

THE ANTI-CORRUPTION AGENCY - LEGAL FRAMEWORK AND PRACTICAL SHORTCOMINGS



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TABLE OF CONTENTS

INTRODUCTION	2
RESEARCH METHODOLOGY AND STATISTICS	2
TERMINOLOGY	3
1. ANTI-CORRUPTION INSTITUTIONAL FRAMEWORK IN GEORGIA	4
1.1. HISTORICAL CONTEXT	4
1.2. MANDATE OF THE STATE SECURITY SERVICE	5
1.3. LEGISLATION AND INTERNATIONAL STANDARDS	6
1.3.1. COMPATIBILITY OF LEGISLATION IN FORCE WITH INTERNATIONAL STANDARDS.....	6
1.3.2. THE VICIOUS PRACTICE OF CONFIDENTIALITY OF THE ASSET DECLARATIONS OF THE HEAD OF THE ANTI-CORRUPTION AGENCY AND HIS DEPUTY/DEPUTIES	8
1.3.3. ASSESSMENT OF THE STRUCTURAL SUBORDINATION OF THE ANTI-CORRUPTION AGENCY BY THE ANTI-CORRUPTION NETWORK OF THE ORGANISATION FOR ECONOMIC CO-COOPERATION AND DEVELOPMENT (OECD-ACN).....	9
2. INVESTIGATION OF CORRUPTION CRIMES AND IDENTIFIED PRACTICAL SHORTCOMINGS..	10
2.1. CORRUPTION AS A CRIME AGAINST NATIONAL SECURITY	13
2.2. INVESTIGATION OF CASES INCOMPATIBLE WITH THE ACTIVITIES OF THE AGENCY.....	15
2.3. DUPLICATE TASKS OF THE ANTI-CORRUPTION AGENCY OF THE STATE SECURITY SERVICE AND THE INVESTIGATION DIVISION OF THE PROSECUTOR'S OFFICE	17
2.4. HIGH LEVEL CORRUPTION AND NO POLITICAL WILL	18
3. COMPATIBILITY OF THE ACTIVITIES OF THE STATE SECURITY SERVICE'S ANTI-CORRUPTION AGENCY WITH INTERNATIONAL STANDARDS	20
CONCLUSION	21

INTRODUCTION

The 2015 reform of the security sector in Georgia resulted in determining the prevention, detection and investigation of corruption as one of the tasks of the State Security Service of Georgia. Apart from the State Security Service, corruption crimes are investigated by the Prosecutor's Office of Georgia, General Inspectorate of the Ministry of Justice and the State Inspector's Service. Legislation in force does not specify in express terms which body should investigate corruption crimes. This in its turn gives rise to the risks of duplication of tasks and ineffective investigation.¹ The State Security Service aims at ensuring national security. However, the agency's key recourses are wasted on preventing petty corruption crimes.²

Since 2003, Georgia has implemented a number of fundamental anti-corruption reforms. However, in the recent period, Georgia has not had any significant progress in terms of fighting corruption.³ Moreover, there has been certain deterioration with regard to transparent functioning of public institutions. There is a pressing need for a number of reforms to be implemented to reduce corruption risks, to increase transparency of administrative bodies as well as public trust in them.

This study aims at contributing to reduction of corruption risks by identifying practical shortcomings. It assesses the State Security Service's anti-corruption mandate and practical shortcomings in the prism of international standards.

The first chapter of the document gives a general analysis of the anti-corruption institutional framework in Georgia, notably, the institutional context, the State Security Service's mandate, the pertinent legislation, related shortcomings as well as relevant international standards. The second chapter of the study is its main part that discusses the shortcomings identified in the investigation of corruption crimes. Particular emphasis is placed on the investigation of cases that are incompatible with the scope of work of the State Security Service, duplication of competencies, and weakness in the fight against high level corruption. Key findings and conclusions about incompatibility of the Anti-Corruption Agency's mandate with international standards are given in the end of the research.

RESEARCH METHODOLOGY AND STATISTICS

The key findings of the DRI study "the State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia,"⁴ served as a starting point in the preparation of the present report. The main purpose of the report was to study the activities of the Anti-Corruption Agency – a structural unit of the State Security Service and to determine the extent to which the cases investigated by the agency are relevant to state security.

¹ See in more details DRI, The State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia, 2020, pp. 37-38, available at, <http://www.democracyresearch.org/files/59eng%20a%20-%20Copy.pdf>.

² *Ibid.* p. 26.

³ Transparency International - Georgia, in 2019-2020, "Corruption Perceptions Index" is 56, available at: <https://www.transparency.org/en/cpi/2020/index/geo?fbclid=IwAR2cAICl3De24gyeoOHV-1kpfJ2ZCIAR3Vxea1F-Y9QjLzfA0HmTTfyYodo>.

⁴ DRI, The State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia, 2020, p.p. 37-38, available at: <http://www.democracyresearch.org/files/59eng%20a%20-%20Copy.pdf>.

For the research purposes, we examined the anti-corruption legal framework. In addition, we used the following research tools:

Analysis of International Standards – since the United Nations Convention against Corruption identifies key components of a national anti-corruption system, this document has been used as a key criterion. Georgia's anti-corruption legislative framework was analysed based on the assessment reports and thematic documents of the Organisation for Economic Co-Operation and Development (OECD).

Analysis on Quantitative Data on Corruption Crimes – the DRI team conducted a quantitative analysis of the public information about criminal cases instituted by the respective bodies under the articles of the Criminal Code⁵ in 2018-2021 and the “closed” statuses of these cases until March 2021. This information was received from the Analytical Department of the Ministry of Internal Affairs, the prosecutor's office and the State Security Service.

Analysis of the Judgments of the Courts of General Jurisdiction – during the research, the DRI team requested information from the city (district) courts of Tbilisi, Mtskheta, Rustavi, Kutaisi, Zugdidi and Batumi. The information concerned the period of 1 January 2018 to 1 March 2021 and the number of cases examined by the city (district) courts under Articles 164¹, 332-335, and 337-342 of the Criminal Code of Georgia as well as the number of accused persons involved. We also requested copies of the final judgments adopted by the court in these cases.

It should be pointed out that the courts failed to supply the complete statistics and case-materials. The DRI received only some redacted judgments. Therefore, the team used judgments published in the search system of court acts.⁶ It should also be noted that in response to our request, there was no correspondence from Mtskheta district court, which complicated to do a comprehensive research.

In-Depth Interviews – in-depth interviews were conducted with experts in the field and representatives of NGOs in order to identify the existing challenges, as well as to be acquainted with the activities of the relevant authorities.

Analysis of Secondary Sources – assessments, studies and reports prepared by the Public Defender of Georgia, academicians and NGOs served as additional information for research purposes.

TERMINOLOGY

The study follows the approach of the European Court of Human Rights in its case-law and the best practice of European countries, when considering the below activities to be **a threat to national security**:

- Terrorism,
- Creating a threat to the functioning of the state and its constitutional bodies,
- Inciting/calling for terrorism, and
- Activities carried out by extremist/separatist organisations that pose a threat to the state unity/security.

⁵ Crimes under the following articles of the Criminal Code of Georgia: 164¹, 332-335, 337-342.

⁶ See <http://ecd.court.ge>.

For the purposes of the study, **high level corruption** is used to describe corruption that pervades the highest levels of government, engendering major abuses of power. A broad erosion of the rule of law, economic stability and confidence in good governance quickly follow. Sometimes it is referred to as “state capture”, which is where external interests illegally distort the highest levels of a political system to private ends.⁷

Petty corruption, sometimes described as “administrative corruption”, involves the exchange of very small amounts of money, and the granting of small favours.⁸

Systemic corruption implies corruption that become ingrained in an administrative system. It is no longer characterised by actions of isolated rogue elements within a public service.⁹

1. ANTI-CORRUPTION INSTITUTIONAL FRAMEWORK IN GEORGIA

1.1. HISTORICAL CONTEXT

After the Rose Revolution, the reform implemented in Georgia (anti-corruption, in particular) is considered the most radical on the post-Soviet territory. The police reform, the fight against members of the criminal underworld and the strengthening of the tax authorities are particularly noteworthy out of the anti-corruption reforms that have been carried out in Georgia since 2003.¹⁰

The above reforms are mainly compared to the Singapore model. This model implies an unwavering effort against corruption where there is a strong political will, high confidence and concentration of power.¹¹ The person in power (the president) determined the main directions and priorities and was involved in the process of making key decisions.¹² Despite the numerous defects and significant shortcomings of the model, corruption was declared a source of existential threat to the state. The Ministry of Internal Affairs was the major investigative body tasked with investigating and combating corruption crimes.¹³ The Department of Constitutional Security and the Department of Special Operations under the Ministry of Internal Affairs also carried out key activities to detect and prevent corruption crimes. Apart from the Ministry of Internal Affairs, the investigative units of the prosecutor’s office and the Ministry of Justice also had the mandate to investigate corruption crimes. This, however, concerned crimes allegedly committed by certain state-political officials or employees of the aforementioned respective agency. This situation required oversight on the part of an agency that would be independent of the Ministry of Internal Affairs.¹⁴

⁷ United Nations Practical Anti-Corruption Measures for Prosecutors and Investigators, Vienna, 2004, p.23.

⁸ *Ibid.* p. 24

⁹ *Idem.*

¹⁰ Peter Pomerantsev, *Revolutionary Tactics: Insights from Police and Justice Reform in Georgia*, 2014, p.p. 7-8, available at: <https://bit.ly/3o5VErR>.

¹¹ World Bank, *Fighting Corruption in Public Services: Chronicling Georgia’s Reforms*, Washington, DC, World Bank, 2012, available at: <http://documents1.worldbank.org/curated/en/518301468256183463/pdf/664490PUB0EPI0065774B09780821394755.pdf> (accessed 10.05.2021).

¹² *Ibid.* p. 98.

¹³ Order no.178 of the Minister of Justice of Georgia of 29 September 2010 on Investigative Jurisdiction over Criminal Cases.

¹⁴ *Ibid.* paras. 2 and 5.

In November 2021, the Department of Constitutional Security and the Department of Special Operations were abolished. They were replaced by the anti-corruption and state security agencies.¹⁵

In young, transitional democracies, organised crime or other act posing a social or economic threat may legitimately be considered a risk to state security.¹⁶ On the other side, however, it can be said definitively that states with best practices are more reluctant to treat corruption crimes as a risk to state security. Nevertheless, in order to assess the Georgian model, it is necessary to analyse the success of this approach in practice. The report analyses the compatibility of the Georgian model with international standards and assesses the quality of human rights protection in the investigation of corruption crimes by the State Security Service.

1.2. MANDATE OF THE STATE SECURITY SERVICE

An empowered, independent, properly accountable and effective anti-corruption agency is crucial to a country's development. The main tasks of anti-corruption agencies are usually aimed at preventing and investigating corruption and raising public awareness in this direction.

As a result of the August 2015 reform in Georgia,¹⁷ the State Security Service, among other tasks, was given a mandate to investigate and prevent corruption. Previously, the anti-corruption agency was under the Ministry of Interior.¹⁸ The main argument for transferring the anti-corruption mandate to the State Security Service was to depoliticise the Ministry of Internal Affairs and treat corruption as a national threat. However, a study by the DRI has demonstrated¹⁹ that vesting the State Security Service with a power to investigate a number of crimes including corruption, leads to irrational expenditure of its resources and fails to give corresponding results. A number of other agencies also have a mandate to fight corruption apart from the State Security Service.

Despite numerous effective measures, Georgia still faces a challenge in terms of fighting corruption, as observed by a number of domestic and international organisations.

For the research purposes, the next chapter assesses the statutory mandate of the State Security Service and the problems identified in practice, along with recommendations made by international organisations.

¹⁵ The 2013 Report of the Ministry of Internal Affairs of Georgia, p. 3, available at: http://gov.ge/index.php?lang_id=-&sec_id=288&info_id=38639 (accessed 11.05.2021).

¹⁶ Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, 2005, p. 29.

¹⁷ The State Security Service was separated from the Ministry of Internal Affairs.

¹⁸ Order on Approving the Statute of the Anti-Corruption Agency (Department) of the Ministry of Internal Affairs of Georgia, 31.01.2015.

¹⁹ DRI, *The State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia*, 2020, available at: <http://www.democracyresearch.org/files/59eng%20a%20-%20Copy.pdf>.

1.3. LEGISLATION AND INTERNATIONAL STANDARDS

1.3.1. COMPATIBILITY OF LEGISLATION IN FORCE WITH INTERNATIONAL STANDARDS

According to the fourth round progress report of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD-ACN), the State Security Service should not have the mandate of corruption crime investigation.²⁰ Furthermore, the Parliamentary Assembly proposes that internal security services should not be allowed to run criminal investigations, arrest or detain people, nor should they be involved in the fight against organised crime, except in very specific cases, when organised crime poses a clear danger to the free order of a democratic state.²¹ Nevertheless, under the Law of Georgia on the State Security Service of Georgia, one of the activities of the agency is "to implement measures for preventing, detecting and suppressing corruption."²² The competence of the service, notably includes the prevention, detection and investigation of the following crimes: vote buying, abuse of official powers, exceeding official powers, illegal discharge of the accused from criminal responsibility, giving explanation, evidence or opinion under duress, illegal participation in entrepreneurial activities, bribe-taking, bribe-giving, influence peddling, accepting gifts prohibited by law, forgery by an official and neglect of official duty.²³

Under the Association agreement with the European Union, Georgia undertook an obligation on continuing effective fight against corruption.²⁴ Despite certain progress,²⁵ there are still numerous challenges with regard to the fight against corruption. Keeping the anti-corruption mandate in the hands of the State Security Service not only fails to be an effective mechanism to reduce corruption risks, it also increases the risks of human rights violations.

The state has a public interest in detecting and investigating any crime. However, due to the nature of the activities of the state security services, the scope of work of these agencies should be strictly limited to protecting national security interests. They should not engage in activities that are not relevant to state security.²⁶ The Parliamentary Assembly of the Council of Europe (PACE) expressed its concern that member countries' internal security services often put the interests of what they perceive as those of national security and their country above respect for the rights of the individual.²⁷ Because their oversight mechanisms are largely weak, the arbitrariness of these agencies increases the risk of human rights violations. It is noteworthy that the 2015 reform was implemented based on the above-mentioned

²⁰ OECD Anti-Corruption Network for Eastern Europe and Central Asia, Anti-Corruption Reforms in Georgia, Istanbul Anti-Corruption Action Plan, Fourth Round of Monitoring Georgia Progress, Update Report, 2016, pp. 129-136.

²¹ Committee on Legal Affairs and Human Rights, Control of Internal Security Services in Council of Europe Member States, Doc. 1402, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16689&lang=en>.

²² The Law of Georgia on the State Security Service of Georgia, Article 5.f).

²³ The Criminal Code of Georgia, Articles 164¹, 332-335, 337-342.

²⁴ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Article 4, available at: [https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02)).

²⁵ According to the International Perception Index, the situation in 2020 is better than in 2012 (in 2012, the methodology for assessing the International Perception Index was developed, and it is valid to this day), available at:

<https://www.transparency.org/en/cpi/2012/index/nzl#>, <https://www.transparency.org/en/cpi/2020/index/nzl>.

²⁶ Martin Scheinin (UN Special Rapporteur) Compilation of Good Practices on Legal and Institutional Frameworks and Measures that Ensure Respect for Human Rights by Intelligence Agencies while Countering Terrorism, Including on their Oversight, 2010, p. 5.

²⁷ Parliamentary Assembly, Control of Internal Security Services in the Council of Europe Member States, Recommendation no. 1402 (1999), 2, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16689&lang=en>.

approach. At the same time, the parliamentary oversight of the State Security Service in the country is weak and ineffective.

According to the PACE recommendations, the legislature should adopt clear and adequate laws putting the internal security services on a statutory basis.²⁸ Unfortunately, Georgian legislation is flawed in this regard as well. Under the order of the Prosecutor General, the State Security Service investigates corruption crimes under Articles 164¹, 332-335, and 337-342 of the Criminal Code of Georgia if the service detects them. Accordingly, the agency is given a mandate to investigate crimes, which, by their very nature, may not be posing any threat to national security and, consequently, may not be in line with the agency's scope of work. That is why there is a clear danger of abuse of power and waste of resources.²⁹

Legislation has vested the State Security Service with broad powers. Despite the 2016 judgment of the Constitutional Court,³⁰ the newly established operative and technical agency, authorised to carry out covert investigative acts, was placed under the State Security Service.

Furthermore, with the amendments moved into the Code of Criminal Procedure, the power of conducting covert investigative acts was extended to all official misconducts (including crimes of negligence).³¹ It is noteworthy that in 2020, the court considered 997 motions for covert interception and recording of telephone conversations out of which 82 were linked to official misconducts. All motions were upheld in full.³² Under the case-law of the European Court of Human Rights, a measure interfering with a constitutional right (i.e. a covert investigative act) may be used only in the investigation of particularly serious crimes.³³ Consequently, there was a threat that the transfer of such a broad mandate to the State Security Service would not be an effective mechanism in terms of the fight against corruption, but would pose a real danger to the control of public officials.

Practice of foreign countries in this direction is noteworthy. In Latvia, for example, a completely independent body investigates corruption crimes.³⁴ The mandate of Canada's State Security/Intelligence Service does not extend to investigation of economic or corruption crimes.³⁵ Lithuania is one of the best examples in terms of fighting corruption. In Lithuania, the Special Investigative Service was set up in 2008. It has the authority to investigate corruption crimes. According to the OECD, this reform was a significant step forward in terms of the fight against corruption.³⁶ It is advisable for Georgia to share the experience of the above-mentioned countries.

²⁸ *Ibid.* C. para. 2.

²⁹ DRI, The State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia, 2020, available at: <http://www.democracyresearch.org/files/59eng%20a%20-%20Copy.pdf>.

³⁰ Decision no. 1/1/625,640 of the First Section of the Constitutional Court of Georgia of 14 April 2016.

³¹ Government Initiative on Amendments to the Criminal Procedure Code of Georgia (07-2/265; 25.10.2018).

³² See the website of the Supreme Court of Georgia, <http://www.supremecourt.ge/statistics/2019/>.

³³ *Uzun v. Germany*, application no. 35623/05, judgment of the European Court of Human Rights of 2 September 2010, para. 80.

³⁴ The Law of Latvia on State Security Institutions, Section 15 (1).

³⁵ Canadian Security Intelligence Service Act (R.S.C., 1985, c. C-23), available at: <https://laws-lois.justice.gc.ca/eng/acts/C23/page-6.html#docCont>.

³⁶ OECD Anti-Corruption Network for Eastern Europe and Central Asia, Anti-Corruption Reforms in Georgia, 2008, Lithuania, Special Investigative Service, p. 60.

1.3.2. THE VICIOUS PRACTICE OF CONFIDENTIALITY OF THE ASSET DECLARATIONS OF THE HEAD OF THE ANTI-CORRUPTION AGENCY AND HIS DEPUTY/DEPUTIES

Access to asset declarations of officials is the best example of open and transparent governance, which is considered an important step in the fight against corruption. That is why it is especially worrying that the asset declarations of the Head of the Anti-Corruption Agency and his deputy/ deputies are not publicly available. Since 1 January 2017, asset declarations of those officials whose position was assigned a security classification marking under the Law of Georgia on State Secrets have been fully classified. The asset declarations published on the website of the Civil Service Bureau before 2017, were also removed from the website. Such a vicious practice makes the already closed agency even more ambiguous.

In response to the DRI's letter requesting public information on asset declarations of the Head of the Anti-Corruption Agency and his deputy/deputies, the Civil Service Bureau stated that **restriction of publicity extended to the asset declarations of the Head of the Anti-Corruption Agency and his deputy/deputies in accordance with the Law of Georgia on State Secrets.**³⁷ It is also noteworthy that the website of the State Security Service does not provide any information about the Head of the Anti-Corruption Agency or his deputy/deputies.³⁸

Confidentiality of information about the head of the agency (that carries out investigative and preventive measures to detect and prevent corruption), his/her deputy/deputies and their asset declarations is clearly against international standards.

Due to the specific nature of the Anti-Corruption Agency, it is necessary to make asset declarations of the agency's head and his/her deputies fully or partially public and to publicise asset declarations of the main divisions' heads and their deputies.

It is noteworthy that the Law of Georgia on State Secrets does not provide an express list of specific officials whose asset declarations must be classified. Under the law, a state secret may include information about persons who are cooperating or have cooperated confidentially in the field of intelligence, state security or law-enforcement with the relevant bodies of Georgia.³⁹ This wording allows for broad interpretation of the provision. The addressee of the provision is vested with control-free discretion to classify the asset declarations of those officials who themselves fight against corruption in the country.

The DRI believes that classifying asset declarations of the heads of the State Security Service's structural units and their deputies, especially in the case of the Head of the Anti-Corruption Agency and his Deputies, is a vicious practice. It contradicts international standards, contributes to the distrust in agencies fighting corruption and renders the State Security Service an even more closed agency, especially in the absence of the appropriate oversight.

³⁷ Letter no. C11875 of the Civil Service Bureau.

³⁸ See the website of the State Security Service.

³⁹ The Law of Georgia on State Secrets, Article 6.d.b) and Article 6.d.c).

1.3.3. ASSESSMENT OF THE STRUCTURAL SUBORDINATION OF THE ANTI-CORRUPTION AGENCY BY THE ANTI-CORRUPTION NETWORK OF THE ORGANISATION FOR ECONOMIC CO-COOPERATION AND DEVELOPMENT (OECD-ACN)

The OECD-ACN assessed situation in Georgia on several occasions.⁴⁰ One of the most recent assessment was carried out in October 2016.⁴¹ In March 2019, the Fourth Round of Monitoring Georgia Progress was published.⁴²

According to the report, progress has been made with regard to 16 out of 22 recommendations. It means that the state has taken some practical steps to implement a recommendation. With regard to six recommendations, it is noted that the state has not taken any measures to implement a recommendation (lack of progress).⁴³ None of the state's actions received the Significant Progress assessment. Compared to previous assessments,⁴⁴ the situation improved in four cases (from the lack of progress to progress), notably with regard to recommendations 2 and 14 which concern raising awareness about corruption and significance of transparency of agencies. However, the state failed to make significant progress in this part of the recommendations as well.⁴⁵ The situation worsened in five cases (from progress to the lack of progress).

The first recommendation of the OECD-ACN concerns the development of the Georgian national anti-corruption strategy and an action plan for its implementation.⁴⁶ The country fulfilled only 2 out of 6 components. However, it is assessed that the state had made some progress with regard to this recommendation.⁴⁷ The National Anti-Corruption Strategy of Georgia and Action Plan for Implementation of the National Anti-Corruption Strategy of Georgia 2019-2020 did not provide for specific measures to improve the performance of the Anti-Corruption Agency of the State Security Service.⁴⁸ It did not include the recommendations regarding the establishment of an independent anti-corruption service made by NGOs.⁴⁹ It is noteworthy that as of April 2021, the Government of Georgia failed to adopt the Anti-Corruption Action Plan for 2021-2022.

⁴⁰ See <https://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm>.

⁴¹ Anti-Corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, p. 7, <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf>.

⁴² Istanbul Anti-Corruption Action Plan, Fourth Round of Monitoring Georgia Progress, Update Report, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Progress-Update-2019-ENG.pdf>.

⁴³ *Ibid.* p. 5.

⁴⁴ See the 2018 July Assessment at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Progress-Update-2018-ENG.pdf>.

⁴⁵ Istanbul Anti-Corruption Action Plan, 4th Round of Monitoring Georgia Progress, Update Report, p. 5, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Progress-Update-2019-ENG.pdf>.

⁴⁶ Anti-Corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, p. 129, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf>.

⁴⁷ Istanbul Anti-Corruption Action Plan, 4th Round of Monitoring Georgia Progress, Update Report, p. 14, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Progress-Update-2019-ENG.pdf>.

⁴⁸ The Anti-Corruption Strategy of Georgia, Anti-Corruption Action Plan for 2019-2020.

⁴⁹ Institute for Development of Freedom of Information (IDFI), Recommendations on the New Anti-Corruption Strategy and Action Plan for 2019-2020, available at:

https://idfi.ge/ge/idfi_proposals_for_new_anti_corruption_strategy_and_action_plan_2019_2020.

According to the general assessment of the OECD-ACN, Georgia has had a significant progress in terms of the fight against corruption in the last decade.⁵⁰ This was mainly due to the detection and eradication of petty corruption. High level corruption remains problematic in Georgia.⁵¹

The report assesses negatively the 2015 reform, notably, the subordination of the Anti-Corruption Agency to the State Security Service. Particular attention is paid to the heightened confidentiality of the agency's activities and its non-transparent nature. The report also discusses on the one hand, the granting of an anti-corruption mandate to the prosecutor's office, which could lead to conflicts of interest during the investigation of crimes and on the other hand, the ambiguity of investigative jurisdiction over corruption crimes. According to the report, this ambiguity could lead to a threat of abuse of power.⁵² Therefore, the OECD-ACN recommends removing the anti-corruption mandate from the prosecutor's office and the State Security Service.

2. INVESTIGATION OF CORRUPTION CRIMES AND IDENTIFIED PRACTICAL SHORTCOMINGS

In Georgia, the task of fighting corruption is redistributed between different agencies. Among them, there are agencies tasked with preventing corruption and investigating corruption crimes. These are the Anti-Corruption Agency of the State Security Service, the Prosecutor's Office, the Investigation Service of the Ministry of Finance, the Investigation Unit of the Ministry of Defence and the General Inspectorate of the Ministry of Justice.

Criminal Code Article	Anti-Corruption Agency	Investigative Division of the Prosecutor's Office	Investigative Service of the Finance Ministry	Investigative Unit of the Defence Ministry	General Inspectorate of the Ministry of Justice
Vote Buying (Art. 164 ¹ of the CC)	X	X	—	—	—
Misappropriation or Embezzlement Using Official Position (Art. 182.2.d)	—	X	X	—	—
Money Laundering (Art. 194 of the CC)	—	X	—	—	—

⁵⁰ Anti-Corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, p. 7, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf>.

⁵¹ *Ibid.* p. 117.

⁵² *Ibid.* p. 121.

Abuse of Powers (Art. 220 of the CC)	—	X	X	—	—
Commercial Bribery (Art. 221 of the CC)	—	X	X	—	—
Abuse of Official Powers (Art. 332 of the CC)	X	X	—	—	X
Exceeding Official Power (Art. 333 of the CC)	X	X	—	—	X
Illegal Participation in Entrepreneurial Activities (Art. 337 of the CC)	X	X	—	—	X
Bribe-Taking (Art. 338 of the CC)	X	X	—	—	X
Bribe-Giving (Art. 339 of the CC)	X	X	—	—	X
Influence Peddling (Art. 339 ¹ of the CC)	X	X	—	—	X
Accepting Gifts Prohibited by Law (Art. 340 of the CC)	X	X	—	—	X

In addition to the above-mentioned agencies, investigators of the State Inspector's Service, established in 2019, investigate crimes under Article 332.3.b), Article 332.3.c), Article 333.3.b) and Article 333.3.c) of the Criminal Code if this crime is committed by a law-enforcement official.⁵³

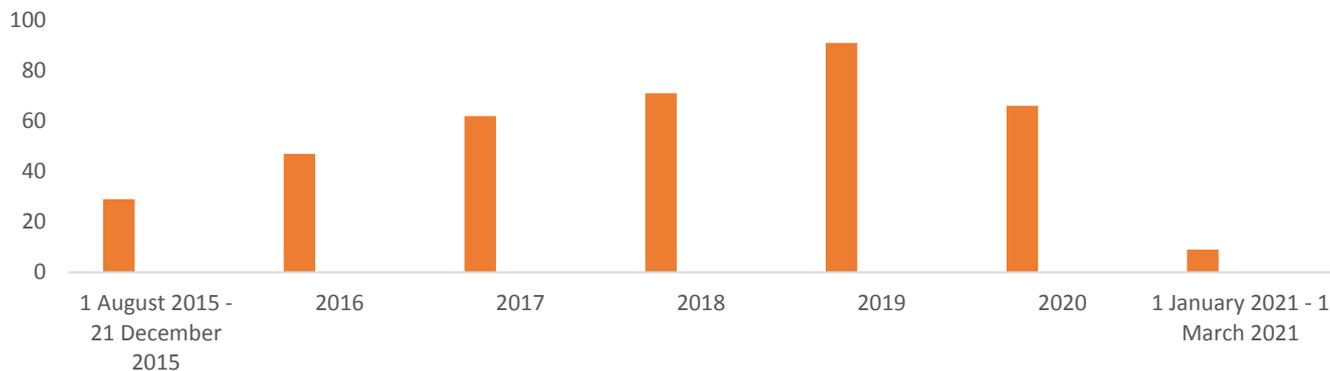
In parallel with the problems of the legislation, the shortcomings identified in practice should also be examined.

The DRI requested the State Security Service of Georgia and the Prosecutor's Office of Georgia to impart public information on the statistics of corruption crimes. The correspondence received from the State Security Service, which did not contain all the information requested had been dispatched in substantial breach of the statutory deadline.⁵⁴

According to the correspondence received from the State Security Service, the number of investigations instituted by the Anti-Corruption Agency had statistically increasing until 2019, and a decrease is observed in 2020.

⁵³ Order no. 3 of the Prosecutor General of Georgia of 23 August 2019 on Determining Investigative and Territorial Jurisdiction over Criminal Cases, para. 8.

⁵⁴ Letter no. SSG 8 21 00049663, SSG 9 21 00049655 of the State Security Service, dated 19.04.2021.



According to the same correspondence, the Anti-Corruption Agency has repeatedly instituted investigation into fraud (a crime under Article 180 of the Criminal Code of Georgia) both independently and in conjunction with other articles. However, Order no. 3 of the Prosecutor General of Georgia on Determining Investigative and Territorial Jurisdiction over Criminal Cases does not refer to fraud in express terms as falling within the investigative competence of the State Security Service, nor is it in its essence relevant to the work of the Anti-Corruption Agency.

According to the correspondence received from the Anti-Corruption agency,⁵⁵ the agency has instituted investigation into 375 cases out of 555 criminal cases, from 1 August 2015 to 1 March 2021. It should be noted that within the above-mentioned period, the State Security Service referred eight cases⁵⁶ to the prosecutor's office in compliance with the jurisdiction rule. From 1 August 2015 to 1 March 2021, the prosecutor's office referred eleven criminal cases to the State Security Service for investigation.⁵⁷

As already mentioned, the Law of Georgia on the State Security Service of Georgia does not specify which crimes fall within its competence. At the same time, the rule of jurisdiction determined by Order no. 3 of the Prosecutor General of Georgia of 23 August 2019 on Determining Investigative and Territorial Jurisdiction over Criminal Cases extends the agency's mandate, which causes numerous practical problems. Under the aforementioned jurisdiction rule, the agency is authorised to investigate certain corruption crimes if they have been detected by officials of the State Security Service.

It is obvious that the fact corruption crimes were detected by the State Security Service does not automatically turn it into an act that poses a threat to the national interest. Therefore, instead of investigating crimes that endanger the public/country, the agency uses its mandate to fight corruption crimes that are not in line with its scope of work.

Human rights and fundamental freedoms were endangered by vesting the operative and technical agency under the State Security Service with the power to conduct covert investigative actions and extending this mechanism to all official misconducts. Numerous experts in the field point out that this mandate is often used illegally by the service against public officials in order to influence and control them.⁵⁸

⁵⁵ Letter no. SSG 8 21 00049663, SSG 9 21 00049655 of the State Security Service, dated 19.04.2021.

⁵⁶ Crimes under Article 194.2.a), Article 194.3.c), Articles 332, 338, 342 and 362 of the Criminal Code of Georgia.

⁵⁷ Crimes under Articles 332, 341, 322¹, 322² and 331.

⁵⁸ A clear example of this is the information spread on 12 September, according to which the State Security Service is carrying out wiretapping and surveillance of all ranks, including public officials of all ranks, most likely without any legal grounds. 14.09.2021, see <https://www.democracyresearch.org/geo/722/>.

2.1. CORRUPTION AS A CRIME AGAINST NATIONAL SECURITY

Article 5 of the Law of Georgia on the State Security Service of Georgia determines the scope of work of the service, which encompasses the following activities:

- Ensuring economic security of the country,
- Combating transnational organised crime and international crime posing a threat to state security;
- Carrying out measures for preventing, detecting and eliminating corruption.⁵⁹

According to the State Security Service, the fight against corruption is a matter of state security, as corruption undermines the proper functioning of the public sector, weakens public confidence in state institutions, and hinders the stable and democratic development of the country.⁶⁰

According to the service's annual reports, corruption of public institutions harms state interests in multiple ways and threatens national security. According to the 2020 Parliamentary Report of the State Security Service, officials involved in official misconducts (corruption crimes) may be vulnerable to foreign special services and/or be targeted by various criminal groups or individuals.⁶¹

According to the best practices and international standards, corruption is not a crime endangering the security of the state.⁶² The European Court of Human Rights has observed that states enjoy certain (including broad) margin of appreciation to determine what constitutes a threat to the state and its interests, if it has a reasonable basis in fact.⁶³

A specific type of a crime (for example, organised crime) might differ from "ordinary" crime in its scale, viability and infrastructure, but still lacking the type of risks to be considered as posing threat to state security.⁶⁴ In some cases, there may be a specific link between organised crime and actions that endanger state security (for example, terrorism), but this should not become automatically a ground for considering any similar actions as threatening state security.

It is similarly unreasonable to treat all corruption crimes as those posing a risk to state security (and therefore be within the State Security Service's jurisdiction). Unlike law-enforcement authorities, the State Security Service has relatively broad powers. The following factors contribute to the unreasonable concentration of power within the State Security Service – faulty redistribution of investigative and territorial jurisdiction over criminal cases; the authority of the State Security Service to go beyond its statutory mandate;⁶⁵ merging intelligence and law-enforcement agencies and the risks associated with the use of data obtained through counterintelligence activities for law-enforcement purposes.

⁵⁹ The Law of Georgia on the State Security Service of Georgia, Article 5.

⁶⁰ The 2015 Report of the State Security Service, p. 33.

⁶¹ The 2020 Report of the State Security Service, p. 34.

⁶² Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, 2005, p. 32.

⁶³ *Janowiec and Others v. Russia*, applications nos. 55508/07 and 29520/09, the judgment of the Grand Chamber of the European Court of Human Rights of 21 October 2013, para. 213.

⁶⁴ Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, 2005, p. 29.

⁶⁵ DRI, *The State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia*, 2020, p. 37, available at: <http://www.democracyresearch.org/files/59eng%20a%20-%20Copy.pdf> (accessed 12.05.2021).

The legislative inconsistency in this regard is noteworthy. Under Article 143³ of the Criminal Procedure Code of Georgia, a covert investigative action can only be carried out if it is allowed by the code and is necessary for a legitimate aim in a democratic society. These legitimate aims are national security and public safety, prevention of a disorder or a crime, protection of the economic well-being of the country or rights and freedoms of others. This means that, in the opinion of the Georgian legislature, actions envisaged in the said article or its parts do not pose a risk to the state security or public safety interests. Then why should the investigation under these articles be within the mandate of the State Security Service?

The DRI hereby clarifies that this view cannot be understood as supporting the idea of conducting covert investigations into all crimes falling within the jurisdiction of the State Security Service. On the contrary, we believe the State Security Service should not have any mandate to investigate crimes that do not pose a direct or immediate threat to state security. Accordingly, the number of crimes covered by his mandate should be reduced considerably.

Treating as any corruption crime as posing a threat to state security is ill-founded due to the following considerations:

a) The following crimes do not fall within the investigative jurisdiction of the State Security Service: misappropriation or embezzlement using the official position (Article 182.2.d) of the Criminal Code of Georgia); money laundering (Article 194 of the Criminal Code of Georgia); use, purchase, possession or sale of property acquired through the legalisation of illegal income (Article 194¹ of the Criminal Code); abuse of power (Article 220 of the Criminal Code); commercial bribery (Article 221 of the Criminal Code); illegal participation in entrepreneurial activities (Article 337 of the Criminal Code); influence peddling (Article 339¹ of the Criminal Code); accepting gifts prohibited by law (Article 340 of the Criminal Code); failure to submit an asset declaration or entry of incomplete or incorrect information therein (Article 355 of the Criminal Code). **Consequently, the State Security Service's position that any corruption crime poses a risk to state security is inconsistent.**⁶⁶

b) In addition to the State Security Service, the task of investigating corruption crimes is also given to the Investigative Division of the General Prosecutor's Office of Georgia, the Investigation Service of the Ministry of Finance, the Investigation Department of the Ministry of Corrections and Probation, the Investigation Unit of the Ministry of Defence and the General Inspectorate of the Ministry of Justice.⁶⁷ The blurred boundaries and mixed competencies between the Investigation Department of the State Security Service and the Investigative Division of the General Prosecutor's Office of Georgia are particularly noteworthy. The State Security Service has the power to investigate any case that should be within the jurisdiction of the prosecutor's office due to the tasks of these services. This makes it particularly difficult to separate the tasks of the State Security Service and the functions of the prosecutor's office in the context of official misconducts (corruption crimes). **Why do investigative bodies whose direct duty is not to ensure the security of the state have an anti-corruption mandate if it is assumed that corruption crimes jeopardize automatically state interests?**⁶⁸

⁶⁶ This cannot be interpreted in such a way that the DRI supports the transfer of the above crimes to the investigative jurisdiction of the State Security Service.

⁶⁷ Order no. 3 of the Prosecutor General of Georgia of 23 August 2019 on Determining Investigative and Territorial Jurisdiction over Criminal Cases.

⁶⁸ Regarding this issue, see DRI, The State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia, Tbilisi, 2020, pp. 16-17, available at: <http://www.democracyresearch.org/files/59eng%20a%20-%20Copy.pdf> (accessed 16.05.2021).

c) Legislation does not provide for covert investigations to be carried out in cases instituted under articles of the Criminal Code that fall within the mandate of the State Security Service,⁶⁹ such as, abuse of power (Article 220 of the Criminal Code) and commercial bribery (Article 221 of the Criminal Code). **Therefore, it is the legislature's position that these acts do not pose a threat to state security.**

d) national interests cannot be endangered by the following acts criminalised under respective articles of the Criminal Code of Georgia: racial discrimination (Article 142¹.1), illegal purchase or storage of a hunting firearm or a sports firearm, or of ammunition intended for such a weapon (Article 236.1), and illegal purchase or storage of a hunting firearm or a sports firearm, or of ammunition intended for such a weapon committed by a group of people or repeatedly (Article 236.2). Accordingly, it is unclear why these articles of the Criminal Code should be within the jurisdiction of the State Security Service. It should be borne in mind that, crimes against constitutional structure and security principles of Georgia under Chapter XXXVII of the Criminal Code, namely, Article 320 (disclosure of state secrets) and Article 321 (breach of the procedure for keeping state secrets) are considered to be posing a threat to the state's national security only if a respective action entailed serious consequences for the country's national interests.

It can be argued that the investigative and territorial jurisdiction over criminal cases is faulty. Therefore, there are cases falling under the investigative jurisdiction of the State Security Service that do not correspond to the objectives of the State Security Service's scope of work. A number of corruption crimes do not fall under the investigative jurisdiction of the State Security Service at all so much so that even theoretically it is impossible to carry out covert actions on the grounds of national security, with regard to some articles of the Criminal Code. This shows that in the opinion of the legislature, these actions cannot pose a danger to state security.

Stemming from the above, the State Security Service's argument that corruption is a crime that poses a risk to national security is inconsistent.

2.2. INVESTIGATION OF CASES INCOMPATIBLE WITH THE ACTIVITIES OF THE AGENCY

In 2015, in the process of the formation of the State Security Service, NGO sector criticised the concentration of excess power in the agency and the duplication of tasks. According to the Ministry of Internal Affairs, this criticism was ill-founded since the activities of the State Security Service did not concern the prevention of concrete threats in a citizen's daily life. Instead, they were aimed against global and domestic threats and attempts that endanger state security interests.⁷⁰

After several years of functioning of the State Security Service, it can be said that the argument that the investigative activities of the State Security Service are concerned with only those cases that pose a threat to state security is wrong. Contrary to this argument, the study revealed a number of examples where cases investigated by the Anti-Corruption Agency of the State Security Service did not pose a threat to

⁶⁹ Until recently, it was impossible to conduct covert investigative actions on all official crimes, which was the right approach. Based on the amendments made in 2019, covert investigative actions can be carried out on all articles of Chapter XXXIX of the Criminal Code, including crimes of negligence (for example, neglect of official duty (Article 342 of the Criminal Code).

⁷⁰ The statement made by the Ministry of Internal Affairs on 14 July 2015, available at: <https://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/8481> (accessed 18.05.2021).

state security in terms of harm, nature of a crime or assessment of public danger and therefore did not comply with the scope of work of the State Security Service.

For instance, in one case investigated by the Anti-Corruption Agency of the State Security Service, the prosecutor's office charged four individuals under Articles 19-180.2.a), Articles 19-180.3.b), Article 180.3.b) and Articles 19-180.2.a), Articles 19-180.3.b) of the Criminal Code of Georgia (fraud, and attempted fraud, committed by a group with a preliminary agreement in large quantities).⁷¹ These acts do not constitute corruption crimes and do not fall within the investigative jurisdiction of the State Security Service.

The DRI also identified the following cases, where investigation was incompatible with the investigative jurisdiction and scope of work of the State Security Service:

- In one case, the Anti-Corruption Agency of the State Security Service investigated attempted fraud in large quantities (under Article 19,180.3.b) and failure to execute or interference with the execution of a judgment or other court decisions (under Article 381.1).⁷²
- The Anti-Corruption Agency of the State Security Service investigated two individuals with regard to the crime under Article 221.4.a) of the Criminal Code of Georgia (commercial bribery – promising, offering, transferring or rendering, directly or indirectly, money to a person holding managerial and representative powers in an enterprise in his/her or other person's favour, in order that he/she act or refrain from certain actions, in violation of his/her official duties, committed by a group).⁷³ The acts covered by this article do not fall within the investigative jurisdiction of the State Security Service.
- In 2017, one person was arrested for bribe-giving to enjoy official standing and official patronage in connection with the problems arising in the process of illegal extraction of minerals under Article 339.2 of the Criminal Code of Georgia (gave a bribe in the amount of 5000 GEL).⁷⁴
- Officials of the Anti-Corruption Agency of the State Security Service arrested an individual for taking a bribe in the amount of 200 USD. Article 338.1 criminalises bribe-taking (taking or demanding by an official of money in order for the official to take or not to take certain actions during the exercise of his/her official powers for the benefit of the bribe-giver). It should be noted that the court changed the charges to Article 180.3.a) of the Criminal Code of Georgia (fraud).⁷⁵

The vast majority of cases investigated by the Anti-Corruption Agency do not pose any risk to state security.⁷⁶ Out of the cases examined, the court stated only in two cases that it had taken into account the public danger and the nature of the act committed. In one of these cases, convicts attempted to illegally purchase, store, possess and dispose of nuclear material (which carries a high risk).⁷⁷ In other cases, the court did not examine the extent to which the actions investigated by the Anti-Corruption Agency of the State Security Service were dangerous. In one case, the court observed in express terms that the fine

⁷¹ Tbilisi City Court's judgment no. 1B/1355-19 of 27 November 2017.

⁷² Tbilisi City Court's judge Natia Gudadze's judgment of 20 January 2018.

⁷³ Tbilisi City Court Judge Khatuna Kharchilava's judgment of 18 April 2018.

⁷⁴ Tbilisi City Court Judge Lela Nozadze's judgment of 19 April 2018.

⁷⁵ Tbilisi City Court Judge Davit Mgeliasvili's decision of 4 April 2018.

⁷⁶ In only five cases, the State Security Service responded to the crimes under Article 344 of the Criminal Code (illegal crossing of the Georgian state border) and smuggling large quantities of movable property across the customs border of Georgia, bypassing the customs control, by prior agreement of the group. This falls within the investigative jurisdiction of the State Security Service.

⁷⁷ Tbilisi City Court's judgment no. 1/1803-19 of 22 November 2019.

imposed on the convicts in the amount of GEL 5,000 was a proportionate punishment for the persons concerned and the acts committed demonstrating the petty nature of the crime.⁷⁸

Consequently, the court judgments examined above demonstrate that the activities of the State Security Service (and its Anti-Corruption Agency) go beyond the crimes posing a threat to state security and assume the tasks of law-enforcement (police) authorities.

2.3. DUPLICATE TASKS OF THE ANTI-CORRUPTION AGENCY OF THE STATE SECURITY SERVICE AND THE INVESTIGATION DIVISION OF THE PROSECUTOR'S OFFICE

There is a problem of blurred boundaries and mixed competencies when it comes to the agencies with a mandate to investigate corruption crimes. This is particularly true with regard to the Anti-Corruption Agency of the State Security Service and the Investigation Division of the Prosecutor's Office of Georgia. This makes it impossible to separate the tasks of the State Security Service and prosecutor's office in the context of official misconducts (corruption crimes).

The study of court judgments did not allow for identification of objective criteria, in which case investigation was carried out by the Investigation Division of the Prosecutor's Office or the Anti-Corruption Agency of the State Security Service.

Furthermore, the analysis revealed that the number of corruption cases investigated by the Investigation Division of the Prosecutor's Office exceeds significantly the number of cases investigated by the Anti-Corruption Agency of the State Security Service. For instance, in 2020, the Prosecutor's Office of Georgia instituted investigation into 169 criminal cases linked to corruption.⁷⁹ For comparison, the Anti-Corruption Agency of the State Security Service instituted investigation into 66 criminal cases during the same period. The difference between numbers was even more striking in previous years. In 2017, the Anti-Corruption Agency of the State Security Service instituted investigation into 62 cases, whereas the prosecutor's office into 474 cases. In 2018, the Anti-Corruption Agency of the State Security Service instituted investigation into 71 cases, whereas the prosecutor's office into 638 cases. In 2019, the Anti-Corruption Agency of the State Security Service had a rate of 91 and the prosecutor's office 655 cases.

It should be noted against this background that the budgetary funds allocated for the State Security Service are approximately three times higher than the budgetary funds allocated for the General Prosecutor's Office.⁸⁰ At the same time, the Anti-Corruption Agency institutes investigation into the highest number of cases, among the departments of the State Security Service.⁸¹

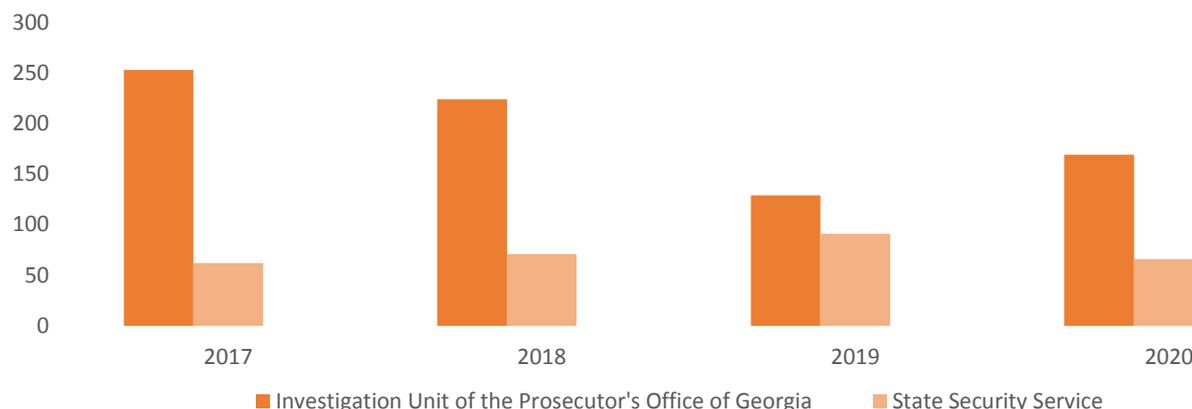
⁷⁸ Tbilisi Appellate Court's judgment no. 1B/1051-18 of 21 February 2019.

⁷⁹ Report of the Office of the General Prosecutor of Georgia, 2020, available at: <https://pog.gov.ge/page/default/saprokuroro-sabWosTvis-wardgenili-angarishebi>, p. 32 (accessed 09.07.2021).

⁸⁰ The 2020 State Budget is available at: <https://mof.ge/5261>. See also the 2021 State Budget at: <https://www.mof.ge/5355>.

⁸¹ DRI, The State Security Service - Duplication of Competences and Parallel Investigative Systems in Georgia, 2020, p. 19, available at: <http://www.democracyresearch.org/files/59eng%20a%20-%20Copy.pdf> (accessed 09.10.2021).

Investigations into Corruption Cases



In 2018-2021, the prosecutor's office received 106 audit reports from the State Audit Service, based on which investigation was instituted into 91 criminal cases. Notably, the prosecutor's office launched investigation into 73 criminal cases; the investigation service of the Ministry of Finance instituted investigation into 17 cases, whereas the Anti-Corruption Agency started investigation only into one criminal case.⁸²

Within the above cases, the prosecutor's office conducted criminal prosecution against 50 individuals; among them 23 public officials were of such ranks as a city mayor, deputy mayor, municipality *Gamgebeli* and deputy *Gamgebeli*, head of the municipality service etc.

Similarly, according to the 2018-2020 annual reports of the State Security Service, numerous public officials were arrested for bribe-taking, among them, a city hall representative, and the first deputy of the municipality mayor, a *Sakrebulo* deputy and the head of a municipality *Sakrebulo*.

2.4. HIGH LEVEL CORRUPTION AND NO POLITICAL WILL

Despite numerous reforms carried out to fight corruption, there is still virtually no response to high level corruption in the country. According to the 2019 report of the Transparency International, the high rate of corruption in Georgia is due to "state capture" and high concentration of power in the hands of private entities.⁸³ This must be one of the reasons for the ineffective fight against high level corruption.

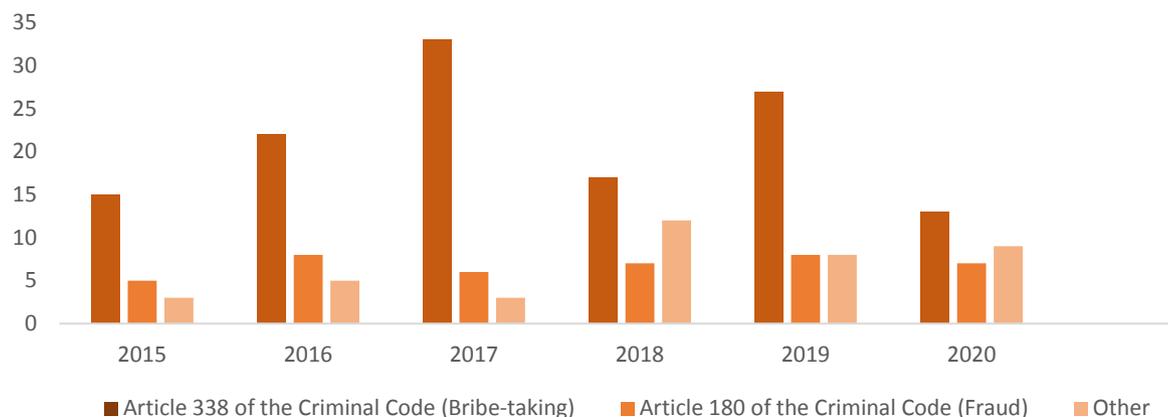
The official website of the State Security Service imparts information about several cases and arrest/arrests made by the Anti-Corruption Agency. The majority of the service's cases are investigated by the Anti-Corruption Agency expending the service's most substantial material and human resources.

⁸² Regarding the information about the response to the reports received from the State Audit Service in 2018-2021, see <https://bit.ly/36qU9w8> 2021, p. 21 (accessed 08.07.2021).

⁸³ Transparency International, the 2019 Report of Activities in Georgia, p. 69, available at: https://docs.google.com/viewerng/viewer?url=https://transparency.ge/sites/default/files/magazine-2019-ge-a4-compressed_1_0.pdf.

The issue is serious enough to warrant a question regarding the extent to which these crimes pose a threat to state security.

Statistics of Investigations Instituted by the Anti-Corruption Agency



The above cases demonstrate that the agency uses its mandate to fight relatively petty corruption crimes. Furthermore, according to the 2020 report of the State Security Service, the majority of the cases investigated by the Anti-Corruption Agency are petty crimes.⁸⁴ Substantial resources of the State Security Service are wasted on the investigation of the crime of fraud criminalised under Article 180 of the Criminal Code of Georgia, which is not a crime posing a risk to national security and does not fall within the investigative mandate of the State Security Service. Meanwhile, there is still no response to the problems related to high level corruption in the Country.

Despite a number of alleged high level corruption crimes were detected through journalistic investigation, the Anti-Corruption Agency of the State Security Service has ignored them. For instance, according to a journalistic investigation, it is alleged that money is extorted from transit carrier companies at the Turkey-Georgia border in favour of a Russian businessperson, Felix Khudoev with the help of high-ranking officials of the Revenue Service and other governmental agencies.⁸⁵ Despite the fact that this information was made public, there has been no follow-up by the law-enforcement body.

It is not enough to have relevant legislation in place to fight effectively high level corruption. It is imperative to have independent investigative authorities and court system as well as to eradicate the problem, which in turn depends mostly whether there is a political will.⁸⁶ The lack of the political will in Georgia is demonstrated by refusal of the 10th parliament to deliberate on the draft Law on the National Anti-Corruption Agency.⁸⁷

⁸⁴ The 2020 Report of the State Security Service of Georgia, p. 33, available at: <http://parliament.ge/ge/ajax/downloadFile/151521/1-4905.pdf>.

⁸⁵ Netgazeti.ge (website), 28.04.2020, see <https://netgazeti.ge/news/447571/>.

⁸⁶ Georgian Institute of Politics (GIP), Zurabashvili, Teona, "Does the national Anti-Corruption Agency has any Perspective in Georgia?" No. 14, p. 11, 11 March 2021. See Meagher, Patrick. 2005. Anti-Corruption Agencies: Rhetoric versus Reality, Journal of Policy Reform 8, no. 1. Meagher, Patrick. 2005, Anti-Corruption Agencies: A Review of Experience. Prepared for the World Bank.

⁸⁷ See the list of draft laws by the Committee for Legal Affairs of the Parliament of Georgia, available at <https://info.parliament.ge/file/1/BillReviewContent/268097>.

3. COMPATIBILITY OF THE ACTIVITIES OF THE STATE SECURITY SERVICE'S ANTI-CORRUPTION AGENCY WITH INTERNATIONAL STANDARDS

According to the recommendations and standards established by international organisations, an agency tasked with the fight against corruption should be independent and apolitical. It should manifest the high level of accountability, transparency and openness. It is discussed below as to what extent the activities of the Anti-Corruption Agency of the State Security Service comply with these standards.

Independence

In 2015, the main argument for separating the Anti-Corruption Agency from the Ministry of Internal Affairs and placing it under the State Security Service was about the independence and apolitical nature of the State Security Service. At first glance, it can be assumed that the independence of the agency is ensured by the procedure for the election of its head and the term of office (6 years). However, in reality, despite the fact that the Prime Minister, Government and Parliament are all involved in selecting the Head of the State Security Service, the redistribution of powers in the parliament and the lack of constructive cooperation with the opposition allow the ruling party to elect a desirable candidate. This, in turn, enables the authorities to influence the activities of the State Security Service.⁸⁸

The fact that there is no response to some numerous alleged high level corruption cases gives rise to a question concerning the independence of the service.

Accountability and Transparency

The Head of the State Security Service is accountable and responsible before the Parliament of Georgia. To ensure accountability, the parliament has oversight mechanisms, such as questioning and interpellation,⁸⁹ requesting the head of the service to attend a committee session,⁹⁰ etc. However, the DRI has demonstrated that the legislative body almost never uses the powers granted by the Rules of the Parliament.⁹¹

As part of its accountability before the parliament, the State Security Service is also obliged to submit an annual report.⁹² The 2020 report of the State Security Service (similar to the reports of previous years) only a few pages are concerned with the fight against corruption, which does not allow a comprehensive assessment of the activities of the Anti-Corruption Agency.⁹³

⁸⁸ Regarding this issue, see a DRI study on Mechanisms of Parliamentary Oversight of the State Security Service of Georgia and Their Significance, 2020.

⁸⁹ The Constitution of Georgia, Article 43, The Rules of Parliament, Articles 148 – 149.

⁹⁰ The Rules of Parliament, Article 4.3.

⁹¹ DRI, Mechanisms of Parliamentary Oversight of the State Security Service of Georgia and Their Significance, 2020.

⁹² The Rules of Parliament, Article 88.2, Article 171; the Law of Georgia on the State Security Service of Georgia, Article 9.2.

⁹³ The 2020 Report of the State Security Service of Georgia, available at: <http://parliament.ge/ge/ajax/downloadFile/151521/1-4905.pdf>.

The central principle of the fight against corruption is the transparency and openness of the agency. Article 10 of the United Nations Convention against Corruption stresses the importance of transparency in public administration's accountability before the public.⁹⁴

Furthermore, contrary to the relevant standards, the activities of the State Security Service are highly confidential and therefore, accountability before the public is low. It is a practice to review annual reports of the State Security Service mostly behind closed doors, using the confidentiality of information concerned as a pretext. Those parts of the reports that are made public impart extremely scarce information about the fight against corruption.

The State Security Service has problems in terms of accessibility of public information as well. The DRI requested public information in writing, namely, statistics on the cases investigated by the Anti-Corruption Agency. The State Security Service imparted incomplete information by returning the correspondence with a considerable delay breaching the statutory term for supplying public information.⁹⁵ However, this was not an isolated case, where the State Security Service has submitted incomplete information or refused to impart information without any justification. Despite numerous requests by the DRI to receive the list of entities posing a high risk to state security with which the State Security Service concluded a contract on cooperation, the State Security Service has been consistently refusing to impart this information. The refusal was challenged before the court, in accordance with a procedure established by law. It is a usual practice of the State Security Service to delay imparting requested public information, thereby breaching statutory terms. This demonstrates the low quality of accountability, transparency and openness of the State Security Service, which is further confirmed by the scarcity of the information published by the service in a proactive manner. For instance, the service's website does not provide any information about heads of structural units of the State Security Service (including the Anti-Corruption Agency) or their deputy/deputies.

It should also be noted that the state has not yet adopted the Anti-Corruption Action Plan for 2021-2022, which should outline in detail the measures to be taken to increase transparency, openness, accountability and independence of anti-corruption agencies. However, due to the confidentiality of the activities carried out by the State Security Service, it is difficult to discuss the solution of the problem in a comprehensive manner.

CONCLUSION

In Georgia, at the stage of building institutions, when corruption was the major threat to the functioning of the state, one key agency was vested with the mandate to fight corruption – the Ministry of Internal Affairs and its special departments in charge of state security. Other agencies such as the prosecutor's office and the respective unit of the Ministry of Justice were assigned these tasks only in isolated, statutory cases. The fight against corruption was considered a matter of state security.

At present, the existence of anti-corruption agency within the State Security Service is not a rational decision to reduce the level of corruption in the state and instead, it has to be explained by the historical

⁹⁴ The United Nations Convention against Corruption, 2003, Article 10, available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁹⁵ Letter no. SSG 8 21 00049663, SSG 9 21 00049655 of the State Security Service, dated 19.04.2021.

legacy of this institution. At present, the Anti-Corruption Agency of the State Security Service is an ineffective agency whose activities do not correspond to the scope of work of the State Security Service.

The Anti-Corruption Agency of the State Security Service has three times as much funding than the Investigative Division of the Prosecutor's Office of Georgia. However, the agency carries out investigation into a much smaller number of cases than the prosecutor's office. The cases investigated by the State Security Service and other anti-corruption investigative authorities are identical in terms of the officials prosecuted, public danger and qualitative indicators. This proves that corruption crimes should not remain within the investigative jurisdiction of the State Security Service.

Under such circumstances, the DRI considers that it is advisable to deprive the State Security Service fully of its investigative powers (especially the power to investigate corruption crimes) and to continue working with the Parliament of Georgia to establish an independent anti-corruption investigation mechanism. Before the implementation of the proposed amendments, the DRI believes that the activities of the State Security Service (and its Anti-Corruption Agency) should be limited to the investigation of those acts that pose an actual risk to the state's security and interests.