



საქართველოს სტრატეგიული და საერთაშორისო უკომუნიკაციო კვლევის ფონდი  
GEORGIAN FOUNDATION FOR STRATEGIC AND INTERNATIONAL STUDIES

**45**

**STATE OF THE FIGHT AGAINST CORRUPTION IN  
THE SOUTH CAUCASUS: THE CASES OF ARMENIA,  
AZERBAIJAN AND GEORGIA**

*KAKHA GOGOLASHVILI*

**EXPERT OPINION**



**2015**



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## **EXPERT OPINION**

**KAKHA GOGOLASHVILI**

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## Introduction

This policy brief scrutinises anti-corruption policies in the three South Caucasus countries over the past two decades in light of their cooperation with, and commitments vis-à-vis the European Union.

From the point of view of democratic tradition, rule of law and governance, Armenia, Azerbaijan and Georgia had approximately equal positions when they became independent in 1992. Ten years later, all three countries were still facing similar problems in governance. These included: the disconnection operated by ruling elites between economic development and good governance; the lack of instruments for democratic oversight and monitoring; and a weak demand for democracy and governance free of corruption.

In countries where the public demand for institutions, such as those fighting corruption, is weak, international influence on the elite is crucial to carrying out reforms. In the 1990s and early 2000s, instruments of the EU and Council of Europe, as well as other bilateral and multilateral aid programmes (e.g. USAid, World Bank) have been almost equally applied to Georgia, Armenia and Azerbaijan. Membership of the Council of Europe (CoE) was granted to all the three countries<sup>1</sup> against the commitment to respect the spirit of European conventions and to subject themselves to tight monitoring by respective CoE bodies. The EU employed a similar approach with all three states, signing practically the same agreements on Partnership and Cooperation in 1996 (in force since 1999). This was yet another indication that the EU did not make distinctions between the levels of political development in Georgia, Armenia and Azerbaijan.

Yet over the past decade the three countries conducted substantially different reforms in terms of the intensity of efforts made to eliminate administrative corruption. Georgia has shown considerable progress in fighting petty corruption and reducing corruption in all areas of public life. The Corruption Perception Index 2014 ranked Georgia 50<sup>th</sup> out of 175 states, which means that the country is a leader in the wider region including Eastern Europe, Turkey and Western Balkans<sup>2</sup>. In the same Index, Armenia and Azerbaijan rank 94<sup>th</sup> and 126<sup>th</sup>, respectively. Therefore, both Armenia and Azerbaijan have worsened their scores while Georgia has made impressive progress.

As the EU and the Council of Europe have developed similar approaches with all three countries, this policy brief argues that domestic political will and public support to anti-corruption policies are the key factors explaining variation in anti-corruption outcomes across the South Caucasus.

## **Evidence and Analysis**

The three cases presented below are based on the research conducted by political scientists from Armenia, Georgia and Azerbaijan. This section provides insights into both the core issues related to corruption in the three countries and the evolution of anti-corruption policies.

### **Armenia**

In comparison to other Commonwealth of Independent States (CIS) countries, Armenia scores better with respect to the general level of corruption, yet it is significantly behind Eastern Europe and the Baltic states.<sup>3</sup> Armenia identified the fight against corruption as a strategic priority. It has taken a number of commitments as part of international conventions and agreements.

One of the most important external drivers pushing the Armenian government to carry out anti-corruption reforms is the EU's conditionality under the Generalised Scheme of Preferences (GSP). GSP was granted for 2006-2008 and from 2009 developed in the form of GSP+, a special "incentive arrangement for sustainable development and good governance (GSP+)" under the EU GSP Regulation for 2009-2011".<sup>4</sup> The 2012 EU regulation developed an even more sophisticated conditionality mechanism, requiring the implementation of 27 international core human rights, labour rights and other sustainable development and good governance conventions in exchange for very strong new preferential treatment.

Armenia has benefited from this mechanism since 2014. With the next deadline of GSP+ set to expire in 2017, the country should make the best possible use of the GSP+. Yet, while GSP+ is undoubtedly a vital opportunity for Armenia's economy and Armenian people's livelihoods, reaping the benefits of this mechanism crucially hinges on Armenia's compliance with commitments taken. These include in particular the United Nations Convention against Corruption (UNCAC). Armenia signed this convention

in 2005 and thus became a member of the first global legally binding international anti-corruption instrument.

The European Neighbourhood Policy (ENP) is yet another instrument providing guidance for reforms and external monitoring in Armenia. In 2006, the EU and Armenia endorsed the ENP Action Plan, in which the fight against corruption was included as a priority area. The priorities mentioned in the ENP action plan specify and expand those commitments listed in the conditionality of GSP.<sup>5</sup>

### *Brief Assessment of the Anti-Corruption Strategy Development in Armenia*

Armenia developed its first Anti-Corruption Strategy and the related Implementation Action Plan (ACSIAP) for the period 2003-2007. Yet both the analysis of ACSIAP's outcomes and international indicators on the level of corruption indicate that ACSIAP did not have measurable goals and objectives and was not geared toward concrete results. However, it was the first strategic document and as such remains a major milestone in the fight against corruption.

In 2009, the Armenian Government endorsed a second Anti-corruption Strategy and the related Action Plan for the period 2009-2012. Unlike the first strategy, these documents were presented to, and discussed with international and local stakeholders such as OSCE, the European Commission, USAid and Transparency International (Armenia).<sup>6</sup> As part of the implementation of the Strategy and Action Plan for the period 2009-2012, the legislative framework on the fight against corruption was strengthened and an institutional system of anti-corruption bodies was set up.<sup>7</sup> While the second Strategy was completed at the end of 2012, the government has not yet adopted a new strategic document. The Ministry of Justice published a draft strategy and the related action plan in May 2015.<sup>8</sup>

Despite the lack of a new strategy, Armenia achieved some progress in the fight against corruption. In 2011 Armenia joined the Open Government Partnership (OGP), thereby showing its commitment to enhancing the level of transparency and accountability in public service. According to the OGP report 2014<sup>9</sup>, Armenia has successfully implemented the commitments included in the OGP-Armenia First Action Plan 2012-2013. The main provisions of this first Action Plan focused on the improvement

of effectiveness, transparency and accountability of public administration, particularly on the effectiveness of public resources, improvement of the internal audit system, progress of freedom of information, and the development of e-governance.<sup>10</sup> In December 2013, a new project on Transactional e-Governance Development was launched in Armenia with EU support. The new e-Armenia initiative aims at creating transactional electronic services, assisting the digitalisation of the Armenian civil registry and providing Armenian citizens with new mechanisms to communicate with the government.<sup>11</sup> This example confirms that despite the absence of anti-corruption strategy, it is possible to strengthen the government's accountability.

### *Current Situation*

Armenia has also signed key international conventions and participates in a number of international schemes of cooperation, including the OECD – Istanbul Anti-Corruption Action Plan, GRECO (Group of States against Corruption) and OGP (Open Government Partnership). It is worth mentioning that implementing the recommendations of the above-mentioned bodies is considered sufficient to comply with the United Nations Convention against Corruption (UNCAC).

Armenia joined GRECO in January 2004 and subsequently signed and ratified two conventions on Criminal Law and Civil Law, respectively. The second report issued by GRECO in 2010<sup>12</sup> outlined 19 recommendations aimed at improving the legal framework and procedures to fight corruption, in particular regarding incrimination and transparency of political funding. With the 2014 compliance report, GRECO concluded that “Armenia has implemented satisfactorily, or dealt with in a satisfactory manner, all nineteen recommendations contained in the Third Round Evaluation Report.”<sup>13</sup> According to this report, Armenia significantly amended its Criminal Code in order to address most of the “ambiguities, including the criminalisation of trading in influence and the subsequent withdrawal of Armenia’s reservation in respect of Article 12 of the Criminal Law Convention.”<sup>14</sup> Transparency and reporting have improved with respect to the financing of political parties and election campaigns. Armenia adopted a new Election Code, introduced a compulsory audit for the larger parties, and established a permanent Oversight and Audit Service.<sup>15</sup> However, the report called for improving the legal framework related to political financing.

In this regard, in its monitoring report (2014) of the Istanbul Anti-Corruption Action Plan Armenia<sup>16</sup> the OECD, mentioned that financial statements of political parties should be published in mass media and on the Internet. It also recommended that audited reports be published for those parties receiving state funding. In addition, the Electoral Code includes requirements with respect to accountability for funds raised and their use during electoral campaigns. However, no information is provided to assess progress related to conflicts of interest and transparency in the work of politicians and high-level officials. Overall, the OECD report assesses all three pillars of the Action Plan (Anticorruption Policy, Criminalisation of Corruption, Prevention of Corruption) as partially implemented and introduces a significant number of new recommendations.

According to the Country Review Report Armenia (2013)<sup>17</sup> by the UNODC, Armenia has either partially or completely implemented the provisions related to Chapter III “Criminalisation and Law Enforcement” and Chapter IV “International Cooperation” of the UNCAC. Despite substantial progress, much remains to be done to decrease the level of corruption risk in the economic and political spheres. Armenian legislation leaves the issue of illicit enrichment unaddressed. According to the UNCAC Civil Society Review,<sup>18</sup> Armenia “...does not provide strong enough grounds for the liability of legal persons, or for trading in influence”. The report also stresses that the legislation does not provide a consistent framework for the protection of reporting persons and does not criminalise illicit enrichment. Weak enforcement of the legislation in cases involving high-ranking public officials and politicians remains a major issue. Another deficiency is the high number of amnesties in cases of corruption offences.

The ENP Progress Report on Armenia 2014 delivered a more critical assessment. According to this Progress Report, “...the lack of trust in the judicial system and the fight against corruption persisted”.<sup>19</sup> The fight against corruption remains a key issue but progress was noted with regard to the right of free legal aid.

In October 2014, Armenia signed the Accession Treaty to the Eurasian Economic Union (EEU). Despite the decision in September 2013 not to initial the Association Agreement negotiated with the EU, including a Deep and Comprehensive Free Trade Area (AA/DCFTA), Armenia and the EU further continued their political and trade dialogue in 2014-2015 in those areas where this was compatible with Armenia’s new international EEU obliga-



tions. To this end, in November 2014 the EU and Armenia launched a scoping exercise on possible areas of cooperation for future relations. These will most likely include topics related to the fight against corruption. The scoping exercise was completed in spring 2015.

To sum up, Armenia has achieved substantial progress in many areas where the risk of corruption was high, such as education and healthcare, and partial improvements in the private sector and in public administration. Despite these changes, according to the OGP Self-Assessment report,<sup>20</sup> Armenia still needs to take additional measures to fully comply with its commitments.

### *Further Development of Anti-Corruption Activities in Armenia*

Despite continuing efforts by the government to comply with the requirements and deadlines set by different international documents, according to Carl Ulbricht (an international expert working in the framework of the project “Multi-Faceted Anti-Corruption Promotion” funded by the European Union) : “The absence of a new strategy mostly influences the public sector. By moving forward in small steps, Armenia will not be able to completely pass the recommendations in a short period of time.”<sup>21</sup> Unfortunately, mistrust in the reform process is growing due to the lack of a dialogue between key players and to the weak involvement of civil society first and foremost. It is worth noting that for the time being no Armenian CSO is willing to join the newly established Anti-Corruption Council. CSO representatives state that an anti-corruption body in which the Prime Minister is President of the Board cannot be independent and act effectively.<sup>22</sup>

The importance of trust and active participation of civil society is stressed in the Draft Strategy and Action Plan on anti-Corruption.<sup>23</sup> According to [www.eurasia.org](http://www.eurasia.org), “Armenia’s Cabinet decided to revamp a state Anti-Corruption Council on February 19, one month after the European Union announced plans to allocate 21 million euro to Yerevan. The EU money would be designed to promote anti-corruption programs and civil service reform.”<sup>24</sup> According to Shushan Doydoyan, President of the Freedom of Information Center in Armenia (FOICA): “When it comes to the real cases and actual results for society in general, people do not see changes”. Civil society does not have proper access to information that can be used to fight corruption independently. The 2013 Global Corruption Barometer 2013 indicated that ordinary citizens can do nothing to influence this situ-

ation. Civil society expert expert Armen Khudaveryan confirms: “Civil society cannot fight independently, fighting corruption needs to start from high-level officials and heads of government...Most documents have a symbolic character, possibly because there is a political fear that disclosing information may bring to light many cases of corruption.”<sup>25</sup>

The absence of dialogue between civil society and the state affects the capacities of civil society to fight against corruption. According to Gevorg Hayrapetyan (Coordinator of Government CSO Dialogue at Freedom of Information Center of Armenia (FOICA) : “The introduction of mechanisms of dialogue would highlight the key role of both the government and civil society in the fight against corruption; in turn, dialogue would foster analytical and monitoring capacities that Armenia currently lacks.”<sup>26</sup> In addition, poor coordination and exchange of information among state bodies also undermines the monitoring capacities of civil society. As Armen Khudaverdyan underlined: “Nobody takes responsibility for providing the information related to the fight against corruption and all concerned bodies explain that it is not their duty. This only makes monitoring more difficult. As a result, corruption is of a systematic nature in Armenia.”

## **Azerbaijan**

### *Legal and Institutional Developments*

Azerbaijan ratified COE Criminal and Civil Law conventions on Corruption in 2004 and became a member of GRECO the same year. GRECO’s first evaluation report on Azerbaijan (2006) outlined the president’s and government’s motivation to fight corruption. The latter was considered to be linked to organised crime and thus represented a threat to the stability and development of the country.<sup>27</sup> Yet the extensive interviews conducted with Azeri government representatives did not allow the authors of the first GRECO report to clarify the scope and nature of corruption<sup>28</sup>. In 2004, the Azeri Parliament adopted a law on “Combating Corruption” allowing confiscation of the proceeds of corruption and establishing the obligation for public officials to declare their incomes. By decree, the President also established a special department in the Prosecutor’s Office dealing with corruption offenses. On September 3, 2004, a Presidential Decree approved the State Programme for Combating Corruption which, among other measures, envisaged setting up a special commission dealing with corruption, reforming law enforcement and courts systems, and

strengthening awareness-raising, education, and communication with civil society. In May 2005, a State Commission for Combating Corruption was established. It involved international experts, civil society and media representatives.

GRECO's third evaluation round in 2010<sup>29</sup> assessed the implementation of the Criminal Law Convention (Part I: Incrimination) and the Recommendation (2003)<sup>30</sup> of the Council of Europe on Party Funding<sup>31</sup>.

The report, in the part on incrimination, praised the country for its amendments to the penal code criminalising bribery, but considered the changes insufficient for the following reasons:

- The concept of “official” used in the relevant bribery provisions did not cover all civil servants and public employees at both central and local level;
- The offer and the promise of a bribe, as well as the acceptance of an offer or a promise, did not constitute completed crimes;
- The criminalisation of trading in influence did not apply to the parties involved in bribing persons working in the private sector;
- In Azerbaijan there remained an excessively large number of reservations to the Criminal Law Convention of Corruption.

In the part related to political party funding (theme II) there were no important comments, as political parties other than the ruling one did not have sufficient financial resources to monitor origination and transparency of funds. Still, the report recommended the establishment of clearer rules for keeping records and reporting on sources of financing<sup>32</sup>.

GRECO produced compliance reports against the above-mentioned evaluation in 2013 and 2015, respectively. As regards the incrimination, tangible progress was noted in the adoption of legal changes. At least half of the recommendations are considered to have been fully implemented and a large number of others partially implemented. Yet the report criticises Azerbaijan for not showing proof of implementation. Statistics on trial proceedings point to a very low number of persons incriminated for offences like passive and active bribing.

With respect to the funding of political parties, the report highlights less substantial achievements in improving the legal framework. It is especially

critical about Azerbaijan's lack of progress in achieving political pluralism. The recommendation to extend the financial and accounting reference period applicable to election campaigns "remained unimplemented"<sup>33</sup>. At the same time, the recommendation advising political parties to keep strict accounting and reporting documents on the movement of their assets and liabilities was completely implemented.

In general, GRECO reports demonstrate that Azerbaijan is trying to formally comply with the requirements of CoE conventions related to the fight against corruption.

In 2011 Azerbaijan joined the Open Government Partnership (OGP)<sup>34</sup> and in 2012 the country adopted an Action Plan for the period 2012-2015. A Self-Assessment report presented by the Commission Combating Corruption indicates that the country is making important steps in the digitalisation of government data and the introduction of e-governance, as well as in increasing transparency of public accountability and transparency of the tax collecting system, and introducing "one window" principles for public registry and other public services. All these actions are meant to reduce space for bribing and contract risks of corruption.

However, the 2014 and 2015 progress updates of the OECD Anti-Corruption Action Plan (which the country joined in 2014) show that Azerbaijan has seriously downsized the speed of implementation of recommendations. The Action Plan encompasses three main areas: anti-corruption policies and institutions, criminalisation of corruption, and prevention of corruption. Azerbaijan has failed to achieve any progress in the following areas: immunities, confiscation, access to financial data, transparency and discretion of public administration, public procurement, access to information, political corruption, and immunity of judges. No progress was noted in the area of awareness-raising and involvement of civil society<sup>35</sup>.

### *Experts' narrative on corruption in Azerbaijan*

In Azerbaijani society, attitude towards corruption is highly negative. It is believed that the authorities of Azerbaijan make every effort to complicate civil society's access to data and information on the economic activity of government agencies. As noted above, formally the country's government has actively engaged in the global fight against corruption: along with the creation of anticorruption bodies and implementing the

e-governance project, Azerbaijan was one of the first countries to support the International Extractive Industries Transparency Initiative (EITI)<sup>36</sup> and all ministries and government agencies created websites related to this initiative. However, as civil society representatives indicate, most of these are disabled and contain outdated and/or insignificant information.

One of the main forms of corruption is trade in public positions. Mass media frequently report on this topic and give specific examples of law violations. However, Azeri authorities mostly ignore the signals coming from civil society.

The country's budget is a serious source of corruption. In 2015, as has been the case over the past few years, over half the budget has been accumulated at the expense of transfers from the State Oil Fund of the Republic of Azerbaijan (SOFAZ). The lion's share of budget spending is traditionally directed at the implementation of infrastructure projects that never go through any cost-benefit analysis. Costs are usually overestimated and increase over time in a number of projects, thereby yielding unjustified and unfounded losses. Examples include: the Oguz-Gabala-Baku water pipeline<sup>37</sup>, the construction of a network of highways, roads and bridges around the capital, the Kars-Tbilisi-Baku railway, the conduct of prestigious international events (such as the 2012 Eurovision Song Contest and the 2015 European Games), the creation of a system of leasing agricultural equipment, the construction of a network of storage facilities for agricultural products, and the erection of hospital and school buildings.

Public procurement and public orders for the realisation of various infrastructure projects are major channels of corruption. Formal legal requirements on the organisation of tenders are usually adhered to. However, tenders are frequently awarded to those companies founded by close relatives of the head of the agency organising the tender. Azerbaijani civil society is actively engaged in the disclosure of corrupt practices and their prevention. In doing so, it closely cooperates with international organisations and it has also repeatedly offered its services in fighting corruption to different governmental bodies. Yet the authorities perceive the activities of civil society in the field of fighting corruption negatively, because these infringe on the interests of rather powerful persons and structures.

A number of CSOs have studied the functioning of corruption mechanisms in different spheres of public administration. In particular, economic CSO

analysed the statistics of various ministries and issued an expert assessment of the rather dubious data of the State Statistical Committee.<sup>38</sup> As a result, both the general public and the authorities received convincing and reliable reports on the facts and scope of corrupt practices in customs, taxes, transport and communications, education, public health, ecology, oil, municipal economy and construction. For example, Gubad Ibadoghlu, an analyst and economist of the Baku-based CSO “Economic Research Center” discovered that between 2001 and 2011, the customhouse had diverted USD 11.5 billion from the registration of commodities, as a result of which the State sustained great losses. The same Centre recently produced a monitoring report on OGP Action Plan implementation and concluded that “assets disclosure is not implemented in Azerbaijan and the declaration of income of high level officials is not disclosed either...”<sup>39</sup>. All these factors reduce the effectiveness of OGP implementation in Azerbaijan. Unfortunately, none of the reports of a serious investigative nature were taken into account by the Azerbaijani authorities. They did not even respond to the disclosure of corrupt practices, which is an indication of the actual attitude of the authorities to the fight against corruption.

Along with studying and disclosing the mechanisms and facts of corruption, civil society activists also provide the authorities with recommendations on how to prevent and fight corruption through systemic reforms. For Azerbaijan, the best example in this domain is certainly Georgia, where the campaigns conducted against government corruption during the presidency of Mikhail Saakashvili yielded rather positive results. The anti-corruption campaign paved the way for developing citizens’ rights and provided a basis for developing democratic institutions. At the same time, the then Georgian authorities committed a number of acts against human rights as part of this campaign.

In Azerbaijan, positive changes can be observed in the state budgeting process. The authorities approximated relevant procedures with the standards of European countries. However, the authorities, while planning the state budget, never consult or take into account the opinion of civil society. The attempt of one of the MPs, Huseyn Abdullayev, to critically assess the outcomes of the government’s work resulted in the deprivation of his MP mandate, his arrest and, finally, expatriation. While measures have been taken to foster transparency in the extractive industry’s revenues, no similar steps have been envisaged for oil revenues and activities of the State

Oil Company of Azerbaijan Republic (SOCAR).<sup>40</sup> There is no information on how the company's revenues are spent. Due to the non-compliance of Azerbaijani authorities' activities with the EITI criteria, a special mission will be sent by the organisation to Azerbaijan this year to investigate the actual state of affairs<sup>41</sup>. Declaratively however, the government actively fights corruption: the number of arrested and dismissed corrupt officials and employees is made public, but those convicted and punished appear to be petty banking officers and lower-rank employees.

With the assistance of the World Bank, a system of provision of public services to the population was set up in Azerbaijan under the "Single Window" concept – the ASAN Service Center. This minimised chances of bribe exaction from the population in many areas. However, the fight against corruption at such a low level neglects the corruption of the upper echelons. The growing pressure, starting in 2014, on civil society activists, also targets journalists involved in an investigation to reveal corruption facts (first and foremost Seymur Haziiev, presenter of programmes on Internet TV, and Khadija Ismayilova,<sup>42</sup> an investigative reporter and a programme host on Radio *Azadlyg*, the Azeri service of the U.S.-funded Radio Free Europe/Radio Liberty). In addition, the freezing of accounts of independent NGOs, arrests of active critics of shortcomings in the public administration, restrictions on the activities of mass media and foreign donors, have all seriously affected civil society's capacities to effectively struggle against corruption.

## **Georgia**

In order to develop an anti-corruption strategy, an Anti-Corruption Policy Coordination Council was introduced in Georgia in 2001; it was headed by the President. Despite this, no important decisions were made by political leadership in subsequent years, which indicated that there was a lack of political will to implement reforms. However, Georgia did achieve significant results in the fight against corruption in the post-2004 period, after a young reformist government came to power in the wake the Rose Revolution. This is because anti-corruption reforms became a political priority of the new elite.

Georgia acceded to almost all International Conventions and initiatives having effect on the fight against corruption, including:

- UN Convention Against Corruption, 2008
- Council of Europe Criminal Law Convention (ETS 173), 2003
- Council of Europe Civil Law Convention (ETS 174), 2008
- OECD Istanbul Anti-Corruption Action Plan, 2004

Monitoring reports and evaluation by international organisations show that Georgia complies with the majority of its commitments, including incrimination, party funding and the prevention of corruption.

The United Nations Convention against Corruption (UNCAC) was ratified by the Parliament of Georgia on 4 November 2008. In 2004, Georgia joined the Istanbul Anticorruption Action Plan and in 2005 it adopted a National Anti-Corruption Strategy and Action Plan for the first time. The Strategy focused on public corruption and aimed at developing anti-corruption policies, effective prosecution, and new approaches to good governance. A second Strategy was adopted in 2010, followed by a new Anti-Corruption Action Plan, with a focus on prevention of corruption. The Plan placed the emphasis on: “...(a) Modernisation of the public service; (b) A competitive and corruption-free private sector; (c) Enhancing the administration of justice; (d) Increased inter-agency coordination; and (e) Prevention of political corruption”<sup>43</sup>. The review of implementation by UNODC, in 2012, showed that Georgian legislation is in conformity with UNCAC with regards to the criminalisation of bribery offences, trading in influence, laundering of proceeds of crime, concealment, embezzlement, abuse of functions, illicit enrichment, obstruction of justice, liability of legal persons among others.<sup>44</sup>

The latest GRECO progress update (March 2015) of the third monitoring round of the Istanbul Anti-Corruption Action Plan<sup>45</sup> shows that Georgia is achieving progress in all directions, including in public participation, resources of anti-corruption policy body, responsibility of legal persons, sanctions and plea bargaining, time limits for prosecution, independence of prosecution, international mutual civil service reform, financial control and audit, and public procurement. Yet a lack of progress was noted in improving transparency of political party funding, the judiciary system and business integrity.



## *Georgia's Anti-Corruption Policy in 2003-2012*

Since 2003, the Government of Georgia has made continuous efforts to reduce the level of corruption through wide-scale institutional reforms. In particular, it:

- Conducted the Patrol Police Reform, through which traffic police officers were replaced with new, more disciplined and better paid road patrol police officers.
- Increased the efficiency of tax services through aggressive tax enforcement and major tax reforms, including the firing of corrupt officials, the competitive hiring of new staff, the reduction in tax rates, and the simplification of the tax code.
- Ensured 24-hour electric power supply and a large increase in collection rates.
- Minimised the number of government regulations, as a result of which the number of permits and licences, as well as number of controlling agencies, representing sources of corruption were reduced.
- Introduced a new Public Registry, with a new culture, new staff, new technology, and new business processes being promoted in all interfaces between the citizen and the state (from registering a property to obtaining a passport), thus eliminating many opportunities for bribes.
- Established a common national university entrance exam and a transparent, competitive examination system, thereby eliminating corruption and improving access for many prospective students (especially the rural poor).

The above-mentioned measures appeared to be very effective as they were based on the framework of the National Policy on Fighting Corruption, which became subject to periodic review. The government adopted the first national Anti-Corruption Strategy in June 2005, and a revised version of the strategy was introduced in 2010. These strategies were accompanied by two-year action plans which defined the objectives for legislative and institutional development and the oversight of anti-corruption measures. The most recent Action Plan (2014-2016) focuses primarily on raising awareness on the prevention of corruption, rather than fighting corruption itself<sup>46</sup>. The Anti-Corruption Council is composed of high-rank-

ing officials from various state agencies, non-governmental and international organisations and the business sector. The Council is headed by the Minister of Justice. Since the 2013 Presidential Election, the Anti-Corruption Council is accountable to the Government of Georgia.

Various international organisations and partner countries admit that Georgia achieved remarkable results in reducing corruption over a short period of time and eradicated petty corruption. In 2014 Transparency International's Corruption Perception Index rated Georgia 52, ranking 50<sup>th</sup> out of 175 states. However, some crucial steps should be taken in order to create an effectively functioning and sustainable anti-corruption system in Georgia which could further improve the democratic consolidation process in the country.

The government needs to continue and speed up reforms in all three fundamental categories of institutions in order to achieve long term results and prevent corruption. In particular, the government needs to ensure the independence and impartiality of the judiciary system, to create an autonomous, merit-based and modern public service, and to achieve a high level of accountability of the executive.

### *Ensure the independence of the judiciary*

The reform of the judicial system was launched in 2005. In recent years, the government has increased court budgets and judges' salaries, reorganised the courts and the High Council of Justice, eliminated the practice of bribery in the courts, technically upgraded and renovated the court buildings, pushed for judge specialisation, established special educational institutions for judges and fought off corruption in the judiciary system in general.

Yet the system is still facing challenges due to the low level of independence of the judiciary<sup>47</sup>. In 2010, many observers pointed out that in criminal cases the courts did not adequately implement the right to a fair trial<sup>48</sup>. In 2012, the ENP Country Progress Report on Georgia underlined that the main problem lies in the strong position of the prosecutor and the lack of independence of the judiciary system. This was also proved by the very high rate of conviction (around 98%) and plea bargaining in 87% of cases.

The new government which came to power after the 2012 parliamentary elections introduced the jury trial for all criminal offences, appointed

judges for life-terms, selected members of the High Council of Justice, adopted new legislation on common courts and regulations limiting the power of the executive to interfere in criminal investigations. Openness and transparency of the court proceedings were improved by cancelling a regulation which banned the use of electronic equipment in courtrooms, and trials became opened to the mass media.

However, judicial independence still remains fragile. Tens of officials from the previous government have been charged with criminal offences and a number of human rights organisations denounced violations of due process during these trials, raising doubts regarding the existence of fair trial in Georgian judiciary<sup>49</sup>. In its ENP Country Progress Reports on Georgia from 2014 and 2015, the European Union has stressed the need to ensure fair, transparent and evidence-based due processes, free from political interference. In a 2014 public opinion poll on Attitudes Towards the Judicial System in Georgia,<sup>50</sup> only 36% of respondents showed trust in the judiciary (out of a list of trusted institutions in Georgia).

The main problem lies in the ambiguity and vagueness of the legislation, which gives wide discretion to judges and allows multiple interpretations. The current level of discretion of judges makes them vulnerable to political intimidation or corruption and bribery. Accordingly, it is urgent to make legislation more explicit and clear, to prioritise anti-corruption training of judges, to ensure publicity and free/proactive access to the decisions made in the courts, the Conference of Judges, High Council of Justice and School of Justice, as well as to increase capacity for proper education of new, independent and qualified judges. The European Commission also points out the need to reform the Prosecutor's Office and to ensure that effective oversight is conducted over the Prosecutor's Office<sup>51</sup>.

### *Ensure Accountability of the Government and Conduct Public Service Reform*

It is important to ensure the government's institutional accountability between two elections in order to avoid repressive and arbitrary decisions made by the government and the rise of the corruption level in the country.

Free **public access to information** could ensure better transparency of the public administration and prevent corruption. The 2015 Open Government Index (published on 26 March 2015) scored Georgia 29th out of 102

countries: Georgia took 16th place for the right to access public information, while it was 36th in the implementation of those rights. However, despite recently made amendments to the Administrative Code, there are persisting problems in the implementation of the new regulations and functioning of the executive institutions.

In the area of **civil service**, the government has not yet developed a systemic framework for reform. It remains to be seen what approach the government will take to promote the functioning of a coherent and integral system of public service and to ensure impartiality and integrity of civil servants. However, some specific efforts have already been started in this direction. While the law on Civil Service explicitly establishes protection from discrimination and politically motivated dismissal, in practice there is very little respect for non-partisanship principles from current or any previous government.

In the legislation, conflicts of interest are adequately addressed; however, the practice is more problematic. While there are frequent reports of nepotism and abuse of position in the media, there is no effective follow-up from law enforcement bodies<sup>52</sup>.

In many democratic countries, regular staff rotation is a precautionary measure against corruption in public administration, and Georgia's reluctance to introduce comprehensive reforms in this area made it possible to exercise political influence over public service in recent years.<sup>53</sup>

Georgia made substantial efforts in reforming the **public procurement area** with the aim of establishing a competitive and transparent system of public procurement. The Law on Public Procurement, which was adopted in 2006 and amended several times ever since, contributed to the introduction of a Unified Electronic System of State Procurement in 2010. However, deficiencies in the legislative framework have impeded effective public procurement. Laws need to be specified with limited possibility for misinterpretation and discretion.

## **Policy Implications and Recommendations**

None of the South Caucasian countries has entirely succeeded in fighting corruption. In the region, political pluralism, open media and active civil society participation are prerequisites to effectively fight against

corruption. However, the three countries are also highly diverse in terms of both progress achieved and tasks yet to be fulfilled.

## **Armenia**

- Despite being an important milestone, Armenia's first Anti-Corruption Strategy and Action Plan, in 2003, did not have measurable goals and objectives. The second Strategy and Action Plan 2009-2012 improved the legislative framework and created an institutional system to fight corruption.
- The country has achieved significant progress in international cooperation in the fight against corruption and the criminalisation of corruption. However, Armenia needs to become more effective in the transparency of political funding, improve trust in the judiciary system and allow civil society to engage more strongly in the process.
- The shift away from association with the EU may result in a de facto limiting of ambitions for the fight against corruption. In this context, the EU should foster the dialogue between the government and civil society and promote the emergence of civil society as a key factor in the fight against corruption. The EU should also use the ENP, the Eastern Partnership, the forthcoming Visa Dialogue and all other remaining possible formats of cooperation to actively treat and monitor the topic of corruption in Armenia.

## **Azerbaijan**

- Azerbaijan adopted of a State Programme for Combating Corruption (2004), created a State Commission for Combating Corruption in 2005 and introduced amendments to the penal code criminalising bribery. However, anti-corruption measures were only selectively implemented.
- Azerbaijan faces more systemic problems than its two neighbours, mostly in the sphere of effective implementation of the laws and regulations. Selective justice and open trade for influence and job positions make it difficult to develop trust in public institutions. Persistent governance problems also derive from the low public demand on fighting corruption. High oil/gas revenues benefit a substantial part of

the population, thereby limiting the demand for reform and the outreach of criticism by civil society. In addition, the recent crackdown on civil society has seriously affected its capacities to effectively struggle against corruption.

- Given Azerbaijan's limited aspirations vis-à-vis the EU, the European Union's leverage in the country is weak. In this context, regional emulation may play a role, with Georgia serving as an example in the fight against corruption. However, it is also important for the EU, using existing formats of cooperation with the country, to stimulate active dialogue between the government and civil society and further empower independent NGOs to monitor corruption in all segments of society.

## **Georgia**

- While an Anti-Corruption Policy Coordination Council was introduced in Georgia in 2001, no significant progress was achieved until the change of power following the Rose Revolution. After the Rose revolution, the new authorities designed a National Policy on Fighting Corruption, with anti-corruption strategies (and related action plans) being adopted in 2005 and 2010. This resulted in significant progress on the basis of a broad array of measures (e.g. Patrol police reform, tax reforms and enforcement, public procurement reform).
- Integration with the EU also contributes to fostering the fight against corruption in the country, including through monitoring and benchmarking.
- Key issues still need to be addressed, e.g. the low level of the judiciary system, the lack of oversight over the Prosecutor's office, and limited accountability of the government between two elections.
- Given its prominent role in the country, the EU should specifically focus on the above-mentioned shortcomings both in its dialogue with Georgian authorities and in its policies (e.g. assistance under the European Neighbourhood Instrument; monitoring of European Neighbourhood Policy implementation).

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