Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
75
1949 - 2024
CONSEIL DE L'EUROPE

Doc. 16018
25 June 2024

Challenges to democracy in Georgia

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Claude KERN, France, Alliance of Liberals and Democrats for Europe, and Ms Edite ESTRELA, Portugal, Socialists, Democrats and Greens Group

Summary

The Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) expresses its deep concern about the recent developments in Georgia that raise questions about the country's commitment to international democratic norms and Euro-Atlantic integration, as well as its willingness to honour its membership obligations and accession commitments to the Council of Europe. The committee considers that the Law on transparency of foreign influence as well as the manner in which it was adopted by the Georgian Parliament, are incompatible with European democratic and human rights standards and urges the authorities to repeal this law in its entirety without any delay.

In the view of the committee, the adoption of the law cannot be seen as separate from the upcoming parliamentary elections in Georgia that will take place on 26 October 2024. It fears that the law will l have an adverse effect on the conduct of these elections and on the trust of the stakeholders and public in their outcome, which could affect the legitimacy of the elections.

The committee deplores the excessive and disproportionate use of force by the police and the violent attacks and intimidation campaigns against demonstrators, civil society activists, journalists, and members of parliament, which amount to a crackdown on legitimate displays of disagreement and dissent. These attacks and acts of intimidation are not sufficiently investigated and condemned by the authorities, which could lead to a climate of impunity for such acts.

The controversial adoption of the Law on transparency of foreign influence is not an isolated event, but the culmination of a series of developments that clearly indicate a democratic backsliding by the country. The committee urges the authorities to reverse this trend and fully commit themselves to honouring the membership obligations and accession commitments to the Council of Europe.

At the same time the committee reiterates its commitment to co-operation and dialogue with all political forces in the country and pays tribute to the commitment of Georgian citizens to the country's democratic development and further Euro-Atlantic integration, which they have continued to demonstrate during the recent developments. The hopes and aspirations of the Georgian citizens for a democratic future firmly anchored within the European family must be recognised and respected.

1. Reference to committee: Bureau decision, Reference 4817 of 24 June 2024.

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A. Draft resolution[2]

1. The Parliamentary Assembly expresses its deep concern about the recent developments in Georgia that raise questions about the country's commitment to international democratic norms and Euro-Atlantic integration, and about its willingness to honour its membership obligations and accession commitments to the Council of Europe.

2. The Assembly takes note of and expresses its full support for the urgent Opinion of the European Commission for Democracy through Law (Venice Commission) on the Law on transparency of foreign influence, and considers that this law, as well as the manner in which it was adopted by the Georgian Parliament, are incompatible with European democratic and human rights standards, as reflected in the obligations and commitments of Georgia to the Council of Europe. The Assembly is of the view that this law has nothing to do with financial transparency of non-commercial entities, including civil society organisations and media – for which a comprehensive legal framework already exists in Georgia – nor with preventing nefarious covert foreign interference, rather, it allows undue political control by the authorities over civil society and the media. The law should therefore be repealed in its entirety without any delay.

3. The Assembly is deeply concerned about the excessive and disproportionate use of force by the police and the violent attacks and intimidation campaigns against demonstrators, civil society activists, journalists, and members of parliament, which amount to a crackdown on legitimate displays of disagreement and dissent. It is also concerned that these attacks and acts of intimidation are not sufficiently investigated and condemned by the authorities and that this could lead to a climate of impunity for such acts. The Assembly stresses that such actions have no place in a democratic society. It is now urgent that all reports of excessive use of force, violent attacks and intimidation campaigns be fully and transparently investigated by the appropriate authorities and that perpetrators be to brought to justice. The authorities should without delay take every necessary measure and precaution to uphold and protect the safety of all protesters, civil society activists, journalists, and members of parliament, irrespective of their opinion on this law.

4. In that context the Assembly reiterates its concerns expressed in Resolution 2438 (2022) as regards the Georgian Law on Administrative Offences, which is fundamentally flawed and allows for an overbroad application of administrative detention and excessively high fines, and which is vulnerable to abuse. The number of persons arrested or issued with – high – fines under this law during the recent demonstrations is consequently to be deplored.

5. The Assembly is concerned moreover that the controversial adoption of the Law on transparency of foreign influence is not an isolated event, but the culmination of a series of developments that clearly indicate a democratic backsliding by the country. This trend needs to be reversed. The Assembly urges the Georgian authorities to recommit in clear terms to the country's democratic consolidation and further European integration, and to honour Georgia's membership obligations and accession commitments to the Council of Europe, not only in words but also by concrete and tangible actions.

6. The adoption of the Law on transparency of foreign influence cannot be seen in isolation from the upcoming parliamentary elections in Georgia that will take place on 26 October 2024. The Assembly fears this law is bound to have an adverse effect on the conduct of these elections and on the trust of the stakeholders and public in their outcome, which could affect the legitimacy of the elections. This is especially the case as the adoption of this law, despite the widespread opposition against it within the Georgian society, has inevitably turned the upcoming elections into a de facto referendum on Georgia's democratic trajectory and foreign alignment, considerably raising the stakes in these elections and adding to polarisation and tensions in the pre-electoral climate.

7. The Assembly underscores furthermore its concern about the recent adoption – despite recommendations by the Venice Commission to the contrary – of amendments to the legal framework for elections in Georgia that change the manner in which the chairperson and the non-partisan members of the Central Election Commission (CEC) are elected, and that abolished the position of a vice president of the CEC appointed by the opposition. These changes will make it possible for the ruling majority, by itself, to select and appoint the chairperson and non-partisan members of the CEC, which would, in effect, give it a majority of members on the CEC. The concerns of the Assembly are compounded by last minute amendments to the Electoral Code, adopted in a hasty manner without consultation with the stakeholders, which altered the legally required majorities for decision making by the CEC. Combined with the changes to the election process of the chairperson and non-partisan CEC members, these amendments would potentially give the ruling majority control over all CEC decisions.

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2. Draft resolution adopted unanimously by the committee on 25 June 2024.

8. It is clear that these changes to the Electoral Code will have a major impact on the perception and trust of the stakeholders in the impartiality and fairness of the election administration. This, in turn, will impact the manner in which the legitimacy and fairness of the elections, and their results, will be perceived and accepted by the stakeholders and the Georgian public at large.

9. Against this backdrop, the Assembly is concerned about the real possibility that – as a result of the Law on transparency of foreign influence – respected civil society organisations, with a long-standing and extensive experience in election observation, might no longer be able to observe the elections. Their exclusion as election observers would, in the eyes of the Assembly, be entirely unacceptable and certainly counterproductive.

10. The Assembly expresses furthermore its strong apprehension as regards the current draft laws on the "protection of family values and minors", which are incompatible with international human rights standards, and in particular the European Convention on Human Rights (ETS No. 5). The presentation of these controversial draft laws on such emotionally charged issues during a pre-electoral period is regrettable. In that context the Assembly expresses its deep concern about the political manipulation of LGBTI-phobia in the run-up to elections. It calls upon the authorities to take full account of the concerns and recommendations contained in the Venice Commission Opinion on these laws.

11. The Assembly would like to pay tribute to the commitment of Georgian citizens to the country's democratic development and further Euro-Atlantic integration, which they have continued to demonstrate during the recent developments, despite the hostile and repressive political climate. The hopes and aspirations of the Georgian citizens for a democratic future firmly anchored within the European family cannot be put aside: they must be recognised and respected.

12. The Assembly expresses its strong hope for Georgia's democratic consolidation and further Euro-Atlantic integration. It reiterates its commitment to co-operation and a constructive and open dialogue with the authorities, as well as with all other political forces and sectors of Georgia's society, to reverse the recent backsliding and to uphold the honouring of Georgia's membership obligations and commitments to the Council of Europe.

13. The Assembly is aware of and concerned about already existing, or initiatives to adopt, similar problematic legislation in other member States that would allow for political control by the authorities over civil society and the media. The Assembly urges all member States to remain mindful of their membership obligations and refrain from adopting legislation that run counter to the democratic and human rights standards of the Council of Europe.

14. The Assembly invites its Monitoring Committee to continue to closely follow the ongoing developments in Georgia, including with regard to the upcoming parliamentary elections and their outcome, and report back to it immediately if the developments so warrant.

B. Explanatory memorandum by Mr Claude Kern and Ms Edite Estrela, co-rapporteurs

1. Introduction

1. Amid widespread domestic protests and ignoring international calls to the contrary, the Georgian Parliament adopted, on 14 May 2024 in its third reading, following an unnecessarily hasty process, the Law on transparency of foreign influence. This law is sometimes referred to as the "foreign agents' law". The hasty adoption of this law, without waiting for the Opinion of the European Commission for Democracy through Law (Venice Commission) that was scheduled to be issued only a few days later, was strongly criticised domestically as well as by the international community, including by the President of Parliamentary Assembly and the Secretary General of the Council of Europe.

2. On 18 May 2024, the President of Georgia, Salome Zourabichvili, vetoed the law, citing its incompatibility with the Georgian Constitution, international norms, and standards, and with Georgia's obligations and commitments to its international partners.

3. On 20 May 2024, the Venice Commission issued its urgent Opinion[3] on the law, which had been requested by the President of our Assembly. The conclusions of this Opinion, which we will outline in more detail in a next section, were unequivocal: the law in its current form is fundamentally flawed; it undermines freedom of expression and association and it harms political pluralism and democracy. The Venice Commission therefore recommended that the law in its current form be repealed in its entirety.

4. Concerned about the impact of this law on Georgia's democratic trajectory, as well as about the deep divisions its introduction was causing in Georgian society, the Assembly organised a current affairs debate on "Recent challenges to democracy in Georgia" during its Standing Committee meeting in Vilnius, on 24 May 2024. During this debate, a new appeal was made to the Georgian authorities to repeal this law. These efforts were to no avail. On 28 May 2024, the Georgian Parliament voted with 66 votes in favour and none against, to override the presidential veto to the law. This decision was strongly condemned domestically and by Georgia's international partners and friends.

5. The adoption of the law, as well as the developments surrounding it, raise clear questions about Georgia's commitment to European democratic norms and principles and about its willingness to honour its membership obligations and accession commitments to the Council of Europe. For this reason, on 24 June 2024, on a proposal of the Bureau, the Assembly decided to organise a debate under urgent procedure on "Challenges to democracy in Georgia" and seized the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) for report. The same day, the Monitoring Committee, in line with established procedure, appointed us as rapporteurs.

6. In this report, we will outline the events and climate surrounding the adoption of the Law on transparency of foreign influence as well as the concerns and recommendations expressed in the Venice Commission Opinion on this law.

2. Law on transparency of foreign influence

7. As we outlined in the information note[4] following our visit to Tbilisi in March 2023, as well as in the 2023 report on the progress of the Assembly's monitoring procedure,[5] in February 2023, the ruling majority introduced in the parliamentary agenda a controversial draft law on "Transparency of Foreign Influence", which would force legal entities (organisations and individuals, including media outlets) who receive more than 20% of their resources from "foreign powers" to register as foreign agents and be subjected to intensive monitoring by the authorities. This draft law bore uncanny similarities with the Russian foreign agents' law and the Hungarian "anti-Soros laws" and led to an outcry within Georgian society. It was criticised by the international community, which warned the Georgian authorities that this draft law raised serious questions as regards its compatibility with European democratic and human rights standards, not least the European Convention on Human Rights (ETS No. 5). In the face of the massive protests by Georgian society, increasing in strength despite attempts by the police to forcibly disperse them, the ruling majority announced on 9 March 2023 that they would withdraw the draft law "on Transparency of Foreign Influence". Subsequently, on 10 March 2023, the parliament voted down the draft law during its second reading in parliament.

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3. CDL-PI(2024)013.
4. AS/Mon(2023)09rev.
5. Doc. 15893.

8. Unexpectedly, and despite firm promises that it would not attempt to re-introduce such legislation, the ruling majority announced on 4 April 2024 that it would reintroduce the draft law on "transparency of foreign influence" on the parliamentary agenda. The draft law proposal was an exact copy of the version that the ruling majority had withdrawn in March 2023. The only[6] small and cosmetic change was that the term "foreign agent" had been replaced by "organisation pursuing the Interests of a Foreign Power", which is hardly a less stigmatising and contentious term.

9. According to the law, all non-commercial legal entities, including broadcasters and media outlets, as well as any legal entity that alone or jointly owns a media outlet or internet domain/website that disseminates information in the Georgian language, and that receives more than 20% of its funding or revenue from "foreign powers"[7] are considered to be "organisations pursuing the Interests of a Foreign Power" and obliged to register with the National Agency of Public Registry, which is publicly accessible.

10. Organisations included in this registry would be subject to wide ranging and intrusive reporting and accounting obligations. Compliance with these requirements is monitored by the Ministry of Justice, which may request any personal data, including confidential data, from all individual persons, state organisations and legal entities. Failure by these individuals or legal entities to provide such data can result in a penalty of 5 000 GEL (approximately 1 650 EUR).

11. As was to be expected, the reintroduction of this very controversial draft legislation led to a renewed outbreak of massive protests, involving a wide cross section of Georgian society, including young people and students, academics, trade unions, civil society organisations and journalists, and the political opposition in Georgia. The reintroduction of the draft law was also condemned by the international community, which reiterated its deep concerns about its compatibility with European democratic and human rights standards, as well as about the commitment of the Georgian authorities to the country's Euro-Atlantic integration process.

12. In the light of the serious questions raised by this law, and in an effort to maintain a dialogue with the Georgian authorities based on European standards and norms, the President of the Assembly, on 15 April 2024, requested an urgent opinion of the Venice Commission on its contents.

13. In the meanwhile, domestic protests against the law intensified. This led to an increasingly polarised political climate, accompanied by harsh and contentious rhetoric from the authorities. Attempts to break up the protest by the police were characterised by disproportionate use of force, and there were also reports of attacks and intimidation of protesters, civil society activists, journalists, and opposition politicians. We will outline in detail our concerns about this apparent crackdown on protests and dissent against this law later in this memorandum.

14. Despite all the domestic and international protests, on 14 May 2024 the Georgian Parliament adopted in third and final reading the Law on transparency of foreign influence without waiting for the Venice Commission Opinion which was due to be issued a few days later. The adoption of this law in such an unnecessarily hasty fashion, without waiting for the Venice Commission Opinion, was strongly criticised by the international community, including by the President of the Assembly, who also condemned the attacks on civil society activists, media representatives and members of the opposition.[8] In her statement on 15 May 2024, the Secretary General of the Council of Europe expressed her deep disappointment with the adoption of the law without waiting for the imminent issuing of the Venice Commission Opinion, which she noted: "[did] not reflect the spirit of constructive dialogue".[9]

15. Reacting to this criticism, Prime Minister Irakli Kobakhidze stated that his party would be willing to consider amendments to the law in the context of its deliberations on an expected veto of the law by the President of Georgia "if the international community provided well-founded legal arguments" – presumably referring to the Venice Commission Opinion.

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6. A further change was made between second and third reading of the draft law that extended the obligation to provide information to the authorities – including confidential information – regarding entities on the foreign agents register to individuals, and not only to organisations and similar legal entities.
7. According to the law, "foreign powers" are agencies of foreign governments; individuals that are not citizens of Georgia; legal entities that are not established under Georgian organisations and organisations established under foreign legislation or international law (which includes any intergovernmental international organisation such as the Council of Europe). It is important to note that the 20% of funding is cumulative and not from a single foreign power. This means that any civil society organisations that would obtain more than 20% of its income from small contributions from a wide array of foreign individuals and organisations would still be obliged to register as an organisation pursuing the interests of a foreign power.
8. Statement by the PACE President (14 May 2024).
9. Statement by the Secretary General (15 May 2024).

16. However, President Zurabichvili considered the law to be so fundamentally flawed and in contradiction with the Georgian Constitution and international law, that it would be impossible to improve through amendments. She therefore vetoed the law on 18 May 2024, via a single amendment to the law limiting its validity to one day.

17. The authorities condemned this presidential veto issued before the reception of the Venice Commission Opinion and accused her of closing the doors on any compromise[10] with the international community as a result.

18. Such criticism by the ruling majority is disingenuous and incorrect. Proper procedure would have been for the legislator to wait until the Venice Commission Opinion was received, so that any concerns and recommendations could be addressed before the law was adopted. It is not the responsibility of the President to do so and would effectively have meant that she would then have to be responsible for negotiating with the government about the compliance of the law with international standards. In addition, the presidential veto procedure is not the appropriate mechanism for reconciling a piece of draft legislation with international standards and is strictly time-limited to two weeks, which is not conducive to a proper amendment process of a fundamentally flawed piece of legislation.

19. On 20 May 2024, the Venice Commission issued its urgent Opinion on the Law on transparency of foreign influence. As already mentioned, the conclusions of this Opinion were unequivocal: the law in its current form is fundamentally flawed and should be repealed in its entirety (see Section 3).

20. The ruling party however denounced the Venice Commission Opinion on the day after its publication as "unfounded," "false," "manipulative," "unjustified," and even "paradoxical"[11] and questioned the objectivity of the Venice Commission itself. They made it clear they would not take into account any of the Venice Commission recommendations nor repeal the law.

21. On 28 May 2024, amid massive demonstrations, the Georgian Parliament overrode the presidential veto, and adopted the law with 84 votes in favour.[12] Again, strong condemnation from the international community was swift. European Council President Charles Michel called the adoption a step backwards that would move Georgia away from the European Union, while the US Administration announced a complete review of the relations between Georgia and the USA as well the implementation of sanctions, including visa restrictions for persons responsible for underminding Georgia's democracy. In a statement that we fully support, the Secretary General of the Council of Europe deplored the decision by the ruling majority to override the presidential veto and warned about the "law's adverse impact on informed public debate, pluralism, and democratic checks and balances, which could potentially jeopardise also the environment for free and fair elections".[13]

22. On 3 June 2024, in line with constitutional provisions, the Speaker of the Georgian Parliament signed the Law on transparency of foreign influence, which was published in the Official Gazette on 4 June 2024. The main provision of the law will come into force 60 days after its publication. Any non-commercial organisations including civil society organisations and media outlets, which receive more than 20% of their income from foreign entities will have to register with the Ministry or Justice or face heavy fines and possible closure. Despite this pressure, more than a hundred civil society organisations and media outlets have announced[14] that they will not register as foreign agents.

23. Several civil society organisations announced that they will challenge the law on transparency of foreign influence before the Georgian Constitutional Court, while also simultaneously preparing an appeal before the European Court of Human Rights.[15]

24. While excluding that she would be a candidate herself, either individually or as part of a party list, in the upcoming elections, President Zourabichvili announced on 26 May 2024 her initiative for a "Georgian Charter"[16] to provide a roadmap to resolve the ongoing political crisis and to safeguard the country's integration prospects. By 3 June 2024 this Charter had been signed by 17 political parties.

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10. Civil Georgia – "PM Accuses President of Blocking Dialogue by Vetoing Agents' Law" (20 May 2024).
11. Civil Georgia – "GD Slams Venice Commission Over 'Unfounded' Opinion on Foreign Agents Law." See also Civil Georgia – "PM Slams Venice Commission Critical Opinion on Agents Law as 'Faltering'" (23 May 2024).
12. The Georgian opposition had left the parliamentary chamber in protest before the vote.
13. Statement by the Secretary General (28 May 2024).
14. Democracy Research Institute (25 April 2024).
15. Georgian young lawyers' association (Gyla) (30 May 2024).
16. Civil Georgia – "Georgian Charter: President Proposes Unified Goals for Short-Term Parliament, Technical Government" (26 May 2024).

3. Venice Commission Opinion

25. For a full understanding of the deficiencies of the law and the concerns they raise regarding their compatibility with fundamental rights, we wholeheartedly recommend the full text of the excellent Opinion[17] of the Venice Commission. In this section we will limit ourselves to briefly summarising its main findings.

26. The Opinion notes that Georgia already has a well-developed legal framework regulating the registration as well as reporting obligations – including financial – for non-commercial (including civil society) and media organisations. The Civil Code requires non-commercial legal entities to register and provide information, *inter alia*, about their employees and sources of funding. In order to obtain tax benefits any donor has to provide the Revenue Service with detailed information published thereafter on the Ministry of Finances website about the programme or project that they are funding, including with regard to participating individuals. Furthermore, in order to obtain a broadcasting licence, broadcasters are already obliged to submit a detailed plan about the financing of their activities and programmes. Moreover, several laws exist to ensure financial transparency of commercial and non-commercial organisations to counter money laundering and financing of terrorist organisations as required by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) and the Financial Action Task Force (FATF). Lastly, the law on lobbying obliges anyone intending to influence a representative of an executive body or to influence legislation, to register in the register of lobbyists and to report regularly on their lobby activities and funding received therefore.[18] The existence of such an extensive legal framework obviates the need for an additional law of such a controversial and intrusive nature as the Law on transparency of foreign influence. This raises questions about its real need and purpose.

27. As outlined by the Venice Commission, any law that requires the public registration and reporting of foreign donations, as is the case of the Georgian law, interferes with several fundamental human rights, as guaranteed by the European Convention on Human Rights, of the organisations and individuals subject thereto, including the right to freedom of association, the right to freedom of expression, right to respect for private life as well as right to be free from discrimination. As set out by several human rights instruments and the case law of the European Court of Human Rights, any restrictions to these rights in a democratic society must meet very narrowly defined conditions of legality, legitimacy, proportionality, strict necessity and non-discriminatory. As the analysis of the Venice Commission clearly shows, none of these conditions is met by this law, which is thus incompatible with European and other international human rights standards.[19]

28. The Venice Commission notes that according to this law the assumption that an entity is under the influence of a foreign power is solely based on the condition that this organisation receives more than 20% of its funding from foreign sources, irrespective of the number and nature of these foreign sources. This assumption is questionable and erroneous. It runs counter to European standards and Venice Commission guidelines, which make it clear that no legislation limiting the rights of individuals or organisations by imposing on them registration and reporting obligations, can be based on such assumption. In particular, in the case of a country which is a candidate to the European Union and has thus committed to bringing its legislation in line with EU acquis, it is relevant to note the judgment of the European Court of Justice (ECJ) in case c78/18 concerning similar transparency legislation in Hungary. This held that legislation to increase transparency of financing of associations could not be justified solely on the basis of that erroneous assumption and therefore should be withdrawn.

29. By inappropriately categorising any organisation receiving foreign funding as an organisation that is pursuing foreign interest – for example being a “foreign agent” – the objective effect of the law will be to stigmatise such organisations and create a climate of mistrust against them.[20] The assertion by the authorities that this law would not impede the functioning of organisations that are so registered does not hold true. It is clear that organisations that are receiving more than 20% of their funding from foreign sources, will either have to forego this funding, or risk losing domestic funding when registered as a foreign agent, since many domestic donors would hesitate to be associated with a “foreign agent” given the stigmatising connotation of such a label. This is compounded by the cost and manpower that the registration and reporting processes foreseen by the law would entail from the organisations concerned. The law could lead to the closure of a considerable number of independent civil society organisations.[21] This was also confirmed by the Secretary

17. CDL-PI(2024)013.
18. CDL-PI(2024)013, §§ 18-26.
19. Idem.
20. CDL-PI(2024)013, §§ 72-74.
21. CDL-PI(2024)013, §§ 75-77.

General of Georgian Dream, Kakha Kaladze, who stated in an interview that: "If NGOs do not obey the Foreign Agents Law, fines will be imposed, then their assets will be frozen. They will not be able to function, nor will they be able to receive funds".[22]

30. As mentioned, organisations that are included in the register will be subject to broad and intrusive reporting and accounting obligations. In addition, the Ministry of Justice will proactively monitor all organisations to ensure that they are registered if they are funded by more than 20% by international sources. For this purpose, the Ministry may request any personal data, including confidential data from all individual persons, state organisations and legal entities. Failure by these individuals or legal entities to provide such data can result in a penalty of 5 000 GEL (approximately 1 650 EUR). In addition, harsh penalties are foreseen for organisations that would fail to register or report as required by the law. As highlighted by the Venice Commission, many organisations would face considerable difficulties, and most likely would be forced to disband, if such fines were to be imposed on them, even for relatively minor violations.

31. In short, in the words of the Venice Commission "The persistent and stigmatising obstacles concentrated in the hands of the state create a chilling effect",[23] and "[t]he Law, under the alleged aim of ensuring transparency, has the objective effect of risking the stigmatising, silencing and eventually elimination of associations and media which receive even a low part of their funds from abroad. A strong risk is created that the associations and media which come to be affected will be those who are critical of the government, so that their removal would adversely affect open, informed public debate, pluralism and democracy".[24]

32. The Georgian authorities have on several occasions asserted that the Georgian Law on transparency of foreign influence is similar to legislation existing in other countries, especially the US Foreign Agents Registration Act (FARA). However, as outlined in the Opinion, this assertion is erroneous. FARA requires any entity, commercial or non-commercial,[25] which acts on behalf of a foreign State or entity to register as a foreign agent, however the act foresees a very high degree of control before this is considered to be the case. Organisations in general do not need to register just because they receive a certain percentage of their funding from foreign entities, as is the case under the Georgian law.[26] Other differences also set these pieces of legislations far apart from each other.[27]

33. The Venice Commission regretted that such a sensitive and controversial law was drafted and adopted in such unnecessary hasty process and without any meaningful consultation with stakeholders, in clear contradiction with European democratic procedure and standards. We note that similar concerns have also been raised with regard to other pieces of important and controversial legislation that have recently been adopted in Georgia.

34. In conclusion, the Venice Commission strongly recommended that the authorities "abandon the special regime of registration, reporting and public disclosure requirements for civil society organisations, online media and broadcasters receiving foreign support, including the administrative sanctions"[28] and urged the authorities to repeal the law in its current form.[29]

4. Attacks and intimidation

35. While massive in scale, the demonstrations were by and large peaceful in nature, apart from some isolated incidents. However, they took place in an increasingly hostile and even repressive political climate, bordering on a crackdown on dissent.

36. We are extremely concerned about recurrent credible reports of the use of excessive and disproportionate force by the police in attempting to break up otherwise peaceful demonstrations. The reports that police were specifically targeting opposition leaders[30] and journalists[31] in order to prevent them from reporting on the protest are especially alarming. Such excessive and disproportionate use of force has been

22. Statement by the Secretary General of Georgian Dream, Kakha Kaladze (3 June 2024).
23. CDL-PI(2024)013, § 97.
24. Ibid., § 98.
25. And not in particular civil society and media organisations as in the case under the Georgian law on transparency of foreign influence.
26. CDL-PI(2024)013, § 40.
27. Civil Georgia – "US FARA vs. Georgian Foreign Agents Law: Three Major Differences" (11 April 2024).
28. CDL-PI(2024)013, § 99.
29. Ibid., § 100.
30. Civil Georgia – "UNM Chair Severely Beaten by Police During Rally Against Agents' Law" (1 May 2024).
31. Civil Georgia – "Media Watchdog Calls on Swift Investigation of Attacks against Journalists" (1 May 2024).

condemned by the international community.[32] It was also strongly and univocally condemned by the Georgian Human Rights Defender (Ombudsperson) who called upon the authorities to conduct an effective investigation into the reports of police violence and excessive use of force.[33] For its part, the Georgian Special Investigation Service announced, on 8 May 2024, that it had started an investigation into the allegations of police violence including the brutal police assault on United National Movement (UNM) Chair Levan Khabeishvili.

37. It is to be regretted that these investigations do not seem to have led to any tangible result. Following a short-lived lull over the orthodox Easter weekend, excessive and disproportionate use of force by the police is reportedly continuing unabated[34] and unpunished. On 28 May 2024, Mr Zviad Kharazishvili, the Head of the Special Tasks Department of the Ministry of Internal Affairs – a body which has reputation for excessive use of force – reportedly admitted[35] beating protesters and acknowledged the existence of a special list of people to be targeted by the police.[36] To our deep concern, no formal investigation seems to have been started by the Ministry of Foreign Affairs into these admissions, nor has Mr Zviad Kharazishvili been suspended from his duties pending an investigation.

38. Of equal concern are the recurrent reports of violent attacks and intimidation campaigns against civil society activists, media representatives and members of the opposition opposing the Law on transparency of foreign influence. Civil society activists and opposition politicians, as well as their family members, receive harassing telephone calls in which their lives are threatened, and posters with their pictures and texts such as "agents" and "enemies of the State", or worse, are plastered around their residences and offices.[37] That these are not hollow threats is clear from the reports of demonstrators and civil activists being ambushed by groups of unknown people and beaten up.[38]

39. Unfortunately, the attacks on civil society activists are not new. Already in our information note following our visit to the country in March 2023, we expressed concern about increasingly frequent attacks against civil society organisations and their leadership.[39]

40. While these attacks and intimidation campaigns are conducted by anonymous individuals, many of the victims reported that their attackers or those trying to intimidate them and their family members, seem to have intimate knowledge of private information that they consider could only be known to the authorities.[40] In such a climate, the announcement by the Speaker of the Georgian Parliament that the ruling party had decided to establish "a database containing information on all individuals 'who are involved in violence, blackmail, threats and other illegal acts', or 'who publicly endorse these actions'",[41] is especially worrying.

41. The vast majority of the attacks and intimidation campaigns have been directed at protesters, civil society activists, journalists, and members of parliament that oppose the Law on transparency of foreign influence. While less serious in scale and scope, an increasing number of incidents have been reported in which members of the ruling majority having voted in favour of the law faced insults such as "slaves" and "traitor" from other persons, or whose property has been defaced.[42] Such incidents are also to be condemned and should cease immediately.

42. Numerous citizens have received significant fines or have been arrested for their participation in the demonstrations. This is perceived by many counterparts as an attempt to dissuade citizens from participating in the demonstrations. These fines and arrests have mostly been applied on the basis of the law on administrative offences of Georgia, which is in itself a problematic piece of legislation. We already raised our concerns regarding this law in our 2022 report to the Assembly on the honouring of obligations and commitments by Georgia.[43] In that report we underscored that "this law dates from the Soviet era and its

32. Civil Georgia – "International Outcry over Police Crackdown on Protest against Foreign Agents Bill" (3 May 2024).
33. Civil Georgia – "Public Defender: Use of Force Against Peaceful Protesters Disproportionate" (1 May 2024).
34. Civil Georgia – "Man Severely Beaten in Car in Another Case of Police Brutality" (11 May 2024).
35. Facebook video.
36. Civil Georgia – "Special Tasks Department Chief Admits to Battering Targeted Protesters at anti-Agents Law Demonstrations" (28 May 2024).
37. Civil Georgia – "Orchestrated Intimidation of Protesters Against Agents' Bill" (11 May 2024).
38. Civil Georgia – "Attacks on the Protest Activists in the Streets of Tbilisi" (9 May 2024).
39. AS/Mon(2023)09rev, § 8.
40. Civil Georgia – "GYLA Raises alarm over surge in abusive phone calls amid protests, Alleges Personal Data breach" (8 May 2024). See also Civil Georgia – "Intimidation Campaign Against Opposition, Civil Society, Gov't Critics as Repressions Announced by GD MPs" (1 June 2024).
41. Civil Georgia – "Speaker Announces Launch of Incriminating Database on Opponents" (8 May 2024).
42. Civil Georgia – "Citizens Confront GD MPs Following Adoption of Foreign Agents' Law" (1 June 2024).
43. Doc. 15497.

complete revision is long overdue. Many of its provisions have already been judged as unconstitutional by Georgia's Constitutional Court, while reportedly several other provisions would suffer the same fate if challenged before it. As a result, the legal framework allows for overbroad application of administrative detention, as well as excessively high fines, and is vulnerable to abuse".[44] Regrettably, despite the law clearly being fundamentally deficient, the parliament adopted in April 2021 a series of controversial amendments to the Law on Administrative Offences. As we outlined in our report, "[t]hese amendments, *inter alia*, considerably increase the penalties for repeated hooliganism and disobeying the police and expand the duration of administrative detention. These amendments have been criticised by the opposition and civil society, as well as international community, as running counter to the principles of freedom of expression and assembly". Recommendations by the Assembly to draft and adopt an entirely new law on administrative offences[45] were, despite promises to the contrary, not addressed. In this context the arrests and fines issued under this law during the ongoing demonstrations are of concern.

5. Democratic backsliding and upcoming elections

43. The recent developments around the adoption of the Law of transparency of foreign influence have raised extremely serious questions about the commitment of the Georgian authorities to the country's democratic trajectory and further Euro-Atlantic integration, including European Union membership. Regrettably, as we will outline, the adoption of this law was the culmination of a series of developments that similarly raise questions about the authority's willingness to honour Georgia's obligations and commitments to the Council of Europe.

44. Already following our visit in March 2023, we stated that Georgia was at a crossroads, and we expressed our concern that at a key moment of Georgia's integration process, the reform process was clearly stalling.[46] In that respect we especially expressed our concern about the reforms needed to ensure the independence of the judiciary. Instead of the holistic reforms demanded by, *inter alia*, the Assembly and the European Commission, only a small number of partial reforms have been adopted and these failed to address the key concerns raised. This was especially the case with regard to the High Council of Justice (HCJ) whose functioning is widely considered to be one of the main obstacles for a genuinely independent and impartial judiciary in Georgia. Instead of the comprehensive reforms which were recommended, the Georgian Parliament adopted, on 30 December 2021, in a fast-track procedure,[47] amendments to the Law on Common Courts that significantly increased the powers of the HCJ, especially in disciplinary matters,[48] potentially increasing the already problematic control of the HCJ over the judiciary.[49]

45. As outlined in the progress report on the Assembly's monitoring procedure (January-December 2023),[50] on 19 October 2023, the Georgian Parliament adopted, in an accelerated procedure, a series of controversial amendments to the Law on Broadcasting that expand the powers of the national media regulator, the Georgian National Communications Commission. Civil society organisations and media stakeholders have expressed concern that these amendments could limit freedom of the media and stifle critical broadcasters. In an expertise on the draft law, the Directorate General of Human Rights and Rule of Law of the Council of Europe considered that a number of provisions would likely be in breach of Article 10 of the European Convention on Human Rights. In addition, the expertise underscored that the national regulatory authority could not be considered an independent institution according to Council of Europe standards on the independence of regulatory bodies. These concerns were not satisfactorily addressed in the adopted law.

46. In a welcome development, Georgia was granted candidate status to the European Union on 8 November 2023, in recognition of the overwhelming support of the Georgian population for European integration and EU membership, even though the country had only satisfactorily addressed 3 out of the 12 priority areas originally set as a condition for candidate status. In addition to addressing the remaining priority

44. Ibid., § 119.
45. Resolution 2438 (2022), § 12.
46. Statement by the co-rapporteurs (4 April 2023).
47. These amendments had only, and unexpectedly, been placed on the parliament's agenda on 27 December 2021, forgoing any meaningful consultation process.
48. CDL-AD(2023)006.
49. The HCJ which, in line with European standards is composed in majority of judges, is according to the Constitution responsible to ensure the independence and efficiency of the judicial system. However, in Georgia the Council in practice functions as a corporatist body protecting the interest of a small group of judges who exert considerable and undue control over the judiciary.
50. Doc. 15893, § 63.

areas, the European Council has set 9 additional conditions for the opening of accession negotiations, including a holistic reform of the judiciary and the HCJ as well as the establishment of a vetting procedure for the judiciary.[51] However, the establishment of such a vetting procedure has been firmly rejected by the Georgian authorities, on the grounds that such a procedure would be a violation of the country's sovereignty. This refusal of a condition is in line with the apparent indifference of the authorities to the repeated and clear warnings by the relevant European partners that the adoption of the Law on transparency of foreign influence would deal a blow to Georgia's EU integration trajectory. It is therefore very surprising that Prime Minister Kobakhidze claimed on 28 May 2024, that the adoption of the Law on transparency of foreign influence "will create a better basis for ensuring Georgia's accession to the European Union".[52]

47. Unfortunately, in the area of electoral legislation, developments are worrying. A number of changes have been made to the legal framework governing these elections which may adversely impact the conduct of these elections and the public trust in the outcome, potentially undermining the legitimacy of the elections.

48. On 5 October 2023, the Georgian Parliament adopted in first reading a series of amendments to the Electoral Code and Rules of procedure of the Parliament, changing the composition of the Central Election Commission of Georgia and the manner in which its chairperson and the non-partisan members on the CEC are elected. According to these amendments, the candidates for the chairperson and non-partisan members on the CEC will be proposed by the Speaker of the Parliament and no longer by the President of Georgia. While the amendments set a 3/5 qualified majority for the election of these persons in the first round of voting, this majority will be lowered to a simple majority in subsequent rounds of voting as an anti-deadlock mechanism. In addition, the amendments abolish the position of a vice president of the CEC to be appointed by the opposition.

49. These draft amendments were subsequently sent to the Venice Commission for opinion by the Speaker of the Parliament. In its Opinion,[53] the Venice Commission noted that these amendments contained fundamental changes to the election legislation for which there was no wide consensus among the various stakeholders, and which would be adopted less than a year before the elections are scheduled to take place, contrary to European standards. Secondly, while recognising the need for an anti-deadlock mechanism, the Venice Commission strongly recommended the introduction of qualified majorities in subsequent rounds of voting to ensure that the chairperson and non-partisan members of the CEC could count on the support and trust of a wide range of stakeholders.[54] The Venice Commission noted that, in effect, under the rules proposed by the amendments, it would be possible for the ruling majority alone to select and appoint the chairperson and non-partisan members of the CEC, giving it a majority on the CEC.

50. Notwithstanding this Opinion, on 20 February 2024, the parliament adopted the amendments to the Electoral Code and Rules of Procedure in final reading, without any changes to the draft as adopted in first reading, thus ignoring the recommendations and concerns expressed by the Venice Commission in its Opinion. On 5 March 2024, the President of Georgia vetoed the amendments, citing the Venice Commission recommendations, but this veto was overturned by the parliament on 19 March 2024.

51. These amendments allowing the ruling party to control the composition of the Central Election Commission, were compounded by the adoption, on 30 May 2024, of a series of amendments to the electoral legislation that changed the CEC's decision-making rules. In combination with the changes to the appointment process of CEC members outlined above, these amendments would in effect allow control by the ruling majority over all CEC decisions.

52. While we want to make it explicitly clear that we do not wish to question the integrity of the individual CEC members, it is clear that these combined changes will have a major impact on the perception and trust of the stakeholders in the impartiality and fairness of the election administration. This, in turn, will impact the manner in which the legitimacy and fairness of the elections, and their results, will be perceived and accepted by the stakeholders and the public at large. This would be especially problematic if, as a result of the Law on transparency of foreign influence, respected civil society organisations, with extensive experience in election observation, were no longer be able to observe the elections. For the legitimacy of the elections, it is not only essential that their conduct and administration are impartial and fair, but also that they are perceived as such by the stakeholders and electorate.

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51. SWD_2023_697, European Commission report on Georgia, chapter 23. See also Georgia – "Statement by the Spokesperson on the developments around judicial reform" (22 March 2024).
52. Civil Georgia – "PM: Agents' Law will Create a Better Basis for Ensuring Georgia's Accession to the EU" (28 May 2024).
53. CDL-AD(2023)047.
54. Ibid, § 56-59.

53. Lastly, on 25 March 2024, the ruling majority tabled two draft constitutional laws[55] on the "protection of family values and minors". These draft laws prohibit – *inter alia* – any activities or gatherings that are seen as promoting or popularising same sex relationships or gender re-assignment; restrict marriage to "genetically" heterosexual couples and limit the adoption or fostering of minors to heterosexual adults; and prohibit any decision by any authority or individual person that would directly or indirectly restrict the use of terms defined by gender. These proposals are of grave concern as regards their incompatibility with international human rights standards, and in particular the European Convention on Human Rights. On 16 April 2024, the Monitoring Committee requested an opinion of the Venice Commission on these draft constitutional laws. It is of concern that such controversial proposals on an emotionally charged subject have been launched in a polarised pre-electoral political environment. We regret the clear indications that their introduction was indeed primarily for electoral purposes, in what the previous Commissioner for Human Rights, Dunja Mijatović,[56] has categorised as the political manipulation of LGBTI-phobia in the run-up to elections. We urge the authorities to fully take into account all the conclusions and recommendations contained in the Venice Commission Opinion[57] on these laws.

6. Conclusions

54. Until recently, Georgia was regarded as an example in the region for its capacity to reform and its willingness to co-operate with the Council of Europe in honouring its membership obligations and commitments. What set Georgia apart and what made it an example was its clear willingness to engage in an open and constructive dialogue, in order to ensure that its policies and reforms adhered to the highest European standards and norms.

55. Sadly, and to our regret, recent developments have raised serious questions about the country's willingness to honour its membership obligations and accession commitments to the Council of Europe. Constructive co-operation and dialogue have been replaced by harsh and uncompromising rhetoric and attacks on anyone that expresses concern or dissent about policies implemented by the authorities. Progress has been replaced by backsliding.

56. The Law on transparency of foreign influence, as well as the manner in which it was adopted are in clear violation of European democratic and human rights standards, as well as the obligations and commitments of Georgia to the Council of Europe. This law has nothing to do with transparency – for which a comprehensive legal framework is already existing in Georgia – or with preventing malicious covert foreign interference. Rather, it is clearly aimed at establishing political control over civil society and the media. The law should be repealed in its entirety without further delay.

57. The demonstrations and reaction of the Georgian society to the introduction of the Law on transparency of foreign influence underscore the high expectations and commitment of citizens to the country's democratic consolidation and further Euro-Atlantic integration. We therefore remain convinced and hopeful about Georgia's proven capacity to overcome the challenges, no matter how profound, on its path.

58. A clear and simple question should therefore be asked to the current authorities: are they still committed to the country's democratic consolidation and further European integration? If affirmative, are they ready and willing to honour the country's membership and accession commitments to the Council of Europe?

59. From our side we reiterate the commitment of the Assembly to co-operation and constructive dialogue. But valid concerns expressed about the direction of Georgia's democratic development need to be addressed openly and constructively. Confrontation needs to be replaced by co-operation and dialogue.

60. The adoption of the Law on transparency of foreign influence and the developments surrounding it cannot be seen separate from the upcoming parliamentary elections in Georgia. It is clear that these developments will have a major impact on the electoral environment and process, as well as the manner in which the fairness and legitimacy of these elections, and their outcome, will be perceived by the stakeholders and Georgian electorate.

61. Given the importance of the next elections, and the need for them to accepted and legitimate it will be important for the Assembly to deploy as large observation delegation as possible in the framework of an international election observation mission.

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55. We have been informed that on 4 June 2024, the same legislative package was tabled by the ruling majority as normal law that would not need a qualified majority to be adopted.
56. Statement by the Commissioner for Human Rights (27 March 2024).
57. CDL-AD(2024)021.

62. We intend to participate actively in the observation of the elections and will return to the country immediately after their conclusions in the framework of the preparation of our next report on the honouring of obligations and commitments by Georgia to the Council of Europe.