

HUMAN RIGHTS ISSUES IN EU ACCESSION NEGOTIATIONS WITH CANDIDATE STATES: GEORGIA

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ABSTRACT

This article examines the role of fundamental rights, access to justice, and the rule of law in Georgia's EU accession process, focusing on the challenges identified in the European Commission's 2023 assessment and related reform priorities. Using doctrinal legal analysis and a policy-oriented approach, the study evaluates Georgian constitutional and legislative frameworks, judicial and prosecutorial practices, and the findings of European and international monitoring bodies. It analyses key problem areas affecting compliance with EU standards, including delays in judicial proceedings, inadequate reasoning in court decisions, restrictions on freedom of expression, assembly, and association, shortcomings in anti-discrimination and personal data protection, ineffective execution of European Court of Human Rights judgments, and broader institutional deficiencies in judicial governance, prosecutorial independence, migration policy, and anti-corruption mechanisms. The article demonstrates that, despite the formal adoption of certain reforms within the European integration process, many changes remain fragmented and do not adequately address systemic governance issues. It concludes that Georgia's genuine progress towards EU membership depends not only on formal legislative alignment but also on substantive institutional reforms capable of ensuring effective human rights protection, judicial independence, and accountable democratic governance.

KEYWORDS

Georgia
Human Rights
judicial system
EU
candidate state

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1. Introduction

Georgia is part of the Continental European (Civil Law) legal family; this is not merely a matter of legal geography, but the whole nation's historical choice. This affiliation is based on values, history, national principles, and an understanding of law. Considering this, it is entirely logical for Georgia to aspire to be not only a member of the European legal dimension but also part of the larger political system – the European Union. To this end, the Association Agreement between Georgia and the European Union was signed in 2014, which substantively elevated Georgia – EU relations to a new level, necessitating the planning of appropriate measures, structuring of approximation–harmonisation processes, and consistent work.

Georgia applied for EU membership in 2022.² The European Commission established 12 recommendations for obtaining candidate status and ultimately recommended granting candidate status to Georgia in the same year.³ Among these recommendations, particular importance was placed on judicial reform, the rule of law, and human rights protection. A small portion of the recommendations has been successfully implemented, such as reaching an agreement on the Public Defender candidate and electing him based on consensus. Although a large part of the opposition did not participate in the vote, the Public Defender was eventually elected through an agreement between the ruling party and part of the opposition.⁴ Work on a large portion of the recommendations is proceeding with delays and with limited success. Some of these are well-known problems that remain perennial challenges for the Georgian legal and political system. Corporatism and informal influences; the extensive power of the High Council of Justice; the lack and ineffectiveness of guarantees for judges' personal independence; and the lack of transparency in the court system along with very low accountability are significant problems of Georgian judiciary.⁵

The basis for granting candidate status was the relevant report by the European Commission, in which Chapters 23 and 24 addressed fundamental human rights, justice, and rule of law issues. Both from legal and socio-political perspectives, these are of utmost importance, as they are systemic issues and directly impact everyday reality. This paper reviews and describes the challenges related to fundamental human rights in Georgia, with particular focus on freedom of assembly and association, freedom of expression, as well as procedural rights, elimination of discrimination, and protection of minority rights and freedoms. Particular attention is paid to the justice and prosecution systems and their challenges, analysing the problems and shortcomings of the Georgian constitutional and common court systems that affect the effectiveness of rights protection and justice in general. The fight against organised crime, anti-corruption policy, and migration issues mentioned in the article are reviewed only in the context of human rights and

2 | OSCE/ODIHR, Opinion No. JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, para. 17.

3 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

4 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 30.

5 | See Papuashvili et al., 2023, p. 9.

the rule of law, within the framework of the information cited in the European Commission's report.

2. The State of Fundamental Human Rights in Georgia

Given its Soviet past, it is natural that Georgia faces numerous challenges in protecting fundamental human rights. A large part of these is shaped by the heavy historical legacy that the country inherited at both governmental and societal levels as a result of totalitarianism and hybrid democracy, established after regaining independence. Various reforms related to human rights have been carried out in different periods, and the constitutional amendments of 2017-2018 also affected the second chapter of the Constitution of Georgia, which unites the constitutional norms on basic rights.⁶

Both at the legislative level and at the stage of law enforcement, human rights face many challenges in the country, so it was entirely logical that this issue would receive special attention in the European Commission's report. The Commission highlighted several key issues: 1. Completion of the Action Plan for the Human Rights Strategy and consideration of the recommendations of the Public Defender and relevant local and international organisations; 2. Strengthening anti-discrimination legislation, prevention of hate speech and hate-motivated crime; 3. Eliminating discrimination, ensuring the protection of ethnic and religious minorities; 4. Ensuring freedom of assembly and expression, investigation of actions against freedom of expression, including violence against demonstrators at mass protest actions, reform of the Code of Administrative Offenses with the participation of interested parties; 5. Refining personal data protection legislation and strengthening the Personal Data Protection Service, taking into account the recommendations of the Venice Commission.⁷

In 2023, the Parliament of Georgia approved the National Strategy for the Protection of Human Rights (2022-2030) as a framework document for necessary measures to achieve the common national strategic goal.⁸ The strategy addresses the challenges of human rights, but it has problems both in content and in formal terms, as it simply does not include certain directions, including accents and information on the protection of the rights of vulnerable groups.

| 2.1. Court Case Review Timeframes and the Right to a Reasoned Decision

The Georgian judicial system is overloaded, leading to delayed case reviews⁹ and, consequently, undermining the right to a fair trial. This issue is on the agenda for both common courts and the Constitutional Court, although the underlying causes differ. In the case of common courts, the main reasons for delayed case reviews are: the objective multitude of disputes, the small number of judges, abuse of procedural mechanisms by

6 | See Gegenava, 2019, p. 112.

7 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 28.

8 | See Resolution N2663-XI06-X03 of the Parliament of Georgia, 23 March 2023.

9 | See European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 25.

parties, ambiguity of legislative regulations, etc.¹⁰ The situation is significantly different for the Constitutional Court. Here, the delay in making and announcing decisions is mainly related to the political nature of the issues. As a result, the Constitutional Court tries to formally adhere to the case review timeframe but delays the announcement of the final decision as much as possible (often this process continues for years). Currently, several important issues have been appealed to the Constitutional Court, but the timeframes for review and case resolution are very stretched out. For some cases, despite years-long processes, decisions have not yet been announced.¹¹

Judges in administrative positions enjoy an advantage in case distribution, receiving significantly fewer cases to review compared to other judges.¹² It further overloads and weighs down an already overloaded system. Moreover, although an electronic case distribution system is in place, court case distribution is used to appoint desired judges to specific cases and to influence final decisions. The opaque system and exceptions to the rule reduce trust in the judiciary.¹³ The legislation is ambiguous regarding the intervention of court chairpersons in the case distribution process; they are not required to justify their intervention decisions.¹⁴

Reasoning decisions is a challenge for Georgian courts. This issue is problematic for both common courts and the Constitutional Court, albeit to varying degrees. The legislative amendments of 2022 assign a special role to the use of case-law of the European Court of Human Rights (ECtHR) in justifying judicial acts for Georgian common courts. Moreover, special departments were created within the judicial system to analyse relevant ECtHR practices.¹⁵ Despite this, it can be said that ECtHR practice is cited thoughtlessly, formally, and without any analysis, which in many cases even leads to comical situations¹⁶ (when it is unclear why a particular judgement was used in the reasoning, both thematically and considering time and context).

The decisions of the Constitutional Court of Georgia and common courts have undergone a very interesting evolutionary path in terms of legal technique – and progress is indeed noticeable. However, this is more related to the formal side, while the substantive coherence and reasoning still barely meet the minimum standard, and even that does not always happen. Several main systemic and substantive challenges of court decisions can be identified: 1. Decisions should focus more on content, properly analysing its functional significance as a judicial act, as well as the purpose and role of structural parts; 2. The content and volume of the descriptive part of the decision should be determined considering the specifics of the case under review; 3. Decisions should become more analytical, based on evaluative reasoning and argumentation, changing the descriptive style; 4. Acts should be enriched with sociological and legal sources; 5. Judicial acts should cite relevant national or international court practices to substantiate legal positions; 6.

10 | Bakradze and Tsikarishvili, 2023, pp. 13–144.

11 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 23.

12 | Papuashvili et al., 2023, p. 42.

13 | Gobronidze, Gerliani and Papuashvili, 2021, p. 123.

14 | Papuashvili et al., 2023, p. 44.

15 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 30.

16 | See Tsimakuridze and Japaridze, 2021, pp. 71–72, pp. 105–106.

Decisions should not be template-based and should not repeat the substantive or formal parts of other acts.

| **2.2. Freedom of Expression, Hate Speech, and Hate-Motivated Crime**

The European Commission has highlighted several priority areas regarding freedom of expression: ensuring the safety of journalists, including prevention of attacks against them and investigation of incidents; strengthening the independence of the Communications Commission; and developing and refining an appropriate legislative framework for hate speech and expressions inciting racism and xenophobia in relation to freedom of expression.¹⁷

Several court proceedings are ongoing concerning critical media, and attacks on media independence are noticeable.¹⁸ Criminal proceedings and investigations against media corporations and their chief executives are particularly dangerous, as such mechanisms damage these media themselves, while also having a certain chilling effect on other critical organisations. In the context of media independence, the role of the Communications Commission is particularly important, as according to Georgian legislation, the Commission is the watchdog¹⁹ and its impartial, transparent operation is a necessary prerequisite for media pluralism. The Commission's activities require more transparency, impartiality, and functional independence; the same applies to the process of selecting and appointing Commission members.²⁰

According to the European Commission's report, effective investigation of hate-motivated crimes remains a challenge for Georgia.²¹ National legislation has provided for the punishment of hate crimes,²² including gender-based violence and gender discrimination, but their practical enforcement is problematic. It is necessary to implement effective protective mechanisms and victim support tools.²³ The investigation of hate-motivated crimes is complicated by the social situation, the perception of the crime itself, the collection of evidence, and the process of proof in court. Given the complexity of the evidentiary process, the personal nature of the hate motive, and the priority of punishing the offender, in many cases, the prosecutor's office prefers to be guided by general criminal law provisions rather than specific hate crime provisions.

| **2.3. Freedom of Assembly and Association, Political Rights**

In March 2023, the so-called 'Agents Law' caused great turmoil and mass protests, resulting in Parliament's refusal to finally adopt the bill.²⁴ The draft law contained numerous threats and damaged the ongoing democratic processes in the state, the rule of law,

17 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 34.

18 | *Ibid.*, p. 35.

19 | See Law N1514 of Georgia 'On Electronic Communications', 2 June 2005.

20 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 35.

21 | *Ibid.*, pp. 30, 33.

22 | See Law 763-II of Georgia amending Criminal Code of Georgia, 4 May 2017; Law 3772-III of Georgia amending Criminal Code of Georgia, 30 November 2018.

23 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 38.

24 | Venice Commission, CDL-AD(2024)020, para. 7.

and equality before the law. Nevertheless, in the spring of 2024, the Georgian Parliament again returned to discussing the draft law 'On Transparency of Foreign Influence', which once again proceeded against a backdrop of mass protests and demonstrations. The Venice Commission considered the law incompatible with human rights, stating that it stigmatises individuals and organisations, is not a proportionate means of achieving a legitimate aim, and damages the rule of law.²⁵ The President of Georgia vetoed the law, but despite this, Parliament overrode it and ensured the act's implementation. The law declares organisations that receive more than 20% of their income from other states or international organisations as subjects of foreign influence.²⁶ It stigmatises individuals and associations of individuals, inciting hostile attitudes towards them,²⁷ and has many legal problems. The regulation establishes an unpredictable regime for non-governmental organisations, equips the executive branch with broad discretion to restrict fundamental human rights based on its own decision without prior court control, and endangers the protection of professional secrecy and personal data. Most importantly, the restrictive actions and regulation fail to meet proportionality – specifically the criterion of necessity in a democratic society, as the legitimate public goal of the law (financial transparency of non-governmental organisations) can be achieved using numerous alternatives and less restrictive mechanisms.

On 1 October 2023, Parliament adopted amendments to the 'Law on Assembly and Manifestations', which restricted freedom of assembly. The law was criticised by the Public Defender, and the President vetoed it.²⁸ The policy towards freedom of assembly, association, and political rights is complex and, unfortunately, damages both human rights and threatens the country's international image and political and electoral environment, as well as inciting discord between different groups in society, which ultimately endangers the sustainability and practical enforcement of the rule of law.

| 2.4. *Discrimination and Gender Equality*

Georgia has modern anti-discrimination legislation, but there is no particular emphasis on protecting the rights of certain vulnerable groups.²⁹ Fighting discrimination is not a one-time or exhaustible goal; it requires both legal foundations and effective rights protection mechanisms. Protecting equality and eliminating discrimination for various vulnerable groups requires different approaches. The challenges differ in terms of protecting the rights of children and women, LGBTIQ individuals, ensuring gender equality, and creating an appropriate political and legal environment for religious and ethnic minorities.

Gender policy needs to be strengthened in favour of women. At the social and labour levels, there are noticeable differences in many areas between women's and men's remuneration and social guarantees. Women's participation in decision-making processes is also problematic.³⁰ In 2020, the obligation for gender quotas in local and parliamentary

25 | See *Ibid.*, paras. 98–101.

26 | Law 4194-XIV06-X03 of Georgia 'On Transparency of Foreign Influence', 28 May 2024, Art. 2(1).

27 | See Tabatadze et al., 2024, pp. 3–16.

28 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 36.

29 | *Ibid.*, p. 37.

30 | *Ibid.*, p. 38.

elections was reflected at the legislative level, taking into account past OSCE/ODIHR recommendations.³¹ Gender quotas are a common practice, and according to the Venice Commission, they do not contradict the electoral principle of equality if they have proper constitutional foundations.³² The Constitutional Court of Georgia shared the same position, considering gender quotas in electoral legislation constitutional and noting that it was justified by the legitimate aim of ensuring gender equality.³³

In 2024, the Parliament of Georgia expedited the review and approval of changes to electoral legislation, abolishing the obligation of gender quotas for political parties in elections.³⁴ According to the Venice Commission's assessment, there was no need to abolish quotas, and such a decision should have been made much more calmly, based on the analysis and discussion of modern approaches and opinions.³⁵ Given that women's representation in electoral processes at the parliamentary and local levels needs strengthening, the Commission recommends that Georgia develop temporary measures to overcome the problem.³⁶ These measures or mechanisms may not be related to quotas at all and could be much more effective and results-oriented, changing the existing situation at the social level. However, the hasty abolition of quotas and implementation of changes in this manner certainly cannot be perceived as a positive step.

There are other challenges in protecting women's rights: prevention of sexual harassment and investigation/civil litigation of related cases, prevention and investigation of domestic violence cases, freedom of expression for women who have experienced violence, proper legislative regulation of crimes against sexual freedom, etc. According to the European Commission's assessment, progress in protecting victims' rights is noteworthy, but it should be noted that there is inconsistent practice regarding the granting of victim status itself, and granting such status in high-profile cases related to freedom of expression is problematic.³⁷ In court practice, attempts to silence women who are victims of harassment or violence are frequent, both through SLAPP lawsuits and the use of other procedural mechanisms.³⁸

LGBTIQ individuals are the most marginalised group in Georgia, with the protection of their rights being a particular problem both socially and politically. Aggression towards them is often encouraged by political actors.³⁹ The human rights strategy adopted by the Georgian Parliament does not focus on protecting LGBTIQ rights.⁴⁰ Moreover, in September 2024, the legislature passed a law 'On Family Values and Protection of Minors', which the president did not sign; however, the law still came into force. Unfortunately, this legislative act further contributes to the stigmatisation of LGBTIQ persons, reinforcing

31 | See OSCE/ODIHR, 2016, Rec. 16.

32 | Venice Commission, CDL-AD(2002)023rev2-cor, Guideline I.2.5.

33 | See Decision N3/3/1526 of the Constitutional Court of Georgia, 25 September 2020.

34 | See Organic Law N4158-XIV06-X03 of Georgia amending Election Code of Georgia, 15 May 2024.

35 | Venice Commission, CDL-AD(2024)023, para. 18.

36 | *Ibid.*, para. 43.

37 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 29.

38 | Bakhtadze, 2024, pp. 17–25.

39 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 40.

40 | Resolution N2663-XI06-X03 of the Parliament of Georgia, 23 March 2023.

negative societal attitudes towards them, and establishes an unpredictable legal regime with abstract and general goals, which is inherently unconstitutional and also contradicts the European Convention.

The realisation of the rights of persons with disabilities (PWDs) is quite limited in certain aspects of life, leading to their marginalisation and low levels of social welfare.⁴¹ Protecting the rights of PWDs and ensuring their legal development requires the state to properly recognise its positive obligations and develop appropriate policies that ensure both a suitable economic environment and social justice.

Georgia has taken several important steps in protecting children's and minors' rights. In 2015, the Georgian Parliament adopted the Juvenile Justice Code, which established a qualitatively new regime oriented towards the best interests of minors.⁴² This was followed a few years later by the Code on Child Rights,⁴³ which comprehensively unified various issues related to child rights protection and elevated the protection of the child's best interests to a different level in civil and administrative legal relations. Nevertheless, there are numerous challenges at the practical level in the field of child rights protection. Of particular concern are the interests of children in orphanages and special institutions, where there is no adequate response to violations of their rights. Combating and preventing violence against children deserves special attention, as it is a pressing challenge. In this respect, supportive mechanisms and interdisciplinary approaches need to be strengthened, work needs to be done on preventing early and forced marriages, and an action plan corresponding to the Lanzarote Convention needs to be developed for children's safety in cyberspace and against violence towards them.⁴⁴

Issues of knowledge and teaching of the state language for ethnic minorities are a challenge.⁴⁵ Despite numerous programs and projects, many representatives of ethnic minorities do not speak the state language, which automatically implies problems with social integration, realisation of civil rights, and limited access to state services.⁴⁶ In this respect, the teaching of the state language and projects for the social integration of ethnic minorities need to be strengthened so that each citizen of Georgia perceives themselves as equal before the law and as a full member of the society.

The European Commission highlighted the issue of equal tax exemptions for religious minorities and the rehabilitation of their places of worship.⁴⁷ Georgia's church-state relationship model is cooperative secularism, which implies a cooperative and positive attitude from the state towards both majority and minority religions.⁴⁸ Nevertheless, the relationship with the Orthodox Church bears an even more distinct character from legal, political, and social perspectives, often ensuring a privileged position compared to other religious organisations. The Constitutional Court of Georgia declared

41 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 39.

42 | Law 3708-III of Georgia 'Juvenile Justice Code', 12 June 2015.

43 | Law 5004-III of Georgia 'Code on the Rights of Child', 20 September 2019.

44 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 39, 44.

45 | *Ibid.*, p. 40.

46 | Gegenava, Partsvania and Tusashvili, 2024, pp. 61–62.

47 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 33.

48 | Gegenava, 2018, p. 122.

unconstitutional the exclusive nature of certain tax exemptions for the Orthodox Church and extended them to other religious organisations.⁴⁹ Some tax exemptions still apply only to the Orthodox Church, as the Constitutional Agreement exempts the church from any payment, and this does not require additional establishment by the tax code. Disputed places of worship, which are owned by the Orthodox Church but are rightfully claimed by the Roman Catholic Church and the Armenian Apostolic Church, are also a significant problem.⁵⁰ It is necessary to review the legal framework of church-state relations and develop and implement a non-discriminatory policy.

| 2.5. Personal Data Protection

Georgia adopted comprehensive legislation on personal data protection in 2011, with the new institution and related innovations being gradually established in the country. Numerous bylaws were adopted, and the Association Agreement with the EU necessitated significant reform. A special body for personal data protection was first created in Georgia in 2013 in the form of the Personal Data Protection Inspector, whose authority was expanded in 2015 to include the responsibility of controlling actions carried out by state bodies regarding personal data. This was followed by several waves of reform in subsequent years, including a change in the name of the body.⁵¹

Since the institution operating under the name of the State Inspector was responsible for both personal data protection and the investigation of crimes committed by law enforcement, there were many questions about its independence. In 2021, without any discussion, the Georgian Parliament expedited the legislative reform of the body responsible for personal data protection, disbanded the State Inspector's Office, and instead established two independent institutions—the Personal Data Protection Service and the Special Investigation Service—while prematurely terminating the authority of the inspector elected for a 6-year term.⁵² The Constitutional Court of Georgia declared the premature termination of authority without compensation unconstitutional, but did not annul the reform itself.⁵³ In December 2025, the Parliament of Georgia adopted the amendments, under which the Personal Data Protection Service will be abolished as of 2 March 2026 and its powers will be assumed by the State Audit Office.⁵⁴ This reform calls into question the institutional autonomy and guarantees of operational independence of the authority responsible for personal data protection, particularly given that the State Audit Office is a heavily burdened and functionally diverse body whose legal nature is less directly aligned with the protection of human rights.

In 2023, Georgia adopted a new law 'On Personal Data Protection', which introduced many beneficial innovations, improved the standard of personal data protection, and showed some progress in fulfilling the obligations under the Association Agreement. However, there are still numerous challenges in this field related to the public perception of personal data and respect for privacy by state bodies. It should be noted that legislation

49 | Decision N1/2/671 of the Constitutional Court of Georgia, 3 July 2018; Decision N1/1/811 of the Constitutional Court of Georgia, 3 July 2018.

50 | Gegenava, 2018, pp. 126–127.

51 | Gugava, 2022, p. 36.

52 | Ibid.

53 | See Decision N1/9/1673,1681 of the Constitutional Court of Georgia, 17 November 2022.

54 | Law N1289-IVთბ- XIთბ of Georgia amending the 'Law on Personal Data Protection', 17 December 2025.

regarding state surveillance of electronic communication means has already been declared unconstitutional once by the Constitutional Court of Georgia.⁵⁵ Meanwhile, on another equally important case, where the constitutionality of a new regulation of the same issue was raised for the second time, the Constitutional Court has not announced a decision for several years.⁵⁶

Regarding personal data protection for criminal law purposes, it is noteworthy that in 2022, the Venice Commission severely criticised the amendment to Georgia's Criminal Procedure Code, which simplified the procedure for conducting covert investigative actions and gave investigative bodies broad discretion.⁵⁷ The President of Georgia vetoed the bill, but the Parliament overrode it despite the President's opposition and the Venice Commission's recommendations.⁵⁸ The protection of personal data rights in the field of investigation remains problematic and is a serious challenge in the context of fundamental human rights.

| **2.6. Implementation of Case-Law of the European Court of Human Rights**

The statistical indicator of the implementation of ECtHR decisions needs analysis, as the percentage data and the substantive significance and scale of unimplemented decisions are completely different. Although the rate of formally implemented decisions is quite high, unfortunately, the number of unimplemented leading cases is also high, with a large part of them having been adopted 10 or more years ago. The high rate of current leading cases is alarming, and in this regard, Georgia surpasses only five states among Council of Europe members. In Georgia's case, the decisions under enhanced supervision concern severe systemic problems that are challenges not only in one individual case but also in other similar cases (ill-treatment, freedom of religion, LGBTIQ rights, etc.). The main obstacles to implementing ECtHR case-law are: lack of political will, ineffective mechanisms for investigating and responding to crimes committed in law enforcement systems, etc.⁵⁹

The implementation of ECtHR decisions is of particular importance for the protection of human rights in Georgia, which has a long way to go to ensure the sustainability of the fundamental rights system and establish the rule of law. In a politically unstable domestic environment, the decisions of an objective, authoritative international court have a strategic function for Georgia in diagnosing the real state of human rights and improving them in the future.

55 | Decision N1/1/625,640 of the Constitutional Court of Georgia, 14 April 2016.

56 | Recording Notice N3/4/N885-924, 928-929, 931-1207, 1213, 1220-1224, 1231 of the Constitutional Court of Georgia, 29 December 2017.

57 | See Venice Commission, CDL-PI(2022)028.

58 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 33.

59 | Kvitskhadze, 2024, pp. 3, 5-8.

3. Protection of Fundamental Rights, Justice, and Prosecution

| 3.1. *The Judiciary*

One of the most significant and critical parts of the European Commission's 2023 report concerns the justice system, as the judiciary is the primary and irreplaceable mechanism for protecting the rule of law and fundamental human rights. This was predictable, as one of the 12 recommendations issued by the European Commission in 2022 regarding the EU membership application, specifically the third recommendation, addressed the challenges of the court and justice system.⁶⁰

In Eastern European and South Caucasian states, challenges related to judicial independence are mainly manifested in three directions: 1. Judicial system management; 2. Procedures, criteria, and decision-making for the appointment, selection, and nomination of judges; 3. The effectiveness and judicial accountability and independence in decision-making.⁶¹ Considering the regional context, while most problems in Georgian justice are symptomatic, some challenges are truly exclusive and uniquely Georgian, as they stem from the existing reality and legal environment in the country. OSCE/ODIHR lists the main challenges of Georgian judicial system: the administration of the judiciary and the composition, operation, and decision-making process of the High Council of Justice; the system of case distribution to judges; the functions and status of administrative and managerial positions in the court; the independence of judicial branch from external interference; the independence of judges within the court; the transparency and verifiability of judges' property declarations; and issues of disciplinary responsibility of judges.⁶²

Taking into account the assessments of international and local observers, the European Commission highlighted several significant problems in Georgian judiciary: 1. Administration of justice and the activities of the High Council of Justice; 2. Guarantees for disciplinary responsibility, secondments, and individual protection of judges; 3. The need for systemic reform; 4. Legal basis and process for the nomination and appointment of judges; 5. Changes to the procedure and required majority for appointing the Prosecutor General.⁶³

3.1.1. *Reforms and Judicial Independence*

After regaining independence, Georgia's judicial system underwent several stages of transformation. Until 2004, Georgian justice was under strong influence from the executive branch, essentially executing the will of the president.⁶⁴ Following the Rose Revolution, systemic and qualitative reforms were implemented in many areas, causing fundamental

60 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

61 | See Kyiv Recommendations, 2010.

62 | OSCE/ODIHR, Opinion-Nr.: JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, p. 2.

63 | See European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 20–21.

64 | Borkowski et al., 2024, p. 43.

changes in state governance.⁶⁵ Naturally, these changes affected the judiciary as well. It can be said that the reforms carried out in 2004-2012 significantly improved the system from a formal perspective: organisational and administrative aspects were streamlined, judges' social and legal status was ensured, corruption was eliminated, and the judicial corps was renewed with young judges. However, the individual and organisational independence of judges was not secured, with criminal justice being particularly problematic and critical.⁶⁶ The executive branch, especially the prosecution and the Ministry of Justice, had significant influence over the court⁶⁷ and effectively controlled it.

In 2012, following parliamentary elections, the Georgian government changed. One of the new ruling coalition's main priorities was to reform the justice, prosecution, and penitentiary systems. However, the new government made political concessions to an influential group within the judiciary. Gradually, relations between the government and the court stabilised. By 2017, the so-called 'clan' had gained complete dominance over the judicial system and received guarantees of inviolability, while the ruling party gained the ability to exert desired influence over the system.⁶⁸ As a result, corporatism and clientelism were reinforced in the court, and the political authority created a dangerous symbiosis with the judiciary.⁶⁹

From 2013, the first wave of court reform began, followed by three more waves in subsequent years.⁷⁰ These reforms were aimed at more or less decentralising the justice system and eliminating problems. The parliament adopted significant constitutional and legislative changes, but substantive judicial independence was not achieved.⁷¹ This was logical and predictable. While government bodies bear significant responsibility for the success of judicial reform, the decisive role ultimately falls to the judges themselves.⁷² Without their active participation, any attempt at fundamental and substantive change in the judicial system is doomed.

On 4 August 2023, a working group on judicial reform was created in the Legal Affairs Committee of the Georgian Parliament, aimed at creating a strategy and action plan to implement the European Commission's 2022 recommendations. Despite the participation of parliamentary members, state body representatives, professional groups, and civil associations, it was still not sufficiently representative.⁷³ For this and other reasons, the 'Judicial Reform Strategy and Action Plan' created by the working group is only formal in nature, quite superficial, and does not adequately address the fundamental challenges of the justice system.⁷⁴

Public trust is vital for the effectiveness of the court and real justice outcomes. For this, public perception and the direct attitude of the population are important, as the ultimate addressees of justice are people. According to research, more than half of Georgia's

65 | Gegenava and Goradze, 2024, pp. 234–235.

66 | Borkowski et al., 2024, p. 43.

67 | Menabde, 2023, p. 7.

68 | *Ibid.*, p. 14.

69 | Papuashvili et al., 2023, p. 7.

70 | See Menabde, 2023, pp. 13–14.

71 | Borkowski et al., 2024, p. 43.

72 | Hagenloch, 2024a, p. 2.

73 | Imnadze, 2023, p. 3.

74 | *Ibid.*, p. 7.

population believes that the court system is under political influence.⁷⁵ The need for judicial reform remains on the agenda, and improving the independence, transparency, and effectiveness of the court will be impossible without systemic and fundamental changes. Only in this case will the system function and be oriented towards people, thus fulfilling its true purpose.

3.1.2. Administration of Justice

The collegial management model of the judicial system was favoured by international organisations in Georgia and other post-Soviet countries.⁷⁶ The High Council of Justice was defined as the supreme body for administering common courts, and over the years, it became the main institution that effectively decides all important issues related to courts and judges. The idea of a collegial management model has been marginalised and is presented in an extremely distorted form. Today, the High Council of Justice itself is a significant threat and challenge to the judicial system and court independence.⁷⁷

Unfortunately, politics and the noticeable influence of political players have been observed in Georgian courts for years.⁷⁸ It can be said that for almost 20 years, the rulers and power holders in the Georgian judicial system have not changed.⁷⁹ The current model of justice is characterised by clan governance and an extremely closed form of judicial system management by a narrow circle of judges.⁸⁰ The existence of the so-called 'clan' (an influential group of judges) has been recognised and strongly criticised by numerous local and international organisations.⁸¹ Consequently, it is logical that self-governance of judges in the Georgian court is essentially formal and not independent, with the 'clan' equipped with formal and unofficial mechanisms of influence and power.⁸² In April 2023, the U.S. State Department imposed sanctions on Georgian judges who were members of the clan due to corruption allegations,⁸³ which were not investigated in Georgia and for which no corresponding responsibility was established.⁸⁴

The composition of the High Council of Justice, as well as the election of judge and non-judge members and the council's activities, pose significant challenges.⁸⁵ All this directly affects the independence and impartiality of both the council and its individual members.⁸⁶ When appointing non-judge members of the High Council of Justice, public trust and political consensus regarding the candidate should be considered.⁸⁷ The Venice Commission recommends that the constitutional arrangement for the composition of the High Council of Justice needs revision. It is desirable that the High Council of Justice not

75 | Gobronidze, Gerliani and Papuashvili, 2021, p. 116.

76 | Verdzeuli, 2021, p. 9.

77 | Papuashvili et al., 2023, p. 8.

78 | Mamrikishvili, 2020, p. 60.

79 | Hagenloch, 2023, p. 1.

80 | See Menabde, 2023, p. 7.

81 | Gobronidze, Gerliani and Papuashvili, 2021, p. 115.

82 | Borkowski et al., 2024, p. 44.

83 | U.S. Department of State, Press Statement, 2023.

84 | Borkowski et al., 2024, p. 43.

85 | See European Commission, Georgia 2023 Report, SWD(2023)697 Final, Brussels, 8 November 2023, pp. 21–22.

86 | OSCE/ODIHR, Opinion-Nr.: JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, para. 30.

87 | Papuashvili et al., 2023, p. 16.

be composed all at once, but rather that at least a quarter of its composition be renewed periodically every two years. It is also important to ensure anti-deadlock mechanisms when composing the council.⁸⁸

In 2021, the Georgian Parliament adopted legislative changes without consulting judges and specialised public actors, significantly reducing guarantees of judicial independence and consequently increasing the power of the High Council of Justice.⁸⁹ In assessing these changes, the Venice Commission indicated that public attitudes towards the High Council of Justice, accusations of corporatism, and other allegations could significantly damage trust in the council and the court in general.⁹⁰ In contrast, despite the assessment of local and international experts, the Constitutional Court believes that the model for composing the Justice Council ensures the prevention of corporatism in the council.⁹¹ Such a position reinforces doubts about political influences on the Constitutional Court.

For the ruling elite of the Georgian court, the priority has never been the introduction of European values,⁹² the establishment of the rule of law, and ensuring independent justice. To this day, for powerful judges, the priority remains total control of judicial power at the expense of restricting judicial independence and maintaining secrecy, which damages not only the justice system but also the right to a fair trial as a whole.

3.1.3. *Appointment of Judges*

Despite four waves of judicial reform, both the legislative regulation and the practical implementation of norms regarding the appointment of judges, as well as the exercise of authority by the High Council of Justice in this direction, remain problematic.⁹³ The Council is vested with exclusive authority in the appointment and promotion of first and second instance judges,⁹⁴ and it also exclusively presents Supreme Court judge candidates to the Georgian Parliament.⁹⁵ The appointment of judges is based on loyalty to the so-called 'clan', and their individual freedom and independence essentially do not exist.⁹⁶ Similarly, judges' freedom of expression has been reduced to a merely formal, normative-level ephemeral and unrealistic concept.

According to Georgian legislation, candidates for judicial appointments are evaluated based on integrity and professionalism criteria.⁹⁷ Integrity and professionalism are not only important for the judicial system in the general context of the rule of law; they are much more – an independent judiciary is a fundamental human right.⁹⁸ A clear illustration of the state of Georgian justice in this regard is that Georgia is the first country to which the Venice Commission recommended integrity checks.⁹⁹ The appointment to a judicial

88 | Venice Commission, CDL-AD(2023)033, paras. 18, 22, 28.

89 | Papuashvili et al., 2023, p. 7.

90 | Venice Commission, CDL-AD(2022)010, para. 60.

91 | Decision N3/1/1459,1491 of the Constitutional Court of Georgia, 30 July 2020, para. 33.

92 | Hagenloch, 2023, p. 1.

93 | Papuashvili et al., 2023, p. 24.

94 | *Ibid.*

95 | Constitution of Georgia, 24 August 1995, Art. 61(2).

96 | Abashidze et al., 2017, p. 10.

97 | Organic Law N2257 of Georgia 'On the Common Courts', 4 December 2009, Art. 35.

98 | Hagenloch, 2024b, p. 4.

99 | Borkowski et al., 2024, p. 42. See Venice Commission, CDL-AD(2023)033.

position should not be politically motivated; the process should focus on assessing the candidate's professional qualifications, skills, and integrity.¹⁰⁰ In Georgian reality, loyalty to the 'clan' is much more important for current and future judges than professionalism and integrity, which significantly hinders the development of the court and the ensuring of its independence.¹⁰¹ It is noteworthy that talk of vetting caused concern among judges; they again sought refuge in the clan and received guarantees of protection from it, which fundamentally determined the lack of prospects for vetting.¹⁰² The predictability, criteria, and justification for issues such as secondment of judges without consent, change of specialisation, promotion, and transfer to other courts are also particularly problematic.¹⁰³ These can be used as means of influencing judges.

In 2019–2020, before the appointment of Supreme Court judges, the Georgian Parliament hastily adopted legislative changes, which were negatively assessed by the Venice Commission,¹⁰⁴ the European Union, the European Parliamentary Assembly co-rapporteurs on Georgia issues, and others.¹⁰⁵ The Commission criticised the process of selecting and appointing Supreme Court judges and called on Georgia to ensure a transparent and fair process.¹⁰⁶

The Public Defender of Georgia challenged the rule for filling the positions of judges of the Supreme Court of Georgia and demanded it be declared unconstitutional, as the system for selecting candidates for judges could not ensure fair selection procedures and established unjustified restrictions. According to the Constitutional Court's interpretation, the two-stage system for selecting judges of the Supreme Court of Georgia and granting the authority to select candidates for the Parliament to the High Council of Justice prevents corporatism and reduces the risk of corruption. The Constitutional Court considered the model of staffing the Supreme Court and the selection of candidates by the Justice Council without justification to be constitutional, noting that since the final decision is to be made by the Parliament, this essentially differentiates this procedure from the appointment of first and second instance court judges, the authority for which is exclusively entrusted to the Council.¹⁰⁷

Four members of the Constitutional Court wrote a dissenting opinion regarding the constitutionality of appointing Supreme Court judges. In their assessment, when defining the model for appointing Supreme Court judges in the Constitution, the legislator intended to reduce the emphasis on politicisation by political decision-makers and create a maximally transparent system. Replacing the President with the Justice Council in the process of appointing Supreme Court judges aimed to involve an apolitical, competent body that would make reasoned decisions based on the evaluation of candidates and present judicial candidates to the Parliament accordingly. The High Council of Justice can select a candidate for the Supreme Court judgeship without justification, without any clear and public argumentation; other candidates who are not presented will not have sufficient information about why they were not selected. The opaque, vague, unjustified

100 | Decision N3/2/717 of the Constitutional Court of Georgia, 7 April 2017, para. II-17.

101 | Hagenloch, 2024a, p. 2.

102 | Hagenloch, 2024b, p. 4.

103 | Papuashvili et al., 2023, pp. 32–34.

104 | See Venice Commission, CDL-AD(2020)021.

105 | Gobronidze, Gerliani and Papuashvili, 2021, p. 116.

106 | See Venice Commission, CDL-AD(2019)009.

107 | Decision N3/1/1459,1491 of the Constitutional Court of Georgia, 30 July 2020, paras. 7, 19, 20.

procedure for appointing Supreme Court judges and the lack of reasoning for the decision significantly contribute to the impossibility of building public trust in the process and its discreditation.¹⁰⁸

Ultimately, the process of selecting Supreme Court candidates, presenting them to Parliament, parliamentary hearings, and approval was conducted against a backdrop of tension, raising numerous questions and creating discord.¹⁰⁹ This further damaged the reputation of Georgian justice and trust in and authority of the Supreme Court.

3.1.4. *Judicial Accountability and Personal Guarantees for Judges*

Prior to the 2013 reform, disciplinary accountability of judges was implemented in a very strict manner and was primarily an active means of pressuring judges. As a result of four waves of reform, the mechanism of disciplinary accountability has been significantly refined and improved in terms of both procedure and substance. However, despite numerous reforms, lawyers have little trust in these rules and mechanisms.¹¹⁰

In the context of disciplinary accountability, the effectiveness of the independent inspector is crucial; it should possess sufficient resources both to investigate misconduct and to make decisions regarding the examination of such misconduct.¹¹¹ The ineffectiveness of disciplinary accountability is evidenced by prolonged disciplinary proceedings, the formal nature of the process, failure to make decisions on accountability, etc.¹¹² Due to the ineffectiveness of the accountability mechanisms and the independent inspector, there is no existing level or assessment indicator of individual judicial integrity.¹¹³ The flawed model of judicial disciplinary accountability paves the way for the establishment of corporatism in judiciary.¹¹⁴

As a result of the 2017–2018 constitutional reform, impeachment was defined as the only ground for dismissal of a Supreme Court judge.¹¹⁵ This placed Supreme Court judges in a somewhat privileged position, with the disciplinary accountability mechanism becoming merely formal for them.¹¹⁶ The role and function of the Supreme Court in disciplinary accountability is also an important issue. According to the Venice Commission's recommendation, Supreme Court decisions in this area should preferably be binding for the High Council of Justice,¹¹⁷ as this ensures greater independence for judges and prevents the Council from having uncontrolled power.

108 | Joint Dissenting Opinion of Judges: Tughushi, Imerlishvili, Kverenchkhiladze and Tsabutashvili on Decision N3/1/1459,1491 of the Constitutional Court of Georgia, 30 July 2020, paras. 27, 28, 49, 112.

109 | See OSCE/ODIHR Report, June–December 2019; OSCE/ODIHR Report, June–September 2019.

110 | Tsikarishvili, 2021, pp. 6–7.

111 | Papuashvili et al., 2023, pp. 38–39.

112 | *Ibid.*, p. 40.

113 | Hagenloch, 2024b, p. 8.

114 | OSCE/ODIHR, Opinion-Nr.: JUD-GEO/457/2023 [NR], Note on Several Issues Relating to Judicial Reform, Warsaw, 26 June 2023, para. 70.

115 | Constitution of Georgia, 24 August 1995, Art. 48(1).

116 | Tsikarishvili, 2021, p. 8.

117 | Venice Commission, CDL-AD(2023)006, para. 52.

Decisions on the appointment, promotion, or disciplinary accountability of judges are made by a 2/3 majority of the Council's composition, which significantly reduces the possibility of lay members influencing the decision-making process.¹¹⁸

Some judges of common courts considered the rules related to judicial secondment, suspension of powers, freedom of expression, and disciplinary accountability as a restriction of their rights and appealed the amendments to the Constitutional Court.¹¹⁹ They argued that the norms contradict the principle of legal security and fail to meet the requirement of legal certainty.¹²⁰ The Constitutional Court deemed the constitutional claim admissible in part and is currently considering it. Three judges of the Constitutional Court published a dissenting opinion regarding the inadmissibility of part of the claim.¹²¹

Judicial independence is an integral part of the rule of law and should not be perceived as a privilege.¹²² This independence is achieved not only through social guarantees, indemnity, or immunity but also through the real possibility of exercising freedom of expression when necessary, of course, while observing the rules of judicial ethics, and without expecting to be punished or subjected to disciplinary or more severe legal mechanisms for doing so.

Formally, Georgian judiciary is based on judicial self-governance,¹²³ but this is only formal; in reality, the situation is radically different. In 2013, under the governance of a new political force, some judges formed the 'Unity of Georgian Judges', aimed at implementing systemic judicial reform and ensuring judicial independence. However, some of these judges were not reappointed for lifelong term in 2014–2015 or were forced to leave the 'Unity' through various means.¹²⁴ The emergence of a provision on 'violation of political neutrality' in the context of judicial disciplinary accountability has further restricted judges; it can be said that this norm is less predictable and creates a risk of limiting judges' freedom of expression.¹²⁵

Today, differing opinions are virtually unheard within Georgian courts, individual freedom of judges is at a very low level, and there are serious problems in terms of transparency, judicial professionalism, and integrity.¹²⁶ There is no constructive debate.¹²⁷ Judges are gripped by an entirely logical and predictable fear, as the punishment of those seeking judicial reform in the years following 2012 had a regrettable preventive effect and served as a 'lesson'.¹²⁸

118 | Papuashvili et al., 2023, p. 15. Venice Commission, CDL-AD(2023)033, para. 18.

119 | See Constitutional Complaint N1693 of Ekaterine Areshidze, Ketevan Meskhishvili, Madona Maisuradze, Mamuka Tsiklauri and Tamar Khazhomia, 11 April 2022.

120 | See Recording Notice N3/14/1693 of the Constitutional Court of Georgia, 25 November 2022.

121 | See Joint Dissenting Opinion of Judges: Kobakhidze, Roinishvili and Tughushi on the Recording Notice N3/14/1693 of the Constitutional Court of Georgia, 25 November 2022.

122 | Consultative Council of European Judges, Conclusion N1(2001), para. 10.

123 | Papuashvili et al., 2023, p. 10.

124 | Hagenloch, 2023, p. 2; Borkowski et al., 2024, p. 43.

125 | See Venice Commission, CDL-AD(2023)033, paras. 31–33.

126 | Borkowski et al., 2024, p. 43.

127 | Hagenloch, 2023, p. 4.

128 | See Ibid., p. 3.

3.1.5. *Publicity of Court Decisions*

The Georgian judicial system is one of the most closed and non-transparent, which effectively precludes any kind of trust from society towards both justice in general and judges individually.¹²⁹ Independence, impartiality, and transparency were also considered one of the most important challenges of Georgian justice by the European Commission.¹³⁰ The Venice Commission also issued a recommendation on ensuring very high transparency,¹³¹ and one of the important components of it is the accessibility of court acts while protecting personal data.¹³²

Since 2015, access to court acts and public information in courts has deteriorated,¹³³ which has ultimately turned Georgian common courts into one of the most closed and non-transparent organisations. In 2019, the Constitutional Court of Georgia declared the restriction on access to court decisions unconstitutional and explained that court decisions should be publicly available while protecting personal data.¹³⁴

Legislative amendments that came into effect on January 1, 2024, significantly improved the situation regarding the issuance of public information on court acts, establishing general accessibility of acts, and defining the time of publication of the judicial act as the entry into legal force of the final decision on the case. However, despite the legislative regulation, courts still do not fully fulfil their obligations related to the publication of court acts and the provision of information.¹³⁵ The publication of decisions of first and second instance courts had been virtually suspended for a long time.¹³⁶ The Supreme Court of Georgia remains the only Georgian court that ensures the publication of its decisions in a depersonalised form on its website.¹³⁷

Access to court acts is not simply related to the transparency of the justice system; it is an integral part of the right to a fair trial. Access to court decisions in a depersonalised form contributes to achieving legal certainty as well as unifying and synchronising legal practice. The High Council of Justice should update the rule of proactive publication of court acts in accordance with the legislation and the principle of transparency of justice.¹³⁸ It is essential that decisions are published according to the procedure established by law and are accessible to the public. Considering that many cases are decided at the appellate level, while some serious disputes are resolved at the first instance, the publicity of these decisions becomes even more important.

| 3.2. **Prosecution**

In Georgia, the prosecution has often been used not only as a repressive mechanism, which it logically has the authority to do by law, but also as a means of political retaliation.

129 | Papuashvili et al., 2023, p. 46.

130 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 22.

131 | See Venice Commission, CDL-AD(2020)021, para. 18.

132 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 24.

133 | IDFI, 2024, p. 9.

134 | See Decision N1/4/693/857 of the Constitutional Court of Georgia, 7 June 2019.

135 | IDFI, 2024, p. 6.

136 | Papuashvili et al., 2023, p. 47.

137 | IDFI, 2024, p. 6.

138 | *Ibid.*, p. 7.

Therefore, from the point of view of both systemic, institutional, and individual independence, it is very important that the system is well-organised, stable, and equipped with proper guarantees. For this purpose, the relevant recommendations of the Venice Commission and the OSCE should be taken into account.¹³⁹ Formally, the 2017–2018 constitutional reform envisaged a new constitutional body – the Prosecutorial Council – to ensure the independence and transparency of the prosecution, which was given the exclusive authority to select and present to the parliament a candidate for the Prosecutor General.¹⁴⁰ The council consists of prosecutor and lay members,¹⁴¹ which is certainly welcome, but more balance between them is necessary to ensure the internal independence of the council.¹⁴²

According to the European Commission's assessment, the appointment to the position of Prosecutor General requires an absolute majority of votes, which is considered problematic and a very low quorum;¹⁴³ for its legitimacy, it is necessary to increase the mandatory number of votes to a qualified majority. Since this issue is directly regulated by the Constitution of Georgia, an amendment to the Constitution of Georgia is necessary to implement this recommendation. For this purpose, in 2022, the Parliament of Georgia initiated such an amendment, but it has not been passed.

4. Fighting Crime, Migration, and Anti-Corruption Policy

The European Commission's fifth recommendation concerned the fight against organised crime – specifically, strengthening the fight against organised crime and ensuring the accountability of relevant authorised bodies.¹⁴⁴ There is some progress in this area, and it can be said that the recommendation has been largely fulfilled. However, investigation in criminal networks, as well as data-based police control and analytical skills of investigators need to be improved. A particular problem is the coordination of the fight against organised crime, as this authority belongs to responsibility of several state bodies, and coordination between them is ensured by the Inter-Agency Coordination Council for Combating Organized Crime – which, according to the European Commission's assessment, should be strengthened.¹⁴⁵

Georgia is operating successfully in the prevention of terrorist financing, but money laundering issues in general are a significant challenge, especially with regard to the

139 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 23.

140 | Constitution of Georgia, 24 August 1995, Art. 65.

141 | Organic Law N3794-Іb of Georgia 'On the Prosecutor's Office', 30 November 2018, Art. 19.

142 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 22.

143 | *Ibid.*, p. 21.

144 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

145 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 42–43.

investigation of these cases and the independence of investigative bodies in the investigation process.¹⁴⁶

In general, the norms on drug crimes in the Criminal Code of Georgia are mostly in line with EU policy.¹⁴⁷ For years, Georgia had a very strict drug policy. The Constitutional Court of Georgia played a significant role in mitigating it – first declaring imprisonment for marijuana use unconstitutional,¹⁴⁸ then completely abolishing related criminal sanctions and decriminalising it.¹⁴⁹ Useful steps can still be taken in the direction of drug policy and proper planning at the strategic level.

Georgian legislation regarding foreign citizens and migrants is generally harmonised with EU law, but issues related to ensuring migrants' rights remain a challenge, and migrant reintegration programs need to be developed. The country's immigration policy needs to be refined, as issues related to residence permits and migrant reception are not harmonised. A particular challenge is Georgian citizens applying for asylum in EU countries; the statistics are very high. According to the European Commission's recommendation, the Ministry of Internal Affairs should improve data exchange for inter-agency risk prevention and analytics in the direction of customs management. It is necessary to increase the funding and budget of the Agency of Internally Displaced Persons, Eco-migrants and Livelihood Provision, as the resources allocated to perform its assigned functions and tasks are insufficient.¹⁵⁰

The European Commission's fourth recommendation addressed the activities of the anti-corruption agency, special investigative, and personal data protection services, ensuring their institutional independence and effectiveness.¹⁵¹ Therefore, these issues were logically included in the report related to candidate status. In the direction of fighting corruption, the European Commission focused on several main topics: improving the activities of the anti-corruption bureau and legislation on fighting corruption; ensuring the independence of the anti-corruption bureau's activities; creating a realistic, result-oriented anti-corruption strategy and action plan; reviewing Georgia's decision to withdraw from the next round of monitoring in OECD/CAN and implementing previous recommendations; and de-oligarchisation.¹⁵²

The Anti-Corruption Bureau was established by legislation in November 2022 and began operations on 1 September 2023.¹⁵³ It is noteworthy that the parliament did not initially send the anti-corruption legislation to the Venice Commission.¹⁵⁴ Eventually, the Venice Commission checked the law.¹⁵⁵ Today, the Anti-Corruption Bureau does not have

146 | *Ibid.*, p. 47.

147 | *Ibid.*, pp. 45–46.

148 | Decision N1/4/592 of the Constitutional Court of Georgia, 24 October 2015.

149 | Decision N1/13/732 of the Constitutional Court of Georgia, 30 November 2017.

150 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, pp. 49–52.

151 | European Commission, Opinion on the EU Membership Application by Georgia, Brussels, 17 June 2022.

152 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 25.

153 | Law N2204-IX06-X03 of Georgia amending the Law 'On Conflict of Interests and Corruption in Public Institution', 30 November 2022.

154 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 26.

155 | See Venice Commission, CDL-AD(2023)046.

investigative authority,¹⁵⁶ which causes additional problems. According to the European Commission's assessment, the function of investigating corruption is distributed among several state bodies, which creates a consolidation problem. Ensuring the autonomy of bodies responsible for investigating corruption and the transparency of appointing their leaders is also a significant challenge.¹⁵⁷ On 17 December 2025, the Parliament of Georgia adopted legislative amendments under which the Anti-Corruption Bureau, as an independent legal entity, will be abolished as of 2 March 2026, and its powers will be transferred to the State Audit Office.¹⁵⁸ This development, naturally, further undermines expectations regarding the credibility and effectiveness of the state's actions in the field of anti-corruption policy.

The Parliament of Georgia initiated a draft law 'On De-Oligarchization', but its content was extremely problematic and uncertain; the legitimate purpose of adopting the law clearly differed from the legal regime to be established by the act itself.¹⁵⁹ The draft law was negatively assessed by the Venice Commission and was not recommended for adoption.¹⁶⁰ The issue of de-oligarchisation is still open in Georgian reality and certainly needs proper response, especially since there are virtually substantiated suspicions about the transparency of state governance, informal management, and influences.

5. Conclusion

The protection of human rights and ensuring the rule of law are not finite goals; they are practical systems of values that, along with legal foundations, require well-functioning, sustainable practices and daily implementation. The issues and challenges raised in the European Commission's 2023 report serve as a good aid for the Georgian legal system to diagnose, study, and address political and legal symptoms identified through external observation.

Several fundamental issues remain challenging in the area of human rights:

1. The effectiveness of legal mechanisms for protecting fundamental rights, especially the timeframes for resolving cases in court, legal consequences, and reasoned decisions;
2. The practical application of freedom of assembly and the proportionality of force used during protests, ensuring freedom of association, and the threat of stigmatisation and restriction of activities of civil society representatives;
3. The fulfilment of the state's positive obligations in the field of freedom of speech and expression, creating a free environment for media independence and information dissemination. Particular attention should be paid to the process and effectiveness of investigating actions directed against freedom of expression;

156 | See Law N2204-IXთბ-XXIII of Georgia amending the 'Law on Conflict of Interests and Corruption in Public Institution', 30 November 2022.

157 | European Commission, Georgia 2023 Report, SWD(2023) 697 Final, Brussels, 8 November 2023, p. 27.

158 | Law N1290-IVთბ-XXIII of Georgia amending the 'Law on Conflict of Interests and Corruption in Public Institution', 17 December 2025.

159 | See Sarukhanishvili, 2023, pp. 32–43.

160 | See Venice Commission, CDL-AD(2023)017.

4. Eliminating discrimination, ensuring the validity of rights protection mechanisms established by anti-discrimination legislation, protecting equality for vulnerable groups, and their full integration into society.

The practical operation of fundamental rights is inconceivable without effective mechanisms for their protection. Among these, the most important are the constitutional and common courts. The judiciary should be transparent, based on democratic self-governance, with a well-functioning system of judicial accountability and freedom of expression for judges. Justice is the key element of the rule of law; a fair trial determines the priority and actualisation of the human being as the supreme value of law.

The issues presented in the European Commission's report are real and require appropriate response, not for their formal satisfaction, but for the real development and progress of the state. The protection of fundamental human rights and the creation of an appropriate political and legal environment in the country ensures the existence of legal security not only at the general national and social level but also for every individual. This, in turn, transforms human rights into real, active law and an integral part of the legal order in the country.

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