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CSRDG
Center for Strategic Research and
Development of Georgia

Addressing 12 Priorities

**Proposed by the EU to Georgia for its Bid to
Candidacy Status**

Tbilisi
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Introduction

In June 2022, the public of three countries - Ukraine, Moldova and Georgia - eagerly awaited the decision of the European Commission on the EU membership candidacy. The decision was positive for the first two countries - both became candidates, although only the European Perspective was given to Georgia, and a six-month deadline was set for attaining candidacy - until December 2022, which was then extended for another year. The Commission imposed a condition for Georgia to fulfill 12 priorities (recommendations) in order to obtain the status. It will release its final opinion in late October or early November, and the final decision will be announced by the European Council in December.

On June 22, 2023, the European Commissioner for Neighborhood Policy and Enlargement, Oliver Varheï, gave a brief overview of the progress of the candidate and applicant countries - Ukraine, Moldova and Georgia - in an oral report.¹ About Georgia, it was said that three of the 12 priorities have been addressed - the 9th, 11th and 12th priorities, in addressing seven more (1st, 2nd, 3rd, 4th, 6th, 8th and 10) it showed "more or less progress". There is "limited" progress on Priority 5 (de-oligarchization), and no progress at all on Priority 7 (free media environment).

The Georgian government claims the country has implemented all recommendations. "Expectations are positive",² "everything indicates that, in the end, the chances have increased",³ Prime Minister Irakli Gharibashvili and Chairman of the ruling party Georgian Dream Irakli Kobakhidze have said, respectively. However, expectations in the opposition spectrum and part of the expert community are more skeptical. Nevertheless, in public speeches, both sides support the granting of status to Georgia.

Although the first (both in order and in importance) priority is to reduce political polarization, this topic itself has become one of the manifestations of polarization in recent months. This process of division went beyond the political space and penetrated into the society. In this document, which discusses the actions taken by the Georgian government to address the priorities of the European Commission, we will try to present only the facts - minimizing the evaluation categories as much as possible.

In the document, which briefly reviews the steps taken by the ruling team on each priority point from June 2022, the announcement of Commission opinion, to September 2023, we refrain from drawing conclusions in terms of how much or to what degree a particular recommendation has been implemented or not implemented - focusing on the more factual material rather than the assessment.

¹ https://ec.europa.eu/commission/presscorner/detail/%20de/statement_23_3460

² <https://rb.gy/i9c2p>

³ <https://rb.gy/a232z>

Priority 1: De-polarization

1.1. The ruling party's plan in 2022 to address the 1st priority

In order to promote depolarization, a specific Polarization Monitoring Group was planned to be established at the Parliament of Georgia with the participation of all parliamentary parties, representatives of civil society and international partners, which would carry out permanent monitoring and present weekly reports to the public about the state and trends in the country from the point of view of polarization. The monitoring reports would reflect recommendations for political parties, media outlets, non-governmental organizations and other entities involved in political processes. The composition and work format of the monitoring group should be specified after consulting with the parliamentary political parties and representatives of the civil sector.

The text of the 1st priority:

Address the issue of political polarization, through ensuring cooperation across political parties in the spirit of the April 19 agreement.

1.2. Important results of addressing 1st priority

After the 2020 parliamentary elections, Charles Michel, the President of the European Council, was personally involved in the mediation of the political crisis in the country, and an agreement was reached on April 19, 2021, which provides for the following issues:⁴

- Addressing perceptions of politicized justice.
- Ambitious electoral reform.
- Rule of Law/Judicial Reform.
- Power Sharing in the Parliament.
- Future elections.⁵

In order to solve the issue of polarization, it is important to implement relevant activities in the spirit of the Charles Michel Agreement.

The ruling party made a decision to start monitoring the media, where the subjects of observation would be public persons, namely politicians, journalists and representatives of civil sector. The object of observation was the rhetoric encouraging polarization, which includes:

- Incitement to violence.
- Threats.

⁴ <https://bit.ly/3Kae9b9> (accessed 26.03.2023).

⁵ Establishing a specific reservation for the upcoming 2021 elections, which provided for re-elections in 2022, if "Georgian Dream" could not collect 43% of the proportional votes.

- Hate speech.
- Obscenity.
- Polarizing language.

The research sources were TV channels, press and leading news agencies in Georgia. As a result of five months of monitoring, a media monitoring report was prepared titled as "Defamatory, polarizing, hateful and threatening language in public statements".

1.3. Existing challenges

At the same time, significant challenges persist - the distribution of power in the Parliament and the reduction of the electoral threshold to 2% as provided by the "Charles Michel Agreement" have not materialize; and, the parties have not stopped making polarizing assessments of each other. In particular, Georgian Dream refers to critics as "the party of global war" and/or foreign agents, enemies and traitors, while the opposition often refers to GD as 'slaves of Russia' and 'traitors'. However, the pardon of Nika Gvaramia, the director of the Mtavari Arkhi by the President of Georgia, is an important step forward. At the same time, the ruling party does not change its approach and keeps on partial boycotting of opposition or/and critical media channels (it's speakers do not participate in political debates and talk-shows).

Priority 2: Effective functioning of state institutions; Parliamentary supervision; Electoral legislation

2.1. The ruling party's plan in 2022 to address the 2nd priority

A working group with the participation of representatives of all parliamentary parties and the civil sector should be established at the Committee on Procedural Issues and Rules of the Parliament, which would provide a comprehensive assessment of the implementation of the Parliament's regulations in the field of parliamentary supervision and prepare a legislative initiative to correct the identified deficiencies.

In addition, within the framework of the Legal Affairs Committee, a working group for the revision of the Election Code should be established comprising of four members of the parliamentary majority, one member from each political groups - "Girchi", "Citizens", "European-Socialists", and "For Georgia". Representatives of the CEC, the State Audit Service and the National Communication Commission would also participate in the activities of the group.

The text of the 2nd priority:

Guarantee the full functioning of all state institutions, strengthening their independent and effective accountability as well as their democratic oversight functions; further improve the electoral framework, addressing all shortcomings identified by OSCE/ODIHR and the Council of Europe/Venice Commission in these processes.

2.2. Important results of addressing 2nd priority

Effective functioning of state institutions, Parliamentary supervision

In terms of strengthening parliamentary control, a working group established with the Committee on Procedural Affairs and Rules of the Parliament prepared changes to the Rules of Procedure of the Parliament, which entered into force immediately after publication on November 2, 2022.⁶ With these changes, several shortcomings were eliminated, which in practice hindered the summoning of ministers and other officials to the parliament and the effective functioning of other oversight mechanisms:

In terms of strengthening parliamentary control, the amendment prepared by the working group of the Parliament's Procedural Issues and Rules Committee and included in the Parliament's Rules of Procedure on November 2, 2022, which entered into force immediately after its publication, eliminated several shortcomings that in practice prevented the summoning of ministers and other officials to the Parliament and the effective implementation of other supervisory mechanisms. Functionality:

⁶ <https://matsne.gov.ge/ka/document/view/5602657?publication=0>

A. Presence of ministers and other officials at the committee meetings - according to the new regulations, the chairman of the committee has 3 days to send the request to the relevant official about the invitation to the committee meeting. Previously, the absence of this procedure allowed the committee chairman to help an official to avoid appearing at the committee meeting or being held accountable for not appearing.⁷ In particular, according to the procedure, the initiator of summoning an official to the committee session can be both the committee and the faction; The minister or other official is obliged to appear at the committee meeting after the committee's or faction's request is sent to the him/her by the chairman of the committee; In practice, the malign practice had existed when the committee chairpersons took advantage of the fact that the regulations did not define the deadlines, and did not send the minister/official requests thereby helping them to avoid the accountability. The absence of a deadline was particularly problematic for the parliamentary opposition: in the period of 2020-2022, 11 officials were summoned by the opposition to the committee meetings, but none of them appeared. Contrary to the mentioned, in the same period the parliamentary majority summoned five officials, all of whom appeared at the relevant committee meetings.⁸

B. In addition, in order to supervise the fulfillment of the obligation of the officials to appear at the committee meetings, the Committee of Procedural Issues and Rules is obliged to periodically (no later than 5 days after the end of every third month of the calendar year) study the issue of the attendance of officials at the committee meetings and adequately respond (issue recommendation; submit the results of the study to the Bureau of the Parliament; publish the information on the Parliament website).

C. The amendments cancel specific restrictions on holding interpellations, e.g. instead of maximum four interpellations during the year, it is possible to conduct interpellations in Parliament monthly (except June and December). In practice, restricting number of interpellations to four, made this mechanism ineffective because it caused the procedure to be delayed and the relevance of the issue to decrease.

D. The timeframe for answering MPs' questions by the relevant bodies and officials was reduced from 15 to 10 days. Also the monitoring system for responding to the MP questions was introduced by the new regulation. The Committee of Procedural Issues and Rules was obliged to study the state of this mechanism on a quarterly basis, and to submit the results to the Parliament Bureau. The relevant information on executing this procedure by the state agencies and officials will be published on the parliament's website.

E. The previous regulations allowed the presentation of the State Security Service's (SUS) annual report on its activities by its deputy head, which is why in practice the SUS's head

⁷ According to Article 44.6 of the Constitution of Georgia, the minister and other officials, upon request, are obliged to attend the plenary and committee sessions of the Parliament, answer the questions asked at the sessions, and submit the activity report. According to Article 48 of the Constitution of Georgia, violation of the Constitution by a member of government is grounds for his/her removal from office by impeachment.

⁸ Democracy Index - Georgia, Proceedings of the 2022 Spring Session of the Parliament of Georgia, from page 37: https://democracyindex.ge/uploads_script/studies/tmp/phpLwRtVq.pdf

never appeared at these presentations in the Parliament. According to the amendments in the regulation, only the SUS's head is authorized to present the annual report to Parliament. This is a step forward in establishing a tradition of democratic control over a largely secretive system with a Soviet past.

F. The Ministerial Hour is the only mandatory oversight mechanism provided for in the regulations, which over the years was used in practice to hear ministers in Parliament. Within the framework of this procedure, each minister was summoned to parliament once a year with an annual report. However, the effectiveness of the mentioned mechanism was reduced by the fact that ministers had no obligation to submit the report in advance to the MPs. The new amendments oblige ministers to submit a written report to Parliament 5 days prior the minister's hour. Another malign practice, which lowered its effectiveness, was a tradition to summon several ministers in one day. In some instances Parliament heard the annual reports of four ministers in the same day. The amended regulation allows summoning not more than two ministers each day.

Electoral legislation

In order to prepare the relevant legislative changes to be implemented necessary for granting Georgia the status of a candidate for EU membership (revision of the Election Code in accordance with the conclusions of the OSCE/ODIHR and the Venice Commission), the Parliament's Committee on Legal Affairs set up a working group for the revision of the Election Code in August 2022, which prepared drafts of legislative changes to the two organic laws in the same month (Election Code of Georgia and On Political Associations of Citizens).

While working on the package of changes, both the previous conclusions of the OSCE/ODIHR and the Venice Commission, as well as the previous recommendations of the Anti-Corruption Agency of the Council of Europe were taken into account. On October 5, 2022, at the Parliament's plenary session, within the framework of the implementation plan of the EC's 12 Priorities, the draft amendments to the Election Code and the Law on Political Associations of Citizens were adopted in the first reading.

On October 10, 2022, the draft law adopted in the first reading was sent to the Venice Commission and the OSCE/ODIHR for expert opinion and evaluation. Soon, preliminary conclusions and recommendations regarding the mentioned change package were developed and delivered to the Georgian side.⁹

The recommendations developed by the OSCE/ODIHR and the Venice Commission were discussed in the working group created within the framework of the Legal Affairs Committee. The new amendments were worked out taking into account the

⁹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)047-e)

recommendations. Consequently, the parliament adopted both bills in the second and third readings in December, 2022.¹⁰

The main amendments relate to the following areas:

I. Introduction of electronic means in elections

According to the amendments, the procedures for registering voters, voting, counting votes, and drawing up a summary protocol of voting results will be carried out by electronic means. Namely, the amendments include the following changes:

- In the electoral precincts where the elections will be held by electronic means:
 - The number of voters can be up to 3,000.
 - No control sheet is used.
 - More than one main ballot box and electronic ballot counter may be used.
 - The ballot printout produced by the electronic counter will have the function of preliminary results.
- In the electoral precincts where electronic counters will not be placed, during the counting all election ballots will be digitized and published online.
- The number of polling stations where the elections are held by electronic means should be determined in such a way that they cover at least 70% of voters nationwide.¹¹

The legislative amendments adopted by the Parliament generally regulate the manner of using electronic technologies in the election process, while the legislator entrusts the solution of other essential issues entirely to the Central Election Commission. Therefore, the law, without establishing essential criteria, in fact grants unlimited powers to the CEC. Too general records of the law and transferring almost all essential issues to the discretion of the CEC are problematic.¹²

The conclusion of the Venice Commission and OSCE/ODIHR also pointed to the legislative regulation of such details as the plan for the use of a new electronic means, effective voter education and training of election administration, as well as the creation and implementation of all those mechanisms that ensure the increase of public trust in the system. Nevertheless, these considerations were not actually taken into account in the adopted amendments.

¹⁰ <https://info.parliament.ge/#law-drafting/24699>

¹¹ <https://isfed.ge/geo/angarishebi/saarchevno-kanonmdeblobashi-2022-tslis-dekembershi-shetanili-tsvlilebebis-shefaseba>

¹² <https://info.parliament.ge/#law-drafting/24699>

II. Staffing of the Precinct Election Commission

Certification of PEC members

The amendments to the Election Code introduce training certification for the non-partisan PEC members.¹³ Unequivocally, the introduction of certificates confirming the competence of the members and heads of the PECs is welcome as it increases the possibility of staffing PECs with qualified personnel. However, it remains unclear what effect the certification will have in practice. An important challenge is the certification of a sufficient number of PEC members by the 2024 parliamentary elections.

The Venice Commission and the OSCE/ODIHR welcomed the introduction certification for the PEC heads and members and noted that it is in line with their recommendations. According to the Venice Commission and OSCE/ODIHR, the requirement for standardized training certification should be extended to the party-appointed PEC members too. However, based on the request of the opposition parties, the said amendment was not included in the law.¹⁴

Disqualifications for non-partisan PEC membership

The amendments adopted by the Parliament introduce additional disqualifications for non-partisan PEC membership. In particular, a person cannot be selected by the higher election body as a non-partisan member of PEC if (a) he/she had been a party-appointed election commission member, election subject, or representative of an election subject for either of the past two ordinary elections or past extraordinary elections or (b) he/she was a party donor since the beginning of the year of the last ordinary elections or extraordinary elections.

These amendments were dubbed as “positive development” by the Venice Commission and the OSCE/ODIHR, and positively evaluated by the local civic groups, because the expansion of the disqualifications’ list for PEC member raises “the impartiality of professionally-appointed lower-level commission members.”¹⁵

III. Tightening responsibility for misuse of administrative resources

The amendments to the Election Code include increasing the maximum fine for the misuse of administrative resources or the exercise of official duties or capacity during election campaigning from the fixed GEL 2,000 to GEL 4,000.¹⁶

¹³ Ibid.

¹⁴ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)047-e)

¹⁵ Ibid.

¹⁶ <https://info.parliament.ge/#law-drafting/24699>

Increasing the amount of the fine and similar changes in the legislation is an unambiguously positive process. However, in practice the inadequate, insufficient and lack of response to violations is the biggest problem. The Venice Commission and the OSCE/ODIHR assessed the increase in the fine as a “minor change” consistent with the recommendations, which cannot be considered a substantial step forward.¹⁷

It should be noted that the Parliament adopted these amendments with multi-party support, which was positively evaluated by both the parliamentary opposition and the civil society. According to their assessment, these legislative changes respond to a number of problems identified by both the Venice Commission and the OSCE/ODIHR, as well as by local civic organizations, although they believe that such changes are not sufficient to carry out systemic and fundamental reforms.¹⁸

IV. Terms of election disputes and other procedures

The amendments to the Election Code extend the deadline for appealing violations recorded at the polling station on the day of voting from two to three days and extend the deadline for the district election commission (DEC) to consider such appeals from two to four days. Consequently, the deadline for summarizing the election results was also extended by one day. Additionally, the deadline for making a decision on imposing or refusing to impose disciplinary liability on a PEC member was further specified to be made within 12 calendar days from the submission of the application/complaint. Also, a two day deadline was set for uploading scanned ballots online.¹⁹

The extension of time limits for handling appeals/complaints is unequivocally a positive change. The Venice Commission and the OSCE/ODIHR recommended shortening the decision-making period for imposing or refusing to impose disciplinary liability on a MEC. Their recommendation also referred to the reduction of the deadline for uploading scanned ballots online to two days.

2.3. Existing challenges

The work of the working group cannot be considered full-fledged, because the ISFED, organization presented by the National Platform, was not allowed to attend the first meeting of the group. As a sign of protest, other organizations nominated by the National Platform also left the working group and suspended their participation in this working group.

¹⁷ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)047-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)047-e)

¹⁸ <https://isfed.ge/eng/angarishebi/saarchevno-kanonmdeblobashi-2022-tslis-dekembershi-shetanili-tsvlilebebis-shefaseba>

¹⁹ <https://info.parliament.ge/#law-drafting/24699>

Priority 3: Judicial reform; Change in the procedure for electing the Prosecutor General; Election of lay members of the High Council of Justice

3.1. The ruling party's plan in 2022 to address the 3rd priority

The judicial reform working group established at the Parliament's Legal Affairs Committee, based on an in-depth analysis of the current situation in the judicial system, had to prepare and publish both a judicial reform strategy and an action plan, as well as a package of relevant draft laws by October 1, on the basis of which legislative amendments had to be prepared and submitted to the Parliament by November 1. As soon as the draft law is initiated, it would be sent to the Venice Commission and OSCE/ODIHR for evaluation. The discussions on the bill in parliament would begin upon the reception of the Venice Commission and OSCE/ODIHR opinion.

The draft constitutional law on the procedure for electing the Prosecutor General should be submitted to the Parliament by September 1, and adopted by the Parliament no later than November 29.

The Parliament would announce the competition for the selection of lay members of the High Council of Justice no later than September 30, and the voting for the election of members of the Council should be held no later than November 15.

3.2. Important results of addressing 3rd priority

In order to fulfill the 3rd priority, within the framework of the working group created with the Parliament's Legal Affairs Committee, the draft amendments to the law "On Common Courts" was prepared and initiated by the Committee on November 9, 2022.²⁰ On November 22, 2022, the Chairman of the Parliament asked the OSCE/ODIHR and the Venice Commission to prepare assessments on the draft amendments.²¹ On March 14,

The text of the 3rd priority:

Adopt and implement a transparent and effective judicial reform strategy and action plan post-2021 based on a broad, inclusive and cross-party consultation process; ensure a judiciary that is fully and truly independent, accountable and impartial along the entire judicial institutional chain, also to safeguard the separation of powers; notably ensure the proper functioning and integrity of all judicial and prosecutorial institutions, in particular the Supreme Court and address any shortcomings identified including the nomination of judges at all levels and of the Prosecutor-General; undertake a thorough reform of the High Council of Justice and appoint the High Council's remaining members. All these measures need to be fully in line with European standards and the recommendations of the Venice Commission.

²⁰ Amendments to the Organic Law of Georgia "On Common Courts" prepared for granting of EU candidate status to Georgia, November 9, 2022, N07-3/265/10, available on the official website of the Parliament of Georgia: <https://info.parliament.ge/#law-drafting/25094>

²¹ Request for Opinion, Georgia, 19/12/2022 <https://www.venice.coe.int/webforms/events/?id=3442>

2023, the Venice Commission adopted a conclusion²² that evaluates the judicial reform in terms of the implementation of the 3rd priority among them.

3.2.1. Dissemination and publication of court decisions as public information

Accountability of the judiciary and increased public trust cannot be achieved until access to judicial decisions is properly guaranteed. The main part of the draft amendments to the Organic Law "On Common Courts" will concern the introduction of detailed regulations for the release of the text of the court decision as public information, while protecting personal data. Despite the need for further refinement, it is important that the legislative initiative concerns the establishment of the rule for ensuring access to court decisions, since due to the absence of such a norm, both the issuance of court decisions at the request of an interested person and their proactive publication have been significantly limited in practice from 2019 until now.²³

The rule proposed by the draft amendment on ensuring access to court decisions needs to be further refined in order to fully take into account the requirements established by the decision of the Constitutional Court of Georgia of June 7, 2019.²⁴ The draft does not address the decision of the Constitutional Court to introduce a flexible mechanism to facilitate timely access to judicial acts.²⁵ In particular:

- Concerning court decisions passed before May 1, 2023, the draft amendment provides for such a procedure of checking of a personal data, which will take several years and will be an immeasurable burden for the courts, and until the conclusion of these procedures (until May 1, 2025), it declares the issuance of court decisions blanketly inadmissible.
- The issuance of decisions made after May 1, 2023 is allowed only after these decisions (final or interim) enter into legal force, which will delay access to said decisions for several years.

²² Venice Commission, Follow-Up Opinion To Four Previous Opinions Concerning The Organic Law On Common Courts, Georgia, 14 March 2023, CDL-AD(2023)006, <https://bit.ly/3ZsnTIF>

²³ The Constitutional Court discussed the issue after the common courts restricted the publication and issuance of court decisions on the grounds of personal data protection. According to the decision of the Constitutional Court, the Parliament was given a deadline until May 1, 2020, to introduce the relevant amendments in the legislation, but it delayed the implementation of the Constitutional Court decision and has not done it so far. As a result, access to court decisions in Georgia has been significantly limited since 2019. For example, based on the request of a group of independent lawyers, the court refused to release the decision on the indictment of the third president of Georgia, Mikheil Saakashvili, on the grounds of protecting his/her personal data. The refusal was appealed to the general courts, where the request was also rejected.

²⁴ Decision of the Constitutional Court of Georgia on the case "Media Development Fund and Institute for the Development of Freedom of Information against the Parliament of Georgia," N1/4/693,857, June 7, 2019 <https://constcourt.ge/ka/judicial-acts?legal=1268>

²⁵ Ibid.

The Venice Commission welcomes the initiative of the Parliament of Georgia to solve the problem of access to the decisions of general courts;²⁶ however, it makes two remarks: it is necessary to strike the right balance between the right to privacy and access to judicial decisions. From this point of view, the Venice Commission notes that the draft law provides for an overly complex procedure, which complicates and delays access to court decisions; the Venice Commission also emphasizes the need for judicial decisions to be available in both past and ongoing cases.²⁷

3.2.2. Avoidance of conflict of interest in the appointment of judges

The draft law envisages removing a member of the High Council of Justice from the process of nominating a candidate for the position of Supreme Court judge. The said innovation can be evaluated positively from the point of view that it excludes from the candidate selection process a member of the High Council of Justice who was biased, his/her approach was discriminatory and/or he/she exceeded the authority granted to him/her by the law.

3.2.3. Election of the Prosecutor General by qualified majority

The draft amendment to the Constitution to introduce the rule for electing the Prosecutor General by a qualified majority, taking into account the April 2019 agreement "Future Road for Georgia" (the so-called "Charles Michel Agreement"), was first initiated in June 2021, although it did not receive the support of the Parliament. Within the framework of the implementation of the 12 priorities of the European Commission, constitutional amendments were initiated again on August 31, 2022.²⁸ The amendment envisages the introduction of a temporary rule for the election of the Prosecutor General: "The Parliament of the next two convocations shall elect the Prosecutor General with a three-fifths majority of the full composition. If the Parliament fails to elect the Prosecutor General twice with a three-fifths majority, it shall elect the Prosecutor General with a majority of the full composition. The second and third ballots shall be held no earlier than the 28th day after the respective previous ballot and shall be cast for the same candidate. The term of office of the Prosecutor General elected by the majority of the parliament's full composition is one year." The constitutional amendment was approved in the first reading on October 18, 2022, with the multi-party support. The draft constitutional law needs to be adopted in the second and third readings, which has not happened on the moment of drafting this report.²⁹

²⁶ Venice Commission, Follow-Up Opinion To Four Previous Opinions Concerning The Organic Law On Common Courts, Georgia, 14 March 2023, CDL-AD(2023)006, par. 46. <https://bit.ly/3IUpa7h>

²⁷ Ibid, par. 48.

²⁸ The draft law 07-3/234-10 is available on the official website of the Parliament: <https://info.parliament.ge/#law-drafting/24570>

²⁹ On November 14, 2022, the decision was made by the Bureau of the Parliament on the extension of the second reading of the constitutional draft N07-3/234 by 30 days.

3.3. Existing challenges

3.3.1. Adopting a transparent and effective strategy and action plan for judicial reform through a participatory process

The new strategy and action plan for judicial reform was published on October 1, 2022.³⁰ Nevertheless, the part of the 3rd Priority of the European Commission, which concerns the updating of the judicial reform strategy and action plan, cannot be considered fulfilled due to the following circumstances:

- The strategy and action plan were not adopted through a broad and inclusive process, as the 3rd Priority requires. The document did not take into account the proposals submitted by the stakeholders to the working group. For example, the document does not even mention the voluminous proposals submitted by the parliamentary opposition party "Lelo"³¹ and the public union "Independent Lawyers Group"³² to the Parliament's Legal Affairs Committee on the needs of judicial reform. The ruling party did not adopt or reject the mentioned proposals as a result of relevant reasoning. The only proposal, which is indicated in this document as the basis for the development of the strategy and action plan, was adopted by the Georgian Dream faction.³³
- The document does not establish the deadlines for the implementation of the strategy and action plan, neither does it define the entities responsible for their implementation, which excludes the effectiveness of the strategy and the action plan, as required by the Priority 3 of the European Commission.

3.3.2. Carrying out a comprehensive reform of the High Council of Justice in full compliance with European standards and recommendations of the Venice Commission

The legislative amendments initiated by the ruling party do not address the European Commission's Priority on comprehensive reform of the High Council of Justice, which was

³⁰ <https://bit.ly/3ntAxUe>

³¹ Ana Natsvlishvili prepared an evaluation document based on the analysis of the changes carried out in the court system, 12.08.2022 <https://bit.ly/3zmbQvi>

³² A group of independent lawyers submitted a document on problems and recommendations to the parliamentary group working on judicial reforms, 15.08.2022, https://democracyindex.ge/index.php?m=261&news_id=177

³³ Institutional Development of Georgian Justice in 2013-2021, 2022, available at: <https://bit.ly/3nysFAA>

also reflected in the opinion of the Venice Commission,³⁴ and does not address the Commission's recommendations on reforming HCoJ issued by back in 2020.³⁵

In the part of the election of the members of the Supreme Council of Justice, the bill envisages only a minor change, which cannot affect the increase of confidence in the process of staffing the Council. In particular, according to the draft law, the candidate for judge membership of the Supreme Council of Justice has the right to address the conference of judges and present his/her vision and opinion before voting. Candidates have never had this right limited, although candidates almost never use this right in the conditions of the non-mandatory procedure. As for the election of lay members of the Council, in this direction, the draft law envisages the obligation to hear them publicly in the Parliament, which is only a reflection of the established practice in the law and has been proven by practice to be insufficient to raise the low level of trust in the judiciary.

In the part of the election of the members of the High Council of Justice, the bill envisages only a minor change, which cannot trigger the increase of confidence in the process of staffing the Council. In particular, according to the draft, the candidate for judge membership of the High Council of Justice has the right to address the conference of judges and present his/her vision and opinion before voting. Candidates have never had this right limited, although almost never use this right in the conditions of the non-mandatory procedure. As for the election of lay members of the Council, the draft envisages the obligation to hear them publicly in the Parliament, which is only an attempt to legalize an established practice, which has proved by practice to be insufficient to raise the low level of trust in the judiciary.

The opinion of the Venice Commission emphasizes that the manner of staffing the High Council of Justice should be changed in such a way as to exclude judicial corporatism, which serves the self-interests of one group of judges to the detriment of other groups of judges.³⁶

The Venice Commission notes that the recommendation by the Parliament to introduce an anti-deadlock mechanism for the election of lay members of the High Council of Justice has not been implemented.³⁷

An important recommendation that the Venice Commission made to tackle the problem of corporatism, which it noted had not been implemented is to increase the role of lay members in the decision-making of the High Council of Justice. Also, as a mechanism against corporatism, the Venice Commission recommends the introduction of a rule for gradually

³⁴ Venice Commission, Follow-Up Opinion To Four Previous Opinions Concerning The Organic Law On Common Courts, Georgia, 14 March 2023, CDL-AD(2023)006, par. 16. „...the draft amendments neither consist of a thorough reform of the HCOJ, nor do they address the Venice Commission's recommendations and concerns about the way the HCOJ functions in Georgia.“ <https://bit.ly/40oSHVv>

³⁵ Ibid, par. 15. The recommendations include the following issues: amendments of the procedures for the transfer and secondment of a judge to another court; Change in procedures for removal of judges of the first and appellate instance from consideration of cases; reducing the number of votes required for disciplinary action against a judge, which creates a danger in the environment of corporatism; Change of "political neutrality" as the basis of judge's disciplinary responsibility.

³⁶ Ibid, par. 17.

³⁷ Ibid, par. 18.

renewal of the composition of the High Council of Justice. Also, according to the recommendation of the Venice Commission, members of the HCoJ have been allowed to serve more than one term in the HCoJ. Changes should also apply to the procedure for electing judicial members of the High Council of Justice.³⁸

3.3.3. Solving the problems identified at all levels of the nomination of judges in full compliance with European standards and recommendations of the Venice Commission

Taking into account the opinion of the Venice Commission issued in 2019³⁹ and the evaluation of the OSCE/ODIHR monitoring of 2021,⁴⁰ in order to solve the problems identified at all levels of the nomination of judges, it is necessary to amend the rule of the appointment of judges based on the principle of merit, both in the High Council of Justice and in the parliament. In particular, the amendments should concern the following issues:

- Establishment of uniform procedures for interviewing candidates in the High Council of Justice and other such changes that ensure the selection of candidates impartially, based on the principle of merit.⁴¹
- Changes that should ensure the protection of the process of appointment of judges by the Parliament from politicization. In particular, the law should establish the obligation to justify conclusions of the relevant Parliament committee in relation to each candidate, in order to ensure the judges are appointed by the Parliament based on the professional and merit principle, and not according to the party opinion.⁴²

³⁸ Ibid, par. 19, 20, 21, 22, 23.

³⁹ In order to fulfill the recommendations issued by the 2019 conclusion of the Venice Commission, a number of changes were made in the Georgian legislation. In particular, the secret voting in the nomination of candidates for Supreme Court judges by the HCoJ was canceled; The changes affected the procedures for making a reasoned decision and appeal in the case of candidate selection and rejection, as well as the procedures for avoiding conflicts of interest in the HCoJ. Venice Commission, Georgia, Urgent Opinion on the Selection and Appointment of the Supreme Court Judges, Key Recommendations, pages 14-15, CDL-PI(2019)002, <https://bit.ly/40srTE3>

⁴⁰ OSCE/ODIHR, Fourth Report on the Nomination and Appointment of Supreme Court Judges in Georgia, August 2021 <https://www.osce.org/files/f/documents/4/b/496261.pdf>

⁴¹ „[...]the candidate hearings before the HCJ, although highly transparent, were marred by variations in conditions, lapses in decorum, internal divisions on the HCJ, and serious conflict of interest issues. Following this process, the HCJ presented its list of nine nominees to parliament, all of which were sitting judges, two of whom were women.“ Ibid, p. 2.

⁴² “The applicable law continues to lack safeguards to prevent the politicization of Supreme Court appointments by giving parliament full discretion to appoint or reject any nominee without substantive justification and without adhering to any established criteria, further threatening judicial independence and impartiality in violation of international standards [...] The eleven committee members that participated in the voting, among them only one woman, overwhelmingly recommended six of the nine nominees and rejected the three others, with the ten ruling party members voting for the same candidates. The committee’s report to the plenary did not include reasoning for its support for, or opposition to, the nominees, raising concerns as to whether the recommendations were based solely on objective criteria. The fact that two of the three rejected candidates, the only two women, had been ranked higher by the HCJ than several of the recommended candidates without committee’s reasoning provided for these deviations, further brought into question the merit-based selection.” Ibid, p. 2-3.

- Legislative amendments should create guarantees so that judges are no longer hastily appointed by the Parliament, without ensuring proper inclusiveness of the process.⁴³

According to the Venice Commission's opinion of March 14, 2023, the following recommendations are not, again, taken into account in the matter of the appointment of Supreme Court judges: tightening of the qualification requirements for Supreme Court judicial candidates and increasing the age limit; introduction of an anti-deadlock mechanism for the Supreme Court judge nomination by the High Council of Justice; amendment of the rules related to the appeal of the decision of the Supreme Council of Justice on the nomination of a candidate for the position of a Supreme Court judge.⁴⁴

On the other hand, the OSCE/ODIHR recommendations of 2021 regarding the appointment of Supreme Court judges have also not been taken into account.⁴⁵ The criteria for the selection of judges established by the current law do not meet the European standard of "objective criteria". In addition, it is important who and in what manner makes the decision on the appointment of a judge. The existing model allows for the appointment of a judge to the position without the involvement of the HCoJ members elected by the Parliament. It is necessary to develop such a model that would exclude the appointment of judges on the basis of an internal corporate decision-making.⁴⁶

The draft amendments initiated by the ruling party only formally refer to the process of appointing judges of the first and appeal courts. It stipulates that the High Council of Justice will appoint a judge to the vacant position of a district (city) or appellate court judge in the manner established for the selection of a candidate to be submitted to the parliament for election to the position of a Supreme Court judge. It is difficult to imagine that with this step, revolutionary changes will occur in terms of increasing the qualification and integrity of the corps of judges in the first and appellate instances, since the current practice of selecting/appointing judges of the Supreme Court has already been severely criticized many times, including as a result of the OSCE/ODIR monitoring.⁴⁷ Without taking into account the mentioned recommendations, the automatic extension of the rule of appointment of judges of

⁴³ "Despite an unrelated civil protest on 12 July that breached the plenary chamber and led to physical confrontations, the final parliamentary vote on the appointments moved forward the same day. Contrary to a legal requirement for such, the plenary did not hold an open discussion about the nominees prior to voting. With almost all opposition parties boycotting the vote, including the largest one, and with barely more than half of all MPs participating, the parliamentarians in attendance overwhelmingly voted to appoint the six recommended nominees and to reject the three others, who received only nominal support. The ruling party's decision to move ahead with the proceedings with the opposition largely absent challenged the inclusivity of the process and credibility of the appointments, and risked further diminishing public trust." Ibid, p. 3.

⁴⁴ Venice Commission, Follow-Up Opinion To Four Previous Opinions Concerning The Organic Law On Common Courts, Georgia, 14 March 2023, CDL-AD(2023)006, para.: 24-38. <https://bit.ly/40oqhek>

⁴⁵ Effective involvement of civil society in the process of selection of judges; bringing the process of appointing judges into full compliance with the OSCE recommendations; reform of the High Council of Justice to increase public trust and other recommendations: OSCE/ODIR, Fourth Report on the Nomination and Appointment of Supreme Court Judges in Georgia, August 2021 <https://www.osce.org/files/f/documents/4/b/496261.pdf>

⁴⁶ OSCE/ODIHR, Fourth Report on the Nomination and Appointment of Supreme Court Judges in Georgia, August 2021 <https://www.osce.org/files/f/documents/4/b/496261.pdf>

⁴⁷ Appointment of new judges to Georgia's highest court lacked integrity and credibility, though procedure was generally well run: ODIHR assessment, 23 August, 2021, <https://www.osce.org/odihr/496270>

the Supreme Court to the appointment the first instance and appeals courts' judges will still not yield results.

3.3.4. Appointment of five lay members of the High Council of Justice

On September 30, 2022, the Parliament announced the selection competition for five lay members for the High Council of Justice. 32 candidates participated in the competition. In December 2022, the hearing of the candidates was held in the Parliament's Legal Affairs Committee. The parliamentary majority and opposition have not been able to reach agreement on the candidates, and the vote to elect HCoJ lay members was postponed until Parliament's 2023 spring session. It should be noted that the process of electing lay members began without taking into account the European recommendations on improving the rules for staffing the HCoJ (see paragraph 3.4.2 of this document).

Priority 4: Anti-Corruption Measures

4.1. The ruling party's plan to address the 1st priority

A working group should be created at the Parliament's Legal Affairs Committee to prepare the concept of consolidation of anti-corruption functions and proposals to ensure further institutional strengthening of the Special Investigation Service and the Personal Data Protection Service. The working group would include members from all parliamentary parties, as well as representatives of Government Administration, Prosecutor's Office, State Security Service and civil sector. The developed draft legislation should have been submitted to the Parliament no later than October 19, and will be adopted by the Parliament by December 1.

The text of the 4th priority:

Strengthen the independence of the Anti-Corruption Agency, in particular to rigorously address high-level corruption cases; equip the new Special Investigative Service and Personal Data Protection Service with resources commensurate to their mandates and ensure their institutional independence.

4.2. Important results of addressing 4th priority

4.2.1. Defining general policy of fighting against corruption

On November 30, 2022, the Parliament adopted legislative amendments⁴⁸ that separated the functions of defining the general anti-corruption policy and its implementation between the legislative and executive authorities. The independent anti-corruption bureau will develop, and the parliament will approve a document defining the general policy of fighting corruption.⁴⁹

Until now, the function of the development of general anti-corruption policy and the monitoring of its implementation was entirely within the competence of executive branch,⁵⁰ which proved to be inefficient in practice: since December 2020, Georgia has no longer had an anti-corruption strategy and action plan, at the same time the Interagency Anti-Corruption Council and its Secretariat have not functioned after 2019.⁵¹ According to the European

⁴⁸ On November 30, 2022, the Parliament adopted the bill on Amendments to the Law "On Conflict of Interests and Corruption". The new law titled "On the Fight against Corruption" partially entered into force immediately after its publication, and will be fully enforced from September 1, 2023. Published: <https://bit.ly/40svvFY>

⁴⁹ Article 132/1 "Approval of the Document Defining General Policy of the Fight against Corruption" was added to the regulations of the Parliament of Georgia.

⁵⁰ In 2005, the President of Georgia approved the first national anti-corruption strategy and action plan (Presidential Decree N550 of June 24, 2005). In 2008, by the decree of the President of Georgia (December 26, 2008 N622), the Interagency Coordination Council for the Fight against Corruption was established at the Ministry of Justice of Georgia in order to shape general anti-corruption policy, monitor implementation of the strategy and action plan, and perform other functions. New priorities for the fight against corruption, strategy and action plan documents were approved by the President or the Government at different times, in 2010, 2013 and 2015.

⁵¹ Commission Opinion on Georgia's Application for Membership of the European Union, 17.6.2022 „...anti-corruption policy in Georgia is negatively affected by the fact that the National Anti-corruption Council has not met since 2019. As of the beginning of 2021, the secretariat of the Council was moved from the Ministry of

Commission, it remains a problem to respond to facts of high-level corruption.⁵² Defining of general anti-corruption policy by the Parliament is important for the participation of opposition and civil society representatives on this issue, for identifying the problems as a result of public discussion, and for the inclusive development of unified national anti-corruption policy.

4.2.2. Strengthening the anti-corruption agency and bringing together all key anti-corruption functions

With the legislative amendments adopted on November 30, 2022,⁵³ a specialized anti-corruption body, the Anti-Corruption Bureau, was created with competencies in the areas of anti-corruption policy, corruption prevention, monitoring and informing of public. Among others, the following functions were transferred to the Anti-Corruption Bureau:

- Develops proposals related to defining the general anti-corruption policy and submits them to the Parliament.
- Develops a draft of the national anti-corruption strategy and action plan and submits it to the Government for approval.
- Coordinates the activities of relevant bodies, organizations and officials in order to implement the general anti-corruption policy, strategy and action plan.
- Supervises the implementation of the general anti-corruption policy, strategy and action plan.
- Ensures receipt of official's assets declaration, controls its proper submission, storage, monitoring and publicity.
- Develops suggestions for improvement of whistleblower protection measures, issues recommendations and implements other measures.
- Monitors the financial activities of political parties, electoral entities, persons with declared electoral goals and other measures.

The Anti-Corruption Bureau assumes such functions, whose unification under one agency is outlined in the European Commission's evaluation document: the functions of public officials' conflicts of interest, verification of declared assets, auditing the spending of

Justice to the Government Administration and remains understaffed. No new national Anticorruption Strategy and Action Plan for 2021-2022 has been developed yet.“ Page 8 <https://bit.ly/3K1RkoR>

⁵² Commission Opinion on Georgia's Application for Membership of the European Union, 17.6.2022 „As regards the track record of high-level corruption cases, a total of 28 verdicts have been issued since 2020, out of which 21 were convicted for corruption, including a deputy minister, deputy district prosecutor, governors and members of local councils. More needs to be done to tackle high-level corruption and in particular, to address the role of large scale vested interests and their influence in both the economic and political sphere.“ Page 8-9 <https://bit.ly/3ZzjoWe>

⁵³ On November 30, 2022, the Parliament adopted legislative Amendments to the Law "On Conflict of Interest and Corruption". The new bill titled "On the fight against corruption" was partially implemented immediately after its publication, and will be fully implemented from September 1, 2023. Posted by: <https://bit.ly/40svvFY>

political parties, and whistleblowers' protection.⁵⁴ The initial version of the draft law did not provide for the mentioned functions of the anti-corruption bureau, and they were added taking into account the comments made by civil society organizations during the discussion of the draft law at the legal affairs committee.⁵⁵

As for the Anti-Corruption Inter-Agency Coordination Council, it remained part of the Government of Georgia with reduced functions. The Council no longer has the functions of defining general anti-corruption policies, developing strategies and action plans, and monitoring performance. The competence of the Anti-Corruption Council was defined as to promote the implementation of a unified state anti-corruption policy by performing the following functions: discussing the Anti-Corruption Bureau reports, developing proposals and recommendations on the general anti-corruption policy, strategy and action plan, issuing recommendations on improving the activities of the Bureau.⁵⁶ The Anti-Corruption Council includes representatives of state agencies assigned by the Government of Georgia. The council may include representatives of local and international organizations, representatives of public organizations performing activities in the relevant field, independent experts and representatives of the academia.

It was established that the Anti-Corruption Bureau is accountable to the Parliament's Anti-Corruption Council. The Bureau shall submit an annual report to the Parliament no later than March 31 of each year. Also, at the request of the Anti-Corruption Interagency Council, it shall submit a report to the said Council.⁵⁷

The head of the Anti-Corruption Bureau is appointed by the Prime Minister of Georgia out of not less than 2 and not more than 5 candidates nominated by the competitive commission created for this purpose. The law defines composition the Commission as consisting of the following 7 members: i. GoG representative; ii. Chairperson of Parliament's Human Rights Protection and Civil Integration Committee; iii. Chairperson of Parliament's Legal Affairs Committee; iv. Deputy Chairperson of the Supreme Court; v. deputy Prosecutor General; vi. Public Defender or his/her deputy; vii. Representative of public organization selected by the Public Defender of Georgia through an open competition. The Prime Minister has the right to terminate the authority of the head of the Anti-Corruption Bureau beforehand in case of the following grounds: i. personal statement of resignation; ii. Termination of citizenship; iii. Death; iv. Entry into legal force of the court's guilty verdict; v. recognition as a recipient of support, if this excludes the performance of his/her powers; vi. non-fulfillment of powers for

⁵⁴ Commission Opinion on Georgia's Application for Membership of the European Union, 17.6.2022 „There is no single independent anticorruption agency that deals independently with conflicts of interest, verification of declared assets, auditing the spending of political parties and whistle-blowers protection. The administrative capacity to obtain effective control of party financing and electoral campaign financing needs to be strengthened, p. 8. <https://bit.ly/3ZtzxfX>

⁵⁵ During the second reading of the draft law at the Legal Affairs Committee, comments were made by representatives of the Democracy Index - Georgia and the Institute for the Development of Freedom of Information.

⁵⁶ Article 20/22 of the Law of Georgia "On Fight against Corruption".

⁵⁷ Ibid, Article 20/15.

4 consecutive months; vii. occupying an incompatible position; viii. Drug use or evasion for drug testing.

4.2.3. Strengthening Special Investigation Service and Personal Data Protection Service

An important innovation of the new legislation is that the investigative jurisdiction of the Special Investigation Service was expanded with amendments adopted on November 30, 2022.⁵⁸ It is important that with the amendments adopted the same day, guarantees of social security for employees of the Personal Data Protection Service have increased.⁵⁹

4.3. Existing challenges

4.3.1. Solving cases of high-level corruption

The recommendation regarding tracking record of high-level corruption cases, i.e. “elite corruption”, remains unfulfilled both in terms of investigating the facts of high-level corruption crimes and carrying out institutional reform.⁶⁰

The evaluation document of the European Commission points to the problem that There are no specialized law enforcement, prosecution services or specialized courts dealing with the fight against high-level corruption, and the prevention, detection and prevention of a number of corruption facts are subordinate to the State Security Service (SUS).⁶¹ It should be noted the SUS is under the direct supervision of the GoG, unlike other agencies with the function of investigating crimes, such as the Prosecutor's Office and the Special Investigation Service.⁶² The SUS is responsible for criminal investigations of a number of corruption crimes, whose connections to the state security are unclear.⁶³ However, according to the standards defined by the Council of Europe for member states, “security services should not be allowed to run criminal investigations, arrest or detain people, nor should they be involved in the fight

⁵⁸ Amendments to the Law of Georgia "On Special Investigation Service" was adopted on November 30, 2022 and entered into force immediately after its publication, <https://bit.ly/3TYb9Sy>

⁵⁹ Amendments to the Law of Georgia "On Personal Data Protection" was adopted on November 30, 2022 and entered into force immediately after its publication, <https://bit.ly/3TWraIR>

⁶⁰ Commission Opinion on Georgia's Application for Membership of the European Union, 17.6.2022. „As regards the track record of high-level corruption cases, a total of 28 verdicts have been issued since 2020, out of which 21 were convicted for corruption, including a deputy minister, deputy district prosecutor, governors and members of local councils. More needs to be done to tackle high-level corruption and in particular, to address the role of large scale vested interests and their influence in both the economic and political sphere.“ Pp. 8-9. <https://bit.ly/3zpyMda>

⁶¹ Ibid, p. 8. „There are no specialized law enforcement, prosecution services or specialized courts dealing with the fight against high-level corruption. More needs to be done to strengthen investigations in this area. The anti-corruption entity is part of the State Security Services.“

⁶² Law of Georgia "On State Security Service".

⁶³ Order N3 of the Prosecutor General of Georgia of August 23, 2019 "On determination of the investigative and territorial investigative sub-location of criminal law cases."

against organized crime, except in very specific cases, when organized crime poses a clear danger to the free order of a democratic state.”⁶⁴

In terms of specialized investigation and prosecution of corruption crimes, the OECD-ACN report welcomes establishment of several specialized units in Georgia to investigate and prosecute corruption crimes, however, it notes that placement of an anti-corruption agency within the Security Service is dubious. Civil society representatives expressed concern that the work of the SUS is not transparent. The Government believes that the Security Service has sufficient control mechanism that prevent any abuse of anti-corruption investigative powers and that the CoE standards are fully implemented in Georgian legislation in terms of ensuring effective democratic oversight of security agency by all three branches of power. An issue of concern can be raised with regard to concentrating both investigation and prosecution within the prosecution service (Anti-Corruption Unit of the PSG). The recent reforms enacted do not include separating the prosecutorial functions from the investigative functions in the PSG. This could lead to conflicts of interests, as prosecutors are supposed to ensure that the investigation was conducted properly and with legitimate means. Co-locating investigators and prosecutors can also undermine the checks and balances on the exercise of power which should exist as a safeguard against improperly motivated investigations and cases and failures to take action where merited. It can also strengthen the perception that high-level corruption is not being effectively addressed. It appears that Georgia did not consider the possibility of excluding the investigation function from the prosecution service. Georgia did establish a unit with prosecutors specialized in corruption cases, as was recommended. However, the autonomy that is afforded to the Anti-Corruption Unit of the PSG should be strengthened (it is now a part of the Investigation Department of the Office of the Chief Prosecutor along with other units). “⁶⁵

The European Parliament pointed out the systemic problem of impunity for high-level corruption crimes back in 2018 and called on Georgia to ensure that the Anti-Corruption body is independent, free from any political interference and separated from the SUS.⁶⁶

⁶⁴ Parliamentary Assembly of Council of Europe, Recommendation 1402 (1999), Control of internal security services in council of Europe member states, para. 6. <http://goo.gl/1G6fUW>

⁶⁵ OECD-ACN, Anti-Corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 2016, p. 120-121. <https://bit.ly/2x3c7Gu>

⁶⁶ European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Georgia (2017/2282(INI)), para. 22.: „Acknowledges Georgia’s results in fighting low and mid-level corruption leading to a good regional ranking in perception indexes; highlights nevertheless that high-level elite corruption remains a serious issue; commends Georgia’s implementation of the Anti-Corruption Strategy and its Action Plan; calls on Georgia to ensure that the Anti-Corruption Agency is independent, free of any political interference and separated from the State Security Service; reiterates the importance of an effective separation of powers and a clear dissociation between politics and economic interests, and stresses that fighting corruption requires an independent judiciary and a solid track record of investigations into high-level cases of corruption, yet to be established; considers Georgia as an important partner of the EU in different fields of cooperation such as the fight against terrorism and organised crime.“
https://www.europarl.europa.eu/doceo/document/TA-8-2018-0457_EN.html

Priority 5: De-oligarchisation

5.1. The ruling party's plan in 2022 to address the 5th priority

Within the framework of the Committee on Legal Affairs, a group working on the issue of de-oligarchisation should be created, which would include: the "Georgian Dream" faction and the parliamentary opposition, as well as representatives of the government administration, the CEC, the State Audit Service, the National Communications Commission and of the Competition Agency.

The group began functioning on August 4, and according to the plan, the draft law prepared by the working group should have to be initiated no later than October 5, 2022, and the law adopted no later than November 29, 2022. According to the decision of the ruling party, the Ukrainian law on de-oligarchisation would be translated and adopted.⁶⁷

5.2. Important results of addressing 5th priority

After discussing the issues in the working group, the Committee on Legal Affairs prepared a legislative initiative on de-oligarchisation "similar to the law of Ukraine". The Legal Affairs Committee supported the initiation of the legislative package prepared by the working group on the issue of "de-oligarchisation". The draft law "On De-oligarchisation" was adopted in the first reading on November 2, 2022, and in the second reading on November 16.

The draft law is similar to the Ukrainian model and regulates the following issues:⁶⁸

- Defining the term "oligarch".
- Identifying a person as an oligarch and listing him/her in the register.
- Managing the register and removing the person from the register of oligarchs.
- Discussing legal consequences.
- Filling out the assets declaration of the persons having connections with the oligarch and/or with his/her representatives.

The project defines the criteria that confer the status of "oligarch" on a person. A natural person who meets at least 3 of the following criteria simultaneously is considered an oligarch:

- Participates in political life.
- Weighs significant Influence on mass media.

The text of the 5th priority:

Implement the commitment to "de-oligarchisation" by eliminating the excessive influence of vested interests in economic, political, and public life.

⁶⁷ <https://bit.ly/40Bzz6U>

⁶⁸ <https://info.parliament.ge/file/1/BillReviewContent/311185>

- Is the final beneficiary of the entrepreneurial legal entity that, after the entry into force of this article, holds a dominant position in the market in accordance with the Law of Georgia "On Competition", and that maintains or improves this position for the last 1 year.
- The confirmed amount of his/her assets and those of entrepreneurial legal entities where he/she is a beneficiary, as of January 1 of the relevant year, exceeds 1,000,000 times the subsistence minimum established for able-bodied persons.⁶⁹

The opposition criticizes the draft law, disagrees with the adjustment of the Ukrainian law to the Georgian reality and demands the development of a new document.

The draft law was sent to the Venice Commission and the OSCE/ODIHR for a legal opinion. The Venice Commission published its final recommendation on the bill in June, 2023, where it emphasizes once again that the draft law, in its current form, should not be adopted.⁷⁰ After the publication of the final conclusion by the Venice Commission, the ruling party made a decision and Georgian Dream Chairman Irakli Kobakhidze issued an official statement that, in accordance with the recommendations of the Commission it will discard the draft law in the third reading.⁷¹

In terms of the implementation of the EU recommendation, the second part of the recommendations of the Venice Commission refers to the need for a systematic approach. It is important that Georgia focuses on the adoption of such laws, which define a systemic approach, contribute to the strengthening and development of democratic institutions, and ensure the creation of such an environment, which, in turn, will hinder the presence of oligarchic influences in the country's political life.

5.3. Existing challenges

Despite the suspension of the draft law on de-oligarchization by the Parliament of Georgia, according to the recommendation of the Venice Commission, there are systemic changes to be implemented in the country in various areas, which should finally ensure the implementation of the obligation of "de-oligarchization" by eliminating the excessive influence of vested interests in economic, political and public life.

⁶⁹ Ibid.

⁷⁰ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)017-e)

⁷¹ <https://formulanews.ge/News/97713>

Priority 6: Fight against Organized Crime

6.1. The ruling party's plan in 2022 to address the 6th priority

Within the framework of the Defense and Security Committee, in order to fulfill the 6th point of the 12-point recommendations of the European Commission, a working group on strengthening the fight against organized crime should be created, the main purpose of which would be to assess the current situation in the field, correct the shortcomings and develop proposals for further strengthening the fight against organized crime. November 1 was defined as the deadline for the group's activities. The working group was staffed with members of the parliament and representatives of government agencies and civil society.

The text of the 6th priority:

Strengthen the fight against organized crime based on detailed threat assessments, notably by ensuring rigorous investigations, prosecutions and a credible track record of prosecutions and convictions; guarantee accountability and oversight of law enforcement agencies.

6.2. Important results of addressing 6th priority

The working group held 9 meetings and developed more than 70 proposals. Apart of the ruling party and opposition MPs, representatives of civil society and relevant state bodies (the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Finance, the Investigative Service of the Ministry of Finance, the Prosecutor's Office, the Supreme Court of Justice, the State Security Service, the Financial Monitoring Service and the National Security Council administration) participated in the process.

Five main directions were studied and discussed in the working group format:

- Fight against organized crime ("Thieves in Law", their associates and supporters).
- Fight against cybercrime.
- Fight against human trafficking.
- Fight against money laundering and financing of terrorism;
- Fight against drug crime.⁷²

At the final meeting of the working group, which was held on October 28, 2022, the proposals developed to strengthen the fight against organized crime were presented, which included the activities to be implemented in each of the above-mentioned directions, the responsible agency/agencies and the deadlines for implementation.⁷³

The committee got acquainted with the results of the working group activities and decided:

⁷² <https://bit.ly/3KnvqxQ>

⁷³ Ibid.

- To hand over prepared proposals for the assessment of the situation in the field, correction of shortcomings and further strengthening of the fight against organized crime to the relevant agencies for execution within the time limits specified by the attached document;
- To charge the Parliament's Defense and Security Committee with supervision of the implementation of proposals developed by the working group.⁷⁴

According to proposals developed to strengthen the fight against organized crime, Georgia will join the EMPACT action plan (The European Multidisciplinary Platform against Criminal Threats). EMPACT aims to tackle the most important threats facing the EU in a coherent and methodical way. In addition, Georgia will join the additional analytical projects of the European Union Agency for Law Enforcement Cooperation (Europol).

In order to strengthen the fight against money laundering and terrorist financing:

- Legislative amendments will be initiated in order to correct the shortcomings identified as a result of the fifth round of evaluation by MONEYVAL (The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism).
- Based on the recommendations of MONEYVAL and FATF (Financial Action Task Force), draft legislative amendments will be initiated on expanding the powers of the Accounting, Reporting and Audit Supervision Service, as well as on establishing a money laundering supervision department; Draft legislation will be initiated for the purpose of introducing a system of issuing permission for the organization of online games and amendments related to the arrangement of casinos on the ships.
- The State Security Service will carry out all necessary procedures to join the following counter-terrorist projects of Europol: "Check the Web", Terrorism Financing Tracking Program (TFTP) and "Travellers".
- The State Security Service will carry out all necessary procedures to join the Europol Counter-Terrorist Joint Liaison Team (CT JLT).⁷⁵

6.3. Existing challenges

According to the interim report of the European Commission, the changes implemented by Georgia to ensure the strengthening of the fight against organized crime have been positively evaluated. However, the European Commission expects Georgia to address all the outstanding recommendations of the Council of Europe MONEYVAL.

⁷⁴ Ibid.

⁷⁵ Ibid.

Priority 7: Ensuring Free, Professional, Pluralistic and Independent Media Environment

7.1. The ruling party's plan in 2022 to address the 7th priority

The Human Rights Protection and Civil Integration Committee of the Parliament, in cooperation with the Prosecutor's Office and the Ministry of Internal Affairs, should ensure the publicity of information about the investigation of all relevant cases.

7.2. Important results of addressing 7th priority

On December 22, 2022, the Parliament adopted amendments to the Law on Broadcasting in the third reading. These changes were harmonized with the EU's Audiovisual Media Services Directive.⁷⁶ Adoption of the mentioned changes was foreseen by the EU-Georgia association agreement.⁷⁷

In addition, the Parliament worked on a package of amendments to be introduced in the Law on Broadcasting. The ruling party initiated legislative amendments on May 24 and May 31, 2023. Working meetings were held with civil society representatives, where these changes were discussed in detail. Representatives of the non-governmental sector developed a draft of amendments that would ensure the harmonization of legislation with European directives. The proposed changes affected Articles 8, 52, 14 and 591 of the Law of Georgia On Broadcasting. One of the main changes is that the regulatory Communications Commission's decisions are no longer subject to immediate enforcement for fines that exceed 1% of the broadcaster's annual income and/or amount 5,000 GEL or more, or when the decision involves suspension/cancellation of the broadcaster's authorization. On June 30, 2023, in the third reading, the Parliament adopted the mentioned amendments to the Law on Broadcasting.

It was important for the fulfillment of the 7th Priority by that on June 23, 2023 President Salome Zurbishvili pardoned Nika Gvaramia, the director of Mtavari Arkhi.

7.3. Existing challenges

The interim report of the European Commission of June 2023, reveals that the changes made to ensure a free, professional, pluralistic and independent media environment are

The text of the 7th priority:

Undertake stronger efforts to guarantee a free, professional, pluralistic and independent media environment, notably by ensuring that criminal procedures brought against media owners fulfill the highest legal standards, and by launching impartial, effective and timely investigations in cases of threats against safety of journalists and other media professionals.

⁷⁶ <https://info.parliament.ge/file/1/BillReviewContent/317156>

⁷⁷ <https://info.parliament.ge/file/1/BillReviewContent/317561>

insufficient. So far, the organizers of the July 5, 2021 violence have not been identified. The issue of journalists' safety and creating a safe environment for them, as well as effective response to specific incidents of harassment, remains a challenge. In accordance with the recommendation of the European Commission, it is necessary for Georgia to raise the level of protection of freedom of journalists and media owners.

Priority 8: Strengthening the Protection of Human Rights of Vulnerable Groups

8.1. The ruling party's plan in 2022 to address the 8th priority

The Parliament's Human Rights Protection and Civil Integration Committee, in cooperation with the Prosecutor's Office and the Ministry of Internal Affairs, should ensure the publicity of information about the investigation of all relevant cases.

The text of the 8th priority:

Move swiftly to strengthen the protection of human rights of vulnerable groups, including by bringing perpetrators and instigators of violence to justice more effectively.

8.2. Important results of addressing 8th priority

According to the information provided by the Parliament, work is underway to fulfill the 8th priority. In the information provided by the Parliament, no results have been mentioned in terms of the investigations conducted so far, bringing criminals to justice or improving the situation of protecting the rights of vulnerable groups.⁷⁸

8.3. Existing challenges

According to the assessment of the European Commission, „the Georgian Constitution guarantees protection against discrimination, and the criminal code defines aggravating circumstances for crimes that include (without using the term) hate crimes. Overall, the country's legal framework on non-discrimination and gender equality is largely in line with the EU acquis, but not sufficiently enforced... More needs to be done to protect the rights of lesbian, gay, bisexual, transgender, intersex or queer (LGBTIQ) persons in Georgia, particularly in light of the July 2021 events. A national strategy against violence against children has not been adopted; Deinstitutionalization reform is to be finalized. People with disabilities remain the most marginalized group. The rights of minorities and their political participation are inadequately ensured. The proper investigation on the facts of violation of the right to inviolability of personal life and personal communication of politicians, journalists, civil society activists and representatives of the diplomatic corps is not completed with tangible results.⁷⁹ The state cannot ensure freedom of assembly and protection for members of the LGBTQI community.

⁷⁸ In response to the question N630/2-7/23 dated January 23, 2023 of what specific measures were taken to fulfill the 8th Priority the Parliament issued the following information: "... In order to implement 7th and 8th Priorities, the Parliament and its Human Rights and Civil Integration Committee are actively working in accordance with the plan developed by the parliamentary majority. These issues are also included in the document submitted by the Government to the Parliament - "Georgian Human Rights Protection and National Strategy Project for 2022-2030" (No. 07-2/181, 05.09.2022), which is considered by the Human Rights Protection and Civil Integration Committee."

⁷⁹ Commission Opinion on Georgia's Application for Membership of the European Union, 17.6.2022. p. 10-11.

Priority 9: Gender Equality

9.1. The ruling party's plan in 2022 to address the 9th priority

The text of the 9th priority:

Consolidate efforts to enhance gender equality and fight violence against women.

The Parliament's Human Rights Protection and Civil Integration Committee and the Council for Gender Equality should work actively to promote gender equality and ensure more efficient efforts to fight violence against women. The package of relevant draft laws had to be submitted to the Parliament no later than October 5, and the Parliament had to accept it no later than November 15.

9.2. Important results of addressing 9th priority

The Parliamentary Council for Gender Equality and the Human Rights Protection and Civil Integration Committee held a number of working meetings, where civil society representatives were actively involved. The meetings discussed all the initiatives that the GEC offered to the civil sector within the framework of addressing EU 12 Priorities. Civil society actors have also presented their opinions and initiatives.

On December 22, 2022, in the third reading, the Parliament adopted the draft resolution of the Georgian State Concept of Gender Equality. The legal basis of the concept was national legislation and international legal acts. The concept details the priority areas to address the challenges. The implementation of the resolution will contribute to the fulfillment of international obligations assumed by Georgia.

The GSCDE project was developed with the support of the UN Women, by its expert. The concept envisages the introduction of complex, strategic approaches to ensure gender equality, namely:

- Ensuring constant review of the legal base on gender equality issues, bringing it into full compliance with international human rights standards and securing their proper implementation.
- Strengthening state institutional mechanisms for protection of gender equality.
- Considering the principles of gender equality in state policy documents and programs, and development and implementation of programs aimed at gender equality.
- Introducing gender mainstreaming in all spheres of public administration and public life.

- Ensuring systematic development and implementation of special measures to eliminate discrimination based on gender.
- Producing statistical data in terms of gender and other possible signs of discrimination (age, place of residence, limited opportunity, ethnic or religious affiliation, sexual orientation, social status, etc.) and appropriate gender analysis in all areas.
- Introducing gender budgeting principles in the management of public finances, both at the local and central government levels.
- Introducing gender impact analysis methodology at the level of both legislative and executive authorities.
- Introducing gender mainstreaming and analysis tools and methodologies in the process of policy documents' development, monitoring and evaluation.
- Raising public awareness and training relevant professionals on women's rights and gender equality issues.
- Implementing gender-sensitive service delivery.
- Supporting for research and teaching on issues of gender equality.
- Eliminating gender discrimination and ensuring gender-sensitive justice, including the introduction of guidance documents in criminal, civil and administrative proceedings.⁸⁰

The resolution envisages following measures within the framework of institutional mechanism created for the implementation of gender equality policy:

- Introducing principle of essential equality in all state strategies, as well as in the budgeting and law-making processes.
- Monitoring, reporting and evaluation of gender equality policy.
- Monitoring the implementation of gender equality institutional mechanism and action plans, and ensuring their effective functioning;
- Strengthening state mechanisms and their effective work at all levels of government.⁸¹

⁸⁰ <https://matsne.gov.ge/ka/document/view/5664358?publication=0>

⁸¹ Ibid.

9.3. Existing challenges

According to the interim report of the European Commission, the changes implemented by Georgia to ensure gender equality have been positively evaluated and the 9th Priority is considered fully addressed.

Priority 10: Involvement of Civil Society

10.1. The ruling party's plan in 2022 to address the 10th priority

The Speaker of Georgian Parliament should coordinate the efficient involvement of civil society representatives in all processes related to the addressing EU priorities, and, in addition, these mechanisms would be maintained even thereafter.

The text of the 10th priority:

Ensure the involvement of civil society in decision-making processes at all levels.

10.2. Important results of addressing 10th priority

Within the framework of this priority, the creation of working groups provided for in Article 46 of the Parliament's Regulations is envisaged for the implementation of practically all components of the 12-point plan. These groups include members of the Georgian Dream faction and the parliamentary opposition, as well as representatives of civil society (the Georgian National Platform of the Eastern Partnership Civil Society Forum), state agencies, and other stake-holders.

The involvement of civil society representatives was defined by the quota of two Georgian National Platform (GNP) organizations in each of working group. They had the opportunity to present their views on the changes needed to implement specific recommendations, both in writing and during discussions. It is important to note that several working groups have increased the quota for civil society representatives.

The areas where the opinions of civil society were actively taken into account have been identified, namely: the member of civil society organizations at the working group for strengthening parliamentary control positively evaluate the result of joint efforts. They note the legislative amendments adopted by this working group echo the recommendations developed by the civil society over the years.

There was also close communication regarding gender issues. Civil society was actively represented in the relevant working group. On the basis of reconciled positions, it was possible to develop the Georgian State Concept of Gender Equality.

From the side of the civil society, the changes prepared by the electoral code revision working group are also positively evaluated. However, representatives of civil society do not value these initiatives as "fundamental changes" and believe that political will and additional efforts are important for the implementation of essential changes.

Representatives of civil society were also involved in the legislative changes related to the media. The members of the Georgian National Platform and the Media Coalition actively

participated in discussions aimed at making amendments to the Law on "Broadcasting", which was developed by the civil society.

On the other hand, representatives of the civil society developed an action plan for the implementation for addressing the 12 Priorities, which the ruling party neglected altogether.

10.3. Existing challenges

There were a number of challenges with civil society engagement. Initially, the subject of discussion was the minimization of the number of civil society members' involvement. Only two organizations should be nominated by the GNP in each working group. Based on the request of the civil society, it was possible to increase the number of their representatives in only a few working groups.

The process was significantly damaged by the exclusion of the organization International Society for Fair Elections and Democracy from the working group dedicated to electoral reform. Despite numerous communications from the civil society, the ruling party did not change its decision.

It is important to increase the involvement of civil society in the decision-making process and to ensure the existence of a regular and transparent dialogue process.

Priority 11: Proactive Consideration of ECHR Judgments

11.1. The ruling party's plan in 2022 to address the 11th priority

The Parliament's Human Rights Protection and Civil Integration Committee, taking into account the implementation procedures of the Committee of Ministers of the Council of Europe, should prepare the relevant draft law and submit it to the Parliament as an initiative by September 1. The parliament should adopt the bill no later than October 18.

The text of the 11th priority:

Adopt legislation so that Georgian courts proactively take into account European Court of Human Rights judgments in their deliberations.

11.2. Important results of addressing 11th priority

On October 18, 2022, legislative amendments were adopted, which determined measures to facilitate the reflection of the European Court of Human Rights judgments by Georgian courts in their decisions.⁸² The amendments were adopted with the broad involvement and support of the parliamentary opposition and civil society. For this purpose eleven different laws have been amended such as:

- The assessment of the relevance of the ECHR decisions' application was added to the criteria for evaluating the judges' performance.
- The judges were obliged to devote at least 5 days in each three years to raising his/her qualifications. The training program will take into account the issues of case law of the ECHR as a mandatory component.
- The case law of the ECHR was added as a necessary component of the prosecutor's and lawyers' qualification exams.
- The correct use of Georgia's international agreements was defined as one of the factors determining the legality of court verdicts;
- ECHR decisions, which found a violation of the Convention and/or its additional protocols in relation to the specific case, were added to the list of grounds for resuming the proceedings on the case.

11.3. Existing challenges

In accordance with the interim report of the European Commission, the changes implemented by Georgia to ensure proactive consideration of the judgments of the European Court of Human Rights in Georgian courts have been positively evaluated and the recommendation is considered fully implemented.

⁸² <https://info.parliament.ge/#law-drafting/24522>

Priority 12: Nominating Ombudsperson

12.1. The ruling party's plan in 2022 to address the 12th priority

The majority should propose to the parliamentary opposition an inclusive procedure for the nomination of candidacies for the public defender position by September 1, to ensure the selection of a person who would be equally acceptable to the majority and the opposition and would be elected with high legitimacy. Voting to elect a public defender should be held no later than December 1.

The text of the 12th priority:

Ensure that an independent person is given preference in the process of nominating a new Public Defender (Ombudsperson) and that this process is conducted in a transparent manner; ensure the Office's effective institutional independence.

12.2. Important results of addressing 12th priority

In terms of addressing 12th priority, prior to starting the selection procedure, parliament adopted relevant changes in the regulations.⁸³ A competition was announced based on the new rules and all interested candidates were given the opportunity to apply directly. The ruling party Georgian Dream separated itself from the selection procedures from the beginning.

A 9-member evaluation commission was created according to the new regulations, which included representatives of various thematic non-governmental organizations, the head of the Georgian Bar Association, and members of academic circles. The members of the commission, individually, on the basis of pre-written criteria, evaluated the candidates based on the documents submitted by them. It should be noted that according to the existing regulations, members of the evaluation commission did not have the opportunity to interview candidates and only after that to make an evaluation, which made the process more difficult.⁸⁴

At the final stage of the competition, after the evaluation commission put down scores for each candidate, all of them met political parties at the hearings planned within the Human Rights Committee. A coalition of more than 50 NGOs supported three out of 18 candidates. Also, regional civil organizations expressed their support to one of the candidates from the region.

After the hearings held within the Human Rights Committee, the representatives of the ruling party and the parliamentary opposition held several rounds of negotiations in order to prevent the process of nominating Ombudsperson from failing. To be elected as a Public Defender, a candidate needed the support of 90 MPs. No political party enjoys this number of votes, so consensus and agreement were needed. However, all 19 candidates eventually failed. The

⁸³ <https://info.parliament.ge/file/1/BillReviewContent/304407>

⁸⁴ Ibid.

parliamentary opposition supported the candidacies of Ana Abashidze, Giorgi Burjanadze⁸⁵ and Nazi Janezashvili, which the GD rejected, and proposed the following five candidates: Lela Gafrindashvili, Tinatin Erkvania, Nugzar Kokhreidze, Giorgi Mariamidze and Ketevan Chachava. In the end, the majority did not vote for any candidate.

After the process failed, the small opposition faction "Citizens" nominated Vice-Speaker of Parliament, Levan Ioseliani. On March 6, 2023, the Human Rights Protection and Civil Integration Committee discussed an approved Ioseliani's nomination. The representatives of all parliamentary factions and political groups and non-factional members of the parliament were given the opportunity to interview the candidate, ask him questions and state their position. Finally, the committee recommended the candidacy of Levan Ioseliani,⁸⁶ and he was elected for a 6-year term with 96 votes.⁸⁷

12.3. Existing challenges

According to the interim report of the European Commission, Georgia ensured the election of a new public defender and the 12th Priority is considered fully implemented.

⁸⁵ Then incumbent Deputy Public Defender.

⁸⁶ <https://info.parliament.ge/file/1/BillReviewContent/322466>

⁸⁷ <https://info.parliament.ge/file/1/BillReviewContent/322579>