

Administration of Justice and Fair Trial (Prosecution Service)

SUMMARY OF KEY ISSUES FROM PREVIOUS CYCLES

Recommendations from the 2nd cycle were related to strengthening the independence and effectiveness of the Prosecutor's Office (Belgium), ensuring justice that is independent and transparent, and that respects the right to defense (France, United States, Czech Republic), strengthening the independence and impartiality of the judiciary to ensure the right to a fair trial, including by increasing the transparency of appointment of prosecutors (Switzerland). All recommendations related to the administration of justice and a fair trial were supported by Georgia. Although certain measures have been taken to fulfill the above-mentioned recommendations, significant shortcomings and challenges remain in the Prosecution Service, which necessitates further reform.

NATIONAL FRAMEWORK

The Organic Law of Georgia on the Prosecutor's Office determines the authority, structure, and work of the Prosecutor's Office. As a result of the 2017 constitutional amendments (which became effective on December 16, 2018), the Prosecutor's Office of Georgia was separated from the executive power, the Chief Prosecutor's Office was transformed into a General Prosecutor's Office and an independent agency was established. This reform is an important achievement for Georgia, but issues such as the independence, transparency, and impartiality of the Prosecutor's Office are serious challenges. The constitutional amendments granted the Prosecutorial Council the role to ensure independence, transparency, and efficiency of the Prosecution Service, however, without relevant legislative amendments this remains just a formality. Despite the recent reforms, there are remaining challenges in the Prosecution Service that necessitate further efforts.

CHALLENGES

1. Lack of legislative guarantees of independence of the individual prosecutors.
2. Flaws in the legislative framework related to the composition and functions of the Prosecutorial Council.

IMPACTS

1. Individual prosecutors' independence remains a challenge. Prosecutor General's orders are obligatory for all prosecutors. Furthermore, according to the organic law, appointment, promotion, disciplining and dismissal of prosecutors is a competence of the Prosecutor General. Even though the advisory body is formed in relation to the above-mentioned issues, its decisions are not mandatory and the final decision is made by the Prosecutor General. Such a system may concentrate excessive powers in the hands of the Prosecutor General and affect the independence of the individual prosecutors.
2. The composition of the Prosecutorial Council does not ensure its proper independence. The low representation of the civil society in the Council remains a challenge. Functions of the Prosecutorial Council have undergone only one amendment and instead of reviewing a candidate proposed by the Minister of Justice, the Council selects the Prosecutor General based on consultations. Ensuring the independence, transparency, and efficiency of the prosecution will be difficult to achieve with the functions assigned to the Prosecutorial Council by the law.

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CHALLENGES

3. The deficient procedure of selection and promotion of prosecutors.

4. Failure to guarantee the independence of the Prosecutor General.

IMPACTS

3. The Organic Law sets the criteria for the selection and promotion of prosecutors. However, the Prosecutor General has great discretion to appoint a prosecutor without competition. The Organic Law does not require reasoned decisions for the promotion of prosecutors, which constitutes a significant challenge. Herewith, even though the new Organic Law defines the basis for employee rotation in more detail, it does not include full procedural guarantees and criteria regarding an appeal of decisions on the reassignment (even mandatory) of a prosecutor/investigator to a different position.

4. The Organic Law provides general criteria for a candidate for the position of the Prosecutor General. There are no further criteria set forth in the legislation to choose between those candidates who have met the general criteria set forth by the law and are taking part in the competition. Election of the Prosecutor General by the majority of the full composition of the Parliament of Georgia does not guarantee depoliticization of a selection process.

RECOMMENDATIONS

- Minimize the participation of political subjects (e.g. Members of the Parliament, a representative of the Minister of Justice) in the work of Prosecutorial Council;
- Review the composition of the Prosecutorial Council and increase civil participation;
- Broaden the Prosecutorial Council functions to make it able to perform its constitutional role;
- Strengthen the role of the Council for Career Management, Ethics, and Incentives;
- Prescribe by the law detailed promotion criteria for prosecutors and investigators as well as justification for assignment or promotion;
- Enshrine in the law full procedural guarantees and criteria regarding an appeal of decisions on the reassignment (including mandatory) of a prosecutor/investigator to a different position;
- Evaluate additional qualifications for a candidate on the position of the Prosecutor General when interviewing those, who have met formal criteria set by the law and guarantee the depoliticization of a candidate selection;
- Enhance the independence of the lower level prosecutors;
- Implement effective and functional legislative guarantees to ensure prosecutors' neutrality and impartiality while carrying out criminal proceedings.

SOURCES

IDFI, Report for the 3rd Cycle of Universal Periodic Review, available at: <https://bit.ly/3gkDiPS>

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