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**Committee on the Honouring of Obligations and Commitments by  
Member States of the Council of Europe (Monitoring Committee)**

**Honouring of obligations and commitments by Georgia**

**Revised information note by the co-rapporteurs on their fact-finding visit to Tbilisi  
(27 to 29 March 2023)**

Co-rapporteurs: Mr Claude KERN, France, Alliance of Liberals and Democrats for Europe and Ms Edite ESTRELA, Portugal, Socialists, Democrats and Greens Group

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<sup>1</sup> Document declassified by the Monitoring Committee at its meeting on 30 May 2023.

## 1. Introduction

1. This is the first visit since the adoption, on 28 April 2022, of [Resolution 2438 \(2022\)](#) on “The honouring of obligations and Commitments by Georgia”. The follow-up given to the Resolution by the Georgian authorities was a key topic for our visit. As we will outline in more detail below, on 3 March 2022, Georgia applied for EU membership in conjunction with Ukraine and the Republic of Moldova. However, only Ukraine and the Republic of Moldova were granted candidate status, while Georgia was given a membership perspective. The European Commission outlined a set of twelve priority issues that the country needs to address in order for it to receive full candidate status. For information, an extract of the Opinion on the EU membership application by Georgia by the European Commission, which outlines these twelve priority areas is attached to this note in appendix 3. The 12 priority areas cover for a large extent the recommendations made by the Assembly in [Resolution 2438 \(2022\)](#). In this note we therefore look at the Assembly recommendations in conjunction with 12 priority areas outlined by the EU. During our visit we also touched upon the issues of women’s rights and the situation with regard to LGBTI persons, as well as other minorities, in Georgia. We intend to return to these issues in more detail during a next visit and will report our findings in an information note following that visit. The statement we issued at the end of this visit is attached in Appendix 1.

2. During this visit we met with, inter alia, the Prime Minister, the Speaker of the Parliament, the Minister of Foreign Affairs, the Minister of Justice, the Head of the Anti-Corruption Bureau of Georgia, the first Deputy Public Defender, the Chairperson and members of the Human Rights and Civil Integration Committee of the Parliament of Georgia, representatives of all parliamentary factions in the Georgian parliament, the Chairperson and members of the Georgian Delegation to PACE, legal representatives of former President Saakashvili, as well as members of the diplomatic community and representatives of civil society organisations in Georgia. The programme of our visit is attached to this note in Appendix 2.

3. We would like to thank the Georgian Parliament for the organisation of our programme and hospitality provided, and the Head of the Council of Europe Office and her staff for the support given to our delegation with the organisation of the programme.

## 2. Recent political developments and political environment

4. On 3 March 2022, in conjunction with Ukraine and the Republic of Moldova, Georgia made an immediate application for membership of the European Union. On 17 June 2022, the European Commission delivered its memorandum on the membership applications of these three countries. The Commission recommended that Ukraine and the Republic of Moldova be given candidate status on the understanding that these two countries would continue the required political reforms. At the same time, in a clear rebuke of the political environment in the country, it recommended that Georgia be given a membership perspective, but that candidate status should only be given after 12 priority areas, or conditions, had been satisfactorily addressed by the country. While we do not wish to comment on the merits of the EU decision, we noted that many interlocutors, and not only from the ruling majority, questioned the fairness and grounds for the decision of the European Commission, as Georgia’s challenges for European integration are not more, or larger, than those faced by Ukraine and the Republic of Moldova.

5. As mentioned, these 12 priority areas are to a large extent similar to the concerns and recommendations of the Assembly expressed in its most recent Resolution. They, inter alia, highlight the need for the political forces to come together to address the extremely polarised political environment; the need to strengthen the role of democratic institutions and in particular the parliament as well as the need for further reform of the judiciary with a view to strengthening its independence and impartiality.

6. In [Resolution 2438 \(2022\)](#), the Assembly, while recognising the continuing progress by Georgia in honouring its commitments and obligations, expressed its serious concerns about the extremely polarised political climate, driven by zero sum political strategies and by a lack of understanding and cooperation between opposition and ruling majority. In this context the Assembly underscored its concern that this extremely polarised environment was affecting the implementation of crucial reforms and hindering Georgia’s democratic consolidation.

7. Regrettably, the political climate in Georgia has remained extremely polarised and cooperation and dialogue between opposition and ruling majority seems few and far between. This has had a large impact on the implementation of the different reforms in the country, with the reform process seemingly losing steam at the moment when these reforms are most needed to secure Georgia’s further European integration. As we will outline below, a number of key reforms needed to strengthen the functioning of Georgia’s democratic, and rule of law institutions seemed have nearly stalled or slowed down considerably. This is not to say that no

reforms are taking place in these areas, but they are often partial and fail to address key concerns and recommendations. This has led to questions by some members of the international community regarding the authorities' intentions and its support for these reforms.<sup>2</sup> This in turn has led to a sometimes contentious relationship, and occasional harsh discourse, between these entities and the representatives of the ruling majority, who express concern that some of the statements could contribute to the polarised political environment.<sup>3</sup>

8. Regrettably, the polarisation in the political environment is overflowing into the wider society. In this context we are extremely worried about the increasingly frequent attacks against civil society organisations and their leadership. These attacks, often by anonymous actors, go as far as questioning their allegiance to Georgia's sovereignty, and its cultural institutions which can endanger their physical safety<sup>4</sup>. A vibrant and critical civil society, as exists in Georgia, is essential for a well-functioning democratic society. We have therefore urged the Georgian authorities to take a pro-active stance in in this respect, and to resolutely condemn, and where necessary investigate, these attacks that clearly aim to silence and stigmatise these organisations.

9. The opposition in Georgia remains highly fragmented. This was underscored by recent developments within the largest opposition party, the United National Movement (UNM). Internal differences over UNM's political course came to the surface on 9 November 2022, when prominent UNM leader Mr Levan Khabeishvili, who is reportedly close to Mr Saakashvili as well as former Prime Minister Merabishvili, attacked the leadership of then UNM Chairman Mr Nika Melia, and called upon him to resign. This triggered a leadership challenge. On 30 January 2023, following a 3-day election, Mr Khabeishvili was elected Chairman of UNM with 52% of the votes while incumbent Chairman Mr Nika Melia received 40% of the votes. This resulted in a leadership shuffle, as several prominent party leaders resigned from their positions or announced that they were leaving the party all together.

10. On 15 February 2023, the People's Power faction in the Georgian parliament, which consist of MPs that have left the Georgian Dream faction<sup>5</sup>, announced that they would propose a draft law on Transparency of Foreign Influence, which would force legal entities (organisations and individuals, including media outlets) who receive more than 20% of their resources from "foreign sources" to register as foreign agents and be subjected to monitoring. Their proposal bore uncanny similarities with the Russian foreign agents' law and the Hungarian "anti-Soros laws" and led to an outcry within the Georgian society. However, the draft law was formally tabled on 16 February. On 17 February we tweeted a statement urging the ruling majority not to support this controversial initiative as the draft law raised serious questions regarding its compatibility with European democratic and human rights standards. In addition to us, several other international and domestic actors, including the Ombudsperson's Office and President Zourabichvili, as well as the European Union and US administration, expressed their concerns about the law and urged the parliament not to support it.

11. Despite the domestic outcry and the recommendations of the international community to the contrary, Georgian dream announced that they would fully support this law. Also in response to the criticism by national and international partners<sup>6</sup>, the Speaker of the Georgian parliament announced that the parliament would ask a Venice Commission opinion on the draft law on "Transparency of Foreign Influence", as well as on an alternative draft law called "On registration of foreign agents"<sup>7</sup>, before they would be adopted in final reading.

12. On 6 March 2023, the Legal Affairs Committee of the Georgian parliament endorsed the draft law on Transparency of Foreign Influence and sent it to the plenary, where it was adopted in first reading a day later, on 7 March 2023. The adoption in first reading of this highly controversial law led to massive popular protests in Georgia. In a statement issued on 7 March 2023 we urged the ruling majority to withdraw the draft law from consideration given the damage the proposal was causing to the functioning of democratic institution in the country.

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<sup>2</sup> To illustrate, as mentioned in the recent progress report of the Assembly's monitoring procedure ([Doc. 15682](#)), this also reflected Georgia's score in Freedom House's Nations in Transit 2022 report, which decreased slightly from 36 to 35; and in Georgia's ranking in the 2022 World Press Freedom Index of Reporters without Borders, which declined from 60th to 89th place.

<sup>3</sup> In our most recent report to the Assembly ([Doc. 15497](#)) we already noted the increasing sensitivity of the ruling majority about concerns and criticism expressed by the international partners about developments in Georgia.

<sup>4</sup> Posters have been plastered around Tbilisi and other places with photos of leaders of well-known NGOs describing them as spies or enemies of the church.

<sup>5</sup> However, they remain part of ruling majority in the Georgian parliament.

<sup>6</sup> The ruling majority has stressed that it was always their intention to send the draft law to the Venice Commission, irrespective of the widespread criticism on the proposed law.

<sup>7</sup> According to the ruling party, the draft law on "Registration of Foreign Agents" was similar to existing legislation in the United States and far more draconic than the by them preferred draft law on "Transparency of Foreign Influence".

13. Despite attempts by the police to disperse the protests, they only increased in strength, underscoring the concerns about this law within the Georgian society in general, which feared that this law would close the doors to EU candidate status. In the light of these ongoing protests, the ruling majority announced on 9 March 2023 that they would withdraw the draft law “on Transparency of Foreign Influence” from the parliament to calm down public concerns and divisions as a result of “*misconceptions*” and “*misunderstandings*”. On 10 March 2023 the Georgian parliament voted down<sup>8</sup> the draft law on transparency of foreign influence. The draft law on registration of foreign agents was also withdrawn from consideration in the Committee.

14. We welcome the decision by the ruling majority to, in the end, withdraw the draft law from consideration by the parliament. However, we regret the original decision to adopt this law, despite widespread recommendations to the contrary, in the light of the questions regarding the compatibility of this law with international human rights and democracy standards and the deep divisions this proposal was causing in the already extremely polarised Georgian society.

### 3. Reform process

15. In order to address the 12 priority areas outlined in the memorandum of the European Commission, the Georgian parliament established, under its Legal Affairs Committee, 7 working groups to draft and implement reforms regarding, inter alia: de-oligarchisation, the judiciary, the electoral law and anticorruption measures. These working groups were composed of members of both ruling majority and opposition as well as of representatives of civil society organisations and relevant state agencies. Despite this broad composition, there were some concerns about the inclusiveness of the process. ISFED, a well-known NGO active in the field of elections and democracy, was banned from participating in the electoral reform working group as a result of a decision by the Chair of the working Group. In solidarity with ISFED, several other NGOs refused to participate in its work. The banning of ISFED was criticised by the opposition parties in the working group, as well as by the international community, and affected the inclusiveness of the process. At the same time, we welcome that all working groups decided to work in close consultation with the Venice commission, which adopted several opinions on the proposed reforms (see below).

#### 3.1. Election of the Public Defender

16. On 30 November 2022, the term of the previous Public Defender (Ombudsperson), Ms Nino Lomjaria, came to an end. According to legal provisions, the Public Defender is appointed by the Georgian parliament with a qualified 3/5 majority (90 votes). Unfortunately, reflecting the polarisation in the country, opposition and ruling majority could not reach a consensus on a joint candidate for this important post. On 22 December 2022, parliament voted to appoint a new Public Defender but none of the candidates that had been proposed by the ruling majority, the opposition and civil society organisations managed to obtain the 90 votes required.

17. However, on 7 March 2023, in a welcome development that was overshadowed by the events around the so-called foreign agents’ law, the Georgian parliament elected Mr Levan Ioseliani as the new Public Defender for a (non-renewable) six-year term. Until his election as Ombudsperson, Mr Ioseliani was a member of the Georgian parliament for the Citizens party, which is part of the opposition<sup>9</sup>. Despite some opposition parties boycotting the vote, Mr Ioseliani received 96 votes in favour of his appointment with no votes against. It is important that he will now be given a fair chance as Ombudsperson by all the relevant stakeholders. He should be judged on the basis of his actions and not on the basis of the contentious selection procedure.

#### 3.2. Electoral Reform

18. In its 12 priority areas, the European Commission called upon Georgia to strengthen its state institutions, to ensure proper democratic oversight over these institutions, and to improve the electoral framework. In this regard, the working group on electoral reform of the Georgian Parliament prepared a number of amendments to the Election Code and to the Law on Political Associations of Citizens. On 10 October 2022, the Speaker of the Georgian Parliament sent these amendments to the Venice Commission for opinion. The Venice

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<sup>8</sup> The law “On Transparency of Foreign Influence” had been adopted by the Parliament in first reading. According to parliamentary procedure (Rules of Procedure of the Georgian Parliament, Article 101.3 and Article 112, points 16 and 17), it could therefore no longer be withdrawn but had to be voted down in 2nd reading to remove it from the parliamentary agenda.

<sup>9</sup> Until his election Mr Ioseliani was member of the Georgian delegation to PACE and frequently represented the opposition when considering Georgia in the meetings of the Monitoring Committee.

Commission adopted a joint opinion<sup>10</sup> with the OSCE/ODIHR on these amendments during its plenary on 16 and 17 December 2022.

19. The Venice Commission regretted that three opposition parties had boycotted the work of the working group from the outset. At the same time, it also regretted the already mentioned decision by the Chair of the working group to ban ISFED from its work. However, it noted with satisfaction that the opposition parties that had boycotted the working group had prepared amendments to the electoral code that now are being the basis for discussions between majority and opposition.

20. In its opinion, the Venice Commission concluded that the amendments only partially addressed the EU recommendations. It welcomed the positive changes introduced by the amendments with regard to the reduced residency requirement for candidates in local elections, the measures to strengthen the impartiality of members of election commissions and observers, the additional grounds for triggering an automatic recount as well as the improvements to the election dispute resolution process. At the same time the Venice Commission found that a number of important recommendations made in previous opinions and election observation reports, had not been addressed by these amendments such as with regard to “*constituency delimitation, restrictive residence requirements for presidential and parliamentary candidates and other undue criteria on voter and candidate eligibility, additional aspects regarding the formation of election commissions, provisions on the misuse of official position for campaign purposes, high donation limits for election campaigns affecting the level playing field, further regulation and oversight of campaign finance, further elaborating media campaign regulations, strengthening the framework for electoral dispute resolution to ensure effective legal remedy, recounts and annulments, and measures to prevent voter intimidation*”.<sup>11</sup>

21. Electoral reform has often been part and parcel of agreements between ruling majority and opposition to resolve political crises in the country. The Venice Commission and OSCE/ODIHR underlined in their joint opinion that frequent changes to the legal framework for elections in Georgia go against the principle of stability of electoral legislation and could undermine public trust in the electoral process. They therefore reiterated their recommendation that the authorities should conduct a comprehensive and systemic review and reform of the election code, preferably in time for the next elections. While fully agreeing with the Venice Commission, it should be underscored that such a systemic review of the election code should not lead to a questioning and review of the fully proportional election system<sup>12</sup> that will finally be implemented as from the next parliamentary elections.

22. The threshold for the 2024 parliamentary elections is an issue of contention between the ruling majority and the opposition. Following a political agreement in 2020, the threshold for the 2020 parliamentary elections was set at 1%. However, in line with legal provisions, for the 2024 parliamentary elections, the threshold will be 5%. The opposition parties fear that this high<sup>13</sup> threshold will be detrimental for political pluralism and de facto creates a two-party parliament. They have called to lower the threshold, preferably to the 1% used in the 2020 elections. For their part, the ruling majority has expressed its concern that a very low threshold will lead to excessive political fragmentation. We note that in the agreement<sup>14</sup> of 19 April 2021 the political parties that signed it agreed to reduce the threshold for elections between the natural threshold and 2%. We hope that the political stakeholders will soon reach a consensus on a threshold that will ensure a pluralist parliament without causing excessive party fragmentation.

### 3.3. Fight against corruption

23. Georgia has often been cited as an example for the region with regard to fighting corruption. However, international bodies, including GRECO have warned against complacency and have called upon the Georgian authorities to further strengthen the legal framework and mechanisms to fight corruption at all levels.<sup>15</sup> This has also been one of the 12 priority areas outlined in the memorandum of the European Commission.

24. In order to strengthen the country’s anti-corruption institutions, the Georgian parliament adopted legal provisions allowing the establishment of an Anti-Corruption Bureau. On 7 February 2023, the parliament selected 3 candidates for the post of Chairperson of the Anti-Corruption Bureau. The Prime Minister is obliged

<sup>10</sup> [CDL-AD\(2022\)047](#).

<sup>11</sup> [CDL-AD\(2022\)047](#).

<sup>12</sup> The introduction of a fully proportional election system in Georgia is a long-standing recommendation of the Assembly as well as of the Venice Commission.

<sup>13</sup> While there is no clear European norm for thresholds in proportional election system, the Assembly considers that it should not exceed 3% ([Resolution 1547 \(2007\)](#) § 58).

<sup>14</sup> Georgian Dream later withdrew from this agreement. For more information, please see our most recent report on the honouring of obligations and commitments by Georgia ([Doc. 15497](#)).

<sup>15</sup> See also [Doc. 15497](#) § 147-151.



to select the Chairperson from this 3-person shortlist. On 10 February 2023 Prime Minister Garibashvili appointed Mr Razhden Kuprashvili, as Chair of the Anti-Corruption Bureau for a six-year term.

25. During our visit several counterparts expressed their concern that the anti-corruption bureau has no investigative powers, which would limit its effectiveness. In addition, they noted that the anti-corruption bureau currently falls administratively under the office of the Prime Minister, while the appointment process for its Head does not provide sufficient guarantees for the independence of this body.

#### 3.4. De-oligarchisation

26. One of the 12 EU priority areas is the so-called de-oligarchisation of Georgia's political and public environment. In order to meet this recommendation, the Georgian authorities proposed a draft de-oligarchisation law that is a copy of a similar legislation adopted in Ukraine.

27. To recall, in June 2021, President Zelensky of Ukraine tabled a draft law to counter the undue political influence of oligarchs in Ukrainian politics. While the rapporteurs for Ukraine, and most domestic interlocutors, were very positive about the stated objective of this law, they also expressed serious concerns about the fact that this law would place excessive and indiscriminate powers in the hands of the President and the national Security and Defence Council of Ukraine, while lacking any mechanisms of judicial oversight and control, making the law vulnerable for political abuse. Upon recommendation of the rapporteurs for Ukraine, the then Speaker of the Verkhovna Rada sent the law to the Venice Commission for opinion. However, as a result of the developments in Ukraine, the adoption of Venice Commission opinion on this law, has been delayed and is now foreseen for June 2023. In the meanwhile, the law has been adopted by the Verkhovna Rada.

28. In a welcome decision, the Georgian draft law was sent to the Venice Commission for opinion by the Speaker of the Georgian parliament after it had been adopted in first reading. Following the adoption by the Venice Commission of its interim opinion on this law (see below) the draft law was referred back to the Legal Affairs Committee of the Georgian parliament in order for it to address the concerns and recommendations expressed in the opinion. During our visit the Speaker of the Parliament reiterated his commitment that the law would not be adopted before all Venice Commission concerns would be addressed. This should be welcomed.

29. The Venice Commission adopted an interim opinion<sup>16</sup> on the Georgian draft law on de-oligarchisation during its plenary session on 10 and 11 March 2023. In this opinion, the Venice Commission underlined the importance of, and its support for, fighting excessive influence of vested interest in economic, political and public life. However, it was critical of the approach taken by the law. The Georgian draft law, like its Ukrainian inspiration, had taken a so-called "*personal approach*", which tries to identify people who wield excessive and undue influence and subject them to series of limitations that are in essence punitive. This raises questions with regard to the compatibility of these limitations with the guarantees for the protection of Human Rights provided in the Convention. Therefore, the Venice Commission considered it preferable that such undue influence should be addressed through a "*systemic approach*", by strengthening the legal tools in the relevant areas, such as party financing, media, anti-corruption and money laundering, to name but a few. While the Venice Commission recognises that in exceptional cases the Convention allows for the restriction of rights provided for in the Convention, and that the fight against undue covert influence of vested interest could be seen as such an exceptional case, it considered that the Georgian draft law is overbroad, allows for far too much discretion to the authorities and lacks proper procedural safeguards and effective remedies. Moreover, the Venice Commission expressed its concern about the central role and excessive powers of the Prime Minister in the process of designating a person as an oligarch, which would make the law vulnerable to abuse. The Venice Commission therefore concluded that, in its current form, the draft law would be difficult to reconcile with Articles 8, 10 and 11 of the ECHR and recommended the Georgian authorities to take the "*systemic approach*" towards combating excessive undue influence by vested interests over the "*personal approach*" taken in this law.

30. We have urged the authorities to drop the personal approach in the draft legislation in favour of the systemic approach by strengthening the available mechanisms to fight the undue influence of vested interests. This is especially important in the context of the extreme polarisation of the political environment and the existing questions regarding control of the High Council of Justice over the judiciary, which could make the personal approach vulnerable to political abuse, which would run counter to the stated objectives of the law.

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<sup>16</sup> [CDL-AD\(2023\)009](#).

### 3.5. Reform of the judiciary

31. In [Resolution 2438 \(2022\)](#), the Assembly called upon the authorities to continue and deepen the reform of the justice system with a view to ensuring the genuine impartiality and independence of the judiciary. This has also been a key recommendation in the 12 priority areas of the European Union. Regrettably, while a number of small partial reforms have been initiated, no holistic reform of the justice system has recently been adopted or is being drafted. Two key recommendations of the Assembly in this respect - the implementation of an independent evaluation of the judicial reform process until now<sup>17</sup>, as well as a far-reaching reform of the High Council of Justice and its decision-making process<sup>18</sup> - have not been addressed.

32. On 30 December 2021, the Georgian parliament adopted, in a fast-track procedure, amendments to the law on common courts that significantly increased the powers of the High Council of Justice, especially in disciplinary matters, potentially increasing the already problematic control of the HCJ over the judiciary. To recall, The HCJ is the Constitutional body responsible to ensure the independence and efficiency of the judicial system. It is composed for the majority by judges. However, in practice, in Georgia this body functions as a corporatist body, reportedly protecting the interest of a small group of judges who exert considerable and undue control over the judiciary. This is seen by many, including the Assembly, as one of the main obstacles for a genuinely independent and impartial judiciary.

33. On 1 February 2022, the Monitoring Committee requested an opinion of the Venice Commission on these amendments. This opinion<sup>19</sup> was adopted by the Venice Commission during its plenary on 17 and 18 June 2022.

34. As mentioned, these amendments were suddenly placed on the agenda by the ruling majority - on 27 December 2021 - and adopted in a fast-track procedure on 30 December. The Venice Commission noted that their sudden introduction and hasty adoption precluded any meaningful consultation with the opposition, civil society, or other stakeholders. In the view of the Venice Commission this adoption procedure raised serious questions about the motives for these amendments and their consequences for the independence of the judiciary.

35. The amendments considerably increase the powers of the HCJ to transfer judges without their consent to other courts. In addition, a geographical limitation for such transfers was abolished by these amendments, and judges are no longer selected by lot for such transfers. Moreover, the maximum period of detachment was increased from 1 to 4 years. The combined effect of these amendments substantially increases the control of the HCJ over individual judges and in the view of the Venice Commission violates the principle of irrevocability of judges.

36. In a positive development, the amendments created additional safeguards for the recusal of judges against whom a disciplinary procedure has been started. At the same time, the time limits for judges to appeal such decisions have been shortened and salary can now already be reduced or withheld before a final decision has been made by a Court in a disciplinary proceeding, which is problematic.

37. The amendments introduced the possibility for members of the HCJ to be immediately reappointed after their term ends. The impossibility to be immediately reappointed is an important safeguard for the independence of the members on such councils, which makes this amendment problematic. In case there would be a systemic shortage of candidates for HCJ membership, the Venice Commission recommended slightly increasing the term in office instead of allowing multiple terms. The amendments also introduced a new ground for disciplinary measures, namely "violating political neutrality". As the law does not clearly define and limits what can be considered a "violation of neutrality", this provision could be abused and violate the principle of freedom of speech as guaranteed by the Convention. The Venice Commission has made a number of recommendations to address the shortcomings of these amendments, but they have reportedly not been addressed.

38. On request of the Speaker of the Georgian parliament, the Venice Commission, during its Plenary on 10 and 11 March, adopted a follow-up opinion<sup>20</sup> to four previous opinions concerning the organic law on common courts (including the opinion outlined above). In this opinion the Venice Commission considered that the recent amendments adopted to address Venice Commission recommendations - as well as the demands of the European Union - are limited in scope and do not provide for a holistic reform of the Law on Common

<sup>17</sup> [Resolution 2438 \(2022\)](#) § 7.

<sup>18</sup> *Idem*, § 8.

<sup>19</sup> [CDL-AD\(2022\)010](#).

<sup>20</sup> [CDL-AD\(2023\)006](#).

Courts or of the High Council of Justice as recommended by the European Union, as well as by our Assembly. In a positive development, the amendments increase the transparency of the reasoning for decisions regarding the nomination of judges and allow these decisions to be appealed to the Supreme Court in both first and second instance. However, regrettably, none of the other recommendations of the Venice Commission were addressed by these latest amendments. The Venice Commission therefore reiterated its recommendation for a comprehensive review and holistic reform of the judiciary and underscored the need to address the issues of judicial corporatism and self interest in the High Council of Justice and to circumscribe its discretionary decision powers regarding the careers of judges.

39. During our visit we were informed by the ruling party that they had conducted their own evaluation of the judicial reforms until now, and that they had invited the opposition parties to do the same in order to start a dialogue on these reforms. However, reportedly, the main opposition parties had not responded to this invitation. We welcome these efforts by the ruling majority and hope the opposition parties also make and publish their evaluation of the justice reform process until now. At the same time, we can not consider this procedure a substitute for the holistic and independent evaluation process - which should involve all stakeholders, including civil society – recommended by the Assembly in [Resolution 2438 \(2022\)](#).

40. With regard to the reform of the High Council of Justice, the ruling majority informed us that it is not clear to them what concrete changes the Venice Commission would recommend regarding its functioning, especially as, in their view, the structure of the HCJ is fully in line with European norms and standards. We strongly welcome and encourage any initiatives for close consultation and co-operation between the Venice Commission and Georgian parliament to address the shortcomings in the functioning of the HCJ. At the same time, we note that several long standing and concrete proposals by the Venice Commission and Assembly is to diminish the possibility for undue influence over the courts and judges by the High Council of Justice, such as ensuring that the chairpersons of district and appeals courts will be elected directly by and from among the judges of each court for a single non-renewable term<sup>21</sup>, have regrettably been rejected by the ruling majority.

41. In June 2022, the Georgian parliament adopted a series of amendments to the Criminal Procedure Code that extended the list of crimes eligible for investigation by means of covert measures, prolonged the overall maximum duration of covert measures, and relaxed the rules of notification of persons concerned. These amendments were veto-ed by the President of Georgia, who requested an opinion of the Venice Commission on these amendments. In its urgent opinion,<sup>22</sup> issued on 26 August 2022, the Venice Commission found that these amendments had been adopted in a hasty procedure without proper impact assessment and consideration of the proportionality of the provisions. Moreover, it noted that these amendments should be seen in the context of an overall inadequate oversight situation over secret surveillance, as highlighted by the leak, in September, of a massive amount of personal data that had been obtained through illegal surveillance. The Venice Commission therefore questioned the justification given for the provisions proposed and recommended that additional consultations be held with the relevant stakeholders. In that context, It underscored the need for a comprehensive revision of the different covert surveillance regimes in Georgia, including with a view to strengthening judicial oversight over them. Regrettably, the Venice Commission recommendations and concerns were left unaddressed, and, on 7 September 2022, the Georgian parliament overrode the presidential veto on these controversial amendments.

#### **4. The situation of former President Saakashvili**

42. During our visit we discussed the situation regarding former President Saakashvili with various stakeholders, including the Minister of Justice and Mr Saakashvili's legal representatives. The situation and developments regarding former President Saakashvili are extremely sensitive and politicised, with attempts from all sides to instrumentalise the international community for their course. Therefore, in line with the confidential nature of our meetings on this subject, we will therefore limit ourselves in this note to the observations we made in our statement after the visit.

43. With regard to the criminal charges filed against Mr Saakashvili, and the subsequent court proceedings, we note that Mr Saakashvili has applied to the European Court of Human Rights against his convictions and incarceration. We will therefore not comment on any legal aspects of these cases, and fully defer to the future decisions and judgments of European Court of Human Rights on these appeals. However, we are very concerned about the controversy regarding his health condition, and the possibility that the disagreements and politicisation of his condition, could possibly lead to irreversible damage to Mr Saakashvili's health. We therefore underscore that, in the best interests of all concerned, but especially Mr Saakashvili, it is important

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<sup>21</sup> [Resolution 2438 \(2022\)](#) § 8.

<sup>22</sup> [CDL-AD\(2022\)037](#).



to depoliticise his health condition and to ensure that all stakeholders can rely on neutral, reliable, and trusted information. The presence of impartial foreign doctors, in our view, could provide an important positive step in that direction. During our visit we understood that some countries would be ready to provide medical experts, while the authorities informed us that Mr Saakashvili was free to employ any medical doctors he wanted. In our statement, we urged the authorities and family of Mr Saakashvili to quickly come to a consensual agreement that would ensure the access of foreign doctors that are ready to assist with Mr Saakashvili's treatment.

## **PACE Rapporteurs: Georgia is at a crossroads on its path to European integration**

03.04.2023 | Monitoring

Following their visit to Georgia from 27 to 29 March 2023, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of Georgia, Claude Kern (France, ALDE) and Edite Estrela (Portugal, SOC), underscored that Georgia is at a crossroads on its path to European Integration.

“Georgia is a European country, Georgians are Europeans. As Georgian Prime Minister Zurab Zhvania emphasised before the Parliamentary Assembly in 1999: ‘I am Georgian and therefore I am European.’ As PACE co-rapporteurs for Georgia, we have always fully supported, and tirelessly worked for, the country’s full integration into Europe’s institutional framework. Georgia and its citizens deserve this. Many reforms have been implemented since the country joined the Council of Europe and good progress has been made to bring the functioning of the country’s democratic and rule of law institutions into line with European standards and norms,” said the co-rapporteurs.

At the same time, the co-rapporteurs expressed their serious concern about the fact that, at this important moment for Georgia’s European integration prospects, the reform process seems to be clearly stalling. “Georgia is at a crossroads. We urge the Georgian authorities and all political forces to overcome their extreme animosity and polarisation, to set aside narrow party interests, and to jointly work with all stakeholders to implement the 12 priority areas for reform outlined by the European Commission in order for the country to obtain EU candidate status,” said the co-rapporteurs.

They highlighted that these 12 priority areas are not new to the country. They largely coincide with the reform priorities outlined by the Assembly in its most recent resolution on the honouring of obligations and commitments to the Council of Europe by Georgia (Resolution 2438 (2022)). As outlined by the Assembly in that resolution, a fundamental priority is resolving the extreme polarisation in the political environment that is overflowing to all areas of the society. Resolving this polarisation fully depends on the commensurate political will of all political forces, majority and opposition alike, to change their behaviour and attitudes.

In this context the co-rapporteurs condemned the increasingly frequent attacks, often by anonymous actors, against civil society organisations and their leadership, including by maliciously questioning their allegiance to Georgia’s sovereignty which can endanger their physical safety. “A vibrant and critical civil society, as exists in Georgia, is essential for a well-functioning democratic society. We therefore call upon the authorities to resolutely condemn, and where necessary investigate, these attacks that aim to silence and stigmatise these organisations,” said the co-rapporteurs.

They reiterated the need for continuing reform of the judiciary with a view to ensuring its role as a genuinely independent and impartial arbiter. While partial reforms have been implemented since the adoption of Resolution 2438 (2022), a holistic reform as recommended by the Assembly, based on an in-depth and independent evaluation of the progress made by the previous waves of judicial reforms, still has to be adopted. In this respect the co-rapporteurs stressed the need for further reform of the High Council of Justice, with a view to addressing its corporatism, the lack of transparency of its decision-making processes, and its undue control over the justice system, which are undermining the independence of the judiciary.

This is especially important in the context of the so-called “de-oligarchisation” law. While the co-rapporteurs lauded the willingness of the authorities to combat the excessive influence of vested interests in economic, political and public life, they expressed concern that - as emphasised by the Venice Commission in its opinion on this draft law – the so-called personal approach taken by this law would be difficult to reconcile with the European Convention on Human Rights. In addition, in the view of the rapporteurs, in the context of the extreme polarisation of the political environment and the existing questions regarding control of the High Council of Justice over the judiciary, the personal approach could make the law vulnerable to political abuse, which would run counter to the stated objectives of the law. The co-rapporteurs recommended that the authorities drop the personal approach in the draft legislation in favour of the so-called systemic approach of strengthening the available mechanisms to fight the undue influence of vested interests, an approach that is also clearly preferred by the Venice Commission.

During their visit the co-rapporteurs were also informed by the relevant interlocutors about the situation regarding former President Saakashvili. While explicitly not wishing to comment on any legal aspects of his cases, on which the rapporteurs fully defer to the European Court of Human Rights, they expressed concern about the controversy regarding his health situation. “In the best interests of Mr Saakashvili, it is important to depoliticise his health condition and to ensure that all stakeholders can rely on neutral, reliable, and trusted information. The presence of impartial foreign doctors could provide an important step in this direction, and we have therefore urged the authorities and family of Mr Saakashvili to quickly come to a consensual agreement that would ensure the access of foreign doctors that are ready to assist with Mr Saakashvili’s treatment.”

<b>Programme of the fact-finding visit to Tbilisi (27 to 29 March 2023)</b>
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Co-rapporteurs: Mr Claude Kern, France, Alliance for Liberals and Democrats for Europe  
Ms Edite Estrela, Portugal, Socialist Group

Secretariat: Mr Bas Klein, Deputy Head of Secretariat, PACE Monitoring Committee

Main focus of the visit:

- Recent political developments
- Implementation of Assembly [Resolution 2438 \(2022\)](#) and EU related reforms
- Democratic reforms, political environment and polarisation
- Reform of the judiciary; fight against corruption
- Human Rights concerns

<b>Monday, 27 March 2023</b>
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12:30            **Briefing by the Head of the Council of Europe Office**

14:00            **NGOs roundtable on Political Environment and Democratic Reforms (\*)**

- Social Justice Centre;
- Georgian Young Lawyers Association (GYLA);
- TI Georgia;
- Open Society Georgia Foundation (OSGF);
- Women's Initiative Support Group (WISG);
- Media Advocacy Coalition;
- Rule of Law Center;
- International Society for Fair Elections and Democracy (ISFED)

16:00            **Meeting with the CSO coalition for an independent and transparent judiciary on judicial reforms and fight against corruption (\*)**

- Social Justice Centre;
- Georgian Young Lawyers Association (GYLA);
- TI Georgia;
- Open Society Georgia Foundation (OSGF);
- Georgian Democracy Initiative (GDI);
- Democracy index;
- Georgian Court Watch;

17:30            **Meeting with the international community (\*)**

Ambassador of Austria  
Ambassador of Switzerland  
Ambassador of Latvia  
Ambassador of Romania  
Ambassador of United States of America  
Embassy of Netherlands - Deputy Head of Mission  
Embassy of Denmark - Deputy Head of Mission  
Embassy of France - Deputy Head of Mission  
EU Delegation - Adviser to the Ambassador

**Tuesday, 28 March 2023**

- 09:00 Meeting with legal representatives of former President Saakashvili (\*)
- 11:15-12:15 Meeting with **H.E. Shalva PAPUASHVILI**, Speaker of the Parliament of Georgia
- 12:30-13:15 Meeting with **H.E. Irakli GARIBASHVILI**, Prime Minister of Georgia
- 13:15-15:00 *Lunch time*
- 15:15-16:10 Meeting with **Mr Rati BREGADZE**, Minister of Justice of Georgia
- 16:30-17:15 Meeting with **Mr Razhden KUPRASHVILI**, Head of the Anti-corruption Bureau of Georgia
- 17:30-18:15 Meeting with **Ms. Tamar GVARAMADZE**, First Deputy Public Defender
- 19:00-20:00 Meeting with For Georgia party representatives (\*)  
**Mr Giorgi GAKHARIA**, party leader

**Wednesday, 29 March 2023**

- 09:10-09:50 Meeting with Members of the Faction "United National Movement - Unified Opposition 'Unity Makes Strength'"
- 10:00-10:30 Meeting with the Members of the Parliamentary Political Group - "Reform Group"
- 10:40-11:10 Meeting with Members of the Parliamentary Political Group – "Girchi"
- 11:20-12:00 Meeting with the Legal Issues Committee of the Parliament of Georgia
- 12:10-13:00 Meeting with the Human Rights and Civil Integration Committee of the Parliament of Georgia
- 13:10-14:40 Working Lunch with **Ms Maka BOTCHORISHVILI**, Chairperson of the Committee on European Integration of the Parliament of Georgia
- 15:25-16:05 Meeting with the Members of the Parliamentary Political Group - "Lelo - Partnership for Georgia"
- 16:15-16:45 Meeting with Members of the Parliamentary Political Group – "Citizens"
- 17:00-17:50 Meeting with Non-affiliated Members of the Parliament
- 18:00-18:40 Meeting with the Members of the Faction "Georgian Dream"
- 20:00 Dinner hosted by **Mr Irakli CHIKOVANI**, Chairperson of Georgian Delegation to the PACE

(\*) Meetings organised by the Council of Europe Office in Tbilisi.



**Extract from the European Commission opinion on Georgia's application for membership of the European Union (Document [COM\(2022\) 405 final](#) pages 17 and 18)**

The Commission recommends that Georgia be granted **candidate status**, once the following priorities will have been addressed:

- address the issue of political polarisation, through ensuring cooperation across political parties in the spirit of the April 19 agreement;
- 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.
- 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.
- strengthen the independence of its Anti-Corruption Agency bringing together all key anti-corruption functions, 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;
- implement the commitment to "de-oligarchisation" by eliminating the excessive influence of vested interests in economic, political, and public life;
- strengthen the fight against organised 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.
- undertake stronger efforts to guarantee a free, professional, pluralistic and independent media environment, notably by ensuring that criminal procedures brought against media owners fulfil the highest legal standards, and by launching impartial, effective and timely investigations in cases of threats against safety of journalists and other media professionals;
- move swiftly to strengthen the protection of human rights of vulnerable groups, including by bringing perpetrators and instigators of violence to justice more effectively;
- notably consolidate efforts to enhance gender equality and fight violence against women;
- ensure the involvement of civil society in decision-making processes at all levels;
- adopt legislation so that Georgian courts proactively take into account European Court of Human Rights judgments in their deliberations;
- 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.