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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### EVALUATION REPORT

### GEORGIA

Adopted by GRECO at its 74<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 November - 2 December 2016)

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## EXECUTIVE SUMMARY

1. It is widely agreed that Georgia has come a long way in creating a regulatory and institutional framework for fighting corruption. Over the years, three different governments have introduced a number of reforms and made considerable progress in the fight against corruption. It would appear that the government has succeeded in significantly reducing petty corruption, and Georgia's scores in corruption perception indices have also improved considerably over the last decade. At the same time, it has been argued that some of the more complex types of corruption remain a problem. Moreover, citizens apparently continue to mistrust the judiciary more than other institutions.

2. Current reforms are embedded in the National Anti-Corruption Strategy and related Action Plan 2015-2016 adopted by the Anti-corruption Interagency Coordination Council which is composed of senior officials from the executive branch, the legislature and the judiciary, as well as several representatives of civil society organisations. Among the recent reforms which are relevant to all three branches of power subject to the present evaluation, significant amendments to the Law on Conflict of Interest and Corruption in Public Service – in particular, the introduction of a monitoring mechanism for asset declarations – are to be highlighted. It is crucial that the new rules are now effectively implemented in practice and kept under review in the years to come.

3. Regarding – more specifically – members of parliament, it is to be noted that a number of measures to increase transparency and accountability are underway in the framework of the global initiative Open Government Partnership and the related Action Plan, with the involvement of civil society organisations. The present report contains recommendations which support planned measures such as further enhancing transparency of the legislative process and developing a code of ethics/conduct for members of parliament. It calls, furthermore, for mandatory *ad hoc* disclosure of parliamentarians' conflicts of interest.

4. Both the judiciary and the prosecution service have been subject to significant reforms which were supported by the Council of Europe, in particular, through the Venice Commission and the Consultative Council of European Prosecutors (CCEP), and also by other international and national partners such as the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the US Department of Justice, USAID, the European Union, local NGOs, etc. The current third stage of the reform of the judiciary focuses on increasing the independence of the judiciary, amending the rules on appointment, promotion and transfer of judges, automatic case assignment, disciplinary procedures, etc. It is of prime importance that the bill which is currently pending before Parliament is now adopted and implemented in practice. This report contains several specific recommendations which support the planned amendments – and which go further in some respects, for example, with respect to disciplinary proceedings, so as to increase their effectiveness, transparency and objectivity. Moreover, it is recommended that the "Norms of Judicial Ethics" be updated and complemented by practical measures, and that the immunity of judges be limited to activities relating to their participation in judicial decision-making ("functional immunity").

5. A reform of the prosecution service was initiated by the government in late 2014 to strengthen the institutional independence of the prosecution service, to ensure non-interference in the activities of the prosecutors and to provide a legal basis for prosecutors to carry out their professional functions impartially and objectively. Within the framework of the reform, amendments to the Law on the Prosecutor's Office were made, *inter alia*, to establish the Prosecutorial Council and the Conference of Prosecutors and to revise the processes for appointment to and dismissal from the office of the Chief Prosecutor. While GRECO welcomes this reform and the underlying intention to de-politicise the Chief Prosecutor's Office, it recommends taking additional measures to reach this goal and to further reduce the influence of the government/parliamentary

majority on the appointment procedure of the Chief Prosecutor and on the activity of the Prosecutorial Council. Other recommendations concern different matters which have not been dealt with in the most recent reform, namely further regulating the recruitment and promotion of prosecutors as well as case management and internal instructions; updating the "Code of Ethics for Employees of the Prosecution Service of Georgia" – which is already underway – and taking complementary measures to ensure its implementation in practice; widening the scope of application of the asset declaration regime under the Law on Conflict of Interest and Corruption to cover all prosecutors (currently, only a very limited number of higher-ranking prosecutors are covered); and reviewing the disciplinary regime applicable to prosecutors.

## **I. INTRODUCTION AND METHODOLOGY**

6. Georgia joined GRECO in September 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in October 2000), Second (in July 2006) and Third (in December 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)).

7. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

8. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

9. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

10. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (GrecoEval4(2016)4) by Georgia, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Georgia from 30 May to 3 June 2016. The GET was composed of Mr Dušan DRAKIC, Head of Section, Agency for Prevention of Corruption (Montenegro), Ms Sheridan GREENLAND, Executive Director, Judicial College, Judicial Office (United Kingdom), Mr Elnur MUSAYEV, Senior Prosecutor, Anticorruption Department, General Prosecutor's Office (Azerbaijan), and Mr Frank RAUE, Division PA 31, Secretariat of the 5<sup>th</sup> Committee of Inquiry of the 18<sup>th</sup> legislative term, Administration, German *Bundestag* (Germany). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat.

11. The GET held interviews with members and staff of the national Parliament (representatives of the Committee of Legal Matters, the Committee on Procedural Issues and Rules and the Speaker's Cabinet), officials of the Secretariat of the Anti-Corruption Council and of the Civil Service Bureau, the Chief Prosecutor's Office and prosecutors from different prosecutor's offices (Tbilisi Prosecutor's Office, Vake-Saburtalo District Prosecutor's Office), representatives of the Ministry of Justice, the High Council of Justice, the High School of Justice and the Disciplinary Committee of Judges of Common Courts as well as judges from different courts (Supreme Court, Court of Appeal). The GET also spoke with representatives of the Public Defender's Office, the Georgian Bar Association, the Delegation of the European Union to Georgia and of non-governmental organisations

(Georgian Young Lawyers Association, Institute for Development of Freedom of Information, Transparency International).

12. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Georgia in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Georgia, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Georgia shall report back on the action taken in response to the recommendations contained herein.

## II. CONTEXT

13. Both domestic and foreign observers widely agree that Georgia has come a long way in creating a regulatory and institutional framework for fighting corruption. "Over two decades, three different governments have introduced a number of reforms, modernised financial and public institutions, initiated the harmonisation of Georgian legislation with EU regulations, and made considerable progress in the fight against corruption."<sup>1</sup> At the same time, it has been stated that some of the more complex types of corruption remain a problem. "While virtually no one challenges the idea that the government has largely succeeded in eradicating petty corruption, it is sometimes argued that corruption has changed shape in Georgia in recent years. For example, it has been suggested that, while the country suffered from rampant and all-encompassing corruption until 2003, presently, a 'clientelistic system' has emerged where the country's leadership 'allocates resources in order to generate the loyalty and support it needs to stay in power'."<sup>2</sup>

14. Georgia's scores in TI's yearly corruption perception index (CPI) have improved considerably over the last decade. In the 2015 CPI ranking, Georgia scored 52 on a scale from 0 (highly corrupt) to 100 (very clean) which places it as number 48 on a list of 167 countries<sup>3</sup> - as compared to rank 130 out of 159 countries in 2005. Similar trends can be observed with regard to the World Bank governance indicators rule of law and control of corruption.<sup>4</sup> According to TI's Global Corruption Barometer 2013 (GCB), during the years 2011-2013, 60% of the respondents felt that the level of corruption in Georgia was decreasing and 12% felt that it was increasing.<sup>5</sup> In terms of the focus of the Fourth Evaluation Round, in Georgia respondents considered the judiciary to be the most corrupted institution: 51% of respondents considered the judiciary corrupt/extremely corrupt and 34% made the same assessment for the national Parliament.

15. Following the "Revolution of Roses" in November 2003, the new government aimed at radical reforms of the Georgian society.<sup>6</sup> It implemented a number of anti-corruption measures, such as reducing public sector bureaucracy, strengthening prosecution and sanctioning those involved in corruption, reforming the law enforcement agencies and amending the criminal law provisions on corruption as well as legal provisions aimed at ensuring integrity of public officials (e.g. provisions of the Law on Conflict of Interest and Corruption in Public Service, LCI). A new wave of institutional reforms aimed at further enhancing functional democracy and the rule of law in the country was launched by the new government which came to power in 2012. Current reforms are embedded in the National Anti-Corruption Strategy and related Action Plan 2015-2016 adopted by the Anti-corruption Interagency Coordination Council (ACC) in 2015. The latter was set up in 2008 and is composed of senior officials from the executive branch, the legislature and the judiciary, as well as several representatives of the business sector and civil society organisations. The LCI was significantly amended by Law No. 4358 of 27 October 2015 whose provisions will enter into force on 1 January 2017. *Inter alia*, the amendments introduced provisions on the monitoring of asset declarations and general rules of ethics and conduct. Some of the provisions of the LCI in its amended form do not apply to all "officials" in the meaning of that law but only to "public servants" as defined in the LCI.

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<sup>1</sup> See the 2016 country report on Georgia by Bertelsmann Stiftung, pages 28/29 ([http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI\\_2016\\_Georgia.pdf](http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Georgia.pdf)). Similar statements can be found, for example, in the Freedom House study "Nations in Transit 2015 - Georgia" ([https://freedomhouse.org/sites/default/files/NIT2015\\_Georgia.pdf](https://freedomhouse.org/sites/default/files/NIT2015_Georgia.pdf)).

<sup>2</sup> See Transparency International's 2015 National Integrity System Assessment Georgia, page 15 ([http://www.transparency.ge/sites/default/files/post\\_attachments/georgia\\_national\\_integrity\\_nis\\_assessment\\_2015.pdf](http://www.transparency.ge/sites/default/files/post_attachments/georgia_national_integrity_nis_assessment_2015.pdf)), with further references.

<sup>3</sup> See <http://www.transparency.org/cpi2015/#results-table>

<sup>4</sup> See [www.govindicators.org](http://www.govindicators.org)

<sup>5</sup> See <http://www.transparency.org/gcb2013/country/?country=georgia>

<sup>6</sup> See e.g. the 2013 Report "Georgia in Transition" prepared by the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, Thomas Hammarberg ([http://eeas.europa.eu/delegations/georgia/documents/virtual\\_library/cooperation\\_sectors/georgia\\_in\\_transition-hammarberg.pdf](http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf)).

Parliamentarians, judges and higher-ranking prosecutors<sup>7</sup> are both qualified as officials and public servants. The present report refers to the LCI in its amended form which is now entitled "Law on Conflict of Interest and Corruption in Public Institutions".

16. Recent progress achieved by Georgia has been acknowledged, for example, by the European Commission which at the same time stressed in its 2014 Progress Report the need for further improvements, *inter alia*, by "ensuring adequate separation of powers and checks and balances between executive, legislative and the judicial powers in the framework of constitutional reform", "reforming the justice system to ensure the full independence of the judiciary, bringing criminal justice policies and practices into line with Council of Europe standards", "ensuring that reform of the Prosecutor's Office is completed and that the office is independent from political influence and is publicly accountable";<sup>8</sup> the authorities draw attention to the fact that those statements were made before the 2015 reform of the prosecution service. It was also observed that "the parliament of Georgia does not make full use of its legislative authority and capacity to supervise the executive. Neither the legislative nor the judiciary branches of power are currently able to fully counterbalance the power of the executive branch."<sup>9</sup> Various domestic and foreign instances have devoted particular attention to the multiple investigations initiated and corruption-related charges brought against a number of former high-level officials, following the transfer of power in 2012. A monitoring of the resulting trials in 2016 by the OSCE/ODIHR, upon invitation by the government, revealed a number of shortcomings in different areas, e.g. regarding the right to be tried by an independent tribunal established by law, public trust in the criminal justice system, the right to a public hearing, etc.<sup>10</sup> Some other commentators expressed concerns that the charges against former officials might be politically motivated.<sup>11</sup>

17. Against this background, it is important to note that both the judiciary and the prosecution service have been subject to significant reforms, which were supported by the Council of Europe, in particular through the Venice Commission. The current third stage of the reform of the judiciary focuses on increasing the independence of the judiciary, amending the rules on appointment, promotion and transfer of judges, automatic case assignment, disciplinary procedures, etc.; the bill is currently pending before Parliament. The first stage of the reform has concentrated on institutional change, and the second on life-time appointment and evaluation procedures. A reform of the prosecution service was initiated by the government in late 2014 to strengthen the institutional independence of the prosecution service, to ensure non-interference in the activities of the prosecutors and to provide a legal basis for prosecutors to carry out their professional functions impartially and objectively. Within the framework of the reform, amendments to the Law on the Prosecutor's Office were made to introduce three new institutes: the Prosecutorial Council, the Conference of Prosecutors and the Special (*ad hoc*) prosecutor. Moreover, the processes for appointment to and dismissal from the office of the Chief Prosecutor have been substantially revised.

18. Finally, it is to be noted that Georgia has also engaged in an ambitious reform programme by joining the global initiative Open Government Partnership (OGP) in 2011<sup>12</sup> where, after two years' membership in the OGP Steering Committee, Georgia was elected

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<sup>7</sup> Namely, the Chief Prosecutor and his/her deputy, heads of departments and services of the Chief Prosecutor's Office and persons having equal authority, the Tbilisi City Prosecutor, the Prosecutors of the Autonomic Republics of Abkhazia and Adjara, regional and district prosecutors. In contrast, line prosecutors are categorised by the LCI as public servants but not as officials.

<sup>8</sup> See the 2014 Country Progress Report on Georgia, pages 34: [http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015\\_en.pdf](http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015_en.pdf).

<sup>9</sup> See the 2016 [country report on Georgia by Bertelsmann Stiftung](#), page 9.

<sup>10</sup> See the 2014 "Trial Monitoring Report Georgia" by the OSCE Office for Democratic Institutions and Human Rights (<http://www.osce.org/odihr/130676?download=true>).

<sup>11</sup> See e.g. the 2016 [country report on Georgia by Bertelsmann Stiftung](#), pages 2/4; [Transparency International's 2015 National Integrity System Assessment Georgia](#) (page 71).

<sup>12</sup> See <http://www.opengovpartnership.org/country/georgia>.



as the next government support co-chair.<sup>13</sup> In this framework, important steps to increase transparency and accountability have already been taken, with the involvement of civil society organisations, and further measures are under preparation under the current OGP Action Plan 2015-2016 (which is integrated in the National Anti-Corruption Strategy) and Open Parliament Georgia Action Plan 2015-2016, such as further enhancing transparency of the legislative process and developing a code of ethics/conduct for members of parliament (MP).

### **III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT**

#### Overview of the parliamentary system

19. Georgia is a democratic republic with a parliamentary system of government. Its head of state, the President, is elected by direct vote for a five-year term which is renewable only once. Following 2010 amendments to the 1995 Constitution which entered into force in November 2013, the powers of the President were reduced in favour of a government – headed by a prime minister – and of the Parliament. The unicameral Parliament<sup>14</sup> (the “*Sakartvelos Parlament’I*”) consists of 150 members, elected for four-year terms through universal, equal and direct suffrage by secret ballot, in a mixed electoral system: 77 members are elected by a proportional system based on party lists and 73 members are elected directly in voting districts by a majority system. Currently 18 MPs (12%) are female. The internal structure and work procedure of Parliament are determined by the 2004 rules of procedure (RoP).

20. According to article 52 of the Constitution, MPs are representatives of all Georgia, have a free mandate and cannot be recalled. While implementing their duties, they are not restricted by the regulations and tasks of the constituencies or political organisations which nominated them.<sup>15</sup> The office of an MP is terminated if s/he resigns by personal application; a judgement of conviction comes into force against the MP; the court recognises the MP as incapable, missing, or dead; the MP holds a position or engages in an activity incompatible with the status of an MP; the MP loses citizenship of Georgia; the MP fails to participate in the work of Parliament for a period of four months without good reason; the MP dies.<sup>16</sup> The authorities indicate that there have been no cases in recent years where the mandate of an MP was terminated when a judgement of conviction came into force against the MP, the MP held a position or engaged in an activity incompatible with the status of an MP or the MP failed to participate in the work of Parliament for a period of four months without good reason.

21. MPs may join a parliamentary faction. The number of members in a parliamentary faction must not be less than six.<sup>17</sup> Parliament elects a chair and deputy chairs and sets up committees, for the term of its authority.<sup>18</sup> It may also establish investigative or other interim commissions. The composition of committees is determined proportionally to the representation of factions and the number of those MPs who are not united in any faction. The number of committee members and the proportional representation are determined by the Committee on Procedural Issues and Rules and approved by the Parliamentary Bureau.<sup>19</sup> Parliament elects the committee chair from among the members of the committee by open vote. Scientific-consultative councils composed of expert-consultants in the appropriate fields, appointed by the committee chair, are created in

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<sup>13</sup> As from October 2016. As a new co-chair of the OGP, Georgia will eventually become the chair of the OGP, succeeding the French chairmanship.

<sup>14</sup> According to article 4 of the Constitution, “after the creation of appropriate conditions and formation of the bodies of local self-government throughout the whole territory of Georgia two chambers shall be set up, namely the Council of Republic and the Senate.”

<sup>15</sup> Section 11(1) RoP

<sup>16</sup> Article 54 of the Constitution

<sup>17</sup> Article 58 of the Constitution

<sup>18</sup> See articles 55 and 56 of the Constitution

<sup>19</sup> See section 32 RoP

the committees.<sup>20</sup> Among the obligatory permanent committees is the Committee on Procedural Issues and Rules which is involved, *inter alia*, in the procedures concerning incompatibilities, early termination of an MP's powers, analysis of MPs' asset declarations and analysis of whether the immunity-related conditions allowing criminal prosecution of an MP have been met.

22. Parliamentary work is organised by the Parliamentary Bureau which consists of the chair and deputy chairs of Parliament and the chairs of committees and factions.<sup>21</sup> Organisational-technical and informational services are provided to Parliament by the Parliamentary Staff.<sup>22</sup> The Supervisory Office within the Parliamentary Staff ("Mandaturi Office" – nine employees) provides information (for example, on MPs' absence from plenary sessions) to the Committee on Procedural Issues and Rules that can help the Committee address certain disciplinary matters. However, the Committee operates without support from the Parliamentary Staff on matters related to the LCI regulations.

23. The right of legislative initiative is granted to the government, MPs, parliamentary factions, parliamentary committees, supreme representative bodies of the Autonomous Republic of Abkhazia, the Autonomous Republic of Ajara, and not less than 30 000 voters.<sup>23</sup> Parliament must give priority to considering draft laws submitted by the government upon request. A bill passed by Parliament – by a majority of the MPs present which must comprise at least by one third of the total number of MPs, unless the Constitution determines another procedure<sup>24</sup> – is to be referred by it to the President who has to sign and promulgate it within 10 days or return it to Parliament with justified comments. If Parliament rejects the President's comments, the initial version of the draft law is put to a vote and is deemed adopted if it is supported by a majority of the full list of MPs (in the case of a draft organic law, by a majority of the total number of MPs).

24. As a rule, draft bills are examined in three readings in Parliament. Upon decision by the Parliamentary Bureau or by the plenary, based on the well-reasoned proposal of the initiator of the draft law and the conclusion of the leading committee, Parliament can discuss and adopt a draft law in an accelerated manner.<sup>25</sup> The draft law is then discussed and adopted by all three hearings during one week of plenary sittings. The authorities indicate that such cases are fairly frequent, namely, in order to resolve time-sensitive issues in an optimal period.

#### Transparency of the legislative process

25. As soon as a draft law is initiated and registered, it is automatically published on the parliamentary website.<sup>26</sup> The authorities state that the same applies to submitted amendments to draft laws during the legislative process. Moreover, the government provides a special module allowing any registered user to comment on laws and draft laws published on the internet.<sup>27</sup> All comments are public. The authorities add that within the Open Parliament Georgia Action Plan 2015-2016,<sup>28</sup> new commitments aimed at increasing citizen engagement were taken, including the commitment to create a special

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<sup>20</sup> See section 54 RoP

<sup>21</sup> Article 57 of the Constitution

<sup>22</sup> See section 25(4) RoP

<sup>23</sup> Article 67 of the Constitution

<sup>24</sup> A constitutional agreement is deemed approved if supported by not less than three fifths of the total number of MPs, and draft organic laws require the support of more than half of the full list of MPs.

<sup>25</sup> See section 163 RoP. However, it is prohibited to discuss and adopt the constitution, constitutional law and organic law in an accelerated manner.

<sup>26</sup> See <http://info.parliament.ge/#law-drafting>

<sup>27</sup> See [www.matsne.gov.ge](http://www.matsne.gov.ge)

<sup>28</sup> The Action Plan was developed in cooperation with civil society through public consultations, through the project "Supporting Parliament of Georgia Involvement in Open Government Partnership Initiative" that is implemented by the Institute for Development of Freedom of Information (IDFI) in partnership with the Parliament of Georgia, and funded within the framework of EU/UNDP program "Strengthening the System of Parliamentary Democracy in Georgia". The implementation of the Action Plan will be monitored by the partner non-governmental organisations.

module on the parliamentary website which will also allow individuals to comment on draft legislation.<sup>29</sup>

26. Public discussions may take place during committee hearings. In case of constitutional changes, the constitutional draft law is to be promulgated for public discussions and Parliament may start considering the draft only a month after its promulgation.

27. As a rule, committee meetings are open to the public, but in special cases a committee may hold a closed meeting, upon decision by the majority of votes of the acting committee members,<sup>30</sup> according to their own judgment. The authorities indicate that such cases occur rarely. MPs, members of government and invited guests may attend the committee meeting with an advisory vote. The interested representatives of the public can be invited to attend the committee meeting and can be given the floor by decision of the chair. The authorities state that such cases occur very frequently and that "interested representatives of the public" can be anyone whose interests are connected with the subject under discussion.<sup>31</sup> Moreover, accredited mass media representatives can be invited and it is possible to allow TV or radio to report on the committee meeting and to publish information on the results of the meeting in the press. The authorities add that committee hearings are also recorded and that audio and video recordings are available to the public.<sup>32</sup>

28. Information about a committee sitting and its agenda are put on the parliamentary website at least two days before the sitting.<sup>33</sup> The authorities indicate that information on the composition of parliamentary committees, the members present at their meetings and the guests/experts heard, the content of their meetings, the text of draft legislation and amendments proposed, and on the voting results, as well as information on scientific-consultative councils and their meetings, is also made public. Any citizen can request the above information at any time.

29. Meetings of Parliament are open to the public, unless by decision of a majority of MPs present, Parliament declares a hearing or part of it as closed while discussing particular issues,<sup>34</sup> i.e. issues of national security. According to the authorities, such cases occur rarely. Voting at a plenary sitting of Parliament is open except as provided for by the Constitution and law. Section 165 RoP states that the protocol of the plenary sitting of Parliament, except the confidential issues, can be published in "Parlamentis Utskebani" (Parliamentary Newsletter) and put on the parliamentary website. The authorities indicate that, in practice, Parliament publishes on its website all relevant documents such as draft laws, explanatory notes, remarks made during hearings, voting results and protocols of plenary sittings, at every stage of the law-making process. The protocols include information on the agenda of the sitting, the proposals presented, the names of speakers, the number of MPs present, voting results, the titles of written petitions, adopted resolutions, declarations or other documents discussed; the text of such documents can be obtained separately. The authorities add that live broadcast of plenary sessions on TV is also provided.

30. The GET commends the authorities for the commitments taken under the OGP and for the level of transparency already achieved, *inter alia*, with respect to the legislative process. It is noteworthy that measures have been taken to allow for online publication of laws and draft laws and for comments on them by the larger public, as well as for active participation by interested representatives of the public in committee work. That

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<sup>29</sup> After the visit, the GET was informed that the IT Department of the Parliament is working on this commitment.

<sup>30</sup> See section 49(10) RoP

<sup>31</sup> E.g. a committee which plans to address issues regarding automobiles with a right-hand steering wheel might decide to invite owners or importers of such cars to join the discussion.

<sup>32</sup> See <http://parliament.ge/en/media/pirdapiri-eteri-94>

<sup>33</sup> Section 48(5) RoP

<sup>34</sup> Article 60 of the Constitution

said, the GET notices some remaining challenges in law and in practice. Namely, during the interviews held on site it was highlighted that the relevant webpages were not regularly updated, which sometimes made it difficult for the interested public to follow closely changes in meeting agendas or the progress of draft legislation; it was also stated by NGOs that such drafts – and amendments to them – are not easily visible (e.g. bills are published as scanned images without a chronological or alphabetical order). The authorities stress, however, that the relevant websites<sup>35</sup> are regularly updated and easily accessible. Furthermore, the GET was informed that the current comment and consultation procedures were seen to be rather ineffective. In this connection, civil society organisations interviewed expressed regret that online comments on draft legislation submitted by the public were not followed up and they suggested that, for example, feedback from Parliament could be organised through the Parliamentary Staff.<sup>36</sup> Room for improvement was also identified in the RoP which foresee a minimum of only three days for public comments on draft laws before the first committee hearing. It has been proposed that longer periods (e.g. at least five days before each of the three hearings) would give the public more time to submit their comments. Finally, the GET's attention was drawn to the lack of clear rules on the organisation of public consultations with relevant stakeholders during the legislative drafting process;<sup>37</sup> it would appear that domestic and international organisations (including the OSCE Office for Democratic Institutions and Human Rights) have repeatedly called for the development of a uniform regulatory framework for such consultations in order to further enhance democratic processes. The GET is pleased to note that this matter, as well as several other suggestions mentioned above, have been taken into account by the authorities in the framework of the OGP and the related Open Parliament Georgia Action Plan which foresees, for example, the creation of an e-petition website. Given the foregoing, **GRECO recommends further enhancing the transparency of the legislative process, including by further ensuring that draft legislation, amendments to such drafts and information on committee work (including on agendas and outcome of meetings) are published in a visible and timely manner, and by establishing a uniform regulatory framework for the public consultation procedure in order to increase its effectiveness.** In this framework, the authorities are also encouraged to explore possibilities for introducing new mechanisms, such as obliging committees to hold a public consultation on a draft law if a qualified minority – e.g. a quarter – of their members so requests, and ensuring that, in such a case, nominees of the minority that requested the hearing must also be heard. This could not only lead to an increasing use of public consultations but also help to ensure space for opposition and cross-party dialogue in the interest of further consolidating democracy.

#### Remuneration and economic benefits

31. MPs' gross monthly salary amounts to GEL 3 790/approximately EUR 1 402.<sup>38</sup> Salaries are higher in case of holding a position such as chair of a committee or a faction, deputy chair, etc. MPs are expected to work full-time.

32. MPs are entitled to housing benefits, remuneration for travel expenses in Georgia and abroad (official and working visits) from the budget of Parliament. Appropriate spending of the parliamentary budget is controlled by the Treasury Council established under the chair of Parliament.

33. Information on remuneration of MPs, including salaries and additional benefits, is publicly available on the parliamentary website.

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<sup>35</sup> See [www.matsne.gov.ge](http://www.matsne.gov.ge) and <http://info.parliament.ge/#law-drafting>.

<sup>36</sup> After the visit, the GET was informed that the Parliament is working to introduce/launch such a feedback mechanism for draft legislation.

<sup>37</sup> The authorities stress in this respect that important legislative draft amendments are regularly published on the Internet ([matsne.gov.ge](http://matsne.gov.ge)) where anyone can leave a comment. In addition, ensuring broad public discussions at the earliest stage of law-making is one of the elements of the Regulatory Impact Assessment mechanism which is under preparation.

<sup>38</sup> The average gross monthly salary in Georgia was GEL 818/approximately EUR 303 in 2014.

34. For executing parliamentary activities, MPs are provided with working space in the building of Parliament, equipment, furniture, clerical aids, communication means, including the governmental connection. Parliament covers MPs' communication costs in the limits determined by Parliament.<sup>39</sup>

35. Furthermore, directly elected MPs have offices in their constituencies (in total 73 offices) and expenses related thereto are covered by the budget of Parliament. No supplementation by external sources is allowed.

36. Parliamentary party groups receive public funds, the use of which is subject to control by the Parliamentary Staff.

#### Ethical principles and rules of conduct

37. Section 1 RoP sets forth core values and principles of the work of Parliament such as the responsibility to ensure representative proportionality, to discuss and resolve issues freely and collectively, to uncompromisingly follow the Constitution, the laws and other normative acts, to follow and respect the universal norms of international law, ensure transparency, etc. In addition, section 14(2) RoP makes it clear, *inter alia*, that MPs must not use their powers and/or the possibilities affiliated with them for personal interests, or use the information containing state secret or confidentially obtained information for personal interests. Under section 122(7) RoP, MPs are to take an oath of office.<sup>40</sup>

38. MPs are also subject to the general rules of ethics for public officials, namely those contained in the "Law on Conflict of Interest and Corruption in Public Institutions" (LCI). The latter was amended by Law No. 4358 of 27 October 2015, *inter alia*, to include general rules of conduct for public servants in a new chapter III.1.<sup>41</sup> The new provisions will enter into force on 1 January 2017.<sup>42</sup> As a complement to the legal provisions, the Civil Service Bureau<sup>43</sup> – the legal entity responsible for the implementation of the LCI – has elaborated a quite extensive document entitled "Ethics and Rules of Conduct of Civil Servants". It includes numerous case studies and thus provides guidance in ethical questions. In the view of the GET, this document is a useful tool, whose practical approach is to be welcomed. At the same time, it is of the opinion that guidance on questions of ethics and conduct tailored more specifically to the needs and challenges of MPs are required.

39. On 12 October 2004, Parliament adopted the "Code of Ethics for Members of Parliament", which had been prepared by a working group under the Committee on Legal Issues comprised of chairs of parliamentary factions in cooperation with civil society organisations. However, it would appear that the code has not had much impact on MPs' behaviour, as the following Parliaments have not taken ownership of the document developed by their predecessor. Furthermore, as is pointed out in the Open Parliament Georgia Action Plan 2015-2016, the non-binding nature of this two-page document means that it lacks any enforcement mechanisms. After the talks held on site, the GET was left with the clear impression that more detailed and binding guidance for MPs on conflicts of interest and related questions is required – a view that was shared by the GET's interlocutors including MPs themselves. The elaboration of a mandatory code of ethics for MPs is therefore included in the Action Plan and the GET was interested to hear

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<sup>39</sup> Section 27 RoP

<sup>40</sup> Pursuant to section 124(7) RoP, the oath of office of MPs reads: "I, as a representative of all Georgia, accountable to my country, declare before God and the nation that I will honestly perform the rights and duties of an MP, and that I shall serve to preserve the Constitutional system, independence, unity and integrity of my country, the interests of the people, the rights and freedoms of the citizens and the might of Georgia."

<sup>41</sup> New sections 13.1 to 13.5 LCI – in this connection, it is recalled that MPs fall under both categories of "officials" and "public servants" in the meaning of the LCI.

<sup>42</sup> The present report refers to the LCI in its amended form.

<sup>43</sup> The Civil Service Bureau is a legal entity of public law established in accordance with the Law on Civil Service. For more details, see below under "Supervision and enforcement" (paragraph 67).

during the visit that the drafting process conducted by the Permanent Parliamentary Council on Open and Transparent Governance – in which all parliamentary parties are represented – was well underway.

40. According to the Action Plan, the code of ethics would serve as a basic reference document for MPs on how they should behave in their capacity as civil servants. It would also contain detailed provisions on acceptable and unacceptable behaviour of MPs, disclosure of personal interests, submission of asset declarations, use of government resources and allowances, as well as their outside, pre and post parliamentary employment. In the view of the GET, it is crucial that such a code deals with various forms of conflicts of interest and related matters, including gifts and other advantages, third party contacts, e.g. with lobbyists. The GET clearly welcomes the current initiative and refers to the support repeatedly expressed in GRECO reports in favour of parliaments having their own set of common standards and guidelines on ethical principles and the conduct expected of their members which are drawn up with a strong involvement of the MPs themselves.<sup>44</sup> They serve to raise MPs' awareness of integrity issues, assist them to act proactively in difficult ethical situations and allow them to demonstrate their commitment to the general public. Codes of ethics/conduct are not intended to replace already existing regulations, rather to provide a comprehensive overview – which appears particularly necessary in the context of Georgia where standards applicable to MPs are contained in different legal acts such as the Constitution, the RoP and the LCI (sometimes dealing with the same matters); in order to avoid duplication, the code could – for example – include references to relevant legislation. Moreover, it may usefully further develop and complement the general standards in place and provide guidance in a flexible way with regard to situations and dilemmas resulting from the unique position of MPs.

41. For these reasons, the GET supports – in the context of Georgia – the concept of a binding code of ethics/conduct with a credible supervisory mechanism attached to it. During the interviews, the GET was informed that no consensus had yet been reached on how this could best be achieved. One possible way would be to include the code itself or a reference to it in the parliamentary RoP. Furthermore, according to the Open Parliament Georgia Action Plan, an authorised parliamentary committee should provide advice to MPs on the requirements of the code, monitor the behaviour of MPs, review complaints regarding violations of the code and impose sanctions or penalties on MPs where necessary. The GET notes that such functions could usefully be entrusted to the Committee on Procedural Issues and Rules (which already has some monitoring functions, for example, in relation to MPs' incompatibilities), but it is ultimately up to the authorities to identify the most appropriate body. In any case, any such body needs to be given a clear mandate and necessary resources in order to ensure effective implementation of the code.

42. Finally, it is crucial that the code of ethics/conduct is actively promoted and distributed to MPs, that it is published in a prominent place on the parliamentary website and fed into dedicated training on questions of ethics and conduct for MPs. In this connection, the GET was interested to hear that the preparation of an induction programme for newly elected MPs – including questions of conduct – was planned, with support by international organisations. It is essential that such training is provided on a systematic and regular basis in order to raise MPs' awareness and to deal with newly emerging challenges. Given the preceding paragraphs, **GRECO recommends (i) that an enforceable code of ethics/conduct be adopted covering various situations of conflicts of interest (e.g. gifts and other advantages, incompatibilities, additional activities and financial interests, third party contacts, including with lobbyists) and that it be made easily accessible to the public; (ii) that the code be complemented by practical measures for its implementation, including**

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<sup>44</sup> In line with Guiding Principle 15 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption

**through awareness-raising and dedicated training, confidential counselling and credible monitoring.**

#### Conflicts of interest

43. Section 3(3) LCI (as amended) defines “Conflict of interest in a public institution” as the “conflict of property or other private interests of a public servant with the interests of a public institution”. The latter is to be understood as “an institution performing state services and public services provided for by the Law of Georgia on Public Service, as well as national regulatory bodies”.<sup>45</sup>

44. The GET is concerned that MPs are not obliged to declare conflicts of interest as they arise during their parliamentary work. The requirement on certain public servants, under section 11 LCI, to declare *ad hoc* conflicts of interest and to refrain from decision-making in such situations, is explicitly not applicable to MPs<sup>46</sup> – even though the general rules of conduct for public servants in the new LCI chapter III.1 require public servants to pay attention to any existing or possible conflict of interest, to take measures to prevent and to declare them.<sup>47</sup> Some of those the GET spoke to, including MPs, confirmed that MPs were not subject to mandatory *ad hoc* disclosure; they stressed that such disclosure and eventually self-recusal possibilities were not developed in Parliament and that there was no established practice in this respect. Bearing in mind also that contacts between MPs and third parties are not regulated, the GET finds the absence of clear rules on MPs for disclosing potential conflicts of interest unsatisfactory. It is of the opinion that a requirement on MPs to publicly declare such conflicts as they arise in relation to their parliamentary work (e.g. in the framework of plenary or committee work) – as exists in some other member states – would ensure that MPs and the public can properly monitor and determine when and how private/personal interests of MPs might influence the decision-making process. As GRECO has pointed out on numerous occasions, this would be of benefit not only to MPs themselves but also to the public at large and its confidence in Parliament and its members. In order to make such a mechanism work effectively in practice, it will be necessary to clearly regulate to whom MPs are to report such conflicts, which situations fall under this concept, who/which body monitors compliance with the rules and what are the consequences for failure to report. In view of the above, **GRECO recommends that a requirement for *ad hoc* disclosure be introduced when a conflict between specific private interests of individual members of parliament and a matter under consideration in parliamentary proceedings may emerge, that clear rules for such situations be developed, and that the operation of this mechanism be subject to monitoring.** Such rules will also need to be reflected in the code of ethics/conduct recommended above and be subject to the monitoring mechanism attached to it.

#### Prohibition or restriction of certain activities

##### *Gifts*

45. Under section 5 LCI, a gift is defined as “property transferred 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.” Certain items specified by section 5.1 LCI are not considered as gifts, e.g. grants, scholarships, rewards and bonuses awarded by the state or an international organisation; diplomatic gifts which are given to a public servant during an official or

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<sup>45</sup> Section 2.2 LCI.

<sup>46</sup> See section 11(4) LCI.

<sup>47</sup> See section 13.4 LCI. This provision also requires public servants to acknowledge publicly persons related to them who are employed at the same public institution where they work; this includes family members and close relatives in the meaning of section 4 LCI as well as any other persons with whom public servants maintain a common household, i.e. such special relationship that may affect conditions or economic outcomes of their activities.

working visit according to the procedure under protocol and the market value of which does not exceed GEL 300/approximately EUR 111; property transferred to a public servant or his/her family member free of charge or under beneficial conditions, with partial or full release from obligations of property owners, or service provided under beneficial conditions, which is not an exception to general rules.

46. The total value of gifts received by a public servant including an MP during a reporting year must not exceed 15% of the amount of one year's salary, and the total value of a single gift received must not exceed 5%, unless these gifts are received from the same source. Furthermore, the total value of gifts received by each member of the public servant's family during a reporting year must not exceed GEL 1 000/approximately EUR 370, and the total value of a single gift received must not exceed GEL 500/approximately EUR 185, unless these gifts are received from the same source. In accordance with section 4 LCI, a person's spouse, minor child, stepchild, or a person permanently residing with him/her are "family members" in the meaning of that law. If the public servant or his/her family member ascertains after receiving a gift that its value exceeds the limits under the LCI and/or it was impossible to refuse the gift due to certain reasons (a gift received by mail, a gift given publicly), s/he must, within three working days, submit to the Civil Service Bureau information on the name of the received gift, its assessed or exact value/amount and the identity of the giver, or must transfer the gift prohibited under the LCI to the Legal Entity under Public Law – the Service Agency of the Ministry of Finance. According to article 340 of the Criminal Code (CC), "acceptance by an official or a person equal thereto of gifts prohibited by law" is a criminal offence.<sup>48</sup>

47. The new chapter III.1 of the LCI on general rules of conduct for public servants contains more detailed provisions on gifts, including the principle that public servants including MPs may not accept any gift or service that may affect the performance of their official duties.<sup>49</sup> If it is uncertain whether a public servant has the right to accept an offered gift or benefit and/or service, s/he has to declare it. If a public servant is offered a benefit prohibited under the LCI, s/he is to a) refuse to accept such benefit and notify, in writing, his/her immediate supervisor (i.e. the chair of Parliament, in the case of MPs) and the Civil Service Bureau, of the offer within three working days; b) try to identify the person who has made the offer; c) limit communication with that person and try to determine the basis for such offer; d) transfer the gift to the relevant state agency – the Legal Entity under Public Law – the Service Agency of the Ministry of Finance within three working days after acceptance if it is impossible to refuse or return the gift.

#### *Incompatibilities and accessory activities, post-employment restrictions*

48. Article 53 of the Constitution provides that an MP may not hold state service or engage in entrepreneurial activity. Section 10 RoP further stipulates that MPs may not personally carry out profit oriented reiterated activity for managing material values and financial resources; personally carry out the responsibilities of a member of a permanent managerial, supervisory, controlling, inspecting and consulting body of an entrepreneurial subject; be a member of local self-government representative body (local council), have a position in other state of self-government representative body or/and state or local government body. Newly elected MPs must quit incompatible work or activity from the moment their powers are confirmed and within seven days submit the certificate of quitting the incompatible work or activity to the Committee on Procedural Issues and Rules.

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<sup>48</sup> Sanctions available under article 340 CC are a fine or community service from 100 to 300 hours or with deprivation of the right to carry out a particular activity for up to three years or with imprisonment for up to two years. The same act committed repeatedly entails fine or community service from 200 to 400 hours or with deprivation of the right to carry out a particular activity for up to three years or with imprisonment for a term of two to four years.

<sup>49</sup> See section 13.5 LCI.



49. Section 10 RoP makes it clear that the above restrictions do not invalidate the constitutionally recognised right of property of MPs, they may possess stocks, shares and other property. Furthermore, MPs may simultaneously work in the sphere of science, education, art, if this work does not involve carrying out the administrative functions. The authorities state that in practice, for example, some MPs are lecturers at university. Moreover, MPs may simultaneously carry out political party work or occupy any position in party and public organisations. The rules do not require MPs to report on allowed activities. That said, any paid work must be declared by MPs in the framework of their asset declarations, as described further below.

50. Section 13 LCI contains more far-reaching incompatibilities for public servants including MPs. For example, it stipulates that a public servant may not perform any kind of paid work (except for scientific, pedagogical or creative activities), hold another position in any public institution or legal entity under private law, or be a member of a representative body at any level, or perform any kind of paid work or hold a position in a body or institution abroad; hold a position in any enterprise; be a representative or a proxy of any natural or legal person, or represent or defend him/her/it in criminal law, civil law or administrative law cases before or against any public institution, except when s/he is a guardian, care giver or supporter of this natural person.

51. Section 13 LCI also provides that an official or his/her family member must resign from an incompatible position or terminate incompatible activities within 10 days of the appointment/election of this official. The official must certify this to the superior official (i.e. the chair of Parliament, in the case of MPs) and to the human resources management unit.

52. There are no specific rules or measures prohibiting or restricting the employment options of MPs, or their engagement in other paid or un-paid activities, on completion of their term of office. That said, the general rules under section 13 LCI need to be borne in mind, in particular, the rule that a former public servant may not, within one year after his/her term of office, start working in the public institution or carry out activities in the enterprise which has been under his systematic official supervision during the past three years. Moreover, within this period, s/he may not receive income from such a public institution or enterprise. In the view of the GET, the above rules – and the concept of “systematic official supervision” – could usefully be further clarified in the code of ethics/conduct recommended above.

#### *Financial interests, contracts with state authorities, misuse of public resources*

53. Under section 13 LCI, public servants including MPs are required, for the term of their office, under a trust agreement, to transfer to other persons for management a capital share (block of stocks) of an enterprise of the business entity owned by them, as determined by law. Moreover, an official – including an MP – or his/her family member may not hold stocks or a capital share in an enterprise, the control of activities of which falls within the powers of this official or his/her office. Here again, further clarification of the rules by way of the code of ethics/conduct recommended above would be useful. Otherwise, there are no prohibitions or restrictions on the holding of financial interests by MPs – but MPs must provide information on financial interest and participation in business activities within annual asset declarations (see below).

54. Under section 10 LCI, a public servant may not, based on his/her personal interests, purchase property of a public institution entrusted to him/her; enter into transactions with a public institution in which s/he works, apart from the exceptions determined by law; enter into a transaction, as a public servant, with his/her business entity, political party or other public institution; enter into a property transaction with his/her family member or close relative as a public servant. Otherwise, there are no prohibitions or restrictions on entering into contracts with public authorities. Besides, the general legislation on public procurement is fully applicable in this context.

55. Regarding misuse of public resources by MPs, it is to be noted that under section 13.2 LCI, public servants are to observe the principle of economic efficiency and effectiveness when performing official duties, and they must not misuse official resources to prevent their embezzlement. Moreover, the general provisions of the CC on economic crimes such as appropriation or embezzlement, theft and fraud apply to MPs.

*Misuse of confidential information, third party contacts*

56. Pursuant to section 14(2) RoP, MPs must not use the information containing state secret or confidentially obtained information for personal interests. Furthermore, section 8 LCI provides that public servants may not disclose or use for unofficial purposes information containing official secrets or any other confidential information, the public availability of which is restricted under the legislation of Georgia and of which they have become aware in the course of official duties. Similarly, according to section 13.3 LCI public servants have to take the measures necessary to ensure confidentiality of information containing state secrets or relating to the reputation of public service, or obtained in the line of official duty, or containing personal data and other information (subject to article 50(4) of the Criminal Procedure Code). This requirement is applicable even after the term of office. Breach of confidentiality is a criminal offence.

57. There are no specific prohibitions or restrictions or transparency regulations as regards MPs' contacts with third parties who might try to influence their decisions. MPs are free to have contact with whoever they wish as part of their political work, including lobbyists, interest groups, NGOs, trade unions, employers' associations or other organisations. The only restriction mentioned by the authorities in this context is the constitutional principle of the free mandate. The "Law on Lobbyist Activities" of 30 September 1998, which requires professional lobbyists to register, does not place any obligations on MPs themselves. According to those interviewed by the GET on the subject, this law is not of high practical relevance because there is no established culture of institutionalised lobbying in Georgia. It would appear that influence on MPs by third parties is mainly exerted in informal ways, and that MPs – who are prohibited from engaging in entrepreneurial activities during the exercise of their mandate – often have quite close relations with business, e.g. due to their former activities or through relatives and friends. It is for those reasons that rules of conduct for MPs vis-à-vis third parties need to be included in the code of conduct/ethics recommended above.<sup>50</sup>

Declaration of assets, income, liabilities and interests

58. Section 13(1) RoP states that MPs are obliged to submit declarations on their property and/or financial conditions (asset declarations), as provided in the LCI. In accordance with the relevant LCI provisions, sections 14 to 19 as amended,<sup>51</sup> officials including MPs are to submit asset declarations to the Civil Service Bureau through an electronic programme<sup>52</sup> a) within two months of their appointment/election, b) during their term of office, once every year and c) within one year after their term of office. Moreover, candidates for MP are to submit an asset declaration within one week of registration as candidates.

59. Asset declarations must contain the following information:

- a) the person's name, surname, personal number, address of the place of permanent residence, telephone number, mobile number and valid e-mail address;

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<sup>50</sup> See above under "Ethical principles and rules of conduct" (paragraphs 40 *et seq.*).

<sup>51</sup> As indicated above, the amendments introduced by Law No. 4358 of 27 October 2015 enter into force on 1 January 2017.

<sup>52</sup> See [www.declaration.gov.ge](http://www.declaration.gov.ge). See also the declaration forms (English version), under <https://declaration.gov.ge/eng/declaration?id=961198>.

- b) the person's place of work, position occupied, address of the place of work and telephone number;
- c) the person's and his/her family members<sup>53</sup> name, surname, personal number, place of birth, date of birth, kinship or other relation with the person;
- d) immovable property owned by the person and his/her family members, the identity of the owner (as well as the co-owner of the property and the percentage of the share of the person and his/her family member if the property is in joint ownership), the date of purchase, form of purchase, the amount paid, total area and location of the property;
- e) movable property owned by the person and his/her family members (except for securities, funds in a bank account/deposit, and cash), each property valued at more than GEL 10 000/approximately EUR 3 700, the identity of the owner (as well as the co-owner of the property and the percentage of the share of the person and his/her family member if the property is in joint shared ownership), the date of purchase, form of purchase and the amount paid;
- f) securities owned by the person and his/her family members, the issuer of securities, the owner of the property, the type of securities, the amount paid, nominal value and quantity;
- g) an account and/or deposit in a bank and/or credit institution in Georgia or abroad, which the person or his/her family member is entitled to administer – the identity of the person administering the account and/or deposit, name of the bank and/or other credit institution, type of the account and/or deposit, balance (credit or debit) on the account and/or deposit;
- h) cash owned by the person and his/her family members, amounting to more than GEL 4 000/approximately EUR 1 480, the identity of the owner of the cash, the amount of the cash in the respective currency;
- i) participation of the person and his/her family members in entrepreneurial activities in Georgia or abroad, the identity of the person participating in entrepreneurial activities, the full company name, form of participation, registration body and registration date, legal address of the enterprise, the duration of participating in entrepreneurial activities, and income received from entrepreneurial activities within the reporting period;
- j) any paid work performed by the person and his/her family members in Georgia or abroad, except for participating in entrepreneurial activities – the identity of the person performing paid work, place of work where the person holds/held a position or performs/performed paid work, name of the position or type of work, income received from the performance of work within a reporting period;
- k) any agreement concluded by the person and his/her family members in Georgia or abroad, valued at more than GEL 3 000/approximately EUR 1 110 (including trust agreements, irrespective of their value) – the type of the agreement, the identity of the parties to the agreement, subject and value of the agreement, the date of entering into the agreement and its duration, the body that performed state registration and attestation of the agreement, material benefit received from the agreement within the reporting period;
- l) any gift valued at more than GEL 500/approximately EUR 185, that the person and his/her family members received within the reporting period - the identity of the person receiving the gift, the person presenting the gift, the relationship between them, type of gift, and market value of the gift;
- m) any income and/or expenditure of the person and his/her family members within a reporting period, amounting to more than GEL 1 500/approximately EUR 555 in each case, except for other income and/or expenditure defined in this article - the person and his/her family members who received income and/or had expenditure, type of income and/or expenditure, and the amount of income and/or expenditure;
- n) secret field - the type of property and the identity of the person and/or his/her family members related to the property, the connection of the person and/or

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<sup>53</sup> Family members in the meaning of the LCI are a person's spouse, children who are minors, stepchildren, or persons permanently residing with him/her, see section 4 LCI.

his/her family members to the property, market value and/or amount of the property;

o) date of completion of the declaration.

60. The Civil Service Bureau is tasked to ensure the receipt of asset declarations, the public availability of property conditions of relevant officials and the control over the submission of declarations according to law. It prepares instructions on the proper completion of asset declarations, ensures an unhindered access of officials to the Unified Declaration Electronic System, receives and keeps the officials' asset declarations and monitors their compliance with the law, ensures public availability of the content of declarations.

61. The authorities indicate that the Civil Service Bureau publishes the asset declarations on the above-mentioned website.<sup>54</sup> The complete declarations (with few exceptions, see below) are thus publicly accessible and are free of charge. In addition, pursuant to section 19 LCI any person may, for a fee,<sup>55</sup> request a copy of a completed official's asset declaration and review it. The only data which is not public is the personal number, address of the place of permanent residence and telephone number, information related to the period before first appointment and/or the period after dismissal provided for by section 15(j) LCI, and the secret field of the declaration (state or official secrets or other confidential information).

62. The authorities state that the online declaration system, which was established by the Civil Service Bureau in 2010, has been gradually developing throughout the years, that the number of officials obliged to fill out declarations has been constantly increasing, and that the Civil Service Bureau continues improving services provided by the system.<sup>56</sup> The GET can only support this development towards more transparency and openness. At the same time, it notes that it is commonly recognised that the declaration regime – until now – suffered from insufficient monitoring and enforcement. The current introduction of more in-depth checks of asset declarations, as outlined below, is meant to remedy this weakness.

### Supervision and enforcement

63. In accordance with article 54 of the Constitution, the office of an MP is terminated early, *inter alia*, if a judgement of conviction comes into force against him/her, or if s/he holds a position or engages in an activity incompatible with the status of an MP. Pursuant to section 8(3) RoP, Parliament decides on the early termination of an MP's powers. The decision by Parliament may be appealed to the Constitutional Court.

64. Procedural rules for such cases are contained in section 9 RoP. If a court decision recognising an MP as guilty comes into legal force, within 15 days, the Committee on Procedural Issues and Rules requests the court decision and immediately submits it to the Parliamentary Bureau. If an MP carries out entrepreneurial activities, within 10 days of the disclosure of the fact, the Committee requests the documents, gets his/her explanations and prepares a relevant conclusion. If Parliament elects, appoints or confirms an MP to a position incompatible with the status of MP, a note is made in the same decision on early termination of his/her powers of MP.

65. According to provisions of the RoP and the regulation of the Committee on Procedural Issues and Rules, the committee periodically and in case of need analyses the information on cases of position incompatibility, restriction of certain activities (entrepreneurial activity) and asset declarations. If necessary, the committee submits

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<sup>54</sup> See [www.declaration.gov.ge](http://www.declaration.gov.ge).

<sup>55</sup> Fees are defined by the "Law on fees for copying public information": e.g. according to article 6 of this law, the amount of the fee for a copy in A4 or A5 format is GEL 0.05/approximately EUR 0.02 per page.

<sup>56</sup> The system received the United Nations Public Service Award in the category "Preventing and Combating Corruption in the Public Service", see [www.unpan.org/unpsa](http://www.unpan.org/unpsa).

the issue to the Parliamentary Bureau and to the plenary for discussion. The authorities state that during the period 2012-2015, the committee examined 19 cases of incompatibility of MPs and addressed the Parliamentary Bureau with the request for pre-term termination of the office of MP. All requests were granted. During the interviews, it was indicated to the GET that most of those cases concerned MPs who were appointed ministers. As far as restrictions on entrepreneurial activities are concerned, the authorities indicate that, in 69 cases, MPs transferred shares to other persons for management purposes and, in 10 cases, resigned from managerial positions in enterprises.

66. Under section 13(16) LCI, an official including an MP is to be dismissed if s/he or a member of his/her family violates the incompatibility provisions under the LCI, or if it is confirmed by a court decision that s/he owns illegal and/or unsubstantiated property. The latter term is to be understood as property, including income generated from this property, stocks (shares), the acquisition of which by legitimate means an official, his/her family member or close relative cannot support with documents, or which is purchased with money generated from the sale of illegal property.<sup>57</sup> The Committee on Procedural Issues and Rules is competent to deal with such cases.

67. Another body tasked with specific monitoring functions in relation to MPs – and other officials – is the Civil Service Bureau. It is a legal entity of public law established in accordance with the Law on Civil Service. Its main tasks are to facilitate the coordination of activities in the area of public service, to implement the main policies defined in that law and to monitor the receipt of officials' asset declarations. The composition, tasks and powers of the Civil Service Bureau are prescribed by its statute<sup>58</sup> which is approved by the government; the same is true for the staff list of the Bureau. From 1 January 2017, the tenure of the head of the Bureau, who is appointed by the Prime Minister, will be limited to five years.

68. Until now, the Civil Service Bureau has only been competent to ensure the technical consistence and completeness of asset declarations submitted and to fine officials in case of failure to submit declarations on time. In recent years, altogether around 6 000 officials submitted complete asset declarations per year. Fines were imposed on 32 officials in 2015 (2014: 10; 2013: 23). Under the new LCI regulations,<sup>59</sup> the Civil Service Bureau will also monitor the entry of full and correct data into the asset declarations and their compliance with the law,<sup>60</sup> through the new Department of Monitoring of Asset Declarations. Initially, the department is planned to be staffed by approximately five employees with the necessary knowledge and skills.

69. According to the new rules, grounds for initiating the monitoring are random selection by the Unified Declaration Electronic System or a reasoned written application which can be made by any person,<sup>61</sup> in line with the relevant government decree. In addition, declarations by top-level officials exposed to high risks of corruption – including MPs – are verified on a regular basis. The Civil Service Bureau notifies the respective official of the initiation of the monitoring and allows a period of 10 working days for the submission by the official of information and documents (including those issued by banks and/or other credit institutions) necessary for the monitoring, and his/her personal opinion. Declarations are monitored based on the principle of confidentiality. The results<sup>62</sup> are to be proactively published at the end of each calendar year.

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<sup>57</sup> Section 3(4) LCI

<sup>58</sup> However, as the mandate of the Civil Service Bureau is cross-cutting, some main responsibilities are prescribed by the Law on Civil Service and the LCI.

<sup>59</sup> As indicated above, the amendments introduced by Law No. 4358 of 27 October 2015 enter into force on 1 January 2017.

<sup>60</sup> See section 18.1 LCI.

<sup>61</sup> The complainant must indicate his/her name, but the Civil Service Bureau is obliged to protect personal data received during the whole monitoring process.

<sup>62</sup> Annual data on the number and nature of asset declarations checked and the number of violations identified.

70. Under the new regulations, asset declarations are monitored, on the basis of government instructions, by verifying the accuracy of data in completed declarations in the electronic databases administered by public institutions, by verifying the evidence submitted by the official to the Civil Service Bureau and/or other written evidence, and through the performance by administrative bodies of the obligation of assistance.

71. The Civil Service Bureau takes a decision on the existence of violations in an asset declaration if the information and documents requested are not submitted or are incomplete or incorrect, or if violations of the provisions of the Law on Public Service or of the LCI are revealed throughout the monitoring process. On the basis of such a decision, the Civil Service Bureau takes the following steps.

- In cases where it was found that an official presented deliberately incomplete or incorrect data – which is punishable under article 355 CC<sup>63</sup> – or where other specific elements of crime were identified, the Civil Service Bureau is to forward the respective declaration and materials of the proceedings to the relevant law enforcement body for further response.
- In cases of minor violations of the law (including failure to submit an asset declaration within the time limit), a decree imposing a fine in the amount of GEL 1 000/approximately EUR 370 is issued by the chair of the Civil Service Bureau through a simple administrative procedure. Appealing such a decree (to the superior body or the court) does not delay its execution. Failure to submit an asset declaration within two weeks of the date of entry into force of the decree or of a court decision confirming the decree results in criminal liability under article 355 CC. In such case, the declaration must be submitted within two weeks of the date when the judgment of conviction enters into force.

72. In principle, MPs may be subject to criminal proceedings and sanctions if they commit offences such as theft, fraud, embezzlement, bribery, acceptance by an official or a person equal thereto of gifts prohibited by law, trading in influence, breach of professional confidentiality, or non-submitting of property or financial declaration or entering incomplete or incorrect data thereto. However, the following rules on parliamentary immunity are to be respected.

73. In accordance with article 52 of the Constitution, MPs are protected from being prosecuted for their ideas and opinions expressed inside or outside Parliament while performing their duties. Moreover, arrest or detention of an MP, search of his/her place of residence, vehicle, workplace, or any personal search is permissible only by consent of Parliament, except when the MP is caught at the scene of crime, in which case Parliament is to be notified immediately. Unless Parliament gives its consent, the arrested or detained MP must be released immediately. Section 19 RoP makes it clear that requests for consent on the aforesaid investigative activities are submitted to Parliament by the Chief Prosecutor. The Committee on Procedural Issues and Rules studies the validity of the submitted request within five days and submits a written conclusion to the Parliamentary Bureau, which puts the issue on the agenda of the next plenary sitting of Parliament. After discussing the issue on the floor, Parliament adopts a decision. Only the Chief Prosecutor can exercise criminal proceedings against an MP,<sup>64</sup> and Parliament must be immediately informed about this.

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<sup>63</sup> The available sanctions under article 355 CC (“non-submitting of property or financial declaration or entering incomplete or incorrect data thereto”) are a fine, community service from 120 to 200 hours, or the prohibition on occupying certain positions or withdrawal of the license to practice particular activities for up to three years.

<sup>64</sup> (provided that s/he was an MP for at least six months of a full parliamentary term and his/her powers were not terminated as set forth in article 54(2), items “a”-“f”, of the Constitution). Former MPs enjoy this right for the term of authority of the newly elected Parliament.

74. The authorities indicate that in practice, there have not been any criminal cases or convictions of MPs in recent years, nor have there been any motions on lifting MPs' immunity.

75. The GET repeatedly heard that effective monitoring of MPs' conduct and compliance with the rules was missing. At the same time, it has the impression that existing bodies such as the Committee on Procedural Issues and Rules and the Civil Service Bureau have the potential to carry out such tasks, provided they are given a clear mandate and the necessary competences and resources. The introduction of substantial checks – by the Civil Service Bureau – of asset declarations submitted by officials including MPs is clearly to be supported; a recommendation to implement and carry on with the current reforms is made below.<sup>65</sup> Moreover, the GET takes the view that monitoring of other obligations and rules of conduct applicable to MPs needs to be further developed, and it refers to the recommendation made above with respect to the establishment of a code of ethics/conduct and its implementation in practice.<sup>66</sup> In this context, the GET wishes to stress how important it is to ensure that the existence of different monitoring mechanisms/bodies does not lead to unclear responsibilities and, as a result, to a lack of effectiveness of the supervisory regime as a whole. In this respect, the fact that the parliamentary RoP assign the monitoring of some LCI rules – in particular, relating to MPs' asset declarations – to the Committee on Procedural Issues and Rules appears confusing, bearing in mind that the Civil Service Bureau is the body responsible for the implementation of the LCI. A clear division of competences between the Committee and the Civil Service Bureau and rules coordinating their activities are crucial to increase the effectiveness of the supervisory regime.

#### Advice, training and awareness

76. The authorities indicate that the Committee on Procedural Issues and Rules informs and advises MPs on issues related to conflicts of interest and on the conduct expected from them. In particular, it informs newly elected MPs on the applicable rules, e.g. on the timeframe for quitting any incompatible activities. MPs may also address the Legal Department of Parliament. According to the authorities, MPs quite often make use of these advice channels, in particular through direct communications with members of the Committee. In addition, the Civil Service Bureau is competent to give advice in case of possible conflicts of interest. The authorities indicate that, in practice, MPs' requests mainly concern the asset declaration system.

77. The authorities also state that with the assistance of civil society, several training activities have been organised for newly elected MPs, which also mostly dealt with ethical questions and standards of conduct. However, there is no training programme available for MPs on a systematic basis. Following the interviews held on site, the GET was left with the clear impression that more needs to be done to raise MPs' awareness of ethical dilemmas and standards of conduct. This matter is covered by the recommendation made above with respect to the adoption and implementation of a code of ethics/conduct.<sup>67</sup>

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<sup>65</sup> See below under "Crosscutting issues" (paragraph 203).

<sup>66</sup> See above under "Ethical principles and rules of conduct" (paragraph 42).

<sup>67</sup> See above under "Ethical principles and rules of conduct" (paragraph 42).

#### **IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES**

##### Overview of the judicial system

78. The judicial system in Georgia is established by the Constitution (Chapter 5, Judicial Authority) and several laws, in particular the 2009 Law on General Courts (LGC). In accordance with the Constitution, "judicial authority shall be independent and be exercised exclusively by the courts." Furthermore, "a judge shall be independent in his/her activity and shall comply with the Constitution and law only. 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." "All acts restricting the independence of any judge shall be null and void."<sup>68</sup>

79. Pursuant to article 82(1) of the Constitution, judicial authority is exercised through constitutional control (by the Constitutional Court), justice, and other forms determined by law. Justice is administered by the courts of general jurisdiction through civil, administrative and criminal proceedings. The general courts are district (city) courts, courts of appeal and the Supreme Court.<sup>69</sup> There are no extraordinary or specialised courts.

80. Pursuant to section 11 LGC, decisions in general courts are taken by individual judges and by multiple judges as a panel, by a majority of votes. No judge may abstain from voting. The district (city) court is the court of first instance that examines cases falling within its jurisdiction according to procedures determined by the procedural legislation by an individual judge or, as determined by law, in a panel of three judges. The court of appeals, in panels of three judges, examines petitions for appeal of decisions of district (city) courts) under procedures determined by procedural law, and it also exercises powers under the Law on Arbitration. Chambers of the Supreme Court – the court of highest review and final instance in the administration of justice – review cases by panels composed of three judges, except the Grand Chamber, where panels are composed of nine judges. The Supreme Court also has a Chamber of Disciplinary Cases to review appeals against the decisions of the Disciplinary Board of Judges of General Courts, as well as a Chamber of Qualification to review appeals of the decisions of the HJC on the refusal to appoint a judge to office for life.

81. There are currently 266 professional judges in the courts of general jurisdiction, half of whom (133) are women. There are no lay judges in the Georgian judicial system. In first instance courts where there are no panels, certain criminal cases<sup>70</sup> may be decided with the participation of a jury.<sup>71</sup> The jury decides, independently, on the guilt or innocence of the accused while the judge determines the punishment. At present, juries consider cases only in Tbilisi and Kutaisi City Courts but following legislative amendments which enter into force in January 2017 juries will also operate in other regions.

82. The Conference of Judges is a self-governing body of general court judges tasked to protect and strengthen the independence of the judiciary, promote increased confidence and faith of the people in the courts and enhance judges' reputation. It consists of the Supreme Court, judges of courts of appeal and district (city) courts.<sup>72</sup>

83. The High Council of Justice's role (hereafter HCJ) is to ensure the independence of courts (judges) and the quality and effectiveness of justice; to appoint and dismiss

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<sup>68</sup> See articles 82(3) and 84(1) and (4) of the Constitution

<sup>69</sup> See sections 1 and 2 LGC.

<sup>70</sup> I.e. murder and other serious crimes such as grave injury that causes loss of life, violence with aggravating circumstances, etc.

<sup>71</sup> Cf. article 226 of the Criminal Procedure Code. See also article 221, according to which in a given case the judge carries out the random selection of candidates for the jury (100 at most) from the list of Georgian citizens of above 18. After a procedure of disqualification of candidates by the parties, 14 jurors are selected. The judge appoints 12 of them as a jury and 2 of them as reserve jury members.

<sup>72</sup> See section 63 LGC



judges; to organise judicial qualification examinations; to formulate proposals for judicial reform; and to accomplish other objectives determined by law.<sup>73</sup> It is chaired by the chair of the Supreme Court and consists of 15 members; in addition to the chair, there are eight judicial members elected by the Conference of Judges by secret ballot following self-nomination; of the six non-judicial members, five are appointed by Parliament, from experts with at least 10 years' legal experience from academia or civil society, and one is appointed by the President on the basis of proposals received from universities, the Georgian Bar Association and other civil society organisations. Members serve four-year terms and cannot be appointed or elected twice in a row.

84. The Department of General Courts of the HCJ provides logistical support to general courts, which includes managing funds to support the activity of courts such as materials, technology, providing the courts with adequate premises and auditing financial and material resources.<sup>74</sup>

85. Despite implementation of judicial reforms in Georgia, most notably in 1997, 2005 and 2013-2016, public trust in the judiciary is not very high<sup>75</sup> – compared to other state institutions – with concerns still prevalent about judicial independence. The first stage of further judicial reform in 2013 was aimed at increasing transparency of justice and depoliticising the HCJ. TV cameras have been reintroduced in courts, the procedure for appointment to the HCJ has been amended and politically appointed members have been removed, and the power to adjudicate disciplinary cases against judges has been assigned to the Disciplinary Board of Judges and General Courts.<sup>76</sup> The second stage of the reform in 2014 concentrated on life-time appointment and evaluation procedures. The current third stage of the reform of the judiciary is focused on increasing the independence of the judiciary, amending the rules on appointment, promotion and transfer of judges, automatic case assignment, disciplinary procedures, etc.; the bill is currently pending in the Parliament. The reforms have received strong support from the Council of Europe, in particular through the Venice Commission, which nevertheless recommended some further amendments, e.g. with respect to disciplinary proceedings against judges (see further below).<sup>77</sup>

86. The GET was worried to hear that despite the above reforms, there are still concerns amongst civil society that the early promise of more democratic decision-making and rigorous challenges, within the HCJ, is dissipating as little has changed. NGOs having monitored the HCJ activities are of the opinion that the non-judicial members are now too strongly influenced by judicial members; the authorities stress in this respect that – while they consider the veracity of this allegation questionable – what matters is that in May 2017 the term of existing members of the HCJ will expire and new members will be elected. The GET also heard during the interviews that the decision-making process within the HCJ often remains unclear. In the view of several interlocutors from civil society, current reforms including the third stage are insufficient to address those concerns. They were also of the opinion that the current bill – which had been submitted to Parliament in late 2015 but had not been finally adopted before the parliamentary elections of October 2016<sup>78</sup> – had been damaged during the legislative

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<sup>73</sup> See article 86.1 of the Constitution and section 47 LGC

<sup>74</sup> See sections 54 and 55 LGC

<sup>75</sup> More details are provided above in the chapter "Context" (paragraphs 14 *et seqq.*).

<sup>76</sup> The Disciplinary Board consists of five members, three of whom are judges of general courts elected by the Conference of Judges; the other two members are not judges and are elected by Parliament.

<sup>77</sup> See the Joint Opinion of the Venice Commission and the Directorate of Human Rights and the Rule of Law 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, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)032-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)032-e) and the Joint Opinion of the Venice Commission and the Directorate of Human Rights and the Rule of Law of the Council of Europe on the "Draft Law on amendments to the organic Law on general courts of Georgia", CDL-AD(2014)031, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e).

<sup>78</sup> The GET was informed, during the interviews, that the bill met with opposition from parts of the judiciary and political spheres. The authorities stress that the only reason it was not passed in the third and final reading is

process. In the view of the GET, the planned amendments which are still pending in the Parliament would be an important step in the right direction and could solve some of the problems identified by the GET. At the same time, this report calls for some additional measures in selected areas which are relevant to the present evaluation.

### Recruitment, career and conditions of service

87. In accordance with article 86(2) of the Constitution, judges are appointed for life, which means their working lifetime until they reach the age determined by law i.e. 65 years. However, the law may provide for an initial appointment of a judge for a defined period of not more than three years, at the end of which a decision is made whether or not to offer a lifetime appointment. Such rules are included in sections 36 *et seqq.* LGC (more details appear below). The introduction of lifetime appointment with a three year probationary period was a main component of the second stage of the reform of the judiciary. The probationary period has been criticised by the Venice Commission as a threat to judges' independence. The authorities consider that in view of the low level of public trust in the judiciary, introducing a probation period was a necessary measure to check competence and integrity of judges before they can be given life tenure. They also stress that the law provides for clear and measurable criteria as well as fair procedures to evaluate competence and integrity.

88. Article 86(2) of the Constitution and section 34 LGC determine the criteria for being eligible to be considered for appointment (elected) as a judge – a competent citizen of Georgia of at least 30 years of age who has a higher legal education with at least a master's or equal academic degree/higher education diploma, at least five years of working experience in the specialty, has the command of the official language, has passed a judge's qualification exam, has completed a full training course of the High School of Justice and is entered on the Justice Trainee Qualifications List.<sup>79</sup>

89. The appointment procedure for judges is regulated in detail by sections 35 to 36.8 LGC. As a rule, the HCJ will announce a competition through an official gazette, and persons who fulfil the above-mentioned requirements can submit an application for the vacancy to the HCJ and will be deemed candidates and take part in the competition. Candidates must submit a certificate that they have filed a property declaration with the Public Registry Bureau. The decision on appointing a candidate to the office of judge is made taking into account his/her serial number on the Justice Students Qualifications List and the evaluation by the Independent Board of the High School of Justice.

90. Judges of district (city) courts and courts of appeal are first appointed to office by the HCJ for a three-year term; unsuccessful candidates cannot appeal the decision by the HCJ on the refusal to appoint them to office. Subsequently, the HCJ decides on whether to appoint the judge to office for life, based on the analysis of the assessment of the judge's activity (carried out by one judge member and one non-judge member of the HCJ selected by lot) and on an interview. The assessment must be performed in an objective, honest and unbiased manner, based on detailed criteria about integrity and competence, specified by law. Integrity criteria include personal honesty and professional integrity, independence, impartiality and fairness, personal and professional conduct – *inter alia*, adherence to judicial ethics – personal and professional reputation, financial obligations – taking account of information on the judge's sources of income, assets, property owned and/or used, and on debts and liabilities related to this property and income. Examination of financial obligations is intended to establish whether there are grounds

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that the ruling coalition was split a few months before the election and it became hard if not impossible to gather the necessary number of votes to support an organic law.

<sup>79</sup> The law provides for certain exemptions from the above requirements, e.g. a person nominated for election to the office of a Supreme Court judge as well as a former judge who has passed a judge's qualification exam, who has been appointed to the office of a judge in the Supreme Court or a district (city) court and/or a court of appeal by competition and who has at least 18 months of working experience as a judge is not required to attend the High School of Justice training to hold the office of a judge.

for a conflict of interest between a judge's material interests and the interest of justice, which may compromise a judge's impartiality.

91. If a judge is appointed to office for life, the judicial assessment reports are made public and any person may request them under Chapter III of the General Administrative Code of Georgia. A judge may appeal the decision of the HCJ on the refusal to appoint him/her to office for life, to the Chamber of Qualification of the Supreme Court, for reasons specified by the LGC and in accordance with the procedure regulated in detail by that law. Decisions made by the Chamber of Qualification are drawn up in writing and are signed by the members of the Chamber of Qualification. They are final.

92. The GET notes that the rules on judges' recruitment have, in recent years, been subject to quite substantial reforms which introduced the principle of lifetime appointment and detailed regulations on the assessment of judges during the probationary period, as well as procedural rules and criteria to be applied when deciding on appointment for life. However, it very much regrets that the procedure and criteria for the selection of candidates and their appointment for the probationary period – i.e. the first stages of judges' recruitment – is much less regulated. The GET was concerned to hear that the absence of clear rules at this stage of the process, as well as the recent practice of the HCJ, have fuelled citizens' mistrust in the system. In particular, different representatives of civil society interviewed by the GET criticised the decision-making process within the HCJ for not being transparent, given that interviews with candidates were often held behind closed doors, voting within the HCJ was secret and reasons for its decisions were not publicly available. They also stated that in some cases, HCJ members who had a conflict of interest had participated in the process, and that the current regime did not guarantee objective decision-making. The authorities stress for their part that NGOs and journalists are free to attend HCJ hearings and to monitor the selection process of judges, and that the HCJ usually publishes lists of candidates, biographies and the interview schedule on its website.

93. In this connection, the GET was pleased to learn that the third stage of the reform of the judiciary foresees several amendments to the recruitment of judges. In particular, it is planned to introduce detailed criteria for the evaluation of judicial candidates by the HCJ, which are similar to those applied when deciding on lifetime appointment (focussing on integrity and competence); to regulate conflicts of interest of HCJ members, including obligatory self-recusal and the right of the candidate to challenge the objectivity of an HCJ member; and to give an unsuccessful candidate the right to appeal the HCJ's decision to the Chamber of Qualification of the Supreme Court. The GET is of the opinion that such amendments are clearly necessary in order to provide for objective and transparent procedures and to restore public confidence in the judiciary. It furthermore sees a need for introducing additional transparency measures, *inter alia*, requiring the HCJ to justify its decisions and to make the reasons available to the applicant. In this context, it draws attention to European standards according to which decisions concerning the selection and career of judges must be based only on objective and pre-established criteria, notably on merit, following transparent procedures with reasons for decisions being made available to applicants on request, and unsuccessful candidates are to be given the possibility to challenge decisions taken (or at least the procedure) in the recruitment process.<sup>80</sup> Regarding the selection criteria, the GET would have a preference for enshrining them in the law itself, in order to ensure that the objective criteria prevail over political considerations and are effectively taken into account by the HCJ in practice.<sup>81</sup>

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<sup>80</sup> See, in particular, Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, paragraphs 44 and 48, <https://wcd.coe.int/ViewDoc.jsp?id=1707137>.

<sup>81</sup> See also the [Joint Opinion of the Venice Commission and the Directorate of Human Rights and the Rule of Law of the Council of Europe on the "Draft Law on amendments to the organic Law on general courts of Georgia"](#), CDL-AD(2014)031, paragraph 50.

94. As far as promotion of judges is concerned, there is also much room for further improvement. The law only provides that a judge of a district (city) court may be appointed in a court of appeal if s/he has served as a judge in the district (city) court for at least two years – except for specified cases such as demonstration of high judicial skills during the exercise of judicial power<sup>82</sup> – and that judges are to be assessed by the HCJ against promotion criteria established by the latter.<sup>83</sup> Again, the GET was concerned to hear about opaque procedures and the lack of clear and objective criteria. The GET wishes to stress how important it is that such promotion criteria, which were under preparation at the time of the visit, are now put in place and applied in practice; for the future, the GET would find it preferable to also enshrine such criteria in the law.<sup>84</sup> Moreover, it is essential that clear and transparent procedures for promotions be established and that unsuccessful candidates can challenge decisions taken by the HCJ. In this connection, the GET again refers to the above-mentioned European standards which also apply to judges' career advancement. Finally, it is to be noted that some amendments to the LGC provisions on promotion of judges are foreseen within the third stage of the reform of the judiciary. Particularly, it is planned to require at least five years' experience as a judge of a district (city) court (instead of two years) before appointment to a court of appeal, and to restrict the right to promotion for judges against whom disciplinary proceedings were initiated. It is clear, however, that those measures are insufficient to address the shortcomings mentioned above. In view of the preceding paragraphs, **GRECO recommends reforming the recruitment and promotion of judges, including by ensuring that any decisions in those procedures by the High Council of Judges a) are made on the basis of clear and objective, pre-established criteria – notably merit, in a transparent manner and with written indication of reasons, and b) can be appealed to a court.**

95. The chair and judges of the Supreme Court are elected for a period of 10 years by Parliament, by a majority of the full list of MPs, on the recommendation of the President of the Republic.<sup>85</sup> The chair of the Supreme Court may nominate to the President of the Republic a candidate to be elected as a judge and the President may nominate for election to Parliament any person who meets the requirements provided for by the Constitution and the LGC. Candidates are released from the judge's qualification exam, on the condition that their professional experience suits the high status of a member of the Supreme Court. The same candidate may be nominated to Parliament for election to the office of member of the Supreme Court only twice. The chair and the deputy chair of a court of appeal are appointed from among chamber chairs for a five-year term and discharged by the HCJ.<sup>86</sup> The chair of a district (city) court is appointed from among the judges of the relevant court, and in a court having panels – from among the panel chairs for a five-year term and is discharged by the HCJ.<sup>87</sup>

96. Until 2015, the law provided for the possibility of transfer of judges. It is planned to reintroduce such provisions in the next years. At present, section 44 LGC only provides that if the court ceases to exist or the judge's office is made redundant, a judge may be assigned, with his/her prior written agreement, to discharge the duty of a corresponding or lower court. If s/he refuses to discharge the duty of a judge or if s/he is not assigned the duty of a judge of another court, the judge is discharged from office, and by his/her prior written consent, is transferred to the reserve.<sup>88</sup> Furthermore, there are legal provisions to exempt judges from obligatory competition when they themselves wish to

<sup>82</sup> A judge may also be promoted earlier if s/he has made a special contribution to the development of law, formulation of uniform judicial practice and fast and effective administration of justice.

<sup>83</sup> Section 41 LGC.

<sup>84</sup> See also the [Joint Opinion of the Venice Commission and the Directorate of Human Rights and the Rule of Law of the Council of Europe on the "Draft Law on amendments to the organic Law on general courts of Georgia"](#), CDL-AD(2014)031, paragraph 62.

<sup>85</sup> See article 90(2) of the Constitution and section 36(1) LGC.

<sup>86</sup> See section 23(6) LGC.

<sup>87</sup> See section 32(1) LGC.

<sup>88</sup> A judge in the reserve retains the right to receive a salary determined by law for three years after having been transferred to the reserve. S/he may be assigned the duty of a judge of another court with his/her prior written consent.

be appointed to another position of judge. There is no possibility to appoint a judge to such a position without his/her consent.<sup>89</sup>

97. The GET was concerned to hear that before 2015, judges used to be transferred from court to court for vague and unclear reasons, which gave rise to allegations that the HCJ's wide discretion was used to punish disobedient judges. Regulations on this matter were annulled in January 2015. The Government is planning to reintroduce the possibility to transfer judges in a manner which will conform to international standards. Particularly, according to the draft law, the transfer of a judge without his/her consent will be allowed only in exceptional circumstances and limited to closely situated courts unlike in the current regulation. Moreover, the HCJ will be obliged to make a substantiated decision regarding the transfer of a judge, it will not be permissible to transfer a judge from a higher court to a lower one without his/her consent, and a judge may be subject to non-voluntary transfer no more than once in 10 years.<sup>90</sup> The GET wishes to stress that irremovability of judges is an important aspect of their independence<sup>91</sup> and that a threat to move a judge from one court to another may be used to exert pressure on a particular judge, or to ensure that a certain judge deals with or does not deal with cases at a particular court. The GET wishes to draw attention to European standards according to which a judge should not "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."<sup>92</sup> In this context, the above reform initiative aimed at regulating the transfer of judges with their consent, in line with international standards, is clearly to be supported. In the view of the GET, it is crucial that such possibilities are clearly regulated and limited to exceptional cases. It is furthermore crucial that the HCJ's transfer decisions can be challenged by the judges concerned. The authorities might also wish to reflect on the advisability of introducing additional transparency measures, such as making public the HCJ's reasons for transfer decisions – partly in order to improve public confidence in the HCJ's decisions – and making such decisions subject to a review mechanism (appeal). Given the above, **GRECO recommends that the planned legislation on the transfer of judges, if adopted, provides for adequate safeguards against misuse of the possibility of transfer of judges to another court without their consent, including by ensuring that such a transfer is only possible in exceptional cases, under strict criteria clearly identified in the law, and by providing for the possibility to appeal against transfer decisions.**

98. Twice a year the HCJ conducts an evaluation<sup>93</sup> of all first and second instance court judges on the basis of statistical data and through a special electronic programme. It is aimed at assessing the efficiency of judges' judicial work on a quantitative basis. The following criteria are taken into account during the evaluation process: number of resolved cases; complexity of resolved cases; observance of procedural deadlines for consideration of a case; observance of deadlines for the preparation of judgments; stability of judgments.

99. Supreme Court judges can be dismissed by impeachment – i.e. by Parliament upon recommendation by the HCJ – and judges of courts of appeal and district (city) courts by decision of the HCJ. The grounds for dismissing a judge are specified in section 43 LGC, *inter alia*, committing disciplinary misconduct, holding an office or engaging in an activity incompatible with the status of a judge, entry into force of a final judgment of

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<sup>89</sup> In particular, section 37 LGC provides that if a vacancy arises, a judge who has been appointed to office may be appointed without competition as a judge of a lower, corresponding or upper court with his/her consent. If a judge has been appointed for life, s/he may be appointed without competition as a judge of a lower, corresponding or upper court within his/her tenure.

<sup>90</sup> Draft section 37.1 LGC.

<sup>91</sup> See e.g. the Magna Carta of Judges adopted by the Consultative Council for European Judges (CCJE), paragraph 4 [https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC\(2010\)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

<sup>92</sup> See, in particular, [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 52.

<sup>93</sup> This tool was introduced by HCJ decision #1/226 of 2011 (amended in 2012) on the "Rules for Assessing the Efficiency of Judges of the Courts of General Jurisdiction", which establishes the evaluation criteria.

conviction against him/her, committing a corruption offence in the meaning of section 20(6) LCI. Disciplinary liability of judges and corresponding proceedings are regulated by a specific law, see further below.

100. In accordance with the provisions of section 69 LGC, judges' remuneration consists of a salary – which must not be reduced throughout the entire term of office of the judge – and salary increment. Monthly salary rates and material benefits of a judge are determined by law. The amount of a salary increment of a Supreme Court judge is determined by the Plenum of the Supreme Court and that of other judges, by the HCJ. Salary increments are published on the HCJ website.<sup>94</sup> In accordance with section 1 of the Law on the Compensation of Judges of General Courts of Georgia, gross annual salaries range from GEL 48 000/approximately EUR 17 760 for a district (city) court judge (magistrate judge) to GEL 84 000/approximately EUR 31 080 for the chair of the Supreme Court. Judges are furthermore entitled to social guarantees and benefits, including necessary living space or payment of necessary housing expenses for judges who have no living accommodation in a self-governing city (municipality) where they have to exercise judicial powers, upon decision by the HCJ (the chair of the Supreme Court, for its members).<sup>95</sup>

#### Case management and procedure

101. In principle, individual cases are assigned “sequentially” among the judges of a court, i.e. in accordance with the date of submitting the complaint and the sequence of the judges on the alphabetical list.<sup>96</sup> However, in appellate and district (city) courts with more than two judges, if cases accumulate with one judge or where, for a different reason, the judge cannot hear a case, the court chair or his/her deputy or a head of the chamber/collegiums may redistribute cases with consideration of the caseload for each judge. During the on-site visit, the GET's interlocutors stated that this rule left much discretion to court chairs who in the past often distributed cases among individual judges as they wished. The GET was concerned to hear that this situation fed citizens' mistrust towards the system. In this connection, it draws attention to international standards which require that the allocation of cases within a court should either be random or follow objective pre-established criteria.<sup>97</sup> Given the situation in Georgia as described above, an automatic (electronic) and random system of case assignment appears preferable, as is currently planned. Within the third stage of the reform of the judiciary, draft amendments to the LGC foresee the introduction of automatic case assignment in appellate and district (city) courts, through an electronic system observing the principle of equal and random distribution of cases.<sup>98</sup> Rules for the automatic case distribution are to be laid down by the HCJ. In case of temporary failure of the electronic system the cases may be assigned sequentially. This move is clearly to be supported. In view of the foregoing, **GRECO recommends introducing an objective and transparent system for the allocation of cases to individual judges, such as an automatic (electronic) system providing for random case assignment.**

102. A judge may be removed from a specific case only for the reasons set out by law. Under section 45 LGC, a judge can be recused from trials and other official powers by the chair of the Supreme Court if s/he is being prosecuted or the Disciplinary Board makes a decision to discharge the judge. The rules on disqualification of a judge under the procedural laws are described further below.

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<sup>94</sup> See [www.hcoj.gov.ge](http://www.hcoj.gov.ge).

<sup>95</sup> See section 68(3) LGC.

<sup>96</sup> Section 7(4) of the Supreme Court Rules; section 4 of the Law on the case distribution and case assignment in general courts.

<sup>97</sup> See e.g. [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 24.

See also the Kyiv Recommendations on judicial independence in Eastern Europe, south Caucasus and Central Asia (paragraph 12), <http://www.osce.org/odihr/KyivRec?download=true>

<sup>98</sup> Draft section 58.1 LGC.

103. Procedural legislation prescribes time limits which must be observed by judges when hearing the cases. A district (city) court hearing criminal cases must render a judgement within 24 months of the judge in the preliminary proceedings making a decision to refer the case for a main hearing; an appellate court hearing a criminal case must render a decision within two months; and a final decision on a cassation appeal is delivered by the Supreme Court within six months after the case and the appeal have been submitted.<sup>99</sup> Unjustified delay in proceedings may become a ground for disciplinary liability of the judge.<sup>100</sup>

104. Legal proceedings are to be conducted on the basis of equality and competition of parties. As a rule, proceedings before a court are oral and public; exceptions are defined by law, namely by the Civil and Criminal Procedure Laws. Judgments must always be pronounced publicly.<sup>101</sup> The public may be excluded from the court in criminal proceedings e.g. for the purpose of protecting personal data, professional or commercial secrets, or for the purpose of personal security of a trial participant and/or of his/her family member (close relative).<sup>102</sup>

#### Ethical principles, rules of conduct and conflicts of interest

105. Some basic principles are set out in the Constitution and the LGC which state that judges are to be independent in their activity and to assess facts and make decisions only according to the Constitution, universally accepted principles and standards of international law, other laws and by their inner conviction. Justice must be administered "as equality before law and court of all persons involved in the case, as well as by the principles of transparency and non-substitution and independence of judges".<sup>103</sup> Moreover, according to section 38 LGC, judges are to take an oath of office, the text of which is approved by the HCJ.

106. In addition, judges are subject to the general rules of ethics for public officials. As mentioned above in the chapter on MPs, the "Law on Conflict of Interest and Corruption in Public Institutions" (LCI) was amended by Law No. 4358 of 27 October 2015 (these new provisions will enter into force on 1 January 2017), *inter alia*, to include general rules of conduct for public servants in a new chapter III.1.<sup>104</sup>

107. The definition of "conflict of interest in a public institution" in section 3(3) LCI and the rules on the prevention and management of such conflicts under section 13.4 LCI as described above with respect to MPs apply to judges also. In addition, the procedural laws include rules on conflicts of interest in the provisions on the disqualification of a judge (see below).

108. In 2007, the Conference of Judges upon proposal by the HCJ adopted and promulgated the "Norms of Judicial Ethics of Georgia",<sup>105</sup> which are publicly accessible on the websites of the HCJ and of the Supreme Court.<sup>106</sup> They "define rules of judicial ethics to strengthen independence, impartiality and integrity of the judiciary, to promote public confidence and trust in the judiciary and to protect reputation and authority of judges." The Norms of Judicial Ethics make reference to the Georgian Constitution and laws as well as international legal values including the Bangalore Principles of Judicial Conduct<sup>107</sup> and Opinion No. 3 of the Consultative Council of European Judges.<sup>108</sup> They are composed

<sup>99</sup> Articles 185(6), 295(6) and 303(8) of the Criminal Procedural Code

<sup>100</sup> Section 2(2)e) of the Law on Disciplinary Liability of Judges of General Courts of Georgia and Disciplinary Proceedings.

<sup>101</sup> See article 85 of the Constitution and section 13 LGC.

<sup>102</sup> Article 182 of the Criminal Procedure Code

<sup>103</sup> See article 84(1) of the Constitution and sections 6 and 7 LGC.

<sup>104</sup> New sections 13.1 to 13.5 LCI. In this connection, it is recalled that just as MPs, judges fall under both categories of "officials" and "public servants" in the meaning of the LCI.

<sup>105</sup> Cf. section 6 of the Charter of the Conference of Judges.

<sup>106</sup> See <http://www.supremecourt.ge/eng/judges-self-governance/judges-ethics-code/>.

<sup>107</sup> See [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf).

<sup>108</sup> See Opinion No. 3 (2009) of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality

of the four chapters "Independence and Impartiality of Judges", "Competence and Diligence of Judges", "Relations between Judges and Mass Media" and "Non-judicial Activities of Judges" (altogether 28 articles). Violation of the Norms of Judicial Ethics by judges may trigger disciplinary liability, as described further below.

109. During the interviews held on site, the GET was informed that a need had been identified to further refine and update the Norms of Judicial Ethics, to take into account practical experience gained since their adoption and to provide for clarifications. It would appear that the HCJ had started its work on such a revision, with the assistance of donor organisations. The GET very much welcomes this initiative; as GRECO has repeatedly pointed out, professional standards of conduct/ethics should be living texts that can evolve over time. Moreover, it is essential that their implementation is ensured by complementary measures including confidential counselling within the judiciary – which is currently missing and could usefully be provided, for example, by the HCJ – and specific (preferably regular) training activities of a practice-oriented nature. Further written guidance, explanatory comments or practical examples (e.g. with regard to risks of corruption and conflicts of interest) would be beneficial to ensure effective application of the norms. Finally, it is crucial that the updated version of the norms is brought to the attention of both judges and the public at large, in order to raise judges' awareness of ethical questions and existing standards and to foster citizens' trust in the judiciary. Consequently, **GRECO recommends (i) that the "Norms of Judicial Ethics" be updated, communicated to all judges and made easily accessible to the public; (ii) that they be complemented by practical measures for the implementation of the rules, such as further written guidance and explanations, further training and confidential counselling.**

#### Prohibition or restriction of certain activities

##### *Incompatibilities and accessory activities, post-employment restrictions*

110. Article 86(3) of the Constitution makes it clear that the position of judge is incompatible with any other occupation or remunerative activity, except for pedagogical and scientific activities. A judge may not be a member of a political party or participate in a political activity. These restrictions are also reflected and further explained in the Norms of Judicial Ethics.

111. In addition, the detailed rules on incompatibilities for public servants, as contained in section 13 LCI and outlined above in the chapter on MPs, are to be taken into account. For example, public servants may not hold another position in any public institution or legal entity under private law, or be a member of a representative body of any level, hold a position in a body or institution abroad, hold a position in any enterprise, be a representative or a proxy of any natural or legal person, or represent or defend him/her/it in criminal law, civil law or administrative law cases before or against any public institution, except when s/he is a guardian, care giver or supporter of this natural person.

112. Section 13 LCI also provides that an official or his/her family member must resign from an incompatible position or terminate incompatible activities within 10 days of the appointment/election of this official. The official must certify this to the superior official/body (in the case of judges, the HCJ) through the human resources management unit (in the case of judges, a structural unit of the HCJ). Judges do not need permission before taking up allowed activities, nor are they obliged to report on such activities. They are, however, required to report on any income they derive from such activities in their regular asset declarations (see below).

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([https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE\(2002\)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2002)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3)).



113. There are no specific rules or measures prohibiting or restricting the employment options of judges, or their engagement in other paid or un-paid activities, on completion of their term of office. That said, the general rules under section 13 LCI need to be borne in mind, in particular, the rule that a former public servant may not, within one year of his/her term of office, start working in the public institution or carry out activities in the enterprise which has been under his/her systematic official supervision during the past three years. Moreover, within this period, s/he may not receive income from such a public institution or enterprise.

#### *Recusal and routine withdrawal*

114. The conditions for disqualification of a judge are specified in the Criminal and Civil Procedure Codes. A judge is disqualified from a criminal case, *inter alia*, whenever s/he participates or participated in this case as the accused, a defence counsel, a victim, an expert, an interpreter or a witness; is subject to an investigation for the alleged commission of an offence; is a family member or close relative of the accused, defence counsel, or of the victim; or there are other circumstances that question his/her objectivity and impartiality.<sup>109</sup> In civil proceedings it is provided, *inter alia*, that a judge must not hear a case or participate in its hearing if s/he represents a party to the case or shares common rights or obligations with any of the parties; participated in a previous hearing of the case as a witness, an expert, a specialist, an interpreter, a representative or a secretary of a court session; is a relative of one of the parties or of the party's representative; is personally interested, directly or indirectly in the outcome of the case, or if there are other grounds for questioning his/her impartiality; or s/he participated in the case as a mediator.<sup>110</sup>

115. When the case is being decided by a panel of judges, the judge may be removed from the case upon self-recusal or upon a motion/challenge from one of the parties, when a reason for disqualification exists. The motion is decided by the panel, without participation of the judge concerned. The decision on disqualification of a judge can be appealed to the upper instance court.<sup>111</sup> The outcome of the disqualification motion cannot be appealed.

#### *Gifts*

116. The rules on gifts applicable to public servants including judges under sections 5 to 5.2 and 13.5 LCI have been described in the chapter on MPs. *Inter alia*, the total value of gifts received by a public servant including a judge during a reporting year must not exceed 15% of the amount of one year's salary, and the total value of a single gift received must not exceed 5%, unless these gifts are received from the same source. Furthermore, the total value of gifts received by each member of the judge's family during a reporting year must not exceed GEL 1 000/approximately EUR 370, and the total value of a single gift received must not exceed GEL 500/approximately EUR 185, unless these gifts are received from the same source. Moreover, judges may not accept any gift or service that may affect the performance of their official duties. If a judge or his/her family member ascertains, after receiving a gift, that its value exceeds the limits under the LCI and/or it was impossible to refuse the gift due to certain reasons (a gift received by mail, a gift given publicly), s/he must, within three working days, submit to the Civil Service Bureau information on the name of the received gift, its assessed or exact value/amount and the identity of the giver, or must transfer the gift prohibited under the LCI to the Legal Entity under Public Law – the Service Agency of the Ministry of Finance. According to article 340 of the Criminal Code (CC), "acceptance by an official or a person equal thereto of gifts prohibited by law" is a criminal offence.<sup>112</sup>

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<sup>109</sup> Article 62(3) of the Criminal Procedure Code

<sup>110</sup> Articles 29 to 31 of the Civil Procedure Code

<sup>111</sup> Article 66 of the Criminal Procedure Code

<sup>112</sup> The sanctions available under article 340 CC are a fine or community service from 100 to 300 hours or deprivation of the right to carry out a particular activity for up to three years or imprisonment for up to two

117. The GET has the clear impression that judges do not consider it permissible for them to accept gifts or other advantages. According to information provided by the Civil Service Bureau, there have not been any practical cases in recent years.

#### *Third party contacts, confidential information*

118. Section 3(1) of the Law on the Procedure of Communication with Judges of General Courts deals with communication with a judge during proceedings. From the time the case is submitted to a court, until the entry into force of the court ruling (also during investigation), participants to the proceedings, interested persons, public servants and state political officials are prohibited from establishing any communication with a judge that is related to the consideration of a specific case or an issue, and/or to the presumable outcome of a case. This is recognised as violating the principle of independence and impartiality of a court/judge, and the principle of the adversarial nature of proceedings.

119. As far as the use of confidential information is concerned, under the procedural laws judges' deliberations are secret and not allowed to be disclosed.<sup>113</sup> Moreover, the general restrictions under sections 8 and 13.3 LCI, as outlined above with respect to MPs, apply accordingly to judges. "Disclosure of secrecy of deliberations of judges or professional secrecy" gives rise to disciplinary liability, see below.

#### *Declaration of assets, income, liabilities and interests*

120. In accordance with sections 14 to 19 LCI, officials including judges are to submit asset declarations to the Civil Service Bureau a) within two months of their appointment/election, b) during their term of office, once every year and c) after their term of office, within the respective month of completion of the previous declaration. The rules have been described in detail in the chapter on MPs.

121. In addition, under the LGC, within seven days of applying for the position of a judge, a judicial candidate must submit to the HCJ a certificate of submission to the Public Registry Bureau of a property declaration. Moreover, when assessing the criteria of the candidacy of the judge, the HCJ takes into consideration information on fulfilment of financial obligations.<sup>114</sup>

#### Supervision and enforcement

122. Disciplinary liability and proceedings are regulated in detail by special law – the 2000 Law on Disciplinary Liability of Judges of General Courts of Georgia and Disciplinary Proceedings (hereafter LDLJ). Judges bear disciplinary liability for disciplinary misconduct specified by law, such as corruption offences or misuse of official status to the detriment of the interests of justice and the office held (an infringement provided for by the LCI constitutes a corruption offence in the meaning of the LDLJ unless it entails criminal or administrative liability); similarly an activity incompatible with the position of a judge, or conflict of interest with duties of a judge; an action inappropriate for a judge that disgraces the reputation of, or damages the confidence in, a court; unjustified delay in proceedings; failure to fulfil or improper fulfilment of the obligations of a judge; disclosure of secrecy of deliberations of judges or professional secrecy; impediment to or disrespect for the activities of bodies having disciplinary powers; breach of judicial ethics. In contrast, the law makes it clear that incorrect interpretation of the law based on a judge's internal faith does not constitute disciplinary misconduct.<sup>115</sup>

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years. The same act committed repeatedly entails fine or community service from 200 to 400 hours or with deprivation of the right to carry out a particular activity for up to three years or with imprisonment for a term of two to four years.

<sup>113</sup> Cf. article 28 of the Civil Procedure Code and article 193 of the Criminal Procedure Code.

<sup>114</sup> See sections 35(4) and 36.3(3) LGC.

<sup>115</sup> See section 2 LDLJ.

123. Disciplinary penalties include reproof, reprimand, severe reprimand, dismissal of a judge from position and elimination of a judge from the reserve list of judges of general courts. Disciplinary measures include giving a private recommendation letter to a judge, and dismissal of a chair, first deputy or deputy chair of a court, a chair of a judicial panel or chamber.<sup>116</sup> Disciplinary liability of judges is subject to statutes of limitation, i.e. it terminates if five years have passed from the date of committing disciplinary misconduct, and one year from the date of a decision on instituting disciplinary proceedings.

124. Disciplinary proceedings against a judge may be initiated on the basis of a complaint or application of any person, other than an anonymous complaint or application; an "explanatory note" by another judge, an employee of a court or an officer of the HCJ; notification by an investigative body; information disseminated by mass media; a recommendation of the Disciplinary Board to initiate disciplinary prosecution of a judge based on new grounds.<sup>117</sup> Under current legislation, they may be initiated by the chair of the Supreme Court, against judges of the Supreme Court, the courts of appeal and district (city) courts; by the chair of the court of appeal, against judges of the respective court of appeal and judges of the district (city) courts within its jurisdiction; by the HCJ, against all judges of general courts.<sup>118</sup> According to the amendments planned in the framework of the third stage of the reform of the judiciary, the HCJ would be the sole authority to initiate disciplinary proceedings and would become the main actor in the process.

125. Disciplinary proceedings include a preliminary investigation by the Secretary or another member of the HCJ; the evaluation of validity of the grounds for initiating disciplinary prosecution by the Secretary of the HCJ, who decides on whether to terminate prosecution or seek an explanation from the judge concerned; the decision by the HCJ on whether to terminate prosecution or institute disciplinary proceedings; disciplinary case hearing and decision by the Disciplinary Board of Judges of General Courts (hereafter Disciplinary Board). The latter consists of five members, three of whom are judges of general courts elected by the Conference of Judges; the other two members are not judges and are elected by Parliament. The process of disciplinary proceedings is confidential. The Disciplinary Board is obliged to provide the parties with equal conditions and opportunities to express and defend their positions.

126. The Disciplinary Board takes a decision on the case in writing, by majority of the Board members present. Pursuant to section 54 LDLJ, disciplinary penalties and measures are to be imposed by following the principle of independence and non-interference in the activities of a judge and having regard to the content and gravity of disciplinary misconduct, implications it incurred or may have incurred, and the degree of guilt. The Disciplinary Board dismisses a judge if, based on the gravity and number of specific instances of disciplinary misconduct, also based on previous disciplinary misconduct, it considers it inappropriate for this judge to continue to exercise his/her judicial power.<sup>119</sup> The decision by the Disciplinary Board must be reasoned and may be appealed by the parties concerned to the Disciplinary Chamber of the Supreme Court, which is composed of three members approved by the Plenum of the Supreme Court for a three-year term.

127. The GET notes that the disciplinary system has already in the past been subject to reforms, with support from the Council of Europe. *Inter alia*, the first stage of the reform of the judiciary in 2013 assigned the power to decide on the imposition of disciplinary sanctions to the Disciplinary Board and thus to a body distinct from investigative authorities. Nevertheless, the GET was seriously concerned to hear views from a wide range of interlocutors that despite the amendments, the disciplinary proceedings in their

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<sup>116</sup> See section 4 LDLJ.

<sup>117</sup> See section 6 LDLJ.

<sup>118</sup> See section 7 LDLJ.

<sup>119</sup> See section 56 LDLJ.

present form were highly ineffective and lacked transparency. This view has also been expressed by different Council of Europe bodies, for example, the Commissioner for Human Rights.<sup>120</sup> In this connection, the GET notes that during the last five years the Disciplinary Board has imposed sanctions in only four cases: three reprimands and a private recommendation letter for failure to fulfil or improper fulfilment of judicial duties. The need for further reform has been recognised by the authorities; the bill currently pending in the Parliament addresses at least some of the concerns raised by civil society and international bodies including the Venice Commission.

128. In particular, the grounds for disciplinary liability have been widely criticised as being too vague, as they refer to concepts such as “an action inappropriate for a judge that disgraces the reputation of, or damages the confidence in, a court”, “failure to fulfil or improper fulfilment of the obligations of a judge” or “breach of judicial ethics”. While the authorities explain that the latter terms are to be understood as a violation of the “Norms of Judicial Ethics of Georgia”, the GET wishes to stress that such references to a code of ethics or general principles – as well as other concepts employed by the LDLJ – have been repeatedly criticised, e.g. by the Venice Commission, as insufficient to prevent possible misuse of disciplinary proceedings.<sup>121</sup> During the on-site visit, the GET was interested to learn that this view was shared by representatives of the Disciplinary Board and that they were in the process of drafting a list of more specific grounds/disciplinary offences which they would then submit to the Ministry of Justice. The GET welcomes this move; for the future, the GET would find it preferable to enshrine such definitions also in the law, as is apparently planned.

129. Several of those with whom the GET spoke argued that a further reason for the current ineffectiveness of disciplinary proceedings related to deficiencies in the investigatory stages at the HCJ. It was indicated that during the period 2013 to 2015, the HCJ had received 300 cases but none of them was submitted to the Disciplinary Board. For example, the Public Defender (Ombudsman) reported that he had repeatedly addressed the HCJ with an initiative to launch disciplinary prosecution against judges “whose allegedly grave violations of procedural norms were evident during case hearings”; however, the HCJ in all cases limited its response to standard replies stating that no relevant infractions were noted on the part of the judges. At present, it is the Secretary of the HCJ who has unchecked power to end disciplinary proceedings. The GET is of the firm opinion that measures need to be taken to ensure in-depth examination by the HCJ of complaints submitted to it and to increase transparency of the process. A legal requirement for the HCJ to give reasons for decisions to dismiss cases,<sup>122</sup> as is foreseen in the bill pending in the Parliament, to notify those reasons to the complainant and to allow for review of the decisions, are necessary steps in that direction. Further measures and practical arrangements to allow for substantive examination of complaints (such as dedicated staff) will also be required. The current bill proposes the introduction of an independent inspector competent to investigate cases; any decisions during the proceedings would be taken by the HCJ. The authorities strongly believe that the institution of an inspector will make the disciplinary system much more effective.

130. Still at the stage of proceedings at the HCJ, in the view of the GET, the current requirement of a two thirds majority for any decisions by the HCJ – including decisions on requiring explanations from the judge concerned, on the “arraignment of the judge”

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<sup>120</sup> See e.g. the Commissioner’s observations on the human rights situation in Georgia of 12 January 2016, CommDH(2016)2 <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2903587&SecMode=1&DocId=2367686&Usage=2>.

<sup>121</sup> See the [Joint Opinion of the Venice Commission and the Directorate of Human Rights and the Rule of Law 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, paragraphs 27 *et seq.*, which contains further references.

<sup>122</sup> See also [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 28, according to which “Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions.”

and on appeal against decisions of the Disciplinary Board – appears too high to allow for an efficient disciplinary system. As the Venice Commission pointed out, such a qualified majority creates the serious risk that too many complaints are not followed up “because of corporatist attitudes within the HCJ.”<sup>123</sup> In light of the recent experience where the number of cases referred to the Disciplinary Board has dropped to zero, the GET clearly agrees that HCJ decisions in disciplinary proceedings must not require more than a simple majority.

131. Moreover, the GET has misgivings about the fact that in addition to the Disciplinary Board, the HCJ also has the power to send a “private recommendation letter” to a judge, as a disciplinary measure, and thereby to terminate the disciplinary proceeding. The GET is concerned that the conditions for taking such a measure are regulated in vague terms. Namely, in accordance with section 19(1) LDJ it may be taken if the examination of a case “credibly establishes the fact of committing disciplinary misconduct by a judge for which institution of disciplinary proceedings against him/her will be considered inappropriate”. Moreover, it is highly unsatisfactory that no appeal is provided against such a measure when it is taken by the HCJ – in contrast to the situation when the same measure is imposed by the Disciplinary Board. Finally, as has been pointed out, the HCJ in such cases “acts at the same time as an investigative body and as a body in charge of establishing the misconduct and deciding on the sanction to apply, which functions should be separated” in accordance with the relevant Council of Europe standards.<sup>124</sup> The GET is therefore of the firm opinion that this power of the HCJ needs to be abolished, as is planned in the framework of the third stage of the reform of the judiciary.

132. To conclude, the GET wishes to stress that the range of recommended amendments as described above are not meant to be exhaustive. In particular, every effort must be made to enhance transparency of disciplinary proceedings – which is to some extent planned in the framework of the third stage of the reform of the judiciary. The HCJ could, for example, give greater publicity to its own disciplinary processes and share outcomes with both the judiciary and the public. These need not include the names of judges, where cases were investigated and dismissed, but could include more data categorising the type of cases considered as well as their outcome. Moreover, a general rule that disciplinary sessions by the HCJ and by the Disciplinary Board are held in public (with the possibility to hold them *in camera*, at the request of the judge and under the circumstances prescribed by law) would have the potential to improve citizens’ disturbingly low confidence in the process. The bill currently pending in the Parliament gives the judge the ability to waive anonymity but only in proceedings before the HCJ. This might be a first step in the right direction; in the view of the GET, much greater transparency is required about the process and disciplinary outcomes. Given the preceding paragraphs, **GRECO recommends taking appropriate measures to increase the effectiveness, transparency and objectivity of disciplinary proceedings against judges, *inter alia*, by defining disciplinary offences more precisely; ensuring in-depth examination of complaints submitted to the High Council of Justice and requiring that its decisions to dismiss cases be reasoned, notified to the complainant and subject to review; introducing a simple majority requirement for the Council’s decisions; and removing the Council’s power to send private recommendation letters to judges as a disciplinary measure.**

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<sup>123</sup> See the [Joint Opinion of the Venice Commission and the Directorate of Human Rights and the Rule of Law 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, paragraph 24.

<sup>124</sup> See the [Joint Opinion of the Venice Commission and the Directorate of Human Rights and the Rule of Law 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, paragraph 38, with reference, *inter alia*, to [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 69. Moreover, this principle has been stressed by GRECO in previous Fourth Round Evaluation Reports, see e.g. the [Report on “The former Yugoslav Republic of Macedonia”](#), paragraph 169.

133. As far as supervision and enforcement of the rules on asset declarations are concerned, the system has been described in detail above in the chapter on MPs. Until now, the Civil Service Bureau was only competent to ensure the technical consistency and completeness of asset declarations submitted and to fine officials in case of failure to submit declarations on time. According to information provided by the Civil Service Bureau, no irregularities have been detected in recent years, and no sanctions have been imposed on judges for violation of the rules on conflict of interest or obligations prescribed by the LCI during the last three years.

134. In accordance with the new section 18.1 LCI which will come into force on 1 January 2017, the Civil Service Bureau monitors the entry of full and correct data into the declarations and their compliance with the law. In case of failure by an official, including a judge, to submit an asset declaration within the time limit or in case of a decision by the Civil Service Bureau on the existence of violations, the Civil Service Bureau takes the following steps.

- In cases where it is found that a judge presented deliberately incomplete or incorrect data – which is punishable under article 355 CC<sup>125</sup> – or where other specific elements of crime were identified, the Civil Service Bureau is to forward the respective declaration and materials of the proceedings to the relevant law enforcement body for further response.

- In cases of minor violations of the law (including failure to submit an asset declaration within the time limit), a decree imposing a fine in the amount of GEL 1 000/approximately EUR 370 is issued by the chair of the Civil Service Bureau through a simple administrative procedure. Failure to submit an asset declaration within two weeks of the date of entry into force of the decree or of a court decision results in criminal liability under article 355 CC.

135. The introduction of substantial checks – by the Civil Service Bureau – of asset declarations submitted by officials, including judges, is clearly to be supported; a recommendation to implement and carry on the current reforms is made below.<sup>126</sup>

136. If a public servant who is subject to disciplinary liability according to law – including a judge – violates the LCI intentionally or negligently, such a violation results in disciplinary liability as determined by law, unless it constitutes a crime or an administrative offence.<sup>127</sup> If a disciplinary measure is imposed on a public servant for violation of the LCI and s/he commits an offence provided for by the LCI again within three years, s/he is to be dismissed from office.

137. Judges may be subject to criminal proceedings and sanctions if they commit offences such as theft, fraud, embezzlement, bribery, “acceptance by an official or a person equal thereto of gifts prohibited by law”, trading in influence, breach of professional confidentiality, or “non-submitting of property or financial declaration or entering incomplete or incorrect data thereto”. However, they enjoy personal immunity in accordance with article 87(1) of the Constitution: “No one has the right to arrest, detain, or bring criminal proceedings against a judge, search his/her apartment, car, workplace, or conduct a personal search without the consent of the Chairperson of the Supreme Court of Georgia, except when he/she is caught at the scene of crime, in which case the Chairperson of the Supreme Court of Georgia shall immediately be notified. Unless the Chairperson of the Supreme Court of Georgia gives his/her consent, the arrested or

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<sup>125</sup> The available sanctions under article 355 CC (“non-submitting of property or financial declaration or entering incomplete or incorrect data thereto”) are a fine, community service from 120 to 200 hours, or the prohibition on occupying certain positions or withdrawal of the license to practice particular activities for up to three years.

<sup>126</sup> See below under “Crosscutting issues” (paragraph 203)

<sup>127</sup> See section 20(5) LCI

detained judge shall immediately be released.” In case of the chair and judges of the Supreme Court, Parliament is competent to give the necessary consent.<sup>128</sup>

138. The GET is concerned about the broad immunity accorded to judges<sup>129</sup> and is of the firm opinion that it represents an unnecessary obstacle to rapid law enforcement action, for example, to secure evidence. The GET is convinced that this extraordinary protection ought to be limited to what is strictly necessary for carrying out the functions of a judge. The authorities consider that the existing immunities do not have any negative effect on the judiciary system and they report that there have not been any criminal cases against judges in recent years, or any requests for lifting judges’ immunity. However, under these circumstances, the GET cannot see a need for the broad immunity rules currently in force. Moreover, there is a risk that the present regime might give the impression that the judiciary is outside of the law and might be contributing to the low level of public confidence. That said, the GET is fully aware that judges may need protection from inappropriate disturbance in carrying out their duties for which so called “functional immunity” would be sufficient. In view of the foregoing and with reference to Council of Europe standards including Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption,<sup>130</sup> **GRECO recommends that the immunity of judges be limited to activities relating to their participation in judicial decision-making (“functional immunity”).**

#### Advice, training and awareness

139. The High School of Justice provides training on judicial ethics both for candidate judges, as part of the obligatory initial 10-month training, and for sitting judges, under the in-service training programme (such training is optional). For this purpose, the High School of Justice, in cooperation with USAID/JILEP,<sup>131</sup> developed the curriculum on “Foundations of Judicial Ethics” which covers the topics “Global Perspectives on the Judicial Office”, “Independence”, “Impartiality and conflicts of interest”, “Integrity”, “Equal treatment”, “Diligence and Competence”, and which includes group discussion as well as case studies. The authorities indicate that almost all sitting judges have already participated in such two-day training sessions, under the in-service training programmes, and that the High School of Justice continues to organise at least one such training course each year. The authorities add that currently, the High School of Justice, in cooperation with USAID/PROLOG, is elaborating an advanced training curriculum on judicial ethics for the next training phase (for judges who have already attended the training on “Foundations of Judicial Ethics”). The GET commends the High School of Justice for the work already undertaken and supports the current initiatives. As a complement, it refers to the recommendation it made above with a view to updating the “Norms of Judicial Ethics” adopted by the Conference of Judges, including such an update in the regular training programme for judges and providing confidential counselling on ethical questions to judges – which is currently missing.<sup>132</sup>

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<sup>128</sup> See article 90(4) of the Constitution. See also section 40(1) LGC

<sup>129</sup> In the First Round Evaluation Report on Georgia, GRECO had recommended that the categories of persons who enjoy immunity from criminal proceedings be reduced (in particular, as regards candidates for MP) and that guidelines be developed containing criteria to be applied when deciding on requests for lifting immunities; the recommendations made by GRECO in those respects were implemented by Georgia in the compliance procedure. In contrast, the First Round Evaluation Report on Georgia had not examined in detail judges’ immunities.

<sup>130</sup> [https://www.coe.int/t/dghl/monitoring/greco/documents/Resolution\(97\)24\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/documents/Resolution(97)24_EN.pdf)

See also [Recommendation Rec\(2010\)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities](#), paragraph 71, and the [Magna Carta of Judges](#) adopted by the CCJE, para 20.

<sup>131</sup> Judicial Independence and Legal Empowerment Project

<sup>132</sup> See above under “Ethical principles, rules of conduct and conflicts of interest” (paragraph 109).

## V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

### Overview of the prosecution service

140. According to article 81.4 of the Constitution, “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.” The 2008 Law on the Prosecutor’s Office (LPO) defines the powers and activities of the prosecution service. According to section 8 LPO, the Minister of Justice has a wide range of powers; however, s/he may not interfere in the actions performed and decisions made by the prosecutor’s office concerning investigation of individual criminal cases or criminal prosecution. Section 36 LPO furthermore provides that any interference in the activity of an employee of the prosecution service by any persons not authorised by law, as well as preventing an employee of the prosecution service from performing his/her activity is punishable by law.

141. According to the LPO, it is the prerogative of the Minister of Justice – on the recommendation of the Chief Prosecutor – to form and dissolve bodies of the Prosecutor’s Office, define their territorial scope and lay down the scope of authority of structural units. The GET has some misgivings about those broad powers entrusted to the Minister of Justice which bear the risk of undue influence on the prosecution service. As it would appear that this state of affairs has not caused any particular problems in practice until now, no recommendation is made in this respect. The authorities stress that for the Minister of Justice to exercise the above-mentioned power, which is limited to the formation of the structural body only, the special written proposal of the Chief Prosecutor is required; proper protection from any undue influence is thus provided for. Nevertheless, the GET wishes to stress that the mere perception of undue political influence can be as damaging as real interference. The authorities are therefore invited to consider the advisability of determining by law the establishment and dissolution of the bodies of the prosecution service, their territorial scope and the scope of authority of structural units.

142. The prosecution service is tasked to conduct criminal prosecution, provide procedural guidance at the stage of investigation to ensure criminal prosecution, conduct investigation to the full extent where so provided for by law, supervise strict and uniform compliance with the law while performing the activities of criminal investigation authorities, verify the facts of violation of the rights of the incarcerated and discharge procedural duties in places of detention and penitentiary institutions, participate as a party in criminal proceedings and support state prosecution, coordinate the fight against crime, participate as a plaintiff on behalf of the state in civil proceedings on transferring to the state illegal and undocumented property, as well as property resulting from racketeering, and conduct criminal intelligence activities.<sup>133</sup>

143. The prosecutorial system is formed of the Chief Prosecutor’s Office, the Prosecutor’s Offices of the Autonomous Republics of Abkhazia and Ajara, the Prosecutor’s Office of the city of Tbilisi, District Prosecutor’s Offices, Regional Prosecutor’s Offices, and Specialised Prosecutor’s Offices (which may be temporarily formed by the Minister of Justice), the system being essentially based on the organisation of courts and on the principle of hierarchy. Pursuant to section 4 LPO, unity and centralisation, subordination of all subordinate prosecutors and other officers of the prosecution service to the Chief Prosecutor are among the principles of activity of the prosecution service. There are currently 449 prosecutors employed in the prosecution service, 126 of whom (28%) are women.

144. The Chief Prosecutor has a wide range of tasks, *inter alia*, to organise and supervise the activities of the prosecution service – s/he is responsible for its activities,

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<sup>133</sup> See section 3 LPO.



to appoint to and remove from office prosecutors and other employees, to issue individual legal acts – orders, instructions and directives based on and for the enforcement of law, to repeal unlawful orders, instructions and directives issued by subordinate prosecutors, to decide matters relating to the application of disciplinary measures to employees of the prosecution service, to submit criminal policy guidelines to the Minister of Justice for approval, etc.<sup>134</sup> A structural subdivision of the Chief Prosecutor’s Office, the General Inspection, is responsible for proceedings against prosecutors. It has a head and deputy head, prosecutors and senior investigators of extraordinary cases and line investigators.

145. The prosecution service has for a long time been considered the weakest link in Georgia’s judicial system.<sup>135</sup> It was noted in 2013 that “excessive influence of the prosecutors over the judiciary has continuously been a matter of concern” and that “NGOs and international observers have criticised prosecutors for being selective in the application of justice”.<sup>136</sup> “Until 2012, the prosecution was a branch of the executive and courts were, to some degree, dependent on the executive.”<sup>137</sup> However, in 2013, significant structural changes were introduced – since then, the Minister of Justice no longer holds the position of Chief Prosecutor and has no prosecutorial powers.

146. Further institutional reforms of the prosecution service were initiated by the government in late 2014 with a view to strengthening the institutional independence of the prosecution service, in order to ensure non-interference in the activities of the prosecutors and to provide a legal basis for prosecutors to carry out their professional functions impartially and objectively. Within this framework, amendments to the LPO were made – which entered into force in September 2015 – to introduce three new institutes: the Prosecutorial Council, the Conference of Prosecutors and the special (*ad hoc*) prosecutor. Moreover, the processes for appointment to and dismissal from the office of the Chief Prosecutor have been substantially revised (see further below).

147. The Conference of Prosecutors is a meeting of prosecutors and investigators of the prosecution service, which is authorised to elect members to the Prosecutorial Council. It is chaired by the Chief Prosecutor who convenes it, when necessary, to exercise powers determined by the LPO.<sup>138</sup> The Prosecutorial Council is established with the Ministry of Justice as an independent collegial body in order to ensure independence and transparency of the prosecution service and to fulfil its functions efficiently. Its 15 members comprise the Minister of Justice as its chair *ex officio*, eight members elected by the Conference of Prosecutors – at least one fourth of a different gender, one MP elected by the parliamentary majority and one MP elected by the MPs outside the parliamentary majority, two members elected by the HCJ from among the judges of common courts, and two members elected by Parliament by majority of its total membership, from among experts with at least 10 years’ legal experience from academia or civil society.<sup>139</sup> Members – except the chair – are elected for four year-terms of office, and may not serve two consecutive terms. As a rule, the Chief Prosecutor may participate in the Prosecutorial Council’s meetings with a consultative vote. Unless otherwise specified by law,<sup>140</sup> decisions are adopted by majority of the Prosecutorial Council members present at the Council’s meeting. The Council is competent, *inter alia*, to approve a candidate for the post of Chief Prosecutor, to conduct disciplinary proceedings against the Chief Prosecutor and his/her deputies and to appoint a special (*ad hoc*) prosecutor in procedures regarding early removal of the Chief Prosecutor from office.

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<sup>134</sup> See section 9 LPO.

<sup>135</sup> See e.g. the [2016 country report on Georgia by Bertelsmann Stiftung](#), page 9.

<sup>136</sup> See the [2013 Report “Georgia in Transition” prepared by the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia](#), Thomas Hammarberg, page 14.

<sup>137</sup> See the [2016 country report on Georgia by Bertelsmann Stiftung](#), page 9.

<sup>138</sup> See section 8.2 LPO.

<sup>139</sup> See section 8.1 LPO.

<sup>140</sup> E.g. the candidate for Chief Prosecutor requires the support of at least two thirds of the full composition of the Prosecutorial Council.

148. Moreover, in January 2016, by virtue of the decision of the Chief Prosecutor, a Consultation Council was created within the prosecution service. The main function of the Consultation Council is to further facilitate the activities of the office and its development, as well as to examine issues related to incentives, promotion and disciplinary responsibility of the employees of the prosecution service. It was established in order to conduct the activities of the prosecution service more transparently and discuss the issues important for this body in a collegial format. The Consultation Council is led by the Chief Prosecutor and is composed of his/her deputies, eight prosecutor members of the Prosecutorial Council, heads of the structural units of the Chief Prosecutor's Office.

149. The GET acknowledges the current reforms – which largely took into account recommendations made by the Venice Commission – and the authorities' endeavours to strengthen the independence of the prosecution service. It understands that implementation of such important changes requires some time to become fully effective. During the interviews, the GET was interested to learn that following the legal amendments, several measures were initiated within the prosecution service to further improve the system, e.g. with respect to the promotion of prosecutors (development of promotion criteria) and to disciplinary proceedings. At the same time, it noted with concern that some civil society organisations, which had been invited to participate in the reform process, complained that they were not given a more prominent role in that process. Since they considered the reform as incomplete when measured against the objective set by the authorities to de-politicise the Chief Prosecutor's Office, they had chosen not to participate in the process. The authorities do not agree with those statements and stress that civil society representatives as well as other stakeholders were actively involved and participated in all three stages of the reform.<sup>141</sup>

150. In particular, civil society organisations argued that the *ex officio* membership of and chairmanship by the Minister of Justice of the Prosecutorial Council, coupled with the fact that Parliament votes by simple majority on the candidate for Chief Prosecutor presented by the government (following a selection by the Prosecutorial Council among the candidates proposed by the Minister of Justice)<sup>142</sup> meant that the government and parliamentary majority still dominated the system. In this connection, the GET notes that – according to the Venice Commission and other international bodies – it would be advisable to have the chair of the Prosecutorial Council elected by the Council itself, for the sake of the independence of this body; furthermore, the election of the Chief Prosecutor by qualified majority of votes in Parliament would secure the broadest political support for the person appointed and thus assist de-politicisation of the process.<sup>143</sup> Other measures which might be considered in this context include, for example, abolishing the need for consent by the government to the candidate for Chief Prosecutor presented by the Minister of Justice. In view of the particular context of Georgia described above, where the need to strengthen the independence of the prosecution service from the executive and from undue political influence has been widely recognised in the past, the GET is convinced that more needs to be done to ensure the intended de-politicisation of the prosecution service and to achieve consistent and comprehensive implementation of the reforms already initiated. At the same time, it takes into account that such implementation requires some time to become fully effective and that practice will show what further measures might possibly prove necessary. Consequently, **GRECO**

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<sup>141</sup> The authorities refer to the joint preparation of a comprehensive 120-page report including a comparative study of general prosecutor's offices around the world, the preparation of the concept note of the reform and the elaboration of the respective draft amendments. They indicate that the government maintains successful inter-sector cooperation in making and monitoring the implementation of public policy by means of Interagency Councils, involving relevant government ministries, civil society representatives and international partners. For example, the reform of the prosecution service was carried out under the auspices of the Criminal Justice Reform Council, which operates in an intensive consultative and participatory format, supported by its Secretariat (Analytical Department of the Ministry of Justice of Georgia).

<sup>142</sup> More details appear below.

<sup>143</sup> See the Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE/DGI) and OSCE/ODIHR on the "Draft Amendments to the Law on the Prosecutor's Office", CDL-AD(2015)039, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)039-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)039-e).

**recommends keeping the implementation of the recent reform of the prosecution service under review and, if necessary, taking appropriate measures to further reduce the influence of the government/parliamentary majority on the appointment procedure of the Chief Prosecutor and on the activity of the Prosecutorial Council.**

#### Recruitment, career and conditions of service

151. Prosecutors are appointed by the Chief Prosecutor for an indefinite period. They must be citizens of Georgia, have a higher legal education, have a command of the language of proceedings, have completed six months to one year internship in the bodies of the prosecution service and have passed a qualifying exam with the Qualification Examination Commission, have taken the oath of an employee of the prosecution service, and be able, based on their working and moral qualities, as well as their health status, to perform the duties of a prosecutor.<sup>144</sup> The procedures, frequency and the exam programme of the qualifying exam, the statute and composition of the Examination Commission are approved by the government upon recommendation of the Minister of Justice. Persons having a criminal record, persons suffering from alcohol or narcotic drug addiction, toxic substance abuse, mental or other severe chronic disease, persons recognised by court as having limited competence or as a beneficiary of support and persons discharged from another job for committing an act against the general principles of ethics<sup>145</sup> cannot be employed in the prosecution service.

152. The authorities add that upon completion of the term of internship, the supervisor of the intern sends an assessment of his/her skills to the Human Resources Department which is submitted to the internship commission. The latter also receives information on the intern's activity from the Human Resources Department, the General Inspection and the Department of Supervision over Prosecutorial Activity and Strategic Development, and it conducts an interview with the candidate. The internship commission refers its proposal and information on a successful candidate to the Chief Prosecutor who makes a decision on the appointment of the candidate. An intern who was not appointed can appeal the decision to the court.

153. The authorities indicate that the appointment, transfer or promotion of prosecutors may take place only with their consent. Decisions on such matters may be appealed to the city court (namely the administrative cases panel of the Tbilisi City Court) within one month from their communication to the prosecutor concerned.<sup>146</sup> The Consultation Council has recently elaborated criteria for incentives and promotion of prosecutors. The authorities indicate that those criteria have been circulated within the prosecution service.

154. The 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 LPO. After the visit, the

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<sup>144</sup> See section 31 LPO. There are some exemptions from certain requirements, e.g. a person who has passed a judicial qualification exam or sat for a lawyer's test is released from passing the qualification exam for employees of the prosecution service.

<sup>145</sup> The authorities refer in this respect to sections 4 to 7 of the "Code of Ethics for the Employees of the Prosecution Service of Georgia" (see further below).

<sup>146</sup> Cf. section 127 of the Law on Public Service.

authorities indicated that Order #43 of the Minister of Justice of 15 August 2015<sup>147</sup> 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.

155. 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"<sup>148</sup> 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."<sup>149</sup> 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 above-mentioned criteria public – and ensuring that any decisions in those procedures are reasoned.**

156. Regarding the appointment of heads of prosecutor's offices (other than the Chief Prosecutor's Office), persons having at least three years' experience working in a legal speciality may be appointed to the positions of Prosecutor of the City of Tbilisi and his/her deputy, regional prosecutors and their deputies, district prosecutors and prosecutors of Specialised Prosecutor's Offices (in exceptional cases, the Chief Prosecutor can reduce this term to 18 months). There is no fixed term of office prescribed by law for heads of prosecutor's offices other than that of the Chief Prosecutor.

157. Employees of the prosecution service must sit an assessment test once every three years, in accordance with the procedure approved by the Minister of Justice, on the recommendation of the Chief Prosecutor.<sup>150</sup> The test is conducted by the selection and certification commission at the HR department in written form and in the form of an interview if necessary. Based on the results of the test and the form of assessment

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<sup>147</sup> 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> .

<sup>148</sup> Cf. Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system, paragraph 5b <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2719990&SecMode=1&DocId=366374&Usage=2>.

<sup>149</sup> Cf. Opinion No. 9 of the Consultative Council of European Prosecutors (CCPE) on "European norms and principles concerning prosecutors" ("Rome Charter"), Article XII ([https://wcd.coe.int/ViewDoc.jsp?Ref=CCPE\(2014\)4&Language=lanEnglish&Ver=original&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCPE(2014)4&Language=lanEnglish&Ver=original&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864)).

<sup>150</sup> See section 31(7) LPO; Order N101 of the Minister of Justice "on the rule of conducting assessment tests for employees of prosecution service".

submitted by the relevant authorised person the commission decides whether the employee of the prosecutor's office is a) compatible with the position held and is eligible for promotion; b) compatible with the position held; c) partly compatible with the position (needs further training and development); not compatible with the position held and is eligible for demotion; e) not compatible with the position held and should be dismissed.

158. Prosecutors can be discharged from the prosecution service by the Chief Prosecutor for the reasons defined under section 34 LPO, *inter alia*, due to non-performance or improper performance of official duties, inaptitude for the position held, "gross or systematic" misconduct at work, incompatibility of functions, breaking the oath, disclosing a professional secret or committing any other act "unbecoming to an employee of the prosecution service",<sup>151</sup> or based on a valid guilty verdict. Decisions on removal of prosecutors may be appealed to the court within one month from their communication to the prosecutor concerned.<sup>152</sup>

159. The procedure for the appointment of the Chief Prosecutor was substantially amended in 2015. S/he is elected by Parliament for a six-year term, by majority of its full composition. The same person may not be elected as the Chief Prosecutor for two consecutive terms. The Chief Prosecutor must be a citizen of Georgia with higher legal education and with no record of convictions, who has at least five years' experience of working as a judge reviewing criminal cases, or as a prosecutor or as a criminal lawyer specialised in general or criminal law, or who is a recognised specialist in criminal law from a higher institution or a civil society organisation, and has at least 10 years' experience of working in the legal profession. A candidate for the Chief Prosecutor must have high reputation due to his/her moral and professional qualities.<sup>153</sup> According to the authorities, moral attributes are assessed based on the reputation of the candidate, his/her previous professional conduct, etc.

160. Based on consultations with academic circles, members of civil society and law specialists, the Minister of Justice presents to the Prosecutorial Council at least three candidates for the Chief Prosecutor's position. The candidate who receives the support of at least two thirds of the full composition of the Prosecutorial Council is then presented by the Minister of Justice to the government. If the latter gives its consent, the candidate is presented to Parliament for election by secret ballot and by majority of its full composition; otherwise, the Minister presents to the government another candidate approved by the Prosecutorial Council. If Parliament does not support the candidate, the complete procedure is repeated.<sup>154</sup> The GET acknowledges the substantial reforms already implemented in this area; a recommendation aimed at further improvement has been made above.<sup>155</sup>

161. Premature removal of the Chief Prosecutor from office is regulated in detail by sections 9.2 and 9.3 LPO. Except for cases (such as death) where the office terminates *ipso facto*, premature removal requires a decision adopted by a majority of the full composition of Parliament. A special procedure is foreseen in cases where there are sufficient grounds to assume that the Chief Prosecutor has committed a crime. In such cases, the Prosecutorial Council may appoint a special (ad hoc) prosecutor<sup>156</sup> to investigate the case. If, according to the report of the special (*ad hoc*) prosecutor, there

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<sup>151</sup> According to the authorities, this concept is to be interpreted in light of the provisions of the code of ethics.

<sup>152</sup> Cf. section 127 of the Law on Public Service.

<sup>153</sup> See section 9 LPO.

<sup>154</sup> See section 9.1 LPO.

<sup>155</sup> See above under "Overview of the prosecution service" (paragraph 150).

<sup>156</sup> Pursuant to section 8.3 LPO, a special (*ad hoc*) prosecutor may be a citizen of Georgia with higher legal education and with no record of convictions, who is a former judge reviewing criminal cases, or a former prosecutor or a lawyer specialised in general or criminal law, who has at least five years' experience of working respectively as a judge, or as a prosecutor, or as a recognised specialist in criminal law from a higher institution or a civil society organisation, and who has at least 10 years' experience of working in the legal profession. A candidate for a special (*ad hoc*) prosecutor must have high reputation due to his/her moral and professional qualities.

is a probable cause that the Chief Prosecutor has committed a crime, and if the Prosecutorial Council approves the report by at least two thirds of its full composition, the Council is to apply to Parliament for the premature removal from office.<sup>157</sup> The Chief Prosecutor may also be prematurely removed from office if the Prosecutorial Council, after having examined the case, confirms that the Chief Prosecutor has committed a disciplinary offence; in this case, no special (*ad hoc*) prosecutor is appointed.

162. The Chief Prosecutor has a first deputy and deputies whom the Chief Prosecutor appoints to and removes from office.

163. In accordance with section 41 LPO, the salary of employees of the prosecution service consists of the salary as per the position, bonuses and other additional payments provided for by law. Gross monthly salaries range from GEL 1 700/approximately EUR 629 for a prosecutor working at a District Prosecutor's Office to GEL 3 910/approximately EUR 1 447 for the Chief Prosecutor. According to the factual functions, prosecutors may be awarded additional bonuses and/or premium. There is no bonus awarded according to the work experience. In future, the bonus system will be linked to the staff appraisal system. Prosecutors are furthermore entitled to social guarantees and benefits such as health insurance, fuel and phone allowances. The authorities indicate that information on salaries, salary increments and bonuses paid to prosecutors and on total fuel expenses etc. are publicly available on the website of the prosecution service.<sup>158</sup> The State Audit Service is responsible for controlling the use and spending of state funds and other tangible assets of the state allocated to the prosecution service.

#### Case management and procedure

164. The authorities indicate that the managers of prosecutorial divisions (heads of structural units) issue orders on the allocation of tasks among the subordinated prosecutors. Typically, prosecutors are assigned to a particular investigative unit or investigators and thus investigations initiated by this investigative unit or investigators fall automatically under their supervision. In court proceedings, state prosecution is represented by the prosecutor who supervised the case during the investigation. However, the head of unit is authorised to assign another prosecutor to support state accusation in consideration of the workload, number of cases and experience of prosecutors.

165. In accordance with section 13 LPO, subordination of a subordinate prosecutor to a superior prosecutor implies that the instructions given by a superior prosecutor to a subordinate prosecutor on the organisation and activities of the prosecution service are binding; a subordinate prosecutor must report to a superior prosecutor when discharging his/her official duties; a superior prosecutor may, if necessary, exercise the powers of a subordinate prosecutor or assign certain of his/her own powers to a subordinate prosecutor; a superior prosecutor may repeal and amend a subordinate prosecutor's decisions and acts or replace them with other decisions and acts;<sup>159</sup> superior prosecutors review complaints against a subordinate prosecutor's decisions and acts; a subordinate prosecutor submits reports of his/her activity, information, cases and materials to a superior prosecutor. A subordinate prosecutor (and any other employee of the prosecution service) must comply with lawful requests and instructions of a superior prosecutor. If s/he disagrees with the decision of the superior s/he can refer to the supervisor (superior prosecutor) of his/her superior; the supervisor may then annul or amend an unlawful or unsubstantiated decision. The authorities stress in this context that

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<sup>157</sup> For further details, see section 9.2 LPO.

<sup>158</sup> See [http://pog.gov.ge/geo/public\\_information/financing\\_accounting](http://pog.gov.ge/geo/public_information/financing_accounting) (Georgian only).

<sup>159</sup> See also article 33(3) of the Criminal Procedure Code.

no one, including the superior prosecutor, is entitled to instruct or otherwise oblige a prosecutor to discontinue a case.<sup>160</sup>

166. The GET notes that superior prosecutors (managers) have broad powers, for example, to assign tasks to subordinate prosecutors, exercise their powers or assign certain of their own powers to subordinate prosecutors. The GET is of the opinion that such powers are logical and acceptable in a hierarchical structure where superior prosecutors have supervisory and control functions. However, as GRECO has pointed out on previous occasions, the allocation of cases as well as decisions to re-distribute or take over cases ought to be subject to sufficient checks and balances; in particular, they ought to be guided by strict criteria and be justified in writing in order to avoid arbitrary decisions. The LPO in its present form does not contain any such safeguards; the GET is particularly concerned about the fact that instructions by superior prosecutors may also be given in oral form, which was confirmed by practitioners interviewed on the subject. In this connection, attention is drawn to European standards according to which "all public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing."<sup>161</sup> In view of the above, **GRECO recommends (i) introducing clear and objective criteria for the assignment and withdrawal of cases to/from prosecutors; (ii) ensuring that decisions and instructions by superior prosecutors, including decisions to remove cases from subordinate prosecutors, are justified in writing.**

167. The authorities indicate that the Department for Supervision over Prosecutorial Activities and Strategic Development as well as the General Inspection of the Chief Prosecutor's Office check that prosecutors investigate and prosecute cases within reasonable time. Specific deadlines are set by the Criminal Procedure Code, e.g. according to article 185.6 the investigation must not take longer than the limitation period defined for the specific crime under the CC. Undue delay of prosecution is classified as an improper performance of a professional duty entailing disciplinary liability. Complaints against delays can be lodged before the General Inspection.  
Ethical principles, rules of conduct and conflicts of interest

168. According to section 32 LPO, employees of the prosecution service are to take an oath of office.<sup>162</sup> Furthermore, section 4 LPO sets forth some general principles of activity of the prosecution service, namely legitimacy; protection of rights and freedoms of natural persons, protection of and respect for the rights of legal persons; professionalism and competence; objectiveness and impartiality; unity and centralisation, subordination of all subordinate prosecutors and other officers of the prosecution service to the Chief Prosecutor; political neutrality.

169. In addition, prosecutors are subject to the general rules of ethics for public officials. As described above in the chapter on MPs, the "Law on Conflict of Interest and Corruption in Public Institutions" (LCI) was amended by Law No. 4358 of 27 October 2015 (whose new provisions will enter into force on 1 January 2017), *inter alia*, to include general rules of conduct for public servants in a new chapter III.1.<sup>163</sup> In this connection, it is recalled that like MPs and judges, all prosecutors fall under the category

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<sup>160</sup> Cf. articles 105 and 106 of the Criminal Procedure Code which specify the grounds for terminating investigations or criminal prosecution, the competence of the prosecutor to take such a decision as well as the right of the victim to appeal his/her decision to the superior prosecutor.

<sup>161</sup> Cf. [Recommendation Rec\(2000\)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system](#), paragraph 10. See also the Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), paragraph 87, which further develops the above-mentioned standard: [http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic\\_reform/europeanStandards\\_en.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf)

<sup>162</sup> The oath of office reads: „I, (first name, last name), hereby solemnly and sincerely swear before God and the People to perform the duty of an officer of the Prosecutor's Office of Georgia in good faith and in so doing comply only with the Constitution and law of Georgia.“ An officer of the prosecution service may be sworn to office without a religious oath.

<sup>163</sup> New sections 13.1 to 13.5 LCI

of “public servants” in the meaning of the LCI. By contrast, only higher-ranking prosecutors (the Chief Prosecutor and his/her deputy, heads of departments and services of the Chief Prosecutor’s Office and persons having equal authority, the Tbilisi City Prosecutor, the Prosecutors of the Autonomous Republics of Abkhazia and Adjara, regional and district prosecutors) are categorised by the LCI as “officials”; certain provisions of the LCI are thus applicable only to those higher-ranking prosecutors.

170. In 2006, the “Code of Ethics for the Employees of the Prosecution Service of Georgia” entered into force, upon approval by the Chief Prosecutor. Its purpose is to establish the norms of conduct of the employees of the prosecution service which facilitate, *inter alia*, reinforcement of the principles of justice and responsibility, performance of duties in office in a professional manner, protection of human rights, conduction of fair, effective, impartial and qualified criminal prosecution, strengthening public trust and respect towards the prosecution service. It sets general moral standards, the principles of independence and freedom from influence, and rules on matters such as use of official authority, conflicts of interest and acceptance of gifts. Compliance with the code of ethics is controlled by the General Inspection of the Chief Prosecutor’s Office. Violation of the code by prosecutors entails disciplinary liability. The code is accessible at the official legislative herald<sup>164</sup> and on the official website of the Chief Prosecutor’s Office.<sup>165</sup> The authorities indicate that the code of ethics is disseminated to newly appointed prosecutors and to all the prosecutors if amendments are made to the code.

171. At present, the prosecution service is working on the revision of the code of ethics, with the involvement of various line prosecutors and members of the Prosecutorial Council. The main reason for revising the code is to ensure that it covers all areas pertinent to the prosecution service in a manner that corresponds to modern requirements (e.g. prosecutors’ attitude towards social media) and to take account of recent reforms of the prosecution service. It is planned to request expert opinions on the draft and to consult the Conference of Prosecutors. The GET welcomes this move. As GRECO has repeatedly pointed out, professional standards of conduct/ethics should be living texts that can evolve over time. GRECO furthermore stressed that their application in practice needs to be ensured by complementary measures including confidential counselling within the prosecution service and specific (preferably regular) training activities of a practice-oriented nature. The authorities may also wish to reflect on the necessity to provide further written guidance, explanatory comments or practical examples (e.g. with regard to risks of corruption and conflicts of interest). To conclude, the updated version of the code of ethics needs to be brought to the attention of both prosecutors and the public at large, in order to further raise prosecutors’ awareness of ethical questions and existing standards and to foster citizens’ trust in the prosecution service. Consequently, **GRECO recommends (i) that the “Code of Ethics for Employees of the Prosecution Service of Georgia” continues to be updated, is communicated to all prosecutors and made easily accessible to the public; (ii) that it be complemented by practical measures for the implementation of the rules, such as further written guidance and explanations, further training and confidential counselling.**

172. The definition of “conflict of interest in a public institution” in section 3(3) LCI and the rules on the prevention and management of such conflicts under section 13.4 LCI as described above with respect to MPs apply to prosecutors accordingly. In addition, the procedural laws include rules on conflicts of interest in the provisions on the disqualification of a prosecutor (see below). Finally, the code of ethics makes it clear that employees of the prosecution service are obliged to refrain from any activity that can objectively challenge their independence or have an influence on the performance of their duties. It also states that employees of the prosecution service having proprietary or other personal interests to the issue belonging to the competency of the prosecution

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<sup>164</sup> See <https://matsne.gov.ge/ka/document/view/65056>.

<sup>165</sup> See [www.pog.gov.ge](http://www.pog.gov.ge).



service are obliged to declare self-recusal following the procedure set by law and not to participate in the review and decision-making on the matter.

#### Prohibition or restriction of certain activities

##### *Incompatibilities and accessory activities, post-employment restrictions*

173. Pursuant to section 31 LPO, the position of an employee of the prosecution service is incompatible with other positions within state or local self-government bodies, as well as with any entrepreneurial or other paid activity (including the ownership of stocks and shares in entrepreneurial entities) other than scientific, creative and pedagogical activity. S/he may, however, concurrently perform other paid work and/or hold another position within the system of the prosecution service. S/he may not be a member of a political party or engage in political activity or organise or take part in a strike.

174. In addition, the detailed rules on incompatibilities for public servants as contained in section 13 LCI and outlined above in the chapter on MPs are to be taken into account. For example, public servants may not hold another position in any public institution or legal entity under private law, or be a member of a representative body of any level, hold a position in a body or institution abroad, hold a position in any enterprise, be a representative or a proxy of any natural or legal person, or represent or defend him/her/it in criminal law, civil law or administrative law cases before or against any public institution, except when s/he is a guardian, care giver or supporter of this natural person.

175. Section 13 LCI also provides that an official or his/her family member must resign from an incompatible position or terminate incompatible activities within 10 days of the appointment/election of this official. The official must certify this to the superior official/body (in the case of prosecutors, the General Inspection) and to the human resources management unit. The authorities state that prosecutors do not need to obtain permission to exercise activities allowed by law, but they are to inform their superiors before engaging in such activities. Moreover, (certain) prosecutors are required to report on any income they derive from such activities in their regular asset declarations (see below). The authorities indicate that in practice, the most common form of pedagogical activity exercised by prosecutors is the delivery of criminal law lectures at different universities of Georgia.

176. There are no specific rules or measures prohibiting or restricting the employment options of prosecutors, or their engagement in other paid or un-paid activities, on completion of their term of office. That said, the general rules under section 13 LCI need to be borne in mind, in particular, the rule that a former public servant may not, within one year of his/her term of office, start working in the public institution or carry out activities in the enterprise which has been under his/her systematic official supervision during the past three years. Moreover, within this period, s/he may not receive income from such a public institution or enterprise. Similarly, section 65 of the Law on Civil Service provides that former civil servants may not, for three years, serve in an agency or start working in an enterprise they have been systematically supervising in the last three years, and that they may not receive any income from such an agency or enterprise during those three years. Finally, articles 59 and 60 of the Criminal Procedure Code make it clear that former prosecutors may not hear the merits of a case as a judge or participate in a criminal proceeding as a defence lawyer if they have been involved in the same case as prosecutors.

##### *Recusal and routine withdrawal*

177. The conditions for disqualification in criminal proceedings are specified in article 59 of the Criminal Procedure Code. *Inter alia*, a prosecutor must not participate in such proceedings if s/he is subject to an investigation for the alleged commission of an

offence; s/he is a family member or a close relative of the defendant, defence lawyer or victim; there are other circumstances which raise suspicion in terms of their impartiality and objectiveness.

178. If there is a circumstance excluding the participation of the prosecutor in criminal proceeding, the latter must immediately declare self-recusal. The prosecutor concerned applies to the superior supervisor who will make a disqualification decision, if the case is at the stage of investigations, or to the court, if the case is at the stage of court proceedings. A disqualification decision can also be made upon the motion of parties to the case (defendant, defence lawyer).<sup>166</sup>

### *Gifts*

179. The rules on gifts applicable to public servants including prosecutors under sections 5 to 5.2 and 13.5 LCI have been described in the chapter on MPs. *Inter alia*, they include the definition of a gift, value thresholds for the acceptance of gifts by public servants and their family, the general prohibition on accepting any gift or service that may affect the performance of official duties. If a prosecutor or his/her family member ascertains after receiving a gift that its value exceeds the limits under the LCI and/or it was impossible to refuse the gift due to certain reasons (a gift received by mail, a gift given publicly), s/he must, within three working days, submit to the Civil Service Bureau information on the name of the received gift, its assessed or exact value/amount and the identity of the giver, or must transfer the gift prohibited under the LCI to the Legal Entity under Public Law – the Service Agency of the Ministry of Finance. According to article 340 of the Criminal Code (CC), “acceptance by an official or a person equal thereto of gifts prohibited by law” is a criminal offence.<sup>167</sup> The code of ethics also states that the acceptance of gifts prohibited by law is punished by the criminal legislation and that employees of the prosecution service must refrain from accepting gifts offered to them if such action is an attempt at influencing them or may affect them in the future.

180. The authorities indicate that no cases of gifts offered to prosecutors were reported during the period 2013-2016. After the talks held on site, the GET was left with the clear impression that prosecutors do not consider it permissible to accept gifts or other advantages.

### *Third party contacts, confidential information*

181. There are no specific rules concerning communication between a prosecutor and third parties outside the official procedures. The code of ethics makes it clear that it is prohibited to comment on a criminal case under purview of a prosecutor if that threatens the interests of investigation or a party to the case. It also restricts the use and disclosure of information received during the exercise of professional duties.

182. Furthermore, the general restrictions under sections 8 and 13.3 LCI on the use of confidential information, as outlined above with respect to MPs, apply accordingly to prosecutors.<sup>168</sup> In addition, section 34 LPO makes it clear that disclosing a professional secret may give rise to dismissal.

### Declaration of assets, income, liabilities and interests

183. In accordance with sections 14 to 19 LCI, “officials” including higher-ranking prosecutors are to submit asset declarations to the Civil Service Bureau a) within two

<sup>166</sup> Section 63 of the Criminal Procedure Code

<sup>167</sup> The sanctions available under article 340 CC are a fine or community service from 100 to 300 hours or deprivation of the right to carry out a particular activity for up to three years or imprisonment for up to two years. The same act committed repeatedly entails fine or community service from 200 to 400 hours or with deprivation of the right to carry out a particular activity for up to three years or with imprisonment for a term of two to four years.

<sup>168</sup> Similar restrictions are provided by section 59 of the Law on Civil Service.

months of their appointment/election, b) during their term of office, once every year and c) after their term of office, within the respective month of completion of the previous declaration. The rules have been described in detail in the chapter on MPs.

184. In contrast, line prosecutors are not required to present asset declarations. They are only obliged to submit to the Revenue Service by 1 November of each calendar year property tax declarations (including information on their income), as any other individuals, if the annual income of the family exceeded GEL 40 000/approximately EUR 14 800 in the preceding year, if they own land, etc.

185. The GET has misgivings about the fact that only a very limited number of – higher-ranking – prosecutors, 40 in total (out of 449), are covered by the rules on asset declaration – whereas all judges are covered by the declaration regime. It cannot see any convincing reasons for this limitation. It appears unsatisfactory that large parts of the LCI such as its provisions on gifts, incompatibilities and conflicts of interest, as well as general rules of conduct are applicable to all prosecutors but not the requirement to submit asset declarations – which is a cornerstone of that law. This appears all the more disturbing as the current amendments to the LCI were meant to further increase transparency and to enhance the detection of public officials’ conflicts of interest. In the view of the GET, an extension of the declaration system to cover all prosecutors would also be feasible in practical terms, given that the planned monitoring of declarations would be quite limited in number, *inter alia*, on the basis of random selection. Bearing in mind the context in Georgia which is marked by a low level of trust in the criminal justice system including the prosecution service, and where calls for more accountability are numerous,<sup>169</sup> the GET is of the firm opinion that for the sake of consistency, transparency and corruption prevention, all prosecutors need to be covered by the declaration regime. Consequently, **GRECO recommends widening the scope of application of the asset declaration regime under the Law on Conflict of Interest and Corruption to cover all prosecutors.**

#### Supervision and enforcement

186. Under section 38 LPO, prosecutors bear disciplinary liability for breaking the oath, committing misconduct or any act unbecoming to an employee of the prosecution service, or failure to perform or negligent performance of their duty vested by law. Disciplinary measures include reprimand, reproach, demotion, discharge from the position held and dismissal from the prosecution service; the Chief Prosecutor may only be subject to reproach or discharge from the position held. A disciplinary action may be applied not later than one year after establishing (revealing) a misconduct and before three years have elapsed since the day of the misconduct.

187. A disciplinary measure is imposed on a prosecutor (or other employee of the prosecution service) by order of the Chief Prosecutor or, in respect of the Chief Prosecutor and his/her deputies or prosecutor and investigator members of the Prosecutorial Council, by the Prosecutorial Council. The prosecutors of the Autonomous Republics of Abkhazia and Ajara have the right to impose reprimands and reproaches on the employees of the respective prosecutor’s offices. An order to impose a disciplinary measure must be reasoned<sup>170</sup> and may be appealed to court within 30 days.

188. The General Inspection of the Chief Prosecutor’s Office is authorised, *inter alia*, to conduct service investigation in relation to the employees of the prosecution service into the facts of violation of the rights and freedoms of citizens, violation of the code of ethics, improper behaviour etc.; conduct investigation in case of commission of a crime

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<sup>169</sup> See e.g. the [observations of the Commissioner for Human Rights of the Council of Europe on the human rights situation in Georgia of 12 January 2016](#), CommDH(2016)2; the 2014 [“Trial Monitoring Report Georgia” by the OSCE Office for Democratic Institutions and Human Rights](#); [Transparency International’s 2015 National Integrity System Assessment Georgia](#).

<sup>170</sup> See article 53 of the General Administrative Code.

by an employee of the prosecution service; examine complaints lodged by natural persons, administrative bodies or international organisations. Possible grounds for launching an internal investigation include information/reports about the commission of an illegal act or disciplinary misconduct; information provided via hotline of the prosecution service; notifications and materials received from administrative bodies, information published in media, written complaints by citizens, etc.

189. If the misconduct committed by an employee of the prosecution service requires applying a disciplinary action, the imposition of which falls only within the Chief Prosecutor's scope of authority, the head of the respective body of the prosecution service submits to the Chief Prosecutor a proposal on application of the relevant disciplinary action. The case is then investigated by the General Inspection, whose report is examined by the Consultation Council; the final decision is made by the Chief Prosecutor.

190. As far as statistics are concerned, the authorities indicate that, in 2015, disciplinary sanctions were imposed on 16 employees of the prosecution service, including reprimands in 10 cases, reproaches in four cases and dismissals in two cases; in eight of those cases, the rules of the code of ethics had been violated. In 2014, disciplinary sanctions were imposed on 20 employees, including reprimands in three cases, reproaches in 12 cases and dismissals in five cases; in 14 of those cases, the rules of the code of ethics had been violated.

191. In the view of the GET, the regulatory framework for disciplinary proceedings against prosecutors leaves some room for improvement. First, it is concerned that the grounds for disciplinary liability are quite vague, as they refer to concepts such as "committing misconduct or any act unbecoming to an employee of the prosecution service". Such terms appear insufficient to provide for legal certainty and to prevent possible misuse of disciplinary proceedings. After the visit, the authorities stated that the term "misconduct" covers violations of the "Internal Rules of the Prosecution Service", while the term "any act unbecoming to an employee of the prosecution service" relates to violations of the code of ethics. Nevertheless, the GET sees a clear need for providing such clarifications by law in order to guarantee a unified understanding and application in practice of the relevant provisions, and for establishing a catalogue of more precisely defined grounds/disciplinary offences including, *inter alia*, violation of specified requirements of the code of ethics. Secondly, the GET has misgivings about the lack of proportionality in the prosecutors' disciplinary regime. The law does not set any criteria for determining the appropriate measure in a given case – except for dismissals, which are limited to certain grounds such as "gross or systematic" misconduct at work, incompatibility of functions, etc.<sup>171</sup> Consequently, in view of the above, **GRECO recommends reviewing the disciplinary regime applicable to prosecutors, including by defining disciplinary offences more precisely and ensuring proportionality of sanctions.**

192. Regarding supervision and enforcement of the rules on asset declarations, the system has been described in detail above in the chapter on MPs. Until now, the Civil Service Bureau was only competent to ensure the technical consistency and full completion of asset declarations submitted and to fine officials in case of failure to submit declarations on time. According to the authorities – up to now – no cases of filing incorrect information in the declarations or non-submission of declarations by prosecutors have been revealed; no sanctions have been imposed on prosecutors for violation of the rules on conflict of interest or obligations prescribed by the LCI during the last three years.

193. In accordance with the new section 18.1 LCI which will enter into force on 1 January 2017, the Civil Service Bureau monitors the entry of full and correct data into

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<sup>171</sup> See above under "Recruitment, career and conditions of service" (paragraph 158).

the declarations and their compliance with the law. In case of failure by an official, including a prosecutor, to submit an asset declaration within the time limit or in case of a decision by the Civil Service Bureau on the existence of violations, the Civil Service Bureau takes the following steps.

- In cases where it was found that a prosecutor presented deliberately incomplete or incorrect data – which is punishable under article 355 CC<sup>172</sup> – or where other specific elements of crime were identified, the Civil Service Bureau is to forward the respective declaration and materials of the proceedings to the relevant law enforcement body for further response.
- In cases of minor violations of the law (including failure to submit an asset declaration within the time limit), a decree imposing a fine in the amount of GEL 1 000/approximately EUR 370 is issued by the chair of the Civil Service Bureau through a simple administrative procedure. Failure to submit an asset declaration within two weeks of the date of entry into force of the decree or of a court decision results in criminal liability under article 355 CC.

194. The introduction of substantial checks – by the Civil Service Bureau – of asset declarations submitted by officials including (certain) prosecutors is clearly to be supported; a recommendation to implement and carry on the current reforms is made below.<sup>173</sup>

195. The new rules under the LCI furthermore provide that if a public servant who is subject to disciplinary liability according to law – including a prosecutor – violates the LCI intentionally or negligently, such a violation results in disciplinary liability as determined by law, unless it constitutes a crime or an administrative offence. If a disciplinary measure is imposed on a public servant for violation of the LCI and s/he commits an offence provided for by the LCI again within three years, s/he is to be dismissed from office.<sup>174</sup>

196. In addition to the monitoring of declarations by the Civil Service Bureau, data declared by prosecutors is also verified by the General Inspection of the Chief Prosecutor's Office by means of review of the database. Internal investigation may be conducted if the submitted information is revealed to be incomplete or inaccurate.

197. Prosecutors may be subject to the ordinary criminal proceedings and sanctions if they commit offences such as theft, fraud, embezzlement, bribery, "acceptance by an official or a person equal thereto of gifts prohibited by law", trading in influence, breach of professional confidentiality or "non-submitting of property or financial declaration or entering incomplete or incorrect data thereto". However, only the Chief Prosecutor may initiate a criminal prosecution of a crime allegedly committed by a prosecutor (or by an investigator of or an advisor to the prosecutor's office). The Chief Prosecutor's Office investigates crimes committed by employees of the prosecution service, according to the investigative jurisdiction provided for by law. The question of criminal or disciplinary liability of the Chief Prosecutor may be raised only after the special procedures provided for by the LPO have been carried out, as described above.<sup>175</sup> According to the authorities, there have not been any criminal cases against prosecutors in recent years.

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<sup>172</sup> The available sanctions under article 355 CC ("non-submitting of property or financial declaration or entering incomplete or incorrect data thereto") are a fine, community service from 120 to 200 hours, or the prohibition on occupying certain positions or withdrawal of the license to practice particular activities for up to three years.

<sup>173</sup> See below under "Crosscutting issues" (paragraph 203).

<sup>174</sup> See section 20(5) and (6) LCI

<sup>175</sup> See above under "Recruitment, career and conditions of service" (paragraph 161).

### Advice, training and awareness

198. Prosecutors receive training in the areas “professional ethics and conflicts of interest” (six hour training module, organised by the Professional Development and Career Management Centre in cooperation with the General Inspection) and “fight against corruption and protection of whistleblowers” (five day training module, organised by the Civil Service Bureau in cooperation with relevant donor organisations). Newly appointed prosecutors are obliged to attend the professional ethics training. All employees are to be retrained in compliance with the programme developed in the field of professional ethics and conflict of interest. The authorities add that at least four training sessions (with at least 80 participants) will be conducted annually for acting investigators and prosecutors. Moreover, with the support of the Secretariat of the Anti-Corruption Council, it is planned to conduct a regular training programme on anti-corruption policy and the legislative framework (including ethics and conflicts of interest) for public officials including employees of the prosecution service.

199. The authorities indicate that while all the relevant laws and regulations applicable to prosecutors are public, the Human Resources Management and Development informs newly appointed prosecutors about the orders and individual administrative acts of the Chief Prosecutor of Georgia. The acts mandatory for execution are sent to all employees of the prosecution service by means of the electronic case management programme and service e-mails. Furthermore, any consultations concerning asset declarations can be addressed to the Civil Service Bureau through a hotline or email.

200. The GET acknowledges the work already undertaken and supports the current plans and initiatives to organise further training activities for prosecutors. As a complement, it refers to the recommendation it made above with a view to updating the code of ethics, including such an update in the regular training programme for prosecutors and providing confidential counselling on ethical questions to prosecutors.<sup>176</sup>

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<sup>176</sup> See above under “Ethical principles, rules of conduct and conflicts of interest” (paragraph 171).

## **VI. CROSSCUTTING ISSUES**

201. As has been seen throughout the present report, the LCI is a cornerstone of corruption prevention with respect to public officials including MPs, judges and prosecutors, which regulates conflicts of interest and related matters such as incompatibilities, gifts and asset declarations. The GET acknowledges this quite comprehensive legal framework – as complemented by sector-specific regulations – which has evolved over time. In particular, the rules on asset declarations, which have been described above in the chapter on MPs, are fairly detailed, and they provide for an online declaration system and publicity of declarations, which is highly commendable. The most recent amendments to the LCI which come into force on 1 January 2017 have a specific focus on strengthening the declaration regime by introducing more in-depth monitoring of declarations submitted. During the on-site visit, various interlocutors placed much hope on the current reforms, which had been called for, *inter alia*, by civil society organisations.

202. It is crucial that a range of measures are now taken to ensure effective implementation of the new regulations. The GET was pleased to hear that the government had established an interdepartmental working group to that effect and that services concerned by the new regime, as well as donors, international organisations, etc. had been consulted. At the time of the visit, secondary legislation in the form of instructions was being drafted and it was planned to organise training and awareness-raising measures. Moreover, the establishment of a new Department of Monitoring of Asset Declarations within the Civil Service Bureau was under preparation, which should initially be staffed with approximately five qualified employees. The GET welcomes these measures but has some doubts whether five staff will be enough for ensuring proper in-depth checks of declarations submitted by top-level officials and officials selected on a random basis (up to 5% of all officials in both cases, i.e. in total 10% of all officials),<sup>177</sup> and by those who have been subject to a reasoned application. It wishes to stress that the monitoring work by the Civil Service Bureau is of prime importance, given that it is the main entry point for checking the information and possibly detecting irregularities. If it detects minor violations of the rules, it is itself responsible for imposing fines; in more serious cases, it refers the cases to the law enforcement authorities. It is therefore crucial that every effort be made to equip the relevant department of the Civil Service Bureau with adequate personnel, financial and technical resources.

203. According to the new LCI provisions, the Civil Service Bureau is to monitor the entry of full and correct data into the asset declarations and their compliance with the law. It is competent for requesting additional information and documents necessary for the monitoring from the officials concerned, including those issued by banks and/or other credit institutions. During the interviews, it was stated that the Bureau would e.g. compare the asset declarations with previous ones and with data from other state databases, via data exchange services. Such arrangements are clearly a good starting point but further measures might prove necessary, such as extending the investigative competences of the Civil Service Bureau, ensuring direct access to state databases, etc., or extending the monitoring on a random basis to a larger number of officials; the GET is concerned that the current 5% might be insufficient to effectively prevent and detect malpractice. In view of the preceding paragraphs, **GRECO recommends taking appropriate measures to ensure effective monitoring of asset declarations to be submitted by members of parliament, judges and prosecutors, including through providing the Civil Service Bureau and/or any other competent body with the competences and resources necessary to check the declarations submitted in depth and in a proactive manner.** In this connection, the authorities are also encouraged to keep the effective implementation of the rules on asset declarations under review in the years to come, with a view to ascertaining the possible need for additional measures in the future (e.g. further increasing the resources of the relevant department of the Civil Service Bureau, further enlarging its investigative competences, etc.).

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<sup>177</sup> Currently this means 560 officials.

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

204. In view of the findings of the present report, GRECO addresses the following recommendations to Georgia:

### *Regarding members of parliament*

- i. further enhancing the transparency of the legislative process, including by further ensuring that draft legislation, amendments to such drafts and information on committee work (including on agendas and outcome of meetings) are published in a visible and timely manner, and by establishing a uniform regulatory framework for the public consultation procedure in order to increase its effectiveness (paragraph 30);**
- ii. (i) that an enforceable code of ethics/conduct be adopted covering various situations of conflicts of interest (e.g. gifts and other advantages, incompatibilities, additional activities and financial interests, third party contacts, including with lobbyists) and that it be made easily accessible to the public; (ii) that the code be complemented by practical measures for its implementation, including through awareness-raising and dedicated training, confidential counselling and credible monitoring (paragraph 42);**
- iii. that a requirement for *ad hoc* disclosure be introduced when a conflict between specific private interests of individual members of parliament and a matter under consideration in parliamentary proceedings may emerge, that clear rules for such situations be developed, and that the operation of this mechanism be subject to monitoring (paragraph 44);**

### *Regarding judges*

- iv. reforming the recruitment and promotion of judges, including by ensuring that any decisions in those procedures by the High Council of Judges a) are made on the basis of clear and objective, pre-established criteria – notably merit, in a transparent manner and with written indication of reasons, and b) can be appealed to a court (paragraph 94);**
- v. that the planned legislation on the transfer of judges, if adopted, provides for adequate safeguards against misuse of the possibility of transfer of judges to another court without their consent, including by ensuring that such a transfer is only possible in exceptional cases, under strict criteria clearly identified in the law, and by providing for the possibility to appeal against transfer decisions (paragraph 97);**
- vi. introducing an objective and transparent system for the allocation of cases to individual judges, such as an automatic (electronic) system providing for random case assignment (paragraph 101);**
- vii. (i) that the “Norms of Judicial Ethics” be updated, communicated to all judges and made easily accessible to the public; (ii) that they be complemented by practical measures for the implementation of the rules, such as further written guidance and explanations, further training and confidential counselling (paragraph 109);**
- viii. taking appropriate measures to increase the effectiveness, transparency and objectivity of disciplinary proceedings against**



**judges, *inter alia*, by defining disciplinary offences more precisely; ensuring in-depth examination of complaints submitted to the High Council of Justice and requiring that its decisions to dismiss cases be reasoned, notified to the complainant and subject to review; introducing a simple majority requirement for the Council's decisions; and removing the Council's power to send private recommendation letters to judges as a disciplinary measure (paragraph 132);**

- ix. that the immunity of judges be limited to activities relating to their participation in judicial decision-making ("functional immunity") (paragraph 138);**

*Regarding prosecutors*

- x. keeping the implementation of the recent reform of the prosecution service under review and, if necessary, taking appropriate measures to further reduce the influence of the government/parliamentary majority on the appointment procedure of the Chief Prosecutor and on the activity of the Prosecutorial Council (paragraph 150);**
- xi. (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 above-mentioned criteria public – and ensuring that any decisions in those procedures are reasoned (paragraph 155);**
- xii. (i) introducing clear and objective criteria for the assignment and withdrawal of cases to/from prosecutors; (ii) ensuring that decisions and instructions by superior prosecutors, including decisions to remove cases from subordinate prosecutors, are justified in writing (paragraph 166);**
- xiii. (i) that the "Code of Ethics for Employees of the Prosecution Service of Georgia" continues to be updated, is communicated to all prosecutors and made easily accessible to the public; (ii) that it be complemented by practical measures for the implementation of the rules, such as further written guidance and explanations, further training and confidential counselling (paragraph 171);**
- xiv. widening the scope of application of the asset declaration regime under the Law on Conflict of Interest and Corruption to cover all prosecutors (paragraph 185);**
- xv. reviewing the disciplinary regime applicable to prosecutors, including by defining disciplinary offences more precisely and ensuring proportionality of sanctions (paragraph 191);**

*Regarding all categories*

- xvi. taking appropriate measures to ensure effective monitoring of asset declarations to be submitted by members of parliament, judges and prosecutors, including through providing the Civil Service Bureau and/or any other competent body with the competences and resources necessary to check the declarations submitted in depth and in a proactive manner (paragraph 203).**

205. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Georgia to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2018. These measures will be assessed by GRECO through its specific compliance procedure.

206. GRECO invites the authorities of Georgia to authorise, at its earliest convenience, the publication of this report, to translate the report into its national language and to make the translation publicly available.

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### About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: [www.coe.int/greco](http://www.coe.int/greco).

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