

2022

# EU Candidacy Check

STATE OF IMPLEMENTATION OF 12 CONDITIONALITIES

GEORGIA REFORMS ASSOCIATES | Tbilisi, 0112, Aghmashenebeli Ave. №189

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## State of Implementation of 12 Conditionalities

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## EU Candidacy Check

### Status of the European Union's 12 Priorities

N	European Union's Priorities	Status
1	Depolarisation	Not Addressed
2	Electoral and Institutional Reforms	Partially Addressed
3	Independent Judiciary	Not Addressed
4	Anti-corruption Measures	Partially Addressed
5	Deoligarchisation	Not Addressed
6	Fight Against Organised Crime	Mostly Addressed
7	Media Freedom	Not Addressed
8	Protection of Vulnerable Groups	Not Addressed
9	Gender Equality	Mostly Addressed
10	Involvement of Civil Society	Partially Addressed
11	Taking into Account the ECHR Judgements	Addressed
12	Independent Public Defender	Not Addressed

## Depolarisation

Priority 1. “Address the issue of political polarisation, ensuring cooperation across political parties in the spirit of the 19 April Agreement.”

The first priority concerns addressing the challenge of political polarisation in the spirit of the “19 April Agreement” (the so-called Charles Michel document). Of note is that over the course of 2022, polarisation between the ruling party and the opposition increased further instead of being reduced.

In order to address the first priority, the Georgian Dream proposed announcing a “moratorium on aggressive rhetoric.” In particular, leaders of the Georgian Dream clarified multiple times that the opposition had to stop labelling them as pro-Russian. The chairperson of the Georgian Dream, Irakli Kobakhidze, stated: “In order to reduce polarisation in the country, it is necessary to remove such words from your vocabulary as pro-Russian government and Putinist government as well as coup d’état, snap elections, etc.” The Georgian Dream also made it clear that participation in the institutional process, involvement in parliamentary work and refraining from organising street rallies would contribute to depolarisation. Of note is that the Georgian Dream has not said anything about what they are supposed to do in order to make sure there is no polarisation in the country.

In accordance with the plan officially unveiled by the Georgian Dream, a polarisation monitoring group was supposed to be established at the Parliament of Georgia “with the involvement of all parliamentary parties, civil society representatives and international partners” to carry out “permanent monitoring and present weekly reports to the public about the state of polarisation in the country and relevant trends” as well as produce recommendations for the political parties, media and NGOs. It was discernible from this plan that the attitude of international partners in regard to polarising actions was important for the Georgian Dream. Of note is that the periodic digest which the Georgian Dream sends out to the international partners says the least about the depolarisation priority. In particular, it is only emphasised that the monitoring group at the Parliament gathers from time to time and discusses statements which contribute to polarisation in the country. However, of note is that information about this task force’s work results is not accessible or known to the public.

It is clear from the analysis that addressing the depolarisation requirement is not the Georgian Dream’s priority. Leaders of the Georgian Dream, at a rhetorical level, argue that this is the only priority from the 12 which needs to be addressed by the opposition whilst the remaining 11 have to be addressed by the government.

For some opposition parties (Lelo, Strategy Builder), addressing the depolarisation priority also means fulfilling the points of Charles Michel’s document together with immediately ending politically motivated legal cases. The opposition parties demand that constitutional amendments on lowering the election threshold should be adopted in all three parliamentary readings as envisioned by the 19 April Agreement as well. However, this does not cut the ice with the Georgian Dream. Furthermore, Irakli Kobakhidze effectively gave an ultimatum to the European Union. As stated by the ruling party chairperson, they will only lower the election threshold to 2% if Georgia is granted EU membership candidate status. Mr Kobakhidze also added that if they see that the “radical opposition wishes to reduce

the degree of polarisation,” the Georgian Dream’s interest in lowering the electoral threshold will also increase.

The opposition also demands the fulfilment of other conditions as stipulated by the 19 April Agreement as well as ending politically-motivated justice, the release the Director of Mtavari Arkhi, Nika Gvaramia, from prison and refraining from attacks against the opposition media.

For the United National Movement, an essential precondition for the reduction of polarisation is sending the leader of the party and the third President of Georgia, Mikheil Saakashvili, abroad for medical treatment. This issue has become particularly acute after reports of Mr Saakashvili’s alleged poisoning and deteriorating health conditions. The UNM leaders often emphasise that his release/pardoning/sending abroad for medical treatment will contribute to depolarisation overall. On the other hand, President Salome Zurbishvili believes that pardoning Mikheil Saakashvili will be a step aimed at further deepening polarisation. Of further note is that in December 2022, President Zurbishvili was no longer adamant in her position of not granting presidential parole to Mikheil Saakashvili.

In regard to the European Union’s position about Mikheil Saakashvili’s case, Peter Stano, Spokesperson for the European Union’s External Action Service, stated: “The EU follows attentively the latest worrying reports about the deteriorating health of Mikheil Saakashvili” and “the Georgian authorities are responsible for his health and well-being and have a duty to take all necessary measures for him to receive appropriate medical care.”

A further step toward depolarisation would be if the Georgian Dream’s leaders decide to take part in political talk shows on the opposition-leaning TV channels. The Georgian Dream leaders refuse to visit TV channels which are critical of the government. As they claim, their party is constantly being offended there. At the same time, the pro-government media also does not invite members of the political opposition to their talk shows. Ultimately, media polarisation only further abets the already dramatic political polarisation in the country.

Of note is that in order to address the depolarisation priority, non-government organisations unveiled their own vision which implies the fulfilment of certain components from Charles Michel’s agreement concerning the distribution of power. In particular, this envisions that the parliamentary opposition should lead a number of parliamentary committees. According to the NGOs, the opposition should chair finance-budget and human rights committees whilst the chairmanship of three additional committees should be agreed in the parliament with the involvement of the ruling party. NGOs also advocate for the appointment of heads of permanent parliamentary delegations from the ranks of the parliamentary opposition.

Transparency International (TI) Georgia submitted a legislative proposal about the distribution of power to the Parliament of Georgia. According to the proposal: “The position of the chair of five parliamentary committees shall be held by a representative of the opposition. Two out of these five committees shall be the Human Rights and Civil Integration Committee and the Finance and Budget Committee. The remaining three committees, with a chair from the opposition, shall be determined as a result of an agreement between the opposition and the majority.” In addition, TI Georgia’s initiative also says: “The chairperson of the Parliament appoints a candidate nominated by a faction in the

opposition, in which most members of the Parliament are united, as the chairperson of one of the parliamentary delegations that represents Georgia in the following international fora: the Euronest Parliamentary Assembly, the European Union-Georgia Parliamentary Association Committee, the Parliamentary Assembly of the Council of Europe and the OSCE Parliamentary Assembly.” In accordance with TI Georgia, “the legislative proposal is in line with the recommendation of the European Commission on granting Georgia the official status according to which political polarisation should be resolved through cooperation between political parties in the spirit of the 19 April Agreement.” On 22 December 2022, the Bureau of the Parliament of Georgia discussed the submitted proposal and instructed the Procedural Issues and Rules Committee to consider it.

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We assess that the depolarisation priority has not been addressed because all of the factors that sparked depolarisation in the first place remain unchanged. In particular, the manifested position of the ruling party that the political opposition, specifically the United National Movement, is the source of all evil, is unmoved. Another position that all other opposition parties are either directly dependent or subordinated to the United National Movement is also unaltered. This approach de-subjectifies political opponents and puts all political rivals into one camp which is in fact one of the major reasons for the country’s polarisation. The authorities also maintain a radical attitude vis-à-vis political opponents, critical media and civil society as well as international partners (the USA and the EU). Polarising rhetoric is still in full swing, blaming opponents for belligerence, aspirations to open the second front of Russia’s war against Ukraine and artificially hindering the Euro-integration process. The government often accuses political opponents of “treason” and uses the pro-government propaganda media to smear its opponents.

In turn, the opposition has also not taken steps towards depolarisation. Although at the very beginning of the process the opposition expressed its readiness to become involved in the working process for addressing the 12 priorities, published its vision in regard to all of the aforementioned 12 priorities and summoned a special session of the Parliament to discuss the EU’s priorities, it ultimately refused to take part in the working groups created within the Parliament. In addition, despite assurances that the opposition would become involved in the working process at the committee and plenary session levels, the majority of the opposition did not attend the committee hearings on the draft legislation submitted by the Georgian Dream. The refusal to participate and the radical rhetoric which implies lambasting the authorities as a pro-Russian and treacherous clique do not contribute to depolarisation. The opposition’s refusal to acknowledge the results of the parliamentary elections and boycotting the Parliament contributed massively to polarisation in the country. However, after Charles Michel’s agreement and deciding to enter the Parliament, the opposition did take a step towards depolarisation. Nevertheless, Mikheil Saakashvili’s return to Georgia in 2021 and his subsequent arrest, putting Nika Gvaramia in prison, the failure to obtain candidate status from the EU and the Georgian government’s opaque position vis-à-vis Russia’s war against Ukraine further aggravated tensions between the authorities and the opposition.

We believe that in order to address the first of the EU’s priorities, the following measures need to be taken:

- Lowering the electoral threshold to 2% and the implementation of a power distribution scheme in the Parliament as envisioned in Charles Michel's agreement.
- Ending politically motivated cases against critical media managers, founders and journalists.
- Releasing Nika Gvaramia from prison.
- Transferring ex-President Mikheil Saakashvili to any multi-profile medical facility in the West.
- Ending radical and mutually vilifying rhetoric both from the ruling party and the opposition (removing such slanderous terms as "sell-out," "Russian agents," etc.).
- Resuming the ruling party's participation in debates on those TV channels which are critical of the government and restoring cooperation with the media which is critical of the government in general.
- Adopting decisions about the distribution of power in the Parliament in line with Charles Michel's agreement.
- Achieving a consensus on appointments through parliamentary vote which requires a higher quorum (public defender, prosecutor general, chairperson of the CEC).



## Electoral and Institutional Reforms

Priority 2. “Guarantee the full functioning of all state institutions, strengthening their independent and effective accountability as well as their democratic oversight functions and further improve the electoral framework, addressing all shortcomings identified by the OSCE/ODIHR and the Council of Europe/Venice Commission in these processes.”

The second priority defined by the European Union includes strengthening parliamentary oversight, on the one hand, and improving electoral legislation through addressing the shortcomings identified by the OSCE/ODIHR and the Council of Europe/Venice Commission, on the other hand. In fact, this priority implies adopting many legislative changes; however, it also allows disguising the non-adoption of some significant changes by adopting plenty of other ones.

As a part of the parliamentary working group, the Georgian Dream prepared amendments in regard to the accountability and the democratic oversight components. The draft law was submitted to the Parliament and was adopted at the third reading. These amendments cover the following topics: thematic inquiry, MP’s questions, interpellation, the Prime Minister’s Hour, the Minister’s Hour, the mandatory summoning of public officials to parliamentary committees and exercising oversight over the implementation of normative acts, the reduction and tightening of deadlines and rules for response and summoning and interpellation whilst making it easier to launch a thematic inquiry.

In particular, as a result of these amendments, the number of interpellations increased from four to eight per year and ministers are now obliged to submit a report in writing five days before the hearing before visiting Parliament as part of the Minister’s Hour in order to make sure that MPs have relevant information and are better prepared. Committee chairpersons are obliged to send requests to attend committee hearings within three days after the MP request. In addition, it is also planned to introduce the proactive publication of quarterly reports online. The timeframe for responding to MP questions was reduced from 15 days to ten (if it is impossible to respond in ten days, the deadline can be extended for an additional ten days in the case of sufficient substantiation). In order to launch a thematic inquiry, a majority of MPs attending the committee session is now required instead of the former majority of committee members whilst the timeframe for the thematic inquiry will be three months with the perspective of a prolongation of a maximum of another two months. An oversight mechanism for the implementation of thematic inquiry recommendations has also been set up. Another noteworthy change is that only the head of the State Security Service (SSS) will be eligible to present the SSS annual report instead of his deputy as per previous practice.

Interestingly, amendments to the regulations did not concern the rule abolished by the Parliament of the previous convocation about parliamentary faction’s power to summon ministers. In particular, any parliamentary faction had the right to summon the Prime Minister and the ministers before 2019. This was one of the most important instruments in terms of accountability, although the government repeatedly ignored it and ministers summoned by the opposition did not show up in the Parliament. In 2019, the Georgian Dream amended the Rules of Procedure of the Parliament and abolished this instrument altogether.

The opposition parties which worked together with the Georgian Dream in the Parliament to bring the changes to the Rules of Procedure of the Parliament more or less offered their endorsements. However,

Girchi also demanded that amendments be made to the relevant organic law, arguing that amendments to the Rules of Procedure of the Parliament alone made no sense because it is unclear how a minister can be held accountable for breaching the Parliament's Rules of Procedure whilst breaching an organic law envisions more nuanced sanctions. Of note is that it has been a frequent occurrence that a minister summoned to the Parliament did not show up whilst relevant agencies also never replied to questions sent by MPs.

In terms of further increasing the Parliament's accountability, several opposition parties pushed forward an initiative to deal with the existing practice in the Parliament when draft laws submitted by the opposition are not considered by the relevant committees for a long time which results in a "shelving" of these draft laws. In order to address this issue, opposition MPs Shalva Shavgulidze, Davit Usupashvili and Ana Natshvilishvili submitted a draft law. In accordance with their proposal, the initiator of the draft law was to be entitled to submit it for reading at the plenary session without first obtaining the conclusion of the lead committee if the latter failed to discuss the draft law within the timeframe set by the Bureau or it was not considered as withdrawn after the expiring of the session time as envisioned by the current Rules of Procedure of the Parliament. The parliamentary majority did not endorse these amendments.

Some opposition political parties had additional remarks which were rejected. For instance, the United National Movement demanded changing the Rules of Procedure of the Parliament to increase the power of the Trust Group member (particularly on cases dealing with access to secret information). The Georgian Dream did not agree with this initiative.

MP from the Citizens party, Levan Ioseliani, argued for an additional change in the rules of the Minister's Hour, depriving a minister from the opportunity to address all of the questions at the end of the session which allows skipping undesirable questions. Instead, Mr Ioseliani demanded that the process should be conducted in a Q&A and live debate format. Of note is that this demand has long been voiced in the Parliament and the European Georgia party sought to push this issue forward multiple times during the 2016-2020 parliament. The ruling party did not endorse this change because collecting the questions and then choosing which ones to answer is more comfortable for a government official. This proposal, if implemented, would have been an important step forward towards increasing the ministers' accountability vis-à-vis the Parliament.

NGOs also presented their recommendations and assessments about strengthening accountability and democratic oversight.

Transparency International Georgia carried out a parliamentary control assessment to identify existing shortcomings. It was found that the implementation of parliamentary control was significantly hindered by the boycott of the Parliament after the 2020 parliamentary elections by the majority of the opposition which reduced the use of control mechanisms which when used were "often executed in an extremely ceremonial manner."

Another problematic issue for the Parliament was fulfilling its duties in a timely and efficient manner such as, for instance, reviewing the reports of accountable bodies and monitoring implementation.

According to Transparency International Georgia, parliamentary oversight of the security sector remains ineffective due to inappropriate legal guarantees along with a number of other issues. In

addition: “The attitude of the members of the government towards parliamentary control was still a problem, especially if the control was initiated by the opposition. For instance, accountable officials were summoned 19 times to committee meetings and in the 12 cases that were initiated by the opposition, the accountable persons did not appear before the committee.” As a recommendation, Transparency International Georgia said that the use of parliamentary control mechanisms should be enhanced and MPs should demonstrate a high degree of independence whilst exercising parliamentary control.

It is also TI’s recommendation that solid legal guarantees be established in order to fully engage the opposition in parliamentary control and strengthen its role. Among other things, TI Georgia emphasised the need to have cooperation mechanisms with the opposition to elect MPs to parliamentary positions, the necessity of consensus with the opposition when voting for independent officials, the distribution of committee chair positions with the opposition, etc.

The Georgian Young Lawyers’ Association (GYLA) also submitted recommendations on addressing the second priority. The Georgian Dream took some of their recommendations into account, albeit not all of them. In particular, the ruling party rejected the following recommendations from GYLA:

- Linking interpellation with the no-confidence procedure.
- Introducing the Government Hour procedure together with the Minister’s Hour.
- Holding not more than two Minister’s Hour sessions per day, thereby allowing the possibility to address unanswered questions from MPs during the Government Hour format.
- Clarifying the power of MPs to have access to information containing personal data, commercial or professional secrets.
- Allowing factions to summon public officials (Prime Minister, Prosecutor General, head of the State Security Service).
- Defining separate timeframes for each thematic inquiry.
- Setting up a legal mechanism for cases when a thematic inquiry group’s deadline is not met such as the automatic suspension of duties.
- Reducing the number of thematic inquiry group members and capping their number at 1/3 of the total members of entity which created the thematic group to ensure a more efficient mechanism by allowing the participation of only those members who have direct interest.
- Summoning a plenary session to discuss the conclusion of an inquiry and the more robust involvement of committees to make certain steps for the implementation of draft recommendations.
- Introducing the possibility to hold a certain minister politically accountable (no confidence).
- Reintroducing a clause in the constitution that if Prime Minister changes a certain number of government members, it is necessary to obtain parliamentary approval again.
- Improving oversight on the implementation of normative acts.

The Parliament took into consideration the recommendation submitted by the Democracy Research Institute which envisions that the submission of the annual report of the State Security Service to the Parliament should be the sole responsibility of the Head of the Security Service. However, Parliament did not consider other recommendations pertaining to strengthening oversight on the security sector.

The decision to create a relevant working group in the Defence and Security Committee was the reason as to why these recommendations were ignored. Of note is that the Democracy Research Institute was not able to continue participation in the aforementioned group as a result of artificial hindrances preventing NGO participation in working groups.

According to the Democracy Research Institute: “Although the new Rules and Procedures have strengthened the mandate of the Trust Group, observation shows that the parliamentary oversight of security institutions is flawed. Among the legislative gaps are the broad opportunity given to the security sector agencies to avoid accountability to the Parliament as well as problems related to the composition of the Trust Group, its staffing, the non-transparency of activities, etc.” However, prior to the abolition of the Trust Group, the recommendations of the Democracy Research Institute are as follows:

- In order to ensure the accountability of the Trust Group and the transparency of its activities, the Rules and Procedures of the Parliament of Georgia should reflect the obligation of the Trust Group to submit an activity report to the Parliament of Georgia every year or twice a year.
- The part of the Rules and Procedures, which determines the composition of the Trust Group, should be edited so as to allow the nomination of a member of the Trust Group not only by one opposition faction but by political groups/faction/factions of the parliamentary opposition.
- Meetings of the Trust Group should be held at least once a month. Any member of the Trust Group should have the right to call a meeting which will give the parliamentary opposition the opportunity to exercise parliamentary supervision over the security sector independently of the ruling party.
- The visits of the Trust Group to relevant agencies should be carried out without informing the agencies in advance.
- The agencies should be able to refuse to provide information to the Trust Group only about the hidden forms and methods of their activities.

In regard to the accountability of the democratic oversight component of the EU’s second priority, it is possible to say that it has been partially addressed because most of the legislative amendments are of a technical nature and this improves existing practice. Therefore, there is no qualitative improvement of parliamentary accountability.

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The European Union’s second priority also envisions the improvement of the electoral legal framework and addressing all of the shortcomings identified by the OSCE/ODIHR and CoE/Venice Commission in these processes.

Lowering the electoral threshold is one of the most important issues in the electoral component of the EU’s second priority. It is one of the most crucial topics for both the opposition and NGOs to adopt constitutional changes in the second and third readings and lower the electoral threshold for parliamentary elections down to 2% as envisioned by Charles Michel’s document adopted on 19 April 2021. In 2021, soon after signing this document, the Georgian Dream adopted this constitutional amendment at a first reading, although it later decided to shelve it. In the action plan published by the

group of NGOs, it is emphasised that lowering electoral threshold is the most important change which will need to be made by the Georgian Dream as part of the aforementioned second priority.

In turn, it is the position of the Georgian Dream that lowering the electoral threshold has nothing to do with the EU's second priority and is beyond the EU's demands. Furthermore, the Georgian Dream's leadership says that lowering the electoral threshold can be considered only after Georgia is granted EU candidate status. In some other statements, Georgian Dream leaders also indicated that it will help the ruling party make a decision about lowering the electoral threshold if the opposition takes steps towards depolarisation.

The Parliament adopted a legislative package on electoral issues on 22 December 2022. It was first adopted in parliamentary committees and was voted on at the first reading of the plenary session and then later was sent to the Venice Commission and the OSCE for their opinions. Prior to that, the legislative package was discussed in working groups where members of the opposition and NGOs were also invited. Of note is that the major parliamentary opposition parties (the United National Movement, Lelo, Strategy Builder) did not take part in the working group, although they stated that they were going to produce alternative draft laws and present them to the relevant committees. It is also noteworthy that the Georgian Dream did not allow a member of the International Society for Fair Elections and Democracy (ISFED) to take part in the working group, arguing that this organisation demanded the resignation of the authorities and the appointment of a caretaker government.

A major novelty in the electoral amendments proposed by the Georgian Dream is holding an electronic vote at 70% of polling stations. Some of the opposition parties endorse this initiative (such as Girchi and Citizens) and some welcome these changes albeit demand having an electronic vote in 100% of precincts (Strategy Builder, Lelo). Election watchdog NGOs positively appraise the idea of having an electronic vote, although they have questions as to why it is planned for 70% and not for 100% of polling stations since it raises doubts that the ruling party may select favourable locations. Of note is that electronic tabulation, as envisioned by the proposed changes, enables knowing election results at polling stations immediately after closing which may reduce the risks of "greening" the polling stations. In particular, it is well known that when the vote tabulation at a polling station gets protracted, one of the instruments used by the government is intimidating polling station workers during the tabulation process and forcing them to sign falsified protocols which makes the polling station "green." Mostly, this happens at polling stations across rural areas. Therefore, if election observers and party representatives at a polling station can have a tentative result immediately after polls are closed, the danger of "greening" manipulation falls drastically. Of note is that the implementation of electronic tabulation will have added value if it is implemented in villages and polling stations in remote areas.

For the United National Movement, it is important that electoral changes include the electronic vote, particularly allowing Georgian nationals abroad to take part in elections. This initiative is seemingly very positive since it will give an opportunity for more Georgian citizens to vote. However, a number of open questions still remain. In particular, it is unclear who will conduct the electronic elections – the CEC or an authoritative and experienced company on the CEC's behalf? How will the safety of electronic election be guaranteed for Georgian nationals abroad? To what extent will they be protected and not forced to vote under intimidation? How expedient would it be to allow Georgian nationals in Russia to vote electronically?, etc. The Georgian Dream did not express support for this issue. Therefore,

changes adopted by the Parliament do not envision the possibility of electronic voting for Georgian nationals abroad.

According to the legislative package adopted by the Parliament, a new cap for party spending has been introduced. The previous limit was 0.1% of Georgia's GDP; that is, GEL 60 million which was cut to 0.05% of Georgia's GDP; that is, to GEL 30 million. These changes seemingly create a more equal playground for the political parties. However, this is in fact pointless since the official electoral expenses of Georgian political parties are much less as compared to GEL 30 million. Therefore, the unofficial and the undeclared funding of the parties still remains a problem. The adopted changes also increase the penalty for the misuse of administrative resources from GEL 2,000 to GEL 4,000. In addition, election administration members will undergo a professional certification and special criteria will be introduced for the selection of professional members of the election administration to ensure their neutrality and impartiality. The time for submitting election complaints increases from two days to three days whilst if the vote tally at a polling station is at least five more or ten less as compared to the number of voters, there will be a mandatory recount. Those voters who use a mobile ballot box will also be marked and regulations for encouraging disabled people to take part in elections will be improved. The mandate of local observer organisations will be expanded and they will be authorised to attend CEC sessions during the non-election period.

In December 2022, the Venice Commission published its remarks on the amendments to the Election Code. In particular, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in their joint opinion underlined that some proposed changes raise concerns, some have not been adequately addressed and others required further attention. Of note is that the Speaker of the Parliament, Shalva Papuashvili, explained that these criticisms were because of a technical flaw.

In its conclusion, the Venice Commission underlined that electoral changes require a broad political consensus which has not been the case for these amendments. It also highlighted some further recommendations:

- a. Further strengthening the recruitment and selection process for the formation of election administration bodies.
- b. Further reducing the residency requirement for mayoral and municipal council candidates in line with international standards.
- c. Establishing a regulatory framework for the use of new voting technologies.
- d. Establishing clear and comprehensive criteria for the conduct of recounts.
- e. Ensuring an improved process for PEC member selection by the DEC's.
- f. Extending requirements for standardised training certification to party-appointed members.
- g. Clarifying the legal criteria in deciding which electoral precincts will use electronic means.
- h. Retaining a maximum number of voters for precincts where electronic means are used.
- i. Establishing public trust in the new voting technologies.
- j. Adapting all polling premises to accommodate voters with mobility challenges.
- k. Extending restrictions on party affiliations of citizen observers to at least the past two elections.

- l. Introducing a more comprehensive and systematic regulation on the prevention of the misuse of administrative resources.
- m. Further extending the deadlines for the submission and consideration of complaints and appeals.

It is the Georgian Dream's position in regard to these recommendations that majority of the Venice Commission's opinions were taken into account as early as 2021.

Of note is that some of the Venice Commission's opinions were adopted by the Georgian Dream. In\* particular, amendments were made to the law to regulate the following issues in line with the Venice Commission's conclusions:

- Voting by electronic means.
- Carrying out some electoral procedures by electronic means.
- Voting and vote tabulation procedures. - Determining the form and features of election documentation.
- Digitalisation of ballot papers.
- Election of precinct election commission officials.
- Voting rules for voters in wheelchairs.
- Temporary rule to exempt polling station members and officials from submitting certificates.

Furthermore, some additional amendments were also enacted in the election legislation. In particular:

- Holding first meeting – the commission shall be recognised as authorised 30 days prior to the election day.
- Norms related to holding elections by electronic means will be detailed.
- All voters, irrespective of the form of voting – electronic or traditional – will be subject to marking.
- Papers printed from an electronic device after the closing of polls will tabulate preliminary results and afterwards each commission shall start an immediate hand recount of ballot papers which will be reflected in the final protocol.

There were some additional changes about tightening restrictions vis-à-vis local observers, limitations on holding those accountable for breaching campaign financing rules and the deadline for responding to administrative offenses committed in a non-election period.

On 15 December 2022, the Parliament voted for a final version of the draft law – where many of the Venice Commission's opinions were taken into account – with 88 votes in favour and adopted it at the third reading on 22 December 2022. Of note is that the Parliament adopted this package will crossparty support with 96 and 93 MPs voting in favour of the changes to the Election Code and changes to the Law on Citizens' Political Unions, respectively. MPs from the United National Movement, Strategy Builder and For Georgia did not vote for the package whilst European Socialists, Girchi, Lelo, Citizens and Reform Group MPs – Khatuna Samnidze and Teona Akubardia – all voted in favour.

Of note is that changes adopted by the Parliament neither concern the election period nor ensure the eradication of voter intimidation and vote buying or some other election transgressions. Levan

Ioseliani, MP of the Citizens party and Deputy Speaker of the Parliament, said that enacted amendments: “Do not rule out the recurrence of those problems during the election period which used to take place before. I am speaking about vote buying, the misuse of administrative resources, etc.”

One of the central issues for the opposition and most of NGOs is the rule for the election of the CEC chairperson. According to this rule, the CEC chairperson should be elected on a consensual basis between the parliamentary majority and minority. What is true today is that after agreeing to Charles Michel’s document, the Parliament adopted changes to the Electoral Code amending the rule of the election of the CEC chairperson. According to the new rule, a simple majority is no longer sufficient in order to elect the CEC chairperson. However, an anti-deadlock mechanism was also added to the law which allowed the Georgian Dream to elect its desirable candidate as the temporary acting CEC chairperson for six months. The opposition has been vocal about this danger for a long time. For instance, Strategy Builder often highlights the fact that it becomes possible to retain one and the same person indefinitely as the acting CEC chairperson with the Georgian Dream’s draft law.

The opposition also submitted its own draft law with respect to the CEC chairperson. According to the proposed changes, the CEC chairperson and CEC members should be eligible for election for only one term in order to avoid misuse of the so-called anti-deadlock mechanism. In addition, this limit should not have been extended indefinitely before the election of a new candidate. The Georgian Dream rejected this initiative.

The draft law as proposed by the opposition also envisioned the following changes:

- Holding open interviews with candidates for the CEC chairperson and members to ensure process transparency.
- Revoking the rule to increase the number of precinct election commission members to 17 by the upper commission and leaving the number at 12 if authorised political parties refuse to exercise their right to appoint precinct election commission members.
- Restoring the right for party-appointed members to be elected as the chair of a precinct election commission. In addition, revoking legislation which bans their participation in the process of distributing functions among precinct election commission registrars.
- Changing the rule of forming the joint voter list and reducing the risks of proxy voting on behalf of voters who are abroad.
- Extending the duration of that passage which allows voters who were removed from their registration address or whose registration was declared null and void to take part in elections based on the latest address of registration.
- Changing rules of forming the list of mobile ballot box voters: It would be possible to be included in the list no later than six days prior to election day whilst request validity will be verified within two days after the submission of such a request and will be approved by at least two-thirds of those attending the commission meeting.
- Allowing both authorised subjects and voters to view the public version of voter lists with signatures in order to ensure an equal playing ground for electoral subjects.
- Voting only by Georgian electronic ID card and passport of a Georgian national.



- Introducing voter registration (verification – electronic registration), voting, vote tabulation and carrying out procedures needed for filling out final protocols by such electronic means which allow the possibility of the verification of election results through a traditional recount of ballot papers for Georgia’s parliamentary and municipal elections up to 2032.
- Increasing the opportunity of voters abroad to take part in elections not only in Georgia’s diplomatic representations but by creating polling stations in different countries on the ground of requests submitted by at least 200 voters based on their area of residence and without mandatory registration at Georgia’s consulates.

MP from Lelo, Davit Usupashvili, proposed that the Georgian Dream send the draft law of both the majority and the opposition to the Venice Commission and adopt a joint document based on a consensus where those parts endorsed by the Venice Commission will be merged. As stated by the MP, the opposition was ready for a political consensus and an agreement on electoral issues. The opposition was going to leave only those parts in its draft which would be endorsed by the Venice Commission and also vote for those parts in the Georgian Dream’s proposed version which would have garnered positive feedback from the Venice Commission. The Parliamentary Committee on Procedural Issues and Rules discussed the changes proposed by the opposition but decided not to support them.

According to the assessment of ISFED and Transparency International Georgia, the changes in the electoral legislation aimed to address the EU’s 12 priorities do not take into full account all of the substantial recommendations of the OSCE/ODIHR and the Council of Europe/Venice Commission. In particular, these amendments leave in place the ill-reputed rule of electing the CEC chairperson and its members as well as the possibility to strip budget funding from political parties which the current legislation unjustifiably links with their participation in parliamentary activities.

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We assess that the European Union’s second priority has been partially addressed. Perhaps, looking at the number of adopted laws and amendments, the verdict of mostly addressed seems more fair but we believe that important reforms have not yet been implemented.

In order to consider the second priority fully addressed, the following changes are necessary:

- Lowering the election threshold to 2%.
- Adopting the CEC chairperson election rule in the spirit of Charles Michel’s agreement which implies electing the CEC chairperson by 2/3 of the votes and ending the practice of running the CEC with a temporarily elected chairperson.
- Enacting electoral amendments which will reduce the room for “carrousels,” vote buying and election pressure to a maximum extent possible. Apart from legislative changes, political will and the decision from the Georgian Dream is also important to achieve this goal.

## Independent Judiciary

Priority 3. “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 of these measures need to be fully in line with European standards and the recommendations of the Venice Commission.”

The European Union’s third priority concerns one of the most important reforms – an independent judiciary. According to many observers, the problem of judicial independence in Georgia is linked with the existence of the so-called clan in the judicial system. The “clan” is a group of judges who have a shady deal with the authorities and carry out their political instructions.

Although judicial independence is an important priority for all, it is not immediately clear what specific legislative reforms should be implemented in order to achieve judicial independence. In particular, judicial reform in 2021 was also a part of Charles Michel’s agreement but soon after signing the agreement, the Georgian Dream appointed four judges to the Supreme Court for a life-long term – these judges had political loyalty to the ruling party – which contradicted the ruling party’s commitments under the EU-brokered deal. The spokesperson of the European Union’s External Action Service commented on those appointments and stated that such appointments, made before the existing shortcomings in the nomination process were addressed, are not in line with the recommendations of the OSCE/Office for Democratic Institutions and Human Rights (ODIHR) and of the Council of Europe’s Venice Commission as well as the commitment to judicial reform made by Georgia’s leaders in the political agreement of 19 April.

Of note is that the appointment of the so-called clan leader to the judicial system continued in 2022 as well. For instance, Levan Murusidze and Dimitri Gvritishvili, who are considered as “clan” members and leaders, were elected as judge-members of the High Council of Justice whilst Mikheil Chinchaladze was re-appointed as chairperson of the Tbilisi Court of Appeals for another five-year term. These appointments contradict the European Union’s third priority and deal a significant blow to the judicial independence according to the opposition and the NGO community.

As part of the working group of the Legal Committee of the Parliament of Georgia, the Georgian Dream drafted a judicial reform action plan to address the third priority and submitted the legislative package to the Parliament based on this action plan. The Georgian Dream unveiled its judicial system reform action plan in October 2022. Chairperson of the Legal Committee, Anri Okhanashvili, stated that the working group drafted the document with the “widest possible involvement” and the participation of the Public Defender’s Office and took into account recommendations from the group members. However, the Deputy Public Defender, Giorgi Burjanadze, stated: “The working group dealing with judicial reform did not consider those recommendations that were submitted by civil society, the Public Defender’s Office and the US Embassy to Georgia.” Of note is that the Georgian Young Lawyers’

Association and the Social Justice Centre were initially involved in the working group. However, as a result of the Georgian Dream's decision to ban ISFED inform the working group dealing with election issues, the aforementioned NGOs also suspended their participation in the respective working groups.

The Georgian Dream's strategy and its action plan vis-à-vis the judiciary consists of the following elements:

- Ensuring the optimal number of judges and court officials to fulfil assigned tasks and duties within a reasonable time frame whilst maintaining a high quality of work.
- Reducing the flow and number of active cases in court for which it is necessary to develop and promote alternative means of dispute resolution, both in regard to arbitration and mediation.
- Improving the quality of justifications that accompany court decisions and further promoting the professional development of judges and court officials.
- Improving the mechanism for implementing judgments made in the European Court of Human Rights deliberations.
- Strengthening the guarantees of the social protection of judges and working on the transparency of justice.
- Further strengthening trust in the court by increasing public awareness and communication with the public.
- Improving mechanisms for preventing disinformation aimed at discrediting the Court.
- Further strengthening the institution of the jury court.
- Expanding the practice of using electronic means in court proceedings.
- Improving the material-technical and technological infrastructure of the judicial system and the introduction of new services.
- Ensuring a fully adapted environment for persons with disabilities and the creation of an appropriate environment taking into account the best interests of children.
- Improving interpreting services to ensure the right of due process.
- Strengthening High School of Justice to produce a sufficient numbers of the school's attendees which is necessary to spearhead the unhindered process of the life-long appointments of judges since 1 January 2025.
- Introducing mandatory public committee hearings of candidates for the High Council of Justice in the Parliament's Rules of Procedures when electing non-judge members of the High Council of Justice.
- Allowing judge candidates for the High Council of Justice to present their visions before the Conference of Judges of Georgia.
- Implementing legislative changes to ensure the rulings of open court hearings are provided as public information in line with the 2019 judgement of the Constitutional Court of Georgia.

Based on the aforementioned action plan, the Georgian Dream submitted draft amendments to the Organic Law of Georgia on Common Courts to the Bureau of Parliament in November 2022. The document was transferred to the Legal Issues Committee for review. The Georgian Dream is awaiting the opinions of the Venice Commission and the OSCE/ODIHR in March 2023. Of note is that the

Venice Commission criticised the amendments to the Law on Common Courts adopted in December 2021 at the Georgian Dream's initiative. These amendments defined new grounds for transgressions of judges and rules for the re-nomination of judges, transferring them to other courts as well as their demotion. These opinions of the Venice Commission were not addressed in the Georgian Dream's action plan.

The legislative package, produced by the Georgian Dream, envisions the following changes:

- Introducing the rule of giving out information of an open court hearing without blurred out personal data to any interested individual as public information.
- Improving the rules of appointment to vacant positions for district (city) or appellate courts. In particular, the High Council of Justice will appoint the nominated judges in line with the same substantiation and transparency standards that are required by the procedure of the High Council of Justice to select candidates for the Supreme Court of Georgia.
- Introducing limitations vis-à-vis a member of the High Council of Justice participating in the process of the selection a judge for the Supreme Court if the Qualification Chamber of the Supreme Court rules that a member in question is not impartial.
- Allowing a judge as a candidate for a member of the High Council of Justice to address the Conference of Judges before the vote and present his/her vision and opinion.
- Introducing the obligation of a public hearing when electing non-judge candidates to the High Council of Justice. In particular, the Legal Issues Committee of the Parliament of Georgia will hold a hearing of each such candidate to ascertain whether or not the candidates for the High Council of Justice are in line with the Georgian legislation.

Civil society outlined six important issues to address the European Union's third priority.

The first issue was about adopting and implementing a new judicial reform strategy and an action plan. The NGO sector, with this demand, meant the drafting of a court reform strategy on an inclusive and cross-party basis as envisioned by the European Union. Although the Georgian Dream did indeed adopt the action plan, it was not drafted on a cross-party and inclusive basis.

The second and perhaps most important issue was undertaking a thorough reform of the High Council of Justice. Here, the NGO sector advocated that the decisions on the selection and appointment of judges must be made based on the double 2/3 vote. According to this principle, a decision will require the consent of 2/3 of the judges and 2/3 of the non-judge members.

The Georgian Dream rejected this principle as meaningless and something that would potentially equip the opposition with veto power. In addition, the Georgian Dream argued that such a model is used nowhere in the world.

NGOs also requested that the appointment of Supreme Court judges by the Parliament should be based on a broad parliamentary consensus with the agreement between the ruling party and the opposition and a high quorum (3/5 of the full composition of the Parliament). The Georgian Dream also rejected this proposal.

Civil society underlined separately the necessity to appoint the remainder of non-judge members of the High Council of Justice based on a wide consensus in the Parliament. On 30 September 2022, the

Parliament announced a competition to select non-judge members for the High Council of Justice. Of 32 nominated candidates, the NGO sector offered its support to five individuals – Lika Sajaira, Ana Abashidze, Dimitri Khachidze, Sul Khan Saladze and Giorgi Burjanadze. In December 2022, the Parliament held a hearing for non-judge member candidates of the High Council of Justice, although the Georgian Dream and the opposition failed to reach a consensus about the candidates and voting for the non-judge members of the High Council of Justice was postponed to the spring session. As stated by the Chairperson of the Georgian Dream, Irakli Kobakhidze, the parties will continue efforts to seek a consensus on the members of the High Council of Justice at the beginning of 2023.

The fourth demand of the NGOs was about the re-evaluation and assessment all recent appointments to the Supreme Court and, if necessary, revise the respective decisions on the appointments. In particular, it envisioned setting up a parliamentary commission focused on problems in the judicial system and qualification compliance checks for judges. The Georgian Dream did not even review this demand.

The fifth demand from civil society was about amending the appointment rules of the Prosecutor General. The Parliament has already adopted constitutional amendments on the appointment rules of Prosecutor General as per the 19 April agreement. According to these changes, the Prosecutor General will be appointed by the Parliaments of the next two convocations based on a 3/5 majority vote which is 90 votes. If the Parliament fails to elect the Prosecutor General twice in a row under this rule, the Prosecutor General will be elected by a simple majority of full composition which is 76 votes (the antideadlock mechanism). In this case, however, the Prosecutor General will be appointed for one year instead of six as envisioned when Prosecutor General is elected by 90 votes. It is possible to say that the parties reached a consensus on this issue and the United National Movement and other opposition MPs also voted in favour of these constitutional amendments together with the Georgian Dream. It is noteworthy that when presenting the legislative package, Georgian Dream MPs described it not as a document for electing the Prosecutor General with a high quorum but as a rule to elect the Prosecutor General for a short period – one year only – eight consecutive times. The Georgian Dream leaders said this change was “legal nonsense” but added that they were going to adopt it anyway as a concession.

The sixth demand from civil society was about implementing the judgment of the Constitutional Court of Georgia from June 2019. According to this judgement, court acts after open court hearings should be accessible to the public. Of note is that the Georgian Dream included this issue in draft amendments to the law on common courts submitted to the Parliament. However, some of the NGOs believe that these amendments are not sufficient to fully implement the judgement of the Constitutional Court.

Some NGOs also unveiled additional proposals as part of the third priority. In particular, the Democracy Research Institute proposed the following recommendations:

- In order to improve the procedure for electing non-judge members of the Council of Justice, the Parliament should ensure a public hearing of the candidates, including the presentation of their vision and a four-year action plan, question-and-answer sessions for the MPs and attendees; the selection of members should be based on prior consultations between the political parties to ensure sufficient and not minimal (90 votes) votes with cross-party involvement. The non-judge member shall be elected by an open vote after consideration of the matter at the plenary session.

- There should be no judges in the Council of Justice who hold the office of the chairperson of the court (deputy chairperson or chairperson of the collegium or chamber).
- Re-election of members of the Council of Justice should be limited.
- Specific grounds for transferring judges to other courts shall be determined by law. The rules for transferring judges to other courts, which had been applied before the December 2021 changes, should be restored.
- The implementation of the four waves of judicial reform should be evaluated within the framework of the parliamentary format - the benefits of the reform in practice and the challenges. The assessment should be based on the documents and opinions developed not only by the ruling party but also by other political groups, professional circles and civil organisations.
- The justice strategy and the action plan should be developed on the basis of the evaluation of the results of the four waves of reform.

The Georgian Dream did not include these changes in its legislative package.

The Coalition for an Independent and Transparent Judiciary criticised the action plan for the reforms proposed by the Georgian Dream. As stated by the Coalition members, the Georgian Dream's court reform document completely ignores the main problems in the justice system; namely, the concentration of power and the informal and clan-based influence in the system. In addition, the Coalition lamented that the parliamentary majority did not discuss a complete and in-depth assessment of the situation in the judicial system.

The opposition also slammed the package proposed by the Georgian Dream. The opposition parties believe that changes are of a cosmetic nature and do not address that major problem which is the existence of the clan in the judicial system because the Georgian Dream is unwilling to relinquish its command and control over the judiciary.

As stated by the United National Movement MP, Khatia Dekanoidze, if the "clan" remains in court and escapes reform, the sixth priority will not be considered as being addressed. This sentiment is echoed by Levan Bezhashvili, MP, saying: "Currently, the major problem in the judiciary is the government's influence on the activities of judges as well as transferring and promoting them." Mikheil Daushvili, For Georgia party MP, claims that the Georgian Dream proposed only some cosmetic changes which in fact will not ensure either the independence or the impartiality of the judiciary. The leader of Strategy Builder, Giorgi Vashadze, also believes that the changes are only cosmetic and evade the issue of defeating the "clan." Leader of the Citizens party, Aleksandre Elisashvili, stated that he does not expect any significant and serious changes given the significance of the command and the control over the judiciary for the Georgian Dream.

The Lelo political party drafted and unveiled its own vision about judicial reform. In addition, most of this legislative package was jointly submitted to the Parliament by Lelo and Strategy Builder in 2021. This package is about appointment of district (city) and appellate court chairpersons as well as chairpersons of collegiums and chambers, changes in the rule for nominating Supreme Court judge candidates, the appointment of judges to their positions, the abolition of the rule to promote judges without a three-year probationary period and taking part in the competition process, introducing a regular assessment system for judges, quotas for judge members in the High Council of Justice,

procedures for electing judge members to the High Council of Justice, the association of judges, the electing secretary of the High Council of Justice, the rule for electing an independent inspector, the rule for forming the independent board for the High School of Justice, the optimisation of disciplinary proceedings, the issue of disclosing personal data in court rulings, etc. The Georgian Dream did not consider Lelo's legislative package.

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We assess that European Union's third priority in regard to judicial independence has not been addressed. Indeed, the Georgian Dream amended the appointment rule for the Prosecutor General and drafted an action plan as well as a legislative package for judicial reform which await the opinion of the Venice Commission but a large number of other important issues remain unaddressed.

In particular, in order to address the third priority, it is important to:

- Carry out a thorough reform of the High Council of Justice which among other things includes the increased role for non-judge members when making important decisions and the introduction of the double 2/3 principle.
- Revise the appointment rule for Supreme Court judges and appointing new members to the High Council of Justice.
- Implement a systemic reform which would rule out the influence of the "clan" over the judiciary.

## Anti-corruption Measures

Priority 4. “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.”

The European Union’s fourth priority consists of two components – (1) the creation of an independent Anti-corruption Agency and (2) strengthening the Special Investigative Service and Personal Data Protection Service and ensuring their independence.

According to Olivér Várhelyi, European Commissioner for Neighbourhood and Enlargement: “Georgia is quite ahead [in terms of fighting corruption], however, we will have to work a lot in order for the anti-corruption agency to be fully independent...” This indicates that the EU attaches great importance to the creation of an independent anti-corruption agency.

The visions on addressing the EU’s 12 priorities, as produced by the opposition parties and civil society, also highlight the need to create an independent anti-corruption agency. Civil society believes that the anti-corruption agency should mostly be focused on the prevention of corruption in the public service and controlling the implementation of the norms established by the law on conflict of interest and corruption in public institutions as well as the impartial and the effective investigation of crimes of corruption.

In order to address the fourth priority, the Georgian Dream decided to create an anti-corruption bureau and adopt a relevant law. According to this law, the main task of the anti-corruption bureau is facilitating the fight against corruption. The bureau will also provide oversight on the implementation of a document defining the general policy on the fight against corruption as well as the national anticorruption strategy. The bureau will also ensure the coordination of the activities of relevant bodies, organisations and public officials. In addition, the anti-corruption bureau will be responsible for monitoring the property declarations of high-ranking public officials, improving safeguards for whistle-blowers and monitoring political party financing. The anti-corruption bureau will be accountable to the Parliament and the inter-agency anti-corruption council. In particular, the head of the bureau will present an annual report to the Parliament whilst periodic reports will be submitted to the inter-agency anti-corruption council. Of note is that the monitoring of property declarations and party financing as well as strengthening protection mechanisms for whistle-blowers was also one of the demands of the NGOs.

The independence of the anti-corruption bureau is largely defined by the appointment rule of its head and his/her political accountability. The Georgian Dream drafted the following appointment rule in regard to the bureau’s head: The competition commission, composed of representatives of government bodies and civil society, will select candidates for the head of the bureau through an open competition and nominate them to the Prime Minister whilst the Prime Minister will select one person from the nominated candidates and appoint them [for a six-year term] to the position of head of the



anticorruption bureau. This rule has already become a subject of criticism as it was claimed that the appointment of the head of the bureau by the Prime Minister will pose risks because the bureau will not be independent and can be used for political purposes. In response to this criticism, the Chairperson of the Georgian Dream, Irakli Kobakhidze, stated: “The talks about the issue that the Prime Minister’s appointee cannot be independent are pure speculation.” Mr Kobakhidze pointed out that it is either the Prime Minister or the parliamentary majority that make decisions on appointments and not the opposition.

The extent to which the EU’s priority will be considered by the creation of the anti-corruption bureau will also depend on its functions. It was decided by the Georgian Dream that the anti-corruption bureau will not have investigative functions.

Opposition parties and NGOs argue that the anti-corruption service, which lacks the functions of investigation, is only able to produce recommendations about the fight against corruption and that it cannot have an impact on this fight against. Therefore, without such a function, the bureau cannot be considered as something intended to address the EU’s fourth priority. For instance, Lelo believes that the anti-corruption bureau will be something like a research institution and an “additional bureaucratic structure” and the “draft law proposed by the majority cannot be considered as a fulfilment of the EU’s recommendation” because the “new LEPL will not have a real mandate of the fight against corruption.” Lelo also pointed out that the draft law proposed by the Georgian Dream envisions amendments to nearly 20 laws, although this does not really change anything and it does not fit with the spirit of the EU’s 12 priorities.

The For Georgia party deems it necessary to start work on the creation of an independent anticorruption agency head of who will be elected on the basis on a strong political consensus. The party’s proposal envisions the creation of an anti-corruption service that will bring together anti-corruption functions scattered across different bodies, be equipped with investigation functions and its head appointed by the 2/3 of the total composition of the Parliament.

Of note is that the opposition parties, Lelo in particular, submitted a legislative package to the Parliament on the creation of an anti-corruption agency as early as in 2021. However, the Georgian Dream has not discussed this package. Of additional note is that a number of opposition parties backed the draft law on the creation national an anti-corruption agency, initiated by the former MPs of the Georgian Dream - Tamar Chugoshvili, Tamar Khulordava, Irine Pruidze, Nino Gogvadze, Dimitri Tskitishvili and Transparency International Georgia. The Georgian Dream did not consider this package either.

In October 2022, Lelo once again requested that Parliament get back to the legislative package about the anti-corruption agency submitted by the opposition in 2021. Under this draft law, the “national anti-corruption agency” would have been established as an independent government institution with investigative functions which would have been accountable to the Parliament and its chairperson would have been elected by the legislative body for a five-year term. Therefore, the State Security Service would have relinquished the function of the fight against corruption in order to transfer it to the independent agency. As per Lelo’s draft law, the functions of the national anti-corruption agency

would have been as follows: preventing corruption in the public service, monitoring the property declarations of public servants and the oversight of political party financing. In addition, the draft law provided that the head of agency should be inviolable and have immunity from criminal prosecution with the exception of having been arrested at a crime scene. His/her residence or workplace also should not be subjected to search. Lelo's proposal provided that the chairperson of the anti-corruption service should not be elected for two consecutive terms. It also envisioned granting the anti-corruption body with the authority to carry out verification, control property declarations and monitor political party financing. Most importantly, it would have equipped the bureau with the power to investigate criminal cases.

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The fourth priority also includes independence and the provision of adequate resources for the Special Investigation Service and the Personal Data Protection Service.

Based on the initiative of the Georgian Dream, the investigative scope of the Special Investigation Service is widened and its investigative power covers a broader area of topics. On 30 November 2022, the Parliament adopted changes at the third reading to increase the investigative scope of the Special Investigative Service. In particular, in the case of the European Court of Human Rights finding a violation of any right enshrined in the Convention on Human Rights, the Special Investigation Service will lead the investigation instead of the Prosecutor's Office. Another change pertaining to the Special Investigation Service is subordination with respect to specific articles if these articles concern the misuse and the abuse of power and transgressions that were identified as part of an investigation carried out by the Special Investigation Service.

The Parliament also supported a package of legislative amendments prepared for the further institutional strengthening of the Personal Data Protection Service which increased social protection guarantees for the employees of the Personal Data Protection Service. The law adopted on 30 November 2022 at the third reading "envisions the possibility to give a special rank to every employee except for non-staff personnel." In addition, the Law on Personal Data Protection envisions an increased statute of limitations for committing an administrative offence. Changes were also made to the Rules of Procedure of the Parliament – in particular, the heads of the Special Investigation Service and the Personal Data Protection Service, immediately after receiving such a request, should submit information to the Parliament about legislative shortcomings identified during the work process as well as opinions on measures to address these shortcomings and steps to increase the efficiency of the Service's performance.

Of separate mention is the reason why implementing reforms in regard to these institutions was added to the EU's agenda. In December 2021, the Georgian Dream unexpectedly and without prior consultations abolished the State Inspector's Service and decided to establish two new bodies in its stead – the Special Investigation Service and the Personal Data Protection Service. The Georgian Dream's initiative was preceded by the decision of the State Inspector's Service in November 2021 to launch an investigation about the potential inhumane treatment of Mikheil Saakashvili when he was transferred from Rustavi Prison to the Gldani Prison's medical facility against his will. In this regard, the State Inspector's Service concluded that the Ministry of Justice and the Special Penitentiary Service breached

the Law on Personal Data Protection by publishing Mikheil Saakashvili's footage and photographs. The President of Georgia, Salome Zurbashvili, the Head of State Inspector's Service, Londa Toloraia, NGOs, the opposition and the US Embassy to Georgia all criticised the decision to abolish the State Inspector's Service. The US Embassy to Georgia noted that: "By abolishing the State Inspector's Service, the ruling party undermined the government's accountability." The European Union was most vocal in the criticism about the abolition of the State Inspector's Service. The then Ambassador of the EU to Georgia, Karl Hartzel stated: "The dismantlement of the State Inspector's Service puts into question the respect for democratic institutions and proper democratic oversight mechanisms." The Georgian Dream did not agree to this criticism and the party chairperson clarified that the government did not dismantle the State Inspector's Service but created two independent bodies in its place. However, additional questions were raised when the head of the State Inspector's Service, Londa Toloraia, was not appointed as head of any new bodies and the leadership of both organs was entrusted to individuals who are close to the government.

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Therefore, we assess that the priority about anti-corruption measures has been partially addressed. In particular, for the independence and the accountability of the anti-corruption bureau, it is vital to remain independent from the government whilst functionally it is key for the agency to have functions of investigation. To fully address the fourth priority, it is also important that the Special Investigation Service and the Personal Data Protection Service remain independent from government interference and political pressure.

## De-oligarchisation

Priority 5. "Implement the commitment to de-oligarchisation by eliminating the excessive influence of vested interests in economic, political and public life."

The European Union presented the de-oligarchisation demand to all three countries of the Associated Trio of Ukraine, Moldova and Georgia. However, as opposed to Ukraine, where the EU insists on the implementation of an anti-oligarchic law, it is only a general passage for Georgia.

Naturally, the EU does not link a de-oligarchisation priority to any specific individual. As underscored by the European Union's Commissioner, Olivér Várhelyi, the de-oligarchisation demand is not tailored to one single person. The Ambassador of the EU to Georgia, Pawel Herczynski, also clearly explained that the EU is generally concerned with the undue interference of rich and influential businessmen in politics.

It is hotly debated in Georgia who is meant under the de-oligarchisation priority. Many have no doubt that this person is Bidzina Ivanishvili, founder of the Georgian Dream and the former Prime Minister. According to the Caucasus Research Resource Centre's public opinion survey, 35% of those surveyed believe that Bidzina Ivanishvili is an oligarch in Georgia. Some 3% of the respondents say that Mikheil Saakashvili and Davit Kezerashvili are the oligarchs whilst another 2% believe Vano Chkhartishvili and Mamuka Khazaradze to be the oligarchs. The European Parliament, in resolutions adopted in June

and December 2022, referred to Bidzina Ivanishvili as an oligarch and called on the EU institutions to put sanctions on him to reduce his influence.

The political opposition and the NGO sector also consider Bidzina Ivanishvili as an oligarch. Their many statements make frequent references to Ivanishvili as an oligarch. Therefore, the EU's fifth priority – which is de-oligarchisation – for the opposition and civil society means curbing Bidzina Ivanishvili's political influence.

Civil society, being perfectly aware that the Georgian Dream will not make any steps contradicting interests of the party founder and informal leader Bidzina Ivanishvili, underlined in its vision on addressing the 12 priorities that in order to fulfil the de-oligarchisation requirement, it was necessary to fully address the rest of the 11 priorities.

As opposed to the European Parliament, the political opposition and civil society, the Georgian Dream does not consider Bidzina Ivanishvili to be an oligarch and, therefore, engages in sharp confrontation with everyone, both inside and outside of the country, who highlights Ivanishvili in the deoligarchisation process. The Prime Minister, Irakli Gharibashvili, sent a special letter to the President of the European Commission, Ursula von der Leyen, to protest the European Parliament's June 2022 resolution and highlighted that Bidzina Ivanishvili has neither formal nor informal influence over Georgian politics and the media and, therefore, he should not be considered as an oligarch by any legal or political criteria. Moreover, the Georgian Dream leaders argue that oligarchs in Georgia can be found only in the supporters of the political opposition. In the same letter, Irakli Gharibashvili noted that there are several rich individuals in Georgia with past criminal records who have robust influence on politics and the media to the benefit of the opposition's radical wing.

To address the de-oligarchisation priority, the Georgian Dream decided to adopt law on deoligarchisation. However, at the beginning of the process, the Georgian Dream Chairperson, Irakli Kobakhidze, stated that if there were no consensus about the de-oligarchisation law and the EU and opposition would consider that adopting such law was not necessary, the government would not adopt such law.

According to the recommendation of the Social Justice Centre, there is a different context in Georgia as opposed to other countries of the Associated Trio and the adoption of an "anti-oligarch law" would not be a rational decision. Therefore, instead of adopting one single law, it is necessary to enact systemic changes which will make state institutions more effective, accountable and transparent. The approach of NGOs and some of the opposition parties stems from the following logic: in such countries where oligarchs or people affiliated with oligarchs are not in the government, a de-oligarchisation law can be effective whilst in such countries where there is a reasonable doubt that the ruling party is under an oligarch's influence, such a law simply will not work and, on the contrary, will be manipulated to target political opponents.

It should be stressed that the EU does not demand the adoption of a de-oligarchisation law. As stated by the Ambassador of Estonia to Georgia, Riina Kaljurand: "The EU has never demanded having a specific law on de-oligarchisation because it is a controversial issue."

Nevertheless, the Georgian Dream decided to go ahead and adopt a law on de-oligarchisation. In particular, the Georgian Dream copied Ukraine's relevant law without taking the local context into consideration. In addition, the Georgian Dream announced in advance that the law would not affect Bidzina Ivanishvili. Furthermore, the Georgian Dream leaders rushed to say that if adopted, this law would concern the former Minister of Defence, Davit Kezerashvili, and other politicians from the opposition; in particular, the leaders of Lelo – Mamuka Khazaradze and Badri Japaridze, as well as UNM MPs Koba Nakopia and Kakhaber Okriashvili.

According to the draft law, submitted by the Georgian Dream, an oligarch is a natural person and meets at least three of the following criteria at the same time:

- a) Participates in political life.
- b) Exerts a significant influence on the mass media.
- c) Is the final beneficiary of an entrepreneurial legal entity which has a dominant position in the market and which maintains or improves this position for one year.
- d) The confirmed amount of his/her assets and those of his/her 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 working force persons.

Such people, according to the draft law, will be limited from:

1. Making donations from his/her own funds in support of political parties, performing work, providing goods, services or cash; performing work, providing goods or services through related persons and/or through such legal entities where he/she is the final beneficiary. As well as, in accordance with the Election Code, making donations to the candidates' election fund (except for their own election fund) and financing political parties during the election process.
2. Being a buyer (beneficiary of the buyer) in the process of the privatisation of large-scale facilities.
3. Financing any political campaign, holding gatherings or demonstrations with political demands.

As opposed to the Ukrainian law where the oligarch's registrar is compiled by the Defence Council staffed by the President, according to the initial draft law of the Georgian Dream, the Parliament of Georgia was responsible for the compilation of such a registrar. However, during the second reading of the draft law, the Georgian Dream enacted amendments and the responsibility to process the registrar was transferred to the government. Opposition parties, civil society and international partners criticised the law on this ground as well because they believe it is unimaginable that the Government of Georgia indeed adds Bidzina Ivanishvili to the registrar of oligarchs.

Despite criticism, the Georgian Dream has already adopted the draft law at the second reading. Initially, the ruling party opposed sending the draft law to the Venice Commission. However, after calls made by the European Commissioner for Neighbourhood and Enlargement, Olivér Várhelyi, and the Delegation of the EU to Georgia, the Georgian Dream decided to postpone the third reading of the draft law and send it to the Venice Commission. Currently, the Georgian Dream awaits the Venice Commission's opinion.

Of note is that whilst drafting the de-oligarchisation law, the Georgian Dream did not take into account the proposals from the United National Movement and other opposition parties. Initially, the United National Movement offered the majority to jointly draft the de-oligarchisation law. MP of the United National Movement, Levan Bezhashvili, stated that if the parliamentary majority decides to submit the de-oligarchisation draft law alone, the UNM will also submit its own version. Therefore, after the Georgian Dream submitted the draft law on 21 November 2022, the UNM also submitted its own version of the de-oligarchisation law to the Parliament.

The draft law submitted by the United National Movement envisions much broader criteria to attach to the status of an oligarch. In addition, it will be in the power of the Constitutional Court to attach the statuses of oligarch and oligarchic rule and not any political or government body. The opposition's initiative requires constitutional amendments since attaching the oligarch's status implies limiting certain rights and only the Constitutional Court is authorised to make judgement on these limitations. According to the authors of the draft law, offering the model of the Constitutional Court will free the process from political content.

According to the draft law submitted by the United National Movement, an oligarch is an individual who meets at least three of the following criteria and exerts influence over bodies of public authority or their officials:

- a) Directly or indirectly carries out political activities.
- b) His/her family members or affiliated individuals, or individuals employed in legal entities owned by him/her, hold state-political, political or state offices.
- c) Exerts direct or indirect (including through the organisation under his/her influence) significant influence on the media.
- d) Owns a company in a sector subject to natural monopolies or one which holds a dominant position in their sector as defined by the current competition legislation.
- e) Proven assets of a natural person or/and an individual owning subject of an entrepreneurial activity exceeds 0.35% of the country's total GDP or/and his/her family members and affiliated individuals own over 7% of Georgia's land resources.
- f) Is sanctioned by NATO or an EU member state, the commonwealth of these states or international organisations.

According to the draft law proposed by the United National Movement, the Constitutional Court makes a judgement to recognise a person as an oligarch based on an application from at least 1/5 of the total number of the MPs. As clarified by Levan Bezhashvili: "The most important and defining thing to attach the status of an oligarch is that he/she should meet... at least three criteria and necessarily exert influence on decisions of government bodies and public officials." Levan Bezashvili also sought to send both draft laws, one initiated by the Georgian Dream and another by the United National Movement, to the Venice Commission, although the ruling party decided to send only its own version.

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We assess that the de-oligarchisation priority has not been addressed. In order to address it, it is vital to implement such institutional reforms which will reduce oligarchic control of the government to a

minimum. Therefore, fully addressing the other 11 priorities of the EU could be a step forward in this direction.

If the Georgian Dream adopt the law on de-oligarchisation, there is a real threat that it can be used as a punishment instrument against political opponents. This challenge persists irrespective of the Georgian Dream's decision whether or not to take the Venice Commission's recommendations into account.

## Fight Against Organised Crime

Priority 6. "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 the accountability and the oversight of law enforcement agencies."

The sixth priority is about strengthening the fight against organised crime. The EU's priority requires a detailed threat assessment by rigorous investigation as well as a credible track record of prosecutions and convictions. This priority also includes guaranteeing the accountability and the oversight of law enforcement agencies.

There was virtually no important discussion about the sixth priority in the public space. The vision, published by NGOs, says: "Law enforcement agencies have the full capacity and the resources, as well as the legislative basis, to effectively overcome problems related with the organised crime." It was also noted that addressing this priority in fact required the improvement of practice and it was possible to fulfil it immediately. The sixth requirement was also not a priority for the opposition. The joint document of the UNM, Lelo and Strategy Builder, which concerns addressing the 12 priorities, highlights the sixth priority by stating that an inter-party standing commission should be created in the Parliament where one representative from all of the parliamentary political factions and groups will be nominated to carry out permanent parliamentary oversight over the activities of law enforcement agencies, including the fight against organised crime. This initiative was not discussed in the Parliament and, therefore, the commission was also not created.

In accordance with the Georgian Dream's plan to address the EU's 12 priorities, a working group to strengthen the fight against organised crime was created in the Parliament's Defence and Security Committee whose activities are carried out behind closed doors. As stated by the Committee Chairperson, Irakli Beraia: "The objective of the working group to strengthen the fight against organised crime is to assess the situation in the country, identify the shortcomings, if any, and produce relevant recommendations."

As per the Georgian Dream's plan, the working group had until 1 November 2022 to produce a comprehensive assessment of the existing situation and prepare recommendations to address shortcomings for further strengthening the fight against organised crime. This document was in fact prepared by the end of 2022. At the concluding meeting of the working group, Irakli Beraia stated that the document covered the steps that needed to be taken and defined a respective timeframe. The document includes the fight against organised crime (including "thieves-in-law," members of the criminal underground and their supporters), cybercrime, human trafficking, money laundering,

terrorism financing and drug crime. Neither the opposition nor civil society participated in the working process at the Parliament.

The Law of Georgia on Accounting, Reporting and Audit was also amended to harmonise with the European Union's directive. Executive and legislative authorities also drafted a legal initiative in close cooperation which ensures the implementation of recommendations in line with the Financial Action Task Force's (FATF) standards. As part of these efforts, changes were made in the rules of online gambling and prize-winning games.

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Apart from strengthening the fight against organised crime, the sixth priority also envisions guaranteeing the accountability and the oversight of law enforcement agencies. The respective working group, created to address the sixth priority, did not in fact pay attention to this issue, although the Georgian Dream clarified that it was discussed as part of addressing the second priority within the framework of the working group on strengthening general democratic oversight.

The Democracy Research Institute (DRI) presented recommendations about strengthening oversight of the security sector. However, the working group created to address the second priority (strengthening accountability and democratic oversight) did not consider these recommendations because the working group for this issue was to be created in the Defence and Security Committee. It is noteworthy that despite the creation of such a group, as mentioned earlier, it has not produced recommendations nor a legislative initiative with respect to the accountability of law enforcement agencies.

In addition, the DRI was unable to participate in aforementioned working group because a barrier was imposed for NGOs to take part in the working groups. In particular, the Parliament had cooperation with the National Platform of the Eastern Partnership's Civil Society Forum which was authorised to nominate only two NGOs for each working group.

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We assess that the EU's sixth priority about organised crime has been mostly addressed. In particular, specific steps were taken for the fight against organized crime, although the issues of the accountability and the oversight of law enforcement agencies still remain a challenge.

## Media

Priority 7. "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."

The European Union's seventh priority is about media freedom. In recent years, media freedom has become one of the critical challenges for Georgia's democratic development and progress on the Eurointegration path. Although freedom of speech and media rights are guaranteed constitutionally and enjoy legislative safeguards, the reality on the ground is starkly different. There have been a number of alarming trends recently falling under scrutiny of the European Parliament and other international observers.



Some of those alarming trends are as follows:

- Arrest of the Director of the Mtavari Arkhi TV channel, Nika Gvaramia: founder of Mtavari Arkhi, Nika Gvaramia, was arrested on 16 May 2022 and sentenced to three and a half years in prison. Other media managers and owners also face the risk of detention because there are active criminal cases against them.
- Sentencing of the founder of TV Formula, Davit Kezerashvili, to prison: on 7 September 2021, the Supreme Court of Georgia sentenced Davit Kezerashvili, owner of 51% of TV Formula's shares, to five years in prison. On 29 March 2022, Tbilisi City Court ruled that Davit Kezerashvili and the former Head of the Procurement Department of the Ministry of Defence, Aleksandre Ninua, had to pay EUR 5,060,000 to the Ministry of Defence.
- Not investigating violence against journalists: violence against journalists, inadequate and protracted investigation of facts of violence and giving inadequate punishment to perpetrators (the mass crackdown of journalist on 5 July 2021, firing rubber bullets at journalists on 20 June 2019, etc.) remains a huge problem in Georgia. There were over 90 registered cases of violence against journalists in the last three years. Apart from cases of violence, where perpetrators often evade justice, there were also numerous cases of the illegal wiretapping of journalists.
- Media facing serious financial difficulties: there were three main reasons why financial revenues of media organisations sharply decreased in 2022 – 1) Legislative changes curbed the media's financial revenues. In particular, amendments were made to the gambling law which basically banned placing advertisements from gambling companies on Georgian TV channels, 2) During the COVID-19 pandemic, business cut spending on ads, although the media continued to remain fully active and 3) Political pressure on sponsors of media. As reported by many media agencies, the government sends direct or indirect threats to businessmen not to place ads with the media which is critical of the government.
- Using cases of libel against the media which is critical of the government: the number of libel suits lodged by government officials against TV channels and other media as well as unfavourable court rulings sharply increased which happens in violation of Georgia's liberal legislation vis-à-vis the freedom of expression. For the TV channels, the aim of the government is evident – to ensure a “chilling effect” on the media to push them into being less critical, impose self-censorship and not go to the court which is controlled by the authorities. The problematic aspect of the court rulings is that they often refer to the “European practice” to justify sanctions against the media. According to Transparency International Georgia: “Court judgements on defamation against the media has become an alarming trend.”
- Existence of a politicised regulator: the politicised Georgian National Communications Commission (GNCC) curbs the freedom of speech and expression in two major ways. First, the GNCC follows the practice of imposing extremely harsh and heavy penalties on the media for the violation of regulations, especially when it comes to the media which is critical of the government. Second, the GNCC interprets the legislation in such a manner to ban the media which is critical of the government from placing critical political ads such as their own or those provided by political parties or NGOs. The GNCC claims that any ad which the GNCC believes is of a political nature should be placed only during the pre-election period which spans only two months in Georgia.

- The government and the ruling party are constantly boycotting and offending the media which is critical of the government: generally, relations between the ruling party and the critical media, as well as the opposition parties and the pro-government media, are extremely unhealthy. Even during the election campaign, government officials continue to boycott the media which is critical of the government whilst the opposition parties are never invited to talk shows and debates hosted by the pro-government media. Furthermore, the general attitude of the government vis-à-vis journalists who are critical of the government is often characterised by bullying, name calling and other forms of offence.
- The government is using propaganda, particularly anti-Western propaganda, for political purposes: this became particularly dramatic in 2022 when pro-government media agencies basically turned themselves into mouthpieces to amplify the government's propaganda on issues such as Russia's war against Ukraine, blaming the opposition in seeking to drag Georgia into the war, portraying the media which is critical of the government as "press services" of the opposition parties and attacking NGOs as agents of foreign nations.

Most of these trends are also documented in Human Rights Watch's 2022 annual report which says that freedom of the media suffered setbacks in Georgia which is precipitated by numerous attacks against media professionals and the jailing of the Director of Mtavari Arkhi, Nika Gvaramia. According to the report, there were numerous attacks against journalists and instances of interference in their work. Human Rights Watch also highlights censorship in Georgia's Public Broadcaster and interference in its editorial policy.

NGOs unveiled their three-point vision in regard to the seventh priority aiming to address the aforementioned problems. The first recommendation of NGOs urged the authorities to stop the ongoing investigations and trials against media outlets which are critical of the government. As per the NGOs, demonstration of the government's political will could be the release of Nika Gvaramia, the Director and Founder of the Mtavari Arkhi TV channel, from jail.

The second recommendation was about impartial, effective and timely investigations against organisers and perpetrators of violence against media workers on 5-6 July 2021. In addition, NGOs demanded that the government launch investigations into the cases of the massive surveillance targeting media professionals.

The third recommendation of the NGO community was the harmonisation of Georgian media laws with the EU Directive on Audio-visual Media Services by the Parliament. This was particularly important to ensure that ethical disputes are resolved by a special professional council rather than the Georgian National Communications Commission.

The opposition endorsed the views of the NGO sector in regard to the seventh priority. In their visions, opposition political parties basically fully copied the three-point plan for civil society.

It is noteworthy that the Georgian Dream has not announced making specific steps on any of the aforementioned important challenges. Moreover, according to the plan presented by the ruling party, the Georgian Dream only announced that Parliament's Human Rights and Civic Integration Committee in cooperation with Prosecutor's Office and the Ministry of Internal Affairs would ensure transparency of information about investigation of any relevant case in order to address the seventh priority.

Over the course of 2022, the ruling party started to resort more frequently to aggressive rhetoric against TV channels which are critical of the government as well as those leaning more towards the opposition. None of the cases pertaining to the violence of 5-6 July 2021 and 20 June 2019 or the illegal surveillance of journalists have been finalised.

The parliamentary majority amended the law on broadcasting in line with the European Union's directive. However, with this amendment, Articles 7 and 8 of the law give the GNCC the power to impose penalties on the media. This means that the media may have to pay massive sums of fines based on the GNCC's decision whether or not they appeal this decision at court. Therefore, the imposition of a penalty is becoming possible at a lower level as compared to a court ruling and, therefore, these articles contain the risks of media going bankrupt.

The Gnomon Wise Research Institute noted that the changes in the law on broadcasting with a biased interpretation of the European Union's directive creates the danger of censorship. In particular, the article which bans the publication of content containing hate speech can become a weapon of censorship in the hands of the GNCC. The Georgian Charter of Journalistic Ethics and the Media Advocacy Coalition also express their concerns about these risks.

Georgia's Reforms Associates also published its own vision in 2022 on how to address the problems in terms of media freedom in Georgia. Recommendations to this aim were as follows:

- Pardoning and releasing media managers and owners.
- Discontinuing politicised court cases against media managers and owners.
- Investigating cases of violence against journalist committed on 5 July 2021 as well as the cases of illegal wiretapping and assaults against journalists during the 2020 and 2021 election campaigns and bringing perpetrators to justice.
- The GNCC abandoning its practice of imposing excessively high fines against the media and ending its politicised interpretation of the law on broadcasting as well as allowing advertisements of a political and a social nature to be aired during non-election periods.
- High-ranking officials stopping the coordinated practice of suing the independent media for libel.
- Authorities ending attacks and boycotting media outlets which are critical of the government or leaning towards the opposition.
- Depoliticisation of the Public Broadcaster and freeing its management system and editorial policy from political control.
- The ruling party and government-controlled media outlets ending their anti-Western propaganda.

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We assess that the European Union's seventh priority has not been addressed. In order to ensure media independence, it is vital that the Georgian Dream takes fundamental steps such as:

- Discontinuing investigations against TV Formula and TV Pirveli owners.
- Pardoning/releasing Nika Gvaramia.
- Bringing organisers and perpetrators of the 5 July 2021 violence against journalists to justice.

- Investigation of illegal surveillance of media professionals and bringing organisers and perpetrators to justice
- Harmonising the law on media with the European Union’s directive on audio-visual media services.
- Depoliticising the GNCC and ending the malpractice of using it as an instrument of punishment against the media which is critical of the government.
- Ending politically motivated cases.

## Vulnerable Groups

Priority 8. “Move swiftly to strengthen the protection of the human rights of vulnerable groups, including by bringing perpetrators and instigators of violence to justice more effectively.”

According to the Georgian Dream’s plan, there are no plans to take any significant steps in the direction of address the eighth priority. The ruling party’s plan had merged the seventh and eight priorities and indicated that the “Parliament’s Human Rights and Civic Integration Committee in cooperation with Prosecutor’s Office and the Ministry of Internal Affairs would ensure the transparency of information about investigation of any relevant case.” However, the Georgian Dream decided to separate the seventh and eighth priorities at the end of 2022, leaving accessibility to information in the eighth priority and adding the implementation of the European Union’s directive to Georgian legislation for the seventh priority (media freedom).

According to NGOs, the steps required to achieve progress in addressing the European Union’s eighth priority are as follows:

1. Fully investigate crimes and bring the organisers of gross human rights violations to justice with the recent most notable case of discrimination-based violence on 5 July 2021.
2. Adopt the National Human Rights strategy and relevant action plan which will include the elaboration of an effective policy for countering violent extremism and conduct informational and educational campaigns aimed at reducing homophobia and xenophobia in society.
3. Establish special mechanisms that will increase the political representation and the participation of ethnic minorities, inter alia, the creation of democratic, inclusive and regular consultative mechanisms with the government and the Parliament of Georgia which will involve independent civil activists and organisations from ethnic minority communities in the decision-making process.

Some opposition parties (UNM, Lelo and Strategy Builder) believe it is necessary to create an interparty standing commission in the Parliament where one representative from all parliamentary political factions and groups will be represented and headed by a representative of the opposition. The commission will be tasked with monitoring crimes committed with discriminatory motives and gross violations of human rights and supervising the response of law enforcement agencies to the aforementioned crimes.

It is a shared opinion of both NGOs and the opposition that the failure to bring organisers of the 5-6 July 2021 violence to justice is a hindrance in addressing this priority. The issue of the protection of the rights of LGBTQI+ groups and the government's lack of response to the discriminatory treatment those groups face is also a challenge.

The report of the Government of Georgia submitted to the Parliament underlines that work to support ethnic minorities and protect their rights are being carried out in line with the 2021-2030 National Strategy of Civic Equality and Integration as well as relevant action plans. The government's report also details programmes carried out by the authorities which help ethnic minorities study the Georgian language, ensure that they have access to all stages of education and are able to have internships at state agencies whilst receiving information in their native language.

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We assess that the European Union's eighth priority has not been addressed. The Georgian Dream says that ensuring the transparency of the relevant investigations alone is sufficient in order to mark this priority as being addressed, however this is not enough. In addition, the Georgian Dream did not take into account the recommendations of NGOs and opposition parties whilst organisers and perpetrators of the violence on 5-6 July 2021 still remain unpunished.

## Gender Equality and Violence Against Women

Priority 9. “Notably consolidate efforts to enhance gender equality and fight violence against women.”

The European Union’s ninth priority implies the enhancement of gender equality and taking measures to fight violence against women. Among the expectations that are related to addressing this priority are the better implementation of gender equality laws, the adoption of an action plan on gender-based and domestic violence, altering the definition of rape in line with the Istanbul Convention and the removal of having the status of victim as a pre-condition to have access to government services. NGOs have also highlighted these three demands in their recommendations. Opposition parties have also included them in their vision.

In order to address the ninth priority, the Parliament adopted three legislative proposals put forward by the Georgian Dream in 2022 aiming at the enhancement of gender equality and the fight against violence against women. In particular, the passage in the Law on Gender Equality, which determines the scope of this law, was amended and now has a new wording which states that the government helps to ensure the equal rights of men and women in political, economic, social and cultural life. It further states that the government will incentivise the implementation of real equality between men and women as well as the eradication of factual inequality. This law made it mandatory to carry out a gender impact assessment when drafting any new legislative act and preparing draft laws to amend any existing legislative acts.

In accordance with the adopted changes, a new principle is introduced which needs to be considered when shaping government policy. In particular, apart from guaranteeing formal gender equality between men and women, the government will ensure incentivising the implementation of real/factual equality between men and women. The scope of the standing Parliamentary Council on Gender Equality was also broadened with the obligation to produce proposals for the eradication factual inequality between men and women and advocate these proposals to relevant bodies. Appropriate passages were added to the Rules and Procedure of the Parliament and the Law of Georgia on Gender Equality to contribute to the achievement of real equality between men and women and the eradication of factual inequality whilst advocating these issues vis-à-vis relevant agencies.

Of note is that apart from the Georgian Dream, all parliamentary factions and groups supported these changes.

In addition, the Parliament also adopted Georgia’s National Concept on Gender Equality with crossparty support. The document aims to fight any issue of discrimination on the ground of sex and gender and facilitating real equality.

Of note is that within the scope of the standing Parliamentary Council on Gender Equality, a thematic research study, entitled Women’s Access to Financial Resources, led by an opposition MP for the first time in the history of the Georgian Parliament, Ana Natsvlishvili from Lelo, was carried out. As a result of the study’s research and despite the tangible progress in many directions, particularly in terms of the improvement of legislation, it was highlighted that women still have to operate in a systemically unequal environment in Georgia and that they face multiple challenges. Some short-term, mediumterm

and long-term recommendations were produced in order to address these identified problems which outline the necessity of having a centralised policy as well as making changes to existing programmes and the legislative framework, implementing specific novelties in the National Bank's regulatory framework, etc.

The Parliament considered the opposition's recommendation on the status of victim and enacted amendments to the Law of Georgia on Violence Against Women or/and the Elimination of Domestic Violence, the Protection and the Support of Victims of Violence to harmonise legislation with the provisions of the Istanbul Convention. According to the amendments, "issues related to violence against women or/and disclosure of domestic violence, victim's rights, his/her social protection and work guarantees, support services, measures aimed at correction of attitudes and behaviours of offender are regulated in a new manner." Among other things, the law covers the issue of using shelters and crisis centres. In particular, the requirement to have the status of victim in order to be eligible for government services was revoked.

The government of Georgia, in cooperation with NGOs, international and donor organisations, changed the amount of compensation disbursed to victims of violence against women or/and domestic violence as well as the disbursement rule. In addition, there is work in progress to improve the geographic accessibility of services for victims of violence against women or/and domestic violence, including some adaptations for disabled people. There are plans to build shelters for victims of violence against women or/and domestic violence whilst crisis centres will be opened in the Samegrelo and Kakheti regions.

As part of fully addressing the ninth priority, the issue of changing the definition of rape remains unresolved. The NGO sector and the opposition demand harmonising legislation with Article 36 of the Istanbul Convention, meaning that engaging in non-consensual acts of a sexual nature should be considered as a rape and consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

Women MPs from the opposition – Ana Natsvlishvili (Lelo), Khatia Dekanoidze (UNM), Khatuna Samnidze (Republican Party), Ana Buchukuri (For Georgia), Teona Akubardia and Tamar Kordzaia submitted specific recommendations on this issue. In order to deal with this issue, the Parliament's Human Rights and Civic Integration Committee decided to launch a thematic inquiry to identify measures for harmonising Georgia's criminal legislation with the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence. Opposition MPs, Levan Ioseliani and Ana Buchukuri are also members of the thematic inquiry group. The inquiry group is also considering the issue of rewording the definition of rape.

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We assess that the European Union's ninth priority has been mostly addressed. Of note is that legislation on gender issues was a rare exception when the ruling party and the opposition achieved a consensus and amendments to the law were enacted with cross-party support. The only issue which remains to be fully addressed within the ninth priority is the definition of rape, although relevant discussions are still ongoing.

## Involvement of Civil Society

Priority 10. “Ensure the involvement of civil society in decision-making processes at all levels.”

According to the tenth priority, the “involvement of civil society in decision-making processes at levels need to be ensured.”

NGOs believe that in order to address the European Union’s tenth priority, the following steps need to be taken: 1) Make the Open Government Partnership format more effective. More specifically, the administration of the government should commit to at least two main (the so-called “star”) commitments proposed by civil society members during the Open Government Council vote and 2) The administration of the government should ensure the involvement of civil society organisations in the process of developing national level policy/strategy documents and their action plans.

The opposition parties also concur and underline that the government should ensure the involvement of civil society organisations in the process of developing national level policy/strategy documents and their action plans.

In accordance with the Georgian Dream’s plan, the ruling party should ensure the effective involvement of civil society in addressing the European Union’s 12 priorities. The action plan also says that it is necessary “to keep effective mechanisms of involvement after finishing the work on addressing the European Union’s priorities.”

At the first stage, the Georgian Dream did invite members of civil society to the working groups. However, it soon turned out that the ruling party was neither going to take into account the recommendations submitted by civil society on important and problematic issues nor allowing their full involvement in the working process. In particular, the Georgian Dream did not allow one of the leading NGOs – the International Society for Fair Elections and Democracy (ISFED) to participate in the working groups. In addition, the Georgian Dream also ignored many of the recommendations proposed by civil society in regard to different priorities which were described in previous sections of this report.

It is particularly problematic that the leadership of the Georgian Dream and government-controlled media outlets seek to continuously discredit NGOs and portray civil society as affiliated with the opposition political parties or/and as a corrupt community. Recently, emphasis has shifted to portraying NGOs as US agents and highlighting the lack of transparency of their funding. The major message of the smear campaign is that the “rich NGOs” spearhead anti-Georgian activities and they are the West’s agents and aspire to drag Georgia into the war.” On top of some other organisations, the Georgian Dream’s smear campaign also targeted Georgia’s Reforms Associates (GRASS) and its projects FactCheck multiple times. NGOs assess that the aggressive campaign of the Georgian Dream against local NGOs has already reached an alarming level.



The Power of the People – a public movement which is part of the parliamentary majority and has nine MPs – is actively involved in this campaign. The Power of the People has formally split from the Georgian Dream, although civil society and the opposition have no doubt that they are still a single political team. It is noteworthy that the Georgian Dream’s leaders distanced themselves from the Power of the People only in the field of its communications strategy and not in its essence. As stated by the Chairperson of the Georgian Dream, Irakli Kobakhidze, the ruling party and the Power of the People have a “tactical disagreement” on the extent to which the truth should be told and in what forms statements need to be made. In regard to their differences in values, Mr Kobakhidze confirmed that “there is no substantial difference.”

At the end of 2022, the Power of the People pushed forward a specific initiative to regulate the activities of NGOs at a legislative level. They are going to initiate a legislative package soon which will put funding of NGOs under a strict regulatory framework. This initiative, in substance and spirit, as well as in accompanying rhetoric, very much resembles the law on foreign agents which Russia and Belarus adopted to tighten the activities of NGOs and the media.

The opposition and the NGO sector also assessed the initiative of the Power of the People very negatively. According to the Georgian Young Lawyers’ Association: “The draft law is an attempt to stigmatise NGOs and cultivate hatred and mistrust in the public toward them to be followed by different types of restrictive measures like what happened in Russia.”

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We assess that the tenth priority has been partially addressed because despite the Georgian Dream’s decision to allow the involvement of NGOs in the working groups, most of their recommendations about judicial reform, anti-corruption measures, democratic oversight, vulnerable groups and the Public Defender were routinely ignored by the ruling party. At the same time, the constant attacks against civil society and the smear campaign to target NGOs are in contradiction with the European Union’s priority.

## Proactively Taking into Account the ECHR’s Judgements

Priority 11. “Adopt legislation so that Georgian courts proactively take into account the European Court of Human Rights judgments in their deliberations.”

The European Union’s eleventh priority is about national courts proactively taking into account the judgements of the European Court of Human Rights.

The working group which was established to address this priority conducted its first meeting in a broader format on 13 July 2022 with the involvement of working group members, executive authorities, judicial authorities, academic circles, civil society, the Council of Europe’s Office in Georgia and EU representatives. The meeting was chaired by the Speaker of the Parliament, Shalva Papuashvili. On 18 October 2022, the Parliament adopted draft law produced by the working group. The law envisions the following changes and novelties:

- In the process of vetting a judge, not only the quantitative component of the European Court of Human Rights' judgements but their relevance will also be taken into account.
- It will be mandatory for the Supreme Court and Courts of Appeals to have a structural unit responsible for the analysis of ECHR judgements. This will facilitate judges' access to ECHR case law, ensure a regular analysis of the ECHR's judgements and carry out information and publishing activities.
- An amendment was made to Article 226 of the Administrative Offences Code of Georgia, allowing that court judgement may include references to norms enshrined in the Convention for Human Rights and Fundamental Freedoms and the ECHR's precedents on similar legal issues which the court used in its judgement.
- It was decided that when verifying a normative act, the Constitutional Court may take into account clarifications reflected in ECHR judgements on similar legal issues. Similarly, it was decided that the constitutional lawsuit or constitutional submission may include ECHR precedents on similar legal issues as a reference.
- International law on human rights, including the ECHR's case law, was added as a mandatory component for the qualification exam for the Prosecutor's Office.
- It was decided that when using the Convention on Human Rights and Fundamental Freedoms, the ECHR's clarifications are to be considered as official clarifications and these clarifications can be used by those who refer to the aforementioned norms.
- International law on human rights, including the ECHR's case law, was added as a mandatory component for the qualification exam for lawyers as well as for the compulsory continuous education programme for lawyers.
- For court rulings, it became possible to refer to precedents of the ECHR when considering norms enshrined in Convention on Human Rights and Fundamental Freedoms and similar legal issues.
- It was decided that the proper use of Georgia's international agreements and other normative acts would be one of the factors to determine the lawfulness of the court's ruling.
- It became possible to refer ECHR precedents in court rulings about norms enshrined in the Convention on Human Rights and Fundamental Freedoms and similar legal issues.
- The ECHR's judgement (ruling) which ruled on a violation of the Convention on Human Rights and Fundamental Freedoms or/and its additional protocols vis-à-vis the case was added to the list of grounds to resume administrative legal proceedings due to newly identified circumstances.
- It was decided that referring to ECHR precedents on the norms of the Convention on Human Rights and Fundamental Freedoms or other similar legal issues, which were used whilst making a judgement, is allowed in administrative-legal acts.
- The Ministry of Justice was instructed to create a registrar of judgements/verdicts of the ECHR vis-à-vis Georgia whilst Georgia's Legislative Herald was instructed to translate and publish those judgements/verdicts.

Of note is that the opposition parties as well as representatives of civil society supported the draft law.

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We assess that the European Union's eleventh priority has been addressed because the Parliament adopted relevant legislation with cross-party support. In addition, it will obviously be very important to see how these changes are implemented in practice.

## Independent Public Defender

Priority 12. “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.”

The European Union’s twelfth priority is electing an independent candidate as the Public Defender in a transparent manner and ensuring the protection of the institutional independence of the Public Defender’s Office.

In December 2022, Nino Lomjaria’s tenure in the position of Public Defender expired. The European Union deliberately and in advance added the obligation of electing an independent Public Defender to the requirements for EU membership candidate status in order to make sure that the ruling party would not appoint a politically loyal person as Ombudsperson. Of note is that Brussels thinks that the election of an independent Public Defender is a certain test for the Georgian authorities.

In accordance with the Constitution of Georgia, the Public Defender is appointed by the Parliament with at least 3/5 of the votes of the total composition (meaning at least 90 votes) for a six-year term (and he/she should get more votes than the other candidates). In addition, it is forbidden to elect one and the same person as a Public Defender for two consecutive terms. The rule for electing the Public Defender is governed by the Rules of Procedure of the Parliament. According to Parliament’s Rules of Procedure, a parliamentary faction or a group of at least seven MPs without a faction can nominate a candidate.

In order to address the European Union’s priority to ensure the transparent process of the election of the Public Defender for obtaining EU membership candidate status, the Georgian Dream introduced a provisional rule for electing the Public Defender. As stated by the Chairperson of the Human Rights Committee, Mikheil Sarjveladze, this amendment aimed to ensure “greater transparency in the process of selecting and nominating candidates for Public Defender and the wider involvement of civil society, including academic and professional communities, in the process.” On 9 September 2022, the Parliament adopted a provisional rule for electing the Public Defender through changing the Rules of Procedure with 83 votes in favour. According to the provisional changes in the Rules of Procedure, the rule for temporarily electing the Public Defender was amended as follows:

- By the order of the Speaker of the Parliament, an evaluation nine-member working group will be created which will be composed of nine members – representatives of civil society, including professional and academic circles.
- The evaluation working group will evaluate the persons who want to be nominated as a candidate for Public Defender, taking into account the following criteria: good faith, impartiality, independence, high reputation, proper professional knowledge and practical experience in the field of human rights and fundamental freedoms.

- The subjects with authority to nominate the candidate determined by the Rules of Procedure will have the opportunity to present the candidates to the Parliament from among the persons who applied to the Parliament to participate in the assessment process.
- The Parliament will start considering the candidates for Public Defender if the number of nominated candidates is not less than seven. Otherwise, the relevant procedures will start again.

In addition, the order of the Speaker of the Parliament also stipulated that anyone willing was allowed to apply for the position of Public Defender, the Parliament's authorised subject would nominate one or more candidates to the Parliament from those persons who applied be considered for candidate evaluation process whilst political groups, apart from parliamentary factions, were also allowed to nominate candidates for Public Defender.

The NGO sector also selected its own candidates for Public Defender. At the first stage, after months of work, NGOs produced the Public Defender selection criteria and later nominated three candidates – Ana Abashidze (Partnership for Human Rights NGO), Giorgi Burjanadze (incumbent Deputy Public Defender) and Nazi Janezashvili (former non-judge member of the High Council of Justice and Director of the Georgian Court Watch NGO). Although these candidates were selected with a broad consensus, the Chairperson of the Georgian Dream, Irakli Kobakhidze, gave a negative assessment to the choice of the NGOs for Public Defender and blamed those NGOs for pursuing clanship whilst refusing to have meetings with the NGOs. According to clarification of civil society, 52 NGOs held a vote to select three persons from five candidates and presented these three persons to the wider public on 27 September 2022.

Most of the opposition parties (UNM, Lelo, Strategy Builder) said they supported the candidates who were selected by civil society whilst the For Georgia party expressed support for Giorgi Burjanadze alone.

It is noteworthy that the candidates who were nominated by the NGOs earned the highest points from the evaluation group established by the Georgian Dream. Although the evaluators employed different methods (some evaluated all candidates, some evaluated only personally preferable candidates, some did not assess certain candidates given the lack of information in specific criterion, etc.), all three candidates nominated by the NGOs took top positions in the ranking. In particular, the candidates with the highest amount of points were Ana Abashidze, Nazi Janezashvili, Nugzar Kokhraidze and Giorgi Burjanadze according to a tally of the absolute value of the points whilst the leaders were Ana Abashidze, Nazi Janezashvili, Giorgi Burjanadze and Nugzar Kokhraidze according to a tally of the average value of the points. However, despite some signs of an initial consensus between the opposition parties and the Georgian Dream-founded evaluation groups, the ruling party decided to put its own scheme under question. In particular, Chairperson of the Human Rights Committee, Mikheil Sarjveladze, stated that ranking the candidates based on awarded points was conditional and none of the candidates would have any ranking positions, advantages or preferences and all candidates, from top to bottom positions, would have equal chances of getting elected. With this approach, the role of the evaluators, as well as the assessment and the support of the NGOs in the selection process of candidates for the Public Defender, were completely disregarded.

After the nomination of candidates for the Public Defender and the publication of their assessment by the group of evaluators, the Citizens political group submitted the candidacies of all the 19 persons who applied for the position of the Public Defender to the Parliament. At the same time, the Parliament supported Levan Ioseliani's initiative to elect the Public Defender through open vote.

From 25 October to 4 November 2022, the Legal Issues Committee held public interviews with the candidates for Ombudsperson. Some of the process observers noted that the Georgian Dream MPs asked the candidates about their previous publications in social networks which raised doubts that the ruling party was not really interested in selecting an independent and impartial candidate for the position. On this ground, Nazi Janezashvili, one of the candidates supported by civil society and some of the opposition parties, refused to participate in the interview.

Given the necessity of 90 votes to elect the Public Defender, the Georgian Dream held consultations with the opposition parties to agree on a common candidate. The ruling party refused to support the candidates nominated by the NGOs. The parliamentary opposition parties – UNM, Lelo, Strategy Builder and For Georgia – on the contrary, supported those candidates. The Citizens party supported five candidates whilst the Girchi political union took a principled stance that it supported its own party member, Iago Khvichia, and nobody else. Therefore, as a result of consultations it turned out that none of the candidates had a sufficient majority in the Parliament. On 22 December 2022, during the vote at the plenary session, Giorgi Burjanadze received the most – 16 votes, followed by Ana Abashidze with 12 votes, Iago Khvichia with 11 votes, Nazibrola Janezashvili with eight votes, Tinatin Erkvania with six votes, Lela Gaprindashvili with five votes, Ketevan Chachava with two votes and Marika Arevadze with one vote whilst all other candidates received zero votes. Therefore, as the Parliament failed to elect a new Public Defender, the First Deputy Public Defender became acting the Public Defender from December 2022.

The Parliament will continue process of electing the Public Defender during the spring session. Of note is that the Parliament will not be able to elect the Public Defender in 2023 through the provisional rule adopted in 2022 because that provisional norm has expired.

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We assess that the European Union's twelfth priority has not been addressed because the Parliament failed to elect an Ombudsperson in 2022 whilst the Georgian Dream did not support the candidates who were nominated by the NGOs and supported by the opposition.