



An Assessment of Civil Service Reform in Georgia: Human Resource Management Policies and Asset Declarations

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Executive Summary

Georgian civil service has gone through many reforms since restoration of country's independence. Last wave of changes is currently underway - a brand new Law "on Civil Service" was adopted on 11 November 2015, key provisions of which will go into force from 1 January 2017.

Transparency International Georgia's report provides an analysis, assessments and recommendations on two topics related to civil service, divided respectively in two sections. The first topic covers Human Resources (HR) management policies, while the other - asset declarations of civil servants.

Section I: HR Management Policies

- Overall, adoption of the new Law "on Civil Service" should be treated positively in terms of HR management regulations. Transformation of malicious institute of interim employees and introduction of civil servant's annual evaluation and certification systems are worth of particular mention;
- Along with positive aspects, new regulations give rise to certain problems as well. Namely, worth mentioning is an increase of probation period's upper threshold from current 6 to 12 months. A 12-month probation period will demotivate qualified staff from being employed in civil service, and increases the risk of abuse of power by superior officials;
- As for implementation of HR policies in practice, in recent years numerous organizations and interest groups have reported serious problems. Only new law would not be sufficient to tackle these problems;
- Over couple of years particularly flawed was the functioning of Selection and Certification Commissions. They enjoyed quite wide statutory discretion that was often abused. Problems persisted also in terms of transparency of selection and certification process and securing external scrutiny. Many local self-government authorities have denied interested parties the right or considerably restricted their possibility to observe the process. Serious gaps were identified also in respect of the commissions' decision-making;
- Only in 2015, thirty cases of contenders and certification participants were proceeded to the courts with the legal aid of Transparency International Georgia. Out of thirty cases 16 were won and the remaining 14 are pending.

To mitigate problems prevailing in terms of legislation and its implementation, we find it expedient to take into account the following recommendations:

- Probation period's upper threshold should be reduced from 12 months back to 6 months;
- To secure more transparent contests, the Government Resolution "on Holding a Contest in Civil Service" must include a clear wording that would ensure high publicity standards in the selection commissions;
- More efficient measures must be taken to combat nepotism in civil service, in particular, the issue of nepotism must be clearly identified and criminalized in legislation.

Section II: Transparency of Information on Assets of Civil Servants

Many countries do not have an online system of asset declarations, so even the existence of this institute is a significant achievement for Georgia. Over years, the absence of state monitoring system of declarations turned to be the most essential gap of this institute. Under the new regulations, from 2017 this function will be vested in the Civil Service Bureau.

Nevertheless, there are several issues we believe should be better regulated. More specifically, we find it reasonable to recommend the following:

- **To correct the term of enforcement of the monitoring system** - pursuant to the Law, proposed amendment (and accordingly the monitoring system) will go into force from 1 January 2017. Overall, this decision is justified because the Civil Service Bureau will obviously require a lot of time to develop the monitoring system. On the other hand, it is desirable that a total vacuum existing today in terms of inspection of asset declarations is not maintained until 2017. Hence, it is preferable to discuss a compromised version. For instance, it is possible to put into force the mechanism of inspection by the Civil Service Bureau of an official's asset declaration based on a justified written application much earlier (even from 1 January 2016), and to launch proactive monitoring of declarations by the Bureau from 2017;
- **To expand a list of officials submitting asset declarations and to include the members of local councils and advisers to the minister and state minister in it** – the members of local councils make weighty decisions and enjoy considerable authority in the municipalities. Yet, unlike other officials, they do not receive remuneration from the state, and therefore they should be obligated to submit declarations in a simplified form - expression of interests - which would aim only at identifying potential conflict of interests. Forcing the local council members to regularly submit more improved forms of asset declarations may prompt some of them not to get involved in politics whatsoever;
- **To expand a list of an official's family members in asset declarations** - a list of an official's family members affected by the asset declaration requirements currently is rather limited. Given the tradition of large families predominant in Georgia, decisions of an official may be strongly affected by a relative and a family member, who does not necessarily live with him/her. Adding to an official's asset declaration the interests of his/her parents, siblings, and financially independent children would be another robust mechanism against nepotism, favoritism and corruption in public sector.

Introduction

Georgian civil service¹ has gone through many reforms since restoration of country's independence. Last wave of changes is currently underway - a brand new Law "on Civil Service" was adopted on 11 November 2015, key provisions of which will go into force from 1 January 2017.

In recent years Transparency International Georgia was actively involved in monitoring and analyzing of ongoing processes in civil service. Throughout this time the organization has dedicated number of reports and publications to issues of concern to civil service. Besides, Transparency International Georgia has rendered legal assistance to up to hundred civil servants in defending their labor rights. As a result, many individuals were restored in office or otherwise redressed.

In general, civil service is rather complex topic covering plentiful of aspects. In this report Transparency International Georgia provides the analysis, assessments and recommendations on two topics related to civil service, divided respectively in two sections:

Section I: Human Resource Management Policies;

Section II: Transparency of Asset Declarations of Civil Servants.

Assessment of each section of the report is divided into two phases:

Legislative and policy framework;

Implementation of legislative and policy framework.

As for a methodology, for each issue of legislative and policy framework discussed, regulations in the old and new Laws "on Civil Service" are compared and their positive and negative sides are discussed. An analysis of implementation of regulations is based on results of inquiries by Transparency International Georgia and other organizations.

¹ Civil service comprises activities in the state and local self-government budgetary institutions - in the public authorities.

Section I: HR Management Policies

Phase I: Legislative and Political Framework

The Parliament of Georgia has adopted the current Law "on Civil Service" in October 1997, which has been amended over a hundred times since its adoption. Implemented legislative amendments had a largely non-systemic nature, and therefore this law fails to advance legal regulations required for fostering a strong body of civil service free from party influence. This naturally sets forth the necessity of civil service reform.

The Georgia-EU Association Agenda², based on the Association Agreement between Georgia and the EU in June 2014, is a time plan of events to be implemented by various agencies in 2014-2016 to achieve political association and economic integration with the EU. This agenda has led to the urgency of the reforms within the civil service.

Alongside other reforms, the Association Agenda envisages the development of concepts for civil service reform, new laws regulating civil service, and the transparent system of remuneration/evaluation.³

Civil Service Reform Concept was approved under the 19 November 2014 Resolution N627 of the Government. To support implementation of the Concept, the 12 February 2015 Decree N198 of the Government approved the Action Plan of events to be implemented in 2015 by the Legal Entity of Public Law (hereinafter "LEPL") the *Civil Service Bureau*, while the new Law "on Civil Service" was adopted on 11 November 2015, which will enter in force fully from 1 January 2017.

This sub-chapter of the report analyzes sections of legislation regulating civil service that are essential for determining HR policies in state agencies. Our opinions cover the current as well as new Law "on Civil Service", which will be enacted from 2017. Key emphasis is made on comparing the new and current regulations. This reports also provides our organization's assessments on issues we consider to be vital.

1. State Service and Civil Service

Current Regulation

Pursuant to Articles 5-8 of the current Law "on Civil Service", individuals employed in state service are divided into following categories:

- **State-political official** - office, which is political, and the election/appointment procedure of which is defined by the Constitution of Georgia, and Constitutions of the Abkhazian and Adjarian Autonomous Republics;
- **Servant** - individual, who is appointed or elected to a full-time position of a treasury institution (state or local self-government);
- **Support personnel**- technical employee, who is recruited to a support staff position included in an institution's regular office staff based on a labor contract;
- **Freelance servants** - individual, who is recruited for a certain period by appointment or based on a labor contract to perform temporary tasks.

New Regulation

The new Law delineates the notions of a) *state service* and b) *civil service*. According to Article 3:

² Georgia-EU Association Agenda: <http://goo.gl/nroUoD>

³ *Ibid.*

- **State service** implies activities related to the exercise of legislative, executive and judicial authority, as well as state supervision and control, when the legal status and authority of an elected/appointed official is defined by a respective legislative act. Hence, a political official, e.g. minister is considered to be a state servant and his/her rights and obligations are defined by relevant legislation and not the Law "on Civil Service".
- **Civil service** implies activities related to the exercise of public legal authority (governing functions). Civil service comprises also activities in administrations of bodies exercising legislative, executive and judicial authority or supervision and control. The new Law also recognizes as civil service the activities in the bodies of local self-government institutions and of LEPLs, which are related to the exercise of governing functions (except for cultural, educational-scientific, religious and membership-based Legal Entities of Public Law).

Civil servants, by itself, are divided into: a) *professional civil servants*, and individuals employed in civil service based on b) *administrative contract* and c) *labor contract*.

- **Professional civil servant** is appointed to a servant's regular office staff position of civil service for unlimited period of time, and exercises public-legal powers as his/her major professional activity;
- **Individual employed based on a labor contract** is granted the power to perform supplementary or temporary tasks of a public institution based on a labor contract;
- **Individual employed based on an administrative contract** performs public-legal powers that assist a political official in discharging powers through provision of field/sectorial advice and intellectual-technical assistance, and performance of organizational-managerial functions.

2. Appointment on a Position and the Career

2.1. Position Ranks and Classes

Current Regulation

Current legislation ranks the positions in civil service as follows:

- Major public position;
- Leading public position;
- Senior public position;
- Junior public position.

A concrete list of public positions by ranks is defined by the registry of civil service positions, which is approved by the Government of Georgia.

Moreover, the current Law provides class ranks, which denotes the consistence of a servant's professional level and skills with qualification requirements for a specific position. The Law defines four class ranks:

- For a major public position – actual state advisor, first class state advisor, state advisor.
- For a leading public position – first, second, third class advisor.
- For a senior public position – first, second, third class advisor of a civil service.
- For a junior public position – first, second, third class assistant of a civil service.

A class rank is awarded or taken away based on a servant's certification results. A servant, who is awarded a class rank, will be given a job salary supplement. When transferring to another position (institution), a servant's class rank supplement is preserved, while in case of resignation from position, the class rank referring to "resigned" is maintained.

New Regulation

Under the new Law, a servant's position is assigned to the following hierarchy ranks:

- First rank - high administration level;
- Second rank - middle administration level;
- Third rank - senior specialist level;
- Fourth rank - junior specialist level.

Positions are assigned to ranks by taking into account the degree of responsibility, difficulty of discharging the duties, competences, required qualification, and work experience. Given these factors, the Government of Georgia will develop a unified rule for assigning servants to position ranks, and will define the hierarchy list of position/career steps assigned to a relevant rank.

Apart from ranks, a class may also be awarded to a servant. However, unlike under the current legislation, a class is awarded based on the evaluation results of performed work and the years of service, while the total number of classes is twelve instead of four. A servant, who is awarded a class, will be given a job salary supplement. In case of transfer to another public institution or another position within the same public institution, a servant's awarded class and class supplement are preserved.

A servant will also preserve his/her awarded class and class supplement in case of a public institution's reorganization, liquidation or merger with another public institution, or relegation to a lower rank due to health condition, while in case of listing in the reserve, an awarded class will be maintained without a class supplement. Procedure and terms for awarding classes will also be defined by the resolution of the Government of Georgia.

The Government resolution will define respective requirements for each rank which will determine relevant knowledge, qualifications and experience. Additional qualification requirements will be introduced by the head of an institution, in light of each position's specifics and job description.

2.2.Appointment on a Position without Competition

Current Regulation

Article 29 of the Law of Georgia "on Civil Service" defines competition as a general rule for appointing an individual to a civil service position. Article 30 of the same Law lists positions which can be filled without competition:

- Servants to be elected or appointed to offices by the President of Georgia, Parliament of Georgia, Speaker of the Parliament of Georgia, and the Prime Minister of Georgia. In addition, servants to be elected by the supreme representative bodies of the Abkhazian and Adjarian Autonomous Republics;
- Minister's deputies, assistants, advisors;
- Individuals appointed for the term of an official's (body's) term of office;
- Temporary replacements on a position;
- Acting officials (not exceeding the term of 3 months) on vacant positions to be occupied through competition. Repeated appointment as an acting official to the same position is prohibited;
- Servants – in case of official promotion;
- Servants – in case of transfer to another structural unit of the same institution, if the same competition requirements were applied for a position occupied by them through competition and a position to be occupied.

New Regulation

Firstly, the notions of temporary replacement are not envisaged in the new Law. Any servant or individual in the reserve may be temporarily assigned to perform functions for a position that is unfilled and that is necessary for the institution's work.

Recruitment without competition is possible only through administrative contracts. Notably, the current Law "on Civil Service" does not envisage the notion of an administrative contract, but the draft Law's approach towards individuals recruited based on an administrative contract is similar to the current Law's approach towards individuals appointed for the term of an official's (body's) term of office.

Our assessment:

Addressing the issue of the malicious practice of temporary replacements is a significant step forward, especially in light of the years of practice it has laid grounds for protectionism in civil service and appointment of servants to positions without due competition.

2.3.Competition for Holding Office

Current Regulation

The Law of Georgia "on Civil Service" regulates the appointment of an individual to position in civil service only through competition, except for exceptional cases. Until 2012, holding a competition for appointment in civil service was an optional procedure and it was up to the head of the state or local self-government institution whether or not to hold it. Holding a competition in civil service became mandatory based on the 29 June 2012 amendments to the Law "on Civil Service", but full enactment of regulations prescribed by the Law was postponed four times⁴, finally entering into force on 31 December 2014.

Remarkably, competitions in central and local authorities have not been held over this period; for instance, out of 6557 civil servants appointed from 20 October 2012 until 1 March 2013, only 257 (4%) were appointed through competition.⁵ Following number of postponements of enactment of statutory wording and amendments made to it, overall the following time-frames have been set:

- For the position referred to in Article 2 of the Law of Georgia "on Conflict of Interests and Corruption in Civil Service", which must be occupied through competition and for which an acting official is appointed, 1 July 2014 was set as a final deadline for appointing a person through competition;
- For the position of a local self-government servant, which must be filled through competition, 31 December 2014 was set as a final deadline for holding a competition;
- For other positions to be filled through competition, for which an acting official is appointed, – individuals must have been appointed through competition before 1 January 2014.

Current procedure for holding a competition in civil service is regulated by the Government resolution "on the Approval of Procedure for Holding the Competition Prescribed by the Law of Georgia "on Civil Service"", which wholly entrusts the competition holding process to an institution, where the vacancy was announced. Namely, the resolution provides the setting up of the Selection-Certification Commission, the chairperson of which is usually the head or deputy head of the same institution. The chairperson singlehandedly determines the Commission's staff and number of members. The resolution sets minimum requirements for staffing the Commission and obligates the

⁴ Transparency International Georgia, *Terms for holding mandatory competitions in local authorities postponed for the fourth time*, 2 October 2014: <http://goo.gl/6OQn7g>

⁵ Transparency International Georgia, *Personnel policy in civil service after the parliamentary elections*, 12 August 2013: <http://goo.gl/16yNho>

chair to ensure participation in the Commission of members of servants' professional unions and independent specialists, but their selection also falls within the individual discretion of the Commission's chairperson.

The aforementioned circumstances create high risks of nepotism and/or protectionism. The resolution also does not provide for mandatory audio-video recording of a competition's interview stage, which would have somewhat mitigated these risks and secured additional evidence in case of court disputes.

New Regulation

The new Law differently regulates recruitment of individuals in civil service through competition. Yet, prior to describing regulations related to the competition directly, it is worth mentioning that the Law introduces mandatory certification of individuals interested in occupying a servant's position in civil service, which is held at least once in six months, and the procedure, standard and topics for holding the competition are determined by the resolution of the Government of Georgia. In case of successful certification, a certificate is awarded, which is a document confirming required general skills and knowledge. It is valid for five years, but the validity is for an unlimited period of time if the person is appointed to a servant's position.

A person is appointed to a servant's vacant position only through competition. However, an open competition is held only for appointments to the fourth (initial) rank positions, while appointments to higher (third, second, first) rank positions are made through internal competition. The current Law is not familiar with the notion of an internal competition; it is announced within the civil service system and implies selection of a candidate from servants employed in civil service, individuals employed based on a labor contract (if employed in the civil service system for at least a year), and persons listed on the servants' reserve.

As an exception, an open competition may be held for a higher ranked position, if:

- An appropriate candidate was not found through internal competition;
- There is a suspicion, that in view of additional qualification requirements set for a relevant vacant post, a candidate will not be identified through an internal competition.

In such case a public institution addresses the Bureau, which assesses the expediency of announcing an open competition by verifying the data in the integrated human resources management online system.

Procedures and terms for announcing an open competition and submitting an application are similar to current legislation. As for the Selection Commission, unlike current regulations, an institution's head cannot chair the Selection Commission. An institution's head appoints the institution's high rank servant as the Commission chair.

It is mandatory that the Selection Commission staff include the representative of a public institution's human resources management unit, representative of a public institution's structural unit, in which the vacancy is available, member of the servants' professional union (if available) and/or invited independent specialist, who is not officially related to a relevant institution and is a field specialist. The Bureau's representative, if assigned by the Bureau Head, has the right to attend the competition.

A contestant is judged by the following stages: written assignment; testing; interview, and the results of the Selection Commission's evaluation will be reflected in the minutes of the Selection Commission session.

2.4. Simplified Competition for Holding Office

Current Regulation

Current Law does not recognize the notion of simplified competition.

New Regulation

The new Law introduces recruitment of an individual in civil service through a simplified competition, which is applied when employing a person based on a labor or administrative contract (only for the managerial positions of LEPL, sub-agency institution, or a territorial body). A simplified competition provides that the vacancy is posted on the Bureau-administrated web page (www.hr.gov.ge) and ten business days are allocated for submission of applications. Once the applications are filtered, decision is made based on interviewing the candidates.

2.5. Human Resources Management Unit

Current Regulation

Current Law is familiar with the notion of the Staff (Cadres) Office, whose functions are more technical by nature. Functions of the Staff Office include: holding a competition and certification for a vacant state position, administration of the servants' personal files, consulting the servants, and organizing the analysis of servants' professional training level and their training (change of qualification) or raising of qualification.

New Regulation

The new Law sets up in all public institutions the Human Resources Management Unit, whose activities are coordinated and methodically assisted by the Bureau. Its functions will include: human resources management, assistance in developing relevant policy, planning, and administration.

2.6. Probation Period

Current Regulation

Under the current Law, a person may be appointed to a position for a probation period for no longer than six months. Consistence of a servant's professional skills, capabilities and personal traits with the position is validated throughout the probation period. In case of unsatisfactory results, a servant may be dismissed from the position during the probation period.

New Regulation

The new Law stipulates that a person is appointed in civil service for a maximum probation period of twelve months. If, before the expiry of a probation period, a person appointed for a probation period is prevented from performing assigned duties due to health conditions, maternity/paternity leave, accident or other objective reason, the public institution's head may decide to extend the probation period term once, for a period no longer than six months. Probation period is included in the employment record.

Throughout the probation period, based on the work evaluation system, the direct manager checks the consistence of professional skills, capabilities, and personal traits of a person recruited for probation period with the occupied position.

Procedure and terms for holding competitions, detailed rule for staffing the Selection Commissions and defining their activities, as well as issues related to a servant's probation period will be governed by the resolution of the Government of Georgia "on the Procedure for Holding a Competition in Civil Service".

Our assessment:

A 6-month probation period set under the current Law is in compliance with the duration of probation period prescribed in the Labor Code.

A 12-month probation period will demotivate qualified staff from being employed in civil service, and increases the risk of abuse of power by superior officials for political purposes. In overall, the requirement for a certificate and the probation period may become an extra hurdle for attracting new cadres in civil service.

2.7. Promotion of a ServantCurrent Regulation

Pursuant to Article 76 of the current Law, the direct manager official can nominate a servant to a higher position if a servant has been recruited in service based on competition and has served on an filled position for at least a year. Certification is mandatory if a position, on which a servant should be appointed by promotion, is subject to competition. If several servants to be promoted are nominated to one position, the servant with the highest certification evaluation results will be appointed.

New Regulation

Under the new Law, a servant is promoted from a lower rank to a higher rank or when moving from a lower position to a higher position of the same rank. A servant is promoted based on an internal competition.

2.8. Giving Incentives to a ServantCurrent Regulation

According to the current Law, the following forms of incentives are in place for exemplary performance of official duties by a servant, long-term and good faith service, and fulfillment of task of particular difficulty or significance:

- a) Note of appreciation;
- b) One-time monetary award;
- c) Valuable gift;
- d) Raising of a remuneration category.

New Regulation

Under the new regulation, incentives are given based on evaluation results of work performed by a servant. The draft Law provides for the forms listed in current legislation, except for raising of a remuneration category. In addition, a bonus is introduced as an incentive form instead of a one-time monetary award, which is a remuneration under current legislation.

2.9. Certification and Evaluation of a Servant

One of the key distinctions between the current and new Laws is that the current Law provides for a servant's certification, and the new Law introduces a servant's evaluation system.

Current Regulation

A servant's certification is the evaluation of consistency of a servant's professional skills, qualification, capabilities and personal traits with the requirements of an filled (or to be filled) position. Certification applies to a servant once in three years, as well as to a candidate of a servant's position, if the position must be filled through competition.

Certification does not apply to servants recruited for a definite period of time, as well as to servants appointed or elected, respectively, by the President of Georgia, Prime Minister of Georgia, Parliament of Georgia or the Speaker of the Parliament of Georgia, and the supreme representative bodies of the Abkhazian and Adjarian Autonomous Republics.

New Regulation

The new Law has rejected certification and introduced the evaluation system. Accordingly, in order to ensure a servant's career development and identify needs for raising professional skills, providing incentives and raising adequate qualification, public institutions have become obligated to evaluate at least once a year servants of all ranks and work performed by them pursuant to the Government of Georgia resolution approving "the Procedure for Evaluation of Work Performed by a Professional Civil Servant". Servants on a probation period are also subject to evaluation of performed work on a quarterly basis.

Evaluation process is carried out with involvement of a servant's direct head, and a four-tier evaluation system will apply:

- Best evaluation of performed work - duties were performed in the best manner and/or more work than expected was performed;
- Good evaluation of performed work - duties were performed well;
- Satisfactory evaluation of performed work - duties were performed well partially, improvement required;
- Non-satisfactory evaluation of performed work - failure to perform duties.

A servant's performed work is evaluated in writing as well as by interviewing. Refusal by a servant to be evaluated for the performed work is considered a gross disciplinary misdemeanor. A public institution is obligated to submit with the Bureau evaluation report of work performed by servants.

2.10. Professional Development of a Servant

Current Regulation

Current Law grants to state servants once in five years a training leave for up to three months, aimed at raising qualification, by preserving remuneration.

New Regulation

Under the new Law, a public institution ensures a servant's participation in mandatory professional development programs in view of a public institution's objectives, and supports his/her participation in professional development programs outside the civil service system.

A public institution determines the need for professional development in the beginning of each year, based on the professional development standard approved by the Government of Georgia, as a result of analysis of an institution's needs and evaluation of work performed by servants.

In addition, a servant is entitled to identify on his/her own the need for training programs required for his/her professional development, and to request leave for training in agreement with the institution.

If the duration of a professional development program exceeds three months and is funded by a public institution based on a contract executed between a servant and a public institution, a servant

is prohibited from self-dismissal from civil service during one year from completion of this program, except when a servant reimburses the public institution the expenses incurred for the professional development training.

2.11. Remuneration

Current Regulation

According to Article 37.1 of the current Law on Civil service, a servant's remuneration (salary) includes the position wage, bonus, and additional pays prescribed by law.

15 July 2014 Resolution N449 of the Government of Georgia has approved the procedure for determining amount of bonuses in public institutions, which has defined the amount of bonuses to be issued to individuals employed in a public institution, and the rules and conditions for issuing.

This Resolution has set a limit on the amount of a single bonus issued to a person, as well as limitations on the periodicity of issuing a bonus. Moreover, persons authorized to issue a bonus were defined, and the goals and grounds of issuing a bonus have been elaborated.

The Resolution does not affect additional pays, the issuing of which is at the discretion of the head of the state institution.

New Regulation

Under the new Law, a servant's remuneration includes a position wage and additional pay, while the bonus is no longer a part of remuneration and instead is one of the forms of incentives.

The Law of Georgia "on Remuneration in Public Institution" will define the number of individuals employed in a public institution based on a labor and administrative contracts and the maximum amount of their remuneration, range of official wages of a municipality's Local Governor/Mayor and his/her Deputy, lower and upper thresholds of official wages of the Local Council Chair and other Local Council officials. As for the amount of position wages in the hierarchical ranks of servants, it will be defined by the Government of Georgia resolution, within the framework established by the above-mentioned Law.

Additional pay is given to a servant in view of his/her class, as well as in accordance with overtime work performed at the request of an official, in line with particularly responsible excess of work, assigning of additional responsibilities, including working overnight hours, weekends and in grave working conditions. The Law of Georgia "on Remuneration in Public Institution" will define the overall volume of additional pay.

As for the bonus, as noted above it is no longer a part of remuneration, but is applied as a form of incentive and depends the evaluation results of work performed by a servant.

3. Dismissal from Service

Current Regulation

Current Law stipulates the following grounds for termination of employment:

- At one's own initiative;
- Expiry of a contractual term;
- Abolishment of an institution;
- Reorganization if resulting in staff reduction (certification results will matter);
- Reduction in positions of an institution's regular office staff or reinstatement in service of unlawfully dismissed servant;
- Non-satisfactory results during the probation period;

- Certification results;
- Lack of a document required for holding a particular position;
- Non-satisfactory command of a state language and failure to have normal relations;
- When a servant's health condition hinders a possibility to duly discharge official duties;
- Non-satisfactory professional skills;
- Confirmation of use of substances included in the I and II Lists of substances subject to special control in Georgia, as a result of periodic, random selection principle inspection for identifying use of substances subject to special control in Georgia, except for the use by servants of these substances for medical treatment purposes;
- Existing disciplinary misdemeanor;
- Breach of official duties, if any other measure of disciplinary liability is already in force against him/her;
- Gross violation of official duties;
- Failure to appear at work due to illness or mutilation for consecutive four months or six months during a calendar year (in such case a servant may be dismissed from service only during the validity of certificate of temporary incapacity to work);
- Entry into force of a guilty court verdict, pursuant to which s/he has been sentenced for committing a deliberate crime, or which sentence rules out continuation of service;
- Violation of legislative requirements when electing or appointing a servant to office;
- If a servant is elected or appointed to a position in other institution, except when s/he is elected or appointed as a member of managerial and supervisory body of an enterprise with state participation;
- Change of citizenship or death.

A servant must be notified one month in advance about termination of employment due to the institution's abolishment, staff reduction, or non-satisfactory results of certification. In case of dismissal due to long-term incapacity to work, a servant must be notified in writing at least two weeks prior to dismissal.

New Regulation

The new Law includes similar grounds for dismissal, yet it also introduces certain novelties. For instance, a person will not be dismissed from service in case of reinstatement in service of unlawfully dismissed servant. As for dismissal from service based on a servant's personal application, in such case a relevant act is issued after the expiry of fourteen business days from registration of the application, and during this period a servant is entitled to request to leave his/her application without consideration.

Given that the new Law has rejected certification and introduced the evaluation system, a new ground for dismissal from service has emerged. Namely, a servant will be dismissed from a position, if work performed by him/her is consecutively evaluated as non-satisfactory twice, while two non-satisfactory evaluations during a probation period are sufficient for dismissal from service, whether such evaluations are consecutive or not.

Issues related to termination of an administrative contract are worth mentioning as well. A contract is terminated:

- During expiration of an administrative contract, if executed for a certain period of time;
- During termination of powers of an official authorized to execute an administrative contract or to nominate a candidate;
- In case parties agree in writing;
- Based on a justified individual decision by an authorized official.

In this case it is mandatory to warn a person one month in advance by sending a preliminary justified written notification.

Phase II: Implementation of Legislation and Policy

Developing good legislation and policies is only a part of obligations of state institutions. Usually, implementation of adopted regulations and policies is not less important. The Georgian civil service has always faced the problem of due enforcement of the law, as a result of which many unlawful and unjust actions had taken place during all of the governments. The public has always had concerns over this issue. This sub-chapter of the report addresses the implementation of legislation and policies in civil service over the last few years. Because the new Law has not fully gone into force, the assessment of its enforcement is naturally yet to take place in the future.

1. Appointment on a Position and the Career

1.1. Advantages of an Acting Official

Problems related to the current procedure for staffing the Selection-Certification Commission that were described in the overview of Phase I cause special concerns when advantage is given to acting officials during the competition. This was reported by contestants who have approached us for legal assistance, believing that winners were identified beforehand, during the competition. Same trend was identified from information received through our online questionnaire, which invited everyone to submit information on alleged unfair competitions.

For this very reason we decided to continue our study in this area and to carry out quantitative and in some cases qualitative analysis of competitions held in the central authorities since March 2013. Given that after the 2012 parliamentary elections only a small portion of new employees has gone through the competition,⁶ we assumed that in many agencies these acting officials would have been easily appointed through competition as well. This by itself would have reinforced the opinion of certain public groups that competitions in civil service are held mostly formally and getting a job there without patronage is difficult. Situation became even more alarming when the 1st of January 2014 was set as a deadline for holding a competition for civil servants of central authorities,⁷ meaning that competitions must have been held for all acting official positions before January 1st.

To verify the hypothesis, we have requested public information from almost all central authorities about competitions that took place from 1 March 2013 till 1 January 2014. We were interested in the number of positions occupied by acting officials in specific agencies, and how many of them had kept the post after the competition.

Processing of requested information has revealed that during the reporting period, in 24 public institutions, 1592 positions to be filled with competition were occupied by acting officials. Out of these 1592 acting officials, 1376 have won competition announced for this position, which means that 86.5% of acting officials participating in the competition have kept positions as a result of competition. This indicator is very high given that on average 62 candidates had submitted applications for each vacancy announced on www.hr.gov.ge over this period, while in case of certain positions in some ministries the number of applicants reached several hundreds.⁸

Obviously, only statistical data is not sufficient to claim that competitions in these agencies were held only formally or unfairly. Yet, the high percentage indeed makes one draw certain conclusions.

⁶ From 20 October 2012 until 1 March 2013, 4483 servants were appointed in the central authorities, and only 230 (5%) of these through competition.

⁷ Positions stipulated in Article 2 of the Law of Georgia "on Conflict of Interests and Corruption in Civil Service" are not implied.

⁸ For details see the report "Outcomes of Competitions for Civil Service Positions Held by the Central Government Institutions", 2014, <http://goo.gl/6OmvkC>

1.2. Competitions and Certification in the Local Self-Government Municipalities

Testing Stage

According to the 2 October 2014 amendment to the Law "on Civil Service", following the fourth postponement, 31st of December 2014 was set as deadline for holding a competition in the local self-government municipalities.

Pursuant to the Law, a competition/certification in civil service may include the following stages: a) selection of applications; b) written assignment; c) testing; d) interview. The Selection-Certification Commission set up in a respective institution decides which of the listed methods to hold the competition with. However, by the 26 July 2014 amendments, the Parliament declared testing as a mandatory stage of competitions held in the local authorities until 1 July 2015.⁹ The same amendments stipulated that unlike other stages of a competition, testing should not have been carried out by the Selection-Certification Commission set up in the municipality, and instructed the Government to determine until 15 September 2014 the institution that would carry out testing across Georgia.

Declaring the testing stage as mandatory and depriving the Selection-Certification Commissions the right to hold it was undoubtedly a progressive step in terms of transparency of competitions and increased impartiality in civil service. As illustrated later, this step has somewhat increased trust in the process. Actually, the applicants have not advanced claims against the testing results.

On September 5 the Government has adopted the resolution within time-frame set by law,¹⁰ through which it granted the authority to carry out testing to two Legal Entities of Public Law - the *National Assessment and Examinations Center* and the *Training Center of Justice of Georgia*. Local self-government municipalities were authorized to decide services of which of these two to use.

The country's largest local municipality, the Tbilisi City Hall has initially opted for the National Examinations Center, when by the Mayor's October 2 Order it determined procedures for holding certification of civil servants and the agency providing testing services. However, later, it entrusted the Training Center of Justice to carry out certification for competitions announced in December 2014 and June 2015. The Training Center of Justice has rendered same services in 2014 to total of 30 local municipalities, while others had opted for the National Assessment and Examinations Center.

Remarkably, above-mentioned Legal Entities of Public Law were covering only a technical aspect of holding the testing, while the Civil Service Bureau fully determined the procedural and content aspect of the testing stage.¹¹

Reasonable complaints towards organization of the testing stage were not reported, and both LEPLs have duly coped with assigned tasks, which is clearly a progressive step compared to the old practice. The fact that institutions distanced from ongoing processes in self-governments were carrying out testing has played a crucial role in this, which cannot be said of the post-competition stage - the interview.

Interviewing Stage. Problems of Comprehensive Monitoring

Under the Government Resolution, unlike testing, interviews are carried out by the Selection-Certification Commissions set up in the municipalities. Pursuant to the Procedure for Staffing Selection-Certification Commissions, the Deputy of Municipality's Mayor/Local Governor is usually

⁹ The 24 June 2015 amendment to the Law "on Civil Service" has extended the deadline until 1 July 2016.

¹⁰ 5 September 2014 Decree N1536 of the Government of Georgia "on the Interim Procedure for Holding a Competition for Appointing Individuals to Local Self-Government Servant Positions and Mandatory Stage of Certification of Local Self-Government Servants - Testing", <https://matsne.gov.ge/ka/document/view/2508690>

¹¹ 10 September 2014 Order #73/sa of the Head of the Civil Service Bureau.

appointed as the Commission Chair, who in fact staffs the Commission at his/her own discretion. We have discussed the risks of Commissions staffed pursuant to the current procedure in more detail above, and these risks are even higher in case of local municipalities (less public control, relatively lower salaries, less competition). Besides, the nature of this stage of competition aggravates the problem further, because full elimination of a bias element from interviewing is in fact impossible. Given this, the Law does not obligate the Commissions to have audio-video recordings of interviews and the Commission set up in each municipality decides individually on recording the interviews.

Once the certification of servants of the Tbilisi City Hall was scheduled on 2 October 2014, Transparency International Georgia, together with the International Society for Fair Elections and Democracy (ISFED) and the Georgian Young Lawyers' Association (GYLA) approached the City Hall with an application, requesting permission to observe the interviewing stage of certification. The City Hall allowed only limited observation; in particular, only one member assigned by three organizations could observe at each Commission¹² and only during the interview part, while the organizations' representative could not have attended the decision-making part. As illustrated later, this means of observation failed to fully evaluate the process, because the most important decisions are made at the interviews evaluation stage. Besides, the sitting of the Selection-Certification Commission, as a collective body, is public and anyone is entitled to attend it.

Notwithstanding extremely limited powers, our organization's representative observed the work of one of the Certification Commissions in the City Hall (as noted, each organization was admitted only to one Commission). The interviewing process itself unfolded without violations, save for irregular working hours. Yet, as expected, understanding a comprehensive picture from observing in these conditions proved to be impossible.

Various municipalities came up with different approaches to allowing the observers to interviews. For instance, in the Kutaisi City Hall the applicant had the right to allow or deny the observer to attend, while the Ozurgeti Municipality refused to allow the observers by referring to protection of the applicants' personal data.

Report by NGO CiDA is rather important,¹³ because the organization's Executive Director Zviad Devdariani personally participated in the Commission's work as the member of the Tbilisi City Hall's Selection-Certification Commission. Accordingly, he was able to observe the entire process of certification and later the competitions. According to the CiDA report:

- "Although it is important that the Office Heads attend the interviews, their majority membership in the Commissions raises subjectivity risks. In fact, only the Commission's Office Heads could check the applicants' specialized knowledge. It is important that special knowledge is checked also by externally invited Commission members from different sectors;
- There was no possibility to get familiar with information on candidates (e.g. CV) in advance and in fact, 15-minute communication with a candidate was the only opportunity to have an impression of him/her;
- Although examinations in the Commission were open and impartial, it was impossible to monitor how these attitudes were translated in points written by the Commission members and individual protocols, as well as if the candidates were selected based on final average points derived from these protocols. Without immediately drawing out the final summary protocols, it was still technically possible to:
 - Change the number of protocols later and accordingly, to alter positions agreed during the oral discussions;

¹² Three Certification Commissions were set up for the Tbilisi City Hall's civil servants, working in parallel.

¹³ NGO CiDA, *On Selection-Certification Processes in Local Authorities*, 10 March 2015: <http://goo.gl/l6LJcF>.

- Send to and agree "preliminary lists" with other agencies, and to make final decisions later in the City Hall in line with positive or negative feedbacks received from them;
- Despite possible winners on this or that position, to disrupt competitions and announce them anew and/or to appoint acting officials. Unfortunately, until now even the Commission member is unable to compare the base of the Commission members' points (protocols or in another form) with final decisions;
- Taking into account the certification point in the final average point written after the oral interview. Otherwise it is unclear why the written results are used as threshold for passing only the first stage (in this case, what is the need for a different point derived from writing, only the evaluation - Passed or Failed to Pass - may exist);
- Irrespective of dissenting opinions on this topic, possibility of video recording of interviews must be discussed definitely, so that in case the applicant disputes the decision, there is a clear evidence demonstrating the extent of this or that decision's fairness."

ISFED, which observed the certification-competition process across Georgia, also reported on their inability to carry out comprehensive observation: "Observation results demonstrate that mixed approaches in self-governing units and flaws of the certification-competition procedures had a negative impact on the process. Public concerns over system of selection-certification are indicative of the problems that exist in the system, which are yet to be addressed. Hence, it is impossible to comprehensively evaluate the extent of fairness and transparency of the certification-competition process, and if the Commission's final decisions are objective for that matter".¹⁴

Notably, the Tbilisi City Hall continued pursuing the existing malpractice and denied ISFED the ability to observe interviews in July 2015, offering it membership in the Commission, which was unacceptable to the organization due to contradiction with its observer activities.¹⁵

The GYLA came to a similar conclusion: The Commissions' decision to close for NGO representatives the decision-making process following the interviews deprives us the possibility to answer the key question: how objective, fair and impartial the Commission was when making decisions for each participant?".¹⁶

Conclusions and reports by the above organizations support the opinion that certification-selection processes lacked due publicity and often disproportionate limitations were imposed on organizations interested in observing. This has, first of all, undermined trust in the process itself.

Problems are also attested by the fact that only in 2015, **cases of 30 applicants and certification participants were admitted into proceedings by various instance courts with legal representation by Transparency International Georgia, from which cases 16 were successful and the remaining 14 are pending.**

2. Dismissal from Service

Under current legislation, the Law "on Civil Service" and the "Labor Code" regulate the dismissal of a person from civil service. The application of a specific normative act in case of a concrete employee depends on whether a person is a regular office staff (servant) or an assisting employee, or a non-staff employee. Both laws imperatively set procedures and preconditions that are required for the dismissal of a civil servant to be qualified as legal.

¹⁴ ISFED, *ISFED Comments on CIDA's Statement*, 10 March 2015: <http://www.isfed.ge/main/864/eng/>

¹⁵ ISFED, *Tbilisi City Hall Restricts ISFED's Ability to Observe Competitions*, 10 July 2015: <http://www.isfed.ge/main/921/eng/>

¹⁶ Georgian Young Lawyers' Association, *GYLA Carries Out Initial Assessment of Interviews Held in the Local Self-Government Authorities*, 2 February 2015: <https://goo.gl/5bfDgT>

Since 2012 Transparency International Georgia has been providing free legal aid to dismissed civil servants. Over this period, the organization's lawyers have won over 80 disputes in various instance courts, following which the court has found up to 50 individuals illegally dismissed and reinstated them into their jobs.¹⁷

Staffing changes launched in civil service following the 2012 parliamentary elections drew public attention and to date remain a relevant topic for discussion. According to our study conducted in March 2013,¹⁸ 6 months following the parliamentary elections, over 5 thousand servants were dismissed from the central and local authorities, 2 300 (45%) of them – based on their own applications. This raised reasonable doubts that civil servants mostly did not leave service out of their own volition.

Although in March 2013 the Parliament has adopted the law that aggravated punishment for coercing an individual to write an application on self-resignation, this malicious tradition persisted even after the 2014 local elections. For instance, according to the ISFED, after the local elections, from 1 August 2014 through 7 September 155 servants were dismissed from the Tbilisi City Hall, and 115 from these – based on personal applications.¹⁹ NGOs have condemned these facts of potentially political dismissals and urged relevant authorities to react to them.²⁰

In its decision about illegal dismissal of employee from the Kareli Local Administration, the Supreme Court has also referred to problems of HR policy in civil service:

"In Georgia, changes in a public institution's administration are accompanied by a mass will of the institution's civil servants to be dismissed". The Court found that "examination of practices in civil service illustrates that nepotism and abuse of positions for narrow party and corruption purposes are still not overcome in Georgia".²¹

Legislative initiative²² submitted to the Parliament by Transparency International Georgia aimed to develop an effective mechanism against nepotism, which stipulated the addition of an article on nepotism to the Criminal Code and specifying the elements of the crime. We find this is expedient given the urgency of the problem. Unfortunately, the Parliament found that the current text of the Criminal Code sufficiently addresses the fight against nepotism and thus failed to support our initiative. Transparency International Georgia intends to vigorously advocate amendments required for prevention of nepotism in the future.

Section I Conclusions and Recommendations

Adoption of the new Law "on Civil Service" must be treated overall as a positive event in terms of regulation of HR policies. Transformation of the malicious institute of acting officials and introduction of a servant's annual evaluation and certification systems are worth of particular mention.

Along with positive aspects, new regulations create certain problems. Namely, worth mentioning is the increase of probation period's upper threshold from the existing 6 months to 12 months. A 12-month probation period will demotivate qualified staff from being employed in civil service, and increases the risk of abuse of power by superior officials for political purposes. In overall, the need

¹⁷ Transparency International Georgia, *Illegal Dismissals in Civil Service: Rights Restored through Courts*, 27 July 2015: <http://goo.gl/D6VI5c>

¹⁸ Transparency International Georgia, *Staffing Changes in Civil Service after the 2012 Parliamentary Elections*, 12 August 2013: <http://goo.gl/5WwFSs>

¹⁹ ISFED, *Employment of 155 People Terminated in Tbilisi City Hall over the period of one Month*, 24 September 2014: <http://www.isfed.ge/main/761/eng/>

²⁰ Transparency International Georgia, ISFED, GYLA, *CSOs Condemn the Dismissals of Civil Servants from Tbilisi City Hall allegedly on Political Grounds*, 12 September 2014: <http://goo.gl/Nn2F4v>

²¹ Decision of the Supreme Court of Georgia, *Nino Maisuradze vs. Kareli Municipality Local Administration*, 18 February 2014: <https://gyla.ge/uploads/.PDF>

²² Transparency International Georgia, *TI Georgia Proposes Criminalization of Nepotism in Civil Service*: <http://goo.gl/sboSpz>

for a certificate and the probation period may become an extra hurdle for attracting new cadres in civil service.

As for implementation of HR policy in practice, numerous organizations and interested parties in recent years have reported serious problems. The adoption of the new Law on Civil Service will not be sufficient to address these issues. Particularly flawed over the past couple of years was the functioning of the Selection-Certification Commissions, which enjoyed quite large statutory discretion but which was often abused. Problems persisted also in terms of transparency of selection and certification process and securing external scrutiny. Many local self-government authorities have denied interested parties the right or considerably restricted their possibility to observe the process. Serious gaps were identified also in respect of the commissions' decision-making.

To mitigate problems prevailing in terms of legislation and its implementation, we find it expedient to take into account the following recommendations:

- Probation period's upper threshold should be reduced from 12 months back to 6 months;
- To secure more transparency of a competition process, the Government Resolution "on Holding a Competition in Civil Service" must include clear wording ensuring high publicity standards in the Selection Commissions;
- More efficient measures must be taken to combat nepotism in civil service, and in particular, the issue of nepotism must be clearly identified and criminalized in legislation.

Section II: Transparency of Asset Declarations of Civil Servants

Phase I: Legislative and Political Framework

Financial declaration system was first set up in Georgia in 1998, but the whole system operated through paperwork: civil servants were filling asset declarations by hand and were sending them to relevant government agencies. Later, in 2010, the Civil Service Bureau, which is responsible for collecting asset declarations, has put into operation the new online database - www.declaration.gov.ge, where all property declarations from 1998 until 2010 are publically available. Furthermore, high-ranking officials can submit annual asset declarations through this site, which are then automatically published online. Currently, approximately 3000 civil servants representing various branches of government are required to publicize their asset declarations. Asset declaration system is a crucial part of the country's anti-corruption tools. The UN Convention against Corruption also advocates introduction of similar mechanisms of control and prevention in civil service.²³

1. Current Regulations

Legal foundations and key regulations of declaring property status are prescribed by the Law "on the Conflict of Interests and Corruption in Civil Service", while the Government Resolution "on the Approval of Procedure for Submission of Property Declarations by Officials and the Registry of Officials, Who are Required to Submit Property Declarations" exhaustively lists the officials obligated to submit declarations.

The legislation defines an asset declaration as a form of declaring a civil servant's economic interests, a document in the form established by law, which includes exhaustive information on his/her and his/her family members' property status, incomes, and other economic interests. The declaration primarily aims to identify hidden incomes received by civil servants from illegal sources, and to spot potential conflict of interests between a civil servant's financial activities and his/her public duties.

The system in general is positively evaluated due to its transparency and efficiency. Nevertheless, it has gaps, particularly important of which is to have a monitoring and verification mechanism for securing accuracy of submitted information, without which the entire property status declaration system resembles archive storage, instead of an effective tool for corruption prevention.

1.1. Scope of Application of Procedure for Submitting the Officials' Asset Declarations

A full list of officials required to submit asset declarations is provided in the Law "on the Conflict of Interests and Corruption in Civil Service" and Government of Georgia Resolution "on the Approval of Procedure for Submission of Property Declarations by Officials and the Registry of Officials, Who are Required to Submit Property Declarations". Pursuant to the Law, the President, Prime Minister, Ministers, Deputy Ministers, Department Heads, Members of Parliament, judges, prosecutors, mayors, governors, municipality heads, some members of the Local Council, leaders of all state institutions (National Bank of Georgia, Public Defender's administration, Georgian National Communications Commission), and heads of Legal Entities of Public Law and the state-owned companies are required to submit annual asset declarations.

²³ Pursuant to UNCAC, Article 8, Paragraph 5: "Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials."

Furthermore, the Law includes a concrete list of civil servants' family members, to whom the Law applies to: a civil servant's spouse, minor child, step-child, and a person residing with an official permanently. Financial information on these persons is included in the asset declaration.

1.2. Type of Information Declared

Given the dual objective set before the asset declaration system in Georgia, information disclosed by civil servants is important for identifying a civil servant's potential conflict of interests as well as for controlling his/her incomes and property. An official is obligated to disclose the following information on himself/herself and his/her family members:

- Real property in the ownership of an official or his/her family members;
- Movable property in the ownership of an official or his/her family members (except for cash, securities, bank deposits, etc.), value of which exceeds 10 000 GEL, and cash in the excess of 4 000 GEL;
- Securities and bank accounts in the banks of Georgia and other countries;
- Information on any entrepreneurial activity or performance of remunerated work by an official or his/her family member in Georgia or other countries;
- Information on any agreement concluded by an official in Georgia or other country from the reporting period onwards, subject value of which exceeds 3 000 GEL;
- Any gift received by an official during the reporting period, value of which exceeds 500 GEL;
- Any income or expense of an official exceeding 1500 GEL, and which is not already reported in other part of the declaration.

All issues apply to officials as well as their family members. Information provided in the declaration is qualitative and quantitative. Specifics and value of a civil servant's assets and incomes generated by him/her are publicized. Position and functions of a civil servant do not have impact on the volume of information to be submitted in the declaration. Everyone is obligated to answer the same questions irrespective of risks of conflict of interests and abuse of power associated with particular individuals.

1.3. Data Collection Terms and Method

The Law "on the Conflict of Interests and Corruption in Civil Service" obligates an official to submit a asset declaration within two months from filling the position. MP nominee is also obligated to submit a simplified asset declaration to the Election Commission within seven days from registration as the MP nominee. In addition, while in service, an official is obligated to fill in and submit a asset declaration on an annual basis, within one week from the expiry of one year from submitting a previous declaration. Finally, an official is obligated to file an asset declaration within two months from leaving the position.

Declarations are submitted online through www.declaration.gov.ge, which is administered by the Civil Service Bureau. The Bureau notifies an official by post, e-mail and a cell phone message about the approaching date for submitting the declaration. A hot line and an "online chat" are available on the web site, through which an official can receive additional information on filing out the declaration, as well as answers to any other questions.

1.4. Monitoring of Compliance with Asset Declaration Requirements, Sanctions and Verification of Information in the Declarations

According to the law, the Civil Service Bureau shall fine an official in the amount of 1 000 GEL for a failure to submit asset declaration within a deadline, or for a late submission. Payment of a fine does not exempt an official from the obligation to submit a asset declaration, while a failure to submit an asset declaration within 2 weeks from imposing a fine shall result in the official's penal liability. Pursuant to Article 355 of the Criminal Code of Georgia, failure to submit an asset

declaration after the imposition of administrative sanction for such action, or intentionally submitting incomplete or inaccurate data in the declaration shall be punishable by a fine, corrective labor, or deprivation of the right to hold office for up to three years.

1.5. Public Access to Information

All property declarations are freely available online at www.declaration.gov.ge. The site includes the archive of declarations dated from 1999. Yet, asset declarations of some representatives of the authorities are not always available: these include security officers assigned by the Ministry of Interior of Georgia in other institutions to control the activities of these institutions. Transparency International Georgia has numerously criticized this illegal practice of encroaching upon independence of the state institutions.

1.6. Gaps of the Asset Publicity System

Apart from the absence of verification mechanism, we would like to focus on few additional gaps of the property declaration mechanism:

- The law does not obligate all members of the Local Council to submit asset declarations, while the latter may be involved in the potential conflict of interests without public awareness of it;
- Obligation to submit an asset declaration doesn't apply to a Minister's Advisor. Legislation of Georgia does not clearly regulate the role and functions of a Minister's Advisor. However, in several countries, e.g. Great Britain, Ireland and Latvia, current systems of asset declaration equally obligate advisors to disclose their interests.²⁴
- Although the law specifies that the requirement to publicize financial information applies to an official's spouse, minor child and persons residing with him/her permanently, this requirement of the law fails to reach an official's family members (parents, siblings and financially independent children not residing with an official), who may be receiving funds generated from an official's illicit activities, or who may be themselves pursuing activities giving rise to potential conflict of interests with an official's duties;
- An official is obligated to submit an asset declaration within one week from the expiry of one year from submitting a previous declaration. Officials submitting the first asset declaration during the last week of any year (from December 24 until 31) may legally avoid disclosing the financial information of the next year. For instance, the Minister of Education Tamar Sanikidze submitted the asset declaration on 28 December 2012. This declaration describes incomes received in 2011. Tamar Sanikidze has submitted the next, i.e. second declaration on 3 January 2014, in full compliance with the law. Information included in the second declaration describes incomes received in 2013. Thus, she has avoided disclosing the financial information of 2012;²⁵
- An official is obligated to file a property declaration within two months from leaving the position. This is not an effective means for avoiding the "revolving door" cases;
- Declarations do not include sufficient details. Although disclosed information is rather broad, declarations lack details. For example, in case of participation of an official or his/her family members in entrepreneurial activities, declaration does not include identification codes of enterprises or companies that an official or his/her family member is associated with;
- As already noted, absence of a verification method is the biggest flaw of the asset declaration system in Georgia.

2. New Regulations

Pursuant to the 27 October 2015 amendments to the Law "on Conflict of Interests and Corruption in Civil Service", since 2017 the Civil Service Bureau shall start monitoring the property declarations of

²⁴ OECD, *Asset Declarations for Public Officials*, pg. 53: <http://goo.gl/DTu1pL>

²⁵ IDFI, Levan Avalishvili, *Property Declaration System in Georgia*: <https://goo.gl/qYYzLE>

public officials, following which it shall make a decision on giving a positive or negative evaluation to submitted declarations.. This amendment is a key progressive step, because the absence of monitoring of submitted declarations considerably undermined the main objective of this system.

According to another positive amendment, a civil servant will be obligated to submit a declaration after one year from dismissal. Further, a civil servant becomes obligated to submit any next declaration in the same month of the following year, in which s/he had submitted a declaration in a previous year (Article 15.d of the Law), thus eliminating the problem of undeclared years (this problem was discussed in detail above). Introduction of the notion of indirect participation in an enterprise's activities is a progressive step as well.

Phase II: Implementation of Legislation and Policy

Remarkably, law-enforcement agencies turn a blind eye even to gross violations identified in asset declarations by civil society organizations.²⁶

As noted above, over 3000 officials are required to submit annual asset declarations in Georgia, which include information on an official's and his/her family members' property, shares in businesses, bank accounts, etc.

It was noted also that current legislation does not prescribe obligation to verify the content of public officials' declarations. This control is fully entrusted with volunteers interested in the topic. The Civil Service Bureau controls only timely submission of declarations. In 2010-2012 the Civil Service Bureau has not fined a single official for a failure to submit an asset declaration or for late submission. In 2013, 23 officials were fined for this reason. In 2014, the number of fined civil servants reduced to 10. Through period until 8 June 2015, 12 civil servants were fined for violation of deadlines. So far not a single official has been prosecuted for a failure to submit a asset declaration.

Transparency International Georgia periodically probed into the high officials' declarations and in case of discovering inaccuracies or violations, reported to relevant authorities. Last year Transparency International Georgia compared the property declarations submitted by MPs (declared shares in various companies) with the Public Registry's database of company owners, following which it identified nine cases of an MP reporting an incomplete list of companies in the declaration.²⁷

Section II Conclusions and Recommendations

Many countries do not have an online system of asset declarations, and accordingly even the existence of this institute is a significant achievement. Over years, the absence of state monitoring system of declarations turned to be the most essential gap of this institute. Under the new regulations, from 2017 this function will be vested with the Civil Service Bureau, which should be welcomed.

Nevertheless, there are several issues we believe should be better regulated for this tool to carry a larger burden in the country's anti-corruption policy. More specifically, we find it reasonable to follow the listed recommendations:

- **Correcting the enactment date of the monitoring system** - pursuant to the Law, proposed amendment (and accordingly the monitoring system) will become effective from 1 January

²⁶ Transparency International Georgia, *The Anti-Corruption Agency of MIA Does not Respond Effectively to Alleged Violations in Asset Declarations of Public Servants*, 22 June 2015: <http://goo.gl/6jvqNx>

²⁷ Transparency International Georgia, *Undisclosed Business Activities of Members of Georgian Parliament*, 27 January 2014: <http://goo.gl/UujSrR>

2017. Overall, this decision is justified because the Civil Service Bureau will obviously require a lot of time to develop the monitoring system. On the other hand, it is desirable that a total vacuum existing today in terms of inspection of asset declarations is not maintained until 2017. Hence, it is preferable to discuss a more middle-ground alternative. For instance, it is possible to put into effect the mechanism of inspection by the Civil Service Bureau of an official's asset declaration based on a justified written application much earlier (even from 1 January 2016), and to launch proactive monitoring of declarations by the Bureau from 2017;

- **To expand the list of officials submitting asset declarations and to include in it the Local Council members and Advisors to the Minister and the State Minister** - Local Council members make important decisions and enjoy considerable authority in the municipalities. Yet, unlike other officials, they do not receive remuneration from the state, and therefore they should be obligated to submit declarations in a simplified form - expression of interests - which would aim only at identifying potential conflict of interests. Forcing the Local Council members to regularly submit more improved forms of property declarations may prompt some of them not to get involved in politics whatsoever; moreover, taking into account that there are thousands of Local Council members across the country, such an approach would be a considerable burden on the Civil Service Bureau in terms of logistics. As for the Advisors to a Minister and the State Minister, their role and functions in the law is often vague and inefficiently regulated. To eliminate all doubts arising out of the Advisors' potential conflict of interests and to approximate the Georgian systems of asset declarations with best international practices, it is preferable to also obligate the Advisors to submit declarations in a simplified form, similar to the Local Council members;
- **To expand the list of an official's family members by including in it persons that the property disclosure norms must apply to** - the list of an official's family members affected by the asset declaration requirements currently is rather limited. Given the tradition of large families predominant in Georgia, decisions of an official may be strongly affected by a relative and a family member, who does not necessarily have to live with him/her. Adding to an official's property declaration the interests of his/her parents, siblings, and financially independent children (names of companies and organizations associated with them) will be another robust mechanism against nepotism, favoritism and corruption in the public sector;
- **To indicate in an asset declaration an identification number of a company and a cadaster code of real property associated with an official and his/her family member** - although the Law requires that the declaration includes the name of a company associated with an official and his/her family member, it does not require to indicate an identification number of such company. This complicates the work of NGO representatives monitoring the declarations, because multiple companies are registered under the same name. Inclusion by an official of identification numbers of his/her companies and cadaster codes of his/her real property in the declaration will improve the monitoring process and ensure the accuracy of submitted declarations.