EU STANDARDS AND THE STATE OF JUDICIARY, CORRUPTION AND HUMAN RIGHTS IN GEORGIA

Open Society Georgia Foundation

The open Society Georgia Foundation (OSGF) is a member of the Open Society Foundation's Network, which was set up in 1994. In more than twenty years of independence, Georgia has made progress in building a democratic society that strives to take its place as of the European Family of nations. Having undergone territorial conflicts, economic collapse and war with Russia, Georgia has nonetheless managed to turn itself from a near-failed state to a developing country with western aspirations. Through donor funding, partnership, training and helping to unlock the potential of talented Georgian young people, the OSGF has played a significant role in this process that continues to this day.

The Foundation has a strong record of achievements in developing civil institutions and the media, promoting civil values, contributing to improvement of election environment, and increasing access to education and healthcare; it has also provided major support to European and national integration programs and the development of social equality.

The present report was prepared in frames of EU Integration Program.

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Centre for the Studies of Ethnicity and Multiculturalism

Georgian Young Lawyers' Association

Human Rights Education and Monitoring Center

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INTRODUCTION

EU membership is Georgia's foreign policy goal. It is based on the broad public consensus and supported up to 80% of country's population.

The country's civil society is actively engaged in Georgia's EU integration process. The proposed document is yet another attempt to bring Georgia closer to the European Union.

The present initiative is backed by EU Integration Program of the Open Society Georgia Foundation and aims at assessing the existing legislation and practice in the field of judiciary, fight against corruption, human rights and fundamental freedoms and equality, based on benchmarks that EU candidate country needs to meet. The exercise is usually carried out by the state institutions of EU candidate countries.

With this document we want to encourage the Georgian authorities to make more progress and bold steps in the process of Georgia's eventual membership in the European Union before its EU accession process gets officially launched. This is an attempt to unilaterally identify the achievements and gaps applying the benchmarks that EU candidate country is supposed to meet.

The Questionnaire is a formal instrument through which the EU assesses the readiness of states to begin the process of accession. Benchmarks are set in every chapter to guide the candidate towards fulfilling the EU membership obligations.

The two year process of preparing the document involving dozens of CSOs was led by Mr. Srdjan Majstorovic, former member of the team negotiating Serbia's EU accession process.

The proposed assessment is based on the analysis of collected qualitative and quantitative data and is enriched with the detailed recommendations. We sincerely hope that this attempt would encourage the Georgian authorities to address the identified challenges and produce similar document applying to remaining 33 chapters of the Questionnaire.

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Open Society Georgia Foundation

LIST OF ACRONYMS

CNM – Council of National Minorities under the Public Defender of Georgia

CoE – Council of Europe
CR – Council of Religions under the Public Defender of Georgia
ECRI – European Commission against Racism and Intolerance
EMIS - Educational Management Information System
FoRB – Freedom of religion or belief
GOC – Georgian Orthodox Church
HEI – Higher Education Institution
ID – Identification Document
IDP – Internally Displaced Person
IDPs – Internally Displaced Persons
IEC - International Education Centre
ILO – International Labour Organisation
IOM – International Organisation for Migration
LEPL – Legal Entity under Public Law
MIA – Ministry of Internal Affairs of Georgia
MoLHSA – Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Affairs of Georgia
NAEC - National Assessment & Examinations Centre
NCEQE - National Centre for Educational Quality Enhancement
CPT - Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
PSG – Prosecution Service of Georgia
SARI – State Agency for Religious Issues
SRNSFG - Shota Rustaveli National Science Foundation of Georgia
SSA – LEPL Social Service Agency
TPDC - National Centre for Teacher Professional Development
UN – United Nations
VAT – Value Added Tax
VET - Vocational Education and Training

KEY FINDINGS OF THE REPORT

The revised Constitution of Georgia came into force after the inauguration of the new President of Georgia at the end of 2018 and completely changed the institutional structure of the Prosecutor's Office, which became an independent institution no longer under the control of the executive. Despite the reform of the prosecution system and the amendments to the law on prosecution, the composition of the Prosecutorial Council cannot ensure the independence of the Prosecutor's Office. It remains politicised and is contrary to the requirements of the revised Constitution. In addition, although the law establishes the discretionary power of the prosecutor to decide to initiate or terminate prosecution, the legislation does not establish proper guarantees for the prosecutor to make this decision independent of his/her superiors. There are no procedural guarantees for tenure, term of office or irrevocability of prosecutor. Nor are there procedures established for lower ranking prosecutors to oppose the illegal decisions of higher-ranking prosecutors or for giving instructions to lower ranking prosecutors, etc. The recruitment and promotion of prosecutors must be improved to ensure that decisions are based on precise and objective criteria, notably merit.

Reforms have also been undertaken to change the selection and promotion of judges. Nevertheless, the High Council of Justice (HCOJ) regulation that establishes certain criteria for the promotion of judges does not employ objective criteria. At the same time, the law does not require the HCOJ to substantiate its decision on the promotion of judges. Furthermore, the number of disciplinary charges brought against judges by the HCOJ is incredibly low in comparison with the number of complaints submitted to the HCoJ.

The Strategy of the Reform of the Court System for 2017-2020 identifies the challenges with the management of the court system. To wit, there is an insufficient number of judges in the court system, a problem with high judicial caseloads and uneven distribution of work among judges, among others. In order to solve the abovementioned problems, the Strategy document elaborates that the required number of judges must be properly defined, the number of judges must be increased (as necessary), effective case management must be introduced, and an electronic system of case distribution must be introduced. The current practice of specialisation of judges in narrow legal fields by the HCoJ or the court presidents, without proper substantiation of the grounds for specialisation, can undermine the independence of judges, as well as the principle of random case distribution. The rules for the selection and appointment of court presidents and heads of collegiums and chambers are not prescribed by law or HCoJ regulations.

Certain restrictions limit access to court decisions as there is no special online programme to access the decisions of lower courts and the courts do not proactively publish their decisions. This restricts public oversight of the judiciary. Georgian legislation on freedom of information and other related regulations give unconditional priority to personal data protection regardless of any

possible public interest in relation to specific court cases. Georgian legislation and practice for disclosure is not compatible with relevant international standards or human rights.

Georgia is a signatory of numerous international documents related to the fight against corruption. Georgia has adopted anti-corruption legislation and accompanying mechanisms, and preventive and oversight mechanisms, such as publication and monitoring of asset declarations, protection of whistleblowers, adoption of codes of ethics, training of public employees and more. One important international convention that Georgia has not yet signed is the Convention against Bribery by Public Officials during International Business Transactions, a key anti-corruption document oriented towards the "supply side" of corruption transactions.

Georgia's Anti-Corruption Strategy for years 2017-2018 is divided into three main parts: Prevention of Corruption, Criminalisation of Corruption and International Cooperation. Georgia's anti-corruption efforts focus on preventing and combating corruption while also decreasing the risk of corruption. Although Georgia has set up several anti-corruption units responsible for the prevention, detection and investigation of violations, civil society has questioned the independence and efficiency of the existing bodies. CSO reports have repeatedly called for the creation of an independent anti-corruption body, which would be equipped with sufficient powers and resources to tackle the prevention of corruption and coordination of anti-corruption efforts nationwide. A report on the State Security Service of Georgia (SSSG) underlined the concern about too many powers vested in the SSSG, as well as its lack of transparency. Furthermore, concerns remain regarding the fair and independent investigation of high-profile cases. Georgia's Law on Conflict of Interest and Corruption in Public Institutions protects individuals working in the public and private sectors who disclose information regarding public bodies, but there are no corresponding whistleblower protection regulations for revealing information regarding private sector representatives.

International assessments commend the operations of the State Audio Office, including the success of budgetmonitor.ge, which was developed and launched under Georgia's Open Government Partnership (OGP) National Action Plan (NAP) for 2016-2018. The procurement.gov.gewebsite has been also commended as a useful tool for ensuring the transparency of upcoming tenders and existing procured deals. However, several recommendations remain to be addressed.

In recent years, Georgia has made a number of meaningful steps to combat torture and ill-treatment. Nevertheless, Georgia's legislation falls short of the requirements of the Istanbul Protocol, the first set of international guidelines for documentation of torture and its consequences. For example, in cases of torture or other ill-treatment allegedly committed by prison officers, prison doctors must inform the investigative department of the Ministry of Corrections, not an independent authority such as the Chief Prosecutor's Office, which is mandated to investigate crimes committed by law enforcement bodies. Investigation by an internal body of the Ministry cannot guarantee the institutional independence needed for the effective investigation of these crimes. The same is true in cases of alleged torture and ill-treatment at temporary detention isolators.

Georgia continues to face important challenges with regard to the prohibition of forced labour and labour exploitation. The criteria for qualifying an act as labour exploitation is vague, resulting in a disjointed approach to redressing the problem. Georgia must enshrine the relevant International Labour Organization (ILO) standards into national legislation and practice, taking into account

important elements, such as poor working conditions, excessive work days and hours, wage manipulation, etc.

The Constitution of Georgia guarantees freedom of belief, religion and conscience for all. In 2017, the Parliament of Georgia initiated draft amendments to the Constitution of Georgia that affected the provisions of freedom of religion and belief. The Parliament of Georgia added new criteria such as "state security," "prevention of crime" and "implementation of justice" as reasons for the restriction of the freedom of belief, religion and conscience.

Despite the high standard of religious neutrality and freedom guaranteed by legislation, in practice, religious minorities and the Public Defender of Georgia report that the requirements of the law are often violated at public schools through the display of religious symbols for non-academic purposes, indoctrination and proselytising. The Georgian Orthodox Church's influence on public educational institutions plays a major role in discrimination against minority students and the violation of religious neutrality. In addition, tax privileges are granted to only the Georgian Orthodox Church. The Georgian authorities have limited engagement with the Council of Religions, which operates under the auspices of the Public Defender's Tolerance Centre. The authorities should require the newly created State Agency for Religious Issues to cooperate with the Council of Religions and utilise the Council's expertise and recommendations in order to tackle the problem of religious intolerance.

Georgian legislation recognises the fundamental rights and freedoms of a human being and guarantees the protection of these rights. Specifically, Georgian legislation prohibits discrimination based on race, colour, language, sex, age, nationality, origin, place of birth, residence, property or title, religion or faith, national, ethnic or social belonging, profession, marital status, health condition, disability, sexual orientation, gender identity and expression, political or other beliefs or other basis. Currently, Georgia lacks both a preventive policy towards hate crimes and specific approaches for how to work with ethnic and/or religious communities. In recent years there has been an alarming rise of newly formed racist, extremist and neo-nationalist groups in Georgia. They target foreigners from Asian and African countries, non-Georgian Orthodox religious communities, human rights NGOs, the LGBT and liberal groups. Official data of the government on racially motivated hate crimes are significantly lower than the number of incidents mentioned by the victims.

The Georgian legislative framework for gender equality is largely in line with international standards. However, the laws can be further refined. For example, the Georgian Labour Code establishes no clear provisions for the prevention of gender discrimination and does not mention the principle of equal remuneration. Sexual harassment is not yet defined in the Labour Code. In addition, the Law on Gender Equality does not prohibit either harassment or sexual harassment beyond employment settings.

The Constitution of Georgia guarantees the freedom of opinion and expression as well as the right to receive and impart information freely. Georgia's media landscape is largely pluralistic, critical and vibrant, and the legal framework guarantees freedom of expression and the independence of editorial policy. However, a 2017 report raised concerns about media independence, specifically: politicised editorial policies at the Georgian Public Broadcaster, continued pressure on the critical television channel Rustavi 2 and the consolidation of ownership of pro-government private

television stations. Political influence over private media, particularly television outlets, from both the opposition and the ruling party remains a major problem.

With respect to restrictions of the activities of non-governmental organisations, problems are related more with practice rather than legislation. In particular, NGOs, especially those working on democratic and judicial reforms and the protection of human rights and elections, are targets of attacks on a regular basis whenever their recommendations or criticism are unacceptable to the ruling party.

The right to education for the citizens of Georgia is guaranteed by the Constitution of Georgia and regulated by various laws, legislative acts and normative documents. The rights of children with special needs and disabilities to access preschool education is curtailed due to various reasons, such as non-adapted infrastructure, lack of inclusive educational programmes and lack of knowledge of preschool teachers of inclusive education. Access of persons with special needs to higher education institutions remains problematic for various reasons, such as lack of inclusive education and distance learning facilities, among others.

Georgia generally ensures respect for EU citizens' rights. The Constitution of Georgia provides the legal ground to ensure that natural and legal persons from EU member states have access to Georgian courts, free of discrimination. However, foreign citizens are prohibited from owning agricultural land. Georgia must harmonise domestic legislation with EU legislation so as to allow EU citizens to vote and stand as candidates in municipal elections in Georgia.

CHAPTER I

JUDICIARY

INDEPENDENCE

1 **How does legislation provide for the independence of the judiciary and the autonomy of prosecutors? Is the independence of judges and autonomy of prosecutors guaranteed by the Constitution? How are the rights of the judiciary protected? Have there been any complaints about the independence of the judiciary and the autonomy of prosecutors? If so, how were they resolved?**

The Georgian prosecution system has undergone several reforms since 2015. Until the end of 2015, the Prosecutor's Office was a structural unit of the Ministry of Justice of Georgia and the Minister of Justice was head of the system. Article 81[4] of the Constitution of Georgia stipulated that the "bodies of the Prosecutor's Office are under the system of the Ministry of Justice and the Minister of Justice shall provide general management of their operations".[1]

Toward the end of 2015, the Prosecutorial Council was established to ensure the independence of the work of the prosecution system. This reform was conducted within the framework of the existing constitutional setting of the prosecution system. Therefore, the Prosecutor's Office remained under the Ministry of Justice and the Minister remained head of the system as well as ex officio head of the Prosecutorial Council.

Following this reform, the Constitution of Georgia was again amended on 13 October 2017.[2]According to Article 65 of the revised Constitution, "The Prosecutor's Office of Georgia shall be independent in its activity and shall only comply with the Constitution and law. The Prosecutor's Office shall be led by the General Prosecutor, who is elected for a term of six years upon nomination by the Prosecutorial Council by majority of the total number of the Members of Parliament, in accordance with the procedures established by the organic law. The Prosecutorial Council shall be established to ensure the independence, transparency and efficiency of the Prosecutor's Office. The Council shall consist of 15 members elected in accordance with the procedures established by the organic law. The Chairperson of the Prosecutorial Council shall be elected by the Council members for a term of two years. The Prosecutor's Office shall submit a report on its activities to Parliament on an annual basis. The competencies, structure and procedure for the activity of the Prosecutor's Office shall be determined by the organic law." The revised Constitution came into force after the inauguration of the new President of Georgia at the end of 2018 and completely changed the institutional structure of the Prosecutor's Office, which became an independent institution no longer under the control of the executive.

The reform of the prosecution system and the amendments to the law on prosecution, deriving from the requirements of revised Constitution, is still on-going. The draft Law on Prosecution which is being considered by the Parliament of Georgia[3] establishes the following composition

1. Georgian Constitution adopted 24/08/1995 N 786, consolidated version of 04/10/2013, published at www.matsne.gov.ge.
2. Date of adoption of the amendments 13/10/2017 N 1324, consolidated version of 23/03/2018, published at www.matsne.gov.ge.
3. The information provided as of 1 December 2018.

of the Prosecutorial Council: eight prosecutors elected by the conference of prosecutors, one elected by members of the Parliamentary majority group, one elected on the nomination of the MPs outside the Parliamentary majority members, one member elected by the Parliament from members of academia, civil society or NGOs, and one member appointed by the Minister of Justice.

> The composition of the Prosecutorial Council cannot ensure the independence of the Prosecutor's Office.It remains politicised and is contrary to the requirements of the revised Constitution. In addition, the Prosecutorial Council lacks the proper functional independence.
>
> The functions of the Council are limited to the following:
>
> - Selection of general prosecutor;
> - Discipline of first deputy and deputy general prosecutors;
> - Hear periodic reports from the general prosecutor and give recommendations;
> - Prepare guidelines for the implementation of criminal policy document;
> - Prepare recommendations for the general prosecutor in order to promote uniform practice of work of the prosecution system, and
> - Decide on the termination of term of office of the member of the prosecutorial council.

Article 35 of the Law on Prosecution[4]states that a prosecutor/investigator of the prosecution system is independent in his/her work. He/she cannot be dismissed or his/her office terminated except on the grounds and through the procedure established by this law. The law declares that no one shall intervene in the work of the prosecutor. The law establishes the following principles of the work of the prosecution system: legality, protection of human rights, professionalism and competence, objectivity and impartiality, unity and centralisation, subordination of all lower ranking prosecutors to the general Prosecutor, and political neutrality.

Article 16 of the Criminal Procedure Code[5]gives the prosecutor discretion to decide on prosecution, namely, the decision to start or drop the investigation is a discretionary power of the prosecutor and shall be guided by public interests. Articles 33 of the Criminal Procedure Code of Georgia[6]states: a prosecutor performs his/her functions on behalf of the state. In court the prosecutor is state representative and bears the burden to prove the charges. When performing his/her duties before the court, the prosecutor is independent and obeys the law. A higher ranking prosecutor is authorised to repeal the illegal/unsubstantiated decisions of a lower ranking prosecutor, to amend such decision or adopt new decision. The prosecutor is authorised: to order investigation into any law enforcement body or an investigator according to the Rules on Investigation Subordination and to withdraw a case from one investigator and transfer it to

4. Law on Prosecution, adopted 21/10/2008 N 382, consolidated version 05/09/2018, published at www.matsne.gov.ge.
5. Criminal Procedure Code, adopted 09/10/2009 N 1772, consolidated version 05/09/2018 published at www.matsne.gov.ge.
6. Ibid.

another. The general prosecutor or a person authorised by him/her has authority to withdraw a case from one investigative body and transfer it to another regardless of the Rules of Investigation Subordination; to dismiss lower ranking prosecutor from supervising the prosecution and order the supervision of this investigation by another prosecutor. The prosecutor is authorised to participate in the investigation of a case or to conduct a full-scale preliminary investigation. The prosecutor is authorised to give mandatory instructions to members of law enforcement bodies or to lower ranking prosecutors. The prosecutor is authorised to repeal the decision of the investigator or the lower ranking prosecutor, etc.

> Although the law establishes the discretionary power of the prosecutor to decide to start or drop the prosecution, the legislation does not establish proper guarantees for the prosecutor to make this decision independent of his/her superiors: there are no procedural guarantees for tenure, term of office or irrevocability of prosecutor. Nor are there procedures established for lower ranking prosecutors to oppose the illegal decisions of higher ranking prosecutors or for giving instructions to lower ranking prosecutors, etc.

Pursuant to Article 59 of the Constitution of Georgia,[7] judicial power shall be independent and exercised by the Constitutional Court of Georgia and the common courts of Georgia. The Constitutional Court of Georgia is a judicial body of constitutional control. Justice shall be administered by the common courts. Specialised courts may be created only within the system of the common courts. A military court may be created during martial law and only within the system of the common courts. The creation of extraordinary courts shall be inadmissible. In common courts, cases shall be heard by juries in cases defined by law and in accordance with the established procedure. The system of common courts, their authority and procedure for activity shall be determined by the organic law.

The Organic Law on Common Courts[8]establishes that judicial decisions are delivered on behalf of the people. They are based on the Constitution, law, ratified international treaties and regulations passed pursuant to the law. Judicial decisions are obligatory for all and may not be subject to extrajudicial examination. A judicial decision may be reconsidered only by the competent court in legal proceedings prescribed by law.

One of the basic principles of the exercise of judicial power, stipulated under Articles 3, 4 and 5 of the Organic Law on Common Courts, is that judicial power is vested in the courts and is independent of the legislative and executive powers. Judicial decisions are binding to all and may not be subject to extrajudicial examination. Nonfulfillment of judicial decisions or precluding its fulfilment leads to the responsibility prescribed by law. Any person has a right to directly apply to court for the protection of rights and freedoms. Any person shall be tried by the court under which jurisdiction the case falls.

7. Constitution of Georgia, adopted 24/08/1995 N 786, consolidated version of 23/03/2018 published at www.matsne.gov.ge.

8. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

The Organic Law on Common Courts provides that judges are independent in their work, that they adjudicate and render judgements in accordance with the Constitution, law and other general acts, ratified international treaties, generally accepted rules of international law and the judicial faith of a judge. No one shall demand a judge to report on the case or to instruct a judge on the outcome of the case. The withdrawal of a case from the judge, termination of his/her office or transfer to another office shall be made pursuant to the law.

If during the hearing of the case a judge decides that the law or regulation which the judge needs to apply in this case, fully or partially is incompatible with the Constitution, the judge shall suspend the case and submit the issue to the Constitutional Court of Georgia. The hearing of the case will be renewed after the decision of the Constitutional Court is delivered on the matter.

State or local authorities, institutions, civil or political unions, public official, individual or legal persons are prohibited from violating the independence of the court. Any influence or intervention in the work of a judge with the aim to influence the outcome of the case is prohibited and punished by law (Article 8).

Parties and other participants in legal proceedings or other interested parties have the right to file a complaint on the performance of judges if they think that there is any kind of unauthorised influence on the course and outcome of the proceedings. The complaints are submitted to the Independent Inspector of the High Council of Justice (HCoJ), which is authorised to conduct preliminary review of the complaint and submit its opinion to the HCoJ. The HCoJ decides to bring disciplinary charges against judges based on the submission of the Independent Inspector. The decision to hold a judge responsible for disciplinary or ethics violation is made by the Disciplinary Board and can be appealed to the Disciplinary Chamber of the Supreme Court.

In 2018 the Disciplinary Board considered only one case related to disciplinary charges brought against a judge by the HCoJ. In 2017 the Disciplinary Board considered two cases related to the disciplinary charges brought against judges by the HCoJ. In 2016 the Disciplinary Board considered two cases related to the disciplinary charges brought against a judge by the HCoJ. In 2015 and 2014 no disciplinary charges were submitted by the HCoJ for the consideration of the Disciplinary Board.

The statistics of submission of complaints to the HCoJ against judges shall be considered here:

- In 2017, 391 complaints were pending in the HCoJ and 345 out of these complaints were terminated by the HCoJ. According to official statistics published by the HCoJ, seven complaints concerned corruption or conflict of interests and most complaints (116) concerned improper performance of judicial authority.
- In 2016, 488 complaints were pending in the HCoJ (including 277 complaints from 2015) and 209 cases were terminated. No thematic statistics are available.
- In 2015, 375 complaints were pending in the HCoJ (including 70 from 2014) and 93 cases were terminated. No thematic statistics are available.

2 Please describe the normal selection (not re-election), promotion, disciplinary and dismissal procedures for judges and prosecutors and indicate how they relate to the accountability and independence of the judiciary (autonomy in the case of prosecutors). Have there been any complaints about the procedures? If so, how were they resolved?

Judges of the first instance and appellate courts of general jurisdiction are selected and appointed by the HCoJ (HCoJ) according to the procedure prescribed by the Organic Law on Common Courts[9]and the Regulation adopted by the HCoJ on the Rules for the Selection of Judicial Candidates.[10]

Supreme Court judges and the chief justice are elected by the Parliament of Georgia upon the nomination of the HCoJ. The new rule of the election of Supreme Court judges has recently been adopted by the Parliament of Georgia as a result of the revision of the Constitution and came into force after the inauguration of a new President of Georgia in December 2018. According to the amended legislation, judges of the Supreme Court are appointed at the nomination of the HCoJ. The requirements to pass a qualification exam for judges and complete studies at the High School of Justice (HSoJ) does not apply to the candidates for the Supreme Court. Meanwhile, Article 34.4 of the Organic Law on General Courts stipulates that the HCoJ is authorised to nominate to the Parliament a candidate for the Supreme Court whose professional experience shall be relevant for the high status of a Supreme Court judge.

Candidates for the first instance and appellate courts are evaluated by the HCoJ based on two main criteria: competence and integrity. The HCoJ announces competitive selection in which those eligible for the competition can participate. Eligibility criteria are as follows: higher legal education, at least five years of professional experience, is at least 30 years old, has successfully passed the qualification exam for judges and completed the 10-month training course in the HSoJ.

The following candidates are exempt from the requirement to complete studies in the HSoJ:

- Person nominated for the position of a Supreme Court judge;
- Former judge, who has passed the qualification exam for judges, was appointed to one of the general courts through competitive selection and has experience working as a judge for at least 18 months.

The competition for the selection of candidates to the first instance and appellate courts is announced through the official webpage of the HCoJ. The term for submitting applications shall be at least 15 calendar days. Within five days after the expiration of the term for submission of applications, the HCoJ decides on the list of candidates and publishes the roster and short biographies of the candidates. The competition is held in two main stages: gathering information and conducting interviews with the candidates, which is then followed by the voting procedure.

9. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

10. Rules for the Selection of Judicial Candidates, adopted 09/10/2009 N 308, consolidated version published at www.hcoj.gov.ge.

The HCoJ and its department gather information about candidates. The list of the minimum sources of information is established by Regulation N308. Any interested person is allowed to submit information about the candidate to the HCoJ within the framework of the competition. The HCoJ may use this information only after verifying its authenticity. The candidates have the right to receive information included in their personal files and submit to the HCoJ additional information or evidence.

After the information is gathered, the interviews are held by the members of the HCoJ. Regulation N308 establishes that the interviews shall be held in a closed session of the HCoJ. Although in previous years the HCoJ conducted interviews with the candidates in an open session, during last two years more and more candidates are choosing to be interviewed in a closed session. It should be noted that all other information about the competition, including information gathered by the HCoJ about the candidates, is closed. The HCoJ does not provide justification for appointments.

Following the interviews, the members of the HCoJ individually prepare an evaluation form where the candidates are assigned scores as prescribed by law. Scores are assigned in the area of competence, however, the evaluation of a candidate's integrity is not score based. In addition, the law does not directly provide for the requirement to substantiate the evaluation and scores by the members of the HCoJ. These deficiencies make the evaluation system of judicial candidates subjective, which raises concerns regarding the lack of objective and merit-based appointments of judges.

Following the evaluation of candidates, the HCoJ appoints judges through secret ballot with a two-thirds majority of the total number of HCoJ members. Judges for the first time are appointed for a three-year probationary term. Those with at least 3 years of experience working as a judge, or those who are exempt from the requirement to undergo probationary appointment, are appointed for life.

Selection and Appointment of General Prosecutor – Article 65.2 of the Constitution of Georgia[11]states that "the Prosecutor's Office shall be led by the General Prosecutor, who is elected for a term of six years upon nomination by the Prosecutor's Council by a majority of the total number of members of Parliament, in accordance with the procedures established by the organic law." The Law on Prosecution[12]establishes the qualification requirements for a candidate to be elected as a general prosecutor of Georgia: has no conviction record, is a Georgian citizen with higher legal education, has at least five years of experience working as a criminal law judge, prosecutor or practicing criminal law cases or is a widely recognised criminal law specialist from an institution of higher education or non-governmental organisation and has at least 10 years of experience working in a legal profession. The candidate shall have a good moral and professional reputation.

According to the Law on Prosecution, no more than six months prior to the expiration of the current general prosecutor's term of office, the Prosecutorial Council of Georgia initiates consultations for the selection of candidates. Consultations are held with academic institutions, members of civil society and law specialists. The consultations continue for one month. As a result of these consultations, the Council shall select and nominate to the Parliament of Georgia

11. Constitution of Georgia, adopted 25/08/1995 N 786, consolidated version 23/03/2018 published at www.matsne.gov.ge.

12. Law on Prosecution, adopted 21/10/2008 N 382 consolidated version 05/09/2018 published at www.matsne.gov.ge.

a candidate for the general prosecutor's office. The Prosecutorial Council holds a secret vote to make this decision. The candidate with the majority votes who at the same time receives at least two thirds of the votes of the total number of the council members is selected. If the votes are evenly divided, the decision is made by the head of the Council. If none of the candidates receives at least two thirds of Council members' votes, a second round of voting is held between the two candidates with the most votes. If still none of the candidate receives the required number of votes, the selection procedure shall start over.

The Parliament of Georgia confirms the general prosecutor with the majority votes of the total composition of the Parliament through secret ballot. If the Parliament does not elect the nominated candidate, the selection procedure shall start over according to the rules elaborated above.

Dismissal of General Prosecutor – The general prosecutor may be dismissed from office only through an impeachment procedure. Other grounds for termination of the term of office of the general prosecutor are: personal statement; job incompatibility; recognition of the general prosecutor by the court decision of lacking mental capacity; loss of Georgian citizenship; or death.

Appointment and Dismissal of Lower Ranking Prosecutors – The general prosecutor is authorised to appoint and dismiss deputy chief prosecutors, prosecutors of autonomous republics of Abkhazia and Adjara, head of the Tbilisi City Prosecutor, heads of district and regional prosecutor's offices, all lower ranking prosecutors. The general rules of appointment and dismissal in public service do not apply to prosecutors. The regulation on the conduct of competition for the appointment of prosecutors is established by the decree of the Minister of Justice. However, the regulation of competitive selection is not a mandatory rule for the appointment of prosecutors.

Article 31 of the Law on Prosecution establishes the required qualifications for prosecutors to be appointed to office: holds higher legal education; has completed a six-month to one-year-long internship in the prosecution system; has passed the qualification exam; and his/her business and moral features and health condition allow performance of prosecutorial duties. The pre-requisite of the qualification exam can be waived and a person can be appointed to the Prosecutor's Office without fulfilling this requirement if this person has passed the qualification exam for judges or the qualification exam for attorneys. The pre-requisite of having completed an internship in the prosecution system can be waived for those candidates who meet one of the following criteria: has worked as a judge or an attorney for at least one year, has passed the qualification exam for judges, or has at least three years work experience in legal profession.

A prosecutor can be dismissed from office by the decision of the general prosecutor and on the following grounds: health conditions that preclude him/her from performing duties of the prosecutor; failure to perform duties or improper performance; job incompatibility; disciplinary violation; reduction in workforce; ethics violation, etc.

> **GRECO** – "The [GRECO Evaluation Team (GET)] has misgivings about the fact that prosecutors' recruitment and career advancement are only sparsely regulated, which significantly impairs the level of transparency of the process. Regarding the recruitment procedure, the principles and criteria which form the basis of the decisions by the internship commission and by the Chief Prosecutor are not specified in detail in the

law. The GET is concerned that the decision-makers may thus have – or at least appear to have – too much discretion, which puts at risk the objectivity and impartiality of the process as well as citizens' trust in the system. These concerns are heightened by the fact that the law does not require appointment decisions to be reasoned – which may undermine the effectiveness of appeal possibilities against such decisions as provided for by the [Law on the Prosecutor's Office]. After the visit, the authorities indicated that Order #43 of the Minister of Justice of 15 August 2015[13] includes some principles and criteria for decision-making by the internship commission and by the Chief Prosecutor. However, the GET sees a need for revision of those rules. It has particular misgivings about section 15 which gives the internship commission discretion to use – or not to use – the questionnaire and evaluation form prepared for that purpose, and also about section 18, according to which the internship commission is free not to nominate any candidate. The situation is similar with respect to the promotion of prosecutors, which is not regulated in detail in the law, though the authorities indicate that promotion criteria have recently been developed and circulated within the prosecution service. Moreover, the GET is again concerned that the law does not require decisions on promotion, although appealable, to be reasoned."[14]

"In line with GRECO's previous pronouncement on these issues, the GET is of the firm opinion that clear, precise and uniform selection procedures and criteria, notably merit, need to be enshrined in the law, both for the first appointment of prosecutors and for promotion; it is also crucial to ensure that procedures are transparent and that all decisions taken are reasoned. In this connection, the GET refers to European standards and reference texts according to which 'the careers of public prosecutors, their promotions and their mobility must be governed by known and objective criteria, such as competence and experience' and 'should be regulated by law and governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial review.' To conclude, the GET wishes to stress that such arrangements will be conducive to strengthening the independence and impartiality of the prosecution service – as well as public trust in this institution – in line with the intentions underlying the reform process currently underway in Georgia. In this connection, the GET was interested to hear, after the visit, that it is planned to regulate the recruitment and promotion of prosecutors by further developing the relevant criteria in more detail. In view of the above, GRECO recommends (i) regulating, in more detail, the recruitment and promotion of prosecutors so as to ensure that decisions are based on precise and objective criteria, notably merit; (ii) providing for transparent procedures – including by making the abovementioned criteria public – and ensuring that any decisions in those procedures are reasoned".[15]

13. Order #43 of the Minister of Justice of 15 August 2015 on the Adoption of the Rule for Undergoing an Internship Programme at the Agencies of the Prosecution Service of Georgia, see https://matsne.gov.ge/ka/document/view/2463273; https://matsne.gov.ge/ka/document/view/19090

14. FOURTH EVALUATION ROUND Corruption prevention in respect of members of Parliament, judges and prosecutors EVALUATION REPORT GEORGIA; Adoption: 2 December 2016, Publication: 17 January 2017 https://rm.coe.int/16806dc116 para, 154.

15. Ibid.,para. 155.

3 Please describe in detail the differences in status, tenure etc. between prosecutors and deputy prosecutors and between judges and assistant judges.

According to Article 65 of the Constitution of Georgia,[16] the term of the office of General Prosecutor is fixed and he/she is elected for a six-year term. According to the Law on Prosecution,[17]the general prosecutor may not be re-elected to the office for two consecutive years. There is no fixed term of office guaranteed by law for the first deputy prosecutor and deputy prosecutors, or for other lower ranking prosecutors. Deputy prosecutors and other prosecutors are appointed and dismissed by the decision of the general prosecutor. These prosecutors are appointed for an indefinite period of time, though they can be dismissed at the will of the general prosecutor based on the procedure described in the response to question 2.

The heads of the prosecutor's offices (prosecutor's offices of autonomous republics, district prosecutor's offices, regional prosecutor's offices, Tbilisi City Prosecutor's Office) have deputy prosecutors who are appointed and dismissed by the general prosecutor. All lower ranking prosecutors in these prosecutor's offices are also appointed and dismissed by the general prosecutor.

The Law on Prosecution establishes the system of subordination of lower ranking prosecutors to higher-ranking prosecutor. The subordination of lower ranking prosecutors to higher-ranking prosecutors includes the following rules:

- Lower ranking prosecutor is obligated to fulfil the directions given by the higher ranking prosecutor;
- Lower ranking prosecutor is accountable to higher ranking prosecutor;
- Higher ranking prosecutor is authorised to repeal or amend decisions made by the lower ranking prosecutor;
- Higher ranking prosecutor is authorised to consider claims regarding the decisions of the lower ranking prosecutor;

In addition, the general prosecutor is authorised to establish other forms of subordination which does not contradict the Constitution or the Law on Prosecution. Lower ranking prosecutors are obliged to fulfil any lawful requirement or reference coming from the higher-ranking prosecutor.

Article 63.3 of Georgian Constitution and Article 36 of the Organic Law on Common Courts[18] guarantee life tenure for judges (until they reach the age established by the organic law). According to the same Article of the Organic Law on Common Courts for the first time appointment of judges of first instance and appellate courts a three-year probationary period is applicable, for those who does not have at least 3 year experience of working as a judge. There is no fixed term of office guaranteed by the law for assistant judges. The rules of appointment and dismissal of assistant

16. Constitution of Georgia, adopted 25/08/1995 N 786, consolidated version 23/03/2018 published at www.matsne.gov.ge.
17. Law on Prosecution, adopted 21/10/2008 N 382, consolidated version 05/09/2018 published at www.matsne.gov.ge.
18. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

judges are regulated by the Law on Public Service of Georgia,[19]which provide general guarantees for employees in public services. The grounds for dismissal of a public servant include, among others: gross disciplinary violation; negative evaluation of a public servant as concluded in the periodic evaluation of public servants; other grounds for termination of office of a public servant. The HCoJ decides on the number of assistant judges and clerks in each court. The assistant judges and clerks are appointed and dismissed by the court presidents.

4 How is the principle of the natural judge covered in Georgian legislation and how is it implemented in practice?

Regulation of case assignment is part of the principle of ***Jus de non evocando*** which states that no one may interfere with the process of handling a case because of a desired and intended outcome, not externally by suddenly creating a special court, and also not internally by administrative measures in order to have befriended or even bribed judges dealing with the case, or by relieving someone of the case and giving it to an inexperienced judge. This is why the principle of ***Jus de non evocando*** is of eminent importance in any judicial organisation – no matter how different it may be operated.[20]

The principle of natural judge is an elaboration of the ***Jus de non evocando*** along with the principle of judges' immovability. This means two things. This interpretation demands that case assignment within the courts takes place at random or with very detailed pre-established criteria so as to make it unpredictable which judge is assigned which case. It also means that if a case is assigned to a judge, he or she may not be withdrawn from the case, and it may not be assigned to another judge.[21]

The way in which a case is assigned to a particular judge shall be compatible with Article 6.1. of the European Convention, particularly with the requirements of independence and impartiality.[22] Although, the European Court of Human Rights (ECHR) and the United Nations (UN)[23] consider case assignment to be an internal matter of judicial administration, the European standards and notion of a "natural judge" require the process of case assignment to be objective and random.

Case assignment–The Georgian law on Case Assignment, adopted in 1998, remained in force until 31 December 2017[24] and applied to all first instance and appellate courts of general jurisdiction.

19. Law on Public Service of Georgia, adopted 27/10/2015 N 4346, consolidated version 05/09/2018 published at www.matsne.gov.ge.

20. MARCO FABRI AND PHILIP M. LANGBROEK, ASSIGNMENT OF CASES TO COURTS AND WITHIN COURTS IN SIX EUROPEAN JUDICIAL ADMINISTRATIONS AND IN QUÉBEC: A COMPARATIVE ANALYSIS, page 10, para.: 2.1.1. http://www.irsig.cnr.it/joomla/images/stories/file/chapter_2004_fabri_case_assignment.pdf

21. MARCO FABRI AND PHILIP M. LANGBROEK, ASSIGNMENT OF CASES TO COURTS AND WITHIN COURTS IN SIX EUROPEAN JUDICIAL ADMINISTRATIONS AND IN QUÉBEC: A COMPARATIVE ANALYSIS, page 10, para.: 2.1.2.

22. Bochan v. Ukraine, para. 71.

23. UN Basic Principles on the Independence of the judiciary, para. 14. http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx

24. Article 3.2 of the Law of Georgia on Common Courts Amending the Law of Georgia on Common Courts adopted on 8 February 2017 abolished the Law of Georgia on Case Assignment effective from 31 December 2017.

The law regulated the distribution of individual cases to judges within a court.[25] This law did not establish the principle of random case allocation. Court chairs drew up an alphabetical roster of judges, and incoming cases were assigned to the judges going down that list, as they were filed in court. In the appellate and district courts where more than two judges performed their duty, if too many cases were accumulated by one judge, or if for any other reason a judge could not hear a case, the chair of the court, the deputy chair of the court or chair of relevant collegium/ chamber of the court could reallocate cases.[26] In addition to the abovementioned broad case assignment regulation, Article 30(5) of the Georgian Organic Law on General Courts provided for the discretion of a court chairperson to deviate from the case assignment rule and assign a particular judge to a case or to change the composition of panels to avoid hindrances in the administration of justice without having to provide a justification.

In February 2017 the Law on Case Assignment was abolished (effective 31 December 2017) and the principle of random electronic case distribution was introduced in Article 58[1] of the Organic Law on Common Courts of Georgia.[27]The system of random case allocation was implemented in Georgian courts in January 2018. The discretion of the court chairpersons to deviate from the case assignment rule (Article 30(5) of the Organic Law on Common Courts) remains in force.

Based on the new regulation of random electronic case assignment, the HCoJ adopted detailed regulation on electronic case assignment.[28]Along with other matters, this regulation establishes the rules of exception where the principle of random case assignment does not apply. Meanwhile, cases in common courts are distributed according to the field of expertise of judges. In the district (city) courts, where the court collegiums are established or where the HCoJ has determined narrow fields of specialisation of judges, cases are distributed among judges of relevant collegium/ narrow field of specialisation. In district (city) courts where there are no such collegiums, cases are distributed among judges of the relevant field of specialisation. Excessive individual specialisation of judges and defining the composition of chambers of appellate courts can undermine the principle of random case allocation and the principle of natural judge.

The Organic Law of Georgia on Common Courts establishes the rule of **narrow specialisation of judges** within the chamber of particular court.[29] Whilst in general, the specialisation of judges is not excluded from international recommendations, it is not regarded as a deliberate choice and is only recommended when particular pre-conditions exist (e.g. need to adapt to changes in the law, need to have a knowledge of science other than the law, etc.).[30] Meanwhile, the same recommendation provides for the possible dangers of specialisation one of them being the following: …Specialisation is only possible when courts reach a sufficient size. Smaller courts may find it impossible to set up specialist chambers, or an adequate number of such chambers. This forces judges to be versatile, and thus to have the ability to address a range of specialist matters.

25. Law on Case Assignment and Imposition of the Duty to another Judge in Common Courts of Georgia, 1998, Articles 4 and 5.

26. Law on Case Assignment and Imposition of the Duty to Another Judge in Common Courts of Georgia, 1998, art. 6.

27. Organic Law on Common Courts of Georgia, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

28. Regulation on electronic case assignment, adopted 01/05/2017 N 1/56, consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/56.pdf.

29. Organic Law of Georgia on Common Courts, art. 30(2).

30. Consultative Council of European Judges, Opinion (2012) No.15, para. 8 and 12. https://rm.coe.int/16807477d9

Excessive individual specialisation of judges would hamper this necessary versatility.[31] Thus, overly narrow specialisation of judges or assigning insufficient number of judges to particular specialisation can undermine the principle of random allocation of cases and the independence and impartiality of that judge.

Article 23.2. of the Organic Law on Common Courts establishes four sectorial chambers of appellate courts. Article 23.3. of the same law states that the number of judges and the composition of chambers of the appellate courts is defined by the HCoJ. According to the same law in the appellate courts, civil cases are heard by three-judge panels, which are part of the appellate chamber. Meanwhile, in the appellate courts, cases are assigned to individual judges, rather than to the relevant panels, however, the law is silent about defining the composition or modification of the composition of the three-judge panels. Therefore, the matter of **how a three-judge panel is assigned to a particular case or replaced during the course of a trial** is unclear both in law and in practice. The assignment of cases to three-judge panels or replacement of one or all judges from the panel at the appellate level does not comply with the objective criteria and casts doubt as to the independence and impartiality of such a tribunal.

5 How many and what types of specialised judges and prosecutors are there?

According to Articles 30 and 49 of the Organic Law on Common Courts,[32]narrow specialisation of judges of the first instance and appellate courts and the number of judges to be assigned in specialised fields is defined by the HCoJ.

The Organic Law on Common Courts establishes two types of specialisation of judges: 1. By creating specialised collegiums and chambers inside the first instance and appellate courts of Georgia and defining the number of judges to be appointed to those collegiums and chambers and 2. By defining the narrow legal categories within the specialised fields of law and assign a judge to hear cases falling within one of those categories.

1. Article 30 of the Organic Law on General Courts states that in the first instance courts where two judges perform judicial functions, one hears criminal cases and the other civil and other cases. In the first instance courts where the proceedings are very intensive and where more than two judges perform judicial functions, the HCoJ may define the narrow specialisation of judges or establish specialised collegiums. In the first instance courts. The number of specialised judges are defined by the HCoJ and the judges are assigned to specialised fields by the decision of the HCoJ. The head of the collegium is appointed to the collegium of the first instance court by the decision of the HCoJ for a five-year term from among the judges, who are members of the same collegium. The president of the first instance court, in order to avoid obstruction of the performance of justice, is authorised to assign a judge to hear a case in different collegium or to assign a magistrate judge to hear a case from the territory outside the working area of this magistrate judge.

31. Consultative Council of European Judges, Opinion (2012) No. 15, para. 17. https://rm.coe.int/16807477d9

32. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published www.matsne.gov.ge.

According to the Organic Law on General Courts, the HCoJ decides on the number of judges in the appellate courts. The law establishes the following specialised chambers of the appellate courts: Civil Law Chamber, Administrative Law Chamber, Criminal Law Chamber and Investigative Collegium. Meanwhile, the law states that the HCoJ may further define more narrow specialisation of judges. The HCoJ appoints presidents of the appellate courts and heads of chambers and collegiums of the appellate courts as well as their deputies for five-year terms. Similar to the first instance courts, the president of the appellate court, in order to avoid obstruction of the performance of justice, is authorised to assign a judge to hear a case in a different chamber or collegium.

2. According to the decision of the HCoJ,[33]the following narrow categorisation of judges is defined within the Civil Law Chamber of the Tbilisi Appellate Court:

- Category A – property disputes, family law disputes, and heritage law disputes.
- Category B – liability law disputes.
- Category C – commercial law disputes if disputed amount is more than 500 000 GEL (164 000 EUR);[34] cases of simplified procedure; labour disputes; disputes on freedom of expression; intellectual property law disputes.
- Category D – cases related to arbitration.

The following narrow categorisation of judges is defined within the Administrative Law Chamber of the Tbilisi Appellate Court:

- Category A – disputes on legality of administrative acts; disputes on adoption of administrative acts; disputes on real acts of administrative bodies; disputes arising from construction law; social protection disputes; election disputes.
- Category B – disputes arising from the obligation of the administrative bodies to reimburse damages; tax law disputes; labour disputes; disputes related to the administrative contracts; disputes on privatisation of state property; disputes arising from the land law; election disputes;
- Category C – cases of administrative violations.

The following narrow categorisation of judges is defined within the Criminal Law Chamber of the Tbilisi Appellate Court:

- Category A – crimes against humanity (certain articles of criminal code); economic crimes (certain articles of criminal code); crimes against security and order (certain articles of criminal code); crimes against the state (certain articles of criminal code);
- Category B – crimes against humanity (certain articles of criminal code); economic crimes (certain articles of criminal code); crimes against security and order (certain articles of criminal code); crimes against the state (certain articles of criminal code);
- Category C – crimes against humanity (certain articles of criminal code); economic crimes (certain articles of criminal code); crimes against security and order (certain articles of criminal code); crimes against the state (certain articles of criminal code);

33. Adopted 30/04/2018 N 1/175, published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/175-2018.pdf.

34. Official exchange rate established by the National Bank of Georgia as of 24/11/2018.

The decision of the HCoJ[35]defines categories of specialisation in the Tbilisi City Court. The following categories of specialised judges are assigned to the following categories of cases:

- Crimes committed by juveniles; cases to be considered by a jury; judicial oversight on plea bargains;
- Crimes against life; crimes against human rights and freedoms; crimes against economic activities; crimes against public security and order; drug related crimes; terrorism; crimes in public service.
- Crimes against health; threatening life or health of a human; crimes in banking sector; crimes in the financial sphere; crimes against workplace safety; crimes against public health and morality; transportation crimes; crimes against constitutionality of the state and security; crimes in public service; crimes against legal regime of occupied territory;
- Crimes against sexual liberty of a person; crimes against family and minor; crimes against property; crimes against cultural heritage; cybercrime; crimes in public service; crimes against environment and use of natural resources; crime against military service; crimes against humanity;
- Investigation stage –first appearance cases; motions on witness examination in the course of investigation of a crime; other judicial oversight over the investigation activities.
- Pre-trial hearings.

A separate decision of the HCoJ establishes narrow categories within civil and administrative disputes in specialised collegiums of Tbilisi City Court.[36]According to the Law on Prosecution,[37]a specialised prosecution unit can be established temporarily. According to the information provided by the Minister of Justice (11/09/2018 N8153), no specialised prosecution units have been established during 2015-2018.

The February 2018 periodic report of the Chief Prosecutor of Georgia (who, until November 2018, before the reform of the prosecution system, was leading the system) mentions that in 2017 two courses of specialisation in juvenile justice were conducted for prosecutors, investigators and managers of the prosecution system with the support of the European Union, UNICEF and the US Embassy. The report does not mention quantitative or qualitative data about this specialisation activity. On the mediation and diversion of juveniles, six multidisciplinary working meetings were conducted with the participation of 72 specialised prosecutors.

6 Human resources policy:

a) Describe the methods and criteria for the selection, appointment and promotion of candidates for judicial office. How judges and prosecutors are recruited (are there competitive and public exams; systematic interviewing of all candidates; comparison of CVs; etc.)?

35. Decision adopted 24/07/2017 N 1/233, published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/233-2017.pdf.

36. Decision adopted 03/10/2006 N 1/92-2016 published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/92-2016.pdf.

37. Law on Prosecution, adopted 21/10/2008 N 382, consolidated version 05/09/2018 published at www.matsne.gov.ge.

Article 63.6 of the Constitution of Georgia[38]establishes the following minimum requirements for the appointment of judges of common courts: is a Georgian citizen, has attained the age of 30, has acquired relevant law degree, and has at least five years of professional experience. The Constitution states that additional qualification requirements be established by the Organic Law on General Courts. A judge of general jurisdiction court is appointed for life until the age of retirement. Judges of the first and appellate instance courts are appointed for three-year probationary periods, except those candidates who are exempt from probationary appointment. The Constitution establishes two major criteria for the selection of the judicial candidate: competency and integrity of the candidate.

Article 61 of the recently revised Constitution of Georgia,[39]which came into force after the inauguration of the newly elected President of the country in December 2018, states that the Supreme Court of Georgia shall consist of at least 28 judges. Upon nomination by the HCoJ, Supreme Court judges shall be elected for life, until they reach the age of retirement, by a majority of the total number of the members of Parliament. Article 63.6 of the Constitution of Georgia states that judges of the common courts shall be selected based on their integrity and competence. Article 34.4 of the Organic Law on General Courts[40]states that the HCoJ is authorised to nominate candidates to the Supreme Court who have not passed the qualification exam for judges and who, by their professional experience, comply with the high standards for judges of the Supreme Court. According to Article 34.3, the requirement to complete study in the HSoJ does not apply to candidates nominated to the Supreme Court. The rules of appointment of judges established by Article 35 of the Organic Law on Common Courts (open competition, gathering information about the candidates, holding interviews with the candidates, score based system of evaluation of a candidate and other procedural rules) do not apply to candidates nominated for the Supreme Court.

Judges of the first instance and appellate courts are appointed by the decision of the HCoJ. Article 63.6 of the Constitution of Georgia states that a judge of the common courts shall be appointed for life until the reach of the retirement age established by law. Judges of the common courts shall be selected based on integrity and competence. The decision to appoint a judge shall be made by a majority of at least two thirds of the total number of the members of the HCoJ. The procedure for appointing and dismissing judges shall be determined by the Organic Law.

Article 35 of the Organic Law on Common Courts establishes the rules for the appointment of judges of the first instance and appellate courts. It states that the HCoJ announces an open competition for the selection of candidates to the first instance and appellate courts elaborated in detail below.

The Organic Law on Common Courts establishes the following criteria for the evaluation of candidates:

- Competence – knowledge of legal norms; skills and competence of legal substantiation; writing and oral communication skills; professional characteristics; academic achievements and professional trainings; professional activities.

38. Constitution of Georgia, adopted 25/08/1995 N 786, consolidated version 23/03/2018 published www.matsne.gov.ge.

39. Ibid.

40. Organic Law on General Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

- Integrity – personal integrity and professional conscience; independence, impartiality and fairness; personal and professional conduct; personal and professional reputation.

Following the abovementioned criteria the law further elaborates characteristics that are relevant to establish compliance with each criteria mentioned above. For example, to establish the compliance of a candidate with the criteria "personal integrity and professional conscience", the following shall be taken into account: conscience, integrity, relevant understanding of responsibilities, transparency, correctness and accuracy while fulfilling different responsibilities (job, financial, etc.), etc. Similar characteristics are established for each and every criterion of integrity and competence.

The compliance of candidates with the criteria of competence is evaluated using points based the following evaluation system: knowledge of legal norms – 25 points; skills and competence of legal substantiation – 25 points; writing and oral communications skills – 20 points; professional characteristics – 15 points; academic achievements and professional trainings – 10 points; professional activities – 5 points.

Following the evaluation of a candidate's integrity, the following decision is made by the HCoJ: The candidate does not comply with the criteria of integrity; the candidate somewhat complies with the criteria of integrity; the candidate fully complies with the criteria of integrity.

Chapter V of the Organic Law on Common Courts of Georgia establishes four methods of appointment of judges of first and appellate instances: first time appointment for a probationary period (competition); lifetime appointment of probationary judges; lifetime appointment of eligible candidates exempt from probationary appointment (competition); transitional rule of lifetime appointment. The criteria of integrity and competence for appointment of judges are the same for all four methods of appointments. Different procedures are used for different types of appointment.

Article 34 of the Organic Law on Common Courts defines eligibility for participation in the **competition** for the first time appointment for a probationary period: those who comply with general qualification requirements established by the Constitution and the Organic Law, have passed qualification exam for judges, completed 10 months of studies in the HSoJ, has between 0 and 18 months of experience working as a judge, and submitted an application for participation in the competition announced by the HCoJ.

The procedure of the competition is established by the Organic Law on General Courts and the decision of the HCoJ regulating the process of selection and appointment of judges.[41]The process of competitive selection is as follows:

- The HCoJ announces competition for the selection and appointment of judges through public notice. The application period shall be no less than 15 calendar days.
- Within five days after the closing of the application period, the HCoJ considers submitted applications and draws up the roster of participating candidates. Everyone who complies with the general qualification requirements is allowed to take part in the competition. During this five-day period, the HCoJ publishes a list of candidates and their short bios.

41. Adopted 09/10/2009 N 1/308, published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/308.pdf.

Short bios of candidates include information about education, work experience, and professional and academic achievements. Upon publication, any interested third party has two weeks to submit information about the candidates to the HCoJ.

- The first stage of the competition includes gathering information about the compliance of the candidate with the criteria established by law. A department of the HCoJ is assigned to gather reliable information about the candidates from the following sources: Ministry of Interior – about administrative violations of the candidate for the last three years; Ministry of Finance – information about the candidate's finances and tax liabilities; Independent Inspector – about disciplinary proceedings against the candidate; at least two reference letters about integrity and competence of the candidate; information from courts about number of cases heard by the candidate, compliance with procedural terms and stability of decisions if a candidate is a former judge.

  In addition, the department is obliged to gather the following information about the candidates: information from media resources; financial declaration; information about business activities of the candidate; information about participation of a candidate in a legal proceedings; video minutes of court proceedings in cases of former judges. The department submits all gathered information to the members of the HCoJ for further consideration. At least 10 days prior to the interview stage of the competition the files of the candidates are open for candidates to review the information gathered by the department and submit responses for consideration by the HCoJ members.
- The second stage of the competition is interviewing candidates. The interview is held to establish the compliance of a candidate with the criteria established by law. The organic law does not provide details on the interview process. Regulation 1/308 establishes the following rules for the conduct of interviews: interviews with candidates are held in a closed session of the HCoJ. Each interview is generally allocated the same amount of time. The members of the HCoJ are allowed to ask candidates questions of similar content prepared for the interview in advance in order to get the information from the candidate about his/her skills, qualifications and knowledge. The rules authorise the HCoJ to conduct interviews with candidates under the supervision of a psychologist, who is allowed to ask questions to the candidates. The psychologist announces his/her opinion about the candidate to the members of the HCoJ and is not allowed to communicate this opinion to the candidate. The opinion of the psychologist is not mandatory for the HCoJ.
- Within five days of the completion of the interviews, members of the HCoJ shall individually fill in the evaluation form for each candidate and indicate either scores as elaborated above or evaluation of integrity criteria as mentioned above.
- After the evaluation forms are filled in by the members, the voting procedure is conducted. Only those candidates who have met the minimum standards of integrity and competence prescribed by law, are included in the voting procedure.
- The decision taken by the HCoJ to exempt a candidate from the voting procedure cannot be appealed.
- The voting on the appointment of judges is by secret ballot by two-thirds majority of the HCoJ members.
- A candidate's rejection by the HCoJ can be appealed to the Qualification Chamber of the Supreme Court of Georgia.

This procedure applies to lifetime appointment of those candidates who are exempt from probationary appointment, those who have at least three years of professional experience as a judge. In addition to the abovementioned procedure, these candidates are evaluated by also assessing their decisions/verdicts made by them during their previous work as a judge.

The transitional method of lifetime appointment applies to those judges who were appointed for a three-year probationary period at the time the legislative amendments were introduced to the Organic Law on General Courts, which exempts judges with at least three years of professional experience as a judge from the obligation to complete the three-year probationary period (judges appointed for probation before 1 July 2017). According to this procedure, upon a judge's application, three-year evaluation procedures are terminated, the candidate judge undergoes a formal evaluation procedure and is appointed for life through the procedure that corresponds with the competition.

The main shortcomings of the system of selection and appointment of judges are the following:

- The criteria for appointment does not comply with the requirement of objective criteria of evaluation of candidates;
- The evaluation of candidates and decision to appoint candidates to judicial positions are not substantiated. The organic law does not establish the requirement for the HCoJ to substantiate its decisions, including final decision on the appointment of judges. While evaluating a candidate and completing the evaluation form, members of the council are not obligated to substantiate why they thought that the candidate either did or did not comply with established criteria nor indicate what evidence and sources of information they relied on while assessing candidates competence and integrity either with or without score based system.
- A points-based system of evaluation is established only for the competence criteria and does not extend to the assessment of a candidate's integrity.
- Following the evaluation, a candidate takes a judicial position through voting by secret ballot.
- The lack of substantiation and objective criteria render the appeals mechanism ineffective.

Judges who were appointed for a three-year probationary period undergo annual evaluations during these three years. The evaluation is performed by the members of the HCoJ according to the criteria of competence and integrity, two members each year. In total, six members of the HCoJ individually evaluate a judge on probation. Evaluations are made at the end of each year. If at the end of the probationary period at least four of the six evaluators decide that the judge does not meet the minimum standards of integrity and competence prescribed by law, the chairperson of the HCoJ issues an act on denial to review lifetime appointment, which can be appealed to the HCoJ.

The evaluation of the work of judges on probation by six members of the HCoJ is made according to the following procedure:

- The abovementioned criteria are used for the evaluation of judges on probation;
- To assess the compliance of a probationary judge with the established criteria, six evaluators (members of the HCoJ) are selected to study decisions made by the candidate judge, attend court hearings conducted by the candidate judge, retrieve video and audio recordings of court hearings conducted by the candidate judge, gather information according to the procedure elaborated above, for legal consultations apply to representatives of the legal profession, meet the candidate judge and other people and ask particular questions for the information gathering purposes. The evaluator is prohibited from asking the candidate judge questions that may seem to require reporting on particular case.
- The work of the judge on probation is assessed by evaluators using a points-based system according to the criteria mentioned above.
- At the end of evaluation process, the evaluators fill in the evaluation form. The candidate judge has access to the information provided in his/her file after which this information becomes part of the casefile of the candidate judge.
- If four out of six evaluators decide that the judge does not meet the minimum standards of integrity and competence prescribed by law, the chairperson of the HCoJ issues an act on denying to review lifetime appointment, which can be appealed to the HCoJ.
- After the decision on minimal standards of integrity and competence is made, those candidates who comply with the minimum criteria are interviewed by the HCoJ.
- The decision on the appointment of a probationary judge for life is made by a two-thirds majority of HCoJ members through open ballot unlike the first time appointment.
- Refusal to lifetime appointment can be appealed to the Qualification Chamber of the Supreme Court of Georgia.

The promotion of judges is regulated by Article 41 of the Organic Law on Common Courts. A judge of the first instance may be appointed to the appellate court if the candidate has served as a judge at least for five years. The law states that the detailed criteria for the promotion of judges are established by the HCoJ.

According to the Rules of Regulations of the work of the HCoJ,[42] the HCoJ defines the number of vacancies in the appellate courts to be filled through the procedure of promotion. Promotion of a judge under disciplinary liability is prohibited. Criteria for the promotion are: a judge whose competence, experience and professional and moral reputation are fit to the high-ranking position of an appellate court judge. Judges are evaluated by the HCoJ according to these criteria. When taking the decision, members of the HCoJ shall take into account: qualitative and quantitative indicators, number of cases heard, complexity of the cases heard, compliance with the terms of hearing of cases, compliance with the terms of delivering reasoned decisions, stability of decisions, work discipline, personal authority of a candidate among colleagues, participation of the candidate judge in teaching and mentoring young professionals, active participation of a candidate in legal discussions, organisational skills, academic and teaching

42. Adopted 25/09/2007 N 1/208, consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/2007-208.pdf.

activities, protection of ethical and professional standards by the candidate, tendencies of his/her professional growth, etc.

With the aim to establish the compliance of a candidate with the abovementioned requirements, the structural department of the HCoJ provides members of the HCoJ with all necessary statistical data about the candidate. Members of the HCoJ are authorised to proactively and individually gather information about the candidates. The candidate for promotion is authorised to submit to the HCoJ a written self-assessment and information about his/her motivation to be promoted to the appellate court.

Article 13[1].18 of the Rules of Regulation of the HCoJ states that members of the HCoJ shall act in compliance with the interests of justice when deciding on the promotion of a judge. Members of the HCoJ while shall be guided by the principles of objectivity, fairness and impartiality, to decide in favour of the candidate who is the best fit with the high standards of an appellate court judge with his/her qualification and moral characteristic, to avoid discrimination and arbitrariness in deciding on the promotion. The HCoJ makes a decision on the promotion of a candidate with a two-thirds majority of votes of HCoJ members.

> Although the HCoJ regulation establishes certain criteria for the promotion of judges, these criteria does not comply with the requirement of objective criteria, the regulation does not establish the evidence and particular sources of information which shall be gathered in order to assess the compliance of the candidate with the established criteria. At the same time, the law does not require the HCoJ to substantiate its decision on the promotion of a judge.

Article 31 of the Law on Prosecution[43]establishes the following qualification requirements for prosecutors and investigators in the prosecution system: has higher legal education, is fluent in Georgian language, has completed a 6 month to 1 year internship in the prosecution system, has passed the qualification exam for prosecutors in the following disciplines: constitutional law, international human rights law, criminal law, criminal procedure, penal law and operative-investigative activities. A candidate must have the professional and moral characteristics and health condition necessary to perform the duties of the prosecutor or investigator in the prosecution system.

The requirement to have passed the qualification exam for prosecutors is waived for the following candidates: general prosecutor, first deputy general prosecutor, and deputy general prosecutors, also, those candidates who have passed the qualification exam for attorneys or qualification exam for judges. The requirement to complete the internship in the prosecution system is waived for the following candidates: general prosecutor, first deputy general prosecutor, deputy general prosecutors, also those candidates who comply with one of the following requirements: has at least one year of experience working as a judge, investigator or attorney; has passed qualification exam for judges; has at least three years of experience working in a legal profession.

43. Law on Prosecution, adopted 21/10/2008 N 382, consolidated version 05/09/2018 published www.matsne.gov.ge.

The qualification exam for prosecutors is held in a form of multiple-choice test. The tests are published in advance. The procedure for the conduct of the qualification exam is established by the Government of Georgia.

To the position of Tbilisi City Prosecutor or deputy city prosecutor, district prosecutors and deputy district prosecutors, regional prosecutors and deputy regional prosecutors and prosecutors of specialised prosecution office shall be appointed those who have at least three years of experience working in a legal profession. In exceptional circumstances, this three year requirement can be decreased to 18 months for the Tbilisi City Prosecutor or deputy city prosecutor, district prosecutors and deputy district prosecutors, and to 12 months for regional prosecutors and deputy regional prosecutors and prosecutors of specialised prosecution office.

According to Article 9.3 of the Law on Prosecution and based on the abovementioned criteria prosecutors and investigators of the prosecution system are appointed and dismissed by the Chief Prosecutor.[44] Meanwhile the Law on Public Service, which establishes the general rules of appointment and dismissal of public servants, does not apply to the appointment of prosecutors and investigators in the prosecution system. Although existing legislation does not provide for the mandatory rule of appointment through a competitive process, the decree of the Minister of Justice[45]establishes the rules of competition in the prosecution system. The decree establishes that the competition for the selection and appointment of prosecutors shall comply with the principles of objectivity, transparency, non-discrimination, publicity, collegiality and correctness. The commission is established for the selection of the candidates. The head of the commission is appointed by the National Bureau on Public Service at the submission of the general prosecutor. The head of the commission defines the number of the members of the commission and appoints members. Members of the commission may also be representatives of NGOs and other civil society representatives and specialists.

The competition for the selection of prosecutors is announced through the webpage of National Bureau of Public Service (www.hr.gov.ge). The competition is held in the form of either interviews or a written exam. The form of the competition is defined by the commission with the agreement of the general prosecutor. The commission evaluates the candidates individually with the use of special pre-established forms. The decision on the appointment of the candidates is made by the general prosecutor based on the information submitted by the commission.

b) Is the performance of holders of judicial office assessed? If yes, describe the body in charge as well as the relevant methods and criteria. What type of career system is established in Georgia (based on merit, seniority, mixed)?

According to the Georgian Law on Prosecution,[46]prosecutors shall pass a certification exam once every three years while in service. The rules of in-service certification of prosecutors are established

44. The text refers to the Law on Prosecution before its amendment according to the revised Constitution.

45. Adopted 15/08/2014 N 43 published www.matsne.gov.ge.

46. Georgian Law on Prosecution, adopted 27/10/2008 N 382 consolidated version 05/09/2018 published www.matsne.gov.ge.

by the decree of the Minister of Justice.[47]The decree establishes the following procedure for the certification of the prosecutors:

- The certification is held based on the principles of objectivity, transparency, non-discrimination, publicity, collegiality and correctness.
- The aims of certification are as follows: to establish the compliance of a prosecutor's professional skills, qualifications and personal characteristics with the position of a prosecutor; to evaluate the work of the prosecutor; to identify perspectives of proper use of competence of a prosecutor; to identify needs for further training; to stimulate professional growth of the prosecutors; to plan and manage the career of a prosecutor.
- The general prosecutor decides on the organisation of the certification exam. The general prosecutor, at the submission of the human resources department of the prosecution system, decides on the list of prosecutors who will be obliged to pass the certification exam and the schedule of the exam. This information shall be provided to the relevant prosecutors at least two weeks prior to the exam date and made public.
- The certification exam is held in writing andcan also be held in the form of interview as needed. The certification commission decides whether to conduct interviews.
- The topics and method of certification are defined by the general prosecutor.
- The written test consists of 100 pre-developed multiple-choice questions. The observers monitor the conduct of the written test.
- Based on the results of certification exam and at the recommendation of the certification commission, the general prosecutor decides on the promotion/demotion, professional development or dismissal of a prosecutor.
- At the decision of the general prosecutor, the appeals commission is set up to consider appeals by the prosecutors related to the certification exam and its results.
- Organisation of the certification commission and appeals commission is established by the decree of the Minister of Justice,[48]which regulates the rules of competitive selection and appointment of prosecutors. This regulation is elaborated in greater detail in the above section.

The HCoJ has adopted the regulation on Rules for Assessing the Efficiency of Judges of General Jurisdiction.[49]According to this regulation, the Council has to assess the workload of judges once every six months. Considering the components of workload assessment, the rule prescribes the coefficients of complexity, adherence to the deadlines of judicial review and decision and stability of decisions. According to the rule, the assessment outcomes on the efficiency of judges' judicial work can be the following: the work is completed on the highest level, exceeding expectations; the work is completed on a good level, meeting expectations; the work is completed on an acceptable level, partially meeting expectations; the work is completed on a satisfactory level; the work is completed on a partially satisfactory level; the work is completed with shortcomings, with room for improvement; the work is completed on an unsatisfactory level, failing to meet requirements. In addition, the rule provides that considering the assessment outcomes, the HCoJ receives recommendations regarding incentives for specific judges (including consideration of a bonus on the remuneration).

47. Adopted 21/12/2013 N 101 published www.matsne.gov.ge.

48. Adopted 25/09/2013 N 96 published www.matsne.gov.ge.

49. Adopted 27/12/2011 N 1/226 consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/226-2011.pdf.

c) Is the guaranteed tenure of office set out in legislation? Is there a mandatory legal retirement age?

The tenure of a judge's office is guaranteed by the Constitution of Georgia. Article 61 of the Constitution of Georgia guarantees life tenure for judges of all instances, until the retirement age established by the organic law. Meanwhile, the Constitution establishes a three-year probationary period for those judges who do not have at least three years of experience working as a judge. At the end of the three-year probationary period, the HCoJ decides on lifetime appointment. Once a judge is appointed, a judge's office may be terminated under the conditions provided for by law. The Constitution states that the removal of a judge from a trial, the termination of his/her office or his/her transfer to another position is allowed only in cases established by the organic law. The Constitution states that the organic law guarantees the principle of irremovability of a judge. The Constitution guarantees that the reorganisation or liquidation of a court shall not serve as a ground for termination of office of a judge appointed for life.

The tenure of prosecutorial office of the general prosecutor is guaranteed by the Constitution and constitutes six years. All other lower ranking prosecutors do not have fixed terms of office, meaning that they are appointed unless the concrete ground for termination of office prescribed by law exists. There are no guarantees of irremovability of prosecutors prescribed by law as in the case of judges.

d) Please describe the exact procedures for the dismissal of judges and prosecutors (legal basis, competent authorities to launch the procedure, reasons for dismissal etc.).

According to Article 42 of the Organic Law on General Courts, the head of the Supreme Court of Georgia and other members of the Supreme Court may be dismissed from office only through the impeachment procedure. No less than 1/3 majority of members of the Parliament of Georgia may initiate the procedure for the dismissal of the head of the Supreme Court and other members of the Supreme Court on the grounds of violation of the Constitution of Georgia or signs of criminal offence in the conduct of the head of the Supreme Court or other members of the same court. The Parliament of Georgia is authorised to dismiss the head and other members of the Supreme Court with the majority vote of the members of the Parliament following the relevant conclusion issued by the Constitutional Court of Georgia. Judges of lower courts may be dismissed from office on the two-thirds majority votes of the HCoJ.

Article 43 of the Organic Law on General Courts lists the following grounds for the termination of office of a judge:

- On personal statement
- In case of disciplinary violation (except supreme court judges)
- If by the court decision was established that a judge is with limited mental capacity
- Termination of Georgian Citizenship
- Criminal verdict was rendered finding a judge guilty of committing criminal offence
- After a judge turns age of 65
- Violation of the Law on Corruption and Conflict of Interests (except supreme court judges)

- Liquidation of a court (except those judges who are appointed for life)
- Appointment of a judge to another court
- Violation of incompatibility rules
- Expiration of term of office

Meanwhile, according to Article 36.6, the HCoJ decides upon the expiration of the term of office of a judge to extend his/her term of office until the cases over which this judge presides are resolved. The particular length of extended office of a judge is not specified in the law.

The HCoJ decides on termination of office of a judge who for more than four months within the past 12 months was not able to perform judicial functions due to his/her health conditions and according to the relevant medical document he/she will not be able to perform judicial functions (Articles 43.2[1] and 43.2[2] of the Organic Law on General Courts).

The Organic Law on General Courts establishes the following grounds for discipline of judges:

- Corruption or abuse of power to the detriment of justice and interests of judicial office. Corruption is defined according to Georgian Law on Conflict of Interest and Corruption in Public Institutions if it does not constitute criminal offence or administrative violation. For these disciplinary violations, the following sanctions may be imposed upon a judge: reprimand, strict reprimand or dismissal.
- Incompatibility of office of a judge or conflict of interests with judicial obligations. For these violations the following disciplinary sanctions may be imposed upon a judge: strict reprimand or dismissal.
- Inappropriate conduct of a judge, which undermines the authority of a judge or damages trust in the judiciary. For these disciplinary violations, the following sanctions may be imposed upon a judge: reprimand, strict reprimand or dismissal.
- Unsubstantiated delay of court proceedings. For this disciplinary violation, the following sanctions may be imposed upon a judge: reference or reprimand.
- Non-fulfilment or improper performance of judicial obligations. For this disciplinary violation, the following sanctions may be imposed upon a judge: reference, reprimand, strict reprimand, or dismissal.
- Disclosure of judicial deliberations or professional secret. For this disciplinary violation, the following sanctions may be imposed upon a judge: reference or reprimand.
- Destruction of the work of a disciplinary body or lack of respect towards this body. For this disciplinary violation, the following sanctions may be imposed upon a judge: reference or reprimand.
- Violation of judicial ethics. For this disciplinary violation, the following sanctions may be imposed upon a judge: reference, reprimand, strict reprimand, or dismissal.

Disciplinary proceedings may be initiated against a judge based on:

- The submission/complaint by any person, except anonymous submission/complaint;
- The submission by other judge, court or member of the HCoJ or a staff member of the HCoJ;
- Notice from an investigative body;
- Information from the media, also information from the report of the Public Defender of Georgia.

Disciplinary proceedings are initiated and a preliminary investigation performed by the Independent Inspector, which operates under the HCoJ. The Independent Inspector submits its conclusions and opinions to the HCoJ. The term for preliminary investigation is maximum 2 months. The ground for initiated disciplinary proceedings may become circumstances of the case, which were not raised in the submission/complaint but the Independent Inspector became aware of such circumstances during the preliminary review of the case.

At the submission of the Independent Inspector, the HCoJ determines whether there are enough grounds to initiate disciplinary proceedings and whether to bring charges against a judge with a two-thirds majority of votes of the members of the HCoJ. If following the voting procedure two thirds members of the HCoJ do not vote in favour of bringing charges against a judge, the case shall be terminated. If the HCoJ decides to bring charges against a judge, the case is transferred to the Disciplinary Collegium of the Courts of General Jurisdiction and the HCoJ presents charges at the hearing of the case. The Disciplinary Collegium consists of five members, three of which are judges of courts of general jurisdiction elected by the Conference of Judges and two who are non-judge members elected by the Parliament of Georgia. Parliament may elect as a member of Disciplinary Collegium a candidate who: is a citizen of Georgia, has higher legal education, at least 10 years of professional experience, a strong moral reputation and is widely recognised as a professional. The law establishes the rules of job incompatibility for the non-judge members of the Disciplinary Collegium. The law sets the rules for hearing a case by the Disciplinary Collegium with the participation of parties, a representative of the HCoJ and a judge. The Disciplinary Collegium decides whether a judge committed the disciplinary violation he/she has been charged with, whether the conduct of the judge amounts to the disciplinary violation and whether the judge is guilty of committing the disciplinary violation. Only if these three circumstances are established is the Disciplinary Collegium authorised to rule on the guilt of a judge and impose disciplinary sanctions. The Disciplinary Collegium is authorised to change the qualification of charges brought against a judge.

The decision of a Disciplinary Collegium may be appealed to the Disciplinary Chamber of the Supreme Court of Georgia. Only parties to the disciplinary proceedings (the HCoJ and the judge) have the right to appeal the decision. The Disciplinary Chamber rules on facts, as well as the legality and fairness of the sanctions applied by the Disciplinary Collegium.

The decisions of the Disciplinary Collegium and Disciplinary Chamber shall be published on the official website immediately after their entry into force. The process of consideration of the disciplinary liability case by the HCoJ, however, is closed. Only general statistical information is available on the decisions made in the disciplinary cases by the HCoJ. Judges are entitled to request public hearing of their cases by the HCoJ, Disciplinary Collegium and Disciplinary Chamber, except for the deliberation and decision-making process.

> According to the official statistical data provided on the webpages of the HCoJ and Disciplinary Collegium, the number of disciplinary charges brought against judges by the HCoJ is almost non-existent when compared to the number of complaints submitted to the HCoJ.[50]

50. http://hcoj.gov.ge/ge/distsiplinuri-samartaltsarmoeba/sadistsiplino-statistika

-In 2017, out of 391 cases pending in the HCoJ, 345 cases were terminated. In 15 cases, judges were asked to provide explanatory notes. In two cases, recommendations were issued by the HCoJ. In three cases, a judge was charged with disciplinary violations, though these cases were combined into one case and submitted to the Disciplinary Collegium by the HCoJ. Forty-one cases were pending in 2018.

-In 2016, out of 488 pending cases in the HCoJ, 209 were terminated. In three cases, recommendations were issued by the HCoJ.Only in 1 case were disciplinary charges brought against a judge and the case was transferred to the Disciplinary Collegium. Other cases were pending.

-In 2015, out of 375 pending cases in the HCoJ, 93 were terminated. In 19 cases, judges were asked to submit explanatory notes to the HCoJ. In four cases, the HCoJ issued recommendations. In one case, a judge was charged with a disciplinary violation and the case was transferred to the Disciplinary Collegium. Other cases remained pending.

-In 2014, out of 383 pending cases in the HCoJ, 266 cases were terminated. In 17 cases, judges were asked to submit explanatory notes to the HCoJ. No charges were brought against judges. Other cases were pending.

The qualification requirements and the procedure for the selection of candidates for the position of general prosecutor are the following:

- Higher legal education; no criminal record; is a citizen of Georgia, is authoritative for his/her moral and professional characteristics, and has experience working as a criminal law judge, prosecutor or an attorney for at least five years or experience working in a legal profession for at least ten years, and meanwhile is recognised specialist of criminal law by academic circles or civic organisations.
- The general prosecutor is appointed to office for a six-year non-renewable term.
- The Prosecutorial Council of Georgia conducts consultations for the selection of candidates for the position of general prosecutor. Consultations are conducted with representatives of academic circles, members of civil society, and representatives of the legal profession. Consultations last for one month. The Prosecutorial Council selects three candidates through these consultations, out of which two candidates shall be of a different gender.
- The Prosecutorial Council votes on these three candidates separately through secret ballot. The candidate who receives the most votes from the members of the Council but no less than a two-thirds majority of the Council members prevails. If votes are evenly divided, the decision is made by the head of the Council.
- The Council nominates the selected candidate to the Parliament of Georgia.
- The Parliament elects the candidate with a majority of votes of the members.

The general prosecutor may be dismissed from office only through an impeachment procedure. Other grounds for termination of the general prosecutor are: personal statement; job incompatibility; loss mental capacity as determined by court decision; loss of Georgian citizenship; death.

All other lower ranking prosecutors are appointed and dismissed by the general prosecutor. The appointment of prosecutors and investigators in the prosecution system is exempt from the general requirements established by the Georgian Law on Public Service, which provide detailed procedures for the selection and appointment of public servants. The Georgian Law on Prosecution does not outline a detailed procedure or mandatory requirement to conduct a competitive selection of prosecutors and investigators.

Grounds for the dismissal of prosecutors and investigators are established by Article 34 of the Law on Prosecution and are as follows:

- Personal statement of resignation;
- Deterioration of health which precludes him/her from performing the duties of the prosecutor;
- Non-fulfilment or improper fulfilment of duties;
- Job incompatibility;
- Gross or systemic violation of work discipline;
- In case of job cut;
- Election/appointment to other public position;
- Breaking prosecutorial oath, disclosure of professional secret, or other improper conduct;
- Criminal verdict finding guilt of a prosecutor/investigator;
- Loss of Georgian citizenship;
- Violation of requirements for appointment to the position;
- Reaching pension age;
- If a prosecutor/investigator has a criminal record;
- Person suffers from alcoholism, drug addiction or other chronic disease;
- Person is recognised by court decision as having limited mental capacity.

e) Probationary period for judges/prosecutors:

- How long is it?

The probationary period for first time appointment of those judges who does not have at least three years of prior work experience as a judge is three years. A probationary appointment does not apply to prosecutors and investigators in the prosecution system. However, the Law on Prosecution establishes the mandatory prerequisite of completion of a six-month to one-year internship in the prosecution system in order to be appointed to the prosecutor's position, except for those positions exempt from this requirement. The Georgian Law on Prosecution Article 2a elaborates that the functions of the prosecutor are performed by the general prosecutor, deputy prosecutors, other city, district and regional prosecutors, specialised prosecutors, and intern-prosecutors, among others.

- Is there a difference in the tasks of probationary period and life-appointed judges/prosecutors?

There is no difference in the performance of professional duties between judges appointed to permanent office and those appointed for the first time, except that the judges appointed for a probationary period are exempt from being appointed to different administrative positions in the judiciary.

- Do judges/prosecutors on a probationary period get specific training?

During the probationary period, judges receive those trainings that are provided by the HSoJ on the regular basis. According to the letter sent by the HSoJ (dated 13/19/2018 N02/2110) to the Georgian Young Lawyers' Association, "The High School of Justice does not differentiate training participants according to their status of probationary judge or otherwise. All judges have equal opportunity to participate in any of the trainings organised by the School according to their choice. In addition, the School invites newly appointed judges to the trainings related to judicial ethics, techniques of conducting of court hearings and juvenile justice."

- Are there objective and pre-determined procedures to evaluate the work during the probationary period? Who is responsible for this evaluation?

The performance of a judge is evaluated after the first and second years in office, as well as four months prior to the expiration of the three-year term. The HSoJ votes, by lot, to select one judge member and one non-judge member of the HCoJ to evaluate the activity of the judge for the given period within one month, independently from each other. A total of six evaluations shall be performed by different evaluators.

The HCoJ carries out the voting procedure in a closed session. According to the law, the details of the evaluation of a judge are confidential until the expiration of the three-year term of the judge. Neither the Council members, nor the structural unit personnel have the right to disclose the results of the evaluation.

According to the Organic Law of Georgia on General Courts, as soon as the three-year term begins, the judge is informed about the procedures and circumstances that will be considered during his/her evaluation based on certain criteria and during decision-making regarding his/her appointment for life.

The OSCE Trial Monitoring Report[51] includes important recommendations, which directly advise the Council to establish additional procedures for the evaluation of judges appointed for a probationary period. The mentioned recommendation stems from the international standards for judicial independence set out by the Venice Commission:

- If the appointment for a probationary period is maintained, the HCOJ should add additional regulations on the monitoring and evaluation of judges to the provisions included in the Organic Law on Common Courts and take into account international recommendations on evaluating the efficiency of performance in terms of international standards of judicial independence and accountability.
- The HCoJ should elaborate fundamental criteria for the selection and appointment of judges and standard procedures, regardless of whether the probationary period is maintained. This should include procedures for decision-making on lifetime appointment after the expiration of the probationary period. These procedures should require written evidence to be enclosed in all decisions.

51. Pg. 21-22. Available at: http://www.osce.org/odihr/130676?download=true

However, the HCoJ has not adopted such regulations. In addition, according to the report by the Georgian Young Lawyers' Association,[52] the procedure of evaluation of probationary judges established by the organic law is not sufficiently clear or transparent. The criteria does not meet the requirement of objective criteria for evaluation.

According to the law, the performance of a judge is evaluated by two main criteria: integrity (personal honesty and professional integrity; independence, impartiality and fairness; personal and professional conduct; personal and professional reputation; financial obligations) and competence (knowledge of legal norms; ability and competence to provide legal arguments; writing skills; oral communication skills; professional qualities, including conduct in a courtroom; academic achievements and professional training; professional activities (Article 36^2).

The Organic Law sets evaluation criteria and determines assessment characteristics for each criterion. Nevertheless, the law does not specify the information and sources the evaluator should rely on during the evaluation. For example, the characteristics under integrity are honesty, personal conduct, moral reputation, etc. However, the law does not specify how or based on what information or sources of information the evaluator should assess the honesty, personal conduct, moral reputation or other qualities of a judge. This renders the evaluation process opaque and creates room for a disparate, unequal approach and arbitrariness and violates the principle of judicial independence.

According to the law, the evaluators carry out the evaluation of the performance of a judge concurrently and independently of each other, and are obligated not to disclose any information obtained during the evaluation or its results. During the one-month evaluation period, an evaluator can, at any time, take any necessary measures to evaluate the judge according to the criteria outlined by the law:

- The evaluators should, concurrently and independently of each other, examine the same minimum five cases reviewed by the judge under evaluation in a relevant period. The law envisages that the mentioned cases to be examined shall be randomly selected.
- According to the organic law, the evaluation of decisions includes the assessment of whether the judge is familiar with substantive and procedural legislation, human rights law, including case law of the European Court of Human Rights, the correctness of application of appropriate legal norms with respect to the decisions made by the judge, and the substantiation and cogency of court decisions.
- The law envisages that the evaluator can attend court hearings chaired by the judge under evaluation.
- The law envisages that the evaluator has the authority to obtain necessary information as

52. Georgian Young Lawyers' Association, The Evaluation and Lifetime Appointment of Judges on Probation https://gyla.ge/files/news/2008/The%20Evaluation%20and%20Lifetime%20Appointment%20of%20Judges%20on%20Probation.pdf

prescribed by the law.

- The law gives the evaluator the right to consult representatives of legal circles.
- The evaluator has the authority to meet with the judge under evaluation and other people in person and ask questions to obtain information on specific issues.

According to the Law, if during the evaluation of a candidate's integrity, more than half of the evaluators consider that the judge does not fulfil this criterion, this constitutes a sufficient condition for refusing to admit the judge to the interview stage. In addition, if the sum of the points gained by the judge for the criterion of competence does not amount to 70% of the maximum available points, the Chairperson of the HCoJ issues a legal act on the refusal by the HCoJ to review the issue of lifetime appointment of a judge.

According to Paragraph 13 of Article 36^4 of the Organic Law on Common Courts, the act of the chairperson on the refusal by the HCoJ to review the lifetime appointment of the judge to office may be appealed to the HCoJ within one week after its submission to the judge. In case of an appeal, the Council, by at least two thirds of the full membership and by an open ballot, makes a decision regarding the cancellation of the legal act of the chairperson and the conduct of an interview with the judge. According to paragraph 16 of the same Article, if the Council does not make a decision to cancel the act and conduct the interview (i.e. if the act of the chairperson on the refusal to review the lifetime appointment of the judge to office remains in force), the mentioned decision shall be final and it may not be appealed.

The law allows for the possibility that the candidate will not proceed to the second stage if three members of the Council (three evaluators) conclude that the candidate does not fulfil the integrity criterion or if the total points obtained in the competence criterion fail to amount to 70%. This cannot, in effect, be appealed.

According to the law, if during the assessment of a candidate's integrity, three or more than three evaluators consider that the judge fulfils or completely fulfils the integrity criterion, and if the total points obtained by the judge on the competence criterion amounts to at least 70% of the maximum available points, the HCoJ shall interview the judge and hear his or her opinions about the results of the evaluation. The judge may submit to the HCoJ his/her opinion on the results of the assessment also in writing, as well as submit an oral and/or written self-assessment, which means that the judge shall submit to the HCoJ the analysis of what he/she considers to be the most successful and most unsuccessful decision(s), as well as mistakes made when adopting decisions over the past three years of judicial activity.

- Who decides on granting permanent tenure and on the basis of which criteria?

According to the Organic Law on Common Courts, the HCoJ of Georgia analyses the results of all assessments prepared during the whole three-year term of the judge. To sum up,in the area of competence, the total sum of the points gained by the judge in the six evaluations conducted during the three rounds of assessments is divided by the total possible points in this area. On the basis of the assessments and interviews conducted with the judge, the HCoJ holds a discussion under Article 36(41) of the Organic Law and, by two thirds of the full membership and an open ballot, makes a decision about the appointment of the judge to office for life before he/she attains the age determined by law. Any member of the HCoJ who disagrees with this decision may record his/her dissenting opinion in writing, which will be

enclosed in the case file.

- Are the decisions on probation subject to judicial or administrative scrutiny?

According to Article 36[5] of the Organic Law on Common Courts, a judge has the right to appeal the decision of the HCoJ on the denial to be appointed as a judge for life before the Qualification Chamber of the Supreme Court of Georgia. The appeal may be made on the following grounds:

- The evaluator (during the evaluation process) or a member of the HCoJ (during the interview with the candidate judge) was biased;
- The evaluator (during the evaluation process) or a member of the HCoJ (during the interview with the candidate judge) discriminated against the candidate judge;
- The evaluator abused power which caused violation of rights of the candidate judge or threatened the independence of the judiciary;
- The information which was used during the evaluation is wrong, which is proved with the information submitted by the candidate judge;
- The evaluation was made with significant violation of the established procedure, which could affect the outcome of the evaluation.

The appeal may be submitted within two weeks following the delivery of the HCoJ's decision to the candidate judge. The appeal shall be heard and decision rendered within one month. The organic law establishes procedural rules for the consideration of the complaint. The chamber is authorised either to repeal the decision of the HCoJ and remand the case to the HCoJ or to uphold the decision of the HCoJ. The decision of the chamber is final and cannot be appealed.

f) High Judicial Council and State Prosecutorial Council:

- Do members have specific privileges?

Article 47.14 of the Organic Law on Common Courts states that the HCoJ may decide on establishing additional payment to the salary of a judge for judge members of the HCoJ. As for the non-judge members of the HCoJ, they are paid a salary, which shall not be less than the salary of an appellate court judge, according to the same Article.

The HCoJ consists of 15 members. The members of the Council are: eight judges elected by the Conference of Judges, head of the Supreme Court of Georgia (an ex-officio member of the Council), five members elected by the Parliament of Georgia and one member appointed by the President of Georgia. The Head of the HCoJ is elected by the members of the Council to a four-year term with the majority votes of the members.

The Prosecutorial Council of Georgia consists of 15 members. The members of the Council are: one member appointed by the Minister of Justice of Georgia; eight prosecutors elected by the Conference of Prosecutors out of which at least 1/4 shall be of a different gender; two members elected by the HCoJ from the judge members of the HCoJ who have at least five years of experience working as a judge; two members of Parliament of Georgia, one of which is elected from the political party holding the majority in Parliament and one member elected from the members outside political power holding majority in Parliament; two members of the Prosecutorial Council

are elected from the representatives of civil society and academia through the procedure prescribed by law. Members of the Prosecutorial Council are not paid remuneration for their work on the Council.

- Can the mandate be renewed and who can renew it?

According to Article 47.12 of the Organic Law on Common Courts, the term of office of the members of the HCoJ is four years. A person shall not be elected to the position of the Council member for two consecutive terms. According to Article 47.2[1], the Head of the HCoJ is elected by the members of the HCoJ from the judge members of the HCoJ for four-year terms.

Members of the Prosecutorial Council are elected for four-year terms. The same person cannot be elected as a member of Prosecutorial Council for two consecutive terms. The head of the Prosecutorial Council is elected by and from the members of the Council for a two-year term with the majority votes of the members attending the Council meeting.

- What are their qualifications?

According to Article 47.4 of the Organic Law on Common Courts, judges who are completing their three-year probationary term (except those probationary judges who have at least five years of experience working as a judge) cannot be elected to serve as judge members of the HCoJ. Members of the Disciplinary Chamber or the Qualification Chamber of the Supreme Court of Georgia also cannot serve as member of the HCoJ. Heads of the courts, deputy heads of the courts, heads of chambers and collegiums of the courts shall not constitute more than half judge members of the Council. Non judge members of the HCoJ elected by Parliament shall be citizens of Georgia, have higher legal education, at least five years of experience working in a legal profession, high personal reputation and be a recognised specialist in a legal field. According to Article 47.5 of the Organic Law on Common Courts, members of Parliament, judges or prosecutors shall not be elected as non-judge members of the Council. Non-judge members of the HCoJ shall be selected from professors and researchers of institutions of higher education, from members of the Georgian Bar Association, or members nominated by non-governmental organisations.

According to Article 8[1] of the Law on Prosecution of Georgia, a member of the Prosecutorial Council of Georgia elected by the Conference of Prosecutors shall be a prosecutor/investigator of the prosecution system who has at least five years of experience working in a legal profession, including at least three years as a prosecutor/investigator. Members of the Prosecutorial Council elected by Parliament shall have: higher legal education, at least five years of experience working in a legal profession and a strong personal reputation with recognition as a specialist in a legal field. Members of Parliament, judges and prosecutors shall not be elected to serve as members of the Council elected by Parliament.

- Are the Judicial Council and Prosecutorial Council deciding on their respective procedural rules?

According to Article 49.2 of the Organic Law on Common Courts, the Rules of the Work of the HCoJ are adopted by the two-thirds majority decision of the members of the HCoJ. The HCoJ decides on the detailed rules of selection and appointment of judges, promotion of judges, in-service evaluation of judges, transfer of judges, case distribution system in the court and other

matters related to the administration of the judiciary. The Rules of Work of the Prosecutorial Council are established with the regulation adopted by the majority votes of the Prosecutorial Council itself.

- How is accountability ensured?

Article 47.1[1] of the Organic Law on Common Courts states that the HCoJ is accountable to the Conference of Judges. Article 8[1].3 of the Law on Prosecution[53]states that the members of Prosecutorial Council are not accountable to the bodies that elect these members. The law also states that the prosecution system is subject to Parliamentary control in the form of annual reports submitted to Parliament by the general prosecutor. The law states that the report shall not include reporting on specific criminal case.

- How is potential conflict of interest scrutinised and taken into account?

The Organic Law on General Courts Article 35[3] establishes rules to avoid conflict of interest during the selection and appointment of judges. The candidate has the right to apply with a reasoned motion to the HCoJ and challenge members of the HCoJ if a conflict of interests exists. Namely, the challenge should include the circumstances that put under question the impartiality, independence or objectivity of this member. On the other hand, members of the HCoJ are obligated to declare potential conflicts of interests and recuse themselves from the proceedings related to the selection and appointment of the relevant candidate. In addition, members of the HCoJ are not authorised to participate in the proceedings of the selection and appointment of judges if this member himself/herself is a candidate in the same selection and appointment proceedings. The decision to withdraw a member of the Council is made by the majority of members of the HCoJ.

The Georgian Law on Conflict of Interest and Corruption in Public Institutions applies to members of the HCoJ, to judges, to the general prosecutor and other lower ranking prosecutors. The law establishes rules to avoid conflicts of interest, regulates issues of assets declaration, gifts, whistleblower protection, etc.

- Do ex-officio members of these councils have the right to vote and what are their exact roles and functions?

According to Article 47.2 of the Organic Law on Common Courts, the ex officio member of the HCoJ (the head of the Supreme Court of Georgia)participates in the Council meetings and has the right to vote. All members of the Prosecutorial Council of Georgia have equal right to vote and participate in the work of the Council.

- Does the Minister of Justice have the right to vote and if yes, in what cases?

The Minister of Justice is not a member to the HCoJ. The Minister of Justice appoints one member to the Prosecutorial Council of Georgia.

53. Law on Prosecution, adopted 21/10/2008 N 382, consolidated version 05/09/2018 published www.matsne.gov.ge.

g) Is there an Inspection Service for the judiciary? (Are there internal control mechanisms established?). If so, describe its composition, role, way of functioning, budget and number of cases it is dealing with. What are the possibilities of appeal against any disciplinary measures and who decides on them?

As a result of the third wave of judicial reform, the Organic Law on Common Courts[54]established the Management Department under the HCoJ. This department supervises the administration and management of the courts. The functions of the department are as follows:

- Studies information related to case distribution, court workload, rate of cases heard by courts, need for temporary transfer of judges, case management and quality of service providing and submits recommendations to the HCoJ and relevant courts.
- Supervises the function of the electronic case assignment system and submits recommendations to the HCoJ.
- Supervises the effective and targeted use of resources of general courts and with this aim coordinates work between the Department of General Courts and the courts.
- Performs other functions prescribed by the HCoJ.

The General Inspectorate is housed within the Prosecutor's Office of Georgia. The General Inspection is accountable to the general prosecutor, who supervises its work. The functions of the inspection are as follows:

- To control the execution of requirements of the legislation by the bodies of prosecution system;
- Control of disciplinary conduct and principle of legality in the bodies of prosecution system, to react on the facts of disciplinary violation and violation of human rights and interests of a citizen;
- Prevention of violations of law in the system;
- Control of finances and budgetary spending in the prosecution system;
- Investigate crimes committed by prosecutors;
- Other functions prescribed by law.

According to the Report of the Chief Prosecutor of Georgia submitted to the Prosecutorial Council[55] in 2017, the General Inspectorate of the Prosecutor's Office conducted 68 official control activities against 115 prosecutors/investigators of the prosecution system. Out of 115 employees of the prosecution system 23 were disciplined (10 warnings; seven reprimands; four dismissals; two demotions; 14 employees were given recommendations; and nine employees were dismissed upon their request). In 2017, the General Inspectorate started 13 criminal investigations; two prosecutions were commenced against two citizens who committed criminal offences in the name of the prosecutor's office. The prosecutor's office did not disclose other information on the work of the General Inspection.

54. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

55. Report of the Chief Prosecutor of Georgia from February 2018, chapter 9, p. 54 http://pc.gov.ge/Multimedia%2FFiles%2F%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98%2F%E1%83%9B%E1%83%97%E1%83%90%E1%83%95%E1%83%90%E1%83%A0%E1%83%98%20%E1%83%9E%E1%83%A0%E1%83%9D%E1%83%99%E1%83%A3%E1%83%A0%E1%83%9D%E1%83%A0%E1%83%98%E1%83%A1%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98%206.02.2018.pdf

The Management Department of the HCoJ was established by the Organic Law on Common Courts with the amendments of 08/02/2017 N255-II (published at www.matsne.gov.ge) and came into force on 08/03/2018. Since that time, the head of the Management Department has not been appointed by the HCoJ.

According to a report prepared by a group of non-governmental organisations,[56] there are several problems related to the structure and functions of the Management Department:

a. The Management Department is responsible for overseeing the operation of the electronic case management and providing recommendations for improvement to the HCoJ. However, the law does not specify the scope of such competence, whether the powers of the department are limited only to technical supervision of the case management software operation, or at the same time it will have controlling levers, including supervision of alternative ways of case distribution if the electronic software breaks down.

b. The Management Department is assigned a number of vague and broad functions, which may jeopardise the autonomy of separate courts, including analysing information about the workload of courts and case hearing index and citizen service quality. Currently, there are several bodies in the judicial system focused on improvement of administrative and organisational management issues in the court.

c. In addition to the court chairpersons and court managers, the judicial system also includes the Department of Common Courts, which provides material and technical support for the system. However, the relationships of the Department of Common Courts and the Management Department with HCoJ of Georgia are the same. In particular, in both cases, the heads of the body are appointed by the HCoJ. Bearing the existing administrative units in mind, the appropriateness and the grounds for setting up a new unit is unclear, especially when the overlap between their roles is obvious.

Prosecutor/investigator is responsible for committing criminal offence or administrative violation on general basis. Parliament recently adopted the Law on State Inspectorate,[57]which is an independent body to investigate the following crimes when allegedly committed by representatives of law enforcement bodies: crimes envisaged by Articles 144^{1}-143^{3}, 332.3.b and d, 333.3.b. and c., 335, and 378.2. The inspectorate also investigates other crimes committed by law enforcement that result in the death of a person when this person was placed in the preliminary detention facility, or penitentiary facility, or other place under control of the law enforcement representative or was otherwise placed under state jurisdiction. The management and prosecutorial supervision over the investigations conducted by the State Inspectorate and prosecution of these cases is made by the structural unit of the Prosecutor's Office of Georgia, which is under the direct control of the general prosecutor.

56. THE JUDICIAL SYSTEM: PAST REFORMS AND FUTURE PERSPECTIVES (2017), Coalition for an Independent and Transparent Judiciary, pages 89-90 https://gyla.ge/files/news/2006/The%20Judicial%20System-3.pdf

57. Law on State Inspectorate, adopted 21/07/2018 N 3273, published at www.matsne.gov.ge.

The State Inspectorate is an independent body and is not under the control of any other state body or public official. To influence or otherwise intervene in the work of the Inspectorate is prohibited and is punished according to law. The candidates for the position of State Inspectorate are selected by the office of the Prime Minister following a public call for applications. The State Inspector is elected by the Parliament of Georgia at the nomination of the Prime Minister of the country. The term of office of the State Inspector is six years. The same person shall not be elected to the State Inspector's Office for two consecutive terms.

A group of local NGOs published an opinion on the draft law on State Inspectorate of Georgia.[58] The main problems identified in the report that can hinder the independence and effectiveness of the new inspectorate are the following: the authority of the inspectorate is limited to certain crimes only and does not cover all crimes that possibly can be committed by law enforcement within their working capacity; the inspectorate is only charged with the investigation of the crime while the decision to prosecute as well as prosecutorial oversight over the investigation conducted by the inspectorate remains in the hands of the Prosecutor's Office of Georgia, etc.

7 Mobility of judges:

a) What procedure governs the allocation of judges to particular courts and regions?

Article 35.5 of the Organic Law on Common Courts[59] establishes that the HCoJ announces a competition to fill particular vacancies in the first instance and appellate courts. The candidates who participate in the competition shall indicate in their application form which vacant position they are applying for. They may choose one or more vacancies indicating the court as well as concrete collegium or chamber in which the vacancy is announced. Thus, at the time of initial appointment, judges are allocated to particular vacant positions of their first choice. The position of a judge is pronounced vacant only after the term of office of the previous holder of the position expires.

b) Can judges be required to move between courts and regions? Who and how is the decision to move a judge made?

Article 37 of the Organic Law on Common Courts states that a judge may be transferred to a vacant position without holding a competition and at the consent of the judge. Article 13^1 of

58. Comments of the Coalition on an Independent and Transparent Judiciary on the draft law of the State Inspectorate, 25/04/2018 http://coalition.ge/index.php?article_id=185&clang=0 available only in Georgian.

59. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

the Rules of Regulation of the work of the HCoJ[60]states that the HCoJ is authorised to decide on the appointment of a judge to another vacant position without holding a competition. The regulation further elaborates that the use of Article 37 of the organic law serves the interest of performing justice effectively, without obstacles. The ground for initiating Article 37 may be one of the following:

- Lack of judges in the relevant court or sharp increase in the caseload of the court;
- If the procedure for the competition to fill in the vacant positions was not announced or it is impossible to conduct the competition in a timely manner;
- Application of a judge to be appointed to a vacant position in other court without a competition.

The Rules of Regulation of the Work of the HCoJ state that while deciding on the transfer of a judge based on Article 37, the HCoJ must take into account the existence of such need in the relevant court, the place of residence of a judge, his/her health and family conditions, influence over the budget spending and other circumstances.

The regulation also establishes the procedure for the non-competitive transfer of a judge. Namely, the information about a vacant position to be filled based on the Article 37 shall be published on the HCoJ website. All interested judges can apply for the vacancy. The HCoJ considers the applications and interviews interested judges. The decision on the non-competitive transfer of a judge is made with two-thirds majority of total number of the HCoJ member.

Temporary transfer of a judge – Article 37^1 of the Organic Law on Common Courts allows for temporary transfer of judges to different courts. There are several guarantees established by the law to balance the need to transfer a judge with the independence of the same judge: in case of sharp increase in caseload of a particular court or if there are no judges available in a court, the HCoJ shall submit request to the judges who are at the top of the reserve list. Only after none of these judges consent to being temporarily transferred to a certain court is the HCoJ authorised to suggest a transfer to the judges of those courts that are located closest to the court in need. In case these judges do not consent, the HCoJ suggests that other judges from courts of the same instance be temporarily transferred. Any of the judges mentioned above can be transferred temporarily to a different court only with their consent and for a maximum of one year. The term of temporary transfer can be prolonged for one more year, which also requires the consent of the judge. If there is not consent, the term of temporary transfer will be terminated. Any decision related to the temporary transfer of a judge must be substantiated by the Council.

If no judge consents to the temporary transfer according to the rules set out above, the HCoJ is authorised to decide on the temporary transfer of a judge without his/her consent. There are several guarantees against the abuse of power established by the organic law: the HCoJ is authorised to select a judge for temporary transfer only from the courts located close to the court in need. The decision of the Council shall state the concrete reasons for the need to temporarily transfer a judge. The decision is made by the HCoJ by drawing lots (random selection). The randomly selected judge is allowed to submit to the HCoJ reasons for his/her inability to be temporarily transferred. If the Council finds that the transfer of a particular judge would not be

60. Rules of Regulation of the Work of the HCoJ, adopted 25/09/2007 N 208, consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/2007-208.pdf.

reasonable, the procedure of drawing lots will be held again. The same judge can be temporarily transferred to a different court without his/her consent only once in ten years in office. Along with applying the procedure of temporary transfer of judges, the HCoJ is obliged to initiate the competition procedure for the selection of judges to fill the vacancies in the court where the need for the transfer of judges arose.

8 **What measures are in place to ensure the internal independence of the judiciary? Are the ordinary courts independent from the Supreme Court or other higher courts? Is the Supreme Court or another high court prohibited from giving instructions, guidance, recommendations, explanations or supervision to ordinary courts? Do judicial leadership posts hold any evaluation, appraisal or disciplinary powers? If so what safeguards exist to prevent the undue influence of the internal judicial hierarchy?**

According to Article 63 of the Constitution of Georgia,[61] a judge shall be independent in his/her activity and shall only comply with the Constitution and law. Any pressure upon a judge or any interference in his/her activity in order to influence his/her decision-making shall be prohibited and punishable by law. No one shall have the right to demand an account concerning a particular case from a judge. All acts restricting the independence of a judge shall be null and void.

Article 4 of the Organic Law on Common Courts[62] states that only the court may repeal, change or suspend a judicial decision according to the procedure prescribed by law. Non-fulfilment of a court decision or obstruction to the fulfilment of court decision will cause responsibility prescribed by law.

Article 7 of the Organic Law on Common Courts states that a judge is independent. A judge assesses facts of the case and makes decisions only in accordance with the Constitution, recognised norms and principles of international law, other laws and judicial faith. No one is entitled to require that a judge report on specific cases or direct a judge to decide in a certain way. It is prohibited to withdraw a judge from a case, to terminate the term of his office, or transfer a judge to other position, except in cases prescribed by law (permanent transfer of a judge to different court with his/her consent, temporary transfer of a judge to different court with his/her consent, promotion of a judge). The principle of immovability of a judge is guaranteed by the Constitution.

Article 8 of the Organic Law on General Courts states that state or local authorities, institutions, civil or political union, public official, legal or private person are prohibited from violating the independence of a judge.

Article 75^1 of the Organic Law on General Courts states that the wrong interpretation of the law, which derives from judicial faith, does not constitute a disciplinary violation and the judge may not be held responsible.

61. Constitution of Georgia, adopted 24/08/1995 N 786, consolidated version 23/03/2018 published at www.matsne.gov.ge.

62. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

However, Article 30 establishes the specialisation of judges. The law states that the HCoJ decides on the narrow specialisation of judges and number of specialised judges. The specialisation of judges in narrow legal fields by the HCoJ or the court presidents, without proper substantiation of the grounds for specialisation, can undermine the independence of judges, as well as the principle of random case distribution.

In terms of the jurisdiction of courts and possibility of reviewing judicial decisions on legal remedies, two appellate courts (Tbilisi and Kutaisi Appellate Courts) are directly higher instance courts to the courts of first instance. The Supreme Court of Georgia, court of cassation, is the directly higher instance court to Tbilisi and Kutaisi Appellate Courts. Article 59.3 states, "Justice shall be administered by common courts. Specialised courts may be created only within the system of common courts. A military court may be created during martial law and only within the system of common courts. The creation of extraordinary courts shall be inadmissible…"

The Supreme Court of Georgia decides on the following civil and criminal appeals:

- The case involves a legal ruling that will promote the development of law and uniform court practice;
- The Supreme Court of Georgia has not ruled on the same legal issue before;
- It is probable that the decision of the Supreme Court on the case will change the existing legal practice established by the court;
- The decision of the appellate court is different from the practice established by the Supreme Court on the same issue;
- The appellate court has ruled on the case with significant violation of material or procedural law which could significantly affect the outcome of the case;
- The decision of the appellate court is contrary to the practice of the ECHR and the Convention on the same issue.
- The convicted appellant is a juvenile.

The Supreme Court of Georgia consists of 28 judges. The number of Supreme Court judges is established by the organic law and the Constitution. Judges of the Supreme Court are nominated by the HCoJ and elected by the Parliament of Georgia whereas judges of the lower courts are selected and appointed by the HCoJ.

The Supreme Court at the decisions of the Plenum of the Supreme Court decides on the following matters related to the independence as well as administration of the Supreme Court separate from the HCoJ:

- Elects members of the Grand Chamber of the Supreme Court at the nomination of the chief justice;
- Elects members of heads of the chambers of the Supreme Court;
- Appoints three out of nine members of the Constitutional Court of Georgia;
- Submits proposals on the constitutionality of a constitutional agreement, law, or normative acts of the President and the Government.
- Submits recommendations to the President or the Government of Georgia on the conclusion of international agreements regarding matters of competence of the Supreme Court;
- Other matters related to the administration of the work of the Supreme Court.

The chief justice: manages the work of the Supreme Court; leads relationships with other branches of government, media and the broader public on behalf of the court system; decides on the appointment and dismissal of the staff members of the Supreme Court; and is an ex-officio member of the HCoJ.

The presidents of the courts of first instance and appellate courts, heads of collegiums in the first instance courts and heads of chambers of the appellate courts are appointed by the HCoJ for five years term. Deputy court presidents and deputy heads of the collegiums and chambers are appointed by the HCoJ. The HCoJ also appoints acting (temporary) court presidents and heads of collegiums and chambers.

Court presidents have the following authorities:

- Hear cases.
- Supervise the work of the court apparatus, decide on the appointment and dismissal of a court manager, assistant judge, clerk of the court, and decide on the discipline of court apparatus.
- In case of necessity and to avoid hindrances in performing justice, assign a judge to hear a case/cases in different chamber or the collegium, or to different panel of three judges, or assign a magistrate judge to hear a case from outside the territory where this magistrate judge is assigned to operate, with the consent of this judge.
- Organise the work of the court, study the information about case management (including data on the submission of cases and completion of their consideration, terms of case management, reasons for delays of proceedings) and submit the generalised information to the judges and the HCoJ. Court presidents also work to eliminate the reasons for delay of proceedings.
- Ensure order in the court.
- Perform other functions prescribed by law.

> The authority of court presidents to assign a judge to hear cases in a different collegium, chamber, or three judge panel, or to assign a magistrate judge to hear a case from a territory outside the area the magistrate judge is assigned to operate, threatens the internal independence of judges. It should also be considered that the rules for the selection and appointment of court presidents and heads of collegiums and chambers are not prescribed by law or HCoJ regulations. The qualification requirements, criteria and detailed procedures for the appointment are non-existent. The appointment of court presidents is non-transparent in practice. In addition, there are no regulations for the appointment of acting (temporary) court presidents and heads of collegiums and chambers within the courts, which also poses questions about the proper use of this power by the HCoJ.[63]

63. Monitoring Report of the HCoJ, Georgian Young Lawyers' Association and Transparency International Georgia, pages 33-37 https://gyla.ge/files/news/2006/MONITORING%20REPORT%20OF%20THE%20HIGH%20COUNCIL%20OF%20JUSTICE%20%20N%205%20ENG%20(3).pdf

Court presidents have important powers granted by the Rules on Random Electronic Case Distribution[64] adopted by the HCoJ. According to this regulation, the court presidents are able to track the number of cases distributed to each judge. In addition, when the electronic system is delayed, the court president is also entitled to allocate cases according to the rule of sequential case distribution.

According to the general rule, court presidents or the heads of the collegium/chamber are only entitled to allocate cases if the duration of the electronic system delay exceeds two days. The rule of case distribution also considers exceptional cases when the chairman is entitled to allocate cases according to the rule of sequence. To specify, the chairman of the court or the chairman of collegium/chamber is entitled to sequentially allocate cases of administrative offence that need to be considered immediately or cases for which the consideration period is either 24 or 48 hours, if the duration of electronic system delay exceeds three hours. Despite the fact, as a result of the 24 July 2017 amendment,[65]the head of collegium/chamber is now also entitled to the right of sequential distribution along with the chairman of the court. The rule does not stipulate what circumstances allow them to use this power.

The record of transitional provisions of the rule of case distribution is problematic and vague. According to it, in case of any deficiencies in the electronic system not foreseen by the regulation, the court president is entitled to allocate cases according to the sequential principle.

The most problematic and noteworthy issue in the new model of case distribution is the authority of the court president to determine the composition of judges in narrow fields of specialisation (groups created according to thematic/procedural stages). Even though the creation of narrow thematic/procedural fields of expertise is determined by the HCoJ itself, the court president personally decides on the composition of judges in narrow fields of specialisation. This creates the real risks of influence over the case distribution process. The programme does allocate cases among the judges of narrow specialisation but only the court president decides who specifically will be representing this specialisation. This problem is aggravated by the fact that there are no formal procedures or stages set out by the law for the distribution of judges among narrow specialisations. Thus, this very authority of the court presidents remains as one of the main challenges of the new rule of case distribution. A report on the deficiencies of the new case distribution system was published by the local NGO.[66]

9 Are the decisions of high courts easily accessible and in what way?

The decisions of the Supreme Court of Georgia are published in special collection and the decisions are made publicly available on the website of the Supreme Court of Georgia (www.supremecourt.

64. Rules on Random Electronic Case Distribution, adopted 01/05/2017 N 1/56 consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/56.pdf.

65. Amendment adopted 24/07/2017 N 1/243 published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/243-2017.pdf.

66. How does the New System of Court Case Distribution Work? Human Rights Education and Monitoring Centre https://emc.org.ge/en/products/rogor-mushaobs-sakmis-ganatsilebis-akhali-sistema-sasamartloshi

ge) through a special search engine (http://prg.supremecourt.ge/). Meanwhile, there is a collection of important interpretations of the court (http://supremecourt.ge/ganmartebebi/) and uniform court practice (http://supremecourt.ge/uniform-court-practice/) published separately on the same website. Decisions of the Supreme Court are published with redacted personal data. The decisions of lower courts are published on the website www.info.court.ge.

In September 2016 the HCoJ adopted the Rules on the Access to the Decisions of Courts of General Jurisdiction (adopted 12/09/2016 N1/250 and an amendment to the decision adopted 17/10/2016 N1/260). This regulation establishes rules for the access as well as proactive publication of court decisions, which apply to all three instances of the courts of general jurisdiction. The regulation states that everyone has the right to request and receive court decisions (except decisions made in closed hearing) and with the protection of personal data (court decision will not be disclosed if the disclosure leads to direct or indirect access to a person's personal data).

This regulation establishes the uniform registry of court decisions through which they are published on the abovementioned website. For purposes of public access to court decisions, they are published with the protection of personal data. The following information is covered in the decision published on the website: name, last name, date of birth, address, and contact information, place of work and address of a person; name, ID number, and address of a legal entity; registration number of a vehicle; any other information that may directly or indirectly lead to an identification of person.

All personal data contained in the texts of the decisions are hidden which makes it hard to read or understand the texts of the decisions. In relation to access to court decisions, only certain categories of cases can be appealed to the court of cassation. Grounds for appeal to the Supreme Court established by civil procedure and criminal procedure codes limit the number and the category of cases the court can hear. In addition, election related disputes and disputes arising from the Administrative Violations Code cannot be appealed to the court of cassation, which further restricts the jurisdiction of the court. These restrictions limit access to court decisions as there is no special online programme to access the decisions of lower courts and the courts do not proactively publish their decisions.

The decisions of the first instance and appellate courts can be accessed by filing a freedom of information request. Prior to October 2015, all court decisions were easily accessible; however, since October 2015, the whole common courts system started refusing to disclose their decisions based on the argument of personal data protection. As a result, it is currently impossible to obtain copies of court decisions, including criminal verdicts against former high-ranking officials. The decisions can only be obtained in a de-personalised form, so that particular people involved or a particular case are impossible to identify.

According to a report by a local NGO, there are following problems related to the access to court decisions: courts employ broad interpretation of the concept of personal data and the depersonalisation obligation. They do not take into account

any possible public interest in relation to specific court cases. The balance between personal data protection and access to public information has been disrupted; courts do not disclose decisions made on cases of former high ranking officials; courts extend the right to personal data protection to legal entities; courts refuse to disclose their decisions due to insufficient resources, etc.[67]

The existing problems related to access to court decisions have their roots in deficient legislation. The same NGO published another report assessing Georgian legislation on freedom of information and other related regulations and found that: the legislation gives unconditional priority to personal data protection and it does not take into account any possible public interest in relation to specific court cases.[68] According to the same study, this legislation and practice of disclosure that is applied in Georgia is not compatible to relevant international standards or human rights.

IMPARTIALITY

10 How does legislation provide for the impartiality of the judiciary?

Article 63.1 of the Constitution of Georgia[69]declares the independence of a judge and states that a judge has the obligation to obey the Constitution and the law. Article 7.1 of the Organic Law on Common Courts[70]states that a judge is independent. He/she evaluates facts and makes decisions only in accordance to the Constitution of Georgia, internationally recognised principles and norms of international law, other laws and own good faith.

The principle of impartiality of judicial institutions and bearers of judicial functions is guaranteed by various pieces of legislation. According to Article 72^1 of the Organic Law on Common Courts, from the moment a case is submitted to the court until the time when the decision enters into force, also during the investigation of criminal case, any communication with the judge related to the investigation, hearing or possible outcome of such case, from the participants of the proceedings, any interested party, public officer, or holder of political office, is prohibited and is a violation of independence and impartiality of a judge/judiciary and adversarial principle of proceedings. The same law establishes measures of responsibility for the violation of the rules of communication.

Article 75^1 of the Organic Law on Common Courts lists the grounds for disciplinary liability, one of

67. Access to Court Decisions in Georgia: Analysis of the Common Court Practice (2016). Institute for Development of Freedom of Informationhttps://idfi.ge/en/access_to_court_decisions_in_georgia_analyses_of_general_courts_practices

68. Increasing Access to Judicial Decisions in Georgia – Presentation of Project Results (2017). Institute for Development of Freedom of Information https://idfi.ge/en/increasing_access_to_judicial_decisions_in_georgia_presentation_of_project_results

69. Constitution of Georgia, adopted 24/08/1995 N 786, consolidated version 23/03/2018 published at www.matsne.gov.ge.

70. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018, published at www.matsne.gov.ge.

them being the violation of judicial ethics. The Norms of Judicial Ethics of Georgia adopted by the Conference of Judges recognises the importance of the impartiality of judges and contains several norms establishing rules to preserve it, including, "a judge shall ensure that his/her conduct, both at the individual and institutional levels, enhances the confidence, fairness and impartiality of the judiciary."

With relation to the impartiality and ethical conduct of a judge, the on-going fourth wave of reform of the judiciary will establish a completely new system of grounds of judicial discipline. New grounds for disciplinary liability will be in line with the best international standards of ethical conduct of a judge and derive from the Bangalore Principles.

Articles 29-36 of the Civil Procedure Code of Georgia[71]and Articles 59-66 of Criminal Procedure Code of Georgia,[72]a judge may be withdrawn from hearing a case if there are circumstances which raise doubt about his/her impartiality (recusal and self-recusal). Failure to comply with the above provisions is a severe violation of procedure, which may be raised in the appeals procedure.

Recent constitutional changes provide for a completely independent prosecution system. Article 65.1 of the Constitution of Georgia states that the prosecutor's office is independent and is obliged to act only according to the Constitution and the law. Article 4 of the Law on Prosecution of Georgia declares the following principles of the work of the prosecution system: legality, protection of human rights, professionalism and competence; objectivity and impartiality; centralisation, subordination of all lower ranking prosecutors to the higher ranking prosecutors; and political neutrality. The decree of the Minister of Justice[73]approved a code of ethics for prosecutors. The code stipulates that the aim of the code is to establish ethical norms that promote impartial criminal prosecution. In another Article, the code states that the prosecutors shall strictly observe the principles of independence from private interests, impartiality and fairness. The prosecutors shall apply active measures in order to avoid even the impression of partial conduct. Prosecutors shall not fall under the influence of separate people (including politicians or high level officials), the media, or public opinion during the prosecution of concrete cases. This decree also establishes norms for avoiding conflict of interests. Violation of the code of ethics by a prosecutor may lead to a disciplinary liability according to the same decree.

According to Criminal Procedure Code of Georgia (Articles 59-66) a prosecutor may be disqualified if there are circumstances, which raise doubts about his/her impartiality (disqualification and self-disqualification). Failure to comply with the above provisions is a severe violation of procedure, which may be raised in the appeals process.

71. Civil Procedure Code of Georgia, adopted 14/11/1997 N 1106, consolidated version 05/07/2018, published at www.matsne.gov.ge.

72. Criminal Procedure Code of Georgia, adopted 09/10/2009 N 1772, consolidated version 05/09/2018, published at www.matsne.gov.ge.

73. Decree of the Minister of Justice, adopted 25/05/2017 N 234, published at www.matsne.gov.ge.

11 Accountability and discipline:

a) Is there a code of ethics for members of the judiciary? If so, by whom has it been set up? What is its legal status? How is it being implemented?

The Law on Public Prosecution of Georgia[74]establishes the authority of the Minister of Justice to adopt a code of ethics for prosecutors (after the revised constitution comes into force – at the inauguration of a new President of Georgia after the November 2018 elections - this authority will be transferred to either the General Prosecutor or the Prosecutorial Council). The bylaw, Decree of the Minister of Justice on the Adoption of the Code of Ethics[75] for Prosecutors obliges all prosecutors to adhere to ethical standards and promote public trust in the prosecution system. The code requires all prosecutors to observe and respect the human rights established by the Constitution of Georgia, laws and international regulations and rules of non-discrimination. The code establishes the rules against abuse of power, requires all prosecutors to observe the principles of independence, impartiality and fairness, effectiveness and professionalism, lists ethical rules of relationships with colleagues, confidentiality, protection of personal data, commenting on specific cases, relationships with the parties to the case, communication with media, rules of avoiding conflict of interests, etc.

The code sets out the rules on the application of the code of ethics: the grounds for disciplinary responsibility and disciplinary violation derive from the ethical standards mentioned above. According to Article 65 of the Organic Law on Common Courts,[76]the Conference of Judges of General Jurisdiction adopts the Rules of Ethics for Judges on the submission of the HCoJ. The Conference of Judges is a self-governing body of the judges of general jurisdiction and consists of all judges of the supreme, appellate and first instance courts. The Conference elects the secretary of the HCoJ, judge members of the HCoJ and has other authorities.

Article 75^1 of the Organic Law on Common Courts lists the grounds for the disciplinary responsibility of judges, one of which is the violation of Code of Judicial Ethics. The Code of Judicial Ethics[77]is divided into four sections: ethical standards related to the independence and impartiality of judges; the competence and diligence of a judge; communication of a judge with media and broader public; and the non-judicial activities of a judge.

> The provision of the Organic Law on Common Courts, which envisages the violation of the ethics code as grounds for disciplinary liability, has been heavily criticised as a general and vague provision that does not comply with the principle of predictability of the law and thus is inconsistent with the requirement of balancing a judge's

74. Law on Public Prosecution of Georgia (adopted 21/10/2008 N 382, consolidated version 05/09/2018, published at www.matsne.gov.ge.
75. Decree of the Minister of Justice, adopted 25/05/2017 N 234, published at www.matsne.gov.ge.
76. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018, published at www.matsne.gov.ge,
77. Available at http://www.supremecourt.ge/judges-self-governance/judges-ethics-code/.

independence and accountability.[78] The working group for the fourth wave of reform of the judiciary created by the Parliament of Georgia has started working on draft amendments to the Organic Law on Common Courts. The provisions to establish more concrete grounds for judicial discipline has been drafted and agreed on by the members of the working group. The draft is more consistent with the Bangalore Principles on Judicial Ethics. However, the reform process is slow and the draft amendments have not been submitted to the Parliament for adoption.

b) Are judges/prosecutors irremovable from the start of their career? How is this principle implemented and respected?

Article 35 of the Law on Prosecution states that a prosecutor is independent and he/she cannot be removed from office, except on the grounds and through the procedure established by this law. A prosecutor can be dismissed from office by the decision of the general prosecutor on the following grounds: health conditions that preclude him/her from performing the duties of the prosecutor; failure to perform duties or improper performance; job incompatibility; disciplinary violation; reduction in workforce; grave or systematic disciplinary violation; violation of the oath of office; disclosure of professional secret; inappropriate behaviour; in case of conviction; official discrepancy; and achievement of retirement age. In addition to general grounds for dismissal, a prosecutor can be dismissed in case of criminal charges brought against him/her and during a pending investigation before a final decision is made on the case. A prosecutor can be either demoted or dismissed from office following a disciplinary violation: violation of oath, violation of work discipline, inappropriate behaviour, or failure to comply with or inadequate performance of the requirements established by law. All decisions related to the career of the prosecutors are made by the general prosecutor. In addition, the general prosecutor has an authority to remand, ease or increase applied sanctions.

The law says nothing about the transfer of a prosecutor or the requirement of consent in case the prosecutor is transferred to another position. Meanwhile, Article 33.6 of Criminal Procedure Code of Georgia states that a prosecutor is authorised to give instructions on the investigation of a case to the investigative authority or a prosecutor while observing the rules of investigatory subordination. The general prosecutor, regardless of the investigatory subordination, is authorised to transfer a case from one investigative authority to another, dismiss a lower ranking prosecutor from supervising the concrete case and transfer this function to another prosecutor. Article 63 of the Constitution of Georgia states that dismissal of a judge from a concrete case, dismissal from the position, or transfer to another position is allowed only in cases established by law. The irremovability of a judge is guaranteed by the organic law. The reorganisation or liquidation of a court cannot serve as grounds for dismissal of a judge with life tenure.

78. JOINT OPINION OF THE VENICE COMMISSION AND THE DIRECTORATE OF HUMAN RIGHTS (DHR) OF THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (DGI) OF THE COUNCIL OF EUROPE ON THE DRAFT LAW ON MAKING CHANGES TO THE LAW ON DISCIPLINARY LIABILITY AND DISCIPLINARY PROCEEDINGS OF JUDGES OF GENERAL COURTS OF GEORGIA CDL-AD(2014)032, Para. 28. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)032-e

The organic law on general courts establishes the following mechanisms to transfer a judge from one position to another: appointment of an active judge to another judicial position without a competitive selection; temporary appointment of a judge to a different court; or promotion of a judge.

Non-competitive (permanent) transfer of judges[79] – Article 37 of the Organic Law on Common Courts stipulates that a judge can be transferred from one court to another with his/her consent when there is a vacancy. Article 13[1] of the regulation adopted by the HCoJ[80]stipulates that the HCoJ is authorised to decide on the transfer of a judge to a lower, equivalent or higher instance court through a non-competitive procedure envisaged by Article 37 of the organic law mentioned above. The regulation also states that the aim of this regulation is to avoid hindrances in delivering justice. The grounds for the initiation of the non-competitive transfer may be the following: lack of sufficient number of judges in a particular court or sharp increase in the workload of a particular court; if the competition for the selection and appointment of judges to the vacancies was not announced or it is impossible to hold a competitive selection within a certain period of time; or a judge's request to be transferred to another court. The regulation also states that while deciding on the matter of transfer of a judge to another court of the same instance, the Council considers the need of the court to which the judge is being transferred, place where the judge resides, family conditions, expenses required from the budget, etc. The procedure for the non-competitive selection is also established by the same decision of the Council and envisages that the Council announces vacancies for non-competitive transfer of judges and sets a timeframe, during which judges are allowed to apply to the vacancy. The Council interviews applicant judges and decides to transfer a judge based on two thirds of the votes of the council members.

> The Compilation of Venice Commission Opinions and Reports Concerning Courts and Judges[81] reads that the "assignment of the judge to a different court or sending on mission should only be possible under strict criteria clearly identified in the law, for instance, the number of cases at the receiving court, the number of cases at the sending court, the number of cases dealt with by the judge who is being assigned. Vague criteria as 'in the interests of justice' may not be considered as 'strict criteria' as required by the abovementioned standards. Also, the maximum duration of the assignment or the mission should be indicated in the law."

79. The principle of irremovability of judges applies to the issue of transfer of judges to other courts: Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paragraph 52. A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system. This content of the principle of irremovability of judges is recognised by the UN basic principles, Recommendation #R(92)12, Principle I(2)(a)(ii) and Principle VI(1) and (2). The principle of irremovability of judges is also observed by Opinion #1(2001) of the Consultative Council of European Judges (CCJE), a deliberative body of the Council of Europe, on Standards Concerning the Independence of the Judiciary and Irremovability of Judges, paragraph 57.

80. Decision of the HCoJ on the adoption of the regulations of the work of the HCoJ from 25 September 2007 #1/208-2007 as amended by the decision of the HCoJ from 19 October 2015 #1/166.

81. 8 COMPILATION OF VENICE COMMISSION OPINIONS AND REPORTS CONCERNING COURTS AND JUDGES, CDL-PI(2015)001, p.45.

Temporary transfer of a judge (sending on a mission) – Article 37[1] of the Organic Law on Common Courts allows for the temporary transfer of judges to different courts. There are several guarantees established by the law to balance the need to transfer a judge with the independence of the same judge: in case of sharp increase in caseload of a particular court or if there are no judges available in a court, the HCoJ shall first submit a request to the judges who are on top of the reserve list. Only after none of these judges consent to be temporarily transferred to a certain court is the HCoJ authorised to suggest judges of those courts located closest to the court in need. In case these judges do not consent, the HCoJ suggests other judges to be temporarily transferred from courts of the same instance. Any of the judges mentioned above can be transferred temporarily to a different court only with their consent and for a maximum of one year. The term of temporary transfer can be prolonged for one additional year, which also requires the consent of the judge. If there is not consent, the term of temporary transfer will be terminated. Any decision related to the temporary transfer of a judge must be substantiated by the HCoJ.

If no judge consents to the temporary transfer according to the rules set out above, the HCoJ is authorised to decide on the temporary transfer of a judge without his/her consent. There are several guarantees against the abuse of power established by the organic law: the HCoJ is authorised to select a judge for temporary transfer only from the courts located close to the court in need. The decision of the HCoJ shall state the concrete reasons for the need to temporarily transfer a judge. The decision is made by the HCoJ by drawing lots (random selection). The randomly selected judge is allowed to submit to the HCoJ reasons for his/her inability to be temporarily transferred. If the HCoJ finds that the transfer of a particular judge would not be reasonable, the procedure of drawing lots will be held again. The same judge can be transferred temporarily to a different court without his/her consent only once in 10 years in office. In addition to undertaking the procedure of temporary transfer of judges, the HCoJ is obliged to initiate a competition for the selection of judges to fill the vacancies in the court where the need for a transfer of judges arose.

Promotion of a judge – Article 41 of the Organic Law on Common Courts stipulates that a judge of the first instance court can be promoted to the appellate court if this judge has at least five years of experience working as a first instance judge. The law states that the HCoJ adopts criteria for the promotion and evaluates the candidate according to the established criteria.

The decision of the HCoJ on the adoption of the regulations of the work of the HCoJ from 25 September 2007 #1/208-2007, Article 13[1].11 stipulates that a judge can be appointed to the appellate court if he/she is compatible with the position of appellate court judge based on his/her competence, experience, work and moral reputation. The regulation also states that HCoJ members, while deciding on the promotion of a judge, shall consider the following: indicators of the quality of work of the judge, the number of cases heard, the complexity of cases heard, violation of procedural terms for hearing a case, violation of terms for preparation of motivated decisions, stability of decisions (the rate of overrule), work discipline, reputation among colleagues, participation in teaching, participation in professional discussions on problematic matters of the law and justice, organisational skills, academic work, observance of ethics rules and professional standards, the tendencies of professional growth, etc.

The law and regulations do not require the HCoJ to substantiate the decision on the promotion of judges. In practice, the HCoJ rarely applies the mechanism of promotion of judges and usually judges are transferred to different court through other available mechanisms or through regular competitive selection process even if the appointment of a particular judge to the higher court is a promotion in its essence.

c) Do the laws provide immunity to judges / prosecutors? If so, what does immunity cover? What is the procedure for lifting the immunity? What is done to ensure that this is clear and transparent? Please give examples of how this has been implemented. What are the possible sanctions?

Article 63.2. of the Constitution of Georgia[82]states: "A judge shall enjoy immunity. Criminal proceedings against a judge, his/her arrest or detention, and searches of his/her place of residence, place of work, vehicle or person shall be permitted only with the consent of the HCoJ and, in the case of a judge of the Constitutional Court, with the consent of the Constitutional Court. An exception may be made if a judge is caught at the crime scene, in which case the HCoJ or the Constitutional Court, respectively, shall be notified immediately. Unless the HCoJ or the Constitutional Court, respectively, consents to the detention, the detained judge shall be released immediately."

Article 365 of the Criminal Code of Georgia[83] (adopted 22/07/1999 N 2287 consolidated version 21/07/2018 published www.matsne.gov.ge) includes a special provision for threatening a judge, which is sanctioned up to 3 years of imprisonment. Contempt of court is criminalised by the Article 366 of the Criminal Code of Georgia and is sanctioned by up to 2 years of imprisonment.

Article 75^1.3 of the Organic Law on Common Courts states that a judge shall not bare disciplinary responsibility for improper interpretation of the law when done on the basis of the judicial faith of the judge.

Article 63 of the Constitution of Georgia and Article 7 of the Organic Law on Common Courts state that no one shall have the right to demand an account concerning particular case from a judge.

The Criminal Code of Georgia applies to judges and does not contain special guidelines on the judiciary. Therefore, it provides the possibility to be fitted to a wide range of relationships that may threaten the independence of judges. Also, there are dispositions within the Criminal Code of Georgia, such as exceeding official authorities and service-related negligence, which require further clarification to make it clear when they can be applied against judges.

82. Constitution of Georgia, adopted 24/08/1995 N 786, consolidated version 23/03/2018, published at www.matsne.gov.ge.

83. Criminal Code of Georgia, adopted 22/07/1999 N 2287, consolidated version 21/07/2018 published at www.matsne.gov.ge.

Over the past several years, no judge has been held responsible for a criminal offence, however, investigations have been commenced on matters involving a judge (criminal investigation on the leak of qualification exam tests for judges allegedly related to the head of the Supreme Court of Georgia and the HCoJ; investigation into biting a minor, crime allegedly committed by the president of the largest city court in the country and secretary of HCoJ, etc.). None of the investigations have been completed or terminated.

Article 1005 of the Civil Code of Georgia[84]establishes the civil liability of the state for the damage inflicted by a public servant's actions, which were committed intentionally or because of gross negligence. If the damage was caused intentionally or a result of gross negligence, the public servant is liable for such damage along with the state. The liability of the state to refund the damages arises if the victim did not attempt intentionally or with gross negligence to avoid such damage. The damage inflicted because of illegal conviction, illegal criminal charge, illegally subjecting a person to pre-trial detention, administrative detention, disciplinary detention, or correctional work shall be refunded by the state despite the guilt of the judge, prosecutor or investigator. In case this damage was caused by intention or gross negligence of the abovementioned state officials, these state officials are liable in solidarity with the state.

Article 48 of the Constitution of Georgia states that no less than one third of the members of Parliament shall have the right to raise the question of impeachment of the General Prosecutor of Georgia if his/her action in question violates the Constitution or contains indications of crime. In this situation, the case shall be transferred to the Constitutional Court, which shall consider the case and submit its conclusion to Parliament within one month. If the Constitutional Court's conclusion confirms a violation of the Constitution or indications of a crime by the general prosecutor, Parliament shall discuss and vote on the impeachment of the official within two weeks from the submission of the conclusion. The general prosecutor shall be considered impeached if this decision is supported by a majority of the total number of the members of Parliament.

The Constitution of Georgia does not provide for the immunity of prosecutors. Article 38 of the Law on Prosecution states: prosecutors are held responsible for criminal offences or administrative violations on a general basis. The same Article states that during the investigation against prosecutor, the prosecutor will be dismissed from office until a final decision is made on the case.

12 **What is the salary scale for judges and prosecutors? How does this compare with other professions (high-ranking civil servants, attorneys, lawyers in private enterprises, etc.) and to the average income? How is the salary of judges and prosecutors set and adjusted in practice? Who is deciding about it?**

According to the Law on Prosecution, the Minister of Justice, on the submission of the chief prosecutor, establishes salaries for the prosecutors within the overall limit of the budget allocation. According to the decree N276 of the Minister of Justice from 26 January 2018, the salary of the prosecutors is defined as follows:

84. Civil Code of Georgia, adopted 26/06/1997 N 786 consolidated version 21/07/2018 published at www.matsne.gov.ge.

N	Position	Salary (GEL)	Salary (EUR)
1	Chief prosecutor	6,600	2,129
2	First Deputy Chief Prosecutor	6,200	2,000
3	Deputy Prosecutor	6,000	1,935
4	Head of Department	5,600	1,806
5	Deputy Head of Department	4,100	1,322
6	Head of Division	3,500	1,129
7	Higher ranking prosecutor (investigative unit, general inspection, department for investigation of obstruction of justice, prosecution of cases with jury trial)	3,000	967
8	Lower ranking prosecutor for the same departments ((investigative unit, general inspection, department for investigation of obstruction of justice, prosecution of cases with jury trial)	2,900	935
9	Higher ranking prosecutor	2,565	827
10	Prosecutor	2,530	816
11	Chief investigator of cases of special importance	3,000	967
12	Investigator of cases of special importance	2,900	935

Article 69 of the Organic Law on Common Courts states that the salary of judges consists of remuneration and a bonus. The amount of monthly salary and material benefits are defined by law. Decreasing the salary of judges during his/her entire tenure is prohibited. The HCoJ defines the amount of bonuses for the judges of first and appellate courts. Plenum of the Supreme Court of Georgia defines the amount of bonuses for the Supreme Court judges.

N	Position of a Judge	Salary (GEL)	Salary (EUR)
1	Head of the Supreme Court of Georgia	7,000	2,258
2	First Deputy Head of the Supreme Court of Georgia	6,500	2,096
3	Deputy Head of the Supreme Court of Georgia	6,300	2,032
4	Supreme Court Judge	6,000	1,935
5	Head of Appellate Court	5,800	1,870
6	Deputy Head of the Appellate Court	5,600	1,806
7	Head of the Chamber of the Appellate Court	5,300	1,709
8	Appellate Court Judge	5,000	1,612
9	Head of the First Instance Court	4,600	1,483
10	Head of the Chamber of the First Instance Court	4,300	1,387
11	First Instance Court Judge and Magistrate Judge	4,000	1,290
12	Judge on reserve	500	161

Based on Article 69 of the Organic Law on Common Courts mentioned above, the HCoJ adopted the regulation on the rules to define the bonuses for the judges of first instance and appellate courts.[85]Article 2 of this regulation states that by the decision of the HCoJ, judges of first instance and appellate courts may (or may not) receive monthly bonuses. The next section of the regulation states that in addition to the bonus defined by the second section, a judge may receive an additional bonus depending upon workload.

The HCoJ has defined the monthly bonuses for all judges of the first instance and appellate courts as follows:[86]

Position	Monthly Bonus (GEL)	Monthly Bonus (EUR)
Head of Appellate Court	1950	629
Deputy Head of Appellate Court	1900	612
Head of the Chamber of an Appellate Court	1800	580
Appellate Court Judge	1700	548
Head of Tbilisi City Court	2250	725
Head of the Chamber of Tbilisi City Court	2150	693
Judge of Tbilisi City Court	2050	661
Head of Batumi City Court	2250	725
Judge of Batumi City Court and Magistrate Judge	2050	661
Head of Kutaisi City Court	2250	725
Judge of Kutaisi City Court and Magistrate Judge	2050	661
Heads of Other Regional Courts	1150	370
Judges of Other Regional Courts and Magistrate Judges	1350	435

Based on the regulation adopted by the HCoJ and mentioned above, the HCoJ has defined additional one-time bonuses for separate judges. For example, in 2018 bonuses were defined for four judges with separate decisions made in different periods. During 2018, different judges received different amounts of bonuses in addition to monthly bonuses. Namely:

Date of the HCoJ Decision	Court	Judge	Additional Bonus Received (GEL)	Additional Bonus Received (EUR)
30 July 2018 N1/239	Tbilisi City Court	One judge	10,408.68	3,357
30 July 2018 N1/239	Bolnisi City Court	One judge	8,689.47	2,803
19 March 2018 N1/155	Tbilisi Appellate Court	One judge	179% of the total salary	
19 March 2018 N1/155	Tbilisi City Court	One judge	231% of the total salary	

85. Decision of the HCoJ from 5 February 2018 N 1/89 published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/89.pdf.

86. Decision of the HCoJ adopted 15/01/2018 N 1/65 published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/65-2018.pdf.

In 2017,52 judges received additional one-time bonuses. The decisions on granting bonuses are not substantiated by the HCoJ and it is impossible to assess whether the judges who were awarded comply with the criteria established by the relevant regulation. The substantiation of HCoJ decisions is not required by the law or regulations. As such, the HCoJ does not substantiate its decisions in practice.

The remuneration of judges should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses and non-financial benefits that include an element of discretion should be excluded.[87]

The salary of a public servant is established by the Law on Remuneration of Civil Servants and the Law on State Budget of the relevant year where the payment groups and payment ratios are defined according to rank. The base calculation of salaries is established by the Law on State Budget of the relevant year. According to these regulations, in the year of 2018, the salary of a minister is 8500 GEL/2741 EUR (bonuses not included), the salary of a president, head of Parliament, and a prime-minister is equal and constitute – 10000 GEL/3225 EUR (bonuses not included), salary of a member of Parliament – 8000 GEL/2580 EUR (bonuses not included), the highest ranking public servant's (except political position) salary in 2018 is defined from 2000 to 6000 GEL/from 645 to 1935 EUR depending on the category of the position.

There are no criteria based on which the salary of judge is able to compare with the salary of attorneys, given that for attorneys the Tariff for Rewards and Reimbursement of Expenses for the Attorneys is prescribed. Attorneys do not have guaranteed incomes, nor are they paid from state budget funds. An attorney's income depends exclusively on the number of clients, their activities and fees for services.

13 **Do judges / prosecutors receive non-monetary benefits such as free housing, real estate etc.? If yes, who decides on granting such benefits and upon which criteria?**

According to Article 68 of the Organic Law on Common Courts,[88]a judge who does not have a place to live in the municipality where he/she was appointed will be provided with housing or have their accommodation costs be covered by the state. The same Article states that the decision to provide a Supreme Court judge with free housing is made by the head of the Supreme Court and the decision to provide free housing for appellate and first instance court judges is made by the HCoJ.

87. European Network for Councils for the Judiciary ENCJ, FUNDING OF THE JUDICIARY, principle 5 https://www.encj.eu/images/stories/pdf/workinggroups/encj_2015_2016_report_funding_judiciary_adopted_ga.pdf

88. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018, published at www.matsne.gov.ge.

The Rules on Bonuses and Expenses of Housing of Judges of Common Courts[89] adopted by the HCoJ state that the HCoJ establishes rates for the purposes of renting a house for a judge or reimbursing housing expenses. The rates are calculated according to the municipal territory where the housing is provided. The expenses are covered from the state budget allocation for the judiciary.

The law does not entitle prosecutorial office bearers to non-pecuniary benefits like free accommodation, real estate etc.

14 Do judges/prosecutors have to submit financial statements (for example to the Anti-Corruption Agency)? If yes, how detailed are these statements and which mechanism is in place to verify the content provided?

The Georgian Law on Conflict of Interest and Corruption in Public Institutions[90]applies to the following members of the judiciary:

- Judges;
- Members of the HCoJ;
- General prosecutor, deputy general prosecutors, heads of departments and units of the prosecution system and those equalised to them, Prosecutors of Abkhazia and Adjara Autonomous Republics, Tbilisi city prosecutors, district prosecutors and regional prosecutors.

Within two months of appointment to the abovementioned position and every year when holding the position, a person shall complete the assets declaration. This person shall also complete the assets disclosure declaration two months and one year after vacating their position. The candidate for the position of a judge shall complete the assets declaration form within seven days after applying for the position to the competition announced by the HCoJ.

The assets disclosure declaration consists of the following information:

- Name, last name, ID number, home address and phone, mobile phone, e-mail of the person;
- Work place, position, work address and phone number;
- Person's and his/her family members' name(s), last name(s), ID number(s), date(s) of birth, place(s) of birth, and information about relationship with this person;
- Information about immovable property of the person and his/her family members – identity of the owner/co-owner of the property, amount of share of the person, his/her family member in this property if the property is in a co-ownership, date of purchase, form of purchase, and amount paid, the area and address of the property.

89. Rules on Bonuses and Expenses of Housing of Judges of Common Courts adopted by the HCoJ dated 05/02/2018 N 1/89 published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/89.pdf.

90. Georgian Law on Conflict of Interest and Corruption in Public Institutions, adopted 17/10/1997 N 982, consolidated version 21/07/2018, published at www.matsne.gov.ge.

- Information about other assets (securities, bank accounts and/or deposits) of the person and his/her family members which exceeds 10000 GEL (3225 EUR) each – identity of the owner/co-owner of the property, amount of share of the person, his/her family member in this property if the property is in a co-ownership, date of purchase, form of purchase, and amount paid.
- Information about securities owned by the person and his/her family members – issuer of thesecurities, identity of the owner, type of securities, amount paid, nominal value and number of securities.
- Other information from bank accounts in Georgia and abroad possessed by the person or his/her family members.
- Cash owned by the person and his/her family members, the amount of which exceeds 4000 GEL (1290 EUR), and source of this income.
- Detailed information about direct or indirect participation in business activities in Georgia or abroad by the person or his/her family members.
- Detailed information about any paid work performed by the person or his/her family member in Georgia or abroad.
- Any contract concluded by the person or his/her family member in Georgia or abroad the value of which exceeds 3000 GEL (967 EUR).
- Information about gifts received by the person or his/her family member over 500 GEL (161 EUR) in value.
- Any income or spending by the person or his/her family member the value of which exceeds 1500 GEL (483 EUR) on each occasion.
- Information about confidential assets is disclosed in a separate confidential graph of the form.

The receipt, publicity, control of assets disclosure is performed by the National Bureau of Public Service. The bureau is in charge of monitoring assets disclosure. The monitoring is initiated on the following grounds: random selection of declarations for monitoring or reasoned written application received by the bureau. The law establishes administrative fines for violating the requirements of assets disclosure, which are imposed by the bureau.

15 What is the system for assignment (allocation) of cases? Are there any challenges to the practical implementation of the system?

Article 58[1] of the Organic Law on Common Courts[91]states that in the first instance, appellate and supreme courts, cases are distributed among judges automatically, via electronic programme, based on the principle of random case assignment. The law states that the HCoJ shall adopt detailed rules of case assignment. The law also stipulates that in case the electronic programme is temporarily out of order, cases will be distributed without the electronic system, according to rule of sequence and based on the time of submission of a case and alphabetical order of judges.

91. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018, published at www.matsne.gov.ge.

The HCoJ adopted the detailed Regulation on Electronic Case Assignment[92] in 2017. The random case allocation system has been implemented in Georgian courts from January 2018.

The NGO called Georgian Democracy Initiative (GDI) monitors the implementation of the random case allocation system in Georgian courts.[93] The study shows the following:

Legislative Regulation

For ensuring the independence of judges, their equal work load and diminishing the role of a court's president in case distribution, within the third wave justice reform, the Organic Law of Georgia on Common Courts was amended. Based on the amendment, since 31 December 2017, cases among judges have been distributed automatically in common courts through the electronic case management system, based on the principle of random distribution.

This reform is clearly a step forward towards the timely and effective administration of justice and equal workload of judges. However, the legislative framework governing the functioning of the software is not comprehensive. This is further confirmed by the fact that, within a short period after the legislation was enforced, it was necessary to make many changes to it. Under the organic law, the authority to elaborate the electronic case management protocol is entirely within the competence of the HCoJ. It is noteworthy that the Venice Commission positively assessed the introduction of the electronic case management. However, it also mentioned that the law should be drafted in a very concise manner and provide for detailed rules on case distribution when the electronic system is out of order.

The HCoJ, by its decision no. 1/56 of 1 May 2017, approved the procedure for automatic distribution of cases in the common courts of Georgia through the electronic case management system that governs assignment of cases to judges. The system is based on the principle of random distribution with the application of a number-generating algorithm. Court cases are distributed among judges according to their specialisation. According to a general rule, the software ensures equal distribution of cases among judges. The system identifies an average indicator of distributed cases and the number of cases assigned to each judge, then generates a number based on random selection and logs all these parameters.

One of the aims sought by the introduction of the system was to decrease to a maximum extent the role of a court's president in the distribution of cases as practiced before the computerised system was introduced. The exclusive power of case distribution used to rest with court presidents. This gave rise to misgivings that a specific case, towards which there was a vested interest, would be assigned to a loyal judge selected in advance to secure a desirable outcome.

92. Regulation on Electronic Case Assignment, adopted 01/05/2017 N 1/56, consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/56.pdf.

93. http://www.hrm.org.ge/en/activity/implementation-electronic-random-distribution-cases-system-courts

The current electronic case distribution rule still leaves the chairmen the following important leverage for intervening in and influencing the case distribution process.

Setting Up and Making Changes Based on Their Personal Attitude in the Composition of Judges in Narrow Specialisations

The Organic Law on Common Courts states that in district (city) courts with high intensity of case management, where more than two judges are employed, the narrow specialisation of judges or the establishment of special court boards could be arranged by the decision of the HCoJ.In case of court of appeal, however, the legislation allows for the narrow specialisation only by the decision of HCoJ. Until 30 April 2018, the narrow specialisation existed only in Tbilisi City Court but, since 30 April, narrow specialisations were established by the decision of HCoJ at the Tbilisi Court of Appeals.

Despite the fact that the law does not grant the Chairman of the Court the power to define the composition of judges with narrow specialisation, the Chairman of the Tbilisi City Court, using the already established practice, defines the composition unilaterally by his/her order. It means that the electronic programme distributes the cases according to the specific specialisations and among the judges of narrow specialisation, although which judges will be included in the programme and in which boards totally depends on the decision of the Chairman of the Court. According to 30 April decision of the HCoJ, the Chairman of the Appellate Court was granted the same authority. The existence of such power creates risks that the chairman of a court could intervene in the case distribution process and have influence on it.

Setting Up the Composition of Panels

There are interesting situations when a case is considered in the court not by one judge but by a panel of judges (consisting of three judges). In district (city) courts, when a case is considered by a panel of judges, the composition of the panel is decided not by the software programme, but by the chairman along with the mandatory participation of the initial judge who started case consideration. Prior to the changes in the Regulation on Electronic Case Assignment,[94] the selection of the relevant number of judges for case consideration in district (city) courts had been ensured by the electronic system.

The rule defining the composition of the panels/chambers in the courts of appeal and cassation is especially problematic. The electronic case distribution rule established only the rule of distribution of the cases for the chief/speaker judge and says nothing about the composition of panels/chambers. Some changes[95] were made to this rule on 18 December 2017. The initial version did not specify the courts but was focused only on the cases to be considered by panel. Meanwhile, the electronic system additionally ensured the selection of the necessary number of judges (except for the HCoJ member judge) out of the relevant panel/chamber. In the situation when the court chairman has

94. Amendments adopted 01/05/2017 N 1/56, consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/56.pdf.

95. Amendment adopted 18/12/2017 N 1/326 published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/326.pdf last visited 01/12/2018.

the possibility to easily change the places of judges in narrow specialisations without justification, there is a high risk of intervention in the setup of composition of panels.

Establishing the List of Shifts for Judges

The chairman of a court defines the list of shifts for judges by his/her order and both cases, during and out of working hours, without taking into consideration the specialisation and random distribution principle, the criminal and administrative cases for which the consideration deadlines do not exceed 72 hours, are distributed to certain judges according to the shift. The abovementioned discretion allows for the chairman of a court to assign a case to a preferable judge and, therefore, influence the results.

Defining the Percentage Indicator (Workload) of Case Distribution among Judges

According to the Regulation on Electronic Case Assignment,[96] the chairman of a court is granted the authority to increase the workload by 20% for the following positions: a judge who is a member of the HCoJ, deputy chairman of the court, chairman of the panel/chamber and others. Moreover, to reduce impediments to the implementation of justice, the chairman has the right to decrease the workload of a judge by no more than 50% due to healthcare problems, family related or other objective reasons.

Despite the abovementioned, under decisions no. 1/243 of 24 July 2017 and no. 1/329 of 27 December 2017, a vice president and a president of a section/chamber can also view the number of cases already distributed to judges and, whenever a system is temporarily disrupted, circumvent it by assigning cases according to the sequential order of judges. The HCoJ explains this change as an effort to relieve presidents from administrative duties. However, the draft amendment that was submitted mentioned nothing as to under what circumstances this power was discharged by a vice president or presidents of sections and chambers. This could cause a real risk of duplication.

Another change[97] made to the abovementioned procedure on 8 January 2018 allows a respective competent official in the court registry to distribute cases according to the sequential order of judges whenever the computer system temporarily fails. In contrast, court presidents, vice presidents and presidents of sections/chambers only retained the power to view the distributed cases. It was maintained by the HCoJ at its session, when the change was initiated, that it aims at ensuring that presidents are not involved in case distribution. However, in our view, this is more about diverting the formal responsibility of the presidents, rather than preventing their involvement in the process. We believe that the existing practice is less likely to ensure that presidents distance themselves from the distribution of cases.

After the launch of the pilot run of the electronic case distribution system, we have repeatedly requested information on the technical assignment of the electronic

96. Regulation on Electronic Case Assignment, adopted 01/05/2017 N 1/56, consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/56.pdf.

97. Amendment adopted 08/01/2018 N 1/1, published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/1-2018.pdf, last visited 01/12/2018.

programme from the HCoJ, Supreme Court of Georgia and the Ministry of Justice of Georgia but we have received neither the requested information nor confirmation that such document exists at all. If there is no pre-written programme in the case distribution system to define in detail the type of product it is aimed for, what kind of functions the programme has, types of users and their authorities, then how could one define whether the algorithm of the programme is in line with the case distribution rule? If there is an error in the programme, when is it the responsibility of the group of programme designers?

The main innovation of the electronic programme is the random distribution of cases (randomiser), which ensures the distribution of cases to randomly selected judges by the system. The programme uses the standard randomising function of Microsoft, which is not professional and is less protected. Gambling businesses (for example casinos), which consider the abovementioned function to be very important, use special paid randomiser services, which are more professional and reliable.

The main challenge to the case distribution programme is the lack of protection for its main module, in particular, the lack of a so-called hard lock which could seal the system and protect it by means of several keys in a way which implies the consent of all the key owners for making any type of programme changes (changes in the algorithm of the programme, increasing/decreasing the functions of users, adding a new user, etc). The unprotected programme allows the technical assistance group to make changes to the programme any time, thus allowing control over the case distribution system and assignment of a case to a preferred judge.

16 **What measures are in place to prevent conflict of interest in the judiciary? Who can decide on it? How is implementation ensured and what are the practical challenges in the implementation of these measures?**

The Law on Conflict of Interest and Corruption in Public Institutions[98] prescribes the incompatibility of a bearer of public office (judges; members of the HCoJ; general prosecutor, deputy general prosecutors, heads of departments and units of the prosecution system and those equalised to them, prosecutors of Abkhazia and Adjara Autonomous Republics, Tbilisi city prosecutors, district prosecutors and regional prosecutors or members of the family of all abovementioned office bearers) with the position in a company or performance of any work for a company registered in Georgia which is under control of the bearer of the abovementioned public office or is under control of that public institution. Bearers of the abovementioned public offices or their family members are prohibited from holding shares in a company, which is under the control of this public official or the public office he is working for. The law prohibits the appointment (except through a competitive procedure) of a close relative of the bearer of the abovementioned public offices to a position under the supervision of this bearer of public office.

98. Law on Conflict of Interest and Corruption in Public Institutions, adopted 17/10/1997 N 982, consolidated version 21/07/2018, published at www.matsne.gov.ge.

The bearer of the abovementioned public office or his/her family member shall resign from an incompatible position or quit an incompatible activity within ten days of assuming the public office by him/her.

The bearer of one of the abovementioned public offices shall be dismissed if:

- He/she or his/her family member violated the rules of incompatibility established by this law;
- It has been established by court decision that he/she is an owner of illegal assets.

According to the Law on Prosecution,[99] the offices of prosecutor and investigator of the prosecution system are incompatible with other public positions in state institutions or local government, also with the entrepreneurial or other remunerated activity, except academic, pedagogic, scientific, or creative activity. A prosecutor or investigator of the prosecution system is allowed to assume a combined position or perform other remunerable duties within the prosecution system. Prosecutors and investigators of the prosecution system are prohibited from joining a political union or performing political activity.

According to the Constitution of Georgia,[100] the office of a judge is incompatible with any other office and remunerated activities, except for academic and pedagogical activities. A judge shall not be a member of political party or participate in political activity. Violation of the Law on Conflict of Interest and Corruption in Public Institutions is grounds for termination of office of a judge.

The Civil Procedure Code,[101] which applies to civil and administrative proceedings, and the Criminal Procedure Code[102]establish situations in which a judge must be excluded from participation in a concrete case so as not to raise doubts about the impartiality of the judge or when a conflict of interest exists. The procedural rules establish the requirement of subjective as well as objective (presumption of impartiality) judicial impartiality.

According to Article 59 of Criminal Procedure Code of Georgia, a judge, jury, prosecutor, investigator or clerk is prohibited from participating in the proceeding if:

- They were not appointed to the position in compliance with the law;
- They participate or participated in the same case as a defendant, attorney, victim, expert, translator, or witness;
- The investigation is pending around alleged criminal conduct by one of the abovementioned people in the same case;
- Is a relative or family member of the defendant, attorney, or victim;
- The judge, jury, prosecutor, investigator, or clerk are relatives or family members;
- There are other circumstances that raise doubt about their objectivity and impartiality.

A judge is prohibited from participating in a criminal proceeding where he/she participated in the case is the capacity of a prosecutor, investigator, pre-trial, first instance, appellate or cassation court judge or clerk. A judge is prohibited from participating in appeals proceedings for cases that were decided by himself/herself.

99. Law on Prosecution, adopted 21/10/2008 N 382, consolidated version 05/09/2018 published at www.matsne.gov.ge.
100. Constitution of Georgia, adopted 24/08/1999 N 786, consolidated version 23/03/2018 published at www.matsne.gov.ge.
101. Civil Procedure Code, adopted 14/11/1997 N 1106, consolidated version 31/10/2018 published at www.matsne.gov.ge.
102. Criminal Procedure Code, adopted 09/10/2009 N 1772, consolidated version 05/09/2018 published at www.matsne.gov.ge.

Participants in the proceeding are required to declare their incompatibility and withdraw from the case. The declaration is made accordingly before a supervising official, in case of prosecutor and investigator, and before the court president, in case of a judge. Parties to the case have the right to challenge the judge or the prosecutor/investigator on the grounds of incompatibility. The motions shall be reasoned. The decision on the motion to withdraw a judge from the proceedings is made accordingly by the judge or panel of judges.

17 **What are the measures to ensure freedom from undue external influence and how are they implemented in practice? Does the law provide sanctions against persons seeking to influence judges? Are judges criminally liable only for offences committed outside their judicial office? Is there a system of civil responsibility of judges for their decisions?**

Article 63 of the Organic Law on Common Courts[103]states that it is the obligation of a Conference of Judges to protect and preserve judicial independence, to promote public trust and faith in the judiciary and raise the authority of the judges. The Conference of Judges is a self-governing body inside the judiciary and consists of all judges of general courts. The Norms of Judicial Ethics of Georgia adopted by the Conference of Judges of Georgia states that a judge shall ensure that his/her conduct, both at the individual and institutional levels, enhances the confidence in the independence, fairness and impartiality of the judiciary. Violation of the Norms of Ethics by a judge constitutes grounds for the disciplinary liability of judges.

In order to maintain impartiality, Articles 62-66 of the Criminal Procedure Code[104]and Articles 31-36 of Civil Procedure Code[105](which applies to administrative proceedings as well) establish the reasons for the exclusion of a judge from the proceedings. The judge is obliged to refrain from participating in trial proceedings when there are reasons to doubt his/her impartiality (subjective and objective impartiality tests).

Article 1^1 of the Organic Law on Common Courts defines communication with judge as any form of relationship with the judge of general courts, including written communication, conversation via phone or any other means of technical communication. An interested party is defined as a person who has an interest in the outcome of the case and, with this aim, attempts to establish communication with the judge.

Article 72^1 of the Organic Law on Common Courts prohibits communication of parties to the proceeding, any interested party, public servant, state official or political official with the judge from the time of case submission to the court until entry into force of the final judgement on this case, also at the stage of investigation of the crime. Prohibited communication is defined as communication that relates to the consideration of a particular case or an issue and/or the possible outcome of the case and violates the independence and impartiality of a judge/court,

103. Organic Law on Common Courts, adopted 04/12/2009 N 2257, consolidated version 31/10/2018 published at www.matsne.gov.ge.

104. Criminal Procedure Code, adopted 09/10/2009 N 1772, consolidated version 05/09/2018 published at www.matsne.gov.ge.

105. Civil Procedure Code, adopted 14/11/1997 N 1106, consolidated version 31/10/2018 published at www.matsne.gov.ge.

and principle of adversarial proceeding. This law does not cover communication with the judge that amounts to a criminal offence. The judge is obliged to immediately and in writing inform the court president about prohibited communication from a party to the proceedings, interested party, public servant, state official or politician. The court president is obliged to immediately and in writing inform the president of the higher court. If prohibited communication was established with the judge of the Supreme Court, he/she shall immediately inform the deputy president or other deputy president of the Supreme Court who is charged with such function. If the prohibited communication was established with the president of the Supreme Court, he/she shall immediately and in writing inform the HCoJ about such communication.

The abovementioned authorised judges and the HCoJ, after receiving information about prohibited communication with the judge, are authorised to take the following measures against the parties to the proceedings, interested party, public servant, state official or political official:

- Impose a fine prescribed by the law;
- In case of public servant – raise the issue of disciplinary responsibility.

A violation of rules of prohibited communication by the judge or the court president is grounds for their disciplinary responsibility. Article 72^3 of the Organic Law on Common Courts states that the violation of rules of prohibited communication by the prosecutor constitutes a disciplinary violation and establishes a fine as well as disciplinary responsibility prescribed by the Law on Prosecution. According to Article 72^4 of the Law on Conflict of Interest and Corruption in Public Institutions, the violation of rules of prohibited communication by the attorney is grounds for his/her disciplinary responsibility prescribed by the Law on Attorneys and imposition of a fine prescribed by the Organic Law on Common Courts. According to Article 72^5 of the Organic Law on Common Courts, the violation of rules of prohibited communication by the investigator is grounds for his/her disciplinary responsibility and imposition of a fine prescribed by the Organic Law on Common Courts. According to Article 72^6 of the Organic Law on Common Courts, the violation of rules of prohibited communication by a public servant, state official or politician is grounds for his/her disciplinary responsibility and imposition of a fine prescribed by the Organic Law on Common Courts.

The fine prescribed by the Organic Law on Common Courts for the violation of rules of prohibited communication by a party to the proceeding, interested party or public servant is 5000 GEL (1612 EUR). The fine prescribed by the Organic Law on Common Courts for the violation of rules of prohibited communication by a state official or politician is 10000 GEL (3225 EUR).

The authorised judge shall consider the information about prohibited communication with the judge within 14 days following the submission of such information by the judge and make a decision to impose a fine upon the party to the proceeding, interested party, public servant, state official or politician. The judge declaring the prohibited communication and the person allegedly participating in the prohibited communication with the judge both have the right to participate in the hearing of the matter. The judge considering the matter has the right to call witnesses whose testimony may have important influence over the matter, to urge parties to present evidence and to hold an oral hearing with the participation of both parties. The secretary of the HCoJ shall consider the information about prohibited communication within one month after receiving such information. If the consideration of the matter reveals

a possible criminal offence, the relevant submission shall be sent to the criminal investigative bodies.

The HCoJ shall process statistical data about the prohibited communication with judges. The following information shall be made public: information about prohibited communication with a judge without disclosure of identity of the judge, and information about the case about which the prohibited communication was established.

The study of the NGO Coalition for an Independent and Transparent Judiciary reveals the following deficiencies in the legislation regulating communication with judges:

- It does not ensure the protection of judges against influence from within the system; final decisions on improper communications are made by chairpersons of the courts which cannot be appealed to the HCoJ;
- Judges are not provided the opportunity to apply to the HCoJ in cases of restricted communication. If the Council is participating in the process, it is solely represented by the Secretary of the HCoJ;
- The current definition of restricted ex-parte communications with judges is not sufficiently foreseeable;
- The law does not clearly identify grounds for a judge's liability in any breach of communication rules, which weakens the accountability system of the judiciary and increases the risk of its abuse.[106]

Article 63.2 of the Constitution states: "a judge shall enjoy immunity. Criminal proceedings against a judge, his/her arrest or detention and searches of his/her place of residence, place of work, vehicle or person shall be permitted only with the consent of the HCoJ and, in the case of a judge of the Constitutional Court, with the consent of the Constitutional Court. An exception may be made if a judge is caught at the crime scene, in which case the HCoJ or the Constitutional Court, respectively, shall be notified immediately. Unless the HCoJ or the Constitutional Court, respectively, consent to the detention, the detained judge shall be released immediately. The decision of the HCoJ to consent to the detention of a judge is made with a two-thirds majority of member votes.

Article 1005 of the Civil Code of Georgia[107]establishes the civil liability of the state for damage inflicted by the acts of a relevant public servant, which were committed intentionally or with gross negligence. If the damage was caused intentionally or with gross negligence the public servant is liable for such damage in solidarity with the state. The liability of the state to refund the damage arises if the victim did not attempt intentionally or with gross negligence to avoid such damage. The damage inflicted by illegal conviction, illegal criminal charge, illegally subjecting a person to pre-trial detention, administrative detention, disciplinary detention, or correctional work shall

106. THE JUDICIAL SYSTEM: PAST REFORMS AND FUTURE PERSPECTIVES, Coalition for an Independent and Transparent Judiciary, pages: 74-81 https://gyla.ge/files/news/2006/The%20Judicial%20System-3.pdf

107. Civil Code of Georgia, adopted 26/06/1997 N 786, consolidated version 31/10/2018 published at www.matsne.gov.ge.

be refunded by the state despite the guilt of the judge, prosecutor or investigator. In case this damage was caused intentionally or due to the gross negligence of the abovementioned state officials, these state officials are liable in solidarity with the state.

18 Have there been any allegations on corruption in the judiciary and, if so, are there any convictions in such cases?

Chapter XXXIX of the Criminal Code of Georgia[108] establishes the criminal offences of official misconduct. Among others, the following crimes relevant to those in judicial office are covered by this chapter: abuse of official powers (Article 332); exceeding official powers (Article 333); unlawful discharge of the accused of criminal liability (Article 334); coercion of a person to provide explanation, evidence or opinion by deception, blackmail or other unlawful act by an official (Article 335); accepting a bribe (Article 338); accepting gifts prohibited by law (Article 340); forgery by an official (Article 341); neglect of official duty (Article 342); other crimes that in general terms could apply to judges and prosecutors.

The Georgian Law on Conflict of Interest and Corruption in Public Institutions[109]establishes rules for the prevention, identification and eradication of conflicts of interest in public service. The law establishes corruption violations and the administrative responsibility for committing corruption. The law establishes the list of public officials and public servants that fall under this law and defines corruption of administrative category. As a mechanism for prevention of corruption, the law establishes the requirement of regular assets disclosure, defines the rules for accepting gifts by public official and public servants, and created the anti-corruption interagency council. The law establishes the rules for incompatibility of duties. Also, the law establishes concrete administrative violations related to corruption that do not amount to criminal offence and sets measures of responsibility. Whistleblower protection is a part of this law as well.

Transparency International Georgia recently reported several cases of alleged corruption:[110]

- David Dzotsenidze's case concerns the renewal of court proceedings in this case which was decided in favour of David Dzotsenidze in 2012 (before change of government). Even though the document submitted in 2016 (after the change of government) was identical to the document submitted to the court in the original proceedings, Tbilisi City Court nevertheless renewed the dispute and came to a different decision. In addition, both cases were presided by the same judge Lasha Kochiashvili. The renewal of the case was unsubstantiated according to Transparency International Georgia.[111]

108. Criminal Code of Georgia (adopted 22/07/1999 N 2287 consolidated version 31/10/2018 published at www.matsne.gov.ge.

109. Law on Conflict of Interest and Corruption in Public Institutions, adopted 17/10/1997 N 982, consolidated version 21/07/2018 published at www.matsne.gov.ge.

110. Corruption Risks in Georgian Judiciary, Transparency International Georgia 2018 https://transparency.ge/ge/post/korupciis-riskebi-sasamartlo-sistemashi

111. Corruption Risks in Georgian Judiciary, Transparency International Georgia, 2018. Pages: 57,58 https://transparency.ge/sites/default/files/corruption-risks-eng.pdf

- In the case of Rustavi Metallurgical Plant, the same judge Lasha Kochiashvili first granted aplaintiff's request against Rustavi Metalurgical Plant and imposed a ban on the company property worth tens of millions of Lari in order to secure the claimed 5,000 GEL (1612 EUR), hampering the operation of the company by doing so, and then invalidated agreements that had already been confirmed by the Supreme Court.[112]
- In 2016, Judge Vladimer Kakabadze imposed a fine of GEL 93 million (30 million EUR) on Philip Morris in favour of JSC Tbilisi Tobacco on the basis of a decision, which lacked any legal and factual argumentation. This decision was subsequently annulled by the court of appeals. Even though the case proceeded with considerable procedural violations and serious questions were raised about court bias, the Council did not investigate the matter. Parallel to this, on 21 September 2017, Tbilisi City Court fined the National Committee Chairperson of the International Chamber of Commerce, Fadi Asli, 3,000 GEL (967 EUR) for criticising the above case. Fadi Asli had referred to the presiding judge as "corrupt". This precedent was dangerous, since in a system with ineffective accountability mechanisms, where strong public protest remains one of the few means of identifying problems, restricting freedom of expression (on the basis of protecting the judiciary's reputation) may aggravate existing problems and increase the risk of corruption.[113]
- Transparency International Georgia studied a dispute between Ltd. Megako and Ltd. Transcaucasus Crystal, which involved Niaz Khalvashi, brother of a government associated businessman Kibar Khalvashi (a person involved in the TV Company Rustavi 2 dispute). The circumstances of the case have raised the suspicion that the judiciary, together with various state bodies, acted in favour of Niaz Khalvashi, who was able to purchase a property worth several million from Ltd. Transcaucasus Crystal for just GEL 942,600 (304,000 EUR) through a public auction.[114]
- Transparency International Georgia examined Tbilisi City Court Order dated 11 May 2017, according to which, a special manager was appointed at Ltd. Georgian Manganese for the purpose of ensuring compliance with licenses and permits. The request to appoint a special manager in the company was submitted to Tbilisi City Court on 10 May 2017 by the Ministry of Environment and Natural Resources Protection and LEPL National Environmental Agency, which claimed that Georgian Manganese had violated the norms established under the Law on Licenses and Permits. Taking into account the volume and complexity of the case, the dispute may have been reviewed at an accelerated pace, with a number of procedural violations and without considering the interests of the party. In addition, the part of the court order with which the special manager is granted unjustifiably broad authority deserves special emphasis.[115]
- The Prosecutor's Office has been inactive in investigating cases of possible corruption in the judiciary. For example, during consideration of the case of Rustavi 2, media reports claimed that Mamuka Akhvlediani, Chairperson of Tbilisi City Court, had received money

112. Corruption Risks in Georgian Judiciary, Transparency International Georgia, 2018. Pages: 60, 61 https://transparency.ge/sites/default/files/corruption-risks-eng.pdf

113. Corruption Risks in Georgian Judiciary, Transparency International Georgia, 2018. p.43. https://transparency.ge/sites/default/files/corruption-risks-eng.pdf

114. Ibid., pp. 64, 65. https://transparency.ge/sites/default/files/corruption-risks-eng.pdf

115. Corruption Risks in Georgian Judiciary, Transparency International Georgia, 2018. Pages: 66, 67. https://transparency.ge/sites/default/files/corruption-risks-eng.pdf

as a result of a corruption deal. The authors of this allegation pointed to the leaked audio recording of a conversation between Akhvlediani and the director of TV Company Rustavi 2, and the purchase of expensive real estate by Akhvlediani as evidence of this deal. More specifically, the allegation was related to the origin of funds used by Mamuka Akhvlediani to purchase the school Olimpi in 2016. Following the leak of the audio recording, the HCoJ commented on the signs of corruption in the case. Mamuka Akhvlediani has denied involvement in any corrupt deal or having any illegal income. According to him, he purchased the property through a bank loan (terms of which was offered by the bank), which he pays using income earned from the school. The public has not been provided sufficient information about the case, since no investigation has been launched nor any conclusion issued by the HCoJ.[116]

- Transparency International Georgia's report also mentions: "The investigation was launched but no results were made public about the case of leaked judicial qualification tests, which allegedly involved the Chairperson of the Supreme Court. Such ineffectiveness of investigation damages the interests of judiciary, since it creates a sense of impunity, and at the same time increases risks of pressure against specific individuals." The Georgian Young Lawyers' Association has repeatedly been requesting information about the development of this investigation. According to several responses from the Prosecutor's Office, the investigation is still pending and no one has been prosecuted so far.
- On 19 December 2012, Chairperson of the Supreme Court made a special statement regarding yet another case of allegedly illegal communication between and influence by law enforcement officials on court employees. The statement was related to the pressure put by the Special Services on the assistant to one of the judges of Tbilisi City Court. According to the statement, an assistant to a judge at Tbilisi City Court was being pressured by special services to disclose information about internal administrative matters and the chairman of the City Court. Later, the Chief Prosecutor's Office stated that it had launched an investigation. Nothing is known about the outcome of this investigation.
- In February 2018, when Batumi City Court Judge Irakli Shavadze publicly announced that the HCoJ denied him life tenure (following a standard three-year initial appointment period) because of a confrontation with the Court Chairman of Batumi City Court. According to Shavadze, the Chairman (who is an outspoken member and supporter of the dominant group of judges) has repeatedly tried to influence his court decisions. On 1 March, the Coalition for an Independent and Transparent Judiciary urged authorities to investigate such allegations of wrongdoing.[117] According to the Prosecutor's Office's response sent to the Georgian Young Lawyers' Association, the investigation was not commenced due to lack of signs of criminal offence.

116. Corruption Risks in Georgian Judiciary, Transparency International Georgia, 2018. pp. 49, 50. https://transparency.ge/sites/default/files/corruption-risks-eng.pdf

117. THE COALITION RESPONDS TO THE DEVELOPMENTS IN THE JUDICIARY AND LAUNCHES THE "MAKE COURTS TRUSTWORTHY" CAMPAIGN, 03/01/2018. "At each stage of selection and appointment of judges, there is a perception that the process of appointment of judges is based on loyalty to the influential group of judges and on possible nepotism. There is a well-founded doubt that the Council uses its powers and flaws in the legislation to expel judges with dissenting opinion from the system and to strengthen its positions. In this situation, judges avoid expressing their critical views in connection with problems in the judiciary. This is confirmed by the developments that unfolded around Irakli Shavadze, a judge of the Batumi City Court. The judge's statement certainly contains signs of a crime, which should be followed by launching of an investigation." http://coalition.ge/

Cases with alleged political interest

Recently, 13 NGOs published a statement regarding the investigation into the murder of two teenagers committed on Khorava Street in Tbilisi on 1 December 2017. The murders had caused a huge public outcry. As a result of street protests, the Chief Prosecutor of Georgia Irakli Shotadze had to resign and the Temporary Investigative Commission was set up in the Parliament of Georgia. The investigation conducted by the Temporary Investigative Commission found fundamental problems prevailing within the law enforcement system and critical challenges with regard to the objective and competent investigation of crimes. The NGOs called for the Prosecutor's Office to take measures to hold responsible those persons who intentionally or by negligence created obstacles or hampered the administration of justice with regard to a grave crime and whose actions possibly involve irregularities and indications of a crime.[118]The parliamentary commission's conclusion contains a total of 32 recommendations concerning corresponding measures against civil servants/public officials responsible for the investigation of this case. The Investigative commission's conclusion has once again demonstrated numerous flaws in the investigation of this case, the number and seriousness of which cast doubt on the objectivity of the investigative bodies. The suspicions are strengthened by two factors: on the one hand, the investigation failed to identify the role of one of the brawl participants (M.K.) in the crime and conducted investigative activities belatedly and incompletely. On the other hand, there is the important factor of M.K's uncle, Mirza Subeliani, is a high-ranking official at the Prosecutor's Office. In combination with fundamental, rather than individual and superficial flaws in the case, this creates a feeling that the investigation was biased. The investigative commission has established that the Prosecutor's Office should have known from the materials of the investigation that M. K. possibly had a weapon-like object during the brawl; it could have received information from the witnesses that M. K. put his hands in his pockets at the start of the brawl. It could have established whether there were traces of Saralidze's blood on M. K.'s clothes. It could have determined the motive of the crime. However, law enforcement did not properly study the video footage obtained as part of the investigation. The witnesses were not asked appropriate questions. We read in the conclusion that, in some cases, the prosecutor told a witness that his/her information – that M. K. put his hands in his pockets at the start of the brawl – was not important and convinced him/her not to provide the court this piece of information. Law enforcement did not seize M. K.'s allegedly blood-stained clothes and did not carry out secret investigative actions concerning the main participants of the brawl, including M.K. They did not question all witnesses that the investigation was aware of, who had information about M.K. or others. It is important to say that the manner of the investigation of this case and the concrete bias with regard to the flaws in the investigation process virtually rule out that these were procedurally insignificant errors made at the level of individual investigators. Despite the fact that the quality of investigation in the country is generally low, the existence of the whole set of the aforementioned factors in this case makes it exemplary.

Tbilisi Mayor Gigi Ugulava, remained in preliminary detention for more than one year due to the fact that the court in this case applied a provision of the Criminal Procedure Code that was soon found unconstitutional by the Constitutional Court of Georgia. The report mentions

118. NGO's Statement Concerning Findings and Recommendations by Temporary Investigative Commission on Khorava Street Crime, 09/18/2018 https://gyla.ge/en/post/arasamtavrobo-organizaciebis-ganckhadeba-khoravas-quchaze-momkhdari-danashaulis-shemstsavleli-droebiti-sagamodziebo-komisiis-daskvnastan-da-rekomendaciebtan-dakavshirebit#sthash.sWwnBQOO.dpbs

that the chronology of the events around the case and the use of loopholes in the legislation on preliminary detention revealed the presence of political motives in this case. The concerns about political motivations in the case were raised by different neutral actors in different periods. The country report published by the US Department of State in 2014 states: "In July, authorities detained Gigi Ugulava at the Tbilisi airport on charges of 'organising of coercion and group action' against the chairman of Marneuli District Election Commission on June 5, allegedly to hamper the chairman's legitimate activities. Prosecutors also charged Ugulava with laundering illegal income and using forged official documents. Ugulava, who was previously charged with embezzlement of state funds in large quantity, remained in pre-trial detention with two trials underway and one trial pending. The prosecutor called for Ugulava's custody rather than bail, asserting he violated the original bail terms when he attempted to leave the country. Tbilisi City Court ordered pre-trial detention, and the court of appeals rejected an appeal against Ugulava's pre-trial detention as inadmissible. The United National Movement (UNM) alleged Ugulava's detention ahead of crucial local election runoffs was intended to incapacitate the country's main opposition party. GYLA and Transparency International Georgia asserted Ugulava's arrest violated the pre-election moratorium, lacked proper justification, and contradicted requirements prescribed under the law. They called on law enforcement agencies to clarify the urgency behind Ugulava's case. Justice Minister Thea Tsulukiani contended that Ugulava attempted to flee the country and thus did not have immunity under the moratorium. Ugulava and his defence argued his purchase of a return ticket, which was published by local media, indicated his intent to return to Georgia the same day. As of December the cases against Ugulava were still pending."[119]The NGO Georgian Young Lawyers' Association raised concerns about the lack of political neutrality of the prosecutor's office in Gigi Ugulava's case.[120]

The so-called "cable case" from 2015 raised concerns about the prevalence of political interests in prosecuting and then hearing a case in courts. The abovementioned report by Transparency International Georgia mentions that criminal charges against high level officials of the Ministry of Defence of Georgia was preceded by political controversies between the ruling party and then the Minister of Defence Irakli Alasania which ended with the resignation of the Minister in November 2014. The report mentions that the developments in this case raised concerns about improper and politicised justice. In its statement published in May 2016, GYLA raised concerns that the court delivered an unlawful, unfair and unsubstantiated verdict in the cable case.[121]

According to a report by Transparency International Georgia, the case of TV Company Rustavi 2 provided the strongest grounds for questioning the impartiality of the court. Questions about the politicisation of the case were raised in 2015 after the court issued rulings that fully froze the property of a TV company that was critical of the government and became a precedent of clear interference in the editorial policy of an independent television station. In March 2017 the European Court of Human Rights intervened by suspending enforcement of the Supreme Court's

119. Country Report on Human Rights Practices in Georgia, US Department of State, 2014 https://www.state.gov/j/drl/rls/hrrpt/2014humanrightsreport/index.htm#wrapper

120. Statement of the GYLA on unsubstantiated postponement of Gigi Ugulava case, June, 2014 https://gyla.ge/ge/post/saias-ganckhadeba-gigi-ugulavas-saqmis-gankhilvis-ganmeorebit-dausabuteblad-gadadebis-shesakheb-20#sthash.7yKiL2Yy.dpbs

121. https://gyla.ge/en/post/saia-ets-kabelebis-saqmeze-sasamartlom-ukanono-usamartlo-da-dausabutebeli-ganacheni-gamoitana#sthash.EuFKbz2O.dpbs

decision in the Rustavi 2 case and ordering the authorities to abstain from interfering with the TV company's editorial policy in any manner. According to April 2017 public opinion survey carried out for the National Democratic Institute (NDI), 56% of respondents agreed with the statement that "there was government interference in the Rustavi 2 case".

The Rustavi 2 case is mentioned in the US Department of State Country Reports of Human Rights Practices, Georgia, 2015:

> There were concerns over government interference with the country's most widely viewed television station, Rustavi 2, and with judicial independence. Rustavi 2 alleged government involvement in an August 5 decision by a Tbilisi judge to freeze the company's assets and shares pending the resolution of a lawsuit filed by one of its previous owners. On August 10, a group of seven leading NGOs stated that the court order in the Rustavi 2 case failed to meet the standard of reasonable doubt and caused a disproportionate restriction on the station's rights. The NGOs also noted that the 'seemingly private legal dispute' raised questions about political influence. In a separate statement on August 10, GYLA questioned the rationale and proportionality of the court's ruling against Rustavi 2, noting that it failed to consider the 'irrevocable damage' that it risked inflicting on the public interest, given the station's large viewership. In mid-October, a former president and opposition leader allegedly called for a 'revolutionary scenario' to resist the court decision, according to recordings released on a foreign website.
>
> On November 3, the court ruled in favour of the former Rustavi 2 owner who filed the lawsuit, granting him 100 percent of the company's shares. It subsequently issued an interim injunction appointing temporary administrators to replace Rustavi 2's director general and chief financial officer. In issuing the injunction, the judge questioned Rustavi 2's editorial policy and provided the new managers, who had a stake in the previous owner's suit, authority to change the station's journalists and take legal actions. On November 30, an appellate court overturned the injunction, allowing the director general and chief financial officer to retain their posts.
>
> Although the government contended the Rustavi 2 case was a legal dispute between private parties, the lower court's actions were widely seen as an attempt to change the editorial policy of Rustavi 2, which often espoused views sympathetic to the opposition UNM party. For many, the ruling also called into question the government's commitment to media freedom, political pluralism, and judicial independence. On November 6, a group of diplomatic missions in Tbilisi issued a joint statement expressing concern over the decision to appoint temporary managers at Rustavi 2, noting it raised 'serious questions about the independence of the judiciary and the actual degree of freedom of the media' in the country.

> With the exception of the president, government figures generally downplayed the developments involving Rustavi 2. […]
>
> The ownership dispute of Rustavi2 refocused attention on the July 2014 death of one of the founders of Rustavi 2 television, Erosi Kitsmarishvili. While the investigation, which remained underway, treated the death as a suicide, Kitsmarishvili's relatives questioned this working assumption, noting Kitsmarishvili was one of the few individuals who knew the detailed ownership history of the media outlet. […]
>
> Media observers, NGO representatives, and opposition politicians alleged that a former prime minister continued to exert a powerful influence over the government and judiciary, including in the lower court decisions against owners of the Rustavi 2 television station."

The US State Department Report 2015 talks about pressure on the judiciary in selected cases.

The European Parliament resolution of 15 June 2017 on the case of Azerbaijani journalist Afgan Mukhtarli (2017/2722(RSP)), recalled that Afgan Mukhtarli, an exiled Azerbaijani investigative journalist who had moved to Tbilisi in 2015, disappeared from Tbilisi on 29 May 2017 and resurfaced a few hours later in Baku. In the resolution, the Parliament inter alia "condemned the abduction of Afgan Mukhtarli in Tbilisi and his subsequent arbitrary detention in Baku considering this as a serious violation of human rights" and urged the Georgian authorities "to ensure a prompt, thorough, transparent and effective investigation into Afgan Mukhtarli's forced disappearance."[122]

Is there a strategy/action plan to fight corruption in the judiciary? If so, what are the practical results in their implementation?

The Strategy of the Reform of Court System 2017-2021 sets the strategic goal 4.3.3. "to establish the practice of yearly publication of reports by the HCoJ covering anti-corruption efforts, effectiveness of steps taken to combat corruption and decisions taken." Section 2 of the strategy document establishes mechanisms for the prevention of corruption, namely: develop corruption prevention mechanisms in the judiciary with a focus on identification, analysis and eradication of preconditions for corruption violations rather than punishment; prevent disciplinary violations; and create systemic mechanisms for the prevention of corruption in the court system.[123] The action plan contains the following anti-corruption activities among others to be performed by the HCoJ by 2018: improvement of procedural rules of work of the HCoJ, substantiation of its decisions and better access to HCoJ decisions; reform procedure for the appointment of judges; etc.

The activities of the anti-corruption efforts of the abovementioned strategy and action plan for the court system are mostly based on the National Anti-Corruption Strategy and Action Plan for

122. http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621833/EPRS_STU(2018)621833_EN.pdf

123. http://www.supremecourt.ge/files/upload-file/pdf/martlmsajuleba-da-kanoni-2017w-n2.pdf

2017-2018 adopted by the Anti-Corruption Council.[124] The strategy document contains a separate chapter for the prevention of corruption in the judiciary (chapter 6). The main directions of the strategy include: reform of the implementation mechanisms of norms on judicial ethics, conflicts of interests and job incompatibility; raising qualification of judges in the fields of ethics, conflicts of interests and job incompatibility; reform of the disciplinary responsibility mechanisms; reform of the system of remuneration of judges; random case distribution; improve functioning of the uniform database of court decisions.

Please provide statistics on indictments and convictions in cases of corruption in the judiciary over past 5 years.

The Prosecutor's Office did not provide statistical data.

PROFESSIONALISM/COMPETENCE

19 Educational system:

a) Are internships for law graduates organised within the judiciary? If so, how is this done?

The HCoJ establishes the regulations for internships in the HCoJ and first instance and appellate courts. The HCoJ decision[125]states that the aim of internship in the HCoJ and first and appellate instance courts is to attract highly qualified human resources for the effective and professional work of the court system and develop and promote their professionalism and practical skills. Third- or fourth-year law school students and graduates are eligible for internship in the court system.

Interns at the HCoJ are selected competitively. As for the first and appellate instance courts, the selection of interns is not competition-based according to Article 4.4 of the abovementioned regulation. For the selection of interns and coordination of their work, internship commissions are established with the head of the commission appointed by a court president for the relevant courts and by the secretary of the HCoJ for internships at the HCoJ. The head of the relevant commission decides on the number of members of the commission and appoints and dismisses members of an internship commission. The internship commissions are authorised to invite specialists to the commission upon the decision of the head of the commission. The head of the commission: decides on the number of interns to be admitted for the internship; appoints secretary of the internship commission and deputy head of the commission; and leads work of the commission. The internship commission is authorised if more than half of the members are present. Internship commissions make decisions with a simple majority of votes. In case votes are evenly divided, the decision is made by the head of the commission. The internship commissions keep minutes of their work.

124. http://justice.gov.ge/Ministry/Index/174

125. Adopted 18/09/2017 N 1/251 published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/251-2017.pdf.

The competition for internship opportunities is announced publicly through the webpage of State Bureau on Public Service (www.hr.gov.ge). The competition is held in two stages: formal selection of documents and the interview. The evaluation of candidates for the internship is individual and the candidates with better knowledge, experience and results of the competition are selected. Based on the results of the selection process, the internship commission submits either to the court president or the secretary of the HCoJ the list of candidates who were successful in the competition. The decision on appointment of candidates for the internship is made either by the court president or the secretary of the HCoJ.

Internships last no more than six months but can be prolonged for six more months at the request of an intern and recommendation of his/her supervisor. Upon successful completion of the internship, the intern is issued a relevant certificate.

For the non-competitive selection of interns at the courts of first and appellate instances, the decree of the Government of Georgia[126]establishes the general rules and conditions of internship in public service. It is mandatory for public institutions (except the Prosecutor's Office) to provide internship opportunities according to the rules established by this decree. The decree outlines the following eligibility criteria for interns: the candidate shall be a Georgian citizen, is a student of an accredited bachelor's programme completing his/her last year of studies, is a master's or doctoral student with a minimum 3.0 GPA or graduate of a bachelor's, master's or doctoral programme with the same minimum GPA. The decree also defines the compulsory quota of interns to be admitted as at least 10% of the total number of employees of the relevant public institution. The duration of internships in public service is from six months to one year.

The rules of admission for internship in public service are as follows: the candidate submits an application to the institution through the webpage of the National Bureau of Public Service. The system of applications, registration of candidates and their deployment to relevant public institutions (according to the abovementioned criteria, location of the candidate and profile of the university of the candidate) is done through an electronic system administered by the National Bureau of Public Service. The length of time for internship candidates to register shall not be less than 10 days. Those candidates who were not deployed to any public institution due to a lack of vacant positions are transferred to the reserve list and will be enrolled in the internship programme automatically without the need to reregister.

The Rules of Internship in the Prosecution System is established by the decree of the Minister of Justice.[127]The internship commission is set up for the selection and supervision of interns. The members of the internship commission are selected by the Chief Prosecutor/General Prosecutor. The commission is composed of the head, deputy head and members of an internship commission. Members of the commission may be employees of the Ministry of Justice and prosecution system, members of NGOs and other representatives of civil society.

Interns in the prosecution system are selected on a competitive basis. Internship candidates may be university students in the last year of their studies or law school graduates. The competition may consist of several stages: written test and interview with the candidate. The General

126. Decree of the Government of Georgia, adopted 18/06/2014 N 410, consolidated version 20/06/2014 published at www.matsne.gov.ge.

127. Decree of the Minister of Justice, adopted 15/08/2014 N 43, published at www.matsne.gov.ge.

Prosecutor decides on the number of stages and form of the competition, programme of the competition and minimum threshold for the written test. The competition for an internship in the prosecution system is announced through the media. The General Prosecutor decides on the limit of interns to be admitted during the year. The internship commission organises the written test and according to the results the candidates are admitted to the second stage of the competition, the interview. The commission is allowed to use a special questionnaire to conduct interviews to help commission members to acquire information about the candidate's skills, professional qualification and experience. To make a decision the commission may use a candidate evaluation form.

The head of the internship commission submits to the Chief Prosecutor/General Prosecutor the list of candidates who successfully participated in the competition. The General Prosecutor, considering the number of internship vacancies and needs of the prosecution system, makes the decision to appoint those candidates recommended by the commission.

The duration of internship in prosecution system is one year. In special circumstances, an intern may be appointed as a prosecutor after six months as an intern.

b) Is there any other form of pre-service training?

The initial training for candidates for judgeship is stipulated in the Organic Law on Common Courts. The HSoJ provides a ten-month long academic programme for future judges selected through the competition procedure. In order to apply for initial training at the HSoJ, the candidate needs to meet the general requirements, including passing the qualification exam for judges and meeting general requirements for employment as a judge. Certain categories of future judges are exempt from initial training requirement (for more details see question 20).

20 Training:

a) Please describe the training system for judges and prosecutors. Is it compulsory? In the case where vocational training is an obligatory requirement for entering the career of a judge or prosecutor, what are the selection criteria for being admitted to such training? If there is a requirement to have passed a final examination, how is such an examination organised?

Article 34 of the Organic Law on Common Courts of Georgia[128]requires the completion of studies in the HSoJ for appointment of judges except for:

- Candidates for the Supreme Court of Georgia;
- Those former judges who have at least 18 months of professional experience as a judge, were appointed to the Supreme, appellate or first instance courts through the competitive procedure and have passed the qualification exam for judges;

128. Organic Law on Common Courts of Georgia, adopted 04/12/2009, N 2257 consolidated version 31/10/2018 published at www.matsne.gov.ge.

- HCoJ is authorised to nominate to the Parliament of Georgia candidates for the Supreme Court of Georgia who are exempt from the obligation of passing the qualification exam for judges. The requirement to pass qualification exam for judges is waived for nominees to the head of the Supreme Court of Georgia (chief justice) as well.
- Former and current members of the Supreme Court of Georgia are also exempt from the requirement to pass the qualification exam for judges or to complete studies in the HSoJ.

For those, who are required to complete studies in the HSoJ, admission to the school is made based on the results of the qualification exam for judges. The results of the studies (place in the qualification roster of the school and an assessment of the independent council of the school) are taken into account for the appointment of the candidate to the judicial position (Article 35.13 of the same law).

The law does not establish the requirement for compulsory in-service training of judges. All judges have the right to participate in trainings organised by the school of justice. Meanwhile, the requirement to engage in professional development activities is a standard established by the rules of judicial ethics.

> The law does not provide the obligation of judges to undergo or the obligation of the state to provide compulsory initial training for those judges chosen to the position for the first time who are exempt from the obligation to complete studies in the HSoJ or to pass the qualification exam for judges. It should also be mentioned that those judges who were appointed to the courts of general jurisdiction and have been performing their judicial duties for years were appointed before the HSoJ was established and the requirement of compulsory training was introduced. The courts are currently staffed by judges, who never studied at the HSoJ or underwent compulsory training. Despite this fact they are exempt from the obligation to undergo compulsory training, this impacts the professionalism of the court system. The terms of office for most judges appointed back in 2005 and 2006 expired in 2015 and 2016, while the HSoJ and the requirement for compulsory initial training were established in 2006. These judges have been reappointed, some of them for life, in 2015 and 2016 and are exempt from the requirement of compulsory training. Meanwhile, there is no requirement for compulsory in-service training established by law.
>
> There is no obligation for judges appointed for the three-year probationary period to undergo compulsory training, however, most probationary judges appointed were exempt from the obligation to undergo compulsory initial training. Probationary judges have the right to undergo in-service trainings delivered by the HSoJ on a general basis. According to the letter of the HSoJ,[129] "the School of Justice does not differentiate from rticipants of the trainings according to the term of their office or the status and all judges have equal opportunity to participate in the trainings organised by the school through the web-portal established by the school. In addition the school provides newly appointed judges with the opportunity to take part in special trainings related to judicial ethics (basic course), techniques for conduct of court hearings and juvenile justice (criminal and administrative specialisation)."

129. Letter N02/2110, sent 13/09/2018 to the Georgian Young Lawyers' Association.

Although there is no general requirement for compulsory in-service training, the law establishes the requirement of specialisation of judges and prosecutors for the purposes of juvenile justice who shall undergo mandatory training in order to participate in juvenile justice proceedings.

The HSoJ was established in 2006. According to the Georgian Law on High School of Justice,[130] the school is established to ensure the professional training of the candidates to be appointed to judicial positions in the courts of general jurisdiction. The school aims at deepening the theoretical knowledge of the candidates as well as acquiring skills necessary for practical work, to help the candidates understand the future responsibilities and freedoms to act in the framework of existing law, and to help integrate the candidates in the environment they will work in the future. The school is also charged with providing in-service trainings for acting judges, as well as preparing highly qualified staff for the judicial system, including assistant judges and other staff.

Admission to the school is through a competition. The law establishes that the competition is usually held twice a year. The decision to announce a competition is made by the HCoJ considering the total number of judges acting in the system of general courts. The rules of competition, criteria for the selection of school participants, and other matters related to the organisation of the competition are established by the charter of the school.

The HSoJ charter is adopted by the Independent Council of the School (18/04/2008 N1/1). According to the law and the charter of the school, the decision to hold a competition is made by the HCoJ. The competition is announced at least two weeks prior but no later than one month before holding the competition. The call for applications is announced publicly. The period for submission of applications is established by the HCoJ. The HCoJ establishes the secretariat for the preparation of a competition. The secretariat is staffed by the staff members of the HCoJ and led by one of the members of the HCoJ. After the application term expires, the competition is held by the HCoJ.

Eligibility criteria for participation in the competition are the following: the candidate shall have a law degree and has passed the qualification exam for judges. The criteria for the selection of candidates are the following: the results of the qualification exam for judges; moral reputation; personal characteristics; professional skills; qualification; skills of argumentation and expression; analytical and logical thinking and decision-making skills. The charter of the school further elaborates the meaning of each criteria as follows: moral reputation is defined as the candidate's approach towards social values, moral and ethical norms, impartiality, as well as attitude of the public towards the candidate. Personal character is defined as: balanced, trustworthy, honest, sociable, strong character and objective. Qualification is defined as: knowledge of material and procedural law, legal practice, methods of legal interpretation, aspiration to deepen the knowledge, professional experience and academic degree. Professional skills are defined as: professionalism, diligence, loyalty, willingness, productivity, perspective, capacity to perform his/her duties with great responsibility, caution, thoroughness, conscientiously and truthfully, and ability to approach the work with planning, economy and focus, and, when necessary, to harmonise the work with other obligations. Skills of argumentation and expression are defined as: ability of a person to duly express and defend his/her opinion with persuasive arguments while expressing a constructive approach, tact and self-criticism; clear, competent, flexible,

130. Georgian Law on High School of Justice adopted 28/12/2005 N 2602 consolidated version 08/02/2017 published at www.matsne.gov.ge.

concentrated, and persuasive manner of oral and written expression; and the ability to give substantive explanation and give comprehensive argumentation of problems. Analytical and logical thinking and decision-making skills are defined as: the ability of a person to correctly perceive complex, foreign circumstances and interconnections of a case; analyse and logically regulate them with the use of professional skills and considering social, economic and other non-legal factors of social relations; ability to concentrate on the important circumstances of a case; ability to make right and thorough decision.

One of the following assessments is made for the evaluation of a candidate: completely exceeds the established requirements; partially exceeds the established requirements; complies with the established requirements; minimally complies with the established requirements; or does not comply with the established requirements. If an evaluation of a candidate in the requirement of personal characteristics is unsatisfactory, a member of the HCoJ is authorised to fail the candidate without assessing compliance of a candidate with other criteria.

The decision of the HCoJ on the admission of a candidate to the HSoJ is made in two stages: the selection of a candidate based on the documents presented by the candidate to the council without hearing the candidates and based on the abovementioned criteria. The HCoJ makes a decision to transfer to the second stage of the competition those candidates who were positively evaluated by the members of the council in the first stage evaluation. The HCoJ is authorised to interview candidates who were transferred to the second stage of the competition.

> However, the rules and procedure for the selection and evaluation of candidates to be admitted to the HSoJ do not establish a procedure that would guarantee an objective assessment: there are no sources of information or evidence listed in the law which the evaluators would be obliged to use during their evaluation and no requirement to substantiate the decisions are in place. This makes the criteria established by the charter of the school subjective.

The competition is organised and the decision to admit the candidate to the school is made by the HCoJ of Georgia. During the entire course, the justice listener is paid an amount that shall not be less than ¼ of the salary of a first instance court judge.

The course lasts for ten months and consists of a theoretical course, internship and seminar work. For those who have at least ten years of experience as a head of division at the HCoJ, head of division at the courts of general jurisdiction, an assistant judge, secretary, investigator, prosecutor, or practicing attorney, the course lasts for six months.

According to the law, the programme of the school is the following: court hearing at the first instance court; court hearing at the appellate level; court hearing in the court of cassation; issues of qualification in criminal, civil and administrative matters; drafting court decisions; professional ethics; human rights; foreign language; and other subjects that are adopted by the decision of the independent council of the school. The forms of teaching are the following: seminars, simulated court hearings, discussions, instruction on making and substantiating decisions, evening classes, and other forms of teaching that are established by the independent council of the school. In the

academic programme the school may establish short-term site visits to courts and prosecutor's offices.

At the end of the theoretical course, the participant shall pass an examination to verify the knowledge acquired during theoretical studies. The examination commission is established by the independent council of the school. The rules of organisation of the exam and the system of evaluation are established by the charter of the school.

After completion of the theoretical course, the participant is sent for either a mandatory or alternative internship. The mandatory internship is held in the court system and alternative internship is held either at a notary, prosecutor's office or other administrative body. The location of an alternative internship is defined according to the will of the participant. The internship is coordinated by a judge, prosecutor or staff member of the relevant body. The coordinator evaluates the intern and issues a written recommendation.

At the end of the course, the participant shall pass an exam to verify the acquisition of theoretical knowledge and practical skills. The exam is held in written form. The participant is given a practical example and is required to draw up a court decision or other judicial document. The exam is held by the commission, which consists of the Supreme Court judge, member of the HCoJ, law professor of the state law school, three members appointed by the independent council of the school, and the director of the school. The commission is established by the independent council of the school.

> However, there is no requirement established by law or the charter of the school of justice to create an individualised academic programme in consideration of a participant's professional background.

As for the in-service training of judges, the HSoJ provides training courses for judges, court staff and prosecutors, which is not compulsory and everyone has the right to participate in the training courses. Articles 32-35 of the Georgian Law on School of Justice establish the rules for in-service training. The law establishes that the school adopts the academic programme for in-service training each year. In-service trainings are provided in the form of seminars, study courses, conferences, theoretical and practical trainings, and discussions. The in-service trainings are conducted by the teachers of the school.

After the academic programme for the year is published by the school, judges can apply to participate in the trainings at the school. The judge's application must contain reasons for his/her interests in a particular course. The school shall respond to the applicant judge and is authorised either to enrol the judge or refuse to enrol him/her in the course. The answer shall be provided to a judge within two weeks. The refusal to enrol a judge in the course shall be reasoned.

> No obligatory training for judges is established by law when the specialisation of a judge is changed.

The obligation of a prosecution system to constantly work on the professional development of prosecutors and investigators can be derived from Article 9 of the Georgian Law on Prosecution. The law requires the general prosecutor to present to the Prosecutorial Council six-month reports on the work of the prosecution system, including information about the professional and development programmes conducted during the reporting period. In addition, the law establishes a system of internships in prosecutorial bodies with the aim to attract and develop professionals for future work in the prosecution system. The special decree adopted by the Minister of Justice[131]regulates the rules of competition, admission and process of internship, as well as the evaluation of interns at the Prosecutor's Office. Meanwhile, the Law on Prosecution establishes mandatory periodic certification exams for prosecutors and investigators of the prosecution system (for more details see answer to the question 6b).

The Law on High School of Justice and the charter of the school allows the school to admit prosecutors and attorneys to the in-service training courses. However, according to a letter received from the HSoJ, the school currently does not provide trainings for prosecutors. Prosecutors have not been involved in the training courses in 2016-2018.[132]

b) Judicial Academy: Give information on its programmes, staff, number of students, financing etc. Are there other training facilities?

The HSoJ was established in 2006. According to the Georgian Law on High School of Justice,[133]the school is established to ensure the professional training of candidates appointed to judicial positions in the courts of general jurisdiction. The school aims at deepening the theoretical knowledge of the candidates as well as imparting the skills necessary for practical work, to help the candidates understand the future responsibilities and freedoms to act in the framework of existing law and to help integrate candidates into the environment they will work in the future. The school is also charged with the obligation to provide in-service trainings for acting judges, as well as to prepare highly qualified staff for the judicial system – assistant judges and other staff. In addition to the authorities granted to the school in ensuring professionalism of judges and court staff, Article 35 of the Law on High School of Justice establishes the authority of the school to adopt rules for admitting other professionals to the courses, namely prosecutors, attorneys, etc. Based on this provision, Article 24 of the charter of the school states that the following professionals may participate in the HSoJ's in-service trainings: prosecutors, on the motion of a general prosecutor and according to the roster drawn up by him; attorneys, on the motion of the head of Georgian Bar Association and according to the roster drawn up by him. The number of prosecutors and attorneys to be admitted to the courses is established by the independent council of the school.

The HSoJ is a legal entity of public law established by the Georgian Law on High School of Justice. It consists of an independent council of the school and the directorate of the school. The

131. Special decree by the Minister of Justice, adopted 15/08/2014 N 43 published at www.matsne.gov.ge.

132. Letter of the High School of Justice N02/2111 13/09/2018 sent to the Georgian Young Lawyers' Association.

133. Law on High School of Justice adopted 28/12/2005 N 2602 consolidated version 08/02/2017 published at www.matsne.gov.ge.

independent council of the school defines the directions of the work of the school and coordinates and supervises their execution. The independent council of the school consists of six members, five of whom are appointed by the HCoJ including one who is a non-judge member of the HCoJ, on the submission of the head of the independent council of the school. Council members' term of office is three years.

The head of the independent council, the sixth member of the council, is elected by the conference of judges from the members of the conference of judges. The term of office of the head of the independent council of the school is three years. The same person can be elected as a head of the council for two consecutive terms.

The directorate of the HSoJ consists of the director of the school, deputy director and the head of the internship programme. The director of the school is elected by the independent council of the school to a five-year term.

The finances required for the functioning of the school are allocated from state budget. The school is authorised to receive other income and material support on the decision of the independent council of the school. The school receives funding from donor organisations for particular activities. The initial trainings as well as in-service trainings for judges and other court staff are free of charges.

Although the HSoJ is established as a separate and independent institution, it is highly dependent on the decisions of the HCoJ. Its independent council is formed by the decision of the HCoJ. Thus the HSoJ lacks the organisational as well as functional independence and other guarantees for independent operation:

- Lack of organisational independence of the HSoJ from the HCoJ – five out of six members of the school are selected by the HCoJ;
- Lack of functional independence of the HSoJ from the HCoJ – judicial certification exams and admissions fall under the functions of the HCoJ. The school does not participate in making decisions about judicial promotions;
- Admissions criteria lack adequate guarantees against biased decisions;
- Means for researching information about the HSoJ admission process and sources of information are not defined by the legislation;
- Lack of transparency of the HSoJ competitive admission process;
- Neither the legislation nor the rule established by the HCoJ defines the criteria for the selection of members of the judicial certification examination commission. The HCoJ enjoys broad discretion and unlimited powers when it comes to the composition of the commission.

There are two types of academic programmes run in the HSoJ: academic programme for initial training of judicial candidates and in-service training programmes.

Initial Training Programme

The ten-month long Initial Training Programme for Judicial Candidates ensures that participants deepen their knowledge of the judiciary and develop the skills essential for future judges. The training takes the following form:

- **Theoretical Course** - within the framework of the five-month-long theoretical course, judicial candidates acquire thorough knowledge in all main branches of law as well as learn necessary skills for judges such as judicial ethics, communication skills, etc. At the end of the theoretical course, judicial candidates complete the theoretical exam.
- **Internship** – for a four-month period, judicial candidates are assigned to judges of Tbilisi City Court (internship coordinator) and under his/her supervision work on real-life court cases. During the internship, judicial candidates are required to prepare various court documents, including court decisions. Internships are hosted in all three branches of law. As part of the internship, judicial candidates are evaluated on both a daily basis and at the end of the internship.
- **Seminar Work** – lasts for one month and aims to generalise the knowledge and experience received during the theoretical course and internship as well as to prepare judicial candidates for the final exam. Judicial candidates are given daily assignments of hypothetical cases for which they conduct mock trials and draft judicial decisions. Seminar work, like the internship, is organised in all three branches of law and each branch has its head of seminar work. At the end of the seminar work, each judicial candidate is evaluated.
- **Final Exam** – at the end of the ten-month-long course, judicial candidates have to read, analyse and write a decision on a real-life case from the Georgian courts. The final exam assesses candidates' level of theoretical knowledge and practical skills as well as the ability to draft high quality judgments in a short period of time.

After completing all stages, judicial candidates receive a qualification number and evaluation from the Independent Board of the HSoJ.

According to the academic programme published on the HSoJ website,[134] theoretical and practical trainings include the following major thematic areas: a) Examination of a case before the court of first instance; b) Examination of a case before the court of appeals; c) Examination of a case before the court of cassation; d) Qualification-related issues in civil law, administrative law and criminal law; e) Preparation of procedural document (decision) in trial; f) Fundamental human rights and freedoms; g) Professional ethics; h) Foreign language.

Lectures

Lectures are detailed discussions of a topic's essence, meaning, objective, purpose, development history, basic trends and relevant international best practice. Lecture participants are asked to make reference to the case law of the Supreme Court of Georgia and the European Court of Human Rights and utilise relevant decisions (judgments). Lectures shall be related to the current case law and trends in the interpretation of rules. Lectures should be built on interactive methods, during which participants will be able to review the existing theories and relevant practice, as well

134. http://www.hsoj.ge/uploads/Uploads/Initial_Training_Program_for_Judicial_Candidates_Group_XIII.pdf

as to present their views on the matter in question. Discussions are to be interactive and aimed at enhancing participants' ability to think analytically; improving participants' ability to clearly express their opinion and support it with legal arguments; developing a culture of listening to and respecting different views; and helping participants absorb and analyse the information received. To achieve the latter, participants will periodically receive homework assignments, either in writing or in oral form, to be completed either individually or in groups. Contemporary methods of technical training that have been tested and approved in international practice are to be used within the framework of lectures. The duration of lectures shall not exceed 40% of the total time intended for the Theoretical Training Course.

Practical Training

Practical training is aimed at deepening the theoretical knowledge gained by participants using various interactive methods. Participants work on case studies, take part in mock trials, discuss and analyse court decisions and judgments that have already entered into force, draw up relevant procedural documents and carry out various procedural actions prescribed by the procedural legislation. Lectures should be interactive discussions, aimed at enhancing participants' ability to think analytically; improving participants' ability to clearly express their opinion and support it with legal arguments; developing a culture of listening to and respecting different views; and helping participants absorb and analyse the information received. In order to maximise participant engagement in practical classes, they may periodically receive homework assignments. Participants should play various roles in the proceedings during mock trials to analyse topics from different perspectives. Contemporary methods of technical training that have been tested and approved in international practice are to be used within the framework of the lecture course. Practical training shall cover at least 60% of the total time intended for the training process. At the end of the theoretical course, participants shall take the graduation examination of the Theoretical Course in a manner prescribed by the HSoJ statute.

Internship

After the completion of the Theoretical Course, participants shall undergo a mandatory internship in the common courts. The period of mandatory internship shall be four months for the ten-month course and two weeks for the six-month course. The participants' mandatory internship shall be conducted and supervised by an internship coordinator. If desired, in addition to mandatory internship, participants may also undergo an alternative internship. The list of administrative authorities for alternative internship nominated by the director of the HSoJ shall be approved by the Independent Board. Over the course of mandatory internship, participants will study in detail the stages of court activities and perform tasks assigned to them by the internship coordinator. During the internship, participants shall note down issues that require additional information in order to further discuss such matters with an internship coordinator and/or workshop teacher. Participants will receive assignments from the internship coordinator on a daily basis to be completed within a specified period of time. The assignments shall be executed in writing and will include but not be limited to the following: drawing up of a judicial decision in the case, preparation of various procedural documents, analysis of draft procedural documents and preparation of conclusions thereon. In order to ensure engagement in the internship process to the maximum extent possible, participants should attend court hearings. Along with other

assignments, the internship coordinator shall periodically ask participants to draw up judicial decisions. The internship coordinator shall evaluate the work completed by participants on a daily basis by awarding points in a manner prescribed by the HSoJ statute. At the end of the internship, the internship coordinator shall prepare recommendation letters (the Characterisation Form) for all participants assigned to him/her, and, also submit a report on the completion of the internship programme to the internship supervisor. In the course of internship, the internship coordinator shall be guided by the Guidelines for Internship Coordinators (Internship Standard) to ensure a unified approach to the internship process. Participants shall keep any information concerning the parties to the case, which has become known to them in the course of their internship in court, in strict confidence. None of the documents prepared by participants shall be used in court activities. Such documents are intended only to enable participants to develop knowledge and skills. Upon the internship coordinator's request, the HSoJ shall provide all stationary supplies required for the internship process. The daily evaluation of participants shall be reflected in the final evaluation of the internship, and the recommendation letters (Characterisation Form) prepared by the internship coordinator will be taken into account by the Independent Board when making the evaluation. At the end of the mandatory internship, participants shall prepare written reports on the work performed as well as an assessment on the operation of the location of the internship, outlining problems and providing solutions. Such written reports and papers shall be submitted to the internship supervisor and then sealed and attached to the personal file of the participant.

Workshops

Upon the completion of the internship, participants shall attend workshops. The duration of workshops shall be one month for the ten-month course and two weeks for the six-month course. Workshops shall be conducted by a schoolteacher or an invited professional. The workshops are aimed at the generalisation of the knowledge and experience gained during the theoretical course and internship and focus on preparing a participant for the HSoJ graduation examination. Participants will receive practical tasks during workshops (preparation of court decisions on the basis of case studies, drawing up of various procedural documents, holding of mock trials, etc.). In the course of workshops, a workshop supervisor shall be guided by the Guidelines for Workshop Supervisors (Workshop Standard), ensuring a unified approach to the workshop process. At the end of the workshops, the workshop supervisor shall prepare a Workshop Description Form in relation to all participants for consideration by the Independent Board when preparing the evaluation.

Foreign Language

Participants will learn English during the training. They will undergo at least seven months of training in the English language as part of the ten-month training course and at least four months under the six-month training course. English language trainings shall not take place in the course of workshops. Based on their existing knowledge of the English language, participants shall be divided into groups and learn English through different programmes. The training may be conducted at least twice a week, as needed, including Saturdays. The duration of each class shall be at least two hours. As part of the English language training, participants shall pass interim and final evaluations in order to assess their knowledge level.

THEORETICAL TRAINING COURSE FOR PARTICIPANTS

#	TOPIC	DURATION
1	Judicial Ethics and Standards of Professional Conduct	one day
2	Success Skills	three days
3	Applied Psychology; Psychology of Adult Behaviour in Court	two days
4	Justice and Information Technologies	one day
5	Interpretation of Rules	two days
6	Constitutional Rights and Constitutional Control	one day
7	Constitutional Submission	one day
8	Decisions Made by the Constitutional Court of Georgia(Precedents)	two days
9	International Human Rights Instruments	one day
10	Case Law of the European Court of Human Rights (ECHR)	five days
11	Combating Discrimination	one day
12	Promoting Justice through Gender Equality	one day
13	Property Law	two days
14	Transactions	one day
15	Law of Obligations	two days
16	Contracts	four days
17	Statutory Obligations	two days
18	Family Law	two days
19	Inheritance Law	two days
20	Corporate (Company/Corporations) Law	two days
21	Intellectual Property Law	one day
22	Law of Georgia on Private International Law	one day
23	Summary Discussion on Civil Law Matters	one day
24	Civil Proceedings in the Court of First Instance	three days
25	Civil Proceedings in Courts of Appeal and Cassation	one day
26	Relation and Subsumption [Subsuming] Techniques	two days
27	Mediation and Judicial Reconciliation	one day
28	Summary Discussion on Civil Procedure Matters	one day
29	Administrative Legal Acts	two days
30	Freedom of Information and Personal Data Protection	one day
31	Administrative Agreement	one day
32	Types of Administrative Proceedings	three days
33	Administrative Complaint	one day
34	Enforcement of Administrative Legal Act; Responsibility of Administrative Body	one day
35	Summary Discussion on Administrative Law-related Matters	one day
36	Administrative Proceedings in the Court of First Instance	two days
37	Administrative Proceedings in Courts of Appeal and Cassation	one day
38	Administrative Proceedings concerning Control of Entrepreneurial Activities	one day

39	Administrative Proceedings concerning Placement of an Individual in Hospital for In-Patients for the Provision of Involuntary Psychiatric Assistance	one day
40	Administrative Proceedings concerning Granting of Refugee Status or Asylum	one day
41	Proceedings into an Administrative Offence	two days
42	Summary Discussion on Matters of Administrative Proceedings	one day
43	Rationale for Decisions	two days
44	Legal Writing	one day
45	Judge's Coherent Speech – Oratory	one day
46	Coherent Writing of Documents by a Judge	one day
47	Tax Law	four days
48	Grounds for Criminal Liability and Crime Categories	one day
49	Guilt in Criminal Law	one day
50	Punishment	one day
51	Exemption from Criminal Liability and Punishment	one day
52	Offence against a Person	one day
53	Offence against Public Security and Order	one day
54	Economic Crime	one day
55	Examination of Trafficking-related Cases	one day
56	Summary Discussion on Criminal Law-related Matters	one day
57	Procedural Actions that Take Place before the Hearing of the Case in Court	one day
58	Measures of Constraint	one day
59	Evidence and Evaluation of Evidence	one day
60	Plea Bargains	one day
61	Jury Trial	one day
62	Judgment, Entry into Force and Enforcement of Judgments	one day
63	International Cooperation in the Field of Criminal Law	one day
64	Criminal Proceedings in the Court of First Instance	two days
65	Criminal Proceedings in Courts of Appeal and Cassation	one day
66	Rationale for Judgments; Legal Writing	two days
67	Domestic Violence (including the threshold between administrative and criminal liabilities; restrictive and protective orders)	one day
68	Summary Discussion on Matters of Criminal Procedure Law	one day
69	Communication during the Trial and Techniques of Holding Hearings	two days

The internship programme for the six-month training course published on the HSoJ website for admissions in 2016 was as follows: Internship shall be conducted on a daily basis (including weekends if necessary), from 10:00 to 18:00, with a one-hour break in the middle. Any participant who, by the decision of the Independent Board, is admitted to the additional graduation examination of the theoretical course (Additional Theoretical Examination) and successfully passes the examination will undergo a half-month internship within the period determined by the HSoJ administration. Any participant who, by the decision of the Independent Board, has been admitted to the additional graduation examination of the theoretical course, as well as any participant who has failed to appear for an internship for a valid reason, may

complete an internship on the weekends as well. The internship schedule shall be set by the HSoJ administration in agreement with the internship coordinator.

The internship programme for the ten-month training course published on the HSoJ website for 2017 was as follows: Internship shall be conducted on a daily basis (including weekends if necessary), from 10:00 to 18:00, with a one-hour break in the middle. For the purpose of undergoing the internship for as many days as prescribed by the HSoJ statute, if necessary, participants shall complete the internship on weekends as well. Any participant who, by the decision of the Independent Board, is admitted to the additional graduation examination of the theoretical course (Additional Theoretical Examination) and successfully passes the examination will undergo a four-month internship within the period determined by the HSoJ administration. Any participant who, by the decision of the Independent Board, has been admitted to the additional graduation examination of the theoretical course, as well as any participant who has failed to appear for an internship for a valid reason, may complete the internship on the weekends as well. The internship schedule shall be set by the HSoJ administration in agreement with the internship coordinator.

The workshop programme for 2016 was as follows: Workshops shall be conducted on a daily basis (including weekends if necessary), from 10:00 to 18:00, with a one-hour and two 15-minute breaks in the middle. Workshops were divided into 3 stages, specifically:

1. Criminal Law Workshops (4 Days) focus on drafting procedural documents, preparing decisions on the basis of case studies and appropriate rationale, discussing issues relating to the qualification of crime, etc. During workshops, participants will be able to practice the skills they have acquired during the theoretical course and internship process. Mock trials will be continued during the workshops, taking into consideration the knowledge and experience gained.
2. Civil Law Workshops (4 Days) cover drafting procedural documents, preparing decisions on the basis of case studies and appropriate rationale as well as preparing procedural documents in ***ex parte*** judicial proceedings, etc. During workshops, participants will be able to practice the skills they have acquired during the theoretical course and internship process. Mock trials will be continued during the workshops, taking into consideration the knowledge and experience gained.
3. Administrative Law Workshops (4 Days) entail drafting procedural documents, preparing decisions on the basis of case studies and appropriate rationale, etc. During workshops, participants will be able to practice the skills they have acquired during the theoretical course and internship process. Mock trials will be continued during the workshops, taking into consideration the knowledge and experience gained.

The workshop programme for the ten-month training course in 2016 was as follows: Workshops shall be conducted on a daily basis (including weekends if necessary), from 10:00 to 18:00, with a one-hour and two 15-minute breaks in the middle. Workshops were divided into 3 stages, specifically:

1. Criminal Law Workshops (6 Days) focusing on drafting procedural documents, preparing decisions on the basis of case studies and appropriate rationale, discussing issues relating to the qualification of crime, etc. During workshops, participants will be able to practice the skills they have acquired during the theoretical course and internship process. Mock

trials will be continued during the workshops, taking into consideration the knowledge and experience gained.

2. Civil Law Workshops (6 Days) include drafting procedural documents, preparing decisions on the basis of case studies and appropriate rationale as well as preparing procedural documents in ***ex parte*** judicial proceedings, etc. During workshops, listeners will be able to practice skills they have acquired during the theoretical course and internship process. Mock trials will be continued during the workshops, taking into consideration the knowledge and experience gained.
3. Administrative Law Workshops (6 Days) cover drafting procedural documents, preparing decisions on the basis of case studies and appropriate rationale, etc. During workshops, participants will be able to practice the skills they have acquired during the theoretical course and internship process. Mock trials will be continued during the workshops, taking into consideration the knowledge and experience gained.

In 2017 the Council of Europe issued recommendations about the initial training programme for judicial candidates as part of the Strengthening the Capacity of the High School of Justice project.[135] The recommendations include among others:

- The duration of training courses should be increased;
- The internship should be mandatory for all candidates for judicial office;
- The rules for evaluation of judicial candidates should be changed and formative and summary evaluation be introduced by the School of Justice;
- Along with the framework academic programme, a candidate should be provided individualised training created specifically for that particular candidate.

As it is obvious from the rules and procedure of training judicial candidates, there is no requirement to take a candidate's personal background into account and the academic programmes for HSoJ participants are designed according to the pre-established general law and are the same for every candidate.

In-Service Training Programmes

The independent board of the HSoJ adopts thein-service training programmes for judges and court staff, which are then implemented by the school director. The law establishes that the school adopts the academic programme for in-service training each year. In-service trainings are provided in the form of seminars, study courses, conferences, theoretical and practical trainings, and discussions. In-service trainings are conducted by the instructors of the school.

After the publication of the year's academic programme, judges interested in participating in the trainings apply to the school. Applicants needs to explain the reasons for their interest in a particular course. The school shall respond to the applicant judge and is authorised to either enrol

135. http://www.hsoj.ge/uploads/recommendations.pdf

the judge in the course or deny their application. The answer shall be provided to a judge within a two-week time period. The refusal to enrol a judge in the course shall be reasoned.

According to the information provided by the HSoJ, in 2015 the school in cooperation with the USAID/ JILEP implemented the electronic web-portal to enable judges and other court staff to manage their course of study through personal webpages, including registration for selected training courses. The HSoJ on the other hand defines training topics and target groups through the portal.[136]

According to the information provided by the school, the statistics of conducted in-service training courses are the following:

-In 2016, the HSoJ conducted 93 trainings with a total of 1524 participants (this number reflects that judges and other staff members may have repeatedly participated in the courses). Out of 93 trainings, 67 were conducted for acting judges (total of 1124 participants) and 26 for other staff members (total of 400 participants).

In-service trainings conducted for judges and court staff in 2016

Area of training	Content of training	Number of trainings conducted	Number of participants
Constitutional law	Important decisions delivered by the Constitutional Court of Georgia	3	17 judges 12 judges and 1 court staff 24 court staff
European and International Human Rights Law	Application of European Convention on Human Rights	3	20 judges 19 judges and 3 court staff 22 court staff
	Precedents of European Court of Human Rights	1	17 judges
	European and International human rights standards	2	15 judges 14 judges
	Right to Fair Trial	2	14 judges and 4 court staff 11 judges and 11 court staff
	Freedom of Expression, including hate speech	1	16 judges
	Prohibition of torture, inhumane and other degrading treatment	6	12 judges 6 judges and 3 court staff 14 judges 16 judges 15 court staff 15 court staff
	Prohibition of discrimination	2	7 judges and 11 court staff 5 judges and 15 court staff
	Promotion of justice through gender equality	2	10 judges and 6 court staff 10 judges and 8 court staff
	Effective access to justice for people with disabilities	3	13 judges 13 court staff 8 court staff
	Rights of asylum seekers, refugees and other people under international protection	2	15 judges 16 court staff

136. Letter of the High School of Justice N02/2111 13/09/2018 sent to the Georgian Young Lawyers' Association.

	Child Rights	2	9 judges and 3 court staff 13 judges
	Rights of drug users	2	15 judges 14 judges
	International labour standards and Georgian Labour Code	1	15 judges
	Right to private life	4	18 judges 10 judges 6 court staff 12 court staff
Civil Law	Business law	3	20 judges 20 judges 19 judges
	Intellectual property law	1	25 judges
	Mediation/Settlement	2	19 judges 18 judges
	Arbitration	1	10 judges
	The limitation periods	2	15 judges 19 court staff
	Unjustified enrichment	1	20 judges
	Declaring a person to have restricted legal capacity and appointment of supporter	1	28 judges
	Contract law	1	20 court staff
	Current issues of civil procedure	1	19 court staff
Administrative law	The law on personal data protection and access to public information	3	10 judges 18 court staff 16 court staff
	Domestic violence, delineation of administrative and legal responsibilities and restrictive and protective orders	2	9 judges 13 court staff
	Registration of immovable property, problematic issues derived from the disputes on the ownership of plot of land	2	12 judges 15 judges
	Problematic issues of considering construction disputes	1	14 judges
	Current issues of administrative proceedings	2	16 judges 13 court staff
	Administrative and civil contracts	1	12 court staff
Tax Law	Problematic issues of tax disputes	1	16 judges
Criminal Law	Substantiation of verdict (form, substantiation and style of the verdict)	4	18 judges 13 judges 19 court staff 14 court staff

	Jury Trial	2	10 judges and 8 court staff 11 judges and 9 court staff
	Trafficking and protection of victims of trafficking including children	2	7 judges and 6 court staff 17 court staff
	Prevention of money laundering and financing of terrorism	1	8 judges and 6 court staff
	Juvenile justice	5	33 judges 31 judges 23 judges 9 judges 26 judges
	Illegal migrant border crossing	2	10 judges 11 court staff
	Consideration of corruption cases with the focus on the responsibility of a legal entity	2	13 judges 8 judges
	Evidence law	2	27 judges 18 court staff
	Preventive measures	1	21 judges
	Reopening criminal cases	2	9 judges and 9 court staff 11 judges and 9 court staff
	Plea agreement	1	16 judges
	Current issues of criminal procedure	2	18 judges 13 court staff
General issues	Introduction to judicial ethics	2	19 judges 22 judges
	In depth course on judicial ethics	1	15 judges
	Drafting of court documents	3	21 court staff 13 court staff 13 court staff

-In 2017, the HSoJ conducted 92 in-service trainings with a total of 1364 participants (this number reflects that judges and other staff members may have repeatedly participated in the courses). Fifty-six trainings were conducted for acting judges with a total of 778 participants, 33 trainings for court staff with a total of 552 participants and three joint training for judges and court staff with a total of 64 participants.

In-service trainings conducted for judges and court staff in 2017:

Area of training	Content of training	Number of trainings conducted	Number of participants
Constitutional law	Important decisions delivered by the Constitutional Court of Georgia	1	16 judges 19 court staff
European and International Human Rights Law	European and international standards on Human Rights	2	13 judges 15 court staff
	Precedents of European Court of Human Rights	2	16 judges 14 court staff
	Freedom of Expression, including hate speech	1	13 judges

	Prohibition of torture, inhumane and other degrading treatment	2	15 judges 9 court staff
	Prohibition of discrimination	2	16 judges 16 court staff
	Promotion of justice through gender equality	2	17 judges 17 court staff
	Effective access to justice for people with disabilities	1	11 judges
	Rights of asylum seekers, refugees and other people under international protection	1	20 judges
	Rights of drug users	1	15 judges
	International labour standards and Georgian Labour Code	1	16 judges
	Training on human rights	6	31 court staff 12 court staff 14 court staff 31 court staff 25 court staff 20 court staff
	International Humanitarian Law	1	13 judges
	Domestic violence and violence against women	2	13 judges 9 court staff
	Child rights	1	12 judges
Civil Law	Business law	4	18 judges 19 judges 19 judges 14 court staff
	Drafting court documents	1	14 court staff
	Hague convention 1980 on civil aspects of child cross-border kidnapping	1	13 judges
	Contract law	1	18 court staff
	Current issues of civil procedure	2	13 judges 14 court staff
	Insolvency proceedings	1	13 judges
	Bank disputes	1	15 judges
	Current issues of Intellectual property law	1	27 judges
	Settling of cases	3	15 judges 17 judges 4 judges
	Bilateral and multilateral contracts in mutual cooperation on civil and business law cases	1	11 judges
	Technics of relation and subsumption in civil law	1	13 judges
	Arbitration law	1	13 judges
Administrative law	The law on personal data protection and access to public information	1	17 judges
	Juvenile justice (administrative law)	2	20 judges 21 judges

	Public procurement disputes	1	16 judges
	Administrative violations	1	7 court staff
	Current issues of administrative proceedings	2	21 judges 14 court staff
Criminal Law	Jury Trial	4	13 judges 6 judges 11 judges 19 judges 25 court staff
	Trafficking	2	13 judges 5 court staff
	Cyber crime	1	10 judges
	Juvenile justice	1	6 judges
	New regulations of witness interrogation	1	9 judges
	Drafting of court documents	1	14 court staff
	Consideration of corruption cases	2	15 judges 14 judges
	Effective justice on hate crimes	1	13 judges
	Reopening the criminal cases	2	11 judges 11 judges
	Plea agreement	1	14 judges
	Substantiation of verdicts	1	11 judges and 4 court staff
	Current issues of criminal procedure	1	15 court staff
	Migration related issues	1	7 judges and 6 court staff
Tax Law	Problematic issues of tax disputes	1	11 judges
General issues	Introduction to judicial ethics	1	9 judges
	In depth course on judicial ethics	1	11 judges
	Leadership and management in courts	2	12 judges 15 court staff
	Applied psychology	1	13 judges
	Skills of productivity and success	2	12 judges 17 court staff
	Case management	2	13 judges 11 court staff
	Stress management	1	15 judges
	Justice and information technologies	2	8 judges 19 court staff
	Academic writing	1	18 court staff
	Effective communication	2	14 court staff 15 court staff
	Ethic rules for court staff	1	16 court staff
	Novelties of law on public service	1	9 judges and 31 court staff

-In 2018 (from 1 January to 12 September) the HSoJ conducted 55 trainings with a total of 759 participants (this number reflects that judges and other staff members may have repeatedly participated in the courses). Thirty-five trainings were conducted for judges with a total of 469 participants and 20 trainings were conducted for court staff with a total of 290 participants.

In-service trainings conducted for judges and court staff in 2018 (from 1 January to 12 September)

Area of training	Content of training	Number of trainings conducted	Number of participants
Constitutional law	Important decisions delivered by the Constitutional Court of Georgia	2	11 judges 14 court staff
European and International Human Rights Law	European and international standards on Human Rights	3	14 judges 16 judges 11 court staff
	Precedents of European Court of Human Rights	1	14 judges
	Prohibition of torture, inhumane and other degrading treatment	2	10 judges 12 court staff
	Prohibition of discrimination	1	10 judges
	Rights of asylum seekers, refugees and other persons under international protection	1	12 judges
	International Humanitarian Law	1	11 judges
	Domestic violence and violence against women	2	15 judges 14 court staff
	International Humanitarian Law	1	11 judges
Civil Law	Business law	4	13 judges 12 judges 14 judges 16 court staff
	Problematic issues of liability law	2	8 judges 15 court staff
	Reopening of civil cases	1	10 judges and 5 court staff
	International labour standards and Georgian labour code	2	16 judges 15 court staff
	Intellectual property law	1	26 judges
	Current issues of civil procedure	2	15 judges 15 court staff
	Arbitration law	1	8 judges
Administrative law	The law on personal data protection and access to public information	3	16 judges 23 court staff 10 court staff
	Juvenile justice (administrative law)	2	23 judges 13 court staff
	Problematic issues of construction disputes	1	12 judges
	Administrative violations	1	14 judges
	Current issues of administrative proceedings	2	15 judges 14 court staff

Criminal Law	Trafficking	1	14 court staff
	Cyber crime	1	9 judges
	Juvenile justice	2	14 judges 14 court staff
	International legal Cooperation on criminal cases	1	11 judges
	Consideration of corruption cases	2	9 judges 13 court staff
	Effective justice on hate crimes	1	7 judges
	Reopening the criminal cases	1	15 judges and 2 court staff
	Current issues of criminal procedure	2	15 judges 13 court staff
General issues	Introduction to judicial ethics	1	25 judges
	In depth course on judicial ethics	1	10 judges
	Leadership and management in courts	2	15 judges 16 court staff
	Case management	2	13 judges 14 court staff
	Effective communication/standards of communication	1	11 court staff

Training Programmes for Prosecutors

According to the Prosecutor's Office,[137] in 2016 a total of 2123 prosecutors and investigators participated in 132 trainings organised by the Prosecutor's Office (this number reflects that some prosecutors and investigators may have repeatedly participated in the courses). Trainings covered the following areas of law: jury trial skills training; European standards of jury trial; prohibition of discrimination (training for trainers); anti-discrimination standards; standards of fair trial according to Article 6 of the ECHR; investigation of hate crimes; communication with people with disabilities; right to privacy; prohibition of torture according to ECHR; proper qualification of crimes of ill-treatment; fighting domestic violence and violence against women; raising access to justice for women in five Eastern Partnership member countries; training for trainers in legal writing; legal writing; standards of professional ethics; juvenile justice, psychology and methods for communication with juveniles; diversion and mediation in juvenile proceedings; prosecutorial discretion; fighting crimes against children; legislative novelties on witness interrogation; skills training on witness interrogation; effective communication and public speaking; pre-trial hearings and their practical aspects; investigation of cybercrime; basic course on cyber security; cybercrime and electronic evidences; digital evidences; investigation of money laundering; investigation of financial crimes; international cooperation in the field of fighting corruption, confiscation of illegal property and independence of a prosecutor; economic crimes; partnership with police units of Eastern Partnership countries; investigation and prosecution of corruption; investigation and prosecution of corruption committed by legal entities; illegal migration; fighting trafficking; risk assessment and management: prevention of violence; methods of fighting against spread of weapons of mass destruction; using internet resources for purposes of terrorism; interrogation of

137. Letter sent from the Office of Chief Prosecutor of Georgia to Georgian Young Lawyers' Association 24/09/2018 N 13/72524

a person accused of terrorism; returning illegally acquired property and income; drug trafficking; conspiracy and other complex investigations; fighting drug related crimes; European standards of human rights and research methodology; witness protection; indirect evidences (hearsay) and standards of ECHR; electronic case management system; national strategy of intellectual property; detection and investigation of crimes in the field of information technology – regional seminar for prosecutors and law enforcement officers; operative analysis of a crime; crimes against intellectual property; fraud; tax legislation and public procurement; witness and victim communication; international cooperation (extradition, legal assistance, etc.).

The abovementioned trainings were conducted with the help of US Embassy, Council of Europe, EU, Public Defenders Office of Georgia, UN Women, UNICEF, NATO Tbilisi, OECD, International Organisation for Migration and UNODC. Over 30 trainings were conducted by means of the financial resources of the prosecutor's office and other national institutions.

Over 30 trainings were four days long, while others were three-day, two-day or one-day long trainings.

The Prosecutor's Office did not provide information on trainings conducted in 2017 and 2018.

c) Do training programmes for judges and prosecutors include both vocational/initial training and continuous training? Is the training compulsory? Please, give information on the length of the vocational/initial training (including information on the average number of hours covered per week), on the curricula and on the average time a judge, prosecutor and a court clerk spend annually on in-service training.

The obligation of a prosecution system to consistently work on the professional development of prosecutors and investigators can be derived from Article 9 of Georgian Law on Prosecution. The law requires the general prosecutor to present to the Prosecutorial Council six-month reports on the work of prosecution system, including information about the professional development programmes conducted during the reporting period. In addition, the law establishes internship programmes within prosecutorial bodies in order to attract and develop professionals for future work in the prosecution and investigation fields. A special decree[138]by the Minister of Justice regulates the rules of competition, admission and process of internship, and evaluation of interns.

According to the decree of the Minister of Justice mentioned above, the length of internship in the Prosecutor's Office is one year. An intern may be appointed to a vacant position in the prosecution system upon successful completion of the internship or in special circumstances, at the recommendation of the internship commission, after six months of the internship.

According to the Prosecutor's Office, the statistics of appointment of interns to vacant positions as a prosecutor or investigator in the Prosecutor's Office are as follows:

-In 2016, 32 of the total 42 vacancies for prosecutors/investigators were filled by interns based upon the recommendation of the internship commission;

-In 2017, 30 of the 40 vacancies for prosecutors and investigators were filled by interns;

138. Decree adopted 15/08/2014 N 43 published at www.matsne.gov.ge.

-In 2018 none of the five vacancies for prosecutors and investigators were filled by interns.

In 2016, a total of 58 interns were admitted for the internship; in 2017 – 0 internships; in 2018 – 61 interns were admitted for the internship.[139]

d) Please describe the training system for lawyers.

The training programme for lawyers is within the Georgian Bar Association. Article 23.3 of the Georgian Law on Attorneys[140]establishes the Study Centre for Attorneys under the Georgian Bar Association (GBA), which is responsible for conducting professional trainings for attorney members of the GBA. According to Article 5 of the Law on Attorneys, attorneys are obliged to fulfil all requirements of the compulsory in-service training programme adopted by the GBA executive board. Violation of Article 5 of the Law on Attorneys is grounds for disciplinary responsibility of an attorney according to the same law.

According to the information published on the official GBA website (www.gba.ge), the GBA currently (as of November 2018) offers the following training courses for attorneys: legal writing and reasoning; role of an attorney in arbitration; important decisions of the ECHR against Georgia; moral damage; ECHR judgments on property law; current issues of bank law; technique of cross examination of witnesses.

e) Is language training an aspect of training of judges, public prosecutors or lawyers?

Language training is a part of the academic programme of initial training of judicial candidates by the HSoJ and thus is compulsory. According to academic programme of the school published on the webpage, "Participants will learn English during the training. Participants will undergo at least seven months of training in the English language as part of the ten-month training course, and at least four months of training in the English language in the six-month training course. Based upon their current level of English, participants shall be divided into groups and learn English through different programmes. The training may be conducted at least twice a week, as needed, including Saturdays. The duration of each class shall be at least two hours. As part of the training in English language, participants shall pass interim and final evaluations in order to examine their knowledge level."

f) Are specific training courses organised for judges in new areas such as company law, cybercrime, financial crime, EU law, ECHR case-law, etc., but also on ethics in justice as well as on fundamental rights? Is there any continued training for judges?

Specific trainings for judges and prosecutors are conducted in different areas of law and professional skills including the novelties of relevant legislation, current legal issues, ethics, fundamental rights, etc. For a detailed list of in-service and initial trainings for judges and prosecutors see sections

139. The statistical data were provided in a letter from the Office of Chief Prosecutor of Georgia N 13/75500 03/10/2018 sent to the Georgian Young Lawyers' Association.

140. Georgian Law on Attorneys, adopted 06/07/2001 N 976 consolidated version 04/05/2018 published at www.matsne.gov.ge.

above. However, the list of trainings conducted for judges and prosecutors does not include topics from EU law.

g) How is training ensured for specialised judges and prosecutors?

The Code of Juvenile Justice of Georgia[141]establishes the mandatory requirement for all participants of juvenile proceedings, judges, prosecutors, investigators, police officers, attorneys, social workers, mediators, probation officers, etc. to complete a special training in juvenile justice issues.

h) What percentage of judges, prosecutors and other staff in the judicial sector has received further training over the last 5 years (compared with the profession as a whole)?

The court system as well as the Prosecutor's Office provided information about the total number of judges and prosecutors who participated in trainings, though the number is not reflective of unique participants (some judges and prosecutors participate in more than one training). Therefore, it is impossible to establish the number of judges and prosecutors who received training in comparison with the number of judges and prosecutors who have never participated in the trainings.

21 Clerical staff: Please give further details on the training for clerks at courts and prosecutors' offices. Do they receive particular initial and vocational training (on case management, IT, relations with the public etc.)? Which institution is in charge of offering this training?

Detailed information on the trainings provided, types of trainings and institutions in charge of providing the trainings to assistant judges and clerks is given in the response to question 20 along with the information on training of judges. The law does not include clerical staff in the Prosecutor's Office. The prosecution system consists of prosecutors, investigators, interns, and other technical staff. Initial trainings are provided for interns at the prosecution system, which is described in more detail in the responses above.

EFFICIENCY

22 What is the annual budget of the judiciary? Please provide a breakdown for the last five years. What is the procedure for deciding the budget? Who is managing the budget in the judiciary?

141. Code of Juvenile Justice of Georgia, adopted 12/06/2015 N 3708-II consolidated version 05/07/2018 published at www.matsne.gov.ge.

According to Article 67 of the Organic Law on Common Courts,[142]the courts are funded by the state budget. Finances related to the organisation and work of the Supreme Court of Georgia are established by a separate provision of the Law on State Budget. According to the same Article, the HCoJ submits to the Government of Georgia a draft budget for the commoncourts of Georgia (except the draft budget of the Supreme Court of Georgia). The HCoJ is authorised to submit its opinion to the Parliament of Georgia on the revised draft law on state budget before the Parliament considers the revised draft law on state budget.

The draft budget of the Supreme Court defining the expenses for the organisation and work of the court must be submitted to the Government of Georgia by the head of the Supreme Court of Georgia according to the procedure established by legislation. Article 67 of the Organic Law on Common Courts stipulates that a reduction in the budget allocated to the commoncourts of Georgia when compared to the expenses of the previous budget year is only possible with the prior consent of the HCoJ.

The Law on State Budget of Georgia is adopted for each year and published at www.matsne.gov.ge. The breakdown of budget allocations below includes funding for the Supreme Court, common courts, HCoJ, trainings and development of the judiciary each year.

Year	Budget Allocation GEL	Budget Allocation EUR*
2018	**154,450,000 – Total** 8,400,000 – Supreme Court 71,150,000 – general courts 69,530,000 – development of court system 1,620,000 – trainings for judges and staff members 3,750,000 – HCoJ	**52,179,054 – Total**
2017	**128,400,000 – Total** 7,700,000- Supreme Court 59,000,000 – general courts 57,470,000 – development of court system 1,530,000 – trainings for judges and staff members 2,700,000 – HCoJ	**45,371,024 – Total**
2016	**175,380,100 – Total** 7,140,600 – Supreme Court 52,833,500 – general courts 51,386,100 – development of court system 1,447,400 – trainings for judges and staff members 2,598,400 – HCoJ	**67,195,440 – Total**
2015	**109,612,800 – Total** 6,596,700 – Supreme Court 50,219,000 – general courts 48,698,700 – development of court system 1,520,300 – trainings for judges and staff members 2,578,100 – HCoJ	**43,670,438 – Total**
2014	**205,246,400 – Total** 6,593,100 – Supreme Court 47,435,100 – general courts 45,818,800 – development of court system 1,616,300 – trainings for judges and staff members 2,319,800 – HCoJ	**87,712,136 – Total**

* Note: the EUR equivalent was calculated using the average exchange rate in the relevant year[143]

142. Organic Law on Common Courts, adopted 28/12/2005 N 2602 consolidated version 08/02/2017 published at www.matsne.gov.ge.

143. Information about exchange rates is available on the official website of Georgian National Bank https://www.nbg.gov.ge/index.php?m=304

According to Law on Prosecution, the prosecution system in funded from the state budget. The allocation for the prosecution system is envisaged by a separate organisational code. The reduction or correction of budget allocations to the prosecutor's service compared to the amount allocated in the previous year is possible only with the prior consent of the General Prosecutor. The draft budget of the prosecution system submitted for approval by the General Prosecutor can be reduced or corrected only with the prior consent of the General Prosecutor.

A separate budget for the prosecution system was established by recent amendments to the Law on Prosecution and has not entered into force. Therefore, the funding of the prosecution system is still considered under the allocations for the Ministry of Justice under the programme "supervision over investigation, prosecution, prevention and fight against crime" and is as follows:

Year	Budget Allocation GEL	Budget Allocation EUR*
2018	**36,000,000**	**12,116,724**
2017	**35,000,000**	**12,357,884**
2016	**35,048,900**	**13,390,219**
2015	**34,924,000**	**13,860,380**
2014	**34,254,200**	**14,599,241**

* Note: the EUR equivalent was calculated using the average exchange rate in the relevant year[144]

23 **What is the average duration of (a) a civil case, (b) criminal case and (c) administrative law cases? In case of delays in handling cases, which problems are they mainly linked with?**

(For example: complex summoning process, prolonged period for collection of evidence; police evidence not being accepted in courts; failure by witnesses to appear; failure by judicial experts to appear; workload associated with enterprise registration; workload associated with high number of appeals; absence of alternative dispute resolution mechanisms; complex case management; lack of technical equipment.)

According to the Supreme Court of Georgia (19/10/2018 Np-476-18), CEPEJ standards are used to measure the average duration of cases. Specifically, the average duration of a case is calculated by establishing the arithmetic average of the length of time between the dates of submission of a case and delivery of a final decision on the same case. According to the data for the first eight months of 2018, the average duration of criminal cases considered by first instance courts was 2.6 months. The average duration of criminal cases considered by the appellate courts was 2.9 months. The Supreme Court does not process similar statistical data on the average duration of civil and administrative cases in the first instance and appellate courts.

According to the Supreme Court, the average duration of civil, administrative and criminal cases

144. Information about exchange rates is available on the official website of Georgian National Bank https://www.nbg.gov.ge/index.php?m=304

in the Supreme Court constituted: 5 months for criminal cases; 4.1 months for civil cases; 4.5 months for administrative cases. The response provided by the Supreme Court of Georgia asserts that the abovementioned average duration of cases is in compliance with the maximum terms established for the consideration of cases by the relevant codes of procedure.

All stakeholders (attorneys, NGOs, judges, HCoJ members, legislators, etc.) recognise that delayed court proceedings is a primary problem in the Georgian judiciary. An HCoJ[145]report in the section covering challenges within the court system highlights the insufficient number of judges and their high caseloads. The HCoJ report admits that "the judges have a large caseload, which significantly increases the risk of mistakes and delays… The situation is further exacerbated by the lack of courthouses, courtrooms and court staff… The judges' caseload is especially evident in Tbilisi City Court." This problem is emphasised in a recent report on the number of judges prepared with the support of the Council of Europe Office in Georgia.[146] The report recommends that the number of judges increase from the existing 300 to 410-450 judges.

The Strategy and Action Plan for the Reform of the Judiciary for the years 2017-2021 includes the task to ensure the optimal number of courts, judges and court staff and reasonable caseloads. This task requires that the appropriate number of judges be defined through the increase of efficiency of the work of the court system and other means. [147]

> It is impossible to identify the exact reasons for the problem of delayed court proceedings because there has been no study of the reasons for the delay, the average duration of proceedings, or in-service evaluations of judges and court staff. The recommendations of the study conducted by a group of Georgian NGOs needs to be considered by the Parliament and the HCoJ in order to define the exact reasons for the delay and address this problem with a comprehensive rather than fragmented approach.[148]

145. Report on the Activities of the HCoJ (June 2013 – May 2017) prepared by the HCoJ composition of 2013-2017, page 46 http://hcoj.gov.ge/files/news/angarishi/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98%20%E1%83%91%E1%83%9D%E1%83%9A%E1%83%9D%2003072017%20%E1%83%95%E1%83%9D%E1%83%9A12_Eng.pdf

146. Assessment Report on the Number of Judges in Georgia https://www.coe.int/en/web/tbilisi/-/facilitating-the-efficient-functioning-of-the-court-system

147. http://www.supremecourt.ge/files/upload-file/pdf/martlmsajuleba-da-kanoni-2017w-n2.pdf

148. The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017. p. 54. "The Organic Law should provide that the High Council of Justice has the obligation to establish a rule for estimating the necessary judicial resources and the main principles that the rule is based upon; the High Council of Justice should also be required by the Law to carry out periodical research to examine the situation on delays in case processing and estimate the appropriate judicial resources; The High Council of Justice of Georgia should ensure the adoption of the rule and methodology for estimating the necessary judicial resource in compliance with the relevant international standards; The Organic Law should require the High Council of Justice to periodically publish information regarding the situation of delays in case processing in the judicial system and take measures to eliminate the reasons behind these delays; The High Council of Justice should determine a list of statistical data necessary for examining the caseload of judges, the situation on delays in case processing and their reasons, as well as the rules for data processing that comply with international standards and the subjects responsible for data processing; The High Council of Justice should ensure that information regarding the caseload of judges and delays in case processing are accessible to the public; The High Council of Justice should periodically carry out research on the caseload of judges and delays in case processing and make the findings accessible to the public." https://gyla.ge/files/news/2006/The%20Judicial%20System-3.pdf

24 **Please provide data on how many cases have been pending more than 1 year, 2 years or 3 years.**

The Supreme Court of Georgia responded that the statistical data about the number of cases pending more than 1 year, 2 years and 3 years, is not processed by the court system (letter 19/10/18 Np-516-18).

25 **Do simplified procedures exist in civil and / or criminal cases? If yes, please describe them and give statistics on their usage.**

The Civil Procedure Code of Georgia[149] outlines the rules and requirements for the implementation of civil proceedings. In addition to the regular court procedure, special civil actions are regulated by the law, where shorter periods and simpler procedures of treatment are required in order to achieve efficiency. According to Article 13 of the Civil Procedure Code of Georgia, courts of first instance hear cases under their jurisdiction. A magistrate judge can be appointed to a court of first instance to hear cases under Article 14 of the same code while residing in the remote administrative territories in the jurisdiction of the same court. Magistrate judges under Article 14 of the Civil Procedure Code of Georgia hear the following disputes:

- pecuniary disputes of a value of not more than 5,000 GEL (1,612 EUR);
- one party (uncontested) proceedings;
- simplified proceedings;
- family disputes except disputes related to adoption, deprivation of parental rights or establishment of paternity.

Proceedings to establish legal facts or declare a person missing or dead are heard by a magistrate judge or a public official of the first instance court designated to hear such cases. The decisions of the magistrate judge or the public official of the court can be appealed to the same first instance court. According to Article 217^1 of the Civil Procedure Code, disputes under the jurisdiction of a magistrate judge shall be heard in a simplified and accelerated procedure.

Courts of first instance apply simplified procedure to the hearing of the following cases: claims regarding checks, promissory notes, leasing, compulsory sale of stocks and compensation for harm derived from certain tort law provisions. The court issues an order without hearing, plea hearing, or statement of the other party (defendant).in the case when the claim is proven by an authenticated document (public documents, bills, invoices, extracts from the business registry). The defendant may object against the decision of the court on issuing such order, and the same court that issued the payment order decides upon it after a debate, and the decision by which the payment order is in force may be appealed directly to the High Court.

149. Civil Procedure Code of Georgia, adopted 14/11/1997 N 1106 consolidated version 31/10/2018 published at www.matsne.gov.ge.

Article 218 of the Civil Procedure Code of Georgia requires a judge to encourage settlement between disputing parties. With this aim, the judge is authorised to pause the pending proceeding on his/her initiative or on the motion of a party and hear the parties and their representatives in a closed session. While settling the case, a judge can indicate to the parties about the possible outcome of a case and suggest terms for the settlement.

According to the same Article a judge can direct parties to the mediation procedure.

According to Article 187[1] of the Civil Procedure Code of Georgia, a mediator is a person or entity that is authorised to settle a dispute between parties after a lawsuit was filed in court. The following disputes can be directed to mediation by the court: family disputes (except adoption of a child, restriction of parental rights, deprivation of parental rights, disputes related to violence against women or domestic violence); heritage disputes; neighbours' disputes; and any other dispute with the consent of parties. The maximum term for mediation and settlement of a case is 45 days with no less than two mediation meetings. If the mediation is successful, the court settles the case. However, if it is not successful, the parties can reapply to the court.

The Georgian Law on Arbitration[150]is another tool for speedy and effective dispute resolution. The law requires the parties to conclude a written agreement on the resolution of their disputes through arbitration. If an arbitration agreement was concluded between the parties, the dispute is no longer under the jurisdiction of the court. According to Article 12 of Civil Procedure Code of Georgia, any civil dispute between private parties can be directed to arbitration with the consent of the disputing parties.

In addition, the court may adjudicate based on a confession (Article 131 of Civil Procedure Code), based on a denial (the principle of party-disposition included in Article 3 of Civil Procedure Code) and in cases when a party fails to appear (chapter XXVI of Civil Procedure Code of Georgia).

According to a letter from the Supreme Court of Georgia (02/10/2018 Np-491-18), the statistics of settled disputes are as follows:

Number of Disputes Settled in 2016-2018 by the Courts

Category of settled disputes	First Instance Courts			Appellate Courts			Supreme Court		
	2016	2017	6 months of 2018	2016	2017	6 months of 2018	2016	2017	6 months of 2018
Civil Disputes	4,351	6,634	4,594	150	225	152	9	9	14
Administrative Disputes	73	23	12	13	10	5	1	2	2

According to the same letter, 106 disputes were transferred to the Mediation Centre of Tbilisi City Court during 2016-2018. Out of these cases, 60% were settled.

Certain categories of civil disputes can be directed to a notary office without bringing the case to court and the notary is authorised to issue an enforcement paper for the demands derived from the contract sealed by the notary. Also, the notary is authorised to mediate between parties in the following cases: family disputes, inheritance law disputes, neighbour law disputes, any other

150. Georgian Law on Arbitration, adopted 19/06/2009 N 1280 consolidated version 04/05/2018 published at www.matsne.gov.ge.

dispute unless special rules of mediation are established for such dispute. Notary mediation can be used to solve the dispute if both parties to the dispute consent to mediate with the notary. When mediation is required for administrative bodies, applying to a notary is required. The Minister of Justice establishes the rules on mediation.

The Criminal Procedure Code establishes the plea agreement as a mechanism for speedy and simplified criminal proceedings.

26 **Please provide statistics (separate figures for civil, criminal, administrative and enforcement cases) on the number of pending cases over the last five years.**

According to the information provided by the Supreme Court of Georgia (19/10/18 Np-475-18) statistical data on the number of pending cases are as follows:

Number of Submitted and Finished Cases

During 8 Months of 2018

	First Instance Courts			Appellate Courts			Supreme Court		
	Balance at start	Cases submitted	Cases Finished	Balance at start	Cases submitted	Cases Finished	Balance at start	Cases submitted	Cases Finished
Civil	44,516	56,112	45,368	2,303	4,014	3,941	440	1,129	936
Admini-strative	5,144	9,219	8,372	1,785	2,538	2,562	438	886	657
Criminal	2,783	10,188	9,774	520	1,481	1,350	352	590	501

-Out of 2,783 criminal cases pending in the first instance courts as of January 2018, 1,817 cases were pending from 2017; 371 cases were pending from 2016; 410 cases were pending from 2015; 98 cases were pending from 2014; 66 cases were pending from 2010-2013; and 18 cases were pending from before 2010.

-Out of 520 criminal cases pending in the appellate courts as of January 2018, 475 cases were pending from 2017; 33 cases were pending from 2016; seven cases were pending from 2015; four cases were pending from 2014; and one case was pending from 2011.

-Out of 310 criminal cases pending in the Supreme Court as of January 2018, all cases were pending from 2017.

The letter from the Supreme Court mentions that the court is not able to process the statistical data for pending civil and administrative cases.

27 **What is the rate of appeals compared with the number of first-instance decisions in civil and criminal matters? (please provide global breakdown of pending cases.) What is the rate of successful appeals compared to the total number of appeals?**

The figures below were provided by the Supreme Court of Georgia (10/10/2018 Np-493-18).

Rate of appeals of the decisions of first instance courts delivered in 2016 (as of 01/10/2018)

	Number of cases heard by the first instance courts	Number of cases appealed to appellate courts (before Sept 2018)	%
Civil Law Cases	54,707	2,038	3.7
Administrative Law Cases	17,629	2,389	13.9
Criminal Law Cases (verdicts)	14,398	1,759	12.2

Rate of appeals of the decisions of first instance courts delivered in 2017 (as of 01/10/2018)

	Number of cases heard by the first instance courts	Number of cases appealed to the appellate courts (before Sept 2018)	%
Civil Law Cases	62079	2748	4.4
Administrative Law Cases	13794	2869	20.8
Criminal Law Cases (verdicts)	13437	1468	10.9

Rate of appeals of the decisions of first instance courts delivered within 6 month of 2018 (as of 01/10/2018)

	Number of cases heard by the first instance courts	Number of cases appealed to the appellate courts (before Sept 2018)	%
Civil Law Cases	35,722	1,530	4.3
Administrative Law Cases	6,074	1,220	20.1
Criminal Law Cases (verdicts)	7,181	1,143	15.9

Data on the Outcome of the Appellate Hearings in 2016

	Number of appeals heard by the appellate courts	Among the decisions delivered:	
		Remained Stable (%)	Repealed/Changed (%)
Civil law cases	2244	67.7	32.3
Administrative law cases	1669	74.1	25.9
Criminal law cases	1816	77.3	22.7

Data on the Outcome of the Appellate Hearings in 2017

	Number of appeals heard by the appellate courts	Among the decisions delivered:	
		Remained Stable (%)	Repealed/Changed (%)
Civil law cases	2,818	72.0	28.0
Administrative law cases	1,899	74.4	25.6
Criminal law cases	1,635	79.1	20.9

Outcome of the appellate hearings within six-month period of 2018

	Number of appeals heard by the appellate courts	Among the decisions delivered:	
		Remained Stable (%)	Repealed/Changed (%)
Civil law cases	2,062	71.8	28.2
Administrative law cases	1,376	80.4	19.6
Criminal law cases	1,079	81.5	18.5

Rate of appeals of the decisions of the appellate courts delivered in 2016 to the Supreme Court of Georgia (as of 01/10/2018)

	Number of cases heard by the appellate courts (decisions delivered)	Number of cases appealed to the Supreme Court of Georgia	%
Civil Law Cases	2,244	940	41.9
Administrative Law Cases	1,669	951	57.0
Criminal Law Cases (verdicts)	1,816	764	42.1

Rate of appeals of the decisions of the Appellate Courts delivered in 2017 to the Supreme Court of Georgia (as of 01/10/2018)

	Number of cases heard by the appellate courts (decisions delivered)	Number of cases appealed to the Supreme Court of Georgia	%
Civil Law Cases	2,818	1,072	38.0
Administrative Law Cases	1,899	1,061	55.9
Criminal Law Cases (verdicts)	1,635	702	42.9

Rate of appeals of the decisions of the appellate courts delivered within six-month period of 2018 to the Supreme Court of Georgia (as of 01/10/2018)

	Number of cases heard by the appellate courts (decisions delivered)	Number of cases appealed to the Supreme Court of Georgia	%
Civil Law Cases	2,062	761	36.9
Administrative Law Cases	1,376	622	45.2
Criminal Law Cases (verdicts)	1,079	520	48.2

Outcome of Supreme Court hearings in 2016

	Number of appeals heard by the Supreme Court of Georgia	Among the decisions delivered:	
		Remained Stable (%)	Repealed/Changed (%)
Civil law cases	860	82.9	17.1
Administrative law cases	699	92.1	7.9
Criminal law cases	757	91.0	9.0

Outcome of Supreme Court hearings in 2017

	Number of appeals heard by the Supreme Court of Georgia	Among the decisions delivered:	
		Remained Stable (%)	Repealed/Changed (%)
Civil law cases	1,020	85.5	14.5
Administrative law cases	895	93.2	6.8
Criminal law cases	712	91.7	8.3

Outcome of Supreme Court hearings within six-month period of 2018

	Number of appeals heard by the Supreme Court of Georgia	Among the decisions delivered:	
		Remained Stable (%)	Repealed/Changed (%)
Civil law cases	472	83.7	16.3
Administrative law cases	541	92.1	7.9
Criminal law cases	362	92.0	8.0

28 Are there plans to reduce the backlog of cases? If so, please provide details.

The Strategy of the Reform of the Court System for 2017-2020 lists the main challenges the faced by the judiciary, one of which is deficiencies of the management of the court system. Namely, there is an insufficient number of judges in the court system, a problem with high judicial caseloads and uneven distribution of work among judges, among others. In order to solve the abovementioned problems, the strategy document elaborates that the required number of judges must be properly defined, the number of judges must be increased (as necessary), effective case management must be introduced, and an electronic system of case distribution must be introduced.

One of the strategic tasks mentioned in the strategy document is: to ensure optimal number and reasonable caseload of courts, judges, assistant judges, court staff and other members of the court system. This task is further elaborated as: optimisation of the number of judges and assistant judges so that they are able to manage their work within a reasonable time while preserving the high level quality of their work; periodic analysis of the caseloads of judges and

judicial staff and rationalising the caseload accordingly; introduction of a system of measuring caseloads to allow for the definition of/increase in the number of judges and judicial staff in concrete courts; establishment of a regulation to define the proper number of judges and judicial staff; implementation of an electronic system of case distribution and case management in order to increase the productivity of judicial work and use judicial resources effectively; and establishment of a minimum number of cases per judge according to category, complexity of cases and other criteria.

The strategy document also envisages the task of analysing the problem of delayed court proceedings and applying relevant measures in order to prepare and implement policies of time management, prevention of delay, and effective decrease of the number of delayed cases. The strategy outlines the development of alternative dispute resolution mechanisms to decrease judicial caseloads.

The indicators for the implementation of the activities of the strategy and action plan in relation to the reduction of backlog of cases are as follows: the regulation on defining proper number of judges and judicial staff is adopted (2017); reasonable caseloads for judges are established by the relevant study; a pilot programme of electronic random case distribution is implemented; the programme of electronic case distribution is implemented in the court system; and the map of judiciary is updated and relevant amendments are made to the Law on Common Courts (2018).

Out of the indicators listed above two have been met: the pilot programme of electronic random case distribution has been implemented and the programme of electronic case distribution has been implemented system-wide. Other activities related to the reduction of the backlog of cases and delayed proceedings have not been implemented in 2017 and 2018.

Recent amendments to the Organic Law on General Court in February 2017 established the Management Department within the HCoJ. The department is charged with studying information about case management in the court system, indicators of caseloads and hearings of cases, the need for the temporary transfer of judges, information about case management and the quality of service in the courts and then makes recommendations to the HCoJ. The department oversees the function of the electronic case management programme and presents recommendations to the HCoJ.

As for the financial resources for the implementation of concrete activities of the action plan, the sources of financing are indicated along with particular activity (allocations from the state budget to the judiciary or assistance from an international donor organisation). However, the action plan does not mention particular amounts needed for the implementation of concrete activities.

29 **Which roles/competencies do judges have (including outside normal proceedings such as in the execution of judgements, in registry issues etc.)? Which roles/competencies do prosecutors have (including outside criminal proceedings such as in the execution of judgements, civil or family law cases etc.)?**

Judges do not have functions outside normal proceedings such as in execution of judgements or

in registry or other issues. Prosecutors do not have functions outside criminal proceedings such as in civil or family cases or other matters. In the execution of judgments, a prosecutor's functions are derived from the investigation/prosecution of a case.

The functions of a prosecutor are established in the administrative violations proceedings. Article 274 of the Code of Administrative Violations[151]allows prosecutors to protest the resolution issued for an administrative violation's case; according to Article 279 of the same code the decision of the first instance or appellate court rendered in the administrative violation's case may be repealed or changed at the protest of a prosecutor by the same court. According to Article 8 of the Administrative Violations Code, prosecutorial oversight is one of the mechanisms to ensure the legality of the use of administrative sanctions.

The procedural oversight of all criminal cases conducted by all the investigative bodies of the country (the investigation of criminal cases is a function of the Police Department of the Ministry of Internal Affairs and other special investigative bodies under the executive branch of the government) is carried out by the Prosecutor's Office of Georgia. As envisaged by Article 27 of the Law on Prosecution, a prosecutor is entitled to, in the cases defined by law, give written instructions to investigation bodies. Fulfilment of the prosecutor's instructions on the investigation is compulsory.

30 **What is the percentage of the civil cases where the executive authorities are asked to enforce the judgement/final decision? Give equivalent information about fines in penal cases (the percentage of the cases where the fine is enforced by the executive authorities out of the total number of cases where a fine is imposed). How much time elapses, on average, until the enforcement of judgements? Is there any plan to improve enforcement?**

According to statistical data provided by the Supreme Court of Georgia (02/10/2018, Np-477-18), the number of fines imposed by first instance courts is as follows:

-In 2016, the courts of first instance imposed fines as a sanction for committing a criminal offence upon 3,568 convicted persons;

-In 2017, the courts of first instance imposed fines as a sanction for committing a criminal offence upon 3,079 convicted persons;

-In the first eight months of 2018, the courts of first instance imposed fines as a sanction for committing a criminal offence upon 2,024 convicted persons.

According to statistical data provided by the Supreme Court of Georgia (10/10/2018 Np-493-18), in 2016, courts of first instance delivered verdicts in 14,398 criminal cases, in 2017 this number was 13,437, whereas in the first six months of 2018 the number of verdicts delivered by the first instance courts in criminal cases is 7,181.

151. Code of Administrative Violations, adopted 15/12/1984 N 161 consolidated version 31/10/2018 published at www.matsne.gov.ge.

Consequently, the percentage of fines applied by the first instance courts compared to the verdicts delivered by the same courts are as follows: in 2016 – 24.7% of the total number of sanctions applied by courts of first instance in criminal cases were in the form of a fine; in 2017 the figure was 22.9% and in the first eight months of 2018 approximately 28%.

The National Bureau of Enforcement of the Ministry of Justice did not provide information on the question.

31 Please describe the procedure for executing civil/criminal judgements.

The enforcement of judicial decisions is regulated by the Law on Enforcement Proceedings.[152]The National Bureau of Enforcement is a state agency under the Ministry of Justice of Georgia, which is responsible for the enforcement of the following acts:

- Final judgments of courts of general jurisdiction on civil and administrative cases;
- Final judgments of courts of general jurisdiction on criminal cases where the fine was applied as a criminal sanction;
- Final judgements of courts of general jurisdiction on administrative violations cases where fine was imposed as an administrative sanction;
- Decision of the European Court of Human Rights which is mandatory for Georgian state;
- Decision of a foreign court and the decision of the International Criminal Court;
- Decision of a local, foreign or international arbitration court;
- Notary act;
- Mandatory decisions of different administrative bodies of the executive government or national independent administrative bodies;
- Other.

The procedure for enforcement of court judgements is commenced on the submission of a creditor and on the ground of the initial enforcement paper issued by the court/judge. The submission is made by the creditor to the territorial bureau of enforcement where the debtor lives or where the property of the debtor is located. The bureau shall inform a debtor that the procedure was initiated within five days. The following information is provided to the debtor:

- A warning that in case the debtor fulfils the court judgement during the following 7 days, he/she will be released from the obligation to pay the enforcement fees. In case the debt or will not fulfil the court judgment voluntarily, the enforcement fees in their entirety will be imposed on the debtor.
- His/her rights during the enforcement procedure;
- Information about legal outcomes of the enforcement procedure;
- Possible measures to be applied in case of forced enforcement;
- Other important information.

Along with the notice sent by the enforcement bureau, the executive officer starts gathering

152. Law on Enforcement Proceedings, adopted 16/04/1999 N 1908 consolidated version 20/07/2018 published at www.matsne.gov.ge.

information about the debtor's income and property and seizing the debtor's property according to the procedure established by law.

The law establishes the stages of the enforcement procedure for decisions that impose financial obligations on the debtor:

1. Commencement of enforcement procedures;
2. Seizure of the property of the debtor;
3. Conduct of auction;
4. Payment to the creditor.

The enforcement officer shall document each activity performed for the enforcement of a judgment.

When the debtor cannot be located, the enforcement officer is authorised to submit a motion to the court based on which the court orders the police to find and present the debtor. The law establishes the option of enforcing court judgements through a private person who performs enforcement activities based on a license issued by the National Bureau of Enforcement. The private enforcement officer is required to have his/her own bureau/office. He/she is allowed to hire a workforce according to the rules prescribed in the Labour Code of Georgia. The National Bureau of Enforcement keeps a registry of private enforcement officers.

A private enforcement officer is authorised to enforce court decisions delivered in civil cases. The authority of the private enforcement officer does not expand to the enforcement of criminal verdicts. Meanwhile, the private enforcement officer is authorised if the parties to the case are private persons and if according to the enforcement document the amount imposed upon the debtor does not exceed 500,000 GEL. The private enforcement officer performs enforcement activities according to the same procedure prescribed by the Law on Enforcement Proceedings.

Participants to the enforcement proceedings are: creditor and debtor, enforcement officer or private enforcement officer, and other persons who participate in the enforcement proceedings. The parties to the enforcement proceedings are both the creditor and debtor, whether legal or natural persons. Parties have the right to challenge the participation of the enforcement officer on the general grounds for recusal of a judge in civil proceedings. The decision to recuse the enforcement officer is made by the superior enforcement official. The decision may be challenged before the court.

The requests of the enforcement officer related to enforcement proceedings are mandatory for everyone related to the enforcement proceedings. The enforcement officer is authorised to request and receive information or documentation about the financial resources of the debtor and is obligated to maintain the confidentiality of personal data. The enforcement officer is authorised to enter the premises of a debtor and conduct observation of his/her property. The enforcement officer is obligated to document his/her observations about the property. For the purposes of compulsory enforcement, the officer is authorised to seize or confiscate property, etc. Parties have the right to appeal the enforcement activities to a higher-ranking official or to the court.

32 Equipment:

a) Is there an IT supported case management system in the courts? Are systems and software compatible across the country? (The need to manage the computerisation on the national level calls for a central capacity to define needs, implement computerisation, including procurement of software and hardware, as well as to advise and help computerised courts.) Please describe briefly the main tools provided by the system.

According to information provided by the Supreme Court of Georgia (05/10/2018 Nos/165-18), the IT supported case management system operates in all courts at all levels and throughout the country. The electronic programme of case management incorporates the following business processes:

- Receipt and processing of applications;
- Registration of cases, creation of electronic case files to allow judges and other related staff members to acquire information about the case, facilitating their everyday work;
- Upload of audio and video files to the electronic case file;
- The case moves within the system and is accessible to other responsible employees of the court (reception, back office of the reception, judge).
- Automatic and random distribution of cases among judges;
- Publication of the schedule of court hearings and information about hearings;
- Electronic preparation of court decisions within the system;
- Depersonalisation and publication of the final decision of the court;
- Transferring of cases from lower instance courts to higher instance courts;
- Archiving case files.

b) Is there a Supreme Court database with case law accessible to courts, legal and judicial professions?

The decisions of the Supreme Court of Georgia are published on its website (http://prg.supremecourt.ge/). This software programme has a search engine that allows any interested person to find a court decision either through ID number of the case, date of the decision, or key word search. Decisions are published in a depersonalised format.

c) Are databases of law enforcement agencies accessible by courts?

The letter from the Supreme Court of Georgia (05/10/2018 Nos/165-18) mentions that the electronic programme of case management has no access to other electronic databases and information of law enforcement institutions.

d) How is the penal register updated with information on new sentences in penal cases and on execution of imprisonment including conditional paroles?

The letter of the Supreme Court of Georgia (05/10/2018 Nos/165-18) mentions that the electronic case management system does not have access to information on the use of criminal sanctions, pre-trial detention, and conditional sentences and their enforcement.

33 General working conditions:

a) Do judges and prosecutors have appropriate offices; computers, secretaries, law clerks?

According to the letter from the Department of General Courts of the HCoJ (04/10/2018 N06-6315) in the first and appellate instance courts all judges have personal workspaces equipped with the necessary equipment and a personal computer, except three courts where two judges share the same office and/or assistant judge/clerk work together with the judge. These courts are:

- Tbilisi City Court which is the busiest court in the country. In the building of Tbilisi City Court, two judges share the same workspace. The letter mentions that this problem will be solved after the construction of the new building is completed (currently on-going). The new building is being constructed in the same area where Tbilisi City Court is located and will be completed in November 2018.
- In Gori Regional Court all judges work in four offices and share the workspace with assistant judges and clerks. To solve this problem, several offices were renovated in the court building. Meanwhile, the preparatory works are on-going to transfer the archives to the first floor of the building. The free space will be reconstructed for use as a working space for judges.
- In Akhalkalaki Regional Court the judge, assistant judge and his/her clerk share the workspace. In the draft budget of 2019, resources are allocated to expand the number of workspaces. If the budget is approved, construction will be completed by the third quarter of 2019.

According to a letter from the Prosecutor's Office (12/10/2018 N13/78248) prosecutors and their support staff usually share the same workspace and the number of people working in the same space changes. Accordingly, the number of individual spaces changes to account for the specifics of the work of the prosecutors and their individual needs. All prosecutors and their support staff have individual computers at their disposal. In order to substitute out-dated computers with new computers, the Prosecutor's Office conducts tenders and purchases new equipment every year.

b) Do judges and prosecutors have access to the archives and legal databases? How is access to recently adopted laws ensured?

According to a letter from the Department of General Courts of the HCoJ (04/10/2018 N06-6315), the court system purchased access to two electronic databases of laws and regulations: Program Codex 2007 and www.matsne.gov.ge. According to a letter from the Prosecutor's Office (12/10/2018 N13/78248), to ensure access to Georgian legislation every member of the prosecution system uses www.matsne.gov.ge. Access to this programme is purchased by

the prosecutor's office annually. Members of the prosecution system also have access to the international electronic library LexisNexis (www.lexisnexis.com).

c) Are archives in courts well managed and computerised? Explain.

The regulation adopted by the HCoJ (02/08/2010 N1/91) sets out the rules for archiving cases completed in the general court system. Since 2012, the electronic case management system has been operating in all courts; however, the archive of the general courts is not integrated into this system as the archive preserves hard copies of finished cases. The cases from 1925-2016 are kept in archives in hard copy and the list of these cases was created and is accessible in an electronic format. A search of archived cases is conducted according to the electronic files of the relevant region (which is not complete, considering the number of regions and number of cases), also through the act of receipt of the case and according to the placement of the case on the shelves of the archive. Upon request, archived documents are scanned and kept on the server of the archive of general courts for further use. The archive has an electronic case management programme called "scqroli," which is operative only within Tbilisi City Court and through which electronic final decisions and case files can be retrieved. The final decisions are uploaded and accessible through the same programme and the case files are sent in hard copy.

The department informs that in order to improve the work of the archive of general courts, the department is constructing additional storage. For the moment (October 2018), the company has been identified who will perform construction works and construction will soon commence. Meanwhile, the department is working to accumulate financial resources in order to perform the following work: scanning final decisions of cases heard before 2005 and scanning the case files of the cases heard during 2006-2016 in their entirety.

34 Clerical staff:

a) Give the number of clerical staff. How does this compare with the number of judges and prosecutors? Who is responsible for deciding about the number of the clerical staff?

As of November 2018, 279 assistant judges, 71 chief consultants and 288 clerks work in the first instance and appellate courts.[153] The total number of judges of the first and appellate instance courts is defined by the HCoJ and constitutes 340 judges.[154]As of November 2018, a total of 299 judges are appointed in the first and appellate instance courts throughout the country.

153. Letter of the HCoJ from 31/10/2018 N 2156/2879-03-ო

154. Decision of the HCoJ adopted on 09/08/2007 N 1/150 consolidated version published at http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/150.pdf.

According to the latest report of the Chief Prosecutor of Georgia,[155]there are a total of 442 prosecutors and 93 investigators in the prosecution system. There are 140 other public servants and 126 employees appointed through contracts. Overall, 801 employees work in the prosecution system.

The HCoJ decides on the number of judges, assistant judges and clerks in the first instance and appellate courts. The minimum number of Supreme Court judges is established by the Constitution of Georgia. Article 14 of the Organic Law on Common Courts has defined the concrete number of Supreme Court judges as 28.

b) Do they have concrete job descriptions?

The information was not provided by the relevant authorities.

c) Which equipment (computers, e-mail, fax etc.) do clerical staff have at their disposal to perform their functions? Describe how archives are organised and to what extent the management of the archives is IT-supported. Is there sufficient and direct access to legal databases?

Answers to these questions are provided in the responses to questions 32 and 33 of the questionnaire.

JUDICIAL REFORM

35 **How will the shortcomings in the recent reform of the judiciary be addressed? Please outline your strategy and further plans for reform. Who is or will be responsible for the implementation, coordination and monitoring of the further steps?**

The Strategy of the Reform of Judiciary for 2017-2021 and the Action Plan for the implementation of the Strategy of the Reform of Judiciary 2017-2018 have been adopted by the HCoJ. The first part of the strategy document describes the mission of the court system and the view of the judiciary power on the future development of court system. The second part of the document establishes five strategic directions and elaborates the challenges existing in each direction, main goals and ways of achieving these goals. The last part focuses on the mechanism for the implementation of the strategy and the procedure for monitoring and assessment.

155. Report of the Chief Prosecutor of Georgia issued in February 2018, p. 56 available at http://pc.gov.ge/Multimedia%2FFiles%2F%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98%2F%E1%83%9B%E1%83%97%E1%83%90%E1%83%95%E1%83%90%E1%83%A0%E1%83%98%20%E1%83%9E%E1%83%A0%E1%83%9D%E1%83%99%E1%83%A3%E1%83%A0%E1%83-%9D%E1%83%A0%E1%83%98%E1%83%A1%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98%206.02.2018.pdf

The five directions set out in the strategy document cover practically all aspects of the work of the judiciary. These five directions are: independence and impartiality; ensuring accountable judiciary; ensuring quality adjudication and professionalism; ensuring effectiveness of the court system; and ensuring access to justice. Along with the strategy and action plan for the reform of the judiciary adopted by the HCoJ, the Human Rights National Action Plan adopted by the Government of Georgia envisages activities related to the reform of the judiciary. In addition, there is a strategy and action Plan for criminal justice reform adopted by the Interagency Council for the Criminal Justice Reform under the Ministry of Justice.

The Prosecutor's Office adopted the Strategy of the Prosecutor's Office for the years 2017-2021, which establishes activities to increase the independence of the prosecution system and improve the effectiveness in fighting certain types of criminal offences, in the direction of human rights protection, juvenile justice and other directions. Unlike other documents, this strategy contains activities that are solely under the responsibility and competence of the prosecution system.

The reform of the prosecution system deriving from the revised constitution is an on-going process, which shall ensure institutional reform of the prosecution system, its independence from the executive and depoliticisation.

CHAPTER II

ANTI-CORRUPTION

POLICY AND DOMESTIC INSTITUTIONS

36 **Are there any areas where corruption is more prominent? If so, how are these areas identified and what measures are taken?**

Since 2004, Georgia has largely eliminated petty corruption, when the government implemented fundamental reforms starting with a zero tolerance policy towards corruption in law enforcement agencies and service delivery. While Transparency International (TI) Global Corruption Barometer (GCB) points to a slight increase in bribery from 4% in 2013 to 7% in 2016,[1] Georgia is a frontrunner with its low level of petty corruption in the region. Nevertheless, 12% of the population believes that corruption is among the three biggest challenges facing the country. According to the latest GCB report, 41% of the population is critical of the government's effort to tackle corruption.

The most prominent areas of risk where corruption needs to be addressed are identified in the main guiding anti-corruption document in the country, namely, the Anti-Corruption Strategy and Action Plan first adopted in 2005. The Anti-Corruption Strategy and Action Plan, which are developed by the Anti-Corruption Council under the Analytic Department of the Ministry of Justice of Georgia, consisting of representatives of public and civil sectors, identifies the main priority areas for the upcoming years, as well as corresponding activities on behalf of the member agencies (For more information on the composition and functions of the agency, see question 37).

The latest Anti-Corruption Strategy for years 2017-2018 (National Anti-Corruption Strategy of Georgia 2017-2018 adopted by Government Decree N443 on September 27, 2017)[2] is divided into three main parts, Prevention of Corruption, Criminalisation of Corruption and International Cooperation. The strategy elaborates the vision of the Government of Georgia on combating corruption as follows: "The anti-corruption policy must continue to be oriented on preventive measures whilst the national Anti-Corruption Strategy must be focused on effectively tackling challenges in combating corruption and decreasing risks of corruption."[3]

Consequently, the strategy outlines priority areas for prevention, namely:

1. Prevention of corruption in public service;
2. Prevention of corruption in law enforcement bodies;
3. Prevention of corruption in the judiciary;
4. Ensuring transparency and prevention of corruption risks in public finance and public procurement spheres;
5. Prevention of corruption in customs and tax system;
6. Prevention of corruption in the private sector;
7. Prevention of corruption in the health and social sector;
8. Prevention of political corruption;

1. Transparency International (TI), "People and Corruption: Europe and Central Asia," November 2016, http://bit.ly/2JVcNAl

2. National Anti-Corruption Strategy of Georgia for 2017-2018 adopted by Government Decree N 443 on 27 September 2016. The Strategy and the Action Plan available in English: http://justice.gov.ge/Ministry/Index/174

3. National Anti-Corruption Strategy of Georgia for 2017-2018

9. Prevention of corruption in the defence sector;
10. Reduction of corruption risks in regulatory bodies;
11. Corruption prevention in the sport sector;
12. Prevention of corruption in infrastructure projects;
13. Prevention of corruption in the activities of self-governing bodies.

The Strategy also indicates measures for preventing corruption in the abovementioned areas, such as:

- Effective interagency coordination for the prevention of corruption;
- Openness, access to public information and civic participation in the fight against corruption;
- Education and public awareness raising with the aim of corruption prevention.

The Action Plan provides a breakdown of activities under each thematic area (16 thematic areas in total). Some of the outlined measures in the Anti-Corruption Action Plan for 2017-2018 have corresponding calculations budgeted for years 2017 and 2018. For example, activities aimed at strengthening interagency anti-corruption mechanism are estimated at 79,840 GEL (approx. EUR 25,754) for 2017 and 87,400 GEL (approx. EUR 28,193) for 2018, which include the development of a corruption risk assessment methodology, designing of training modules on anti-corruption legislation and training of civil servants, as well as conducting an awareness-raising campaign. For certain figures, the document specifies whether the funding comes from the state budget or donor assistance. Figures are provided for years 2017 and 2018, respectively. The total estimate for efforts in each priority area is provided below, whereas a detailed breakdown is included in the Anti-Corruption Action Plan for 2017-2018.[4]

Thematic Direction	Budget for years 2017 – 2018	
	GEL	EUR
1. Effective interagency coordination for the prevention of corruption	167,240	53,948
2. Prevention of corruption in public service	650,190	209,738
3. Openness, access to public information, and civic participation in the fight against corruption	9,000	2,903
4. Education and public awareness raising with the aim of corruption prevention	79,800	25,741
5. Prevention of corruption in law enforcement bodies	27,000	8,709
6. Prevention of corruption in judiciary	169,355	54,630
7. Ensuring transparency and prevention of corruption risks in public finance and public procurement spheres	3,152,920	1,017,070
8. Prevention of corruption in customs and tax system	421,500	135,967
9. Prevention of corruption in private sector	884, 315	285,262
10. Prevention of corruption in health and social sector	N/A	
11. Prevention of political corruption	N/A	
12. Prevention of corruption in defence sector	2,734,400	882,064

4. Anti-Corruption Action Plan of Georgia for 2017-2018, available partially in English with budget estimates in Georgian: http://justice.gov.ge/Ministry/Index/174

13. Reduction of corruption risks in regulatory bodies	1,772,970	571,925
14. Prevention of corruption in the activities of self-governing bodies	N/A	
15. Corruption prevention in sport sector	695,000	224,193
16. Prevention of corruption in infrastructure projects	N/A	

As mentioned above, the Action Plan provides a separate section of activities aimed at strengthening the investigation of criminal offences of corruption, including improving the investigative capacity of law enforcement agencies, especially with regards to the liability of legal persons, and improved coordination of law enforcement agencies and international cooperation (more information in the following sections). The total budget estimate for the activities under this section amounts to 251,632 GEL (approx. EUR 81,171).

While the Anti-Corruption Strategy for years 2017-2018 outlines 16 priority areas, assessments by civil society and international organisations identify specific sectors which are prone to political influence and elite corruption. Transparency International Georgia points to challenges with regards to weak parliamentary oversight of the executive branch, challenges in the judiciary and law enforcement bodies, as well as the independence of regulatory bodies such as the State Procurement Agency, Competition Agency, and others.[5] The OECD further expresses concerns about the integrity of MPs and other political officials due to the public perception of high level corruption among politicians, the balance between independence and accountability in the judiciary, the independence of the Prosecution Service and loopholes in procurement legislation and practice, which call for increased transparency and accountability. For more information, see OECD ACN Report on "Anti-corruption Reforms in Georgia."[6]

37 **What specialised anti-corruption bodies exist? Please describe them, indicating their legal and institutional status, composition, functions, powers and resources (i.e. public and private sector corruption). How are the independence and appropriate level of expertise and resources for these bodies ensured?**

Corruption prevention and investigation functions are divided among various state institutions, including agencies in the executive branch, law enforcement bodies and independent regulatory agencies. As there is no standalone agency responsible for the fight against corruption in Georgia, their powers and spheres of operation are not always distinct, which sometimes creates an overlap of competences. The functions of prevention, detection and investigation of corruption crimes are divided among the following institutions:

5. Transparency International Georgia, "Georgia's ranking in Corruption Perception Index 2017 points to the Need to Speed up Reforms," 22 February 2018, http://bit.ly/2S4O27V

6. OECD ACN "Anti-corruption Reforms in Georgia," 2016, http://bit.ly/2CwbgyT

1. Anti-Corruption Council (ACC) of the Ministry of Justice (MoJ)
2. Anti-Corruption Unit and other investigative units of the Prosecution Service of Georgia (PSG)[7]
3. Anti-Corruption Agency of the State Security Service of Georgia (SSSG)
4. Investigation Service (IS) of the Ministry of Finance (MoF)
5. State Audit Office (SAO)

1. Anti-Corruption Council

The Interagency Anti-Corruption Council under the Ministry of Justice was created in 2008 by Presidential Decree N622 (adopted 26/12/2008)[8] and was later incorporated into the Law on Conflict of Interest and Corruption in Public Institutions.[9] Article 12[1] of the law defines the functions of the interagency Anti-Corruption Council as the main coordinating body of anti-corruption efforts in the country, responsible for developing and adopting the anti-corruption strategy and action plan and monitoring their implementation. Article 12[1](4) describes the composition of the council, which includes representatives of various public bodies, international and local civil society organisations, academia and non-entrepreneurial (non-commercial) legal entities as well as independent experts. The procedural regulations of the council are defined by Ordinance of the Government of Georgia (N390, adopted 30/12/2013),[10] which outlines in detail the composition of the council in addition to provisions in the law, which includes heads of the local governments of Rustavi, Tbilisi and Telavi along with the representatives of the agencies on central level. The Government of Georgia approves the composition of the council. Since, the Ministry of Justice is the main coordinating entity of the Anticorruption Council, it is funded from the state budget. The annual budget of the Ministry for 2018 is 63,000,000 GEL (approx. EUR 20,332,580).[11]

2. Chief Prosecutor's Office of Georgia

The Prosecutor's Office of Georgia is an agency within the system of the Ministry of Justice of Georgia and has exclusive powers of criminal prosecution. Due to the amendments to the Constitution of Georgia,[12] which will come into force after the presidential elections in November 2018, the Prosecutor's Office of Georgia will no longer be within the MoJ, thus, improving its

7. The terms "Chief Prosecutor's Office of Georgia," "Prosecutor's Office," and "Prosecution Service of Georgia" are used interchangeably throughout the document mirroring the use in common reports and official discussions to denote the main prosecutorial body in the country.
8. Presidential Decree N 622 on creation of the Anti-Corruption Council adopted on 26/12/2008, Georgian version available: https://matsne.gov.ge/ka/document/view/104218?publication=0
9. Law on Conflict of Interest and Corruption in Public Institutions N 982 adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo
10. Ordinance of Government of Georgia N 390 on the Approval of Composition and Statute of Inter-Agency Coordination Council for Combating Corruption, adopted on 30/12/2013, available in Georgian: http://bit.ly/2RJVgxC.
11. Law of Georgia on the State Budget for Year 2018, N 1721-I, adopted on 13/12/2017, published on 22/12/2017, latest version (last amended on 07/03/2018) available in Georgian:https://matsne.gov.ge/ka/document/view/3938064?publication=1
12. The Constitution of Georgia N 786, adopted on 24/08/1995, published on 24/08/1995, latest version (last amended on 23/03/2018) available in English: https://matsne.gov.ge/en/document/view/30346?publication=35

institutional independence. According to the changes, the title of the head of the prosecution service will change from Chief Prosecutor to General Prosecutor, "who will be elected for a term of six years upon nomination by the Prosecutors' Council by a majority of the total number of the Members of Parliament, in accordance with the procedures established by the organic law. The Prosecutors' Council shall be established to ensure the independence, transparency, and efficiency of the Prosecutor's Office. The Council shall consist of 15 members elected in accordance with the procedures established by the organic law."[13]

According to the Law on Prosecutor's Office of Georgia (N382, adopted 21/10/2008, published 27/10/2008, latest amended 05/09/2018)[14], among other duties, the Prosecutor's Office is responsible for conducting criminal prosecution, providing procedural guidance at the investigation stage and conducting an investigation to the full extent provided by the law.[15]Accordingly, a number of divisions (including those departments that are tasked with oversight over other law enforcement agencies) within the Prosecution's Office of Georgia have the competence to investigate and prosecute corruption crimes. That said, the main specialised entity responsible for corruption crimes in the Prosecutor's Office is the Anti-Corruption Unit.

The Anti-Corruption Unit within the Chief Prosecutor's Office of Georgia was created in 2015 by the order of the Minister of Justice N64 on Adoption of the Statute for Investigative Department of the Prosecutor's Office of Georgia.[16] The unit was established as an independent division by Order N303 of the Minister of Justice[17] on the Amendment to the Order of the Minister of Justice N38 on the Adoption of the Statute of the Chief Prosecutor's Office of Georgia.[18] According to Article 2 of the Statute of the Criminal Prosecution Unit on Corruption Crimes adopted by the Order N304 of the Minister of Justice (adopted and published 02/05/2018),[19] the objectives of this unit are as follows: investigation of all corruption crimes unless committed by officials in the Ministry of Justice or when the crime was detected and the proceedings were initiated by other competent organs (such as the State Security Service of Georgia or General Inspectorate), prosecution of corruption crimes, analysis of corruption cases detected and investigated by all of the law enforcement bodies, adoption of unified standards, and drafting of policy recommendations for corruption crimes along with adoption of prevention policies for prosecution of corruption crimes. It is noteworthy that the Prosecutor's Office of Georgia has the right to investigate crimes

13. Article 65 of the Constitution of Georgia

14. The Law on Prosecutor's Office of Georgia (N 382, adopted:21/10/2008, published:27/10/2008, latest amendments:05/09/2018) latest version available in Georgian: https://matsne.gov.ge/document/view/19090?publication=18

15. Article 3 of the Law on Prosecutor's Office of Georgia

16. Order of the Minister of Justice N 64 on "Adoption of the Statute for Investigative Department of the Prosecutor's Office of Georgia" (adopted: 13/02/2015, published: 13/02/2015, last amended: 02/05/2018) available in Georgian: https://matsne.gov.ge/document/view/2728187?publication=2

17. Order of The Minister of Justice N 303 on the "Amendment to the Order of the Minister of Justice N 38 on the Adoption of the Statute of the Chief Prosecutor's Office of Georgia" adopted on 02/05/2018, published on 02/05/2018, available in Georgian: https://matsne.gov.ge/ka/document/view/4155545?publication=0

18. Order of the Minister of Justice N 38 on the "Adoption of the Statute of the Chief Prosecutor's Office of Georgia" and the accompanying Statute adopted on 10/07/2013, published on 11/07/2013, latest version (last amended on 02/05/2018) available in Georgian: https://matsne.gov.ge/document/view/1966261?publication=10

19. Article 2 of the Order N 304 of the Minister of Justice on adoption of the Statute of the Criminal Prosecution Unit on Corruption Crimes (adopted and published on 02/05/2018) latest version available in Georgian: https://matsne.gov.ge/ka/document/view/4155529?publication=0

involving several high-level officials, including the President of Georgia, MPs, members of the government, judges, Public Defender, Auditor General, members of the Board of the National Bank, Prosecution Service of Georgia (PSG) employees, police officers, and high ranking military or public officials. The PSG also has the right to take over the investigation when a conflict of interest or other relevant reason prevent the competent investigative authorities from investigating that specific crime (Criminal Procedural Code of Georgia[20] and Order N34 of the Minister of Justice on "Investigative and Territorial Competences in Criminal Cases"[21]).

The unit is comprised of the head of the unit, prosecutors, Senior Investigators of Especially Important Cases, and Investigators of Especially Important Cases.[22] As an internal unit of the PSG, which according to current legislation is under the MoJ, the unit is funded from the state budget.

Competences among the agencies are determined by the Criminal Procedural Code of Georgia and Order N34 of the Minister of Justice on "Investigative and Territorial Competences in Criminal Cases," while the rules for withdrawing criminal cases from one investigative agency and referring them to another were approved by the Order N130-m of the Chief Prosecutor of Georgia on the "Determination of the Basis for Referring Criminal Cases to Another Investigative Agency, Regardless of the Investigative Jurisdiction" (adopted 07/09/2015).[23]Criminal cases can be withdrawn/referred from/to an investigative agency irrespective of its investigative jurisdiction if:

- the crime was detected by another investigative agency;
- the transfer of the case to another investigative agency will significantly reduce procedural expenses;
- the transfer of the case to another investigative agency will promote a thorough and objective investigation:
- the majority of the participants of criminal proceedings live on the territory over which another investigative agency has jurisdiction and referring case to this investigative authority facilitates the participation of the mentioned persons in investigation/procedural activities;
- most of investigation/procedural activities are expected to be conducted on the territory over which another investigative agency has jurisdiction;
- another investigation authority conducted urgent investigative actions on the criminal case and transfer of the case as per its investigative jurisdiction will result in the delayed rendering of a final decision and/or will otherwise hinder the interests of the investigation.

3. Anti-Corruption Agency of the State Security Service of Georgia

The Anti-Corruption Agency is a structural unit of the State Security Service of Georgia. The mandate, functions and authority of the Anti-Corruption Agency of the SSSG are clearly defined

20. Criminal Procedural Code of Georgia (N 1772, adopted: 09/10/2009, published: 03/11/2009, last amendments: 31/10/2018) latest version available in Georgian: https://matsne.gov.ge/ka/document/view/90034?publication=96

21. Order N 34 of the Minister of Justice on "Investigative and Territorial Competences in Criminal Cases (adopted: 07/07/2013, published: 07/08/2013, latest amendments: 29/07/2016): http://bit.ly/2Q9vtCW

22. Decree of the Government of Georgia on the List of Staff of the Chief Prosecutor's Office of Georgia N 91, adopted on 30/01/2015, published on 16/02/15, available in Georgian: https://matsne.gov.ge/en/document/view/2724425

23. Ministry of Justice, "Monitoring Report on the Implementation of Georgia's National Anti-Corruption Action Plan for 2015-2016," available at: http://justice.gov.ge/Ministry/Index/288

by the Law on State Security Service of Georgia,[24] "the Statute of the Anti-Corruption Agency of the State Security Service of Georgia" adopted by the Order N9 of Head of the SSSG[25] and other relevant laws and sub-laws. The main functions of the Anti-Corruption Agency are as follows:

- Detection, prevention, suppression and investigation of corruption and malfeasance within its competence;
- Conducting relevant investigative and other procedural activities within its competence;
- Ensuring response measures against the perpetrators of corruption;
- Implementation of measures for prevention and suppression of crime within its competence;
- Using coercive measures according to the Criminal Procedure Code;
- Implementation of criminal intelligence and covert investigative activities, in accordance with the relevant legislation.

The following corruption-related crimes under the Criminal Code of Georgia[26] fall within the investigative competences of the State Security Service of Georgia:

- Bribery of voters (Article 164[1])
- Abuse of official powers (Article 332)
- Exceeding official powers (Article 333)
- Unlawful discharge of the accused from criminal liability (Article 334)
- Providing explanation, evidence or opinion under duress (Article 335)
- Illegal participation in entrepreneurial activities (Article 337)
- Bribe-taking (Article 338)
- Bribe-giving (Article 339)
- Influence peddling (Article 3391)
- Accepting gifts prohibited by law (Article 340)
- Forgery by an official (Article 341)
- Neglect of official duty (Article 342)

The abovementioned corruption-related crimes are investigated by the SSSG if they are detected by the Service and excluded from the exceptional cases falling under the investigative jurisdiction of the Prosecutor's Office or the Ministry of Justice as defined by the regulations related to the investigative competencies.[27] The Georgian Law on State Security Service of Georgia safeguards a mechanism for ensuring the political impartiality of the service, which, in terms of independence, is manifested in several important circumstances, namely, SSSG is not a part of the government as the ministries are, and the head of the SSSG is not a member of the Government. The head of the SSSG is elected and dismissed directly by the Parliament for a six-year term.[28]

24. The Law of Georgia on "State Security Service of Georgia" (N 3921-rs, adopted: 08/07/2015, published: 15/07/2015, latest amendments: 31/10/2018) latest version available in Georgian: https://matsne.gov.ge/ka/document/view/2905260?publication=8
25. Order N 9 of Head of the State Security Service of Georgia on Adoption of the "Statute of the Anti-Corruption Agency of the State Security Service of Georgia" adopted and published 01/08/2015, latest amendments: 18/04/2018) latest version available in Georgian: https://matsne.gov.ge/ka/document/view/2929553?publication=2
26. Criminal Code of Georgia N 2287, adopted on 22/07/1990, published on 13/08/1990, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16426
27. Criminal Procedural Code of Georgia
28. The Law of Georgia on State Security Service of Georgia

4. Investigation Service of the Ministry of Finance

The Investigation Service under the Ministry of Finance is responsible for the prevention, detection and investigation of financial and economic crimes on the basis of the Georgian Law on Investigation Service of the Ministry of Finance[29] and Order of the Minister of Finance of Georgia N790 on Adoption of the Statute of the Investigation Service of the Ministry of Finance.[30]The service has a conditional competence to investigate certain crimes under the Criminal Code of Georgia, namely: abuse of power in the private sector (Article 220), bribery in the private sector (Article 221) and misuse and embezzlement through abuse of position (Article 182).[31] The IS has a head of service and four deputy heads, which are in charge of Administration, Economic Department, Investigation Department, and Special Research and Expertise Department respectively. The Investigation Department has ten divisions, nine of which are regional, whereas one is the Division of Fighting Against Customs Rules Violations. The detailed structure of the Service is published on the official website of the IS.[32] As an internal unit of the Ministry of Finance, the IS is funded from the state budget. The total budget of the Ministry in 2018 is 82,300,000 GEL (approx. EUR 26,548,387).

5. Civil Service Bureau

The Civil Service Bureau (CSB) is an independent body responsible for promoting transparency and accountability in public service by monitoring asset declarations of officials, as well as through developing standards for recruitment for civil service posts. The CSB exercises its power on the basis of the Constitution of Georgia, General Administrative Code of Georgia,[33] Law of Georgia on Civil Service,[34]Law on Conflict of Interest and Corruption in Public Institutions and Law of Georgia on Legal Entities of Public Law.[35]

The head of the CSB has two deputies, one in charge of Civil Service Human Resource Management Department and Civil Service Institutional Set-up and Practice Generalisation Department, whereas the second supervises Asset Declaration, Asset Declaration Monitoring, and Administrative Departments.[36] The CSB has a total of 36 employees and was allocated 1,400,000 GEL (approx. EUR 451,612) from the state budget for 2018.

29. The Law of Georgia on Investigation Service of the Ministry of Finance N 1928 adopted on 03/11/2009, published on 06/11/2009, the latest version (last amended on 05/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/90304?publication=12#!
30. Order of the Minister of Finance of Georgia N 790 on "Adoption of the Statute of the Investigation Service of the Ministry of Finance," adopted: 30/11/2009, http://is.ge/common/get_doc.aspx?doc_id=6904
31. Criminal Code of Georgia
32. Investigation Service of the Ministry of Finance, Official Website, accessed on 18 November 2018, http://is.ge/en/4161
33. General Administrative Code of Georgia N 2181, adopted on 25/06/1999, published on 15/07/1999, latest version (last amended on 21/07/2018): https://matsne.gov.ge/ka/document/view/16270?publication=26
34. Law of Georgia on Civil Service N 4346-Is, adopted on 27/10/2015, published on 11/11/2015, latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3031098?publication=14#DOCUMENT:1
35. Law of Georgia on Legal Entities of Public Law N 2052, adopted on 28/05/1999, published on 09/06/1999, latest version (last amended on 05/07/2018): https://matsne.gov.ge/ru/document/download/19204/19/en/pdf
36. Civil Service Bureau, official webpage, accessed on 18 November 2018, http://csb.gov.ge/en/about-us/structure

6. General Inspection and Internal Audit Departments

Most state entities have a special general inspection unit responsible for monitoring the compliance of the employees of the state agency with the relevant legislation regulating conduct of government employees (i.e. statute, code of ethics). The competences and objectives of general inspection units are defined by the specific legislation of the public entity, such as statutes of the entities and other relevant provisions. For more information on general inspection units in law enforcement agencies, see the response to question 38.

7. *State Audit Office*

The State Audit Office (SAO) is a key body for ensuring the accountability of the executive branch. The functions of the SAO include conducting an external audit of the public sector, monitoring party financing and providing recommendations to the Parliament.[37]The SAO is regulated on the basis of the Constitution of Georgia and Georgian Law on State Audit Office.[38] In addition to its core functions, the SAO accepts reports of alleged corruption submitted by citizens through its online platform Budgetmonitor.ge, and redirects substantiated claims to the Prosecutor's Office. The platform was launched in March 2017. In 2018, the SAO submitted 29 reports received through its "Citizen's Page" to the Prosecutor's Office for further investigation.[39] As of 2018, the SAO has 339 employees and an annual budget of 14,517,200 GEL (approx. EUR 4,682,967) for the year of 2018.[40]For more detailed information on the SAO's powers and functions, see the response to question 57.

While Georgia has set up several anti-corruption units responsible for the prevention, detection and investigation of violations, civil society has questioned the independence and efficiency of the existing bodies. Institute for Development of Freedom of Information and Transparency International Georgia have repeatedly called for the creation of an independent anti-corruption body, which would be equipped with sufficient powers and resources to tackle the prevention of corruption and coordination of anti-corruption efforts nationwide. For more information, see the Independent Anti-Corruption Agency-Georgia and International Standards report by Institute for Development of Freedom of Information[41] and Anti-Corruption Agency: International Experience and Reform Options for Georgia by Transparency International Georgia.[42]

37. Supreme Audit Office, Official Website, accessed 20 November 2017,http://sao.ge/about-us/office-structure-and-functions.
38. The Law of Georgia on State Audit Office N 880 adopted and published on 15/01/2009, the latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/17506?publication=15
39. Tsotne Karkashadze, Head of the State Budget Analysis and Strategic Department, phone interview, 10 October 2018
40. Law of Georgia on the State Budget for Year 2018
41. IDFI, "Independent Anti-Corruption Agency-Georgia and International Standards," June 2017, https://idfi.ge/en/independent_anti_corruption_structure_creation_needs_georgia
42. Transparency International Georgia, "Anti-Corruption Agency: International Experience and Reform Options for Georgia," 2014, http://bit.ly/2QSv3x3

Additionally, joint report on the State Security Service of Georgia by EMC and Transparency International Georgia further underlines the concern about too many powers vested in the SSSG, as well as its lack of transparency.[43] Concerns have also been raised about placing both investigative and prosecution competences within the PSG. A more detailed account is available in the OECD ACN's Anti-corruption Reforms in Georgia report.[44] Furthermore, concerns remain regarding a fair and independent investigation of high-profile cases.[45] For more information on specific cases that were deemed to lack adequate response from law enforcement agencies, see Institute for Development of Freedom of Information's analysis in the Georgian National Anti-Corruption System Is Ineffective against High Level Corruption.[46]

38 **Do specialised departments to tackle corruption exist within the law enforcement authorities and the judiciary? If so, please describe them, indicating their legal and institutional status, composition, functions, powers and resources.**

Law enforcement agencies in Georgia have a general inspection department responsible for monitoring compliance of the employees of the agency with relevant legislation regulating the conduct of employees (i.e. statute, code of ethics). General inspection units are directly subordinate to the heads of the agencies.

Ministry of Internal Affairs

According to the Police Law of Georgia,[47]the General Inspection is a structural unit of the Ministry of Internal Affairs of Georgia (MIA) responsible for conducting intradepartmental control over the activities of police officers and other employees of the MIA within its competence. It also states that the General Inspection is independent in its activity and it is inadmissible for other structural units or officials of the Ministry to interfere with its work. The General Inspection is directly accountable to the Minister who supervises it under the legislation of Georgia. Based on the Order N123 of the Minister of Internal Affairs on adoption of the Statute of the General Inspection (Department) of the Ministry of Internal Affairs,[48] the General Inspection, among other functions,

43. EMC, Transparency International Georgia, "Reform of the Security Service in Georgia: Results and Challenges," 2018, https://www.transparency.ge/en/post/reform-security-service-georgia
44. OECD ACN "Anti-corruption Reforms in Georgia," 2016, http://bit.ly/2CwbgyT
45. US Department of State, Country Reports on Human Rights Practices for 2017, available in English: https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dlid=277167#wrapper
46. IDFI, "The Georgian National Anti-Corruption System is Ineffective against High Level Corruption," 12 October 2018, https://idfi.ge/en/fight_against_elit_corruption_is_still_a_challenge_in_georgia
47. Article 57 of the Police Law of Georgia, N 1444-Is, adopted 04/10/2013, published on 28/10/2013, last amended: 21/07/2018, Georgian Version available: https://matsne.gov.ge/ka/document/view/2047533?publication=18
48. Order N 123 of the Minister of Internal Affairs on adoption of the "Statute of the General Inspection (Department) of the Ministry of Internal Affairs" (adopted and published: 23/02/2015, latest amendments: 25/05/2018) Latest version available in Georgian: https://matsne.gov.ge/document/view/2737879?publication=3

ensures the detection of and adequate response to the violation of ethical and disciplinary norms, improper fulfilment of official duties and certain unlawful actions committed by employees of the Ministry. Additionally, it ensures legal procedural enforcement measures over the cases falling into the sphere of its competence, detects violations and deficiencies within the system of the Ministry, inspects the legality and soundness of expenditure of financial and material resources by the structural units of the Ministry, and inspects financial expenses, including operative expenses within the system of the Ministry. In cases of serious violations that may constitute a crime, the General Inspection is obligated to forward the case to the Prosecution Service of Georgia. In the period between 2014-2018, the MIA transferred a total of 1,265 cases to the PSG.[49]

According to the statistical data available on the official website of the Ministry,[50] in 2015 the General Inspection of the MIA imposed penalties on disciplinary infractions in 2,234 cases. Of those penalties, severe reprimand was used in 720 cases, reprimand in 639, rebuke in 578 cases, dismissal in 161 cases, up to three extra allocations in 112 cases, deprivation of the right to next dismissal in 11, and demotion was used in 13 cases. In 2016, reprimand was used in 891 cases, reprimand in 619 cases, rebuke in 480 cases, dismissal in 158 cases, up to three extra allocations in 112 cases, deprivation of the right to next dismissal in 16 cases, demotion in 11 cases, and removal from office in five cases. In 2017, reprimand was used in 363 cases, reprimand in 311 cases, rebuke in 511 cases, dismissal in 175 cases, up to three extra allocations in 127 cases, deprivation of the right to next dismissal in nine cases, demotion in five cases, suspension in seven cases, and six people were fired. Specifically for the violation of ethical norms, in the period between 2014-2018, in total 618 MIA employees were subject to disciplinary measures, including: reprimand in 100 cases, severe reprimand in 244 cases, rebuke in 22 cases, firing in 3 cases, demotion in 16 cases, dismissal in 228 cases, and removal from office in 5 cases.[51]

Ministry of Justice and Prosecution Service of Georgia

The General Inspection Unit of the Ministry of Justice of Georgia is responsible for monitoring, detecting and investigating corruption-related offences for the MoJ employees, besides the Prosecutor's Office. The General Inspection Unit of the Office of the Chief Prosecutor of Georgia is in charge of the investigation of disciplinary, administrative and criminal offences committed by prosecutors. At the same time, the General Inspection Unit of the PSG has enhanced monitoring on cases that fall under the risk profiles, especially where a prosecutor enjoyed discretion.

According to the statistical data provided by the Prosecution Service of Georgia,[52] unfit behaviour for prosecutors, defined as any action which will challenge the independence or influence the work of a prosecutor (Article 21, Code of Ethics of Prosecutors adopted by the Order of the Minister of Justice N234 on 25/05/2017, published 29/05/2017)[53] was exhibited by 11 employees of the

49. Letter N 2960082 of the Ministry of Internal Affairs, 7 December 2018

50. Statistics of disciplinary penalties imposed on the employees by the General Inspection, information available in English: https://info.police.ge/page?id=234

51. Letter N 2960082 of the Ministry of Internal Affairs, 7 December 2018

52. Letter N 13/81172 of the Prosecutor's Office of Georgia, 24 October 2018

53. Article 21, Code of Ethics of Prosecutors adopted by the Order of the Minister of Justice N 234 on 25/05/2017, published 29/05/2017, available in Georgian: https://matsne.gov.ge/ka/document/view/3679145?publication=0

Prosecution Service in 2014, seven employees in 2015, 10 employees in 2016, seven employees in 2017, and three employees in 2018 as of 28 August 2018.

For more detailed information on these issues regarding the Prosecution Service and Judiciary, please refer to the response for question 2 in the Judiciary section of Chapter 23.

State Security Service of Georgia

According to the Georgian Law on State Security Service of Georgia,[54] the activities of employees are controlled by the Department of General Inspection, which is directly accountable to the Head of Service. The interference of other structural subdivisions or officials of the Service within the activities of the General Inspection of the Service is inadmissible.

The main functions of the General Inspection of the SSSG are: inspecting and monitoring the steady performance of the requirements of the legislation within the structural units of the SSSG, detecting violations of the norms of Disciplinary Statute and unlawful acts by employees at the Service and making the appropriate response, as provided by the legislation of Georgia, monitoring the financial-economic activities of the divisions within the Service, examining the legality and expediency of the management of material and financial resources by the units, detecting conflicts of interest and monitoring employee compliance with the norms of ethics

Ministry of Defence

The General Inspection Department of the Ministry of Defence and the Military Police (department) of the Georgian Armed Forces investigate offences committed on the territories of subordinated institutions and military divisions as well as offences against the military service, e.g. evasion of military service by a conscript, deserting a military unit or another place of service, violation of the regulations of internal service, violations of codes of ethics, and more. Namely, according to the Order N08 of the Minister of Defence on Adoption of the Statute of the General Inspection of the Ministry of Defence,[55]the functions of the General Inspection Department are to monitor and control the fulfilment of relevant Georgian Legislation, including rules regulating conduct in the Ministry of Defence, General Staff of the Georgian Armed Forces and LEPL operating within the system of Ministry, as well as to detect, prevent and respond to facts of unlawful actions by military/special rank officers and/or civil servants. The General Inspection of the Ministry is independent in its work and is accountable only to the Minister of Defence.

Meanwhile, the Georgian Law on Military Police[56] states that the Military Police is a special law enforcement structural unit of the General Staff of the Georgian Armed Forces, which, in accordance with the legislation of Georgia, investigates cases assigned by the criminal procedural

54. The law of Georgia on State Security Service of Georgia

55. Order N08 of the Minister of Defence on Adoption of the Statute of the General Inspection of the Ministry of Defence (adopted: 27/01/2017, entry into force: 31/01/2017, last amended: 14/12/2017), latest version available in Georgian: https://matsne.gov.ge/ka/document/view/3560650?publication=1

56. Article 2 of the Law of Georgia on Military Police (N 4924, adopted: 08/06/2007, published: 19/06/2007, last amended: 31/10/2018), latest version available in Georgian: https://matsne.gov.ge/document/view/21514?publication=12

law with in its competence, responds to administrative offences, protects the deployment locations of the facilities of the Ministry of Defence of Georgia and of the units of Armed Forces, fights crime within the scope of its authority and performs other functions prescribed by the legislation of Georgia.

39 **To what extent and from which sources are statistical data available on corruption cases (investigations, cases in court, convictions and sanction level), international co-operation in corruption cases, the link between corruption and organised crime and the link between corruption and money laundering?**

Statistical data on crimes including corruption crimes are available from various sources, including the websites of the Ministry of Internal Affairs,[57] State Security Service of Georgia[58] and the Investigative Service of the Ministry of Finance.[59] At the same time, as a supervising body, the Chief Prosecutor's Office of Georgia maintains consolidated statistics from all investigative agencies and thus provides an overall picture of the fight against corruption. Statistical data provided by the PSG include disciplinary violations of the prosecutors, general corruption crime statistics, as well as limited information on money laundering cases.

According to the Criminal Code of Georgia, the following acts of corruption are prohibited: bribery of voters (Article 164(1)), appropriation or embezzlement (Article 182), abuse of powers (Article 220), commercial bribery (Article 221), abuse of official powers (Article 332), exceeding official powers (Article 333), illegal participation in entrepreneurial activities (Article 337), bribe-taking (passive bribery) (Article 338), bribe-giving (active bribery) (Article 339), trading in Influence (Article 339(1)), accepting gifts prohibited by law (Article 340) and forgery by an official (Article 341). The table below provides the number of criminal prosecutions launched on the basis of specific Articles in the CCG.

Statistics of Launched Criminal Persecutions[60]

Article of the Criminal Code	2014	2015	2016	2017	2018 (9 months)	Total
164 (1)	0	0	0	0	0	**0**
182	298	272	228	215	194	**1207**
220	1	18	5	5	8	**37**
221	21	9	10	13	10	**63**
332	40	16	11	25	19	**111**

57. Ministry of Internal Affairs, Police Statistical Data, accessed on 22 November 2018, https://info.police.ge/page?id=115
58. State Security Service of Georgia, Statistical Data, accessed on 22 November 2018, https://ssg.gov.ge/page/info/reports
59. Ministry of Finance of Georgia, Investigative Service, Statistical Data, accessed on 22 November 2018, http://is.ge/4234
60. Letter N 13/81172 of the Prosecutor's Office of Georgia, 24 October 2018

333	42	24	20	8	12	**106**
337	1	0	0	0	0	**1**
338	56	79	35	29	15	**214**
339	7	1	7	7	11	**33**
339 (1)	7	3	0	0	0	**10**
340	1	0	0	0	0	**1**
341	44	39	8	22	16	**129**

According to the statistics provided by the Prosecutor's Office of Georgia, criminal proceedings on the basis of Article 194 of the Criminal Code on money laundering were commenced against 12 individuals in 2014, 10 in 2015, 24 in 2016, 32 in 2017 and four individuals in the first three quarters of 2018.[61] The Ministry of Internal Affairs, which also maintains a register of crimes and publishes crime statistics, provides an aggregated number of crimes against entrepreneurial or other economic activities under Articles 190-207 of the Criminal Code of Georgia.[62] In 2017, the number of registered cases under these Articles was 364, whereas in the first three quarters of 2018 the number was 262.[63] However, data from the MIA are not broken further down according to the Articles.

In response to the freedom of information request to the Chief Prosecutor's Office of Georgia regarding corruption cases, money laundering, international co-operation in corruption cases and the link between corruption and organised crime, the prosecution service responded that it does not maintain statistics on the latter two beyond the statistics provided in the table.

40 **Is there any specific training on combating corruption or training on ethics for public officials, the judiciary and the law enforcement? a) How and by whom is relevant staff trained? b) Which accompanying offences (e.g. fraud, tax offences and money laundering) are covered by the training?**

There is indeed training on ethics and corruption prevention for public officials, the judiciary and law enforcement. Most of the trainings in the public sector aimed at enhancing anti-corruption measures are conducted by the CSB, which is responsible for promoting transparency and accountability in the civil service. The CSB provided statistics of the trainings conducted from 2014 through 2017, while the data for 2018 will be available only at the end of the year.[64] The table below provides a general overview of the trainings conducted by the CSB.

61. Letter N 13/81172 of the Prosecutor's Office of Georgia, 24 October 2018
62. Criminal Code of Georgia N 2287, adopted on 22/07/1990, published on 13/08/1990, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16426
63. Ministry of Internal Affairs, Crime Statistics, last accessed on 28 November 2018, https://info.police.ge/page?id=115
64. Civil Service Bureau, email response to FOI request, 16 October 2018

Civil Service Bureau Trainings in Code of Ethics and Whistleblower Protection for Civil Servants in 2014-2017

Year	Total Number of Participants
2014 – 2015	770
2016	606
2017	289
Total:	**1665**

According to the statistics provided by the CSB, in 2014-2015 the Bureau conducted 25 two-day trainings on ethics in the civil service for employees of the central and municipal bodies. In total, 423 individuals were trained. More specifically, the following number of trainings was conducted:

- 2 trainings for employees of the line ministries;
- 3 trainings for the employees of the Presidential Administration of Georgia;
- 1 training specifically for the Ministry of Foreign Affairs;
- 8 trainings for the local government representatives of eastern municipalities;
- 8 trainings for local government representatives of western municipalities;
- 1 training for the Administration of the Government of Georgia;
- 1 training for Legal Entities of Public Law (LEPL);
- 1 training for the staff of the Parliament of Georgia.

Additionally, in 2014-2015, the CSB trained 347 employees of the central and municipal bodies in whistleblower protection.

In 2016, the CSB trained a total of 606 employees on central and municipal levels in ethics and whistleblower protection. Namely, a total of 72 individuals were trained from both executive and legislative bodies, i.e. the Administration of the Government of Georgia and the Parliament of Georgia, whereas a total of 302 individuals were trained in all local government entities (160 representatives of the eastern municipalities and 142 representatives of the western municipalities in total 20 trainings), including Administrations of State Representatives (Governor's Offices); 200 employees of the Legal Entities of Public Law and 32 in independent LEPLs were trained in ethics in the civil sector.

In 2017, CSB conducted six trainings for 114 employees of the Ombudsman's Office. With the support of the UNDP programme focusing on raising public awareness on the civil service reform and anti-corruption mechanisms, the Bureau conducted the following trainings:

- 8 trainings for LEPL employees (120 in total);
- 19 trainings for staff of the line ministries;
- 1 training for Administrations of State Representatives (Governor's Offices).

The trainings are conducted over two days by representatives of the Civil Service Bureau, Ministry of Defence, Ministry of Internal Affairs, Tbilisi Mayor's Office, State Ministry for EUR-Atlantic Integration of Georgia (which was later incorporated into the Ministry of Foreign Affairs) and representatives of the civil sector. While the trainings in 2014-2017 covered the executive and legislative bodies at central and local levels, according to the CSB, trainings conducted in 2018 included representatives of the judiciary as well. The statistics will be published at the end of 2018.[65]

65. Civil Service Bureau, email response to FOI request, 16 October 2018

The main body responsible for conducting professional trainings in the judiciary is the HSoJ, which, among other courses, offers training in professional ethics both for acting judges as well as judicial candidates. In the period between 2014-2018 years, a total of 24 trainings were conducted for judges on the following topics: judicial ethics, effective hearing of corruption-related cases, prevention of money laundering and terrorism financing, and financial crimes (money laundering and property confiscation).[66] Based on the Progress Report[67] on the implementation of the Anti-Corruption Action Plan for 2017-2018 provided by the Ministry of Justice, the High School of Justice of Georgia (HSoJ) along with the Council of Europe developed a module on effective hearing of cases related to corruption. The training was led by an international trainer, who conducted a training of trainers for judges, who in turn trained other judges. In 2017, two trainings were conducted with 29 participants in total. For more information on HCoJ and HSoJ, their mission, mandate, and assessment, see the response to question 20.

In the period of 2014-2017 to the third quarter of 2018, the Department of Human Resource Management and Development of the Prosecutor's Office conducted 42 educational activities about the fight against corruption, including 13 study visits. The total number of participants from the prosecution service was 509. In the period of 2014-2017 to the third quarter of 2018, 39 educational activities were conducted for employees of the Prosecution Service on the issues of professional ethics and conflict of interests. In total, 842 employees participated in the activities.[68]According to the Monitoring Report on the Implementation of Georgia's National Anti-Corruption Action Plan for 2017-2018 submitted by the Anti-Corruption Council of the Ministry of Justice, that number includes 307 employees of the PSG trained on the internal Code of Ethics.[69]

Less systematic trainings include trainings on integrity and corruption risks for representatives of the security sector conducted by the LEPL Defence Institution Building School of the Ministry of Defence. Additionally, in order to strengthen the Anti-Corruption Council, the members of the Council were trained in corruption prevention and avoidance of conflicts of interest in the Parliament, judiciary, and prosecution service. Trainings were carried out with the help of the International Anti-Corruption Academy (IACA). The ACC and IACA signed a memorandum of understanding.[70]

Additionally, most of the training modules on corruption prevention, including the CSB's modules, cover issues that relate to the prevention and disclosure of corruption and do not specifically address corruption crimes such as money laundering, fraud or tax offences. However, there are instances of one-off trainings on such issues for law enforcement agencies. In the period of 2014-2018, a total of eight trainings were organised for employees of the MIA on the fight against corruption. Trainings include: Money Laundering Crimes Investigation in 2015 (attended by 20 participants), Terrorism Financing and Money Laundering Issues in 2015 (attended by 31 participants including representatives of the Counterterrorism Centre, Central Criminal Police

66. Letter N02/2180 of the High School of Justice, 6 December 2018

67. Anti-Corruption Action Plan 2017-2018, Progress Monitoring Tool: http://justice.gov.ge/Ministry/Index/288

68. Letter N 13/81172 of the Prosecutor's Office of Georgia, 24 October 2018

69. Ministry of Justice, "Monitoring Report on the Implementation of Georgia's National Anti-Corruption Action Plan for 2017-2018," 2017, http://bit.ly/2rcO1mM

70. Ministry of Justice, "Monitoring Report on the Implementation of Georgia's National Anti-Corruption Action Plan for 2017-2018"

Department, Patrol Police Department, Anti-Corruption Agency, as well as the PSG and Revenue Service), Money Laundering/Financial Investigations in 2015 (attended by 17 participants), Transnational Organised Crime in 2017 (attended by 20 participants) and Operative Techniques in Combating Organised Crime in 2018 (attended by 15 participants).[71]

41 **Public offices: is equal access guaranteed to all citizens? Do regulations exist which are objective and founded on merit-based criteria (in terms of adequate salaries, social rights, rotation in sensitive posts, financial disclosure obligations during office, rules on conflict of interest)?**

The guiding legislation on public offices is the Law on Civil Service.[72]The law was adopted in light of the public administration reform of 2014 with the aim of creating a professional, merit-based public service free of political influence.

The Law on Civil Service differentiates between state service and civil service. State service employees are defined as elected or appointed positions in legislative, judicial and executive branches, as well as in regulatory and law enforcement and defence units. State political officials include the President of Georgia, Members of Parliament, Prime Minister, other members of the government and their deputies, Supreme Representative Bodies of the Government of Autonomous Republics of Abkhazia and Adjara and their deputies. Political officials include regional governors and their deputies, officials in legislative municipal bodies, and mayors and their deputies.[73]

The civil service is defined as public bodies, Legal Entities of Public Law, Administration of the President, advisory bodies of the Prime Minister and the government, State Audit Office, Office of the Business Ombudsman, Office of the Public Defender, HCoJ, the National Bank of Georgia, Office of the Personal Data Protection Inspector, Central Election Commission, Administration of Regional Governors, and Supreme Election Commissions of the Autonomous Republics of Abkhazia and Adjara.[74]Civil servants are further broken down into (1) professional civil servants (i.e. permanent employees), (2) employees on the basis of administrative contracts, and (3) employees on the basis of labour contracts. Therefore, the law does not apply to:

- State political officials
- Political officials
- Judges
- Prosecutors and investigators
- SAO Chief Auditor and his/her deputies
- Personal Data Inspector and his/her deputies
- Public Defender and his/her deputies

71. Letter N 2926921 of the Ministry of Internal Affairs, 4 December 2018

72. Law of Georgia on Civil Service N 4346-Is, adopted on 27/10/2015, published on 11/11/2015, latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3031098?publication=14#DOCUMENT:1

73. Law of Georgia on Civil Service

74. Article 3, Law of Georgia on Civil Service

- The President and board members of the National Bank of Georgia
- Members of the HCoJ
- Parliament faction, investigative commission, and other temporary commission staff[75]

The law introduces four categories or ranks of civil servants according to experience and qualifications in the public sector. Open calls for vacant positions are announced only for positions of the fourth rank. For the positions of top three ranks, closed calls are announced, where already employed civil servants can apply.[76]Article 13 of Chapter II of the law lays out the basic principles of civil service, including equal access to the civil service for Georgian citizens. Chapter II underlines the importance of political neutrality, accountability, transparency and openness in the process. In order to enter the civil service, the new law introduces a mandatory certificate, which is awarded to an applicant upon completion of certification of an individual's knowledge and skills. Certification exams are conducted by the Civil Service Bureau. The certificate is valid for five years.[77]

In order to ensure accessible and fair competition for vacancies in public office, the government of Georgia adopted Ordinance N204 on the Rules of Conducting Competition in Civil Service[78]. Article 3 of the law defines the principles for conducting the competition for civil service posts, including rule of law, equality before the law, impartiality, political neutrality, efficiency and equal access to the civil service for Georgian citizens. Article 4 of the law describes the objectives of the competition, which are to ensure: equal access to vacancies in the civil service, transparency of the recruitment process and selection of the most qualified candidates based on experience and skills. Article 6 states that the CSB is responsible for announcing and administering recruitment for vacant positions on hr.gov.ge, where all citizens can register, view available vacancies and apply online.

For years, the Georgian civil service was recommended to adopt regulations for the uniform application of remuneration standards, especially considering selective and excessive issuance of bonuses, which did not fall under specific restrictions.[79]As part of the civil service reform, Georgia adopted a Law on Remuneration in Public Institutions in December 2017.[80]The purpose of the new law was to consolidate and adopt a uniform approach to remuneration and especially the bonus system in the civil service. The objectives of the law are to ensure equality and transparency, which implies equal pay for equal work. According to the law, remuneration consists of the salary, salary supplement, rank-based supplement and monetary reward. New concepts introduced by the Law are ranks and classes for the public servants, coefficients and base salary, and a method for determining the salary amount for a specific position, which is calculated by multiplying a

75. Article 4, Law of Georgia on Civil Service

76. Article 34, Law of Georgia on Civil Service

77. Chapter V, Law of Georgia on Civil Service

78. Ordinance N 204 of the Government of Georgia on the Rules of Conducting Competition in Civil Service, the Rules adopted on 21/04/2017, published on 24/04/2017, latest version (last amended on 14/05/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3646700?publication=2

79. IDFI, Challenges of the Bureaucratic System in Georgia, 2017, https://idfi.ge/en/challenges_of_the_georgian_bureaucratic_system_2011_2016

80. Law of Georgia on Remuneration in Public Institutions N 1825-rs, adopted on 22/12/2017, published on 29/12/2017, latest version (last amended: 20/09/2012) available in Georgian: https://matsne.gov.ge/ka/document/view/3971683?publication=5

coefficient by base salary. The base salary is determined each year according to the Law of Georgia on State Budget[81] and amounts to 1,000 GEL for 2018. The law does not apply to several positions, including prosecutors and investigators, judges, members of the Constitutional Court of Georgia, members of the HCoJ, employees of the regulatory bodies, general auditor, auditors and analysts at the SAO, and board members of the National Bank of Georgia.

The disclosure of financial assets of public employees, along with other provisions for the prevention of corruption in public office, is regulated by Law on Conflict of Interest and Corruption in Public Sector.[82] For detailed information on asset disclosure provisions and practice, see the response to question 51 of the questionnaire.

There is no universal law governing the rotation of sensitive posts. However, in different legislation relevant to specific public entities, there are restrictions on the term and number of times a person can be appointed to a position. For example, the same person cannot be appointed as chief prosecutor two consecutive times.[83] Other posts that have such limits include the head of Georgian National Energy and Water Supply Regulatory Commission (GNERC), General Auditor, Ombudsman, Personal Data Inspector, Head of State Security Service of Georgia, and others.

CSOs have criticised regulations that limit entry into the civil sector in positions of the fourth rank whereas positions in the top three ranks are available only to individuals already employed in the public sector, thus creating a threat of "closing" the civil sector to newcomers. The 12-month probation period for new employees was also criticised. For more information, see Institute for Development of Freedom of Information's analysis of the civil service reform.[84]The Georgian Law on Remuneration in Public Institutions was also criticised for excluding several important positions from the scope of the law, as well as for lack of clear criteria for determining the appropriate coefficients, which leaves room for arbitrary determination of salaries for specific officials. For more information, read New Draft Law on Remuneration in Public Service Fails to Meet Existing Challenges by Institute for Development of Freedom of Information.[85]

42 Do you take any measures to protect whistleblowers in the fight against corruption?

81. Law of Georgia on the State Budget for Year 2018, N 1721-I, adopted on 13/12/2017, published on 22/12/2017, latest version (last amended on 07/03/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3938064?publication=1

82. Law on Conflict of Interest and Corruption in Public Institutions N 982 adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo

83. The Law on Prosecutor's Office of Georgia N 382, adopted on 21/10/2008, published on 27/10/2008, latest version (last amended:05/09/2018) available in Georgian: https://matsne.gov.ge/document/view/19090?publication=18

84. IDFI, "The Analysis of the Civil Service Reform," 11 March 2016, https://idfi.ge/ge/analysis-of-civil-service-reform

85. IDFI, "New Draft Law on Remuneration in Public Service Fails to Meet Existing Challenges," 30 August 2017, https://idfi.ge/ge/ammendments_into_the_law_on_public_officials_salaries

Provisions protecting whistleblowers were first incorporated into the Law on Conflict of Interest and Corruption in Public Institutions in 2009.[86] While initial regulations were limited in scope, subsequent amendments in 2014 improved the definition of whistleblowing from disclosing already committed violations to include potential violations and extended the reach from current employees only to include former employees of public bodies. Other changes ensured the presumption of innocence of whistleblowers, additional channels of reporting such as the Prosecutor's Office, Public Defender, investigative agencies, as well as external channels including media and civil society organisations, and broadened the scope of protection of whistleblowers' relatives and guarantees of whistleblower anonymity.[87] The latest amendments to the Law on Conflict of Interest and Corruption in Public Institutions further improved the scope of regulations by defining "whistleblower" as any person as opposed to "current or former employees" of public institutions.[88] OECD ACN Fourth Round of Monitoring further commended the changes to no longer require a two-month waiting period before resorting to external channels of reporting.[89] Reporting a violation is possible through a whistleblower page launched by the CSB (https://mkhileba.gov.ge). However, the law provides that special regulations must be adopted by the Ministry of Defence, State Security Service of Georgia and the Ministry of Internal Affairs that will regulate the issues of whistleblower protection within these agencies. As of 1 December 2018, no provisions have been adopted on whistleblowing within the abovementioned ministries.[90]

The CSB developed a manual on whistleblowers.[91] The manual identifies the seven main categories of behaviour that a whistleblower can report on, such as: unlawful act for personal gain, conflict of interest, inappropriate and unprofessional behaviour, inefficient administration, mismanagement of resources, obstruction of justice and dissatisfaction of personnel with the work environment. The document provides examples of best practices from around the world, as well as a brief overview of international standards and recommendations. Importantly, the document lists risks related to being a whistleblower, including being too trusting of other people (such as supervisors and colleagues), choosing unfit time and circumstances to blow the whistle, having insufficient evidence and psychological risks of being under pressure. The manual also contains specific guidelines for trainers on topics related to whistleblower protection.

Based on the manual, the CSB conducted trainings for representatives of the central and local governments. In 2014-2015, a total of 347 representatives were trained. In 2016, the number reached 606. In 2017, the number fell to 114 participants.[92]The CSB maintains statistics on submitted whistleblowing claims through the online reporting mechanism. According to the statistics, in 2016 29 submissions were received, in 2017 – 110, and as of October 2018 – 36 in 2018. There are no official data on follow-up to the received submissions. The CSB stresses that

86. Law on Conflict of Interest and Corruption in Public Institutions N 982, adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo

87. Transparency International Georgia, " Georgia Improves Whistleblower Provisions but More Changes Needed," 18 June 2014, http://bit.ly/2OAaSa0

88. Chapter V, Article 20 of Law on Conflict of Interest and Corruption in Public Institutions

89. OECD ACN "Anti-corruption Reforms in Georgia," 2016, http://bit.ly/2CwbgyT

90. Transparency International Georgia, "Georgia Must Better Protect the Whistleblowers," 29 July 2015, http://bit.ly/2Ak9vDD

91. Manual on Protection of Whistleblowers, 2015: https://mkhileba.gov.ge/src/files/mkhileba.pdf

92. Civil Service Bureau, email response to FOI request, 16 October 2018

their function is to administer the website and forward submissions to the relevant authorities.[93]

While the Law on Conflict of Interest and Corruption in Public Institutions protects individuals working in the public and private sectors who disclose information regarding public bodies, there are no corresponding whistleblower protection regulations for revealing information regarding private sector representatives.

While overall Georgia's efforts towards enhancing whistleblower protection are assessed positively, the OECD ACN's Progress Update on the Fourth Round of Monitoring of Georgia's anti-corruption reforms stresses the lack of evaluation of the effectiveness of reporting channels and follow-up by law enforcement bodies.[94]

43 Is integrity, accountability and transparency of public administration assured, e.g. by means of quality management tools, auditing and monitoring of standards, such as the Common Assessment Framework of EU Heads of Public Administration?

One of the main objectives of the civil service reform that started in 2014 and fully came into force in 2017 was to create a unified system of appraisal in the civil service. This concept was introduced by the Law on Civil Service[95] and the Government's Decree on the Approval of Rule and Conditions of Civil Servants' Performance Appraisal.[96]According to this legislative framework, the subject of the appraisal is a professional public servant. The evaluation process is carried out once a year for all the employees of state entities. However, the evaluation system does not apply to officials appointed on political grounds (e.g. Minister) or to those employed by a labour contract. In addition, there are different rules and criteria for the evaluation of lower level public servants and managers.

Additionally, transparency, accountability, and integrity of the public administration are assured by regulations calling for proactive disclosure of information and the right of citizens to request information and receive a response within 10 days (Chapter III of the General Administrative Code of Georgia[97] and Ordinance of the Government of Georgia N219 on Proactive Publication of

93. Civil Service Bureau, email response to FOI request, 16 October 2018

94. OECD ACN "Fourth Round of Monitoring, Georgia: Progress Update," 2016,http://bit.ly/2CwbgyT

95. Law of Georgia on Civil Service N 4346-Is, adopted on 27/10/2015, published on 11/11/2015, latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3031098?publication=14#DOCUMENT:1

96. Government's Decree on "the Approval of Rule and Conditions of Civil Servants Performance Appraisal" (N 220, adopted: 28/04/2017, published: 01/01/2018) available in Georgian: https://matsne.gov.ge/document/view/3652594?publication=0

97. Chapter III of the General Administrative Code of Georgia N 2181, adopted on 25/06/1999, published on 15/07/1999, latest version (last amended: 31/10/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16270?publication=27

Information,)[98] obligations to report asset declarations set out in Law on Conflict of Interest and Corruption in Public Institutions,[99] obligations to publish annual reports for various government entities including municipal bodies vested in the Local Self-Government Code of Georgia,[100] and obligatory codes of ethics. For more information, see the response to question 45. Accountability and transparency with regards to handling budgetary funds are further ensured through the existing electronic procurement system, managed by the State Procurement Agency, an independent body operating on the basis of the Law on Public Procurement.[101]Financial accountability oversight of the ministries, their subordinate entities and local governments is conducted by the State Audit Office on the basis of the Law on State Audit Office,[102] which carries out regular financial and performance audits. For more information on public procurement and the work of the State Audit Office, refer to the response to question 57.

44 Which measures are taken to raise awareness of corruption as a serious criminal offence (e.g. campaigns, media and training)? Who is responsible for awareness raising?

The Anti-Corruption Council of the Ministry of Justice is the main coordinating body of preventative measures against corruption in the country, which adopts and implements the Anti-Corruption Strategy and its accompanying Action Plan. For more information on the ACC, see question 36. The Anti-Corruption Strategy for 2017-2018[103] underlines 16 priority areas, one of which is education and public awareness raising for the prevention of corruption. The document identifies the lack of communication with citizens as one of the main challenges to combating corruption and calls for:

- Informing citizens about the results achieved in the fight against corruption and existing challenges;
- Developing a public relations strategy on issues related to corruption;
- Raising awareness about issues related to corruption in educational institutions;
- Informing the public regarding the scope, existing risks and threats of corruption;
- Adding an Anti-Corruption Council banner on the website of the Ministry of Justice;
- Developing anti-corruption policies and ensuring public participation in their implementation on a regular basis.

98. Ordinance of the Government of Georgia N 219 on Proactive Publication of Information(adopted: 26/08/2013, entry into force: 01/09/2013, last amended: 31/12/2013) latest version available in English: https://matsne.gov.ge/en/document/view/2001875?publication=1

99. Law on Conflict of Interest and Corruption in Public Institutions N 982, adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo

100. Local Self-Government Code of Georgia N 1958-IIs, adopted on 05/02/2014, published on 19/02/2014, latest version (last amended on 31/10/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/2244429?publication=39

101. The Law of Georgia on Procurement N 1388, adopted on 20/04/2005, published on 18/05/2005, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/31252?publication=68

102. The Law of Georgia on State Audit Office N 880 adopted and published on 15/01/2009, the latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/17506?publication=15

103. National Anti-Corruption Strategy of Georgia for 2017-2018 adopted by Government Decree N 443 on 27 September 2016. The Strategy and the Action Plan available in English: http://justice.gov.ge/Ministry/Index/174

The methods for awareness-raising underlined in the Anti-Corruption Action Plan for 2017-2018[104] include conducting trainings, thematic conferences, public lectures and information meetings for relevant state agencies, as well as for specific target groups (i.e. students) throughout Georgia, publishing reports and manuals, and using media outlets. In terms of thematic areas, the following awareness-raising activities are planned: trainings on ethics and conflicts of interest in the public sector, awareness-raising on freedom of information regulations for persons responsible for public information disclosure, raising public awareness regarding the work of the Anti-Corruption Council, updating the website of the Ministry of Justice, developing a training module on corruption-related issues for judges and developing and publishing the communications strategy of the State Procurement Agency (SPA).[105] According to the Monitoring Report on the Implementation of Georgia's National Anti-Corruption Action Plan for 2017-2018 provided by the Ministry of Justice,[106] due to delay in the adoption of the public relations strategy, no activities were conducted targeted at raising public awareness on corruption-related issues in 2017.

45 Do effective codes of conduct and other measures enhancing corporate social responsibility exist for the private sector to prevent corrupt practices? How are these codes of conducts enforced?

While there are specific provisions in the Criminal Code of Georgia[107] criminalising corruption in the private sector (for more information, see question 50), there is no sector-wide obligation to adopt codes of conduct or other effective measures enhancing corporate social responsibility to prevent corrupt practices. That said, several large companies, including banks and communications companies, have adopted internal codes of conduct. The only obligation to adhere to mandatory integrity rules exists for companies trading on the stock market.[108]

On the other hand, there are certain measures for transparency of the private sector. Company registration data are publicly accessible, whereas accountability measures are mostly internal (i.e. accountability to the board). The financial sector stands out as one of the most regulated sectors overseen by the National Bank of Georgia (NBG), ensuring consumer rights protection and monitoring transactions to detect instances of money laundering among its other functions. Yet, the competences do not include promoting CSR in institutions under its supervision. Similarly, there are transparency and accountability obligations for private utility companies overseen by the Georgian National Energy and Water Supply Regulatory Commission (GNERC). While GNERC conducts oversight of the companies by receiving their quarterly reports and presenting them

104. Anti-Corruption Action Plan of Georgia for 2017-2018, available partially in English (budget estimates in Georgian): http://justice.gov.ge/Ministry/Index/174

105. Anti-Corruption Action Plan 2017-2018, Progress Monitoring Tool: http://justice.gov.ge/Ministry/Index/288

106. Ministry of Justice, "Monitoring Report on the Implementation of Georgia's National Anti-Corruption Action Plan for 2017-2018," 2017, http://justice.gov.ge/Ministry/Index/288

107. Criminal Code of Georgia

108. Law of Georgia on Securities Market N 1745, adopted on 24/12/1998, published on 14/01/1999, (last amended: 21/07/2018) latest version in Georgian and previous versions in English: https://matsne.gov.ge/en/document/view/18196?publication=28

to Parliament,[109] as well as by protecting consumer rights when applicable, it does not oblige licensees to abide by codes of ethics or any other type of codes of conduct.

Notably, preventing corruption in private sector is one of the priority areas in the Anti-Corruption Strategy for 2017-2018. The Business Ombudsman joined these efforts and took commitments under the Anti-Corruption Action Plan for 2017-2018 as a responsible agency. According to the Monitoring Report,[110] in 2017 the State Procurement Agency conducted meetings with representatives of the business sector on changes to the procurement legislation, as well as on raising awareness on business integrity. Events included the "Healthy Competition and Business Integrity as Key Elements for Sustainable Economic Development" conference for small and medium-sized enterprises.

46 **What are the measures, approaches, strategies etc. targeting prevention of corruption? What is the practical experience with their implementation? Domestic legal framework.**

Corruption prevention is a complex process and involves different stakeholders on the government level to implement measures for increased transparency and accountability. The main body coordinating corruption prevention measures and approaches is the Anti-Corruption Council under the Ministry of Justice. The ACC adopts the Anti-Corruption Strategy and Action Plan, the main guiding documents for the country. As the ACC is an interagency body, the Strategy and Action Plan cover multiple directions and involve various state entities in their implementation. For more information on the work of the ACC, refer to question 37 of the questionnaire.

As mentioned in question 36, the Anti-Corruption Strategy envisages priorities for both situational and social prevention of corruption.[111] The questionnaire covers many of the approaches and measures relevant to each of the priority areas identified in the strategy. For more detailed information on specific directions, refer to questions as indicated below:

1. Effective interagency coordination for the prevention of corruption – the strategy outlines long-term goals for of improved interagency coordination (question 37).
2. Prevention of corruption in public service – the end goals are to create an effective, transparent, quality-oriented, politically neutral and professional standards-based public service, which will in turn contribute to minimising corruption-related risks and to increasing public trust of society towards the civil service (questions 37, 38 and 40-43 describe the Law on Civil Service, the work of the Civil Service Bureau, asset declaration monitoring, trainings, and more).
3. Openness, access to public information and civic participation in the fight against corruption

109. Ordinance of the Georgian National Energy and Water Supply Regulatory Commission N 6 on "Adoption of the Statute of the Georgian National Energy and Water Supply Regulatory Commission," 06/03/2014 http://gnerc.org/ge/about/debuleba

110. Ministry of Justice, "Monitoring Report on the Implementation of Georgia's National Anti-Corruption Action Plan for 2017-2018," 2017, http://justice.gov.ge/Ministry/Index/288

111. National Anti-Corruption Strategy of Georgia for 2017-2018 adopted by Government Decree N 443 on 27 September 2016. The Strategy and the Action Plan available in English: http://justice.gov.ge/Ministry/Index/174

– the objective of the strategy and action plan in this regard is to achieve a high degree of transparency and accountability through revising freedom of information regulatory norms, implementing these norms in practice and increasing the participation of citizens in a decision-making process (question 56).

4. Education and public awareness raising for the aim of preventing corruption – long-term goals are to raise public awareness on corruption, to provide information about on-going anti-corruption reforms, achievements and existing challenges, and to engage society in the fight against corruption (question 44).
5. Prevention of corruption in law enforcement bodies – establishment of corruption-free law enforcement bodies, effective detection of corruption crimes and implementation of clear and accurate procedures for the investigation and prosecution of such crimes (questions 37, 38 and 52).
6. Prevention of corruption in the judiciary – the main objectives are achieving an independent, fair and impartial judiciary, with minimal risks of corruption, adopting transparent recruitment and promotion procedures and improving integrity of judges (for detailed information, see Judiciary section of the Chapter 23).
7. Ensuring transparency and prevention of corruption risks in the spheres of public finance and public procurement– end goals are to improve the public procurement system by improving relevant legislation, maintain a high degree of transparency, ensure non-discrimination and healthy competition in the process of public procurement and improve management of public funds (question 57).
8. Prevention of corruption in customs and tax system – the objective is to ensure the transparency and accountability of customs and tax systems and to minimise the likelihood of corrupt deals by reducing discretion and interpretation.
9. Prevention of corruption in the private sector – the end goals are to support integrity, transparency and competition in the private sector, establish transparent principles of corporate management and decrease risks of corruption by encouraging modern mechanisms of business integrity which, for their part, will contribute to the improvement of the investment environment and economic growth (questions 45, 50 and 53).
10. Prevention of corruption in health and social sector – the objectives are to minimise corruption risks in the healthcare and welfare systems and to develop cost-effective and transparent mechanisms for administering, monitoring and evaluating state healthcare programmes, public disbursements and childcare.
11. Prevention of political corruption – the objective is to ensure a high degree of transparency in funding and expenditures of political parties as well as to minimise corrupt practices (questions 54 and 55).
12. Prevention of corruption in defence sector – the end goal is to increase transparency and accountability in the defence sector, improve financial management and procurement procedures and raise awareness among civil servants and military servicemen in the defence sector for the aim of preventing corruption (question 38).
13. Reduction of corruption risks in regulatory bodies – the strategy aims at strengthening national regulatory bodies and increasing the transparency of their activity and accountability in order to prevent corruption.

In addition to the National Anti-Corruption Strategy, there are several other important strategies addressing corruption in different sectors. In 2017, the Ministry of Regional Development and

Infrastructure (MRDI) adopted the first sectoral anti-corruption strategy. The MRDI oversees large-scale infrastructure projects, which makes it one of the key government bodies implementing anti-corruption measures for greater transparency and integrity. The Ministry adopted the Transparency and Integrity Strategy and Action Plan by ministerial decree N69.[112] The strategy lays out four main objectives: 1) increasing transparency and civic participation, 2) strengthening ethics and integrity standards, 3) improving human resource management and 4) enhancing planning, monitoring and internal financial control systems. The action plan is divided into four six-month phases and identifies specific activities with regards to the areas covered in the strategy. The action plan includes activities such as the proactive publication of information and enhancing whistleblower protection (a link to whistleblower page has been added to the websites of subordinate bodies of Ministry after the adoption of the strategy).

Additionally, the Government of Georgia adopted a strategy and action plan for combating money laundering and terrorism financing by the Ordinance N236.[113] The strategy calls for developing an approach to combating money laundering and terrorism financing and approximating it to international standards. The documents envision trainings on corruption for the judiciary, law enforcement agencies and other oversight bodies.

To ensure the accountability, transparency and efficiency of the judiciary, the HCoJ adopted the Strategy for the Judiciary for 2017-2021.[114] The strategy defines several directions to improve the work of the judiciary. Under the strategic direction to increase accountability, several challenges are specified, including improving ethical norms in the judiciary, increasing the transparency of disciplinary measures and systematically publishing court reports and other relevant information. The strategy calls for preventive measures including trainings to reduce the number of disciplinary violations, as well as for a more efficient system of asset declarations in line with the Law on Conflict of Interest and Corruption in Public Institutions.

Under different state agencies, there are several online platforms aimed at improving access to information, increasing government accountability and collecting citizen feedback. Such platforms include but are not limited to:

- Budgetmonitor.ge – managed by the State Audit Office (SAO), the platform publishes detailed information on audit findings as well as the state budget including macroeconomic indicators, information on state debt, expenditure of various institutions (at the central and local levels), and more. The platform also allows citizens to submit claims on alleged cases of corruption, as well as to send suggestions for the annual audit plan.
- Data.gov.ge – combines public information made available by different public bodies on a single platform, including statistics and reports.
- Mygov.ge – is a personal platform where citizens can log in with an identification card or through a username acquired at the Public Service Hall and view any state-owned information on him/

112. Transparency and Integrity Strategy and the Action Plan of the Ministry of Regional Development and Infrastructure adopted by the Decree N 69 of the Minister adopted on 26 April 2017, available in Georgian: https://idfi.ge/public/upload/IDFI_Photos_2017/anticorruption/Order_1.pdf; https://idfi.ge/public/upload/IDFI_Photos_2017/anticorruption/Annex_to_order_1.pdf

113. Ordinance of the Government of Georgia N 236 on "The Adoption of the Strategy and Action Plan for Combating Money Laundering and Terrorism Financing," adopted on 18/03/2014, published on 19/03/2014, latest version (last amended on 24/01/2017) available in Georgian: https://matsne.gov.ge/ka/document/view/2284180?publication=3

114. Strategy for the Judiciary for 2017-202, adopted in 2017, available in Georgian: http://hcoj.gov.ge/files/saertashoriso/სასამართლო%20სისტემის%20სტრატეგია.pdf

her. The platform allows for requesting official documentation in electronic form or a hard copy, submit freedom of information requests, register a business and more.

- Procurement.gov.ge – online platform of the State Procurement Agency (SPA) publishing announced and concluded tenders with all accompanying documents provided by the company (for more information, see question 57).
- Matsne.gov.ge – online platform that publishes laws, normative acts, strategies and other relevant documents adopted or issued by different public entities.
- Napr.gov.ge – state property register, where citizens can receive various services related to his/her property, including requesting a cadastral map of their property and other official documents.
- Rs.ge – official website of the Revenue Service, where citizens can pay their taxes online.
- Municipal webpages – almost all municipal bodies (64 municipalities in total, each having a legislative and an executive body) have websites where they publish information on the work of the local government, such as assembly meeting notes, programmes, news and more. The websites are not standardised, which results in uneven information published by various municipalities. In 2017, several civil society organisations launched an assessment of municipal webpages to evaluate access to information, accountability and opportunities for citizen participation in decision-making processes. Based on the results, a ranking of both the executive and legislative local bodies was produced.[115]

DOMESTIC LEGAL FRAMEWORK

47 **Please provide succinct information on legislation or other rules governing this area.**

There is a range of legislation addressing corruption prevention through specific measures such as asset declaration monitoring and limitations on "revolving doors" which restricts movement of individuals from/to public/private sectors, as well as containing provisions on transparency, accountability and integrity in the public sector. Georgia is also a signatory of a range of international agreements, which have an obligatory nature. For more information on hierarchy of domestic and international laws, see question 49. For more information on all relevant international agreements that Georgia is a part of see question 58.

Domestic legislation:

- Law on Conflict of Interest and Corruption in Public Institutions[116]and accompanying manuals such as the Manual on Protection of Whistleblowers[117](for detailed information, see question 48 of the questionnaire);

115. Local Self-Government Index 2017, accessed 1 December 2018, http://www.lsgindex.org/

116. Law on Conflict of Interest and Corruption in Public Institutions N 982 adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo

117. Manual on Protection of Whistleblowers, 2015: https://mkhileba.gov.ge/src/files/mkhileba.pdf

- Law on Civil Service;[118]
- Law on Public Procurement;[119]
- Law on State Audit Office;[120]
- Law of Georgia on Personal Data Protection;[121]
- Legislation ensuring access to information, namely: Chapter III of the General Administrative Code of Georgia[122] and Ordinance of the Government of Georgia N219 on "the Form of the Electronic Request of Information and Proactive Disclosure of Information;"[123]
- Law of Georgia on Lobbying;[124]
- Codes of ethics and other rules governing conduct with accompanying guidelines or manuals adopted by the Civil Service Bureau and different state entities (for more information, see question 52);
- Local Self-Government Code of Georgia;[125]
- Law of Georgia on Competition;[126]
- Law of Georgia on Business Ombudsman;[127]
- Election Code of Georgia;[128]
- Law of Georgia on Political Associations of Citizens.[129]

48 What anti-corruption laws exist? How and by which bodies are they implemented? Does the legislation contain provisions designed to prevent corruption?

118. Law of Georgia on Civil Service N 4346-Is, adopted on 27/10/2015, published on 11/11/2015, latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3031098?publication=14#DOCUMENT:1
119. The Law of Georgia on Procurement N 1388, adopted on 20/04/2005, published on 18/05/2005, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/31252?publication=68
120. The Law of Georgia on State Audit Office N 880 adopted and published on 15/01/2009, the latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/17506?publication=15
121. Law of Georgia on Personal Data Protection N 5669-rs, adopted on 28/12/2011, published on 16/01/2012, latest version (last amended: 20/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/1561437?publication=15
122. Chapter III of the General Administrative Code of Georgia N 2181, adopted on 25/06/1999, published on 15/07/1999, latest version (last amended: 31/10/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16270?publication=27
123. Ordinance of the Government of Georgia N 219 on "About the Form of the Electronic Request of Information and Proactive Disclosure of Information," adopted on 26/08/2013, http://bit.ly/2SmFv0c
124. Law of Georgia on Lobbying N 1591, adopted on 30/09/1998, published on 26/10/1998, latest version (last amended: 21/12/2016) available in Georgian: https://matsne.gov.ge/ka/document/view/13552?publication=6
125. Local Self-Government Code of Georgia N 1958-IIs, adopted on 05/02/2014, published on 19/02/2014, latest version (last amended on 31/10/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/2244429?publication=39
126. Law of Georgia on Competition N 6148-Is, adopted on 08/05/2012, published on 25/05/2012, latest version (last amended on 21/03/2014) available in Georgian: https://matsne.gov.ge/ka/document/view/1659450?publication=4
127. Law of Georgia on Business Ombudsman N 3612-IIs, adopted on 28/05/2015, published on 04/06/2015, latest version (last amended on 22/12/2017) available in Georgian: https://matsne.gov.ge/ka/document/view/2860205?publication=3
128. Election Code of Georgia N 5636-rs, adopted on 27/12/2011, published on 10/01/2012, latest version (last amended: 31/10/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/1557168?publication=49
129. Law of Georgia on Political Associations of Citizens N 1028, adopted on 31/10/1997, published on 21/11/1997, latest versions (last amended: 20/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/28324?publication=27

The Law on Conflict of Interest and Corruption in Public Institutions[130] (hereinafter, LCI) establishes the legal basis for defining, disclosing and preventing corruption in the public sector. The law has undergone multiple changes since its adoption. In its current form, the law applies to positions directly elected or appointed on the basis of the Constitution of Georgia, including but not limited to the President of Georgia and managerial positions in the Presidential Administration, Members of Parliament, Supreme Representatives of the Autonomous Republics of Georgia, ministers and deputy ministers as well as other managerial posts in the executive branch, heads of local government bodies including the legislative and the executive bodies, governors, judges, and prosecutors occupying managerial positions. In contrast to judges, the law does not cover all prosecutors, but extends only to high-ranking prosecutors.[131] As there is no standalone anti-corruption body in the country, provisions in the LCI are enforced by a multitude of agencies including the CSB, human resource and general inspection departments of various public entities, courts, Prosecution Service of Georgia (PSG) and others (for more information on anti-corruption bodies, see questions 37 and 38).

The LCI serves as the legal basis to ensure the integrity of public officials with the provisions on prevention, identification and elimination of corruption. Corruption is defined as "the abuse of the position or the opportunities related to the position by a public servant in order to obtain property or other assets prohibited by law, and the transfer of these assets to him/her, or support in obtaining and legalising them."[132] The law establishes provisions on the incompatibility of duties, general rules of conduct for public servants, obligation of asset declaration disclosure, limits on the value of gifts along with the requirement to declare unauthorised offerings, and whistleblower protection (For detailed information on whistleblower protection and asset declarations see questions 42 and 51 respectively). The Law on Civil Service[133]states that violating the LCI can be grounds for dismissal of a civil servant.

The LCI limits public employees' rights to accept gifts. Article 5 of the law defines a "gift" as "transferred property or services provided to a public servant or his/her family members free of charge or under beneficial conditions, partial or full release from obligations, which represents an exception from general rules." The limit of the total value of gifts that a public servant shall receive in a year is set at 15% of the annual salary. The value of a single gift should be under 5%, unless the gifts are received from the same source. The law also places limitations on gifts received by a public servant's family members, namely: "the total value of gifts received by each member of the public servant's family during a reporting year shall not exceed GEL 1,000, whereas the total value of a single gift received shall not exceed GEL 500, unless these gifts are received from the same source." These limitations apply to all subjects of the law including judges, prosecutors in managerial positions and Members of Parliament.

Additionally, the LCI strives to prevent the so-called "revolving doors" phenomenon, which implies the movement of individuals between public and private sectors, which constitutes a risk

130. Law on Conflict of Interest and Corruption in Public Institutions N 982 adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo

131. Law on Conflict of Interest and Corruption in Public Institutions

132. Chapter I Article 3 of the Law on Conflict of Interest and Corruption in Public Institutions, cited from the English version: http://csb.gov.ge/uploads/745748.pdf

133. Law of Georgia on Civil Service N 4346-Is, adopted on 27/10/2015, published on 11/11/2015, latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3031098?publication=14#DOCUMENT:1

of corruption. According to the law (Chapter III, Article 13 (10)), within one year after leaving his/her post, a civil servant cannot start working at or receive any income from an enterprise that he/she oversaw as a part of his/her position for three years. Additionally, a civil servant cannot work for and receive income from an enterprise that he/she oversees while performing official duties, nor can he/she conduct oversight over enterprises where his family members are in managerial positions. Article 10 limits civil servants right to conclude deals with his/her family members or the party.

The Law on Civil Service[134] contains key provisions aimed at preventing corruption and promoting a merit-based, professional public service. The law regulates equal access to public service and the transparency of recruitment process and guarantees the independence and neutrality of public servants.

Important provisions against corruption are present in the Criminal Code of Georgia,[135] which defines corruption as a crime in line with the Council of Europe Criminal Convention. Acts criminalised under the CCG include but are not limited to active and passive bribery, embezzlement, trading in influence and bribery of foreign officials. Provisions of the CCG are enforced by law enforcement agencies including the Ministry of Internal Affairs, Chief Prosecutor's Office of Georgia, State Security Service of Georgia and Ministry of Finance. This legislative framework serves the dual purpose of enforcing and punishing corruption crimes, as well as preventing future violations, which are punishable by severe sanctions. Please see question 50 for more information on the provisions and specific sanctions.

For a more detailed list of laws that contain provisions aimed at the fight against corruption, transparency in the public service and accountability of the state entities, refer to question 47 of the questionnaire.

While the Law on Conflict of Interest and Corruption in Public Institutions applies to several key positions, that provision excluding a large number of prosecutors has been criticised in several international and local assessments, especially considering the exclusion of the prosecutors from the obligation to file asset declarations. For the complete analysis, see GRECO Fourth Round of Monitoring report on Georgia.[136]

The law in its current form includes the president and the board members of the National Bank of Georgia, the latter to be excluded if draft amendments to the law are approved,[137] which according to local civil society organisations entails unequal treatment under the law.[138]

134. Law of Georgia on Civil Service

135. Criminal Code of Georgia N 2287, adopted on 22/07/1990, published on 13/08/1990, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16426

136. GRECO, "Fourth Round of Monitoring: Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors," 17 January 2017,http://bit.ly/2OwziRE

137. Draft Amendments to the Law on Conflict of Interest and Corruption in Public Institutions,http://info.parliament.ge/file/1/BillReviewContent/150551

138. Institute for Development of Freedom of Information (IDFI), "Corruption Risks of the New Amendments Related to the National Bank of Georgia," 30 June 2017,http://bit.ly/2CWG50T

49 **How is the link between domestic legislation and international conventions ensured?**

Article 6 paragraph I of the Constitution of Georgia[139] states that "the Constitution is the supreme law of the state" and "all other legal acts shall be in compliance with the Constitution." In addition, the Law of Georgia on Normative Acts[140] defines the types and hierarchy of normative acts, including the place of international agreements and treaties of Georgia in the system of normative acts of Georgia. Namely, Article 7 determines the interrelation of the normative acts.[141]Paragraph 5 states: "International agreements and treaties of Georgia that have entered into force in accordance with the Constitution of Georgia and the Law of Georgia on International Agreements of Georgia[142] shall take precedence over domestic normative acts unless they contradict the Constitution of Georgia, the Constitutional Law of Georgia and the Constitutional Agreement of Georgia." "The procedure for preparing, signing, ratifying, promulgating, fulfilling, denouncing and abrogating international agreements and treaties of Georgia is determined by the Constitution of Georgia, this Law, the Law of Georgia on International Agreements and the Rules of Procedure of the Parliament of Georgia."[143] According to Article 65 of the Constitution,[144] while the ratification of an international agreement is required in most of the cases, it is not necessary to adopt a special normative act for the provisions of the agreement for them to become applicable in Georgian legislation.

50 **Is corruption defined as a criminal offence in line with the Council of Europe Criminal and Civil Law Convention? Which type of conduct can be sanctioned as corruption? Is active and/or passive bribery sanctioned? In the public and/or private sector? Trading in influence? Corruption of foreign and international public officials? What kind of sanctions exist (e.g. possibility of confiscation of proceeds, disqualification measures)**

Georgia is a signatory of the Criminal[145] and Civil Law[146] Conventions of the Council of Europe.

139. The Constitution of Georgia N 786, adopted on 24/08/1995, published on 24/08/1995, latest version (last amended on 23/03/2018) available in English: https://matsne.gov.ge/en/document/view/30346?publication=35

140. The Law of Georgia on Normative Acts (N 1876, adopted: 22/10/2009, published: 09/11/2009, last amended: 31/10/2018), latest version available in Georgian: https://matsne.gov.ge/ka/document/view/90052?publication=22

141. Article 7 of The Law of Georgia on Normative Acts

142. Law of Georgia on International Agreements of Georgia (N 934, adopted: 16/10/1997, published: 11/11/1997, last amended: 31/10/2018) latest in Georgian: https://matsne.gov.ge/ka/document/view/33442?publication=13

143. Article 2 of the Law of Georgia on Normative Acts (N 1876, adopted: 22/10/2009, published: 09/11/2009, last amended: 31/10/2018), latest version available in Georgian: https://matsne.gov.ge/ka/document/view/90052?publication=22

144. Article 65 of the Constitution of Georgia N 786, adopted on 24/08/1995, published on 24/08/1995, latest version (last amended on 23/03/2018) available in English: https://matsne.gov.ge/en/document/view/30346?publication=35

145. Resolution N 872-rs of the Parliament of Georgia on the Ratification of the Additional Protocol of the CoE Criminal Law Convention on Corruption (adopted on 27/07/2013, came in on 01/05/2014) available at: https://matsne.gov.ge/document/view/1980303?publication=0

146. Resolution N 2109 of the Parliament of Georgia on Ratification of the CoE Civil Law Convention on Corruption (adopted on 24/04/2003, published on 15/05/2003) available at: https://matsne.gov.ge/document/view/41788?publication=0

The Criminal Code of Georgia[147] defines corruption as a crime in line with the Council of Europe Criminal Convention. The following actions constitute a crime according to the CCG: bribery of voters (Article 164(1)), appropriation or embezzlement (Article 182), abuse of powers (Article 220), commercial bribery (Article 221), abuse of official powers (Article 332), exceeding official powers (Article 333), illegal participation in entrepreneurial activities (Article 337), bribe-taking (passive bribery) (Article 338), bribe-giving (active bribery) (Article 339), trading in Influence (Article 339(1)), accepting gifts prohibited by law (Article 340) and forgery by an official (Article 341). Additionally, based on GRECO's Second Evaluation Round, definition of both bribery and trading in influence was expanded to include cases when the advantage is sought for a third party instead of the bribe-taker. Moreover, the Government of Georgia signed the Additional Protocol to the Criminal Law Convention on Corruption,[148] which covers bribery of foreign arbitrators and foreign jurors. For more information, see question 58 on GRECO recommendations and their implementation.

According to Criminal Code of Georgia, following types of sanctions can be applied: fine, corrective labour, restriction of liberty, imprisonment or deprivation of the right to hold an official position or to carry out a particular activity. In case of legal persons, possible sanctions are liquidation, deprivation of the right to carry out activity and confiscation. More specifically, Article 338 on bribe taking is punishable by imprisonment for a term of 6-9 years. Additionally, bribe-taking that happens with aggravating circumstances carries a possible term of imprisonment of 7-11 years. Aggravating circumstances are: (1) the bribe was accepted in large quantity (i.e. above 10, 000 GEL, approx. EUR 3,225), (2) was accepted by a state political official or (3) was taken by a group with prior agreement. If the bribe was accepted by a person who has repeatedly committed a similar crime, was committed by extortion or by an organised group, or was for a particularly large quantity (i.e. above 30,000 GEL, approx. EUR 9,677), the punishment is further increased to 11-15 years.

On the other hand, bribe-giving (Article 339) may be punished by: a fine, corrective labour for up to two years, restriction of liberty for up to two years, or imprisonment for up to three years. Bribe giving committed for the purpose of committing an unlawful act may be punished by a fine or imprisonment for a term of 4-7 years. An offence committed by an organised group is punishable by imprisonment for 5-8 years. The bribe-giver shall be freed from criminal liability if they have voluntarily declared effective regret. The decision to discharge a person from criminal liability is carried out by the entity conducting criminal proceedings. In such instances, a fine will be imposed on legal persons.

Trading in influence (Article 339[1]) is punishable by a fine, corrective labour, restriction of liberty up to 2 years, or imprisonment up to 2 years. In aggravating circumstances, the offence is punishable for a term of 3-5 years. If committed by an organised group, the offence shall be punished by imprisonment for 4-7 years. The same rules of effective regret are applicable as in the case of active bribery.

147. Criminal Code of Georgia N 2287, adopted on 22/07/1990, published on 13/08/1990, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16426

148. Council of Europe Portal, Additional Protocol to the Criminal Law Convention, Chart of Signatures and Ratifications of Treaty 191, accessed on 25 November 2018, http://bit.ly/2DWzxzW

51 What are the rules guaranteeing the avoidance of conflict of interest in the performance of officials serving in the government, the administration and the judiciary? Does the legislation provide for public declarations of wealth and/or interest for the mentioned officials? How are such declarations assessed, checked and followed-up? What are the rules for members of Parliament?

The Law on Conflict of Interest and Corruption in Public Institutions[149] (hereinafter, LCI) establishes the legal basis for defining, disclosing and preventing corruption in the public sector. The law applies to most of the key positions appointed or elected according to the Constitution of Georgia.[150] The law establishes provisions on the incompatibility of duties, general rules of conduct for public servants, asset declarations, limits on gifts, and whistleblower protection. For more information on LCI, please refer to question 48 of the questionnaire.

Chapter IV of the Law on Conflict of Interest and Corruption in Public Institutions requires public officials to submit asset declarations,[151] which are made public on an electronic platform (www.declaration.gov.ge)that is maintained and monitored by the CSB. The officials required to submit asset declarations include the President of Georgia, the Prime Minister of Georgia, Supreme Representatives of the Autonomous Republics of Georgia, Members of Parliament, governors, representatives of local government including mayors and heads of the legislative bodies, top management of legal entities of public law and non-entrepreneurial legal entities founded by the state, judges, and those occupying managerial posts in Prosecution Service of Georgia.[152]While all judges are required to submit asset declarations, the regulation extends only to a limited number of prosecutors and does not cover line prosecutors. Consequently, in 2016, only 40 out of the total of 449 prosecutors had to submit asset declarations.[153]

The CSB is responsible for monitoring asset declarations, and in case of violation, for passing the case to law enforcement for further examination. All submitted asset declarations are published on the CSB's online platform declarations.gov.ge.[154] Until 2017, there was no effective monitoring system of submitted declarations, often referred to as an issue to be addressed in recommendations by civil society organisations.[155]The government launched a monitoring procedure following the adoption of the Government Decree on 14 February 2017 on the Adoption of the Instruction for Monitoring Asset Declarations of Public Servants.[156]

149. Law on Conflict of Interest and Corruption in Public Institutions N 982 adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo
150. Constitution of Georgia N 786, adopted on 24/08/1995, published on 24/08/1995, latest version (last amended on 23/03/2018) available in English: https://matsne.gov.ge/en/document/view/30346?publication=35
151. Chapter IV of the Law on Conflict of Interest and Corruption in Public Institutions
152. Chapter I of the Law on Conflict of Interest and Corruption in Public Institutions
153. GRECO, "Fourth Round of Monitoring: Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors," 17 January 2017, available here: http://bit.ly/2OwziRE
154. Civil Service Bureau, Asset Declarations Database, https://declaration.gov.ge/
155. Transparency International Georgia, "Georgia National Integrity System Assessment 2015," http://bit.ly/2JdO6yZ
156. OECD ACN "Fourth Round of Monitoring, Georgia: Progress Update," 2016, available here: http://bit.ly/2CwbgyT

According to the Decree, monitoring of asset declarations happens in three ways: 1) random selection by the electronic system, 2) justified written statement and 3) independent commission created by the Head of the CSB based on high corruption risk and public interest.[157]The total number of asset declarations selected through the electronic system and justified written statements cannot exceed 5% of the total number of declarations received. The same limit applies to declarations selected by the commission.[158]

The CSB committed to creating an asset declarations monitoring system in Georgia's Open Government Partnership (OGP) National Action Plan for 2016-2018, which was called "transformative" in the OGP Independent Reporting Mechanism's (IRM) mid-term report.[159] However, the report also refers to legislative shortcomings.[160] According to the government decree, the commission is comprised of five members, three of whom are representatives of civil society organisations and two members from academia. The decree allows the CSB to refrain from creating an independent commission if less than three membership applications are received. As of October 2018, the CSB has not created the independent commission.

Regulations on sanctions in case of violations were recently amended to better address different kinds of transgressions, whether it is technical errors or deliberate refusal to submit a declaration. Article 20 of LCI establishes sanctions for violating asset declaration disclosure provisions, which range from reprimand in case of a technical mistake, through a 20% deduction from salary or a minimum of 500 GEL (approx. EUR 161) for other violations, to 1,000 GEL (approx. EUR 322) for failure to submit a declaration.[161] If monitoring reveals indications of a crime, the CSB assigns the case to a relevant law enforcement agency.[162]

The Civil Service Bureau reports statistics of published declarations on the publicly accessible declarations website for the period of 2014-2017. Information on 2018 will be available at the end of the year.[163]

Number of Asset Declarations Published by the Civil Service Bureau in 2014-2017

Year	Number of Declarations Published
2014	5,753
2015	5,691
2016	5,654
2017	5,760

157. Government Decree 14 February 2017 on "Adoption of the Instruction for Monitoring Asset Declarations of Public Servants"

158. Article 18 paragraph 4 of the Law on Conflict of Interest and Corruption in Public Institutions

159. OGP Independent Reporting Mechanism (IRM) Mid-Term Report 2016-2018, https://www.opengovpartnership.org/report/georgia-mid-term-report-2016-2018-year-1

160. OGP Independent Reporting Mechanism (IRM), "Georgia Mid-Term Report 2016-2017,"http://bit.ly/2S4zlSLf

161. Article 20 of the Law on Conflict of Interest and Corruption in Public Institutions

162. Article 355 of the Criminal Code of Georgia N 2287, adopted on 22/07/1990, published on 13/08/1990, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16426

163. Civil Service Bureau, email response to FOI request, 16 October 2018

In 2017, declarations were monitored based on random selection by the electronic system as well as written requests. As a result of random selection, 284 declarations were monitored and an additional three were reviewed on the basis of written requests to the CSB. Out of the total 287, 224 included violations such as incorrect measurements of the property declared, undeclared property, mismatch between declared funds and bank accounts, undeclared bank accounts, errors in bank loan calculations, undeclared shares in enterprises (especially, in non-functioning enterprises) and incorrect declaration of family members' income. Monitored declarations include but are not limited to 14 MPs and one parliament staff member, 13 judges, one staff member of the Presidential Administration of Georgia, 119 employees of the executive branch of the government and 107 declarations of local government representatives (including 11 employees of the Tbilisi Municipality).[164]

52 **Do precise codes of conduct exist, which indicate what is and what is not allowed, and which are subject to a permanent monitoring process? How are these codes of conduct enforced?**

As indicated in questions 41 and 48, the rules of conduct for public officials, including issues relevant to the integrity and discipline of public servants are enshrined in several documents, including the Law on Conflict of Interest and Corruption in Public Institutions.[165]Additionally, the CSB has adopted a code of ethics by the Ordinance N200 of the Government of Georgia,[166] which includes a detailed regulation of conduct in the civil service and applies to all public officials as defined by the Law on Conflict of Interest and Corruption in Public Institutions, unless a more specialised law exists that covers the conduct of those officials. The CSB has also developed the Guidelines for Ethics and General Rules of Conduct.[167]

These rules of ethics and behaviour set out a framework of general values and standards of professional behaviour for all public servants. At the same time, it should be taken into consideration that because of the general character of this code, it does not cover the specific needs of every public institution. Consequently, the code leaves room[168] for public institutions to adopt rules of conduct tailored specifically to their work. Based on the above, the general rules of ethics are applicable together with the rules adopted by individual public institutions.

Considering the specificity of their work, law enforcement agencies have adopted their own codes of conduct, including the Ministry of Internal Affairs, which adopted the Police Code of

164. Civil Service Bureau, "Results of 2017 Monitoring of Asset Declarations" provided by the CSB, partially covered by "2017 Annual Report" of the Civil Service Bureau, http://bit.ly/2q1Gt5N

165. Law on Conflict of Interest and Corruption in Public Institutions

166. Ordinance of the Government of Georgia N 200 on the adoption of the Rules of Ethics and General Conduct in Civil Service, adopted on 20/04/2017, published on 21/04/2917, latest version (last amended on: 14/05/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3645402?publication=1

167. Civil Service Bureau, "Guidelines for Ethics and General Rules of Conduct," http://csb.gov.ge/uploads/etika-2018.pdf

168. Article 2 of the Ordinance of the Government of Georgia N 200 on the adoption of the Rules of Ethics and General Conduct in Civil Service, adopted on 20/04/2017, published on 21/04/2917, latest version (last amended on 14/05/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/3645402?publication=1

Ethics by Order N999 of the Minister of Internal Affairs,[169]the Chief Prosecutor's Office of Georgia, which adopted the Code of Ethics for Employees of the Prosecution Service by Order N234 of the Minister of Justice,[170]the State Security Service of Georgia (SSSG), which adopted the Code of Ethics for the Employees of the State Security Service of Georgia by the Order N5 of the Head of SSSG,[171] and the State Audit Office, which adopted the Code of Ethics of the Auditors by Order N65/37 of the General Auditor.[172]These codes underline the main principles of the public service and of the specific agencies respectively, but also define specific rules for dealing with conflict of interest and for ensuring independence, equality, accountability, transparency and whistleblower protection. Notably, the Parliament of Georgia also adopted a Code of Ethics by Ordinance N3684 of the Parliament of Georgia on 31/10/2018, defining permissible and non-permissible behaviour for MPs.[173]

Enforcement of the codes of conduct falls under the purview of the internal audit or general inspection departments of the state agencies. The main functions of the general inspection units are: inspection and monitoring of the steady performance of the requirements of the legislation within the state agency, detecting violations of the norms of code of ethics, disciplinary statutes or other rules of conduct, monitoring of the financial-economic activities of the employees of the agencies, examining the legality and expediency of the management of material and financial resources by the officials and detecting instances of conflicts of interest, among others. When violations are detected, the monitoring unit, in accordance with Georgian legislation, can apply appropriate disciplinary measures or refer the case to relevant authorities, such as law enforcement bodies. For more detailed information on general inspection units, see the answer to question 38.

53 Whistle-blowing – do clear rules (including on effective protection of whistle blowing) and reporting mechanisms exist in both the public and the private sectors? Please explain.

Rules ensuring the protection of whistleblowers exist as a part of the Law on Conflict of Interest and Corruption in Public Institutions,[174]which defines whistleblowing as an act of disclosing a violation of Georgian law of Georgia or code of ethics (if applicable), which damages the public

169. Order of the Ministry of Internal Affairs on "Adoption of Police Code of Ethics," adopted on 31/12/2013, published on 31/12/2013, the document last amended on 06/11/2015: http://bit.ly/2Sl3fSf

170. Order N 234 of the Minister of Justice on "Adoption of Code of Ethics for Employees of the Prosecution Service," adopted on 25/05/2017, published on 29/05/2017: https://matsne.gov.ge/ka/document/view/3679145?publication=0

171. Order N 5 of the Head of SSSG on Adoption of the Code of Ethics for Employees of the State Security Service of Georgia, adopted on 1/08/2015: http://bit.ly/2BJAjOe

172. Order N 65/37 of the General Auditor on Adoption of Code of Ethics for Auditors, adopted on 04/04/2013: https://matsne.gov.ge/ka/document/view/1889279?publication=0

173. Ordinance of the Parliament of Georgia N 3684 on the "Adoption of the Code of Ethics for Members of the Parliament of Georgia" adopted on 31/10/2018, available in Georgian:https://info.Parliament.ge/file/1/BillReviewContent/205673?

174. Law on Conflict of Interest and Corruption in Public Institutions N 982 adopted on 17/10/1997, published on 11/11/1997, latest version (last amended on 21/07/2018) available in Georgian: http://bit.ly/2S4e7oo

interest or the reputation of the given public institutions.[175] The law provides provisions such as:

- Defining a whistleblower as anyone reporting a violation in the public sector, which includes employees of the public and private sectors;
- Defining reporting channels to include the Prosecutor's Office, Public Defender, investigative agencies, as well as external channels including media and civil society organisations;
- Guaranteeing the anonymity of a whistleblower.

Reporting such violations is possible through an online platform run by the CSB, which redirects submissions to relevant law enforcement authorities. The link to the portal is integrated into the websites of various public bodies, including the Ministry of Regional Development and Infrastructure (MRDI) and its subordinate units (which are especially sensitive due to the large-scale infrastructure projects they implement and oversee). While statistics of submissions to the reporting platform exist, there is no information on follow-up on specific reports. For more detailed information on the legislation and numbers, see question 42 of the questionnaire.

While the Law on Conflict of Interest and Corruption in Public Institutions protects individuals working in the public and private sectors who disclose information regarding public bodies, there are no corresponding whistleblower protection regulations for revealing information regarding private entities.

54 **Are there clear and transparent rules on funding of political parties, social partners and other interest groups? Are these entities subjected to external financial control in order to avoid conflicts of interest between their representatives, public officials and the private sector? What is the practical experience with implementation of these rules?**

Funding of political parties is regulated by the Organic Law on Political Unions of Citizens (#1028, 31/10/1997, published: Parliamentary Gazette, 45, 21/11/1997, last amended: 21/07/2018). According to Article 25 of the Organic Law the property of the party shall comprise of:

a) membership fees;
b) donations;
c) state allocated funds, as prescribed by law;
d) funds accumulated by printing and distributing party symbols, organizing lectures, exhibitions and similar public events, funds received by publishing or other activities in line with aims of the party statute. Annual income received via sources listed in this sub-paragraph shall not exceed double amount of minimal base funding.

Donations include:

a) financial contributions transferred to party's account by a citizen of Georgia;
b) financial contributions transferred to party's account by legal entity which is registered in Georgia and whose partners and final beneficiaries are only Georgian citizens;
c) any material or immaterial value (including a credit on concessionary terms) and service

175. Chapter V, art. 20, Law on Conflict of Interest and Corruption in Public Institutions

(except for a voluntary work performed by a volunteer) received by a party free of charge or at a discounted price/on concessionary terms.

Funds provided for supporting a party material or immaterial of value or services provided free of charge or at a discounted price/on concessionary terms (except for a voluntary work performed by a volunteer) shall also be deemed as donation.

It is also stipulated that a political party may take credit from a commercial bank of Georgia. Total amount of credit shall not exceed GEL 1 million during one calendar year.

Article 26 of the Organic Law determines cases when it is prohibited to receive donations. In particular, it is prohibited to accept donations from:

a) physical and legal entities of foreign countries, international organizations and movements, except when lectures, workshops and other public arrangements are held;
b) a state agency, state organization, legal entity of public law, enterprises with state shares, except when otherwise prescribed by this Law;
c) a non-profit legal entity and religious organizations except when lectures, workshops and other public arrangements are held;
d) stateless persons;
e) donations received anonymously.

A donor shall indicate his/her name, address, and personal identification number. Finances contributed without indication of these details shall be deemed anonymous. Anonymous contributions should be immediately transferred into the state budget of Georgia by the official person responsible for financial activities of the political union. Though these requirements do not apply to donations received as a result of public events which shall not exceed GEL 30 000 per year. An official responsible for the financial activities of a party shall transfer all the donations received from the public event to the account of the party within 7 days.

The Organic Law also regulates the amount of donations allowed. According to Article 27 total amount of a donation received by a party from a single citizen shall not exceed GEL 60 000 per year. Total amount of donation received by party from a legal person shall not exceed GEL 120 000 per year. Annual amount of membership fee shall not exceed GEL 1 200 per member.

A citizen or a legal entity may donate in favor of several political parties per year; however, total amount of donations shall not exceed the limits prescribed by the Law. Furthermore, the total sum of donations by one beneficiary through different legal entities shall not exceed the donation limit prescribed to a legal entity.

A citizen of Georgia who received more than 15 % of his/her annual income from simplified government procurement carried out in his/her favor or in favor of an enterprise established with his/her participation shall be prohibited from donating.

The party membership fees, as well as monetary donations from the citizens shall be received through non-cash payment. Donations shall be made only from a personal account of a donor or a membership fee payer in a commercial bank licensed in Georgia. Making donations via other person shall result in transfer of the donation to the state budget, whereas the offender will be held liable under the Georgian legislation.

As regards state funding of the parties According to Article 30 of the Organic law the right of funding a party from state budget shall originate from the day following the day when the first session of the newly-elected Parliament of Georgia is held, and from the day following the day when all summary protocols of the final results of general elections of the representative bodies of the municipalities – the Sakrebulos (local assemblies) are announced. The amount of funding for a party is determined by a decree of the Chairperson of the Central Election Commission of Georgia on the basis of the Law, a summary protocol of the final results of the Georgian Parliamentary elections, the information on establishing a parliamentary faction by a party and the results of general elections of the representative bodies of the municipalities – the Sakrebulos. The information on establishing/dissolving a parliamentary faction shall be communicated to the Central Election Commission of Georgia in writing immediately after the occurrence of such fact.

The funds allocated for a direct transfer to a party shall be received by a party registered with the Georgian Central Election Commission:

a) which has participated in elections independently or as part of an electoral bloc, provided that the party or the relevant electoral bloc has obtained 3%, or more than 3%, of the votes in recent parliamentary or local self-government elections (the given number of votes is calculated based on the number of votes cast in the elections held under a proportional system in the entire territory of Georgia);
b) which has participated in parliamentary elections independently or as part of an electoral bloc, provided that majoritarian candidate presented by the party or respective electoral bloc was elected in the parliament and the party is presented in the parliament by a faction.

Concern:
It should be noted that a new regulation that based on creating a faction in the parliament by one majoritarian MP a party can qualify for state funding was adopted in April, 2018. This regulation was negatively assessed by the NGOs working on party funding issues. It was stated that this rule reduces public funding standards and increases a risk of their misuse. Besides that, it was stated that the amendment was adopted to benefit one particular political party. It was declared that this type of fragmented and unreasonable amendments will further deepen the problem related with the public funding of the parties which has some flaws.[176]

Recommendation:
Creation of a faction as criteria for receiving state funding should be abolished.

The amount of the budgetary funding allocated is composed of the basic funding, and bonuses for each Member of Parliament elected under a proportional electoral system, and a component corresponding to the number of votes received by a party.

176. Statement of International Society for Fair Elections and Democracy, Georgian Young Lawyers' Association and Transparency International-Georgia, The rule of public funding distribution among political parties has worsened again, 20 April, 2018. Available at: http://www.isfed.ge/main/1371/eng/

The budget funding to be received by a party shall be calculated in accordance with the following formula: Z=B+(M*600*12)+(L*100*12)+(V*1,5)+(W*1)+(H),

Where Z means the amount of budgetary funding to be received by a party; B- the amount of basic funding; M- the number of Members of Parliament equal to 30 or up to 30 elected under a proportional system; L- the number of Members of Parliament above 30 elected under a proportional system; V- the number of votes received from up to 200,000 voters; W- the number of the votes received from more than 200,000 voters; H- a party that has been registered with the Georgian Central Election Commission for the purpose of participating in the recent parliamentary elections and whose members have been elected to the Parliament of Georgia, provided that the given party creates a parliamentary faction. For the purposes of the given formula H=GEL 300,000. The minimum amount of the annual basic funding shall be GEL 300,000.

If a party or an electoral bloc participating in elections independently has received 6% or more of the votes cast in the recent parliamentary or local self-government elections, its basic funding shall be doubled.

A party will receive budgetary funding only on the basis of prior written consent, which shall be submitted to the State Audit Office annually, not later than 25 November. If a party fails to submit, within the specified time limit written consent to receive budgetary funding for the following year, the State Audit Office shall notify the party in writing about this fact on the second day after the expiration of this time limit. The party shall have the right to submit the relevant consent within 3 days after receiving written notice from the State Audit Office. If a party fails again to submit the relevant consent within the period established by the State Audit Office, it shall forfeit the right to receive the budgetary funding for the following year and shall be notified in writing about this by the State Audit Office. The State Audit Office shall transfer the above funding back to the state budget within 5 days after the party forfeits the right to funding.

A party receiving state funding shall receive a bonus of 30% of the basic funding if, in the election list presented by this party or by the relevant electoral bloc (in the case of local self-government elections, in all party lists) at the elections based on the results of which they received funding, at least 30% of female candidates are included in the first, second and every subsequent 10 candidates.

Besides that, in order to provide financial support to the election campaigns of political parties during the year of general parliamentary and local self-government elections, additional funding is allocated from the state budget of Georgia to cover TV advertising costs. This funding may be used for TV advertising only, from the date when the respective general elections are called up to election day, and in the case of a repeat vote, a second round of elections or re-run elections, before the day of the respective voting. The funding shall be received only by parties that have become eligible for funding according to the results of the recent general elections. The amount of funding allocated to a party shall be calculated by multiplying the number of votes obtained by the relevant electoral subject in the recent general elections by three and dividing it by the number of political parties within the electoral subject. In addition, the amount of funding allocated to a party and electoral bloc (despite the number of parties in the bloc) participating independently in the elections may not exceed GEL 600,000. At least 15% of the funding allocated to an electoral subject shall be used for pre-election advertising with at least 7 broadcasters,

which do not represent national broadcasters. The expenses will be compensated to the relevant broadcaster by the Georgian Central Election Commission on the basis of an agreement entered into between the broadcaster and political party, within 10 working days after the submission of the agreement to the Georgian Central Election Commission.

Monitoring lawfulness and transparency of financial activities of a party is carried out by the State Audit Office of Georgia. The State Audit Office is a constitutional body. According to Article 69 of the Constitution of Georgia (#783, 24/08/1995, published: Parliamentary Gazette, 31-33, 24/08/1995, last amended: 23/03/2018 to be effective after the inauguration of the president following 28 October presidential elections) The use and expenditure of budgetary funds and other public resources shall be supervised by the State Audit Office, with the purpose of facilitating the efficiency and accountability of public governance. It shall also be entitled to scrutinise the activities of other state bodies of fiscal and economic control and to submit proposals on improving tax legislation to Parliament. The State Audit Office is led by the General Auditor, who shall be elected by a majority of the total number of the Members of Parliament for a term of 5 years upon nomination by the Chairperson of Parliament. The State Audit Office shall be independent in its activity. The State Audit Office shall be accountable to Parliament. Twice a year, together with the submission of preliminary and full reports on the execution of the State Budget, the State Audit Office shall submit to Parliament its conclusions on the Government report. Once a year, it shall submit to Parliament its own activity report. The State Audit Office shall ensure the control of public funds by Parliament.

According to Article 34^1 of the Organic Law the State Audit Office of Georgia is authorized to:

a) Elaborate a template of financial declaration;
b) Determine auditing standards for political party funding;
c) Verify that a party's financial declaration and report of election campaign funds is complete, accurate and lawful;
d) Conduct audit of financial activities of the party no more than once a year;
d)[1] In the event of reasonable doubt regarding party's illegal financial activities party may approach court with the request to conduct additional financial audit;
e) Ensure transparency of party funding;
f) Request information on party's finances from parties, administrative agencies and commercial banks, if necessary;
g) According to court ruling to request the information about the origins of property of natural or legal person donating to parties;
h) Provide consultations on party funding for interested persons;
i) Act on violations of party funding regulations and apply sanctions prescribed by law;
j) Apply to prosecuting agencies if signs of crime have been detected.
k) Request a financial report from a person, provided there is a reasonable doubt about the existence of circumstances envisaged by Article 26^1 of this Law.
l) Make a decision about application of prohibitions envisaged by Article 26^1 to an individual under simple administrative proceedings. If requested by a party, a copy of the decision shall be provided before 18:00 on the day after the act has been issued.
m) Elaborate methodology for financial monitoring of a party.
n) Discharge its other authorities prescribed by the Law.

State Audit Office of Georgia shall provide information on party's financial declaration to all interested persons, as well as publish declaration on relevant web-page within 5 working days after its receipt. The State Audit Office of Georgia shall elaborate a template of annual financial declaration of parties and establish audit standards.

If a party fails to submit its financial declaration to the State Audit Office of Georgia in due time, the latter shall warn the party in written form and request remedying the flaw within 5 days. If a party fails to file its financial declaration with the State Audit Office of Georgia within 5 days, it shall lose the right to receive budgetary funding throughout the following year.

Besides annual declarations during election year every political party participating in the elections individually or in a bloc is obliged to present financial report to the State Audit Office of Georgia once per three weeks after the appointment of the elections.

55 What is the state of play in adopting a new law on party funding?

Adoption of a new law on party funding is not planned.

56 Does legislation on free access to information exist? What is the experience with its implementation? What is the role and remit of the Commissioner for Free Access to Information?

There is no separate Law on Freedom of Information in Georgia. Instead, the General Administrative Code of Georgia[177] regulates access to public information. According to this code, public information is an official document (including a drawing, model, plan, layout, photograph, electronic information, or video or audio recording), i.e. any information stored at a public institution, as well as any information received, processed, created or sent by a public institution or public servant in connection with official activities; also any information proactively published by any public institution.

According to the General Administrative Code, public information is open except for information that is considered to be personal data or state, commercial or professional secret as provided by law (Article 28). Everyone has the right to request public information regardless of its physical form and storage conditions, choose the form of receiving public information if it exists in different types, and access the original information (Article 37). The public institution is obliged to issue public information immediately or no later than 10 days if the information requires processing (Article 40). Public institutions are obliged to ensure the availability of copies of public information. Charging any fees for issuing public information other than the cost of making copies is not permitted (Article 38).

In practice there are certain obstacles in terms of obtaining public information. Sometimes state agencies refuse to release public information, claiming they lack sufficient human resources to search and process large amounts of data or they cite the protection of privacy. The current legislative framework does not provide access to special categories of personal data stored in public institutions

177. General Administrative Code of Georgia (№2181, 25/06/1999, published: Legislative Herald of Georgia, 32(39), 15/07/1999, last amended: 31/10/2018)

regarding former and acting high ranking officials and candidates, related to their official duties without the consent of a data subject, even in cases of high public interest. In addition, the timeframe established by the law for issuing public information is often violated in practice. Moreover, when bringing lawsuits regarding access to public information, the court proceedings are usually lengthy.

There is no Commissioner for Free Access to Information in Georgia and there are no sanctions for illegal refusals to issue public information, which constitutes an obstacle in terms of access to information.

57 **Public procurement, privatisation, large budgetary expenditure, construction, land-use planning: a) How are these areas monitored? Is the monitoring done efficiently and by an independent body? Is there sufficient follow-up to irregularities? b) Is there parliamentary oversight? c) How is financial control regulated? Is there a functioning auditing authority?**

Procurement, privatisation, large budgetary expenditure, construction and land-use planning are overseen by different government agencies. The competences are split among the State Procurement Agency (SPA), State Audit Office (SAOG), National Agency of State Property (NASP), the Ministry of Economy and Sustainable Development (MESD), Ministry of Regional Development and Infrastructure (MRDI) and local governments.

The State Procurement Agency is an independent legal entity of public law, which is responsible for coordinating and monitoring state procurement. The SPA operates on the basis of the Law of Georgia on Procurement,[178] international agreements, and statute adopted by Ordinance N306 of Government of Georgia on Reorganisation of the LEPL State Procurement Agency and Adoption of the Statute and Structure of the LEPL State Procurement Agency.[179]According to the statute, the State Procurement Agency is accountable to the Government of Georgia, which approves the agency's staff remuneration and schedule, loans, purchase and sale of immovable property and bonus funds, and makes other decisions regarding agency property. The SPA reports to the Government of Georgia and prepares annual reports by 15 May for publication on the SPA website. The main objectives of the SPA are to ensure neutrality, transparency, non-discrimination and compliance with the existing regulations during decision-making, maintain and develop the electronic platform for procurement (procurement.gov.ge), thereby increasing public trust in the system, and improving existing legislation and ensuring its compliance with international standards.

The Ministry of Economy and Sustainable Development of Georgia is responsible for the management of state property as well as for defining construction policies.[180] To this end, the MESD has structural sub-units responsible for carrying out of the abovementioned functions, such as LEPL Technical and Construction Supervision Agency, which is tasked with state control

178. The Law of Georgia on Procurement N 1388, adopted on 20/04/2005, published on 18/05/2005, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/31252?publication=68

179. Ordinance of Government of Georgia N 306 on "Reorganisation of the LEPL State Procurement Agency and Adoption of the Statute and Structure of the LEPL State Procurement Agency" adopted on 23/04/2014, available in Georgian: http://procurement.gov.ge/getattachment/ELibrary/LegalActs/saagentos_debuleba.pdf.aspx

180. Ordinance N 70 of the Government of Georgia on the "Adoption of the Statute of the Ministry of Economy and Sustainable Development of Georgia" (adopted: 11/02/2016, entry into force: 01/03/2016, last amended: 24/10/2018), latest version available in Georgian:https://matsne.gov.ge/ka/document/view/3190898?publication=13

and supervision of construction objects, issuance of special permits for construction of objects of special significance (including radiation and nuclear facilities) throughout the country and control of fulfilment of permit conditions. Additionally, the National Agency of State Property (NASP) under the MESD oversees and manages the privatisation of state property.[181] Namely, the NASP exercises the rights related to the privatisation of state property, transfer with the right of use of state property and managing companies established with government shareholdings.

The rules and procedures governing state-owned property and privatisation are defined by the Law of Georgia on State Property,[182] which regulates relations concerning the management, administration and transfer into use of the state property of Georgia. The law also defines the term "privatisation" as "the acquisition of title to state property by natural and legal persons or by their associations as provided for by this law by electronic and/or public auctions, direct sale, competitive direct sale and the transfer of title free of charge, as well as through a trade outlet or a third person, and also by the acquisition of an ownership interest or shares or share certificates directly or through an intermediary, by public or private offer or any other form of offer corresponding to the practice established at a recognised foreign stock exchange or in international capital markets for the given period." Information about privatisation through auctions, along with the annual report of the Agency is published on the NASP's website (http://nasp.gov.ge). The agency is directly accountable to the MESD.

Article 16 of the Local Government Code of Georgia[183] defines the competences of municipal bodies, including managing property in the ownership of the municipality, handling the use of natural resources in the municipality (i.e. water, forests and other resources), conducting territorial-spatial planning and adopting documents (general plan) for urban and territorial planning, and issuing construction permits and overseeing construction. While not all property located in municipalities is under the ownership of the municipality and is owned by the MESD, local governments (legislative body "Sakrebulo" and the executive Mayor's offices) often address the NASP with requests to transfer given property into their ownership. The Law of Georgia on Privatisation of State-Owned Property, Privatisation of the Property Owned by Self-Governing Units, and Transferring the Rights to Use[184] regulates the privatisation process. Article 4 of the law lists the type of state-owned property that shall not be privatised, including but not limited to water resources, forests, natural reserves, airspace, objects having official historic/cultural status, and more.

Construction projects are overseen by the MRDI and its subordinate bodies, as well as individual municipal bodies depending on the project.[185]Information on construction projects is published on the MRDI's website (build.gov.ge), linking each project to the procurement website (procurement.

181. Ordinance N 391 of the Government of Georgia on the "Adoption of the Statute of the National Agency of State Property" (adopted and published: 17/09/2012, latest amendments: 10/04/2018),latest version available in Georgian: https://matsne.gov.ge/ka/document/view/1744350?publication=13

182. Law of Georgia on State Property (N 3512, adopted: 21/07/2010, published: 09/08/2010, last amended: 20/07/2018), latest version available in Georgian: https://matsne.gov.ge/ka/document/view/112588?publication=34

183. Local Government Code of Georgia (N 1958-IIS, adopted: 05/02/2014, published: 19/02/2014, last amended: 31/10/2018), latest version available in Georgian: https://matsne.gov.ge/ka/document/view/2244429?publication=39

184. The Law of Georgia on Privatisation of State-Owned Property, Privatisation of the Property Owned by Self-Governing Units, and Transferring the Rights to Use N 743, adopted on 30/05/1997, published on 09/07/1997, latest version (last amended: 21/07/2010) available in Georgian: https://matsne.gov.ge/ka/document/view/29920?publication=35

185. Ordinance of the Government of Georgia N 385 on the "Adoption of the Statute of the Ministry of Regional Development and Infrastructure" (adopted: 30/07/2018, published: 31/07/2018, last amended: 06/11/2018) latest version available in Georgian: https://matsne.gov.ge/ka/document/view/4279362?publication=1

gov.ge), where detailed information is provided including the agreement with the company, construction plans and more.

The State Audit Office of Georgia is an independent institution responsible for supporting the Parliament of Georgia in conducting oversight of the executive branch. The functions of the SAO include conducting external audit of the public sector, monitoring party financing and providing recommendations to Parliament.[186]The SAO is regulated on the basis of the Constitution of Georgia[187] and the Law of Georgia on State Audit Office.[188] Article 3 of the law guarantees the independence of the SAO and forbids any type of interference in or influencing of the work of the agency, whereas Article 5 underlines the principles that the SAO should operate on, namely: objectivity, independence, transparency[189] and professionalism. The Auditor General, the head of the agency, is appointed by the Parliament of Georgia for a five-year term. The SAO is accountable to the Parliament of Georgia. The report on the SAO's work on public spending at the national level is presented to the Parliament annually, whereas the report on budgetary spending at the local level is presented every two years.[190] The SAO is authorised to conduct audits of budgetary institutions (including performance and financial audit), oversee party funding, provide expert input on drafts on primary and secondary legislation regulating the areas of finance and economics, submit proposals to the Parliament of Georgia on improving tax legislation, and receive corruption complaints from citizens and transfer them to the prosecution service for further investigation.

International assessments[191]commend the operations of the SAO, including the success of budgetmonitor.ge, which was developed and launched under Georgia's Open Government Partnership (OGP) National Action Plan (NAP) for 2016-2018 and received a Global Initiative of Fiscal Transparency (GIFT) award as an Innovative Web Platform for Transparency and Citizens' Involvement at the US Open Governance Partnership Regional Meeting.[192]

The procurement.gov.ge website has been also commended as a useful tool for ensuring the transparency of upcoming tenders and existing procured deals. However, several recommendations remain to be addressed, including: 1) reducing the number of simplified procurement processes (despite the SPA's introduction of an extra step requiring the approval of requests for simplified procurement), 2) reducing the volume of secret procurement, 3) requiring subcontractors to submit information for greater

186. State Audit Office, official webpage, accessed 10 August 2017,http://sao.ge/about-us/office-structure-and-functions.

187. Constitution of Georgia N 786, adopted on 24/08/1995, published on 24/08/1995, latest version (last amended on 23/03/2018) available in English: https://matsne.gov.ge/en/document/view/30346?publication=35

188. The Law of Georgia on State Audit Office N 880 adopted and published on 15/01/2009, the latest version (last amended on 05/09/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/17506?publication=15

189. The Georgian term "sajarooba" is seldom translated as "publicity," which does not reflect its actual meaning. The term denotes making the work of the agency more transparent to the public.

190. Article 31 of the Law of Georgia on State Audit Office

191. World Bank Group, "Public Expenditure and Financial Accountability (PEFA) Assessment 2017," June 2018, https://pefa.org/sites/default/files/GE-Jun18-PFMPR-Public%20with%20PEFA%20Check.pdf

192. State Audit Office of Georgia, "Budget Monitor" received GIFT award, 22 November 2017, accessed on 28 November 2018, https://sao.ge/en/news/951

transparency, 4) providing all information published on the website in machine-readable format, 5) ensuring the transparency of sub-contractors and 6) improving the work of the Dispute Resolution Board, whose non-governmental members are working without compensation.[193]Additionally, the OGP Independent Reporting Mechanism (IRM) calls for the adoption of Open Contracting Data Standard (OCDS).[194]

With regards to privatisation of state property, concerns exist regarding individual cases of privatisation that might include signs of corruption. For more information see Transparency International Georgia's analysis "Signs of Corruption in Land Privatisation Process in Gardabani Municipality."[195]

INTERNATIONAL LEGAL FRAMEWORK AND INSTITUTIONS

58 **Please provide succinct information on adherence to relevant international conventions (e.g. the UN Convention against Corruption, the Council of Europe Civil and Criminal Law Conventions on Corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and the OECD Conventions on Combating Bribery of Foreign Public Officials in International Business Transactions and on Bribery in International Business Transactions).**

The abovementioned and other relevant international agreements related to corruption, came into force for Georgia after the adoption of the following legislative acts:

- Resolution N337of the Parliament of Georgia on the Accession to the United Nations Convention against Corruption;[196]
- Resolution of the Parliament of Georgia N3200 on the Ratification of the United Nations Convention against Transnational Organised Crime;[197]
- Resolution N3956 of the Parliament of Georgia on the Ratification of the CoE Criminal Law Convention on Corruption[198] and Resolution N872-RS of the Parliament of Georgia on the

193. OECD ACN "Anti-corruption Reforms in Georgia," 2016, http://bit.ly/2CwbgyT

194. OGP Independent Reporting Mechanism (IRM) Mid-Term Report 2016-2018, https://www.opengovpartnership.org/report/georgia-mid-term-report-2016-2018-year-1

195. Transparency International Georgia, "Signs of Corruption in Land Privatisation Process in Gardabani Municipality," 19 June 2017, https://www.transparency.ge/en/blog/signs-corruption-land-privatisation-process-gardabani-municipality

196. Ordinance N 337 of the Parliament of Georgia on the Accession to the United Nations Convention against Corruption (adopted: 10/10/2008, published: 16/10/2008) available in Georgian: https://matsne.gov.ge/ka/document/view/45454?publication=0

197. Resolution of the Parliament of Georgia N 3200 on the Ratification of the United Nations Convention against Transnational Organised Crime (adopted: 07/06/2006, published: 15/06/2006); https://matsne.gov.ge/ka/document/view/43852?publication=0

198. Resolution of the Parliament of Georgia N 3956 on the Ratification of the CoE Criminal Law Convention on Corruption (adopted on 14/12/2006, published on 20/12/2006) available at: https://matsne.gov.ge/document/view/44002?publication=0

Ratification of the Additional Protocol of the CoE Criminal Law Convention on Corruption;[199]

- Resolution N2109 of the Parliament of Georgia on Ratification of the CoE Civil Law Convention on Corruption;[200]
- Resolution of the Parliament of Georgia N1460-IS on Ratification of the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;[201]
- Resolution N2143 of the Parliament of Georgia on the Accession to the European Convention on Mutual Assistance in Criminal Matters[202] and its Additional Protocols;[203]
- Agreement on Cooperation among the Governments of GUAM Participating States in the Field of Combat against Terrorism, Organised Crime and Other Dangerous Types of Crimes and its Protocol;
- Resolution N117 of the Parliament of Georgia on Ratification of the Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organised Forms and its Additional Protocol.[204]

One important international convention that Georgia has not signed yet is the Convention against Bribery by Public Officials during International Business Transactions, which is deemed to be a key anti-corruption document towards the "supply side" of corruption transactions. Furthermore, based on the agenda of the Association Agreement with the EU, Georgia has recognised different standards of the OECD and ratification of this Convention would be a step forward towards fighting corruption in the business sector.[205]

59 **What are the practical implications of implementation of the abovementioned international conventions including internal measures and anti-corruption strategies and initiatives to improve international anti-corruption cooperation (e.g. International Anti-Corruption Agency)?**

199. Resolution N 872-RS of the Parliament of Georgia on the Ratification of the Additional Protocol of the CoE Criminal Law Convention on Corruption (adopted on 27/07/2013, came in on 01/05/2014) available at: https://matsne.gov.ge/document/view/1980303?publication=0

200. Resolution N 2109 of the Parliament of Georgia on Ratification of the CoE Civil Law Convention on Corruption (adopted on 24/04/2003, published on 15/05/2003) available at: https://matsne.gov.ge/document/view/41788?publication=0

201. Resolution of the Parliament of Georgia N 1460-IS on Ratification of the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (adopted on 04/10/2013, published on 15/10/2013) available in Georgian: https://matsne.gov.ge/ka/document/view/2046451?publication=0

202. Resolution of the Parliament of Georgia N 2143 on the Accession to the European Convention on Mutual Assistance in Criminal Matters (adopted on 23/06/1999, published on 09/07/1999) available in Georgian: https://matsne.gov.ge/ka/document/view/39622?publication=0

203. Resolution of the Parliament of Georgia N 1462-IS on the Ratification of the Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Matters (adopted on 04/10/2013, published on 5/10/2013) available at: https://matsne.gov.ge/ka/document/view/2046396?publication=0

204. Resolution N 117 of the Parliament of Georgia on Ratification of the Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organised Forms and its Additional Protocol (adopted on 11/03/2005, published: on 22/03/2005), https://matsne.gov.ge/document/view/42934?publication=0

205. Assessment by CiDA – Civil Development Agency

Georgia is a signatory of numerous international documents related to the fight against corruption (for the full list, see question 58). Simultaneously, Georgia has adopted anti-corruption legislation and accompanying mechanisms, including the laws presented in question 47, and preventive and oversight mechanisms, such as publication and monitoring of asset declarations, whistleblower protection, conflict of interest provisions, provisions to prevent "revolving doors," adoption of codes of ethics, training of public employees and more. Most of the reforms implemented in Georgia on anti-corruption issues thus far, including but not limited to changes in the Criminal Code of Georgia[206]that criminalise different types of corruption and define their scope, are in response to key international conventions that the country adheres to, such as UNCAC and Criminal and Civil Conventions of the Council of Europe. Namely, in order to better correspond with international standards, the following legislative amendments were made to the Criminal Code of Georgia: revision of the definitions of such types of crime as passive/active bribery, commercial bribery and trading in influence. In addition, the definitions of "public servant" and a person equivalent to him/her have been amended, the liability of legal entities for corruption crimes has been specified, and the concept of plea-bargaining has been improved. Additionally, a number of jurisdictional issues have been clarified and the mechanism of exemption from punishment in case of effective regret has been established (refer to questions 50 and 60).

Specific measures to implement international conventions in response to GRECO's recommendations are presented in question 60. Additionally, upon signing the Association Agreement (AA) with the EU in 2013, Georgia committed itself to "the rule of law, good governance, the fight against corruption, the fight against the various forms of transnational organised crime and terrorism, the promotion of sustainable development, effective multilateralism and the fight against the proliferation of weapons of mass destruction and their delivery systems."[207] One of the main challenges identified in the AA is the creation of a transparent professional civil service, which Georgia adhered to by launching the Civil Service Reform and by adopting necessary legislation for transparent and merit-based competition for posts in civil service and standardised remuneration. For more information, see question 41 of this questionnaire. While some progress is noted, the remaining challenges include the need for improving legislation on access to information, ensuring judicial independence, separating the Anti-Corruption Agency from the State Security Service, and effectively investigating high-level cases.[208]

60 When did Georgia become a member of the Council of Europe Group of States Against Corruption (GRECO) and what measures have been taken to implement GRECO recommendations? (For questions related to money laundering – see also chapter 4 (Free Movement of Capital); public procurement see also chapter 5 (Public Procurement); and fight against organised crime see also chapter 24 (Justice, Freedom and Security)).

206. Criminal Code of Georgia N 2287, adopted on 22/07/1990, published on 13/08/1990, latest version (last amended on 21/07/2018) available in Georgian: https://matsne.gov.ge/ka/document/view/16426

207. EU/Georgia Association Agreement, http://bit.ly/2DWGdNp

208. European Parliament, Report on the implementation of the EU Association Agreement with Georgia (2017/2282(INI)), 15/10/2018, http://bit.ly/2QwMKFk

Georgia became a member of GRECO in 1999. Since the accession, four evaluation rounds have been conducted to assess Georgia's process in implementing anti-corruption mechanisms. Each round of monitoring focuses on different anti-corruption legislation and measures.

The First Evaluation Round (2000) focused on independence, specialisation and means available to national bodies engaged in the prevention of and fight against corruption, and the extent and scope of immunities. In response to recommendations put forward in the First Evaluation Round, Georgia adopted the National Anti-Corruption Strategy, put in place mechanisms for challenging decisions or acts by administrative bodies and thus, provided complaints mechanism, created an inter-agency coordination mechanism to tackle corruption, and established the asset declaration disclosure requirement along with a monitoring mechanism. As the First Evaluation Round began in 2000 and was concluded in 2007, a significant number of steps were taken in subsequent years that went beyond the GRECO recommendations. For more information on this specific evaluation round, see GRECO First Evaluation Round compliance reports on Georgia.[209]

The Second Evaluation Round (2006) assessed public administration and corruption, tax and financial legislation against corruption and the links between corruption, organised crime and money laundering. GRECO reported that 13 out of 14 recommendations were implemented satisfactorily thanks to legislative changes with the entry into force of the Law on Civil Service and the Law on Conflict of Interest and Corruption in Public Institutions, which provided more protection to individuals reporting corruption, provisions on access to information, and practical measures such as trainings on access to information for responsible individuals in charge of responding to information requests and on corporate criminal liability for prosecution and judges among other measures,. For more detailed information on progress, see compliance reports for Second Evaluation Round.[210]

The Third Evaluation Round (2010)[211] focused on the transparency of party funding and incriminations. With regards to incriminations, all five recommendations were implemented satisfactorily, including the introduction of amendments to the Criminal Code to expand the scope of bribery to instances when the bribe is not of advantage to the bribe-taker but to a third person, as well as to expand the application of trading in influence clause to include benefit for third parties. Additionally, in response to the third recommendation, the Government of Georgia signed the Additional Protocol to the Criminal Law Convention on Corruption,[212] which covers bribery of foreign arbitrators and foreign jurors. Regulations on exemption from punishment in case of effective regret have also been added to several articles in the Criminal Code of Georgia. With regards to party financing, three recommendations were implemented satisfactorily, while seven remained partially implemented. Among the implemented recommendations, are: taking measures to extend the period of reporting for election subjects to ensure that all financial transactions are adequately reflected, maintaining all financial documentation relating to the funding for an appropriate period of time, as well as introducing appropriate auditing standards to

209. GRECO, First Evaluation Round, Compliance Report on Georgia 2003, http://bit.ly/2PUaALU, and Addendum to the Final Overall Assessment Report on Georgia 2007, http://bit.ly/2R8dY2d

210. GRECO, Second Evaluation Round, Compliance Report on Georgia 2009, http://bit.ly/2PRU3I9

211. GRECO, Third Evaluation Report (2010), Compliance Report (2013), and Second Compliance Report (2015), https://www.coe.int/en/web/greco/evaluations/round-3

212. Council of Europe Portal, Chart of signatures and ratifications of Treaty 191, accessed on 25 November 2018, http://bit.ly/2DWzxzW

ensure the independence of auditors of party funding. For a detailed account, see the Compliance Report[213] and Second Compliance Report of the Third Evaluation Round.[214]

The focus of the fourth round of evaluation is corruption prevention with respect to MPs, judges and prosecutors.[215] The evaluation report put forward the following recommendations:

With regard to the Parliament: (1) Increasing the transparency of parliamentary legislative process, (2) Adopting a code of ethics, which will be publicly available, and complementing it with practical measures for implementation, and (3) Introducing an ad hoc disclosure requirement when conflicts of interest arise between an MP and their personal interests, along with accompanying rules and monitoring procedure.

With regards to judges: (1) Reforming the recruitment process of judges for greater transparency, (2) Adopting safeguards in legislation on the transfer of judges to avoid possible misuse, (3) Introducing objective and transparent case allocation, (4) Updating the Norms of Judicial Ethics, and complementing it with practical measures for implementation, (5) Taking necessary measures to increase the effectiveness, transparency and objectivity of disciplinary proceedings against judges and (6) Ensuring the "functional immunity" of judges, i.e. limiting the immunity of judges to activities related to judicial decision-making.

With regard to prosecutors: (1) Keeping prosecution service reform under review, and further reducing influence on the appointment of the Chief Prosecutor and the work of the Prosecutorial Council, (2) Improving procedures for recruitment and promotion of prosecutors and ensuring transparency of the procedure, (3) Introducing clear criteria for assignment/withdrawal of cases, as well as ensuring that such decisions are justified in writing, (4) Updating the Code of Ethics for Employees of the Prosecution of Georgia and supplementing it with practical measures for implementation, (5) Widening the application of the requirement to fill out asset declarations to include all prosecutors and (6) Adopting more precise definitions of disciplinary offences and ensuring proportionality of sanctions.

Regarding all categories: Ensuring effective monitoring of asset declarations, including providing appropriate resources and competences to the CSB, which is responsible for the monitoring.

While the following Compliance Report has not yet been published, the Government of Georgia took some measures to address GRECO's recommendations. Parliament adopted the Code of Ethics by Ordinance N3684 of the Parliament of Georgia on 31/10/2018.[216] Additionally, random case allocation in courts was introduced in the Organic Law on Common Courts of Georgia.[217] (For more information on the reform of the judiciary, please see the response to question 4 in the Judiciary section). Additionally, monitoring of asset declarations was adopted in 2017. See more detailed information on the regulations and practice in question 51 of the questionnaire.

213. GRECO, Third Evaluation Report, Compliance Report 2013, http://bit.ly/2RcFknU

214. GRECO, Third Evaluation Report, Second Compliance Report on Georgia 2015, http://bit.ly/2Rh9mah

215. GRECO, "Fourth Evaluation Round: Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors," 17 January 2017,http://bit.ly/2OwziRE

216. Ordinance of the Parliament of Georgia N 3684 on the "Adoption of the Code of Ethics for Members of the Parliament of Georgia" adopted on 31/10/2018, available in Georgian:https://info.Parliament.ge/file/1/BillReviewContent/205673?

217. Article 581 of the Organic Law of Georgia on Common Courts N 2257, adopted on 04/12/2009, published on 08/12/2009, latest version (last amended on 31/10/2018) available in Georgian:https://matsne.gov.ge/ka/document/view/90676?publication=30

III

CHAPTER

FUNDAMENTAL RIGHTS

Human Rights

RIGHT TO LIFE AND TO THE INTEGRITY OF THE PERSON

61 **Please provide an overview of legislation and case law relevant to the right to life (Art. 2 of the Charter of Fundamental Rights of the EU and Art. 2 of the European Convention on Human Rights). Also provide an overview of national legislation, ratification of international treaties, case law and custom/practice relating to the death penalty. How does your legislation cover extrajudicial killings and crimes in the name of honour? What are the practical results in investigating such crimes?**

- Right to life

Article 10 of the Georgian Constitution provides that life is an inviolable human right and shall be safeguarded by law and determines that no one shall be condemned to the death penalty. The right to life is protected by a series of international and regional treaties for the protection of human rights. Georgia signed Protocol 6 on the abolition of the death penalty in time of peace on 17 June 1999. It entered into force for Georgia on 1 May 2000. On 3 May 2002, Georgia signed Protocol 13 on the abolition of the death penalty in time of war. It entered into force on 1 September 2003. In addition, on 22 March 1999, Georgia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights abolishing the death penalty. The latter entered into force for Georgia on 22 June 1999. The right to life is the main human right, which is a logical prerequisite to all other rights. At the same time, the European Commission of Human Rights considers that (a) States are obliged to take relevant steps to protect life (No. 7154/75, Dec. 12.7.78. D.R. 14, p. 31 (32-33).) and so (b) Article 2 gives rise to positive obligations on the part of the State (No. 9348/81, Dec. 28.2.83. D.R. 32, p. 190 (199-200)).

- Death penalty

Article 10 of the Georgian Constitution provides that no one shall be condemned to the death penalty.

- Unlawful deprivation of freedom[218]

Homicide, either premeditated or committed in aggravating circumstances, is ranked as one of the most serious crimes. Custodial sentences of various lengths are prescribed for such crimes as premeditated murder committed in a state of sudden extreme mental agitation, premeditated murder by a mother of her new-born child, death caused by negligence and driving a person to

218. The Criminal Code of Georgia contains a section on crimes against the person, which includes chapters on crimes against life (Articles 108-116) and threats against the life and health of the person (Articles 127-135). The Code classifies as criminal offences acts of violence against individuals and prescribes appropriate penalties for such offences.

suicide. Under the legislation, a thorough and effective investigation is to be performed in all murder cases. Pursuant to Georgian legislation, it is the Prosecutor's Office (not the bodies of the Ministry of Internal Affairs) that must investigate cases linked to murders.

- *Health protection*

Legislative framework

The Law of Georgia on Healthcare (adopted 10/12/1997 N1139) regulates the relations between state authorities and natural and legal persons in the field of healthcare of citizens. The legislation of Georgia in the field of healthcare comprises the Constitution of Georgia, treaties and international agreements of Georgia, the Law of Georgia on Healthcare and other legislative and subordinate normative acts.

According to Article 15 (adopted 10/12/1997 N1139; Amended 05/07/2018 N3094), the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia shall ensure the implementation of the state healthcare policy and shall develop and issue respective legal acts on issues within the scope of its authority, unless otherwise determined by the legislation of Georgia.

In Georgia, the Law on Health Protection and the Law on the Rights of the Patient (adopted 5/5/2000 N283) guarantee the right of all citizens to have access to medical services. Article 41(2) (adopted 5/5/2000 N283 and amended 28/05/2015 N3609) of the Law on the Rights of the Patient states that "health services shall be provided to a minor under 16 only [with the] consent of his/her parents or legal representative." However, Article 40(2) (adopted 5/5/2000 N283) provides some exceptions for adolescents aged 14 to 18, who can consult healthcare providers for "the treatment of sexually transmitted disease[s] or drug abuse or for counselling about nonsurgical methods of contraception or for abortion." In this case, a patient has the important right of informed consent and is allowed to obtain reproductive health services confidentially. The law also permits termination of pregnancy within the first 12 weeks of pregnancy. It should be performed by a doctor in a licensed medical facility with the written consent of the woman. The law imposes additional legal requirements for an abortion after 12 weeks.

Environment Protection

The Law of Georgia on Protection of the Environment (adopted 10/12/1996 N519) regulates the legal terms between the bodies of state authority and natural and legal persons (regardless of the kind of property or organisational and legal type) in the sphere of protection of the environment and use of natural resources (hereinafter " environmental protection") all over the territory of Georgia, including its territorial waters, airspace, continental shelf and free economic zone. The laws governing environmental protection include the Constitution of Georgia, international treaties and covenants of Georgia, the Law on Protection of the Environment and other legislative and regulatory enactments.

The Law of Georgia on Protection of the Environment aims to protect and preserve the environment for the safety of human health; provide for the protection of the environment from the negative effect; preserve and improve the environment; create the optimal balance (harmony) among ecological, economic and social interests of the public; manage the use of natural resources in accordance with the principles of probable and stable development of the environment.

Under Georgian law, a citizen is entitled to:

a. live in the healthy environment;
b. use the natural environment;
c. obtain complete, impartial and timely information of the state of his/her working and living surroundings;
d. receive environmental and ecological education to improve his/her knowledge of the environment;
e. associate in public organisations for environment protection;
f. take part in the consideration and making of significant decisions in the sphere of environmental protection;
g. receive compensation for incurred damages caused by the non-compliance with the requirements of the Law of Georgia on Protection of the Environment;
h. by order of the court, require the reconsideration of decisions on the location, planning, construction, reconstruction and operation of ecologically dangerous projects.

Use of firearms

Issues relating to the use of firearms by law enforcement personnel are governed by Article 34 of the Law on Police (adopted 4/10/2013 N1444). A police officer is authorised to use firearms as a means of last resort:

a) in order to protect a person and himself/herself, when life and/or health is endangered;
b) in order to free persons illegally deprived of their liberty;
c) in order to prevent the escape of a person detained for a violent act or omission or especially grave crime,;
d) in order to suppress a violent crime, if a person shows resistance to a police officer;
e) in repelling an attack on a protected object, state organ and/or public organisation;
f) while protecting a person from attack by a dangerous animal;
g) in order to damage a vehicle with the aim to stop it, except for shooting from a moving vehicle at another moving vehicle, if the act of a driver poses a real threat to the life and/or health of a person and the driver does not comply with repeated requests of a police officer to stop the vehicle.

Alongside the Law on Police, Georgian police is committed to strict observance of the principles prescribed by the Georgian Police Code of Ethics, taking into consideration that:

- Georgia is a democratic state, recognising the principle of the rule of law;
- People aspire to the idea of building a just state, to ensure maximum protection of its freedom within the framework of necessary and fair restrictions under the law;
- Police is a state agency that serves the public and by enforcing the law ensures every citizen`s liberty and security;

- The principle of the rule of law is the cornerstone of Georgian police activities;
- Police, being an agency serving the public, is accountable thereto.

The Code of Ethics establishes the main principles of police ethics and the rules of conduct in accordance with the United Nations Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, international legal acts against torture, inhuman and degrading treatment or other forms of punishment, the basic provisions of the European Code of Police Ethics and other international and national legal acts. The observation thereof is obligatory for a police officer while on duty as well as during other activities, including when off duty. The objective of the Code of Ethics is to strengthen police officers' loyalty to ethical norms and high moral values and deepen the sense of responsibility towards work-related duties. The Police Code of Ethics applies to all police officers employed within the MIA system. The police officer is obliged to observe the Code not only in Georgia but also beyond its borders.

Armed forces

The Georgian Armed Forces is the name of the unified armed forces of Georgia.

Missions and functions of the GDF[219] are defined by the Law on Defence and include such objectives as protection of independence, protection of the territorial integrity and fulfilment of the international agreements. The GDF performs these functions under the direction and authority of the Minister of Defence, according to the principles of democratic civilian control. In order to fulfil the national interests of Georgia, the GDF has set forth the following missions:

- To maintain forces in a high state of readiness;
- To carry out political decisions made by the executive and legislative branches of the Georgian Government;
- To identify threats based on the current military-political situation;
- To develop the force structure of the GDF;
- To accomplish military cooperation in accordance with international treaties and agreements.

The Ministry of Defence of Georgia is an executive agency established in conformity with the Georgian Constitution and Law on the Structure, Authority and Activity of the Georgian Government (adopted 11/02/2004 N3277). The Defence Ministry carries out the state policy in the field of defence within its sphere of competence as determined by the applicable legislation of Georgia. The Ministry of Defence is headed by the Defence Minister. He is accountable to the President of Georgia, the Supreme Commander-in-Chief and the Government of Georgia. The mission of the Ministry of Defence is to develop the Georgian armed forces and ensure their combat and mobilisation readiness, to enhance defence capabilities as well as to repel any attempt of aggression or infringement of the country's independence.

International and regional developments of the last few years have significantly changed the security environment of Georgia. Georgia maintains close relations with the world's leading democratic states. The support of these countries plays an important role in the development of a democratic Georgia.

219. https://mod.gov.ge/en

Georgia developed several acts and documents regarding defence policy:

- National security concept of Georgia;
- National military strategy;
- The threat assessment document;
- Strategic defence review;
- Minister's directives;
- White paper;
- Communication strategy;
- Major systems acquisition strategy.

62 What strategies and measures are in place to ensure the respect of the right to integrity of the person?

The Government of Georgia has adopted numerous strategies and appropriate measures for implementation of these strategies relevant to the respect of the right to personal integrity, and these are:

- National Human Rights Strategy 2014-2020;
- Human Rights Action Plan 2018-2020
- 2016-2017 National Action Plan of Georgia for Implementation of the UN Security Council Resolutions on Women, Peace and Security
- National Action Plan for 2018-2020 on the Measures to be Implemented for Combating Violence Against Women and Domestic Violence and Protection of Victims/Survivors
- Action Plan of the Government of Georgia on the Protection of Human Rights for 2016-2017
- 2017-2018 Action Plan for Combating Human Trafficking
- Action Plan for Persons with Disabilities 2014-2016
- Governmental Ordinance N622 on Approving Migration Strategy of Georgia 2016–2020
- Migration Strategy Action Plan for 2018 (as of 12/02/2018)
- The Action Plan of Migration Strategy of Georgia 2016-2017
- 2014-2020 State Concept of Healthcare System of Georgia for Universal Healthcare and Quality Control for the Protection of Patients' Rights

63 In the fields of medicine and biology, do precise rules exist which indicate what is and what is not permitted? Are these rules subject to a permanent monitoring process, in particular with regard to the right to integrity of the person?

There are several laws that which regulate human rights in the sphere of medicine in Georgia. The Law of Georgia on Healthcare (adopted 10/12/1997 N1139) regulates the relations between state authorities and natural and legal persons in the field of citizen healthcare. According to Article 4 of the law, the principles of the state healthcare policy are:

a) universal and equal accessibility of healthcare for the population within the limits of the state obligations provided for by state healthcare programmes;

b) protection of human rights and freedoms in the field of healthcare, and acknowledgement of the honour, dignity and autonomy of the patient;
c) independence of doctors and other medical personnel within the limits determined by the legislation of Georgia;
d) compliance of the healthcare system with the economic development strategy of the country and ensuring the system's manageability;
e) protection of patients in prisons or in places of detention, also those suffering from a disease, from discrimination during the provision of medical care;
f) introduction of universally acknowledged norms of medical ethics in the field of healthcare;
g) providing the population with comprehensive information on all existing forms of medical care and its availability;
h) contributing to cooperation with international healthcare organisations;
i) the State's responsibility for the volume and quality of healthcare services envisaged by mandatory healthcare insurance programme;
j) the priority of primary healthcare, including the priority of emergency medical care (and the participation of state and private sectors therein) and development of family medicine and the institute of the family doctor and ensuring the accessibility of healthcare services based on it;
k) the state's responsibility for certification of doctors, licensing of medical activities and issuing permits to medical institutions;
l) participation of the state, society, and each citizen in the promotion of healthy lifestyle practices and in the protection of living, working and recreational environments;
m) diversity of forms of ownership and legal-organisational forms in the field of healthcare services and their coexistence based on equal rights;
n) application of administrative sanctions envisaged by legislation for actions harmful to the health of the population;
o) programme-based and targeted programme-based healthcare state financing; the autonomy of the financial, economic and contractual relations and the management system to ensure self-financing and self-governance of public healthcare institutions as provided for by legislation;
p) state financing of biomedical and healthcare research according to existing resources and creation of favourable conditions for attracting financial resources from the private sector for this;
q) participation of professional associations, also other non-governmental organisations, in the formation of a modern and effective system of healthcare through consultations, scientific and professional discussions, developing projects, and participating in the protection of patients' rights.

Article 71(2) outlines the state's responsibility for environmental radiation monitoring and the radiation safety of the population.

The Law on Patients (adopted 5/5/2000 N283) aims to protect citizens' rights in healthcare, as well as to ensure the inviolability of their dignity and privacy. Legislation governing the field of citizens' healthcare rights in Georgia include: the Constitution of Georgia, international treaties and agreements to which Georgia is a party, the Law of Georgia on Healthcare, the Law on Patients and other legislative and regulatory texts.

The Law on Medical Practice (adopted 8/6/2001 N904) aims is to ensure appropriate professional education and practical training of independent medical practitioners, proper state supervision of their professional activity and protection of their rights, as well as to ensure high-quality medical services for the population of Georgia by introducing nationally recognised medical standards and ethical norms in the medical practice. The Law on Medical Practice regulates legal relations between independent medical practitioners and state authorities, as well as natural and legal persons. Article 15(4) requires that technical support and monitoring of a state-funded training of residents shall be provided by an appropriate agency of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Protection of Georgia as provided for by the legislation of Georgia.

Georgia joined the European Convention on Biomedicine and Human Rights, as well as the Additional Protocol to this Convention on the Protection of Human Rights and Dignity in Biology and Medicine of 1998 on the Prohibition of Human Cloning - Entered into force in Georgia 27/09/2000; Additional Protocol to the Convention on Human Rights and Biomedicine on the Transplantation of Human Organs and Tissues was ratified by the Working Committee of the Parliament of Georgia Resolution 1677-I of September 27, 2002.

PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

64 **Please provide information on specific national legislative as well as administrative and technical measures designed to prevent the occurrence of torture, inhuman or degrading treatment or punishment in state institutions, prisons or police stations etc. In this respect, what measures are in place providing for the inspections of detention centres or police stations and how often do such inspections take place? Is legal redress foreseen for victims?**

The Constitution of Georgia[220] prohibits torture, cruel, inhuman or degrading treatment and the application of such punishment. It also stipulates the inviolability of human honour and dignity and prohibits the physical or mental coercion of a detainee or a person whose liberty has been otherwise restricted. The new Constitution of Georgia also stipulates the inviolability of human dignity and the positive obligation of the state to protect it. It also prohibits torture, and inhuman, degrading treatment and punishment.[221] Article 10 protects human life and the physical integrity of persons.

220. Constitution of Georgia, N 786, adopted on 24/08/1995, art. 17

221. Constitution of Georgia (2017), art. 9 (to be effective after the inauguration of the president following 28 October presidential elections)

Article 39 of the Criminal Code[222] stipulates that the purpose of a sentence shall not be the physical torture or humiliation of a person. The Criminal Code[223] stipulates criminal responsibilities for crimes of torture and other ill-treatment. Specifically, Article 144^1 defines torture as exposing a person, or a third person to such conditions or treating him/her in a manner that causes severe physical pain or psychological or moral anguish, and which aims to obtain information, evidence or confession, threaten or coerce, or punish the person for the act he/she or a third person has committed or has allegedly committed (punishable by seven to 10 years of imprisonment). This act committed by an official or a person holding equivalent position or by abusing the official position is an aggravating circumstance, punishable more severely, i.e. imprisonment for a term of nine to fifteen years, with deprivation of the right to hold public office or carry out activities for up to five years. Torture committed through sexual abuse, or the act committed by an organised group, or the one resulting in death, is considered a particularly grave crime punishable for a term of twelve to twenty years or life imprisonment, with the deprivation of the right to hold public office or to carry out activities for up to five years. The threat of torture is stipulated by Article 144^2 of the Criminal Code of Georgia, punishable by a fine or imprisonment for up to two years. Article 144^3 stipulates a crime of humiliation or inhuman treatment, defined as humiliating or coercing a person, placing him/her in an inhuman, degrading and humiliating condition, which inflicts severe physical and psychological suffering on them, punishable by a fine or imprisonment for a term of three to seven years.

Two other articles used to bring officials who perpetrate crimes of torture to justice: Article 332[224](abuse of official powers) and Article 333[225](exceeding official powers). According to the Public Defender, these two articles are often erroneously used to bring perpetrators to justice for crimes of torture and ill-treatment.[226].

Georgia is a state party to both the UN Convention against Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment[227] (and has recognised the competence of the respective UN Treaty Body - the UN Committee against Torture)[228] and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[229] and is subject to visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Georgia ratified the Optional Protocol to the UN Convention against Torture (UN OPCAT)[230] and designated the Public Defender's Office as a National Preventive Mechanism (NPM) through amendments to the Organic Law on Public Defender. The

222. Criminal Code of Georgia (Law N 2287, adopted: 22/07/1999, published: Georgian Legislative Herald, 41(48), 13/08/1999, last amended: 14/12/2018)

223. Criminal Code of Georgia

224. Criminal Code of Georgia

225. Criminal Code of Georgia

226. Reports of the Public Defender of Georgia, 2015, 2016, 2017

227. Acceded to by the Resolution N 562 of the Parliament of Georgia (dated 22 September 1994), https://matsne.gov.ge/en/document/view/37378?publication=0

228. Resolution N 1493 of the Georgian Parliament, dated 7 July 2002, Legislative Herald of Georgia 63, 19/06/2002 URL: https://matsne.gov.ge/en/document/view/41422?publication=0

229. Ratified by the Resolution N 272 of the Parliament (dated 3 May 2000), Georgian Legislative Herald N 42 (11 May 2000) URL: https://matsne.gov.ge/ka/document/view/40300?publication=0

230. Entered into force for Georgia on 22/06/2006

NPM undertakes regular preventive and unannounced visits to all places of detention, including planned and ad hoc visits, and produces reports on the findings of these visits.

There are some legal and procedural safeguards against torture and ill-treatment provided in Georgian legislation, including the right to have access to legal counsel, to notify a relative of the admission of a detainee to a place of detention (police, prison), to access medical examination by an independent doctor, the right to be informed of one's rights and the right to file complaints. Detainees have the right to a lawyer, including in certain cases to free legal aid, provided by the state. Article 42.3 of the Constitution[231] guarantees the right to defence. According to Article 13.4. of the new Constitution,[232] a person shall be informed of his/her rights and grounds for arrest immediately upon being arrested and may request the assistance of a lawyer immediately upon being arrested. This request must be satisfied.

Article 38 of the Criminal Procedure Code[233] stipulates that upon detention, or if a person is not detained, immediately upon his/her recognition as the accused, also before any interrogation, the accused shall be informed that he/she may use the services of a defence counsel. The accused may choose a defence counsel and use his/her services, also may replace the defence counsel any time, or if he/she is indigent, defence counsel may be assigned to him/her at the expense of the state. The accused shall have a reasonable amount of time and means for the preparation of a defence. The relationship between the accused and his/her defence counsel shall be confidential. No restrictions may be imposed on communication between the accused and his/her defence counsel in such a way to impede the due performance of the defence.

According to information[234] provided by the MIA, detained persons, held in temporary detention isolators (TDIs) fully enjoy the right to contact their lawyers and to meet with them, without any limitations, at any time. Both remanded and convicted prisoners have the right to meet with their defence lawyers without any limitations or interference.[235] The staff of the penitentiary institution may monitor the meeting with a defence lawyer visually and without listening, using remote surveillance and visual recording equipment.[236] Correspondence of a prisoner with his/her lawyers is protected from being seized or inspected by the penitentiary institution[237].

The accused person may, upon detention or arrest, inform his/her family members or close relatives about the detention or arrest and about his/her location[238] and the detaining authority (police) shall provide such a possibility. Penitentiary institutions are obligated to notify a relative

231. Constitution of Georgia (1995)

232. Constitution of Georgia (2017), will come effective upon the inauguration of the new president, elected in October 2018 elections

233. Criminal Procedure Code of Georgia (Law N 1772, adopted: 09/10/2009, published: Legislative Herald of Georgia, N 31, 03/11/2009, last amended: 13/12/2018)

234. Letter N MIA 9 18 02999006 of the Ministry of Internal Affairs, dated 12/12/2018.

235. As stipulated by the Imprisonment Code, (Law N 2696, adopted: 09/03/2010, published: LHG, N 12, 24/03/2010, last amended: 09/08/2018) as well as Order N 157 of the Minister of Corrections (dated 2 November 2015)

236. Imprisonment Code of Georgia (2010), art. 18.

237. Ibid., art. 16.

238. Criminal Procedure Code (2009), art. 38.10

of a prisoner (either remanded and convicted) immediately or no later than one working day upon the admission of a person to the establishment.[239] If a prisoner so wishes, at his/her request, the prison administration is to notify another person or a lawyer.

Detainees also have the right to access a medical examination by a doctor. The accused may, upon detention or arrest, request a free medical examination and obtain the relevant written conclusion. This right of the accused shall be exercised immediately. The accused shall also be authorised, in accordance with the legislation of Georgia, to undergo a medical examination at any time and at his/her own expense with the participation of an expert of their choice.[240]The Imprisonment Code[241] provides for the medical examination of prisoners (remanded and convicted) upon admission to a penitentiary institution and preparation of a subsequent medical report to be included in prisoners' files, including documentation of any injury on the prisoners' bodies. The Code also stipulates mandatory medical examinations of prisoners with subsequent medical reports immediately after the application of security measures[242] and measures of restraint. Mandatory medical examination is also to be conducted when a prisoner is released from a penal institution or transferred to a different one.[243]

Order N131[244] of the Minister of Corrections sets out rules for the recording, documenting and photographing by doctors in prisons of injuries sustained by prisoners as a possible result of torture or other cruel, inhuman or degrading treatment, including sexual violence. The Ministerial Order also approves special forms to be used by doctors to record the disclosed injuries. The rules require medical confidentiality to be observed during these procedures, i.e. no third parties should be present, save for some exceptional circumstances, including as explicitly requested by a medical doctor.

The Order stipulates rules for the documentation of injuries that might later serve as medical evidence for investigations. This is in line with the requirements of the UN Istanbul Protocol.

> Article 6 of Order N131 falls short of the requirements of the Istanbul Protocol as it stipulates the responsibility of prison doctors to inform the investigative department of the Ministry of Corrections, and not an independent authority such as the Chief Prosecutor's Office, which is mandated to investigate crimes committed by law enforcement bodies. Investigation by an internal body of the Ministry cannot guarantee the institutional independence needed for the effective investigation of torture or other ill-treatment in the system allegedly committed by prison officers.

239. Imprisonment Code of Georgia (2010), art. 34.
240. Criminal Procedure Code of Georgia, art. 38.9
241. Imprisonment Code, Articles 24.2, 75, 120.1,
242. Imprisonment Code, art. 56
243. Ibid, art. 76.3
244. Order N 131 of the Minister of Corrections, dated 26 October 2016 on the approval of rules for the documentation of injuries of prisoners inflicted possibly as a result of torture and other cruel, inhuman, or degrading treatment in penitentiary institutions of the Ministry of Corrections of Georgia https://matsne.gov.ge/ka/document/view/3402759?publication=0

Order N423[245] of the Minister of Internal Affairs also contains provisions about the responsibility of doctors working in the temporary detention isolators (TDI) to conduct comprehensive documentation of injuries revealed during the medical examination of detainees upon their admission to a TDI. This procedure is to be undertaken while observing medical confidentiality and without the attendance of a third party, unless explicitly requested by the medical doctor. In the absence of a medical unit in TDIs, an ambulance medical brigade is called to examine detainees. In this case, documentation of injuries is undertaken by a shift officer of the isolator, based on medical conclusions provided by ambulance doctors.

> Similar to the Order of the Minister of Corrections, here too information about injuries is not directly communicated to the independent investigative authority, but rather to the head of isolator, who shall immediately relay this communication to the Chief Prosecutor's Office and General Inspection of the Ministry of Internal Affairs.

According to information[246] provided by the MIA, an additional mechanism to prevent torture and ill-treatment is to conduct medical examination of a detainee when transferring from a TDI with their informed consent. The Imprisonment Code[247] stipulates the obligation of a detention facility to immediately inform a detainee (an accused person) of their rights and obligations in a language understandable to them.

Prisoners are entitled to file complaints, including confidential ones. Complaints related to torture and inhuman and degrading treatment are considered special cases and are reviewed immediately.[248] The director of a prison facility or other authorised person and/or the Special Prevention Group shall be notified within 24 hours about a complaint related to torture and inhuman and degrading treatment.

In terms of technical measures applied, video surveillance systems operate in police and prisons. One of the purposes is to prevent torture and other abuse of detainees.

> However, on the other hand, security considerations by prison authorities prevail over the detainees' right to privacy, and the situation is a reflection of security versus dignity mode, particularly in prisons. So the use of surveillance for ensuring security overrides the principle of human dignity of prisoners and their right to privacy. According to the Ombudsman,[249] the decision to use visual and electronic surveillance with regard to prisoners is often not properly justified, especially in high-risk facilities. The Ombudsman and NPM have limited access to saved and archived video materials,

245. Order 423 of the Minister of Internal Affairs (dated 2 August 2016) on the approval of Model Regulation and Internal rules for temporary detention isolators under the Ministry of Internal Affairs

246. Letter N MIA 9 18 02999006 of the Ministry of Internal Affairs, dated 12/12/2018.

247. Imprisonment Code, art. 75.6

248. Imprisonment Code, art. 105

249. Public Defender of Georgia, Annual Parliamentary reports 2016 and 2017

> which are not saved for a sufficiently long time to allow for effective investigations into allegations of ill-treatment later on. In prisons surveillance recordings from CCTV cameras are kept only for five days, despite the Public Defender's recommendation to increase the length to 10 days.[250] Recordings of CCTVs are kept for 120 hours in police detention isolators despite the Public Defender's recommendation to increase this further to 20 days.

The General Inspectorate of the Special Penitentiary Service (formerly, the Ministry of Corrections) is in the process of reorganisation. Its functions are being redefined within the system of the Ministry of Justice.

The General Inspectorate of the Ministry of Internal Affairs oversees the legality of the actions of employees within the structure of the Ministry and responds to violations of the legislation, the commission of certain crimes and disciplinary violations.[251]The Inspectorate responds to applications and complaints filed by detainees by interviewing them and taking appropriate action. Also, the Department for Securing Temporary Detention under the MIA and specifically its Monitoring Service provides regular control over TDIs remotely and through planned and ad hoc visits. In 2017, 112 visits were undertaken to TDIs, and in 2018 – 116 visits.[252] The Monitoring Service works in coordination with the General Inspectorate of the MIA. Monitoring encompasses the following issues: discipline of TDI staff, degree of protection of detainees' rights, accuracy of registers and electronic database at isolators, legal education level of isolator staff, organisation of meals for detainees, sanitary-hygienic conditions in TDIs and security and safety.

Victims of torture have the same procedural rights as victims of other crimes. Only juvenile victims of torture and inhuman, degrading treatment have access to free legal aid, according to the Law on Legal Aid.

Order N1/196[253]of the Minister of Interior defined the limits on the number of persons per cell in TDIs (on average 2-3 detainees) to ensure a minimum of four square metres (European standard) per detainee.

There is an Interagency Coordination Council[254] for implementing activities against torture and other cruel, inhuman or degrading treatment and punishment. It is chaired by the Minister of Justice, who oversees the implementation of state strategy and national actions plans for combating torture and other cruel, inhuman, degrading treatment or punishment. The action plans contain information on activities to be undertaken by various responsible state agencies for fighting torture and ill-treatment in their respective fields.

250. Ibid.

251. Order N 123 of the Minister of Internal Affairs (dated 23 February 2015) on the approval of the statute for the Department

252. Letter N MIA 9 18 02999006 of the Ministry of Internal Affairs, dated 12/12/2018.

253. Order of the Minister of Internal Affairs, dated 30 April 2018, on defining maximum number of detainees in Temporary Detention Isolators

254. Established based on the Ordinance N 341 of the Government of Georgia (7 May 2014)

65 **Is there any independent body that oversees the conditions in such institutions? Give details on disciplinary and criminal sanctions for state agents accused of ill treatment or torture during the exercise of their duties. Please provide relevant statistics.**

The Public Defender (Ombudsman)[255] of Georgia oversees the protection of human rights on the territory and within the jurisdiction of Georgia, exposes violations of human rights and freedoms and fosters the restoration of rights.[256]As noted above (question 64), Georgia ratified[257] the Optional Protocol to the UN Convention against Torture in August 2015. In accordance with the OPCAT requirements, amendments[258] to the Organic Law on Public Defender in 2009 designated the Public Defender's Office as a National Preventive Mechanism (NPM).

To implement the NPM functions, a Special Preventive Group is established at the Public Defender's Office tasked with undertaking regular preventive visits to various places of detention, including prisons, police isolators, mental health hospitals, children's homes and elderly homes. During the visits, the Special Preventive Group examines the conditions and treatment of persons held therein, interviews them confidentially and examines relevant documentation.[259] Based on findings of inspections, the Public Defender is entitled to present legislative proposals/draft laws to Parliament and observations and recommendations to state and local government bodies, public institutions and officials with the aim of improving the human rights situation and the treatment and conditions of detainees.

The Special Preventive Group consists of staff members of the Department for Monitoring and Prevention under the Public Defender's Office and invited civil society experts, who undertake preventive visits based on the special authority granted by the Public Defender. They enjoy certain immunities associated with their mandate: Members of the Special Preventive Group are entitled not to give evidence about information that was disclosed to them in the exercise of the functions under the National Preventive Mechanism. They shall retain this right after termination of their powers as members of the Special Preventive Group. Post and telegraph correspondence and postal parcels belonging to a member of the Special Preventive Group may not be subject to seizure, inspection or confiscation.[260] The Public Defender and the NPM have been granted the right to take photos in penitentiary institutions based on the Order[261] of the Minister of Corrections.

According to the Statute of the Public Defender's Office, another unit of the Office, specifically the Criminal Justice Department, is responsible for responding to and following up on complaints submitted by prisoners and other detainees.

255. Organic Law on Public Defender of Georgia, N 230, adopted on 16/05/1996, Parliamentary Gazette, 13, 07/06/1996 art. 2

256. Ibid., art. 3.2.

257. United Nations Treaty Collection, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-9-b&chapter=4&clang=_en

258. Articles 3^1, 19 and 19^1

259. Articles 19 and 19^1, Organic Law of Georgia on Public Defender

260. Ibid., art. 19^1.

261. Order N 123, dated 1 September 2016.

The Public Defender presents an annual report on the human rights situation (including an NPM report on the situation in places of detention) to the Parliament of Georgia once a year.[262] Parliament also provides parliamentary oversight through the hearing of the Public Defender's/NPM's reports and organising hearings of those executive bodies that are responsible for following up on and implementing the Public Defender's recommendations addressed to them.

> Currently, the Public Defender's Office and its NPM represent the only independent body mandated to visit places of detention and examine conditions/treatment. There are no public oversight bodies in place.

Statistics on prosecutions[263]

144^1 – Torture
144^2 – Threat of torture
144^3 – Inhuman and degrading treatment

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Number of cases Initiated by type (2018)	0	1– 144^1 1– 144^3			7–144^3	2–144^1 1–144^3		3–144^1 2–144^3				
Number of cases closed by type (2018)							1–144^3					
Number of victims by type		1–144^1, 1– 144^3			1	1–1443	5–1443	1–1443				
Number of cases initiated by type (2017)	5–144^3	1–144^1	1–144^1	4–144^1	7–144^3		3–144^1	8–144^1			2–144^3	8– 144^1
Number of victims by type					7–144^3		23–144^3	1–144^1, 1–144^3	1–144^1		1–144^3	19– 144^3

According to the official statistics,[264] during 2013-2016 criminal prosecutions were initiated against 127 persons on facts of ill-treatment committed by employees of the penitentiary system and law enforcement bodies. In 2017 criminal prosecutions were initiated against 17 persons, including three police officers under Articles 333 (one person) and 144^3 (two individuals) and 14 employees of the penitentiary department (two people under Articles 144^1 and 144^3, 10 persons under Article 144^3 and two people under the Article 333).

262. Ibid., art. 22.

263. National Statistics Office of Georgia, Justice Statistics, http://geostat.ge/index.php?action=0&lang=eng

264. Report of the Chief Prosecutor, February 2018

Judicial statistics[265]on convictions:

Criminal Code Article	2014 Sept-Dec		2015		2016		2017		2018 (8 months)	
	Cases	People	Cases	People	Cases	People	Cases	People	Cases	People
144[1]	1	2								
144[2]									1	1
144[3]	2	3	2	3	1	2			5	16
332 (3c)					2	4				
333 (3b)			1	2	2	3	3	4	3	4
333 (3c)	1	1	1	1			3	5	1	1

In 2017, three people (officials) were acquitted under Article 144[1], two people under Article 333(3b) and one person under Art. 333(3c). In the first seven months of 2018, two people were acquitted under Article 333(3c).

PROHIBITION OF SLAVERY, SERVITUDE, AND FORCED OR COMPULSORY LABOUR

66 **Please provide information on specific national legislative, strategies as well as measures designed to prevent the occurrence of slavery, servitude and forced or compulsory labour**

The Legislative Framework

The Constitution of Georgia (hereinafter – "the Constitution") does not explicitly and separately prohibit slavery and servitude. However, the Constitution recognises the inviolability of personal dignity and obliges the state to take measures to protect it.[266] Furthermore, according to the Constitution, all persons are equal before the law and human liberty shall be protected.[267]In addition, according to the Article 26 of the Constitution, the freedom of labour should be guaranteed and everyone has the right to freely choose their employment, to strike and to establish and join trade unions in accordance with the organic law. The right to safe working conditions and other labour rights shall be protected by the organic law.

The Constitution empowers the President of Georgia to restrict or suspend the rights enshrined, *inter alia*, in Articles 13 and 26 across the entire territory of Georgia or in any part of it during a state of emergency or martial law.[268]According to the Constitution, the legislation of Georgia shall comply with the universally recognised principles and norms of international law. In addition, the international treaties to which Georgia is a signatory have precedence over domestic normative

265. Judicial statistics, provided by the Supreme Court of Georgia (dated 05/11/2018), N P-559-18

266. The Constitution of Georgia, art. 9(1). **Note**: the mentioned version of the Constitution of Georgia will be enacted as soon as the President of the country elected in subsequent elections will take the oath of office.

267. Ibid., arts. 11(1), 13(1).

268. Ibid., art. 71 (4). **Note:** the power of suspension of rights applies to paragraphs 2 to 6 of Article 13 and does not apply to paragraph 1 of the same Article, as well as Article 26.

acts as long as they are in compliance with the Constitution or the Constitutional Agreement of Georgia.[269] Therefore, on the one hand, the rights and freedoms of persons and, on the other hand, the obligations of the states enshrined in the international treaties are fully applicable at the national level (see, question 67).

The Criminal Code of Georgia contains several relevant provisions with regard to the prohibition of human trafficking. Specifically, the articles 143^1 – 143^3 of the Criminal Code criminalise human trafficking, child trafficking and using the services of victims (statutory victims) of human trafficking. According to the Criminal Code of Georgia, the term trafficking covers the purchase or sale of human beings or any unlawful transactions in relation to them, in addition to the recruitment, carriage, concealment, hiring, transportation, providing, harbouring or receiving of a human being for exploitation by means of threat, use of force or other forms of coercion, abduction, blackmail, fraud, deception, abuse of a vulnerable position, abuse of power or the means of giving or getting payment or benefits to achieve the consent of a person having control over another person. The term "exploitation" is defined by Article 143^1 of the Criminal Code as the following acts aiming at gaining material or other benefits: inducing a person to perform labour or other services; inducing a person to provide sexual services; engaging a person in criminal activities, prostitution, pornographic or other anti-social activities; removing, transplanting or otherwise using an organ, part of an organ or tissue of the human body by coercion or deception; or subjecting a human being to practices similar to slavery or to modern-day slavery. It should be emphasised that the consent of persons to his/her predetermined exploitation is not taken into account for the purposes of the articles prohibiting human trafficking.

Article 143^1 of the Criminal Code also sets the elements for the qualification of acts as modern-day slavery, which is connected with creating such conditions when the person performs certain work or renders services in favour of another person in return for payment, inadequate payment or with no payment and that person is not able to change these circumstances because of his/her dependence on that person. The dependence can be caused by, ***inter alia***: confiscation, control or intentional unlawful handling of personal identification documents; restriction of the right to free movement or control of free movement; restriction or control of communication with family members or other persons; or creation of a coercive or threatening environment.

Human trafficking is punished by imprisonment for a term from seven to twelve years with deprivation of the right to hold an official position or carry out a particular activity for up to three years. The charges are stricter in the case of aggravating circumstances. The highest level of charge is imprisonment for a term of fifteen to twenty years with deprivation of the right to hold an official position or carry out a particular activity for up to three years. Criminal charges against legal persons are articulated through the deprivation of the right to carry out its activities, liquidation or fine.

Article 143^2 of the Criminal Code prohibits child trafficking, which is punished by imprisonment from eight to 12 years with deprivation of the right to hold an official position or carry out a particular activity for up to three years. The highest level of charge is imprisonment for a term of 17 to 20 years with deprivation of the right to hold an official position or carry out a particular activity for up to three years or life imprisonment.

269. Ibid., art. 4(5).

Furthermore, Article 143[3] of the Criminal Code prohibits knowingly using such services of victims (statutory victims) of human trafficking, which constitutes exploitation and is punished by imprisonment from three to five years. Taking into account the aggravating circumstances, the strictest charge under this article amounts to imprisonment for a period of twelve to fifteen years, with deprivation of the right to hold the official position or carry out a particular activity for up to three years.

In addition, the Criminal Code of Georgia (Art. 322[1] – Breach of procedures for entry into the occupied territories; Art. 344 – Illegal crossing of the state border of Georgia; Art. 362 – Making, sale or use of a forged document, seal, stamp or blank forms; Art. 371 – Refusal of a witness or victim to give testimony) and the Administrative Offences Code of Georgia (Art. 172[3] – Prostitution and Art. 185 – Residing in Georgia in violation of the registration rules for Georgian citizens and aliens residing in Georgia) contain some provisions that exempt victims and/or statutory victims of trafficking from criminal or administrative liability if they committed the prohibited acts before acquiring the status of victim.[270] Furthermore, the Criminal Code of Georgia does not establish criminal liability for the concealment of a crime or failure to report a crime, ***inter alia***, for (1) an authorised person of an institution (shelter) that provides victims of human trafficking with services in accordance with the Law on Combating Human Trafficking; (2) a member of the permanent working group that is reviewing the issues of status granting to the victim of human trafficking and is operating under the Inter-Agency Coordinating Council for Implementing Measures against Human Trafficking; (3) a representative of the LEPL- State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking (except from the criminal acts directed against the minor); and (4) the operator of a free hotline consultation.[271]

Aside from the articles prohibiting trafficking, the Criminal Code contains some provisions that are contextually connected with the prohibition of trafficking (forced labour/labour exploitation). Namely, the Criminal Code of Georgia prohibits the act of coercion (Article 150); engagement in prostitution (Article 253); promotion of prostitution (Article 254) and illegal making or sale of a pornographic work or other items (Article 255).

Apart from the Criminal Code, the Law on Combating Human Trafficking ***(N2944, adopted 28/04/2006, published: legislative herald of Georgia, 15, 16/05/2006, last amended: 05/07/2018)*** represents one of the most important legislative acts with regard to the fight against trafficking (forced labour/labour exploitation). The law is designed to facilitate the prevention and eradication of human trafficking by protecting the rights of victims; to protect, support and rehabilitate victims; to define the specificity of the criminal prosecution of the abovementioned crime; to define principles for cooperation among the relevant stakeholders for preventing and combating human trafficking, as well as the protection, support and rehabilitation of victims.[272] Among other definitions, the law explains the term "forced labour" as any work or service associated with physical or mental coercion, use of threat, blackmail against the person or by abusing his/

270. According to the Criminal Code of Georgia, for the releasing from the criminal liability, the acts prescribed by the Articles- 322[1], 344, 362, shall be conducted by the person based on being the victim of trafficking, while according to Article 371, the victim of trafficking is discharged from the criminal liability for the term of reflection period.

271. Criminal Code of Georgia, arts. 375, 376.

272. Law of Georgia on Combating Human Trafficking, art. 2.

her helpless state.[273] Furthermore, the law defines the following main directions: mechanisms and state authorities responsible for preventing human trafficking; mechanisms for combating human trafficking; the legal protection, support and rehabilitation of victims or statutory victims (including, minors) of human trafficking; and international cooperation in the sphere of combating human trafficking.

The Law of Georgia on the Legal Status of Aliens and Stateless Persons ***(N2045-IIS, adopted: 05/03/2014, published: Legislative Herald of Georgia, 17/03/2014, last amended: 05/07/2018)*** foresees the issuance of a special residence permit to the alien, who is reasonably assumed to be a victim or statutory victim of the crime of human trafficking.[274]

In 2016, the Government of Georgia approved the rules for carrying out state monitoring aiming at preventing and responding to forced labour and labour exploitation (***N 112, adopted 07/03/2016, published: Legislative Herald of Georgia ,10/03/2016***).[275] In accordance with the abovementioned instrument, the basis for the planned and unplanned inspection of workplaces was defined, in parallel with the rules for the inspection and the main obligations of the inspection institution, as well as the rights and obligations of the employees and employers. For detailed information on the scope of the unit in charge of the labour inspection, please see the institutional framework sub-chapter

The Law of Georgia on Trade Unions (***N617, adopted 02/04/1997, published: Official Gazette of the Parliament of Georgia, 15-16, 26/04/1997, last amended: 20/07/2018***) regulates the rights of trade unions to protect and represent the labour and socio-economic rights and interests of workers. Namely, among other rights, the trade unions have power to exercise the public control over the status of employment, the implementation of measures covered by the labour legislation or employment agreements of the trade union members and to apply to the employers for the elimination of the violation of the law, as well as to monitor the performance of collective agreements.[276] In addition, the trade unions and federations (associations) of trade unions are entitled to protect the rights of its members to freely use their working opportunities, choose a profession and receive a fair wage at least taking into account the statutory minimum wage, as well as to participate in the process of establishing the labour rates, remuneration systems and the amount of salaries by setting out in the collective agreements.[277]

The Policy Framework

Various general and specific policy documents were elaborated in order to combat human trafficking (forced labour/labour exploitation). These instruments are as follows:

- State Programme of the Inspection of the Labour Conditions – Since 2016, the Government of Georgia annually adopts the abovementioned state programme. Among other aims,

273. Ibid., art. 3 (e).

274. Law of Georgia on the Legal Status of Aliens and Stateless Persons, art. 15.

275. Ordinance N 112 of the Government of Georgia on Approval of the Rules for the State Monitoring for the Prevention and Response to the Forced Labour and Labour Exploitation, 2016.

276. The Law of Georgia on Trade Unions, Arts. 12, 16.

277. Ibid., arts. 10, 11.

the programme is designed to prevent the violation of labour conditions and raise the awareness of employers and employees on the threat of human trafficking. The general allocation of the budget for the programme is incorporated into the relevant ordinances of the Georgian Government (2016 – 275,500 GEL/88,870 EUR; 2017 – 312,100 GEL/100,677 EUR; and 2018 – 870,500 GEL/280,806 EUR).[278]

- The Action Plan on Combating Trafficking in Human Beings (for 2017 – 2018)- The document consists of the following main directions: the development of the policy regarding human trafficking; the prevention of human trafficking; the protection of human trafficking victims; the effective prosecution of the crime of human trafficking; raising of the qualifications of the personnel working on the abovementioned issues; cooperation and internal coordination.[279] The action plan indicates which concrete state authorities are obliged to implement the specific activities set by the document, as well as the timeframes for their implementation.
- The National Human Rights Action Plans (for 2014-2015; 2016-2017 and 2018-2020) – The fight against trafficking is regulated by an independent chapter of the action plans. The general tasks of the Chapter on Trafficking concern the prevention of trafficking; the protection of victims; the effective criminal prosecution of trafficking; development of partnership in the sphere of fighting against trafficking.[280] The Trafficking Chapter of 2016-2017 Human Rights Action Plan also reflected the need to raise the qualification of the persons in charge of the inspection of labour conditions.[281]
- The Migration Strategy (for 2016-2020) and its Action Plan – This strategy describes the existing situation with regard to trafficking, especially in light of illegal labour migration, and sets the main strategic tasks in that regard. This is reflected in the tasks of the action plan for 2018, such as the refinement of the mechanisms for identifying human trafficking and carrying out effective criminal prosecution; the study of the protection of and support services for victims/statutory victims, analysis of the rehabilitation and reintegration programmes, monitoring and refinement; and activities to increase the qualifications of representatives of relevant stakeholders.[282]

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278. Ordinance of the Government of Georgia on Approval of the 2016 State Programme for the Inspection of Labour Conditions (***N19, adopted: 18/01/2016, published: Legislative Herald of Georgia, 21/01/2016, last amended: 13/10/2017***), Annex, art. 4(1); Ordinance of the Government of Georgia, on Approval of the 2017 State Programme for the Inspection of Labour Conditions (***N627, adopted: 29/12/2016, published: Legislative Herald of Georgia, 30/12/2016, last amended: 27/12/2017***), Annex, art. 4(1); Ordinance of the Government of Georgia on Approval of the 2018 State Programme for the Inspection of Labour Conditions (***N 603, adopted: 29/12/2017, published: Legislative Herald of Georgia, 29/12/2017, last amended: 08/06/2018***), Annex, art. 4(1).

279. The Action Plan on Combating Trafficking in Human Beings (for 2017-2018 years), Available at: http://justice.gov.ge/Ministry/Index/334.

280. Ordinance of the Government of Georgia on Adoption of the Governmental Human Rights Action Plan of Georgia (for 2014-2015 years) and Establishment and Adoption of the Statute of the Interagency Coordinating Council for the Governmental Human Rights Action Plan of Georgia (for 2014-2015 years) (***N445, adopted: 09/07/2014, published: Legislative Herald of Georgia, 11/07/2014***), Annex 1, the Governmental Human Rights Action Plan of Georgia (for 2014-2015 years), Activities – 7.1.1 – 7.4.2; Ordinance of the Government of Georgia on the Adoption of the Governmental Human Rights Action Plan of Georgia (for 2016-2017 years) (***N338, adopted: 21/07/2016, published: Legislative Herald of Georgia, 02/08/2016***), the Governmental Human Rights Action Plan of Georgia (for 2016-2017 years), Activities – 6.1.1.1 – 6.1.5.2; Ordinance of the Government of Georgia on the Adoption of the Governmental Human Rights Action Plan of Georgia (for 2018-2020 years) (***N182; adopted: 17/04/2018, published: Legislative Herald of Georgia, 19/04/2018***), Annex 1, the Governmental Human Rights Action Plan of Georgia (for 2018-2020 years), Activities – 20.1.1.1 – 20.3.1.7.

281. Ordinance N 338 of the Government of Georgia on the Adoption of the Governmental Human Rights Action Plan of Georgia (for 2016-2017 years), 2016, the Governmental Human Rights Action Plan of Georgia (for 2016-2017 years), Activity – 6.1.4.2.

282. Ordinance of the Government of Georgia on Approval of the Migration Strategy of Georgia for 2016-2020 years (***N622, adopted: 14/12/2015, published: Legislative Herald of Georgia, 18/12/2015, last amended: 06/08/2018***); The Action Plan of the Migration Strategy of Georgia (for 2016-2020 Years) for 2018.

The Institutional Framework

The institutional framework for fighting against forced or compulsory labour and trafficking concerns governmental institutions and inter-agency bodies. The main stakeholders in that regard are as follows:

1. The Ministry of Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia - The Labour Conditions Inspection Department is one of the main structural units responsible for combating trafficking (forced labour/labour exploitation). According to the Statute of the MoLHSA, the Labour Conditions Inspection Department is entitled to develop the relevant recommendations aiming at preventing forced labour at the workplaces, as well as to carry out the relevant measures to raise the awareness of employers and employees about the threat of trafficking.[283] It is noteworthy that the Department is empowered to access workplaces in the cases of planned inspection, the occurrence of accidents and follow-up monitoring. Additionally, the Department can unconditionally access workplaces in cases of allegations of forced labour/labour exploitation. In other cases, the Department is allowed to carry out the unplanned inspection in accordance with the court permission.[284] The Department monitors the labour conditions for the prevention of forced labour and labour exploitation and in the case of identification of the elements of trafficking, refers the case to the MIA.[285]

The LEPL – State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking operates under the MoLHSA.[286] The fund is designed to carry out activities for protection, support and rehabilitation of victims and statutory victims of human trafficking.[287]

2. The Ministry of Internal Affairs of Georgia – The structural units of the MIA are involved in combating trafficking (forced labour/labour exploitation).[288] The Central Criminal Police Department of Georgia is one of the units designed for combating trafficking.[289] To this end, the Unit of Combating Trafficking and Illegal Migration is functioning within the framework of the abovementioned Department.[290]The Department of Human Rights Protection was established under the Order of the Minister of Internal Affairs and is aimed at the monitoring of the investigation and administrative case management of, ***inter alia***, alleged trafficking cases. The abovementioned department is entitled to ensure the identification of challenges in that regard,

283. Ordinance of the Government of Georgia on Approval of the Statute of the Ministry Labour, Health and Social Affairs of Georgia (***N249, adopted: 31/12/2005, published: Legislative Herald of Georgia, 154, 31/12/2005, last amended: 09/07/2018***), art. 18^{8}.

284. Law of Georgia on Control of the Entrepreneurial Activity (***N 921, adopted: 08/06/2001, published: Legislative Herald of Georgia, 18, 28/06/2001, last amended: 21/07/2018***), art. 3 (2).

285. Law of Georgia on Combating Human Trafficking, art. 7 (7).

286. Ordinance N 249 of the Government of Georgia on Approval of the Statute of the Ministry Labour, Health and Social Affairs of Georgia, art. 4.

287. Law of Georgia on Combating Human Trafficking, art. 9 (1).

288. Ordinance of the Government of Georgia on Approval of the Statute of the Ministry of Internal Affairs of Georgia (***N337, adopted: 13/12/2013, published: Legislative Herald of Georgia, 16/12/2013, last amended: 31/08/2018***).

289. Order of the Minister of Internal Affairs of Georgia on Approval of the Statute of the Central Criminal Police Department of the Ministry of Internal Affairs of Georgia (***N 103, adopted: 11/02/2015, published: Legislative Herald of Georgia, 11/02/2015, last amended: 02/04/2018***), art. 3.

290. Correspondence of the Ministry of Internal Affairs of Georgia, N MIA 1 18 02240423, 14/09/2018.

as well as to develop the relevant recommendations in order to eradicate the existing flaws.[291]The Border Police of Georgia, a subordinate state agency of the MIA, is entitled to prevent, identify and eradicate trafficking at the state border of Georgia.[292] In addition, the Information-analytical Department is responsible for the systemic and technical maintenance, as well as the quality and the refinement of the information of the unified informational bank, which, ***inter alia***, is designed for the systemisation of the relevant information concerning the fight against human trafficking, as well as the identification of the perpetrators, coordination among the various stakeholders and the prevention of the crime.[293]

3. The Interagency Coordination Council for Implementation of Measures against Human Trafficking was established in 2006 to facilitate the efficient implementation of the functions of state bodies with regard to the prevention and combating of human trafficking, as well as the coordination and monitoring activities of state bodies.[294] This council consists of various representatives of relevant state agencies, including the Minister of Justice (the head of the Council), the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, the Deputy Ministers of Justice, Internal Affairs, and Foreign Affairs, the Public Defender of Georgia, the Parliamentary Secretary of the Government of Georgia, as well as representatives of international and non-governmental organisations.

4. Other Interagency Platforms – In 2017, a working group was created, which consists of representatives of the Office of Chief Prosecutor of Georgia, the Ministry of Justice of Georgia, the MIA and the MoLHSA. The working group aims at facilitating the identification of human trafficking cases.[295]

In spite of the abovementioned regulations, there are some important challenges especially with regard to the prohibition of forced labour and labour exploitation.

> **Guaranteeing the General Labour Rights** – The Labour Code of Georgia determines the maximum duration of the working time in a week, while the longest duration of the working day, the maximum number of working days in a week and the highest

291. Order of the Minister of Internal Affairs of Georgia on Approval of the Statute of the Human Rights Department of the Ministry of Internal Affairs of Georgia (***N 1, adopted: 12/01/2018, published: Legislative Herald of Georgia, 12/01/2018, last amended: 20/08/2018***); Correspondence of the Ministry of Internal Affairs of Georgia, N MIA 1 18 02240423, 14/09/2018.

292. Order of the Minister of Internal Affairs of Georgia on Approval of the Statute of the Subordinate State Agency of the Ministry of Internal Affairs of Georgia – Border Police of Georgia (***N 786, adopted: 21/06/2006, published: Legislative Herald of Georgia, 84, 23/06/2006, last amended: 15/06/2018***).

293. Order of the Minister of Internal Affairs of Georgia on Approval of the Rules for Development of the Unified Informational Bank and Formulation of the List of Persons Entitled to have Access to the Information (***N 1544, adopted: 28/12/2006, published: Legislative Herald of Georgia, 2, 08/01/2007, last amended: 30/07/2015***).

294. Law of Georgia on Combating Human Trafficking, art. 10 (1); Edict of the President of Georgia on Approval of the Composition and the Statute of the Interagency Coordination Council for the Implementation of Measures Against Human Trafficking (***N 534, adopted: 01/09/2006, published: Legislative Herald of Georgia, 119, 04/09/2006, last amended: 31/12/2012***); Ordinance of the Government of Georgia on Approval of the Composition and the Statute of the Interagency Coordination Council for the Implementation of Measures Against Human Trafficking (***N 281, adopted: 10/04/2014, published: Legislative Herald of Georgia, 11/04/2014, last amended: 09/12/2016***).

295. Correspondence of the Office of the Chief Prosecutor of Georgia, N 13/72532, 24/09/2018.

permissible threshold for overtime work are not defined.[296] In addition, although the law regulates the general aspects of the labour remuneration, the minimum monthly wage is defined by the Edicts of the President of Georgia,[297] which amounts to 20 GEL (6.45 EUR) in the private sector and 135 GEL (43.54 EUR) in public sector and cannot be regarded as the adequate salary[298] as it does not meet the official subsistence income level.[299] Therefore, the legal regulations can cause the extreme vulnerability of the employees.

Legislative challenges with regard to the Labour Inspection – It is noteworthy that the current mandate of the Labour Conditions Inspection Department of the MoLHSA does not cover the inspection of the implementation of labour rights and only includes certain aspects of the occupational safety. Therefore, it should be concluded that the institution does not possess the power to take measures to eradicate the violation of the labour rights before it qualifies as forced labour/labour exploitation.

Although the Labour Conditions Inspection Department is empowered to enter a workplace without the permission of the employer, various issues undermine the effectiveness of the inspection. Namely, while the department is empowered to identify the presence of alleged labour exploitation, this term is not defined by Georgian legislation (unlike the general term "exploitation," which is defined by Georgian legislation). This suggests that the methodology of the qualification of the act as labour exploitation is vague and a disjointed approach might exist in that regard. Hence, it is of utmost important to enshrine the relevant ILO standards into national legislation and practice, taking into account important elements, such as poor working conditions, excessive work days and hours, wage manipulation, etc.[300]

Even in the instances of alleged cases of forced labour/labour exploitation, the Labour Conditions Inspection Department possesses weak mechanisms as it has only two options to respond to the grave violation of workers' rights at the workplaces: 1) referral of the case to the MIA and 2) issuance of non-binding recommendations.[301] Even in these cases, the department is not empowered to apply the mechanisms of immediate effect, which might be the suspension of the working process or similar activities. Therefore, the department itself does not possess the powers to effectively and promptly react to the abovementioned violations of labour rights and the legal acts regulating the operation of the department are in need of amendments.

296. Organic Law of Georgia Labour Code of Georgia (***N 4113-RS, adopted: 17/12/2010, published: Legislative Herald of Georgia, 75, 27/12/2010, last amended: 05/07/2018***), art. 14; see, The Report of the Public Defender of Georgia on the Protection of Human Rights and Freedoms in Georgia, 2017, p. 199.

297. Edict of the President of Georgia on Amount the Minimum Wage (***N 351, adopted 04/06/1999, published: Legislative Herald of Georgia, 29 (36), 19/06/1999, last amended: 26/12/2006***), Edict of the President of Georgia on Particular Measures for the Regulation of Remuneration of Public Service Employees ***(N 43, adopted 24/01/2005, published: Legislative Herald of Georgia, 7, 24/01/2005, last amended: 07/07/2010)***.

298. The Report of the Public Defender of Georgia on the Protection of Human Rights and Freedoms in Georgia, 2017, p. 199.

299. Georgia 2017 Human Rights Report, United States of America, Department of State, p. 44.

300. See, Operational Indicators of Trafficking in Human Beings, International Labour Organisation (ILO), 2009, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf.

301. The Need for the Creation of the Effective Labour Conditions Inspection Mechanism, the Human Rights Education and Monitoring Centre (EMC), 2016, p. 6, available at: https://emc.org.ge/ka/products/shromis-inspektirebis-efektiani-mekanizmis-shekmnis-autsilebloba.

Recommendations

1. Define the term "labour exploitation" in the national legislation;
2. Take necessary legislative measures to define the longest duration of the working day, the maximum number of working days in a week and the threshold for overtime work, as well as a decent minimum monthly wage;
3. Take necessary legislative measures to provide the Labour Conditions Inspection Department with adequate powers to inspect the implementation of labour rights and employ the mechanisms of immediate effect in the cases of alleged trafficking (forced labour/labour exploitation), as well as other violations of labour rights.

For the other types of implementing measures, please see the response to question 68. For the answers to the questions 66-68 in a child's perspective, please seethe response to question 100.

67 Has Georgia ratified relevant international conventions and agreements?

The following relevant international conventions and agreements are in force in Georgia:

I. UN

1. International Covenant on Civil and Political Rights, 1966;
2. International Covenant on Economic, Social and Cultural Rights, 1966;
3. International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973;
4. Convention on the Elimination of All Forms of Discrimination against Women, 1979;
5. Convention on the Rights of the Child, 1989;
6. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000;
7. The Rome Statute of International Criminal Court, 1998
8. United Nations Convention against Transnational Organised Crime, 2000;
9. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 2000;
10. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, 2006;
11. Convention on the Rights of Persons with Disabilities, 2006.

II. ILO

12. Forced Labour Convention, No. C29, 1930.
13. Abolition of Forced Labour Convention, No. C105, 1957;
14. Minimum Age Convention, No. C138, 1973;
15. Worst Forms of Child Labour Convention, No. C182. 1999.

III. CoE

16. Convention for the Protection of Human Rights and Fundamental Freedoms, 1950;
17. The European Social Charter (Revised), 1996;
18. Council of Europe Convention on Action against Trafficking in Human Beings, 2005;
19. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007.

68 What is the practical experience with implementing the legislation in this area?

General Measures

The measures for combating human trafficking (forced labour/labour exploitation) are as follows:

- The Government of Georgia adopted the uniform standards and rules for the identification of victims of human trafficking;[302]
- The Minister of Internal Affairs of Georgia adopted the Code of Ethics of the Georgian Police and the Instructions for Conduct of Some Employees of the Ministry of Internal Affairs of Georgia,[303]as well as the Standard Operative Procedures (SOPs) for the identification of human trafficking designed for investigators, operative investigators and mobile group members.
- The Minister of Internally Displaced Persons from the Occupied Territories, Labour and Social Affairs of Georgia adopted the minimum standards for the arrangement and operation of the crisis centre;[304]
- Interagency Coordination Council for Implementation of Measures against Human Trafficking adopted the Information Strategy, Guidelines for the Law Enforcements on the Investigation and Prosecution of Trafficking Cases and Treatment with Victims and Statutory Victims of Trafficking in Persons, as well as the Guidelines on Identification of Victims of Trafficking in Human Beings for State Border Officials of Georgia.[305]

In addition, according to the Law on Combating Human Trafficking, the measures of protection, support and rehabilitation of victims and statutory victims shall be carried out before, during and after relevant criminal proceedings.[306] To this end, the strategy for the rehabilitation and reintegration of the victims and statutory victims of human trafficking was adopted by the Interagency Coordination Council for Implementation of Measures against Human Trafficking and has been operative since 2007.[307] In the framework of the LEPL – State Fund for the Protection

302. Ordinance of the Government of Georgia on the Approval of Unified Standards and Rules for the Identification of Human Trafficking (***N 284, adopted: 11/04/2014, published: Legislative Herald of Georgia, 14/04/2014***).
303. Order of the Minister of Internal Affairs of Georgia on Approval of the Code of Ethics of the Georgian Police and the Instructions for Conduct of Some Employees of the Ministry of Internal Affairs of Georgia (***N 999, adopted: 31/12/2013, published: Legislative Herald of Georgia, 31/12/2013, last amended: 06/11/2015***).
304. Order of the Minister Labour, Health and Social Affairs of Georgia on Approval of the Minimum Standards for the Arrangement and Operation of the Crisis Centre (***N 01-64/N, adopted: 10/11/2017, published: Legislative Herald of Georgia, 14/11/2017***).
305. The documents are available at: http://justice.gov.ge/Ministry/Index/332.
306. Law of Georgia on Combating Human Trafficking, art. 13 (6).
307. The document is available at: http://www.justice.gov.ge/ministry/Department/335.

and Assistance of (Statutory) Victims of Human Trafficking, three mobile groups are operating (one mobile group for Western Georgia and two mobile groups for Eastern Georgia) for the identification of victims of human trafficking. The rate of granting the victim status to the person and the statistics of the services provided for the victims/statutory victims are illustrated in the charts below.[308]

Statistics of granting the victim status to the person

Year	Number of Alleged Victims	Number of persons granted victim status	Number of persons not granted victim status	Number of persons reaching out to the mobile groups
2014	7	5[309]	2	3
2015	12	8[310]	4	10
2016	6	1[311]	5	4
2017	6	4[312]	2	6
2018[313]	2	2	0	2

Services Provided for Victims/Statutory Victims

Year/the number of recipients of service	Shelter (in Tbilisi and Batumi)	Legal Consultation	Organising of the Medical Service	Psychosocial Rehabilitation/ assistance	Compensation (1,000 GEL/322.58 EUR)	Hotline assistance
2014	7	12	6	4	9	121
2015	8	25	5	6	18	189
2016	4	6	1	1	2	123
2017	7	10	5	7	1	70
2018[314]	3	3	1	1	-	19

308. Correspondence of the LEPL – State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking, N 07/1263, 07/09/2018; Correspondence of the Ministry of Justice of Georgia, N 12327, 27/11/2018.

309. Out of them- 1 woman (sexual exploitation) and 4 men (labour exploitation). In three cases, the crimes were carried out in Turkey, while in two cases the crime was conducted in Iraq. In addition, the same year 7 women were granted the status of statutory victim of the human trafficking (sexual exploitation cases). 4 of them were citizen of Uzbekistan, 2 – Kyrgyzstan and 1 – Tajikistan.

310. Out of them – 3 women (labour exploitation) and 5 men (labour exploitation). In five cases, the crimes were carried out in Iraq, in 2 cases – Georgia, in 1 case – Turkey. Additionally, the same year 8 women were granted the status of statutory victim of human trafficking (1 case – labour exploitation, 5 cases – sexual exploitation, 2 cases – buying/ selling). Out of them, 3 persons were Georgian citizens and 5 persons were Uzbek Citizens.

311. 1 woman of Uzbek citizenship was granted the victim status (sexual exploitation case committed in Georgia). The same year 2 women of Uzbek citizenship were granted the status of statutory victim of human trafficking (sexual exploitation cases).

312. 4 women (2 Georgian citizens and 2 Uzbek citizens) were granted the victim status (sexual exploitation cases). In 3 cases, the crime was committed in Iraq, while in one case – in Turkey. Additionally, 8 women were granted the status of statutory victim of human trafficking (6 cases of sexual exploitation and 2 cases of labour exploitation). Out of them, 4 persons were Georgian citizens, 2 persons – Ukrainian citizens and 2 persons – Uzbek citizens.

313. As of 1 July.

314. As of 1 July.

One of the main directions of the implementing measures is the training of representatives of relevant stakeholders, in particular:

- Representatives of the Office of the Chief Prosecutor of Georgia were involved in 40 trainings between 2014-2018[315](five trainings in 2014, six trainings – 2015, 11 training – 2016, 10 training – 2017, eight training – 2018). Overall, 550 persons were involved in the relevant training. Out of the total number, there were 470 prosecutors/investigators (2014 – 98 people, 2015 – 36 people, 2016 – 107 people, 2017 – 188 people, 2018 – 41 people) and 80 people (2014 – 13 people, 2015 – 20 people, 2016 – 30 people, 2017 – 17 people, 2018 – 0) were other staff members (such as coordinators).
- Annually, approximately 7-10 representatives of the MIA are involved in the qualification raising courses organised by the international organisations or national agencies. Furthermore, in 2014-2018[316], 1,888 employees of the MIA were involved in the training on the issue of human trafficking (forced labour/labour exploitation) conducted in the framework of the LEPL – Academy of the Ministry of Internal Affairs of Georgia. In addition, in 2014-2018, 241 employees (2014 – 61 people, 2015 – 54 people, 2016 – 22 people, 2017 – 11 people, 2018 – 93 people) of the MIA participated in the study visits and training regarding the abovementioned issues.
- Representatives of the MoLHSA were involved in various training with regard to forced labour and human trafficking issues. In 2015-2017, three training were conducted in that regard (the number of participants: in 2015 – 25; 2016 – 23; 2017 – 23).[317] The relevant trainings were conducted for representatives of the LEPL- State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking (the number of participants: in 2015 - 35; 2016- 24; 2017- 9; 2018[318] – 20).[319]
- The HSoJ elaborated two training modules for judges, judge's assistants and other employees of the common court system. In particular, the training modules – "International Labour Standards and the Labour Code of Georgia" and "Human Trafficking" were developed in 2016 and 2017, respectively. Based on these modules, ***inter alia***, overall 14 trainings were conducted in 2014-2018 with 191 participants (in 2014 – two trainings with 24 participants (judges); in 2015 – three trainings with 43 participants (judges); in 2016 – three trainings with 45 participants (22 judges, six judge's assistants, 17 – employees of courts); in 2017 – three trainings with 34 participants (29 judges and 5 employees of courts); in 2018[320] – three trainings with 45 participants (16 judges and 29 employees of courts)).[321]
- Representatives of the Ministry of Foreign Affairs of Georgia are mainly trained in the framework of "the special obligatory study programmes for the appointment of consular

315. As of 1st of September.

316. As of 1st of August.

317. Correspondence of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, N 01/4099-s, 11/09/2018.

318. As of 1 July.

319. Correspondence of the LEPL – State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking, N 07/1263, 07/09/2018.

320. As of 1 September.

321. Correspondence of the High School of Justice, N 02/2102, 04/09/2018.

officials" (2014 – 12 diplomats, 2015 – 19 diplomats, and 2018[322] – 48 diplomats).[323] Additionally, consular officials are trained on issues, such as identification of trafficking and assistance to the victims of the abovementioned crime.[324]

In addition, relevant state agencies are conducting educational and awareness-raising campaigns among the general public, as well as the employers and employees. The following issues and events should be distinguished:

- The National Curriculum of Georgia (for 2011-2016 years) foresaw teaching of the issues regarding human trafficking, which was integrated into the programme of civic education. The New National Curriculum was adopted in 2018, which also included the element of human trafficking as a part of the programme on citizenship. Therefore, the civic education textbooks for IX-X grades include lessons on human trafficking issues. Apart from the textbooks, the IOM developed supplemental books for IX-X grades on human trafficking.[325]
- As part of the project "Community Prosecution," the Office of the Chief Prosecutor of Georgia carried out informational meetings with students of public schools and universities and the general public. Overall, between 2014-2018, 114 meetings were conducted by the institution with up to 5,850 participants.
- The Ministry of Justice of Georgia organised various activities aiming at increasing the awareness of the issue of human trafficking. Namely, representatives of the Ministry organised meetings with the local population, school and university students, teachers, IDPs, ethnic and religious minorities, etc. In 2014, meetings were conducted at 31 cities/villages with about 1,500 participants, in 2015 – 19 cities/villages with about 2,000 participants, in 2016 – 26 cities/villages with about 2,000 participants, in 2017 – 10 cities/villages with 505 participants, in 2018 – 5 cities/villages with 300 participants.

Additionally, the Ministry, in coordination with various partners, has organised:

- Trainings- in 2014, training of trainers was conducted for 12 university students, in 2016, in accordance with the initiative of the LEPL – Training Centre of Justice, the training – "Prevention of Human Trafficking" was conducted for about 270 participants at 26 Community Centres. The trainers of the abovementioned training had themselves been trained the same year. In 2017, the training of trainers on "legal mechanism and contemporary trends of the combating the human trafficking" was held, after which 113 persons were trained at 12 community centres on the prevention of human trafficking;
- Law Schools- in 2014, Law School was held for 30 university students, while, in 2016, the Law School and Essays Competition was conducted, in which 25 students took part;
- Moot Court Competitions- in 2014, 40 students took part from eight universities, in 2017 and 2018 – eight teams from five universities;
- Conferences/Roundtable meetings/Discussions- in 2015, roundtable meeting and

322. As of 1 September.

323. Correspondence of the Foreign Affairs of Georgia, N 01/45740, 19/11/2018.

324. Ibid.

325. Correspondence of the Ministry of Education, Science, Culture and Sport of Georgia, N MES 8 18 01113752, 11/09/2018.

discussions were conducted at Ivane Javakhishvili Tbilisi State University and in 2016 a conference was held at Ivane Javakhishvili Tbilisi State University. The same year, a discussion was held at the LEPL – Crime Prevention Centre for seven participants of the House of Leaders programme. In 2017, the State Policy towards Fighting against Human Trafficking conference was held with 20 participants.[326]

In addition, in 2014-2018, in the framework of six grant programmes, the Ministry of Justice issued a grant (total sum – 93,000 GEL / 30,000 EUR) for five organisations aiming at raising awareness of human trafficking.[327]

- The MIA conducts informational meetings with the students of public schools and universities on the subject of human trafficking, the rights of the victim as well as the issues connected with illegal migration. The informational meetings have a permanent nature – annually the MIA conducts approximately five to six informational meetings.
- In 2017, the MoLHSA organised four trainings for the thematic groups (55 participants were involved in three trainings, while the fourth event was an informational meeting with the students and teachers in Gori). Additionally, the LEPL - State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking conducted informational campaign for the general public.[328] Namely, the Fund held informational meetings, ***inter alia,*** for students of public schools and universities, representatives of the local non-governmental organisations and the local population (the representative of the Fund took part in the following meetings: in 2014 – two meetings, 2015 – 11 meetings, 2016 – 23 meetings, 2017 – 17 meetings, and 2018[329] – 6 meetings), developed information videos for the general public, as well as participated in the development (about 40,000 units) and dissemination of the leaflets and brochures, ***inter alia***, on the services of the Fund, operation of the hotline and preventive measures.
- The 24-hour hotline is functioning at the Consular Department of the Ministry of Foreign Affairs of Georgia, as well as the consular representations abroad aiming at identification and prevention of human trafficking.[330]

Relevant Proceedings

First of all, the inspection conducted by the Department of the Labour Conditions Inspection should be emphasised. In 2016-2018,[331] the Department conducted 325 (in 2016 – 98; 2017 – 111; 2018 – 116) inspections at various workplaces. Of those, only 14 (in 2016 – 7; 2017 – 6; 2018 – 1) inspections were unplanned. As for the identification of forced labour or labour exploitation, the Department identified the elements of labour exploitation in only one case (in 2016).

326. Correspondence of the Ministry of Justice of Georgia, N 12327, 27/11/2018.

327. Ibid.

328. Correspondence of the LEPL – State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking, N 07/1263, 07/09/2018.

329. As of 1 September.

330. Correspondence of the Foreign Affairs of Georgia, N 01/45740, 19/11/2018.

331. As of 1 August.

According to the Law on Combating Human Trafficking, criminal proceedings for the crime are conducted under the Criminal Procedure Code and other legislative acts of Georgia. The same law states the specificity of criminal proceedings for the crime of trafficking. Namely, on the application of the prosecutor, victim or his/her representative, the relevant court can order that a hearing be closed. Additionally, special protective measures can be applied in accordance with the Criminal Procedure Code of Georgia. In addition, criminal liability is imposed against the perpetrator of the crime under the Georgian legislation, which, ***inter alia***, provides the grounds for the deprivation of the perpetrator's property obtained through the crime.[332]

In order to carry out the fight against the crime of trafficking, the Special Task Force was created to coordinate the operative-investigative activities throughout the country. In addition, since 2013, four mobile groups are based in Tbilisi and are empowered, ***inter alia,*** to identify those places where there is a high risk of trafficking, to interview the people involved and provide them with the information about the abovementioned crime, across the country.[333]

The rate of the criminal investigation and prosecution of the crime of human trafficking and use of the services of victims (statutory victims) of human trafficking are shown in the charts below.

The rate of the criminal investigation (number of cases) towards the alleged crimes of Human Trafficking and using the services of victims (statutory victims) of human trafficking[334]

Criminal Code Article	2014	2015	2016	2017	2018[335]
143[1]	11	15	18	16	9
143[3]	0	0	0	0	0

The rate of criminal prosecution (number of prosecuted persons) of alleged human trafficking crimes and use of the services of victims (statutory victims) of human trafficking[336]

Criminal Code Article	2014	2015	2016	2017	2018[337]
143[1]	7	1	1	6	3
143[3]	0	0	0	0	0

In 2014-2018, no investigation or prosecution was discontinued in accordance with the Criminal Procedure Code of Georgia.

The statistics of the examination of trafficking cases by Georgian courts are illustrated in the charts below. It should be noted that in 2014-2018 no case was examined by the courts under the Article 143[3] of the Criminal Code of Georgia (use of the services of victims (statutory victims) of human trafficking).[338]

332. Law of Georgia on Combating Human Trafficking, art. 13.

333. Correspondence of the Ministry of Internal Affairs of Georgia, N MIA 1 18 02240423, 14/09/2018.

334. Ibid.

335. As of 1 August.

336. Correspondence of the Office of the Chief Prosecutor of Georgia, N 13/72532, 24/09/2018.

337. As of 10 September.

338. Correspondence of the Supreme Court of Georgia, N p – 435 – 18; 04/09/2018.

The rate of the case examinations towards the alleged crime of Human Trafficking by the first instance Courts

Year	Registered Cases	Examined Cases		
		Judgments (imprisonment)[339]	Inter alia, in accordance with a Plea Bargain	Discontinuation
2014	3	2	1	-
2015	4	2	-	-
2016	-	1	-	1
2017	5	2	1	-
2018[340]	3	3	1	-

Chart N 6. The rate of the case examinations towards the alleged crime of Human Trafficking by the Appeal Courts

Year	Registered Cases	Examined Cases	
		Left Unchanged[341]	Alleviation of Sentence[342]
2014	3	2	1
2015	4	3	-
2016	1	1	1
2017	-	-	-
2018[343]	-	-	-

The rate of case examinations of the alleged crime of human trafficking by the Supreme Court

Year	Registered Cases	Examined Cases	Found Inadmissible
2014	1	-	-
2015	2	1	1
2016	1	2	2
2017	-	1	1
2018[344]	-	-	-

339. In the statistics, the numbers of convictions and persons (who were sentenced to imprisonment) are identical.

340. As of 1 August.

341. In the statistics, the numbers of cases and persons are identical.

342. In the statistics, the numbers of cases and persons are identical.

343. As of 1st of August.

344. As of 1st of August.

State agencies took some measures designed to prevent and combat the crime of trafficking (forced labour/labour exploitation). The efforts of the country are articulated in the 2018 Trafficking in Persons Report of the US State Department, according to which, Georgia remained in tier 1.[345] However, there are important challenges concerning the prevention and eradication of trafficking (forced labour/labour exploitation). According to the US State Department, Women and girls from Georgia are subjected to sex trafficking within the country, in Turkey, and, to a lesser extent, in China and the United Arab Emirates. Georgia is also a transit country for women from Kyrgyzstan, Tajikistan, and Uzbekistan exploited in Turkey. Women from Azerbaijan and Central Asia are subjected to forced prostitution in the tourist areas of the Adjara region and larger cities like Tbilisi and Batumi in saunas, brothels, bars, strip clubs, casinos, and hotels. Georgian men and women are subjected to forced labour within Georgia and in Turkey, United Arab Emirates, Egypt, Cyprus, and Iraq. Georgian, Romani, and Kurdish children are subjected to forced begging and coerced into criminality in Georgia".[346]

Victim Identification - There are challenges with regard to the identification of victims by the MIA and the SSA as in particular cases, the elements of the alleged exploitation are not taking into account in the process of qualification of the case.[347] The problem with regard to the victim identification is especially presented with regard to foreigners and minors.[348]

The assistance to the victims–The assistance provided to the victims/statutory victims of human trafficking at shelters has remained problematic. According, to the Special Report of the Public Defender of Georgia, both shelters in Tbilisi and Batumi are capable of receiving 18 people (Tbilisi Shelter – three victims or dependent persons, Batumi Shelter – five victims and 10 dependent persons) at one time.[349] There are challenges with regard to the assistance provided to shelter beneficiaries, as they tend to leave the shelter after a short period of time.[350] There are major challenges with regard to the provision of relevant services to the beneficiaries (including, psycho-social and translation services), as the shelters are mostly designed for the victims of domestic violence rather than the victims of human trafficking.[351] In addition, no victim has ever received restitution from the perpetrators of human trafficking.[352]

Lack of Transparency - The US State Department's Human Trafficking Report highlights the lack of public transparency of the Government in this realm, as it did not

345. Trafficking in Persons Report, the United States of America, Department of State, 2018, p. 194.

346. Ibid., pp. 195-196.

347. The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2016, pp. 628-629.

348. Trafficking in Persons Report, the United States of America, Department of State, 2018, p. 195.

349. Monitoring Report of the Public Defender of Georgia regarding the Service Providers (Shelters) for the Victims of Domestic Violence, 2018, pp. 26-27.

350. Ibid., p. 27.

351. Ibid.

352. Trafficking in Persons Report, the United States of America, Department of State, 2018, p. 194.

provide the public with the assessments of its own anti-trafficking measures.[353] The Government also has not made concrete information on the budgetary allocations for the implementation of the relevant action plans publicly accessible for the population. This could be an indicator either of the lack of transparency or the lack of a concrete financial understanding of the implementation of the commitments.

Practical Shortcomings with Regard to the Labour Inspection - As noted above, the labour inspectorate is operating with a limited mandate and the rate of the identification of trafficking (forced labour/labour exploitation) is extremely low (only one alleged case was detected despite allegations of trafficking in other instances[354]). The practical challenges with regard to the labour inspection institution are linked with particular shortcomings. Namely, the unclear mandate of the labour inspectorate "inhibited inspectors' ability to effectively investigate employers."[355] In addition, other factors,[356] such as lack of financial and human resources[357]and the fact that the mechanism does not possess any regional representation, hinder the exercise of effective and prompt monitoring outside of Tbilisi. In addition, the mechanism's institutional dependence upon the MoLHSA prevents the Department from properly executing the inspection procedure and reduces the possibility of detecting the violations.

Challenges with regard to the criminal responses to the crimes- Article 143^3 of the Criminal Code of Georgia (Using the Services of Victims (Statutory Victims) of Human Trafficking) is, in fact, non-operative in practice. Although the penalties prescribed by the criminal legislation are sufficiently high, the rates of investigation and criminal prosecution in light of the statistics of the investigation are so low that it "offset the effect of strong penalties and encouraged the use of forced and compulsory labour."[358]

The absence of the research and hidden forms of forced labour/labour exploitation – The analysis of the implementation reports of the Anti-Trafficking Action Plans[359] indicates that the state has not carried out systemic research of the structural causes of trafficking, which according to the international standards,[360] shall be the basis for the effective prevention policy.

The practical shortcomings regarding the fight against the forced labour/labour exploitation can also be illustrated by the existence of its hidden forms. For example, the National Preventive Mechanism of the Public Defender of Georgia detected the elements of forced labour/labour exploitation in prisoner-involved service. Prisoners

353. Ibid.

354. Georgia 2017 Human Rights Report, United States of America, Department of State, pp. 42-43.

355. Trafficking in Persons Report, the United States of America, Department of State, 2018, p. 194.

356. The Necessity of Creation of Effective Labour Inspection Mechanism, Human Rights Education and Monitoring Centre (EMC), 2016, available at: https://emc.org.ge/ka/products/shromis-inspektirebis-efektiani-mekanizmis-shekmnis-autsilebloba.

357. 29 employees are in charge of carrying out the inspection in the whole territory of Georgia.

358. Georgia 2017 Human Rights Report, United States of America, Department of State, p. 42.

359. The Implementation Reports are available at: http://justice.gov.ge/Ministry/Index/334.

360. Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, 2005, Para. 103.

involved in logistic service, were forced to work on the weekends and holidays and at night.[361] In addition, the Order of the Director of the Penitentiary Institution, according to which prisoners can be involved in logistic service, does not include information on the type of the job to be performed. Hence, the National Preventive Mechanism saw the threat that the employed prisoners might be performing work that was not feasible at the time of application for the job.[362] The fact that the risk of occurrence of the forced labour/labour exploitation is high in penitentiary institutions, the uniform document designed to record, ***inter alia,*** the working schedule of persons (including, working hours and overtime job), as well as the job description need to be developed.[363]

Another hidden form of forced labour is connected with representatives of the LGBT community. Because of stigma and discrimination towards them (including the existence of the identity documents that do not correspond to the gender expression of the human being), transgender people tend to be involved in informal workplaces with poor working conditions and remuneration (including commercial sex work), making them especially vulnerable to violence and exploitation.[364]

Another important shortcoming is connected with the fact that the working conditions for migrant workers are generally unregulated.[365]Some labour migrants arrive in the country without having previously secured employment and are unable to find employment opportunities, which exposes them to exploitative situations.[366] Against this background, a significant number of domestic and migrant workers are employed in the informal economy, which in parallel with the lack of employment contracts, exposes them to the exploitative conditions.[367]

Victims of forced marriage and domestic violence are another group of people vulnerable to forced labour/labour exploitation. In most cases, however, the elements of those crimes are presented and identified, while the alleged occurrence of forced labour/labour exploitation remains unaddressed.

Challenges regarding border management - Although there are some mechanisms for the eradication and prevention of forced labour/labour exploitation, the challenge of effective border management is reflected in the fact that Georgia remains a source, transit and destination country for women and girls subjected to forced labour.[368]

361. The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2016, p. 22.

362. Ibid., p. 125.

363. Ibid.

364. Situation of Transgender People in Georgia, Women's Initiatives Supporting Group (WISG), 2015, p. 72. available at: https://women.ge/data/docs/publications/WISG_Transgender_survey_2015.pdf; The Council of Europe Recommendation to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity (CM/Rec(2010)5), Monitoring of Progress towards Implementation in Georgia, Women's Initiatives Supporting Group (WISG), 2018, p. 6, available at: https://women.ge/data/docs/publications/WISG-CMREC-2013-18-ENG.pdf.

365. Georgia 2017 Human Rights Report, United States of America, Department of State, pp. 45 – 46.

366. Ibid.

367. Ibid., p. 46.

368. Trafficking in Persons Report, the United States of America, Department of State, 2018, p. 196.

Furthermore, Government of Georgia is unable to undertake the anti-trafficking efforts within the occupied territories of Abkhazia and South Ossetia.[369]

Recommendations

1. Take effective steps to improve the establishment of the elements of trafficking (forced labour/labour exploitation), as well as the identification of victims of these crimes and take further steps to increase the capacity of the state authorities in that regard.
2. Develop and refine the assistance services for the victims/statutory victims of human trafficking by focusing on the individual needs of the beneficiaries and develop specific shelters independent from the shelters for the victims of domestic violence, inter alia, in order to prevent the occurrence of their double victimisation.
3. Develop the labour inspection mechanism as an independent institution and provide it with adequate financial resources and qualified human personnel.
4. Take further steps to strengthen the criminal law responses to the abovementioned crimes and to improve border management.
5. As social and economic hardship is one of the bases for trafficking (forced labour/labour exploitation), the country should conduct systemic research aiming at identifying the structural causes of trafficking and implement special initiatives to address socio-economic vulnerability. Additionally, the state should effectively identify and address hidden forms of forced labour.

RESPECT FOR PRIVATE AND FAMILY LIFE AND COMMUNICATIONS

69 **How are the rights protecting and upholding respect for private and family life, home and communications ensured? In which circumstances can they be set aside?**

- Constitutional and legislative measures designed to protect and uphold respect for private and family life and home and the implementation of these measures:

Article 15 of the Constitution of Georgia defines that personal and family life shall be inviolable. This right may be restricted only in the interests of national security or public safety, or in order to protect the rights of others, insofar as is necessary in a democratic society. Additionally, the same constitutional provision classifies personal space and communication as inviolable. No one shall have the right to enter a place of residence or other possessions, or to conduct a search, against the will of the possessor. These rights may be restricted only in accordance with law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society, based on a court decision or without a court decision in cases of urgent necessity provided for by law. In cases of urgent necessity, a court shall be notified of the

369. Ibid.

restriction of the right no later than 24 hours after the restriction, and the court shall approve the legality of the restriction no later than 24 hours after the submission of the notification. Article 5 of the Constitution defines that the State shall protect family welfare.

The Criminal Code of Georgia defines that illegal intrusion into, search of or any other action related to the domicile or other possession against the will of the owner that encroaches upon the inviolability of the domicile or other possession shall be punishable by fine, corrective labour for up to two years, house arrest from six months to one year or imprisonment up to two years (Article 160).

Personal data enjoy constitutional, legal and judicial protection. The right to have one's personal data safeguarded is a constitutional right. Article 18 of the Constitution of Georgia provides that everyone shall have the right to be informed about personal data collected about him/her in accordance with the law, unless they contain state, professional or commercial secrets. Also Information contained in official records pertaining to health, finances or other private matters of an individual shall not be made available to anyone without the prior consent of the individual in question, except as determined by law, when doing so is necessary to safeguard national security or public safety, or the health, rights and freedoms of others.

The principal umbrella law governing the protection of personal data is the Georgian Law on Personal Data Protection.[370]The law aims to ensure the protection of the right to privacy and other rights and freedoms for each and every natural person. Provisions of the Law on Personal Data Protection are applied to the processing of data through automatic or semi-automatic means, and to the processing of data through non-automatic means within the territory of Georgia, of data that form part of a filing system or are intended to form part of a filing system. This law also applies to the automatic processing of data as a state secret for crime prevention and investigation, operational-investigative activities and protection of the rule of law, except as provided in the Law on Personal Data Protection.

Article 44 of the General Administrative Code of Georgia[371]defines that a public institution shall be obliged not to disclose personal data without the consent of the persons themselves, or without a justified court decision if so provided for by law, except for personal data of officials (and nominees for positions).

The Constitution of Georgia as well as the Civil Code of Georgia, which includes the legal norms of family law, do not contain provisions defining the family. They do define marriage as the union of a woman and a man for the purpose of founding a family. The term "family member" is also defined for the purposes of the specific laws.

The rulebook of social work obliges every centre for social work to respect human rights and the dignity of the beneficiary, safeguard the confidentiality of information on personal and family circumstances, represent the interests and rights of beneficiaries and ensure equal access to services for all citizens, irrespective of their ethnic, cultural, religious, gender or socioeconomic differences, disability or sexual orientation.

370. Personal Data Protection, Official Gazette of Georgia, no. 5669-RS, first adoption: 28/12/2011; last amended: no 3451-S, 20/09/2018.

371. General Administrative Code of Georgia (Official gazette of Georgia, no. 2181, first adoption: 25/06/1999; last amended: no 3619-IS, 31/10/2018)

Violations of the right to respect for private and family life as set out in Article 8 of the European Convention on Human Rights pertaining to the violation of the right to family life, were found in seven judgements of the European Court of Human Rights (JISHKARIANI v. GEORGIA*(Application no. 18925/09);* JUGHELI AND OTHERS v. GEORGIA *(Application no. 38342/05);* N.TS. AND OTHERS v. GEORGIA *(Application no. 71776/12);* G.S. v. GEORGIA *(Application no. 2361/13);* SAGHINADZE AND OTHERS v. GEORGIA *(Application no. 18768/05);* GIORGI NIKOLAISHVILI v. GEORGIA *(Application no. 37048/04);* GURGENIDZE v. GEORGIA *(Application no.71678/01)).*Final resolutions have been made in two cases, four cases are pending and a judgment was made in one case in September 2018.

-Constitutional and legislative measures designed to protect and uphold respect for the privacy of communications and the implementation of these measures:

Article 15 of the Constitution of Georgia defines that personal and family life shall be inviolable. This right may be restricted only in accordance with the law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society. Additionally, the same constitutional provision provides that personal space and communication shall be inviolable. No one shall have the right to enter a place of residence or other possessions, or to conduct a search, against the will of the possessor. These rights may be restricted only in accordance with the law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society, based on a court decision or without a court decision in cases of urgent necessity provided for by law. In cases of urgent necessity, a court shall be notified of the restriction of the right no later than 24 hours after the restriction, and the court shall approve the legality of the restriction no later than 24 hours after the submission of the notification. Article 18 of the Constitution of Georgia establishes that everyone shall have the right to be informed about personal data collected about him in accordance with the law, unless they contain state, professional or commercial secrets. Also Information contained in official records pertaining to health, finances or other private matters of an individual shall not be made available to anyone without the prior consent of the individual in question, except as determined by law, when doing so is necessary to safeguard national security or public safety, or the health, rights and freedoms of others.

The Criminal Code of Georgia defines that unauthorised recording of or eavesdropping on private conversations, or unauthorised obtaining of the computer data or of the electromagnetic waves containing such data transmitted through or from a computer system during private communication using technical means, or unlawful storage of recordings of private communications or of the information or computer data obtained through technical means shall be punished by a fine or restriction of liberty from two to four years (Article 158). Also, the Criminal Code of Georgia defines that unlawfully obtaining, opening or reading or storage of personal correspondence or mail messages, of the recording of phone conversations or of conversations made with other technical means or of messages received or transmitted through telegraph, computer system, fax or other technical means shall be punished by a fine or corrective labour for up to two years, or with imprisonment for up to three years (Article 159). Article 157 of the Criminal Code of Georgia defines that unlawfully obtaining, storing, using, disseminating or otherwise making available personal or family secrets or information on private life or personal data, which has resulted in

considerable damage, shall be punished by a fine or corrective labour for up to two years, or by imprisonment for up to three years.

According to the Law on Electronic Communication,[372] information on users of electronic communications networks as well as information transmitted by users by means of electronic communications networks are confidential and shall be protected by the legislation of Georgia (Article 8). This law also defines that an authorised person is obliged to provide the Georgian National Communication Commission duly with full information related to the pursuit of its objectives and activities defined in the present law and in the normative acts issued by the Commission, including financial and economic documentation, irrespective of its confidentiality, as well as documentation in compliance with author's and allied rights defined by Georgian legislation. The Commission shall maintain confidentiality of that information, which, pursuant to the General Administrative Code of Georgia and Law of Georgia on Personal Data Protection, is regarded as a commercial secret or private data. General information on the market as well as information on the number of subscribers, traffic, income and expenditure shall not be deemed confidential. Provision of wrong or incomplete information by an authorised person shall be deemed as failure to provide information (Article 19).

The authorised person shall record the electronic communications identification data provided by the Criminal Procedure Code of Georgia[373]to the relevant state bodies and provide appropriate information to the Inspector of Personal Data Protection (Article 8^2).

According to the Police Law of Georgia[374]and Criminal Procedure Code police officers may deny a person of certain rights guaranteed by the Constitution of Georgia, that is, they can use their legal authority in relation to them.

70 **Please describe the exact procedure for the application of house searches and special investigative means (such as telephone tapping) and how the protection of fundamental rights is ensured. Is, for example, any case of telephone tapping or house search allowed without a judge's warrant? What is the practical experience with implementing the legislation in this area?**

Searching of persons and premises are evidentiary actions that are used by authorised officials in a manner and procedure specified by the Criminal Procedure Code of Georgia.[375] According the code, during an investigation, a party may not arbitrarily or unlawfully interfere with the persons personal life. The law guarantees the inviolability of private or other property or of

372. Law on Electronic Communication (Official Gazette of Georgia, no. 1514, first adopted: 02/06/2005; last amended: no 3286-RS, 21/07/2018.

373. Criminal Procedure Code of Georgia (Official Gazette of Georgia, no. 1772, first adopted: 09/10/2009; last amended: no 3610-IS, 31/10/2018)

374. Police Law of Georgia (Official Gazette of Georgia, no. 1444-IS, first adopted: 04/10/2013; last amended: no 3284-RS, 21/07/2018.

375. Criminal Procedure Code of Georgia (Official gazette of Georgia, no. 1772, first adopted: 09/10/2009; last amended: no 3610-IS, 31/10/2018.

private communication performed by any means. A person carrying out a procedural action shall not disclose information on the personal life or private information that the subject of the investigation considers necessary to keep confidential. A person who suffered damage as a result of the unlawful disclosure of information regarding his/her private life/personal data shall have the right to be fully indemnified for the damage under the legislation of Georgia (Article 7).

When carrying out investigative actions provided by the Criminal Procedure Code of Georgia, the parties shall enjoy equal rights and obligations. Upon a reasoned motion of the defence party, investigative actions shall based on a court ruling and be carried out by an investigator who may not be the same person as the one who is investigating the given case (Article 111).

An investigative action that restricts private property, ownership or the inviolability of private life shall be carried out under a court ruling upon a motion of a party. No later than 24 hours after receiving a motion and the information required for its review, a judge shall decide the motion without an oral hearing. A judge may review a motion with the participation of the party that filed the motion. The consent of a co-owner or co-holder or of one party of communication shall be sufficient to carry out an investigative action provided for by this paragraph without a court ruling (Article 112).

An investigative action in the case of urgent necessity may also be carried out without a court ruling, when a delay may cause the destruction of the factual data essential to the investigation, or when a delay makes it impossible to obtain the above data, or when an item, document, substance or any other object containing information that is essential to the case has been found during the conduct of any other investigative action (if found only after a superficial examination), or when an actual risk of death or injury exists. In this case, the prosecutor shall, within 24 hours after initiating the above investigative action, notify a judge under whose jurisdiction the investigative action has been carried out, or according to the place of investigation, and hand over materials of a criminal case (or their copies), which justify the necessity of an urgent necessity in the conduct of the investigative action. Within no later than 24 hours after receipt of the materials, the judge shall decide the motion without an oral hearing (Article 112).

If there is probable cause, a search shall be conducted for the purpose of uncovering and seizing an item, document, substance or any other object containing information that is essential to the case. A search may also be conducted to find a wanted person or a corpse. An item, document, substance or any other object containing information that is essential to the case may be seized if there is probable cause that it is kept in a certain place, with a certain person and if there is no need to search for it. A search to seize an item, document, substance or any other object containing information that is important for the case may be conducted, if there is probable cause that it is kept in a certain place, with a certain person and if the search is necessary to discover it (Article 119).

During a search or seizure, an investigator may open a closed storage facility, domicile or premises, if the person subject to search refuses to voluntarily grant the investigator access. A person present at the place of search and/or seizure may be personally searched if there is probable cause that he/she has concealed an item, document, subject or any other object that is subject to seizure. Such case shall be considered an urgent necessity and a personal search shall be conducted without a court ruling. The legality of the search and/or seizure shall be examined by the court (Article 120).

To discover a trace of a material evidence of a crime, or to establish the details of an incident and other circumstances essential to a criminal case, a party may inspect a crime scene, storage facility, domicile, premises, corpse, item, document or any other object that contains information. If private property is to be inspected, the inspection shall be conducted under a court ruling. A court ruling shall be not be required for an inspection conducted by a party in the event of absolute necessity, or when the owner (holder) expresses his/her consent in writing (Article 125).

Secret investigative actions such as telephone tapping, secret video and audio recording shall be carried out only if they are under the Criminal Procedure Code and if they are necessary to achieve a legitimate goal in a democratic society, in particular, to ensure national or public security, to prevent riots or crime, to protect the country's economic interests and the rights and freedoms of other persons. These actions may be carried out only when the evidence essential to the investigation cannot be obtained through other means or it requires unreasonably great effort (Article 143^{1}-143^{2}).

Secret investigative actions shall be carried out when an investigation has been initiated and/or criminal prosecution is conducted due to an intentionally serious and/or particularly serious offence or to any of the offences defined in the following articles of the Criminal Code of Georgia: Article 117(1), Article 139(2), Articles 140 and 141, Articles 143(1), Article 143^{3}(1), Article 180(1), Article 181(1), Article 186(2), Article 187(2), Article 198(1), Article 210(1), Articles 253(1), Article 255^{1}(1), 259^{4} and 184, Article 285(1), Articles 286 and 287, Article 288(1-2), Articles 289, 290 and 292-303, Article 304(1), Articles 305 and 306, Article 318(1), Article 322^{1}(1-2), Articles 340 and 341(Article 143^{3}).

Secret investigative actions shall be carried out under a court ruling. A judge of a district (city) court shall render a ruling upon a prosecutor's reasoned motion. These actions may, under a reasoned decree of a prosecutor, be carried out without a court ruling, in the case of urgent necessity, when a delay may cause destruction of the facts important for the case (investigation) or make it impossible to obtain those data (Article 143^{3}).The body conducting secret investigative actions, also investigative authorities or persons, shall be obliged, within their powers, to limit, to the extend possible, the monitoring of communications and persons that are not related to the investigation (Article 1437).

A body carrying out secret investigative actions and relevant investigative authorities shall be responsible for appropriately safeguarding the information obtained as a result of secret investigative actions. Information obtained as a result of secret investigative actions shall, by decision of the prosecutor, be immediately destroyed after the termination or completion of such actions, unless the information is of any value to the investigation. Also included is the information obtained as a result of the secret investigative action that has been carried out without a ruling of a judge in the case of urgent necessity and that, even though recognised by a court as lawful, has not been submitted as evidence by the prosecution in the manner prescribed by the Criminal Code to the court that hears the case on the merits. The materials shall be immediately destroyed if they are obtained as a result of operative-investigative activities and do nor concern a person's criminal activities but include details of that person's or any other person's private life and are subject to destruction under the Georgian Law on Operative-Investigative Activities (Article 143^{8}).

71 Respect of privacy: is privacy safeguarded by law?

The right to have one's personal data safeguarded is a constitutional right. Article 15 of the Constitution of Georgia defines that personal and family life shall be inviolable. This right may be restricted only in accordance with the law in order to ensure national security or public safety, or to protect the rights of others, insofar as is necessary in a democratic society. Additionally, the Constitution of Georgia defines in that same provision that personal space and communication shall be inviolable. No one shall have the right to enter a place of residence or other possessions, or to conduct a search, against the will of the possessor. These rights may be restricted only in accordance with the law in order to ensure national security or public safety, or to protect the rights of others, insofar as is necessary in a democratic society, based on a court decision or without a court decision in cases of urgent necessity provided for by law. In cases of urgent necessity, a court shall be notified of the restriction of the right no later than 24 hours after the restriction, and the court shall approve the legality of the restriction no later than 24 hours after the submission of the notification. Finally, Article 18 of the Constitution of Georgia establishes that everyone shall have the right to be informed about personal data collected about him/her in accordance with the law, unless they contain state, professional or commercial secrets. Also Information contained in official records pertaining to health, finances or other private matters of an individual shall not be made available to anyone without the prior consent of the individual in question, except as determined by law, when doing so is necessary to safeguard national security or public safety, or the health, rights and freedoms of others.

The principal umbrella law governing the protection of personal data is the Law on Personal Data Protection. The law aims to ensure the exercise and protection of rights to privacy and other rights and freedoms for each and every natural person. Provisions of the Law on Personal Data Protection are applied to the processing of data through automatic or semi-automatic means, and to the processing of data through non-automatic means within the territory of Georgia, of data that form part of a filing system or are intended to form part of a filing system. This law also applies to automatic processing of data as a state secret for crime prevention and investigation, operational-investigative activities and protection of the rule of law, except as provided in this law.

Article 44 of the General Administrative Code of Georgia defines that a public institution shall be obliged not to disclose personal data without the consent of the individual, or without a justified court decision if so provided for by law, except for the personal data of officials (and nominees for positions).Neither the Civil Code of Georgia nor any other law governing the field of marriage, family and domestic relations contain provisions that precisely provide for the matters of collecting, storing, processing and using of personal data in the area involved, which is however an obligation derived from Article 15 of the Constitution of Georgia and Article 3 of the Law on Personal Data Protection.

Pursuant to the Criminal Procedure Code of Georgia, an investigative action that restricts private property, ownership or the inviolability of private life, shall be carried out under a court ruling upon motion of a party. In the case of urgent necessity, an investigative action may also be carried out without a court ruling, when a delay may cause the destruction of the factual data essential to

the investigation, or when a delay makes it impossible to obtain the above data, or when an item, document, substance or any other object containing information that is essential to the case has been found during the conduct of any other investigative action (if found only after a superficial examination), or when an actual risk of death or injury exists.

In an answer to this question and since there are no other legal sources for protecting and guaranteeing the right to privacy in the field of electronic communications aside from the Law on Electronic Communications,[376] please see our answer to question number 69.

RIGHT TO MARRY AND RIGHT TO FOUND A FAMILY

72 **Elaborate how the right to marry and the right to establish a family are protected within your legislation.**

According to the Constitution of Georgia, marriage is a union of a woman and man, for the purpose of establishing a family and shall be based on the equality of rights and the free will of spouses (Article 30).The Civil Code of Georgia determines the minimum age of marriage, established at the age of 18. According to the Civil Code of Georgia, marriage may end upon the death of one of the spouses, by annulment or by divorce. If there is a dispute between spouses, divorce shall be obtained through legal proceedings; in other cases, through a civil registration authority. There is also a provision that states that in certain circumstances, a husband has no right to file for divorce without the wife's consent, namely during the pregnancy of the wife and within one year after the birth of a child.

Under Article 574, in case the spouses cannot agree on who will live in a rented lodging, a court shall settle the dispute. It does not matter for the court which of the spouses is the tenant. If the court acknowledges the right of that spouse to the lodging who is not the tenant, then that spouse becomes a party to the tenancy agreement.

According to the law, if a divorce case is to be considered by the court, the case shall be heard through adversarial proceedings established by the Civil Procedure Code of Georgia. Also, the court shall take measures to reconcile the spouses. It may adjourn the hearing and fix a period of a maximum of six months for reconciliation of the spouses. A divorce shall be granted if the court finds that it is no longer possible for the spouses to live together and preserve the family despite the reconciliation measures taken. When delivering a divorce decision, the court shall, if necessary, take actions to safeguard the interests of the minor children and a disabled spouse.

By law, in case of minors, if the spouses have not agreed on the place of residence of their children and on the funds to be paid for their maintenance after the divorce, the court shall be obligated, when granting the divorce, to determine which parent is to be awarded custody of the child, as well as the amount of the maintenance (alimony) and the parent responsible for its payment. In

376. Law on Electronic Communications, Official Gazette of Georgia, no. 1514, first adopted: 02/06/2005; last amended: no 3286-RS, 21/07/2018.

the cases provided in Article 574, if necessary, a guardianship and custodianship authority shall be involved in the proceedings. At the request of the spouse entitled to maintenance from the other spouse, the court shall, when making a decision on a divorce case, determine the amount of the funds to be paid by the other spouse.

According to the law, at the request of both or one of the spouses, the court shall, when making a decision in a divorce case, consider the partition of the assets that constitute common property of the spouses. If such a partition affects the rights of third parties, the dispute over the partition of property may not be settled concurrently with the divorce case. If the spouses have matrimonial property, the period on claims for division of the matrimonial property of divorced spouses shall be three years.

According toArticle 1136 of the Civil Code of Georgia, divorced spouses may remarry. The Georgian legislation also defines the marriage contract, which may be changed or terminated at any time by mutual agreement of the spouses. Unilateral repudiation of a marriage contract shall not be allowed. A marriage contract shall be terminated upon divorce.

If parents have minors and spouses live apart due to divorce or for any other reason, they shall agree on who will have the right to decide with whom the minor child is to live. If parents disagree, the dispute over the custody of the minor shall be resolved by the court, taking the child's interests into consideration. In that case, the right of a parent to be a representative of the child in a legal dispute shall be suspended. A guardianship and custodianship authority shall appoint a child's representative who is to represent the child's interests in court proceedings. Article 1202 states that parents shall have equal rights and duties with respect to their children regardless of the fact that they are divorced or live apart. The parent who has the custody of the child may not limit the rights and duties of the other parent.

Georgian Law also regulates forced marriages. Article 150^1 of the Criminal Code of Georgia says that forced marriage (including an unregistered marriage) shall be punished by community service for two hundred to four hundred hours or with imprisonment for up to two years. The same act committed knowingly against a minor shall be punished by imprisonment for up to four years.

73 **What are your legal provisions on marriage or legal partnership, if any, including of same-sex couples?**

The regulations governing the field of family relations do not include same-sex partnerships. By the provisions of Georgian legislation, persons who enter into marriage must be of the opposite sex.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

74 **Please give details and explain any limitations to this freedom, which are permitted.**

Freedom of belief, religion or conscience is guaranteed by the Constitution of Georgia. Other laws also create conditions for the protection and realisation of the right.

The Constitution of Georgia was adopted in 1995 after the country gained political independence from the Soviet Union. Article 16 of the Constitution guarantees freedom of belief, religion and conscience for all. It prohibits persecution of a person based on their religion or belief or expression thereof. This constitutional provision also contains legitimate aims for the restriction of freedom of religion or belief. The limitation clause was amended in 2018.

According to the Constitution (before amendments in 2017), freedom of belief, religion and conscience shall be restricted only if it violates the rights of others. In 2017, the Parliament of Georgia initiated draft amendments to the Constitution of Georgia. The amendments, among other issues, affected the provisions of freedom of religion and belief. The Parliament of Georgia added new criteria such as "state security," "prevention of crime" and "implementation of justice" as the legitimate aims of the restriction of FoRB. The Council of Europe Venice Commission emphasised in its second opinion[377] on the draft constitution that those criteria do not represent legitimate aims for interfering in freedom of religion and belief, and according to paragraph 2 of Article 9 of the European Convention for Human Rights, the legitimate aims for restricting FoRB require strict interpretation and may not be extended by way of interpretation to other notions. The Venice Commission referred to the case law of the European Court of Human Rights, according to which the state cannot restrict the freedom of religion on the grounds of state/national security. As a result, the Parliament of Georgia initiated new amendments and the problematic provisions (restriction of FoRB based on state (national) security, prevention of crime and implementation of justice) were removed in the draft constitution. The final text was adopted by the Parliament on 23 March 2018 which states: "restriction of freedom of religion and belief shall be subject only to such limitations as are prescribed by law, are necessary for a democratic society in the interest of public safety, health and the protection the rights of others." These amendments to the Constitution will come into force after the 2018 presidential elections.

Freedom of religion and belief is further enshrined in Article 8 of the Constitution. It brings forward the idea of independence of the Georgian Orthodox Church (GOC) from the state, declares the GOC and state to be independent agents and differentiates their respective spheres, which is the very essence of secularity. The Constitution does not provide more specificity on the separation of religion and state. Therefore, the abovementioned provision is the only and main guarantee for the separation of state and religion.

After the 2018 amendments[378], Article 8 of the Constitution now considers freedom of belief and the special role of the Georgian Orthodox Church as proportional/equal values. Together with freedom of belief and religion, the State recognises the special role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia [...]. After the constitutional amendment in 2001, a new provision was added to grant a special role to the GOC. As a result, Article 8 further declares that the relations between the state and GOC are regulated by constitutional agreement (see question 76*)*.

377. Opinion of the Venice Commission on Draft constitution, paragraph 39, 22 September 2017 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2017)006-e

378. The previous version of the edition (art. 9) recognised separately: a. full freedom of religion; b. special role of the Orthodox Church in the history and its independence from the state.

Article 17 guarantees the right to freedom of opinion. No one shall be persecuted because of his/her opinion or for the expression thereof. Article 22 of the Constitution protects freedom of association, including religious association.

Article 11 of the Constitution states that everyone is equal before the law and prohibits discrimination on the basis of race, skin colour, sex, origin, ethnic affiliation, language, religion, political or other opinions, property or social status, place of residence, etc. Consequently, Chapter 2 of the Constitution of Georgia, which guarantees fundamental rights and freedoms, grants equal rights to the members of all religious organisations.

Freedom of religion or belief is guaranteed by Georgian legislation, in full compliance with the Constitution and international treaties. Georgia does not have a separate law on religion or religious organisations. Instead, the right and activities of religious organisations are regulated by a variety of laws.

Registration of religious organisations: Until 2005, due to the law and malpractice, religious organisations were unable to register. Only the Georgian Orthodox Church enjoyed the special status of legal entity under public law. After the legislative amendments in the Civil Code of Georgia in April 2005, other religious organisations were also allowed to register as non-profit legal entities (as either a union or a foundation). Later, in 2006, the notions of union and foundation were abolished and religious organisations were being registered directly as non-profits.

Despite this possibility, for some religious organisations, operating as a non-profit legal entity was not acceptable. For a number of years, they were demanding to be given the ability to register as legal entities under public law, a status enjoyed up until then only by the Georgian Orthodox Church, recognised as such by the state in 2002 under the constitutional agreement. After the requests from religious organisations over the years, on 5 July 2011, the Parliament of Georgia amended[379] the Civil Code, which allowed them to register as legal entities under public law (LEPL). The amendments do not preclude the organisations' right to register, upon their wish, as legal entities under private law, or not register at all.

In order to acquire LEPL status, according to the law, a religious organisation must meet the following two criteria: 1. Have historical connection to Georgia; 2. Be recognised as a religion in the countries of the Council of Europe. The National Agency of Public Registry within the Ministry for Justice of Georgia is responsible for the registration.

It is worth noting that after the amendments, religious organisations nevertheless remained under the scope of private law, as the Law of Georgia on Legal Entities under Public Law does not cover religious organisations registered as legal entities under public law.[380] Moreover, registration of the religious organisations is conducted pursuant to the rules set for the registration of non-commercial (non-profit) legal entities. At the same time, their power is defined under a chapter[381] of the Civil Code that concerns the rights and obligations of non-commercial legal entities.[382] The purpose of such normative regulation was to grant the possibility to religious organisations to

379. Article 1509^1 was added to the Civil Code of Georgia.

380. Civil Code of Georgia, art. 1509^1, para.5.

381. Civil Code of Georgia, Title one, Chapter two.

382. Civil Code of Georgia, art. 1509^1, para.6.

register as legal entities under public law, which, in essence, has declarative nature. Its purpose was to provide more or less equal treatment to religious organisations, and not to bind them by the obligations of public law. Despite this, since 2014, the state in its other normative acts, established the practice of extending the rules for legal entities under public law to religious organisations (see question 76).

Registration of religious organisations has practical importance, since Georgian legislation links the legal personality to the fact of registration. The capacity for the rights of a legal person arises from the moment of its registration (Civil Code of Georgia, Article 25, para. 4).As a result, the organization becomes independently liable with its own property, acquires rights and duties in its own name, enters into transactions and can sue or be sued (Civil Code of Georgia, Article 24, para. 1).

Georgian legislation does not regulate the specific time or place to hold religious rituals, prayers and other religious activities. Therefore, there is no restriction in this regard, except those defined by the limitation clause of the Constitution (Article 16) as legitimate aims for the restriction of the freedom. Unlawful interference with the performance of religious service (Article 155), also persecution of persons because of their speech, opinion, conscience, confession, faith or creed, or religious activities (Article 156) is punishable under the Criminal Code of Georgia.

The Law of Georgia on General Education[383]defined religious neutrality and non-discrimination as one of the key principles of public schools. The law aims to create an environment based on secularity and equality for all the students. The law prohibits the placement/display of religious symbols for non-academic purposes (Article 18) and the use of the study process in general education institutions for the purpose of religious indoctrination, proselytising or forced assimilation (Article 13). This rule does not restrict the celebration of public holidays and historical dates in public schools, as well as the organisation of such events that are intended to establish national and universal values. According to the law, any kind of discrimination on admission to a school is inadmissible. Pupils, parents and teachers shall have the right to freedom of belief, religion and conscience and to choose voluntarily and convert to any or no belief or worldview. It is illegal to impose such obligations upon pupils, parents and teachers that fundamentally contradict their belief, religion or conscience, unless it violates the rights of others or prevents achievement of the educational level determined by the National Curriculum (Article 18). According to the law, pupils of public school shall have the right to study religion or conduct religious rituals outside of school time, if it serves the purposes of acquiring religious education.

> Despite the high standard of religious neutrality and freedom guaranteed by legislation, in practice, religious minorities and the Public Defender (Ombudsman) of Georgia frequently underline that the requirements of the law are often violated at public schools by display of religious symbols for non-academic purposes, indoctrination and proselytising[384]. In its fourth report on Georgia, the European Commission

383. Law on General Education, Law No. 1330, 08/04/2005, Legislative Herald of Georgia 04/05/2005, last amended 20/09/2018.

384. Tolerance and Diversity Institute: Assessment of the Needs of Religious Organisations in Georgia, 2014, available at http://tdi.ge/sites/default/files/saxelmzgvaneloebis_analizi_tdi_2016.pdf
Human Rights Education and Monitoring Centre: Religion in Public Schools, 2014, available at https://emc.org.ge/uploads/products/pdf/Religion_In_Public_Schools.pdf

against Racism and Intolerance (ECRI) states that some teachers oppress student representatives of religious minorities, e.g. "they talk in favour of the religion of the majority when teaching subjects that are not related to the religion."[385] The practice of starting classes with prayers still exists in schools. The Public Defender reported that students of different faiths are pressured to participate in religious activities against their will, in order to avoid more rejection and discrimination from majority.[386]

School textbooks often disseminate stereotypical, negative and distorted images of non-dominant religious and ethnic groups and promote xenophobic attitudes and intolerant perspectives. Another facet of the problem is the qualification of school teachers who do not have enough knowledge and awareness to manage cultural diversity. They very often express negative attitudes towards particular religions, religious attributes and practices, and portray followers of some non-dominant confessions in Georgia as traitors to Georgia's true identity, which is constructed around a homogeneous, mono-religious and mono-ethnic depiction of what it means to be "Georgian."[387]

The GOC's influence on public educational institutions plays a major role in discrimination against minority students and violation of religious neutrality. GOC representatives frequently visit public schools and interfere in the academic process. Besides, there are several examples of the GOC interfering in the content of new school subject standards and textbooks, which ultimately resulted in the Ministry of Education changing the content in favour of the GOC's demands.

75 **Please give information on the measures taken to prevent discrimination against religious minorities in Georgia.**

According to Article 11 of the Constitution, all persons are equal before the law, regardless of religion. In accordance with universally recognised principles and norms of international law and the legislation of Georgia, citizens of Georgia, regardless of their ethnic and religious affiliation or language, shall have the right to maintain and develop their culture, and use their mother tongue in private and in public, without any discrimination. Article 23 prohibits the establishment and activity of a political party that aims to overthrow or forcibly change the constitutional order of Georgia, infringe on the independence or violate the territorial integrity of the country, or that propagates war or violence or incites national, ethnic, provincial, religious or social strife.

385. [1] European Commission Against Racism and Intolerance (ECRI), Report on Georgia (Fourth cycle of the monitoring, adopted on 28 April 2010) page 27; The document is available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-IV-2010-017-GEO.pdf
[2] See the survey of the Tolerance and Diversity Institute (TDI) "Assessment of the Needs of Religious Organisations in Georgia" (2014), page 60, the survey is available at: http://tdi.ge/sites/default/files/religiuri-gaertianebebis-sachiroebebis-kvleva-sakartveloshi_0.pdf .

386. See "Report on the protection of human rights and freedoms in Georgia of the Public Defender of Georgia" 2015, page 91, the report is available at:http://ombudsman.ge/res/docs/2019062409381098019.pdf.

387. Tolerance and Diversity Institute, analysis Religious and Ethnic Diversity in School Textbooks, 2016, available at: http://tdi.ge/sites/default/files/saxelmzgvaneloebis_analizi_tdi_2016.pdf

Article 31 of the Georgian Constitution guarantees the right to a fair trial. According to the first paragraph of the article, every person has the right to apply to court to defend his/her rights. The right to a fair and timely trial shall be ensured (Constitution of Georgia, Article 31, para. 1).

The Constitutional Court of Georgia is one of the most important guarantors of fundamental rights. According to the Constitution, the Constitutional Court reviews the constitutionality of a normative act with respect to the fundamental human rights enshrined in Chapter Two of the Constitution on the basis of a claim submitted by a natural person, a legal person or the Public Defender (Constitution of Georgia, Article 60, para. 4, "a"). Article 39 of the Organic Law on the Constitutional Court of Georgia[388]provides that the right to lodge a claim with the Constitutional Court on the constitutionality of a normative act or its individual provisions shall rest with citizens of Georgia, other natural and legal persons, if they believe that their rights and freedoms recognised under Chapter Two of the Constitution of Georgia have been violated or may be directly violated. In cases that fall under Article 39, the defendant shall be the body/official whose act, in the plaintiff's opinion, has caused the violation of human rights and freedoms recognised under Chapter Two of the Constitution of Georgia, including the freedom of religion or belief.

Since 2014, the common courts have also become significant guarantors for the protection of religious freedom and prohibition of discrimination, as a special provision was added to the Civil Code of Procedure on litigation of discrimination cases. According to Article 363^2, any person who considers himself/herself a victim of discrimination may file a claim with the court against the person/institution that, in his/her opinion, has discriminated against him/her. In a claim under this article, a person may request termination of the discriminatory action and/or elimination of the results of such action, also compensation for moral and/or material damages.

The Public Defender (Ombudsman) of Georgia is an important institution supervising the protection of human rights and freedoms. The Public Defender is elected by majority of the total composition of Parliament of Georgia for a term of five years. According to Article 4, para. 1, of the Organic Law on Public Defender of Georgia, the Public Defender of Georgia acts independently and carries out his/her activities according to the Constitution of Georgia, treaties and international agreements, universally recognised principles and norms of international law, the organic law and other legislative acts.

In order to provide state guarantees for protecting human rights and freedoms, the Public Defender of Georgia monitors to determine that state and local self-government authorities, public institutions and officials protect and respect the rights and freedoms recognised by the state for every person in the territory of Georgia and under its jurisdiction, irrespective of race, skin colour, sex, language, religion, political or other opinions, national, ethnic and social affiliation, origin, property and social status, place of residence or other characteristics. The Public Defender detects violations of human rights and freedoms and promotes the restoration of violated human rights and freedoms (Law on Public Defender of Georgia, Article 3, para. 1, para. 3); independently examines the situation with regard to the protection of human rights and freedoms, and the facts of their violation, based on both received statements and appeals and on his/her own initiative (Article 12); examines statements and appeals of citizens of Georgia, foreign citizens and stateless persons, as well as legal entities under private law, and political and religious associations,

388. Article 39, para. 1, "a" of the Organic Law on the Constitutional Court of Georgia, ***Law. No 95, adopted 31/01/1996, published legislative herald of Georgia 27/02/1996, last amended 21/07/2018.***

regarding actions or acts of state and local self-government authorities, public institutions and officials violating the rights and freedoms defined in the Constitution and laws of Georgia, and in treaties and international agreements to which Georgia is a party (Article 13).

In the frame of the EU Visa Liberalisation Action Plan, in 2013 Georgia took on the obligation to adopt special anti-discrimination legislation. Consequently, on 2 May 2014 the Parliament of Georgia adopted the Law on Elimination of all Forms of Discrimination.[389]The law creates additional guarantees to protect victims of discrimination. The Public Defender of Georgia is defined as a supervisory body for the implementation of the law.

In addition, in 2014, the Parliament of Georgia adopted the National Strategy for the Protection of Human Rights in Georgia 2014-2020. The goals of the strategy include protecting the freedom of religion and belief, as well as equal rights and protection of the rights of minorities. The Action Plan for 2018-2020 ***inter alia*** includes prevention and effective investigation of crimes motivated by religious hatred, retraining the staff of the Ministry of Internal Affairs and Chief Prosecutor's Office, to strengthen their capacity to investigate the crimes committed on the grounds of hatred.

According to the Human Rights Action Plan, the State Agency for Religious Issues (SARI) functioning under the prime minister of Georgia is the responsible body for implementing the following activities: eliminating the unequal tax regime that grants tax exemptions to only one religious organisation (Georgian Orthodox Church); overhauling legislation in the field of freedom of religion and belief; and if needed, proposing corresponding recommendations to the government.

> Nonetheless**,** SARI has not implemented any particular activities with regard to the mentioned responsibilities. The Agency has not drafted any amendment to the legislation on discriminatory provisions. Therefore, religious organisations applied to the Constitutional Court of Georgia requesting to find those norms of the Tax Code of Georgia unconstitutional, on the basis of which tax privileges are granted to only one religious organisation (the Georgian Orthodox Church); religious organisations also addressed the Constitutional Court about the discriminatory provisions of the State Property Law that grants privileges exclusively to the Georgian Orthodox Church. The court affirmed the claims of the religious organisations and found the abovementioned provisions unconstitutional, contradicting Article 14 of the Constitution (right to equality). (For more details see question 76).
>
> Pertaining to the responsibility of defining historical owners of houses of worship of different religious denominations, solving property disputes and ensuring the transfer of property, SARI established the practice of transferring the property to minority religious organisations with the right of usage (and not with the right of ownership). SARI does not address the issue of restitution of religious property that had been confiscated by the Soviet regime and is claimed by a number of religious organisations in Georgia.[390]

389. Law on Elimination of all Forms of Discrimination**,** Law No. 2391-II, adopted 02/05/2014, published legislative herald of Georgia 07/05/2014.

390. Human Rights Education and Monitoring Centre, Report on the monitoring of the implementation of human rights strategies and action plans for 2016-2017, 2018, available at: https://emc.org.ge/uploads/products/pdf/RELIGIOUS-MINORITIES_1539077176.pdf

The LEPL State Agency for Religious Issues was established in 2014 under the prime minister of Georgia. According to its statute, SARI is responsible to provide information, research, scholar-educational activities and recommendations in fields of religion for government and prime minister of Georgia.

> The establishment of SARI was criticised by the big number of religious organisations and human rights NGOs, as it was established without consulting with the main actors. In addition, its mandate and functions seemed dubious and it is considered to be an instrument of control over religious minority organisations. The European Commission Against Racism and Intolerance (ECRI)[391] found that "doubts about the agency's work increased further with the publication of its Religious Policy Development Strategy in early 2015. It states that the Georgian State needs to 'avoid interference of the neighbour states in the internal politics of Georgia by using Georgian population's ethnic-religious diversity. In Georgia … [t]he scope of the problem was only limited on protection of religious minorities rights, while, at the same time, it should cover internal and foreign security discourses of the state.' Many observers note that viewing religious freedom and the rights of religious minorities through a security perspective is detrimental to the protection of rights and the prevention of discrimination and intolerance. It also carries a risk of becoming a self-fulfilling prophecy, as it can result in the marginalisation of minorities, eroding their trust in, and identification with, the state."
>
> Another concern about SARI is its preferential treatment towards religious organisations and lack of cooperation with the Council of Religions. SARI's policy is discriminatory in terms of financing religious organisations too (see question 76).

The Council of Religions (CR) under the Public Defender of Georgia was established in 2005 based on the memorandum between the Public Defender and religious associations. CR is the largest forum of religious organisations in Georgia. Nowadays it unites 32 religious organisations. All CR members have equal rights. The work of the CR is facilitated and coordinated by the Tolerance Centre. In May 2017, the CR published and presented its recommendations addressing state institutions and the media. The document reflects the main systemic challenges faced by religious minorities in Georgia and offers relevant recommendations.[392] The problems include: the need to amend certain legislation and discriminatory provisions, ineffective investigation of crimes committed on the grounds of religious intolerance, unequal treatment towards non-dominant religious groups, improper and discriminatory practice of issuing permits for construction of houses of worship for religious minorities, historical buildings and restitution of property confiscated by the Soviet regime, problem of religious neutrality and discrimination at public schools, hate speech and the role of the media, etc.

391. ECRI Report on Georgia, fifth monitoring cycle, Published on 1 March 2016, para. 99 https://rm.coe.int/fourth-report-on-georgia/16808b5773

392. Recommendations of the Council of Religions, 2017, available at: http://www.tolerantoba.ge/failebi/inglisuri_broshura_sasxalxo___damcveli__1__44654.pdf

> The State Agency for Religious Issues (SARI) has not taken any steps to cooperate with the CR and Public Defender. The European Commission against Racism and Intolerance (ECRI) underlines the importance of the Council of Religions:" ECRI recommends that the Georgian authorities scale up their support for the Council of Religions, which operates under the auspices of the Public Defender's Tolerance Centre. The authorities should in particular task the newly created State Agency for Religious Issues to cooperate with the Council of Religions and utilise the Council's expertise and recommendations in order to tackle the problem of religious intolerance."[393]

On 12 January 2018 the Ministry of Internal Affairs of Georgia established the Human Rights Department. The main mission of the department is to ensure the timely response and effectiveness of pending investigations on violence against women, domestic violence, hate crimes, trafficking and crimes committed by or against juveniles. The Department is also assigned to cooperate with state institutions and non-governmental organisations.

> The establishment of the department was assessed positively by civil society organisations. However, the mandate of the department cannot be considered the full realisation of ECRI's recommendation, since the recommendation envisaged establishment of a special police unit with an investigative mandate for hate crimes, even though the new department has no investigative mandate. The authority granted to it implies the monitoring of investigations (including crimes committed on the grounds of discrimination) and the right to submit relevant recommendations to the minister, also identification of flaws in the process of investigation and administrative proceedings. However, it is not clear what mechanisms are foreseen to identify the flaws and when and how the department can get involved in the process. In addition, the lack of a preventive policy towards hate crimes, lack of a policy oriented on the protection and rehabilitation of victims, also deficiency of particular approaches how to work among ethnic and/or religious communities and establish trustworthy relations are issues of concern. Therefore, the mandate and functions of the department might not be sufficient to address the problem of effective investigation of hate crimes.

Georgian legislation recognises the fundamental rights and freedoms of a human being and, on the other hand, guarantees the protection of these rights. In this respect, considering the content of human rights, the existing norms of the state's positive obligations are especially important. The Criminal Code of Georgia creates important guarantees for the protection of human equality. Article 142 of the code imposes responsibility for violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation,

393. ECRI Report on Georgia, fifth monitoring cycle, Published on 1 March 2016, para. 103 https://rm.coe.int/fourth-report-on-georgia/16808b5773

gender identity and expression, political or other views or of any other signs that have substantially breached human rights (Criminal Code of Georgia, Article 142).

Furthermore, according to Article 155 of the Criminal Code, unlawful interference with the performance of religious service or other religious rites or customs using violence or the threat of violence, or if accompanied by an insult to a believer's religious affiliation, shall be punished by a fine or corrective labour for up to a year, house arrest for a term of six months to one year, or with imprisonment for up to two years (Article 155).

Article 156 of the Criminal Code imposes criminal liability for persecution of persons because of their speech, opinion, conscience, confession, faith or creed, or political, social, professional, religious or scientific activities.As for punishment, thecode imposes a fine, or house arrest for a term of six months to one year, or imprisonment for up to two years.

In March 2012, an amendment passed to the Criminal Code added a specific provision with regard to hate crimes. Therefore, hatred as a motive of crime, serves as an aggravating circumstance for every criminal offence defined by the Code (Article 53[1] of the Criminal Code).

The law protects people from discrimination on religious grounds in labour and pre-contractual relations. According to the Article 2, paragraph 3 of Labour Code of Georgia,[394]labour and pre-contractual relations shall prohibit any type of discrimination due to race, skin colour, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, public, political or other affiliation, including affiliation to trade unions, political or other opinions (Labour Code of Georgia, Article 2, para. 3). According to the Code, discrimination shall be direct or indirect harassment of a person aimed at or resulting in creating an intimidating, hostile, humiliating, degrading, or abusive environment for that person, or creating the circumstances for a person directly or indirectly causing their condition to deteriorate as compared to other persons in similar circumstances (Article 2).

Article 1153 of the Civil Code of Georgia includes the prohibition of discrimination when entering into a marriage and in domestic relations (rights may not be restricted directly or indirectly). No direct or indirect preference may be given on the grounds of origin, social and property status, racial and ethnic background, sex, education, language, attitude to religion, type and nature of activities, place of residence and other circumstances (Article 1153).

According to the Article 6 of Law on Patient Rights,[395]patients may not be discriminated against on the grounds of race, skin colour, language, sex, genetic heritage, belief and religion, political and other opinions, national, ethnic or social origin, property and social status, place of residence, illness, sexual orientation or negative personal attitude.

Article 56 of Georgian Law on Broadcasting[396]is devoted to restricting the broadcast of programmes that contain the apparent and direct threat of inciting racial, ethnic, religious or other hatred

394. Labour Code of Georgia, Law no. 4113, adopted 17/12/2010, published legislative herald of Georgia 27/12/2010, last amended 05/09/2018.

395. Law on Patient Rights**,** Law no. 283, adopted 05/05/2000,published legislative herald of Georgia 25/05/2000, last amended 05/07/2018.

396. Law on Broadcasting, Law no. 780, adopted 23/12/2004, published legislative herald of Georgia 18/01/2005, last amended 20/09/2018.

in any form and the threat of encouraging discrimination or violence toward any group. Also, broadcasting of programmes intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, are prohibited, except when this is necessary due to the content of a programme and when it is targeted to illustrate existing hatred (Georgian Law on Broadcasting, Article 56, para. 2, para. 3).

76 **What is the constitutional status of religions in your country? Is there any state religion? Is there a legislative framework for conscientious objection? If so, please provide details.**

The Constitution of Georgia recognises freedom of religion and belief on one hand and underscores 'the outstanding role in the history of Georgia' of the GOC. According to Article 8 of the Constitution, along with freedom of belief and religion, the state shall recognise the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia, and its independence from the state. The relationship between the state of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia shall be determined by a constitutional agreement, which shall be in full compliance with the universally recognised principles and norms of international law in the area of human rights and freedoms. Prior to the 2018 Constitutional Amendments, the corresponding Article 9 was divided into two parts. It recognised separately: a. freedom of religion and b. special role of the Orthodox Church in the history and independence of the state. The first part used to declare **absolute** freedom of religion and belief. The second part was completed with the recognition of the special role of the Orthodox Church in the history of Georgia and with the statement regarding the independence of the church from the state. Following the Constitutional amendments, the structure of the norm was amended.

Another legal document that regulates the relationship between the GOC and state is the Constitutional Agreement that was concluded on 14 October 2002. It grants considerable privileges to the Church.

The text of the Constitutional Agreement is not discriminatory itself, as this is the agreement concluded between two parties and does not contain provisions prohibiting the same rights to other religious organisations. However, the state has not signed similar agreements with other religious organisations in addition to the fact that a number of benefits for the GOC envisaged by various laws are derived from the Constitutional Agreement. Therefore, the approach of the state towards religious organisations can be appraised as selective and discriminatory. Furthermore, both the GOC and state often justify the GOC's privileges with the Constitutional Agreement and the historic role of the Church.

In this regard, the Constitutional Court of Georgian 2018 made a very important statement: "[R]ecognition of the special role of the [Georgian Orthodox] Church

> is related to its historical contribution and does not serve to create privileged legal conditions for the GOC at the present time. The historical role should not be considered as the source of privileged legitimacy. Differentiation and creation of a legally predominant condition is not and should not be the goal of the Constitution[...] Granting certain rights to the GOC does not imply the creation of obstacles for other religious organisations to enjoy the same rights."[397]

The Constitutional Agreement determines the legal status of the Georgian Orthodox Church, which was declared a historically formed legal entity under public law (LEPL). Determination of legal status of religious organisations, including the dominant religious organisation, is one of the important guarantees of the autonomy of religious organisations enshrined by the freedom of religion and belief. However, at the time of conclusion of the Constitutional Agreement, it was the vivid example of the preferential treatment of the Georgian Orthodox Church and hugely advantageous to it when compared with other religious organisations. If other religious organisations would declare their religious objectives, they would not be entitled to register as legal persons at all, not to mention registration as legal entities under public law.

Article 3 of the Constitutional Agreement recognises Orthodox marriage conducted by the GOC.

Pursuant to Article 4 of the Constitutional Agreement, a "clergyman," which is defined as a person ordained under Orthodox, canonical procedure, is exempted from military service. It is noteworthy that the exemption of clergymen is not related to conscientious objection, as the Orthodox Church has no teaching against the military service. Religion ***per se*** does not require followers or clergy to decline from military service.

Under Article 5 of the Constitutional Agreement, the Orthodox Church was granted significant privileges in the sphere of public education: voluntary teaching of Orthodox Christianity in educational establishments, recognition of diplomas, degrees and titles bestowed by educational institutions of the Church, implementation of joint programmes and support of the educational institutions of the Church.

According to the Agreement, the GOC is granted tax exemptions. Pursuant to Article 6, objects pertaining to worship, e.g. the production, import, supply and donation, as well as property and land used for non-economical purposes, are exempted from taxation.

> Thus, the property and land of the Orthodox Church used for non-economical purposes, production of objects for worship and their supply shall not be taxed. Exemption of GOC from taxation in this particular provision does not automatically create a discriminatory environment for other religious entities. The question is whether the same tax exemptions are also available to other religious organisations that function in Georgia and whether other laws entitle religious communities to enjoy the same benefits.

397. Judgements of the Constitutional Court of Georgia on the cases #671 and 811, 3 July, 2018

According to Article 99 of the Tax Code of Georgia,[398] profit gained from the realisation of the crosses, candles, icons, books and calendars used for religious purposes by the Patriarchate of Georgia is exempt from profit tax. Article 168of the Tax Code explicitly states that the Patriarchate of Georgia is VAT exempt in regards to the supply of crosses, candles, icons, books, calendar and other religious items, that are exclusively used for religious purposes. Moreover, Article 168 states that construction, restoration and painting of cathedrals and churches at the order of the Patriarchate of Georgia are also VAT exempt without the right of deduction. According to this Article, if the Patriarchate orders a particular company to implement the abovementioned activities on the immovable property of religious purposes, the company does not pay VAT. However, if the same order is given by another religious organisation, the same company is obliged to pay VAT. Stemming from the above, the construction, restoration and painting of the Patriarchate's worship houses might cost 18% less. As for the land tax, the Tax Code of Georgia does not provide for a differential tax regime and does not exempt religious organisations from it. The Tax Code contains no exception for the Orthodox Church of Georgia. However, Article 6 of the Constitutional Agreement states explicitly: "The Land... of Church is exempt from taxes." Therefore, despite the lack of tax exemptions for the Orthodox Church in the Tax Code, exemption is guaranteed by the superior normative act (the Constitutional Agreement) and, in respect to the land tax, the Georgian Orthodox Church benefits from significant financial advantage in contrast to other religious organisations, which pay the land tax.

In October 2015, eight religious organisations applied[399] to court with a constitutional complaint[400] (#671). The applicants requested to recognise as unconstitutional those legislative norms that impose Value Added Tax, Profit Tax and Property Tax on all religious organisations except the GOC.

In 2018, the Court declared Article 168 (paragraph 2, subsection "b") unconstitutional according to which the building, restoration and painting of temples and churches ordered by the Patriarchate of Georgian Orthodox Church (GOC) is exempted from value-added tax (VAT).[401]

It is noteworthy that the Constitutional Court made interesting interpretations of the claimed norms on the admissibility stage,in particular about the parts of the claim that the court did not consider on the merits. The court stated that the noted norms of the Tax Code (VAT and profit tax) should be interpreted in a way that will give the same rights to other religious organisations as the Patriarchate of Georgia, since the general norms that regulate religious activities allow for such interpretation. Hence, public bodies and the Common Courts shall take important interpretation of the Constitutional Court into consideration in the decision-making process and all of the religious organisations should be allowed to use the mentioned tax benefits.

The legal provision of the Georgian Law on State Property[402] ***(Law No 3512, adopted 21/07/2010, published legislative herald of Georgia 09/02/2010, last amended 20/07/2018)*** also provides privilege exclusively for GOC to receive the state property free of charge.

398. Tax Code of Georgia, law N 3591, adopted 17/09/2010, published legislative herald of Georgia 10/12/2010, last amended 31/10/2018.

399. http://tdi.ge/en/news/256-8-religious-organizations-applied-constitutional-court-georgia

400. constcourt.ge/ge/court/sarchelebi

401. Constitutional Court Granted two complaints of religious organisations. http://tdi.ge/en/news/602-constitutional-court-granted-two-complaints-religious-organisations

402. Law on State Property, Law No 3512, adopted 21/07/2010, published legislative herald of Georgia 09/02/2010, last amended 20/07/2018.

In 2016, five religious organisations applied to the Constitutional Court of Georgia with constitutional complaint (#811).In particular, the claim was doubting the constitutionality of the norm of the State Property Law, based on which, religious organisations registered as Legal Entities of Public Law (LEPL) (except the Georgian Orthodox Church) are deprived of the possibility to purchase state property. Also, the regulation allows the transfer of state property free of charge only to the Georgian Orthodox Church.

In 2018, the Constitutional Court of Georgia declared unconstitutional the legal provision of Georgian Law on State Property that provides the GOC the exclusive privilege of receiving state property free of charge (Article 6 (3) paragraph 1).[403]

In both decisions, the Constitutional Court outlined that discrimination could be eliminated by a complete abolition of the reviewed privileges, as well as by its equal application for all religious organisations. According to the court, the unconstitutional articles will be declared invalid after 31 December 2018.

Under Article 11of the Constitutional Agreement, the state reaffirms the fact of material and moral damages inflicted on the GOC during the 19th and 20th centuries (especially during 1921-1990), in the period of loss of state independence and, as the factual owner of the part of the confiscated property, assumes responsibility for partial compensation of the material damage. After conclusion of the Constitutional Agreement, the state started financially subsidising the Patriarchate of Georgia each year. The GOC has been receiving annually around 30 million GEL (approx. EUR 9.6 million) from the state budget, in addition to movable and immovable property of an unknown amount.[404]Besides the central budgetary transfer, various types of material goods have been transferred to the Patriarchate of Georgia over the years through the reserve funds of the President of Georgia and the Government of Georgia, Government of the Autonomous Republic of Adjara, local self-government bodies, also by President and Government through individual acts.

As to the second part of the damages inflicted by the Soviet Union through the seizure of churches, lands and movable property, there is an important guarantee enshrined in the Constitutional Agreement in this respect too (Article 7): “The state recognises the [GOC’s] ownership of the Orthodox churches, monasteries (functioning and not-functioning), their ruins, as well as land plots on which they are located, that are on the territory of Georgia.”

> The justification for the existing practice of state funding to the Church on the basis of the Agreement is unreasonable. Paragraph 2 of Article 11of the Constitutional Agreement notes that, in order to assess the issue of damage compensation, as well as the form, amount, and duration of compensation and compensation of property, land and other details, a commission should be created. The commission should prepare relevant draft normative acts. The commission, which had to establish the amount, forms and duration of the compensation to be given to the Church and other rules, has never really worked.

403. Constitutional Court Granted two complaints of religious organisations. http://tdi.ge/en/news/602-constitutional-court-granted-two-complaints-religious-organisations

404. State policy and Practice of Funding Religious Organisations. Tolerance and Diversity Institute (TDI) 2016. http://tdi.ge/sites/default/files/religiuri-organisaciebis-saxelmcipo-dapinansebis-politika-2014-2015.pdf

For instance, Order N1 of 7 January 2003 determined the composition of the "Commissions ensuring the measures envisaged in the Constitutional Agreement between the state of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia." In total, five commissions were created, including one related to the issue of partial compensation of material damage inflicted on the GOC. Regardless of the fact that the commission had to present provisions of the relevant commission to the President once in every two months, such provisions were never prepared. Information regarding the protocols of commission sessions is not recorded in the Administration of the President.

The Order of the President was annulled on 21 February 2012. Instead, Ordinance N63 of 21 February 2012 of the Government of Georgia created the governmental commission on the issues related to the Constitutional Agreement between the state of Georgia and the Orthodox Church. Among the eight working groups, one has to work on the estimation of the damage inflicted on the Church during the 19th and 20th centuries. However, the mentioned group has never really functioned or made any decisions to be used as a legal basis of the funding of the Orthodox Church.

> Therefore, the practice of direct funding of the GOC from the state budget does not represent a form of compensation, since the damage inflicted has not been calculated and the annual transfer of material goods began without the adoption of any normative acts establishing a legal basis.

It should be pointed out that in the 20th century, during the Soviet times, places of worship and all types of property were seized from religious organisations. After the demolition of the Soviet Union and regaining political independence in 1991, only the Georgian Orthodox Church had its property restored. Armenian, Catholic and Evangelical-Lutheran churches, along with Muslim and Jewish communities are still unable to restore their historic property. The majority of such places of worship remain under state ownership, however, some of the disputed churches had been transferred by the state in the ownership of GOC.

On the basis of Ordinance N117 of 27 January 2014, the government started financing four religious organisations (Islamic, Jewish, Roman-Catholic and Armenian Apostolic religious organisations) with the aim of compensating the material and moral damage suffered during the Soviet period.[405]

Financial assistance to religious organisations through the State Agency of Religious Issues (SARI) is regulated, on one hand, by the Ordinance of the Government of Georgia, according

405. The total amount allocated to the mentioned organisations in 2014 was 1,750,000 GEL (approx. 564,516 EUR). The amount transferred to the Muslim community was 1,100,000 GEL (approx. 354,838 EUR), while the Jewish community received 150,000 GEL (approx. 48,387 EUR), the Roman Catholic community received 200,000 GEL (approx. 64,516 EUR) and the Armenian Apostolic Christian community received 300,000 GEL (approx. 96,774 EUR). According to a 2015 Ordinance, 3,500,000 GEL was allocated to religious organisations and was distributed as follows: 2,200,000 GEL (approx. 709,677 EUR) to the Islamic community, 600,000 GEL to the Armenian Apostolic Christian community, 400,000 GEL (approx. 129,032 EUR) to the Roman-Catholic community and 300,000 GEL (approx. 96.774 EUR) to the Jewish community. In 2016, the funding for the four religious organisations was defined as 4.5 million GEL, and the same amount is allocated in the 2017 budget.

to subparagraph (a) of Paragraph I of Article 2 of this Ordinance, the government "expresses readiness" to compensate the damage caused during the Soviet totalitarian regime to religious organisations, and according to subparagraph (b) of the same Paragraph, due to the absence of estimation of the damage, the compensation will be "symbolic." The same argumentation is given in contracts between the Agency and religious organisations, where the purpose of transfer of financial resources is indicated as partial and symbolic compensation for the damage inflicted during the Soviet totalitarian regime.

As in the case of the GOC, the practice of funding of the four religious organisations falls under the direct financing model. SARI defined the criteria according to which the existing resources would be distributed among religious organisations. The criteria established by the Agency are based on three indicators: numbers of parish, religious leaders, and religious buildings.

> It is impossible to relate these criteria to the damage suffered during the Soviet totalitarian regime, since neither of these considers the amount of the damage and/or mechanisms for calculation. For example, a religious organisation suffering the severest repression could have ownership over the fewest number of religious buildings. The same can be said of the number of religious leaders or parish. Therefore, the criteria are irrelevant towards the purpose of financial resource allocation and provides for subsidisation of religious organisations, rather than damage compensation. During the period of Soviet repression, far more religious organisations suffered from damage. Therefore, the recognition of only four religious organisations reveals the state's differentiated and discriminatory approach.
>
> Moreover, in order for the religious organisations representing the selected denominations to receive budget funds, they have to satisfy certain preconditions. The Ordinance applies only to religious organisations registered as Legal Entities of Public Law before the adoption of the Ordinance. It is unclear why the religious organisations registered as LEPLs are privileged, while religious organisations registered as non-commercial legal entities or unregistered organisations are devoid of such opportunity.

SARI forms contracts regarding the partial compensation of damage inflicted during the Soviet totalitarian regime with religious organisations. According to these contracts, religious organisations assumed the responsibility of spending the amounts received as compensation for purposes pre-approved by the SARI. Within a month of signing the contract, religious organisations are required to report to the Agency regarding the purposes of spending, submitting interim and final reports of expenditure. The Agency can also conduct audit examination of these reports. For comparison, the GOC is not accountable to the state for the received annual subsidies. As the analysis of the relevant public information shows, the biggest share of the received funds is used for religious purposes: running religious schools and building churches, also obtaining luxury items.[406]

406. State policy and Practice of Funding Religious Organisations. Tolerance and Diversity Institute (TDI) 2016. http://tdi.ge/sites/default/files/religiuri-organisaciebis-saxelmcipo-dapinansebis-politika-2014-2015.pdf

As for the legislative framework for conscientious objection, Georgian legislation provides for objection to military service (see the response to question 77).

77 **Is there a legislative framework for conscientious objection to military service? If so, please provide details.**

Today in Georgia, believers who have a conscientious objection to military service can choose an alternative to military service according to the Law of Georgia Military Duty and Military Service.

Until 2011, theLaw on Military Reserve Service[407]included the obligation for every citizen of Georgia to serve and did not allow for exceptions, including people with a conscientious objection, for instance, Jehovah's Witnesses. They could not ask for alternative service.

In 2011, the Constitutional Court of Georgia in the case of ***Public Defender of Georgia v. the Parliament of Georgia*** declared that Article 2, clause 2 of the Law of Georgia on Military Reserve Service unconstitutional in respect with Article 14 (equality before the law) and Article 19 (freedom of religion and belief). Article 2, clause 2 covering Military Reserve Service declared that it was the duty of each and every citizen of Georgia to serve in the military reserve pursuant to this norm. Hence, the provision implied forcing people with a conscientious objection to act against their beliefs. They had the following alternatives: either to fulfil military reserve service against their beliefs, or to act in accordance with their own beliefs. For the latter, they would bear the responsibility imposed by the law. Failure to complete military reserve even on the ground of objection was considered a violation of the Code of Administrative Offences and could be punished with the imposition of a fine.

On 23 March 2018, the Parliament adopted a new law on reserve service. The law directly defines that a person who has conscientious objection shall serve in an alternative, non-military service. A citizen completing an alternative to the military service shall enjoy all rights guaranteed by the Constitution. A person who accomplishes alternative labour service and is listed in the reserve list, might be drafted for non-military purposes.

78 **Please provide statistics on the number of religiously motivated incidents for the last five years.**

The statistical data is based on the information provided by the Ministry of Internal Affairs of Georgia and Supreme Court of Georgia .It includes data for the period between 1 January 2014 and 1 July 2018.

Article 142 of Criminal Code of Georgia declares the violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation,

407. Law on Military Reserve Service**,** law N 4196, annulled 01/06/2018.

gender identity and expression, political or other views or of any other signs that have substantially breached human rights punishable by law. The mentioned crime shall be punished by a fine or corrective labour for up to a year and/or by imprisonment for up two years.

According to the information provided by the Ministry of Internal Affairs of Georgia, for the period of 1 January 2014 to 1 July 2018, only one investigation was initiated under Article 142 (violation of human equality on the grounds of religion). The case was later terminated on due to the absence of the act provided for by the criminal law. According to the information provided by the Supreme Court of Georgia, during the reporting period, there were no cases submitted to the common courts under Article 142 (on the grounds of religion).

According to Article 155 of the Criminal Code, the unlawful interference with the performance of religious service or other religious rites or customs using violence or the threat of violence, or if accompanied by an insult to a believer's religious feelings shall be punished by a fine or corrective labour for up to a year, house arrest for a term of six months to one year, or by imprisonment for up to two years. The same act committed by abusing one's official position shall be punished by a fine or imprisonment for a term of one to five years, with or without deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

According to the information provided by the Ministry of Internal Affairs, in 2014, the investigation of three cases began under the Article 155. The investigation of two cases was later terminated due to the absence of the act provided for by the Criminal Code. According to the Supreme Court of Georgia, one guilty verdict was passed in 2014. In 2015 the investigation began on one case. In 2016, the investigation began on five cases and was terminated on three cases. One case was considered by the court and, as stated in a letter from the Supreme Court of Georgia, a guilty verdict was passed. In 2017, no investigations were begun under the abovementioned Article, while in 2018, five case investigations started with one terminated due to the absence of the act provided for by the Criminal Code.

According to Article 156 of the Criminal Code, persecution of persons because of their speech, opinion, conscience, confession, faith or creed, or political, social, professional, religious or scientific activities shall be punished by a fine, or restriction of liberty for up to two years or by imprisonment for the same term. The same act committed using violence or the threat of violence or through abuse of the official position, which has resulted in considerable damage, shall be punished by a fine or by house arrest for a term of one to two years, or by imprisonment for up to three years, with or without deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

In 2014, investigations began on 11 cases under Article 156. According to information provided by the Supreme Court of Georgia, that year first instance courts considered five cases and three guilty verdicts were passed. In 2015, investigations began on five cases, first instance courts examined three cases and there were four guilty convictions. In 2016, the Ministry of Internal Affairs of Georgia launched investigations into 10 cases. According to information provided by the Supreme Court of Georgia, under Article 156, the first instance court considered nine cases and five guilty verdicts were passed on the basis of persecution on religious grounds. In 2017, the Ministry of Internal Affairs of Georgia launched investigations into six cases, first instance courts examined five cases and five guilty verdicts were passed. In 2018 under the same Article, the MIA launched investigations into seven cases. The first instance courts have not considered any of the cases yet.

According to Article 166 of the Criminal Code of Georgia, the unlawful interference with the establishment of political, public or religious associations or with their activities using violence, threat of violence or official position is criminalised and shall be punished by a fine or corrective labour for up to a year, or by house arrest for a term of six months to two years or imprisonment for up to two years.

According to information provided by the Ministry of Internal Affairs of Georgia, under the mentioned Article, on the grounds of religious intolerance, two investigations were initiated one in 2014 and one in 2018. During the reporting period, the first instance court has not received any cases under Article 166 of Criminal Code.

As for Article 53(1), the commission of a crime on the grounds of race, colour, language, sex, sexual orientation, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds constitutes an aggravating circumstance for all the relevant crimes provided for by the Code. The Article has not been referred to in any cases in common courts during the reporting period, according to information provided by the Supreme Court of Georgia.

The number of instances of the violation of rights, persecution and violence against Jehovah's Witnesses and the reaction of the state to the abovementioned facts clearly reveals the situation in Georgia in regard to freedom of religion. Members of the abovementioned religious organisations often become victims of religious hate crimes because of ineffective state policy and social stereotypes. The Jehovah's Witnesses' organisation records each incident in detail and tries to solve the issues on both the national and international level.

Physical violence, obstruction of religious rituals, and damaging religious buildings, property and literature are the most frequent offences committed against the religious community. The reaction of law enforcement organs to the abovementioned crimes has been problematic for years. The investigation is not even launched in most cases and, if it is launched, is delayed for an unreasonable term. If the investigation is launched, the action is given improper qualifications and/or the proper liability is not imposed upon the offender.

The Public Defender of Georgia receives applications and analyses the cases of violence against religious communities. The official statistical data of the Public Defender is significantly higher than the information provided by the Government of Georgia. According to the data of the Public Defender, the following number of cases of violence against Jehovah's Witnesses had been reported in 2014-2017: In 2014- 45 cases; in 2015- 37 cases, in 2016- 23 cases, and in 2017- 13 cases.

Violence against Jehovah's Witnesses is largely motivated by religious intolerance and often takes place in public, when the members of the organisation are engaged in religious services. The violence is generally preceded by verbal insults and threat. Cases of interference with the performance of religious services or damaging/destroying display stands and literature used for religious reasons are especially frequent among the offences committed against Jehovah's Witnesses. Several facts of destroying Jehovah's Witnesses' buildings (Assembly Halls) have been revealed in recent years. According to statistics provided by the Jehovah's Witnesses, damaging building façades, throwing stones and other objects, and defacing walls happens frequently. In 2015, the Assembly Halls were shot at several times. Law enforcement officers' ineffective

performance of duties has been systematically revealed over the past years, e.g. they do not investigate offences committed against the Jehovah's Witnesses, do not react adequately to the mentioned cases, express bias during the investigation process or exceed their powers.

The majority of alleged crimes, in which investigative authorities reported that discriminatory grounds were not disclosed, the investigation continued, was terminated or did not begin due to the absence of the act provided for by the Criminal Code, relate to violent or other acts committed against Jehovah's Witnesses. There are also cases, when systemic physical offence is qualified as ordinary violence, not as an offence under Article 156 (persecution or other articles addressing religiously-motivated crimes).

The Jehovah's Witnesses also point out instances of stone-throwing at the windows of religious buildings, starting fires to the display stands, and destroying religious literature. Furthermore, the statements of Jehovah's Witnesses indicate a significant number of cases of damaging religious buildings. Such incidents are qualified under Article 187 of Criminal Code (damage or destruction of property) and the investigation gets terminated on the grounds of absence of the act provided for by criminal law, since the damage does not exceed 150 GEL. There are cases when, after the termination of the investigation, the fact is qualified as an administrative violation. However, since the administrative legislation does not indicate discrimination as an aggravating circumstance in the administrative liability, discriminatory grounds are not reflected in the decision.

In addition, during 2012-2016, in various geographical areas of Georgia (Nigvziani, Tsintskaro, Tsikhisdziri, Samtatskaro, Chela, Mokhe, Kobuleti and Adigeni), eight large-scale incidents of religious violence and the violation of religious rights against Muslims took place, the majority of which had a continuous character. The main reasons for confrontation of Orthodox Christians and/or authorities against Muslims has been prayer, the functioning of the religious building, the religious institution, or other forms of expressing religious identity in a public space. The state usually does not respond properly to such facts, which increases the scale of the violence and promotes a culture of intolerance in the society. The majority of the abovementioned cases were not followed by any legal consequences. As for the incidents where the officers of the Ministry of Internal Affairs had allegedly violated the rights of Muslims, the investigation of the alleged abuse of power by police officers in the village of Mokhe in Adigeni municipality continues without any legal consequence. As for the alleged abuse of power in the village of Chela (2013) in Adigeni municipality towards the Muslims, the Prosecutor's Office has not launched an investigation. Muslims who have been physically assaulted have not yet been granted the status of victims, which limits their access to justice.

The European Court of Human Rights identified violations of freedom of religion in three cases against Georgia due to the ineffective investigation of hate-motivated crimes on the grounds of religion, including the violation of the prohibition of discrimination. Two cases pertained to the persecution of Jehovah's Witnesses. In the decisions against Georgia, the European Court outlined the importance of effective investigation of crimes committed against vulnerable groups and noted that ineffective investigation might promote the violence. The European Court of Human Rights also admitted two claims for consideration on various criminal acts committed against Muslims.

Since 2016, the situation has improved in terms of the qualification of crimes committed against

Jehovah's Witnesses. In particular, if the investigation in previous years did not begin with the proper articles of the Criminal Code, which imposes religious intolerance as a motivation for the offence, during 2016-2017 the investigation into more cases began under Article 155 of the Criminal Code (unlawful interference with the performance of religious service) and Article 156 (persecution). However, despite the accurate qualifications for the acts, the rate of launching investigation and charging for the committed acts, also investigation of the crimes committed during the previous years is problematic.

FREEDOM OF EXPRESSION INCLUDING FREEDOM OF THE MEDIA

79 **Please describe the media landscape (written press and audio-visual sector). How are the audio-visual media financed? Is there a supervisory body for the (audio-visual) media, what is its composition and how does it function? Have recommendations of experts from the Council of Europe and OSCE been taken into consideration when drafting legislation in the field of media?**

The Constitution of Georgia[408]guarantees the freedom of opinion and expression as well as the right to receive and impart information freely. Moreover, the Constitution guarantees freedom of mass media and prohibits censorship. Neither the state nor particular individuals have the right to monopolise mass media or the means of dissemination of information. As a result of amendments in 2017, the right to access and freely use the Internet was included in the Constitution (Article 17). Even though Internet freedom was already incorporated into the existing constitutional rights in Georgia, emphasising this right in the Constitution was nevertheless significant due to the Internet's global importance.

According to the Constitution, freedom of expression may be restricted by law, to the extent and insofar as is necessary in a democratic society, for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognised as confidential, or for ensuring the independence and impartiality of the judiciary.

As a result of the 2017 amendments, the Constitution also stipulates that the independence of the public broadcaster from state agencies and its freedom from political and substantial commercial influence shall be ensured by law. Moreover, the institutional and financial independence of the national regulatory body – established to protect media pluralism and the exercise of freedom of expression in mass media, prevent the monopolisation of mass media or means of dissemination of information, and protect the rights of consumers and entrepreneurs in the field of broadcasting and electronic communications – shall be guaranteed by law.

408. Constitution of Georgia, №786, 24/08/1995, published: Official Gazette of the Parliament of Georgia, 31-33, 24/08/1995, last amended: 23/03/2018.

The Law on Freedom of Speech and Expression[409]ensures absolute freedom of opinion; freedom of political speech and debate; the right to seek, receive, create, keep, process and disseminate information and ideas in any form; prohibition of censorship, editorial independence and pluralism of the media; the right of a journalist to protect a source of information and to make editorial decisions based on his/her conscience, etc. (Article 3).

The Criminal Code of Georgia[410]establishes criminal offences related to violations of freedom of expression. Article 153 provides that illegal interference with the exercise of the freedom of speech or of the right to obtain or disseminate information, which has resulted in considerable damage, or performed by abusing one's official position shall be punished by a fine or corrective labour for up to a year, or house arrest from 6 months to 2 years, or by imprisonment for up to two years, with or without deprivation of the right to hold an official position or to carry out a particular activity for up to three years. Moreover, Article 154 provides that unlawful interference with a journalist's professional activities, i.e. coercing a journalist into disseminating or not disseminating information, shall be punished by a fine or community service from 120 to 140 hours or with corrective labour for up to two years or house arrest from six months to two years. The same act using threat of violence or abuse of official position shall be punished by a fine or imprisonment for up to two years, with or without the deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

The Law of Georgia on Broadcasting[411]determines the rules for carrying out broadcasting in accordance with the principles of freedom of speech and opinion and the principles of free enterprise, the procedure for setting up the national regulatory body in the field of broadcasting and for determining its functions, the provisions for the regulation of activities in this field, and the rules and procedures for acquiring the right to broadcast (Article 1). According to this law, broadcasting is carried out on the basis of an authorisation or a license. Types of broadcasting are TV broadcasting and radio broadcasting. TV broadcasting and radio broadcasting (except for over-the-air radio broadcasting) are carried out on the basis of an authorisation. Over-the-air radio broadcasting is carried out on the basis of a license. The varieties of broadcasting are community broadcasting and private broadcasting. Private broadcasting includes general broadcasting and specialised broadcasting. Depending on geographical areas, broadcasting may be national or local. Depending on the availability of broadcasting programmes, broadcasting may be with or without fees (Article 38). Licenses in the field of broadcasting are issued and the authorisation of activities in the field of broadcasting is carried out by Georgian National Communications Commission. The Commission controls compliance with license provisions and compliance of authorised persons with legislation in the field of broadcasting (Articles 36^1 and 36^2).

According to the registry[412] kept by the Commission (accessed in September 2018), at present there are 86 active licenses for radio broadcasting: five for community broadcasting and 81 for private broadcasting. There are 104 authorised organisations in the field of TV broadcasting and seven

409. Law on Freedom of Speech and Expression, N 220, 24/06/2004, published: Legislative Herald of Georgia, 19, 15/07/2004, last amended: 21/12/2016.

410.

411. Law of Georgia on Broadcasting, N 780, 23/12/2004, published: Legislative Herald of Georgia, 5, 18/01/2005, last amended: 27/06/2018.

412. http://registry.gncc.ge/

authorised organisations in the field of radio broadcasting. All of these authorised organisations are private broadcasters. In 2015, Georgia completed its switchover to digital broadcasting. As for the print outlets, according to the National Statistics Office of Georgia[413] (accessed in October 2018), there were a total of 218 newspapers in 2017. Numerous newspapers and several television stations produce online content and social-media platforms play a growing role in the dissemination of news and information.

Access to public information is guaranteed by the Constitution. Moreover, according to the General Administrative Code of Georgia,[414]public information is open except for information that is considered personal data or state, commercial or professional secret as provided by law (Article 28). Everyone has the right to request public information regardless of its physical form and storage conditions, choose the form of receiving public information if it exists in different types, and to access the original information (Article 37). Public institutions are obliged to issue public information immediately or no later than 10 days if the information requires processing (Article 40). The Law of Georgia on Personal Data Protection[415]prohibits disclosure of public information containing special categories of personal data without the consent of a data subject even when there is high public interest related to the information in question. Under the current legislative framework, there is no supervisory body or mechanism that will monitor access to information and there are no sanctions for illegal refusals to issue public information.

The freedom of information legislative reform was initiated in order to increase access to public information and the Draft Law on Freedom of Information has been prepared. However, the initiation of the Draft Law has been delayed for years and, as of today, has not been presented before the Parliament.

The report of the European Parliament on the implementation of the EU Association Agreement with Georgia (15/10/2018) notes with concern that the Georgian Government has failed to adopt new legislation to improve the public's access to information and calls on the Georgian Government to ensure effective access to public information.[416]Moreover, according to the annual report of the Public Defender of Georgia, the Law of Georgia on Personal Data Protection does not strike a balance between freedom of information and personal data protection. The law does not provide access to special categories of data stored in public institutions regarding former and acting high-ranking officials and candidates, related to their official duties without the consent of a data subject, even in cases of high public interest[417].

413. http://www.geostat.ge/index.php?action=page&p_id=209&lang=eng

414. General Administrative Code of Georgia, №2181, 25/06/1999, published: Legislative Herald of Georgia, 32(39), 15/07/1999, last amended: 21/07/2018.

415. Law on Personal Data Protection, №5669, 28/12/2011, published: Legislative Herald of Georgia, 16/01/2012, last amended: 21/07/2018.

416. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%20REPORT%20A8-2018-0320%200%20DOC%20PDF%20V0%2F%2FEN&fbclid=IwAR2CSW2G6fUiLipTNM1K0I_s_q8MHGpvcMOorq935UtwG5Dx1PTruJ-1c-4

417. Annual report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2017.

The Draft Law on Freedom of Information should be initiated in the Parliament without delay. The government must improve the existing mechanisms of monitoring access to public information and develop prompt and effective mechanisms to ensure the right to public information through the introduction of a sanctioning mechanism against public institutions that ignore freedom of information requests or refuse to disclose public information. More specifically, the government must set up a supervisory body (i.e. Freedom of Information Inspectorate) with a mandate to bypass lengthy procedures, such as court proceedings, when reviewing complaints and responding to them by sanctioning public institutions that violate applicants' right to freedom of information.

Financing of audio-visual media

According to the Law on Broadcasting, the term "broadcaster" includes the Public Broadcaster, Adjara TV and Radio of Public Broadcaster, a person holding a license or an authorised person, who carries out TV and/or radio broadcasting on the basis of the law (Article 2). Television and radio stations are privately owned in Georgia. The Law of Georgia on Broadcasting provides for an exception and establishes the Public Broadcaster, which is a legal entity of public law that is independent from the state government and is accountable before the public. It is created for TV and radio broadcasting on the basis of state property and operates on the basis of public financing. The Public Broadcaster is not subordinate to any state agency (Article 15).

Under current legislation, the main source of financing for the Public Broadcaster is the state budget of Georgia. The amount of financing for the Public Broadcaster shall be no less than 0.14% of the gross domestic product of Georgia during the previous year, taking into account micro parameters existing in the period when preparing the Draft Law on State Budget (Article 33(5)). Adjara TV and Radio of the Public Broadcaster are financed from the budget of the Pubic Broadcaster by at least 15% of the whole amount of the budget (Article 35^{12}).

Amendments were introduced to the Law on Broadcasting in February 2018 which allowed the Public Broadcaster to double commercial advertising airtime from 30 minutes per 24 hours to 60 minutes (Article 64(1)) and to accept sponsorship of entertainment programmes and television series (Article 64(2)).

Broadcasting other than public broadcasting is carried out on the basis of an authorisation or a license. According to the Law on Broadcasting, a license holder and/or authorised person in the field of broadcasting may not be an administrative body; an official of an administrative body or other officer; a legal person interdependent with an administrative body; a political party or its official; a legal person registered offshore; a legal person, the shares or stocks of which are directly or indirectly owned by a legal person registered offshore; a person, the beneficial owner of which is a political party or its official of another state. Moreover, a license holder and/or authorised person in the field of broadcasting may not be a person whose beneficial owner is an administrative body, an official of an administrative body or other officer, or a legal person interdependent with an administrative body of another state, except as provided for by an international agreement of Georgia (Article 37).

Commercial advertisement and teleshopping together with sponsorship are the main sources of private broadcasters' revenues. Changes in the legislation were introduced in 2015 with regard to

commercial advertising and teleshopping that limited the overall time for commercial advertising and/or teleshopping spots to 20% in an hour. In January 2016, new rules for sponsorship came into effect. At present sponsorship messages must not directly promote or encourage the purchase of particular goods or services (Article 67). Legislative amendments in 2015 for the first time regulated product placement in broadcast media. According to the law, product (goods/services) placement in programmes should be clearly identified (Article 69[1]).

A broadcaster annually publishes and submits to Georgian National Communications Commission a declaration of compliance (Article 61) that includes identification data, data on head officers and bodies, identification data of beneficial owners and information about the shares owned by them. A broadcaster is obliged to submit to the Commission a declaration of compliance in the case of changing owners of its shares and stockholders, members of management authorities and officials, within 10 days after the respective change is made. A broadcaster is also obliged to publish this information on its website (Article 62).

According to the law, before 1 May of each year, a broadcaster submits to the Georgian National Communications Commission and publishes on its official website a report for the previous year on the fulfilment of the requirements of Georgian legislation, license and/or authorisation provisions and the Code of Conduct, and on the sources of financing. An auditor's opinion shall be attached to the report (Article 70 (3)). The Commission determines electronic forms of reporting. Reporting forms, in addition to other information defined by the law, contain information about the sources of financing of the broadcaster, including information on revenues received from advertising, sponsorship, and teleshopping and from contributions of the owner of a broadcaster or any other person separately. Reporting forms also include information about services rendered to a broadcaster, including information on paid or free services provided by the owner of a broadcaster or any other person. A broadcaster submits the reporting forms to the Commission within 15 days after the end of each quarter (Article 70(4)). The Commission publishes the reporting forms within seven days after receipt (Article 70(4[1])).

> The 2018 legislative amendments related to commercial advertising airtime and sponsorship in terms of the Public Broadcaster were criticised by non-governmental organisations, who claim that the new rules disregard the true value of the Public Broadcaster and create a non-competitive environment in the media advertising market. Moreover, according to the report of the Public Defender, this amendment runs counter to the legislative principle of public broadcasting on freeing the Public Broadcaster from commercial influence.[418]
>
> According to the 2018 report related to Media Sustainability Index (MSI), taking into account the fact that the market is already overloaded and unable to generate sufficient revenues for even the largest players, the appearance of another big player in the form of the Georgian Public Broadcaster, which already receives substantial funds from the state budget, will further deteriorate the media market and its sustainability.[419]

418. Annual report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2017.

419. https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-georgia-2.pdf

Supervisory body for the media

According to the Law of Georgia on Broadcasting, activities in the field of broadcasting are regulated by the Georgian National Communications Commission (Article 5). The Commission is a constitutional body, a legal entity of public law and a permanent national regulatory body, which is not subordinate to any state agency and is not established on the basis of state property.

The Commission is composed of five members. The term of office of a member of the Commission is six years and a person may not be appointed as a member of the Commission for more than two terms. Candidates for membership on the Commission are elected through open competition. A candidate can be a person having public recognition and confidence, who holds a master's or equivalent degree in economics, public administration, business administration, law, electronic communications or journalism and at least 10 years of work experience, including three years of experience in working in a managerial position. Anyone may nominate a candidate for membership on the Commission. The Government of Georgia, taking into account the qualification requirements determined by the law, submits to the President of Georgia the list of candidates (at least three candidates per vacant position) to be submitted to the Parliament of Georgia for election. A candidate nominated for a vacant position of a member of the Commission is deemed elected if he/she receives more votes than other candidates, but at least half of the votes of the full list of the members of the Parliament. The Commission elects the chairperson of the Commission from amongst the members by a majority of the total members of the Commission for the term of three years (Article 9).

The Law on Broadcasting guarantees the independence and inviolability of the Commission: The Commission, members of the Commission and employees are independent in exercising their powers and abide only by the law. Unlawful influence on and intervention in their activities is prohibited, and any decision made as a result of such influence and intervention is deemed void. A member of the Commission may be detained, arrested or searched only with the consent of the Parliament of Georgia. Exceptions are made when a member of the Commission is caught at the scene of crime, of which the Parliament shall be immediately notified. If the Parliament refuses to give its consent, a detained or arrested member of the Commission shall be released immediately (Article 6).

The Law on Broadcasting regulates the issue of conflict of interest with regard to members of the Commission. A conflict of interest may arise if a member of the Commission is concurrently an official of another administrative body; is a member of a political party; carries out any work in return for payment for a person whose activities fall within the scope of regulation of the Commission; holds stocks or a share in the authorised capital of an enterprise, the activities of which fall within the scope of regulation of the Commission; is an official, representative, authorised person or advisor of a person whose activities fall within the scope of regulation of the Commission; has any other direct or indirect economic interest towards a person whose activities fall within the scope of regulation of the Commission. A person with a conflict of interest may not be a member of the Commission (Article 11).

The budget of the Commission is funded by a regulation fee and other funding sources provided for by the Law on Broadcasting, the Law on Electronic Communications[420]and the Law on Legal

420. Law on Electronic Communications, №1514, 02/06/2005, published: Legislative Herald of Georgia 26, 06/06/2005, last amended: 21/07/2018.

Entities of Public Law.[421] Regulation fees are one of the main sources of funding for the budget of the Commission. It is related to the exercise of powers granted to the Commission under the legislation of Georgia and is not considered to be income generated through economic activities. Regulation fees are used to cover expenses defined in the budget of the Commission (Article 12).

Sessions of the Commission are open to the public. The Commission may hold closed sessions to maintain the confidentiality of information (Article 7). The Commission submits to the Parliament, the President and the Government and publishes an annual report on its work and the results of the financial audit (Article 13).

According to the 2018 report of Freedom House, Georgia's media landscape is largely pluralistic, critical and vibrant, and the legal framework guarantees freedom of expression and the independence of editorial policy. However, the report also notes that in 2017 certain negative developments raised concerns about media independence: apparently politicised editorial policies at the Georgian Public Broadcaster, continued pressure on the critical television channel Rustavi 2, and ownership consolidation among pro-government private television stations.[422] The same report from 2016 also stresses that political influence over private media, particularly television outlets, from both the opposition and the ruling party has traditionally been a major problem.[423]

Moreover, Reporters without Borders notes that Georgia's media are diverse but still very polarised. The reforms of recent years have brought improvements in media ownership transparency and satellite TV pluralism, but owners still often call the shots on editorial content.[424] The Report of the European Parliament on the implementation of the EU Association Agreement with Georgia (15/10/2018) also underlines the politicisation of media content.[425]

Moreover, according to the 2018 report related to the Media Sustainability Index (MSI), corporate or political interests can foster self-censorship. Journalists who work for pro-government outlets are aware of boundaries they should not cross. Moreover, some large businesses can "literally wipe out" material that puts them in an unfavourable light.[426] The same report also stresses the fact that the Georgian Public Broadcaster and the Georgian National Communications Commission have shown signs of becoming overtly political actors.

421. Legal Entities of Public Law, N 2052, 28/05/1999, published: Legislative Herald of Georgia 20(27), 09/06/1999, last amended 05/07/2018.

422. https://freedomhouse.org/report/nations-transit/2018/georgia

423. https://freedomhouse.org/report/freedom-press/2016/georgia

424. https://rsf.org/en/georgia

425. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%20REPORT%20A8-2018-0320%200%20DOC%20PDF%20V0%2F%2FEN&fbclid=IwAR2CSW2G6fUiLipTNM1K0I_s_q8MHGpvcMOorq935UtwG5Dx1PTruJ-1c-4

426. https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-georgia-2.pdf

80 **Is the media legislation aligned to European standards? Please provide information on the new media law.**

According to the Law of Georgia on Broadcasting,[427]legislation in the field of broadcasting shall be interpreted in accordance with the European Convention on Human Rights and Fundamental Freedoms, the case law of the European Court of Human Rights and other international legal norms having legal effect in Georgia (Article 3). A similar provision is laid down in the Law on Freedom of Speech and Expression:[428]This Law shall be interpreted according to the Constitution of Georgia, international legal obligations undertaken by Georgia, including the European Convention on Human Rights and Fundamental Freedoms and case law of the European Court of Human Rights (Article 2).

Georgia signed the Association Agreement with the European Union and the European Atomic Energy Community and their Member States in 2014, which entered into force later on 1 July 2016. The Association Agreement includes the obligation for Georgia to harmonise its legislation with Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive). The legislation of Georgia has to be harmonised with Directive 2010/13/EU in three years, except for Article 23 that needs to be entered into force within five years after the Association Agreement entered into force.

According to a letter from the Georgian National Communications Commission,[429] the draft law was prepared with the aim of harmonising Georgian legislation with Audio-visual Media Services Directive.

81 **Describe the libel legislation. What types of penalties are used for libel offences? What is the general trend of the court decisions in the area of freedom of expression (including the number of libel suits and other cases involving representatives of the news media)? Please provide statistics on libel cases and related fines, separating data for suits against media and civil society organisations' representatives.**

Defamation ceased to be a criminal violation in Georgia in 2004. Rather, one can only be held liable for disseminating defamatory information under civil legislation. The Law on Freedom of Speech and Expression[430]contains provisions regarding defamation of a private person and a public figure:

427. Law on Broadcasting, N 780, 23/12/2004, published: Legislative Herald of Georgia 5, 18/01/2005, last amended: 27/06/2018.

428. Law on Freedom of Speech and Expression, N 220, 24/06/2004, published: Legislative Herald of Georgia, 19, 15/07/2004, last amended: 21/12/2016.

429. Letter N 17/3545-18 of National Communications Commission, 30/10/2018.

430. Law on Freedom of Speech and Expression, N 220, 24/06/2014, published: Legislative Herald of Georgia, 19, 15/07/2004, last amended: 21/12/2016.

- A person shall bear responsibility under the civil law for defamation of a private person, if the plaintiff proves in court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damage as a result of this statement (Article 13).
- A person shall bear responsibility under the civil law for defamation of a public figure if the plaintiff proves in court that the statement of the respondent contains a substantially false fact in relation to the plaintiff, and that the plaintiff suffered damages as a result of this statement, and the falseness of the stated fact was known to the respondent in advance, or the respondent acted with apparent and gross negligence, which led to spreading a statement containing a substantially false fact (Article 14).

According to the law, a statement, which concerns an undefined group of persons and/or where the plaintiff is not clearly identified, may not be the subject of litigation of defamation (Article 6). Furthermore, a person shall be released from liability for defamation, if he/she did not know and could not have known that he/she was disseminating defamation (Article 16).

As for the liability for defamation, a respondent may be required by court to publish a notice on the court decision in a form determined by the court. Forcing a respondent to apologise is prohibited. If the respondent makes a correction or denial within the time limit determined by law, but publishing the correction or denial is not sufficient for proper reimbursement of the damages caused by the defamation to the plaintiff, the respondent may be required to pay pecuniary and/or non-pecuniary (moral) damages to the plaintiff (Article 17).

In the event if an apparently groundless claim for defamation has been filed that is aimed to create an unlawful restriction of freedom of speech and expression, the respondent has the right to demand monetary compensation, within reasonable limits, from the plaintiff (Article 18).

The law establishes the following rules with regard to the standard and burden of proof (Article 7):

- Any doubt on limitation of the rights recognised and protected by the Law on Freedom of Speech and Expression, which cannot be confirmed under the procedure established by the law, shall be resolved against the limitation of these rights.
- In considering the issue of granting the status of a private person or public figure, any reasonable doubt, which cannot be confirmed under the procedures established by the law, shall be resolved in favour of granting the person the status of a public figure.
- In considering the issue of granting the status of public attention or curiosity, any reasonable doubt, which cannot be confirmed under the procedure established by the law, shall be resolved in favour of granting the event the status of public attention.
- In considering the issue of granting the status of an opinion or fact, any reasonable doubt, which cannot be confirmed under the procedure established by the law, shall be resolved in favour of granting the piece of information contained in the statement the status of an opinion.

- The burden of proof for limitation of freedom of speech shall lie with the initiator of the limitation. Any reasonable doubt that cannot be confirmed under the procedure established by the law shall be resolved against the limitation of the freedom of speech.
- It shall be inadmissible in litigation on restriction of the freedom of speech that a respondent's denial to disclose a professional secret or its source serve as the sole grounds for making a decision against the respondent.

According to the public information[431] provided by the Supreme Court of Georgia, the number of civil cases related to freedom of speech and expression and defamation, protection of honour and dignity as well as reimbursement of pecuniary damages related to the protection of honour and dignity which have been considered by Georgian city/district courts is the following:

Year	Number of civil lawsuits	Number of satisfied claims
2014	34	15
2015	17	9
2016	14	9
2017	30	16
2018 (6 months)	11	7

The table above includes the total number of cases without differentiating civil lawsuits against media and civil society organisations. According to the information provided by the Supreme Court, cases in existing statistical forms of common courts are recorded based on the categories of the dispute and the forms do not include information about the parties to the dispute. Therefore, separated statistical data for suits against media and civil society organisations' representatives are not available.

Analysis of the judgments of the Supreme Court of Georgia published on its website (accessed in October 2018) reveals that in 2014-2018 the Supreme Court considered 16 civil cases related to defamation:

- Seven cases were related to defamation carried out through the media. No responsibility was imposed on the respondent in five cases and in two cases the court ordered the denial of facts.

- In seven cases respondents were individuals/legal persons. In six cases, no responsibility was imposed on the respondent and in one case the court ordered the denial of facts.

- In two cases a civil lawsuit was brought against media representatives and the complaints were satisfied:

1) The court ordered[432] to publish the denial of facts in the same newspaper and awarded 1,000 GEL (approx. 323 EUR) in respect of non-pecuniary damage for one article published in the newspaper, 2,000 GEL (approx. 645 EUR) for the second article and 2,000 GEL (approx. 645 EUR) for the third article.

431. Letter N 433-18 of the Supreme Court of Georgia, 03/09/2018.

432. Case N 1011-972-2016, 26 July 2017.

2) The court ordered[433] to publish the judgment in the same newspaper and awarded 50,000 GEL (approx. 16,129 EUR) in respect of non-pecuniary damage.

According to the judgment of the Supreme Court of Georgia, the Law on Freedom of Speech and Expression provides for the definition of an opinion (value judgment, a viewpoint, a comment as well as expression of opinion by any means reflecting the attitude towards a person, an event or a subject that does not contain verifiable or deniable facts) as well as defamation (a statement containing a substantially false fact causing damage to a person or his/her reputation) analysis of which suggests that the distinction between a fact and an opinion is a necessary precondition for determining defamation. According to the law, the term "opinion" should be defined in a broad manner. It implies a value judgment, attitude or an assessment the accuracy or falseness of which entirely depends on an individual and his/her subjective attitude. As for the facts, they are usually free of subjective attitude as they derive from objective circumstances. Therefore, it is possible to check the facts and determine their truthfulness. Moreover, one of the major elements of defamation is statement of those facts which are not too far from reality, are concrete and not of a general character, have more objective content rather than subjective, and importantly, their verification is possible.[434]

In addition, according to the Supreme Court of Georgia, it is unacceptable to require media representatives to disseminate information which has been 100% verified, however, it is necessary to comply with the standard of disseminating verified information within a reasonable scope, in order to prevent the devaluation of democratic values. Establishing such standard of behaviour is in full compliance with the principle of realising civil rights in good faith.[435] Moreover, in one case, the Supreme Court has indicated that if the respondent proved that information had been obtained from official sources, the journalist was sure about the accuracy of disseminated information, the journalist checked the truthfulness of information within reasonable scope or the verification was subject to insuperable difficulties, it might be possible to release the respondent from civil liability.[436]

The Georgian legislative framework does not establish criteria for determining the scope of reimbursing non-pecuniary (moral) damages. This issue is assessed by the Court on a case-by-case basis taking into account the uniqueness and peculiarity of the case.[437]For example, in one case, when determining the amount of moral damages, the court took into consideration the following circumstances: The plaintiff was well-known in society; The statement included defamatory information about the plaintiff; and the newspaper had a wide circulation on the whole territory of Georgia, was disseminated and became accessible to Georgian readers.[438]

According to the judgment of the Supreme Court, a legal person cannot demand reimbursement of moral damages. A legal person cannot suffer moral injury as it implies infringement of a non-pecuniary interest, which does not have material equivalent.[439]

433. Case N 1332-1258-2012, 23 April 2014.

434. Case N 1011-972-2016, 26 July 2017.

435. Case N 1011-972-2016, 26 July 2017; Case N 1332-1258-2012, 23 April 2014.

436. Case N 1332-1258-2012, 23 April 2014.

437. Case N 1332-1258-2012, 23 April 2014.

438. Case N 1332-1258-2012, 23 April 2014.

439. Case N 1011-972-2016, 26 July 2017.

Other cases involving representatives of news media

Case of Rustavi 2 Broadcasting Company

A legal dispute over ownership of Rustavi 2, the leading opposition television channel, has raised significant concerns about endangering freedom of the media. The case was initiated by a former owner, Kibar Khalvashi, who claimed that he had been coerced into selling his company shares by the leaders of the then ruling forces, UNM. After the case was considered by Tbilisi City Court and Tbilisi Court of Appeals, the Grand Chamber of the Supreme Court delivered the judgment on 2 March 2017 by which 60% of the shares of Rustavi 2 was granted to Kibar Khalvashi and 40% of the shares to Panorama Ltd (100% of the shares of Panorama are owned by Kibar Khalvashi).

The Public Defender actively observed the events surrounding Rustavi 2, regularly monitored court proceedings and studied relevant documentation. According to the report[440] of the Public Defender, the monitoring revealed significant violations of law in terms of seizure of property of Rustavi 2, appointment of a temporary management in the company and premature delivery of the decision based on the motion of the appellate court. The mentioned circumstances and reviewing the Rustavi 2 case without oral hearing at the Supreme Court damaged the credibility of the on-going proceedings at courts. The Public Defender of Georgia made a statement regarding the decision of the Grand Chamber of the Supreme Court of Georgia of 2 March 2017 and stated that its enforcement could endanger the existence of a diverse media environment, and particularly the activities of media outlets critical of the ruling party.

Rustavi 2 Broadcasting Company Ltd and others (TV Company Sakartvelo Ltd, Mr Levan Karamanishvili and Mr Giorgi Karamanishvili) lodged an application[441] with the European Court of Human Rights. Invoking Rule 39 of the Rules of Court, the applicants requested that the Court indicate interim measures to the respondent Government. The applicants referred to the right of Rustavi 2 under Article 10 of the Convention – freedom of expression. Even if, on the surface, the case looked like an ordinary civil dispute between private parties, in the applicants' view, the chronology of the alleged campaign orchestrated by the state against Rustavi 2 suggested that political interests were at stake. Being virtually the only opposition television channel in the country whose editorial policy was beyond the control of the current ruling forces, the applicants claimed that the state machinery had used Kibar Khalvashi's otherwise clearly unmeritorious civil claim to achieve its hidden goal of silencing the free media outlet.

On 3 March 2017 the European Court of Human Rights (the duty judge) applied Rule 39 of the Rules of Court and indicated to the respondent Government that "in the interests of the parties and the proper conduct of the proceedings before it, the enforcement of the Supreme Court decision of 2 March 2017 should be suspended, and that the authorities should abstain from interfering with the applicant company's editorial policy in any manner.[442]" The interim measure lasted until 8 March 2017.

440. Annual report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2017.

441. Application no. 16812/17, Rustavi 2 Broadcasting Company Ltd and others v. Georgia.

442. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179679%22]}

Twenty-nine Georgian non-governmental organisations addressed[443] the European Court of Human Rights on the Rustavi 2 case with regard to maintaining the interim measure under Rule 39 until the Court would be in a position to consider the case on the merits. In their statement they indicated that even though at the national level this case was (nominally) represented as a dispute between two private parties over property ownership, it left the clear impression that the government had been attempting to take control over the main opposition media outlet, which would significantly damage media pluralism and democracy in Georgia. The change of the editorial policy of Rustavi 2, following the 2 March 2017 decision of the Supreme Court of Georgia, could prove to be a decisive blow to free media. On 7 March 2017 the European Court of Human Rights decided unanimously to confirm until further notice the interim measure previously indicated on 3 March 2017.

Case of Afgan Mukhtarli

An Azerbaijani journalist and political activist was allegedly kidnapped in Georgia's capital Tbilisi on 29 May 2017, and then illegally brought across the border to Azerbaijan, where he reappeared less than 24 hours later in Azerbaijani border police custody. Mukhtarli and his wife, Leyla Mustafayeva, also an investigative journalist, have been living in Georgia since 2015 to escape the Azerbaijani government's vicious crackdown against its critics.[444]

The European Parliament adopted a resolution[445] on 15 June 2017 on the case of Azerbaijani journalist Afgan Mukhtarli and urged the Georgian authorities to ensure a prompt, thorough, transparent and effective investigation into Afgan Mukhtarli's forced disappearance in Georgia and illegal transfer to Azerbaijan and to bring the perpetrators to justice. The resolution considered it of utmost importance that the Georgian authorities made every effort possible to clarify beyond any doubt all suspicion regarding the involvement of Georgian state agents in the forced disappearance. On 12 January 2018 the US Department of State stated that they continue to closely follow the Georgian investigation into the reported abduction, and reiterate their call that it be full, transparent, and timely.[446] The report of the European Parliament on the implementation of the EU Association Agreement with Georgia (15/10/2018) also expresses concern over the lack of progress in the investigation of Mukhtarli's abduction from Tbilisi, which revealed many shortcomings as regards the functioning of the security services, including political party interference; calls on the Georgian Government to deliver a prompt and credible conclusion to the investigation, and underscores the need for Georgia to ensure a safe and secure environment for human rights defenders residing within its territory to ensure such actions do not happen again.[447]

443. https://idfi.ge/en/georgian_ngos_%20address_to_the_european_court_of_human_rights

444. https://www.hrw.org/news/2017/05/31/georgia/azerbaijan-journalist-kidnapped-across-border

445. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0267+0+DOC+XML+V0//EN

446. https://www.state.gov/r/pa/prs/ps/2018/01/277441.htm

447. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%20REPORT%20A8-2018-0320%200%20DOC%20PDF%20V0%2F%2FEN&fbclid=IwAR2CSW2G6fUiLipTNM1K0I_s_q8MHGpvcMOorq935UtwG5Dx1PTruJ-1c-4

The Georgian Charter of Journalistic Ethics – A Self-Regulatory Mechanism

On 4 December 2009, 137 journalists signed 11 principles to observe general professional standards and founded the Georgian Charter of Journalistic Ethics. This organisation is an independent self-regulatory body in Georgia. The goal of the Charter is to raise the public responsibility of the media through the protection of professional and ethical standards and creation of self-regulatory mechanisms. The Charter is based on Article 10 of the European Convention on Human Rights and Fundamental Freedoms and the Declaration of Principles on the Conduct of Journalists recognised by International Federation of Journalists (IFJ). The Charter is managed by the Council composed of nine members selected by the Charter's members. The Council of the Charter considers the facts of any violation of professional standards on the basis of submitted complaints. The number of complaints considered by the Charter and number of violations (accessed in November 2018) are shown in the table below:

Year	Number of complaints	Number of violations
2018	55	46
2017	56	48
2016	28	23
2015	35	26
2014	21	19

82 **Please indicate how laws on telecommunications have been, or will be, amended to take into account international recommendations regarding the freedom of expression.**

The Law of Georgia on Electronic Communications[448] lays down the legal and economic basis for activities carried out through electronic communication networks and associated facilities, the principles for creating and regulating a competitive environment in this field, determines the functions of the national regulatory authority (Georgian National Communications Commission), and the rights and obligations of natural and legal persons in the process of possessing or using electronic communication networks and facilities, or when providing services via such networks and facilities (Article 1).

According to a letter[449] from the Parliament of Georgia, since 2014 the following amendments have been made to the Law on Electronic Communications to take into account international recommendations:

- The legislative amendment (N2039-II, 20/02/2014, published: Legislative Herald of Georgia, 27/02/2014) which provided the legal base for implementing an action plan in order to change analogue broadcasting to digital broadcasting within the time-frame determined by International Telecommunication Union (before 17 June 2015).

448. Law of Georgia on Electronic Communications, №1514, 02/06/2005, published: Legislative Herald of Georgia, 26, 06/06/2005, last amended: 21/07/2018.

449. Letter N 10273/2-7 of the Parliament of Georgia, 23/10/2018.

- The legislative amendment (N3693-II, 12/06/2015, published: Legislative Herald of Georgia, 15/06/2015) that aimed to determine new and improved rules of suspension and termination of authorisation in the area of electronic communications. Together with the switchover to digital broadcasting, the changes were related to the establishment of a new, reformed regime of authorisation and cancelation of licenses for TV broadcasting under the Law of Georgia on Broadcasting.
- The legislative amendment (N5021-II, 27/04/2016, published: Legislative Herald of Georgia, 13/05/2016) which determined the regulations for broadcasters for spreading over multiplex platform in order to protect the interests of broadcasters, consumers and owners of the multiplex platform.
- The legislative amendment (N1929, 23/12/2017, published: Legislative Herald of Georgia, 11/01/2018) that aimed to harmonise Georgian legislation with EU legislation and international legal instruments as well as to provide finances for the new functions of the Georgian National Communications Commission related to media literacy.

The Regulation on the Rules of Provision of Services and Protection of Consumer Rights in the area of Electronic Communications[450]adopted by the Georgian National Communications Commission is related to the issue of freedom of expression. This Regulation defines the concept of "inadmissible content:" inadmissible content implies any content transmitted by means of electronic communication, such as pornography, items featuring especially grave forms of hatred and violence, invasions of a person's privacy, are defamatory or insulting, violate the principle of presumption of innocence, are inaccurate, violate copyright and other content transmitted in violation of the Georgian legislation (Article 3).

According to the Regulation, the service provider is obliged to create mechanisms allowing it to disconnect or terminate service provision to a consumer when the consumer disseminates/redirects inadmissible content (Article 10^{1}). The Regulation also foresees obligations for the domain issuer to periodically examine the contents of the websites registered by it in order to prevent the placement of inadmissible content on such websites (Article 10^{3}). A similar obligation applies to the owner of the website (Article 10^{2}). Moreover, on finding inadmissible content, the issuer of an Internet domain must immediately take the following appropriate measures to eliminate them: (a) to warn the possessor of the domain and seta time limit for the removal of inadmissible content; and (b) to block the Internet page in case the warning is ignored (Paragraph 2 of Article 10^{3}).In addition, the Regulation states that in cases of inadmissible content, consumers have the right to file a complaint to a relevant service provider, Consumer Rights Public Defender under Georgian National Communications Commission or the court (Article 26).

The Georgian National Communications Commission provided information[451] regarding eight decisions issued in 2014-2018 with regard to inadmissible content which are published on its website. These decisions reveal the following trend: Responsibilities were imposed in six cases

450. Regulation on the Rules of Provision of Services and Protection of Consumer Rights in the Area of Electronic Communications,N 3, 17/03/2006, published: Legislative Herald of Georgia, 39, 23/03/2006, last amended: 27/07/2017.

451. Letter N01/3331-18 of National Communications Commission, 05/10/2018.

and all of these cases were related to copyright violations. In four cases the Commission issued a warning and ordered termination of the breach of the law. In two cases the Commission ordered the termination of the breach of the law and imposed a 30,000 GEL fine (approx. 9,677 EUR). One case was about the items featuring grave forms of violence and the complaint was not satisfied. One case was related to unauthorised broadcasting and the administrative procedure was ceased due to the absence of factual circumstances constituting an administrative offence.

The components of the concept of "inadmissible content" defined by the Regulation do not meet the local and international standards of restricting freedom of expression.[452] Certain grounds for deeming content inadmissible are vague and leave room for interpretation. This is even more significant as the GNCC does not have a well-established practice on certain criteria. The Regulation does not clearly specify that defamatory information can only be restricted when it has been determined to be as such based on the procedure foreseen by legislation, by a court decision that has entered into legal force. Moreover, such general and vague concepts as "insulting" and "inaccurate" content should not be used as grounds for restricting freedom of expression. Moreover, general obligations imposed by the Regulation represent an unfair burden for private companies. In most cases it is impossible to check and objectively assess content placed on Internet domains due to the volume of the information.

Although this Regulation has not been misused to date, it should be amended in order to take international standards regarding freedom of expression into account. It is recommended to adopt relevant amendments, which will reduce the danger of arbitrary interpretation of the regulation by the state body and will prevent excessive restriction of the freedom of expression. In addition, the obligation of private companies should be limited to responding to specific complaints on placement of inadmissible content and they should not be obliged to monitor Internet content.

FREEDOM OF ASSEMBLY AND ASSOCIATION, INCLUDING FREEDOM TO FORM POLITICAL PARTIES, THE RIGHT TO ESTABLISH TRADE UNIONS

83 **Provide statistics regarding the number of non-governmental organisations and associations or foundations active in your country? Please present a breakdown per sector/activity.**

Non-governmental organisations (NGOs) and trade unions are non-entrepreneurial (non-commercial) legal persons. Since 2010, for registration purposes they should submit an application

452. https://idfi.ge/public/upload/IDFI_Photos_2017/media_internet_telecommunications/Inadmissible_content_in_internet_law_eng.pdf

with the requested supporting documents to the National Agency of Public Registry (NAPR), which is the legal entity under public law of the Ministry of Justice of Georgia. NGOs are registered in the Registry of Entrepreneurial and Non-entrepreneurial (Non-commercial) Legal Entities. Data of the Registry are public and any interested person can receive information contained in the Registry. Documents used for registration are also public except in cases determined by the legislation.

Since 2012 political parties that are also non-entrepreneurial (non-commercial) legal persons are registered by the National Agency of Public Registry. Registration is carried out in the Registry of Political Associations of Citizens (Parties), which is a systematic collection of data on political associations of citizens (parties).

According to the public information received from NAPR (Letter #399565, 19/09/2018) as of 1 September 2018 there are:

- 243 political parties out of which 12 are revoked because of reorganisation/liquidation;
- 24,648 non-entrepreneurial (non-commercial) legal persons. It is impossible to identify out of this number how many are NGOs because this is not tracked in registration data;
- 370 trade unions/associations. Trade unions are registered as non-entrepreneurial legal entities and there is no other special rule for their registration. Statistical data in the electronic database were found based on the words “trade union/association” indicated in the title of the registered entities;
- 170 branches (representative offices) of foreign non-entrepreneurial (non-commercial) legal persons.

According to a letter from the NAPR, the electronic database transferred from the Tax Inspection of the Ministry of Finance to the NAPR in 2010 contained some errors. Since 2010, the NAPR has been trying to correct the information, but there is the possibility that data registered before 1 January 2010 still contain some irregularities.

84 **What is the legal status of non-governmental organisations and associations or foundations, including their financing, taxation, and restrictions on membership or activities? Specify the rationale of the State funding for NGOs and the mechanism for monitoring of the use of the funds. Is there a process for registering these organisations? Is it obligatory? Please describe the process in detail.**

The creation and registration of non-governmental organisations (NGOs) is mainly regulated by the following laws and by laws:

- Constitution of Georgia (#783, 24/08/1995, published: Parliamentary Gazette, 31-33, 24/08/1995, last amended: 23/03/2018 to be effective after the inauguration of the president following 28 October presidential elections);
- Civil Code of Georgia (#786, 26/06/1997, published: Parliamentary Gazette, 31, 24/07/1997, last amended: 21/07/2018);
- Law of Georgia on Entrepreneurs (#577, 28/10/1994, published: Parliamentary Gazette, 21-22, 28/10/1994, last amended: 06/06/2018);
- Law of Georgia on Public Registry (#820, 19/12/2008, published: legislative herald of

Georgia, 41, 30/12/2008, last amended: 20/07/2018);

- Instruction on the Registration of Entrepreneurial and Non-entrepreneurial (non-commercial) Legal Entities approved by the Order #241 of the Minister of Justice of Georgia (#241, 31/12/2009, published: legislative herald of Georgia, 160, 31/12/2009, last amended: 30/07/2016);
- Ordinance #509 of the Government of Georgia on the approval of Service Fees, Payment Regulation and Timelines for Rendering Services by the National Agency of Public Registry – legal entity under public law of the Ministry of Justice (#509, 29/12/2011, published on the website: 30/12/2011, entered into force: 01/01/2012, last amended: 28/07/2016).

Article 22 of the Constitution of Georgia guarantees freedom of association. It states that association may be dissolved by its own or a court decision in cases defined by law and in accordance with the established procedures.

NGOs are non-entrepreneurial (non-commercial) legal persons. A non-entrepreneurial (non-commercial) legal entity is an organised formation established for a certain purpose, which is independently liable with its own property, acquires rights and obligations in its own name, enters into transactions and is entitled to be presented as complainant and defendant in court. A non-entrepreneurial (non-commercial) legal entity may be founded on the membership, dependent or independent from the status of its members (Article 24 of the Civil Code). According to the legislation there is no restriction on membership.

As stated in Article 25 para. 2 of the Civil Code, a non-entrepreneurial (non-commercial) legal entity may engage in any activity not prohibited by law, regardless of whether or not this activity is provided for in its statute. Besides that, a non-entrepreneurial (non-commercial) legal person may engage in an entrepreneurial activity of an auxiliary nature, the profit from which shall be used for achieving the objectives of the non-entrepreneurial (non-commercial) legal person. The profit made from such activity may not be distributed to the founders, members or donors of the non-entrepreneurial (non-commercial) legal person or to those having managerial and representative powers in such non-entrepreneurial (non-commercial) legal person.

Based on Article 28 of the Civil Code, non-entrepreneurial (non-commercial) legal persons and branches (representative offices) of foreign non-entrepreneurial (non-commercial) legal persons shall be registered in the Registry of Entrepreneurial and Non-entrepreneurial (Non-commercial) Legal Entities. The Registry of Entrepreneurial and Non-entrepreneurial (Non-commercial) Legal Entities is maintained by the Legal Entity under Public Law (LEPL) - National Agency of Public Registry of the Ministry of Justice of Georgia (hereinafter NAPR).

Article 29 para. 1 of the Civil Code states that for the registration of a non-entrepreneurial (non-commercial) legal person, the interested person shall submit to the registration authority the founders'/members' agreement and an application containing the necessary details required under the Law of Georgia on Entrepreneurs for the registration of entrepreneurial legal persons.

Article 5 para. 1 of the Law of Georgia on Entrepreneurs determines that if registration of an enterprise is sought, a duly certified registration application signed by all partners of the enterprise submitted to the registration authority shall state among others:

a) the enterprise name/company name;
b) the legal form of the enterprise;

c) the legal address of the enterprise;
d) the name, surname, residential address and personal number of the partner(s) of the enterprise, and if the partner is a legal person – its company name, legal form, legal address, registration date, identification number, and details of its representatives;
e) the management body and decision-making procedure of the enterprise;
f) the name and surname, residential address and personal number of the person(s) authorised to manage and represent the enterprise, and their term in office;
g) the name and surname, residential address and personal number of the authorised signatory;
h) if the enterprise has several authorised representatives – whether they represent the company jointly or separately;
i) in case of a natural person authorised to register a change in the registration application – the name and surname, residential address and personal number, and, in case of a legal person authorised to register a change in the registration application – its company name, legal form, legal address, registration date, identification number and data on its representatives; etc.

Based on Article 29 para. 2 of the Civil Code registration application of non-entrepreneurial (non-commercial) legal persons shall contain also following information:

a) the object of the activity of the non-entrepreneurial (non-commercial) legal person;
b) the procedures for admitting, withdrawing and excluding members of the non-entrepreneurial (non-commercial) legal person if it is a non-entrepreneurial (non-commercial) legal person based on membership;
c) name of the body (person) authorised to take a decision on reorganisation or liquidation and the decision-making procedure;
d) the procedures for creating (electing) and the tenure of the management body (managing person) of the non-entrepreneurial (non-commercial) legal person.

Ordinance #509 of the Government of Georgia on Service Fees, Payment Regulation and Timelines for Rendering Service by the National Agency of Public Registry also establishes fees to be paid and timelines for the registration of non-entrepreneurial (non-commercial) legal person. Article 2 para "l" of Ordinance #509 determines that for the registration of non-entrepreneurial legal person, registration of changes or termination of registration within one working day a certificate of payment 100 GEL (32.26 EUR) of registration fee shall be submitted with the application and supporting documents. Article 4 also envisages accelerated registration on the same day of submitting application. In this case, the registration fee is 200 GEL (64.52 EUR).

Changes made by non-entrepreneurial (non-commercial) legal persons and branches (representative offices) of foreign non-entrepreneurial (non-commercial) legal persons that cause a change in their registration documents require re-registration. Changes made in the registered records of non-entrepreneurial legal persons/branches (representative offices) of foreign non-entrepreneurial legal persons shall be registered according to the procedure laid down for the registration of entrepreneurial legal persons/branches (representative offices).

Based on Article 20^1 para. 3 of the Law on Public Registry, non-entrepreneurial (non-commercial) legal entities and branches (representative offices) of foreign non-entrepreneurial (non-commercial) legal persons shall be considered established, registered data changed and

registration terminated upon the entry into force of a decision on the registration of any of the above in the Registry of Entrepreneurs and Non-entrepreneurial (Non-commercial) Legal Entities. As a result of registration, a registration body prepares an extract. Similarly, Article 5 para. 3 of the Instruction on the Registration of Entrepreneurial and Non-entrepreneurial (non-commercial) Legal Entities states that a non-commercial legal entity is considered created after registration in the Registry. Article 14 para. 3 determines that the decision on registration enters into force after its publication on the website of the NAPR.

The NAPR refuses registration in the following cases:

- If the requested registration is not subject to registration in the Registry of Entrepreneurs and Non-entrepreneurial (Non-commercial) Legal Entities;
- There is legal act adopted by the authorised person/body that the envisages refusal of registration;
- A legal error established in the process of registration was not eliminated in the determined timeframe;
- Requested registration is identical to already existing registered information;
- There are other grounds provided for by the legislation.

In case of refusal and if requested, all submitted documents are returned to the applicant except the payment fee certificate.

According to Article 27 of the Civil Code, a non-entrepreneurial (non-commercial) legal person shall have a name that includes the indication that it is a non-entrepreneurial (non-commercial) legal person. The name of non-entrepreneurial legal person may not include any graphic symbols that do not have any sound or verbal equivalent established by linguistic standards or the indications characteristic of the legal person or legal entity under public law specified by the Law of Georgia on Entrepreneurs and the Organic Law of Georgia on Political Unions of Citizens. The name may not include any addition that may mislead a third person and/or cause a mistake and/or misunderstanding of the form or activity of the entity. The name of a non-entrepreneurial legal person must not be the same as that of an already registered non-entrepreneurial legal person. A person who unlawfully uses the name of another legal person shall cease such use at the demand of the authorised person and compensate damages caused by such unlawful use.

Article 35 of the Civil Code regulates the management and representation of non-entrepreneurial (non-commercial) legal persons. A founder/member of a non-entrepreneurial (non-commercial) legal person may grant exclusive right to one person to manage the activities of a non-entrepreneurial (non-commercial) legal person and/or may establish joint management and/or representation by two or more persons. Managerial authority means making decisions on behalf of a non-entrepreneurial (non-commercial) legal person within the scope of its authority, and representative authority means acting on behalf of a non-entrepreneurial (non-commercial) legal person in relations with third parties. Unless otherwise determined by the registration documents, managerial authority shall include representative authority. The organisational structure of a non-entrepreneurial (non-commercial) legal person shall be regulated by its charter (founders'/members' agreement) that shall be duly certified.

The assets owned by a non-entrepreneurial (non-commercial) legal person may be transferred

if the transfer serves the activity of the non-entrepreneurial (non-commercial) legal person, its organisational development, promotes the achievement of its objectives or serves charitable purposes (Article 36, Civil Code).

As regards compensation for damage, a non-entrepreneurial (non-commercial) legal person shall be liable for damages incurred to third parties as a result of an action performed by a person(s) with managerial and representative authorities in the course of his/her duties, which gives rise to the obligation to pay damages. The liability of the non-entrepreneurial (non-commercial) legal person shall be limited to its property. The members of a non-entrepreneurial (non-commercial) legal person or its manager(s) and representative(s) shall not be liable for the obligations of the non-entrepreneurial (non-commercial) legal person. The non-entrepreneurial (non-commercial) legal person is not liable for the obligations of its members or person(s) with managerial and representative authorities.

In case of liquidation of a non-entrepreneurial (non-commercial) legal person, founders/members shall determine the person entitled to receive the assets remaining after the liquidation in the application for registration. When the non-entrepreneurial (non-commercial) legal person is liquidated, its assets may be transferred if:

a) the transfer promotes the achievement of its objectives;
b) the transfer serves charitable purposes;
c) the property is transferred to another non-entrepreneurial legal person.

The assets remaining after the liquidation of a non-entrepreneurial (non-commercial) legal person may not be distributed to its founders/members or persons with managerial and representative authorities. If the founders/members of a non-entrepreneurial (non-commercial) legal person do not identify the person entitled to receive the assets remaining after its liquidation, a court shall transfer the assets remaining after the liquidation of the non-entrepreneurial (non-commercial) legal person to one or several non-entrepreneurial (non-commercial) legal entities with the same or similar objectives as those of the liquidated non-entrepreneurial legal person. If no such legal persons exist or can be found, a decision may be made on transferring the assets to the State. The court may distribute the assets after six months from the registration of the commencement of the liquidation proceedings.

As regards financing, grants are the main source of funding for non-governmental organisations. According to Article 4 para. "d" of the Law of Georgia on Grants,[453]a grantee can be non-entrepreneurial (non-commercial) legal person, resident or non-resident of Georgia, its representation, branch or department. Article 2 para. 1 of the same law states that the grant is the target-oriented means allotted by the grantor (donor) to the grantee free of charge in monetary or in natural form, which shall be used for implementation of specific humane, educational, scientific-research, health, cultural, sport, ecological, agricultural and social projects, as well as the programmes of state or public importance.

Article 3 para. 1 of the Law on Grants determines that the grantor (donor) can be:

a) International charity, humanitarian and other citizen organisations (including International sport associations, federations and committees), financial credit institutions, government of the foreign country or its representation, also foreign commercial (in case the recipient

453. Law of Georgia on Grants, N 331, 28/06/1996, published: Parliamentary Gazette, 19-20, 30/07/1996.

of grant is the state or the Government of Georgia) or non-commercial legal entity;

b) non-commercial legal person the objective of the charter of which is to accumulate funds in order to promote charity, social, cultural, educational, scientific-research or other activities beneficial to society;

c) legal entity of public law defined by the government of Georgia, the objective of the charter of which is: issuing grants in order to improve education-teaching quality in the sphere of education; issuing grants for financial support of study costs; issuing grants for scientific research; issuing grants for supporting integration of citizens residing in high mountainous regions and compact communities of national minorities; issuing grants for financial support of youth and public projects; issuing grants in order to support the socio-economic integration of internally displaced persons (IDPs) and economic migrants' families, victims of natural disaster and those eligible for resettlement, issuing grants in order to ensure availability of adequate means of subsistence for them; promotion of reforms and innovations implemented in Georgia and assisting their establishment in international society; assisting governments of partner countries of Georgia in the spheres of education, healthcare, social assistance and sustainable development and contributing to the eradication of consequences of natural and human-made disasters; activities carried out by the state to support agricultural cooperatives;

d) Ministry of Georgia; Office of the State Minister; the Ministries of the Autonomous Republics of Abkhazia and Adjara.

In cases when the grant is issued by the Ministry of Georgia or the Ministries of the Autonomous Republics of Abkhazia and Adjara a draft project on the issuance of a grant shall be submitted by the respective Ministry to the Government of Georgia or to the Government of Autonomous Republic of Abkhazia and Adjara by the respective Ministry of the Autonomous Republics of Abkhazia and Adjara for the assessment of purpose, scope and specific direction of using of grants (Article 3, para. 2).

Article 5 para. 1 determines that the legal basis for issuing grants is a written agreement between the grantor and grantee. The grant shall be used only for those purposes envisaged in the agreement. Its usage for other purposes is permitted only with the consent of grantor (donor).

Article 6 para. 2 states that a dispute regarding a grant between the residents or citizens of different countries shall be decided by the court of the country agreed between the parties in advance. If there is no such agreement, the dispute shall be solved according to the legislation of Georgia. Article 7 also determines that taxation of the grant is regulated by the legislation of Georgia.

Article 1^1 of the Government Ordinance on the Measures to be Carried out in respect of the Grants by the Institutions of the Executive Branch and Legal Entities under the Public Law Controlled by the State[454] determines that if the grant amount and/or assets in-kind to be issued by the Ministry of Georgia exceeds 50,000 GEL, before issuing such grant the respective Ministry shall submit draft project of the grant together with the conclusion of the Ministry of Finance to the Government of Georgia for the preliminary assessment of the purpose, scope and specific direction of usage of

454. Government Ordinance on the Measures to be Carried out in Respect of the Grants by the Institutions of the Executive Branch and Legal Entities under the Public Law Controlled by the State, #126, 14/03/2011; published: Website, 110317010, 18/03/2011; last amended: 13/03/2014)

funds. If the amount of the grant and/or assets in-kind does not exceed 50,000 GEL the Ministry is authorised to issue the grant with the preliminary consent of the Prime Minister. The annual amount of grants issued by each ministry shall not exceed 1% of its total budget unless otherwise decided by the Government.

According to Article 30[1] of the Law on Political Unions of Citizens,[455]a certain sum is transferred from the state budget annually to a fund that is intended to support development of parties and non-governmental organisations and promote the formation of a sound and competitive political system. The functions of the fund are performed by the Centre of Electoral Systems Development, Reforms and Training (the Training Centre)- a legal entity under public law established based on Election Code of Georgia (Article 17 of the Election Code).

The amount to be transferred from the state budget to the fund shall be half of the sum to be directly distributed to the parties. Funds shall be transferred from the state budget to the fund on a quarterly basis. The fund may receive financing from other sources as well. Fifty percent of the total amount transferred to the fund from the state budget shall be distributed to the parties and the remaining 50%, to non-governmental organisations. The funds shall be allocated only for the purpose of financing research, educational programmes, conferences, business trips, regional projects and projects aimed at the electoral and civic education of voters.

Funds shall be issued to non-governmental organisations only on the basis of projects presented to support the development of parties and the civic education of voters. The amount of money to be transferred to a non-governmental organisation may not exceed 10% of the total sum allocated for the non-governmental sector. During the review of projects presented by non-governmental organisations, at least three representatives of international organisations or foreign monetary funds with the relevant experience shall participate in an advisory capacity in the activities of the Centre. Funds that have not been used by parties or the non-governmental sector shall be distributed next year.

The statute of the Legal Entity under Public Law called the Electoral Systems Development, Reforms and Training Centre approved by Decree #7/2012 of the Central Election Commission[456]regulates procedures for awarding grants to non-governmental organisations and monitoring expenditures (Annex #3 of the Statute). According to Article 16 of Annex #3, the implementation of the activities provided for by a grant project shall be controlled by a monitoring group established by order of the Director of the Training Centre, and the financial and accounting examination of the expenditure of grant funds according to the budget of a grant project shall be carried out by a relevant authorised person/body invited by the Training Centre. Monitoring shall be carried out in the form of final monitoring. Monitoring may also be carried out in the form of interim monitoring in the case of transfer of the grant funds in phases. Activities provided for by the grant project of a non-governmental organisation shall be controlled on the basis of field monitoring and/or the interim/final reports submitted by the non-governmental organisation. Field monitoring includes the right of the monitoring group to attend the activities provided for by the grant project. In this regard, the non-governmental organisation shall submit to the Training Centre, at intervals

455. Law on Political Unions of Citizens, #1028, 31/10/1997, published: Parliamentary Gazette, 45, 21/11/1997, last amended: 21/07/2018.

456. Decree #7/2012 of the Central Election Commission, #7/2012, 03/02/2012, published: matsne.gov.ge., 06/02/2012, last amended: 05/02/2018.

determined by the grant agreement, the schedule of planned activities, specifying their details, data (name, surname, phone number) of responsible persons, and venue and time of their implementation. The monitoring group shall notify the members of the Competition Commission and of the Central Election Commission of the schedule of activities in electronic form.

For the purpose of interim monitoring, the non-governmental organisation shall submit to the Training Centre an interim report (in paper and compact disk format) at intervals determined by the grant agreement, which shall include the following: a) activities carried out for a certain period, with indication of the time and place of their implementation, performed works, and used materials (printed and/or audio, video and photo materials); b) a detailed plan of activities for the remaining period of time.

For the purpose of carrying out final monitoring, a non-governmental organisation shall submit to the Training Centre a final report (in paper and compact disk format) no later than 15 business days after the completion of the grant project, which shall not exceed 20 pages and shall include the following: a) analysis of achievement of the goals and objectives defined in the project; b) impact of the project (achieved results); c) target group that participated in the project; d) activities carried out within the scope of the project; e) printed materials, audio, video, photo and other materials created as a result of implementation of the project (if any); f) hindering circumstances (if any) and their solutions; g) assistance received during the implementation of the project (specifying the form of assistance and names of organisations, if any); h) a financial report. The non-governmental organisation shall attach to the final report two copies of the financial documentation certifying the expenditure of the funds allocated to it. If a non-governmental organisation fails to fulfil or improperly fulfils any of the abovementioned obligations, the monitoring group shall determine the timeframe of not less than two business days for the fulfilment of a respective obligation by sending a notification to the e-mail address of the non-governmental organisation.

According to Article 17, the monitoring group shall submit the information/report on monitoring results to the Director of the Training Centre and the Competition Commission. If the monitoring group reveals violations, the Competition Commission shall decide the issue of liability of a non-governmental organisation.

Article 18 determines that the Competition Commission may impose any of the following penalties on the non-governmental organisation: a) warning; b) termination of the on-going grant project and/or withdrawal of grant funds in full or in part; c) withdrawal of grant funds in full or in part.

The decision of the Competition Commission on imposing a penalty on a non-governmental organisation shall be approved by order of the Director of the Training Centre. The order may be appealed to the Central Election Commission according to the procedure established by the legislation of Georgia. The appeal of the order of the Director of the Training Centre shall not suspend the effect of the appealed act.

This is one example of how monitoring is carried out in case of state funding of NGOs. It should be noted that though all state institutions issuing grants use similar methods and procedures, there is no unified practice of monitoring and reporting[457] or any legal act specifically regulating the

457. Public Financing of Civil Society Organisations: Considerations for Georgia, Europe Foundation, 2018, p.15. available at: http://www.epfound.ge/wp-content/uploads/2018/11/Report-CSO-Public-Funding-Final.pdf

issue. The methods used for sanctioning NGOs for misusing funds are also different.[458]

NGOs are paying taxes according to the activities they carry out. The issue of taxation is mainly regulated by the Tax Code of Georgia.[459]There is no legal act regulating the taxation of NGOs separately. Article 66 para. 8 of the Tax Code states that tax registration of a non-entrepreneurial (non-commercial) legal entity shall be performed according to the legal address.

Article 63 para. 5 of the same law determines that a grantee who buys goods provided in the grant agreement and/or receives services under the same agreement in compliance with the legislation of Georgia, may obtain a deduction or refund of the value added tax (VAT) paid for such goods/ services on the basis of a tax invoice submitted to a tax authority or, in the case of a reverse charge, a document evidencing VAT payment to the budget.

NGOs are exempt from paying value added tax and other taxes (excise tax; import duty) on the grants received within United States aid programmes based on the Agreement between the Governments of Georgia and United States of America for promoting Cooperation on Humanitarian and Technical Economic Aid (31/07/1992; published: 31/12/1997). Similarly, NGOs are exempted from paying taxes (VAT, excise tax and import duty) on grants received from the EU based on the Framework Agreement between the Government of Georgia and EU Commission (18/06/2007; published: 17/03/2009).

85 Which, if any, justifications are permitted as regards possible restrictions placed on the exercise of these freedoms? Which body may impose such restrictions?

Article 22 para. 2 of the Constitution of Georgia states that "an association may only be dissolved by its own or a court decision in cases defined by law and in accordance with the established procedures."[460]Article 33 of the Civil Code of Georgia states that a decision to suspend or prohibit the activity of non-entrepreneurial (non-commercial) legal persons shall be made by a court in the cases and in the manner provided by an organic law of Georgia. If a non-entrepreneurial (non-commercial) legal person has substantially engaged in entrepreneurial activity, a court, based on the application from the registration authority and/or the interested person, shall consider and take a decision to suspend or prohibit the activity of the non-entrepreneurial (non-commercial) legal person. After the court renders a decision to prohibit the activity of a non-entrepreneurial (non-commercial) legal person, the registration authority shall revoke the registration of the non-entrepreneurial (non-commercial) legal person.

The Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations[461]regulates the grounds and the procedures for the suspension and prohibition of

458. Ibid.

459. Tax Code of Georgia, #3591, 17/09/2010, published: legislative herald, 54, 12/10/2010, last amended: 21/07/2018.

460. Constitution of Georgia, #783, 24/08/1995, published: Parliamentary Gazette, 31-33, 24/08/1995, last amended: 23/03/2018 to be effective after the inauguration of the president following 28 October presidential elections.

461. Organic Law of Georgia on the Suspension and Prohibition of Activities of Public Associations, #1103, 14/10/1997, published: Parliamentary Gazette, 46, 03/12/1997, last amended: 14/12/2006.

activities of non-entrepreneurial legal entities, trade unions and other public associations. Similar to the Civil Code it determines that the activities of public associations can be suspended and prohibited only by decision of the court. According to Article 3 of the organic law, a court may suspend the activities of the public association for up to three months, which has substantially engaged itself in entrepreneurial activities. After the expiration of the term of suspension of activities of a public association that has been set by a court, the public association shall resume its activities.

Article 4 states that the court may ban a public association that aims to overthrow or forcibly change the constitutional order of Georgia, to infringe on the independence and territorial integrity of the country, or to propagandise war or violence, to stir up national, ethnic, religious, or social strife, or that is forming or has formed an armed group, or that resumes entrepreneurial activities after the suspension of its activities by a court. A public association shall be deprived of the right to carry out activities and shall be liquidated on the basis of a conviction of the court that has entered into legal force. The decision of a court to suspend or ban public associations may be appealed in compliance with the procedures determined by the legislation of Georgia.

In respect to restrictions of the activities of non-governmental organisations, problems are related more with practice rather than legislation. In particular, NGOs, especially those impartial and reputable NGOs working on democratic and judicial reforms and the protection of human rights and elections, are targets of attacks on a regular basis whenever their recommendations or criticism is unacceptable for the ruling party. Attacks and discrediting statements are usually made by high-level public officials such as the Prime Minister, Chair of the Parliament and other members of the Parliament from the ruling party, Mayor of Tbilisi, etc.

For instance, in May 2014, the Prime Minister of Georgia declared at the government sitting in respect to the NGOs campaigning to end illegal surveillance in the country that those NGOs spend money to damage the image of the country and their campaign that there is illegal surveillance is directed against the state. He considered the activities of these non-governmental organisations as undermining the state.[462] Following this statement former Prime Minister and informal ruler of the country Bidzina Ivanishvili has also made several discrediting statements about NGOs. In particular, he attacked the heads of major non-governmental organisations and accused them of being affiliated by the opposition political party. In one of the statements he announced the publication of compromising materials about NGO leaders. The NGOs considered these statements to be harassment directed against the entire NGO sector, which could incite other public officials to use the same rhetoric against civil society organisations, as often happened in the past.[463]

462. NGOs campaigning to end illegal surveillance respond to PM's accusations, 1 May 2014. Available at: http://www.isfed.ge/main/582/eng/

463. Statement of Civil Society Organisations about the Oppression from Government, 2 February 2015. Available at: https://idfi.ge/en/ngos-statement-about-governments-pressure
Statement about Remarks of Ivanishvili against Gigauri and Kozhoridze, 28 April 2015. Available at: http://www.isfed.ge/main/887/eng/

Government officials should stop harassing and attacking non-governmental organisations. Instead of trying to discredit and harm the reputation of non-governmental organisations, they should treat civil society with the respect characteristic of a democratic and pluralistic society.

86 What are the provisions on dissolution of political parties? Is there any case law in this field?

According to Article 23 para. 3 of the Constitution of Georgia, the establishment and activity of a political party that aims to overthrow or forcibly change the constitutional order of Georgia, infringe on the independence or violate the territorial integrity of the country, or that propagates war or violence or incites national, ethnic, provincial, religious or social strife, is inadmissible. The establishment of a political party on a territorial principle is also inadmissible. Paragraph 4 of the same Article stipulates that a political party can be prohibited only by a decision of the Constitutional Court, in cases defined by the organic law and in accordance with the established procedure.

In accordance with the Constitution, Article 5 para. 2 of the Organic Law of Georgia on the Political Unions of Citizens[464]states that "forming and operating a party aimed at subversion or forced change of the constitutional order of Georgia, infringement upon the country's independence, violation of its territorial integrity or which propagates war or violence or kindles national, community, religious or social strife, shall be prohibited." Article 6 of the Organic Law also states that "forming a party according to a regional or territorial principle shall be prohibited."

Article 35 of the Organic Law determines that political party can be banned only based on the decision of the Constitutional Court. In accordance with the Constitution and Organic Law on Political Unions of Citizens, Article 19 subparagraph "c" of para. 1 of the Organic Law of Georgia on the Constitutional Court of Georgia[465]states that the Constitutional Court is authorised to consider and adjudicate the constitutionality of the formation and activity of political parties and termination of the mandate of a member of the representative body nominated in the elections by that political party.

The President of Georgia, not less than one fifth of the members of the Parliament of Georgia or the Government of Georgia have the right to lodge a claim with the Constitutional Court concerning the constitutionality of the formation and activity of a political party and termination of the mandate of a member of the representative body nominated in the elections by that political party (Article 35). If the claim is lodged with the Constitutional Court, respondents are the respective political party and a body authorised to register political parties.

464. Organic Law of Georgia on the Political Unions of Citizens, #1028, 31/10/1997; published: Parliamentary Gazette, 45, 21/11/1997; lase amended: 21/07/2018.

465. Organic Law of Georgia on the Constitutional Court of Georgia, #95, 31/01/1996; published: Parliamentary Gazette, 001, 27/02/1996; last amended: 21/07/2018.

Upholding a constitutional claim results in the annulment of the act of registration of the political party (Article 23, para. 3).

The activity of a political party may also be terminated by means of its reorganisation (merger, accession or separation) or self-liquidation. A party may be reorganised by the decision of its convention. A political party (parties) that emerged as a result of reorganisation shall be registered in accordance with the rules prescribed by the Law. In an event of a party's reorganisation, its convention shall also decide on distribution of the party's property pursuant to established rules. Self-liquidation of a party may occur by decision of its convention pursuant to the rules prescribed by its statute.

Property of a prohibited or self-liquidated party shall be handed to the state treasury. As regards case law there are no claims filed with the Constitutional Court regarding the prohibition of a political party. Accordingly, there is no case law on the issue.

TREATMENT OF SOCIALLY VULNERABLE AND PERSONS WITH DISABILITIES AND PRINCIPLE OF NON-DISCRIMINATION

87 **Provide information on legislation covering the treatment of socially vulnerable and persons with disabilities and the principle of non-discrimination.**

The Constitution of Georgia amended in 2017 provides that the state shall provide equal rights and opportunities for men and women. The state shall create special conditions in order to realise the rights and interests of persons with disabilities. Pursuant to constitutional amendments, the state shall promote the principles of social justice, social equality and social solidarity within the society. The Constitution also stipulates that the state shall ensure healthcare and social protection, subsistence minimum and decent housing for citizens. The state shall promote employment of citizens. The conditions of providing a subsistence minimum will be determined by law. Pursuant to the Constitution, the state shall promote family welfare. The rights of mothers and children shall be safeguarded by law.

The Constitution guarantees the right of citizens to state health insurance as a means of affordable and effective medical assistance. The state also constitutionally protects family welfare and the rights of mothers and children.

Pursuant to Article 27 of the newly amended Constitution, everyone has the right to receive an education and the right to choose the type of education. Preschool education shall be guaranteed according to the rule prescribed by law. Elementary and basic education shall be compulsory. General education shall be fully funded by the state according to the rule prescribed by law. Citizens shall have the right to state-funded vocational and higher education according to the rule prescribed by law. Based on the constitutional provision, the Constitutional Court of Georgia struck down the law requiring foreign students to pay a fee for their general (primary, secondary and basic education) in 2014. Education at public school is free for every child since that time.

Pursuant to Article 1212 of the Civil Code of Georgia, parents are obliged to maintain their minor children as well as children with disabilities. Pursuant to Article 1206 of the Code, the deprivation of parental rights and duties shall be the measure of last resort. The decision is delivered by a court on the initiative of a guardianship and custodianship authority or on the initiative of a child who has attained the age of 14, unless otherwise provided in this Article. A parent who systematically avoids parental duties and abuses parental rights – mistreats children, has a negative influence on them through his/her immoral conduct, or who is a chronic alcoholic or drug addict or who has involved the child in antisocial activities (including begging, vagrancy) or if a parent abandoned the child, all parental rights and duties should be stripped from those parents. Detailed information regarding the rights of children can be found in the response to question 98.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) came into force for Georgia on 1 September 2017. After that, the Law on Domestic Violence of Georgia was renamed as the Statute on the Elimination of Violence against Women and Prevention of Domestic Violence, Protection and Support of Victims of Domestic Violence.[466]The law protects women from violence not only in their family and private life, but also in the public domain. The perpetrator of violence against women can be their family members and also strangers encountered by those victims in their public life. The perpetrators of violence against men can only be their family members in order for those men to benefit from the law. Detailed information regarding the protection of women from violence can be seen in the response to question 97.

The legislation regarding people with disabilities is discussed in the next question.

According to the Law on Social Assistance,[467]a person experiencing homelessness is a person who has no specific or permanent place of residence. The municipal authority is in charge of registering people experiencing homelessness. Pursuant to Article 18 (1) of the Law on Social Assistance, the municipal authority should provide shelter for people experiencing homelessness. The person is provided overnight accommodation and food in the shelter. According to a letter from the Social Service Agency of Georgia dated 20 September 2018, there are 1,715 people experiencing homelessness in the capital city of Tbilisi and 119 in Samtredia municipality (western part of Georgia).

> According to the Law on Social Assistance, living allowances are provided for families below the poverty line. Pursuant to Article 7(2) of the law, the Government of Georgia pays money (living allowance)to families below the poverty line. The amount of the payment depends on a social worker's evaluation of the socio-economic conditions of the family.
>
> The Government should take steps to eliminate discriminatory practices that exclude persons with disabilities from access to emergency shelters.

466. Statute on the Elimination of Violence against Women and Prevention of Domestic Violence, Protection and Support of Victims of Domestic Violence, issued 25/05/2006, Legislative Herald of Georgia, 20, 09/06/2006; consolidated publication on 05/07/2018.

467. Law on Social Assistance, issued 29/12/2006, Legislative Herald of Georgia, 51, 31/12/2006, consolidated publication on 05/07/2018.

Pursuant to Article 6(3) of Ordinance N145 of the Government of Georgia,[468] the monthly living allowance for families below the poverty line is determined in the following ways:

1) 60 GEL (19.82 EUR) for each member of a family that has received less than 30,001 points according to the socio-economic evaluation. (According to the Social Service Agency, 143,065 people received this amount in September 2018);
2) 50 GEL (16.52 EUR) for each member of a family that has received more than 30,001 points but less than 57,001 points according to the socio-economic evaluation.(According to the Social Service Agency, 190,147 people received this amount in September 2018);
3) 40 GEL (13.21 EUR) for each member of a family that has received than 57,001 points but less than 60,001 points according to the socio-economic evaluation.(According to the Social Service Agency, 24,048 people received this amount in September 2018);
4) 30 GEL (9.91 EUR) for each member of a family that has received more than 60,001 points but less than 65,001 points according to the socio-economic evaluation.(According to the Social Service Agency, 40,853 people received this amount in September 2018).
5) 10 GEL (3.30 EUR) is paid for each minor under 16 years of age in a family that has received than 100,001 points according to the socio-economic evaluation. (According to the Social Service Agency, there were a total of 32,670 minors in September 2018).

According to the Social Service Agency of Georgia, 417,065 people received living allowances at the end of September 2018.

There are number of statutory and regulatory laws that pertain to people with social vulnerabilities and disabilities. The legal acts are as follows:

- Statute on Social Assistance (date of issuing -29/12/2006; Source and date of publishing LHG, 51, 31/12/2006, Consolidated publications – 05/07/2018);
- Statute on Insurance (Parliamentary Gazette, 21-22, 31/05/1997 Consolidated publications – 05/07/2018)
- Relevant provisions of the Civil Code that deal with people with psychosocial needs (date of issuing- 20/03/2015; matsne.gov.ge, 31/03/2015; Consolidated publications – 31/10/2018)
- Statute on Conducting Forensic Examination upon Psychosocial Needs of the Individual (Date of issuing - 20/03/2015; matsne.gov.ge,31/03/2015; Consolidated publications – 05/07/2018)
- Chapter XLV[11] of Civil Procedure Code of Georgia (arranging support for a person in psychosocial needs) (Date of issuing- 20/03/2015; matsne.gov.ge; 31/03/2015; Consolidated publications – 31/10/2018)
- Statute on Psychiatric Assistance (Date of issuing- 14/07/2006; Legislative Herald of Georgia, 30, 27/07/2006; Consolidated publications – 05/07/2018)
- Statute on Healthcare (Date of issuing -10/12/1997; Parliamentary Gazette, 47-48, 31/12/1997; Consolidated publications – 05/07/2018)
- Statute on Rights of the Patient (Date of issuing- 05/05/2000; Legislative Herald of Georgia, 19, 25/05/2000; Consolidated publications – 05/07/2018)
- Statute on Protection and Promotion of Natural Feeding of Infants, Rules of Utilisation of Artificial Nutrition (Date of issuing- 09/09/1999; Legislative Herald of Georgia, 43(50), 21/09/1999; Consolidated publications – 20/09/2013)

468. Ordinance N 145 of the Government of Georgia, issued 28/07/2006; Legislative Herald of Georgia, 101, 01/08/2006; consolidated publication on 30/03/2018.

- Statute on Adoption and Foster Care (Date of issuing - 04/05/2017; matsne.gov.ge, 24/05/2017; Consolidated publications – 20/09/2018)
- Statute on Social protection of Person with disabilities (Date of issuing -14/06/1995; Departments of the Parliament of Georgia, 27-30, 14/06/1995; Consolidated publications – 23/03/2017)
- Statute on Medical-Social forensic examination (Date of issuing -07/12/2001; Legislative Herald of Georgia, 35, 26/12/2001; Consolidated publications- 05/07/2018)
- Decree of Minister for Labour, Health and Social Protection on Approval of Instruction on Rules of Determination of Disability Status (Date of issuing- 13/01/2003; Legislative Herald of Georgia, 9, 20/01/2003; Consolidated publications- 26/07/2013);
- UN Convention on the Rights of Persons with Disabilities (ratified by the Georgian Parliament 26 December 2013; matsne.gove.ge, 02/05/2014, Registration code 480610000.03.030.016244);
- Statute on State Pension (Date of issuing-23/12/2005; Legislative Herald of Georgia, 56, 28/12/2005; Consolidated publications-05/07/2018)
- Statute on Contributory Pension (Date of issuing-21/07/2018; matsne.gov.ge, 06/08/2018; Registration code- 280060000.05.001.019066)
- Statute on State Compensation and State Scholarship (Date of issuing-27/12/2005; Legislative Herald of Georgia, 56, 28/12/2005; Consolidated publications-31/10/2018)
- Statute on Social Security of Persons Transferred to the Reserve from Military Bodies, Internal Affairs Bodies and the Special State Protection Service, and Their Family Members (Date of issuing-16/10/1996; Parliamentary Gazette, 27-28/4, 21/11/1996; Consolidated publications- 31/10/2018)
- Statute on Social Protection of the Families of the People who Died or Disappeared while Carrying out their Duties to Protect the Territorial Integrity, Liberty and Independence of Georgia (Date of issuing -27/12/1996; Parliamentary Gazette, 1-2(33-34), 22/01/1997; Consolidated publications-05/07/2018)
- Statute on the Recognition of Victims as a Result of Dispersal of Peaceful Assembly for the Independence of Georgia on 9 April 1989 in Tbilisi, and their Social Security Guarantees (Date of issuing-30/04/1999; Legislative Herald of Georgia, 14(21), 13/05/1999; Consolidated publications – 23/12/2005)
- Statute on General Education (Date of issuing-08/04/2005; Legislative Herald of Georgia, 20, 04/05/2005; Consolidated publications- 20/09/2018)
- Statute on Higher Education (Date of issuing-21/12/2004; Legislative Herald of Georgia, 2, 10/01/2005; Consolidated publications-20/09/2018)
- Statute on Vocational Education (Date of issuing- 20/09/2018;matsne.gov.ge, 09/10/2018)
- Statute on Early and Preschool Education (Date of issuing - 08/06/2016; matsne.gov.ge, 24/06/2016; Consolidated publications – 20/09/2018)
- Governmental Decree #601 on State Programme 2018 of Social Rehabilitation and Taking Care of a Child (Date of issuing-29/12/2017; matsne.gov.ge, 29/12/2017; Consolidated publications-29/12/2017)
- Labour Code (Date of issuing- 17/12/2010; Legislative Herald of Georgia, 75, 27/12/2010; Consolidated publications – 05/09/2018)
- Statute on Occupational Safety (Date of issuing- 07/03/2018; matsne.gov.ge, 21/03/2018; Consolidated publications – 05/07/2018)

- Product Safety and Free Movement Code (Date of issuing - 08/05/2012; matsne.gov.ge, 25/05/2012; Consolidated publications – 31/10/2018)
- Governmental Decree N57 on the Rule for Issuing Constriction Permits and Permit Conditions (Date of issuing - 24/03/2009; Legislative Herald of Georgia, 38, 27/03/2009; consolidated version – 16/02/2018)
- Civil Code of Georgia (Date of issuing-26/06/1997; Parliamentary Gazette, 31, 24/07/1997; Consolidated publications – 31/10/2018).

88 **What steps have been taken to prevent discrimination based on membership of a national minority, ethnic or social origin, sex, race, colour, genetic features, language, religion or belief, political or any other opinion, property, birth, disability, age or sexual orientation?**

Article 14 of Georgian Constitution holds that all persons shall be equal before the law. Any discrimination based on race, colour, origin, ethnic belonging, language, sex, religion, political and other opinions, social affiliation, property and social rank or residence shall be prohibited. After the constitutional amendment that is effective at the end of 2018, the grounds for discrimination will be open-ended. Pursuant to the constitutional amendments, discrimination on grounds not explicitly mentioned in the Constitution is banned.

Even though the protected grounds of discrimination have been strictly defined since 1995, the Constitutional Court interprets the right to equality broadly. In 2008, the Constitutional Court ruled that Article 14 also prohibited discrimination on grounds that were not explicitly mentioned in the Constitution. While Article 14 of the Georgian Constitution is silent on discrimination based on sexual orientation, in 2014 the Constitutional Court struck down the regulation of the Minister of Labour, Health and Social Protection that prevented gay men from being blood donors. The Constitutional Court found discrimination based on sexual orientation in this case.

According to the Georgian Constitution, everyone has the right to speech, opinion, conscience, religion and belief. Persecution of a person with regard to his/her speech, opinion, conscience, religion and belief is prohibited. According to Article 19(2), restriction of expression of speech, opinion, conscience, religion and belief is permitted if it infringes upon the rights of others.

Article 21 of Georgian Constitution guarantees the right to property and inheritance. The restriction of these rights is permitted when pressing social needs so requires. In restricting the right to property, the essence of the right should not be diminished. Article 21(3) allows the state to take a property title of an individual by eminent domain in order to meet pressing public needs. The decision on eminent domain is made by court pursuant to the rule set forth by the organic statute. Due compensation is guaranteed for the individual whose property was taken.

The Law on Gender Equality[469]defines the term “gender” as a social aspect of relation between sexes, which is expressed in all spheres of public life and implies opinions formed about different

469. Law on Gender Equality, date of issuing-26/03/2010; Legislative Herald of Georgia, 18, 12/04/2010; Consolidated publications – 26/07/2017.

sexes through socialisation. The law also enshrines the meaning of "gender equality," a component of human rights, which implies equal rights, duties, responsibilities and participation of men and women in all spheres of personal and public lives. The law explicitly prohibits both direct and indirect discrimination based on gender. The law allows the authority to resort to special measures, which are intended to remedy the consequences of discrimination and is intended for a circle of persons requiring special protection due to their gender.

The Law on Gender Equality guarantees the equal rights of men and women with regard to access to education and free choice of learning; matters relating to children; guardianship, wardship, trusteeship, or adoption of children; free choice of profession or career, promotion, vocational training/retraining, social security in cases of illness and infirmity and healthcare. Pursuant to Article 5 of the Law on Gender Equality, official statistics related to gender issues should provide disaggregated data on sexes.

The Law on Gender Equality also prohibits both harassment and sexual harassment. Article 6(1)a of the Law on Gender Equality prohibits harassment and/or coercion of a person with the purpose or effect of creating an intimidating, hostile, humiliating, degrading or offensive environment in a labour relation. Article 6(1)b of the Law on Gender Equality prohibits any unwanted verbal, non-verbal or physical behaviour of a sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment in employment relations.

> The Law on Gender Equality does not prohibits both harassment and sexual harassment beyond employment settings. The law does not enshrine a specified punishment for committing either harassment or sexual harassment
>
> The Georgian Parliament should introduce a punishment for harassment and sexual harassment as misdemeanours through amending the Administrative Offences Code of Georgia.

Pursuant to the Georgian Constitution, citizens of Georgia, regardless of their ethnic, religious or linguistic origin, shall have the right to maintain and develop their culture without any discrimination and enjoy their mother tongue in private and in public. There is no specific statutory law regarding ethnic minorities; however, the Office of the State Minister of Georgia for Reconciliation and Civic Activity adopted the State Strategy for Civic Equality and Integration and Action Plan for 2015-2020. The strategy envisages four strategic goals:

- Representatives of ethnic minorities participate equally and fully in civic and political life;
- Equal social and economic conditions and opportunities are created for ethnic minority representatives;
- Representatives of ethnic minorities have access to high quality education at all levels and the level of the state language knowledge is improved;
- Culture of ethnic minorities is preserved and tolerant environment is encouraged.

There is no consolidated budget allocated to implement the Civic Equality and Integration Strategy

and Action Plan. Each responsible public agency uses its own annual budgetary allocations to carry out the tasks envisaged thereby.

In 2014 the Constitutional Court found the system of guardianship unconstitutional. The model enabled a guardian to completely replace the will of a person under guardianship. Declaring a person legally incapacitated resulted in the civil death of the person with mental and intellectual impairments. After the judgment of the court, Parliament passed legislative amendment in conformity with Article 12 of CRPD.

Pursuant to Article 12 of Georgian Civil Code, a person with psychosocial needs (support-recipient) retains his/her legal capacity. The support-recipient is an adult person who has long-term psychological or mental/intellectual impairments that may hinder his/her full and effective participation in society on an equal basis with others. Without appropriate support and advice, the impairments prevent a person from making informed decisions in the sphere determined by the court. The court appoints a support person for a person with psychosocial needs to provide him/her with advice regarding civil transactions. The supporter has no right to substitute the will of the support recipient. The supporter is required to explain the nature and consequences of the transaction. If the transaction is made in writing, it should be signed by both the support provider and support recipient. The law allows for the involvement of the support provider in the transaction of support recipient if the court ruling directly mentioned it. Article 363[15] of the Civil Procedure Code permits the court to assign a support person in conducting employment activities, transactions of minor significance, business activities, management and disposition of real estate, choice of the place of residence, expression of the consent for medical treatment. If any transaction or other issue is not explicitly mentioned in the court ruling, the support recipient can make an independent decision in this regard without the involvement of the supporter.

The transactions and issues in which a person needs support is defined by the court based on the report submitted by multidisciplinary groups of experts on a case-by-case basis. The group consists of four experts: a psychiatrist, psychologist, social worker and occupational therapist. The multidisciplinary groups assess the skills and needs of the person seeking support. If the person is recovered, he or she can independently apply to the court to have the support measure repealed. The support measure is in effect for five years. After that, the court automatically reviews whether the support measure is still needed.

While the support recipient is free to marry, before the marriage is registered, a prenuptial contract should be concluded with the mandatory involvement of the supporter. The involvement is necessary to protect the financial interests of the support recipient from deception.

The right to vote is guaranteed for a support recipient if he/she is not placed in any psychiatric establishment.

Pursuant to Article 2 of the Law on Social Protection of Persons with Disabilities, persons with disabilities are those individuals with substantial physical, mental, intellectual or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society. Article 5 of the law recognises sign language as a means for interpersonal communication. The state should create the necessary condition for its use and development.

Article 7 of the Law on Social Protection of Persons with Disabilities[470]requires state agencies and private institutions and organisations to create the conditions for persons with disabilities to allow them to freely move and orient themselves or use residential, public and business premises, transportation and means of communication and the media.

Article 8 of the Law on Social Protection of Person with Disabilities prohibits to design and construct residential areas, to develop residential districts, to work out design solutions, to build and reconstruct buildings and facilities, including educational, cultural and entertainment, as well as, sport and recreation facilities, airports, railway stations, sea and river transportation communications and facilities, individual means of communication and information unless those facilities meet the needs of persons with disabilities.

Pursuant to Article 24 of the Law on Social Protection of Persons with Disabilities, persons with disabilities should receive social assistance in the form of financial support (pensions, allowances, etc.), as well as in the form of technical and other means, including motor vehicles, wheelchairs, prosthetic and orthopaedic appliances, special script publications, sound amplification devices and signalling systems, also in the form of medical, social and professional rehabilitation services. Article 25 of the Law on Social Protection of Person with Disabilities guarantees that if state agencies fail to provide persons with disabilities with technical and other means determined by their individual rehabilitation programmes or if persons with disabilities purchase these means on their own, they shall receive compensation.

Article 26 of the Law on Social Protection of Persons with Disabilities guarantees people with disabilities the right to a caregiver and supporter who should provide those services in their own homes or at inpatient facilities. Under Article 27 of that law, the state is obliged to accommodate a person with disabilities at care homes. If there is no need to keep a person with disabilities at a care home, local self-government and administrative bodies shall provide them with a place to live. Article 31 of the Law on Social Protection of Persons with Disabilities provides the right to form and associate with any non-profit, non-governmental organisation.

The Criminal Code of Georgia specifically deals with the hate crimes. Pursuant to Article 53(3^1) of the Criminal Code of Georgia, the commission of a crime on the grounds of race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code.

Article 142 of the Criminal Code of Georgia proscribes crime (the violation of equality among human beings). The provision prohibits the following crimes: violation of equality among human beings on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity and expression, political or other views or of any other grounds that have substantially breached human rights. These violations are punishable by fine or correctional work for up to a year and/or by imprisonment for up to two years.

470. Law on Social Protection of Persons with Disabilities, Date of issuing- 14/06/1995; Departments of the Parliament of Georgia, 27-30, 14/06/1995; Consolidated publications – 23/03/2017.

Article 142[1] of the Criminal Code of Georgia prohibits the crime of racial discrimination, i.e. an act committed to incite national or racial rivalry or discord in order to degrade national honour and dignity, as well as the direct or indirect restriction of human rights or to give an advantage to the person based on race, colour, national or ethnic belonging, which has substantially breached human rights. This crime will be punished by imprisonment for up to three years.

Article 142[2] of Georgian Criminal Code specifically deals with infringement of the rights of persons with disabilities. The Article specifically proscribes denying persons with disabilities the opportunity to exercise the rights granted by the law and/or treaties to which Georgia is a party, due to their disabilities, which substantially breached their rights. This denial is punished by fine or home detention from six months to two years and/or imprisonment up to three years.

Article 155 of Georgian Criminal Code prohibits unlawful prevention of performing religious worship. The element of the crime is interference in religious service, prevention of other religious rites or practices from taking place by violence or threat of violence or if it accompanies an insult to a believer's religious feelings. This crime is punishable by a fine or corrective labour for up to a year, home detention from six months to a year or imprisonment for up to two years.

Article 156 of Criminal Code prohibits the crime of persecution. The proscription specifically deals with the persecution of persons because of their speech, opinion, conscience, confession, faith or creed, or political, social, professional, religious or scientific activities. The crime is punishable by a fine, home detention from six months to a year or imprisonment for up to two years.

According to statistics provided by Tbilisi City Court, Tbilisi Court of Appeals and the Supreme Court of Georgia, they did not adjudicate any case related to articles 142 (violation of equality among human beings) or 142[2] (infringement of the rights of a person with disabilities) of the Criminal Code from 2016 to 2018. Tbilisi City Court found two individuals guilty of committing the crime of racial discrimination proscribed by Article 142[1] on 16 November 2016. The defendants attacked a person of African origin calling him a Negro (*ზანგი* in Georgian). The victim was ahead of the defendants in a line at a shop. The perpetrators let the victim know he had no right to leave the shop before Georgians. The perpetrators caught up with the victim in the street, forced him to the ground, kicked him and hitbrick in his face. The court imposed conditional imprisonment for three years upon those two defendants. This was the only case with regard to racial discrimination adjudicated by Tbilisi City Court in 2016-2018.

There is another conviction regarding racial discrimination at Tbilisi Court of Appeals in 2016-2018. On 20 April 2018 Tbilisi Court of Appeals found a person guilty of racial discrimination for attacking citizens of Nigeria in the centre of Tbilisi, Georgia's capital. The court imposed conditional imprisonment for three years upon the perpetrators.

Tbilisi City Court made convictions regarding persecution of Jehovah's Witness in three cases from 2016 to 2018 (Article 156 of the Criminal Code). The same court used Article 155 (unlawful prevention of performing religious worship) only in one case. Two persons intruded into Kingdom Hall, the place of worship used by Jehovah's Witnesses. The perpetrators prevented members of the Jehovah's Witness community from reading and discussing the Bible. The perpetrators cursed their religion and threatened to kill them. One of the defendants slapped a member of the religious community. Tbilisi City Court imposed two years of conditional imprisonment upon those two perpetrators.

Tbilisi Court of Appeals used Article 156 (persecution) of the Criminal Code of Georgia to convict perpetrators three times in 2016-2018. One of the cases dealt with the persecution of political opponents and the others to the physical abuse of Jehovah's witnesses. Kutaisi Court of Appeals adjudicated four cases regarding Article 156 of Criminal Code of Georgia in 2016-2018. One of the four cases involved persecution because of the political beliefs of the victim. The other three cases were about persecution of Jehovah's Witnesses due to religious intolerance toward them. Kutaisi Court of Appeals upheld all of the four convictions rendered by the lower courts.

Tbilisi City Court used Article 53(3^1) of the Criminal Code of Georgia to aggravate punishment for hate crimes in two cases from 2016 to 2018. In the first case, Tbilisi City Court found a person guilty of persecution as the perpetrator had beaten members of the Jehovah's Witness congregation for proselytising their religion. The first instance judge noticed that the crime was motivated by religious intolerance, an aggravating circumstance under Article 53(3^1) of the Criminal Code. For this reason, the judge sentenced the perpetrator to prison rather than prescribe a more lenient punishment. However, the judge balanced the aggravating circumstance against mitigating ones. The mitigating circumstance was the confession of the defendant in the case. The court also found that it was the first crime committed by the defendant. Based on these two mitigating circumstances, the court used conditional rather than actual imprisonment. The same approach was taken by the same judge in another case that dealt with the unlawful prevention of religious worship of Jehovah's witnesses.

Article 53(3^1) of the Criminal Code of Georgia was properly used by Senaki District Court in its conviction rendered on 11 May 2016. Two Jehovah's Witnesses were distributing flyers of religious content near the railway station of the city of Senaki (western part of Georgia). The members of the congregation offered flyers to the defendant who, in response, physically attacked them. The members of Jehovah's Witness sustained actual bodily harm in the attack. The perpetrator was found guilty of the crime of religious persecution. In citing Article 53(3^1) of the Criminal Code of Georgia, Senaki District Court (Judge Levan Nutsubidze) found that the crime had been motivated by religious intolerance, an aggravating circumstance for criminal responsibility. Because of the biased motive, the court imposed one year of imprisonment rather than a fine upon the defendant. The judgment with its motivation was upheld by the Kutaisi Court of Appeals in its decision rendered 11 July 2016.

The right to equality and prohibition of discrimination is also enshrined in the Labour Code of Georgia. Article 2(3) of the Labour Code provides that any type of discrimination due to race, skin colour, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, public, political or other affiliation, including affiliation to trade unions, political or other opinions in employment and pre-employment relations, is prohibited.

The Labour Code specifically proscribes harassment at the workplace, recognising it as a form of discrimination. Pursuant to Article 2(4) of the Labour Code, discrimination is the direct or indirect harassment of a person aimed at creating an intimidating, hostile, humiliating, degrading, or abusive environment for that person, or deteriorating their conditions as compared to other people in similar circumstances. The need to differentiate among persons that arises from genuine occupational requirements, which pursue legitimate aims and are proportionate and necessary means of achieving that objective, will not be deemed discrimination. Discrimination is also prohibited by

the Law of Georgia on Patient's Rights.[471]Under Article 6 of the law it, is prohibited to discriminate against a patient on the basis of his/her race, skin colour, language, sex, genetic heritage, belief, religion; political and other views, national, ethnic and social origin; financial situation and rank of nobility; place of residence, disease, sexual orientation and personal negative attitude.

89 **How do you ensure legally and in practice the respect of the principle of non-discrimination on the basis of sexual orientation? Please name the NGOs active in the field of fighting against discrimination in sexual orientation, age and disability. Has the Freedom of Assembly been exercised freely and without problems for instance in the organisation of gay prides or similar events?**

The Constitutional Court of Georgia found the regulation of the Minister of Labour, Health and Social Protection, preventing men who have sex with men (MSM) from donating for the rest of his life, unconstitutional. However, the Minister of Labour, Health and Social Protection has enacted a new regulation preventing MSMs from donating blood for 10 years from the last moment of sexual contact. The new regulation has also been challenged before the Constitutional Court. The case is pending.

The Parliament amended the constitution and defined marriage as a voluntary union between man and women in 2017, thereby effectively preventing members of the LGBT community from having their relationships legally recognised and protected. Although the constitutional amendment is not an obstacle for introducing the concept of civil partnership, there is not such institution in Georgia.

The Law on Elimination of Violence against Women and Prevention of Domestic Violence, Protection and Support of Victims of Domestic Violence also protects members of the LGBT community. According to Article 17^2 of the law, a shelter for domestic violence victims was set up under the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Protection. Pursuant to Article 18 of the Law on Elimination of Violence against Women and Prevention of Domestic Violence, Protection and Support of Victims of Domestic Violence, the victim of domestic violence shall be transported by law enforcement authorities to a shelter. In 2017, seven persons received services at the shelters for victims of domestic violence on the grounds of sexual orientation and gender identity.

The law does not recognise a transgender woman as a woman. The law is not applicable when a transgender woman is subjected to violence outside of her family settings. The law protects a transgender woman only if she is victimised by a member of her family. A cisgender woman is protected by the law when she is the victim of violence outside of her family.

The Georgian Parliament should amend the law and extend the protection of transgender women from violence occurring outside of family.

471. Law of Georgia on Patient's Rights, date of issuing- 05/05/2000; Legislative Herald of Georgia, 19, 25/05/2000; Consolidated publications – 05/07/2018.

In 2017, the Prosecutor's Office of Georgia identified 86 hate crimes. Crimes motivated by transphobia are in first place as they were committed in 37 instances. There were 25 instances of crimes committed against women. Twelve crimes were committed because of the sexual orientation of the victims. In 10 crimes, the perpetrators were biased towards the victim's religion. One crime was motivated by the victim's nationality. One crime was committed due to the victim's ethnic origin. The statistic indicates that transphobia is an acute problem in Georgia.

Criminal charges have been brought against four people for allegedly committing crimes due to the sexual orientation of the victims. The number of the defendants in crimes committed against transgender people is also four. No final court ruling has yet been rendered in those cases.

Gender appears on the ID of every Georgian citizen. For transgender people, their gender identity does not correspond with the biological sex marked on their ID. Article 78 of Civil Statues Acts allows to change civil acts including gender marker in the case of changing sex of the person. The law allows a person to change his/her gender marker, name and family name. The problem arises when it comes to the interpretation of the law about the meaning of sex change. It is unclear whether gender reassignment surgery is the only way to get a gender marker changed. It is not clear whether the law allows a person to change their gender marker after undergoing hormone therapy or making changes in social behaviour without any medical intervention. The issue is a matter of court proceedings at the domestic level. The case has been sent to the European Courts of Human Rights.

The Government of Georgia should guarantee the right of a transgender person to have his/her sex marker changed on identification cards or in other documents without requiring surgery.

Four community NGOs are working on LGBT issues: Equality Movement, Women's Initiatives Supportive Group, Identoba and Temida. The Coalition for Independent Living is a coalition of disabled persons' organisations (DPOs). The coalition comprises 26 NGOs. There is another DPO, Accessible Environment for Everyone. Partnership for Human Rights also conducts strategic litigation on disability rights. The elderly women's organisation called Dignified Old Age is one of the NGOs working on behalf of senior people.

No gay pride parade has ever taken place in Georgia. However, Georgian LGBT organisations have been intending to celebrate the International Day against Homophobia and Transphobia (IDAHO) on 17 May since 2012. The event was violently dispersed in 2012 and 2013. The European Court of Human Rights found the violation of Article 3 (inhuman and degrading treatment) and Article 11 (right to peaceful assembly) of the European Convention of Human Rights regarding IDAHO in 2012. The violent dispersal of the peaceful rally of the LGBT community by orthodox priests of the Georgian church in 2013 is pending at the European Court of Human Rights. The court of first instance and appeals acquitted four defendants charged in the 2013

incident. The LGBT community was forced to abandon the celebration of IDAHO on 17 May 2014. In 2015, IDAHO was celebrated peacefully in Round Garden Tbilisi. Even though the area is in the centre of the city, it is a very unusual place of protest. In order to participate in the IDAHO assembly, a person should register on the Internet and receive verification before 17 May. The area of the rally was surrounded by police. Unverified visitors were not allowed to enter the Round Garden area. The event was not announced prior to taking place.

LGBT activists wanted to celebrate IDAHO on Rustaveli Avenue in Tbilisi in 2016. It is traditionally aprime location for public events in Georgia. However, the Ministry of Internal Affairs did not provide security guarantees, which forced activists to cancel the event. LGBT activists again applied to the mayor of Tbilisi and Ministry of Internal affairs (MIA) to celebrate IDAHO on Rustaveli Avenue in 2017. Ultimately, a negotiated compromise was reached between the MIA and LGBT activists. The event would take place in front of the government administration building on Ingorokva Street, a neighbouring area to Rustaveli Avenue. Event participants were required to register on the Internet. The area surrounding the government administration office was blocked by police. Event participants were transported to the event from different areas of Tbilisi by minibus. The rally started at 10 AM and lasted for one hour. After the event, participants were transported away from the event by minibus.

Because of security concerns, LGBT organisations cancelled an event to celebrate IDAHO in 2018. Instead, they showed up in front of different agencies in charge of the well-being of the LGBT community on 17 May 2018. One event took place on Ingorokva Street in front of a government office. The police shielded the LGBT rally from counter-demonstrators organised by right-wing groups. One counter-demonstrator gain access to the area and punched one of the LGBT speakers in the face. The perpetrator was arrested and his criminal case is still pending.

The Georgian Government should provide the right for members of the LGBTQIA+ community to celebrate IDAHO on May 17 every year and provide enhanced and efficient security measures.

90 **Has Georgia established specialised bodies to combat discrimination? If so, which legislative framework, institutional context, composition, functions and powers pertain to these services?**

The Georgian Parliament passed the Law on Elimination of All Forms of Discrimination on 2 May 2014 (published on 07/05/2014 and available at matsne.gov.ge).The Public Defender (Ombudsman) is a specialised body in charge of implementing the law. Article 1 of the law prohibits discrimination based on race, colour, language, sex, age, nationality, origin, place of birth, residence, property or title, religion or faith, national, ethnic or social belonging, profession, marital status, health condition, disability, sexual orientation, gender identity and expression, political or other beliefs or other basis.

Prohibiting both direct and indirect discrimination, the law is applicable not only to the public agencies, but also private entities and individuals. Pursuant to the Article 2(2) of the law, direct discrimination is any treatment or creation of any conditions putting a person in a disadvantaged position in the enjoyment of the rights determined by the legislation of Georgia based on any protected grounds as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such treatment serves a legitimate purpose, including protection of public order and morale, has objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

According Article 2(3) of the law, indirect discrimination is where a provision, criterion or practice is neutral on its face, but discriminatory in its essence. Indirect discrimination puts less advantaged persons under protected grounds as compared to other persons in similar conditions, or puts in equal condition those persons, who are in essentially unequal conditions, unless such a condition serves a legitimate purpose, including protection of public order and morale, has an objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

Pursuant to the Article 6 of the Organic Law on the Public Defender,[472]the Ombudsman is elected by a majority of the total number of MPs for five years. Candidates for the position of Ombudsman may be nominated by a parliamentary faction, or by a group of at least six MPs who do not belong to any faction. According to the constitutional amendment that takes effect at the end of 2018, the Ombudsman is elected by the Parliament for six years. The Ombudsman reports to the Parliament.

Pursuant to Article 6 of the Law on Elimination of All Forms of Discrimination, the Ombudsman reviews applications and complaints submitted by natural and legal persons or groups of persons, who identify themselves as victims of discrimination. The Ombudsman may also inquire into facts of discrimination without a complaint from the victim. The Ombudsman summons the victim of discrimination and alleged perpetrator of discrimination and attempts to resolve the case through mediation. The Ombudsman issues a non-binding recommendation to the relevant public agency or private person when discrimination is confirmed. If the Ombudsman sees a threat of discrimination, it addresses a general proposition to the relevant authority. The Ombudsman can also elaborate legislative proposals to end the discrimination.

While recommendations and general proposals issued by the Ombudsman are non-binding, he/she can force the relevant public agency to follow the decision. The Ombudsman can sue a public agency before the court to have it issue an individual administrative decision or carry out any act.

While investigating alleged instances of discrimination, the Ombudsman can subpoena both public agencies and private persons. The public agency is required to comply with the subpoena within 10 days while a private person is not obliged to provide any information to the Ombudsman.

472. Organic Law on the Public Defender, Date of issuing- 16/05/1996; Parliamentary Gazette, 13, 07/06/1996; Consolidated publications – 05/09/2018.

As private individuals and corporations suspected of committing an act of discrimination are not obliged to cooperate with the ombudsman and provide him/her with relevant information regarding the alleged discrimination, the ombudsman is incapable of enquiring into the alleged instances of discrimination. The ombudsman suspends enquiries into alleged acts of discrimination if a private individual and/or corporation (as appropriate) does not respond to the subpoena. In this case, no recommendation is issued as the fact of discrimination is not found.

Parliament should amend the law in order to force private individuals and legal entities to comply with the Ombudsman's subpoena.

A victim of discrimination can apply to the courts of common jurisdiction to bring to an end the act of discrimination or to remedy the consequences of discrimination. The victim can also seek compensation for moral or material damage caused by the discrimination. The victim can apply to the court after he/she becomes aware or ought to have become aware of the circumstances of discrimination.

According to the Law of Georgia on Gender Equality, Parliament established the Gender Equality Council to ensure systematic and coordinated work on gender issues. The chairperson of the council is the first vice-speaker of the Parliament. MPs are members of the council. The chairperson of the council can invite representatives of different public agencies and non-governmental organisation to participate in the activities of the council.

The Gender Equality Council is vested with the functions of developing and submitting for approval to the Parliament of Georgia an action plan on providing gender equality; performing analysis of the legislation of Georgia and developing proposals to eliminate gender inequality in the legislation; ensuring expert examination of draft legislation in terms of gender equality; and planning and implementing activities relating to achievement of gender equality.

The Interagency Human Rights Council has been set up to draft, deliberate and submit a human rights action plan to the government. The prime minister chairs the council. The council consists of all ministries and offices of state ministers. Additional members of the council are: the Ombudsman; Legal Aid Service; Supreme Court of Georgia; Constitutional Court of Georgia; Human Rights and Civic Integration Committee of the Parliament of Georgia; Legal Issues Committee of the Parliament of Georgia; Foreign Relations Committee of the Parliament of Georgia; Office of the Personal Data Protection Inspector; and Election Administration of Georgia. Several international and national non-governmental organisations are invited members of the Interagency Human Rights Council. The council has thematic working groups dealing with crafting and implementing the human rights action plan.

The Human Rights Secretariat is a structural unit of the Administration of the Government of Georgia. It comprises the head of the secretariat and advisors. The Secretariat prepares reports on implementation of the human rights action plan. The Secretariat also provides organisational and analytical support to: the State Coordination Council on Issues of Persons with Disabilities and the Interagency Commission for the implementation of the Convention on the Rights of the Child and Children's Rights Issues.

The Department of Human Rights Protection has been set up under the Ministry of Internal Affairs. The function of the department is to monitor the investigation of hate crimes, trafficking, crimes related to domestic violence and juvenile offenders or victims. The Department is entitled to address recommendations to the investigator to rectify shortcomings regarding the investigation of domestic violence, hate crimes and juvenile cases. The Department is entitled to request disciplinary proceeding against the investigator. The Department is headed by a director who is accountable to the minister and his/her relevant deputy.

91 Is there specific legislative protection for the rights of the elderly? How is it implemented?

There is no single legislative act specifically related to the elderly. The Law on State Pensions is the most important one dealing with the elderly. A state pension is provided not only for the citizens of the Georgia, but also for stateless persons permanently residing in Georgia and citizens of foreign countries living in Georgia for ten years. A man is eligible for state pension when he reaches 65 years of age. A woman is entitled to a state pension from the age of 60.

The Law on State Pensions underpins the principles of social solidarity. Pension amounts are determined by the Parliament on an annual basis by the statute on state budget. Each person, once attaining the age of eligibility, receives the same pension amount regardless of age. The state pension has nothing to do with either the employment experience or contribution made to the pension fund. The amount of the pension for the senior people is 180 GEL (equal to 58 EUR) according to the 2018 Law on State Budget.

On 21 July 2018, the Georgian Parliament adopted Law of Georgia on Pension Savings (published on 06/08/2018 and available at matsne.gov.ge) that aims to introduce a new mandatory defined contribution (DC) pension scheme in Georgia. Participation in this scheme will be mandatory for all employees under 40 years of age. They will be required to direct 2% of their earnings to the pension fund and employers will add the same amount. State shall also pay to the Individual Pension Account of each Participant two percent (2%) of his/her taxable wage. Participation in this scheme will be voluntary for the self-employed and for those employees who are older than 40 years. If a person leaves the contributory pension scheme, he/she will be included in the social solidarity pension scheme.

A special law, namely the Statute on State Compensation and State Scholarship[473]regulates social entitlements for retired MPs, judges of the Constitutional and Common Courts, Auditor General and his/her deputy, Members of the Military, Police, State Security Service, Intelligence Service, the Special State Protection Service, Civil Aviation, Prison Administration, investigative bodies of the ministries of justice and finance; staff of the Council for State Security and Crisis Management; the Prosecutor's Office; people having highest diplomatic ran; employees of the Georgian Parliament and scholars. The amount of state compensation and state scholarship should not be more than 560 GEL (equal to 180.55 EUR).

473. Statute on State Compensation and State Scholarship, Date of issuing- 27/12/2005; Legislative Herald of Georgia, 56, 28/12/2005; Consolidated publications- 31/10/2018.

According to Governmental Decree #36 on Implementation of the Universal Healthcare Program,[474]a person, eligible for the state age pension receives emergency medical services, out-patient treatment, common blood and urine tests, glucose and other kinds of tests at the expense of the state treasury. The decree also offers senior citizens emergency inpatient treatment and palliative care. For emergency inpatient treatment of an elder person, the state treasury covers 90% of the expenses. The elder person should pay 10%. The cost of palliative care is fully covered by the government. The state also fully insures the emergency inpatient treatment of older war veterans.

With universal insurance, the state provides a pensioner up to 15,000 GEL (4,836.05 EUR) annually for elective surgery. The funding covers preoperative care, surgery and post-operative care. The elder person should pay 10% in co-funding for his/her elective surgery. This co-pay is not required when the elective surgery relates to oncology. The state fully funds the elective surgery of senior war veterans. With universal insurance, the state allocates 100 GEL (32.24 EUR) for certain medicines for each pensioner per year. The pensioner should provide 50% of co-funding for those medicines.

According to the Article 1218 of the Civil Code of Georgia, children are required to take care of and support their parents. Adult able-bodied children are obligated to maintain parents who are in need of support and are unable to work. Pursuant to Article 1219 of the Civil Code of Georgia, the court determines each child's contribution in maintaining a parent who is in need of support, in the form of a monthly payment, taking account of the material and family status of the parents and the children. In determining the payment, the court takes into account the duty of all the adult children of the parents regardless of whether the claim is filed against all, some or one of the children.

RIGHT TO EDUCATION

92 **Please provide information on how, and to what extent, the right to education is guaranteed in legislative and practical terms. Please comment on the allocation of resources and institutional framework in place to facilitate the exercise of this right.**

The right to education for the citizens of Georgia is guaranteed by the Constitution of Georgia[475] and regulated by various laws, legislative acts and normative documents. The following laws are considered the major legislative documents: Law of Georgia on Early and Preschool Education,[476] Law of Georgia on General Education,[477] Law of Georgia on Vocational Education and Training[478] and Law of Georgia on Higher Education.[479]

474. Governmental Decree #36 on Implementation of the Universal Healthcare Program, Date of issuing- 21/02/2013; matsne.gov.ge, 22/02/2013; Consolidated publications- 20/04/2018.

475. Constitution of Georgia, art. 27; (Law No. 786, adopted: 24/08/1995, published: Legislative Herald of Georgia, 24/08/1995, last amended: 23/03/2018

476. Law No. 5366-IIS, adopted: 08/06/2016, published: Legislative Herald of Georgia, 24/06/2016, last amended: 20/09/2018

477. Law No. 1330, adopted: 08/04/2005, published: Legislative herald of Georgia, 04/05/2005, last amended: 20/09/2018

478. Law No. 4528, adopted: 28/03/2007, published: Legislative Herald of Georgia, 23/04/2007, last amended: 20/09/2018

479. Law No. 688, adopted: 21/12/2004 published: Legislative Herald of Georgia, 10/01/2005, last amended: 20/09/2018

Based on the latest version of the Constitution of Georgia, which enters into force in January 2019, everyone has a right to education and freedom of choice concerning the form of education;[480] pre-school education is guaranteed by the state, meaning that the state funds early and preschool educational facilities owned by the state; general education (the whole cycle – I-XII grades) is fully funded by the state; and certain resources are also allocated for higher and vocational education.[481]

Early and Preschool Education

Early (before age 2) and preschool education (before school age) is regulated by the respective law[482] adopted in fall 2017 and considers voluntary education funded by the state in case of public educational institutions. The law allows the establishment of private educational institutions; however, no state funding is allocated for them. The law envisages inclusive education to provide equal opportunities for every child considering their individual needs and despite physical and cognitive disabilities/limitations, gender, ethnic, racial belongings, etc.[483] The law also regulates the language of instruction to be Georgian and Abkhazian (on the territory of Abkhazia), though it allows educational institutions to deliver classes in ethnic minority languages.[484]

According to Georgian legislation, early and preschool educational institutions should be authorised by the respective municipality. The authorisation process is free and should be based on the authorisation standards elaborated by the state agency.[485] The authorisation standards regulate various directions, including the provision of an adapted environment for children with special needs, safety and security, tolerance, as well as the establishment of a non-discriminatory space irrespective of a child's/parent's gender, race, age, religion, language, culture, family composition, socio-economic conditions, health issues, etc.[486] According to the latest data, there are total of 1,438 public educational institutions with 153,230 students registered.[487]

> Despite the fact that Georgia adopted the Law on Early and Preschool Education in order to ensure that citizens receive high quality preschool education, which was largely unregulated before 2016, problems still remain in this sphere. For example, the law regulates the teacher/pupil ratios for early and preschool educational institutions not to exceed the following indicators: 1:13 for 2-3 year-old groups and 1:15 for 3-6 year-old groups.[488] This provision was introduced due to high number of students and low number of qualified teachers and the resulting challenges in providing a high

480. Constitution of Georgia, art. 27, point 1.

481. Ibid, art. 27, point 2

482. Law of Georgia on Early and Preschool Education

483. Ibid, art. 3.l; art. 10, point 2.a.

484. Ibid, art. 5.1, 5.2.

485. Ibid, art. 14, points 2, 3, 4, 5.

486. Government of Georgia, Decree No. 488, dated 30/10/2017 on ***State Standards on Early and Preschool Education***

487. Geostat.ge, ***Indicators on Public Preschool Education and Care (PEC) Institutions by Municipalities 2017-18***

488. Law of Georgia on Early and Preschool Education, art. 22, point 3

quality education.[489] According to the National Statistics Office of Georgia, by academic year 2017-18, the aggregated students-staff ratio throughout the country was 12:1; however, when an analysis of data for different municipalities reveals that this ratio is exceeded in some cases (e.g. Tetritskaro municipality – 25:1; Kareli municipality – 23:1; Marneuli municipality – 19:1, etc.).[490] Considering the fact that the educational institutions should be authorised by the end of 2018, this situation might cause serious challenges for the state in respect to the student planning bodies in early and preschool educational institutions and may infringe the right to preschool education. This is especially true for children with special needs. Research on this subject has found that the rights of children with special needs and disabilities to access preschool education is curtailed due to different factors, such as non-adapted infrastructure, lack of inclusive educational programmes and lack of knowledge of preschool teachers of inclusive education.[491]

General Education

General education is regulated by the Law of Georgia on General Education, which guarantees equal access to education for every citizen of Georgia and aims to create an inclusive educational system free from violence.[492] The language of instruction in Georgian general educational facilities is Georgian, Abkhazian on the territory of Abkhazia and minority languages for those whose mother tongue is other than Georgian, though in such cases teaching Georgian is mandatory.[493] The law also envisages teaching in Georgian sign language and bilingual teaching for students with hearing disabilities as well as usage of the Braille system and respective technologies for students with visual disabilities.[494]

The national curriculum envisaging preparation of individual, alternative or extended curricula for students considering their individual age and family conditions,[495] as well as for students with special educational needs, including for those with heavy intellectual or multiple sensory disturbances, should be objective and non-discriminatory. Students with special needs should be provided all necessary human resources and materials, which are financed by the state.[496]

According to the Constitution of Georgia, elementary (I-VI grades) and basic education (VII-IX grades) are mandatory, while secondary education (X-XII grades) is voluntary.[497] The Law of

489. Unicef.ge, *New Academic Year in Preschool Educational Institutions – Problems and Perspectives – Interview with Ana Janelidze*

490. Geostat.ge, 2018.

491. Gochiashvili, N., *Needs Assessment of People with Special Needs [Shezguduli Shesadzleblobebis Mkone Pirta Sachiroebebis Kvleva].* Partnership for Human Rights. 2016

492. Law of Georgia on General Education, art. 3, point 2

493. Ibid, art. 4, points 1, 2, 3, 4

494. Ibid, art. 4, points 5, 6

495. Ibid, art. 9, point 5

496. Ibid, art. 5, points 1, 6, 11, 12; art. 9, point 3;

497. Constitution of Georgia, art. 27, point 2

Georgia on General Education ensures that no student will be left without a basic education.[498] Students with special educational needs without an educational background have a right to continue studies without examination based on the decision of the multidisciplinary team.[499]

The law defines the starting age for general educational facilities at six years old.[500] The complete general education is covered in 12 years. In case a student is unable to complete basic education level in 12 years, the state may allocate additional financial resource and offer an alternative educational programme for up to three years. After three years, additional financial resources may be allocated by the appropriate local self-government body.[501] The law allows distance learning as well as external studies.[502]

The law ensures access to school for every student, including students with special needs, close to their place of residence (and in their native language) based on the voucher-based funding system. In case the standard voucher cannot guarantee the implementation of this right, the state provides an increased voucher that will ensure equal access to education, inclusive and multilingual education and a safe environment.[503] In addition, the Authorisation Standards for General Education Institutions require schools to provide an adapted environment for students with special needs, as well as school inventory, such as desks and classrooms adjusted to the individual needs of students.[504]

The law obliges both public and private schools to create a safe and secure school environment and protect children from abuse, neglect and improper treatment. The school should guarantee a learning process free from political and religious indoctrination, proselytising or forced assimilation, or any other form of discrimination and should support the establishment of a tolerant environment based on mutual respect regardless of the students'/teachers' social, ethnic, religious, linguistic and world-view affiliations.[505]Considering this provision, religious studies as a separate course is not part of the school curriculum in order to avoid religious discrimination in a society that has a majority Orthodox population and provide a religiously neutral environment in schools.[506]

Public general education in Georgia is funded by the state budget on a voucher-based funding system for the complete cycle, i.e. 12 years. Every child has a right to mobility from one school to another on the same educational level with permission to also transfer the voucher with him/her. Funding is provided for inclusive education, specialised classes, resource schools and boarding schools. The vouchers can be provided for citizens of Georgia, foreign citizens including Georgian

498. Article 6, point 4

499. Ibid, art. 6, point 51.

500. Ibid, art. 6, point 6.

501. Ibid, art. 23.

502. Ibid, art. 6^1; art. 9, point 4.

503. Ibid, art. 7, points 1, 2, 3.

504. Eqe.ge, n.d. ***Authorisation Standards for General Education Institutions.*** art. 4.National Centre for Educational Quality Enhancement

505. Law of Georgia on General Education, art. 9, points 8, 9; art. 13, points 1, 2, 3, 6

506. Gotsiridze, R., ***Religion and Education in Georgian Schools [Religia da Ganatleba Kartul Skolebshi].*** Tolerance and Diversity Institute. 2018

compatriots living in foreign countries, stateless persons, persons with international protection and persons with temporary ID cards.[507] In addition, this provision is also extended to persons with Georgian neutral IDs who live on the occupied territories of Abkhazia and South Ossetia.[508]

Despite the abovementioned, problems remain on the general education level. According to the Georgia Country Report on Human Rights Practices published by the US Department of State Bureau of Democracy, Human Rights and Labor in 2017, there are certain difficulties in respect to accessibility of education for various vulnerable groups. In particular, access to education for children with various disabilities, or for street children and children in foster care was hindered as the level of their school attendance was pretty low due to problems related to negligence, marginalisation and violence, as well as lack of infrastructure for children with special needs.[509] Access to education for refugees and asylum seekers was also hindered by the lack of language skills despite the governmental efforts to offer Georgian language classes.[510]

Despite the fact that religion is not a separate course in the school curricula in order to create equal ground for every group, bullying and discrimination based on religious affiliation is widely reported in schools. The biggest challenge in respect to overcoming this problem remains not necessarily in the existence or non-existence of religious studies at schools, but in the low awareness of the school administrations and teachers on multiculturalism and interconfessional teaching.[511]

Vocational Education and Training (VET)

VET is regulated by the Law of Georgia on Vocational Education that aims to provide opportunities for lifelong learning and individual development.[512] Persons with complete general education (who completed secondary education – 12 grades) as well as basic education (9 grades) have a right to be admitted to the first level of vocational education; however, only persons with complete general education have a right to be admitted to the fourth and fifth levels of VET programmes. Since VET is divided into formal and non-formal education, knowledge acquired during the non-formal vocational education can be recognised at the first levels of VET education.[513] The law guarantees the equal treatment of students despite their gender, ethnic or social identities,

507. Law of Georgia on General Education, art. 22, points 1, 2; art. 9, points 11, 12; art. 22, points 6^2, 6^3,7

508. Law of Georgia On the Procedure for Registering the Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia, art. 20^{13}, point 1 (Law No. 323, Adopted: 27/06/1996, published: Parliamentary Gazette, 30/07/1996, last amended: 05/07/2018).

509. Bureau of Democracy, Human Rights and Labour. (2017). ***Georgia Country Report on Human Rights Practices.*** U.S. Department of State, p. 34-37

510. Ibid, p. 26

511. Gotsiridze, R., ***Religion and Education in Georgian Schools [Religia da Ganatleba Kartul Skolebshi].*** Tolerance and Diversity Institute. 2018

512. Law of Georgia on Vocational Education, art. 5

513. Ibid, art. 10.

religious or political affiliation, physical abilities or other aspects.[514] The Authorisation Standards for Vocational Education Institutions asks such institutions to have an adapted environment for students with special educational needs.[515]

Higher Education

Higher education is regulated by the Law of Georgia on Higher Education, which determines the entry requirements for applicants, funding opportunities, equality of access to higher education for everyone including for those convicted (though, convicted students cannot participate in the student self-government elections or establish student organisations) as well as accessibility to lifelong learning.[516] The language of instruction is defined to be Georgian and Abkhazian on the Abkhazian territory, however, instruction in other languages is also permitted within the international collaborative agreements and by the authorisation of the Ministry of Education, Science, Culture and Sport of Georgia.[517] The law also guarantees that persons at higher education institutions (HEIs) are treated equally despite their gender, race, ethnic, political, social and religious affiliation.[518]

Persons with complete general education or equalised certificate can be admitted to the higher education institutions. In case of graduate levels, applicants should have a Bachelor's degree in case of admission to a Master's programme, or Master's degree (or equalised educational level) in case of admission to doctoral studies.[519] Only students who have passed the Unified National Entry Exams have the right to be admitted to higher education institutions (both public and private institutions); however, there are certain provision that allow admission without the abovementioned exams, such as: 1) citizens or residents of Georgia can be admitted to Georgian language preparatory 1 year course in case they pass one of the four tests: general skills test in Azerbaijani or Armenian languages, language test in Ossetian or Abkhazian languages. This provision mainly targets ethnic minorities residing in Georgia and their right to higher education; 2) admission through mobility for foreign citizens and stateless persons who have completed general education; for citizens of Georgia having completed general education (full cycle or last two years) in foreign countries; for citizens of Georgia or foreign citizens studying at foreign higher education institutions and willing to be transferred to Georgian HEIs. Similar scheme works in case of admission on graduate levels: Georgian citizens can be admitted to Master's level based on the results of Unified National Master's Exams, or through having received an undergraduate degree at a foreign university; foreign citizens can be admitted without the national examinations in case they have completed or are still studying (through mobility) at foreign universities.[520]

The law guarantees that every public university will provide a Georgian language preparatory

514. Ibid, art. 31, point 1b.

515. Ibid, art. 7, point g.

516. Law of Georgia on Higher Education, art. 43, point 1.1^2; art. 3.2.

517. Ibid, art. 4.

518. Ibid, art. 16, point 1.

519. Ibid, art. 48; art. 49

520. Ibid, art. 52, points 1, 1^2, 3, 7

programme for students who pass the national entry exams. This provision is targeted at providing educational opportunities for ethnic minorities who lack proficiency in the Georgian language. For this purpose, special quotas for ethnic minorities are allocated in every public university: 5% of the overall student body of an HEI should be allocated for those passing Azerbaijani, 5% – for those passing Armenian language tests; while 1% of the overall student body should be allocated for those passing Ossetian language test and 1%- for those who pass Abkhazian language tests.[521]

The law also permits the admission to Georgian higher education institutions for those applicants who have received complete general education in the occupied territories of Abkhazia and South Ossetia. Such applicants can be admitted without passing the Unified National Exams; however, their certificate of general education should be recognised by the Ministry of Education, Science, Culture and Sport.[522] In addition, persons affected by the Russo-Georgian War of 2008 have the right to acquire funding for studying at HEIs within the social programme envisaged by the Ministry of Education. The citizens of Georgia residing in Russia and who had been studying at Russian HEIs before the Russo-Georgian War of 2008 have the right to be admitted to Georgian HEIs without the Unified National Exams. The admissions process is regulated by the Ministry of Education, Science, Culture and Georgia.[523]

According to the law, the right of citizens to receive a high quality tertiary education is also guaranteed by the authorisation standards for higher education institutions, which should be satisfied by every institution wishing to operate on Georgian territory and recognised by the state.[524] According to the institutional authorisation standards approved by the Minister of Education, Science, Culture and Sport on 31 January 2018 by Decree №07/n, universities should offer individualised educational programmes to students in consideration of their different needs and levels of academic readiness in order to support their continuous engagement in the learning process. HEIs should provide fair assessment systems for student learning outcomes, ensure the protection of their rights and support socially vulnerable students through such means as flexible payment mechanisms, scholarships, etc. The authorisation standards also regulate the existence of proper material resources for ensuring an uninterrupted teaching and learning process, in particular, health and safety measures, as well as adapted environments for people with special needs, such as ramps and/or elevators, adapted sanitary units, access to learning resources and administrative units and faculty, and parking lots for people with special needs to facilitate their access to the buildings.

In case the higher educational institution is not granted/deprived authorisation, the law guarantees that its students will be transferred to other educational institution and academic programmes and gives them up to five years to be transferred.[525]

The state provides scholarships for undergraduate and graduate students. The scholarship amount is regulated by the Ministry of Education, Science, Culture and Sport and totals 2,250 GEL (726

521. Ibid, art. 43, point 7; art. 52, point 5^1.

522. Ibid, art. 6, point $1g^1$.

523. Ibid, art. 89^1, points 2, 3.

524. Ibid, art. 56^1; Law of Georgia on Education Quality Improvement, art. 7, (Law No. 3531, adopted: 21/07/2010, published: Legislative Herald of Georgia, 05/08/2010, last amended: 05/07/2018).

525. Law of Georgia on Higher Education, art. 43, point 1.11; art. 56, point 3b.

EUR) per year. Georgian citizens despite their ethnic, race, gender and other social background, have a right to state scholarships only in case they are admitted to the accredited academic programmes. Students using the mobility opportunities are allowed to take their state scholarship with them, though only to accredited programmes.[526] This provision does not cover the academic programmes of Orthodox Divinity Higher Educational Institutions, which are accredited by the Georgian Orthodox Church and not by the National Centre for Educational Quality Enhancement.[527]

Students have the right to acquire state scholarships to fund their studies at private education institutions, however, the programme they are admitted to should be accredited. The state only grants scholarship in the defined amount of 2,250 GEL (726 EUR) per year, and students have to pay themselves or seek private funding if the tuition fee of the programme/university exceeds the state threshold. In case the tuition fee is less than the state scholarship threshold, the scholarship amount granted to the student will decrease accordingly.[528]

The law allows for the implementation of special programmes for socially vulnerable groups in the form of financial support to socially unprotected students in the amount of 6-20% of the entire state scholarship amount. The exact grant amount is regulated by the Ministry of Education, Science, Culture and Sport. Students with disabilities can receive certain benefits that are regulated by the statutory documents of higher educational institutions.[529] The state social programme targets the following groups at the undergraduate level: a) students residing in the mountainous regions of Georgia that comprise the list of mountainous are as approved by the Government of Georgia;[530] b) students that acquired general education in the occupied territories of Georgia, as well as those students residing near the territories that are recognised as occupied territories after the Russo-Georgian War of 2008; c) students who acquired general education in Azerbaijani and Armenian-language educational institutions, or studied there for the last three years; d) children of those who died in the wars of territorial integrity and independence; e) repatriates whose family members were recognised as IDPs during the 1940s; f) orphans; g) children from large families (with four or more children); h) students with disabilities; i) students under the custody of the state; and j) students registered as socially vulnerable.[531]

The state social programme also funds graduate level studies. In particular, funding is provided for Master's students from the following social groups: children of those who died in the wars of territorial integrity and independence; students with disabilities; students registered as socially vulnerable with the family ranking score of ≥70,000. According to the information of the Ministry of Education, Science, Culture and Sport, a total of 69 students benefited from this programme in 2016, while in 2017 this number was 92.[532]

526. Ibid, art. 43, point 1/ი; art. 63, point 3

527. Ibid, art. 43, point 13.

528. Ibid, art. 81, points 3, 4.

529. Ibid, art. 52, point 8; art. 43, point 3.

530. Government Decree N 671On the List of Mountainous Settlements, dated: 30/12/2015.

531. Government of Georgia, ***The Funding Amount and Conditions of the Students Admitted to the Accredited Academic Programmes at the Higher Education Institutions within the Social Programme Based on the Unified National Exam Results***, Decree N 395, dated: 11/08/2017.

532. The information is obtained from the Ministry of Education, Science, Culture and Sport of Georgia in October 2018, though provided information describes situation before 1 September 2018 (Letter N 81801377507, 25/10/2018).

The Law on Higher Education also regulates the existence of Orthodox Divinity Higher Educational Institutions, which can exist as structural units of the Patriarchate of Georgia or as independent entities of private law. All of the operations related to student admissions, management, authorisation and accreditation processes, issuing diplomas, etc. are under the direct control of the Patriarchate.[533]

Access to higher education remains somewhat problematic for various groups. As mentioned above, the Law on Georgia on Higher Education guarantees that every public university will provide a Georgian language preparatory programme for students who pass the national entry exams.[534] This provision is targeted at providing educational opportunities for ethnic minorities who lack proficiency in the Georgian language. For this purpose, special quotas for ethnic minorities are allocated in every public university: 5% of the overall student body of HEI should be allocated for those passing Azerbaijani and 5% - for those passing Armenian language tests; while 1% of the overall student body should be allocated for those passing Ossetian language test and 1% for those passing Abkhazian language tests.[535] However, research has found that the quotas are usually not met in the universities and many vacant positions remain to be filled.[536] In particular, in 2018 a total of 1,211 students were admitted to the one-year Georgian language training programme (4+1 programme) at Georgian higher education institutions.[537] Compared to the previous years, this number has increased (1,047 students for 2017; 960 students for 2016), however, compared to existing quotas (5% of the overall student body for Armenian and Azerbaijani ethnic minorities; 1% of the overall students body for Ossetian and Abkhazian ethnic minorities) these numbers are pretty low, especially in case of Ossetian and Abkhazian minorities (a total of three students were admitted from the Ossetian minority, while 0 students were admitted from the Abkhazian minority in 2018).

Despite the legislative and financial frameworks, accessibility of persons with special needs to higher education institutions remains problematic for various reasons, such as lack of inclusive education component, lack of distance learning facilities, etc.[538]Unfortunately, it is impossible to fully evaluate the accessibility of persons with special needs to HEIs due to lack of statistical information. According to the Ministry of Education, Science, Culture and Sport of Georgia, data on persons with special needs are collected only fragmentally and only on general and vocational education levels. In particular, the following information was provided by the Ministry:

Number of students with special educational needs in VET institutions: 268 students in 2016, 244 students in 2017;

533. Ibid, art. 9, point 3; Chapter 4, art. 31^1.

534. Ibid, art. 43, point 7.

535. Ibid, art. 52, point 51.

536. Chanturia, R., ***Accessibility of Higher Education***. Centre for International Education. 2015

537. National Assessment & Examinations Centre. ***Ranking of the entrants to the Georgian language educational programmes by competition scores.*** 2018

538. Edu.aris.ge, ***How Accessible is Higher Education in Georgia – Issue was Discussed at Sokhumi State University [Ramdenad Khelmisatvdomia Umaghlesi Ganatleba Sakartveloshi – Sakitkhze Sokhumis Universitetshi Imsjeles].***2017

Number of students with special educational needs in general education institutions: 6,793 in 2016, 7,728 in 2017.

A similar response was given in respect to the overall number of students belonging to different ethnic minority groups. The only statistical data collected by the Ministry in this respect are the number of students at Armenian, Russian and Azerbaijani departments of general education institutions: 51,749 in 2016 and 51,741 in 2017.[539]

Institutional Framework

The main governmental body responsible for exercising the right to education is the Ministry of Education, Science, Culture and Sport of Georgia with the subordinate institutions that operate under the aegis of the Ministry. In particular, the following institutions comprise the major institutional framework responsible for various levels of education in respect to improving the quality of teaching and providing funding:

- National Centre for Educational Quality Enhancement (NCEQE) responsible for external quality assurance for all levels of education, as well as diploma and educational recognition;
- National Assessment & Examinations Centre (NAEC) mainly responsible for the admissions process to Georgian HEIs through administration of the unified national exams;
- Educational Management Information System (EMIS) responsible for providing technological and electronic resources to public education institutions;
- National Centre for Teacher Professional Development (TPDC) responsible for training teachers and improving the quality of teaching in schools;
- International Education Centre (IEC) providing scholarships to Georgian citizens for studying abroad;
- Shota Rustaveli National Science Foundation (SRNSFG) responsible for funding research.

Funding

The overall funding of education and science comprises of 1,236,634,000 GEL (39,891,419 EUR) for 2018. This amount is distributed for the following directions of educational activities:[540]

- Preschool education – 140,000 GEL (45,161 EUR)
- General education – 611,880,000 GEL (197,380,645 EUR)
- Vocational education – 45,960,000 GEL (14,825,806 EUR)
- Higher education – 153,962,000 GEL (49,665,161 EUR)
- Post-tertiary education – 2,500,000 GEL (806,452 EUR)
- Educational assistance sphere – 94,829,000 GEL (30,590,000 EUR)
- Applied research in the sphere of education – 41,770,000 GEL (13,474,193 EUR)
- Other uncategorised activities in the sphere of education – 285,593,000 GEL (92,126,774 EUR) (189,103,000 GEL (61,000,967 EUR) is from state budget resources, while 96,490,000 GEL (31,125,806 EUR) is from donors)

539. Letter N 81801377507 of the Ministry of Education, Science, Culture and Sport of Georgia, 25/10/2018

540. Law of Georgia on 2018 State Budget, Chapter 3, art. 8, 9; N 1721-Iს, 13/12/2017, published: Legislative Herald of Georgia, 22/12/2017, last amended: 07/03/2018

Out of the abovementioned amount, the following budget categories and amounts were allocated for various vulnerable groups:

- Accessibility of general education for convicted individuals – 210,000 GEL (67,742 EUR)
- Accessibility of vocational education for convicted individuals – 185,000 GEL (59,677 EUR)
- Professional training for ethnic minorities – 2,300,000 GEL (741,935 EUR)
- Inclusive education – 5,135,000 GEL (1,656,452 EUR)
- Based on the Decree No.395 dated 11/08/2017 of the Government of Georgia (available in Georgian), a total of 1,920,000 GEL (619,355 EUR) was allocated for students studying at Georgian HEIs within the social programme framework. In total, 853 students admitted in 2017 were included in the abovementioned programme; furthermore, in 2017 additional 600,000 GEL (193,548 EUR) was granted to the students admitted to HEIs in 2016 and in 2015 (Article 3). In 2016, the same amount (1,920,000 GEL (619,355 EUR)) was allocated for social programme in 2016 (benefitting 1382 students).[541]

In addition to the general expenses, the state allocates 113,620,000 GEL (36,651,613 EUR) for higher education scholarships. In particular, these scholarships are funding undergraduate and graduate level studies at Georgian HEIs. The state also funds higher education in non-Georgian HEIs. Through the International Education Centre (IEC), the state funds the studies of Georgian citizens abroad, for which special contests are organised. The following table displays the numbers and amounts allocated by the IEC for the last two years:[542]

	Academic Year 2016-17	Academic Year 2017-18
Master's studies in France	16	13
Qualification improving programmes abroad	7	15
International Master's programmes	49	61
International PhD programmes	7	6
International Arts programmes	7	3
Holders of Active Grants from previous years with high GPA	42	41
Scholarships for studying in Hungary (Stipendium Hungaricum). Funding provided by the Government of Hungary		63
Scholarships for Hungarian students and scholars for participating in seasonal schools. Funding provided by the Georgian government		3
Small grants programme for graduates		4
Fulbright Master's Scholarship		
Total number	**128**	**209**
Total amount	**5,558,098.12 GEL (1,792,935 EUR)**	**5,901,700.00 GEL (1,903,774 EUR)**

541. Government of Georgia, ***The Funding Amount and Conditions of the Students Admitted to the Accredited Academic Programmes at the Higher Education Institutions within the Social Programme Based on the Unified National Exam Results***, Decree N 395, 11/08/2017; Government of Georgia, ***The Funding Amount and Conditions of the Students Admitted to the Accredited Academic Programmes at the Higher Education Institutions within the Social Programme Based on the Unified National Exam Results***, Decree N 310, 07/07/2016; Letter N 81801377507 of the Ministry of Education, Science, Culture and Sport of Georgia, 25/10/2018

542. Letter N 81801377507 of the Ministry of Education, Science, Culture and Sport of Georgia, 25/10/2018

In addition to the state budget, Millennium Challenge Corporation Georgia II Compact allocated a total of 140,000,000 (45,161,290 EUR) for 2014-19, out of which total of 86,490,000 GEL (27,900,000 EUR) was allocated for 2018. This assistance was provisioned for reforming educational system and divided on all levels of education.

RIGHT TO PROPERTY

93 **Please provide information on how, and to what extent, the right of ownership is guaranteed in legislative and practical terms. Is there any limitation for certain categories of persons (e.g. foreigners, EU citizens) or for certain types of property (e.g. agricultural land)? How is the right to property assured? What are the justifications permitted for restrictions placed on the exercise of this right and which body or bodies may impose such restrictions? Provide information on the main elements of the expropriation legislation (See also Chapter 4 on Free movement of capital.)**

The right to property is guaranteed by Article 21 of the current version of the Constitution of Georgia:[543] "The right to own and inherit property shall be recognised and inviolable. Abrogation of the universal right to ownership, acquisition, alienation, or inheritance of property shall be inadmissible." Article 21 applies certain limitations, namely, the right of property may be deprived:

- For pressing social needs
- By court decision
- If urgently necessary under the organic law

The Law of Georgia on the Procedure for Expropriation of Property for Pressing Social Needs[544] further posits rules for expropriation. First, it clearly defines the cases when expropriation is allowed, echoing provisions in Constitution of Georgia presented above. Second, it identifies the competent agencies that have the power to expropriate the property. Third, it clearly lists the types of public needs that might require using expropriated property, such as for building roads, highways, railways, providing electricity, gas, water supply, sewage system, communications and more. The list is exhaustive and does not allow for ambiguity. In such cases, Article 1 ensures that the appropriate compensation shall be provided in advance by fair and full reimbursement for the property, or through offering a property of an equal market value.

Due to the amendments to the Constitution, which will come into force after the Presidential elections in November 2018, the right to property will be guaranteed by Article 19, Paragraph IV, which will carry forward the existing provisions on property rights presented above. Article 19 of the new version of the Constitution of Georgia further imposes a restriction on the ownership of agricultural land. Based on these amendments, which will enter into force after the runoff of

543. The Constitution of Georgia N 786, adopted on 24/08/1995, latest version (last amended on 23/03/2018): https://matsne.gov.ge/en/document/view/30346?publication=35

544. The Law of Georgia on the Procedure for Expropriation of Property for Pressing Social Needs N 2349, adopted on 23/07/1999, published on 11/08/1999, latest version (last amended: 29/06/2018) available in Georgian: https://matsne.gov.ge/en/document/view/16480?publication=5

the Presidential election, as a resource of special importance agricultural land may be owned by: the state, a self-governing unit and a citizen of Georgia or an association of citizens of Georgia. Agricultural property rights are further regulated by the Law of Georgia on Agricultural Land Ownership.[545] Until the amendments enter into force, the property rights of foreigners and legal persons registered abroad have been suspended.

Civil society organisations have widely criticised the restrictions placed on the rights to ownership of the agricultural land by non-Georgian citizens. In 2014, prior to introducing abovementioned restrictions in the Constitution (which will come into force after the Presidential elections of 2018), the Constitutional Court ruled in favour of Transparency International Georgia's appeal on behalf of the citizen of Austria, attesting that the temporary ban on the rights to own agricultural land are unconstitutional. For more information, see Transparency International's blog on the case.[546] Based on the recent amendments, given restrictions will be vested in the Constitution of Georgia, creating an unequal footing for foreign citizens in comparison with the citizens of Georgia.

94 **Which body is responsible for maintaining an urban and land cadastre and property register? Please provide information on the existing cadastre and land registry. Are there any plans for modernisations in the land registration and cadastre areas? Please explain.**

LEPL National Agency of Public Registry under the Ministry of Justice is responsible for maintaining an urban and land cadastre and property register and operates on the basis of the Law of Georgia on the Public Registry.[547] The functions NAPR include:

- Property registration
- Registration of rights on movable objects and non-material property
- Registration of tax liens/mortgage or collateral
- Registration of commercial and non-entrepreneurial (non-commercial) entities
- Cartography and geodesy
- Registration of political associations
- Address registry
- Municipality registry

545. Law of Georgia on Agricultural Land Ownership N 165, adopted on 22/03/1006, published on 30/04/1996, latest version (last amended: 16/06/2017) available in Georgian: https://matsne.gov.ge/ka/document/view/32998?publication=16

546. Transparency International Georgia, "Constitutional court has ruled temporary ban on acquisition of agricultural land by foreign citizens to be unconstitutional," 24 June 2014, http://bit.ly/2AkMboc

547. Law of Georgia on the Public Registry N 820, adopted on 19/12/2008, published on 30/12/2008, last amended on 20/07/2018, available in English: https://matsne.gov.ge/en/document/download/20560/17/en/pdf

Article 6 of the law guarantees access to all information kept at the Public Registry for viewing. For the purpose of greater transparency, NAPR launched a unified electronic database[548] of property open to the public. Citizens can receive various services using the platform, including requesting a cadastral map of their property and other official documents. Restrictions to information constitute all information designated as confidential under the General Administrative Code of Georgia.[549]

GENDER EQUALITY AND WOMEN'S RIGHTS

95 **Please provide details on legislative measures which ensure equality between men and women, commenting particularly on equality in areas such as employment, work and pay.**

The equality of women and men in Georgia is guaranteed by the Constitution of Georgia,[550]the Labour Code of Georgia,[551]the Law on Gender Equality[552]and the Law on the Elimination of All Forms of Discrimination.[553]

Article 11 of the Georgian Constitution guarantees equality – all persons are equal before the law, regardless of race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, etc. Furthermore, Article 11(3) holds that the state shall provide equal rights and opportunities for men and women. The state shall take special measures to ensure the essential equality of men and women and to eliminate inequality. Article 2 of the Labour Code prohibits discrimination. In addition, the Labour Code sets out provisions that ensure equality between women and men, prohibiting any kind of discrimination in labour and pre-contractual relations.

The Law of Georgia on Gender Equality also guarantees gender equality in employment. Namely, Article 4 reads: "The state shall support and ensure equal rights for men and women in political, economic, social and cultural life." Furthermore, every person is entitled to freely choose a profession and speciality based on his/her abilities and "free choice of profession or career, promotion, vocational training/retraining" is guaranteed without discrimination.[554] Article 6(1) of

548. National Agency of Public Property, Unified Platform, accessed on 25 November 2018, https://napr.gov.ge/udzravi

549. General Administrative Code of Georgia N 2181, adopted on 25/06/1999, published on 15/07/1999, latest version (last amended on 21/07/2018): https://matsne.gov.ge/ka/document/view/16270?publication=26

550. Constitution of Georgia, N 786, 24/08/1995, published: Legislative Herald of Georgia, 31-33, 24/08/1995, last amended: 23/03/2018),

551. Labour Code of Georgia (N 4113, 17/12/2010, published: legislative herald of Georgia, 75, 27/12/2010, last amended: 05/09/2018),

552. Law on Gender Equality (N 2844, 26/03/2010, published: legislative herald of Georgia, 18, 12/04/2010, last amended: 26/07/2017)

553. Law on the Elimination of All Forms of Discrimination (N 2391, 02/05/2014, published: legislative herald of Georgia, 07/05/2014).

554. Gender Equality Law, 2010, art. 4, Available at: https://matsne.gov.ge/ka/document/view/91624

the Law on Gender Equality refers to actions that might constitute sexual harassment.[555]

Following the amendments made to the Law on Gender Equality in 2016, the Gender Equality Council was established at the Sakrebulo of Tbilisi Municipality.[556] Under Article 13(1[1]), gender equality councils are established at the local municipalities, furthermore, the mayor of every municipality appoints the civil servant (focal point) in order to address the matters related to gender equality (Art. 13[2]). As of the end of 2017, Gender Equality Councils existed in 38 local self-governing bodies.

The Law on the Elimination of All Forms of Discrimination prohibits all forms of discrimination. The law defines direct and indirect discrimination and sets the measures and mechanisms for eliminating discrimination.[557]

According to the National Statistics Office in Georgia, as of January 2017, 52% of Georgian population is women.[558] According to the 2016 data, 42% of women age 15 and above are economically inactive, while for the same age category only 22% of men are economically inactive. As for employment, 67% of men are employed. The average monthly salary of women amounts to 731.3 GEL, while that of men equals 1,116.6 GEL.[559]

96 **Give an overview of possible incentives, which exist for both the public and private sectors to refrain from discriminatory employment practices.**

Providing equal opportunities for men and women on the labour market has been one of the main objectives of the Human Rights Action Plan of 2018-2020.[560]Additionally, providing equal opportunities for professional development (12.6.2), ensuring equal reimbursement (12.6.3), prevention of sexual harassment at the workplace (12.6.4) and measuring the scale and value of women's invisible labour (12.7.1) are other essential objectives of the plan.[561]

The Parliament of Georgia amended the Labour Code in 2013. According to the new regulations, maternity leave during pregnancy and childcare was increased from 477 to 730 days and paid leave from 126 days to 183 days. Following these changes, payment from the state budget also increased up to 1,000 GEL (approx. EUR 323) for the 183 days.[562]

555. "Gender Equality in Georgia: Barriers and Recommendations," January, 2018,p.53.

556. Implementation of Gender equality Policy in Georgia: 2016 Progress Report on National Action Plan of 2014-2016 for the Implementation of Gender Equality Policy in Georgia, 2017, p. 15.

557. Law of Georgia on the Elimination of All Forms of Discrimination,2014, art. 2 and 4, available at: https://matsne.gov.ge/ka/document/view/2339687?publication=0.

558. National Statistics Office of Georgia. Woman and Man in Georgia. 2017.p.5.2

559. National Statistics Office of Georgia. Monthly Salary of Employees based on Sex. 2017.

560. Human Rights Action Plan of 2018-2020 (N 182, 17/04/2018, published: legislative herald of Georgia, 19/04/2018).

561. Available at: http://myrights.gov.ge/en/plan/Human%20Rights%20Action%20Plan%20for%202018-2020?sphere=752&goal=759&task=

562. Labour Code of Georgia, 2010, art. 27, art. 29, Available at: https://matsne.gov.ge/ka/document/view/1155567?publication=8

The Law on Gender Equality states that favourable working conditions for pregnant women and nursing mothers shall be ensured by the Georgian legislation, which excludes women's employment in hard, harmful and dangerous environment, as well as at night.[563] The Labour Code of Georgia provides safety rules for pregnant women and mothers who have recently given birth or who are breastfeeding. The Georgian Labour Code sets the limitation for the night jobs.[564]Additionally, it is possible to suspend working relations for maternity, adoption and childcare leave,[565] while these abovementioned cannot be grounds for terminating a labour agreement.[566] Maintenance of a payment of, and/or entitlement to, an adequate allowance for pregnant women, breastfeeding mothers and women who have recently given birth is not obligatory under the Labour Code, although according to the Civil Service Law the maternity leave should paid in an amount equal to the employee's remuneration.[567] Different regulations apply to the private sector in Georgia: usually it is at the employer's discretion whether payment for maternity leave will be provided by a private employer.

Employment subsides

Since January 2018, the Government of Georgia envisages employer to subsidize 50% of salary for the beneficiaries employed in new or existing free workplaces. The Social Services Agency provides the selection of candidates and nominates them to vacant position. The employer makes the final decision on the signing of the labour contract with the beneficiary. After the completion of subsidies, the employer is obliged to extend the employment contract for at least six months. Young people (from 16 to 29 years old), persons with disabilities and persons with special educational needs can be involved in the Employment Promotion Services Development Programmes.[568]

Non-governmental organisations in Georgia have been working on the promotion of international corporate responsibility standards among relevant stakeholders, such as businesses, CSOs and the government.[569] Two working groups have been coordinated on women's empowerment in the business sector and promotion of inclusive business with the focus on the employment of persons with disabilities. In February 2018, the Corporate Social Responsibility Award ceremony was organised. Three leading local companies were awarded for their initiatives in protecting human rights. The CSR Award Competition aimed to promote corporate social responsibility in Georgia.

563. Gender Equality Law, 2010, art. 6(4), Available at: https://matsne.gov.ge/ka/document/view/91624

564. Labour Code of Georgia, 2010, art. 27, art. 18, Available at: https://matsne.gov.ge/ka/document/view/1155567?publication=8

565. Ibid, art. 36.

566. Ibid, art. 37.

567. The Law of Georgia on Civil Service, art. 41^1(2), Available at: https://matsne.gov.ge/ka/document/view/28312

568. Available At: http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=1372

569. Available at: https://www.unglobalcompact.org/system/attachments/cop_2017/410181/original/Civil_Development_Agency_%28CiDA%29__COE.pdf?1502435322

Programmes Supporting Women

Economic empowerment of women is one of the important components for gender equality. In 2014, the Ministry of Economy and Sustainable Development in association with the Ministry of Agriculture launched the project "Produce in Georgia." The main objectives are: promotion of entrepreneurship in Georgia, stimulating local production, new enterprise development, creation of new jobs and increase in export potential. In 2015-2016, 43,885 people applied for the programme, including 16,401 women (37.5 % of total applicants). The number of female beneficiaries totals 1,935 (40%).[570]

Empowering women in rural areas is a priority. In 2013 the Law on Agricultural Cooperatives[571]was adopted and the LEPL Agency for the Development of Cooperatives was established under the Ministry of Agriculture. Today, 1,538 agricultural cooperatives are registered, including 13,677 individuals and 3,674 are women.[572]

97 **How is gender based violence and domestic violence treated in your legislation and in judicial practice in terms of prevention, victim support and prosecution.**

Legal framework

The Constitution of Georgia guarantees equality of men and women (Article 11), prohibits discrimination on any bases, and prohibits torture, inhuman, cruel treatment (Article 9). In 2006, the Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence[573]was established. During its existence, it has undergone a number of amendments: most recently it was amended in order to harmonise the law with the Istanbul Convention. The law defines a set of actions, which constitute domestic violence, the legal and organisational grounds for detecting and eliminating domestic violence and the guarantees for the legal protection and support for victims of domestic violence (Article 1). Article 4 of the law defines following types of violence: physical, psychological, sexual and economic violence.

In order to ensure a prompt response to domestic violence cases and ensure victim protection, restraining or protective order can be used as a temporary measure (Article 10(1)). According to the Article 12(1)(2), a protective order is issued for a period of up to six months. The validity of the order may be extended. As for the restraining order, it is issued for a period up to one month (Article 12(4)). Violation of either the restraining or protective order is addressed in Article 175^2 of the Code on Administrative Offences. Furthermore, Article 381^1 of the Criminal Code establishes sanctions for a person who has violated the restrictive/protective order, and has already been subjected to an administrative penalty under Article 175^2 of the Administrative Code.[574]

570. Implementation of Gender equality Policy in Georgia: 2016 Progress Report on National Action Plan of 2014-2016 for the Implementation of Gender Equality Policy in Georgia, 2017, pg. 16

571. Law on Agricultural Cooperatives (N 816, 12/07/2013, published: legislative herald of Georgia, 05/08/2013, last amended: 07/12/2017)

572. Women's Economic Empowerment in Georgia: Analysis of Existing Policies and Initiatives, Sapari, 2017, pg. 21

573. Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence (N 3143, 25/05/2006,published: legislative herald of Georgia, 20, 09/06/2006, last amended: 05/07/2018)

574. Gender Equality in Georgia: Barriers and Recommendations, January 2018, p. 62

Article 6(3)(a) and (c) of the Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence defines the mechanisms for the prevention of domestic violence. It obliges the state to "maintain relevant statistics" and "analyse, study and assess the factors that provoke domestic violence." In cases, where violence is witnessed by a minor, the minor might be separated from the abusive parent/parents as a temporary measure. The final decision is upon the court.[575]

The Criminal Code of Georgia defines domestic violence, as a violence, systematic insult, blackmail or humiliation by one family member toward another family member, which results in physical pain or anguish.[576] The following are considered aggravating circumstances: violence committed knowingly against a pregnant woman, minor or helpless person; violence against a minor's family member in the presence of the minor; violence against two or more persons; violence committed by a group of persons; repeated violence.

According to Article 11^1 of the Code, the following persons are considered family members: a spouse, mother, father, grandfather, grandmother, child, foster child, adoptive parent, adoptive parent's spouse, adoptee, foster family, guardian, grandchild, sister, brother, parents of the spouse, son-in-law, daughter-in-law, former spouse, also persons who maintain or maintained a common household.

Chapter twelve of the Criminal Code of Georgia defines the criminal offences against sexual freedom: rape (Art. 137), violent act of sexual nature (Art. 138), coercion into sexual intercourse or any other act of a sexual nature (Art. 139), sexual intercourse or any other act of a sexual nature with a person who has not attained the age of 16 years (Art. 140), and lewd acts (Art.141).

Forced marriage is criminalised under Article 150^1 of the Georgian Criminal Code. Additionally, sexual intercourse, committed knowingly by an adult offender with a person who has not attained the age of 16 years is punished by imprisonment for a term of seven to nine years (Art. 140 GCC).

The Convention on the Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) was signed in 2014 and it was ratified in 2017. In order to harmonise the current legislation with the Convention, the ratification package accompanying the Convention was submitted to the Parliament of Georgia. According to the amendments, Article 133^2 which criminalises female genital mutilation was added to the Criminal Code of Georgia. In addition, stalking has also become punishable under Article 155^1 of the Criminal Code of Georgia.

Data of the Ministry of Internal Affairs

The Ministry of Internal Affairs provides statistics on criminal offences committed in recent years. The table below shows the registered number of criminal offences related to domestic violence and criminal offences against sexual freedom.[577]

575. The Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, art. 14(1), Available at: https://matsne.gov.ge/en/document/download/26422/2/en/pdf

576. Criminal Code of Georgia, art. 126^1, available at: https://matsne.gov.ge/en/document/download/16426/157/en/pdf

577. Statistics of the Ministry of Internal Affairs of Georgia, available at: https://info.police.ge/uploads/5ba12ad771a1d.pdf

Registered Crimes	2017 Year	2018 Year
Rape (Art.137)	38	66
Other criminal offences against sexual freedom (Art.138-141)	149	202
Domestic Violence (Art. 126[1])	1,027	3,335

According to the Ministry of Internal Affairs, in 2017, 4,370 restrictive orders were issued and 5,472 in 2018.[578]

State Action Plans

The National Strategy for the Protection of Human Rights (2014-2020)[579]in the section of protection of women's rights and combating violence against women, encompasses five basic objectives:

- Implement effective measures across all fields to ensure and promote the concept of gender equality; in particular, encourage greater involvement of women in political life, as well as the decision-making process;
- Ensure prompt and effective response to all reported cases of gender discrimination;
- Ensure the full compliance of existing mechanisms with international standards for the protection and assistance of victims of domestic violence;
- Conduct awareness-raising campaigns, especially for civil servants, on issues of gender equality and domestic violence;
- Provide access to legal protection, psychosocial rehabilitation facilities and shelters for victims of domestic violence.

The Governmental Action Plans (2017-2018, 2018-2020) on the Protection of Human Rights aim to fulfil objective 14 of the National Strategy. For this reason, activities necessary for ensuring gender equality and the enjoyment of women's rights are defined in these plans. Furthermore, the plans set the responsible state bodies and the timeframe for the implementation of each activity. NGOs monitor the Action Plans implementation process and issue monitoring reports. The Government also regularly issues implementation reports.

Implementation Mechanisms and National Institutions

Gender Equality Council of the Parliament of Georgia

The Gender Equality Council, which ensures systematic and coordinated work regarding gender issues, was set up in 2004. Later, in 2010, the Council was converted into a standing body of the Parliament. The Council is presided over by the Chairperson of the Parliament or by one of the Deputy Chairpersons. The Council is composed of 16 MPs, who are selected in proportion to the percentage of the MPs from all political parties represented in the Parliament.[580]

578. Available at: https://police.ge/en/shinagan-saqmeta-saministros-adamianis-uflebata-datsvis-departamentma-sazogadoebas-9-tviani-mushaobis-shedegebi-tsarudgina/12049

579. National Strategy for the Protection of Human Rights (2014-2020) (N 2315, 30/04/2014, published: legislative herald of Georgia, 16/05/2014

580. The Regulations of the Gender Equality Council of Parliament of Georgia ("endorsed" with the Ordinance of the Chairman of the Parliament of Georgia of 16 February 2017, N 41/3), Available at: http://www.Parliament.ge/en/saparlamento-saqmianoba/komisiebi-da-sabchoebi-8/genderuli-tanasworobis-sabcho/oficialuri-dokumentebi/sabchos-debuleba

The Gender Equality Council is entitled to perform analysis of the Georgian legislation, develop proposals and eliminate inequality in the legislation, develop activities to reach gender equality and provide equal rights for men and women. One of the important activities of the Council is to raise awareness within the society on gender equality issues.

Gender Equality Council of the Government of Georgia

In 2017, with technical support from UN Women and other UN agencies, the Interagency Commission on Gender Equality, Violence against Women and Domestic Violence was created in the executive branch.[581]It unites representatives of ministries, the Public Defender's Office, the Legal Aid Service, the Gender Equality Council of the Parliament, the Public Broadcaster and the Supreme Court.

The Commission aims to strengthen the existing gender equality policy and monitor its implementation at the local level. The Interagency Commission is a coordinating body, envisaged in Article 10 of the Istanbul Convention, which ensures the effective implementation of state agencies' functions and aims to prevent the violence against women.

Public Defender of Georgia

The Law on Elimination of All Forms of Discrimination names the Public Defender as the equality body, which, among other functions, supervises the implementation of the law. Furthermore the Public Defender develops opinions on necessary legislative amendments.[582] At the Common Courts and the Constitutional Court of Georgia, the Ombudsman is entitled to exercise amicus curiae function. The recommendations of the Public Defender cannot be enforced.

On 15 May 2013, the Public Defender of Georgia created the Gender Equality Department within its office. Monitoring the protection of gender equality rights and examining individual complaints are the two important functions of the Department. Furthermore, the Department actively issues annual monitoring reports on women's rights, issues research and actively supports awareness-raising activities on gender equality among the general public.

State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking (Atipfund)

The State Fund, which was established according to the Law of Georgia on Combating Human Trafficking,[583]offers protection, support and rehabilitation of those women, who are affected by domestic violence, sexual abuse and human trafficking. In this regard, different services are available for victims and alleged victims.

The State Fund's revenue consists of state budgetary resources, resources from international organisations, contributions from legal and natural persons and other revenue as permitted under

581. Government of Georgia Ordinance N 286, 12/06/2017, published: legislative herald of Georgia, 14/06/2017.

582. The Law of Georgia on The Elimination of All Forms of Discrimination, 2014, art. 6(2), Available at: https://matsne.gov.ge/ka/document/view/2339687?publication=0

583. Law of Georgia on Combating Human Trafficking (N 2944, 28/04/2006, published: legislative herald of Georgia, 15, 16/05/2006, last amended: 05/07/2018),

the legislation of Georgia.[584]The State Fund's approved budget for Protection and Assistance of Victims of Human Trafficking Programme in 2017 was 6,034,000 GEL (approx. EUR 1,946,451).

Currently, five state shelters and three crisis centres are run by Atipfund. The temporary accommodation (shelter) for domestic violence victims provides safe accommodation and medical, psychological, legal and social reintegration assistance. Additionally, victims of violence can also receive psychological, primary and emergency medical aid and legal assistance in the Crisis Centre. Crises centres and shelters are also run by non-governmental organisations frequently in cooperation with local municipalities.

Hotline

Free Consultation Hotline 116 006 under the State Fund provides consultations on issues regarding violence against women. The hotline was established with the support of UN Women and financial support from the Government of Sweden. Four operators receive calls and man the hotline around the clock. The hotline is funded from the annual budget of the State Fund for Protection and Assistance of Victims of Human Trafficking. In 2017, the hotline provided services to 2,135 beneficiaries.

Human Rights Protection and Monitoring Department within the Ministry of Internal Affairs

The Ministry of Internal Affairs of Georgia established the Human Rights Protection and Monitoring Department in January 2018. The Department aims to react in a timely fashion to and ensure the effective investigation of the following crimes: violence against women (including sexual violence), domestic violence, crimes committed on the grounds of discrimination, trafficking, offences committed by/against juveniles and hate crimes. From September 2018, the Department introduced a risk assessment instrument and a restrictive orders' monitoring mechanism, which enables the government to reduce the risk of violence.

The Department has 14 employees. In order to raise awareness and qualification, the MIA conducts thematic trainings for the employees on the regular basis.

> The Georgian legislative framework for gender equality is largely in line with international standards. However, the laws can be further refined. For example, the Georgian Labour Code establishes no clear provisions for the prevention of gender discrimination and does not mention the principle of equal remuneration,[585] even though Georgia has ratified ILO Convention N100 on Equal Remuneration in 1993. Sexual harassment is not yet defined in the Labour Code.

584. The Law of Georgia on Combating Human Trafficking, 2006, art. 9(6), Available at: https://www.matsne.gov.ge/ka/document/view/26152

585. USAID, Article 42, Gender Discrimination in Labour Relations, 2014 p. 55, available at: http://Article42.ge/wp-content/uploads/2016/03/Gender_Discrimination_in_Labour_Relations.pdf

RIGHTS OF THE CHILD

98 **Please elaborate on the legislative, administrative and institutional framework in place to ensure effective protection of the rights of the child.**

Protection of the rights of children holds a special place within the group of human rights and freedoms guaranteed by the legislation of Georgia. According to the Constitution, the rights of mothers and children are protected by the legislation of the country (Constitution of Georgia, Article 36(3)).

International Framework

The key international treaty body for protecting the rights of children is the Committee on the Rights of the Child under the United Nations, which adopted the Convention on the Rights of the Child in 1989 (A/RES/44/25). This is the first binding international instrument of children's rights. Georgia has been a member country since 1994, when the Parliament of Georgia ratified the convention. The Georgian Parliament ratified other relevant international conventions and, in the process of ratification, Georgia undertook to abide by and incorporate the provisions of the conventions in domestic laws, including administrative proceedings and procedures related to children. International conventions and optional protocols on the rights of the child:

1. Optional Protocol of the Convention of the Rights of the Child for a complaints mechanism, 28 February 2012, (Ratification: 19 December 2016);
2. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007, /CETS No. 201/ (Ratification: 1 January 2015);
3. Hague Convention on parental responsibility and protection of children, or Hague Convention 1996, officially Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children or Hague Convention 1996 (Ratification: 1 March 2015);
4. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, A/RES/54/263 of 25 May 2000 (Ratification: 3 September 2010)
5. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, A/RES/54/263 of 25 May 2000 (Ratification: 28 June 2005)
6. Worst Forms of Child Labour Convention, Geneva 17 June 1999, /No.C182/ (Ratification: 24 June 2003)
7. European Convention on the Legal Status of Children Born out of Wedlock, 15 October 1975 (Ratification: 31 June 2002)
8. Convention on the Rights of the Child, A/RES/44/25 (Ratification: 2 June 1994)
9. Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention 25 October 1980 (Ratification: 1 December 1983)

Domestic Legislation

Georgian domestic law protects the rights of children through numerous legislative acts in the area of criminal, civil and administrative law. These regulations intend to protect children in the area of family, social, economic protection, education, health and labour, criminal justice, alternative family care, etc. These core legislative acts are the following:

1. Civil Code of Georgia (Date of issuing 26/06/1997; Document Number 786)
2. Civil Procedure Code (Date of issuing 14/11/1997; Document Number 1106)
3. General Administrative Code (Date of issuing 25/06/1999; Document Number 2181)
4. Administrative Procedure Code (Date of issuing 23/07/1999; Document Number 2352)
5. Code of Administrative Offences (Date of issuing 15/12/1984; Document Number 161)
6. Criminal Code of Georgia (Date of issuing 22/07/1999; Document Number 2287)
7. Criminal Procedure Code (Date of issuing 09/10/2009; Document Number 1172)
8. Code of Juvenile Justice (Date of issuing 12/06/2015; Document Number 3708-IIs)
9. Law of General Education (Date of issuing 08/04/2005; Document Number 1330)
10. Law on Early and Preschool Education (Date of issuing 08/26/2016; Document Number 5366-IIs)
11. Law on Social Assistance (Date of issuing 29/12/2006; Document Number 4289)
12. Law of Social Protection of Persons With Disabilities (Date of issuing 14/06/1995; Document Number 756)
13. Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence and Women (Date of issuing 25/05/2006; Document Number 3143)
14. Law on the Procedure for Registering the Citizens of Georgia and Aliens Residing on Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia (Date of issuing 27/06/1996; Document Number 323)
15. Law on Civil Status Acts (Date of issuing 20/12/2011; Document Number 5562)
16. Labour Code of Georgia (Date of issuing 17/12/2010; Document Number 4113 RS)
17. Police Law (Date of issuing 04/10/2013; Document Number 1444-Is)
18. Law on Elimination of All forms of Discrimination (Date of issuing 02/05/2014; Document Number 2391-IIs)
19. Law on Adoption and Foster Care (Date of issuing 26/06/1997; Document Number 786)
20. Law of the Rights of Patients (Date of issuing 04/05/2017; Document Number 743-IIs)

- Overview of key provisions pertaining to the protection of the rights of children

Definition of a Child

According to the Civil Code of Georgia (Article 18(2)), a child is a person who has not attained the age of eighteen years, which is aligned with the definition contained in the Convention on the Rights of the Child. Pursuant to the Code of Juvenile Justice, the age of criminal liability is 14 and 16 for the purpose of administrative offences (Article 3 (1) of the Code of Juvenile Justice).

Maturity is obtained by reaching 18 years of age. Full legal capacity is obtained by reaching the age of maturity. Pursuant to Article 1108 of the Civil Code, a person who has not reached 18 years should not conclude a marriage. A child who has reached 10 years of age has to give his/her informed consent to adoption and a child under the age of 10 gives his/her consent according

to their state of maturity .However, if a child lives in the family that was considered as his/her biological parents, the court has a right to decide a case of adoption without the consent of 10-year-old child (Article 13 of the Law of Adoption and Foster Care and Civil Code Article 1255). A child who has reached the age of 14 is able to bring a lawsuit before the courts (Article 1198[1](1) of the Civil Code and Article 81[1] of the Code of Civil Procedure). A child between the ages 14-18, who has ability to reason, has a right to give informed consent on some medical intervention related to his/her sexual life (Articles 40-41 of the Law on Patients' Rights). Article 4 of the Labour Code stipulates that the minimum age for entering into an employment relationship with a minor is 16. Special conditions are prescribed for entering into a employment relationship with a minor below age of 16: written approval of the parents, under the condition that such work does not jeopardise his/her health, morale or education and is not prohibited by law. A person below the age of 14 (a minor) can enter into an employment relationship only to perform tasks related to culture, art and advertising. Pursuant to Article 32 of the Code of Administrative Offences, administrative detention cannot be imposed on a person under the age of 18. The Civil Procedure Code stipulates that a minor shall be competent for civil wrongdoings from the age of 10 if they have ability to realise the negative consequences of their actions (Article 994). According to the Civil Code (Article 65), a child at the age of 16, by the decision of the parents and social service agency (which is state entity responsible for defending children), can be emancipated and rule Company.

Best Interest of the Child

For the purpose of the Civil Code of Georgia, parents are obliged to act in the best interest of a child in all activities related to the child (Article 1199 of Civil Code). The state is obliged to undertake all necessary measures to protect the child from neglect, from physical, sexual and emotional abuse and from every form of exploitation. In addition, the state is obliged to respect, protect and improve the rights of the child. A child born out-of-wedlock has the same rights as a child born within a marriage. An adopted child has the same rights in relation to his/her adoptive parents as a child has in relation to his/her biological parents. The state is obliged to provide a child without parental care with protection in a family environment whenever possible. The procedures for adoption and foster care provide that the child may be adopted, or that foster care may be established according to the best interest of a child (Article 1 of the Law on Adoption and Foster Care).

All individuals and organisations (including public, private) are responsible for the protection of child rights, as well as a duty to inform the public authority about breaches of children's rights (Article 1198[1] of Civil Code).

Article 1 of the Juvenile Justice Code stipulates that the child's best interest is a primary principle in every procedure and provision under the criminal justice system in Georgia. The Code, adopted in 2015, was considered very progressive in terms of children's rights in the complete penal system.[586]

586. Juvenile Justice Code, N 3708-IIs, issued 12/06/2015.

Non-discrimination

According to the Constitution of Georgia, all direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other belief shall be prohibited (Article 11). The age is not stipulated under the provision but it is considered as protected ground by the practice and by the Law on Elimination of all Forms of Discrimination, which prohibits all kinds of discrimination based on ***inter alia*** age (Article 1).

Every child enjoys equal rights and protection in the family, society and the state, regardless of his/her personal characteristics or those of his/her parents, guardians or family members. It is forbidden to discriminate against a child on the grounds of his/her health, being born in or out of wedlock, to publicly advocate giving priority to children of one gender over the other, as well as differentiating among children on the grounds of the financial situation, profession and other characteristics related to the social position, activities, expressed opinions or beliefs of the child's parents, guardians and family members. According to the Law on General Education (Article 8; 13), every child has equal rights to exercise his/her rights to education in the school life without any discrimination based on disability, race, age, religion, social status, etc.

Human Rights and Freedoms

According to the Constitution of Georgia, everyone, including children, has fundamental rights and freedoms. The right to life, education, freedom of expression and association, survival and development are guaranteed for everyone without discrimination. Protection of human rights is also guaranteed by other legislative documents such as criminal, civil and administrative regulations. According to the Constitution, the rights of mothers and children have special attention and are protected by different laws.

Personal Name of a Child

The Civil Code of Georgia stipulates that children have the right to personal identity (name). Relevant public entities are obliged to register children and pursuant to the law, everyone shall have the right to a personal name, which is acquired by birth, and can be changed under the conditions stipulated by this law (Article 17 of the Civil Code and Chapter II of Law on Civil Status Act). According to the Law on Civil Status Act (Article 23), a medical institution, in which a child is born, is obliged to report the birth in the prescribed form. A child's parents, guardians and representatives of local authority are required to report the birth of a child born outside of a medical institution. The fact of child's birth whose parents are unknown is entered in the register of births. Entry into the register is conducted on the basis of the information sent by the competent authority of guardianship, including the following information: personal name of the child, gender of the child, day, month, year and time of birth, place and municipality of birth and nationality of the child (Article 28 of Law on Civil Status Act).

According to Article 1194 of the Civil Code, his/her parents together determine a child's name. The guardianship authority determines a child's name if the parents are not alive, or a child is abandoned and child's name is unknown. The parents, according to the surname of one or both

parents, determine a child's surname. Parents may not give different surnames to their common children. The guardianship authority determines a child's surname if the parents are not alive or if they are unknown.

Preservation of identity

The Law on Adoption and Foster Care guarantees every child's right to learn about his/her ancestry, and the right to preserve his/her own identity in certain circumstances (Article 65). A child between the ages of 16-18 has the right to change his/her name with patent approval. If a child is the age of 10 or more, his/her consent is obligatory for making any changes in his/her name and surname (Article 63 of the Law on Civil Status Act). The Law on Adoption and Foster Care stipulates that future parents have the right to change a child's biological name and surname, date of birth, place of birth and ID number. However, if a child is age of 10 or more, the court takes into consideration his/her will. If a child is under the age 10, the court has a right to consider his/her will according to the child's maturity (Article 62).

Freedom of speech and expression

According to the Convention on the Rights of Child and the Constitution of Georgia, a child who is able to form his/her own opinion has freedom of speech and expression of opinion. A child has a right to receive all information necessary to form his/her own opinion. Due attention must be given to a child's opinion in all issues concerning a child and in all proceedings where his/her rights are decided on, in accordance with the age and maturity of the child. A child who has reached the age of 10 may freely and directly express his/her opinion within every court or administrative proceedings.

Family Life and Childcare

The Civil Code and the Convention on the Rights of the Child stipulate special protection of children and the right to family life. The state has the obligation to support families and ensure that children live in biological families. Parents have equal responsibilities and rights to children (Article 1198 of Civil Code). The Family Law Chapter in the civil code stipulates that the mother and the father share joint parental rights. Parents are equally entitled to exercise parental rights. Adopters have the legal status of parents (Article 1261 of Civil Code). The law prescribes that parental rights are derived from the duties of the parents and exist only to the extent necessary for the protection of the personality, rights and interests of the child (Article 1198 of Civil Code). Parents have the right and duty to take care of the child, including protection, upbringing, education, representation and support of the child and management and disposal of the child's property. Parents have the right to receive all information about their child from educational and medical institutions.

Separation from parents

The Civil Code of Georgia stipulates that children have the right to live with their parents and to be taken care of by their parents. The right of a child to live with his/her parents may be limited only

by court decision and when it is in the best interest of the child. A court may decide to separate a child from his/her parent(s) if there are legitimate reasons. A child has a right to maintain personal relations with a parent he/she does not live with. The right of a child to maintain personal relations with the parent he/she does not live with may be limited only by court decision and when it is in the best interest of a child.

A parent who abuses his/her rights or grossly neglects duties that comprise a part of his/her parental rights may be fully deprived of parental rights. A parent abuses rights that comprise a part of parental rights: if he/she physically, sexually or emotionally abuses the child; if he/she exploits the child by forcing him/her into excessive labour or into labour that endangers the moral, health or education of the child, or that is prohibited by law; if he/she provokes the child to commit criminal acts; if he/she accustoms the child to indulge in bad habits; if he/she in any other way abuses rights that comprise a part of parental rights (Article 1206 of Civil Code). The parental rights of a parent may be restored when the reasons for which he/she was fully or partially deprived of his/her parental rights cease to exist (Article 1209 of Civil Code).

Elicit detention and retention of a child abroad

In the case of illegal detention, retention and non-return of a child from abroad, which can be qualified as a violation of the right of custody over the child, i.e. violation of the right to maintain personal relationships, the provisions of the Convention on the Civil Aspects of International Child Abduction shall be applied. The Ministry of Justice shall be the central authority responsible for the implementation of the Convention. The Ministry shall be obliged to receive from abroad and dispatch to the central authorities of other Member States the requests for return of children who were illegally separated from their parents or persons having parental responsibility.

Protection of Children without Parental Care

The Civil Code of Georgia regulates protection of children without parental care. A child without parental care, within the meaning of Article 1275 of the Civil Code, shall be considered: a child who has no parents, a child whose parents are unknown or a child whose parents are fully or partially deprived of parental rights, etc. Pursuant to the law, the Social Service Agency is responsible for a child without parental care and they temporarily or permanently substitute parental rights and obligations (Article 1275 of Civil Code). One of the measures of family care of the child without parental care is guardianship.

Protection of Children from Abuse and Neglect

The right of protection against all forms of violence represents the fundamental right of every child stipulated in the Convention on the Rights of the Child and other documents of the United Nations, the Council of Europe and other international organisations ratified by Georgia. By confirming (ratifying) the Convention on the Rights of the Child, Georgia undertook the obligations to take measures to prevent violence against children and to provide protection from any form of violence in the family, institutions and wider social environment, from physical and mental violence, abuse

and neglect (Article 19 of UN CRC), all forms of sexual exploitation and sexual abuse (Article 34 UN CRC), abduction of children and trafficking in children (Article 35 UN CRC), all other forms of exploitation harmful to the child (Article 36 UN CRC), torture, inhuman or degrading treatment or punishment (Article 37 UN CRC). The Convention also establishes the state's obligation to provide support measures for the physical and psychological recovery of child victims of violence and their social reintegration (Article 39 UN CRC).

Under the Constitution, human life is inviolable (there is no death penalty in Georgia), the physical and mental integrity is inviolable, and no one can be held in slavery or similar position. All forms of human trafficking are prohibited. Forced labour is prohibited. Children shall enjoy human rights suitable to their age and mental maturity. Children are protected from physical, psychological, economic and any other form of exploitation or abuse. As a rule, children under the age of 16 cannot be employed, however there are several exceptions in the law, which allows children to work at the age of 14 or below.

Article 1198[1] of the Civil Code of Georgia and the Law on Domestic Violence establish the obligation of the parents and state to take all necessary measures to protect children from neglect, physical, sexual and emotional abuse, and every kind of exploitation. In addition, all institutions and citizens shall be obliged to inform the police and social agency about the violation of child rights. According to the Civil Code (Article 1205(6)), in the case of domestic violence, parental rights are restricted and they are not representatives of a child until a final decision of the court has been made.

According to the Ordinance of Government of Georgia on Referral Mechanism of Violence against Children,[587]organisations that provide services to children have the obligation to identify and refer information to the relevant public authorities such as police and social agency if they have information about violence against children.

Juvenile Justice

The Code of Juvenile Justice of Georgia was adopted in 2015, which completely changed the penal system in the country. The Criminal Code of Georgia contains a large number of criminal offences against children or perpetrated by juveniles. The Code of Juvenile Justice stipulates special procedures and regulations about children who are in conflict with the law or victims of criminal offences. The prime principle of the code is the best interest of the child. For the purpose of the code, a child is defined as a person under the age of 18, however in many aspects, the law covers youths under the age of 21. The new rights established by the code are very progressive. For example, the code guarantees the right to free legal aid for children under the age 21. Detention should be the last resort in the case. The first options always must be less restrictive measures, as restoring justice requires in the criminal system. In accordance with the Juvenile Justice Code, a unique system, which requires specialised professionals such as police officers, investigators, attorneys and judges who have an exclusive right to handle and rule the criminal cases where children are involved was created. There are special limitations on detention terms as well as investigation etc.

587. Adopted by the Government of Georgia. Date of issuing 12/09/2016; Document Number 437.

Administrative Institutions

Court

The court is the most powerful institutional mechanism for children's rights. In general, parents are representatives of their children and they have all rights and obligations to protect and represent children without any special permission from the government. According to the Civil Code and Civil Procedure Code, children at the age of 14 or older have a right to bring a case before the court. In such cases, the court appoints a special representative to a child who is considered the child's legal defender in court. A child has a right to refuse that decision of the court and defend himself independently. The court is obliged to officially invite child social service agency of the country into the process (Article 1198[1] of the Civil Code and Article 81[1] of the Code of Civil Procedure).

Commission

In 2016, a governmental ordinance established the Interdisciplinary Commission.[588] The head of the commission is the deputy ministry of foreign affairs. The members are representatives of different ministries, the judicial system, NGOs and international organisations. The commission unites 22 commissioners from which only 12 have voting rights. They are mainly representatives of ministries. The members/representatives from the Supreme Court, Parliament, Prosecutor's Office, Public Defender, Free Legal Aid Service, NGOs and international organisations do not have the right to participate in the voting process.

The commission does not have a budget or other separate funding from the state or international organisations.

The goals of the commission are:

1. Monitoring the Implementation of the UN Convention on the Rights of the Child(UNCRC);
2. Coordinating among state actors;
3. Implementing the optional protocols of UNCRC and making international communication;
4. Data collection and identification of the main challenges of the public bodies;
5. Coordinating annual and special state reports about implementation of the Convention etc.

Public Defender (Ombudsman) of Georgia

The Public Defender is a constitutional human rights institution in Georgia. The Ombudsman's office is the independent body that protects the rights of citizens and supervises the work of public administration, as well as other authorities and organisations, companies and institutions that have been delegated public authorities. Within the institution of the Ombudsman, a special area of work is the protection of child rights, under the Centre of Child Rights. The Ombudsman's office has the obligation to monitor all child institutions including closed residential ones such as orphanages, penitentiaries, mental health facilities, etc. The Public Defender also prepares legislative initiatives and recommendations regarding child rights in Georgia. The overall goal

588. Adopted by the Government of Georgia. Date of issuing 13/12/2016. Document Number 550.

in the field of child rights is to monitor implementation of the UN Convention on the Rights of the Child (UNCRC) and prepare reports for parliamentary discussion annually. The Ombudsman actively prepares reports for the UNCRC committee.

The total number of operational employees in the Office of Public defender is 123. Of this number, only four employees work for the Centre of Children's Rights and three individuals in the support centre based on projects financed by donor organisations, as they are not permanent staff members of the Centre of Children's Rights.

99 **How is domestic violence against children treated in your legislation and in judicial practice? How is effective protection of children from violence, including exploitation and sexual violence, ensured?**

Protection from domestic violence

According to the Constitution of Georgia, the rights of mothers and children shall be safeguarded by law. In 2006, the Georgian Parliament adopted the Law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence. The law envisaged the protection of child victims through protective and restraining orders. It stipulated provisions related to the temporary accommodation and social and rehabilitation services provided for victims of domestic violence, including children. It also referred to relevant administrative and criminal sanctions against perpetrators. Domestic violence was criminalised in 2012 in Georgia.

In May 2017, the Parliament of Georgia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). The Parliament also initiated the process of harmonising national legislation and introduced amendments in 24 laws accompanying the Istanbul Convention. In the amendments, child witnesses of domestic violence have been granted the status of the victims of domestic violence.

According to the Georgian Law on Elimination of Domestic Violence, Protection and Support to its Victims, if, because of some forms of violence in the family, a person applies to a court for a protective order, the court shall consider the relationship of the abusive parent/parents with the minor. If signs of violence are observed affecting the minor, the court will request the minor be separated from the abusive parent, as a temporary measure, until the court makes its final decision. When considering the matter related to the right of representation of the minor, the allegedly abusive parent will be deprived of the right to represent the child. According to the law, the abusive parent shall be given the right to visit the child only when all safety measures are in place, including the venue of the visit, time, frequency, duration and person responsible for adherence to safety measures. In cases when safety measures are not observed, the right of the abusive parent to visit the child is restricted.[589]

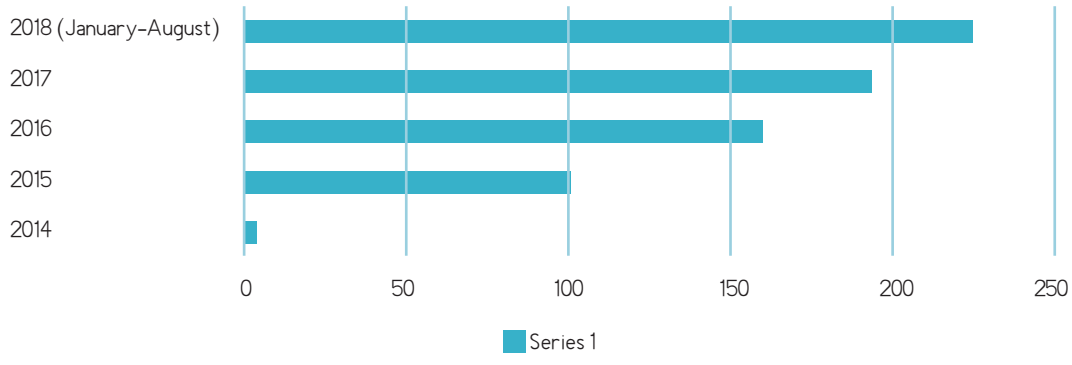
589. Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention, fourth periodic reports of States parties due in 2011, Georgia, 2016. pp. 22-24. Available at (last accessed 25/10/2018): https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGEO%2f4&Lang=en

Considering the recommendations of the UN Committee in the Rights of the Child (hereinafter UNCRC), the definition of "child neglect" has been introduced in the law against domestic violence.[590] There were prescribed detailed instructions to support/simplify the procedure for restrictive and protective orders in relation to child victims. Specified rules were set for questioning child victims and witnesses in the presence of parents who might be considered a perpetrator or interested party.

Child Referral Procedures

In 2010, the Child Protection Referral Procedures (CPRP) were introduced by three ministers: the Minister of Labour, Health and Social Affairs (MoLHSA), Ministry of Internal Affairs (MoI) and Ministry of Education and Science (MoES). The CPRP defined various forms of violence against children and the agencies responsible for identification, assessment and intervention. It required all involved parties to issue guidelines/instructions for the respective professionals.[591] The CPRP was upgraded in 2016 by a relevant governmental decree. The new referral mechanism widened the list of entities that are obliged to refer child abuse cases to the LEPL Social Service Agency and the police. The rule of coordination of work and mechanism of effective and efficient response to child abuse cases were determined by the referral procedures at the ministries, legal entities of public law under the control of the ministries, the Prosecutor's Office of Georgia etc. It is important to underline that the referral mechanism describes in detail the conditions for child separation from a violent environment. The referral mechanism also includes administrative liability for the failure to fulfil the obligations determined by the document as well as creation of unified database of child abuse cases by January 2019.[592]

Statistics on restraining orders issued for the protection of child victims in domestic violence cases[593] 2014-2018



590. Georgian Coalition for Children and Youth. Implementation of the convention on the rights of child in Georgia: an alternative report, 2016, p. 11. Available at (last accessed 25/10/2018): https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GEO/INT_CRC_NGO_GEO_23821_E.pdf

591. Ibid. p. 5

592. Human Rights Secretariat of the Administration of the Government of Georgia, The Implementation Report of the Action Plan of the Government of Georgia on the Protection of Human Rights 2016-2017 Short Version, 2017, p. 20. Available at (last accessed 25/10/2018): http://myrights.gov.ge/uploads/files/docs/7554annual-eng.pdf

593. Letter of the Ministry of Internals of Georgia, dated 12 October 2018, MIA718 03499766

Child Access to Justice

Under the Georgian Civil Procedure Code, a child (minor) can address the court to protect his/her rights and legal interests starting from the age of 14. The cases might include but are not limited to the violation of child rights by parents. Upon submission of a child petition, the court appoints a legal representative (lawyer) and considers the case. The plaintiff (child/minor) can refuse to accept the legal representative and decide to defend himself/herself. The court should involve guardianship and childcare bodies in such cases.[594] Under the Georgian Civil Procedure Code, children below the age of 14 are denied free access to court and the assistance of an independent lawyer. The National Anti-Discrimination Mechanism (Public Defender of Georgia) considered the aforementioned law to be discriminatory towards children. As the recommendation notes,[595] the law treats children below and above the age of 14 differently and such a difference in treatment cannot be justified. The legislator aimed to protect the right to access to court for children below the age of 14 by delegating child representation rights to the respective parents. But this approach creates numerous challenges in practice: children are de facto left without access to courts once their parents neglect their needs by protecting their rights through judicial mechanisms, and/or the parents themselves are violating the rights of their children. When parents violate their children's rights, the child protection services (the Social Service Agency) are obligated to file a lawsuit against the parents for ignoring/violating children's needs, though in practice this rarely happens.[596]

Sexual Abuse and Exploitation of Children

In 2015, Georgia adopted the Juvenile Justice Code, which introduced child-sensitive justice for child victims of sexual violence. It introduces a number of child-sensitive measures, such as an individualised approach, the protection of the private life of a child, the appointment of a legal representative and victim-witness coordinator during judicial proceedings. It serves to protect child victims of sexual abuse from secondary trauma.

The forced marriage of children has been prohibited in Georgia since 2014 by the Criminal Code of Georgia. It implies the sanction of imprisonment (Article 150 of the Criminal Code of Georgia). Article 140 of the Criminal Code criminalises sexual intercourse with a child under 16 years of age.

In 2006, Georgia adopted the Law on Combating Human Trafficking, which includes a special part on social and legal protection, rehabilitation and support of child victims of trafficking. However, it should be noted that sexual exploitation of children is only criminalised in relation to, or as part of, the crime of trafficking (Article 3.f of the Law on Combating Human Trafficking), and not as a separate crime. Moreover, Articles 253.2 and 255 of the Criminal Code, which criminalise the engagement of minors in "prostitution" and "illegal production and sale of pornographic works"

594. Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention, fourth periodic reports of States parties due in 2011, Georgia, 2016. pp. 22-24. Available at (last accessed 25/10/2018) https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGEO%2f4&Lang=en

595. Public Defender of Georgia (2016), Recommendation on the age-based discrimination addressed to the Chairman of Georgian of Georgian Parliament, Mr Irakli Kobakhidze, to the Georgian Prime Minister, Mr Giorgi Kvirikashvili. p. 20.

596. Anna Arganashvili. The need for improving child access to justice in Georgia. 2018, 00. 3-4. Available at (last accessed 25/10/2018) http://www.osgf.ge/files/2018/Publications/Angarishi_A4__Child_ENG.pdf

respectively, do not fully incorporate the definitions of child prostitution and child pornography contained in the Optional Protocol on the sale of children, child prostitution and child pornography.[597]

The Special Rapporteur on the sale of children, child prostitution and child pornography notes[598] with concern that there are no comprehensive or reliable data on the scope and different forms of sexual abuse and exploitation of children in Georgia. The information received is fragmented and anecdotal. However, it shows that the scope of the phenomenon is broader than what is officially registered.

The Special Rapporteur observed that sexuality and issues related to sex are considered taboo by society. That may lead to a denial of sexual abuse and violence against children within the family and make it difficult to detect and report such cases. While the Special Rapporteur commends the efforts made by Georgia in combating trafficking in persons, she regrets the low level of prosecutions and convictions for trafficking in children. Between 2010 and August 2016, 12 cases of trafficking in relation to the sale and sexual and labour exploitation of children were investigated. During the same period, five persons were convicted for child sexual exploitation and three for the sale of children.

Official statistics on gender-based violence and sexual offences against child victims[599]

	2014	2015	2016	2017	2018 (Jan-Aug)
Article 126[1] Domestic violence	19	33	94	171	272
Article 137, III, Rape	4	10	7	10	16
Article 137, IV, Rape (victims below the age of 14)	1	2	3	4	5
Article 138, III, Violent act of a sexual nature (victims below the age of 14)	1	4	5	1	0
Article 139, III, Coercion into sexual intercourse or any other act of a sexual nature	0	0	0	1	2
Article 139, IV, Coercion into sexual intercourse or any other act of a sexual nature (victim below 14 years)	0	0	0	0	1
Article 140, Sexual intercourse or any act of a sexual nature with a person who has not attained the age of 16 years	56	179	251	173	135
Article 141, Lewd acts	20	42	40	42	39
Article 143[2], Child Trafficking	1	2	2	4	5
Article 150, II, Coercion (victim below 14 years)	4	2	5	3	9
Article 171, Engagement of minors in anti-social activities	1	3	1	1	8
Article 253, II, Engagement in prostitution (victim below 14 years)	0	0	0	0	4
Article 255, II, Illegal making or sale of a pornographic work or other items (knowingly)	3	2	3	5	0
Article 255, III, Illegal making or sale of a pornographic work or other items (containing images of minors)	0	0	0	0	0

597. Human Rights Council, 34th session. Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Georgia, 2017. Available at (last accessed 25/10/2018): https://www.ohchr.org/Documents/Issues/Children/SR/A_HRC_34_55_Add.2.pdf

598. Ibid.

599. Letter of the Office of the Chief Prosecutor of Georgia, dated 25 September 2018, #13/72764

Article 255[1] Engagement of minors in illegal production and sale of pornographic works or other similar items	0	1	3	1	0
Article 255[2] Offering a meeting of a sexual character under the age of 16	0	0	0	0	0

Statistics[600] on child victims in the context of domestic crimes (Article 11[1])[601]

Article of the Criminal Code of Georgia	2014	2015	2016	2017	2018 (01 Jan – 11 Sep)	Total
11[1]-126[1] (Domestic Violence)	48	16	0	1	0	65
11[1]-126 (Violence)	0	0	1	9	22	32
126[1] (Domestic Violence)	6	48	110	174	342	680
11[1]-120 (Intentional less grave bodily injury)	1	0	5	1	2	9
11[1]-125 (Battery)	0	0	1	0	0	1
11[1]-117 (Intentional infliction of bodily injury)	1	0	0	0	0	1
11[1]-139 (Coercion into sexual intercourse or any other act of sexual nature)	1	0	0	0	0	1
11[1]-19-109 (Attempt of murder under aggravating circumstances)	0	0	0	2	2	4
11[1]-137 (Rape)	0	0	1	1	4	6
11[1]-138 (Violent act of a sexual nature)	1	0	2	0	1	4
11[1]-140 (Sexual intercourse or any other act of sexual nature with a person who has not attained the age of 16)	0	50	148	89	48	335
11[1]-141 (Lewd acts)	1	0	0	1	0	2
11[1]-19-143 (Attempted unlawful imprisonment)	0	0	5	0	0	5
11[1]-143 (Unlawful imprisonment)	0	0	5	0	0	5
11[1]-144[1] (Torture)	0	1	0	0	0	1
11[1]-150 (Coercion)	0	0	0	0	5	5
11[1]-151 (Threat)	0	0	4	8	25	37
11[1]-151[1] (Stalking)	0	0	0	0	1	1
11[1]-381 (Failure to execute or interference with the execution of a judgement or other court decisions)	0	0	0	0	4	4

100 How is child labour addressed in the legislation and what is the practical experience with its implementation

Georgia has ratified two ILO conventions regulating child labour: Convention #138 – Minimum Age Convention and Convention #183 on the Worst Forms of Child Labour. In addition, Georgia acceded to the UNCRC in 1994. Georgia recognises the right of the child to be protected from child labour, economic exploitation and from any work that threatens child's development.

600. Letter of the Office of the Chief Prosecutor of Georgia, dated 25 September 2018, #13/72764

601. Article 11 of Georgian Criminal Code qualifies the crimes committed by one family member against another family member under Articles 108, 109, 115, 117, 118, 120, 125, 126, 137, 141, 143, 144-1443 , 149-151, 160, 171, 253, 255, 2551 , 3811 and 3812 shall be considered a domestic crime. Criminal liability for domestic crime shall be determined by the relevant Article of the Criminal Code of Georgia specified in this article, by making reference to this article.

Domestic legislation regulating child labour is presented by the Georgian Labour Law, which defines the minimum age for employment at 16. As the ILO study notes,[602] the legal capacity of minors under 16 to enter into a labour agreement shall originate by consent of their legal representative or a custodian/guardian unless the labour relations contradict minors' interests, negatively impact their moral, physical and mental development, or limit their right and opportunity to acquire compulsory primary and basic education. Consent of the legal representative or custodian/guardian shall be valid with respect to similar types of subsequent labour relations as well. A labour agreement with minors under 14 may be concluded solely in connection with the activities in sport, art and culture, as well as for performing certain advertising work (Labour Code of Georgia, Paragraphs 1, 2, 3 and 4 of Article 4). As defined in the Legislation of Georgia concerning working time, duration of working time shall not exceed 36 hours per week for minors aged 16-17, and 24 hours for minors aged 14-15 (Labour Code of Georgia, Article 14, paragraphs 3 and 4). The Legislation of Georgia also prohibits employment of a minor in night job (10 PM to 6 AM) (Labour Code of Georgia, Article 18).

According to the latest ILO data,[603] 4.2% of 5-17 year-old children are involved in child labour, including 6.3% of boys and 1.9% of girls. More than half of the children engaged in child labour (51.8%) are between five and 13 years of age (below the minimum age permissible for light work). Due to dominance of agriculture in the employment structure, significantly more children are engaged in child labour in rural areas than in urban areas. In particular, 84% of children engaged in child labour live in rural areas, and 16.0% – in urban areas. A total of 63.9% of children in child labour perform "hazardous work," while 36.1% are involved in "child labour other than hazardous work." 31.6% of 5-13 year-old children in child labour are engaged in hazardous work, while 68.4% work in child labour other than hazardous work In terms of sex, 67.4% of boys and 51.4% of girls in child labour are involved in "hazardous work." Hazardous work is performed by 78.6% and 61.1% of children in child labour in urban and rural areas, respectively.

Inspection and monitoring of the labour relations and conditions are generally under the Labour Conditions Inspection Department, which was created in 2015. However, to date, the mechanism is not effective and it has not produced any monitoring report related to child labour exploitation or children working in harmful conditions.

101 **Please elaborate on legislative and non-legislative actions taken to address discrimination against children from ethnic minorities (including the Roma minority), children with disabilities, children living in remote areas as well as on grounds such as sex, birth status**

According to the Georgian Constitution, everyone is born free and equal before the law irrespective of race, colour, language, race, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, and place of residence. The Criminal Code of Georgia

602. ILO, GEOSTAT, National Child Labour Survey, 2015. pp.32-41. Available at (last accessed 25/10/2018): https://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_28635/lang--en/index.htm

603. ILO, GEOSTAT, National Child Labour Survey, 2015. pp. 3-9. Available at (last accessed 25/10/2018): https://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_28635/lang--en/index.htm

criminalises the violation of equality (Art. 142), racial discrimination (art. 142[1]) and the restriction of rights of persons with disabilities (142[2]).

On 2 May 2014, the Georgian Parliament adopted the Law on Elimination of All forms of Discrimination. The law entitled the Public Defender of Georgia to monitor and oversee the efforts for the elimination of discrimination. The national anti-discrimination mechanism was created at the office of the Public Defender of Georgia, which regularly handles the complaints relating to discrimination.

Legislative measures prohibiting discrimination of children also cover:[604]

- Childcare standards[605] which notes that the service provider is obliged to: (a) provide beneficiaries with a service based on individual needs and possibilities, without any discrimination, biased or negative attitude or action that may occur during the provision of services by the service provider, other beneficiary or third person; (b) provide a beneficiary with a service irrespective of his/her race, skin colour, sex, language, religion, political and other views, nationality, ethnic and social origin, material condition, the health or other kind of condition of the beneficiary or his/her legal representative;
- Regulation of the body of guardianship and custody,[606] which notes that the agency acts according to the following principles while fulfilling its goals and functions: (a) Eliminating discrimination according to the person's social and material conditions, race, skin colour, religion, sex, age and political views (measures aiming to fulfil the needs of persons recognised as needing special protection and help according to their sex, age, physical inferiority, marital status and/or social condition, will not be considered as discrimination);
- Law of Georgia on Healthcare (Art. 6, para. 1), which notes that discrimination of a patient based upon their race, skin colour, language, sex, confession, political and other views, nationality, ethnic and social belonging, origin, material and social condition, and place of residence. Children in Georgia mostly experience discrimination based on disability, religion, race and age.

In 2016-2017 the Ombudsman reported on the child discrimination case related to the denial of housing to a family having a child with autism. Discrimination also occurred in school and pre-school settings, where children with special needs were denied reasonable accommodation. Discrimination of children with disabilities took place through the government's failure to take proper action in terms of introducing adequate rehabilitation services, as well.

Following the report of the Equality Coalition, [607] child discrimination on the grounds of race occurred in relation to the juvenile of African descent before Tbilisi City Court. The court did not uphold the claims of the child in its judgment rendered in 2016. However, this decision was overturned by the appellate court.

604. Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention, fourth periodic reports of States parties due in 2011, Georgia, 2016. pp. 10-12. Available at (last accessed 25/10/2018): https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGEO%2f4&Lang=en

605. Decree of the Government of Georgia #66, adopted 12 January 2014.

606. Proved by the Minister of Labour, Health and Social Affairs of Georgia, with the Edict N 190/N on 27 June 2007, art. 2, para. 4, sub-para. A

607. Coalition for Equality, Universal Periodic Review (UPR) Mid-term Review Report on Georgia's UPR Second Cycle by the Coalition for Equality, 2018. p.5. Available at (last accessed 25/10/2018): https://emc.org.ge/uploads/products/pdf/4_1530610413.pdf

According to the Public Defender of Georgia,[608] incidents of violation of the right to equality also take place with regard to religious minority children. As the practice shows, Muslim children face indoctrination in some public schools.

Following the mid-term UPR report submitted by the NGO Coalition, Roma children continue to face discrimination based on ethnicity. Sixty-four Roma children were enrolled in Kobuleti Public School #5 in 2016. The city of Kobuleti is one of the biggest settlements for Roma people in Georgia. However, there are instances when Roma children are denied admission to kindergartens because of their ethnic origin.

102 Which measures have been taken to facilitate the registration of all children

The Civil Registry Agency of Georgia registers children born in Georgia through its territorial services. Diplomatic or consular missions register children of citizens of Georgia or stateless persons permanently residing in Georgia when they are born abroad.[609]

According to the Civil Registry Agency, since April 2011, medical institutions have been required to electronically submit information concerning childbirth to the Civil Registry Agency, to ensure birth registration in the shortest possible time. Until recently, a major problem was the high number of persons without ID documents in regions inhabited by ethnic Azeris. Until 2008, birth registration of children without documents required approval by court. Since April 2008, the Civil Registry Agency has been given the responsibility to register persons without documents and issue their IDs. The Agency has conducted a number of projects throughout Georgia with the support of UNHCR and UNICEF to eliminate the problem of persons without identification documents, including by going "door-to-door." As a result, several thousands of children have been registered and birth certificates released. In 2010, the Organic Law of Georgia on Citizenship of Georgia was amended. In particular, pursuant to Article 15, the child, who is found on the territory of Georgia and whose parents are both unknown, shall be deemed as a citizen of Georgia until otherwise established. The procedure of issuance of IDs and passports to juveniles has been simplified. Pursuant to the Article 3 of the Law of Georgia on the Rules of Registration, Issuing of Identification (Residence) Card and Passport to the Citizens of Georgia and Aliens Residing in Georgia, a citizen of Georgia who has attained 14 years of age is obliged to receive an identification card no later than six months. Upon the application of a legal representative, citizens of Georgia are entitled to receive IDs even before reaching the age of 14.

According to the information of the official agencies, during the last four years no child has been refused the right to education due to birth registration problems.[610]

608. Public Defender (Ombudsman) of Georgia. Special report on the fight against discrimination, its prevention and situation of equality. 2017. pp. 25-27.

609. Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention, fourth periodic reports of States parties due in 2011, Georgia, 2016. p. 13. Available at (last accessed 25/10/2018): https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGEO%2f4&Lang=en

610. Letter of the Ministry of Education, Science, Culture and Sport of Georgia, dated 25 September 2018. MES 618 01205307

103 **Please describe the procedure for taking care of orphans. Is there a foster care system?**

There were 5,000 children under state care in 2004 in Georgia. These children were placed in 46 orphanages. Due to the child deinstitutionalisation process, most of these children were placed in alternative care services.

According to the state report,[611] the legislation of Georgia sets out the situations in which a child is given the status of underprivileged. An underprivileged child is a person under 18:

(a) If his/her parents are recognised as disabled, lost or dead, by court;
(b) If he/she is an orphan;
(c) If his/her parent (parents) are deprived (restricted or suspended) of parental rights and responsibilities according to the rules established by the legislation;
(d) If he/she is recognised as abandoned;
(e) If staying with parent (parents) or guardian/caretaker is dangerous for the child for some reasons.

When a child must be separated from the biological family, the body of guardianship and custody discusses placement alternatives in order to ensure that the child remains in an environment as close as possible to his/her family. According to the decision of the body of guardianship and custody (based on the social worker's evaluation and conclusion) depending on the case, the underprivileged child:

1. Is given the status of child for adoption and legislative adoption procedures are implemented towards him/her;
2. Is imposed guardianship/custody and he/she is placed with a guardian/caretaker;
3. Is placed in the service (foster family, small family-type home, orphanage) where the child's life most closely aligns with his/her interests. He/she has access to all care services throughout the country.

The Ministry of Labour, Health and Social Affairs of Georgia elaborated the main directions of the Childcare System Reform Action Plan for 2011-2012 (adopted by Ordinance N373 of the Government of Georgia on support for the development of alternative forms of childcare on 8 December 2010).

On 26 August 2009 the Minister of Labour, Health and Social Affairs approved the Childcare Standards by Edict N281/N. The development of this document had started in 2005. Georgian and foreign specialists from the governmental and non-governmental sectors participated in its elaboration. A first version of the standards, approved in 2007, had a recommendatory status for childcare services (residential institutions and day care centres). The Technical Secretariat piloted the standards on behalf of the Government Commission of Child Protection and Deinstitutionalisation, with support from the EU Child Welfare Reform Project and UNICEF, in order to ensure that the final version of the standards would be acceptable and realistic for

611. Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention, fourth periodic reports of States parties due in 2011, Georgia, 2016. pp. 16-19. Available at (last accessed 25/10/2018): https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGEO%2f4&Lang=en

service providers to implement. Following an evaluation of the pilot exercise, the Minister of Labour, Health and Social Affairs approved a revised version of the Childcare Standards with Edict N01-59/N on 30 August 2012. The Standards became mandatory for all childcare institutions regardless of their organisational-legal and property nature and for day care centres for non-disabled children, registered with the state programme.

The state has developed the following alternative childcare services in recent years:

- Reintegration programme
- Emergency support for families in crisis
- Shelters for mothers and children
- Day care centres for children with and without disability
- Provision of assistive devices
- Communication support for children with hearing impairment
- Home care service for children with severe and profound disabilities
- Early intervention services
- Habilitation/rehabilitation services.

According to the Ombudsman of Georgia, there are in total 1,748 children in foster care. 11% of these children have been removed from their families due to poverty, which represents a significant violation of child rights. Children in foster care still experience the lack of individualised approach, training of foster parents and strict monitoring of the process.[612]

Currently there remain two child institutions and seven boarding schools. However, NGOs focused on children's rights report there are more than 1,000 children placed in orphanages that function beyond the law. Most of them are founded by religious groups and are not monitored either by the government of by any independent body.

Number of children placed in child institutions without state oversight, see the table below: [613]

Residential childcare institutions without state oversight		
Islamic boarding-schools (the so-called madrasa)	23	470 children
Institutions under Orthodox Church	4	229 children
Institutions run by local self-governments and private persons	9	447 children
Total	36	1146 children

612. Public Defender (Ombudsman) of Georgia, Parliamentary report 2017. pp. 265-270

613. Abashidze, A., Arganashvili,A., Gochiashvili,N. Voices of children failing to reach the state- shadow childcare system in Georgia. 2018. p.-4. . Available at (last accessed 25/10/2018): http://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Children_ENG_Cor.pdf

Procedural safeguards

LIBERTY AND SECURITY

104 **How do you ensure that natural and legal persons from EU Member States have access to your courts, free of discrimination compared to your own nationals?**

The Constitution of Georgia[614]provides the legal ground to ensure that natural and legal persons from EU member states have access to Georgian courts, free of discrimination, compared to Georgian nationals. Article 42, paragraph 1 of the Constitution states: "Everyone shall have the right to apply to the court for protection of his/her rights and freedoms." Article 47, paragraph 1 of the Constitution further clarifies that: "Aliens and stateless persons living in Georgia shall have the rights and obligations equal to those of the citizens of Georgia except as provided for by the Constitution and law." These two provisions provide constitutional guarantees not only for EU nationals but for every alien residing in Georgia.

The constitutional guarantee is further implemented by the Law of Georgia on the Legal Status of Aliens and Stateless Persons.[615] According to the mentioned law, specifically Article 47, paragraph 1: "Aliens in Georgia, regardless of their legal status, may apply to the courts and other state agencies to protect their personal, property and other rights." This can be interpreted as natural and legal persons, in other words, foreign nationals, individuals, or different kinds of legal entities residing in Georgia have the full right to appeal to all Georgian courts, including the Constitutional Court of Georgia. Article 39, paragraph 1 of the Organic Law of Georgia on the Constitutional Court of Georgia[616] states that every natural or legal person has the right to appeal to the Constitutional Court if they believe that their rights and freedoms recognised by the Constitution of Georgia have been violated.

Article 47, paragraph 2, of the Law of Georgia on the Legal Status of Aliens and Stateless Persons holds that "in legal proceedings aliens shall have the same procedural rights as citizens of Georgia." According to the aforementioned, we can conclude that Georgian legislation provides equal ground for every person in Georgia to use legal mechanisms of protection of their rights and interests. It is important to underline that the presented law also states in paragraph 1, part C, of Article 48 that the obligation of aliens to leave Georgia can be deferred if proceedings are pending in Georgia's court of general jurisdiction with their participation and if their stay in Georgia is essential for protecting their interests.

According to all of the aforementioned, Georgia ensures the access of aliens, including EU natural and legal persons, to courts, free of discrimination, under the same terms as Georgian citizens.

105 **Do police, prison and other officers receive training on human rights, including training on the rights of women and of persons belonging to minorities?**

614. Constitutional Law of Georgia, No 786 of 24 August 1995 by the Parliament of the Republic of Georgia, Consolidated version: 23 March 2018

615. Law of Georgia, No 2045 – II *b* of 05 March 2014 by the Parliament of Georgia, activating date 01 September 2014, Consolidated version: 31 October 2018

616. Organic Law of Georgia No 95 of 30 January, 1996 by the Parliament of Georgia, Consolidated version: 21 July 2018.

The Academy of the Ministry of Internal Affairs is the main body that ensures higher and specialised professional police education, retraining of police staff and re-qualifying of personnel. The last restructuring of the MIA[617] caused increased demand on personnel with knowledge in the field of human rights. The Academy curricula include subjects and disciplines related to human rights and women's rights. In the case of higher-level police education, human rights is a compulsory academic course and is taught in the same manner as it is done in other higher educational institutions.

In case of special professional educational programmes human rights related subjects are included in teaching curricula as follows:[618]

- Special professional education programmes for training of: neighbourhood inspectors, patrol inspectors, junior police lieutenants, prospective and in-service police recruits, detective-investigators, as well as curriculum of the special promotional retraining courses for in-service employees of patrol police department, the central criminal police department and territorial units of the MIA include a training module on human rights and the police.
- Separate module on human rights is considered by the special professional education programmes for border police officers of the Land Border Defence Department of the Border Police of Georgia and patrol police officers. Border police officers also receive training on human rights and the Code of Police Ethics.
- Special professional education programmes for training and retraining of neighbourhood inspectors, patrol inspectors, patrol police receive training related to domestic violence along with human rights.

Neighbourhood inspectors and patrol inspectors also receive special training on gender equality.

The Special Penitentiary Service of the Ministry of Justice of Georgia is the state institution responsible for managing prisons and other penitentiary facilities. Accordingly, its training centre is the key body that provides educational activities and trainings to prison officers. According to the last available data, their teaching programme[619] includes such topics as human rights and liberties, prevention of torture and inhumane treatment in the penitentiary facilities, and the so-called "Bangkok Rules."[620]

According to the aforementioned, it is clear that the Ministry of Justice as well as the Ministry of Internal Affairs provide trainings to their officers in various fields of human rights.

106 **Does your legislation allow for alternatives to imprisonment sentences, e.g. supervision measures, probation period and conditional release?**

&

107 **Describe your plans to develop a probation system. Do you have conditioned parole and conditioned imprisonment sentences and, if so, are the convicted in these cases subject to surveillance by a probation officer during the probation period?**

617. On January 2018, Human Rights Department has been established inside ministry of internal affairs. http://agenda.ge/en/news/2018/128; The human rights department of ministry of internal affairs is responsible to supervise and monitor investigations of cases related to domestic violence, violence of women's rights, crimes motivated by discrimination and hate, crimes involving human trafficking.

618. See curricula of MIA academy, https://police.ge/files/New%20Microsoft%20Word%20Document.pdf

619. See curriculum of the penitentiary training centre http://pptc.moc.gov.ge/?action=page&p_id=58&lang=geo

620. UN rules on treatment to female prisoners.

Georgian criminal legislation is aimed at softening imprisonment sentences. Currently, sentencing is regulated by two main legal norms, the Criminal Code[621] of Georgia and the Law of Georgia on Procedure for Enforcing Non-custodial Sentences and Probation.[622]The first one determines types of sentences and provides their definition. According to Article 39, paragraph 1 of the Criminal Code of Georgia, the goal of a sentence is to restore justice, prevent repetition of a crime and re-socialise the offender. Notwithstanding the kind and noble intentions of the law, the mentioned goal was almost impossible to achieve, as far as imprisonment has been used as a general form of sentence since the Rose Revolution, when the post-revolutionary government openly declared a zero tolerance policy against crime. Usually this type of approach is extremely effective in the short term. Over the long term, however, the policy can be counterproductive. At first glance, every criminal is going to prison and the streets become safer. At the same time, the zero tolerance policy was often the reason behind the application of disproportionally strict sentences for small crimes. This had a negative impact on the offender and, in the most cases, imprisonment for small crimes served not as a means of re-socialisation, but as means of professionalising crime.

Also, it is obvious that no country can keep offenders in custody forever. The offender, upon release returns to the social environment which remains unchained and crime determinants still exist as far as socio-economic factors of crime remain static. Punishing a criminal by removal from society, without addressing the reasons behind the crime, is not the best solution to achieve the goal of Georgian criminal legislation, prevention of crime. Therefore, it is important for the Georgian judicial system to encourage the use of alternatives to imprisonment.

According to Article 40, paragraph 1 of the Criminal Code, the types of sentences are as follows: fines, deprivation of the right to occupy an official position or carry out a particular activity, community service, corrective labour, service restrictions for military personnel, restriction of liberty, fixed term imprisonment, life imprisonment and confiscation of property.

Paragraphs 1 and 2 of Article 41 of the Georgian Criminal Code define the main and ancillary penalties. Corrective labour, service restriction for military personnel, fixed and life imprisonment may be imposed only as main penalties. The other sentences, with the exception of the confiscation of property, may be imposed as ancillary or main penalties. Confiscation of property is always an ancillary penalty.

Article 50, paragraph 2^1 of the Criminal Code of Georgia states that the court may impose a sentence that is less than the minimum sentence prescribed under paragraph 2 of this Article provided a plea bargain is concluded between the parties. Paragraph 5 of the same article provides another possibility for the use of alternatives to imprisonment or softening of terms of imprisonment: When imposing a fixed term imprisonment, the court may, by its judgment, order the service of a certain part of the sentence and count the other part as a conditional sentence provided the accused (convicted) person admits the crime (unless the person has been caught at the scene of the crime or immediately after the crime has been committed), names accomplices and collaborates with the investigation authorities. If, except for the conclusion of a plea bargain agreement, a particularly serious crime has been committed, a conditional sentence may be deemed a quarter of the sentence imposed, one third of the sentence, in the case of a serious crime, and half of the sentence, in the case of a less serious crime.

621. Law of Georgia, No 2287 of 22 July 1999, Parliament of Georgia, consolidated version 31 October 2018.

622. Law of Georgia, No 943 of 19 June 2001, Parliament of Georgia, consolidated version 05 June 2018.

Conditional sentence as an alternative to imprisonment is regulated by Article 63 of the Criminal Code of Georgia. According to this term, specifically paragraph 1, "If a plea bargain is concluded between the parties, the court may rule that the sentence imposed be considered conditional." Another term of imposing conditional sentence is provided in paragraph 3, of Article 63, according to which: "If the convicted person has committed a less serious crime or a crime of negligence and he/she admits it and/or collaborates with investigative authorities, the court may rule that the sentence imposed be considered as a conditional sentence, unless the convicted person had previous conviction for particularly serious or intentionally serious crime in the past."

If the convicted person has committed a particularly serious or intentionally serious crime, or has been previously convicted for committing two or more intentionally serious crimes in the past, the imposed sentence may not be considered as paragraphs 2 and 4 state in the same article.

Articles 64, 65, 66, 67 and 68 define and clarify the terms of probation, imposition of obligation, monitoring and assistance, lifting conditional sentence, or reducing/extending probation period and civil law agreement.

According to Article 64 of the Criminal Code of Georgia, "in the circumstances provided for by Articles 50(5) and 63 of this Code, the court shall prescribe a probation period during which the convicted person may not commit a new crime and shall fulfil the obligation assigned. When imposing a sentence that is more lenient than imprisonment, the probation period shall be at least one year and not longer than three years, when imposing imprisonment, at least one year and not longer than six years, and when imposing the final sentence based on the accumulation of sentences in the case of cumulative crimes and cumulative sentences,- at least two years and not longer than six years."

According to Article 65: "In the case of a conditional sentence, if there are relevant grounds, the court may impose on the convicted person certain obligations: not to change permanent place of residence without the permission of the Probation Bureau, not to establish relationships with persons who may engage him/her in anti-social activities, not to visit a particular place, to provide material support to the family, to undergo a treatment course for alcoholism, drug addiction, toxic addiction or venereal disease, and if the convicted person has committed a domestic crime, to undergo a mandatory training course directed at changing violent behaviour and conduct. The court may also impose on the convicted person other obligations which will help to correct him/her."

Article 65 is important as far as it separately underlines the circumstance where domestic violence has been committed.

Article 66 defines the institutions responsible for assistance to and monitoring of a convicted person. According to the legal term, such institution is the Probation Bureau under the Ministry of Justice of Georgia.

To summarise the answer to the question, it is clear that Georgian legislation allows alternatives to imprisonment, and according to the latest statistics,[623][624]the imposition of alternatives to imprisonment is increasing. For example, in January 2012 and 2018 there were almost an equal

623. http://geostat.ge/cms/site_images/_files/georgian/crime/ianvari/Report_ianvari%202018.pdf

624. http://www.geostat.ge/cms/site_images/_files/georgian/crime/ianvari/Report.January.pdf

number of convicts, 991 (in 2012) and 1,051 (in 2018). In 2012, 416 people were imprisoned, which is 42% of total number of convicts. In 2018, 259 people were sentenced to imprisonment, what totals 24.6% of total convicts.

Currently there are no further institutional reforms planned with regard to the probation system. Also, it is worth mentioning that no surveillance or other covert investigative activities are used to ensure the control of convicts. The Georgian legislation providing the legal framework for sentences and the work of the Probation Bureau does not consider such terms.

108 Pre-trial detention:

a) Is there a minimum threshold for pre-trial detention? If yes, what is the threshold? (Pre-trial detention can as a main rule only be decided for crimes which can be punished with imprisonment above a certain duration, e.g. 1 year or more, which is the case in some MS.)

Georgian legislation does not provide a minimum duration of pre-trial imprisonment (detention); it only defines a maximum duration, which is 72 hours.[625]A person can be detained only when there is a reasonable suspicion to believe that he/she committed a crime that is punishable by deprivation of freedom as punishment, according to the legislation.[626]

b) What is the average duration of pre-trial detention?

This information is not maintained and therefore, we are not aware of the average duration of pre-trial detention.

c) Please describe the rules and procedures governing pre-trial detention and the rules on extending it. What are the rules regarding the revision of decisions on deprivation of freedom and pre-trial detention (automatic or upon request of the suspected)? For how long can a suspected person be deprived of his freedom before a court review takes place? Is there a maximum time limit for the total duration of pre-trial detention?

Criminal procedure legislation provides for two types of detention: detention under court ruling and detention under emergency circumstances. In both cases, there should be a reasonable suspicion that the person committed a crime that requires deprivation of liberty as punishment under the legislation.

625. Constitution of Georgia, (№786, 24/08/1995, published: Official Gazette of the Parliament of Georgia, 31-33, 24/08/1995, last amended: 23/03/2018), art. 13 (3), Criminal Procedure Code, (№1772, 09/10/2009, published: Legislative Herald of Georgia, 31, 03/11/2009, last amended 30/11/2018), art. 174 (5)

626. Criminal Procedure Code, art. 171 (1)

The court issues a warrant for detention when there is probable cause that the person has committed a crime that requires deprivation of liberty as punishment under the legislation, or the person will flee or will not appear before court, will destroy information relevant to the case, or will commit a new crime, or when this involves requesting consent from a relevant foreign state. The prosecutor should apply to court for the warrant according to the place of investigation. The judge examines the issue of detaining an individual without oral hearing and if the requirements prescribed by the law are met, it issues a detention warrant. The decision may not be appealed.

A person may be detained without a court ruling, if: a) the person has been caught in action while or immediately after committing crime; b) the person has been seen at the crime scene and criminal prosecution has been immediately instituted for his/her detention; c) when clear traces of a crime have been found on or with the person or on his/her clothes; d) the person has fled after committing a crime but he/she was identified by an eyewitness; e) the person may flee; f) the person is wanted; or g) detention without a court ruling is allowed by the law of Georgia on International Cooperation in Criminal Matters. Detention without a court warrant is allowed when there is probable cause that the person has committed a crime and the risk that he/she may flee, not appear before court, destroy information relevant to the case or commit a new crime cannot be prevented by an alternative measure proportional to the circumstances of the alleged crime and to the personal characteristics of the accused.[627]

Employees of the body authorised to carry out an investigation, who perform operative functions, maintain public order, conduct investigations or criminal prosecutions, are authorised to detain a person.[628]Detention must happen in accordance with the following rules: when there are grounds for detention, the detaining officer must clearly notify the detained person of those grounds, explain which crime he/she is suspected of committing, and inform him/her that he/she has the right to an attorney, the right to remain silent and to refuse to answer questions, the right not to incriminate himself/herself, and that everything that he/she says may be used against him/her in the court of law. Any statement made by the detainee before he/she was informed about these rights is considered inadmissible evidence. The detaining officer should immediately take the detained person to the nearest police station or to another law enforcement authority.[629]

Following detention, the person should be taken to court. More specifically, no later than within 48 hours following the detention, the prosecutor must file a motion with a relevant magistrate judge, according to the place of investigation, about the use of a preventive measure. In special cases when the accused cannot be brought from the place of custody to court due to his/her illness or a natural disaster or other objective reasons, the judge may hold a court session at the detention facility. If the motion for use of a preventive measure is not filed with the magistrate judge within 48 hours after the detention, the detained person must be immediately released.[630] No later than 24 hours after a motion is filed for application of a preventive measure, the magistrate judge must conduct a hearing for first appearance of the defendant and decide

627. Criminal Procedure Code, (№1772, 09/10/2009, published: Legislative Herald of Georgia, 31, 03/11/2009, last amended 30/11/2018) art. 171

628. Criminal Procedure Code, art. 172

629. Criminal Procedure Code, art. 174

630. Criminal Procedure Code, art. 196

about the application of a preventive measure. The types of preventive measures include detention, bail or any other non-custodial measure, in which case the person will be released from custody.[631]

If pre-trial detention is applied as a preventive measure, its total duration may not exceed nine months. In addition, according to the legislation, the length of a defendant's detention before a preliminary hearing may not exceed 60 days from the date of detention. Upon expiration of the sixty-day period, the defendant must be released.[632] Pre-trial detention can be reviewed based on the initiative of a judge at a pre-trial hearing[633] and, subsequently, every two months.[634]

A party to criminal proceedings has the right to apply to the magistrate judge, according to the place of investigation, for replacement and revocation of a preventive measure.[635]The decision of the first instance court about the application of a preventive measure can be appealed in the Investigative Collegium of the appellate court.[636]

d) How are humane and secure conditions for detainees (in respect of international human rights standards) ensured by the police, justice, prosecution and penitentiary systems? What measures are taken if such standards are not respected?

Georgia has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Resolution of the Parliament of Georgia, dated 22 September 1994), and the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Resolution of the Parliament of Georgia, dated 8 July 2005). Georgia has also recognised the competencies of the Committee against Torture under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1975 (Resolution of the Parliament of Georgia, dated 7 June 2002). Georgia has also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Resolution of the Parliament of Georgia, dated 3 May 2000) and its Optional Protocol (Resolution of the Parliament of Georgia, dated 3 May 2000).

The Constitution of Georgia prohibits torture, inhuman and cruel treatment and punishment, or treatment and punishment infringing upon honour and dignity. The physical or mental coercion of a person detained or otherwise restricted in his/her liberty is prohibited.[637]In addition, by virtue of the Constitution of Georgia, the liberty of an individual is inviolable. Deprivation of liberty or other restriction of personal liberty without a court decision is prohibited. Detention of an individual is allowed by a specially authorised official in the cases determined by law. Everyone detained or otherwise restricted in his/her liberty must be brought before a competent court within no later

631. Criminal Procedure Code, art. 205
632. Criminal Procedure Code, art. 219
633. Criminal Procedure Code, art. 219 (4)
634. Criminal Procedure Code, art. 230[1]
635. Criminal Procedure Code, art. 206
636. Criminal Procedure Code, art. 207
637. Constitution of Georgia, art.9.

than 48 hours. If, within the next 24 hours, the court fails to adjudicate upon the detention or another type of restriction of liberty, the individual must immediately be released. An arrested or detained person must be informed about his/her rights and the grounds for restriction of his/her liberty upon his/her arrest or detention. The arrested or detained person may request the assistance of a defender upon his/her arrest or detention and the request must be met. The term of detention on remand may not exceed nine months.[638]

The Interagency Coordination Council under the Ministry of Justice of Georgia is responsible for implementing measures directed against torture, inhuman and cruel treatment and punishment, or treatment and punishment infringing upon honour and dignity. The Council was established via Presidential Decree No.369 In 2007. On 27 November 2009, the Decree was amended and the Ministry of Justice was designated as the institution responsible for coordinating the implementation process action plan and providing the Council with organisational-technical assistance. The objectives of the Council include: monitoring the situation in the field of combating torture; promoting effective implementation of the functions of relevant state agencies that operate in the field of combating torture, protecting, assisting and rehabilitating victims of torture, and coordinating their actions; developing and periodically updating the Strategy for Combating Torture Effectively and its Action Plan, monitoring its implementation and submitting recommendations to the President of Georgia. The Council is composed of representatives of state agencies and non-governmental and international organisations.

The Criminal Procedure Code[639]provides for procedural guarantees during detention. In particular, a detained person at the time of detention or immediately, as well as prior to his/her interrogation, should be informed, in the language that he/she understands, which crime provided in the Criminal Code of Georgia he is suspected of committing based on a reasonable suspicion. The defendant should be provided with a copy of the detention report. Also, he/she should be informed that he/she has the right to an attorney, the right to remain silent and to refuse to answer questions, the right not to incriminate himself/herself, and that everything that he/she says may be used against him/her in the court of law, as well as the right to undergo free medical examination upon detention, as soon as he/she is transferred to the relevant facility.[640]

No later than 48 hours following detention, the prosecutor must, according to the place of investigation, file a motion with the court for application of a preventive measure. Unless the motion is submitted with a magistrate judge within 48 hours following detention, the detained person must be immediately released,[641] and within 24 hours after the motion was filed initial hearing should be held.

Starting 1 January 2019, Article 191^1 of the Criminal Procedure Code will become effective. Based on this article if a judge, at any stage of criminal proceedings, begins to suspect that a defendant/convicted person has been subjected to torture, degrading and/or inhuman treatment, or if the defendant/convicted person reports such treatment to the judge, the judge applies to relevant

638. Constitution of Georgia, art.13.

639. Criminal Procedure Code (№1772, 09/10/2009, published: Legislative Herald of Georgia, 31, 03/11/2009, last amended: 30/11/2018)

640. Criminal Procedure Code, art. 38

641. Criminal Procedure Code, art. 196

investigative body for further actions. If the life or health of a defendant/convicted person held at the penitentiary facility is put at risk, and/or if a judge begins to suspect that the defendant/convicted person was or may be subjected to torture, degrading and/or inhuman treatment, the judge is may order general director of the Special Penitentiary Service – an agency within the system of the Ministry of Justice of Georgia – to take special measures to ensure protection of such defendant/convicted person.

The Law of Georgia on Police[642]contains regulations about use of coercive measures by the police during detention. To ensure fulfilment of the functions of the police, a police officer has the right to use appropriate and proportionate coercive measures only in the case of necessity and to the extent that the use thereof ensures the achievement of legitimate objectives.[643] The law also prohibits torture, inhuman and degrading treatment in the process of carrying out police measures.[644] The training modules of the Police Academy intended for police patrol officers as well as for district inspectors, envisage teaching standards of communication with citizens and methods of conflict resolution. Human rights and the police is also taught as a separate subject and it includes almost all basic human rights as sub-topics. Within the very same subject, trainees also learn about the use of force and its implications and the principles of using force, as well as topics related to the prohibition of torture. The subject also covers rights related to detention or imprisonment and, more specifically, when detention is considered legitimate and how to carry out such detention.

Following its visit to Georgia in 2014, the CPT underlined the need to create an independent and effective mechanism for cases involving ill-treatment by law enforcement officers, which would ensure investigation of such cases without bias.[645] Based on this recommendation, a mechanism for investigation of possible crimes committed by law enforcement officers was created in Georgia at the legislative level. More specifically, starting from 1 January 2019, the provisions of the Law on State Inspector[646]will become effective, based on which investigative jurisdiction of the State Inspector's Office will be extended to: a) crimes provided in the following provisions of the Criminal Code of Georgia - 144^1–144^3 (torture, threat of torture, degrading or inhuman treatment), subparagraphs "b" and "c" of para.3, Article 332 (abuse of official powers, using violence or a weapon, and by infringing upon victim's personal dignity), Article 335 (providing statement, evidence or opinion under duress) and/or para.2 of Article 378 (interfering with and/or inciting disorder in a penitentiary facility), if these crimes are committed by a representative of law enforcement authorities, as well as by an official or a person equal thereto; b) other crimes committed by a representative of law enforcement authorities, by an official or a person equal thereto, which resulted in deprivation of life of an individual, and when during commission of the crime the individual concerned was in a pre-trial detention isolator or penitentiary facility and/or in any other place where the individual was prohibited from leaving the place, against his/her free will, by a representative of law enforcement authorities, an official or a person equal thereto,

642. Law of Georgia on Police (N 1444-IS, 04/10/2013, published: Website, 28/10/2013, last amended: 21/07/2018)

643. Law on Police, art. 31

644. Law on Police, art. 9

645. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069d4a3

646. Law on State Inspector (N 3273-rs, 21/07/2018, published: Website, 09/08/2018, last amended: 30/11/2018)

and/or the individual was otherwise subjected to effective control of the state.[647]

The Code of Imprisonment[648]provides a number of guarantees for prisoners and convicted persons. According to the Code, complaints related to torture, inhuman and degrading treatment are special cases and are reviewed immediately. The director of a facility or his/her authorised representative and/or the Special Prevention Group must be notified within 24 hours about a complaint related to torture, inhuman and degrading treatment.[649]

According to the Code of Imprisonment, an accused/convicted person has the right to be provided with a living space, food, personal hygiene, clothes, employment and work and personal safety; medical services; visitations with close relatives, with his/her defence lawyer, with representatives of a diplomatic mission or a consular office, and with other diplomatic representatives (in case of an alien); with telephone conversations and correspondence; the possibility to receive and send parcels and money; and free legal aid and legal consultations.

An accused/convicted person has the right to receive general and vocational education; to participate in sport, cultural, educational and religious events; to receive information through the press and other mass media, and have access to fiction and other literature; to carry out individual activities and have the supplies necessary for those activities under the supervision of the administration of the penitentiary facility, and to sell with support of the penitentiary institution objects (pieces of work) made as a result of individual activity; to file a claim or a complaint; to stay in the open air at least one hour a day (enjoy the right to walk in the open air); to leave the penitentiary facility for a short period of time in connection with special personal circumstances; to participate in religious rituals and meet with clergymen based on the regulation prescribed by the Minister's Resolution; to participate in rehabilitation programmes; based on the regulation prescribed by the relevant order.[650]

According to the Code of Imprisonment, the Monitoring Department of the Special Penitentiary Service conducts a systemic monitoring of how employees of the Service observe human rights and comply with the requirements of the Georgian legislation.[651]Notably, accused persons are placed in a detention facility, where there are no convicted persons. The only exception is a mixed-type facility where accused persons should be isolated from convicted persons, at least by living spaces separated from one another.[652] Persons accused in the same case must also be held separately.[653]

Guarantees for the protection of persons held in a pre-trial detention isolator from torture and ill-treatment are provided in Order N423 of the Minister of Internal Affairs[654] based on which

647. Law of Georgia on State Inspector, art. 19

648. Code of Imprisonment (N 2696, 09/03/2010, published: Legislative Herald of Georgia, 24/03/2010, last amended: 21/07/2018)

649. Code of Imprisonment, art. 105

650. Code of Imprisonment, art. 14

651. Code of Imprisonment, art. 31

652. Code of Imprisonment, art. 9

653. Criminal Code, art. 205

654. Order of the Minister of Internal Affairs of Georgia no.423 on adoption of typical provisions and internal regulations of the pre-trial detention isolator of the Ministry of Internal Affairs, art. 6. Published: Website, 03/08/2016, last

a person undergoes an initial medical examination before being placed in a pre-trial detention isolator cell. During initial medical examination, he/she will be questioned by a medical professional about his/her health and visually examined to identify any and all injuries that exist on his/her body. Information about the individual's health will be documented. If a doctor begins to suspect torture and ill-treatment, he/she must notify the chief of the isolator, who will then notify the Prosecutor's Office of Georgia and the General Inspection of the Ministry. When the isolator has no medical facility, an ambulance brigade should be called by the shift supervisor for initial medical examination of a person to be admitted at the isolator. The report on a detainee's external examination should include the external condition of the person to be admitted at the isolator, possible signs of bodily injuries, where, under what conditions and by whom the injuries were inflicted, and whether or not the person to be admitted to the isolator has complaints about anyone. The report is then signed by the person concerned. If he/she refuses to sign, an isolator worker should indicate this on the report. If the person to be admitted to the isolator has complaints and/or if there are recently sustained injuries on his/her body, the isolator chief must immediately notify the Prosecutor's Office and the General Inspection. If the health of the individual is too poor for him/her to be admitted to the isolator, he/she is sent to a corresponding medical facility instead.

The same Order determines the legal status of persons held in a pre-trial detention isolator.[655] In particular, such a person should be provided with: a special living space (cell), food, personal hygiene, clothes and personal safety; medical services; meetings with his/her defence lawyer, with representatives of a diplomatic mission or a consular office, and with other diplomatic representatives (in case of an alien); the possibility to receive parcels; free legal aid and legal consultations, pursuant to the Georgian legislation. The non-discriminatory treatment by isolator staff and other inmates should be ensured.

A person held in a pre-trial detention isolator has the right to file an application and/or a complaint, as prescribed by the Georgian legislation; to be protected from violence and insults by other inmates; to keep and use items allowed by internal regulations; to receive information about duties and responsibilities in the form and language that he/she understands; to receive interpretation services if he/she does not speak the state language. A person held in a pre-trial detention isolator has the right to humane treatment. Restrictions used against him/her should not be stricter than what is required to prevent the person from injuring himself/herself and people around him/her and damaging property, to prevent crime or any other violation of law in the isolator; to prevent the person from disobeying the demands of isolator workers; to repel attacks, prevent group disobedience and/or mass unrest, attempts to escape or interfere with determining the truth in a criminal case. A person held in a pre-trial detention isolator should be provided with access to the phone to be able to contact the General Inspection of the Ministry and/or the Public Defender's Office hotline. If the person is exercising his/her right to contact the General Inspection of the Ministry and/or the Public Defender's Office hotline, isolator staff should protect the confidentiality of his/her conversation.

amended: 26/02/2018.

655. Order of the Minister of Internal Affairs of Georgia no.423 on adoption of typical provisions and internal regulations of the pre-trial detention isolator of the Ministry of Internal Affairs, art.23

The Code of Juvenile Justice[656] adopted by the Parliament of Georgia on 12 June 2015, which harmonises Georgian legislation with international standards in the field of juvenile justice, contains special regulations about juvenile detention and imprisonment. The Code prohibits the deprivation of liberty of minors if the goal of the legislation can be achieved by using less severe measures. Arrest, detention, restriction of liberty and imprisonment of minors is allowed only as measures of last resort and they should be applied for the shortest duration possible and be subject to regular review.[657]

A person that detained a minor, an investigator, or a prosecutor must take all necessary steps upon the detention of the minor to immediately contact his/her parents and, if this is impossible, other close relatives and/or any other person named by the minor should be contacted immediately. A person who detained a minor, an investigator or a prosecutor must, after bringing the minor into the law enforcement body, notify the legal representative of the minor of his/her detention and place of detention, and explain the reason for the detention of the minor and the rights of the accused.[658]

Detained minors should be kept separate from adults in a pre-trial detention isolator. Female and male minors should also be kept separate from one another.[659]

The prosecutor should file a motion for use of a preventive measure with a magistrate judge, according to the place of investigation, as soon as possible but no later than 48 hours after the detention.[660]

e) What measures have been put in place to prevent or prosecute the occurrence of torture and other inhuman or degrading treatment?

As stated earlier, Georgia has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Resolution of the Parliament of Georgia, dated 22 September 1994), and the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Resolution of the Parliament of Georgia, dated 8 July 2005). Georgia has also recognised the competencies of the Committee against Torture under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1975 (Resolution of the Parliament of Georgia, dated 7 June 2002). Georgia has also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Resolution of the Parliament of Georgia, dated 3 May 2000) and its Optional Protocol (Resolution of the Parliament of Georgia, dated 3 May 2000). According to these international instruments, the state has undertaken a commitment to take effective measures against torture and ill-treatment.

656. Code of Juvenile Justice adopted by the Parliament of Georgia on 12 June 2015, (N 3708-Is, 12/06/2015, published legislative herald of Georgia: Website https://matsne.gov.ge/en/document/download/2877281/0/en/pdf, 24/06/2015, last amended: 05/07/2018)

657. Code of Juvenile Justice, art. 9

658. Code of Juvenile Justice, art. 49

659. Code of Juvenile Justice, art. 51

660. Code of Juvenile Justice, art. 54

Firstly, we must note that torture and ill-treatment is subject to blanket prohibition under the Georgian legislation and it is an absolute right. By virtue of the Constitution of Georgia, human dignity is inviolable and is protected by the state. Torture, inhuman or degrading treatment of an individual and use of inhuman or degrading treatment is prohibited.[661]

Torture and inhuman treatment is one of the most serious crimes punishable under the Criminal Code of Georgia. Under Article 144^1 of the Criminal Code, torture is defined as exposing a person, his/her close relative or a person who is dependent on him/her materially or otherwise to such conditions or treating him/her in a manner that causes severe physical pain or psychological or moral suffering, which aims to obtain information, evidence or confession, threaten or coerce, or punish the person for the act he/she or a third person has committed or has allegedly committed, and is punishable by imprisonment for a period of seven to ten years, a fine, with or without restriction of weapon rights.

Under Article 144^2 of the Criminal Code, a threat of the creation of conditions or of the application of the treatment or punishment specified in Article 144^1 of this law, to be carried out for the same purpose, is punishable by deprivation of liberty for the term of up to two years, with or without restriction of weapon rights.

Under Article 144^3 of the Criminal Code, degrading or coercing a person, or exposing a person to inhuman, degrading or humiliating conditions as a result of which he/she suffers severe physical or mental pain or moral suffering, is punishable by fine, or deprivation of liberty from three to seven years, with or without restriction of weapon rights.

Notably, in cases of torture and inhuman treatment, the law prescribes a number of aggravating circumstances subjected to more severe sanctions and in some cases to lifelong deprivation of liberty – e.g. torture using sexual violence. In cases of torture, as well as in cases of inhuman and degrading treatment, the commission of crime by a state official amounts to an aggravating circumstance.

Abuse of official powers[662] and exceeding official powers[663]by an official (including a law enforcement representative) is viewed as a separate crime.

Article 332 of the Criminal Code of Georgia provides the following definition of abuse of official powers: abuse of official powers by an official or a person equal thereto in contempt of public service requirements in order to gain any profit or privilege for oneself or others that results in substantial damage to the right of a natural or legal person, legal public or state interest. This is punishable by fine or by domestic arrest from six months to two years or deprivation of liberty for up to three years, deprivation of the right to hold office or pursue a particular activity for up to three years.

Article 333 of the Criminal Code provides the following definition of exceeding official powers: exceeding official powers by an official or a person equal thereto that has inflicted substantial damage to the right of a natural or legal person, legal public or state interest, is punishable by fine

661. Constitution of Georgia, art. 9

662. Criminal Code, art. 332

663. Criminal Code, art. 333

or by domestic arrest from six months to two years or deprivation of liberty for up to three years, deprivation of the right to hold office or pursue a particular activity for up to three years.

In addition, Chapter 23 of the Criminal Code provides the list of crimes against human rights and freedoms, including: violation of equality of persons; racial discrimination; restriction of rights of a person with disability; illegal deprivation of liberty; human trafficking; trafficking of minors; use of services of a victim of human trafficking, taking him/her as a hostage, torturing or threatening to torture him/her, subjecting him/her to degrading or inhuman treatment; provocation of crime; malicious criminal prosecution of an innocent person; malicious illegal arrest or detention; illegal placement or detention in a psychiatric institution, etc. The judge handling a criminal case should determine during initial hearing whether or not the defendant has any complaints or motions in connection with the violation of his/her rights.[664]

Currently, crimes committed by law enforcement officers, including cases of torture or ill-treatment, fall under the investigative jurisdiction of the prosecution service. Investigation of crimes committed by officers of the prosecution service and their prosecutorial supervision also falls within the jurisdiction of the prosecution service. However, starting on 1 January 2019, provisions of the Law on State Inspector will take effect, based on which the investigative jurisdiction of the State Inspector's Office will be extended to: a) crimes provided in the following provisions of the Criminal Code of Georgia- 144^{1}–144^{3} (torture, threat of torture, degrading or inhuman treatment), subparagraphs "b" and "c" of para.3, Article 332 (abuse of official powers, using violence or a weapon, and by infringing upon a victim's personal dignity), Article 335 (providing statement, evidence or opinion under duress) and/or para.2 of Article 378 (interfering with and/or inciting disorder within a penitentiary facility), if these crimes are committed by a representative of law enforcement authorities, as well as by an official or a person equal thereto; b) other crimes committed by a representative of law enforcement authorities, by an official or a person equal thereto, which resulted in the deprivation of life of an individual, and when, during the commission of the crime, the individual concerned was in a pre-trial detention isolator or penitentiary facility and/or in any other place where the individual was prohibited from leaving the place, against his/her free will, by a representative of law enforcement authorities, an official or a person equal thereto, and/or the individual was otherwise subjected to effective control of the State.[665]

Here we must also note the National Strategy for Protection of Human Rights 2014-2020. Among its objectives are implementation of effective measures against torture and ill-treatment, including transparent and independent investigation. The objectives of the strategy document include:

a) Creating a system that will ensure the prevention of torture and ill-treatment, as well as timely, comprehensive and effective investigation of facts of torture and ill-treatment;
b) Creating effective mechanism for combating torture and ill-treatment, which will address the problem in a systemic way;
c) Implementing effective measures to ensure prevention of torture and ill-treatment by the correctional system, law enforcement bodies and civil servants, and to ensure timely, unbiased and comprehensive response to any violation;
d) Creating effective mechanisms for protection and rehabilitation of victims of torture and ill-treatment;

664. Criminal Procedure Code, art. 197

665. Law on State Inspector, art. 19

e) Informing the public in a timely and effective manner about the prohibition and prevention of torture and other forms of ill-treatment, as well as their investigation.

In recent years, Georgia has made a number of meaningful steps to combat torture and ill-treatment. More specifically[666]

1. Role of a judge in combating torture and ill-treatment in the course of criminal proceedings has been increased. In particular, according to an amendment introduced in the Criminal Code, which will become effective as of 1 January 2019, if during any stage of the criminal proceedings, a judge begins to suspect that the defendant/convicted person has been subjected to torture, degrading and/or inhuman treatment, or if the defendant/convicted person reports such treatment to the judge, the judge applies to the relevant investigative body for further actions.

If life or health of a defendant/convicted person held at the penitentiary facility is put at risk, and/or if a judge begins to suspect that the defendant/convicted person was or may be subjected to torture, degrading and/or inhuman treatment, the judge may order the general director of the Special Penitentiary Service – an agency within the system of the Ministry of Justice of Georgia – to take special measures to ensure the protection of such defendant/convicted person.

2. The Public Defender of Georgia and members of the special preventive group authorised by the Public Defender were given the right to take photos of accused/convicted persons and/or conditions where they are held, places where they walk, medical facility, food facility, common shower rooms, common bathrooms and visitation rooms, with the consent of accused/convicted persons;[667]
3. An amendment was introduced to the Criminal Code, according to which the statute of limitation releasing a perpetrator from criminal liability does not apply to crimes of torture, threat of torture and degrading or inhuman treatment;
4. To ensure access to an attorney and protect attorney-client confidentiality, the rule for exercising the right of accused/convicted persons to meet with an attorney/defender has been adopted. In addition, the Code of Imprisonment and provisions of penitentiary facilities guarantee the confidentiality of meetings between attorneys and accused/convicted persons.[668]
5. At pre-trial detention isolators, to ensure timely access to medical personnel for persons held at facilities for administrative imprisonment, facilities for imprisonment and deprivation of liberty and at psychiatric facilities, in October 2015, the Office of Medical Assistance was established, which contracted medical workers. Medical assistance to individuals held in Tbilisi and in regional pre-trial detention isolators is provided by local medical personnel, while other isolators continue to use emergency brigades. A person undergoes a medical examination before he/she is admitted to an isolator, while in the isolator medical services are provided on as needed basis and/or upon the request of a detained person, any time.

666. http://myrights.gov.ge/uploads/files/docs/6971Report2016-2017.pdf , p. 96-114

667. Order no. 123 of the Minister of Corrections of Georgia, dated 1 Sept 2016 (N 123, 01/09/2016, published: Website, 02/09/2016, last amended: 14/12/2016) , on exercising the right of the Public Defender of Georgia, as well as a member of the Special Preventive Group to take photos at penitentiary facilities of the Ministry of Corrections of Georgia

668. Order no. 157 of the Minister of Corrections of Georgia, dated 2 Nov 2015 (N 157, 02/11/2015, published: Website, 04/11/2015)

When certain services could not be provided on the premises, the person is immediately transferred to an appropriate medical facility, based on the decision of a doctor. According to the standard of penitentiary health, in penitentiary facilities, the services of medical personnel are available without any limitations – an accused/convicted person has the right to unlimited contact with a doctor, if he/she has health complaints. Immediately after an accused/convicted person is admitted at the facility, he/she has a consultation with a doctor, he/she is examined externally (injuries are recorded, if any) and, based on anamnesis, further examination or treatment is planned;

6. A form for documenting torture and ill-treatment according to the Istanbul Protocol has been prepared and adopted;
7. Medical personnel have been trained on issues of documenting and preventing torture and ill-treatment. Personnel in any facility are able to document injuries sustained as a result of torture and ill-treatment;
8. In penitentiary facilities and pre-trial detention isolators, food, sanitary, hygienic and other material conditions have been improved;
9. Independent mechanism for investigation of possible crimes perpetrated by law enforcement officers has been created at the legislative level. It will take effect on 1 January 2019.

In parallel with the foregoing measures, the Action Plan of the Government of Georgia for Protection of Human Rights 2018-2022 defines the following objectives: strengthening legal, procedural and institutional mechanisms for combating ill-treatment; documenting torture and ill-treatment facts according to the Istanbul Protocol; improving quality of independence, effectiveness and transparency of investigation; promoting protection, compensation and rehabilitation of victims of ill-treatment; improving healthcare services; developing principles and procedures for use of coercive measures.[669]

The Public Defender is the guarantor of human rights protection. Based on Article 43 of the Constitution of Georgia, the Public Defender is elected by the Parliament of Georgia for a five-year term, by the majority of the total number of MPs. The Public Defender supervises the protection of human rights and fundamental freedoms nationwide.

The Public Defender of Georgia also carries out the functions of the National Preventive Mechanism stipulated under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[670]

In order to implement the National Preventive Mechanism, the Special Preventive Group must be set up under the auspices of the Public Defender of Georgia. The group must regularly monitor the condition and treatment of detainees and prisoners or persons whose liberty is otherwise restricted, convicted persons, as well as persons in psychiatric facilities, in homes for the elderly and children's shelters, and their treatment, in order to protect them from torture and other cruel, inhuman or degrading treatment or punishment.[671]

669. http://myrights.gov.ge/ka/plan/Action%20Plan%202020?sphere=737&goal=

670. Organic law on the Public Defender, (N 230, 16/05/1996, published: Parliamentary Gazette, 13, 07/06/1996, last amended: 05/09/2018), art. 3^1.

671. Organic Law on the Public Defender, art. 19^1.

109 **In cases where there is a pre-trial detention, in average how long have the suspected persons been deprived of their freedom before a competent judicial authority has decided on the detention? What is the average duration between the lawful arrest and the start of the trial?**

By virtue of the Georgian Constitution, the arrest of an individual is allowed by a specially authorised official in cases provided by law. Everyone arrested or otherwise restricted in his/her liberty must be brought before a competent court no later than within 48 hours. If, within the next 24 hours, court fails to adjudicate upon the detention or another time of restriction of liberty, the individual must be immediately released. Term of imprisonment of an accused may not exceed nine months.[672]

According to the Criminal Procedure Code of Georgia, the term of detention may not exceed 72 hours. Within no later than 48 hours following detention, a detainee should be provided with a bill of indictment.[673] Otherwise, the person should be immediately released. No later than 48 hours after the detention, the prosecutor must, according to the place of investigation, file a motion with the court for application of a preventive measure. Unless the motion is submitted to a magistrate judge within 48 hours after detention, the detainee must be immediately released.[674]Within 24 hours after the motion was filed the initial hearing should be held. At the initial hearing, the court decides whether or not to use a preventive measure. If court decides not to impose imprisonment on an individual, he/she must be immediately released.[675] Therefore, within 72 hours of detention, the person must absolutely appear before court and court supervision over detention is exercised.

The duration of detention as well as imprisonment as a preventive measure are subject to strict restrictions under the legislation. Overall, the duration of imprisonment of an accused may not exceed nine months. Following the expiration of this period, the accused must be released from imprisonment. Imprisonment term commences from the moment the person was detained, and if the person has not been detained – from the moment of enforcement of the ruling of the court about applying this particular preventive measure until the decision of the first instance court that judged the case on merits is delivered.

The term of imprisonment before a pre-trial hearing may not exceed 60 days after his/her detention. Upon expiration of this term, the accused must be released from imprisonment.[676] If the accused has been remanded to custody, before delivering the judgment, periodically, at least once in two months, the presiding judge must, on his/her own initiative, review the necessity of leaving the accused in custody. This two-month period should start running from the day when the pre-trial judge made a decision to leave the detention order in place.[677]

672. Constitution of Georgia,) art. 18.

673. Criminal Procedure Code, art. 174.

674. Criminal Procedure Code, art. 196.

675. Criminal Procedure Code, art. 197.

676. Criminal Procedure Code, art. 205.

677. Criminal Procedure Code, art. 230^1.

As to information on the average duration between lawful arrest and the start of a trial, such statistics are not maintained.

110 Imprisonment after conviction

a) What is the average number of prisoners per cell square metre? What is the present size of the prison population?

Georgian legislation defines the following space allocations per prisoner: At least four square metres per convicted prisoner and at least three square metres per prisoner in pre-trial detention. In practice, there is no set average as the number of prisoners per cell varies according to the type of establishment (low risk, high risk, semi-open). In some prison facilities, inmates are held mostly in single-occupancy cells/solitary confinement (high risk establishments), whilst in others the number can be between 2-8.

The current number of prisoners[678] is 9,990, including 1,637 pre-trial detainees and 7,985 convicted prisoners (including 320 women, 48 juveniles, and 572 foreigners/stateless people).

The table below shows the allocation of prisoners in penitentiary establishments vis-à-vis their capacity limits[679]:

	Penitentiary institutions	Official capacity limits[680]	Actual prison population as of 31/08/2018	
1.	Kutaisi prison N2	1068	1228	Overcrowded
2.	Batumi prison N3	92	54	
3.	Women's prison N5	867	304	
4.	Prison N6	309	179	
5.	Prison N7	29	9	
6.	Prison N8	3170	2857	
7.	Prison N9	72	37	
8.	Prison N 11 for juveniles	106	25	
9.	Prison N 12	335	266	
10.	Prison N14	1362	974	
11.	Prison N 15	1388	1820	Overcrowded
12.	Prison N 16	856	167	
13.	Prison N 17	2000	1877	
14.	Prison N 18	140	111	
15.	Prison N 19	698	82	
	Total	12492	9990	

678. As of 31 August 2018, Statistics provided by the Ministry of Corrections of Georgia, letter dated 26 September 2018, N MOC 3 18 00885839

679. Ibid.

680. Approved by Order N 106 of the Minister of Corrections (dated 27 August 2015)

111 **Do you have a system of alternative sanctions (instead of prison)? What is the ratio of prison sentences compared with alternative sentences? Are alternative measures to pre-trial detention and imprisonment being developed or in place? If yes, please describe the measures.**

Georgia has a system of probation and alternative non-custodial sanctions, enforced by the National Probation Agency under the Ministry of Corrections. According to the Criminal Code of Georgia,[681] there are the following non-custodial sanctions envisioned for adult offenders: a fine, deprivation of the right to hold office or carry out activities; community service; corrective labour; service restrictions for military personnel; house arrest and confiscation of property. Community service, house arrest, fine and deprivation of the right to hold office or carry out activities may be imposed as both basic and ancillary punishments. Confiscation of property may be imposed only as an ancillary punishment.

The Juvenile Justice Code[682] stipulates the following non-custodial sanctions for juvenile offenders: a) a fine; b) house arrest; c) the deprivation of the right to carry out an activity; d) community service. A fine, the deprivation of a right to carry out an activity, house arrest and community service may be imposed both as primary and ancillary sentences. Only one additional sentence may be imposed together with a primary sentence.

A fine is a monetary penalty.[683] The minimum amount of a fine shall be 2,000 GEL. If the relevant article of the special part of the code prescribes imprisonment for up to three years, the minimum amount of the fine shall be at least 500 GEL. The court shall determine the amount of a fine according to the gravity of the crime committed and the material status of the convicted person. The material status shall be determined based on the person's property, income and other circumstances.

Deprivation of the right to hold office or carry out activities[684] shall mean that a convicted person is prohibited from holding an appointed office in the public service or in local self-government bodies or from pursuing professional or other activities. This sanction shall be imposed as a basic punishment for a term of one to five years and as an ancillary punishment for a term of six months to three years. The sanction can be imposed as an ancillary punishment even when it has not been prescribed as a punishment for the committed crime under the relevant article of the Criminal Code of Georgia provided that, based on the character and quality of the threat of the crime and the offender's personality, the court considers it impossible to reserve him/her the right to hold office or carry out activity.

681. Article 40, Criminal Code of Georgia, N 2287, Legislative Herald of Georgia, 41(48), issued on 22/07/1999, published on 13/08/1999, last amended on 21/07/2018

682. Article 66, Juvenile Justice Code of Georgia, N 3708-IIs, Date of issuing: 12/06/2015, date of publication on the website 24/06/2015, last amended on 05/07/2018. URL: https://matsne.gov.ge/en/document/view/2877281?publication=11

683. Ibid., art. 42.

684. Ibid., art. 43.

Community service[685] implies free labour of a convicted person where the type of labour is determined by the Probation Bureau. This sanction can be imposed for a term of 40 to 800 hours and, in some cases stipulated by the Criminal Code, even for a longer period. The daily length of the community service must not exceed eight hours. In the case of non-compliance with community service orders, this punishment shall be substituted by a fine, house arrest or imprisonment. Community service shall not be imposed on disabled persons of first and second categories, pregnant women and women with children under seven years of age, persons of retirement age, as well as for military service conscripts Community service may be imposed as an ancillary punishment even when it has not been prescribed as a sentence under the relevant article of this Code.

Article 71 of the Juvenile Justice Code stipulates the application of community service to minors. Community service shall be imposed on a minor for a period of 40 to 300 hours. The daily duration of community service shall not exceed four hours. If imprisonment is replaced by community service, or if a plea bargain is concluded by the parties, community service may be imposed for a longer term. Community service as an ancillary sentence may be imposed for a shorter term.

Community service shall be imposed on a minor in a manner so as not to obstruct the performance of remunerated work or education. When imposing community service on a minor, it is desirable that the minor is assigned to work at a place where he/she can acquire the experience and skills necessary to become a member of society.

Community service as an ancillary sentence may also be imposed on a minor when this sentence is not provided for by the respective article of the Criminal Code of Georgia.

Corrective labour[686] shall be imposed for a term of one month to two years and it shall be performed at the place of work of the convicted person. When imposing corrective labour, at least five and not more than twenty percent of the amount established by the judgement shall be deducted from the convicted person's salary in favour of the state. If a convicted person deliberately evades corrective labour, this punishment shall be substituted by house arrest or imprisonment. A minor may be deprived of a right to carry out an activity for a period of one to three years.[687]

House arrest[688] implies imposition on a convicted person of the obligation to stay in his/her place of residence for a specific period of a day. It shall be imposed on a person with no criminal record for a term of six months to two years. If imprisonment, community service, corrective labour or fine is substituted by house arrest, it may be imposed for a term less than six months or more than two years. If a convicted person deliberately evades house arrest, this punishment shall be substituted by imprisonment. Generally, house arrest shall be enforced by means of electronic supervision. The decision to not use electronic supervision shall be made by the legal entity under public law operating under the Ministry of Corrections of Georgia – the National Agency for Enforcement of Non-custodial Sentences and Probation. House arrest shall not be imposed on a military conscript or a person having committed a domestic crime. It shall be forbidden for a convicted person to cross the border of Georgia during the period of his/her house arrest.

685. Stipulated by art. 44 of the Criminal Code of Georgia

686. Ibid., art. 45.

687. Juvenile Justice Code, art. 70.

688. Stipulated by art. 47^1, Criminal Code

House arrest shall be imposed on a minor for a period of six months to one year[689] for commission of a minor crime. It shall be imposed in a manner that its execution does not obstruct the performance of remunerated work or education. House arrest is generally enforced by means of electronic monitoring, unless decided otherwise by the National Probation Agency.

Article 63 of the Criminal Code of Georgia and Article 74 of Juvenile Justice Code stipulate the application of conditional sentence respectively to adult and minor offenders. The court may rule that the sentence imposed be considered conditional, if there is a plea bargain concluded between the parties; if the committed crime is not particularly grave or intentionally grave; if a convicted person has committed a less grave crime or a crime of negligence and he/she admits it and/or collaborates with investigative authorities, and there is no previous conviction for a particularly grave or intentionally grave crime in the past; and there are no previous convictions for two or more intentional grave crimes in the past. In the case of a conditional sentence, a supplementary punishment may be imposed.

According to the Juvenile Justice Code, the court may hold that the imposed sentence be considered conditional if a minor, who has no previous convictions for intentional crimes, has committed a less serious or serious crime.

In the case of a conditional sentence,[690] if there are relevant grounds, the court may impose on the convicted person certain obligations: not to change permanent place of residence without the permission of the Probation Bureau, not to establish relationships with persons who may engage him/her in anti-social activities, not to visit a particular place, to provide material support to the family, to undergo a treatment course for alcoholism, drug addiction, toxic addiction or venereal disease, and if the convicted person has committed a domestic crime, to undergo a mandatory training course directed at changing violent behaviour and conduct. The court may also impose on the convicted person other obligations, which will help to correct him/her.

When imposing a fixed-term imprisonment, the court may, by its judgement, order the completion of a certain part of the sentence and count the other part as a conditional sentence provided the accused (convicted) person admits the crime (unless the person has been caught at the scene of the crime or immediately after the crime has been committed), names accomplices and collaborates with the investigation authorities. If, except for the conclusion of a plea bargain agreement, a particularly serious crime has been committed, a conditional sentence may be deemed a quarter of the sentence imposed, one third of the sentence for a serious crime, and half of the sentence in the case of a less serious crime.[691]

When a plea bargain[692] is concluded between the parties, the court may rule that the sentence imposed be considered conditional, except when the convicted person has committed a particularly serious or intentionally serious crime, or the convicted person was previously convicted for particularly serious or intentionally serious crime in the past or two or more such crimes.

689. Article 69, Juvenile Justice Code

690. Article 65, Criminal Code

691. Criminal Code, art. 50.5.

692. Ibid., art. 63.

In the case of applying a conditional sentence in the circumstances described above (provided for by Articles 50(5) and 63 of the Criminal Code), the court shall prescribe a probation period during which the convicted person may not commit a new crime and shall fulfil the obligation assigned. When a more lenient punishment than imprisonment is imposed, the probation period must be at least one and not more than three years, and when imprisonment is imposed, the probation period must be at least one and not more than six years, and when the final punishment is imposed based on the accumulation of sentences in the case of cumulative crimes and cumulative sentences, the probation period must be at least two years and not more than six years.

Ratio of prison sentences compared to alternative sanctions (statistics[693] for 7 months in 2018):

- Deprivation of liberty – 2,010 cases (24.3% of all sanctions imposed) impacting 2,328 persons (25.2% of all persons convicted)
- Conditional sentence – 4,146 cases (50.2%) impacting 4,565 persons (49.5%)
- Fine – 1,598 cases (19.4%) impacting 1,812 persons (19.6%)
- Community service – 478 cases (5.8%) impacting 495 persons (5.4%)
- Other – 0.3%

Georgian legislation also permits release on parole. The Criminal Code[694] stipulates that a person completing community service, corrective labour, service restrictions for military personnel or house arrest may be released on parole if the court considers that serving the full sentence is no longer required for his/her correction. A person who has been sentenced to fixed-term imprisonment, except for a convicted person placed in a penitentiary institution of special risk, may be released on parole if the Local Council of the Special Penitentiary Service (a parole board) under the Ministry of Justice considers that serving the full sentence is no longer required for his/her correction. In addition, this person may in full or in part be released from serving the ancillary punishment.

Cases of parole for juvenile convicts are reviewed by a separate Local Council (parole board). No later than three months prior to the date of release of a convicted minor on parole, the Penitentiary Service shall inform the National Probation Agency of the possible release of the convicted minor on parole. The National Probation Agency shall study the family situation and living conditions of the convicted minor, which may affect the decision of the Local Council of the Penitentiary Service, and shall send the findings of the study to the Penitentiary Service.[695]

When released on parole and if there are relevant grounds, the court may impose on the convicted person certain obligations, as prescribed in the Article 65 of the Code, which he/she shall fulfil during the period of the outstanding sentence. These obligations/conditions for parole include: not to change permanent place of residence without the permission of the Probation Bureau, not to establish relationships with persons who may engage him/her in anti-social activities, not to visit a particular place, to provide material support to the family, to undergo a treatment course for alcoholism, drug addiction, toxic addiction or venereal disease, and if the convicted person has committed a domestic crime, to undergo a mandatory training course directed at changing violent

693. Supreme Court of Georgia, Statistical data on the review of criminal cases, http://www.supremecourt.ge/files/upload-file/pdf/2018w-statistic-3.pdf

694. Article 72, Criminal Code of Georgia

695. Article 95, Juvenile Justice Code

behaviour and conduct. The court may also impose on the convicted person other obligations that will help to correct him/her. At least six months of imprisonment should be served for a person to be able to apply for parole.

The court may release on parole a prisoner sentenced to life imprisonment (after having served 20 years of the sentence) from further serving the sentence for the probation period provided for in Article 64(2) of this Code. When making the decision, the court shall consider the character of the crime, the way in which the convicted person behaved during his/her service of sentence, the fact of committing a crime by him/her in the past, his/her criminal record, the risk of repeated commission of crime, the family circumstances and the personality of the convicted person.[696]

The legislation also allows for commutation of prison sentence to a more lenient alternative. The Local Council (parole board) of the Special Penitentiary Service under the Ministry of Justice may substitute the remaining prison term (after a prisoner has served at least one third of a prison sentence) for a less grave crime by a more lenient sentence, based on the prisoner's conduct while serving a sentence in a penitentiary establishment. In addition, this person may in full or in part be released from serving the ancillary punishment (except for the confiscation of property).

The Local Council of the Ministry of Corrections of Georgia can substitute the remaining portion of a sentence of a person convicted to a fixed-term imprisonment, except for a convicted person placed in a special risk penitentiary facility, for community service by his/her own consent or house arrest. The legislation[697] also envisions the possibility of compassionate release due to illness or old age. The court may release a convicted person from further serving the sentence if his/her health status is not compatible with serving the sentence and if, based on the expert report, the recovery and/or substantial improvement of the health status of the convict is not expected. The Joint Standing Commission of the Ministry of Justice of Georgia and the Ministry of IDPs from Occupied Territories, Labour, Health and Social Affairs of Georgia may release a convicted person placed in a penitentiary institution from further serving the sentence if he/she has an illness or a combination of illnesses and it is difficult to maintain his/her basic life indicators irrespective of the treatment being administered, and if, furthermore, the expectation of lethality determined by the council of physicians on the basis of consensus is high.

The court may release a person that has attained an elderly age while completing his/her sentence (women – from 65 years of age, men – from 70 years of age) from further serving the sentence if he/she was not sentenced to life imprisonment and has served at least half of the sentence.

The legislation also stipulates a suspended sentence for pregnant women. According to Article 75 of the Criminal Code, a court may defer the completion of a sentence for a pregnant woman for up to a year after she has had a baby. When the child attains the age of one year, the court shall exempt the convicted person from serving the outstanding sentence or substitute the outstanding sentence with a more lenient sentence or deliver a decision to return the convicted person to the respective institution to serve the outstanding sentence.

This possibility of deferment of the sentence for pregnant women/mothers of young children can be revoked if, after being warned by the Probation Bureau, a convicted person refuses to take care

696. Article 72^1 of Criminal Code of Georgia

697. Article 74 of the Criminal Code

of the child or evades the responsibility of nurturing the child. In this case, the court may, upon the recommendation of the Probation Bureau, vacate the deferral and send the convicted person to serve the sentence at the place assigned in the judgement.

According to the legislation,[698]the National Agency for the Enforcement of Non-custodial Sanctions and Probation (briefly, National Probation Agency), a legal entity of public law under the jurisdiction of the Ministry of Justice, is responsible for the supervision of offenders convicted of non-custodial sanctions (except for fines and limitations of military personnel), probation, or released on parole and other measures, through its territorial bodies – probation bureaus.

According to the statistics[699] of the National Probation Agency, in September 2018, there were 21,203 convicted people under its supervision, including 20,651 on probation (probationers) and 552 sentenced to alternative, non-custodial sanctions (including 1,287 women and 85 juveniles).

The 552 individuals serving alternative sanctions as principal sanctions included 220 parolees, 13 with suspended sentences, 104 deprived of the right to hold office or pursue an activity, and 215 sentenced to community service. There were also 830 individuals serving alternative sanctions in addition to other principal sentence (including 329 deprived of their right to hold a position or pursue an activity; and 501 sentenced to community service).

As described above and stipulated by the Criminal Code of Georgia, the Local Council of the Special Penitentiary Service under the Ministry of Justice is a quasi-judicial body, responsible for making decisions about the early release of prisoners, including parolees, and substitution of a prison sentence for a more lenient sanction.

Alternative measures to pre-trial detention, according to the legislation,[700] include: bail, an agreement not to leave and to behave properly, personal surety, supervision by the command of the behaviour of a military service member.

The following measures may also be applied against the accused along with measures of restraint: an obligation to appear in court at the specified time or upon summons; prohibition to engage in certain activities or pursue a certain profession; an obligation to report to the court, police or any other public authority daily or with other frequency; supervision by the agency designated by the court; electronic monitoring; obligation to be at a certain place during certain hours or without that; prohibition to leave or enter certain places; prohibition to meet certain people without special authorisation; obligation to surrender a passport or any other identity document; any other measure prescribed by the court that is necessary to achieve the purpose of the measure of restraint, including prohibition to enter certain places and to approach the victim in cases where a person is prosecuted under charges related to the violence against women and/or domestic violence or domestic crime.

698. Law on the Procedures for Enforcement of Non-custodial Measures and Probation, N 4956, adopted on 19/06/2007, Georgian Legislative Herald N 24 (02/07/2007), last amended on 11/07/2018

699. Statistical data, National Probation Agency, September 2018, available at: http://probation.moc.gov.ge/eng/main/index/1167

700. Article 199, Criminal Procedure Code of Georgia, N 1772, adopted on 09/10/2009, published in Georgian Legislative Herald, 31, 03/11/2009, last amended on 21/09/2018

112 **When a case is remanded from the Supreme Court to a lower court for retrial, is the lower court then obliged to respect the positions of the Supreme Court on the legal issues the Supreme Court has dealt with? Does it happen often that one and the same case is remanded several times from the Supreme Court? If so, do you consider that this is a problem which you need to rectify?**

According to the Law on Common Courts, the Supreme Court of Georgia is the court of highest review and final instance in the administration of justice throughout Georgia.[701]

The Criminal Procedure Code of Georgia does not recognise the mechanism of remanding cases to lower courts for retrial in criminal cases. According to the Criminal Procedure Code of Georgia, the Supreme Court of Georgia, under its judgment, makes one of the following decisions: a) to overrule the judgment of conviction of the court of appeal and render a judgment of acquittal instead; b) to overrule the judgment of acquittal of the court of appeal and render a judgment of conviction instead; c) to make changes to the judgment of the court of appeal; d) to uphold the judgment of the court of appeal and deny the cassation appeal. The decision of the cassation court is final and may not be appealed.[702]

As to civil cases, according to the Civil Procedure Code, the cassation court invalidates the decision and remands the case to the court of appeals for retrial, if: a) circumstances of the case have been established in violation of procedural norms that has resulted in an erroneous decision on the case and additional fact-finding process is required; b) there are absolute grounds for invalidating the decision – e.g. the composition of the court of decision was not compliant with the relevant provisions; the court heard the case in the absence of one of the parties because they were not provided prior notice according to law, or in absence of the party's legal representative, if such representation was stipulated by law, unless such legal representative approves the litigation; the decision was delivered on a case that is not under the subject-matter jurisdiction of the court; the decision has been delivered based on a hearing for oral argument in which the procedures for public access to proceedings were violated; the reasons provided are incomplete to such extent that it is impossible to check its legal grounds; the decision is not signed by the judges that previously participated in the hearing of the case; the records of hearing of the court of appeal are not enclosed to the case file.

In the foregoing cases, the court of cassation must base the decision on legal evaluation that must be binding for the court of appeals. A case may be remanded to the same or another composition of the court of appeals for retrial.[703]

As to remanding a case to an appellate court by the Supreme Court during administrative proceedings, these situations are subject to civil procedure legislation, so applicable regulations are the same ones discussed earlier.[704]

701. Law on Common Courts, art. 14

702. Criminal Procedure Code, art. 307

703. Criminal Procedure Code, art. 412

704. Administrative Procedure Code, (N 2352, 23/07/1999, published: Legislative Herald of Georgia 39(46), 06/08/1999, last amended: 30/11/2018), art. 1

Number of civil or administrative cases that can be remanded to lower court for retrial is not limited. However, the Supreme Court has remanded a total of 27 cases to appellate court for retrial and the last decision to remand a case was made in 2013. As to administrative cases, decisions to remand a case to a lower court are more frequent – in particular, according to the Supreme Court database, there were 1,174 cases remanded to lower courts for retrial.

RIGHT TO A FAIR TRIAL

113 How is the right to a fair trial enshrined in the legislation?

The Constitution of Georgia provides that 1) Everyone shall have the right to apply to the court to protect his/her rights and freedoms; 2) Everyone shall be tried only by the court that has jurisdiction over the particular case; 3) The right to a defence shall be guaranteed; 4) No one shall be tried twice for the same offence; 5) No one shall be held responsible for an action that did not constitute an offence at the time it was committed and no law shall have retroactive force unless it reduces or abrogates responsibility; 6) An accused shall have the right to request the attendance and examination of witnesses on his/her behalf under the same conditions as the prosecution witnesses; 7) Evidence obtained unlawfully shall have no legal force; 8) No one shall be obliged to testify against themselves or against their familiars as determined by law; 9) Any person, who has illegally sustained damage inflicted by the state, autonomous republics, or self-government bodies and officials, shall be guaranteed full compensation by the court from the funds of the state, autonomous republic, or local self-government as appropriate.[705]

Criminal procedure legislation also contains basic principles of a fair trial. In particular, according to the Criminal Procedure Code, a person should be considered innocent unless his/her culpability has been established by a final guilty verdict. No one is obligated to prove his/her innocence. The burden of proof lies with the prosecutor. A prosecutor may dismiss charges. A suspicion that arises during evaluation of evidence, which cannot be confirmed under the procedure prescribed by law, must be resolved in favour of the defendant (convicted person).[706]

The Criminal Procedure Code determines that the accused (convicted or acquitted person) has the right to a fair trial. The accused has the right to swift justice within the time limits prescribed by the Code. A person may relinquish this right if so required for the appropriate preparation of the defence. The court must prioritise the consideration of a criminal case in which the accused has been remanded into custody.[707]

Upon commencement of criminal prosecution, criminal proceedings must be carried out based on the equality of arms and adversarial principles. Parties have the right to file a motion, obtain,

705. Constitution of Georgia, art. 42

706. Criminal Procedure Code, art. 5

707. Criminal Procedure Code, art. 8

request through court, submit and examine all relevant evidence, as prescribed by the Code.[708]

According to the Criminal Procedure Code, bringing charges falls within the exclusive powers of the prosecution. When making a decision to initiate or terminate criminal prosecution, the prosecutor exercises discretionary powers and is guided by public interest.[709]

According to the criminal procedure law of Georgia, upon detention, or if a person is not detained, immediately upon his/her recognition as accused, also before any interrogation, the accused has the right to be notified in the language that he/she understands, of the offence provided in the Criminal Code of Georgia, commission of which he/she has been reasonably suspected of. Immediately after a person is recognised as accused, also before any interrogation, he/she has the right to be informed that he/she has the right to an attorney, the right to remain silent and to refuse to answer questions, the right not to incriminate himself/herself, and that everything that he/she says may be used against him/her in the court of law. He/she also has the right to receive a free medical examination upon imprisonment or in the event of detention – upon his/her request. The accused may exercise the right to be silent at any time. If the accused prefers to remain silent, this may not be considered as evidence of his guilt. The accused has the right to select and retain defence counsel, and the right to replace the defence counsel at any time, or if the accused is indigent, he/she has the right to have an attorney at the expense of the state. The accused should have a reasonable amount of time and the means for preparing the defence. The relationship between the accused and his/her defence counsel must be confidential. No restrictions may be imposed on the communication between the accused and his/her defence counsel in a way that impedes the due performance of defence. The accused may choose not to have defence counsel and to defend himself/herself on his/her own, for which he/she must be provided with sufficient time and means. The accused may not turn down the services of defence counsel if there is a case of mandatory defence established under the Code. The accused has the following rights: to independently or through a defence counsel carry out an investigation, lawfully obtain and provide evidence in the manner provided for by the Code; to request the conduct of investigative actions and provision of evidence that is required to refute the charges or to mitigate the liability; to participate in the investigative actions carried out on his/her personal and/or his/her defence counsel's motion; to request attendance of the defence counsel during the investigative action conducted with his/her participation. The accused has the right to, during the conduct of interrogation and other investigative actions, use the services of an interpreter at the expense of the State, if he/she has no or insufficient command of the language of a criminal trial, or has such physical disability that does not allow him/her to communicate without an interpreter. The accused may participate in the investigation of his/her charges, as well as in a court hearing, directly or indirectly, by using technical means; file motions and challenges; examine the evidence of the defence in the same conditions as those in which the evidence of the prosecution are examined; inspect the appeal filed by the party and express his/her opinion on it; examine the record of the court hearing and make remarks on it.[710]

The right to a fair trial also applies to civil and administrative cases. According to the civil procedure

708. Criminal Procedure Code, art. 9

709. Criminal Procedure Code, art. 16

710. Criminal Procedure Code, art. 38

legislation, everyone has the right to protect his/her rights through court.[711]Only a court should administer justice on civil matters based on equality of all persons before the law and the court.[712]

According to the Law on Common Courts, a judge is independent in his/her work. Judges assess facts and make decisions only according to the Constitution of Georgia, universally accepted principles and standards of international law, other laws and by their inner conviction. No one may request a judge to make a report on a particular case or instruct him/her what kind of decision to make. Removal of a judge form a trial or termination of his/her powers prematurely and/or his/her transfer to another position is prohibited, except as provided for by law.[713]

114 **Elaborate on the legislative structures in place to ensure effective access to legal aid, commenting on the scope and resources of the legal aid service.**

Article 42 of the Constitution of Georgia guarantees the right to a fair trial. The Constitution pays particular attention to the realisation of the rights of detained or imprisoned persons. In particular, under Article 18, upon his/her arrest or detention, an arrestee or a detainee should be made aware of his/her rights and the grounds for the restriction of his/her liberty. An arrestee or a detainee may request the assistance of an advocate upon his/her arrest or detention and the request must be satisfied.

Legal aid at the expense of the state is provided by the Legal Aid Centre that has 19 legal aid bureaus and consultation centres in different regions of Georgia. Free legal aid is regulated by the Law of Georgia on Legal Aid adopted in 2007.[714] The law provides a detailed definition of the types of legal aid and categories of individuals that are entitled to legal aid at the state's expense. In particular, the court recognises the following types of legal aid: d) drafting legal documents (applications, claims, complaints, statements of defence, motions and other documents); b) defending an accused, convicted or acquitted person in criminal proceedings; c) protecting victims in criminal proceedings when conducting a defence in cases provided by the CPC at the expense of the state; d) providing representation in court with respect to administrative and civil cases; and e) providing representation before an administrative body.

115 **How is effective access to free legal aid in criminal cases ensured? Can free legal aid also be obtained in civil cases? Please give details on the criteria for receiving legal aid in civil matters.**

711. Civil Procedure Code, (N 786, 26/06/1997, published: Parliamentary Gazette, 31, 24/07/1997, last amended: 30/11/2018) art. 2

712. Civil Procedure Code, art. 5

713. Law on Common Courts, art. 7 (1)

714. Law of Georgia on Legal Aid (N 4955, 19/06/2007, published: Legislative Herald of Georgia24, 02/07/2007, last amended: 30/05/2018)

In the criminal process an individual can access free legal aid if he/she is indigent or when defence counsel is mandatory according to the Criminal Procedure Code and the defence counsel hired by the accused is not participating in the criminal case.[715]

The Criminal Procedure Code determines cases in which the defendant has access to free legal aid. The accused has the right to choose and retain defence counsel, and the right to replace the defence counsel at any time, or if the accused is indigent, he/she has the right to have an attorney funded by the state. The accused should have reasonable time and means for preparing the defence.[716] According to the code, the state will cover the expenses of defence, if: a) the indigent accused requests the assignment of a defence counsel; b) there is a case of mandatory defence specified by the Criminal Procedure Code and the defence counsel hired by the accused is not participating in the criminal case (defence by agreement).[717]

The procedural legislation requires an accused person to have defence counsel: a) if the accused is a minor; b) if the accused has no command of the language of the criminal proceedings; c) if the accused has physical or mental disabilities that prevent him/her from defending himself/herself; d) if a ruling (decree) has been issued on the assignment of a forensic psychiatric examination; e) if the Criminal Code of Georgia prescribes life imprisonment as punishment for the action committed; f) if negotiations on the conclusion of a plea bargain with the accused are in progress; g) if the criminal case is reviewed by a jury; h) if the accused fails to appear before law enforcement bodies; i) if the accused has been expelled from a court room; j) if the accused is an unidentified person; j) if the issue considered is extradition of the accused from a foreign country using simplified procedure; and k) in cases directly provided for by the Criminal Code.[718]

Not only accused/convicted/acquitted minors but also minor-victims have the right to free legal aid in criminal cases. In addition, a minor-witness can access free legal aid if he/she cannot afford an attorney.[719]

In addition to criminal cases, the Law on Legal Aid also provides for free legal aid in administrative and civil cases. In particular, it stipulates that legal aid (representation in court) is provided in civil and administrative cases and representation before an administrative body is provided in administrative cases if a person cannot afford a representative (attorney) and it is expedient to provide legal aid to him/her based on the importance and complexity of the case.[720] Transitional provision of the law provides the list of issues in connection to which free legal aid (representation in court) can be provided on the foregoing grounds.[721] In such cases, a judge makes a reasoned judgment and applies to the legal aid service with a request for appointment of an attorney at the expense of the state. The legal aid service is obligated to comply with the judgment about appointment of an attorney at the expense of the state.[722]

715. Criminal Procedure Code, art. 46

716. Criminal Procedure Code, art. 38

717. Criminal Procedure Code, art. 46

718. Criminal Procedure Code, art. 45

719. Code of Juvenile Justice, (N 3708-IIს, 12/06/2015, published: Website, 24/06/2015, last amended: 05/07/2018) art. 15

720. Law on Legal Aid, art. 5

721. Law on Legal Aid, art. 23^1

722. Civil Procedure Code, art. 47 (2)

In addition, the Civil Procedure Code also provides for mandatory defence. In particular, when a court is considering the issue of recognising a person as a recipient of support, this person should have an attorney[723] and if he/she does not have an attorney, defence counsel will be provided to him/her at the state's expense.

Cases of mandatory defence are also provided in the Administrative Procedure Code. In particular, when the issue being considered is placement of a person in a hospital for involuntary psychiatric assistance, the person should have an attorney. If he/she cannot afford to have an attorney, the court can appoint one at the state's expense.

The Code of Administrative Offences stipulates that if an administrative offence is punishable by administrative detention only or administrative detention alongside another type of punishment, and the person cannot afford an attorney, he/she has the right to request one at the state's expense.[724]

The Legal Aid Service prepares legal documents for indigent persons about any issues related to civil and administrative cases, irrespective of the importance or complexity of a case.[725]

116 How are defence lawyers appointed in cases where their fees are paid through the legal aid system? Are they entitled to fees according to normal lawyer tariffs?

When legal aid is provided at state expense, it is provided by the legal entity of public law Legal Aid Service. At the Legal Aid Service there is a structural entity – the Bureau of Legal Aid – which employs lawyers that provide legal aid. In addition, to avoid conflicts of interest, the bureau maintains a register of invited public lawyers that are involved in a case when opposing sides apply to the bureau for assistance and legal aid is provided at the expense of the state. Such legal aid may be provided by a private provider. In this case, the provider is a legal entity of private law or an attorney selected on the basis of a call for tenders, who provides legal aid based on the law and within the operational area defined by the agreement. Legal aid bureaus, providers or consultation centres ensure the involvement of a public lawyer in criminal proceedings: a) based on the application of an accused, convicted and/or acquitted person or his/her representative or close relative; or b) based on an application of a body conducting proceedings according to the procedure established by the legislation of Georgia.[726]

The Legal Aid Service is funded through: a) special purpose funds allocated from the state budget of Georgia; b) donations and grants; and c) other income permitted by the legislation of Georgia.[727]A public lawyer employed by the Legal Aid Service receives a salary for providing legal aid on criminal, civil and administrative cases, and the legal aid rendered by an invited public lawyer is remunerated according to the rule on the amount of remuneration of labour and its payment, approved by the Council.[728]

723. Civil Procedure Code, art. 363^{19}

724. Administrative Procedure Code, art. 21^{18}

725. Law on Legal Aid, art. 5 (2^{1})

726. Law on Legal Aid, art. 21 (1)

727. Law on Legal Aid, art. 22

728. Law on Legal Aid, art. 21 (7)

As to the difference between rates of compensation of private lawyers and lawyers appointed at state expense, because there are no pre-determined tariffs and rates in Georgia, it is impossible to compare the two. Every private lawyer or law firm sets its own compensation rates.

117 **Regarding the rights of defence, please provide information on how the following rights are guaranteed in legislative and practical terms. (Please comment on the allocation of resources and the institutional framework in place to facilitate the exercise of these rights.)**

a) The right of the defendant to be informed promptly in a language which he/she understands of the nature and cause of the accusation against him/her;

According to the Constitution of Georgia, the state language of Georgia is Georgian and in Abkhazia – also Abkhazian.[729]Legal proceedings are conducted in the state language. An individual not having a command of the state language must be provided an interpreter.[730]

The Constitution guarantees the right of a detained or imprisoned person to have his/her rights and the basis for limiting his/her freedoms explained.[731] The Criminal Procedure Code also stipulates that the moment a person is detained, or if he/she is not detained – the moment he/she is recognised as the accused – he/she should be informed in the language that he/she understands, of the offence provided in the Criminal Code of Georgia, the commission of which he/she has been reasonably suspected of.[732]The accused may, during the conduct of an interrogation or other investigative actions, use the services of an interpreter at the expense of the state, if he/she has no or insufficient command of the language of a criminal trial, or has such physical disability that does not allow him/her to communicate without an interpreter. If the accused has no or inadequate command of the language of criminal proceedings, the verdict should be immediately after it is announced or simultaneously interpreted for him/her in his/her native language or the language that he/she understands.[733] A defendant that has no command of the language of proceedings is subject to mandatory defence.[734]

In addition to the accused, any other participant of proceedings (witness, victim) that has no or inadequate command of the language of criminal proceedings can have access to the services of an interpreter. An interpreter is called into criminal proceedings when: a) a trial participant has no or insufficient command of the language of the criminal proceedings; or b) it is necessary to translate a text in the language of the criminal procedure.[735]

729. Constitution of Georgia, art. 2
730. Constitution of Georgia, art. 85 (2)
731. Constitution of Georgia, art. 18 (5)
732. Criminal Procedure Code, art. 38 (1)
733. Criminal Procedure Code, art. 38 (8)
734. Criminal Procedure Code, art. 45
735. Criminal Procedure Code, art. 53

Similar regulations are also provided in the Code of Administrative Offences, according to which in the event of an administrative detention, the arresting officer must explain the following to the arrested person upon arrest, in a form that he/she understands: a) administrative offence committed by him/her and the grounds for administrative detention; b) right to an attorney; c) right to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her and to the administration at his/her place of work or study.[736]

b) The right to have the free assistance of an interpreter, if one cannot understand or speak the language used in the court;

As explained earlier, if a person does not have a command of the language of the proceedings, he/she will be provided an interpreter. The Law on Common Courts of Georgia determines that the services of an interpreter will be compensated from the state budget of Georgia.[737]

Criminal procedural legislation also contains a provision, based on which the state will pay for the services of an interpreter appointed to the accused as well as other participants of the proceedings. The accused has the right to, during the conduct of the interrogation and other investigative actions, use the services of an interpreter at the expense of the state, if he/she has no or insufficient command of the language of a criminal trial, or has such physical disability that does not allow him/her to communicate without an interpreter.[738]The witness has the right to testify in his/her native language or any other language of his/her choice, if he/she has no or inadequate command of the language of proceedings, and to use the services of an interpreter at the expense of the state.[739]

According to the Code of Administrative Offences, a person prosecuted for an administrative offence has the right to speak in his/her native language and if he/she has no command of the language of proceedings, he/she may use the services of an interpreter.[740]

c) The defendant's right to have adequate time and facilities for the preparation of his/her defence;

The accused has the right to choose and retain defence counsel, and the right to replace the defence counsel at any time. If the accused is indigent, he/she has the right to have an attorney at the expense of the state. The accused should have reasonable time and means for the preparation of a defence. The relationship between the accused and his/her defence counsel must be confidential. No restrictions may be imposed on the communication between the accused and his/her defence counsel in a way that impedes the due performance of defence.[741]

736. Code of Administrative Offences, art. 245,

737. Law on Common Courts, art. 10

738. Criminal Procedure Code, art. 38

739. Criminal Procedure Code, art. 49

740. Code of Administrative Offences, art. 252

741. Criminal Procedure Code, art. 38

The accused must be notified in a timely manner of the time and place of investigative actions, which are to be carried out upon his/her or his/her defence counsel's motion. If the accused and/or his/her defence counsel are not notified within a reasonable period of the time and place of the investigative actions, the investigative actions should not be carried out, and the evidence obtained as a result of such investigative actions must be considered inadmissible.[742]

d) The right to defend oneself in person or through legal assistance of one's own choosing;

The Constitution of Georgia guarantees the right to a fair trial, alongside other rights. The right to a defence shall be guaranteed.[743]

The Criminal Procedure Code defines the rights of the accused. It also regulates the right to defence of the accused and clarifies that the accused has the right to choose and retain a defence counsel, and the right to replace the defence counsel at any time. If the accused is indigent, he/she has the right to have an attorney at the expense of the state. The relationship between the accused and his/her defence counsel must be confidential. No restrictions may be imposed on the communication between the accused and his/her defence counsel in a way that impedes the due performance of defence. The accused may refuse to use the services of a defence counsel, and to defend himself/herself on his/her own, for which he/she must be provided with sufficient time and means. The accused may not refuse the services of defence counsel if there is a case of mandatory defence established under the Criminal Procedure Code. It is mandatory for the accused to have defence counsel if: he/she is a minor; he/she has no command of the language of the criminal proceedings; he/she has physical or mental disabilities that prevent him/her from defending himself/herself; if a ruling (decree) has been issued on the assignment of a forensic psychiatric examination; if the Criminal Code of Georgia prescribes life imprisonment as punishment for the action committed; if negotiations on the conclusion of a plea bargain with the accused are in progress; if the criminal case is reviewed by a jury; if the accused fails to appear before law enforcement bodies; if the accused has been expelled from a court room; if he/she is an unidentified person; if the issue considered is extradition of the accused from a foreign country using a simplified procedure.

In addition, the accused may: independently or through a defence counsel, carry out an investigation, lawfully obtain and provide evidence in the manner provided for by this Code; request the conduct of investigative actions and provision of evidence that is required to refute the charges or to mitigate the liability; participate in the investigative actions carried out based on his/her personal and/or his/her defence counsel's motion; and request the attendance of the defence counsel during the investigative actions conducted by him/her. The accused may participate in the investigation of his/her charges and in a court hearing, directly or indirectly, by technical means; file motions and challenges; examine the evidence of the defence in the same conditions as those in which the evidence of the prosecution are examined; inspect the appeal filed by the party and express his/her opinion on it; examine the record of the court hearing and make remarks on it. The accused may, in cases and in the manner provided for by the Criminal Procedure Code, appeal the actions of an investigator to a prosecutor, appeal the actions and decision of a prosecutor to

742. Criminal Procedure Code, art. 40 (2)

743. Constitution of Georgia, art. 42

a superior prosecutor, and in cases provided for by this Code, to a court. The accused/convicted person may appeal a court decision and request a copy of the appealed decision.[744]

The Code of Administrative Offences determines that a person prosecuted for an administrative offence may familiarise himself/herself with the case material, give statements, submit evidence and file petitions; have access to legal services through defence counsel during the hearing; speak in his/her native language and, if he/she does not speak the language of the proceedings, have access to the eservices of an interpreter; and appeal an order issued in the case. The administrative proceedings must be held in the presence of the person being prosecuted for the administrative offence. The case may be heard in the absence of the person only if there is information that he/she was informed in a timely manner of the venue and time of the hearing but he/she has not filed a petition for the postponement of the hearing.[745] In this way, in administrative proceedings, having an attorney is a right not an obligation, except for cases of mandatory defence. According to the Code of Administrative Offences, defence is mandatory when proceedings have been brought against an unidentified offender.[746]

e) The right to examine, or have examined, witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her.

According to the Constitution of Georgia, which regulates the procedural rights of an individual, the accused has the right to demand that his/her witnesses be summoned and questioned under the same conditions as the prosecution's witnesses.[747]According to the Criminal Procedure Code, the accused has the right to: participate in the investigation of his/her charges, as well as in court hearings, directly or indirectly, by using technical means; file motions and challenges; examine the evidence of the defence in the same conditions as those in which the evidence of the prosecution are examined; inspect the appeal filed by the party and express his/her opinion on it; examine the record of the court hearing and make remarks on it.[748]

118 Provide information about the elaboration and implementation of legislation regarding the following legal concepts:

a) The principle that a person cannot be prosecuted for something that was not a criminal offence in national or international law at the time when it took place;

The Constitution of Georgia is the supreme law of the land. All other legal acts should comply with the Constitution. Georgian legislation complies with the universally recognised principles and

744. Criminal Procedure Code, art. 38

745. Code of Administrative Offences, art. 252

746. Code of Administrative Offences, art. 312^1

747. Constitution of Georgia, art. 42

748. Criminal Procedure Code, art. 38

norms of international law. An international treaty or agreement of Georgia, unless it contradicts the Constitution of Georgia or the Constitutional Agreement, must take precedence over domestic normative acts. The state must recognise and protect universally recognised human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state must be bound by these rights and freedoms as directly acting law.

According to the Constitution of Georgia, no one may be held responsible on account of an action, which did not constitute a criminal offence at the time it was committed. A law that neither mitigates nor abrogates responsibility has no retroactive force.[749]

According to the Criminal Code, the criminality and punishability of the action shall be determined under the criminal law, which was applicable at the time the action was committed. A criminal law that nullifies the criminality of the action or improves the condition of the offender shall be retroactive. A criminal law, which provides the criminality of the action, toughens punishment or otherwise aggravates the condition of the offender, shall in no way be retroactive.

If a new criminal law commutes the sentence for the action wherefore the convict is serving it, this sentence must be shortened to the extent permitted by the new criminal law. If, from the perpetration of the crime to conviction, the criminal law was changed several times, the most lenient law shall be applied.[750]

b) Non-application of a heavier sentence than was applicable at the time the criminal offence was committed;

As stated earlier, the Constitution of Georgia does not provide for retroactivity of a norm. In particular, laws that neither mitigate nor abrogate responsibility have no retroactive force. The Criminal Code provides for a similar principle. In particular, according to the Code, the criminality and punishability of the action shall be determined under the criminal law, which was applicable at the time the action was committed. The time of committing a crime shall be the time when the perpetrator or accomplice acted or must have acted irrespective of when the result is produced.[751]A criminal law that nullifies the criminality of the action or improves the condition of the offender shall be retroactive. A criminal law that redefines the criminality of the action, toughens punishment or otherwise aggravates the condition of the offender shall in no way be retroactive. If a new criminal law commutes the sentence for the action wherefore the convict is serving it, this sentence must be shortened to the extent permitted by the new criminal law. If, from the perpetration of the crime to conviction, the criminal law was changed several times, the most lenient law shall be applied.[752]

The Code of Administrative Offences, which is criminal in nature with regard to penalties, determines that an administrative offender may be held liable based on the legislation that is in force at the time and at the place where the offence is committed. Normative acts reducing

749. Constitution of Georgia, art. 42

750. Criminal Code, art. 3

751. Criminal Code, art. 2

752. Criminal Code, art. 3

or abolishing penalties for administrative offences have retroactive force, i.e. they also apply to administrative offences committed before the issue of such acts. Acts introducing or increasing penalties for administrative offences have no retroactive force. Proceedings for administrative offences must be conducted based on the legislation that is in force at the time and at the pace at which the hearing on the offence is held.[753]

c) Proportionality of the severity of the penalty to the criminal offence.

According to the Constitution of Georgia, torture, inhuman or degrading treatment and use of inhuman and degrading punishment is prohibited.[754]The Criminal Code determines that punishment is aimed at the restoration of justice, prevention of new crimes and socialisation of a criminal. The purpose of punishment shall be fulfilled through pressure upon the convict and other person in order that they develop a feeling of responsibility for the protection of law and order. The purpose of punishment is not to inflict physical suffering on a human being or humiliation of his/her dignity. A more severe type of sentence may be handed down only in case the less severe type of sentence fails to insure the fulfilment of the purpose of the sentence.[755]

When delivering a sentence, the court shall take into consideration the extenuating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, illegal will demonstrated in the action, character and extent of breach of obligations, manner of implementing the action, method employed and illegal consequence, past life of the criminal, his/her personal and economic conditions, behaviour after the action, especially willingness to effect restitution or reconcile with the victim.[756]

The commission of a criminal offence with the motive of intolerance on the base of race, skin colour, language, sex, sexual orientation, gender identity, age, religion, political or other opinion, disability, nationality, national, ethnic or social origin, financial standing, place of residence or any other discriminatory ground amounts to aggravating circumstance for all relevant crimes provided in the Criminal Code. In addition, the commission of a criminal offence by one family member against another, against a helpless person, against a minor or in his/her presence, with particular cruelty, by using a weapon or threatening to use a weapon, or by abusing official status, amounts to aggravating circumstances for all relevant crimes provided in the Criminal Code.[757]

If after perpetrating the crime the criminal appears and pleads guilty, acts in a manner conducive to the detection of the crime, and there are no aggravating circumstances, the term or extent of the crime should in no way exceed three fourths of the maximum term for the most severe crime provided under the relevant article or part of the article of the Special Part of the Code.[758]

If the article or part of the article of the Special Part of the Code provides for extenuating and

753. Code of Administrative Offences, art. 17

754. Constitution of Georgia, art. 9

755. Criminal Code, art. 39

756. Criminal Code, art. 53

757. Criminal Code, art. 53^1

758. Criminal Code, art. 54

aggravating circumstances such as Corpus Delicti, the same circumstance may not be taken into consideration when awarding a sentence.[759]

According to the Code of Administrative Offences, an administrative penalty is a measure of liability and is applied to educate an administrative perpetrator in the spirit of respect for the rule of law and for the ways of social life as well as to avoid the commission of new offences, either by the offender or other persons.[760] When imposing a penalty, due regard must be had for the nature of the offence, the person of the offender, the gravity of his/her fault, his/her material status, and extenuating and aggravating circumstances.[761]

The following are deemed extenuating circumstances when imposing liability for administrative offences: a) sincere repentance by the offender; 2) aversion of the adverse consequences of the offence, voluntary compensation of damages or mediation of the harm by the offender; 3) commission of an offence in the heat of passion or due to the concurrence of grave personal or family circumstances; 4) commission of an offence by a minor; and 5) commission of an offence by a pregnant woman or by a woman who has a child under one year of age.

The legislation of Georgia may also provide for other mitigating circumstances for administrative offences. A body (official) that is authorised to decide a case of an administrative offence may deem other circumstances extenuating that are not specified in the legislation.[762]The following are deemed aggravating circumstances for administrative offences: 1) continuation of unlawful conduct regardless of the demand of authorised persons to cease; 2) repeated commission of a similar offence during a year, for which the person has already been subjected to administrative liability, or commission of an offence by a person who has previously committed a crime; 3) involvement of a minor into an offence; 4) commission of an offence by a group of persons; 5) commission of an offence during natural disasters or in other extraordinary circumstances; and 6) commission of an offence in a state of alcoholic intoxication. The body (official) authorised to impose an administrative penalty has the right not to regard these circumstances as aggravating.[763]

119 **Please provide details on how the right not to be tried or punished twice in criminal proceedings for the same criminal offence is interpreted in your domestic law.**

The Constitution of Georgia reinforces the universally recognised principle against convicting a person for the same criminal offence twice and stipulates that no one can be convicted twice for the same crime.[764]This principle is also reinforced in the criminal procedural legislation, which prohibits detaining a person twice based on the same evidence and/or the same information. A

759. Criminal Code, art. 53

760. Code of Administrative Offences, art. 23

761. Code of Administrative Offences, art. 33

762. Code of Administrative Offences, art. 34

763. Code of Administrative Offences, art. 35

764. Constitution of Georgia, art. 42

person may not be charged with and/or convicted of an offence for which he/she was acquitted or convicted once before.[765]

120 **Please provide details on how the rights of victims of crime are ensured in criminal proceedings. Is there legislation in place concerning the fair and appropriate compensation for the injuries that crime victims have suffered?**

In today's criminal procedure legislation, a victim is not a case party in criminal proceedings. The only parties are the prosecutor, the investigator, the convicted/accused/acquitted person and his/her lawyer. As to the victim, he/she is a participant in the proceedings but he/she may not exercise the rights that parties of the proceedings enjoy. For example, a victim may not participate in hearings, question witnesses, appeal court decisions, etc.

According to the Criminal Procedure Code, a victim is a state, physical or legal person, who sustained moral, physical or material damage directly as a result of crime.[766]Chapter 7 of the CPC is entirely dedicated to the rights of a victim and determines that victims enjoy all the rights of a witness and have all the duties of a witness. In a criminal case that resulted in the death of the victim, the victim's rights and duties are assigned to his/her next of kin (victim's successor). The investigator, prosecutor and judge have no right to deny the victim's successor any of his/her rights. When there is a dispute among several next of kin, the victim's successor will be determined by casting lots. In cases involving preparation (plotting) of crime or attempted crime, the state or natural or legal person that may have sustained damage is the victim.

If there are appropriate grounds for recognising a person as a victim or as a legal successor of the victim, the prosecutor must issue a decree on his/her own initiative or upon the filing of the relevant application by that person. If a prosecutor does not satisfy the application within 48 hours after it has been filed, the person in question may apply once to a superior prosecutor to recognise him/her as a victim or a legal successor of the victim. The decision of a superior prosecutor is final and may not be appealed, except when a particularly serious offence has been committed. If a superior prosecutor does not satisfy the appeal, the person in question may appeal the decision of the prosecutor to a district (city) court according to the place of investigation.

A prosecutor, or upon his/her instructions, an investigator, must familiarise the victim with the decree on the recognition of a person as a victim and explain to him/her all the rights provided for by the Code, and the procedures related to the exercise of those rights, and must draft a report to that effect. The report should be signed by the victim and the person(s) who drafted it. The victim may make comment on the report. If a victim refuses to sign the report, the reason for the refusal must be recorded in the report.

If, after issuing a decree on the recognition of a person as a victim, it is established that there are no appropriate grounds for such recognition, the prosecutor must make a decision to annul that decree and must inform the victim about it. A victim may appeal the decision of the prosecutor

765. Criminal Procedure Code, art. 18

766. Criminal Procedure Code, art. 3

annulling the decree on the recognition of a person as a victim to a superior prosecutor, only once. The decision of a superior prosecutor is final and it may not be appealed, except when a particularly serious offence has been committed. If a superior prosecutor does not satisfy the appeal, the victim may appeal the decision of the prosecutor to a district (city) court, according to the place of investigation.[767]

According to the criminal procedure legislation, a victim has the right to: a) be informed about the essence of the charges brought against the accused; b) be informed about the procedural actions provided for by Article 58 of the Code; c) during the hearing of a case on the merits, during the review of a motion for rendering a ruling without hearing the merits and at the sentencing hearing, give testimony concerning the damage he/she has incurred as a result of the offence, or submit in writing that information to the court; d) obtain, free of charge, copies of a decree/ruling, and/or of a judgment on the termination of investigation and/or criminal prosecution, or of other final court decisions; e) be indemnified for the expenses incurred as a result of participating in the proceedings; f) recover his/her own property that was temporarily confiscated during the investigation and court hearing for the needs of the case; g) request the application of special protective measures if his/her own or his/her family member's or close relative's life, health and/or property is endangered; h) be informed on the progress of the investigation and review the materials of the criminal case, unless this contradicts the interests of the investigation; i) upon request, obtain information on the measure of restraint applied against the accused and information on the accused/convicted person's release from a penitentiary facility, unless this creates a risk for the accused/convicted person; j) review materials of the criminal case at least 10 days before a preliminary hearing; k) request the prosecution to file a motion for closing, in part or in full, a court hearing for the purposes specified in Article 182(3) of the Code; and l) receive explanations as to his/her rights and obligations.

Upon satisfying a request for obtaining the information and for reviewing materials, a prosecutor/investigator drafts a report. If satisfying the request contradicts the interests of the investigation, the prosecutor/investigator, immediately upon the elimination of the grounds for denying the request, is obligated to inform the victim and provide him/her information on the progress of the investigation and familiarise him/her with the materials of the criminal case. If the request referred to in this article is denied, the prosecutor must issue a reasoned decree. A victim may appeal the decree, only once, to a superior prosecutor.[768]

Upon request, the prosecutor must provide advance notice to the victim of the place and time of the following procedural actions: a) the initial appearance of the accused before a magistrate judge; b) preliminary hearing; c) main hearing; d) a hearing at which a prosecutor's motion requesting the passing of a judgment without hearing a case on the merits is considered; e) sentencing hearing; and f) appellate or cassation court hearing. This information should be provided to the victim in writing, except when the transfer of the information through other means is reasonable under the given circumstances and allows sufficient time for making appropriate decision. The prosecutor is also obligated to notify the victim of the conclusion of a plea bargain.[769]

767. Criminal Procedure Code,art. 56

768. Criminal Procedure Code, art. 57

769. Criminal Procedure Code, art. 58

A prosecutor must, by a decree, decide to terminate an investigation and/or a criminal prosecution, except for cases provided for by para.3 of the Article. The prosecutor must, within a week after making the decision, submit a copy of the decree to the victim. Before rendering a decree to terminate a criminal prosecution by exercising discretionary powers, the prosecutor is obligated to notify the victim of that fact and draw up a report.

A victim may appeal a decree of the prosecutor to terminate an investigation and/or a criminal prosecution to a superior prosecutor. A decision of the superior prosecutor should be final and it may not be appealed, except when a particularly serious offence has been committed. In that case, if a superior prosecutor does not grant the appeal, the victim may appeal the decision of the prosecutor to a district (city) court, according to the place of investigation. A court must deliver a judgment within 15 days, with or without an oral hearing. A decision made by the court may not be appealed.[770]

Before issuing an order refusing to initiate a criminal prosecution, the prosecutor must consult with the victim and prepare a report, and if a decree is issued, he/she must send a copy to the victim within one week after the order was issued. A victim can appeal a decree of a prosecutor refusing to initiate criminal prosecution to a supervising prosecutor, only once. The decision of the supervising prosecutor is final and may not be appealed, except for the case when an especially serious crime or crime that legally falls under the jurisdiction of the State Inspector has been committed. In this case, if the supervising prosecutor denies the appeal, the victim can appeal the prosecutor's decision with the regional (city) court, according to the place of investigation. The court must deliver its ruling within 15 days, with or without oral hearing. The decision made by court may not be appealed.[771]

Regardless of a ruling ordering partial or full closure of a court session, the judge may allow the person who has been recognised as a victim in the given case to attend the session either in full or in part.[772]

As to compensation of damage sustained by a victim, this is outside the scope of criminal regulations. The Criminal Procedure Code stipulates that a person may request compensation for damages in civil procedures.[773]A plea bargain does not prevent a victim from filing a civil suit.[774]

A victim can request compensation for damages under the civil procedure. In particular the Civil Procedure Code contains the rule for compensation of damage as a result of a crime.[775]In this case, within the dispute on material damages, plaintiffs are exempt from paying state duty.[776]

770. Criminal Procedure Code, art. 106

771. Criminal Procedure Code, art. 168

772. Criminal Procedure Code, art. 182

773. Criminal Procedure Code, art. 92

774. Criminal Procedure Code, art. 217 (3)

775. Civil Procedure Code, Chapter XXXIV[3]

776. Civil Procedure Code, art. 46 (1(d))

PROTECTION OF MINORITIES AND CULTURAL RIGHTS

121 How are the principles of non-discrimination and equal treatment of minorities ensured? Please provide details of constitutional and legislative provisions as well as the institutional framework.

Non-discrimination and equal treatment of minorities are ensured by a number of legislative provisions initiated by the government. The Law on Elimination of All Forms of Discrimination was adopted in May 2014. It prohibits any form of discrimination, and among other provisions, takes into consideration the legal interests of various minority groups. In particular, the law provides for equality regardless of race, skin colour, language, sex, age, citizenship, origin, place of birth, place of residence, property or social status religion or belief, national, ethnic or social background, profession, marital status, health,, disability, sexual orientation, gender identity and expression, political or other opinions.

In 2014 the Government of Georgia also approved the Human Rights Strategy and 2014-2020 Action Plan, with one of its main components being ethnic/national minority rights. Together with other issues, the National Strategy on Human Rights Protection establishes the provision of freedom of faith and confession as well as the protection of minority rights as priorities. The strategy entails conducting measures for the prevention and elimination of discrimination, provision of possibility for religious unions to conduct activities without limitations, improvement of the level of national language knowledge among ethnic minorities, increase of inclusion of minorities in the social, economic, and cultural life, raising awareness about equality and tolerance, and other important measures.

Besides these two important governmental documents adopted in the reporting period, the Georgian legal framework has active antidiscrimination mechanisms that are effectively implemented and present an important guarantee of the protection of minority rights. First of all, provisions of the Constitution of Georgia provide equal rights and prohibit discrimination on the basis of ethnicity and religion. According to Article 14 of the Constitution, “All people are free by birth and are equal under the law regardless of their race, skin colour, language, religion, political and other views, national, ethnic, and social background, origin, property and title position, and place of residence”.

Current Georgian legislation in various other spheres is also oriented on equality and elimination of discrimination. Sanctions established by the Criminal Code of Georgia for violation of equal rights (Article 142) must be mentioned here. Sanctions relate to facts of racial discrimination performed with the aim of creating national and racial animosity or discord or humiliating national honour and dignity. According to changes made in 2012, the Criminal Code of Georgia increases the punishment if the crime is committed based on any form of discrimination. According to the changes, it was defined that “committing a crime on racial, skin colour, language, sex, sexual orientation, gender identity, age, religion, political or other views, citizenship, national, ethnic or social background, origin, property or title position, place of residence or other discriminative ground with a motive of intolerance is an aggravating circumstance to the responsibility for all corresponding crimes defined by the Code.”

Important antidiscrimination provisions were taken into account in the Law on Protection of Personal Data as of 28 December 2011. The law provides the guarantee that a person's racial or ethnic background, being the person's personal data, will be protected and violation of the person's privacy will not take place.

The legislative base defining the educational policy of Georgia, in particular the Law of Georgia on General Education and the Law on Higher Education, also applies an anti-discriminatory approach. The Law on General Education provides everyone with the right to receive education (Article 9) and equal access to education (Article 3.2a). The law on higher education obliges higher education institutions to provide equal treatment to students and academic staff (Article 16.1d) and prohibits discrimination on religious or ethnic basis (Article 3.2h).

The legislative framework defining the Georgian media policy also has antidiscrimination provisions. In particular, the Law of Georgia on Broadcasting prohibits airing programmes that in any form create a clear and direct danger of establishing racial, ethnic, religious or other feud, or encouraging discrimination or violence against any group. It also prohibits airing programmes that specifically aim to highlight a person's or group's physical abilities, ethnic background, religion, views, sex, sexual orientation and other characteristics or status (Article 56). It must also be mentioned that according to the abovementioned law, the Public Broadcaster is obliged to reflect in its programmes the existing ethnic, cultural, language, religious, age, and gender diversity of the country.

The steps made towards the elimination of discrimination in the cultural policy of Georgia are also prominent. First of all, the defining legislative framework of the culture policy and its provisions must be mentioned. Cultural policy of Georgia is defined by the Law on Culture, according to which Georgian citizens are equal in cultural life regardless of their national, ethnic, religious and language background (Article 6).

In addition, the adoption of the Organic Law of Georgia on Local Self-Governance Code as of 5 February 2014, initiated by the Ministry of Regional Development and Infrastructure of Georgia, must be mentioned regarding the establishment of equality in the economic, social, political and cultural life of ethnic minorities. While regulating issues of local self-governance, the new code takes into account the equality before the law of Georgian citizens, including representatives of national minorities, and provides equal protection of their rights. According to item 2 of Article 6, citizens of Georgia have the right to elect and be elected to bodies of local self-governance in the order defined by the present law and election legislation, regardless of their race, skin colour, language, sex, religion, political and other views, national, ethnic and social background, origin, property and social status Also, according to clause 2 of Article 85 of the present law, other legislative and statutory acts and within the frames defined by the normative administrative and legislative acts of the local municipality council and in defined order, any person has the right to use without limitations the form of citizen participation in the exercise of local self-governance. Item 4 of the Article 85defines the specific forms of citizen participation in the exercise of local self-governance as follows: a) general meeting of the settlement; b) petition; c) union of civic advisors; d) participation in meetings of the local municipality council and commission of the local municipality council; e) receiving reports on work performed by a municipality's councillor/mayor and members of the local municipal council. It must also be mentioned that any person has the right, without prior notification and/or prior permission, to attend public meetings of the local municipal council and commission of the local municipal council.

To increase the access of representatives of national minorities to the Organic Law of Georgia on Local Self-Governance Code, in 2014 the Code was translated and published in Azeri and Armenian languages under the coordination of the Ministry of Regional Development and Infrastructure, financed by USAID within the Democratic Governance in Georgia programme. It was disseminated in the regions populated by minorities.

As for the institutional framework, minority related issues and policies are coordinated by the State Minister's Office for Reconciliation and Civic Equality, which initiated a comprehensive policy document aiming at the civic integration of minority communities. This document, called the State Strategy on Civil Equality and Integration, was first adopted in 2009 and further developed and improved in 2015. The document is supplemented by a corresponding action plan for 2015-2020.

This framework document prepared jointly by the Office of the State Minister and independent experts, revealed the positive and negative tendencies encountered during the implementation of the concept. The drafting process involved independent experts and included large-scale consultation activities with the participation of ethnic minority communities. The Office of the OSCE Higher Commissioner on National Minorities performed an international assessment of the document. The development of the document and outline of the new action plan were unilaterally positively assessed by both local and international experts. The new document on civic integration is based on the principles of equality and approach of "more diversity, more integration." The general aim of the document is to protect the cultural values and identity of each member of the society, while civic integration is defined as the creation of appropriate conditions for representatives of all ethnic groups to fully participate in the country's development.

According to the newly adopted strategic vision, the main aims are united around four directions: equal and full-fledged participation in civic and political life; creation of equal social and economic conditions and opportunities; provision of access to high-quality education and improvement of state language knowledge; and preservation of ethnic minorities' culture and provision of a tolerant environment(State Strategy on Civic Equality and Integration and 2015-2020 Action Plan, Government of Georgia, 2015). The Action Plan to the Strategy defines a list of various specific measures to undertake for five years and indicates the corresponding responsible institutions. At the end of each calendar year, the Strategy also envisages development of an annual action plan to be implemented over the next year. The document also establishes mechanisms for reporting and evaluation, according to which annual reports are implementation reports will be prepared. Development of a mid-term evaluation document is envisaged.

The approved strategic document provides for more interaction with the majority, as civic integration is a process that involves every member of society. A significant novelty of the strategy is taking into account such issues as support of small and vulnerable ethnic minorities. According to the document, the government takes responsibility for satisfying the educational and legal needs of small and vulnerable ethnic groups, as well as implementation of the study of the languages of these groups in public schools. Another important novelty of the strategy is consideration of the gender aspect. In particular, it is the responsibility of the government to protect the rights of women belonging to ethnic minorities, as well as provide for their needs and integration.

With the aim of appropriate and efficient implementation of the measures envisaged by the national strategy and action plan, the Office of the State Minister coordinates the State Interagency

Commission that unites all ministries and other state bodies involved in the implementation of policy for civic integration of ethnic minorities. With the current management of the Office of the State Minister, the work of the commission became more effective and efficient, which is reflected in the number of meetings conducted and wide spectrum of the issues reviewed. Along with formal adjustment of the mechanisms for institutional management of policy for protection and civic integration of ethnic minorities, during the past years the functional load and responsibilities of corresponding governmental structures became clear. Thematic working groups were established within the interagency commission where commission members and representatives of the NGO sector jointly review current issues and challenges and prepare suggestions and recommendations. Events and responsibilities for 2017 are correspondingly distributed among the following ministries and other bodies: Ministry of Culture and Monument Protection of Georgia; Ministry of Labour, Healthcare and Social Protection of Georgia; Ministry of Regional Development and Infrastructure of Georgia; Ministry of Justice of Georgia; Ministry of Education and Science of Georgia; Ministry of Sport and Youth Affairs of Georgia; Ministry of Internal Affairs of Georgia; Office of the Public Defender of Georgia; Central Election Committee of Georgia; Local municipal council of the Tbilisi Municipality; Mayor's Office of Batumi; Administration of the State Representative – Governor of Kvemo Kartli; Administration of the State Representative – Governor of Samtskhe-Javakheti; Administration of the State Representative – Governor of Kakheti; Public Broadcaster of Georgia; LEPL National Centre for Professional Development of Teachers; LEPL National Centre of Evaluation and Examinations; LEPL Police Academy of the Ministry of Internal Affairs of Georgia; National Library of the Parliament of Georgia; Ministry of Corrections of Georgia; Ministry of Agriculture of Georgia; Z. Zhvania State School of Public Administration; LEPL D. Aghmashenebeli Academy of National Security of Georgia; and Administrations of State Representatives – Governors of regions populated by ethnic minorities.

Another important decision made by the current government of Georgia in the sphere of institutional management of minorities was the separation of policies for ethnic and religious minorities. As mentioned above, the component of ethnic minority integration is coordinated by the Office of the State Minister for Reconciliation and Civic Equality Issues. As to religious diversity and the problems faced by religious minorities, this sphere is monitored and coordinated by the State Agency for Religious Issues that was established in 2014 upon a governmental decree and was tasked with managing the state policy on religion.

122 **Please indicate when you plan to hold the next population census. Have the Law and all implementing measures on the Census questionnaire been adopted and when? Is its financing ensured? Does the questionnaire include a question on ethnic origin? How do you expect to protect personal data while gathering the needed statistics on minorities? Please explain.**

The exact date for the next population census has not yet been defined. The most recent population census was conducted in the period of 5-19 November 2014 based on the Law of Georgia on Official Statistics adopted by the Parliament on 11 December 2009. This law sets out rules for defining census dates, preparation and implementation activities, processing of collected

data, and publishing and dissemination of results. It defines the key provisions and methods of census, and the participation of the population. The main responsible institution for conducting the census is the National Statistical Office (Geostat).

Geostat, with the involvement of governmental institutions, scientific organisations and other stakeholders, reviews and defines methodological and organisational issues related to conducting the census. It determines the list of actions to be carried out at the level of administration and territorial units.

Prior to the 2014 population census, Geostat considered recommendations from the UN and other international organisations in order to improve methodology and the questionnaire instrument. Geostat also conducted a series of trainings for the relevant personnel involved in conducting the census. In total, 15,000 people were trained, who conducted face-to-face interviews.

According to the relevant legislation, funds for financing the census activities are allocated in the state budget.

Questions related to ethnic origin as well as religious affiliation and mother tongue were included in the content of the census questionnaires. However, citizens had the right not to disclose their ethnic origin. The population census was not conducted in the occupied territories of Abkhazia and South Ossetia. A breakdown of the population of Georgia by ethnicity is provided below.

Measures undertaken for the protection of personal data

Pursuant to Article 28 of the Law of Georgia on Official Statistics, individual responses shall be treated as confidential and shall not be disclosed. Individuals' responses are kept in accordance with legally established rules. At the same time, census personnel shall not inform anyone about the content of the questionnaire filled out by a respondent. Violating the rules on use of individual data shall entail responsibility under the legally established rules. Individual data may be disseminated only in a consolidated and generalised way.

Ethnic composition of Georgia according to 2014 population census

Ethnicity	Number	Percent
Georgian	3,224,564	86.83%
Azeri	233,024	6.27%
Armenian	168,102	4.53%
Russian	26,453	0.71%
Ossetian	14,385	0.39%
Yezid	12,174	0.33%
Kurd	1,596	0.04%
Ukrainian	6,034	0.16%

Kist	5,697	0.15%
Greek	5,544	0.15%
Assyrian	2,377	0.06%
Turkish	1,663	0.04%
Jewish	1,405	0.04%
Avar	1,060	0.03%
Abkhazian	864	0.02%
Moldovan	770	0.02%
Polish	740	0.02%
Roma	604	0.02%
German	438	0.01%
Belarusian	431	0.01%
Udin	174	0.00%
Bulgarian	98	0.00%
Lithuanian	98	0.00%
Latvian	81	0.00%
Estonian	47	0.00%
Czech	37	0.00%
Other ethnicity	4,240	0.11%
Not indicated	1,104	0.03%

123 **Please provide statistical information, if available, on the situation of minorities as compared with the majority population in respect of**

- **Housing**
- **Education**
- **Health services**
- **Employment and unemployment**

Geostat does not provide statistical information on the situation of minorities with regards to the abovementioned dimensions. However, data include statistical information on fluency of native languages according to regions, as well as the number of households according to Georgian language fluency of household members by region. Moreover, the Ministry of Education and Science of Georgia provides statistical information about number of non-Georgian schools and number of minority pupils.

T1. Population by region, by native languages and fluently speak Georgian language

	Total								
	Total	*Native languages:*							
		Georgian	Abkhazian	Ossetian	Azeri	Russian	Armenian	Other	Not indicated
Georgia	**3,713,804**	**3,254,852**	**272**	**5,698**	**231,436**	**45,920**	**144,812**	**30,742**	**72**
Tbilisi	**1,108,717**	1,014,079	96	1,281	14,640	25,993	37,500	15,086	42
Adjara Autonomous Region	**333,953**	321,823	113	23	232	6,500	3,237	2,017	...
Guria	**113,350**	111,343	...	15	33	742	998	215	...
Imereti	**533,906**	530,672	12	43	85	1,755	528	810	...
Kakheti	**318,583**	272,737	...	1,953	32,183	2,310	1,483	7,902	...
Mtsketa-Mtianeti	**94,573**	90,370	...	578	2,297	332	150	843	0
Racha Lechkhumi and Kvemo Svaneti	**32,089**	31,992	0	21	...	50	...	23	0
Samegrelo Zemo Svaneti	**330,761**	328,570	17	17	55	1,585	117	399	...
Samtskhe-Javakheti	**160,504**	79,065	...	91	74	979	79,878	413	0
Kvemo Kartli	**423,986**	219,706	13	277	176,417	4,849	20,095	2,620	...
Shida Kartli	**263,382**	254,495	...	1,399	5,419	825	824	414	...

Fluently speak Georgian language							
Total	*Native languages:*						
	Georgian	Abkhazian	Ossetian	Azeri	Russian	Armenian	Other
3,409,015	**3,254,852**	**163**	**4,831**	**43,579**	**29,179**	**57,316**	**19,095**
1,082,680	1,014,079	57	1,010	10,121	18,171	29,584	9,658
328,651	321,823	70	17	160	3,595	2,233	753
112,653	111,343	...	...	19	394	745	139
532,786	530,672	12	37	38	1,152	411	464
290,873	272,737	...	1,729	8,068	1,437	1,251	5,649
93,702	90,370	0	501	1,816	221	98	696
32,059	31,992	0	16	...	34	0	16
329,711	328,570	11	12	19	795	88	216
96,649	79,065	...	72	40	468	16,676	326
247,822	219,706	...	209	18,983	2,356	5,573	990
261,429	254,495	...	1,218	4,314	556	657	188

Fluently do not speak Georgian language							
Total	*Native languages*						
	Georgian	Abkhazian	Ossetian	Azeri	Russian	Armenian	Other
263,706	**X**	**19**	**189**	**172,134**	**9,099**	**74,258**	**8,007**
13,299	X	…	46	3,034	4,002	2,889	3,320
3,098	X	…	0	32	1,598	511	950
269	X	0	…	…	144	72	47
556	X	0	0	20	253	30	253
24,249	X	0	58	21,672	552	110	1,857
341	X	0	15	198	47	…	75
12	X	0	0	0	…	…	…
688	X	…	0	21	507	19	140
57,610	X	0	…	27	384	57,132	62
162,400	X	…	16	146,276	1,493	13,423	1,189
1,184	X	0	48	849	113	65	109

Not stated							
Total	*Native languages*						
	Abkhazian	Ossetian	Azeri	Russian	Armenian	Other	Not indicated
41,083	**90**	**678**	**15,723**	**7,642**	**13,238**	**3,640**	**72**
12,738	31	225	1,485	3,820	5,027	2,108	42
2,204	36	…	40	1,307	493	314	…
428	0	…	…	204	181	29	…
564	0	…	27	350	87	93	…
3,461	…	166	2,443	321	122	396	…
530	…	62	283	64	46	72	0
18	0	…	0	…	…	…	0
362	…	…	15	283	…	43	…
6,245	…	14	…	127	6,070	25	0
13,764	…	52	11,158	1,000	1,099	441	…
769	…	133	256	156	102	117	…

Households according to Georgian language fluency of household members by region

	Number of private households	All household members fluently speak Georgian language	Al least one, but not all household members fluently speak Georgian language	Non Georgian Speaking Households	Not stated
Georgia	**1,109,130**	**1,009,810**	**39,898**	**59,403**	**19**
Tbilisi	339,304	322,622	11,448	5,224	...
Adjara Autonomous Republic	83,782	80,320	1,964	1,493	...
Guria	34,931	34,475	305	151	0
Imereti	169,016	168,166	539	310	...
Kakheti	98,975	90,631	4,789	3,554	...
Mtsketa-Mtianeti	29,863	29,369	420	74	0
Racha Lechkhumi and Kvemo Svaneti	12,902	12,877	16	...	0
Samegrelo-Zemo Svaneti	101,507	100,684	557	266	0
Samtskhe-Javakheti	43,981	25,040	6,545	12,396	0
Kvemo Kartli	114,579	66,614	12,322	35,641	...
Shida Kartli	80,290	79,012	993	285	0

Number of non-Georgian public schools and number of pupils according to data of the Ministry of Education and Science

Public Schools with non-Georgian Language Sectors	Number of Schools	Number of Pupils
Armenian	115	12,657
Azeri	82	15,597
Georgian-Azeri	229	11,926
Georgian-Russian	20	16,801
Russian	10	2,610
Georgian-Armenian	8	1,242
Armenian-Azeri	2	143
Azeri-Russian	2	290
Georgian-Armenian-Russian	1	593
Armenian-Russian	1	11
Georgian-Azeri-Russian	1	1,218
Total	271	63,088

124 What is the size of the Roma population in Georgia? What are the measures taken or planned for their integration?

According to latest official census data of 2014, there are 604 Roma living in Georgia. However, according to the information provided by independent CSOs, the number of Roma exceeds 1,200. The main priority of the Georgian government towards this group has been the resolution of legal problems, which are defining their citizenship and regulating Roma documentation. The next priority is studying and regulating their educational needs. This policy of the Georgian government is reflected in the State Strategy on Civic Equality and Integration that specifically focuses on supporting small and vulnerable ethnic minorities. In the framework of the Strategy, the Georgian government took on the responsibility of creating a working group within the interagency commission to study the problems of small and vulnerable ethnic minorities and develop and implement a policy oriented on basic integration of the mentioned groups. Among ethnic minorities, Roma and other groups associated with Roma are the first to be considered as such a category.

Besides studying the needs of vulnerable groups and eliminating possible discrimination against them, the Government of Georgia pays attention to the preparation and requalification of representatives of governmental structures, especially various structural units of the Ministry of Internal Affairs, regarding ethnic minority rights protection and elimination of discrimination. The main governmental institutions that work on regulation of these problems are the Public Service Development Agency of the Ministry of Justice of Georgia, Ministry of Education and Science of Georgia and Ministry of Internal Affairs of Georgia.

Since 2016 a format of interagency coordination meetings functions under the coordination of the Office of the State Minister for Reconciliation and Civic Equality Issues, with the participation of various relevant governmental bodies (Ministry of Education and Science, Ministry of Justice, National Statistics Office, Ministry of Culture), as well as NGOs that address the problems of vulnerable ethnic groups, including Roma, and work on revealing and solving specific needs.

From the point of view of defining the legal status and regulating legal documents for vulnerable ethnic groups, important work has been performed by the Public Service Development Agency of the Ministry of Justice of Georgia. During 2012-2018 number of Roma cases were processed 65 of them received an appropriate legal status.

With the aim of satisfying the needs of vulnerable ethnic groups, the Ministry of Education and Science of Georgia conducts the policy of integrating Roma into the general educational space within various current programmes. In particular, within the Ministry's sub-programme for promoting social inclusion, 225 young Roma have already been admitted to various public schools. For comparison, according to independent research conducted in 2008 (Working Report of the European Centre for Minority Issues), only five children were registered in Georgian public schools. In addition, within the mentioned sub-programme, a training module was prepared in 2016 aiming at raising awareness about Roma in the Georgian society.

125 **What measures have been taken to improve birth registration data for minorities, particularly the Roma and the Egyptians? Is the ethnic origin sometimes registered in the birth certificate, especially for Roma? Do you know of cases when this happens at local level?**

According to Georgian legislation, birth registration procedures are the same for both majority and minority ethnic communities. However, the Roma community in Georgia, being extremely vulnerable and marginalised, had difficulties obtaining birth certificates in a timely manner. According to different CSOs working in the area of Roma empowerment and integration (European Centre for Minority Issues- Caucasus, Centre for the Studies of Ethnicity and Multiculturalism, etc.), only 50 percent of Roma children in Georgia possessed birth certificates in the period of 2005-2010. This situation has improved after the adoption of the State Strategy for Civic Equality and Integration and the relevant Action Plan in 2009. Under this strategy, the government established the Roma Consultation Unit, composed of different state structures including the Ministry of Justice, which coordinates the process of granting birth certificates for Roma. Today, almost all Roma children have birth registration documents. However, because of the low awareness level among the Roma population, parents still prefer to give birth at home, which delays the process of registration of newly born children.

According to existing legislation, ethnic origin is not indicated on Georgian birth certificates. Ethnic affiliation is also not included on ID cards.

126 **Please provide a description of existing language legislation and language training programmes for minority languages. Is language legislation in line with the Council of Europe's recommendations? What arrangements have been taken to ensure translation and interpretation?**

The state language policy, including issues of minority language development, is regulated by the Law on State Language, adopted in July 2015. This law defines the status of the state language, the means of its use and protection. The law is important in the context that it contains a number of provisions on the use of ethnic/national minority languages. The law defines a "national minority language" as a non-state language that is traditionally used on a specific territory of Georgia by compactly settled Georgian citizens. The law provides the following possibilities for speakers of ethnic/national minority languages: receiving pre-school, general, and higher education in minority languages.

State and local self-governance bodies communicate with people belonging to ethnic/national minorities in the minority language through a translator. When necessary, the local self-governance body provides translated versions of adopted normative acts in the minority language(s).A national minority language can be used to conduct various events in the local language, except for meetings of the local self-governance bodies. In municipalities where national minorities reside compactly, it is possible to use national minority languages to disseminate public information through posters, plaques, advertisements, etc.

The benefits for ethnic minorities in the educational sphere provided by the Ministry of Education and Science of Georgia must be mentioned. Since 2010, representatives of ethnic minorities can receive higher education in a simplified way. The simplified system, the so-called 1+4 Programme, allows pupils to take the general skills test in Abkhazian, Ossetian, Armenian, and Azeri languages and, in case of getting an appropriate score, provides the possibility to receive higher education. For one year, students take a Georgian language educational course and, in case of getting 60 credits, continue studying at the faculty of their choice. With the aim of promoting admission to higher educational programmes, in the period of 2011-2015, LEPL National Centre of Evaluation and Examinations of the Ministry of Education and Science provided Abkhazian-speaking enrolees with the general skills test and Abkhazian language test in Russian. This allowed Abkhazian-speaking enrolees the opportunity to take the Abkhazian language admission exams in a simplified form. Since the beginning of the 2016-2017 academic year, Georgian citizens have been admitted to educational institutions based only on the results of the Abkhazian-language and Ossetian-language general skills test.

If we analyse the number of ethnic minorities enrolled in higher education institutions since 2012 and the corresponding dynamics, we see a clear increase in the number of minority representatives admitted to Georgian higher education institutions. For example, based on the results of the Azeri-language and Armenian-language general skills tests during the unified exams in 2015, the following number of students were able to continue their education in higher educational institutions of Georgia: 522 students based on Azeri-language tests and 219 students based on Armenian-language tests. In 2016 the number of students admitted based on the Azeri-language tests increased to 660, and 300 for the Armenian-language tests. In 2016, 194 students received the state educational grant based only on the results of the Azeri- and Armenian-language general skills tests (99 students for Azeri-language general skills tests, 95 students for Armenian-language general skills tests). Within the programme, 589 non-Georgian-speaking students were admitted to higher education institutions of Georgia in 2012, 890 students – in 2013, 673 students – in 2014, 741 students – in 2015, and 960 students – in 2016.

Moreover, the Ministry of Education and Science of Georgia provides support to non-Georgian schools and non-Georgian sectors. Many non-Georgian schools (especially Russian-language ones) ceased functioning in the process of optimisation, however in the places where there was a growing need, the state maintained such schools. Also, the possibility to receive education in the native languages of the ethnic minorities (Azeri, Armenian, Russian) is provided. There are 298 non-Georgian public schools and 81 non-Georgian sectors in Georgia. This includes 118 Azeri, 131 Armenian and 49 Russian schools. There are also 32 Georgian-Azeri sectors, 42 Georgian-Russian sectors, 10 Georgian-Armenian sectors, 1 Georgian-Azeri-Russian sector, 1 Georgian-Russian-Armenian sector, which comprises 14% of the total schools.

Georgia has an on-going tradition of studying the languages of large ethnic groups (Armenian and Azeri) and corresponding standards and methodologies exist. Thus, the educational system of Georgia easily manages to implement the programme for studying native languages for Armenian-speaking and Azeri-speaking students. Studying languages of smaller ethnic groups was seen as problematic. During the Soviet period there was a tradition of studying several languages in Georgia (e.g. Greek, Ossetian, Kurdish), but in the modern period studying these languages was impacted by standardisation and methodological adjustments. In this regard, an important change was carried out in 2016. Based on Order #1255 of the Minister of Education and Science of Georgia, as of 20 November 2015, schools/classes were created to implement studying of the

following languages of smaller ethnic minorities: Ossetian, Khundzi, Udi, Assyrian and Kurdish. Based on Order #702 of the Minister as of 13 September 2016, a change was made to the abovementioned Order #1255, where sub-item "f" was added to item 1 to include the Chechen language as a selective subject to be studied for two hours per week.

127 Is the right of translation of all proceedings and documents in criminal and civil judicial proceedings ensured in accordance with the relevant Council of Europe Documents? If so, how is this done?

In accordance with Articles 10 and 11 of the Council of Europe Framework Convention for the Protection of National Minorities (FCNM), Georgian legislation ensures the right of translation for national minorities. In particular, the Organic Law of Georgia on Common Courts (Article 10) guarantees the right of translation into minority languages during court hearings. At the same time, the Criminal Code of Georgia (Article 38) ensures the use of minority languages and free translation services for those who cannot speaker the state language during interrogation as well as during the entire investigation.

The Georgian Law on State Language stipulates that the state should ensure free use of minority languages in the regions and municipalities compactly inhabited by ethnic minorities. This right envisages the allocation of free translators for minority citizens during their communication with local government authorities. At the same time, this law ensures the right of local citizens to apply to local state structures in minority languages.

The Law on the State Language also regulates the use of minority languages on the local level. Specifically, "in the municipality where representatives of national minorities reside compactly, state and local self-governance bodies are authorised to establish rules different from the General Administrative Code of Georgia, which implies, in case of necessity, translation of an application or complaint submitted to the local self-governance body by a person belonging to a national minority in the language of this national minority or answers to those. In this case, only the original version of the corresponding text has official force."

According to the same law, "in the municipality where representatives of national minorities reside compactly, the local self-governance body, in case of necessity, provides translation of its adopted normative acts in the language of this national minority. In this case, only the original version of the corresponding text has official force."

Nevertheless full and efficient implementation of the mentioned right is a challenge for Georgia due to a lack of qualified translators. In certain cases, minority citizens are not able to receive qualified translation services during court hearings, which has a negative impact on court decisions.

128 Are there any professional restrictions for minorities *(de jure or de facto)?*

Georgian legislation prohibits discrimination against persons seeking employment. Article 2 of Georgian Labour Code (Adopted on 17 December 2010) prohibits any type of discrimination

due to race, skin colour, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, public, political or other affiliation, including affiliation to trade unions, or political or other opinions. In practice, however, employment of minority communities is a challenge in Georgia. The unemployment rate is much higher in regions compactly settled by minorities in comparison with other regions. The main reasons for this are: lack of knowledge of state language by ethnic minorities and limited professional capacities among minority communities. In order to address this issue, the Government of Georgia initiated benefits for minority students and adults seeking professional development. Since 2016, representatives of ethnic minorities can take professional tests in Russian, Azeri or Armenian languages and be admitted to a professional educational programme with full state financing. At the same time, with the aim of improving the knowledge of the state language, vocational students representing ethnic minorities have a possibility, while studying in a professional educational programme, to take a Georgian language module before starting the professional programme.

129 How is the full participation in political life of persons belonging to minorities ensured?

The full and effective participation of national minorities in political life is envisaged in the State Strategy for Civic Equality and Integration and Action Plan for 2015-2020 adopted by the government. One of the priorities of the strategy is to encourage ethnic minority representatives' participation in the political decision-making process. To achieve this goal, the strategy sets the following tasks for the period of 2015-2020: ensuring that ethnic minorities have an informed choice and a right to vote; encouraging the participation and involvement of ethnic minority representatives in activities of political parties and election party lists; increasing participation of ethnic minorities in public service.

In practical terms, participation issue of minorities has two different dimensions- civic and political. From the point of view of civic participation, the tendencies of the past years show that ethnic minorities have adequate possibilities to participate in civic processes. The government in its turn has also provided institutional mechanisms for communication, consultation and advocacy. In this regard, the Council of Ethnic Minorities – a consultative structure implemented at the Office of the Public Defender and functioning since 2005 as a communication and consultation channel between the government and ethnic minorities – must be mentioned. The Council unites civic organisations of ethnic minorities regardless of the number of their members and geographic location. The Council is also authorised to voice any problems regarding ethnic minorities and develop political recommendations. In recent years, the designation and mandate of the Council further expanded to monitoring and evaluation functions. In this direction, the engagement of the Council in annual monitoring of the fulfilment of the National Strategy on Tolerance and Civic Integration is the most important aspect.

Another important mechanism envisaging the civic participation of minorities exists on the local self-governance level. In particular, according to the governmental action plan approved in 2016, a consultation mechanism at the regional administration level began functioning in 2017,

in which representatives of both local self-governance and ethnic minorities residing within the corresponding regional administration take part.

Another important consultative mechanism is a structure oriented on the civic involvement of ethnic minorities in the Autonomous Republic of Adjara called House of Friendship. The House of Friendship was founded by the Mayor's Office of Batumi in 2006 and unites all ethnic organisations registered in the Autonomous Republic of Adjara. Unlike the Council of Ethnic Minorities at the Office of the Public Defender, the Batumi-based House of Friendship is financed from the local budget. The main direction of activities is presenting the ethnic diversity of Adjara and protecting cultural identity.

The importance of both consultative and involvement-oriented structures for ethnic minorities located in Tbilisi as well as in the regions is reflected in their participation in preparation of alternative reports on current minority conditions in Georgia for various international mechanisms. Such reports have already been prepared for a universal periodical review and for the Committee on the Elimination of Racial Discrimination (CERD).

As mentioned, ethnic minorities residing in Georgia, both in the capital and in the regions, have possibilities for civic activity and voicing and advocating their problems and current challenges, while the government provides corresponding institutional mechanisms. Notwithstanding such a positive background, the main challenge remains the instability of ethnic minority organisations and community unions and insufficient readiness to exercise civic activism independently, in particular, advocating, monitoring and lobbying. The civic participation of ethnic minorities largely depends on external financial support. When it is absent, such organisations fail to self-mobilise. The best example of this in the recent years is the virtual disappearance of the active ethnic minority consultation network in Javakheti (Akhalkalaki and Ninotsminda municipalities). Since 2005, community mobilisation of ethnic minorities in Javakheti became quite intense, resulting in the formation of a consultative civic forum on the local level that during several years efficiently voiced and advocated local problems and protected rights. In 2012, after the corresponding financial support to the forum from international donors was reduced, the forum's activities were completely terminated. It is the instability and dependency on permanent external financing that pose the main obstacles to the civic activity of ethnic minorities. The same instability characterises the abovementioned Council of Ethnic Minorities at the Office of the Public Defender, whose activities are mainly supported by international donor organisations. Presumably, if the financing were terminated, its efficiency and influence would significantly reduce.

As to the political component of the ethnic minority participation, the situation does not resemble that of civic participation. If civil society organisations of ethnic minorities have the necessary mechanisms for conducting civic activities, political interests and the participation of ethnic minorities in the country's social and political life is significantly limited. Even though this issue was defined in the National Concept for Tolerance and Civic Integration and Action Plan as one of the prioritised directions, in the real Georgian political space the integration of ethnic minorities has not been carried out adequately. As mentioned above, the policy implemented by Georgia regarding the protection and integration of ethnic minorities is characterised by the concept of multiculturalism. In the context of political engagement, however, the same approach is only partially employed. In many countries that share principles of multiculturalism, a number of practical mechanisms guaranteeing minority participation are implemented, often having

a character of positive discrimination. In particular, such measures include the existence of political parties reflecting the interests of ethnic minorities; guaranteed representation of ethnic minorities in both the Parliament and local representative bodies through the implementation of quotas; establishment of incentives for political parties for including ethnic minorities in electoral lists, etc. Similar affirmative actions regarding minority political participation are not envisaged by Georgian legislation.

The effective and full participation and inclusion of ethnic minorities in general political processes to a great extent depends on the decisions of political parties and various political leaders, which is directly connected to their goodwill. If we review the representation of ethnic minorities on the political arena, it will become clear that the sole existence of political will is insufficient for reflecting the political interests of minorities in various governmental structures. If we take the participation of minorities in parliamentary activities and executive power as the defining indicator of political participation of ethnic minorities, the situation is particularly unfavourable. Ethnic minorities are represented in every parliamentary convocation, but their number and percentage permanently fluctuate. If we take into consideration the total number of ethnic minorities in the country, the most adequate and proportional representation occurred in the Parliament of Georgia elected in 2016, where ethnic minorities constituted 11 MPs or 7.3% of the total number of MPs. Unlike the previous convocation, this number comes comparatively close to the general percentage of ethnic minorities in the country, which equalled 13.2% in 2016.

Taking into consideration the current legal framework, the election of ethnic minorities as MPs happens through the inclusion of ethnic minority candidates in electoral lists by political parties in case of the proportional system, and through the nomination of ethnic minorities as majoritarian district candidates by political parties or initiative groups in case of the majoritarian system. The established practice shows that leading political parties are hardly oriented on attracting ethnic minorities to party activities, which is then reflected in the low numbers of ethnic minorities on party lists. A similar problem arises during elections through the majoritarian system. Elections practice of the past years shows that ethnic minorities had guaranteed representation in only two election districts – Akhalkalaki and Ninotsminda. The election of ethnic minorities from other compactly inhabited districts depended on whether the political party made a choice in favour of a minority representative. According to changes made in the Election Code in 2015, which expanded and merged comparatively small electoral districts, the probability of electing ethnic minorities through the majoritarian system became even smaller, as some of the districts where minorities had the possibility to elect several candidates were affected by this consolidation of districts. In particular, due to the merger of the Akhalkalaki and Ninotsminda electoral districts, from 2016 onwards the number of representatives elected from the region will be reduced to one.

As to the executive power, representation of the interests of minority communities is generally present in the regions and municipalities compactly inhabited by ethnic minorities. In the case of Akhalkalaki and Ninotsminda municipalities, ruling responsibilities fully belong to the representatives of the local Armenian ethnic group who hold the positions of the local municipality councillor, deputy local municipality councillor or other key positions. In the case of Kvemo Kartli, the local ethnic Azeri community participates in the local authorities only fragmentarily and inadequately. Unlike Akhalkalaki and Ninotsminda, in Kvemo Kartli ethnic Azeris have never held

the position of the local municipality councillor, and, with rare exceptions, all other key positions are concentrated among non-Azeri representatives.

In order to address these challenges, the government has initiated a number of measures and actions. Positive tendencies have been noted in the activities of the Central Electoral Commission of Georgia (CEC) conducted for ethnic minorities in the recent years. The CEC conducts various important activities in the mentioned direction. In particular, it trains district electoral commission members representing ethnic minorities on the issue of electoral procedures; provides translation of electoral documentation into Armenian and Azeri languages; produces informational and promotional videos in Armenian and Azeri languages and airs them on the Public Broadcaster and regional TV channels; carries out educational programmes for ethnic minority voters; conducts informational meetings; and employs ethnic minority representatives in the CEC structure during the election period. It must be mentioned that the CEC annually defines the financing directions for a grant competition, including specifically for ethnic minority voters target group. In 2016 LEPL Centre for Electoral System Development, Reforms and Study (CEC Study Centre), similar to previous years, distributed targeted grants in this direction to eight local NGOs. The total budget of financed projects exceeded 200,000 GEL.

The initiative of the Office of the State Minister for Reconciliation and Civic Equality aims at raising the civic and political participation of ethnic/national minorities. It envisages the implementation of internships for ethnic/national minorities in the public sector. Within the programme, young people belonging to ethnic/national minorities will be selected on a competitive basis to be employed as interns in various public institutions (ministries, local regional services, representative offices of the Public Defender and others). The pilot project has already started.

MEASURES AGAINST RACISM AND XENOPHOBIA

130 What is the legislative and institutional framework for measures against racism and xenophobia?

Legislative framework

The principle of equality before the law is enshrined in the Constitution of Georgia. According to Article 11 of the Constitution: "All persons are equal before the law. Any discrimination on the grounds of race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds shall be prohibited."

Georgia ratified the Convention for the Protection of Human Rights and Fundamental Freedoms in 1999. The same year, the International Convention on the Elimination of All Forms of Racial Discrimination was also ratified. Thus, Georgia is a party to the abovementioned international treaties. The most recent periodic report of state was submitted to the Committee on the Elimination of Racial Discrimination in July 2014.

In May 2014, Georgia adopted the new Law on Elimination of All Forms of Discrimination. The law regulates the prohibition of discrimination and envisages specific mechanisms to combat it. It defines the forms of discrimination and provides legal remedies for the victims.

According to the law, it is the Public Defender (Ombudsman) of Georgia that monitors the elimination of discrimination and the process of ensuring equality. The Equality Department of the Public Defender examines acts of discrimination based on applications or complaints of individuals, or on its own initiative, and makes relevant recommendations. The recommendation of the Ombudsman, however, does not have a binding legal power.

On the other hand, the law provides victims of discrimination with the right to file a lawsuit in court and claim certain remedies, including compensation for moral damages.

The Law of Georgia on Elimination of All Forms of Discrimination defines two forms of discrimination: direct and indirect. However, it does not determine the notion of harassment, which is a specific form of discrimination.

It is noteworthy that Georgian Labour Code also guarantees the prohibition of discrimination. According to it, any kind of discrimination is prohibited in labour relations. Unlike the Law on Elimination of All Forms of Discrimination, the Labour Code defines harassment as a form of discrimination at the workplace.

The Criminal Code of Georgia defines specific conduct as a crime and stipulates criminal liability for racial discrimination and intolerance. The criminal offence of violation of equality of individuals is provided for under the provision of Article 142 of the Criminal Code of Georgia. Therefore, the violation of the equality of individuals before the law, in case it substantially violates any of the human rights, will result in the relevant criminal liability for the offender.

The Georgian Criminal Code also defines racial discrimination separately as a criminal offence. According to Article 142^1 of the code, racial discrimination is conduct committed for the purpose of causing national or racial hostility or conflict or for the purpose of humiliating national honour and dignity, also direct or indirect restriction of human rights or giving privilege to others based on race, skin colour, nationality or ethnicity, which substantially violated the rights of victim.

In March 2012, an amendment was made to the Criminal Code, and a specific provision was added to the code with regard to hate crimes. Therefore, hatred as a motive of crime, serves as an aggravating circumstance for every criminal offence defined by the Code (Article 53^1 of the Criminal Code).

Provisions regarding the prohibition of discrimination can also be found in the field of administrative law. For instance, the General Administrative Code of Georgia guarantees equality before the law and determines that executive authorities must provide their services neutrally. It prohibits administrative bodies from making different decisions in different cases when their factual circumstances are similar (Article 4).

Guarantees for equality before the law and the prohibition of discrimination are provided in the fields of healthcare and education, among others. For example, the Law of Georgia on Healthcare determines that discrimination of patients on the grounds of race, skin colour, language, sex, religion, political or other views, national, ethnic, and social origin, property or social status, place

of living, disease, sexual orientation or based on personal negative attitude, is prohibited (Article 6). In addition, the Law of Georgia on Rights of Patients sets the guarantees of prohibition of discrimination in the healthcare field (Article 6).

According to the Article 3, section 1, subsection "h" of the Law of Georgia on Higher Education, in order for the state to achieve its aims in the field of higher education, any sort of discrimination is prohibited, including discrimination on the grounds of academic, religious or ethnic origin and/or views, sex, social origin and other grounds.

The provision of Article 9 of the Law of Georgia on Public Service guarantees non-discrimination and equality before the law for civil servants. The provisions of this law provide that all civil servants are equal before the law. It is prohibited to restrict or hinder the realisation of the rights, freedoms and interests of any citizen of Georgia participating in public service relations on the grounds of race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, affiliation to political or other association, political or other opinion, or other characteristics.

Article 11 of the Law of Georgia on Police provides that the police is obliged to respect and protect human rights and freedoms regardless of race, skin colour, language, sex, age, religion, political and other opinion, national, ethnic or social origin, property or social status, place of birth or other characteristics.

Institutional framework

In its fifth report on Georgia, the European Commission against Racism and Intolerance (ECRI) recommended that the government set up a specialised unit within the police to deal specifically with racism and homophobic and transphobic hate crimes. The ECRI additionally recommended that the government ,seek expert advice from the Public Defender, relevant NGOs and international organisations when creating this unit. As a result, in the beginning of 2018, the Ministry of Internal Affairs of Georgia established the Human Rights Department**.** The main mission of the department is to ensure timely response to and effective investigation of violence against women, domestic violence, hate crimes, trafficking and crimes committed by or against juveniles. The Department is also assigned to cooperate with state institutions and non-governmental organisations. However**,** the mandate of the department cannot be considered the full realisation of international recommendations: it was recommended that a special police unit be established with an investigative mandate for hate crimes, though the new department has no investigative mandate. The authority granted to it implies monitoring of investigations (including crimes committed on the grounds of racial discrimination) and the right to submit relevant recommendations to the minister, also identification of flaws in the process of investigation and administrative proceedings.

The Human Rights Unit of the Chief Prosecutor's Office monitors the overall prosecution process and supervises compliance with national and international human rights standards. The unit reviews recommendations, prepares statistical and analytical data and prepares relevant recommendations for prosecutors. According to the report of the Chief Prosecutor's Office of

Georgia,[777] the fight against hate-motivated crimes is a priority. In 2017, aiming at the effective implementation in practice of the recommendation elaborated for prosecutors on hate-motivated crimes, a special questionnaire was created that provides instruction on conducting interviews/interrogations of a probable victim, defendant and witness of a hate-motivated crime. The mentioned questionnaire was sent to the officers of the Prosecution Service of Georgia (PSG), which, according to the Prosecutor's Office, improved the quality and effectiveness of the measures taken for emphasising hate motives on criminal cases.

However, the Ministry of Internal Affairs and the Prosecutor's Office do not have more specific guidelines for the policy to combat racism and xenophobia. Taking into consideration the rising number of racially motivated crimes and xenophobia, the state is lacking a clear and precise policy for overcoming the problem. The knowledge and sensitivity of law enforcement bodies towards cases involving discrimination is not sufficient (see the response to question 132).

The court is an important tool in the fight against discrimination and mitigation of hate crimes. The Constitutional Court of Georgia is one of the most important guarantors of fundamental rights. According to the Constitution, the Constitutional Court reviews the constitutionality of normative acts with respect to the fundamental human rights enshrined in Chapter Two of the Constitution on the basis of a claim submitted by a natural person, a legal person or the Public Defender.[778]According to the Organic Law on the Constitutional Court of Georgia, the right to lodge a constitutional claim with the Constitutional Court on the constitutionality of a normative act or its individual provisions shall rest with the citizens of Georgia, other natural persons and legal persons, if they believe that their rights and freedoms recognised under Chapter Two of the Constitution of Georgia have been violated or may be directly violated.[779]Since May 2014, the common courts have also become significant guarantors for the prohibition of discrimination, as special provisions with regard to litigation of discrimination cases were added to the Civil Procedure Code of Georgia. According to Article 363^2 of the mentioned code, any person who considers himself/herself a victim of discrimination may file a claim with a court against the person/institution that, in his/her opinion, has discriminated against him/her. In a claim under this Article a person may request the termination of the discriminatory action and/or elimination of the results of such action, also compensation for moral and/or material damages.

The Public Defender (Ombudsman) of Georgia is an important institution supervising the protection of human rights and freedoms. The Public Defender is elected by a majority of the total composition of the Parliament of Georgia for a term of five years. According to Article 4, para. 1 of the Organic Law on Public Defender of Georgia, the Public Defender of Georgia acts independently and carries out his/her activities according to the Constitution of Georgia, treaties and international agreements, universally recognised principles and norms of international law, the organic law and other legislative acts. Since 2005, the Council of National Minorities (CNM) and Council of Religions (CR)have been functioning under the auspices of the Public Defender of Georgia. The councils are unique and important consultative units for the Public Defender and the Government of Georgia. CR unites 32 religious organisations and CNM up to 100 ethnic minority organisations and diasporas.

777. Report of the Chief Prosecutor of Georgia, 2018 http://pog.gov.ge/res/docs/ReportoftheChiefProsecutor2017.pdf

778. Constitution of Georgia, art. 60, para. 4, "a".

779. Organic Law of Georgia on the Constitutional Court of Georgia, art. 39, para. 1, "a".

131 What is the practical experience with its implementation in Georgia?

From 1 January 2014 - 1 July 2018, 65 cases of criminal offences under Article 53[1] (aggravating circumstance for hate crimes) of the Criminal Code of Georgia have been recorded by the Office of Chief Prosecutor of Georgia. These cases break down as follows:

- In 2016 - 1 case (hate crime based on nationality); - 3 cases (hate crime based on ethnicity); - 27 cases (hate crime based on religion); - 4 cases (hate crime based on racial background);
- In 2017 - 1 case (hate crime based on nationality); - 1 case (hate crime based on ethnicity); - 10 cases (hate crime based on religion);
- In 2018 (until 1 July) - 1 case (hate crime based on nationality); - 3 cases (hate crime based on ethnicity); - 1 case (hate crime on skin colour); - 13 cases (hate crime based on religion).

In the abovementioned cases, six people have been prosecuted and charged with hate crimes, including four people for hate crimes on the grounds of religion, one person for a hate crime on the grounds of ethnicity, and one person for a hate crime on the grounds of nationality. With regard to Article 142[1] (racial discrimination) of the Criminal Code, 17 persons have been prosecuted, including three people in 2015 and 14 in 2016.

In recent years there has been an alarming rise of newly formed racist, extremist and neo-nationalist groups. They target foreigners from Asian and African countries, non-Georgian Orthodox religious communities, human rights NGOs, the LGBT and liberal groups.

> In 2018, two persons who were accused of racial discrimination were sentenced to four years imprisonment by Tbilisi City Court. The persons found guilty were members of the fascist group Bergman. After 2017, neo-Nazi groups became more active on the Internet and in the offline space as well. The number of accounts, profiles and webpages managed by neo-Nazis has increased. They harass foreigners (mainly citizens of Asian and African countries), sometimes asking (unlawfully) that foreigners present their identity cards in the streets and prove that they reside in Georgia legally. These neo-Nazi groups demand that the state ban the sale of lands to non-Georgians and prohibit foreigners from settling in Georgia. They request that the government to outlaw NGOs and international organisations[780] for being "traitors of the nation." They fight against freedom of expression, nightclubs, art, literature and films. The targets change according to the current political, social and cultural context. Usually, the aggression is directed towards those who manifest their existence and rights in a public space. For instance, on 13 May 2018, members of the self-proclaimed fascist

780. Ultranationalists Rally Against Soros Foundation, Land Ownership Changes, Civil.ge, September 2017 https://old.civil.ge/eng/article.php?id=30436

organisation Georgian National Unity - Nationalist-Socialist Movement[781]and their supporters held a counter rally[782] in Tbilisi against youth protesting night raids and limitation of freedom of expression by law enforcement bodies. The group gave Nazi salutes and chanted, "Glory to the nation – death to the enemies." Ultra nationalist groups had thronged to Tbilisi streets showcasing Nazi symbols. Later, after the detention of the leader of the organisation on charges related to illegal possession of firearms,[783] at the trial court, members of the group were giving the Nazi salute in the courtroom.[784]

Often, the work of the government to respond to racially motivated hate crimes is not sufficient. In some cases, an investigation is not launched or the racial motive is not revealed by the investigation. At the same time, foreigners (mostly from African and Asian countries) mention that they are frequently the targets of racial hatred in public transport, streets and various public spaces. Official data of the government on racially motivated hate crimes are significantly lower than the number of incidents mentioned by the victims. Sometimes, the language barrier is a hindrance to launch relevant proceedings against the perpetrators. A lack of trust in and fear of law enforcement structures are additional obstacles to victims reporting the violations against them.

Below are several cases to demonstrate the problem of racism and the response of the state on the hate crimes:

Alleged racially-motivated violence against Nigerian Students

On 8 April 2018, citizens of Georgia attacked foreign students in Tbilisi at the municipal stadium on Beliashvili Street. Specifically, some citizens of Georgia physically and verbally insulted the foreign students who were playing football (soccer) and expelled them from the stadium. The abusers allegedly used discriminatory and racist vocabulary during the attack, pointing to the students' skin colour and country of origin, and calling on them to leave the country.

The Ministry of Internal Affairs (MIA) launched an investigation under Article 126 (violence) of the Criminal Code. During the investigative activities, it was revealed that during the interviews, the investigators of the MIA were trying not to record the possible racial motive in the testimonies of the witnesses (foreign students). Allegedly, the investigators were motivated by the desire to pursue the investigation under Article 126 of Criminal Code and not to qualify the action under Article 142^1 (racial discrimination) or Article 53^1 of the same code, according to which intolerance (including racial) as a motive is considered an aggravating circumstance.

781. Facebook page of the organisation, https://www.facebook.com/pg/GeoNSM/about/?ref=page_internal

782. The video featuring counter-demonstrator far-right group members, Kviris Palitra, May 2018, https://palitranews.ge/video/chven-vart-kartveli-fashistebi-danarchenze-pasukhi-metaurma-gastsa-sakartvelos-erovnuli-ertobis-tsevrebi-kashvetis-tadzarshi-mividnen

783. Police Arrest Leader of Neo-Nazi Group, civil.ge, 01/09/2018, https://civil.ge/archives/250854

784. Neo-Nazi leader arrested on gun charges in Georgia, OC media, September, 2018 http://oc-media.org/neo-nazi-leader-arrested-on-gun-charges-in-georgia/

At the end of July 2018, two Nigerian students, the victims of physical abuse, were officially granted victim status within the criminal investigation. One person from the Georgian side admitted to physically abusing two of Nigerian students, and the prosecution decided to use a diversion mechanism with regard to him. This meant the imposition of a fine equal to 500 GEL, without creating a criminal record. For this, representatives of the Prosecutor's Office asked the victims for their consent in order to finalise the diversion procedure and close the criminal case.

Manifestation of "Neo-Nazi" Groups on Aghmashenebeli Avenue

September 2016 was an active time for ultra-national and neo-fascist groups in Tbilisi. On 27 September, members of the following movements - Georgian Power, Bergman, Dinamo Ultra, and Edelvaisi - organised a demonstration from Rustaveli Avenue to Aghmashenebeli Avenue in Tbilisi. Participants in the demonstration were using discriminatory and xenophobic language and were calling on foreigners to leave Georgia. Later violent actions commenced: participants damaged the banners of several Turkish restaurants and threw incendiary devices into one of the restaurants. They also damaged the façades of these restaurants. It was obvious that foreigners and their businesses in Georgia were the targets. However, the police stopped several participants and called for maintaining the order. This caused discontent among participants and led to a physical confrontation.

Representatives of the Ministry of Internal Affairs of Georgia arrested 11 participants, including seven juveniles.[785] According to the information of the MIA, arrested persons were accused of hooliganism in accordance with Article 239 of the Criminal Code of Georgia.

According to the official letter of the Office of Chief Prosecutor of Georgia[786] on 29 September 2016, 12 persons have been held criminally liable (including seven juveniles). They were found guilty of racial discrimination and hooliganism.

Members of Neo-Nazi group Bergman Assaulting Nigerian Citizen

In 2015, a video was published on the Facebook page of Georgian Ultras, a neo-Nazi group. The video showed members of fascist group Bergman physically assaulting Nigerian youngsters. The incident took place on 19 September 2015, on Rustaveli Avenue in Tbilisi. Georgian citizens verbally and physically assaulted two Nigerians and their Georgian friends.

The investigation started with Article 142^1 of Criminal Code of Georgia (racial discrimination).[787] According to the official letter from the Office of the Chief Prosecutor of Georgia,[788] with regard to the abovementioned incident, on 27 September 2015, three persons were held liable and accused of racial discrimination (including one juvenile). On 20 April 2018, two persons were found guilty. With regard to the third accused person, the juvenile, a diversion mechanism was applied in accordance with the Juvenile Justice Code of Georgia. Hence, the criminal case against him was ceased.

785. http://police.ge/ge/shss-m-khulignobis-braldebit-11-piri-daakava/10030
http://liberali.ge/news/view/24891/qartuli-dzalis-tsevrebs-rasobrivi-diskriminatsiis-braldeba-aqvt-tsayenebuli

786. Official letter of Office of Chief Prosecutor of Georgia N 13/68380 07/09/2018

787. http://www.tabula.ge/ge/story/129183-sasamartlom-rasobrivi-diskriminaciis-gamo-2-adamians-4-4-tslit-patimroba-miusaja

788. Official letter of the Office of Chief Prosecutor of Georgia N 13/68380 07/09/2018

Physical Violence against Nigerian Citizen

On 17 October 2016, two Georgian citizens harassed a Nigerian citizen at a supermarket because of his skin colour. They verbally harassed him and used racial insults. The Georgian perpetrators called the manager of the supermarket and demanded that the Nigerian not be allowed to stand in front of them in the queue. In order to avoid escalating the conflict, the manager quickly let the Nigerian walk through his queue, and the Nigerian quickly left the store shortly. However, the Georgian perpetrators chased after him and started beating him up in the street. Some by-passers intervened in order to stop the physical abuse. While the perpetrators were beating the Nigerian, they continued using hate speech and told him to leave Georgia, as there was no place for him in Georgia.

Georgian citizens were held liable for this offence according to Article 142[1] of the Criminal Code of Georgia (racial discrimination). On 9 November 2016, a plea bargain was agreed between the offenders and the prosecutor, which was then approved by the court. Both Georgian citizens were found guilty of racial discrimination, but they were given three years-probation for the crime, without imprisonment.[789]

132 Are there any specific policies, programmes, strategies, etc. tackling racism and xenophobia?

There are no specific state policies, programmes or strategies for tackling racism and xenophobia in Georgia. According to the information officially provided by the Office of the Chief Prosecutor of Georgia,[790] the office does not have a specific programme or action plan tackling racism and xenophobia. However, the official letter notes that a special recommendation has been elaborated for prosecutors on how to investigate and prosecute hate crimes. Additionally, there is a special chapter dedicated to combating discrimination and hate crimes in the strategy of Prosecutor's Office of 2017-2021.

The Ministry of Internal Affairs of Georgia does not have a specific programme or policy against racism and xenophobia either. According to the official letter received from the Ministry,[791] a special guide has been prepared on the principles for fighting against crimes motivated by discrimination, which is used during the investigation.

The Administration of the Government of Georgia indicates in its letter[792] that it has the 2015 State Strategy on Civic Equality and Integration as well as its action plan for 2015-2020, which envisages certain steps to combat racism and xenophobia.

> However, as an example, the government indicates that the action plan contains steps for raising awareness of civil servants and ethnic minorities on anti-discrimination legislation, which can be considered neither a strategy nor measures of the government against racism and xenophobia.

789. Verdict of Tbilisi City Court, 16 November 2016, Judge Ekaterine Gabrichidze.

790. Letter of Office of Chief Prosecutor of Georgia #13/87765. 19/11/2018

791. Letter of Ministry of Internal Affairs of Georgia #MIA 3 18 02654561. 30/10/2018

792. Letter of Administration of Government of Georgia #GOV 9 18 00035448. 30/10/2018

According to the Administration of the Government, the Government Action Plan for the Protection of Human Rights of 2018-2020 also includes a number of goals and activities to combat racism and xenophobia.

> In fact, the Human Rights Action Plan consists of thematic chapters none of which is dedicated to the work against racism and xenophobia. In the official letter of the Government, reference is made to Chapter 18 - protection of religious freedom and religious neutrality, which does not contain specific goals or activities for the fight against racism and xenophobia.

In the official letter received from the Ministry of Education, Science, Culture and Sport of Georgia,[793] anti-discrimination approaches and issues of human rights protection are integrated into various national strategies adopted by the Ministry. According to the Ministry, the national curriculum for 9th and 10thgrades includes civic education as a mandatory subject. This subject teaches pupils human rights, tolerance, equality and fundamental democratic values and principles. For 3rd and 4thgrades, there is a subject called Me and Society, and for 5thand 6thgrades, the subject My Georgia. According to the Ministry, these subjects aim to contribute to the formation of a person with a sense of respect for tolerance, cultural differences, ethnic differences and disabled people. In addition, a citizenship course was developed for 7th to 9thgrades, which has already been approved/adopted. According to the Ministry, this programme will further contribute to the expansion and development of democratic values and ethical-humane attitudes among pupils. The Ministry also notes that in addition to the abovementioned school programmes, thematic school contests are regularly organised in the frame of informal education.

Despite the fact that the abovementioned governmental bodies have some documents regarding combating discrimination and raising awareness, more steps need to be taken to specifically tackle racism and xenophobia with specific programmes and/or strategies.

> As already mentioned in present document, there has been an alarming rise in newly formed racist, extremist and neo-nationalist groups in recent years. Neo-Nazi groups have become highly active in the virtual space on social media and offline as well. The rising number of racially motivated crimes and xenophobia is also alarming.
>
> In light of the growth of xenophobic and fascist groups, the overall increased number of these groups being establish, and the rising number of cases of racial discrimination, hate crime and xenophobia, the government's general anti-discrimination guidelines are clearly insufficient and inadequate for specifically tackling the issue of racial discrimination and xenophobia.
>
> The Government of Georgia needs a clear and precise policy to address the existing problem. The government needs to do more work to respond to racially motivated hate crimes in an adequate, sufficient and effective way.

793. Letter of Ministry of Education, Science, Culture and Sport of Georgia #MES 5 18 01414250 02/11/2018

133 **Are there any official bodies with a specific task and powers to combat racism and xenophobia?**

There are no official bodies with the specific task of and authority to combat racism and xenophobia. However, there are bodies that address discrimination according to their competencies, such as the Public Defender of Georgia and the Human Rights Department under the Ministry of Internal Affairs.

The Law of Georgia on Elimination of All Forms of Discrimination defines the competencies of the Public Defender in the field of combating discrimination in Georgia. The Public Defender of Georgia monitors issues regarding the elimination of discrimination and ensuring equality in Georgia. For this, the Ombudsman: reviews the applications and complaints regarding discrimination; examines acts of discrimination on his/her own initiative; issues relevant recommendations for eliminating discrimination; prepares and submits general proposals to relevant institutions or persons on the issue of preventing and combating discrimination; prepares opinions regarding necessary legislative changes and submits them to the Parliament of Georgia; records and analyses statistical data on discrimination cases; organises events to raise public awareness of discrimination, etc.

The mission of the Human Rights Department of the Ministry of Internal Affairs of Georgia is to ensure the timely response to and effective investigation of violence against women, domestic violence, hate crimes, trafficking and crimes committed by or against juveniles. The Department is also required to cooperate with state institutions and non-governmental organisations. However, the mandate and functions of the department might not be sufficient to address the problem of effective investigation of hate crimes.

134 **Please provide statistics on hate, racist and xenophobic crimes as regards both victims and perpetrators, if available**.

The following statistical data have been obtained from the Supreme Court of Georgia, Office of the Chief Prosecutor of Georgia and the Ministry of Internal Affairs of Georgia on criminal offences regarding hate crimes based on race, nationality, ethnicity and religion, and regarding racist and xenophobic crimes. The statistical data include the period from 1 January 2014 until 1 July 2018 (4 years and 6 months).

Data of Supreme Court of Georgia

According to the official information provided[794]for the abovementioned period, no cases have been filed for the consideration of courts of first instance, courts of appeal or the court of cassation of Georgia with regard to criminal offence provided for under the provision of Article 142 (violation of equality of individuals) and Article 53[1] (aggravating circumstance for hate crimes) of the Criminal Code.

With regard to criminal offence provided for under the provision of Article 142[1] (racial

794. Official letter of Supreme Court of Georgia No. a-405-18. 10/08/2018

discrimination) of the Criminal Code of Georgia, six cases have been filed for consideration by the courts of first instance (one case in 2015; four cases in 2016; and one case in 2017).Two cases have been filed for consideration by the courts of appeal (one case in 2017 undone case in the first six months of 2018). Zero cases have been filed for consideration to the court of cassation.

With regard to information on the number of guilty verdicts in the abovementioned cases, one guilty verdict was delivered by the court of first instance in 2016, and one in the first six months of 2018. Two guilty verdicts have been delivered by the court of appeals during in six months of 2018. Zero cases have been filed for consideration by the court of cassation, as already mentioned above.

Data of the Office of Chief Prosecutor of Georgia

According to the official information provided[795]for the abovementioned period, no prosecutions were initiated with regard to criminal offence provided for under the provision of Article 142 (violation of equality of individuals) of the Criminal Code of Georgia. However, regarding Article 142[1] (racial discrimination) of the Criminal Code, three people were prosecuted in 2015 and 14people in 2016.

As to the criminal offences under Article 53[1] (aggravating circumstance for hate crimes) of the Criminal Code of Georgia, in 2016, the Prosecutor's Office processed one case of a hate crime based on nationality, three cases of a hate crime based on ethnicity, 27 cases of a hate crime based on religion, and four cases of a hate crime based on race.

In 2017, the Prosecutor's Office processed one case of a hate crime based on nationality, one case of a hate crime based on ethnicity; 10 cases of a hate crime based on religion, and zero cases of a hate crime based on race. With regard to the abovementioned statistics on Article 53[1] of the Criminal Code, four people were prosecuted for a hate crime on the grounds of religion.

Regarding the first six months of 2018, the Prosecutor's Office processed one case of a hate crime on the grounds of nationality, three cases of a hate crime on the grounds of ethnicity, one case of a hate crime on the grounds of skin colour, and 13 cases of a hate crime on the grounds of religion. Of these cases, one person was prosecuted for a hate crime on the grounds of ethnicity and one person was prosecuted for a hate crime on the grounds of nationality.

Data of the Ministry of Internal Affairs of Georgia

According to the official information provided[796]for the abovementioned period, in 2014,a criminal investigation started in one case, with regard to Article 142[1] of Criminal Code (racial discrimination); in 2015, a criminal investigation started on one case, with regard to Article 142of Criminal Code (violation of equality of individuals). In the latter case, the criminal investigation has been ceased due to the absence of criminal conduct in the case. In 2016,a criminal investigation was started in one case, also with regard to Article 142of the Criminal Code (violation of equality of individuals). In the latter case, the criminal investigation has been ceased as well due to the absence of criminal conduct in the case. According to data for 2017, no cases have been recorded.

795. Official letter of Office of Chief Prosecutor of Georgia No. 13/65109 23/08/2018

796. Official letter of Ministry of Internal Affairs of Georgia No. MIA 6 18 02023410. 20/08/2018

For the first six months of 2018, criminal investigations were started in three cases, also with regard to Article 142of Criminal Code. These investigations ceased due to the absence of criminal conduct in the cases.

The Ministry of Internal Affairs of Georgia was unable to provide statistical data relating to Article 53[1] of the Criminal Code (aggravating circumstance for hate crimes). It was explained that the Ministry does not process these statistical data.

	Article 142 – (violation of equality) Criminal Code					Article 1421- (racial discrimination) Criminal Code					Article 531 (aggravating circumstance for hate crime) Criminal Code				
national/ethnic/racial ground															
	2014	**2015**	**2016**	**2017**	**2018 (6 months)**	**2014**	**2015**	**2016**	**2017**	**2018 (6 months)**	**2014**	**2015**	**2016**	**2017**	**2018 (6 months)**
Ministry of Internal Affairs															
Number of cases where investigation was started	**0**	**1**	**1**	**0**	**3**	**1**	**1**	**2**	**0**	**0**	-	-	-	-	-
Investigation successful	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	-	-	-	-	-
Considered by court	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**1**	**0**	**0**	-	-	-	-	-
Ceased	**0**	**1**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**0**					
Chief Prosecutor's Office															
Number of cases studied	-	-	-	-	-	-	-	-	-	-	-	-	**8**	**2**	**5**
Prosecution started	**0**	**0**	**0**		**0**	-	**3**	**14**	-	-	-	-	**4**	-	**2**
Accused	-	-	-	-	-	-	-	**14**	-	-	-	-	-	-	-
Common Courts															
Court of first instance															
Total cases	-	-	-	-	-		**1**	**4**	**1**	-	-	-	-	-	-
Acquittal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guilty verdict	-	-	-	-	-	-	-	**1**	-	**1**	-	-	-	-	-
Court of second instance															
Total cases	-	-	-	-	-	-	-	-	**1**	**1**	-	-	-	-	-
Acquittal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guilty verdict	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Court of Third															
Total cases	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquittal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guilty verdict	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Religious ground	2014	2015	2016	2017	2018 (6 months)	2014	2015	2016	2017	2018 (6 months)	2014	2015	2016	2017	2018 (6 months)
Ministry of Internal Affairs															
Number of cases where investigation was started	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Investigation successful	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Considered by court	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ceased	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Chief Prosecutor's Office															
Number of cases studied	-	-	-	-	-	-	-	-	-	-	-	-	**27**	**10**	**13**
Prosecution started	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accused	-	-	-	-	-	-	-	-	-	-	-	-	**16**	**2**	-
Common Courts															
Court of first instance															
Total cases	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquittal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guilty verdict	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Court of second instance															
Total	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquittal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Guilty verdict	-	-	-	-	-	--	-	-	-	-	-	-	-	-	-

THE EU FUNDAMENTAL RIGHTS AGENCY

135 **What steps (legislative, institutional and other) is Georgia undertaking/planning to take in order to be able to participate as an observer in the Agency's work?**

Article 28(1) of Council Regulation (EC) No 168/2007 on establishing a European Union Agency for Fundamental Rights states that candidate countries may participate in the Agency as observers.[797] Furthermore, according to Article 28(3), a country that has concluded a Stabilisation and Association Agreement with the EU may be invited to participate in the Agency as an observer. Therefore this question is not relevant to Georgia at this moment of time. Georgia needs to be a candidate state in order to be invited as an observer state in the agency.

797. Article 28, Paragraph 1 of the Council Regulation (EC) of 15 February 2007 establishing a European Union Agency for Fundamental Rights, No 168/2007.

PROTECTION OF PERSONAL DATA

136 **Personal data protection: Provide information on any legislation or other rules governing this area, and the coherence of such rules to relevant international conventions. What is done in order to ensure efficient protection of personal data?**

The main law governing the protection of personal data is the Law of Georgia on Personal Data Protection. This law is intended to ensure the protection of human rights and freedoms, including the right to privacy, in the course of personal data processing. The Law of Georgia on Personal Data Protection declares the Personal Data Protection Inspector as the public official responsible for the supervision of the execution of personal data protection legislation. Moreover, the activities of the Personal Data Protection Inspector are regulated by the Statute on the Activities of and Procedure of Powers by the Personal Data Protection Inspector, approved by the Resolution No. 180 of the Georgian Government.[798]

The Parliament of Georgia adopted the Law of Georgia on Office of State Inspector,[799]which will enter into force on 1 January 2019. The last provides the basis for the creation of the institution of State Inspector, which will guarantee personal data protection in Georgia and investigate crimes committed by representatives of law enforcement bodies and officials.

Georgia has ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Resolution of the Parliament of Georgia, dated 28 October 2005). Georgia became a party to the Convention on 1 April 2006. Georgia has also ratified the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, covering supervisory authority and trans-border data flows (Resolution of the Parliament of Georgia, dated 27 July 2013). It entered into force on 1 May 2014. The Georgian legislation regulating personal data protection issues is in compliance with the abovementioned international standards.

The Personal Data Protection Inspector has encountered various problems when performing her duties, signalling the need to take relevant actions to ensure protection of personal data in Georgia. Many steps have already been taken to improve the situation. The actions taken by the Inspector encompass:

1. Awareness raising activities on personal data protection, including:
   - educational activities, including organisation of trainings and information meetings;
   - production of printed materials, including recommendations, brochures and posters on issues related to personal data protection;
   - production and dissemination of social advertisements in media, including preparation of video materials for posting in social networks;
   - launch of an official webpage.
2. Involvement in law-making;

798. Resolution No. 180, adopted: 19/07/2013, published at www.matsne.gov.ge,, 22/07/2013.

799. Law of Georgia on Office of State Inspector (Law No. 3273-*rs*, adopted: 21/07/2018, published at www.matsne.gov.ge, 09/08/2018),

3. Involvement in international and national conferences, fora and working groups;
4. Issuing recommendations related to personal data protection;
5. Revealing administrative violations and taking timely measures;
6. Addressing the Chief Prosecutor when the elements of a crime are revealed.[800]

137 **Does existing legislation foresee sanctions in case of infringement of its provisions? If yes, please specify.**

Articles 43-54 of the Law of Georgia on Personal Data Protection[801] prescribe administrative offences and penalties related to personal data protection. Data processing without the grounds (Article 43), violation of the principles of data processing (Article 44), violation of video surveillance rules (Article 48), failure to comply with data security requirements (Article 46), assignment of data processing to a data processor by a data controller in violation of the rules (Article 51), violation of the rule for submitting information and documents to the Service (office) of State Inspector by a data controller or a data processor (Article 53), or violation of the rule under Article 3(1^1) of the Law of Georgia on Personal Data Protection (Article 54) shall result in a warning or a fine of 500 GEL (approx. 160 EUR). Processing of special category data without the grounds (Article 45), violation of rules under Article 16 of the Law of Georgia on Personal Data Protection by a data processor (Article 52) or transfer of data in violation of the rules established under Article 41 of the Law of Georgia on Personal Data Protection shall result in a fine of 1,000 GEL (approx. 320 EUR). Violation of rules for processing of the building entry/exit data of public and private institutions (Article 49) or violation of rules for notification of a data subject by a data controller (Article 50) shall result in a warning or a fine of 100 GEL (approx. 32 EUR). Using data for direct marketing purposes in violation of the rules shall result in a fine of 3,000GEL(approx. 970 EUR).

The Criminal Code of Georgia prescribes that unlawful obtaining, storage, use, dissemination of or otherwise making available information on private life or personal data, which has resulted in considerable damage, shall be punished by a fine or corrective labour for up to two years, or imprisonment for up to three years (Article 157). Article 157^1 of the Criminal Code of Georgia also defines that unlawful obtaining, storage, use, dissemination of or otherwise making available secrets of personal life shall be punished by imprisonment from four to seven years. According to Article 158, the unauthorised recording of or eavesdropping on private conversations, or unauthorised obtaining of the computer data or of the electromagnetic waves containing such data transmitted through or from a computer system during private communication using technical means, or unlawful storage of recordings of private communications or of the information or computer data obtained through technical means, shall be punished by a fine or imprisonment for a term of two to four years. Article 159 defines that unlawfully obtaining, opening or reading or storage of personal correspondence or mail messages, of the recordings of phone conversations or of conversations made with other technical means or of messages received or transmitted

800. For more information see annual reports of Personal Data Protection Inspector: https://personaldata.ge/en/publications/annual-report. Last seen: 31/08/2018.

801. Law of Georgia on Personal Data Protection (Law No. 5669-*rs*, adopted: 28/12/2011, published at www.matsne.gov..ge, 16/01/2012, last amended: 21/07/2018)

through telegraph, computer system, fax or other technical means, shall be punished by a fine or corrective labour for up to two years, or by imprisonment for up to three years.

138 Does existing legislation include the following data protection principles:

a) Purpose limitation principle: Data should be processed for a specific purpose and subsequently used or further communicated only insofar as this is not incompatible with the purpose of the transfer.

Sub-paragraph "b" of Article 4 of the Law of Georgia on Personal Data Protection claims that data may be processed only for specific, clearly defined and legitimate purposes. Further processing of data for purposes that are incompatible with the original purpose shall be inadmissible.

b) Data quality and proportionality principle: Data should be accurate and, where necessary, kept up to date. The data should be adequate, relevant and not excessive in relation to the purposes for which they are transferred or further processed.

Sub-paragraph "c", "d" and "e" of Article 4 of the Law of Georgia on Personal Data Protection prescribe that data may be processed only to the extent necessary to achieve the respective legitimate purpose. The data must be adequate and proportionate to the purpose for which they are processed. Data may be valid and accurate, and must be updated, if necessary. Data that are collected without legal grounds and irrelevant to the processing purpose must be blocked, deleted or destroyed. Data may be kept only for the period necessary to achieve the purpose of data processing. After the purpose of data processing is achieved, the data must be blocked, deleted or destroyed, or stored in a form that excludes identification of a person, unless otherwise determined by the law.

c) Transparency principle: Individuals should be provided with information as to the purpose of the processing and the identity of the data controller in the third country, and other information insofar as this is necessary to ensure fairness.

Article 15 of the Law of Georgia on Personal Data Protection prescribes that if data are collected directly from a data subject, a data controller or a data processor shall provide the following information to the data subject:

a) Identity and registered addresses of the data controller and the data processor (if applicable);
b) Purpose of data processing;
c) Whether provision of data is mandatory or voluntary; if mandatory – the legal consequences of refusal to provide data;
d) The right of a data subject to obtain information on his/her personal data and request that information be corrected, updated, added, blocked, deleted or destroyed.

Provision of the abovementioned information should not be mandatory if the data subject already has it. Furthermore, if the data are not collected directly from a data subject, a data controller or a data processor shall provide the data subject with the information indicated in the Paragraph 1 of this Article upon request. But when collecting data for statistical, scientific and historical purposes, the provision of information shall not be mandatory if this requires disproportionate efforts.

Moreover, Article 21 of the Law of Georgia on Personal Data Protection prescribes the right of a data subject to request information from a data controller on processing of his/her data (see the response to question 148 for more details).

d) Security principle: Technical and organisational security measures should be taken by the data controller that are appropriate to the risks presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process data except on instructions from the controller.

According to Article 17 of the Law of Georgia on Personal Data Protection, a data controller shall take appropriate organisational and technical measures to ensure the protection of data against the accidental or unlawful destruction, alteration, disclosure, collection or any other form of unlawful use, and accidental or unlawful loss. Measures taken to ensure data security must be adequate to the risks related to processing of data. Any employee of a data controller and of a data processor, who is involved in processing of data, shall stay within the scope of powers granted to him/her. In addition, he/she shall protect data secrecy, including after the termination of his/her term of office.

A data controller shall ensure the registration of all operations performed in relation to electronic data, whereas while processing non-electronic data, a data controller shall register all operations with respect to disclosure and/or alteration of data. Furthermore, Article 18 of the Law of Georgia on Personal Data Protection states that when disclosing data, a data controller and a data processor shall ensure registration of the following information: the data that were disclosed, to whom, when and on what legal grounds. This information must be stored together with the data on a data subject for the entire storage period.

139 Does existing data protection legislation provide for the possibility of limitations or exceptions to certain data protection principles and data subject's rights for important public interest grounds? If yes, please specify.

Article 5 of the Law of Georgia on Personal Data Protection declares, not as a basis for limitations, but as one of the grounds, that data processing shall be admissible if it is necessary to protect a significant public interest under the law. Furthermore, Article 24 of the Law of Georgia on Personal Data Protection prescribes permissible limitation of the rights of data subject to request and receive information, to request a correction, update, addition, blocking, deletion and destruction of data, if the exercise of these rights endangers:

a) the interests of state security and defence;
b) the interests of public security;

c) crime detection, investigation and prevention;
d) significant financial and economic interests of the country (including those related to monetary, budgetary and taxation issues);
e) rights and freedoms of a data subject and others.

Moreover it should be noted that a limitation measure may be applied only to the extent it is necessary to achieve the intent of the limitation.

140 Does existing legislation contain provisions concerning:

a) Special categories of data (sensitive data)?

According to Paragraph "b" of Article 2 of the Law of Georgia on Personal Data Protection, special categories of data are data connected to a person's racial or ethnic origin, political views, religious or philosophical beliefs, membership of professional unions, state of health, sexual life, criminal history, administrative detention, measures of restraint plea bargains, abatement, recognition as a victim of a crime or as a person affected, also biometric and genetic data that allow to identification of a natural person by the abovementioned features.

Article 6 of the Law of Georgia on Personal Data Protection prescribes that processing of special categories of data shall be possible with the written consent of a data subject or when:

a) processing of the data related to previous convictions and state of health is necessary for labour obligations and labour relations, including making a decision regarding employment;
b) data processing is necessary to protect the vital interests of a data subject or a third person and when the data subject is physically or legally unable to give his/her consent to data processing;
c) the data are processed for public health protection, healthcare or protection of health of a natural person by an institution (employee), and if it is necessary to manage or operate the healthcare system;
d) a data subject has made his/her data publicly available without an explicit prohibition of their use;
e) data are processed by a political, philosophical, religious or professional union or a non-commercial organisation when implementing legitimate activities; In this case, the data processing may only be connected with the members of this union/organisation or persons who have regular contact with this union/organisation;
f) data are processed to consider the issues related to the maintenance of personal files and registers of accused/convicted persons; to the individual planning for a convicted person to serve his/her sentence, and/or the release of a convicted person on parole and the substitution of a remaining sentence with a lighter punishment;
g) data are processed for the purpose of enforcing legal acts under Article 2 of the Law of Georgia on Enforcement Procedure of Non-custodial Sentences and Probation;
h) data are processed in the cases directly provided for by the Law of Georgia on International Protection;
i) data are processed for the functioning of the integrated analytical system of migration data.

Furthermore when data are processed on the abovementioned basis, it shall be prohibited to make the data publicly available and to disclose the data to a third party without the consent of the data subject.

b) Direct marketing?

Paragraph "t" of Article 2, of the Law of Georgia on Personal Data Protection describes direct marketing as offering goods, services, employment or temporary jobs by mail, telephone, e-mail or other means of telecommunication. According to Article 8 of the Law of Georgia on Personal Data Protection, data obtained from publicly available sources may be processed for direct marketing purposes. Furthermore, regardless of the purpose of data collection, the following data may be processed for direct marketing purposes: name (names), address, telephone number, e-mail address, and fax number. Moreover, any data may be processed for direct marketing purposes on the basis of written consent given by a data subject in compliance with this law.

A data subject shall have the right to request that a data controller stop using his/her data for direct marketing purposes at any time. Whereas, a data controller shall stop data processing for direct marketing purposes and/or ensure termination of data processing for direct marketing purposes by an authorised person no later than 10 working days after the receipt of request from the data subject.

When data are processed for direct marketing purposes, a data controller shall notify a data subject of the right to request that the data controller stop using his/her data for direct marketing and ensure the stoppage of data processing for direct marketing purposes in the same form as the direct marketing is conducted, and/or to determine the available and adequate means to request discontinuation of data processing for direct marketing purposes.

c) Automated individual decisions?

Existing legislation does not contain provisions concerning automated individual decisions.

141 How does existing legislation cover cross-border transfers of personal data? Please provide information on the application of the principle that trans-border data flows may only take place if the country of destination has a certain standard of data protection (adequacy)?

Chapter VI of the Law of Georgia on Personal Data Protection regulates the transfer of personal data to other state or international organisations. According to Article 41 of the law, data may be transferred to other states and international organisations if there are grounds for data processing under the Law of Georgia on Personal Data Protection and if appropriate data protection guarantees are provided by the respective state or international organisation. Data may also be transferred to other states and international organisations, if:

a) data transfer is part of a treaty or an international agreement of Georgia;
b) a data processor provides appropriate guarantees for the protection of data and of the fundamental rights of a data subject on the basis of an agreement between a data processor and the respective state, a natural or legal person of this state or an international organisation. In this case, data may be transferred only with the permission of the Office of State Inspector.

According to Article 42 of the Law of Georgia on Personal Data Protection, the Office of the State Inspector shall assess the presence of appropriate guarantees for data protection in other states and/or international organisations, and make a decision on the basis of analysis of the legislation regulating data processing and the practice.

142 **Please provide information on the supervisory authority responsible for monitoring the application of data protection provisions, in particular on the legal and practical measures taken to ensure its complete independence, and on the organisation of the supervisory authority, including the number of its staff, notably of inspectors.**

Independence of supervisory authority

The Personal Data Protection Inspector ensures the protection of personal data. Ms Tamar Kaldani has been Personal Data Protection Inspector, since the inception of the position in 2013. Ms Kaldani has many years of experience in the human rights protection field and has been re-elected to the abovementioned position.

The Parliament of Georgia adopted the Law of Georgia on Office of State Inspector, which will enter into force on 1 January 2019. This lays the foundation for the creation of the institution of the State Inspector, which will replace the Office of Personal Data Protection Inspector.

Both the Law of Georgia on Personal Data Protection and the Law of Georgia on the Office of State Inspector set forth the rules for appointment of the State Inspector and safeguard his/her independence. Namely, according to Article 6 of the Law of Georgia on the Office of State Inspector, the Inspector shall be elected by the Parliament of Georgia for a six-year term from the list of candidates selected on the basis of a competition and nominated by the Prime Minister of Georgia. The Inspector shall be accountable only to the Parliament and he/she shall submit to the Parliament of Georgia an annual report on the personal data protection situation in the country (Article 12). The Office of State Inspector shall be independent in exercising its powers and shall not be subordinated to any official or body. Any influence on the inspector or representatives of his/her office shall be prohibited and punishable by law (Article 11).

Article 7 of the Law of Georgia on the Office of State Inspector prescribes that no one has the right to arrest, detain or bring criminal proceedings against the Inspector, search his/her apartment, car, or workplace, or conduct a personal search without the consent of the Georgian Parliament, except when he/she is caught at the scene of crime, in which case the Parliament of Georgia shall immediately be notified. Unless the Parliament gives consent, the arrested or detained inspector shall be immediately released.

The financial independence of the Office of State Inspector is also assured by the law. Namely, the office is financed from the state budget, with necessary allocations defined by a separate code. Without prior approval of the Inspector it is prohibited to decrease current spending compared to the last year spending (Article 10).

Approved budget of the Personal Data Protection Inspector's Office in 2014-2017[802]

Year	GEL	EUR
2014	600,000	Approx.194,000
2015	1,450,000	Approx. 468,000
2016	2,100,000	Approx. 677,000
2017	1,900,000	Approx. 613,000

According to Article 13 of the Law of Georgia on the Office of State Inspector, the main directions of the activities of the Office of State Inspector for controlling the legitimacy of personal data processing are:

a) rendering consultations to public and private institutions, as well as to natural persons, on data protection issues;
b) review of applications on data protection;
c) examination (inspection) of the legality of data processing at public and private institutions;
d) information for the public about the situation in the area of data protection and significant developments in this respect in Georgia.

Organisation and human resources of the office of Personal data Protection Inspector

Based on the information provided by the Office of Personal Data Protection Inspector, the Office consists of four departments, two units and three services, with a total of 43 positions. One position is directly subordinate to the Inspector.[803]

Moreover, 28 employees are in charge of carrying out the key functions and responsibilities (rendering of consultations, review of applications and examination of the legality of data processing) of the Office of State Inspector out of which seven employees belong to the Legal Department, nine employees to the Inspection Department, four employees to the IT Department, three employees to administration, two employees for public relations, as well as the Information Security Officer, Deputy Inspector and Inspector herself/himself.

143 **Please provide information, including statistics, on the investigative powers of the supervisory authority, such as powers of access to data forming the subject of processing operations and powers to collect all the information necessary for the performance of its supervisory duties? Does the supervisory authority hear claims by any person in regard to the processing of personal data?**

802. https://personaldata.ge/en/about-us/budget. Last accessed: 31/08/2018

803. For information on the structure of the office of Personal Data Protection Inspector see: https://personaldata.ge/en/about-us/office/structure. Last seen: 31/08/2018

Article 14 of the Law of Georgia on the Office of State Inspector prescribes that the Office of State Inspector shall study the application of a data subject on personal data processing and take adequate measures envisaged by the legislation. To examine and investigate circumstances related to an application of a data subject, the Office of State Inspector shall have the right to conduct an inspection. A data controller and a data processor shall provide the Inspector with appropriate materials, information and documents, if the Inspector so requires.

According to the Article 15 of the Law of Georgia on the Office of State Inspector, the Inspector shall be authorised, on his/her own initiative and upon application of an interested person, to conduct an inspection of any data controller and data processor. The Inspector takes the decision to carry out the inspection/examination envisaged by this article. When conducting an inspection, the Inspector shall be authorised to demand from any institution, natural or legal person the production of documents and information, including information containing state, tax, bank, commercial and professional secrets or personal data, as well as materials concerning the operative and investigative activities and criminal investigation that are considered state secrets and are necessary to conduct the inspection. Furthermore, the Inspector shall be authorised to enter any institution or organisation to conduct an inspection and review any document and information, including information containing state, tax, bank, commercial and professional secrets or personal data, as well as materials concerning the operative and investigative activities and criminal investigation that are considered state secrets, regardless of their content and form of storage.

Article 18 of the Law of Georgia on the Office of State Inspector defines the measures of control for carrying out secret investigative activities. The Office of State Inspector, when carrying out control over secret investigative activities, shall be authorised:

a) to enter into the area of limited access of the Operational-Technical Agency of Georgia and observe the activities of authorised institutions in current regime;
b) to get acquainted with legal documents (including those containing state secrets) and technical instructions regulating the activities of the Operational-Technical Agency of Georgia;
c) to obtain information on technical infrastructure used for secret investigative activities and inspect the abovementioned infrastructure;
d) to request explanations on concrete issues revealed during the inspection from the employees of the Operational-Technical Agency of Georgia.

Statistical data on reviewed applications and carried out inspections provided by the Personal Data Protection Inspector's Office

	2013	2014	2015	2016	2017	2018 (8 months)
Number of submitted application	2	22	120	216	240	296
Number of carried out inspection	2	13	54	87	114	90 completed; 38 under discussion/review.

144 **Please provide information, including statistics, on the effective powers of intervention of the supervisory authority such as the following:**

a) possibility for delivering opinions before data processing operations are carried out?

Article 27, Paragraph 1, Sub-paragraph "a" of the Law of Georgia on Personal Data Protection (Law No. 5669-*rs* adopted: 28/12/2011, published at www.matsne.gov.ge, 16/01/2012, last amended: 21/07/2018)[804] (from 1 January 2019 Article 13, paragraph A of Law of Georgia on the Office of State Inspector (Law No. 3273-*rs*, adopted: 21/07/2018, published at www.matsne.gov.ge, 09/08/2018))[805] states that one of the main areas of the Inspector's activity shall be the provision of consultations on data protection issues.

According to Paragraph 1 of Article 33, of the Law of Georgia on Personal Data Protection (as of 1 January 2019 Paragraph 1 of Article 17, of the Law of Georgia on the Office of State Inspector) the inspector shall be obliged, if requested, to offer consultations to the state municipal bodies of Georgia, other public institutions, legal entities of private law and natural persons on any issues related to data processing and protection.

The Personal Data Protection Inspector's Office provided the following statistical data on intensity of execution of consultative functions:

	2014	2015	2016	2017	2018 (8 months)
Consultations provided to public and private institutions, including law enforcement bodies	924	1216	3840	4800	4575

b) possibility for ordering the blocking, erasure or destruction of data?

According to Paragraph 1(c) of Article 39 of the Law of Georgia on Personal Data Protection (as of 1 January 2019 Paragraph 1(c) of Article 16 of the Law of Georgia on the Office of State Inspector) if the inspector detects a violation of this law or other normative acts that regulate data processing, he/she shall be authorised to request the termination of data processing, data blocking, erasure, destruction or depersonalisation if he/she believes that the data processing is conducted unlawfully.

c) possibility for imposing a temporary or definitive ban on processing?

According to Paragraph 1(b) of Article 39 of the Law of Georgia on Personal Data Protection (as of 1 January 2019 Paragraph 1(b) of Article 16 of the Law of Georgia on the Office of State Inspector) if the Inspector detects a violation of this law or other normative acts that regulate

804. Law of Georgia on Personal Data Protection (Law No. 5669-*rs* adopted: 28/12/2011, published at www.matsne.gov.ge, 16/01/2012, last amended: 21/07/2018)

805. Law of Georgia on the Office of State Inspector (Law No. 3273-*rs*, adopted: 21/07/2018, published at www.matsne.gov.ge, 09/08/2018)

data processing, he/she shall be authorised to request the temporary or permanent termination of data processing, if measures for the protection of data security and implemented procedures applied by the data controller or a data processor fail to comply with the statutory requirements.

The Personal Data Protection Inspector's Office provided the following statistical data on cases of terminating, deleting, destroying, and blocking data:

2014	2015	2016	2017	2018 (8 months)
➢ 5 cases of requesting termination of data processing; ➢ 6 cases of data blocking; ➢ 1 case of data deletion	➢ 21 cases of requesting termination of data processing; ➢ 3 cases of data blocking; ➢ 3 cases of data deleting; ➢ 4 cases of data destruction	➢ 21 cases of requesting termination of data processing; ➢ 3 cases of data blocking; ➢ 13 cases of data deleting; ➢ 1 case of data destruction	➢ 30 cases of requesting termination of data processing; ➢ 1 case of data blocking; ➢ 24 cases of data deleting; ➢ 2 cases of data destruction	➢ 35 cases of requesting termination of data processing; ➢ 16 cases of data deleting; ➢ 6 cases of data destruction

d) possibility for imposing sanctions on controllers?

According to Paragraph 4 of Article 39 of the Law of Georgia on Personal Data Protection (as of 1 January 2019 Paragraph 4 of Article 16 of the Law of Georgia on the Office of State Inspector) if the Inspector identifies an administrative offence, he/she shall have the right to draw up an administrative offence report and impose administrative liability upon a data controller and data processor, respectively, under the Law of Georgia on Personal Data Protection and Administrative Offences Code of Georgia. (For additional information on administrative liability, see the response to question 137)

For statistics on administrative offences see the following information provided by the Personal Data Protection Inspector's Office:

	2014	2015	2016	2017	2018 (8 months)
Total number of revealed violations	4	64	221	274	216
In relation to law enforcement bodies	n/a	11	46	42	32
Fine	3	41	63	145	58
Warning	0	0	35	53	44
Prescriptive/Period of limitation	1	23	47	76	74

145 **Please provide information, including statistics, on the powers of the supervisory authority to engage in legal proceedings in case of violation of data protection provisions.**

According to Article 16 of the Law of Georgia on the Office of State Inspector, if the Office of State Inspector discovers the violation of norms regulating data processing, it shall be authorised to take appropriate measures. In the abovementioned case, a data controller and a data processor shall be obliged to fulfil the requirements of the Office of State Inspector within the indicated period and to notify him/her upon completion. Please see the statistics related to the use of relevant measures by Inspector in the response to the question 143.

If an inspector reveals the elements of crime when reviewing/discussing an administrative case, he/she shall send the case to the Prosecutor's Office or relevant investigatory body. Based on Paragraph 5 of Article 16 of the Law of Georgia on the Office of State Inspector, in instances when in the course of activities, the Office of the Inspector believes that the elements of a crime are present, he/she shall be obliged to notify an authorised state body under statutory procedures, if the case falls beyond her/his competence (cases on some category of crimes committed by a representative of law enforcement bodies, civil servant or person having equal status). If the case falls under the competence of the Office of State Inspector, the Office of State Inspector shall launch the investigation.

Statistics on revealing elements of crime provided by the Personal Data Protection Inspector's Office:

	2014	2015	2016	2017	2018 (8 months)
Number of cases sent to the Chief Prosecutor's Office	0	1	4 (in 2 cases- possible violation of provisions of Article 159 of Criminal Code of Georgia)	0	0
Number of cases re-directed to the Ministry of Internal Affairs	0	2	0	6 (in 4 cases – possible violation of provisions of Article 157 of the Criminal Code of Georgia)	4

146 **Does the supervisory authority have powers to bring to the attention of judicial authorities the violations of data protection provisions? Can the decisions taken by the supervisory authority which give rise to complaints be appealed against through the courts? If yes, please specify and provide statistics.**

Based on Paragraph 3 and Paragraph 6 of Article 16 of the Law of Georgia on the Office of State Inspector, the decisions of the Office of State Inspector in the field of personal data protection shall be binding. If a data controller or a data processor fail to comply with the requirements of the Office of State Inspector, the Office shall be authorised to apply to the court, law enforcement bodies and/or relevant state institutions defined by the legislation. If an addressee does not agree with the decision of the Inspector, he/she shall be entitled to appeal the decision in court only.

Statistics on appeals in court of decisions of the Personal Data Protection Inspector on violations of the Law of Georgia on Personal Data Protection", provided by the Personal Data Protection Inspector's Office:

	2014	2015	2016	2017	2018 (8 months)
Number of appealed decisions	1	16	33	40	25
Unaltered decision	1	14	28	35	9
Re-submitted for discussion/ review	0	1	3	2 1 partially re-submitted	0
Annulled	0	1	2	0	0
Under discussion - 18 cases					

147 Does data protection legislation provide for the notification of processing operations to the supervisory authority?

Chapter III of the Statute on the Activities of and Procedure of Powers by the Personal Data Protection Inspector, approved by Resolution No. 180 of the Georgian Government, regulates issues related to the obligation of notification of the Inspector. According to Article 15, any person shall be obligated to notify the Inspector about the data processing in cases prescribed by the legislation of Georgia and this Statute. Article 16 directly states that if the legislation does not provide otherwise, prior to the use of biometric data, a private person processing the data shall provide to the Inspector detailed information in writing on processing of the biometric data, including the information provided to the data subject, reason behind the data processing, and the guarantees of data protection. If the Inspector finds that processing of biometric data does not comply with the objectives and principles of the Law of Georgia on the Personal Data Protection, he/she shall inform the data processor thereof in writing and shall be authorised to request the termination of processing, blocking, deletion, destruction or depersonalisation of the data. The data processor can use the biometric data prior to taking into consideration the Inspector's request as well, if this is necessary to protect the vital interests of the data subject or a third party. In the abovementioned case, the data processor shall be obligated to inform the Inspector immediately thereof by a justified application.

According to Article 17 of the Statute, prior to setting up a filing system and entering the new category of data in it, the data processor shall be required to provide to the Inspector in writing or electronically the following information:

a) Name of a filing system;
b) Title/name, surname and address of the data processor and authorised person, place of storage and/or processing of the data;
c) Legal basis of the data processing;
d) Category of the data subject;
e) Category of the data in a filing system;
f) Purpose of the data processing;
g) Term of storage of the data;
h) Fact and grounds of limiting the right of the data subject;

i) The recipient of the data available in the filing system and their categories;
j) Information on the transfer of data to another state or international organisation and the legal basis of such transfer;
k) General description of the procedure established for the protection of safety of the data.

The data processor shall also notify the Inspector about amending the information referred to above within no later than 30 days from the introduction of the amendment. If the Inspector finds that the catalogue of a filing system does not comply with the objectives and principles of effective legislation on data processing, she/he shall notify the data processor in writing thereof and request to bring the catalogue of a filing system in compliance with the objectives and principles of legislation.

Furthermore, Article 20 of the Law of Georgia on Personal Data Protection prescribes that one copy of a court ruling on the issuance of a permit or refusal to issue a permit to conduct secret investigative activities requested by a law enforcement body (in case of urgent necessity, a resolution of a prosecutor on conducting a secret investigative action), which contains only the requisite details and an operative part, as well as a copy of the court ruling on recognition of a secret investigative activity as lawful or unlawful conducted by a law enforcement body without court permission, which contains only the details and the resolution part, shall be submitted to the Office of the State Inspector according to the rules declared in the Criminal Procedure Code of Georgia.

Also an electronic communications company shall notify the Office of State Inspector about the transfer of identification data of electronic communication to a law enforcement body according to the Criminal Procedure Code of Georgia within 24 hours after the transfer.

148 **Please indicate whether the existing legislation provides for rights of the data subjects. Do the data subjects have the right to access their own data, to object to the processing of their own data, to ask for rectification or deletion of their own data and under which conditions?**

Chapter IV of the Law of Georgia on Personal Data Protection defines the rights of a data subject. Namely, according to Article 21, a data subject shall have the right to request information from a data processor on processing of his/her data. The data processor shall provide to the data subject, upon request, immediately or, in special circumstances prescribed by the law, not later than 10 days after receiving the request with the following information:

a) which personal data are being processed;
b) the purpose of data processing;
c) the legal grounds for data processing;
d) the ways in which the data were collected;
e) to whom his/her personal data were disclosed, and the grounds and purpose of the disclosure (this provision is not mandatory if the data are public under law).

According to Paragraph 5, a person shall have the right to get acquainted with his/her personal data kept at a public institution and obtain copies of the data for free, except for the information defined by Georgian legislation as requiring payment.

Article 22 of the Law of Georgia on Personal Data Protection prescribes that when requested by a data subject, a data controller shall correct, update, add, block, delete, or destroy data if the data are incomplete, inaccurate, not updated or are collected and processed illegally. A data processor shall inform all data recipients of the correction, update, addition, blocking, deletion, and destruction of the data, except when the provision of this information is impossible due to the large number of data recipients or disproportionately high costs. The Office of State Inspector shall be notified of the latter circumstance. If information is received, the recipient party shall correct, update, add, block, delete, or destroy the data, respectively.

According to Article 23 of the Law of Georgia on Personal Data Protection, a request to correct, update, add, block, delete, or destroy data shall be submitted either in writing, orally or by electronic means. A data processor shall correct, update, add, block, delete or destroy the data or inform the data subject of the grounds for refusal within 15 days after receiving the request. If a data processor, without a request from a data subject, considers on its own that the data at his/her disposal are incomplete, inaccurate, or not updated, the data processor shall correct or update the data accordingly and inform the data subject. After a data subject submits a request, a data processor shall have the right to block the data based on the applicant's request. A decision to block data shall be made within three days after an appropriate request is submitted and shall be valid until a data controller decides to correct, update, add, delete or destroy the data.

Furthermore, Article 25 of the Law of Georgia on Personal Data Protection declares that a data subject shall have the right to, at any time and without explanation, withdraw his/her consent and request the termination of the data processing and/or the destruction of data, whereas the data processor shall terminate data processing and/or destroy the processed data according to the request of a data subject within five days after the application is submitted, unless there are other grounds to process the data. This right shall not apply to information that is related to fulfilment of a data subject's monetary/financial obligations and processed with his/her consent.

149 **Please clarify whether the data subject exercises his/her rights directly or indirectly. Please indicate which is the relevant procedure and whether there are any exemptions or restrictions to the exercise of these rights.**

According to Article 26 of the Law of Georgia on Personal Data Protection, if the rights under this law are violated, a data subject shall have the right to apply to the Office of the State Inspector or to the court under procedures determined by the law, and if a data controller is a public institution, he/she may also submit an appeal to the same or senior administrative body. Moreover, a data subject shall have right to appeal the decision of a higher administrative body or the Office of the State Inspector to the court under procedures determined by law.

Whereas Article 9 of the Statute on the Activities of and Procedure of Powers by the Personal Data Protection Inspector, approved by Resolution No. 180 of the Georgian Government, prescribes

that in case of breach of rights under the Law of Georgia on Personal Data Protection, the data subject shall have the right to address the Office of the State Inspector personally or through a plenipotentiary.

150 What is done in order to ensure efficient protection of personal data by police and judicial authorities in criminal matters?

Protection of personal data by police and other law enforcement bodies

Article 7 of the Criminal Procedure Code of Georgia prescribes the principle of inviolability of private life in criminal proceedings and declares that a person carrying out a procedural action shall not disclose information on a person's personal life, nor private information that the person considers necessary to keep confidential. A person, who suffered damage as a result of the unlawful disclosure of information regarding his/her private life/personal data, shall have the right to be fully indemnified for the damage under the legislation of Georgia.

The principle of protection of privacy is also prescribed in Article 13 of the Juvenile Justice Code, in which the privacy of minors shall be protected at all stages of the juvenile justice procedure. Information on the previous convictions and previous administrative liability of minors shall not be available to the public. The personal data of minors may not be disclosed or published, except as provided for by the Law of Georgia on Personal Data Protection.

Also there is the Law Enforcement Bodies Oversight Unit under the Inspections Department of the Office of Personal Data Protection (Office of State Inspector as of 1 January 2019) in charge of controlling personal data protection by law enforcement bodies. The Inspector shall be exclusively authorised to carry out the following mechanisms for the control of personal data protection:

a) control of secret eavesdropping and recording of telephone communication – via inspection, electronic system of control and control via special electronic system that enables Inspector to observe the legality of secret investigation activities;
b) control of retrieval and recording of information from a communications channel (by connecting to the communication facilities, computer networks, line communications and station devices), computer system (both directly or remotely) and installation of respective software in the computer for this purpose – via inspection;
c) control of real-time identification of geolocation via special electronic system of control for identification of geolocation in real-time and inspection;
d) inspecting the legality of control/monitoring of a postal and telegraphic transfer (except for diplomatic post);
e) inspecting the legality of secret video recording and/or audio recording, photographing;
f) control of the legality of electronic surveillance through technical means (the use of which does not cause harm to human life, health and environment).

Furthermore, the Office of Personal Data Protection Inspector (Office of State Inspector as of 1 January 2019) has exclusive authority to control the legality of investigatory activities related to computer data via inspection and comparison of information provided by court, the Prosecutor's Office and electronic communication service provider. Moreover, the Office of Personal Data

Protection Inspector (Office of State Inspector as of 1 January 2019) controls activities carried out in the central bank of identification data of electronic communication via special data bank electronic control system, which enables permanent oversight of activities carried out in the bank, as well as via inspection of the legality of data processing by a data processor/data controller.

In addition to exercising the abovementioned exclusive authority, the Office of Personal Data Protection Inspector (Office of State Inspector as of 1 January 2019) examines the observance of personal data protection regulations by other law enforcement bodies based on the general requirements and provisions of the Law of Georgia on Personal Data Protection and the Law of Georgia on the Office of State Inspector.

The Personal Data Protection Inspector's Office provided the following statistical data on the Inspector's execution of the consultative and monitoring functions in relation to law enforcement bodies:

Applications and carried out inspections in relation to law enforcement bodies

	2015	2016	2017	2018 (8 months)
Submitted applications	4	38	43	29
Carried out inspections	In total 6 inspections: 1 inspection of the Ministry of Corrections; 4 inspections of the Ministry of Internal Affairs; 1 inspection of State Security Service	In total 60 inspections: 35 inspections of Chief Prosecutor's Office; 14 inspections of Ministry of Internal Affairs; 9 inspections of Ministry of Corrections; 1 inspection of State Security Service; 1 inspection of Investigation Service of the Ministry of Finance	In total 77 inspections: 34 inspections of Ministry of Corrections; 28 inspections of the Ministry of Internal Affairs and its LEPLs; 8 inspections of Chief Prosecutor's Office; 5 inspections of State Security Service and LEPL Operational-Technical Agency; 2 inspections of Investigation Service of the Ministry of Finance.	46 inspections have been completed: 20 inspections of Ministry of Internal Affairs; 10 inspections of Chief Prosecutor's Office; 11 inspections of Ministry of Corrections; 2 inspections of LEPL Operational-Technical Agency; 1 inspection of State Security Service; 2 inspections of Investigation Service of the Ministry of Finance.

Consultations provided:

	2014	2015	2016	2017	2018 (8 months)
In relation to secret investigatory activities/ actions	n/a	50	68	125	82

Revealed violations:

	2014	2015	2016	2017	2018 (8 months)
In relation to law enforcement bodies	n/a	11	46	42	32

Protection of personal data by judicial authority

The protection of personal data by the court when discussing criminal cases is ensured via the application of the Constitution of Georgia and the Criminal Procedure Code of Georgia. Paragraph 3 of Article 62 of the Constitution of Georgia prescribes that a court shall consider a case at an open hearing. Consideration of a case at a closed hearing shall be permitted only in cases provided for by the law. Article 10 of the Criminal Procedure Code of Georgia reaffirms that a hearing, as a

rule, shall be public and oral, whereas Article 182 states that a court may, upon the motion of any of the parties, or on its own initiative, take a decision to close a session partially or fully:

a) for the purpose of protecting personal data, or professional or commercial secrets;
b) for the purpose of personal security of a trial participant and/or of his/her family member (close relative), or if a special protective measure is applied with respect to a trial participant, which requires the closing of a trial session;
c) for the purpose of defending the interests of victims of sexual abuse, human trafficking or domestic violence;
d) when a person whose personal correspondence or communication/message is to be published/discusses at the court hearing without his/her consent.

Moreover, the court may request persons attending a closed session not to disclose information that they have learnt during the session.

> However, it should be emphasised that regardless of whether the court hearing is closed or open, both paragraph 3 of Article 62 of the Constitution of Georgia and Article 10 of the Criminal Procedure Code of Georgia reiterate that the decision of the court shall be announced publicly. Under the current legislative framework and established practice, the balance between freedom of information and personal data protection is not ensured. Namely, the Common Courts of Georgia, notwithstanding the fact that the decision in the criminal case has been taken based on open court hearing, the decision has been announced publicly and there has been high public interest towards the case, refuse to disclose the decision due to the lack of grounds for processing personal data and special categories of personal data envisaged by Article 5 and Article 6 of the Law of Georgia on Personal Data Protection. Considering the fact that all court decisions contain personal data, the law does not allow disclosure of any court decision when requested as public information. The Institute for Development of Freedom of Information believes that the existing regulation on access to court decisions contradicts the Constitution of Georgia and it has filed a ***constitutional complaint to the Constitutional Court.***

From the personal data protection perspective, it should be mentioned that the Criminal Procedure Code of Georgia prescribes he procedure for applying special protection measures in relation to participants of criminal proceedings. Article 67 of the Criminal Procedure Code of Georgia foresees special measures for protecting a participant of criminal proceedings, if:

a) the proceedings concern the commission of such an act, the public hearing of which, due to its nature, will substantially harm the personal life of the participant of the proceedings;
b) by making public the identity and the involvement in the case of a participant of the proceedings, will considerably endanger his/her or his/her close relative's life, health or property;
c) the participant of the procedure depends on the accused.

Article 68 of the Criminal Procedure Code of Georgia provides for the following protection measures:

a) taking measures preventing the location [of participants of the proceedings]- replacing or removing from the public registry or any other public record the data that make it possible to recognise and identify a participant of the proceedings, in particular, the participant's name, address, work place, occupation or other relevant information;
b) changing the identity and issuing new documents- assigning a pseudonym, changing the physical appearance, classifying as secret the procedural and other documents that make it possible to recognise and identify the person;
c) taking safety measures (personal protection, emergency call, etc.);
d) changing temporarily or permanently the place of residence;
e) moving (relocating) to another state.

CHAPTER IV

EU CITIZENS RIGHTS

RIGHT TO VOTE AND STAND AS A CANDIDATE IN MUNICIPAL ELECTIONS

151 **Which legal procedures would be necessary to allow EU citizens to vote for and/or stand for the local elections in your country, or to benefit from other electoral rights?**

In order to harmonise the legislation of Georgia with EU legislation so as to allow EU citizens to vote and stand as a candidate in municipal elections in Georgia, the following regulations must be amended:

- Constitution of Georgia
- Election Code of Georgia
- Organic Law of Georgia Local Self-Government Code
- Law of Georgia on the Legal Status of Aliens and Stateless Persons

Changes should be in compliance with the Council Directive 94/80/EC of 19 December 1994, which ensures that all citizens of the European Union can exercise the right to vote and stand as a candidate in municipal elections, regardless of whether they are nationals of the country they reside in.

For this purpose, the following changes should be carried out in the abovementioned laws:

- Pursuant to Article 24 of the Constitution of Georgia,806 every citizen who has attained the age of 18 has the right to participate in referenda and elections. This article should be amended to guarantee the right to participate in referenda and elections to EU citizens, but under certain conditions (length of residency, limitation to local elections, etc.).
- Article 2, (m) and (n), of the Election Code of Georgia807 regarding active suffrage and passive suffrage, should also be changed accordingly to give the right to vote and right to run as a candidate to EU citizens, however changes shall be made under certain conditions as described in the previous paragraph.
- Changes should be made in Organic Law of Georgia Local Self-Government Code as well. Specifically, Article 6808 should be amended in order to enable citizens of the European Union residing in Georgia to vote and stand as a candidate in elections of local self-government.
- Amendments should be made in the Law of Georgia on the Legal Status of Aliens and Stateless Persons. Under Article 42 of this law[809], aliens may not vote in elections or be elected to local self-government and to central government bodies,

806. Article 24, Paragraph 1 of the Constitution of Georgia, (#783, 24/08/1995, published: Parliamentary Gazette, 31-33, 24/08/1995, last amended: 23/03/2018 to be effective after the inauguration of the president following 28 October presidential elections)

807. Article 2, Paragraph (m) and (n) of the Election Code of Georgia, (#5636, 27/12/2011, published: Website, 10/01/2012, last amended: 21/07/2018)

808. Article 6 of the Organic Law of Georgia Local Self-Government Code, (#1958, 05/02/2014, published: Website, 19/02/2014, last amended: 20/09/2018)

809. Article 42 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, (#2045, 05/03/2014, published: Website, 17/03/2014, entered into force: 01/09/2014, last amended: 05/07/2018)

or participate in referenda. This article should be amended to give right to the EU citizens to vote and be elected in local elections.

RIGHT TO MOVE AND RESIDE FREELY

152 What documents do EU citizens and members of their families need in order to enter Georgia?

According to Ordinance No 255 of the Government of Georgia[810]on Approval of the List of Countries Whose Citizens May Enter Georgia without a Visa, citizens of the European Union do not need a visa to enter Georgia.

Citizens of the European Union may enter Georgia with a travel document, as well as an identity card issued by the respective member state of the European Union. Identity card shall contain the name, surname, date of birth and photo of the person.[811]

Citizens of the member states of the European Union may enter and stay in Georgia without a visa for up to one year.

153 What documents do EU citizens not exercising an economic activity have to produce and which fee are they charged for a residence permit?

Ordinance No 255 of the Government of Georgia, On Approval of the List of Countries Whose Citizens May Enter Georgia without a Visa provides that nationals of the European Union may enter and stay in Georgia without visa for one full year. If nationals of the European Union intend to stay in Georgia more than one year, they must apply for a residence permit.

Article 15 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons lists different types of residence permits.[812] As this question is focused on EU citizens not exercising economic activity, only certain types of residence permit will be discussed below.

Under Article 17 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, in order to obtain residence permit in Georgia, an alien "shall apply to the agency in person or through an authorised representative."[813]

810. Ordinance of the Government of Georgia On Approval of the List of Countries Whose Citizens May Enter Georgia without a Visa, (#255, 05/06/2015, published: Website, 08/06/2015, last amended: 24/01/2017)

811. Ibid.

812. Article 15 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, (#2045, 05/03/2014, published: Website, 17/03/2014, entered into force: 01/09/2014, last amended: 05/07/2018)

813. Article 17, Paragraph I, of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, (#2045, 05/03/2014, published: Website, 17/03/2014, entered into force: 01/09/2014, last amended: 05/07/2018)

Pursuant to Article 3 of Ordinance #520 of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits application on residence permit should be addressed to the Public Service Development Agency.[814]

Fees vary according to the type of residence permit and speed with which an applicant must receive the permit. Residence permits for studies or for the purpose of family reunification cost: 210 GEL (67.74 EUR) within 30 calendar days, 330 GEL (106,45 EUR) within 20 calendar days, or 410 GEL (132.25 EUR) within 10 calendar days. There is no fee for special residence permits. Permanent residence permits cost: 180 GEL (58.08 EUR) within 30 calendar days and 300 GEL (96.77 EUR) within 20 days.[815]

1. Pursuant to Article 6 of the Ordinance of the Government of Georgia of 1 September 2014 on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, an applicant for a study residence permit[816]must submit:
   - Copy of a valid travel document;
   - a document evidencing lawful stay in Georgia (Visa type D3);
   - Application of an established form;
   - Photo 3×4 in size;
   - Receipt certifying the payment of service fee;
   - A document from an authorised educational institution confirming that the applicant is enrolled (indicating expected length of learning);
   - Document certifying the legal income of a foreigner and/or a citizen of Georgia or his/her relative holding a residence permit in Georgia, and evidencing the kinship with the mentioned person. The income may also be the amount on the bank account of a foreigner, provided it is not less than twice the amount of average consumer subsistence level applicable in Georgia per month over the duration of study residence permit;

2. Pursuant to Article 7 of the Ordinance of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, an applicant for a residence permit for the purpose of family reunification[817]must submit:
   - Copy of a valid travel document;
   - a document evidencing lawful stay in Georgia (Visa type D4);
   - Application of an established form;
   - Photo 3×4 in size;
   - Receipt certifying the payment of service fee;
   - A document certifying the kinship;
   - Document certifying the legal income of a foreigner and/or a citizen of Georgia or his/her relative holding a residence permit in Georgia, and evidencing the kinship with

814. Article 3 of the Ordinance of the Government of Georgia, On Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits (#520, 01/09/2014, published: Website, 02/09/2014, entry into force: 01/09/2014, last amended: 27/01/2017)

815. Official website of Public Service Development Agency: https://sda.gov.ge/?page_id=7445&lang=en

816. Article 6 of the Ordinance of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, (#520, 01/09/2014, published: Website, 02/09/2014, entry into force: 01/09/2014, last amended: 27/01/2017)

817. Article 7 of the Ordinance of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, (#520, 01/09/2014, published: Website, 02/09/2014, entry into force: 01/09/2014, last amended: 27/01/2017)

the mentioned person. The income may also be the amount on the bank account of a foreigner, provided it is not less than twice the amount of average consumer subsistence level applicable in Georgia per month over the duration of residence permit;

3. Pursuant to Article 9 of the Ordinance of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, a special residence permit[818]requires the following documents:
   a. To issue a special residence permit upon the initiative of a member of Georgian government:
      - Application of an established form;
      - Copy of a valid travel document;
      - A document evidencing lawful stay in Georgia;
      - Written application of member of government of Georgia;
      - Photo 3×4 in size;
   b. To issue a special residence permit to a victim of human trafficking – a motion from an institution providing service to victims of human trafficking or a body conducting the process;
   c. To issue a special residence permit to persons specified in Article 60 of the Law:
      - Application of an established form;
      - Copy of a travel document of foreigner (if available);
      - Photo 3×4 in size.

4. Pursuant to Article 10 of the Ordinance of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, a permanent residence permit819requires the following documents:
   a. To issue a permanent residence permit to a spouse, parent(s) and child (children) of a citizen of Georgia:
      - Copy of a valid travel document;
      - a document evidencing lawful stay in Georgia (Visa type D4);
      - Application of an established form;
      - Photo 3×4 in size;
      - Receipt certifying the payment of service fee;
      - A document certifying the kinship;
      - Document certifying the legal income of a foreigner and/or a citizen of Georgia or his/her relative holding a residence permit in Georgia. If a citizen of Georgia is of retirement age or social assistance beneficiary – a document certifying the receipt of a pension or social assistance. The income may also be the amount on the bank account of a foreigner;

818. Article 9 of the Ordinance of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, ((#520, 01/09/2014, published: Website, 02/09/2014, entry into force: 01/09/2014, last amended: 27/01/2017)

819. Article 10 of the Ordinance of the Government of Georgia on Approval of the Procedures for Reviewing and Deciding the Granting of Georgian Residence Permits, (#520, 01/09/2014, published: Website, 02/09/2014, entry into force: 01/09/2014, last amended: 27/01/2017)

b. To issue a permanent residence permit to a foreigner living in Georgia for the preceding six years on the basis of a temporary residence permit:
   - Copy of a valid travel document;
   - a document evidencing lawful stay in Georgia;
   - Application of an established form;
   - Photo 3×4 in size;
   - Receipt certifying the payment of service fee;
   - Document certifying the legal stay in Georgia for the preceding six years on the basis of a temporary residence permit (a copy of temporary residence card/ residence permit in Georgia);
   - Document certifying the legal income of a foreigner and/or a citizen of Georgia or his/her relative holding a residence permit in Georgia and the kinship. If a citizen of Georgia is of retirement age or social assistance beneficiary – a document certifying the receipt of social pension or social assistance. The income may also be the amount on the bank account of a foreigner.

Furthermore, under Article 15 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, a temporary residence permit shall be issued to the foreign citizen who has been assigned the status of a victim under the Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence. Also, Article 15 states that a short-term residence permit shall be issued to an alien who, under the procedure established by the legislation of Georgia, has the right of ownership of real property within the territory of Georgia (other than agricultural land) with a market value exceeding USD 35,000 equivalent in GEL, and their family members. To grant a short-term residence permit, the market value of the real property shall be established by a certified assessor of a body accredited by the LEPL –Georgian Unified National Accreditation Body- Georgian Accreditation Centre.

Study, family reunification, special, temporary and short-term residence permits are issued with the right of temporary residence, for six years. The procedure of granting residence permit lasts up to one month, however permits can be issued in an accelerated manner.

It has to be noted that the Parliament of Georgia is currently reviewing amendments to the Law on Legal Status of Foreign Citizens and Stateless Persons. The amendments will introduce stricter requirements for foreigners that seek to acquire residence permit in Georgia. Initiated amendments envisage changes in procedures of issuance investment residence permit, short-term and permanent residence permits, as well as regarding issuance of visa type D5. Changes mainly concern foreign nationals that are exercising economic activity.

154 What are the reasons to refuse entry or residence to EU citizens?

Pursuant to Article 3(k) of the Law of Georgia on the Legal Status of Aliens and Stateless Persons,[820] a request shall be denied to a foreigner against whom criminal proceedings are pending for international crimes, such as terrorism, drug smuggling, and human trafficking.

820. Article 3, Paragraph K of the of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, (#2045, 05/03/2014, published: Website, 17/03/2014, entered into force: 01/09/2014, last amended: 05/07/2018)

Furthermore, under Article 11,[821]a foreigner shall be denied entry to Georgia if:

1) He/she does not have documents required under Georgian legislation that are necessary for entry to Georgia;
2) He/she has been banned from entering Georgia or did not pay a fine imposed for an unlawful stay in Georgia;
3) If he/she has submitted incomplete or false data or documents for obtaining a Georgian visa or for extending a visa validity period;
4) He/she does not have health and accident insurance or sufficient financial means to sustain his/her stay in Georgia and to return to their country of origin;
5) His/her stay in Georgia poses a threat to state security and/or public order of Georgia, or to the protection of the health, rights and legal interests of citizens of Georgia and other persons residing in Georgia;
6) His/her stay in Georgia is unacceptable because of foreign policy considerations;
7) if there is a reasonable doubt that he/she will unlawfully stay in Georgia after the visa validity expires;
8) He/she does not provide sufficient information or provides fraudulent information about his/her personality and travel purpose;
9) In other cases provided for by the legislation of Georgia.

Under Article 18,[822] a foreigner shall be denied a residence permit in following cases:

1) There is the decision of an authorised body on the advisability of his/her residence in Georgia for the safeguarding of state and/or public safety interests;
2) The grounds for which an alien obtained the right to stay in Georgia no longer exist;
3) He/she is engaged in activities that pose a danger to Georgian state security and/or public safety;
4) He/she has committed a crime against peace and humanity;
5) He/she is wanted for a criminal offence or is convicted of a grave crime committed within the last five years prior to submitting the application (if the conviction has not been overturned or completed) or if criminal proceedings have been instituted against him/her - until the completion of the criminal proceedings;
6) If he/she has such an infectious or other diseases, the nature, severity and duration of which may pose a threat to the Georgian population. The list of such diseases shall be established by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia;
7) He/she has submitted forged or invalid documents for obtaining a Georgian residence permit;
8) He/she has indicated incorrect data in the application or concealed significant information about circumstances that are of critical importance for making a decision on granting a residence permit in Georgia.

821. Article 11 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, (#2045, 05/03/2014, published: Website, 17/03/2014, entered into force: 01/09/2014, last amended: 05/07/2018)

822. Article 18 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, (#2045, 05/03/2014, published: Website, 17/03/2014, entered into force: 01/09/2014, last amended: 05/07/2018)

DIPLOMATIC AND CONSULAR PROTECTION

155 **Which measures (legal, institutional and others) would be necessary to allow EU citizens to benefit from protection of diplomatic and consular representations of Georgia, including the establishment of an emergency travel document?**

Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union (TFEU) and Article 46 of the Charter of Fundamental Rights of the European Union provide the legal basis for every EU citizen to enjoy equal treatment regarding consular protection. Article 23 of TFEU states that "member States shall adopt the necessary provisions and start the international negotiations required to secure this protection."[823]

Currently, Pursuant to Article 41(3) of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, a foreigner has the right to apply to a diplomatic mission or consular office, of which he/she is a national or has permanent residency or who is entitled to protect his rights and legitimate interests.[824]

Pursuant to Article 5(1) of the Law of Georgia on Consular Activities,[825]consular officials shall, in the host country, protect the rights and legal interests of natural and legal persons registered in Georgia ('Legal Persons of Georgia'), as well as the state interests of Georgia. Therefore changes should be made in this article in order to guarantee that EU citizens benefit from the protection of consular representations of Georgia.

Furthermore, it needs to be mentioned that under Article 5(5) of the Law of Georgia on Consular Activities, the main consular functions for foreign citizens and stateless persons shall be performed in the cases and through the procedures defined by the Minister. Delegated consular functions shall be performed according to Article 25 of this law.

The Law of Georgia on Consular Activities and Law of Georgia On the Procedure for Registering the Citizens of Georgia and Aliens Residing in Georgia, for Issuing Identity (Residence) Cards and Passports of a Citizen of Georgia, should be also amended in order to be in compliance with Decision 96/409/CFSP on establishment of Emergency Travel Document.

823. Article 23, Treaty on the Functioning of the European Union, Official Journal C 326, 2012

824. Article 41, Paragraph 3, 11 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, (#2045, 05/03/2014, published: Website, 17/03/2014, entered into force: 01/09/2014, last amended: 05/07/2018)

825. Article 5, Paragraph 1, of the Law of Georgia on Consular Activities (#6438, 12/06/2012, published: Website, 22/06/2012, last amended: 29/06/2014)