



FULFILLMENT OF THE EU CANDIDACY CONDITIONS BY GEORGIA



EMBASSY OF THE
REPUBLIC OF LITHUANIA
TO GEORGIA





FULFILLMENT OF
THE EU CANDIDACY
CONDITIONS BY
GEORGIA

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Russia's aggression against Ukraine has radically changed the security environment in Europe. It has also introduced a new geopolitical reality, which significantly increased the possibilities of rapid advancement on the path of integration, as well as raising the European perspective for the Association Trio states wishing to join the EU. In view of this new reality, Georgia, Moldova, and Ukraine submitted an official application for EU membership to the Council of the European Union in March 2022. In response, as a result of filling out the procedurally determined questionnaires and their consideration, the European Commission proposed the European Council grant Georgia "European perspective." The Council made a corresponding positive decision on June 24. Unlike Georgia, Ukraine and Moldova received a higher status - that of "EU candidate."

Although Georgia was left without candidate status, it was told it would receive this after six months, in return for fulfilling 12 conditions which involve a number of political reforms to raise the quality of democracy. Yet, Georgia failed to fulfill those conditions within that time-frame, and as such the "European perspective" status remains. If a positive evaluation of the country's progress is made in the European Commission report scheduled for the fall of 2023, the issue will again be transferred to the European Council for approval.

Almost all Georgian society has mobilized to take on this important task, including civil society, whose mission it is to monitor the implementation of the priorities set out, and to develop and advocate recommendations.

This collection of policy briefs includes the opinions of Georgian experts regarding the implementation of four of the EU's 12 priorities - **depolarization, judicial reform, media freedom, and civil society engagement.**

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DEPOLARIZATION - A NECESSARY
CONDITION FOR BUILDING A
COHESIVE STATE

Paata Gaprindashvili

Polarization is a challenge for modern democracies in general, however, this phenomenon has acquired an alarming scale in Georgia and is hindering the country's development in various ways. That is why the European Union named the **need for depolarization** as the top priority among the priorities to be fulfilled in order for Georgia to obtain EU candidate status. According to the European Union, the issue of political polarization should be resolved through cooperation between political parties, in the spirit of the April 19 agreement.

Depolarization is all the more important for a candidate for EU membership, since the EU itself is based on the principle of consensus in decision making. Therefore, it is necessary that the political elite of any potential member has a **culture of consensus** and is not in a mode of constant confrontation. First and foremost, depolarization means cooperation between political parties.

After Russia's illegal invasion of Ukraine, the eastward enlargement of the European Union gained urgency. Georgia applied for EU membership together with Ukraine and Moldova, however, unlike the mentioned two countries, which obtained the status of a candidate country for EU membership, Georgia was given a European perspective. In order to get candidate status, the European Union, on June 17, 2022, set out 12 priorities for Georgia to fulfill.

Unfortunately, after the European Union defined these 12 priorities for Georgia, the polarization in the political spectrum only increased. In fact, it would be fair to say that polarization in the hands of the ruling party has become something of a **political tool**. Interestingly, in addition to the ruling power and the opposition, polarization has increased between the Georgian Dream ruling party and the president, the ruling party and the media, and the ruling party and civil society. By initiating and passing the first reading of the "Agents of Foreign Influence" bill, which would require foreign-funded non-governmental organizations and media to register as agents or suspend their activities through fines, the parliamentary majority played a significant role in deepening the polarization. As a result of internal and external pressure, Georgian Dream dropped the draft law, although it still follows the spirit of the bill and names opposition parties, civil society, media, as well as the president and any opponent, "agents controlled from abroad".

Even Georgian Dream considers the EU priority of polarization unfulfilled, however, at the same time, it considers that the responsibility for meeting this priority rests with the opposition. In their recent rhetoric, the leaders of Georgian Dream has blamed the polarization not only on the opposition, but also on the West, Europe, and various European politicians, claiming they promote rejection of the candidate status and finance the polarization, thus implying the Georgian non-governmental sector is being financed with Western funds.

The first fully proportional parliamentary elections since the restoration of independence are to be held in Georgia in 2024. In a typical democratic country, a proportional electoral system often creates the need for government coalitions, as it can be a challenge to fill half the seats in a parliament. However, Georgian Dream does not seem to consider any party from the current political field a worthy partner and is looking to continue governing alone. Accordingly, Georgian Dream will need to win almost every second vote in

the elections, if one does not count the redistribution of votes for those parties unable to pass the 5% electoral threshold. Therefore, Georgian Dream's strategy is to keep up bipolarity, thereby maintaining a sharp confrontation between the two poles. For this purpose, Georgian Dream seeks to "boil all opposition parties in one pot" and **take away their independent agency** by labeling them as a "collective national movement", which, according to them, is the root of all evil and must be neutralized.

As a result, the rhetoric between the parties has become extremely heated. After several hot debates in parliament, Georgian Dream seemingly established a policy of swearing as an adequate response to those who call them pro-Russian.¹ Cases of both verbal and physical confrontation are increasingly witnessed during debates in parliament. The escalation of rhetoric between members of Georgian Dream and the opposition parties is spiraling, and is shaping itself to be an alarming trend. And all this when the European Union is openly calling for the end of heated rhetoric as one of the foundations for depolarization.

The recent violence carried out against politicians, critical media and members of civil society is disturbing. And the perpetrators do not hide their crimes: on the contrary, they display pride in them publicly. Some see traces of the government in the orchestration of such violence. While the government denies this, it is clear that such actions are at least encouraged by the polarization and heated rhetoric.

Naturally, alongside Georgian Dream, the opposition also bears some responsibility for that rhetoric. Representatives of the opposition often call Georgian Dream "slaves of Russia" and "traitors".

Although Georgian politics is extremely polarized today, this does not mean that there is no space for agreement or cooperation between the political parties. Naturally, parties cannot agree on all issues, and pluralism is good for democracy, but there needs to be consensus on strategic (for example, European integration) and grassroots (for example, the protection of democratic norms, including fair elections and judicial independence) issues and rules of the game, so that the conflict does not become radical. Only constructive and healthy debates should take place around such issues.

There have, however, been precedents of agreement between the political forces in Georgia in the recent past. Among them, the most important is the **April 19** agreement in 2022, which was reached through the mediation of the European Union and, in particular, the President of the European Council, Charles Michel. It should be noted that the April 19 agreement was reached by the same persons who are today the main actors in the political spectrum. It ended the opposition's parliamentary boycott, and secured an agreement to carry out reforms on a number of important issues. According to the 12 EU priorities, the European Union expected the end of polarization precisely in the spirit of the April 19 agreement, and in the interim report of June 22 on the implementation of the 12 priorities, the European Union once again emphasized the need to respect the April 19 agreement.

1. Interpress News. Beka Odisharia - those who call us pro-Russian, will take full of it first morally, and if they do not settle, they may get a little more. 2023. Available at: <https://www.interpressnews.ge/ka/article/761404-beka-odisharia-chven-vinc-proruss-dag-vixaxebs-miigebs-cxvir-pirshi-jer-moralurad-da-tu-ar-moisveneb-sheizleba-cota-metic-miigos/>

Unfortunately, Georgian Dream has displayed a negative attitude towards the April 19 agreement since it was concluded. The leader of the parliamentary majority, Irakli Kobakhidze, said that if the goal of the April 19 agreement had been fulfilled, “Russian tanks would be stationed in Tbilisi” and “fortunately, the scenario that was included in the April 19 agreement did not take place.”² According to him, along with the opposition, the heads of non-governmental organizations also participated in this “plan of radicalization and destabilization.” According to Kobakhidze, the April 19 agreement was an “anomaly” and “a rude and open attempt to change the government against the will of the people.”

One of the most important issues from the April 19 agreement is the reduction of the **electoral threshold to 2%** for the 2024 elections, which is expected by many to reduce polarization. According to Georgian Dream, the electoral threshold would have been lowered to 2% if Georgia had received candidate status in December 2022. Also, according to the ruling party, if they were to see that “the radical opposition is willing to reduce the degree of polarization”, their interest in lowering the electoral threshold would accordingly increase. Such an ultimatum was tantamount to setting out a condition for the European Union. However, the recent Georgian Dream rhetoric on lowering the electoral threshold has changed, and now they are not even expressing any level of readiness for it. The representatives of the party claim that the promise to lower the electoral threshold to 2% “was related to a specific period” and would have been relevant if Georgia had received candidate status in December 2022. The leaders of the ruling party support the current 5% threshold, and say that “the 5% threshold is one of the most balanced solutions for democratic systems”³, stating that “the issue of lowering the threshold is not relevant today”.⁴

The April 19 agreement regarding election issues also included the **election of the CEC chairman and professional members by a qualified majority**. Amendments were made to the legislation regarding the aforementioned, however, Georgian Dream decided to cancel the amendments and adopted the corresponding bill anyway. The president vetoed the bill, proposing instead that parliament elect the CEC chairman and members with 90 votes, in order to “maintain and strengthen trust in the elections and election administration”. According to the president’s parliamentary secretary, “the interim report on the 12 recommendations of the European Union call us to elect the chairman of the CEC by a consensus.” The president said she had used her right to veto so as to protect the independence of the institutions (CEC and National Bank – see below). Despite the call voiced in the mid-term evaluation of the European Union

2. Imedi. Irakli Kobakhidze: The April 19 agreement had a specific goal and task - if this goal had been fulfilled, I can tell you with full guarantee that Russian tanks would now be stationed in Tbilisi. 2023. Available at: <https://imedinews.ge/ge/politika/282680/irakli-kobakhidze-19-aprilis-shetankhmebas-konkretuli-mizani-da-amotsana-hqonda-es-mizani-rom-shesrulebuliko-am-shemtkhvevashi-me-sruli-garantiit-geubnebit-rom-tbilisshi-rusuli-tankebi-idgeboda>

3. Interpressnews. Mamuka Mdinardze - European countries also consider that the 5% threshold is one of the most balanced solutions for democratic systems. 2023. Available at: <https://www.interpressnews.ge/ka/article/754601-mamuka-mdinaraze-evropul-kveqnebshic-miichneva-rom-5-iani-barieri-demokratiuli-sistemebistvis-ert-erti-qvelaze-dabalansebuli-gadacqvetaa>

4. Interpressnews. Mikheil Sarjveladze - when Irakli Kobakhidze made that statement about lowering the electoral threshold to 2%, we had in mind that a decision on the status of Georgia would have been made last December - the change in the date precipitated some corrections. Available at: <https://www.interpressnews.ge/ka/article/754692-mixeil-sarjveladze-roca-irakli-kobaxizem-gancxadeba-saarchevno-barieris-2-mde-dacevis-taobaze-gaaketa-saubari-imaze-iqo-rom-sakartvelos-statusze-gadacqveteleba-sharshan-dekembershi-unda-miegot-roca-tarigma-gadainacvla-man-garkveuli-korektivebi-sheitana>

to return to the previously existing rule of electing the CEC chairman and professional members, Georgian Dream overthrew the president's veto.

Another important part of the April 19 agreement, which is directly related to the end of polarization, is the **distribution of power in parliament**, which implied the five parliamentary committees should fall under the leadership of the opposition representatives. Georgian Dream has not even discussed the proposed issue, and rejected the draft law prepared on this matter. It is important for the depolarization process to allow the opposition to effectively use the levers at its disposal in parliament. The European Union considers **the provision of effective parliamentary supervision** to be an important component of depolarization. Georgian Dream has strengthened the supervisory functions through changes made to the regulations, however, serious problems arise regarding their use in practice. In particular, the ruling party does not give the opposition the opportunity to create parliamentary investigative commissions, despite the fact that the opposition has the sufficient 50 votes to do so. Moreover, numerous questions opposition deputies have for the government bodies remain unanswered, and in some cases the ministers summoned by the opposition do not bother to appear in parliament.

It is critical that the ruling party and opposition reach **a consensus on such parliamentary appointments where the support of a qualified majority is required**. The only exception seeing this become possible was the election of a public defender. However, even in this case, the first properly and painstakingly conducted candidate selection process was thwarted by Georgian Dream, as it did not support the candidates with the best evaluation record. In a repeated attempt to elect a public defender, which did not meet the same standard of transparency, some opposition MPs supported the candidacy of Levan Yoseliyan, who garnered 90 votes, although this still cannot serve as the best example of a broad consensus among parties.

In addition, parliament was able to elect three non-judge members of **the Supreme Council of Justice**, which also required more than 90 votes, however, during the closed vote, several opposition MPs switched their support to candidates approved by the ruling party. It raised suspicion, as it was done without any prior agreement, and so cannot be considered as a case of consensus reached. Two non-judge members of the Supreme Council of Justice remain to be elected.

Regarding the election of the chairman of the CEC, Georgian Dream, rather than trying to find a consensus with the opposition, decided to remove the need to appoint the chairman by consensus altogether. The ruling party behaved in a similar vein in relation to the appointment of members of the board of the National Bank. The president again vetoed the move, Georgian Dream again overthrew her veto. Here, parliament played a significant role - instead of finding a common language with the president, the ruling party singlehandedly made changes to the law on the board of the National Bank. "Ensuring the proper functioning of institutions" was the argument they made to explain these changes and the reasons they had overthrown both presidential vetoes.

All this indicates that Georgian Dream does not have the willingness or political will to reach consensus and thus reduce the polarization; instead, it prefers to find ways to make unilateral decisions even in cases where cooperation with the opposition and the president is stipulated by law. Regarding the change in the procedure for electing the head of the CEC, the chairman of the ruling party, Irakli Kobakhidze, declared that modern democracy is not based on a culture of consensus, but on the rule of the majority.⁵

Participation of the Georgian Dream leaders in political programs on critical TV channels would also facilitate depolarization. Yet, the leaders of Georgian Dream refuse to appear on the shows of critical TV channels because, according to them, Georgian Dream is forced to face insults there. Yet, in return, the governmental media does not invite representatives of the political opposition onto its programs. Changing this situation and holding a healthy debate in the pre-election period would be a good step to take toward reducing polarization and establishing a healthy political process.

So far, only the end of the parliamentary boycott by the opposition and the adoption of several laws with multi-party support can be considered “progress made” by the European Union in terms of depolarization, and they are, indeed, positive developments. However, overall, since the publication of the 12 priorities by the European Union, the degree of polarization in Georgia not only failed to decrease, but in fact increased. What is more alarming is that there is currently no political will to end the polarization, and it is being instrumentalized for political purposes in the pre-election period. Although there is no reason for optimism in terms of depolarization in the current political environment, examples of reaching an agreement between political parties can be found in the recent past, and thus, the process of depolarization is still possible to initiate – all it needs is a little political will.

5. Interpressnews. Irakli Kobakhidze - modern democracy is not based on consensus culture, but majority rule - political forces and their owners want the CEC to be in the hands of the opposition, which is unacceptable in principle. 2023. Available: <https://www.interpressnews.ge/ka/article/762440-irakli-kobaxize-tanamedrove-demokratia-epuzneba-ara-konsensusis-kulturas-armed-umravlesobis-mmartvelobas-politikur-zalebsa-da-mat-patronebs-undat-rom-cesko-opoziciis-xelshi-iqos-rac-principulad-miugebelia/>



POLICY PAPER:
INDEPENDENT, ACCOUNTABLE, AND
EFFECTIVE JUDICIARY

Nazi Janezashvili

An independent judiciary is critical to ensure the rule of law, primarily meaning that judges are not subject to influence and are free to make impartial decisions notwithstanding the political climate.

In recent years, a number of legislative changes have been made regarding the judicial system of Georgia, however, acute problems in terms of independence, accountability, and effectiveness of the courts remain. The legislative innovations, which were supposed to have a positive effect on the judicial system, were supplemented with such conditions and regulations that the content of the changes themselves were nullified, as the power and influence of the High Council of Justice over the judicial system only increased. At the same time, the political authorities and the judicial system displayed no will to establish an independent court. As a result, individual legislative changes did not facilitate the development of the court for the better.

The independence of the judiciary is enshrined in the Constitution of Georgia, although its independence is still of a formal nature. The political influence of the ruling power on the court, and their connection with the influential judges of the court, is so strong that neither the government representatives nor the influential judges of the judicial system seek to hide it. Thus, the lack of independence and accountability of the judiciary, as well as the low level of efficiency, is a problem of such a scale that it requires fundamental considerations and changes not only in the legislation, but also in the approaches of the judges and authorities themselves.

THE THIRD PRIORITY OF THE EU

On June 17, 2022, the European Commission published its opinion regarding Georgia's application to join the European Union. The document indicated that Georgia's European perspective depends on how it responds to the most important challenges facing it - more specifically, the 12 priorities that have been defined in order for Georgia to be able to obtain the status of a candidate for EU membership. The third priority concerns the judiciary, and includes the following main aspects: *Adoption of a transparent and effective justice reform strategy and action plan as a result of a broad and inclusive process ensuring the independence, accountability and impartiality of the judiciary and safeguarding the separation of powers between the branches; optimal functioning of judicial and investigative institutes, in particular, ameliorating the problems identified in the process of nominating Supreme Court judges (also in the case of Prosecutor General); carrying out the ongoing reform of the High Council of Justice; election of non-judge members to the vacant seats of the High Council of Justice; all this while noting that, when making changes, European standards and the recommendations of the Venice Commission should be fully respected.*

JUSTICE REFORM STRATEGY AND ACTION PLAN

In October 2022, the Legal Affairs Committee of the Parliament of Georgia published a judicial reform strategy and action plan¹, one that was not developed as a result of a broad and inclusive process. The

1. Legal Issues Committee of the Parliament of Georgia, "Strategy and Action plan of the judiciary reform," October 1, 2022. <<https://shorturl.at/jxAC2>>

action plan does not mention the accountability of the judicial system, nor does it say anything about the need to increase the transparency and publicity of the activities of the High Council of Justice, nor the need for a fair distribution of power. It ignores the primary problem - internal influences on the court and concentrated power in the hands of a narrow group of people - which directly threatens the individual independence of judges.

AMENDMENTS TO THE ORGANIC LAW ON COMMON COURTS OF GEORGIA AND RECOMMENDATIONS OF THE VENICE COMMISSION

The Venice Commission published an opinion on March 14, 2023, reiterating its previous recommendations, including the December 2021 opinion² regarding amendments to the Organic Law on Common Courts of Georgia. Following the opinion of the Venice Commission, ruling party Georgian Dream made changes to the Organic Law. The Venice Commission, regarding the initial version of the draft law, noted that the draft amendments are **limited and do not provide for a thorough reform of the Law on Common Courts, nor of the High Council of Justice, which is of fundamental importance**. In addition, it pointed out that corporatism and vested interests in the Council of Justice undermine public confidence in the judicial system and should be taken seriously. In June 2023, the Parliament of Georgia made changes to the Organic Law, seeing the recommendations of the Venice Commission partially taken into account, although a number of issues remained open.

The legislative changes removed district and appeal court judges from the consideration of cases, which is possible only if a criminal prosecution has been initiated against a judge, and the High Council of Justice of Georgia makes a corresponding decision. In such a case, a judge retains the rights, salary, and other material benefits stipulated by the law. Certain changes have been made in the process of disciplinary proceedings against judges, resulting in increased deadlines for the consideration of appeals. In addition, the publication of court decisions has been an unsolved problem for years, and, although the law has undergone changes in this regard, it remains unclear to what extent the availability of past court decisions will be ensured. At the same time, it was established that depersonalized court decisions will be made public only after they enter into legal force, which may hinder the availability of court decisions.

Parliament **did not take into** account the recommendations related to the strengthening of the individual independence of the judge. The High Council of Justice can make a decision on the secondment of a judge against their will. In relation to the judge's secondment, the law does not take into account geographical restrictions, objective criteria, or the random principle, and no short timeframes are assigned for the secondment.

One of the most important issues affecting the individual independence of a judge is the issue of a judge's upholding "political neutrality." In case of a violation of such, the judge may be subject to disciplinary

2. European Commission for Democracy through Law (Venice Commission), Opinion No. 1077, 2022, Amendments to the Organic Law on Common Courts, Strasbourg. <https://shorturl.at/wLQVZ>

sanctions. The recommendation of the Venice Commission was partially taken into account, and now it is considered a disciplinary offense for a judge to publicly express an opinion, this being in violation of the principle of political neutrality. A judge discussing in a scientific or analytical manner the judicial reform and/or legal changes related to justice will not be considered a violation of political neutrality. Thus, parliament, partially taking into account the Venice Commission, made changes to the law, but in such a way that the threat that limits the judge's freedom of expression persisted.

REFORM OF THE HIGH COUNCIL OF JUSTICE

Both the Venice Commission³ and the OSCE/ODIHR⁴ point to the importance of pluralism in the High Council of Justice, as well as the role of non-judge members of the Council in the decision-making process, to ensure an appropriate balance between non-judge and judge members of the Council. As one way to reduce corporatism, the Venice Commission suggests the renewal of member rotation, as well as limiting the election (appointment) of the same person as a member of the board twice in a row. The Parliament of Georgia did not take into account the recommendations related to the aforementioned issues. Moreover, the reform of the High Council of Justice did not even come up for discussion.

NOMINATION PROCESS OF SUPREME COURT JUDICIAL CANDIDATES

Regarding the nominations for Supreme Court judges, parliament did not revise the qualification requirements of the judicial candidates, neither in terms of age nor professional experience. In addition, the recommendation to create an anti-deadlock mechanism for the nomination process was not taken into account. Some changes affected the nomination process for the Supreme Court judicial candidates, including removal of a council member from the process and the candidate's ability to appeal a decision.

ELECTION OF NON-JUDGE MEMBERS TO THE VACANT SEATS OF THE HIGH COUNCIL OF JUSTICE

On May 17, 2023, the Parliament of Georgia elected⁵ three non-judge members to the vacant places of the five non-judge members of the High Council of Justice. Although five opposition MPs also supported it, the election of non-judge members was not the result of a broad consensus.

3. European Commission for Democracy through Law (Venice Commission), Follow-up Opinion to Four Previous Opinions Concerning the Organic Law on Common Courts, Strasbourg, 14 March, 2023. <<https://shorturl.at/giA02>>

4. Organization for Security and Co-operation in Europe (OSCE), Georgia: Opinion on the Draft Amendments to the Legal Framework on the Judiciary, 23 March, 2023. <<https://shorturl.at/eLNu8>>

5. Refer to web page of the Georgian Court Watch, the article published on May 17, 2023, "What do we know about the new non-judge members of the High Council of Justice?" <<https://shorturl.at/pAGj8>>

SANCTIONING OF CURRENT AND FORMER JUDGES

On April 5, 2023, the United States Department of State imposed visa restrictions⁶ (that also extend to the family members of the sanctioned individuals) on three current and one former judge for the “abuse of public office” and “engagement in significant corruption.” Neither the ruling party nor the high officials of the judiciary critically assessed the current situation in the judicial system. Moreover, the chairman of the Supreme Court merely expressed hope⁷ that the US State Department would present relevant evidence or reconsider the issue of sanctioning judges.

CREATION OF THE INVESTIGATIVE COMMISSION

The creation of a special investigative commission to investigate acts of corruption was initiated in December 2022 by opposition MPs to conduct a thorough investigation of the current situation in the general courts system. On April 18, 19, and 20, 2023⁸, the issue failed in the Parliament of Georgia due to a lack of quorum, as the Georgian Dream deputies did not register for the session. Thus, Georgian Dream did not support the creation of an investigative commission on the judicial system, thereby once again proving its political support for the influential group of judges.

OSCE/ODIHR OPINION

The opinion⁹ and recommendations of the OSCE/ODIHR, published on June 16, 2023, touched on a number of issues of fundamental importance, which were also noted by the Venice Commission. The OSCE/ODIHR deems it necessary to make some changes to the regulation of the distribution of cases through the electronic system. It also indicates that the chairpersons of the court and the judicial members of the Council of Justice should keep up the judicial practice regardless of the position occupied. Accordingly, the recommendations of the OSCE/ODIHR cover the status, privileges, and manner of election of the Head of the Court. In addition, the opinion mentions the need for changes in the system of verifying declarations on the property status of judges and their family members. Finally, there is also a recommendation from the Venice Commission on ensuring the independence guarantees of the body responsible for initiating disciplinary proceedings against judges.

Since the judicial reform is a complex issue, only a few basic issues are presented in the recommendations below.

6. Refer to article published on civil.ge-b on April 6, 2023, “Georgian Judges Sanctioned by US State Department Speak Out Against Accusations.” . < <https://civil.ge/archives/536258>>

7. Refer to article published on civil.ge-b on April 7, 2023, “High Council of Justice Holds Session Following the Sanctions on Georgian Judges” <https://civil.ge/archives/536476>

8. The plenary session of the Parliament of Georgia held on April 18, 2023, <<https://www.youtube.com/watch?v=OuY1pl-23IU>>

9. Organization for Security and Co-operation in Europe (OSCE), Georgia: Note on Several Issues Relating to Judicial Reform, 16 June, 2023. < <https://shorturl.at/CEMNX> >

In terms of strengthening the independence, accountability, and effectiveness of the judicial system, it is important to implement the following changes:

- *A thorough reform of the High Council of Justice, which includes a change in the composition of the Council (e.g. the chairpersons of the first and second instance courts should not hold the position of a member of the Council at the same time; also, not to allow the chairperson of the Supreme Court to be elected as the chairperson of the High Council of Justice, as to avoid having power concentrated in the hands of one person)¹⁰;*
- *Changes in the way members are elected, and more involvement of non-judge members (e.g. OSCE/ODIHR recommends that a non-judge member be elected as the chairman of the Supreme Council of Justice); changes in the decision-making procedure in the Council on all kinds of issues; effective participation of judges of general courts in the activities of the Council; increasing the standard of accountability of the Council (meaning the publication of meeting agendas, attached materials, and decisions).*
- *It is also necessary to review and change the rules of promotion, transfer and secondment of judges by the Council. It is essential that the decision to promote a judge to a higher instance is made based on the results of an evaluation of the judge and according to merit, in order to avoid making a decision on promotion based on nepotism, cronyism, and favoritism. In addition, the transfer of judges to another court should be carried out only in a court of the same instance and based on objective criteria. Further, the rule of judges' secondment should be changed in accordance with the recommendation of the Venice Commission, in order to strengthen the independence of individual judges. In particular, geographic restrictions, objective criteria, and the random principle should be imposed on a judge's secondment, as well as short time frames.*
- *Effective involvement of civil society and professional groups in the development of reform proposals and the implementation of such proposals by the parliament so as to ensure the independence, accountability, and effectiveness of the court.*
- *Taking into account the recommendations of the Venice Commission and OSCE/ODIHR by the Parliament of Georgia, which, if fully implemented, will significantly change the current situation in the judicial system.*

10. According to the Organic Law on Common Courts of Georgia, the chairman of the Supreme Court is no longer the ex-officio chairman of the High Council of Justice. Nevertheless, currently, and from October 2020, the chairman of the Supreme Court is at the same time the chairman of the High Council of Justice. See link:<https://shorturl.at/lqKQX>



OPINION ON THE EU MEMBERSHIP
APPLICATION BY GEORGIA
SEVENTH RECOMMENDATION – MEDIA

Natia Kuprashvili

“Undertake stronger efforts to guarantee a free, professional, pluralistic and independent media environment, notably by ensuring that criminal procedures brought against media owners fulfil the highest legal standards, and by launching impartial, effective and timely investigations in cases of threats against the safety of journalists and other media professionals” - This is one of the recommendations¹ published by the European Union for Georgia in June 2022.

This policy document analyzes the steps taken in this direction throughout the past year, highlights the existing challenges, and provides specific recommendations for promoting media freedom in Georgia.

BASELINE

The EU’s assessments take into account factors such as media legislation, regulatory frameworks, freedom of expression, safety of journalists, media ownership, access to information, and the overall environment for independent journalism. These assessments aim to provide an objective analysis of the media landscape in Georgia and identify areas where improvements are needed.

Authoritative international organizations also constantly monitor Georgian media with similar criteria. According to their reports, from 2021 to 2023, Georgia has experienced setbacks and even regression in this regard.

Freedom House assesses media freedom around the world through its annual “Freedom of the Press” report. In recent years, Georgia has received mixed evaluations². While recognizing legal protections for media freedom, Freedom House has raised concerns about political polarization, ownership concentration, and occasional incidents of violence or intimidation targeting journalists. They have also highlighted issues related to media self-censorship and the need for greater transparency in media ownership.

RSF publishes an annual “World Press Freedom Index” that ranks countries based on their media freedom situation. In recent years, Georgia has been ranked within the “Partially Free” category. RSF has raised concerns about media ownership concentration, the influence of political actors over media outlets, and incidents of violence or harassment against journalists³. They have also highlighted the need for improved self-regulation mechanisms.

Political polarization⁴ in the media is considered a significant problem in Georgia. Some media outlets are perceived to have close ties to political parties or influential individuals, which can influence their editorial stance and coverage. This polarization can limit media plurality, distort public discourse, and undermine the credibility and trust in journalism.

1. https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_3800

2. <https://freedomhouse.org/country/georgia/nations-transit/2023>

3. <https://civil.ge/archives/540318>

4. Political polarization refers to the alignment of media outlets with specific political interests or factions, leading to biased reporting and limited objectivity. This polarization can hinder the public’s access to unbiased information and contribute to the spread of disinformation and propaganda.

THE ESSENCE OF THE RECOMMENDATION

The European Commission presented⁵ a report to ambassadors on the progress of Georgia, Ukraine, and Moldova on their path to accession to the EU, one year after the recommendation was issued. However, up to June 21, 2023, it was found that Georgia had made no progress on the media recommendation, which was the only area with no advancements.

The remarks of Olivér Várhelyi⁶, the Commissioner for Neighborhood and Enlargement, were also published. His statement highlighted the lack of progress in media pluralism and standards for criminal procedures against media owners in Georgia. To address these issues, the Commissioner emphasized⁷ the need for Georgia to amend the Law on Broadcasting in accordance with the legal opinion of the Council of Europe. Additionally, it was named crucial to ensure the safety of journalists and enhance the protection of freedom for journalists and media owners.

These remarks shed light on what the Georgian government should have done regarding the media recommendation, which consists of two important parts:

Legal framework:

- Adoption of key media legislation in full compliance with the EU's audio-visual media services directive.

Political framework:

- Protection of opposition media owners, particularly addressing the case of Nika Gvaramia, the founder of "Mtavari TV."
- Ensuring the safety of journalists - case of July 5.

In the following sections, we will analyze each of these cases separately.

MEDIA LEGISLATION AND THE AVMSD

In 2014, Georgia signed an Association Agreement with the European Union (EU) which provides, among other things, for Georgia to align its legislation with the EU Audiovisual Media Services Directive (AVMSD). After receiving the recommendation in 2022, the Parliament of Georgia swiftly initiated amendments to the Law on Broadcasting. However, both the Council of Europe and local civic organizations⁸ have repeat-

5. <https://jam-news.net/european-commission-interim-report/>

6. https://ec.europa.eu/commission/presscorner/detail/en/statement_23_3460

7. "On media pluralism and standards for criminal procedures against media owners, Georgia has achieved no progress. In order to fulfil this step, Georgia needs to amend the Law on Broadcasting, in line with the legal opinion of the Council of Europe and to ensure the safety of journalists and to raise the level of protection of freedom of journalists and media owners".

8. <https://www.facebook.com/photo/?fbid=5627805180660702&set=a.133240893353703>

edly raised concerns over the legislative changes adopted by parliament on December 20, which lacked stakeholder involvement and disregarded the recommendations put forth by broadcasters themselves.

The Council of Europe's recommendation, referenced in Olivér Várhelyi's speech, strongly criticized⁹ the changes enacted by the Parliament of Georgia. According to the Legal Opinion, there were several areas within the Broadcasting Law that did not align with EU and Council of Europe standards. In general, the Broadcasting Law failed to adhere to the Audiovisual Media Services Directive (AVMSD). Furthermore, certain provisions were likely in violation of Article 10 (freedom of expression) of the European Convention on Human Rights (ECHR). Therefore, the current Broadcasting Law requires amendments to address these clauses that are not yet aligned with European standards.

Revision of the law and further improvements were suggested in various areas, among them:

- Provisions related to the media regulatory authority, including guarantees for its independence;
- Provisions related to video-sharing platforms, including the complaints handling system, sanctions, accountability, and more;
- Right to appeal and the effect of decisions of the regulatory authority;
- Licensing and authorization, including provisions related to suspension and reinstatement of services;
- Right to reply - correction and rebuttal related aspects;
- "Hate speech" and incitement to terrorism related provisions;
- Sanctions for violations of rules for the protection of minors.

In June 2023, the parliamentary majority in Georgia resumed work on new amendments to the law on broadcasting, in collaboration with civic organizations involved in media development, namely the Georgian Civil Society National Platform for the Eastern Partnership and the Coalition for Media Advocacy. Parliament revisited all the changes implemented in December 2022 and modified the law in line with the recommendations provided by the Council of Europe. On June 30, 2023, a new law was passed which aimed to ease the repressive sanctions imposed by the regulatory commission and transition the regulation of hate speech and the right to reply from "strict regulation" to "co-regulation".

The adopted changes received positive evaluations from local civic organizations¹⁰.

including the Media Advocacy Coalition and the National Platform of Georgia.

Additionally, civic organizations urge parliament and the Regulatory Commission to amend the Broadcasters' Code of Conduct, a normative act, to establish effective mechanisms for the co-regulation of hate speech and the right to reply.

9. <https://www.coe.int/en/web/tbilisi/-/legal-opinion-on-the-law-of-georgia-on-broadcasting-proposes-its-revision-in-line-with-the-european-standards>

10. <http://mediacoalition.ge/ge/a/a2bc0961>

THE CASE OF NIKA GVARAMIA

Tbilisi City Court, in May 2022, sentenced the director of government-critical Mtavari Arkhi TV Nika Gvaramia to 3 years and 6 months in prison for abuse of power over the managerial decisions he made when he was running Rustavi 2 TV.

This was the first time in the history of Georgia that a leader and founder of the opposition media was arrested, and it happened right before the European Commission issued its opinion on Georgia's application for EU Membership.

From the outset, civic and media organizations emphasized that Gvaramia's imprisonment was politically motivated¹¹. This assertion was supported by the findings of the public defender¹². As a result, Gvaramia's case emerged as one of the primary concerns, leading authoritative international organizations to highlight the media regression in Georgia. The U.S. State Department report, for instance, underscored that NGOs, opposition parties, and international organizations, including Amnesty International, consider the case of Nika Gvaramia to be politically motivated.

After an interim assessment for Georgia by the European Commission in June 2023, significant developments unfolded regarding the events surrounding Nika Gvaramia:

On June 19, 2023, the Supreme Court of Georgia ruled to keep Nika Gvaramia in custody, thereby extinguishing the possibility of his release through the court system.

On June 22, 2023, the President of Georgia granted a pardon to Nika Gvaramia, resulting in his subsequent release. He is currently free.

SAFETY OF JOURNALISTS - THE CASE OF JULY 5

On July 5, 2021, during the coverage of the "March of Dignity" protest, more than fifty journalists and cameramen were injured in an attack by violent groups. Some journalists required hospitalization for treatment. Tragically, cameraman Lekso Lashkarava, who was injured during these attacks, was found dead a few days later. While law enforcement officers arrested and prosecuted dozens of individuals, local civic organizations continue to believe¹³ that none of the organizers of these violent actions have been held accountable. Additionally, the circumstances surrounding Lekso Lashkarava's death have not been adequately investigated to this day.

11. <https://civil.ge/archives/540415>

12. <https://ombudsman.ge/geo/akhali-ambebi/sakhalkho-damtsvelis-shemotsmebis-shedegebi-nika-gvaramias-ganachen-tan-dakavshirebit>

13. <http://mediacoalition.ge/ge/a/ffa46ae8>

Instead of taking additional steps to ensure the safety of journalists following the recommendations from the European Union, the ruling team in parliament supported a bill similar to Russian legislation. This bill required civic and media organizations to register as agents of a foreign country if they receive funding from abroad.

After facing widespread protests, the ruling political team eventually revoked the bill¹⁴. However, this law served as an inspiration for violent far-right anti-Western groups to persist in their attacks on the media. Consequently, ensuring the safety of journalists remains a significant challenge in the country.

The EU delegation in Georgia welcomed¹⁵ the announcement that the law had been dropped, and expressed its satisfaction in a statement. The delegation further encouraged political leaders to resume “pro-EU reforms” following this positive development.

Latest Recommendations

- In light of the new broadcasting law, the Parliament of Georgia should enhance its oversight of the procedures pertaining to the adoption of the code of conduct for audio-visual media by the National Communications Commission. This will ensure the active involvement of both the civil sector and the media industry in the process, with the National Communications Commission assuming a responsible role.
- Considering the directives provided by the Council of Europe, the novel normative legislation, namely the Audio-Visual Media Code of Conduct, should establish robust mechanisms for co-regulating audio and visual media (especially the issue of co-regulation of hate speech).
- The Parliament of Georgia must intensify its vigilance over instances involving violence and the obstruction of journalists. Furthermore, those responsible for orchestrating the violent events on July 5-6 must be held accountable and subjected to appropriate sanctions.
- Incidents involving attacks and undue pressure put on media proprietors, journalists, and all individuals engaged in the media field must be promptly curbed. This includes addressing actions from members of the ruling party, ensuring a cessation of such behavior.

14. <https://www.bbc.com/news/world-europe-64899041>

15. <https://twitter.com/EUinGeorgia/status/1633718652229828609?s=20>



**CIVIL SOCIETY
ENGAGEMENT**

Kakha Gogolashvili

Involvement of civil society at all levels of decision-making should be ensured. (The 10th priority set for Georgia to obtain EU candidate status)¹

The opinion of the European Commission on Georgia's application for joining the European Union states that "Georgia has a well-developed and dynamic civil society, whose opinions and results of activities need to be taken into account in a more systematic way."

On July 1, 2022, in response to the recommendation of the European Commission to fulfill the 12 priorities given to the Government of Georgia, the ruling power presented a plan at the meeting of the Political Council of Georgian Dream which contained the effective engagement of civil society in the process. It was also planned to "maintain effective mechanisms of engagement even after the completion of work on EU priorities".²

The Georgian Dream party invited representatives of civil society to the working groups, yet it did not allow one of the leading non-governmental organizations - "International Society for Fair Elections and Democracy" (ISFED) to be involved, which resulted in protests from many other non-governmental organizations, who pulled out of the relevant working groups. However, some organizations continued to work and tried to contribute to the reforms needed to meet the EU's 12 priorities.

GEORGIAN DREAM'S ATTITUDE TOWARDS CIVIL SOCIETY

Leaders of the ruling power and government media engage in efforts to portray NGOs as affiliated with opposition political parties and/or corrupt groups. Attempts are also made to portray the non-governmental organizations as "foreign agents" and emphasize the lack of transparency of their finances. The main message is that "rich non-governmental organizations" are engaged in anti-Georgian activities, are agents of the West, and want to drag Georgia into the war against Russia. In this regard, the "People's Power" - a public movement that is part of the parliamentary majority and has nine deputies in the parliament - is particularly cynical. "People's Power" was formally separated from Georgian Dream, although both civil society and the opposition consider them as one political team. As far as the values are concerned, chairman of the Georgian Dream party Irakli Kobakhidze confirmed that "there is no essential difference" between the two political forces.

At the end of 2022, People's Power put forward a specific initiative to regulate the activities of non-governmental organizations at the legislative level. If the draft law had been adopted, it would have directly harmed practically all non-governmental organizations and media.³ The aforementioned draft law

1. Commission Opinion on Georgia's application for membership of the European Union. Brussels, 17.6.2022 COM(2022) 405 final. Page 11

2. <https://www.radiotavisupleba.ge/a/31924843.html>

3. <https://gfsis.org.ge/ge/blog/view/1554>

contradicted a number of international obligations undertaken by the country, including, first of all, the Association Agreement signed with the European Union in 2014.⁴ The attempt to adopt the law certainly made it clear that the government did not consider civil society as a partner in the process of reforms and institutional development, but rather as an obstacle, the containment and subjugation of which is important for the exercise of its own power.

Later, in July 2023, the Parliament of Georgia and the National Platform held a joint conference, where both sides discussed the implementation of the priorities recommended by the European Union. The meeting took place in a reasonably constructive environment, but it is unlikely that the remarks of the NGOs were fully understood or shared by the official team. The debates made it clear that the government officials do not consider civil society a voice of the people, although it is widely known that a large number of organizations directly express the interests and views of specific public groups (professional unions, business associations, sectoral non-governmental organizations). They even expressed doubt that non-governmental organizations belong to civil society at all, and as such said that state funding would not be considered. It is clear that the Georgian political elite does not recognize the role and place of civil society in the building up of a democratic society. Hate speech and discriminatory expressions are still used against non-governmental organizations, and freedom of expression is often restricted for civil activists.

THE FOREIGN INFLUENCE TRANSPARENCY BILL AND THE CIVIL SECTOR PROTEST

The legislative initiative,⁵ according to which the financing of non-governmental organizations was to be regulated in a strict legal framework, in its content and pathos resembled the law on foreign influence agents adopted in the Russian Federation in 2012. A similar law was also adopted in Belarus and Hungary in 2015. In all cases, the law caused the greatest damage to the civil sector. At the request of a part of the Georgian public, a meeting was held with the Speaker of Parliament, where representatives of public organizations presented their opinion on the draft law under consideration:

- By adopting it, the government would be given the opportunity to weaken and harass public organizations;
- The consideration process of the draft law would exacerbate polarization in society;
- It would reduce the chances of the EU granting the country EU candidate status.

Despite the arguments expressed at the meeting, as well as numerous opposing arguments presented by the civil sector at two committee hearings, and the warnings received from international partner countries and international organizations, the government still adopted the law in the first reading. Only the protests of tens of thousands of citizens on the streets and their willingness to fight for democracy to the end forced the authorities to withdraw and recall the draft law.

4. <https://gfsis.org/ge/blog/view/1547>

5. Statement of People's Power retrieved from Information agency Interpressnews on November 18, 2022 <https://www.interpressnews.ge/ka/article/734880-xalxis-zalis-gancxadebit-enjeoebis-dapinanseba-mkacr-sakanonmdeblo-charchoebshi-un-da-moekces-razec-kanonproekts-moamzadeben>

THE RESULTS OF ATTEMPTING TO ADOPT THE “RUSSIAN LAW”

As a result of the initiation and adoption of the law with the first reading, the distrust between the government and civil society, and between the government and opposition political forces, increased, thus making the involvement of civil society in the decision-making process much more difficult. A number of civil organizations⁶ suspended their membership of the advisory group of the Permanent Parliamentary Council on Open Governance. Despite withdrawing the bill, the leaders of Georgian Dream still publicly refer to civil organizations as agents of foreign influence. The civil sector is accused of destructive activities and an attempt to drag the country into the war in Ukraine. Interestingly, the monitoring group for the implementation of the EU’s 12 priorities, created by non-governmental organizations whose monthly reports are critical and are quite close to the results given in the interim conclusion by the European Commission itself, are publically accused of betraying the country’s interests in the statements of the leaders of the ruling power.

NGO EFFORTS TO ENHANCE CIVIL ENGAGEMENT

The member organizations of the National Platform of Georgia, during a meeting with the Speaker of Parliament in May of this year, requested a renewal of consultations with parliament in order to promote the fulfillment of the EU’s 12 priorities. As a result, several meetings of civil society representatives with the chairmen of parliament and committees were held regarding standalone issues.

In early June, the work of subgroups of the working group created for the implementation of those 12 priorities was partially restored in the parliamentary format. At two meetings of the judicial reform subgroup, the discussion touched upon the issue of adopting the recommendations of the Venice Commission in the draft law “On Common Courts”. Unfortunately, the suggestions of civil society were not taken into account. The meetings of the Media Advocacy Association and some organizations of the National Platform with a number of parliamentary committees yielded positive results, and the implementation of the “Audio-Visual Directive” of the European Union on broadcasting was almost fully reflected in the Law on Public Broadcasting. The conclusion of February 21, 2023, developed by the experts of the Council of Europe, was also fully taken into account. The law was adopted on June 30.

In relation to the development of the Water Law of Georgia, non-governmental organizations also intensively requested the government and parliament consider their comments. Despite significant opposition, which lasted almost two years, at the end of June 2023, 28 proposals of CSOs (out of 36) were reflected in the law approved by parliament. This engagement can be considered mainly fruitful.

In June, following a civil sector initiative, consultations regarding the signing of a memorandum of cooperation between the Office of the Speaker of the Parliament and the Civil Society Platform of the Eastern

6. Institute for Development of Freedom of Information, Transparency International - Georgia, Institute of Civil Society, and Association of Young Lawyers of Georgia

Partnership began. The memorandum envisages regular meetings of the platform with representatives of parliament, and the holding of an annual joint conference on reforms related to the country's European integration. The text of the memorandum is still under consideration. If signed, it will open the opportunity for the National Platform to be involved in the decision-making process. Unfortunately, the memorandum is not open to other coalitions or NGOs.

GENERAL STATE OF ENGAGEMENT AND COOPERATION

Consultative or informative meetings among the non-governmental organizations and governmental or parliamentary structures are rare. Their participation in the decision-making process of the country is practically non-existent. The lack of cooperation is felt especially in the regions. Although cooperation formats formally exist, they are hardly ever used.⁷

The government does not care at all to create sources of funding for the non-governmental sector, or to involve them in the evaluation of draft laws, development of strategies and concepts, creation of policy documents, or the implementation of other activities beneficial for society. Instead, to perform such tasks, government institutions establish legal entities under public law. These organizations receive funding from the state budget. Also, according to the government, their activities are often financed by international donors in the form of grants, thus reducing the amount of international aid spent on independent non-governmental organizations. The creation of a special state fund to promote the activities of civil public organizations, and their participation in the process of decision making, was proposed many times to parliament and government representatives, but to no avail. Such examples count the Georgia-EU Civil Society Platform, which was established by Article 412 of the Association Agreement, and which the state has an obligation to ensure and support. This platform has been operating on public funds since 2015 and has experienced great difficulties covering its costs.

CONCLUSION

The tenth EU priority was only partially fulfilled. Some NGOs were allowed to work in parliamentary working groups, but most NGO recommendations on judicial reform, anti-corruption measures, democratic oversight, media, vulnerable groups, and the ombudsman were not taken into account. In addition, the constant attacks on the civil sector and the discreditation campaign against them contradict the EU conditions.

7. For example, over the years, the organizations of the National Platform of Georgia held frequent consultations with sectoral ministries and agencies in order to monitor and promote the implementation of the Association Agreement, and also took part in the development of the association action plan.

RECOMMENDATIONS:

- In consultation with civil society, create an independent foundation for the development of the civil sector, which will facilitate the emergence of new non-governmental organizations and their professional growth, as well as the long-term sustainability of the existing organizations, financing of projects proposed by civil society, etc.
- In order to ensure the inclusion of CSOs in the decision-making process in a systematic and not eclectic manner, it is necessary to create a voluntary centralized register, affiliated to parliament, of those non-governmental organizations that are interested in cooperation with the state and government institutions. Such an automated registry would classify non-governmental organizations according to their field of interest, and invite them to discuss any draft law or government initiative, as well as to organize meetings based on their request. An analogue of this kind of organizational tool exists in the European Parliament, and it has a completely opposite nature to the detrimental bill on “agents” previously envisaged by the ruling party in Georgia. It promotes the active involvement of civil society in the processes.
- The government should ensure the involvement of civil society organizations in the process of developing national level policy/strategy documents and their action plans. Further, the government should reinvigorate the involvement of non-governmental organizations and independent experts in the process of developing and implementing such tasks which it cannot handle properly due to insufficient resources. For this, the policy of establishing new legal entities under public law should be abandoned and replaced by non-governmental organizations selected on the basis of competition for each task.