



# **STRONGER JUDICIARY IN EASTERN EUROPE: GEORGIA, MOLDOVA AND UKRAINE**



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## **CONTEXT**

Orange Revolution in 2004, Moldovan revolts in 2009 and the recent Ukrainian Euromaidan are just a few of the popular movements that toppled down governments and regimes in the last years. People participated in such movements in very large numbers asking for better governments despite significant risks. During Moldovan upraise at least four people died and hundreds were arrested and tortured by police. Euromaidan brought an unprecedented death toll estimated by international media at about 100 people, with hundreds others injured. Despite that, street demonstrations continued until governments changed on a popular wave of support and hope that new governments will perform better.

Nevertheless, demonstrations have yet to convince political powers to change their habits. Just recently Moldovan citizens witnessed the disappearance of 1 billion \$ from the Moldovan Banks and the demonstrations of people in the streets of Chişinău in the summer of 2015 on account of peoples' need for justice, investigations in the case of notorious corrupt politicians. At the same time, in Ukraine the atmosphere is tense and peoples' patience is being tested whilst still waiting for the newly created anticorruption institutions to bring results.

The recurring demonstrations do raise some key questions relevant for the entire region. What happened or did not happen between 2004 and 2015 that people had to come back on streets nine years after the Orange Revolution, for example? The political class failed to meet the expectations of the people for prosperity and less corruption. Instead, high profile leaders of all main parties are accused of corruption, embezzlement and misappropriation of public resources to the benefit of a selected few.

From pure embezzlement and economic to more sophisticated forms of corruption, such as laws drafted to benefit personal interests of the legislators (state capture), the citizens of the Black Sea countries have seen it all. In countries in transition there is little incentive on the side of politicians to build a strong judiciary and prosecution that would be capable to investigate, prosecute and punish high-profile people.

In addition, in Ukraine and Moldova the government oppression of political adversaries, human rights abuses and democratic backsliding just added to the popular discontent. Failing to transform itself into a functional democracy, but rather turned towards oligarchy, corruption and more and more authoritarian ruling, with key institutions such as the prosecution

and the judiciary failing to protect the rule of law and individual rights, is a common feature of the political systems existing in Ukraine and Moldova. Political competition in regular elections does not suffice and the circle of discontent with violent outburst on street brings huge risk for these countries. The traps of bad governance make countries stay caught in a vicious circle of underdevelopment with recurring prospective of violent conflicts.

Romania was a perfect candidate to illustrate the bad governance trap. However, unprecedented reforms and changes in the judiciary are likely to move the country on new tracks. Although there are questions about the irreversibility of the reforms, so far the judiciary is fighting corruption at a scale higher than the Italian “Mani Pulite”. Much is still needed, the rule of law and successful anti-corruption should not be taken for granted as the response of the corrupt politicians is still part of daily media attacks against magistrates, with several attempts to change laws and dismantle institutions. It is still work in progress, but a lesson is already proven.

Romania has demonstrated that unbiased and strong judiciary could become an effective driver for cleaner politics. Strengthening the judiciary might break the vicious circles of underdevelopment, limitation of oligarchic networks, protection and consolidation of democracy.

Negotiations with the European Union within Eastern Partnership and Association Agreement open a window of opportunity for change in this area that should not be missed. Romania’s experience in this field is very relevant to Ukraine, Moldova and Georgia as similar systemic problems were addressed in a relatively short timeframe. Corruption in Eastern Europe countries is different than what the Western countries experience. Whilst in the West, private money is used in order to exert influence on public officials to persuade them to make certain desired decisions, in the former Soviet countries, money is transferred from public institutions to private companies by public officials. Moreover, like in Romania, corruption is of an institutional and systematic nature.

Within this project Expert Forum together with its partners organized a large-scale conference in Bucharest to share best practices in judicial reform and fight against corruption. Following the conference, site visits to the main anticorruption players were organized for visitors from the region. These events allowed for in depth discussions about the challenges and the opportunities that anticorruption actors face in transition societies. Fact-finding missions were organized in Moldova, Georgia and Ukraine prior to the Bucharest events to better shape the agenda for discussions. The interlocutors were highly interested in learning about Romania’s experience on judicial reform, shaping anticorruption prosecution offices, assets recovery and assets and interests disclosure and control mechanisms. This paper will focus on these topics.

## **MOLDOVA**

### **Specialized anticorruption prosecution office**

The prosecution service of Moldova still strongly resembles a soviet-type prosecution, having large competence vaguely described in the law, and a significant hierarchic subordination. Acknowledging these shortcomings, a new law was developed to radically change the role and structure of the Prosecution Service. In 2013, a working group of experts set up by the Parliament drafted the concept of prosecution reform and the draft law on prosecution, whilst Ministry of Justice set up a working group for drafting collateral legislation to implement the law on prosecution. Although the draft law was expected to be adopted since 2014, to date the Parliament hasn't yet voted it in the second lecture. One of the substantial changes in the draft law relates to the consolidation of **Anticorruption Prosecution Office**. This office will have criminal investigation attributions and its own specialized experts. For the first time the draft legislation on prosecution provides for investigative tools to be used in high-level corruption investigations. The collateral legislation aimed to implement the law on prosecution has not been even sent to the Government yet, as a prior requirement before reaching the Parliament. Therefore, even if the law on the prosecution will be approved by the Parliament, without the collateral legislation, its impact will be modest. There is a stringent need to amend the procedure codes as well as the regulations on the status of criminal investigators to make them compliant with the new law on prosecution.

Looking at the Romanian example in retrospect, giving independence to prosecutors to act on their investigative files was essential to obtaining good results. It is hard to imagine a prosecution service that would be dependent on a particular politician and at the same time capable of conducting impartial investigations. Prosecutors in Romania are magistrates, therefore protected by their status from political chicanery. The carrier of prosecutors is managed by the Superior Council of Magistracy and promotions are done competitively through competitions organized by the National Institute of Magistrates. Regretfully, in Moldova this topic was not sufficiently discussed and analyzed. The new draft law on prosecution still maintains the connection between the prosecution and the executive branch and does not provide that prosecutors, like judges, should be magistrates.

Further on, when creating a specialized structure for fighting corruption it is important to ensure that the mandate reflects the needs of the country and the capacities of the new institutions. A too broad mandate risks to disperse the resources on the specialized institution on cases of little relevance or to suffocate the institution with enormous workload. Specialized institutions should be created to handle complex cases involving high-level

criminality or very sophisticated crimes. The rest of the crimes, including petty corruption, can remain in the hands of regular prosecution offices.

**The National Anticorruption Directorate** (DNA), the specialized anticorruption office in Romania, was created in 2002 and had very broad attributions as a result of a zero tolerance policy towards corruption. The European Union accession process was the window of opportunity for change in the Romanian criminal justice system – particularly on anticorruption related institutions. A similar window of opportunity may be seen now in Moldova in relation to the negotiations with the International Monetary Fund.

In the first years the judicial practice generated by the National Anticorruption Directorate included mostly cases of low-level corruption. The lack of concrete results against high-level corruption prompted legislative amendments in 2005 to restrict the competence of the institution only to high-level corruption cases. The rationale was that a highly specialized prosecution office staffed with the best human resources available – prosecutors, police officers and experts – should be put at work against the most dangerous and sophisticated types of corruption. The competence of the structure is now determined by the high-level positions of the suspects, by the value of the undue benefit or by the value of the material gain generated by the criminal behavior.

The structure of the National Anticorruption Directorate is unique because it brings together not just prosecutors, but also police officers that during their mandate in the institution report only to the Directorate management. Specialized experts can be used in analyzing complex economic and financial flows that usually accompany high-level corruption. The management of the Directorate has a strong saying regarding the police officers and experts that are hired, as well as for prosecutors who undergo a thorough selection process upon entering the Directorate.

In 2005 the management of the National Anticorruption Directorate was appointed through a competitive and transparent procedure for selection handled by the Minister of Justice. The Minister of Justice (Monica Macovei) invited applications for managerial positions from all potential candidates and organized interviews with them. Her proposals for managerial positions were forwarded to the Superior Council of Magistracy which issued an opinion and then sent them to the President of Romania for appointment.

Under the new managerial team, important investigations were started against high-profile politicians and business people. The judicial proceedings were protracted before courts as the criminal justice system was for the first time faced with such sensitive and complex investigations. Final decisions started to appear after 5 years showing a conviction rate of over 90%.

This process needs to be thoroughly explained to the society as many



people expect fast results. Justice takes time and criminal justice needs to be careful to ensure both proper investigations and the rights of the defendant. In this sense, anticorruption should not be done at any cost. Respect for the rule of law is indispensable, irrespective of the public opinion which, at times, might demand for quick solutions and results, in disregard of rules. When fighting high-level corruption, it is essential that the law enforcement complies with the rules set-up in the Criminal Procedure Code. Investigations also require certain amplitude and it is necessary for the people working in the criminal investigations system to learn how to deal with such investigations and all their implications.

To date there are problems in Moldova both related to the weak quality of investigations, but also to judges' reluctance to apply harsh sentences for corruption related offences. Even if some measures taken for combating corruption seem to bring a certain change, the vast majority of them still lack effectiveness. Moreover, the majority of those convicted receive conditional suspended sentences instead of real imprisonment that would serve as dissuasive punishments. Rarely are confiscations applied. Even deprivation of occupying certain functions for a period of time after conviction for corruption related offences is not applied in every case. For example, there are several lawyers that continue to practice law, even though they were convicted for trafficking in influence.

If investigations are initiated and the persons are convicted, these persons can escape justice. Out of two judges convicted for corruption recently, only one is serving his sentence in a penitentiary. The second judge has disappeared from the courtroom and is currently on a wanted list. The respective judge shares the wanted list with other high-rank public officials and police officers that flew the country prior or right after their conviction by the court.

Relevant in this sense is that the American Bar Association conducted a focus groups with Romanian judges who were imposing light sanctions (suspension of the execution of the penalty, prison in most cases) for corruption related offences to understand the reason behind it back in 2005. Their arguments were very humane and appropriate for the Romanian society at that moment: the people they were condemning served as models in the society, for what were they being condemned? They had not committed any violent crimes, if a person in such a position and does not help family, then when? These were economic crimes, it seemed pointless to put them in jail. However this practice has profoundly changed in the past six years with an increasing trend of convictions to jail time<sup>1</sup>.

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1. See Summary of the DNA activity 2005-2012 (<http://www.pna.ro/faces/obiect2.jsp?id=193>), Summary of the DNA activity 2013 ([http://www.pna.ro/faces/bilant\\_activitate.xhtml?id=29](http://www.pna.ro/faces/bilant_activitate.xhtml?id=29)), Summary of the DNA activity 2014 ([http://www.pna.ro/faces/bilant\\_activitate.xhtml?id=32](http://www.pna.ro/faces/bilant_activitate.xhtml?id=32)).



Another important aspect which contributed to the independence and effectiveness of the National Anticorruption Directorate is its **integrated structure**. All the people working with the Directorate belong to the same institution and are under one line of command. This gives the head of National Anticorruption Directorate room to impose his/her vision on how the institution should be managed. Police officers are appointed to the National Anticorruption Directorate by common act of the Ministry of Internal Affairs and Ministry of Justice. But if the Directorate's chief-prosecutor decides that a police officer should not be part of their team, that officer is dismissed without any means of appeal for the Ministry. The National Anticorruption Directorate has major influence over what happens to the people working with the institution. In order to become part of the Directorate, a prosecutor needs to have 6 years prior experience and pass a selection process. The National Anticorruption Directorate is a specialized prosecution office within the prosecutor's general office. If a single institution has overall responsibility from one end to the other of the investigation, and afterwards a judge does a critical overview of the file, results in fighting high-level corruption can be achieved.

At the moment, Moldova has run into a similar obstacle to Ukraine and Georgia; the responsibility of the investigation is divided between two institutions with different, yet, at some point, overlapping attributions.

Institutionally, when talking about anticorruption in Moldova, there is the **National Anticorruption Center (CNA)** and the **Anticorruption Prosecution**. The National Anticorruption Center is a specialized anticorruption body, which includes prevention, criminal investigation of corruption related misdemeanors and crimes, prevention and combatting money-laundering and anticorruption expertise of draft legislation. The National Anticorruption Center includes criminal investigators and specialists/experts. The Anticorruption Prosecution office is a specialized office within the prosecution service. It supervises or conducts criminal investigations in corruption related crimes and brings them to court. The status of the National Anticorruption Center has been changed over the years, from subordination to the President, to subordination to the Parliament, then the Government and then back to Parliament. Although prosecutors supervise criminal investigations, the subordination of the Center plays crucial role, otherwise the status of the institutions would not have been changed so often depending on the distribution of political powers. The prosecutors are hierarchically subordinated to the General Prosecutor. Although the prosecution office is declared independent in the Constitution and the law on prosecution, the appointment process clearly shows the dominant role of political parties' appointment. The Speaker of Parliament proposes the candidate and the Parliament votes him/her. In the last procedure, the Speaker created a working group to select a candidate via

a public competition. Although the group selected a candidate, the Speaker proposed the head of the working group as the Prosecutor General, arguing that the candidate selected by the working group had no political support. The Parliament voted the proposed candidate, who is still in office.

In Romania, the General Prosecutor, the chief-prosecutor of the National Anticorruption Directorate and of the Directorate for Investigating Organized Crime and Terrorism, as well as their deputies, are appointed according to the following procedure: the minister of justice makes a proposal, the prosecution division of the Superior Council of Magistracy expresses an opinion on the proposal, after which the president of Romania makes a decision and may reject the proposal. Undoubtedly, the political factor plays an important role. Out of all the possible appointment procedures, this is the lesser evil because it entails individual responsibilities of the politicians that take part in it. While the President does not have to follow the opinion expressed by the prosecution section of the Superior Council of Magistracy, in practice he often does. It is preferable to have a procedure of appointment which implies personal and transparent decisions, not collective decisions which may hide very well other interests.

### **Reform of the judiciary system**

Before 2004 judges to the Supreme Court were appointed in Romania by the President upon the proposal of the Minister of Justice. The procedure was criticized for politicization and many pointed towards it to explain the lack of convictions in cases involving high-level politicians in the early days of the anticorruption campaign. In the following years the procedure was changed and promotion to the High Court of Cassation and Justice is now done through an interview before the judges section of the Superior Council of Magistracy.

There were also discussions to introduce a written exam, but the judiciary had rejected this suggestion. Although any procedure can be illicitly altered, it is important to have a clear promotion procedure in place and to investigate and punish potential illicit behavior. One element for ensuring correctness of the procedure is the online transmission of interviews. Reforms should not be blocked just because they might be undermined from the inside.

In Moldova, the Supreme Court of Justice (SCJ) judges are appointed by Parliament, at the proposal of the Superior Council of Magistracy. According to the current procedure, in order to participate in the competition, judges are evaluated by the Performance Evaluation Board and the Selection Board on the basis of criteria set by a regulation adopted by the Superior Council of Magistracy. The respective evaluations include analysis of the judges' activity or candidate judges' experience and an interview. As a result of the evaluation, judges accumulate points with which they participate in the

competition. By law the Superior Council of Magistracy is not supposed to carry out an additional evaluation of candidates, but only to approve the Selection Board's proposals or to select among the ones that have accumulated equal amount of points at the Selection Board's evaluation. In practice, the Council does not appoint the candidates with the highest score and sometimes prefers to nominate for appointment the candidates with a lower score without any justification. Added to this caveat is the flawed appointment procedure of judges at the Supreme Court of Justice by the Parliament. By law, the Parliament has no powers or procedures to evaluate the work of Supreme Court judges. The law does not provide any procedures for interviewing the candidates for Supreme Court positions. The law only provides that the Superior Council of Magistracy makes the proposals and the Parliament votes them. Despite this, in the last Supreme Court of Justice contests, the candidates were interviewed separately by parliamentary fractions behind closed doors, which raises serious issues as to the transparency of the procedure of appointment and efficiency of the appointment procedure done by the Parliament.

Even if the proposal for the appointment of judges and the Supreme Court leadership comes from the Superior Council of Magistracy, it may not provide sufficient guarantees of independence for judges. Superior Council of Magistracy proposal is not binding, whilst deputies can reject the candidates without any justification by simply voting in plenary, or fail to examine Superior Council of Magistracy judge's proposals for a long time, as it occurred in practice. Although the appointment of judges by Parliament takes place in some other European countries, appointment of judges by the President or by the judges' self-administration body (Superior Council of Magistracy) is the model preferred by the Venice Commission.

Even if the Superior Council of Magistracy appointment is not a perfect recipe either, as it was stated above that the Council does not consider it necessary to appoint candidates with the highest score and sometimes prefers candidates with a lower score without any explanation, at least in appointments by Superior Council of Magistracy and the President, the political factor is reduced significantly from the appointment of judges.

The composition of the Moldovan Superior Council of Magistracy largely meets the European best practices. It consists of 12 members, with 6 judges elected by other judges, 3 law professors appointed by the Parliament and 3 ex officio members: the President of the Council, the General Prosecutor and the Minister of Justice. In principle, the majority of the Council are elected judges, in line with Council of Europe recommendations. However, the President of the Supreme Court of Justice is appointed by the Parliament, which is usually a political appointment. The General Prosecutor is also a political appointee. The appointment of the 3 law professors by the

Parliament is still problematic, as the appointment procedure is not very clear and the appointed professors tend to have links with the ruling parties. The performance of the law professors in at least last two compositions of the Superior Council of Magistracy shows that they do not act as neutral members to ensure a voice of the civil society, but rather join the governing majority in the Council. In conclusion, the Superior Council of Magistracy is still dominated by political appointments and both the composition and the appointment procedures need to be improved. In particular, the General Prosecutor and the President of the Superior Council of Magistracy should not be part of the Council, while the law professors should be extended to civil society representatives and the appointment should be split between the Parliament and the President of the country, to ensure some balance. The number of elected judges by other judges should be at least 7 (majority out of 12).

The Judicial Inspection in Moldova is subordinated to the Superior Council of Magistracy, both by law and de facto. The Judicial Inspection is largely understaffed and performs too many functions that should be performed by the Council Secretariat. The legal framework should be amended to provide for functional autonomy of the Judicial Inspection within the Superior Council of Magistracy and to limit its competencies to verifications of courts' activity, verifications of judges/candidate judges in appointment, transfer and promotion procedures and investigation of disciplinary complaints against judges. Selection procedure of judicial inspection should be improved to ensure selection of the most competent persons.

A controversial and problematic aspect **regards the representatives of the civil society** (NGOs) in the Superior Council of Magistracy. The practice in Romania on this point has been mixed with genuine civil society being represented as well as representatives of political parties being promoted under the cover of civil society. Direct participation in a self-regulatory body of the judiciary and prosecution of people with strong ties with the political parties brings into question issues related to the independence of such structure from the political agenda. When representatives on behalf of civil society openly admitted to represent in fact political parties, trust in those representatives was lost. This experience does not mean that civil society should not be represented in such self-regulatory bodies, but emphasis should be put on a selection process that would ensure that the best-suited candidates make it to the post.

Although political parties are part of the civil society, they are different from the NGOs: political parties tend to accede to the power, hence are prone to compromise with the political allies, while NGOs are meant as neutral monitors over the Government. The presence of civil society in the self-governing judicial bodies is recommended for

similar reasons<sup>2</sup> – to act as a balance to the majority of judges, in order to prevent corporatism within the system. Professional qualifications should prevail over political considerations when appointing representatives of civil society in the self-governing judicial bodies. In this respect, Romania still has to develop a fair and transparent procedure of selecting and appointing representatives of civil society in the Council.

**The Judicial inspection in Romania** is a specialized and autonomous body under the Superior Council of Magistracy composed of senior judges and prosecutors selected competitively.

A crucial reform in Romania that increased the judges' accountability was the reform of the Judicial Inspection. In 2012 the Law no. 317/2004 on the Superior Council of Magistracy was amended, providing for the creation of an independent Judicial Inspection. Judicial Inspection is an autonomous body within the Council. The Council appoints the General Inspector through a public competition. Then the General Inspector selects the other inspectors and manages the inspection. Judicial Inspection carries out verifications on courts' performance and investigates disciplinary complaints against judges, initiated on the basis of received complaints or ex officio. Only judges and prosecutors that have 8 years of experience can be appointed as judicial inspectors. These inspectors control the work of their colleagues in disciplinary investigations started upon complaints of ex officio. The Judicial Inspection also has a role in conducting verifications to determine if the independence of justice was interfered with or if the reputation of individual judges or prosecutors was unduly tainted.

### **Preventive measures in anticorruption**

In 2011, the Moldovan Parliament established a specialized anti-corruption agency for verifying statements of income, property and personal interests for public officials holding office, called **National Integrity Commission (NIC)**. The National Integrity Commission is a collegial body consisting of five members, which are appointed by Parliament with a majority of deputies, for a five years mandate. Moldova's civil society has long stated that there is a need for reform of the Commission and that the performance of the institution so far is modest. Unfortunately there is no political support for such changes and a progressive and balanced draft law was not passed by the Government in 2015.

EFOR's recommendation, based on Romania's experience, is sticking with models of such institutions that worked in this region. The institution should cover three main areas: control of conflict of interests, incompatibilities and of unjustified wealth. In Romania, the **National Integrity Agency**

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2. See, for example, OSCE/ODIHR Kiyv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 2010, para. 8.



is an administrative control body. The Agency is headed by a President and a Vice-president. A National Integrity Council acts as the board of the Agency and interacts with its executive management on issues pertaining to policies. The National Integrity Council may not interfere with concrete controls of wealth, incompatibilities and conflict of interests. As a matter of fact, inspectors in the Agency have independence in the manner they conduct their controls even from the executive management. Inspectors are selected through a competitive process which includes written tests. Its findings are challenged to administrative courts by those that are subject to control. Decisions are enforced once they become final.

Confiscation of unjustified wealth, disciplinary sanctions or release from public office are possible outcomes at the end of the control process. One challenging practical aspect is dealing with the acts concluded while in conflict of interest. At present, the Agency may go before courts to ask for the annulment of such acts – which are usually contracts or permits – but the procedures are long and final decisions are obtained long after the legal consequences of these acts have been produced. The final goal of such control procedures is to take illicit gain away from those that obtained it by breaking the law. Confiscation of unjustified wealth is a good example of non-conviction based confiscation transposed in the Romanian legislation. This mechanism is more suitable to be used to deprive public officials of ill-gotten gain without starting criminal procedures that are expensive and lengthy. The track-record of the National Integrity Agency shows that even an administrative control body may achieve results in the area of anticorruption.

Among other loopholes that exist in the current legislation of Moldova, de facto it does not allow the control of unjustified wealth, in the sense that the National Integrity Commission staff cannot access existing databases in order to compare declarations from previous years. The Commission can verify declarations only if someone files a complaint, but not ex officio. Sanctions for conflict of interests are not provided in the legislation, nor is the possibility to annul acts done while in conflict of interests. When the National Integrity Commission finds a misdemeanor, it cannot apply directly the sanction, nor can it go to court. It sends a notification about the misdemeanor to the National Anticorruption Center. If indications of a criminal conduct become apparent during the checks, the Commission informs either the National Anticorruption Center or the prosecution office. This convoluted mechanism of sanction application renders the control procedures ineffective in practice. To be effective, control institutions must be entitled to apply sanctions upon their finding subject to judicial review.

The National Integrity Commission is currently facing numerous difficulties, the main reason for this being limited tools to effectively carry

out assets investigation set out in the current legislation (lack of access to relevant public databases, limited period for carrying out the investigations, absence of sanctioning powers). Moreover, it is worth mentioning the Commission's current limited internal institutional capacity.

In order to enhance the National Integrity Commission's credibility and strengthen the mechanism of verifying declarations of income and property, in 2015, Ministry of Justice submitted a draft law that aims for the Commission's reorganization, providing institutional and operational independence, by reorganising the National Integrity Commission in the **National Integrity Centre**, a body with slightly different organizational structure. The new National Integrity Centre president will be appointed by the country President, not the Parliament, and will have more staff with better defined competences, such as online submission and online public access to declarations, as well as access by the Centre to banking data for verifying declarations. One of the most important innovations of the draft law relates to the Centre's staff – integrity agents – to have the competence to carry out the investigations by themselves, without having to have a collegial body to vote on their investigation results (as currently the National Integrity Commission does). Moreover, integrity agents may go directly to court to require recognition of any adopted/signed acts in violation of integrity rules and be declared null and void. In addition, integrity agents may request the court to confiscate the assets in case of discovering a significant difference between the submitted assets and personal interests' declarations and the de facto assets.

The new draft law on National Integrity Centre should improve the current system, strengthening the Centre's ability to conduct not formal, but real investigations of the evolution of incomes and assets of public servants and high rank public figures. The new draft on assets and personal interests combines two laws and regimes (assets and conflicts of interests) and includes significant improvements to the regulation of income and personal interests' declarations, incompatibilities and conflicts of interest. Another draft law includes amendments to several laws to make possible the implementation of the National Integrity Centre and income and personal interests' declarations (so-called `national integrity package of laws`). Although these three draft laws were largely consulted with local and international experts, had the expertise of the Council of Europe and local United Nations Development Program experts, to date the draft laws were not adopted. The three draft laws were initially rejected by the Government in June 2015 and since then have never been put on the Government's agenda again.

The current debates in the country seem to suggest the willingness of at least one governing party and the interest of the National Anticorruption



Center to have the National Integrity Commission merged with the National Anticorruption Center. Moreover, the National Anticorruption Center may be attributed functions related to assets recovery for crimes. This move will be a serious regress in the fight against corruption in Moldova. The biggest danger in merging these two institutions is the potential of creating of an institution with a very broad mandate, which will include crucial functions related to anti-corruption, such as:

- 1) Criminal investigation of corruption related cases;
- 2) Integrity testing of all public officials (around 65.000, an unprecedented competence in Europe and elsewhere. Although the law on integrity testing was criticized by the Venice Commission and declared unconstitutional by the Constitutional Court of Moldova, the Government amended the law changing individual to institutional integrity testing, practically maintaining the same system);
- 3) Verification of assets and personal interests, incompatibilities and conflicts of interests;
- 4) Assets recovery;
- 5) Anticorruption expertise of all draft normative acts of the Government and legislative acts submitted to the Parliament.

These are only discussions and tendencies at the moment, with no official result yet. The outcomes of the process of reorganizing the National Integrity Commission, consolidating the Anticorruption Prosecution Office and setting up legislation and institutions for assets recovery will be one of the first serious test of Moldova's leadership real intentions on fighting or not fighting corruption.

## UKRAINE

Aside from the institutional nature of corruption, similar to other countries in the region, in the past years Ukraine has had to deal with the outbreak of the armed conflict in the Eastern part of its territory and the separation of these territories from the Ukrainian Government, facilitating the emergence of new corruption schemes. In December 2014, the Cabinet of Ministers adopted a new government agenda which contained an entire chapter on the new anticorruption policy. The Government also launched institutional changes including the formal establishment of the **National Anticorruption Bureau (NABU)**. Unfortunately, the constant intentional delay of enforcing such reforms, has led to a situation where small steps in various direction have been made, without any results so far in the struggle to fight high-level corruption and put a stop to public theft.

### **Specialized anticorruption prosecution – National Anticorruption Bureau and Anticorruption Prosecutor’s Office**

In its efforts to fight and prevent corruption, in the last years, Ukraine has created six anticorruption structures – two bureaus (the NABU and the State Investigation Bureau), two national agencies (the National Agency for Prevention of Corruption and the National Agency for Stolen Asset Recovery), the Specialized Anticorruption Prosecutor’s Office, and the National Council for Anticorruption Policy under the President of Ukraine. Out of the six, the **National Anticorruption Bureau (NABU)** is an investigative unit, with pre-trial attributions strongly linked with the **Anticorruption Prosecution Office** (a specialized prosecution unit within the General Prosecutor’s Office to procedurally supervise the Bureau).

The **National Anticorruption Bureau** will investigate top-level corruption in Ukraine and prepare cases for prosecution (pre-trial investigations), as well as having attributions to identify and freeze assets. It was established in 2014<sup>3</sup> and it is a specialized law enforcement body aimed at investigating corruption of high profile officials, including ministers, MPs, high-ranking civil servants, judges, prosecutors of the Prosecutor General Office and regional prosecutor offices, high officers, directors of state enterprises etc.

In order to ensure transparency and civil control over the activity of the National Bureau, a Council of Public Control was created within the National Anticorruption Bureau, consisting of 15 persons and formed on the principles of open and transparent competition. One of the main functions of the Council of Public Control is its participation with the Disciplinary

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3. See <http://www.nabu.gov.ua/en/history-nab>.

Commission of the National Anticorruption Bureau, which is tasked with dismissing corrupt employees at the Bureau. Also, the Council of Public Control is charged with the competitive process for selecting the staff of the Bureau. Additionally, the Council of Public Control provides an evaluation of the Anticorruption Bureau's performance twice a year to the Verkhovna Rada, the Cabinet of Ministers, and the president.

In April 2015, the organization's first manager was appointed, Artem Sytnyk. Mr. Sytnyk is a former chief investigator and was appointed on the 16th of April 2015 by President Poroshenko. His appointment is for 7 years, during which he will have to report to the Verkhovna Rada (Parliament), the Cabinet of Ministers and the President, who retains authority to dismiss him, along with the Verkhovna Rada, but only based on an international audit.

The bureau was initially scheduled to start working in October 2015, but without the anticorruption prosecutor it was not be able to operate. Thus, this interdependence between the two institutions started out as a hindrance, since the Bureau couldn't effectively exist without the Anticorruption Prosecutor's Office. The main attribution of the chief anticorruption prosecutor was to have procedural supervision of Anticorruption Bureau's investigations.

Although the Bureau was scheduled to start investigating in October, on November 30th, the General Prosecutor finally issued an order appointing Nazar Kholodnytskiy, former Deputy Prosecutor General of Ukraine, Head of the Specialized Anticorruption Prosecutor's Office. His appointment was viewed as positive by the civil society. In order to select the chief anticorruption prosecutor, a Selection Commission was set up which consisted of 7 civil society members selected by the Ukrainian Parliament and 4 member appointed by the General Prosecutor.

Following the appointment of the anticorruption prosecutor, by December 2015, director Artem Sytnyk announced that the National Anticorruption Bureau detectives had already collected materials for over 10 cases against corrupt Ukrainian officials for including in the National Register of Pre-Trial Investigations and were ready to launch their investigation.

So far, 70 detectives of the Bureau took oath of allegiance, when the training program started. The program is supported by the European Union, who provide trainers and long-term experts to assist with the Bureau's capacity building for this wave of recruitment, but also for the ones to follow. The National Anticorruption Bureau is set to have around 700 employees.

In order to diminish risks of internal corruption of an institution which is expected to bring down high-level corruption, the Bureau will recruit only people which have not been involved in the past 3 years in Ukraine's law enforcement agencies conducting anticorruption investigations. The National Anticorruption Bureau faces the challenge of recruiting people

who are not experienced in a highly technical field. There needs to be a strong effort on initial training for the people recruited by the Bureau and international expertise may be the best suitable solution for the beginning, but it needs to set up an inside training system that will pass on this expertise, together with the practical experience gained to all the investigators it has aimed to employ.

**Media coverage of corruption** will play a crucial role in building trust in these institutions once they become operative. After the change in government in 2014, social activists as well as journalists continued to play an important role in exposing cases of corruption. A lot of them continued to be involved in the implementation of the new anticorruption laws which established National Anticorruption Bureau and the National Agency for the Prevention of Corruption. Public demand for the high quality anticorruption journalist investigations keeps growing. There are number of precedents where high public resonance created by journalist reports has led to resignation of public officials and commencement of official investigations for those criminal offences. The role of social activists and journalists will continue to be crucial when investigations of high-level corrupts will start.

Also holding investigative powers, the **State Investigative Bureau**, was envisioned to be an independent body that would investigate unlawful actions of law enforcers (for example police, among other crimes). The Bureau will be engaged in the investigation of crimes committed by organized criminal groups, as well as make liable such high-ranking officials who have committed crimes as judges, prosecutors, ministers, Members of Parliament. It will also be authorized to investigate crimes committed by the National Anticorruption Bureau officials and personnel of the Specialized Anticorruption Prosecutor's Office. Currently, General Prosecutor's Office and the Security Service of Ukraine hold these powers. There is serious concern that the powers of this Bureau would overlap those of the National Anticorruption Bureau. So far, this institution has yet to be established.

### **Reform of the judiciary**

Having to set up institutions to fight and prevent corruption while simultaneously reform the judiciary is a difficult task. Nevertheless, it is equally important for the judiciary to be properly reformed, as, otherwise, all efforts invested in consolidating investigative bodies such as the National Anticorruption Bureau will be left without result. There is a lot to be done, thus, Ukraine needs to decide on the main steps of judicial reform.

Firstly, Ukraine needs to implement mechanisms that allow the cleaning of the judiciary system. As measures taken in this direction, a lustration law was adopted in September 2014. The law consisted in the verification of

officials in term as to their possible involvement in illegal decisions taken by the Yanukovych regime and of officials who cooperated with the Communist system, followed by the dismissal of corrupt officials associated with these regimes. As a consequence, certain officials (the prime-minister, individual ministers and heads of other central offices) were subject to a ban of holding public office for 10 years if they had these posts during the Yanukovych regime. Although there were advantages to this law (for example, some public officials were dismissed that otherwise would still be in office), there are major disadvantages. For example, heads of specific institutions were made responsible for the enforcement of the law. Thus, in some offices it has been enforced, while in others officials falling within the provisions of the law still hold their posts<sup>4</sup>. Romania introduced in 2005 a compulsory statement for all judges and prosecutor in regard to their potential cooperation with previous and current intelligence services. Subsequently, the Romanian judiciary saw a big wave of resignations.

Secondly, it is essential to ensure judicial independence. In Romania, for example, most of the governing powers of the Minister of Justice were taken away and given to the self-governing body (the **Superior Council of Magistracy**) that is elected by the judiciary system itself. Of course there is a risk that a corrupt judiciary system elect a self-governing body just as corrupt. There is always a fine-tuning that needs to be made between the competences of a self-governing body and those of the Ministry of Justice.

Another step towards ensuring independence is providing judges with life tenure<sup>5</sup>. However, this should be done only after the judiciary is cleaned of magistrates with a dark past. The lack of tenure would otherwise give way to a lot of self-censorship and corruption in high-level courts. If the lack of tenure is accompanied by appointments to the highest courts made by political factors (such as the President), then the risk of political undue influence is very high.

Thirdly, continuous training should be provided for judges on difficult, sometimes very technical, aspects of the cases that will be brought before them. Most of the times, criminal cases on corruption related offences need a thorough understanding of public procurement or money laundering legislation. In Romania, the National Magistrates Institute is an institution under the coordination of the Superior Council of Magistracy tasked with training judges and prosecutors in Romania (prosecutors are magistrates in Romania). The Institute is responsible not only for initial training, but also for elaborating a training program for judges throughout their career as to make sure that they are up to date with recent jurisprudence of the EU, with

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4. Marta Jaroszewucz, Piotr Zochowski, „Combating corruption in Ukraine – the beginning of a long march” (<http://www.osw.waw.pl/en/publikacje/osw-commentary/2015-05-07/combatingcorruption-ukraine-beginning-a-long-march>).

5. Appointment as a judge is permanent, until he or she either resigns or retires.



modern instruments for criminal investigations etc. Furthermore, thorough evaluations should not be disregarded, for reasons of accountability. It is advisable for clear procedures on evaluations to be incorporated into law.

### **Preventive anticorruption measures**

In late March 2015, the **National Agency for the Prevention of Corruption** was established at the Ukrainian government with the task of verifying the asset declarations submitted by public officials.

The National Agency for the Prevention of Corruption is a central agency of executive power, which is subordinated to the Cabinet of Ministers. It shall check declarations of Ukrainian officials' income and their actual spending, and if it sees any violations, materials shall be sent to the National Anticorruption Bureau.

The Ministry of Justice is responsible for setting up this Agency which will be composed of 5 experts to be selected by an independent Selection Commission. However, independence of this Selection Commission has already been undermined by the Government decision. Following violations detected by the Parliamentarian Committee on Corruption Prevention and Counteraction, the civil society requested the Prime Minister to issue new procedures to select candidates for the Agency. Thus, there was a re-launch of the nomination of the selection panel to form the National Agency for Prevention of Corruption in Ukraine in August 2015. Unfortunately, to the present time the National Agency for the Prevention of Corruption has yet to become operational.

Other changes have also been planned to increase the state's transparency: opening up access to the state register of real property, the creation of a state register of individuals who have committed corruption-related offences and the introduction of special anticorruption screening procedures for public servants. Provisions making it possible to temporarily freeze property and assets of individuals suspected of corruption were also introduced.

Public officials are now obliged to submit annual publicly accessible assets declarations by the 1st of April each year. However, there is no mechanism to monitor the declarations due to the delay in launching the operation of the National Agency for the Prevention of Corruption.

Constant efforts by governmental powers to slow down and delay anticorruption reforms, such as the setting up of the National Agency for the Prevention of Corruption, add to the general sense of discontent and the lack of trust of the population.

### **Asset recovery**

When fighting with high-level corruption it is necessary to understand that for criminal organizations what matters most is the financial gain obtained. Thus, seizing criminal proceeds has become

urgent in order for corruption to stop being profitable in states such as Romania and Ukraine.

In order to do so, proper instruments for efficient asset recovery need to be created. Secondly, judges and prosecutors need training on how to use these instruments.

Seizing and freezing assets early on in the investigation is essential. Training prosecutors on the importance of making use of the instruments the Criminal Code provides for seizing and freezing assets was essential in Romania. In 2009, in 31 out of 41 counties, no prosecutor had placed a seizure of assets<sup>6</sup>. Following intensive training and improving the legislative framework, the situation has changed considerably and by 2013 approximately 1.9 billion RON in assets were confiscated throughout criminal proceedings<sup>7</sup>.

On the 10th of November 2015, Ukrainian Parliament passed a set of laws aimed at improving asset recovery procedures in the country. However, there are certain considerations that those laws would undermine the declared goals. In particular, the already soft regime of assets seizure has been worsen, jeopardizing the possibility to seize assets at early stages of criminal investigations and assets of third parties. The law sets up very high standards of proof which need to be presented by prosecutors in court to seize assets, which could be compared with the standard needed to prove a crime and guilt of a particular person<sup>8</sup>.

In order to seize assets prosecutors will have, in addition to proving their criminal origin, to calculate whether the value of the asset to be seized corresponds to the crime damages or illicit income. However, damages could be present in not every crime and illicit income might not be detected. It would give discretion for courts to refuse seizure warrants in almost any criminal investigation. This would mean that not only third-party confiscation will not work in Ukraine, but the possibility to confiscate assets directly owned by criminals will be also under serious threat.

Another law is supposed to set up an independent asset recovery and management agency (the **National Agency of Ukraine for Tracing and Management of Proceeds of Corruption and Other Offences**). However, the law deprives the agency of the power to manage seized property, as well as to sell and/or transfer it if needed. Thus, the purpose and efficiency of the agency for the asset recovery process is questionable, since the agency will in fact have no power to manage seized assets, leaving this function to investigators and prosecutors. Currently, prosecutors and investigators

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6. See the General Prosecutor's speech on the Annual Report of the Public Ministry, 2010 ([http://www.mpublic.ro/presa/2011/discurs\\_bilant\\_2010.pdf](http://www.mpublic.ro/presa/2011/discurs_bilant_2010.pdf)).

7. See Annual Report of the Public Ministry, 2013 (<http://www.mpublic.ro/presa/2014/bilant2013.pdf>).

8. Anticorruption Action Centre on asset recovery laws adopted by parliament (<http://antac.org.ua/en/2015/11/asset-recovery-laws-adopted-by-parliament-are-worsening-seizure-and-confiscation-regime-in-ukraine/>).



execute authority with no clear procedures, as well as tools of oversight and control, resulting in a high risk of corruption, ineffectiveness and violation of property rights. Several public officials, including the Minister of Justice, confirmed that these draft laws – after changes in parliament – will harm the work of law enforcement agencies, including the newly established National Anticorruption Bureau.

The **National Agency for Stolen Asset Recovery, which has yet to be established**, will search and evaluate stolen assets not only in Ukraine, but also abroad at the request of an investigator, a prosecutor, or a judge. It will also keep a register of seized assets.

## **GEORGIA**

In recent years, Georgia has promoted a transparency agenda that has built a remarkable international reputation for the country. A multitude of IT solutions and online mechanisms have been implemented to make information easily available to people in areas ranging from public administration, public procurement, permits and authorisations to courts. One-stop-shops have been set-up to facilitate the interaction between citizens and the government. These solutions should be looked at by the countries in the region that are still struggling to decrease red-tape and to reform the opaque public administration. The transparency agenda in Georgia plays an important role in the area of prevention of corruption. The campaign to reduce widespread petty corruption several years ago has also drawn attention from international media. Ukraine is now looking into ways to replicate the Georgian model to fight petty corruption including employing Georgian nationals as Ukraine's high-level public officials. Despite its achievements, Georgia still needs to tackle challenges regarding judicial independence and allegation of selective prosecution especially linked with high-level corruption and white-collar cases. Trust in the Judiciary continues to rank low in citizens' surveys.

### **Reform of the judiciary**

The problem of low public trust in the Judiciary is severe because of its spill-over effects. If the Judiciary is not perceived as trustworthy the public will always regard with disbelief prosecutions for high-level corruption and will question final decisions from courts on suspicions of political undue influence. This is why this problem needs to be addressed in the early days of the reform process. Some important steps have been made towards ensuring judicial independence. Transparency of the judicial process and ensuring tenure for judges are just two of the most important measures Georgia has taken in the recent past. However these types of measure will produce effects in time, as there is always a delay between reform measures, their impact in the daily functioning of the Judiciary and the perception of the public on how the Judiciary operates.

One serious criticism to the Georgian Judiciary has been the failure to provide proper reasoning for decisions in high profile criminal cases<sup>9</sup>. This is by no means a minor issue as it undermines all attempts to build respect and confidence in the public. This problem was constantly highlighted by the Georgian Ombudsman in the last years. A 2014 OSCE ODHIR Report noted that in many cases judges fail to thoroughly assess the evidence

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9. Transparency International Georgia, Georgia National Integrity System Assessment 2015 ([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)).

presented by the parties and „provide an adequate level of legal analysis to explain how the fact established amounted to a criminal offence and how they led to a specific sentence”<sup>10</sup>. Training is one of the manners to address this problem. Georgian judges need to understand better what the expectations are from an accountable and trustworthy judicial process. Exchanges between judges from Georgia and those of countries in the region could help influence judicial practice to the better through the socialising effect. Professional periodical evaluations should take into account judge’s capacity to reason his/her decisions. It is important that due attention is given to this issue in the early days of judicial training offered to aspiring judges.

Another long lasting challenge regarded judicial independence and the relationship between the political power and the justice system. The increase of the role of the High Council of Justice – the self-governing body of the judiciary - in matters having to do with appointment, evaluation, promotion and discipline of judges was the natural solution to address these challenges. **The High Council of Justice** is responsible for the appointment and dismissal of judges, organizing qualifying examinations of judges and developing proposals for the reform of the judiciary. More precisely, the Council appoints judges of the district and city courts, as well as for the Court of Appeals<sup>11</sup>.

Based on the Council of Europe recommendations, the High Council of Justice has a changed composition since 2012. It now has 15 members of which 9 are judges (8 of whom are elected by the Conference of Judges and the 9th is the chairperson of the Supreme Court of Justice) and 6 are representatives of the civil society and academia. Each individual judge of the Conference of Judges can, by secret vote, nominate and elect the members of the High Council of Justice (8 of them).

Consolidating independence of the judiciary is essential in order to increase trust of the population that the judiciary protects their rights and interests and that no one is above the law. Thus, recent amendments have awarded judges with life tenure. Lack of tenure increases vulnerability to external pressure (especially political). Still, Georgian judges are exposed to a great risk since a judge may be appointed for life only after having successfully passed a 3 years probation period. Although this change aims at creating a balance between independence and accountability, given the risk of political interference in Georgia, there might be a better alternative to the 3 years probation period. Taking Romania’s example, the issue of accountability was addressed by introducing evaluation exams, assessing

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

11. The structure of the judiciary system in Georgia consists of district or city courts, the Court of Appeals and the Supreme Court.

judges' knowledge of the law. Although this cannot test a judge's integrity, it ensures that judges in the system remain knowledgeable.

Recent amendments have also limited the possibility of the **High Council of Justice** to second judges to other courts, thus consolidating the stability of a judges' position. This procedure has been very much criticized in the past on account of jeopardizing a judge's independence and irremovability. Previous practice of this possibility has shown that this was mainly used as a means of punishment of judges who were unfavourable to the ruling party.

The practice of **transferring** cases to courts that are more likely to make decisions favourable to the government is still present. The case of the former prime-minister, Vano Merabishvili, was transferred for Tbilisi City Court to Kutaisi City Court which made the decision to keep him in pre-trial detention. An OSCE ODIHR Report of 2014 also highlighted **non-transparent allocation of cases** between judges and the already mentioned problem of transfer of judges<sup>12</sup>.

As for accountability inside the judiciary system, the system is not seen as fair and predictable. Legislative loopholes and institutional bad practices are at the heart of inconsistent or biased actions against judges. Disciplinary actions can be taken only against judges of common courts. The legislation does not provide for disciplinary action against members of the High Council of Justice or/and tools to supervise the compliance with ethics norms. The legislation does not provide the general definition of a „disciplinary misconduct” to be used as the grounds for bringing disciplinary liability against a judge, neither definitions/explanations of specific types of disciplinary misconduct<sup>13</sup>.

In comparison to other systems in the region, Georgia has been able to successfully implement legislation to ensure transparency of the judicial act. Among these, courts now allow audio, photo and video recording of trials and provide these records to the public upon request. Moreover, the judge's permission for making transcripts and audio recordings of trials is no longer required.

### **Prosecution of corruption**

The Georgian system has divided attributions of investigating corruption related offences between several institutions with overlapping attributions thus increasing the risk of blockages in the investigative procedure. Reforms need to be made in order to eliminate these risks and for investigations to have results. A possible solution may be to create one specialized institution which encompasses investigation and prosecution of corruption related offences, similar to the Romanian model of the National Anticorruption Directorate.

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12. OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring Report Georgia, Warsaw 2014. (<http://www.osce.org/odihr/130676?download=true>).

13. Coalition Opinion on the Judicial Reform Legislative Amendments ([http://www.coalition.org.ge/article\\_files/217/Analysis%20of%20the%20Judicial%20Liability%20System.pdf](http://www.coalition.org.ge/article_files/217/Analysis%20of%20the%20Judicial%20Liability%20System.pdf)).

Previous to 2013, the Minister of Justice in Georgia had the power to intervene in the prosecution of individual cases. In May 2013, a series of amendments were passed in order to eliminate such powers and initiate other reforms of the **Prosecution Service**. At present, the Minister of Justice is no longer legally competent to intervene in concrete investigations and the functional hierarchy of the Prosecution Service ends with the **General Prosecutor**. As a consequence, a lot of the previous powers of the Minister of Justice have now been transferred to the General Prosecutor. Continuation of the reform process, particularly with regard to the status of the prosecutor inside the system is very relevant. Under the Criminal Code of Georgia, the role of the prosecutor in investigation can be: close supervision over investigator conduction investigation and endorsement of procedural documents prepared by the investigator; direct investigation of the case. Like in Moldova and Ukraine and unlike Romania, the prosecutor in Georgia is not a magistrate as judges are. Leaving the Prosecution Service under the realm of the executive power brings into question risks of political interference. These risks are even more astute in countries that have experienced for many years in the past a strong political grip of the judicial process.

The competence to investigate corruption and white-collar crime is split between the Anticorruption Agency within the Ministry of Interior, the Financial Investigation Service within the Ministry of Finance and the Prosecution Service that may decide to overtake a case from any investigative body if it deems it necessary. The Ministry of Justice retains investigative competences for its employees. The Anticorruption Agency of the Ministry of Interior is the main investigative body and has also regional representation – eight regional units. For senior officials – such as ministers or members of Parliament – the Prosecution Service is the competent unit to conduct investigations. Overlapping attributions among several institutions with the power to conduct investigations has led to the present situation where Georgia has only modest results to show for fighting high-level corruption, although it has made reforms by creating specialized institutions. Furthermore, the constant delay and lack of resources raises the question of whether there is political will to enforce the initiated reforms.

### **Anticorruption strategy and action-plan**

The **Interagency Coordinating Council for Combating Corruption** (Anti-corruption Council), established in 2008 and reformed several times since, it is a body tasked with general policy coordination, rather than an independent and multifunction anticorruption agency whose responsibilities would include investigation, monitoring and enforcement. The Council's effectiveness and its ability to influence policy and have suffered as a

result of its limited mandate and resources. The National Anti-corruption Strategy was adopted in January 2010 and identified the main goals of the anticorruption policy. The Action Plan was adopted in September 2010 in a hasty procedure and it identified the expected results in each of these policy areas and the agencies responsible for the implementation of the relevant activities. Unfortunately, these 2 strategic documents had very few results and lacked appropriate time frames and indicators, as well as proper monitoring procedure.

As a consequence of the lack of resources, it took more than 2 years to update the Strategy and produce a new Action plan. This happened in 2013. The documents were finally adopted in February 2015, along with a monitoring and evaluation methodology. The Council decisions are usually reflects in the minutes of its meetings and points of action circulated by the Secretariat. They are not mandatory, unless reflected in Governmental/ Presidential decree of other normative acts. Thus, the Anticorruption Council has limited influence due to the fact that its decisions are not mandatory, but also because it's administrative structure doesn't allow it to fully deal with the monitoring and evaluation of the Strategy and Action Plan (lack of a strong organizational structure and dedicated staff).

The Council is headed by the Minister of Justice and comprises representatives from the executive, legislature and judiciary, non-governmental and international organizations, as well as the business sector. Analytical and administrative support to the Anticorruption Council is provided by the Secretariat of the Council – the Analytical Department of the Ministry of Justice.

### **Asset declarations and asset recovery**

Asset declarations of any public official in Georgia are easily accessible online for any citizen and interest group through the **Public Officials' Assets Declaration Electronic System** ([www.declaration.gov.ge](http://www.declaration.gov.ge)). The major advantage of this system is that through modern technologies (post information, publicly disclosed, manage and verify data) it ensures cost-effective use of financial and human resources. Currently, all senior public officials, as well as middle management officers (such as department directors and thier deputies in government ministries) of administrative agencies are required by the Law of Georgia on Conflict of Interests and Corruption in Public Service to submit asset declarations electronically through the internet. The Online Asset Declaration System was established by the **Civil Service Bureau** (CSB) in 2010. Efforts continued to work to improve services. For example, an easy access to the assets declarations web page is now available through the cell phone. Citizens can easily search and download any of the assets declarations



via cell phones, while public officials can fill or edit their own declaration through different mobile platforms.

Although the advantage of the online system is that it's easily accessible to anyone and thus encourages citizens to monitor the income and expenditures of high-ranking officials, Georgia lacks a proper detection and sanctioning system in the case of conflict of interest and unjustified wealth. An existing draft amendment on the law states that the monitoring of declaration will take place in following three situations: constant verification of the declarations of top-level officials exposed to high risks of corruption; by random selection of declarations in a transparent manner through electronic system based on specific risk-criteria by the Independent Commission; on the basis of well-grounded written complaints/information submitted to the Civil Service Bureau. In minor violations, the Head of the Civil Service Bureau will impose a fine upon a public officer and in cases where it is found that a public officer presented deliberately incomplete or incorrect data, or specific elements of crime were identified, the declaration in question together with appropriate documentation will be sent to law-enforcement bodies for their consideration. These amendments have yet to be adopted and at present there is no agency in charge of monitoring asset declarations and sanctioning improper use.

The **Anti-Corruption Agency** is, according to its Regulations competent to „take measures to prevent, disclose and eliminate conflicts of interest and corruption” but, as practice has shown, these provisions are not clear enough for the institution itself<sup>14</sup>. There is an urgent need for the creation of an institution responsible with monitoring of asset declarations and sanctioning of violations. Secondly, the law does not require public officials to provide information about close family members in their declarations. Although system in Western countries do not require public officials to include information about relatives, there is a well-known practice of public officials making use of their relatives to hide different assets. Also, the information is not detailed enough. For example, public officials are not required to provide identification codes of the companies in which they are involved or cadastral codes of the property they own, making it very difficult to prevent and detect conflicts of interests<sup>15</sup>.

As for **managing seized assets**, in Georgia there are a few institutions responsible for this aspect. There is extensive regulation on asset forfeiture, but there are no regulations on asset management. And unfortunately, at present, no discussions on this subject in the public space.

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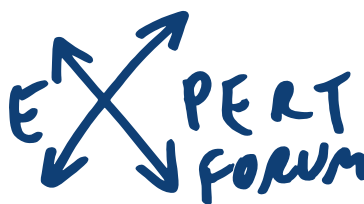
14. Transparency International Georgia „The Anti-Corruption Agency of the MIA does not respond effectively to alleged violations in asset declarations of public officials”, 19th of June 2015 (<http://www.transparency.ge/en/blog/anti-corruption-agency-mia-does-not-respond-effectively-alleged-violations-asset-declarations-public-officials>).

15. Policy brief, ASSET DECLARATION SYSTEM - International Practices and Lessons for Georgia - July 2015, Transparency International Georgia (<http://www.transparency.ge/en/node/5427>).





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