

Corruption, the judiciary and the rule of law



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The independence of the judiciary is an indispensable feature of an open society, where the rule of law sustains social and economic development and democratic advances. The Early Transition Countries¹ have certain constitutional safeguards preserving the independence of the judiciary, but these are not consistently observed. In addition, there are shortfalls in the appointment of judges and the extent of political pressure exerted on the judiciary. The prospect of reforms in Georgia following the “rose” revolution will be closely monitored to assess anti-corruption strategies across the region.

Corruption is the abuse of entrusted power for private gain, such that decisions are taken not for the public benefit but to serve private interests.

Corruption among public officials and politicians leads to a loss of legitimacy, and of public trust and support. As corruption increases, regimes become more secretive, posing a threat to basic social and economic rights.

Instead of fair competition based on price, quality and innovation, corruption leads to competitive bribery, hampering trade and deterring investment. Corruption directly affects the viability of our social contract by altering the relationship between governments and citizens, whereby public officials are not providing what is expected, and where citizens no longer trust their authorities.

The “rose” revolution that took place in Georgia at the end of 2003 has raised new hopes of democratic progress and more open government. Before becoming Minister of Justice in 2000, Mikheil Saakashvili – now President of Georgia - invited the American Bar Association to supervise the country’s selection of judges. With judicial examinations supervised by the

ABA, the improvements to the judiciary helped counter-balance the influence of the then ruling party.

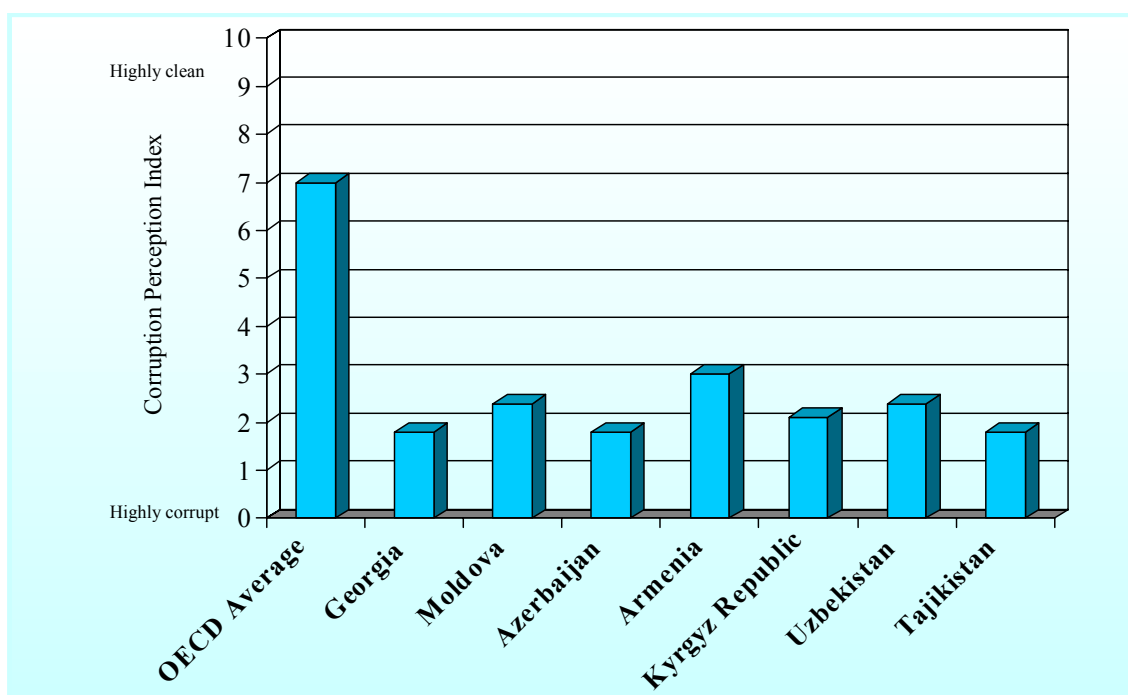
Now in power himself, in an interview on 6 July 2004,² Saakashvili declared that as part of his reforms he was tackling corruption by firing 19,000 police, 2,000 tax officials and 1,500 customs officials. A draft package of changes to Georgia’s legal system has now been prepared, including a redrawing of the balance of powers between the Supreme Court and the Council of Justice.

The progress made in Georgia will be closely watched and used as a measure for assessing governance, media freedoms, the independence of the courts and corruption levels in the Early Transition Countries.

The challenge ahead

An enormous task lies ahead of the Early Transition Countries. According to the Transparency International Corruption Perceptions Index 2003,³ which charts levels of corruption in 133 countries, Georgia and Azerbaijan each score 1.8 against a clean score of 10. This indicates rampant corruption in the public sector and politics. Even Armenia, where the problem is less acute, scores only 3.0 against a clean 10. While the problem is worse in Moldova and Uzbekistan, each with 2.4 out of 10, corruption in the Kyrgyz Republic (2.1) was nearly as pervasive as in Georgia and Azerbaijan.

Corruption Perceptions in the Early Transition Countries



Source: Transparency International

A Corruption Perceptions Index 2003 Score relates to perceptions of the degree of corruption as seen by business people, academics and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt).

According to the Freedom in the World 2004 ranking by Freedom House,⁴ Azerbaijan, the Kyrgyz Republic and Uzbekistan are “not free”. Armenia, Georgia and Moldova were assessed as “partly free”. On a range from 1 to 7, where 1 is the most free and 7 the least free, on political rights, Moldova is the most free with a score of 3 and Uzbekistan the least free with a score of 7. Armenia and Georgia have a score of 4, while Azerbaijan and the Kyrgyz Republic have a score of 6. On civil liberties, the scores are similar, with Armenia, Georgia and Moldova each attracting a score of 4, Azerbaijan and the Kyrgyz Republic with a score of 5, and Uzbekistan the least free with a score of 6.

One measure is cautiously positive for the region, however, namely the extent to which corruption is an obstacle to business. The World Bank Survey *Anticorruption in Transition 2*⁵ sees an improvement in all six countries between 1999 and 2002. On a scale of 1 to 4, where 1 signifies that corruption poses no obstacle to business and 4 signifies that corruption poses a major obstacle to business, the Kyrgyz Republic improved from 3.37 to 2.36, and Azerbaijan improved from 2.76 to 2.07. Uzbekistan, which had a score of 2.24 in 1999, improved to 1.71 in 2002. Armenia improved from 1.90 to 1.85, Moldova improved from 2.90 to 2.65 and Georgia from 3.03 to 2.87.

International Anti-Corruption Day

So the news is not all bleak. Furthermore, the signing in December 2003 of the UN Convention against Corruption was a watershed for the anti-corruption movement. In addition, the UN General Assembly declared 9 December, the day the Convention was signed by Heads of Government, as an annual International Anti-Corruption Day. This should be a potent opportunity for heightening public awareness of the problems of corruption on a sustained basis and for continuing to apply pressure on those in power to lead by example, by earning the trust of citizens, and by exercising power with integrity.

According to Transparency International’s Global Corruption Barometer,⁶ a survey conducted by Gallup International in 47 countries, the institution one in three respondents would most like to eliminate corruption from would be political parties. The institution next most likely would be the courts (named by one in seven respondents).

Similar results were found in the Early Transition Countries. For example, in Georgia, one in five respondents singled out the courts – while one in eight chose political parties as the institution in most urgent need of reform.

The right to a fair trial before an impartial court is universally recognised as a fundamental human right.

Independence protects judicial institutions from the executive and the legislature. As such, it lies at the very heart of the separation of powers. The other arms of governance are accountable to the people, but the judiciary alone is accountable to the higher value of justice.

Judges must not be seen as political appointees, but rather selected for their competence and political neutrality. The selection of judges for promotion should involve the judges themselves, and the principle of the “permanency” of the judiciary. There should be no removal from office other than for just cause and by due process, and the judge’s security of tenure to the age of retirement is an important safeguard of the Rule of Law.

The constitutional role of the judiciary is to review actions taken by the government and to determine whether they comply with the constitution and the laws enacted by the legislature. In emerging democracies, the judiciary has the additional task of guaranteeing that new laws passed by an inexperienced executive or legislative branch do not violate the constitution or other legal requirements. An independent, impartial and informed judiciary is crucial to the realisation of just, honest, open and accountable government.

Transparency International’s national chapters in Armenia, Azerbaijan, Georgia, the Kyrgyz Republic and Moldova assessed the state of the judiciary in the context of corruption in their respective countries⁷.

Armenia⁸

Article 15 of the Law on Council of Justice and Article 11 of the Law on the Court System explicitly state that the appointment of judges should be based on the professional and moral qualities of the candidates. Article 19 of the Law on Council of Justice and Article 30 of the Law on Status of Judge define the grounds (justification) for early termination of the powers (removal) of judges.

Article 14 of the Law on Constitutional Court sets out grounds for early termination of powers of a member of the Constitutional Court and protects the appointees from unjustified removal. Articles 13 of the Law on Council of Justice and Article 34 of the Law on Status of Judge stipulate that the recruitment and career development of judges (including advancement in the judicial ranks) should be based on merit.

Article 55 of the Constitution empowers the President to appoint, remove and promote all judges (upon the recommendation of the Council of Justice), and nominate four out of nine members of the Constitutional Court.

Opposition politicians and press claim that the judiciary in Armenia is not independent. They point to the - in their view - unfair verdicts passed by judges. In particular, they refer to the many participants in protest manifestations organised by opposition leaders during

the 2003 Presidential elections who were fined or sentenced to 15 days’ imprisonment⁹.

Though the Armenian Constitution and relevant laws formally declare the independence of the Judiciary (Article 94) and independence of judges and members of the Constitutional Court (see Article 97 of the Constitution, Article 5 of the Law on the Status of Judge, and Article 10 of the Law on the Constitutional Court), they are legally dependent on the President and financially dependent on the state budget. “Corporate solidarity” among state officials is widely believed to play an important role too, sometimes prevailing over the primary mission of ensuring justice.

The appointment, removal and career development of judges is not transparent. There is no information available on how the Council of Justice decides whom to recommend to the President for appointment, removal or promotion. Presidential decrees on judges’ appointments, removals or promotions do not disclose that information either. This fosters the public perception that bribery and nepotism, rather than merit, are the decisive factors in the appointment and career promotion of judges, prosecutors and police officers.

A survey conducted by the Center for Regional Development, Transparency International Armenia, revealed that 84 per cent of households, 92 per cent of businesses and 88.5 per cent of public officials consider the courts to be corrupt.¹⁰ Furthermore, for both households and businesses, the courts are considered to be the most corrupt state institution. The findings of a public opinion survey carried out by the Armenian Democratic Forum¹¹ showed that 96 per cent of households have not used judicial services over the past 12 months. Of these, 59 per cent of households said they did not apply because they believed that “without bribes it was impossible to solve the case”. Although the media regularly covers the activities of the judiciary, with few exceptions, there is no investigative coverage.

Since the establishment of the Council of Justice in 1998, the media have reported only one officially recorded case of corruption in the judiciary. In 2000, a judge of the first instance court of the Lori Marz was convicted for bribery. His powers were terminated, though the grounds for this termination were not mentioned in the corresponding Presidential Decree. As reported by the Association of Investigative Journalists of Armenia, the Council of Justice is reluctant to work transparently. For example, when the press reported that in 2002 the law-enforcement authorities arrested an assistant to a judge of the Lori Marz first instance court for accepting a US\$ 200 bribe, the Council of Justice released no official information.

There is a common perception, though justly backed by some experts that many corruption cases within the judiciary do not reach the courts because the investigation is stopped by the police or the Prosecutor’s Offices, either because of corruption or

“corporate solidarity” among public officials. Combined with the impunity of judges, this leads some people to believe that judges do not always base their actions on the law. This is why the citizens of Armenia tend to avoid contact with the judiciary. Reportedly, many of those who have to appeal to the courts or are otherwise involved in cases brought before a court believe that the desired fair decision can be reached only through bribes.

Azerbaijan

In Azerbaijan the judicial system is wholly dependent on the ruling political elite. This is primarily due to loopholes in the legislation regulating the judiciary. Candidates for the positions of judges are elected by the Judicial and Legal Council, established by the President of Azerbaijan and headed by the Ministry of Justice. Appointments are made in line with the principles established by the Council, rather than in accordance with legislative norms. Some of these rules are contradictory and create conditions favourable for corrupt practices. The appointment of judges in 2000 in accordance with these rules has negatively affected the confidence of the public in judicial power.

The contradictory nature of the rules is perceived by experts and the public at large as an intrinsic feature of the entire Azerbaijan legal framework. According to a nationwide household opinion survey¹² conducted by Transparency Azerbaijan in April 2004, only 14.2 per cent of respondents agree that the laws of the country have strict and clear norms that discourage corrupt practices. Meanwhile, 49.5 per cent believe that imperfect laws create an environment favourable to corruption. In addition, 20.6 per cent believe that contradictory norms have been deliberately included in the legislative framework to facilitate the corrupt practices of public officials.

Provisions establishing the terms of office for judges do not ensure their independence either. The judges of the Supreme Court, the Court of Arbitration, the Court of Appeal, and the Supreme Court of Nakhichevan Autonomous Republic are appointed for ten years and other judges for five years. According to Article 127 of the Azerbaijan Republic Constitution and Article 97 of the Law on Courts and Judges, judges cannot be dismissed before the expiry of their terms.

To be reappointed after five years, judges are “screened” by the Ministry of Justice in accordance with the “regulations” described above. Current practice shows that judges are mostly concerned with the evaluation of their activities by the Ministry of Justice, rather than with due administration of justice and law enforcement, or with the fear that the higher judiciary will refute their illegal and ungrounded verdicts.

Judges are de facto dependent on the Ministry of Justice because current regulations allow the Ministry of Justice to start disciplinary proceedings in respect of all judges, with the exception of chairmen of the

Supreme Court, the Court of Arbitration, the Court of Appeal, and the Supreme Court of Nakhichevan Autonomous Republic.

Despite the fact that judges’ salaries were recently increased somewhat, it is doubtful that these provide a decent standard of living, thereby jeopardising the judges’ independence and their resistance to corruption. Furthermore, except for the Supreme Court, the Court of Arbitration, the Court of Appeal, and the Supreme Court of Nakhichevan Autonomous Republic, the organisational chart of courts, the staff schedule, the cost estimates and staff salaries are defined by the Ministry of Justice. In addition, the Ministry of Justice is entitled to audit courts, including processing papers by courts.

There have been no cases where corrupt judges have been prosecuted so far. In contrast, there have been several cases, in which courts were widely believed to be manipulated by authorities as an instrument in political struggle. The most notorious case was that of naval captain Janmirza Mirzoyev, who on 5 November 2000 was sentenced to eight years imprisonment for allegedly arranging the murder of Rear Admiral Eduard Huseinov in 1993. Mirzoyev had publicly made detailed allegations of mismanagement and corruption within the Defence Ministry. Mirzoyev’s lawyers and human right activists persisted that the case was fabricated and the court ruling ordered by the authorities.¹³ Documents and manuscripts by Mirzoyev, testifying to his activities, have now been made public. He was released from prison in May 2004 under heavy pressure from the international community.¹⁴ Mirzoyev was pardoned by the president, but not cleared of all charges.

Another example of the courts being used for political purposes are the frequent claims by individual public officials against independent and opposition media on the grounds of “libel” or “contempt of honour and dignity”. It happens that the courts satisfy the claims of officials, and sentence newspapers to ruinous financial penalties or pass sentences against journalists.¹⁵

In Azerbaijan, the Prosecutor’s Office is also dependent on Executive power. The Chief Prosecutor is appointed by the President, with the approval of the Parliament. The law does not contain any special provisions envisioning conditions for the release of the Chief Prosecutor from their duties. Deputy Chief Prosecutors (prosecutors in charge of specialised branches) are also appointed by the President. District prosecutors are appointed with the approval of the President. Prosecutors do not have guarantees set out in the law and supported by the constitutional system to enable them to refuse “orders” coming from the executive authorities. Therefore, to effectively fight corruption in the corridors of power in Azerbaijan, the office of an independent prosecutor must be established.

Moldova

Both interference with the administration of justice and paying or accepting a bribe constitute criminal offences in Moldova. Under Rule 3 of the Judicial Code of Ethics, judges have a duty when considering cases not to be influenced by “any governmental or administrative institutions, public opinion, the media, or any other person”.¹⁶

Under the legislation of the Republic of Moldova, court judges, including specialised court judges, and trainee judges are appointed as candidate judges by the President of the Republic of Moldova, at the proposal of the Superior Council of the Magistracy. The candidate is appointed to the position of judge initially for a period of five years. After the expiry of this period, the judge is appointed to the office with tenure until the age of 65.

Presidents and deputy presidents of first instance courts and of courts of appeal are appointed to the office by the President of the Republic of Moldova, at the proposal of the Superior Council of the Magistracy for a period of four years. The judges of the Supreme Court of Justice are appointed by the Parliament, at the proposal of the Superior Council of the Magistracy. A judge can be removed from office by the appointing authority in cases provided for in the legislation. The proposal regarding the removal of the judge from office is submitted by the Superior Council of the Magistracy to the President of the Republic of Moldova or, in some cases, to the Parliament.

Although difficult to quantify, bribery of judges is reported to occur in Moldova. Instances of political pressure on the courts have also been reported. According to an opinion poll carried out by Transparency International Moldova¹⁷ at the end of 2002, 4.3 per cent of households, 11.9 per cent of representatives of non-governmental organisations and 15.2 per cent of businessmen contacted courts. Of those who contacted the courts, 33.3 per cent, 18.9 per cent and 15.7 per cent respectively paid a bribe.

As a general rule, lawyers who were interviewed by the American Bar Association/Central European and Eurasian Law Initiative in Moldova¹⁸ believe that bribery is widespread. These lawyers note that some judges drive expensive cars and live in expensive houses, even though their salaries are low. At the same time, they recognise that there are impartial judges who would never think of accepting a bribe.

According to these interviewees, the size of a bribe depends on how much is at stake and on the level of the court. Some concluded that in almost all cases involving important economic or political interests, bribery or improper influence is a strong possibility. As a result, the decisions in such cases may not be based solely on the facts and law. Interviewees frequently remarked that the low level of judges' salaries is a major factor contributing to the corruption, but others believe that it is more a moral than a material problem.

“Telephone justice”, or attempts to influence the outcome of cases by putting pressure on the judges themselves or on the presidents of their courts, still reportedly exists in Moldova. One judge who was interviewed recounted recent cases in which persons in the President's office or Parliament, who had received petitions from litigants, telephoned the judge hearing the case to inquire about it or make suggestions for its disposition.

Another judge described a case in which the president of a court was given direct instructions from the president of a higher court on how to decide a particular case. After the judge delivered a sentence according to his interpretation of the law, he was reportedly called to explain his “disobedience”.

Non-tenured judges are said to be more likely to accede to political pressure out of fear that they will not be given a life-time appointment at the end of their five-year term. Another judge said that the precarious financial situation of some judges may tempt them to comply with requests from local authorities regarding pending litigation, in exchange for benefits such as installation of a natural gas system in the judge's home.

The biggest obstacles to full assurance of judicial independence and impartiality include the legal stipulations or legal loopholes allowing for judges' tenure to be limited:

- (i) Judges are firstly appointed for a period of five years (without any indication that this is a trial period), and after that five-year term are considered for a tenure till retirement age;
- (ii) The President of the Republic of Moldova and, in some cases the Parliament, can reject the candidature for appointment to the position of judge, as submitted by the Superior Council of the Magistracy;
- (iii) The President of the Republic of Moldova can reject (sometimes repeatedly) the candidature proposed for appointment to the position of judge with tenure till retirement age. In addition, this rejection can then serve as a basis for the Superior Council of the Magistracy to submit the proposal for his/her removal;
- (iv) Judges are unable to appeal in the event that he/she is removed at the authorities' initiative;
- (v) The Ministry of Justice provides the organisational, material and financial insurance of first instance courts and of courts of appeal. The Government, through the authorities of local public administration, furnishes courts with premises, transportation means and other endowments. In addition, the Ministry of

Justice controls the organisational and financial issues of first instance courts and courts of appeal; and

- (vi) Judges and courts have insufficient material and financial insurance.

There have been a number of cases when judges have been prosecuted based on corruption charges. One judge, when examining an economic case, allegedly requested a US\$ 6,000 bribe for a favourable judgement. After examination of the case and passing judgement in favour of the party, the judge requested repayment of the “due debt” and was arrested in *flagrante delicto* and charged with receiving a bribe worth US\$ 1,800.¹⁹ In another case, a prosecutor, bringing criminal charges against a defendant, requested a bribe of US\$ 600 from the defendant for adopting a favourable position with the court. The case-examining judge was allegedly to be bribed later. At the moment of handing over the agreed cash, both the judge and prosecutor were arrested in *flagrante delicto*.²⁰

Kyrgyz Republic

The constitutional law of the Kyrgyz Republic establishes that judicial power belongs to the courts only on behalf of judges. Judges are independent and submit only to the Constitution and to the laws of the Kyrgyz Republic. The independence of the judiciary is provided through:

- (i) the realisation of justice by the rules stipulated only by the law;
- (ii) the inadmissibility, under the threat of legal sanctions, of influencing the judges in any form by any of the parties;
- (iii) the established order of tenure and termination of powers of judges;
- (iv) the inviolability of the judge;
- (v) the granting of social security to the judge corresponding to his/her status; and
- (vi) the granting of state protection of life, health and property of the judge.

The constitution provides that “the judiciary shall be independent, and shall be subject to the Constitution... and laws of the Kyrgyz Republic only... No one shall require a judge to account for a case”.²¹ The Law on the Constitutional Court states that the judges of the court “shall be independent in the course of fulfilment of their duties and shall be governed only by the Constitution... Any interference in their activities as well as any form of influence upon judges aimed at hindering their activities shall be prohibited and shall entail liability pursuant to the legislation.”²²

According to the law of the Kyrgyz Republic, judges are completely independent but, as practice shows, the

Ministry of Justice prepares, represents and administers the budget of the judicial system. As to the term of judges, before the amendments were introduced into the Constitution, judges were appointed in the first term for three years, and the second term for seven years. Now, under the new Constitution, one term of seven years is established, which makes judges more independent.

The full independence of the courts, however, cannot be discussed. Before modification and additions to the Constitution, all judges (in districts, cities and the capital Bishkek) were appointed by the President. Now, after presentation by the President, the Parliament should approve their appointments. Many judges complain that parliamentarians blackmail them and press them on their decisions, making it clear that they will not support them and will not confirm their candidature for the next term.

To determine the degree of competence of judges, certification is carried out. In the opinion of many judges, certification should be carried out more transparently and a more objective computer testing should be introduced. The rotation of the staff, movement and assignment of judges should operate more transparently. Nowadays, it is common practice that the less loyal judges tend to be directed to remote areas of the country.

Evidence suggests that the judiciary is subject to undue pressure from the executive power, from within the judiciary itself, and through the use of corruption, bribery, and connections. According to the US Department of State 2003 Report on Human Rights practices, “the executive branch dominated the judiciary, and the government used judicial proceedings against prominent political opposition and independent media figures in numerous instances.”²³ The report later states: “In decisions that appear to have been politically motivated, a number of prominent opposition candidates were disqualified or deregistered before the runoffs, despite having led voting after the first round.”

Other analysts have drawn similar conclusions: “During the 2000 election campaign, international and local observers complained that the judiciary was biased against opposition candidates and used its powers selectively to harass potentially strong candidates such as Daniyar Usenov and Feliks Kulov.”²⁴

Reportedly, political and financial interests also use the courts to intimidate the press.²⁵ The courts award high monetary damages for offences to the “honour and dignity” of political figures, including in a case filed by the Prime Minister. The courts rarely decide in favour of the press in these matters. As a result of the high damages, a number of newspapers have been forced out of business. As an example, one newspaper, namely “Moya Stolitsa”, which criticized corrupt officials, including president Akayev, was sued two or three times a week. After being charged 32 times for a total sum of estimated US\$ 95,000, it ultimately went out of

business, without being able to win a single case.²⁶ Journalists may also be held criminally liable. For instance, a newspaper journalist in Jalal-Abad was sentenced to two years' imprisonment for violating the honour and dignity of a local official.

A number of former judges and lawyers reported that "telephone justice" is still the determining factor in political and certain important financial cases in the country. According to the journalist investigations of the newspaper "Moya Stolitsa", in these cases, telephone calls from Executive, the local administration or from the prosecutor's office are likely to determine the outcome of the case.²⁷ Private interests can also exercise undue influence on the courts. Almost every individual that the assessment team interviewed indicated that corruption was a serious problem within the judiciary and that the outcomes of both civil and criminal cases are frequently influenced by corrupt practices. Public trust in the judiciary, moreover, is reported to be very low.

A recent survey conducted by the World Bank concluded that "nearly half of the households surveyed believe that corruption is very widespread in the courts and less than one in 15 was willing to assert that corruption was not widespread."²⁸ The report goes on to state that 28 per cent of firms that had gone to court had encountered bribery. Regarding individuals, "three out of ten respondents who had been to court said they had provided an unofficial payment, mostly in the form of money." Despite this apparently high level of corruption, the prosecutor's office reported that it had convicted only two judges for taking bribes in 2002 and that one other case was pending.

To conclude, it is possible to state that the trust in judicial system in the Kyrgyz Republic is fairly low.²⁹ It is widely believed that the courts are corrupt and that the executive branch and senior level judges wield undue influence over judicial decision-making.

Georgia

Article 87 of the Constitution guarantees the independence and inviolability of a judge and the security of his/her family. Moreover, the prosecution, detention or arrest of a judge or the search of his/her apartment, workplace or him/her personally is prohibited without the permission of the Chairman of the Supreme Court. However, these provisions do not guarantee the independence of judges. There are several reasons for this:

- (i) Judges (except for a Supreme Court Judge) are appointed and dismissed by the President following nomination by the Council of Justice. Therefore, the judges are presidential appointees and they always run the risk of being dismissed;
- (ii) The laws do not provide for an appeals procedure for the dismissed judges. This means that even if the judges are

dismissed unfairly there is nothing they can do about it; and

- (iii) The salaries of judges range from GEL 500 to 700. Taking into consideration that the judges often hear lawsuits concerning disputes over several thousand lari, there is always a possibility for judges to become corrupted.

Nevertheless, experts claim that there is no systemic corruption in the judicial system of Georgia. According to the American Bar Association/Central European and Eurasian Law Initiative representatives in Georgia, the Chair of the Judges' Association, who is a strong pro-reform judge, estimates that about 25 per cent of the judges are absolutely incorruptible. Further, about 25-30 per cent are corrupt, and the rest could go one way or the other depending on positive working conditions and anti-corruption control mechanisms.

Article 2.2.b of the Law of Georgia on the Discipline Responsibility and the Discipline Jurisprudence of Judges provides that judges may face disciplinary action for acts of corruption in violation of the law. Under this law such violations committed by the judges of the common courts are discussed by the Disciplinary Council of Judges. The Council is composed of 12 judges, which are elected by the Conference of the Judges of the Common Courts. However, if while hearing the case the Council finds that criminal acts were committed by the judge, the Council suspends the hearing and sends the relevant information to the relevant law-enforcement organ for investigation.

The Council has dismissed 16 judges so far. However, none of these dismissals were based on the above-mentioned provision of the law. Two of the judges were suspected of having accepted bribes, but the Council based its decision concerning dismissal on the grave violation of the law and not bribery. This is explained by the fact that under Article 20.3 of the Law of Georgia on Conflicts of Interest and Corruption in Public Service, a judge can be dismissed only if he or she has first undergone disciplinary sanctions for acts of corruption in violation of the law, and then again commits such a violation.

Legal experts argue that the Law of Georgia on the Discipline Responsibility and the Discipline Jurisprudence of Judges is not precise and needs further elaboration. For example, the law does not define acts of corruption in violation of the law. This also makes it difficult to hold the judges responsible for such violations.

There have not been significant changes in the judicial system of Georgia since the "rose" revolution of November 2003. However, the discussion concerning the necessity of legal reform has been re-opened. The Georgian government acknowledges that it is necessary to adopt changes to the legal system, and a draft package of amendments has been prepared. The

amendments initiate structural changes in the judicial system, namely balancing the Supreme Court and Council of Justice, and decreasing the number of district courts.

Certain powers of the Supreme Court are set to move to the competence of the Council of Justice of Georgia. These include the powers concerning the provision of the general courts with material and technical equipments, social protection of judges, disciplinary actions, and budgeting. In other words, all powers not connected to court proceedings will be transferred to the Council of Justice.

The Disciplinary Council of Judges will also move to the Council of Justice, and the composition of the Disciplinary Council will change so that it consists of eight members: four judges and four non-judges. All members will be elected by the conference of judges after nomination by the Council of Justice. One positive change is that the four judges will be selected from the judges of the district courts rather than from the higher courts as was previously the case.

The government is also planning to decrease the number of district courts by unifying several courts. It believes that this will raise the effectiveness of the district courts, making it possible to have judges specialising in different fields of law and thus improving the quality of the court proceedings. Currently, many of the district courts have only two judges, a factor that makes it almost impossible for them to specialise in just one field.

Conclusion

An independent and accountable judiciary is indispensable in ensuring that the Rule of Law is upheld, and that the government functions effectively and honestly. In this larger role, the judiciary is one of a number of the institutions that make up what Transparency International calls the National Integrity System.³⁰ These institutions – the executive, the legislature, watchdog agencies, a free media, an active civil society, the private sector and the judiciary – must be mutually reinforcing.

The concepts of independence and accountability of a judiciary, within a democracy, reinforce each other. Judicial independence relates to the institution – independence is not designed to benefit an individual judge, or even the judiciary as a body. It is designed to protect the people. Judicial accountability is not exercised in a vacuum.

But individual judges also have to be held accountable, without undermining the essential and central concept of judicial independence. This is achieved by the manner in which they exercise judicial power and the environment in which they operate. This is namely achieved by judges sitting in courts open to the public, and by their judgements being subject to appeal and judicial review.

Effective accountability is also achieved by ensuring that judges are obliged by the law to give reasons for their decisions and to publish them. Likewise, judges must be subject to laws of bias and perceived bias, subject to questions in the legislature, and – by way of laws governing press freedoms – subject to media criticism. Judges should be subject to removal (due to incapacity or misbehaviour) by the legislature (or by a supreme judicial council), and of course accountable to their peers. “The fact that individual judges can be held to account increases the integrity of the judicial process and helps to protect the judicial power from those who would encroach on it.”³¹

But care is needed in devising a system of enforcement for the rules of judicial conduct. It is important to guard against according more power to the Executive, whose decisions must be subject to review by the courts. It is also not advisable to cede more power to the legislature, as that would leave the judiciary vulnerable to political manipulation.

One option is to establish formal machinery to regulate the conduct of judges. The other is for the senior judiciary to accept the task for itself.

“The most potent tool would seem to be an appropriate code of conduct. This should be developed by the judges themselves, and provide both for its enforcement and for advice to be given to individual judges when they are in doubt as to whether a particular provision in the code applies to a particular situation. Codes of conduct have been used to reverse such unacceptable practices as when the sons and daughters of judges appear before their parents as lawyers to argue cases.”³²

Transparency International has certain indicators for assessing the independence and accountability of the judiciary:³³

Do judges have the jurisdiction to review the lawfulness of government decisions? If so, are these powers used? Are decisions respected and complied with by the government? Is there a perception that the Executive gets special treatment, be it hostile or preferential?

- Have the judges adequate access to legal developments in comparable legal systems elsewhere?
- Are members of the legal profession making sufficient use of the courts to protect their clients and to promote just and honest government under the law? If not, is access to the courts as simple as it can be? Are the legal requirements unnecessarily complicated?
- Are appointments to the senior judiciary made independently of the other arms of government? Are they seen as being influenced by political considerations?

- Are judges free to enter judgments against the government without risking retaliation, such as the loss of their posts, the loss of cars and benefits, transfers to obscure and unattractive parts of the country?
- Are cases brought on for trial without unreasonable delay? If not, are these delays increasing or decreasing? Are judgments given reasonably quickly after court hearings? Are there delays in implementing/executing orders of the court, e.g. issue of summons, service, grant of bail, listing for hearing? Are there delays in delivering judgements?
- Are court filing systems reliable?
- Are the public able to complain effectively about judicial misconduct (other than appeal through the formal court system)?

However able and independent the judiciary, it must still be supported by a populace willing to speak out, by independent and able investigators, by independent lawyers of integrity, and by honest court clerks. Prosecutors should inspire public confidence, taking decisions on whether or not to investigate and to prosecute in a manner that is fair, reasonable and not influenced by political considerations or connections. Not least, the political establishment must concede that there is a higher authority, namely justice as decreed by independent judges.

¹ The Early Transition Countries (ETC) Initiative was launched in 2002 by the international community and has become one of the focal points of the International Financial Institutions' work. Its principal aim is to help responding to the special developmental challenges facing Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, Moldova, Tajikistan and Uzbekistan. This article is addressing the situation in five Early Transition Countries (Armenia, Azerbaijan, Moldova, the Kyrgyz Republic and Georgia).

² "Primer for a Revolution" by David Ignatius, Washington Post, 6 July 2004

³ Transparency International Corruption Perceptions Index 2003. See www.transparency.org/surveys.

⁴ Freedom in the World 2004 Table of Independent Countries – Comparative Measures of Freedom. See www.freedomhouse.org.

⁵ Cheryl Gray, Joel Hellman and Randi Ryterman, Anticorruption in Transition 2 – Corruption in Enterprise-State Interactions in Central Asia 1999-2002, World Bank 2004, www.worldbank.org/wbi/governance.

⁶ Transparency International Global Corruption Barometer 2003. See www.transparency.org/surveys.

⁷ The country analysis for this article was provided by Amalia Kostanyan, Chairwoman, Center for Regional Development, Transparency International Armenia; Varuzhan Hochtanyan, Public Policy Expert, Center for Regional Development, Transparency International Armenia; Rena Safaraliev, Executive Director, Transparency Azerbaijan; Lilia Carasciuc, Executive Director, Transparency International Moldova; Aigul Akmatjanova, Scientists Group, Kyrgyz Republic; and Salome Menuargia, Transparency International Georgia. Additional research was carried out by Svetlana Podolskaia, research assistant, Transparency International Secretariat.

⁸ A more extensive report by the authors, the Transparency International National Integrity Systems Country Study Report for Armenia, will be published in the autumn of 2004. www.transparency.org/activities/nat_integ_systems/country_studies.html.

⁹ A. Israyelyan "8 new prisoners", Aravot daily, February 28, 2003 and N Zohrabyan, "Dialogue is necessary", Haykakan Zhamanak daily, 28 February 2003.

¹⁰ Country Corruption Assessment: Public Opinion Survey, Center for Regional Development, Transparency International Armenia, 2002, www.transparency.am/Website/Publications/Survey/Survey-eng.pdf.

¹¹ The Report of the Sociological Survey on Public Sector Reforms (for Households) by Armenian Democratic Forum, 2001.

[http://lnweb18.worldbank.org/eca/ecspeExt.nsf/0/1b062b0dc8a543b485256c63005d49fd/\\$FILE/Armenia%20household%20report%20final%20eng.pdf](http://lnweb18.worldbank.org/eca/ecspeExt.nsf/0/1b062b0dc8a543b485256c63005d49fd/$FILE/Armenia%20household%20report%20final%20eng.pdf).

¹² <http://www.transparency-az.org/index-e.htm>.

¹³ R. Babayev, Manuscripts and Documents of Jan Mirza Mirzoyev Have Been Made Public, Echo newspaper, 21.04.2001, www.echo-az.com/facts.shtml.

¹⁴ Daily newspaper Zerkalo on 11 May 2004 (www.zerkalo.az) quoted Mirzoev as saying he will continue to campaign to have the sentence against him repealed

¹⁵ For example, on August 30 2004 Aydin Guliev, editor in chief of the independent newspaper "Baki habar" was sentenced by Baku district court to a one-year suspended prison sentence for slandering Djalal Aliyev, President Ilham Aliyev's uncle. Posted on August 31 by Dow Kimbrell on <http://www.eurasianet.org/resource/azerbaijan/hypermail/200408/0048.shtml>

¹⁶ Conference of Judges (Feb.4, 2000), "Judicial Code of Ethics", Bulletin of the Supreme Court of Justice, No. 3 (2000).

¹⁷ Lilia Carasciuc, Efim Obreja, Tudor Popovici, Valeriu Mandru, Corruption and Access to Justice, Transparency International – Moldova, Chisinau, 2002, p. 28-30.

¹⁸ Judiciary Reform Index for Moldova: November 2002, ABA CEELI, 2003, p. 31-32.

¹⁹ Lilia Carasciuc, Efim Obreja, Tudor Popovici, Valeriu Mandru, Corruption and Access to Justice, Transparency International – Moldova, Chisinau, 2002, p. 80-81

²⁰ Ibid.

²¹ Constitution of the Kyrgyz Republic, Article 80.

²² Law on the Constitutional Court, Article 7.

²³ U.S. Department of State 2003 Report on Human Rights Practices

²⁴ Nations in Transit 2002, Freedom House, 2002. See www.freedomhouse.org

²⁵ See a journalist investigation that tackles the issue of the misuse of the judicial power in order to threaten local media: "The captain of the sinking ship wants to fly up". Moya Stolitsa, 11th July 2004, and "Reporters will be put in a prison" by Solto Temir. Respublika, 15.06.2004

²⁶ This information, supported with legal documentation was disclosed to the TI-Kyrgyzstan by T. Janaliev, reporter and chief the of the department of the legal affairs of the "Moya Stolitsa" in a informal interview on 09.09.2004.

²⁷ Main journalist investigation on this topic was published in "The captain of the sinking ship wants to fly up". Moya Stolitsa. 11.07. 2004. Also see publication of other recent related articles in the same newspaper: "Judge, who does not submit to the law" by Renat Medetbek. Moya Stolitsa.10.06.04. and "Where is "buka" sitting?" by Rina Prizjivoit. Moya Stolitsa, 17.06.2004.

²⁸ Governance and Service Delivery in the Kyrgyz Republic: Results of Diagnostic Surveys, World Bank, July 2002.

²⁹ This common belief is reflected in several journalist investigations that focused on the level of public trust in national judicial system. See: "People from Aksyi do not trust regional court". Respublika, 08.09.2004; "People from Talas have damned judges". Moya Stolitsa, 23.07.2004 and also see "Do you trust the courts?", Moya Stolitsa, 13.05.2004.

³⁰ J. Pope (ed.), "Transparency International Source Book. Confronting Corruption: The Elements of a National Integrity System" (2000), <http://www.transparency.org/sourcebook>.

³¹ J. Pope (ed.), "Transparency International Source Book. Confronting Corruption: The Elements of a National Integrity System" (2000), <http://www.transparency.org/sourcebook>.

³² Ibid

³³ J. Pope (ed.), "Transparency International Source Book. Confronting Corruption: The Elements of a National Integrity System" (2000), <http://www.transparency.org/sourcebook>.