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**Embracing or Resisting the EU's Promotion of the Democratic
Rule of Law? A Comparative Analysis of the Balance of
Powers in Georgia and Armenia**

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Abstract

The thesis seeks to delineate the reform paths of Georgia and Armenia, whose geographical positions as enclaves between East and West have historically made their identity formation problematic, as evidenced in a rather turbulent nation-building process since their independence from the USSR. By analysing the reforms impacting the three constitutional branches - legislative, executive, and judiciary - and their implications on the balance of power, the thesis delves into the political culture of the two states, identifies the prevailing political patterns, and, based on recent developments, assesses the current democratic state of their institutions. Their different positioning vis-à-vis the EU makes them interesting subjects for comparison, helping to understand how much this factor truly reflects their level of internal democratisation, and allowing for an evaluation of the EU's actual role compared to domestic actors in shaping such transition.

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List of Acronyms

AA	Association Agreement
APNM	Armenian Pan-National Movement
ARF	Armenian Revolutionary Federation
AT	Associated Trio
CEPA	Comprehensive and Enhanced Partnership Agreement
CIS	Commonwealth of Independent States
CoE	Council of Europe
CSF	Eastern Partnership Civil Society Forum
CSO	Civil society organisation
CSP	Country Strategy Paper
CUG	Citizen's Union of Georgia
DCFTA	Deep and Comprehensive Free Trade Area
DRoL	Democratic Rule of Law
EaP	Eastern Partnership
ECHO	European Civil Protection and Humanitarian Aid Operations
EEAS	European External Action Service

EEU	Eurasian Economic Union
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights
EIP	Economic and Investment Plan
ENI	European Neighbourhood Instrument
ENP	European Neighborhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EPF	Eastern Partners Facility
EPIC	Facility for Eastern Partnership Investment in Connectivity
ESS	European Security Strategy
EU	European Union
GAJ	General Assembly of Judges
GD	Georgian Dream
ICNS	European Instrument for International Cooperation on Nuclear Safety
IR	Internationalisation of rules
MEDA	Euro-Mediterranean Partnership

MIP	Multi-annual Indicative Programme
NaIP	National Indicative Programme
NATO	North Atlantic Treaty Organisation
NDICI	Neighbourhood, Development and International Cooperation Instrument - Global Europe
NIF	Neighbourhood Investment Facility
NIP	Neighbourhood Investment Platform
OSCE	Organisation for Security and Cooperation in Europe
ODIHR	OSCE Office for Democratic Institutions and Human Rights
PCA	Partnership and Cooperation Agreement
RA	Rule adoption
RIm	Rule implementation
RPA	Republican Party of Armenia
SIGMA	Support for Improvement in Governance and Management instrument
SJC	Armenia's Supreme Judicial Council
SSF	Single Support Framework
SSR	Supreme Soviet of the Armenian Soviet Socialist Republic

TACIS	Technical Assistance to the Commonwealth of Independent States
TAIEX	Technical Assistance and Information Exchange instrument
UNDP	United Nations Development Programme
UNM	United National Movement
USSR	Union of the Soviet Socialist Republics
VLAP	Visa Liberalisation Action Plan

Introduction

Georgia and Armenia are two countries situated in the European Eastern Neighbourhood, between Europe and Russia. Their geographical positioning exposes them to the influence of two major centres of power, rendering them subjects of contention between two different regional projects. Since gaining independence from the Soviet Union, Georgia and Armenia have embarked on a transitional path of their state institutions towards a new democratic political order. Therefore, the two states have consistently confronted internal challenges in rebuilding and redefining state institutions within a democratic framework, while also contending with external influences aimed at shaping this domestic transformation. Particular emphasis will be placed on the European Union and its normative role as a promoter of democratic values, identifying it as the external actor of reference. In this regard, the present thesis seeks to compare the democratic state of Armenian and Georgian institutions through the analysis of a series of reforms implemented in both countries, and to assess the relative weight of internal actors and the external EU actor in the process of adoption, implementation, and internalisation of each reform. The analysis is embedded within the theoretical framework outlined by Morlino and Magen, which centres on the concept of Europeanisation. Europeanisation refers to the European strategy of democratic rule of law promotion, which, according to the authors, is adapted in each case along four main dimensions: institutional links, economic assistance, democratic conditionality and democratic socialisation. The rationale behind the comparison between Georgia and Armenia lies in demonstrating how two seemingly different states in terms of their political proximity to the EU, are nonetheless undergoing a similar internal democratisation process, and that a pro-European political culture does not necessarily correspond to a greater democratic character of the institutions. Indeed, according to the thesis hypothesis, which will need to be validated or refuted during the course of the research, Armenia, one of Russia's historical allies, appears to have made more progress than Georgia in advancing democratic rule of law reforms. The analysis will be qualitative, drawing on a range of sources, particularly academic articles, papers and official EU documents.

The structure of the thesis is organised into three chapters, each focusing on the EU, Georgia and Armenia, respectively. The first chapter primarily establishes Europeanisation's theoretical framework as articulated by Morlino and Magen, exploring the EU's interaction with Eastern Neighbourhood countries through the four dimensions mentioned above. After defining the concept of democratic rule of law and outlining its key components, the European strategy for democratic rule of law promotion is contextualised within the European initiatives designed for such purpose,

namely the European Neighbourhood Policy and subsequently the Eastern Partnership. Building upon the four dimensions of the theoretical framework, the chapter then provides a comprehensive overview of the EU's relations with Georgia and Armenia separately, discussing such a relationship with respect to each dimension. The chapter concludes by briefly addressing some of the shortcomings inherent in such European initiatives, both in their conception and impact, which have affected the EU's ability to effectively integrate the Eastern Neighbourhood within a broader regional project. The second and third chapters follow a similar structure and proceed to the core of the thesis by examining the case study countries, Georgia and Armenia respectively. Both chapters focus primarily on domestic policy developments, as major determinants of each state's reform path and key filters of external influences in shaping domestic outcomes. The chapters begin by detailing the political history that has characterised the respective states throughout the major shifts in power, and seek to identify entrenched political tendencies that have impacted the definition and implementation of the democratic rule of law reforms. Subsequently, the chapters delve into the actual analysis of these reforms, with a particular focus on two rule of law components previously presented in the theoretical framework, namely institutional capacity and judicial independence. Specifically, such reforms involve the legislative-executive relationship and the judicial system, corresponding to the three constitutional branches. The decision to reference the three constitutional branches of power is driven by their shared foundation in the principle of separation of powers, which serves as the thesis' primary benchmark for assessing the democratic state of the institutions under scrutiny. Besides investigating the effects of any alteration of the balance of power on the country's form of government, the chapters also delineate the interaction and the relative contribution of internal and external EU actors in determining such outcomes, as well as the actual significance of European influence, thereby addressing the thesis' two research questions. Finally, in light of the recent developments, the chapters conclude by drawing final consideration on the current stage of democratic transition in both countries and on plausible future scenarios, both domestically and in their relations with the EU.

Chapter I. EU's strategy of democratic rule of law promotion towards Georgia and Armenia

Introduction

The following chapter aims to provide an overview of the EU's forms of intervention in Eastern neighbourhood countries in the field of democratic rule of law (DRoL) promotion. Particularly, the first paragraph introduces the theoretical framework guiding the interaction between the EU and its neighbours Georgia and Armenia, which will be explored throughout the thesis. Among the various theories formulated on EU democratic promotion, this thesis has chosen to base its structure on Morlino and Magen's theoretical framework, which the author considers the most convincing in capturing the different aspects along which the European strategy unfolds. Subsequently, the paragraph outlines the EU's two primary initiatives towards its Eastern neighbourhood - the European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP) - through which the DRoL promotion has been pursued. At this juncture, specific reference to Georgia and Armenia was not necessary, as prior to the recent Russian full-scale invasion of Ukraine, all six eastern neighbours were equally addressed within the EaP institutional framework¹. This meant that, despite differences in bilateral policies, each state could potentially aspire to the same path towards European integration leading to the signing of the Association Agreement. The second paragraph delves deeper into the core of the European strategy, separately discussing the four components that define it as indicated in the theoretical framework: institutional links, economic assistance, democratic conditionality, and democratic socialisation. These four dimensions are thus further explored and tailored to Georgia and Armenia's specific cases, first by reconstructing the institutional relations between the EU and each country and assessing the status of these relations as of 2024. In this respect, Georgia's rapprochement with the EU, marked by its signing of the Association Agreement and the subsequent application for EU membership, has been treated separately from Armenia's more volatile path. After a detailed analysis of the existing institutional links, the paragraph proceeds with a review of the EU's economic assistance, conditionality, and socialisation. Although more technical, this latter part is essential to provide the reader with a comprehensive picture of the relationships among these three actors in all aspects of the European strategy of democratic promotion, thereby offering the theoretical foundation for subsequent chapters.

¹ The six EU eastern neighbours are Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine.

1.1 Theoretical Framework

The promotion of the democratic rule of law is a broad concept that assumes various forms and encompasses different strategies. The European strategy in this regard aligns with its foreign policy and its self-attributed role as a normative power, fostering democratic peace and stability. However, the intentions do not always reflect a genuine effort to trigger substantial change, and safeguarding and spreading the democratic rule of law in the Eastern neighbourhood has not been an EU priority for a long time. The ENP, and later the EaP, partnership initiatives highlight this contradiction of seeking closeness with neighbouring states without fully considering them as such, resulting in a lack of defined and impactful policy. This loose European regulatory framework is filtered internally by Georgia and Armenia's political dynamics, leading to an interplay between internal and external actors in shaping DRoL domestic reforms.

1.1.1 EU Incentives and Mechanisms for Democratic Anchoring

The present thesis aims to draw on the concept of Europeanisation as theorised by Morlino and Magen to lay the foundations of its analysis. According to the authors, the European strategy for the promotion of the democratic rule of law consists of four basic components: institutional links, and economic assistance, defined as incentives, combined with democratic conditionality and socialisation, defined as mechanisms of democratic anchoring². It is therefore appropriate to delve deeper into these four dimensions to understand their implications in the interaction between the EU and a third country and how they are interconnected.

Institutional links are the first EU incentive to promote contractual or non-contractual relations with a country in view of enhancing their cooperation. They envisage different degrees in the relationship, from association to, only in some cases, membership, resulting in different strengths of the incentives proposed³. In the specific case of Georgia and Armenia, the EU has indeed provided for different types of institutional links: on the one hand, Georgia signed the Association Agreement (AA) in 2014, and in December 2023 it was granted candidate status, effectively embarking on the path towards

² Amichai Magen and Leonardo Morlino, "Methods of influence, layers of impact, cycles of change," in *International Actors, Democratization and the Rule of Law, Anchoring Democracy?* ed. Amichai Magen and Leonardo Morlino (New York: Routledge, 2009), 26-52.

³ Elena Baracani, "EU democratic rule of law promotion," in *International Actors, Democratization and the Rule of Law, Anchoring Democracy?* ed. Amichai Magen and Leonardo Morlino (New York: Routledge, 2009), 55.

European membership⁴; Armenia, on the other hand, signed the Comprehensive and Enhanced Partnership Agreement (CEPA) in 2017, which, differently from the Association Agreement, is relieved of certain obligations that could have conflicted with its membership in the Eurasian Economic Union (EEU)⁵.

Economic assistance is the second incentive and main benefit of a fruitful relationship between the EU and a third state. Particularly in the case of the EU, it is mainly realised through the so-called funding programmes, i.e. instruments through which the EU allocates funds to countries it has relations with⁶. The programme through which the EU is currently providing economic assistance to Georgia and Armenia is the Neighbourhood, Development and International Cooperation Instrument - Global Europe (NDICI). Planned for the seven-year period 2021-2027, NDICI also targets the Southern and Eastern neighbourhoods and is expected to cover a wide range of topics, from sustainable development to democratic governance⁷. In addition, other financing options are available, either through sectoral budget lines such as the European Instrument for Democracy and Human Rights (EIDHR) and the European Instrument for International Cooperation on Nuclear Safety (ICNS), or through various European Investment Bank (EIB) facilities, the current one being the Economic and Investment Plan (EIP)⁸. Overall, the EU is now the largest donor to both Georgia and Armenia in terms of financial support and, in the case of Georgia, even the first trade partner⁹. Before proceeding with the explanation of the mechanisms of democratic anchoring, it is appropriate to provide a precise definition of the term at issue. Democratic anchoring is intended to conceptualise

⁴ European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), “Georgia,” European Commission, Accessed May 4, 2024, https://neighbourhood-enlargement.ec.europa.eu/european-neighbourhood-policy/countries-region/georgia_en.

⁵ Mikayel Hovhannisyan and Julia Sahakyan, *Adopting Experience of Bilateral EU-Moldova and EU-Georgia Civil Society Platforms to Armenia: Report on Armenia* (Yerevan: Eurasia Partnership Foundation, 2017), 8.

⁶ Funds are normally classified into grants, subsidies, loans and prizes. They can be managed directly by the European Commission, jointly through the collaboration between the Commission and national authorities, or indirectly by national authorities acting as intermediaries. European Union, “European Union funding, grants and subsidies,” European Union, Accessed May 4, 2024, https://european-union.europa.eu/live-work-study/funding-grants-subsidies_en.

⁷ European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), “Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI – Global Europe),” European Commission, Accessed May 4, 2024, https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/neighbourhood-development-and-international-cooperation-instrument-global-europe-ndici-global-europe_en.

⁸ As for the EIDHR, see Official Journal of the European Union, *Regulation (EU) of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide*, 32014R0235, March 13, 2014, L 77/85. As for the ICNS, see European Commission, “European Instrument for International Nuclear Safety Cooperation,” European Commission, accessed July 18, 2024, https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/programme-performance-statements/european-instrument-international-nuclear-safety-cooperation-performance_en#:~:text=Mission,materials%20in%20non%2DEU%20countries. As for the EIB EIP, see for example Western Balkans Investment Framework, “Economic and Investment Plan for the Western Balkans 2021-2027,” Western Balkans Investment Framework, accessed July 18, 2024, <https://www.wbif.eu/eip>.

⁹ Vera Rihackova, *Taking Stock of EU Civil Society Funding in EaP Countries* (Brussels: Eastern Partnership Civil Society Forum, 2014), 5. Trade, “EU trade relations with Georgia. Facts, figures and latest developments,” European Commission, Accessed June 18, 2024, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/georgia_en#:~:text=Trade%20picture,€4.25%20billion%20in%202022.

the external pressure, in this case from the EU, on the domestic DRoL consolidation process and the consequent interaction between external and internal actors¹⁰. However, it is important to bear in mind that although nation-states are indeed subject to international, transnational, and supranational influences, democratic consolidation exists as a national process and is thus the result of certain internal conditions¹¹. Therefore, when analysing the external influence on domestic change, it is necessary to recognise that the former should not be viewed as an independent variable and instead be considered explanatory only in its interaction with the latter. In other words, what ultimately shapes national outcomes are not external factors per se, but the way they are filtered by internal ones¹². It follows that the level of analysis of the democratisation processes in Georgia and Armenia in the present thesis will be essentially domestic, acknowledging the role of EU democratic promotion as constrained in this external-internal interplay.

Mechanisms of democratic anchoring are potential methods of (external) influence, each implying different modes of interaction with domestic factors¹³. The EU strategy of democratic rule of law promotion consists of a combination of two different methods of influence: democratic conditionality and democratic socialisation. Democratic conditionality is manifested in the “threat of punitive measures and promises of positive rewards”¹⁴ from external actors. This ‘carrot-and-stick’ approach aims to modify the cost-benefit analysis underpinning national decision-making by leveraging the incentives or deterrents behind domestic choices. Conditionalities are categorised as positive and negative. Negative conditionalities refer to non-military coercive measures, such as the imposition of economic sanctions or the withdrawal of diplomatic personnel, in response to breaches of democratic principles¹⁵. The EU applied this type of conditionality mostly during the accession negotiations with Central and Eastern European countries: when a country does not fulfil the DRoL requirements, the EU might react by suspending economic assistance or stalling the advancement of institutional ties. The ENP itself, the EU’s first Partnership with its Eastern and Southern neighbourhoods, includes a negative conditionality clause:

¹⁰ Amichai Magen and Leonardo Morlino, “Methods of influence, layers of impact, cycles of change,” 28.

¹¹ On the role of internal factors in determining democratic consolidation, see David Beetham, “Conditions for Democratic Consolidation,” *Review of African Political Economy* 21, no. 60 (June 1994): 157-172.

¹² See Wolfgang Merkel, “Democratic consolidation and civil society: problems of democratic consolidation in East Central Europe,” in *Civil society, political society, democracy*, eds. Adolf Bibic, Graziano Gini (Ljubljana: Slovenian Political Science Association, 1994), 325-351.

¹³ Amichai Magen and Leonardo Morlino, “Methods of influence, layers of impact, cycles of change,” 29.

¹⁴ Amichai Magen and Leonardo Morlino, “Methods of influence, layers of impact, cycles of change,” 31.

¹⁵ See Robert Hart, “Democracy and the Successful Use of Economic Sanctions,” *Political Research Quarterly* 53, no. 2 (June 2000): 267-284.

“[The EU] emphasises the need to establish an effective monitoring mechanism and a readiness to restrict or suspend and even to cancel agreements with countries which violate international and European standards of respect for human rights and democracy [...]”¹⁶.

Positive conditionalities, on the other hand, entail subordinating rewards for a country to its progress in the democratisation process. After the collapse of the Soviet Union, Western international organisations and states increasingly employed positive conditionality in their DRoL promotion policies, intensifying trade, security and economic relations in exchange for compliance with democracy and human rights conditions¹⁷. The EU resorted to this conditionality for its associated countries of Central and Eastern Europe when the Copenhagen European Council in 1993 complemented the prospect of membership with a set of obligations that the candidate country is supposed to assume:

“membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union”¹⁸.

Indeed, fulfilment of the so-called Copenhagen criteria implies the country’s capacity to take on such membership obligations, resulting in EU accession by right¹⁹. The EU has combined negative with positive conditionalities not only for accession candidate countries, but also in its relations with ENP countries, offering greater cooperation provided the implementation of a series of political and economic reforms²⁰.

Democratic conditionalities can be either *ex-ante* or *ex-post*. Although the former were once the most common, there is now a shift towards favouring the latter²¹. *Ex-ante* conditionalities are a specific type of positive conditionalities, involving the provision of awards before verifying compliance, and are still applied, for instance, by development banks for aid spending policies. *Ex-post* conditionalities include ‘reinforcement by reward’, i.e. granting benefits only after ascertaining the satisfaction of the

¹⁶ Official Journal of the European Union, *European Neighbourhood Policy*, P6_TA(2006)0028, January 19, 2006, C 287 E/315.

¹⁷ See Theodore Piccone, *International Mechanisms for Protecting Democracy* (Washington, D.C.: Democracy Coalition Project, 2004).

¹⁸ European Council, *Conclusion of the Presidency*, DOC/93/3, June 21-22, 1993, 13.

¹⁹ Elena Baracani, “EU democratic rule of law promotion,” 66.

²⁰ Commission of the European Communities, *Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM(2003) 104 final, March 11, 2003, 16.

²¹ See Svea Koch, “A Typology of Political Conditionality Beyond Aid: Conceptual Horizon Based on Lessons from the European Union,” *World Development* 75, no. 1 (November 2015): 97-108.

required conditions²². Western actors have institutionalised the most advanced forms of *ex-post* conditionality, particularly through organisations such as NATO or the EU, which are effectively able to persuade or discourage third states by providing or blocking proper material resources²³.

As affecting the calculation of costs and benefits behind domestic decisions, the effectiveness of conditionality varies from case to case depending on several factors: the relative bargaining power of the recipient state, including the availability of feasible and equally attractive alternatives; the magnitude and promptness of rewards; the reliability of conditionality; the amount and allocation of internal compliance costs; the determinacy of the enforced conditions²⁴. As regards this latter aspect, determinacy plays a crucial role in defining the scope of conditionality, acting as a sort of informational guide for the recipient state. Determinacy establishes the clarity and formality of the rule to be observed, narrowing its margin for interpretation and thus discretion, thereby increasing accuracy and enabling more precise compliance monitoring²⁵. As the thesis will further illustrate, one of the main reasons for the limited success of certain EU conditionality stems precisely from its abstract nature and lack of clear guidance in its definition and application.

Unlike democratic conditionality, democratic socialisation does not arise from top-down pressure by an external actor, but rather exerts influence on a more horizontal level. Indeed, democratic socialisation aims to intensify dialogue and collaboration between liberal international forums and the recipient states to trigger the spread of democratic practices. Therefore, by exploiting the potential of socialisation, it attempts to promote openness and engagement of such transitional states, encouraging them to internalise these practices²⁶. In institutional terms, this can be achieved, for instance, through exchanges of opinions and good practices at academic, professional, or political levels, as well as by encouraging scientific, cultural or youth programmes. Since the end of the Cold War, international and especially regional organisations have undertaken functions of democratic socialisation towards transitional states (first in post-Soviet countries) by disseminating norms of

²² Amichai Magen and Leonardo Morlino, "Methods of influence, layers of impact, cycles of change," 32.

²³ Frank Schimmelfennig, "Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe," *International Organization* 59, no. 4 (October 2005): 832-833.

²⁴ Amichai Magen and Leonardo Morlino, "Methods of influence, layers of impact, cycles of change," 33.

²⁵ *Ibidem*.

²⁶ See Jeffrey T. Checkel, "International Institutions and Socialization in Europe: Introduction and Framework," *International Organization* 59, no. 4 (October 2005): 801-826. On the notion of transitional states, particularly fashioned during the 1990s, see Giuseppe di Palma, *To Craft Democracies: an Essay on Democratic Transition* (Berkeley: University of California Press, 1990); Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation. Southern Europe, South America, and Post-Communist Europe* (Baltimore: John Hopkins University Press, 1996). As for debates on the notion of transitional states and its applicability to the Eastern Europe area, see Dean McSweeney and Clive Tempest, "The Political Science of Democratic Transition in Eastern Europe," *Political Studies* 41, no. 3 (September 1993): 408-419.

proper conduct²⁷ and aiming to promote constructive environments for confrontation²⁸. Hence, the anchoring of recipient states to like-minded forums run by liberal international actors has the ultimate goal of reconfiguring their preferences and identities, eventually shaping national policy decisions in support of DRoL reforms²⁹. Another important difference between democratic conditionality and democratic socialisation is that the external impact of the latter is not attributable to rational behaviour but rather relies on social structures and interactions³⁰. This means that the process of democratic change is facilitated by opportunities for learning, deliberation, adaptation and persuasion,³¹ which supposes an active participation of the recipient state and its civil society. Indeed, the EU's democratic socialisation is potentially able to foster democratic tendencies at several levels: it can involve not only political elites and high bureaucrats in pursuing the necessary measures for closer institutional ties, but also civil society organisations (CSOs), state officials and civil servants at a lower level in mobilising economic assistance through the implementation of various projects in the field of DRoL promotion³². As the thesis will properly discuss in the next paragraph, the mechanism of democratic socialisation has gained prominence in the EU's relations vis-à-vis its Eastern neighbourhood with the establishment of the EaP. In particular, through the introduction of a multilateral track, the EaP enabled the six partner countries to meet in summits or to address issues of great interest in thematic forums, and the different categories of civil society and public sector employees to be engaged in project implementation³³.

Once the two main methods of external influence and the underlying leverage logics have been explored, it is necessary to analyse how their impact unfolds within domestic dynamics. According to Morlino and Magen, the democratic anchoring mechanism promoted by external actors can contribute to domestic change at three distinct "layers of impact"³⁴, each with a different level of significance. With reference to the EU, the lowest and least meaningful layer is rule adoption (RA), which refers to the transposition of EU standards to national legislation³⁵. Therefore, rule adoption

²⁷ See Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 54, no. 4 (September 1998): 887-917.

²⁸ See Alexandru Grigorescu, "International Organizations and Government Transparency: Linking the International and Domestic Realms," *International Studies Quarterly* 47, no. 4 (November 2003): 643-667.

²⁹ The notion of international liberal actors, such as international organisations, refers to subjects who act coherently with international liberalism. For a comprehensive discussion on the theme, see Micheal Barnett and Martha Finnemore, "The power of liberal international organisations," in *Power in Global Governance*, eds. Micheal Barnett, Raymond Duvall (Cambridge: Cambridge University Press, 2005).

³⁰ Amichai Magen and Leonardo Morlino, "Methods of influence, layers of impact, cycles of change," 37.

³¹ See Jeffrey T. Checkel, "International Institutions and Socialization in Europe."

³² Elena Baracani, "EU democratic rule of law promotion," 72.

³³ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment* (Tallinn: Estonian Center of Eastern Partnership, 2011), 8.

³⁴ Amichai Magen and Leonardo Morlino, "Methods of influence, layers of impact, cycles of change," 39.

³⁵ See Frank Schimmelfennig and Ulrich Sedelmeier, *The Europeanization of Central and Eastern Europe* (Ithaca, NY: Cornell University Press, 2005).

denotes the formal establishment of domestic reforms, which may range from the simple harmonisation of existing legislation to the introduction of constitutional amendments. Specifically, the reforms related to DRoL mainly concern five dimensions: civil and political rights, corruption prevention, civilian oversight of security forces, judicial independence and institutional and administrative capacity³⁶. Among these, the present thesis will delve into the last two, as both are concerned with the separation of powers, the central principle around which the analyses in the subsequent chapters will revolve. In addressing the second layer, namely Rule Implementation (RI_m), it is important to make a preliminary remark. For reforms to be successfully implemented, a country must have sufficiently developed administrative and institutional structures to allow formal change to become effective³⁷. The most common consequence of poorly functioning national authorities and bureaucracy is the so-called “institutional decoupling”, i.e. the gap between the law’s adoption and its implementation³⁸. This phenomenon is instrumental in adopting purely cosmetic reforms. Indeed, in countries undergoing democratic transition, such as the Eastern neighbourhood, political elites, usually compelled by external pressure or public opinion, assume formal commitments without ensuring them produce the intended normative effects, ultimately emptying them of all meaning. Overall, a proper implementation process cannot occur without adequate state follow-up capacity to support it. The last and most impactful layer of impact on domestic change is the internationalisation of rules (IR), which is a slow and gradual process of internal legitimisation of reforms, leading to a wide public recognition of them as their own, beyond their formal existence³⁹. Once this final stage of spontaneous acceptance of a norm, now firmly rooted as such, is achieved, its value becomes unanimously acknowledged and respected, catalysing a behavioural shift that every rule is supposed to reach. To conclude, in examining the developments of the reforms under review, the present thesis will not only analyse the extent of interaction between external and internal actors, but also the stage to which each reform under scrutiny has progressed based on the levels mentioned above.

1.1.2 European Neighbourhood Policy and Eastern Partnership: Institutional Structure and Functions

Since the collapse of the USSR, the Western-centric approach towards the Eastern neighbourhood countries has always been linked to an idea of peripherality. In other words, the Eastern

³⁶ Amichai Magen and Leonardo Morlino, “Methods of influence, layers of impact, cycles of change,” 40.

³⁷ *Ibidem*.

³⁸ John W. Meyer, John Boli, George M. Thomas, Francisco O. Ramirez, “World Society and the Nation-State,” *The American Journal of Sociology* 103, no. 1 (July 1997): 154-156.

³⁹ Amichai Magen and Leonardo Morlino, “Methods of influence, layers of impact, cycles of change,” 41.

neighbourhood was denoted as ‘other’, beyond the natural European borders, and rather as a sort of buffer zone between the West and Russia⁴⁰. Such European ‘peripheral discourse’, connected to the reluctance to consider the Eastern neighbourhood as fully European, has contributed to a prolonged EU lack of commitment in the area, resulting in weak and poorly structured policies⁴¹.

According to the EU Security Strategy of 2003 and Global Strategy of 2016, the EU’s interest in the region stems from its foreign policy vision⁴², centred on its self-perception of normative power and based on the projection of its core values on the international stage⁴³. The intensification of relations reached a turning point with the so-called ‘Big Bang’ enlargement in 2004, after which the EU found itself bordering more fragile and unstable countries, posing a security threat to the Union as a whole⁴⁴. Being more exposed to this radical change in circumstances, the Eastern European countries called for the necessity to devise a policy with a dual purpose: on the one hand, to accommodate the desire of some countries in the Eastern neighbourhood to move closer to Europe; on the other hand, to satisfy the EU’s prerogative to create a “ring of friends”⁴⁵ and safeguard its borders through cooperative and peaceful relations. Therefore, the first form of institutional cooperation with the Eastern neighbourhood came through the ENP, which included both the Eastern and Southern neighbourhoods. The origins of the ENP trace back to the 2003 Commission’s Communication titled ‘Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’, which proposed to unify all previous neighbourhood policies into a single comprehensive one⁴⁶. Such a European initiative was thus meant to foster “stability, security and prosperity in the EU’s neighbouring regions”⁴⁷ by supporting their foreign and domestic policy towards liberal democratic systems. The ENP envisages the same European strategy reserved for potential accession states, i.e. the subordination of enhanced cooperation to the compliance of the so-

⁴⁰ Mart Kuldkepp, “Western Orientalism Targeting Eastern Europe: An Emerging Research Programme,” *Central European Journal of International and Security Studies* 17, no. 4 (December 2023): 76.

⁴¹ For a discussion on the weaknesses of EU democracy promotion policies in Central and Eastern Europe, see Geoffrey Pridham, *Designing democracy: EU enlargement and regime change in post-communist Europe* (Basingstoke: Palgrave Macmillan, 2005). The limits of the said EU policies are also acknowledged by Arolda Elbasani, *European Integration and Transformation in the Western Balkans. Europeanization or Business as Usual?* (New York: Routledge, 2013); and by Martin Mendelski, “The EU’s Pathological Power: The Failure of External Rule of Law Promotion in South Eastern Europe,” *Southeastern Europe* 39, no. 3 (December 2015): 318-346.

⁴² The 2003 Security Strategy and the 2016 Global Strategy.

⁴³ Ian Manners, “As You Like It: European Union Normative Power in the European Neighbourhood Policy,” in *The European Neighbourhood Policy in Perspective*, ed. Richard G. Whitman and Stefan Wolff (London: Palgrave Macmillan, 2010), 37.

⁴⁴ Edzard Wesselink and Ron Boschma, “European Neighbourhood Policy: History, Structure, and Implemented Policy Measures,” *Tijdschrift Voor Economische En Sociale Geografie* 108, no. 1 (July 2016): 4.

⁴⁵ Benita Ferrero-Waldner, “Press Conference to launch first seven Action Plans under the European Neighbourhood Policy,” transcript of speech delivered at Brussels, December 9, 2004, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_04_529.

⁴⁶ Edzard Wesselink and Ron Boschma, “European Neighbourhood Policy,” 9.

⁴⁷ European External Action Service, “European Neighbourhood Policy,” European External Action Service, July 29, 2021, https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en.

called EU *acquis*⁴⁸ through the fulfilment of a series of political, economic and social reforms⁴⁹. However, despite such similarities with the enlargement policies, the ENP does not contemplate the possibility of EU membership. Indeed, the appellation of partner countries, emphasising partnership rather than accession, implicitly suggests an EU-centric perspective according to which neighbouring countries could become “like us, but not one of us”⁵⁰.

The ENP has undergone a transitional period from 2004 to 2006 to allow time for convergence and harmonisation between the previous policies, while the full integration and incorporation of such policies was initiated during the new multiannual framework 2007-13⁵¹. Although focusing primarily on economic and trade aspects, the ENP covers a wide range of different topics, from research and education to institutional development. Therefore, the new EU initiative had to face the daunting challenge of coherently gathering a variety of existing policy mechanisms, often overlapping and with their own specificities, and streamlining them into a single integrated institutional framework⁵². As previously stated, in the context of the ENP’s role in democracy promotion, the EU leverages institutional ties and economic assistance as incentives for DRoL reforms. The former can be either political or economic, and the integration of both dimensions culminated in the more recent AA, which combines the political component with the economic aspect represented by the Deep and Comprehensive Free Trade Area (DCFTA)⁵³. When it comes to economic assistance, it can occur either directly through the disbursement of funds, through technical assistance, or indirectly through EIB facilities. With the creation of a unified policy framework, the ENP had to harmonise all previous existing financial instruments, resulting in the comprehensive European Neighbourhood and Partnership Instrument (ENPI)⁵⁴. This financial instrument has evolved over the following multiannual frameworks up to the current NDICI, and although with some differences in scope and degree of integration, its fundamental approach has remained similar throughout its evolution. This funding mechanism allocates funds to two main types of programmes: localised programmes, which target a specific geographical area, and thematic programmes, which focus on sectoral issues such as democracy and human rights, sustainability and economic development⁵⁵. These programmes are designed to carry out projects or reforms in order to implement legislation and develop institutional

⁴⁸ The EU body of laws and standards.

⁴⁹ Elena Baracani, “EU democratic rule of law promotion,” 81.

⁵⁰ Martin Nilsson and Daniel Silander, “Democracy and Security in the EU’s Eastern Neighborhood? Assessing the ENP in Georgia, Moldova, and Ukraine,” *Democracy and Security* 12, no. 1 (January 2016): 49.

⁵¹ Edzard Wesselink and Ron Boschma, “European Neighbourhood Policy,” 5.

⁵² *Ibidem*.

⁵³ Official Journal of the European Union, *Association Agreements / Deep and Comprehensive Free Trade Areas with Georgia, Moldova and Ukraine*, P8_TA(2016)0018, January 1, 2018, C 11/82.

⁵⁴ Edzard Wesselink and Ron Boschma, “European Neighbourhood Policy,” 7.

⁵⁵ European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), “Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI – Global Europe).”

capacity in the relevant field. As regards technical assistance, the ENP support programmes initiating reforms through three modalities: Twinning, which involves at least a 12-month institutional collaboration between EU and ENP countries' governance structures to facilitate the alignment of legislation to the EU *acquis*; the Technical Assistance and Information Exchange instrument (TAIEX), which differs from Twinning for short-term technical assistance mainly through training and informative session on legislation approximation; finally, the Support for Improvement in Governance and Management instrument (SIGMA), which aims to enhance governance and management structures through targeted support for high-level state officials⁵⁶. Although not related to the promotion of the DRoL, the ENP can also direct investments in the Eastern neighbourhood countries via the EIB. By employing grants received from the ENP financing instrument, the EIB has the mandate to invest in various projects, particularly in energy, transport, social development and environment sectors, through different facilities. These latter include the Neighbourhood Investment Facility (NIF), now called the Neighbourhood Investment Platform (NIP)⁵⁷, which was officially launched in 2008 to invest in projects targeting both the southern and eastern neighbourhoods⁵⁸. Concerning the Eastern neighbourhood specifically, the EIB had its own investment facility called the Eastern Partners Facility (EPF) since 2009. This has been succeeded in 2022 by the Facility for Eastern Partnership Investment in Connectivity (EPIC), which supports projects primarily aimed at improving connectivity and transport infrastructures⁵⁹.

Over the years, the ENP has been subject to various criticisms. The European engagement with the Eastern neighbourhood through the ENP appeared to be driven more by security concerns, specifically the urgency to shelter its borders from unstable and potentially hostile neighbours, rather than by a genuine desire to promote a closer integration of these countries within the EU. Critics were identified by the Commission itself through periodic evaluation reports, facilitating the advancement of the policy and its institutional structure⁶⁰. The 2006 evaluation reported little progress on DRoL reforms, due to unclear implementation guidelines and the subordination of any rewards, particularly the access to the internal market, to the prior harmonisation of legislation with the *acquis*⁶¹. Therefore,

⁵⁶ Edzard Wesselink and Ron Boschma, "European Neighbourhood Policy," 7-8.

⁵⁷ In 2017 the NIP became an integral part of the European Fund for Sustainable Development (EFSD), which operates within NDICI and aims at fostering sustainable development investments. European Union External Action, "The new 'NDICI - Global Europe' (2021-2027)," European External Action Service, March 17, 2022, https://www.eeas.europa.eu/eeas/new-ndici-global-europe-2021-2027_en.

⁵⁸ European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), "Neighbourhood Investment Platform," European Commission, Accessed June 14, 2024, https://neighbourhood-enlargement.ec.europa.eu/neighbourhood-investment-platform_en.

⁵⁹ See European Investment Bank, European Bank for Reconstruction and Development and The World Bank, *Guide to the Facility for Eastern Partnership Investment in Connectivity (EPIC)* (Luxembourg: European Investment Bank, 2022).

⁶⁰ Edzard Wesselink and Ron Boschma, "European Neighbourhood Policy," 12.

⁶¹ Commission of the European Communities, *On Strengthening the European Neighbourhood Policy*, COM(2006)726 final, December 4, 2006, 2.

the benefits of increased market access can only be reaped after the lengthy and costly task of policy alignment, resulting in inadequate incentives to meet the required conditions⁶². Subsequent evaluations continued to record minimal progress in political reform, which was then frustrated by the 2008 war in Georgia and the 2010 Arab Spring. Such critical international circumstances compelled EU policymakers to acknowledge that “not all states buy into the postmodern view of international relations, where sovereignty, spheres of influence, or the use of force are day-to-day occurrences – i.e. the whole Westphalian package”⁶³, further highlighting the shortcomings of the ENP in its ‘naïve’ ambition of promoting domestic change regardless of geopolitical considerations⁶⁴. Overall, this EU’s lack of commitment, linked to the above-mentioned reasons, has manifested in the ENP through a vague scope, an undefined pathway for reforms, and consequent insufficient incentives, ultimately leading to a loose integration framework. An additional challenge of the ENP is represented by its “geographic arbitrariness”⁶⁵. Indeed, its institutional configuration reflects the divergent strategic interests within the EU member states, accommodating the demands of South-Western European countries, such as France and Italy, which privileged strengthening relations with the South, as well as Central-Eastern European countries, such as Germany and Poland, which prioritised intensifying relations with the East⁶⁶. However, this ‘grouping’ effort unilaterally undertaken by the EU appeared to be more congenial to its own perspective than to the geographical and ideological differences of these states in terms of their aspirations and objectives vis-à-vis the EU⁶⁷. Therefore, in order to avoid this over-simplification, the ENP has increasingly embraced the principle of differentiation through bilateral relations, aiming to tailor reform support to each country’s national context, capacities, and priorities⁶⁸. In this regard, the Commission prepares country reports detailing the respective states’ political, social, and economic landscapes. These reports serve as the basis for negotiating Action Plans that outline the main priority areas in each country for implementing policy reforms⁶⁹. However, such divergences between EU member states led to fragmentation in action and uneven and alternating efforts between one region and another, preventing a more consistent approach to address the specific needs of each. This awareness became increasingly evident with the 2008 war in Georgia, which confirmed the necessity for a more defined

⁶² *Ibidem*.

⁶³ Cristian Nitoiu and Monika Sus, “Introduction: The Rise of Geopolitics in the EU’s Approach in its Eastern Neighbourhood,” *Geopolitics* 24, no. 1 (November 2018): 6.

⁶⁴ *Ibidem*.

⁶⁵ Barbara Lippert, “The EU neighbourhood policy: Profile, potential, perspective,” *Intereconomics* 42, no. 4 (August 2007): 182.

⁶⁶ *Ibidem*.

⁶⁷ Cristian Nitoiu and Monika Sus, “Introduction: The Rise of Geopolitics in the EU’s Approach in its Eastern Neighbourhood,” 7.

⁶⁸ Edzard Wesseling and Ron Boschma, “European Neighbourhood Policy,” 16.

⁶⁹ *Ibidem*.

foreign policy direction in the region⁷⁰. Therefore, at the Prague Eastern Partnership Summit in 2009, the EU decided to launch the EaP as a “specific Eastern dimension of the ENP”⁷¹.

The EaP confirms the EU’s persistent normative approach towards its neighbourhood, framing it on a regional scale, as enshrined in its aim “to strengthen and deepen the political and economic relations between the European Union [...] and six Eastern European and South Caucasus partner countries”⁷². The potential for integration of the EaP represents a turning point in the creation of a dual policy framework that complements the existing bilateral track with a multilateral track related to the regional dimension. The bilateral track remains the primary means of deepening relations between the EU and its Eastern neighbourhood, as it defines such cooperation’s key priorities and objectives⁷³. Particularly, it created an enhanced contractual framework with each country through tailor-made agreements, which included stronger incentives for those partners willing to pursue closer integration with the EU⁷⁴. Thus, Association Agreements were established as the legal basis to foster political dialogue, along with DCFTAs and visa-free regimes to favour economic integration. Therefore, the persistence of the principle of differentiation as a founding pillar of the ENP allowed Ukraine, Moldova, and Georgia to sign the Association Agreement in 2014. However, the increased offer of incentives implied more defined and stringent conditionalities in terms of approximation to the *acquis*, and internal divisions within the EU continued to prevent any prospect of membership⁷⁵. The real innovation lies in the multilateral track, which for the first time introduced “horizontal governance structures”⁷⁶ by bringing together all six EaP countries and the EU in various discussion platforms, spanning different areas and levels of representation. Although it was conceived as an “additional instrument”⁷⁷ in support of the bilateral track, such innovation has marked a shift to a new institutional framework previously based almost exclusively on bilateral relations⁷⁸. More precisely, the attempt was, according to Laure Delcour, to develop a “multilayered and, to some extent, a pluricentric and participative institutional framework”⁷⁹. Indeed, unlike the bilateral track, which

⁷⁰ Ukrainian National Platform of the Eastern Partnership Civil Society Forum, “About Eastern Partnership,” Ukrainian National Platform of the Eastern Partnership Civil Society Forum, April 23, 2021, <http://eap-csf.org.ua/en/about/about-the-eastern-partnership/>.

⁷¹ Council of the European Union, *Joint Declaration of the Prague Eastern Partnership Summit*, 8435/09 (Presse 78), May 7, 2009, 5.

⁷² European External Action Service, “Eastern Partnership,” European External Action Service, March 17, 2022, https://www.eeas.europa.eu/eeas/eastern-partnership_en.

⁷³ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, 6.

⁷⁴ Laure Delcour, “Dealing with the elephant in the room: the EU, its ‘Eastern neighbourhood’ and Russia,” *Contemporary Politics* 24, no. 1 (December 2017): 23.

⁷⁵ *Ibidem*.

⁷⁶ See Bernd Weber, *Europe’s neighborhood between conditionality, network governance and bargaining* (Paris: Centre d’études et de recherches internationales, 2010).

⁷⁷ Commission of the European Communities, *Eastern Partnership*, COM(2008) 823, December 3, 2008, 9. Hereinafter “EaP Communication”.

⁷⁸ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, 7.

⁷⁹ *Ibidem*.

favours a hierarchical logic where the EU has greater leverage over partner countries through conditionalities, the multilateral track is based on the so-called networked form of interaction⁸⁰. This latter logic emphasises socialisation and shared responsibility, promoting a more balanced, equitable, and collaborative relationship⁸¹. Looking at the objectives set by the Commission, the multilateral track aims to: strengthen relations between partners themselves in order to achieve common approaches and develop joint initiatives; share information and best practices on their transition and modernisation paths; facilitate an effective process of legislation harmonisation as the ultimate goal⁸². As regards the EaP operational structure, it is composed of four levels. At the highest political level, summits between Heads of State and Government of EU and EaP countries occur every two years⁸³. Foreign Affairs ministerial meetings are held annually, complemented by “sector-specific ministerial conferences”⁸⁴ which may be held to address specific fields of interest. At the technical level, the European External Action Service (EEAS) and the European Commission manage four thematic platforms that oversee the main areas of cooperation between the EU and its Eastern neighbourhood: democracy and good governance, economic integration, energy security, and cultural and education cooperation. Each platform convenes senior officials at least twice a year, serving as a multilateral forum for discussions and the exchange of perspectives. The last institutional level consists of thematic panels, formed by expert officials from a specific policy area, which can be established ad hoc within each platform to assist and follow up on its activities⁸⁵. Finally, within the technical framework of the multilateral track, the EU and the partner countries are committed to organising flagship and participatory initiatives in a wide variety of fields aimed at involving the various sectors of civil society. Worth mentioning are the Eastern Partnership Civil Society Forum (CSF), which will be described in more detail further on, EU4Youth, and EU4Energy, as sectoral initiatives, and EU4Georgia and EU4Armenia, which instead carry out projects on a national basis⁸⁶.

1.2 EU, Georgia and Armenia: historical overview from 1991 to date

The EU’s relations with Georgia and Armenia followed a similar path in the first decades after the dissolution of the USSR. However, these paths diverged significantly with Georgia’s signing of the

⁸⁰ Sandra Lavenex and Frank Schimmelfennig, “EU rules beyond EU borders: theorizing external governance in European politics,” *Journal of European Public Policy* 16, no. 6 (September 2009): 796.

⁸¹ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, 7.

⁸² EaP Communication, 9.

⁸³ The sixth and last Eastern Partnership summit took place in Brussels on 15 December 2021.

⁸⁴ EaP Communication, 10.

⁸⁵ *Ibidem*.

⁸⁶ Ukrainian National Platform of the Eastern Partnership Civil Society Forum. “About Eastern Partnership.”

AA, whereas Armenia's unsuccessful attempt resulted in the signing of the CEPA instead. Since then, directions have increasingly differed, particularly with Armenia's entry into the Russian-driven regional economic organisation EEU in 2014. Currently, the situation has evolved further with Russia's full-scale invasion of Ukraine: this latter event has prompted Georgia to officially pursue EU membership, while leaving Armenia in a middle ground, balancing the need to ensure its own security with the benefits of increased European cooperation⁸⁷. In general, among the six EaP countries, if Georgia has consistently maintained a pro-European stance, at least formally, Armenia has always preferred to adopt a more cautious approach to leverage the opportunity of engaging in dialogue with both Russia and the EU⁸⁸. Only recently, following Azerbaijani's aggression in Nagorno-Karabakh in September 2023, has Armenia begun to tentatively shift this balance towards the West, though a proper discussion of such a development will be provided in the third chapter. However, it is important to bear in mind that political positioning may not be explanatory, nor necessarily reflect the actual record of the DRoL reforms effectively implemented.

1.2.1 Institutional links

EU-Georgia relations began after Georgia's Act of Restoration of State Independence in 1991⁸⁹. Since then, every subsequent government, regardless of its political orientation, has embraced a pro-Western approach, deemed essential to secure Georgia's sovereignty against Russian interference⁹⁰. The EU as the sole conceivable destiny became the pillar on which the ruling class anchored its political agenda and forged its consensus. According to this narrative, the country's existence was inextricably tied to its integration into Western institutions. Moreover, the inseparable link between Westernisation and democratic transition implied that Georgia would undergo an internal transformation in compliance with Western liberal-democratic principles. Therefore, the Georgian approach was built on a shared set of values that crossed both foreign and domestic policy agendas,

⁸⁷ For an interesting discussion over Armenia's foreign policy vis-à-vis Russia and the EU, see Thomas de Waal, "Armenia Navigates a Path Away From Russia," Carnegie Russia Eurasia Center, July 11, 2024, <https://carnegieendowment.org/research/2024/07/armenia-navigates-a-path-away-from-russia?lang=en¢er=russia-eurasia>.

⁸⁸ Laure Delcour, "Armenia's and Georgia's contrasted positioning vis-à-vis the EU: Between vocal centrality and strategic marginality," *Journal of Contemporary European Studies* 27, no. 4 (April 2019): 448.

⁸⁹ Supreme Council of the Republic of Georgia, *Act of Restoration of State Independence of Georgia*, 95, April 9, 1991.

⁹⁰ However, it should be noted that the Georgian Dream party is currently pursuing an ambiguous strategy defined as "appeasement of Russia". See Thomas de Waal, "Georgian Nightmare," Engelsberg Ideas, May 21, 2024, <https://engelsbergideas.com/essays/georgian-nightmare/>.

relying on the social consensus that the European model of democratic governance, seen as the only viable alternative, had gained⁹¹.

Relations with the EU have unfolded in four main stages, from the post-Soviet era to the current pre-accession period⁹². In the first phase immediately following the EU's recognition of Georgia's independence in 1992, relations exclusively involved financial, technical, and humanitarian assistance⁹³. The latter was especially necessary due to the civil wars that broke out in the country, particularly in Abkhazia and South Ossetia, which pitted Georgian nationalism against the two separatist regions' secessionist aspirations⁹⁴. However, ties remained quite loose, as Georgia was embroiled in its internal political turmoil and the EU still perceived the state as Russia's prerogative rather than a real neighbour⁹⁵. Increased cooperation emerged with the signing of the Partnership and Cooperation Agreement (PCA) in 1996, which officially entered into force in 1999, marking the start of the second phase⁹⁶. The PCA represented the first treaty to formally institutionalise a political dialogue between the parties, establishing several basic objectives for the partnership (that will be more extensively addressed in the AA): these include the deepening of political relations and cooperation in different sectors, economic development towards a market economy with greater trade and investment, and the consolidation of democracy⁹⁷. However, Georgia's low priority for the EU at that time, as evidenced by the prolonged ratification process of the PCA⁹⁸, coupled with the internal challenges faced by a state struggling to regain autonomy and stability after years of occupation, continued to hinder significant rapprochement between the two sides. Since 2003, several factors have contributed to the improvement of their relations: the adoption of the 2003 European Security Strategy (ESS), which introduced a new foreign policy approach highlighting the need for greater EU

⁹¹ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater," Carnegie Europe, November 16, 2023, <https://carnegieendowment.org/research/2023/11/eu-georgia-relations-a-local-show-of-the-global-theater?lang=en>. For a discussion on the framing of the EU membership as a priority of Georgian foreign policy, see Thomas de Waal, *Georgia's Choices: Charting a Future in Uncertain Times* (Washington DC: Carnegie Endowment for International Peace, 2011); and Kornely Kakachia and Salome Minesashvili, "Identity politics: Exploring Georgian foreign policy behavior," *Journal of Eurasian Studies* 6, no. 2 (July 2015): 171-180.

⁹² Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

⁹³ Ioannis N. Grigoriadis and Mariam Gugulashvili, "EU-Georgia Relations at a Critical Juncture: A Case for European Strategic Autonomy," Hellenic Foundation for European & Foreign Policy, September 2, 2022, <https://www.eliamep.gr/en/publication/οι-σχέσεις-ευρωπαϊκής-ένωσης-και-γεωρ/>.

⁹⁴ Stefan Wolff, "Georgia: Abkhazia and South Ossetia," *Encyclopedia Princetoniensis*, accessed May 24, 2024, <https://pesd.princeton.edu/node/706>.

⁹⁵ See Commission of the European Communities, *Communication from the Commission towards a European Union Strategy for Relations with the Transcaucasian Republics*, 51995DC0205, May 31, 1995, COM(95) 205. For a discussion on the EU's 'hesitations' in Georgia during the 1990s, see Nicu Popescu, *Europe's Unrecognised Neighbours: the EU in Abkhazia and South Ossetia* (Brussels: Centre for European Policy Studies, 2007), 2-8.

⁹⁶ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

⁹⁷ Official Journal of the European Communities, *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part*, 21999A0804(01), August 4, 1999, Art. 1. Hereinafter "Georgia PCA".

⁹⁸ Taras Kuzio, *EU and Ukraine: a turning point in 2004?* (Paris: European Union Institute for Security Studies, 2003), 14.

involvement in its neighbourhood; Georgia's decisive turn towards Western-oriented foreign policy following the 2003 "Rose Revolution", which witnessed a large pro-European popular mobilisation for the first time; the 2008 Georgian war, which not only heightened awareness of the impending Russian threat, reinforcing pro-European sentiments, but also served as a warning to the EU about the potential impact of regional dynamics on its political stability, posing significant security concerns for both partners⁹⁹. Of note, the Russian-Georgian conflict made clear that the EU, but especially the US and NATO, "failed to prevent the war and failed to prevent [Georgia] from suffering a comprehensive military defeat"¹⁰⁰. These developments culminated in the third phase with the signing of the Association Agreement in 2014, which came into its full application in 2016, representing a pivotal moment in the intensification of EU-Georgia relations¹⁰¹. The AA first introduces its political dimension, affirming in its preamble a shared dedication to "the common values on which the European Union is built – democracy, respect for human rights and fundamental freedoms, and the rule of law – lie also at the heart of political association and economic integration as envisaged in this Agreement"¹⁰². These "essential elements"¹⁰³ reiterated in Article 2 constitute the core political values upon which the EU bases any meaningful relationship. Being rather general in the text, these latter's concrete implementation is addressed in more detail in the so-called Association Agenda¹⁰⁴. The economic-related content of the agreement is covered by the DCFTA and establishes a free trade area for goods, leading to the abolition of import tariffs on both sides for nearly all products. Different from the Moldovan and Ukrainian cases, Georgia's DCFTA did not include transition periods, as the country had already liberalised its trade in 2006. Therefore, through the DCFTA the EU aligned with Georgia in liberalising its imports, resulting in almost complete tariff exemption for exports and imports since September 1 2014¹⁰⁵. Moreover, the DCFTA includes a series of measures to regulate customs legislation and procedures, ensuring their speed, efficiency and transparency¹⁰⁶. Lastly, with the AA laying the foundation for visa-free travel to the EU, the Visa

⁹⁹ Ioannis N. Grigoriadis and Mariam Gugulashvili, "EU-Georgia Relations at a Critical Juncture." For a study of the ethnic features of the 2008 war in Georgia, see Vicken Cheterian, "The August 2008 War in Georgia: from Ethnic Conflict to Border Wars," in *War and Revolutions in the Caucasus*, ed. Stephen F. Jones (London: Routledge, 2016), 155-170. As for the political reasons behind Russia's policy towards Georgia in 2008, see Thornike Gordadze, "Georgia-Russia Conflict in August 2008: War as a Continuation of Politics," in *Reassessing Security in the South Caucasus*, ed. Annie Jafalian (London: Routledge, 2011), 11-32. Concerning the Western response to the 2008 Georgian war, see Mike Bowker, "The War in Georgia and the Western Response," *Central Asian Survey* 30, no. 2 (June 2011): 197-211.

¹⁰⁰ Bowker, "The War in Georgia and the Western Response" 198.

¹⁰¹ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

¹⁰² Official Journal of the European Union, *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part*, 22014A0830(02), August 30, 2014, Preamble. Hereinafter "Georgia AA".

¹⁰³ Georgia Association Agreement, Art. 2.

¹⁰⁴ Michael Emerson and Tamara Kovziridze, *Deepening EU-Georgian Relations. What, why and how?* (London: Rowman & Littlefield International, 2018), 12.

¹⁰⁵ Michael Emerson and Tamara Kovziridze, *Deepening EU-Georgian Relations. What, why and how?* 36.

¹⁰⁶ Michael Emerson and Tamara Kovziridze, *Deepening EU-Georgian Relations. What, why and how?* 48.

Liberalisation Action Plan (VLAP) was initiated in 2013 and, given its positive implementation, the abolition of visas for short-term visits to the Schengen area was approved in March 2017¹⁰⁷.

Georgia's ambition for European integration has been further consolidated as an obligation through the 2017 constitutional amendment¹⁰⁸ and identified as a key strategic priority in Georgia's Foreign Policy Strategy for 2019-2022¹⁰⁹. Georgia's commitment has evolved alongside Ukraine and Moldova, who formed the "Associated Trio" (AT) in 2021 to emancipate from the other EaP countries and establish a joint preferential dialogue with the EU. At the AT's Petra Summit in 2021, the states signed a declaration appealing to the EU to recognise their European membership perspective, indicating their desire to become full members of the EU in the future¹¹⁰. However, the prolonged negotiations over this recognition during the last Eastern Partnership Summit¹¹¹ underline the EU's persistent "othering attitude"¹¹² towards its Eastern neighbourhood until recently. It took a geopolitical shock to shift away from such a Western-centric approach. Indeed, the Russian full-scale invasion of Ukraine, and the subsequent return of the East to European dynamics, represents a true watershed in the EU's attitude towards its eastern neighbours, raising for the first time the possibility of future, albeit distant, membership for these countries. Accordingly, Georgia seized the window of opportunity opened by the Russian aggression to submit its application for membership in March 2022¹¹³, marking the beginning of the fourth and current phase of EU-Georgia relations¹¹⁴. However, unlike Ukraine and Moldova, Georgia's recent democratic backsliding and the consequent cooling of relations with the EU led to an initial rejection of the candidate status in June 2022¹¹⁵. The differentiated decision distanced Georgia from the other members of the Trio, causing it to fall behind the two partners, although this detachment had already been sealed by Georgia's ambiguous position¹¹⁶ in response to Russia's full-scale invasion of Ukraine¹¹⁷. In its June 2022 opinion, the Commission set further detailed conditions through 12 key priorities that Georgia was recommended to fulfil in order to obtain the status¹¹⁸. Although satisfied with the completion of only 3 of these

¹⁰⁷ Michael Emerson and Tamara Kovziridze, *Deepening EU–Georgian Relations. What, why and how?* 26.

¹⁰⁸ Parliament of the Republic of Georgia, *Constitution of Georgia*, 786, August 24, 1995 (Amended in 2017), Art. 78. Hereinafter "Constitution of Georgia".

¹⁰⁹ Caucasus Watch, Georgian Government adopts foreign policy strategy for 2019-2022, Caucasus Watch, April 2, 2019, <https://caucasuswatch.de/en/news/georgian-government-adopts-foreign-policy-strategy-for-2019-2022.html>.

¹¹⁰ Georgi Gotev, "The Associated Trio in Action: Special Report," Euractive, July 2020, <https://en.euractiv.eu/wp-content/uploads/sites/2/special-report/The-Associated-Trio-in-action-Special-Report-1.pdf>.

¹¹¹ Council of the European Union, *Joint Declaration of the Eastern Partnership Summit: 'Recovery, Resilience and Reform'*, 14964/21, December 15, 2021, Art. 8.

¹¹² Mart Kuldkepp, "Western Orientalism Targeting Eastern Europe: An Emerging Research Programme," 65.

¹¹³ European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), "Georgia."

¹¹⁴ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

¹¹⁵ European Council, *European Council conclusions*, EUCO 24/22, June 23-24, 2022, 4.

¹¹⁶ Georgia has not joined the Western sanctions against Russia.

¹¹⁷ Ioannis N. Grigoriadis and Mariam Gugulashvili, "EU-Georgia Relations at a Critical Juncture."

¹¹⁸ European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, COM(2022) 405 final, June 17, 2022, 17-18.

priorities¹¹⁹, the EU decided to grant Georgia the candidate status in December 2023 following the Commission's latest recommendation a month earlier¹²⁰. Georgia's advancement was highly controversial, as, rather than being based on substantial progress, it was mainly driven by a politically motivated decision to signal the EU's closeness and optimism about the country's democratisation potential, while also preventing a closer alignment with Russia¹²¹.

As in the Georgian case, EU-Armenia relations started after Armenia's independence from the USSR in 1991 and its recognition from the EU in the same year¹²², assuming the form of economic assistance. Once again, the relations in the early years were quite distant, due to the already mentioned EU's limited concern and Armenia's involvement in the 1991-1994 war against its neighbour Azerbaijan over the disputed Nagorno-Karabakh. Nagorno-Karabakh is an ethnic Armenian-majority region, which had been connected to Azerbaijan since the time of tsarist Russia and formally integrated as an Azeri enclave in 1921¹²³. For this reason, the region became an object of contention between Azerbaijan and Armenia, with each claiming it under their sovereignty by invoking their right of territorial integrity and self-determination respectively¹²⁴. Since the first 1991-1994 war, Nagorno-Karabakh has passed from one state's control to the other throughout numerous conflicts, until the recent reacquisition of full control by Azerbaijan in September 2023¹²⁵. The Nagorno-Karabakh question is paramount in understanding Armenia's foreign and domestic policy choices up to the present day, as will be discussed shortly. Relations with the EU gradually began to intensify with the signing of the PCA in 1996, which came into force in 1999 following the usual lengthy ratification process¹²⁶. This first institutional framework was uniform across all countries in the Eastern neighbourhood, thus lacking tailored differentiation for each state, which suggests a further sign of the low level of commitment from the European side. Therefore, as in the case of Georgia, the PCA included the same four main objectives, namely democratic and economic development and

¹¹⁹ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

¹²⁰ European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), "Georgia."

¹²¹ For a comprehensive overview over Georgia's adherence to EU's requirements for accession few months before the granting of the candidate status, see Sasha Stone et. al., "Reform and Resistance: Georgia's Path to EU Candidacy," Center for European Policy Analysis, April 6, 2023, https://cepa.org/comprehensive-reports/reform-and-resistance-georgias-path-to-eu-candidacy/#footnote_3_17325.

¹²² Mikayel Hovhannisyan and Julia Sahakyan, *Adopting Experience of Bilateral EU-Moldova and EU-Georgia Civil Society Platforms to Armenia*, 7.

¹²³ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade* (Brussels: Centre for European Policy Studies, 2021), 1.

¹²⁴ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict in Light of the Crisis over Ukraine," in *Not Frozen!*, ed. Sabine Fischer (Berlin: Stiftung Wissenschaft und Politik, 2016), 63.

¹²⁵ Council on Foreign Relations, "Nagorno-Karabakh Conflict," Global Conflict Tracker, March 20, 2024, <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict>.

¹²⁶ Mikayel Hovhannisyan and Julia Sahakyan, *Adopting Experience of Bilateral EU-Moldova and EU-Georgia Civil Society Platforms to Armenia*, 7.

enhanced political dialogue and cooperation¹²⁷. Since the EaP was launched, as Schumacher argues, Armenia found itself caught between Georgia, Moldova and Ukraine, mostly pro-European and motivated to take further steps towards the EU, and Belarus and Azerbaijan, with rather no interest other than external legitimacy¹²⁸. Although distinct from any membership aspiration, Armenia's intention to reap the benefits from increased European cooperation led to the opening of negotiations on the draft Association Agreement and the related DCFTA in 2010¹²⁹. However, shortly after such negotiations were finalised, in September 2013 President Sargsyan declared Armenia's decision to withdraw from signing the AA to join the Eurasian Customs Union, which eventually became the EEU¹³⁰. Indeed, the AA's trade component was incompatible with Armenia's new membership status, given the irreconcilability of two agreements involving accession to different single markets and customs unions. However, at the 2013 Vilnius Summit, the EU and Armenia adopted a joint declaration expressing their willingness to keep fostering cooperation in several non-trade areas, such as human rights and democracy, and to redefine the institutional basis of their relations in the shortest possible time¹³¹. In order to understand Armenia's drastic shift, it is important to note that Armenia could not entirely rely on the EU. The European partnership model with its Eastern neighbourhood was conceived as asymmetrical¹³², as it was built on an expectation gap¹³³ not only in terms of integration but also of security. As previously mentioned, Armenia resides in a state of regional vulnerability due to the past Nagorno-Karabakh conflict with Azerbaijan and the permanent risks of recrudescence, compelling it to consider security concerns as an overarching priority¹³⁴. Nevertheless, while security is recognised as a crucial component of the ENP¹³⁵, the EU appears to have offered only marginal support in this regard¹³⁶, as evidenced by its inability to address persistent border tensions in Nagorno-Karabakh, the 2008 Georgian war, and the 2014 Crimean conflict. Hence, the Pashinyan government's choice stems from the realisation that, due to the inefficiency of the EaP as

¹²⁷ Official Journal of the European Communities, *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part*, 21999A0909(01), September 9, 1999. Hereinafter "Armenia PCA".

¹²⁸ Tobias Schumacher, "The European Union, its Eastern Neighbourhood and an evolving structured engagement within and beyond the Eastern Partnership Framework," in *The European Union and Its Eastern Neighbourhood: Whither 'Eastern Partnership'?* ed. Andriy Tyushka and Tobias Schumacher (New York: Routledge, 2022), 2.

¹²⁹ Hrant Kostanyan and Richard Giragosian, *EU-Armenian Relations: Charting a Fresh Course* (Brussels: Centre for European Policy Studies, 2017), 1.

¹³⁰ Laure Delcour, "Armenia's and Georgia's contrasted positioning vis-à-vis the EU," 444.

¹³¹ Council of the European Union, *Joint Declaration of the Eastern Partnership Summit, Vilnius, 28-29 November 2013*, 17130/13, November 29, 2013, 3. Hereinafter, Council of the EU, *Joint Declaration Vilnius*.

¹³² Barbara Lippert, "The EU neighbourhood policy," 181.

¹³³ Laure Delcour and Kataryna Wolczuk, "Mind the Gap: Role Expectations and Perceived Performance of the EU in the South Caucasus," *Eurasian Geographies and Economics* 62, no.2 (June 2020): 168.

¹³⁴ Laure Delcour, "Armenia's and Georgia's contrasted positioning vis-à-vis the EU," 443.

¹³⁵ Barbara Lippert, "The EU neighbourhood policy," 180.

¹³⁶ Gustav Gressel, "Promoting European strategic sovereignty in the eastern neighbourhood," European Council on Foreign Relations, December 1, 2020, <https://ecfr.eu/publication/promoting-european-strategic-sovereignty-in-the-eastern-neighbourhood/>.

a security provider, its historic alliance with Russia was the only reliable guarantee¹³⁷. Indeed, Pashinyan was aware of not being able to afford the potential consequences of any open alignment with the West¹³⁸. For this reason, its rapprochement with the EU through the AA negotiations has been characterised by cautious rhetoric and constraints in its European identification¹³⁹, leading to Armenia's behaviour being described as silent Europeanisation¹⁴⁰.

However, the period after 2010 witnessed the most intense phase of EU-Armenia cooperation, marked by significant progress in reforms undertaken by Armenia to align with European standards. In light of this improvement in their relations, the CPA appeared to be quite outdated, as it did not reflect the high level of cooperation that the EU and Armenia had already reached. Therefore, as endorsed by both parties in Vilnius, it was necessary to upgrade such cooperation with a new agreement that would enhance their relations by preserving current achievements and further developing them, especially since most areas of existing collaboration were non-trade related¹⁴¹. About two years after the sudden Armenian pivot to the East, negotiations for the CEPA began, concluding in February 2017 and being finalised in November of the same year during the Eastern Partnership Summit in Brussels¹⁴². The new treaty is also referred to as the "AA-minus", as it builds upon the previously negotiated AA, incorporating almost all its provisions, except for those aspects related to customs and trade matters that would have conflicted with Armenia's new obligations following its accession to the EEU¹⁴³. Therefore, compared to Georgia's AA, the agreement structure is nearly identical, and the political component follows the same general principles, aside from the part relating to territorial integrity and inviolability of borders, which is not present in Armenia's CEPA¹⁴⁴. This means, that similar to Georgia, Armenia is committed to developing democratic institutions, respecting human rights, ensuring judicial independence, fighting against corruption and, more broadly, adhering to all DRoL principles. However, as previously stated, CEPA covers all sections of the AA excluding the DCFTA, and this substantial difference is apparent from the outset

¹³⁷ Laure Delcour, "Armenia's and Georgia's contrasted positioning vis-à-vis the EU," 442-443.

¹³⁸ For an analysis of Pashinyan government foreign policy vis-à-vis Russia, see *infra*, chapter III.

¹³⁹ *Ibidem*.

¹⁴⁰ Laure Delcour and Kataryna Wolczuk, "The EU's Unexpected 'Ideal Neighbour'? The Perplexing Case of Armenia's Europeanisation," *Journal of European Integration* 37, no. 4 (February 2015): 502. See also Aram Terzyan, "Closer to Europe? Domestic Changes and the Europeanization Processes in Post-Revolution Ukraine and Armenia," *Romanian Journal of European Affairs* 20, no. 1 (June 2020): 37-59.

¹⁴¹ Council of the EU, *Joint Declaration Vilnius*. See also European Friends of Armenia, *The Future of EU-Armenia Relations: A Comprehensive Analysis* (Brussels: EuFoA, 2014), 10.

¹⁴² Mikayel Hovhannisyan and Julia Sahakyan, *Adopting Experience of Bilateral EU-Moldova and EU-Georgia Civil Society Platforms to Armenia*, 8.

¹⁴³ *Ibidem*.

¹⁴⁴ Official Journal of the European Union, *Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part*, 22018A0126(01), January 1, 2018, Art. 2. Hereinafter "Armenia CEPA".

in the drafting of their objectives, particularly in the distinct terminology used: while Georgia's emphasises "economic integration"¹⁴⁵, Armenia's CEPA focuses on "economic cooperation"¹⁴⁶.

1.2.2. Economic Assistance

The first major European economic aid for Georgia and Armenia was provided under the Technical Assistance to the Commonwealth of Independent States (TACIS) programme from 1991 to 2006, along with other subsidiary sectoral programmes such as the European Civil Protection and Humanitarian Aid Operations (ECHO)¹⁴⁷. TACIS was established soon after the end of the Cold War "to support the process of transition to market economies and democratic societies in the countries of Eastern Europe, South Caucasus and Central Asia"¹⁴⁸. Due to the scarcity of information on these former Soviet Republics and their still unknown, constantly evolving political and institutional structures, TACIS had to be built from scratch without relying on previous norms or procedures¹⁴⁹. Under its pioneering role, the TACIS programme established a precedent that served as the foundation for the economic assistance structure in the subsequent financing instruments aimed at the Eastern neighbourhood. The TACIS objectives that had received the most substantial amount of assistance centred around the national component¹⁵⁰, which primarily included support for institutional, legal and administrative reforms, private sector development and economic growth, and the social consequences of transition¹⁵¹. The launch of ENP necessitated a unified financing instrument that would be coherent with its new broader scope. Therefore, in 2007 TACIS was replaced by ENPI, which incorporated several previously independent funding programmes, including the former and the Euro-Mediterranean Partnership (MEDA) for the Southern neighbourhood¹⁵². Unlike the TACIS' purely technical nature, the ENPI funded a multitude of programmes with various formats¹⁵³ across different cooperation sectors and geographical areas¹⁵⁴. The ambitious objectives of the ENPI aligned with those of the ENP, encompassing political, economic, and social reforms. Particularly within the political sphere, the reforms to be addressed

¹⁴⁵ Georgia AA, Art. 1.

¹⁴⁶ Armenia CEPA, Art. 1.

¹⁴⁷ Elena Baracani, "EU democratic rule of law promotion," 65.

¹⁴⁸ Alexander Frenz, *The European Commission's Tacis Programme 1991 – 2006: A Success Story* (Istanbul: Organization for Security and Co-operation in Europe (OSCE), 1999), 2.

¹⁴⁹ Alexander Frenz, *The European Commission's Tacis Programme 1991 – 2006*, 2.

¹⁵⁰ Elena Baracani, "EU democratic rule of law promotion," 65.

¹⁵¹ EUR-Lex, "Tacis Programme (2001-2006)," EUR-Lex, February 21, 2007, <https://eur-lex.europa.eu/EN/legal-content/summary/tacis-programme-2000-2006.html#>.

¹⁵² Information Center on NATO and EU, "Partnership History," Information Center on NATO and EU, Accessed May 8, 2024, <https://infocenter.gov.ge/en/eu-georgia/thanamshromlobis-istoria/>.

¹⁵³ National, multi-country and cross-border cooperation programmes.

¹⁵⁴ See *supra*, sub-paragraph 1.1.2.

were outlined in more detail, including the “establishment and adaptation of institutional and administrative capacities, good governance, [and] rule of law”¹⁵⁵. Further innovations introduced with the ENPI were the NIF, TAIEX, SIGMA and the use of Twinning, better described in the previous paragraph¹⁵⁶. Economic assistance under ENPI was coordinated through two main planning documents: the Country Strategy Paper (CSP), which provided a comprehensive analysis of the country’s political, social and economic context and identified the overall objectives of EU support; and the Multi-annual Indicative Programme (MIP) (usually 7 years) or National Indicative Programme (NaIP) (3-4 years), which operationalised this long-term strategic framework set by the CSP, defining priority areas for cooperation and guiding the allocation of financial resources for each¹⁵⁷. In 2013, the ENPI was succeeded by the European Neighbourhood Instrument (ENI), a new financial instrument designed to be “based on differentiation, joint ownership, and flexibility”¹⁵⁸, in conformity with the upcoming ENP’s revision. It should be noted that, unlike the ENPI, the ENI does not envisage any cooperation with Russia¹⁵⁹. The ENI adopts all the innovations of the ENPI and further expands upon them, especially in cross-cooperation programmes. New advancements focus on increased participation of CSOs and local authorities in EU support activities, as well as greater engagement of partner countries’ citizens in EU internal programmes such as Horizon 2020 and Erasmus +¹⁶⁰. The ENI’s objectives indeed reflect these developments, emphasising not only good governance and economic integration, but also sectoral cooperation, especially in the energy field, and people-to-people contacts¹⁶¹. Such objectives are closely connected with the four thematic platforms of the EaP’s multilateral track, further demonstrating the commitment to enhance the shared and horizontal cooperation initiated with the new partnership initiative. Moreover, the CSP was replaced by the Single Support Framework (SSF), a 3-4 year budgetary planning instrument operating under the ENI, while continuing to use the MIPs and NIPs to provide more detailed planning of the sectors and specific projects to be funded by the EU within the broader strategic framework defined by the SSFs¹⁶². In 2021, ENI gave way to the even more integrated and centralised NDICI, the current

¹⁵⁵ EUR-Lex, “European Neighbourhood and Partnership Instrument (2007 – 2013),” EUR-Lex, October 8, 2007, <https://eur-lex.europa.eu/EN/legal-content/summary/european-neighbourhood-and-partnership-instrument-2007-2013.html>.

¹⁵⁶ Directorate General Development and Cooperation – EuropeAid, *European Neighbourhood and Partnership Instrument 2007-2013: Overview of Activities and Results* (Brussels: European Commission, 2014), 15.

¹⁵⁷ European Friends of Armenia, *The Future of EU-Armenia Relations*, 10.

¹⁵⁸ EUR-Lex, “The European Neighbourhood Instrument (2014–2020),” EUR-Lex, March 3, 2023, <https://eur-lex.europa.eu/EN/legal-content/summary/the-european-neighbourhood-instrument-2014-2020.html>.

¹⁵⁹ Information Center on NATO and EU, “Partnership History.”

¹⁶⁰ EUR-Lex, “The European Neighbourhood Instrument (2014–2020).”

¹⁶¹ Information Center on NATO and EU, “Partnership History.”

¹⁶² See Directorate-General for International Partnerships (European Commission), Directorate-General for Neighbourhood and Enlargement Negotiations (European Commission), ECDPM, ECORYS, Mancala Consultores and Particip, *Evaluation of the EU's cooperation with Georgia* (Luxembourg: Publications Office of the European Union, 2022).

financing instrument covering the seven-year period 2021-2027. Indeed, NDICI further brings together several separate financial instruments from the previous 2014-2020 period, including the European Development Fund. In this regard, in addition to the political and economic objectives inherited from the previous financial instruments, NDICI places special focus on development, aiming to address global challenges such as poverty reduction, climate change and irregular migration¹⁶³. This focus implied broadening its scope beyond the neighbourhoods, extending cooperation to sub-Saharan Africa, Asia and the Pacific, the Americas, and the Caribbean, according to its ambitions to foster multilateralism¹⁶⁴. A further innovation in line with its new focus involves the programming structure, integrating rapid response programmes with the established thematic and geographical ones to address crisis or conflict situations, including natural disasters and hybrid threats¹⁶⁵.

1.2.3 Democratic Conditionality

As previously mentioned, positive or negative conditionalities are used for both accession candidate and potential candidate countries such as the EaP partners. Although proclaimed in 1993, the Copenhagen criteria were only effectively applied by the EU starting in 1997 with the launch of the enhanced pre-accession strategy during the Luxembourg European Council¹⁶⁶. This policy enabled their implementation through three fundamental elements: Accession Partnerships that outline specific priorities to address, annual evaluations to monitor compliance and progress, and accession-oriented economic assistance designed to help countries advance these priorities¹⁶⁷. The conditionality approach towards ENP countries is based on three similar elements: Action Plans that identify key priority areas for intervention, annual progress reports monitoring the developments in these areas, and economic assistance in support of compliance efforts¹⁶⁸. The Action Plan is a “primary agenda-setting and benchmarking instrument”¹⁶⁹, serving as a “political guidance”¹⁷⁰ for ENP countries to progress in their relations with the EU. The main difference between the pre-accession strategy and the ENP regarding the implementation of conditionality is that, while the

¹⁶³ EUR-Lex, “Global Europe — the EU Neighbourhood, Development and International Cooperation Instrument,” EUR-Lex, August 2, 2021, <https://eur-lex.europa.eu/EN/legal-content/summary/global-europe-the-eu-neighbourhood-development-and-international-cooperation-instrument.html>.

¹⁶⁴ EUR-Lex, “Global Europe — the EU Neighbourhood, Development and International Cooperation Instrument.”

¹⁶⁵ EUR-Lex, “Global Europe — the EU Neighbourhood, Development and International Cooperation Instrument.”

¹⁶⁶ Elena Baracani, “EU democratic rule of law promotion,” 68.

¹⁶⁷ *Ibidem*.

¹⁶⁸ Elena Baracani, “EU democratic rule of law promotion,” 69.

¹⁶⁹ No author, *Analysis of European Neighbourhood Policy (ENP action plans for South Caucasus: Armenia, Azerbaijan and Georgia)* (Budapest: Central European University, 2007), 1.

¹⁷⁰ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, 6.

Accession Partnerships are determined unilaterally by the Council on a Commission's proposal, Action Plans must be jointly negotiated and approved by the ENP country as well. This implies that the Commission and the Council cannot require the partner country to add certain priorities to the Action Plan without the latter's consent¹⁷¹. The ENP Action Plans for Armenia and Georgia were both adopted in 2006¹⁷² and cover all dimensions of DRoL as priority areas, thus subjecting them to EU political conditionality¹⁷³. Specifically, both documents highlight the same priorities in this regard, calling for the strengthening of democratic institutions and the reform of the judicial system first, followed by the fight against corruption, respect for human rights and fundamental freedoms, and improvement of the civil service¹⁷⁴. The Commission's progress report is essential for enhancing the level of determinacy of conditionality, as it informs countries about the objectives met, identifies areas needing improvement and outlines necessary steps forward. Moreover, this annual monitoring plays a key role in enforcing conditionality by identifying rewards and sanctions based on each state's compliance status¹⁷⁵. Forms of conditionality have existed since the EU's first bilateral agreements with Georgia and Armenia, the CPA, as stated in both treaties: "if either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures"¹⁷⁶. By supporting the achievement of certain political and economic goals expressed in the treaties, the financial instruments themselves embodied these conditionalities, as demonstrated by the first TACIS Programme: "when an essential element for the continuation of cooperation is missing, the Council may, on a proposal from the Commission and acting by qualified majority, decide upon appropriate measures"¹⁷⁷. Furthermore, the 2011 Commission Communication "A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy", introduced a new conditionality approach based on mutual responsibility:

"[i]ncreased EU support to its neighbours is conditional. It will depend on progress in building and consolidating democracy and respect for the rule of law. The more and the faster a country progresses in its internal reforms, the more support it will get from the EU"¹⁷⁸.

¹⁷¹ Elena Baracani, "Pre-accession and Neighbourhood: The European Union's democratic conditionality in Turkey and Morocco," in *European External Democracy Promotion*, ed. Annette Jünemann and Michèle Knodt (Baden-Baden: Nomos, 2007), 339.

¹⁷² Edzard Wesseling and Ron Boschma, "European Neighbourhood Policy," 7.

¹⁷³ Elena Baracani, "EU democratic rule of law promotion," 69.

¹⁷⁴ See Ministry of Foreign Affairs of Georgia, *EU/Georgia Action Plan within the European Neighbourhood Policy* (Tbilisi: Ministry of Foreign Affairs of Georgia, 2006); European External Action Service, *EU/Armenia Action Plan* (Brussels: European External Action Service, 2006).

¹⁷⁵ Elena Baracani, "EU democratic rule of law promotion," 71.

¹⁷⁶ Georgia PCA, Art.98; Armenia PCA, Art. 95.

¹⁷⁷ EUR-Lex, "Tacis Programme (2001-2006)."

¹⁷⁸ European Commission, *A new response to a changing Neighbourhood: A Review of European Neighbourhood Policy*, COM(2011) 303, May 25, 2011, 3. Hereinafter "ENP review".

Therefore, to offer further short-term incentives, the so-called “more for more”¹⁷⁹ approach proposed higher funding levels in exchange for more substantial reforms, with the idea of “building deep democracy”¹⁸⁰ by rewarding reforms that drive significant systemic change. Accordingly, subsequent funding instruments embrace this differentiated approach, as explicitly expressed in the ENI document, which is defined as being “based on an incentive-based approach (known as the more for more approach) to permit greater support for partners genuinely implementing sustainable democracy”¹⁸¹. Finally, having embarked on the path to EU accession, and officially become a candidate country, Georgia is now bound by the pre-accession strategy. The current bilateral treaty regulating relations between Georgia and the EU is the AA, which outlines a clearer political path and consequently stricter conditionalities. Indeed, the so-called “essential elements” in Art. 2, such as democracy and the rule of law, form the political core of the treaty and condition the entire agreement on these fundamental premises. Their foundational role mandates that all cooperation must be subordinated to respect for these principles, and, in the event of a serious violation, the agreement may be subject to suspension, as stated in Art. 422¹⁸².

1.2.4 Democratic socialisation

Through the financing instruments described above, Georgia and Armenia participated in numerous European programmes and realised projects across various fields, developing their institutional capacities and advancing reform implementation. Projects facilitate the establishment of “multi-level contacts”¹⁸³, not only between the EU and the partner countries’ governments, but also with their civil societies. Hence, projects aimed at fulfilling the political conditions specified in the treaties were not limited to those with high-level institutions, such as TAIEX and SIGMA, already described in the previous paragraph, but also included those from grassroots levels. Indeed, considering the EU’s growing recognition of civil society as a catalyst for political change and a guarantor for democratic oversight¹⁸⁴, CSOs have progressively become active in the EU’s initiatives. Such a perception of civil society’s potential driving role in EU cooperation underwent a turning point with the launch of

¹⁷⁹ Directorate-General for International Partnerships (European Commission), ECDPM, ECORYS, Lattanzio and Particip, *Evaluation of the European Union's Cooperation with Georgia (2007-2013)* (Luxembourg: Publications Office of the European Union, 2022), 15.

¹⁸⁰ ENP review, 2.

¹⁸¹ EUR-Lex, “The European Neighbourhood Instrument (2014–2020).”

¹⁸² Georgia AA, Art. 422.

¹⁸³ Mikayel Hovhannisyan and Julya Sahakyan, *Adopting Experience of Bilateral EU-Moldova and EU-Georgia Civil Society Platforms to Armenia*, 11.

¹⁸⁴ Michael Emerson and Tamara Kovziridze, *Deepening EU–Georgian Relations. What, why and how?* 9.

the EaP¹⁸⁵ and the subsequent initiation of various projects (flagship initiatives) within this framework. This was demonstrated by the creation of the CSF, one of the most established projects involving extensive engagement of EaP countries' civil societies in the definition and promotion of EaP priorities¹⁸⁶. The CSF partly resembles the operational structures of the EaP, as it is organised into four working groups corresponding to the multilateral track's four thematic platforms. The structure thus comprises a steering committee, four working groups jointly coordinated by an EU and an EaP representative, with participation from various EU and EaP CSOs, and six national platforms, each representing an EaP country and led by national coordinators¹⁸⁷. This flagship initiative provides an unprecedented platform to foster connections between EU and EaP partners' civil societies and intensify EaP CSOs' interaction with public authorities and public life in their respective countries. Indeed, in addition to serving as a platform for dialogue, the Forum contributes to the implementation of the EaP itself by considering and translating civil society perspectives into targeted recommendations and proposals¹⁸⁸. However, despite the potential of this initiative in shaping policymaking in support of civil society and DRoL reforms in the EaP countries, its impact in terms of political influence is rather weak. Besides its dispersed and irregular organisation and inadequate financial resources, the primary challenge lies in its "limited access to the policy process"¹⁸⁹, confirmed by its non-participant status in the EaP thematic platforms, due to which the Forum has rarely been able to effectively convey its viewpoints to governmental bodies. Therefore, while the CSF facilitated an exchange of views and contacts among CSOs from the EU and partner countries, it cannot be considered among those projects that significantly contributed to the EaP countries' meaningful political and economic convergence with the EU.

Conclusion

The present chapter has shed light on the development of the EU's DRoL promotion strategy over the years, first describing the main initiatives through which it has been implemented, i.e. the ENP and EaP, then focusing on Georgia and Armenia and analysing their interaction with it across its main aspects. However, the chapter has also revealed several shortcomings that the EU strategy brought about, potentially affecting relations with the two eastern neighbourhood countries. It is worth noting

¹⁸⁵ Mikayel Hovhannisyan and Julia Sahakyan, *Adopting Experience of Bilateral EU-Moldova and EU-Georgia Civil Society Platforms to Armenia*, 12.

¹⁸⁶ *Ibidem*.

¹⁸⁷ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, 13.

¹⁸⁸ Ukrainian National Platform of the Eastern Partnership Civil Society Forum. "About Eastern Partnership."

¹⁸⁹ Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, 13.

that the neighbourhood policies towards the East were inherently contradictory from the outset, applying the logic of EU enlargement policy to partner countries for which membership was not contemplated. Indeed, the recent steps forward by Georgia, Ukraine and Moldova on their path towards EU accession did not occur within the Eastern Partnership Framework, but in parallel with it, being part of the so-called enhanced pre-accession strategy. Moreover, developments in strengthening EU relations do not necessarily imply progress in democratic reforms. A notable example is Georgia, which was granted candidate status more as a symbolic sign aimed at incentivising greater commitment, rather than as a reward for substantial progress in reforms¹⁹⁰. Nevertheless, the considerations drawn in this first chapter have primarily presented the European DRoL promotion instruments, particularly analysing their functioning and theoretical applications to the recipient states. The problematisation of such instruments' influence on Armenia and Georgia's domestic context will be further explored in the next chapters. In conclusion, it is appropriate to specify that, regardless of the exact degree of impact, the shortcomings in the ENP and EaP suggest that the current state of DRoL reforms in Georgia and Armenia largely hinges on internal political dynamics within these states. For this reason, while aiming to understand the interplay between external and internal influences, the upcoming chapters will thoroughly examine the political context from which the reforms under scrutiny emerged and evolved.

¹⁹⁰ The EU's recent condemnation of the 'Russian Law' approved by the Georgian Parliament in May 2024 highlights the absence of substantial reforms in coherence with the country's candidate status. See Joseph Borrell, "Georgia: Statement by High Representative Josep Borrell with the European Commission on the adoption of the "transparency of foreign influence" law," European Union External Action Service, May 15, 2024, https://www.eeas.europa.eu/eeas/georgia-statement-high-representative-josep-borrell-with-european-commission-adoption_en. See *infra*, chapter II.

Chapter II. Democratic rule of law reform adoption, implementation, and internalisation in Georgia: progress, setbacks, and stalemates

Introduction

The following chapter delves into Georgia, with particular emphasis on the internal dynamics that have characterised its political system and shaped the foundational environment for the emergence of DRoL reforms. Notably, the chapter begins by outlining its historical trajectory from the independence from the USSR to the present day, delineating four distinct phases corresponding to the major transfers of power. This historical overview is essential for a comprehensive understanding of how entrenched political practices have consolidated over the years, further reinforced by recent developments concerning the adoption of the ‘Russian law’. The second and third paragraphs are then dedicated to the analysis of reforms, with a specific focus on the executive-legislative relationship and the judicial system, each aligning with the two DRoL dimensions within the theoretical framework of institutional capacity and judicial independence. The consideration of these dimensions arises from the objective of monitoring their evolution in relation to adherence to the principle of separation of powers, which, in a democratic form of government, pertains to the three constitutional branches of the executive, legislative and judiciary. In addition to examining how certain constitutional and legislative provisions have altered the balance of power, the interplay of internal actors with the external EU actor is also assessed to determine the extent of their responsiveness to EU pressures for democratic change. Specifically, the second paragraph addresses the three main constitutional reforms which have significantly influenced the Georgian form of government, facilitating a gradual transition from a presidential to a parliamentary system. The paragraph discusses those provisions of the reforms related to the distribution of competencies between parliament and the government, including the prime minister as its head, and the resulting shifts in the power relationship between the two bodies. Finally, the third paragraph investigates the evolution of the High Council of Justice as the supreme authority responsible for the administration of justice, primarily for the appointments of judges, as monitoring changes within this body have a ripple effect on the overall structure and composition of the judicial system. Following a brief review of the judicial system as of 2012, this final paragraph deals with the four waves of reforms launched between 2013 and 2019. Particularly, it explores those provisions that clarified the Council’s competencies and their impact on the balance of powers between this latter and, on the one hand, the judiciary itself, and on the other hand, the political institutions.

2.1 Georgia's Political Transition: Historical Overview since the Collapse of the USSR

After having presented the theoretical framework and explored the role of the EU as an external actor, it is appropriate to review the main stages of Georgian political history in order to reconstruct the domestic context that has shaped and constrained the reforms to be discussed in the following sections. A historical framework is indeed essential to delve into the political dynamics of a state, retracing the main steps towards its democratic endeavour, and identifying the roots of certain current trends that continue to shape its power structure.

2.1.1 1990-2003: a Tumultuous Departure to State-Building

The history of Georgia after its independence from the USSR was certainly not easy, but rather characterised by turbulent events that resulted in a series of entrenched political patterns. These latter have become typical of the country's governance, thereby hindering the establishment of a stable and functioning political system in the subsequent years.

Apart from the brief interlude between 1918 and 1921, Georgia declared its independence on April 9, 1991¹⁹¹, and since then, it has experienced a succession of attempts at democratic transition. Similar to all former Soviet states, Georgia seized the opportunity presented by the Soviet political and economic liberalisation policies of *perestroika* and *glasnost* to launch a national independence movement that gradually undermined the legitimacy of the communist regime¹⁹². In October 1990, the inaugural multi-party elections resulted in the victory of the nationalist and anti-communist coalition "Round Table – Free Georgia"¹⁹³, which obtained 54% of the vote. Such coalition was under the leadership of Zviad Gamsakhurdia, a dissident against the Soviet regime who played a pivotal role in Georgia's resistance movement¹⁹⁴. Following independence, in May 1991, Gamsakhurdia secured his presidency with 86% of the electorate's support. This event successfully constituted the first peaceful governmental change in the history of Georgian politics up to that time, introducing for the first time a political agenda grounded in the fundamental principles of independence and democracy¹⁹⁵. From this juncture onwards, as the first Georgian state institutions began to take shape,

¹⁹¹ University of Central Kansas, "Georgia (1991-present)," University of Central Kansas, Accessed May 11, 2024, <https://uca.edu/politicalscience/home/research-projects/dadm-project/europerussiacentral-asia-region/georgia-1991-present/>.

¹⁹² Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia, Political Parties: Achievements, Challenges and Prospects* (Utrecht: Eburon Academic Publishers, 2006), 8.

¹⁹³ *Ibidem*.

¹⁹⁴ Anna Fruhstorfer, "Paradoxes of Constitutional Politics in the Post-Soviet Space," *Illinois Law Review* 2 (March 2017): 783.

¹⁹⁵ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 8.

the country underwent a tumultuous decade that defined its record as one of the most dramatic among the former Soviet countries¹⁹⁶. Since the Gamsakhurdia era, Georgian politics witnessed internal fragmentation across the political spectrum, formally due to disagreements on the content of the matters, yet substantially driven by power ambitions among other anti-communist resistance leaders¹⁹⁷. Instead of joining efforts to reach a compromise on a clear plan of action to rebuild the institutions, their approach was framed in terms of allies and adversaries, prioritising the fight for supremacy over the public good¹⁹⁸. Therefore, as a recurring pattern in Georgian politics, the criticism directed at Gamsakhurdia for his authoritarian tendencies lacked constructive intent aimed at fostering cooperative solutions, but rather served as a strategy to gain popular favour and reverse the balance of power. Indeed, Gamsakhurdia's competitors found fertile ground for such accusations, given the leader's interpretation of the popular mandate as a source of legitimacy for even the most repressive actions. The dismantling of the opposition, the closure of most of the independent media outlets, and the adoption of a hard-line nationalist policy were evident examples of strong authoritarian traits¹⁹⁹. In this latter aspect, besides the suppression of political pluralism, Gamsakhurdia's aggressive nationalism prevented the possibility of ethnic pluralism, leading to a gradual escalation of tensions with the regions of Abkhazia and South Ossetia. These territories had enjoyed substantial autonomy under the USSR and, in response to Georgia's strict uniformization policies since independence, developed their own secessionist movements, marking the peak of hostilities²⁰⁰. Furthermore, secessionist sentiments in both regions were supported by Soviet and later Russian forces, which have maintained an interest over the years in exploiting them as proxies, posing a persistent threat to Georgia's internal stability and increasing Russia's leverage over the country²⁰¹. The first open conflict broke out in South Ossetia in 1990 when it unilaterally proclaimed itself an independent republic, followed by Georgia's rejection and abolition of its autonomy with the proclamation of the country as a unitary state. The subsequent military intervention in 1991 led by the Georgian government to restore control over the region proved ineffective against the well-organised and Kremlin-backed Ossetian resistance²⁰². However, as previously mentioned, in addition to tensions with external destabilising forces Gamsakhurdia had to contend primarily with internal political opponents and their accusations of authoritarianism, which were increasingly endorsed by

¹⁹⁶ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 7.

¹⁹⁷ Archil Gegeshidze and Thomas de Waal, "Divided Georgia: a Hostage to Polarization," Carnegie Europe, December 8, 2021, <https://carnegieendowment.org/research/2021/12/divided-georgia-a-hostage-to-polarization?lang=en¢er=Europe>.

¹⁹⁸ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 9.

¹⁹⁹ *Ibidem*.

²⁰⁰ Wolff, Stefan. "Georgia: Abkhazia and South Ossetia."

²⁰¹ Christopher Berglund and Ketevan Bolkvadze, "Sons of the Soil or Servants of the Empire? Profiling the Guardians of Separatism in Abkhazia and South Ossetia," *Problems of Post-Communism* 71, no. 1 (August 2022): 37-48.

²⁰² Wolff, Stefan. "Georgia: Abkhazia and South Ossetia."

public opinion. This growing internal opposition culminated in December 1991 with a rebellion by most of the National Guard²⁰³ and other paramilitary groups who launched a military attack on the parliament building, sparking a civil war²⁰⁴. After two weeks, in January 1992, the *coup d'état*²⁰⁵ managed to overthrow president Gamsakhurdia, forcing him to flee the country and the Georgian Military Council took control of the government²⁰⁶. Therefore, the incumbent president's dethronement during the first year of his mandate was the decisive event that proved the failure of Georgia's first attempt at democratic transition.

In March 1992, leaders of the military rebellion appointed Eduard Shevardnadze, the former Foreign Minister of the USSR under Gorbachev, as Chairman of the Georgian State Council (which succeeded the Military Council). In the parliamentary elections of October that year, Shevardnadze ran alone, winning with an overwhelming majority of over 95% of the votes and assuming the offices of Chairman of the parliament and head of State²⁰⁷. At the time of the adoption of the new Constitution in 1995, Shevardnadze secured a victory in the newly held presidential elections with 77% of the votes, and the party he founded, the Citizens' Union of Georgia (CUG), obtained the majority of seats in the legislative elections²⁰⁸. From that moment on, Shevardnadze, the new face of Georgia, served as president until 2003. His government started to build basic state institutions, ushering in a renewed sense of optimism for democratic transition, and adopted a more moderate approach than its predecessor. It softened aggressive rhetoric, embraced more tolerance toward political parties and ethnic minorities, and improved media independence²⁰⁹. However, new conflicts fuelled by forces both inside and outside the central state affected the Shevardnadze administration, resulting in another turbulent period that prevented democratic institutions from taking root and stabilising. The conflict in South Ossetia, which began under Gamsakhurdia's direction, persisted for another year²¹⁰. In July 1992, following yet another defeat of the Georgian forces, a peace agreement brokered by Russia was signed, leaving the territory under the administration of the separatist government with a ceasefire overseen by Georgian-Russian-Ossetian peacekeepers²¹¹. The first new challenge arose in 1992 from the retaliatory actions of Gamsakhurdia's supporters who, following the *coup*, seized control of Mingrelia, the former president's native region, and launched a series of attacks against the ruling government. Shevardnadze's efforts to restore order proved unsuccessful and caused the prolonged

²⁰³ A sort of Georgian army that was supposed to be loyal to the government.

²⁰⁴ Anna Fruhstorfer, "Paradoxes of Constitutional Politics in the Post-Soviet Space," 783.

²⁰⁵ The so-called Christmas coup.

²⁰⁶ University of Central Kansas, "Georgia (1991-present)."

²⁰⁷ Human Rights Watch Report, "Georgia/Abkhazia: Violations of the Law of War and Russia's Role in the Conflict," Human Rights Watch, March, 1995, <https://www.hrw.org/reports/1995/Georgia2.htm>.

²⁰⁸ University of Central Kansas, "Georgia (1991-present)."

²⁰⁹ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 11.

²¹⁰ Wolff, Stefan. "Georgia: Abkhazia and South Ossetia."

²¹¹ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 12.

duration of the civil war until the end of 1993, when a cease-fire agreement was reached²¹². Moreover, Mingrelia borders the south of Abkhazia, which provided both opponents of the new government with a shared interest in coordinating their activities against a common enemy, ultimately leading to a further escalation of ethnic conflict²¹³. Under Gamsakhurdia's leadership, hostilities began with the abolition of Abkhazia's autonomy through Georgia's declaration of independence, prompting the region's counterreaction to reinstate its 1925 Constitution and claim secession²¹⁴. The tensions were temporarily mitigated through a power-sharing compromise, which however did not last long²¹⁵. Abkhazia took advantage of Shevardnadze's inability to manage the internal political disorders, and when Georgian forces entered Abkhazia in August 1992, resistance from the region's militias eventually defeated the central government in September 1993²¹⁶. As a result of the war, the Georgian community residing in Abkhazia, once the dominant ethnic group constituting about 46% of the inhabitants, was forced to flee the region, and by 2011 their population had further declined to 19% mainly due to the 2008 war. Notably, remaining ethnic Georgians continue to face various forms of discrimination in terms of employment, education, freedom of movement, and political rights²¹⁷. In April 1994, the Abkhaz conflict ended with a cease-fire agreement mediated by Russia, followed by the deployment of Moscow-led peacekeepers from the Commonwealth of Independent States (CIS)²¹⁸. The precarious situation in Abkhazia and Ossetia has been described as frozen conflicts, as no final solution has been reached and future prospects remain uncertain²¹⁹. Local institutions are substantially consolidated, though they lack formal legitimacy, and the territories continue to experience episodes of violence, especially along the borders²²⁰. After the internal unrest of the early years and the failure to permanently resolve disputes with separatist regions, Shevardnadze began to consolidate his power starting from the electoral victory that followed the establishment of the Constitution. A new feature of the Shevardnadze government was the so-called "young reformers"

²¹² Human Rights Watch Report, "Georgia/Abkhazia".

²¹³ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 12.

²¹⁴ Wolff, Stefan. "Georgia: Abkhazia and South Ossetia."

²¹⁵ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 10.

²¹⁶ Wolff, Stefan. "Georgia: Abkhazia and South Ossetia."

²¹⁷ Cory Welt, *Georgia: Background and U.S. Policy* (Washington, D.C.: Congressional Research Service, 2021), 12.

²¹⁸ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 12; The Commonwealth of Independent States (CIS) is a community of independent states founded by Russia, Belarus, and Ukraine on 8 December 1991. The CIS considers itself the successor of the USSR as regards some aspects of international law and politics. The CIS's functions are to coordinate its members' policies regarding their economies, foreign relations, defense, immigration policies, environmental protection, and law enforcement. As of 2024, the member states are Russia, Belarus, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova (planning full withdrawal), Tajikistan and Uzbekistan. See Barry Turner, "Commonwealth of Independent States (CIS)," in *The Statesman's Yearbook*, ed. Barry Turner (London: Palgrave Macmillan, 2014): 46-47.

²¹⁹ For a discussion on the frozen nature of the said conflicts, as well as potential but still uncertain scenarios, see Thomas de Waal and Nikolaus von Twickel, *Beyond Frozen Conflict: Scenarios for the Separatist Disputes of Eastern European* (Brussels: Centre for European Policy Studies, 2020).

²²⁰ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 12.

team, a group of young Georgians from the moderate wing of the national resistance movement that became the most dynamic centre of power. Many of them had worked or studied in the West, including Mikheil Saakashvili, the future president of Georgia²²¹. Largely thanks to this wave of youth in Georgia's politics, a series of important Western-style reforms, such as the civil, criminal and administrative codes, were adopted in the second half of the 1990s, providing a glimmer of hope for democratic development²²². While allowing a certain degree of civic and political freedoms, the regime assumed a hybrid form, specifically defined as "competitive authoritarianism"²²³. This means that political participation was formally authorised but substantially limited to a narrow elite who held *de facto* control of power, thereby marginalising the broader civil society and preventing fair political competition. In other words, Shevardnadze's solution to the tense and conflictual environment of those years involved the creation of a clientelist network by coopting representatives from various interest groups who would benefit from their dependence on the government²²⁴. Therefore, the political system was preserved, but the majority party remained poorly institutionalised and the president significantly weak, as efforts focused more on ensuring the government's survival rather than enhancing its capacity to be accountable to the public interest²²⁵. Since then, this tendency has characterised all subsequent governments, who have seemed to secure their political primacy through a dense network of dependencies rather than through popular trust and support. This patronage network had irreversible repercussions on the functioning of the Georgian political system, maturing two systemic characteristics: electoral fraud and widespread corruption. Under Shevardnadze's leadership, the quality of electoral processes had dramatically deteriorated, marked by issues such as multiple voting, voter pressure, and irregular tabulation of results²²⁶. This led to the description of that decade as "state capture", a term referring to the creation of clan dynamics aimed at restricting decision-making processes to the advantage of narrow elite circles' private interests, ultimately classifying Georgia as one of the most corrupt states in the world²²⁷. In 2003, Transparency International ranked it 124th out of 133 countries surveyed²²⁸. The concept of "state capture" was

²²¹ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 13-14.

²²² *Ibidem*.

²²³ See Stephen Levitsky and Lucan A. Way, "The Rise of Competitive Authoritarianism," *Journal of Democracy* 13, no. 2 (April 2002): 51-65.

²²⁴ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 13.

²²⁵ *Ibidem*.

²²⁶ See David Usupashvili and Ghia Nodia, "Electoral Processes in Georgia," in *Building Democracy in Georgia*, ed. International IDEA (Stockholm: International IDEA, 2003), 8-15.

²²⁷ See Joel Hellman, "Winners Take All: The Politics of Partial Reforms in Post-Communist Transitions," *World Politics* 50, no. 2 (January 1998): 203-234; Robin S. Bhatti, "Tough Choices: Observations on the Political Economy of Armenia, Azerbaijan and Georgia," World Bank, December 1, 2002, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/305291467995423872/tough-choices-observations-on-the-political-economy-of-armenia-azerbaijan-and-georgia>.

²²⁸ Transparency International, "Corruption Perception Index 2003," Transparency International, Accessed July 24, 2024, <https://www.transparency.org/en/cpi/2003>.

also used by scholarship with reference to the weaknesses of Shevardnadze's state during its last period, encompassing two main aspects²²⁹. First, territorial failure due to frozen conflicts compounded by issues in the Republic of Abkhazia, where the regional leadership opposed the central government, and in the small territory of Pankisi, where corruption within the security forces profiting from criminal activities prevented the restoration of order. Second, the political failure to address public concerns regarding security, poverty, infrastructure inefficiency and economic stagnation was exacerbated by the government's lack of responsiveness, leading to the loss of institutional capacity, popular support, and eventually its collapse²³⁰.

2.1.2 2003-2012: Revolution, War, and a Fragile Democracy

The climate of growing popular frustration at the government's paralysis led to a strong desire for change, resulting in the first major Georgian popular mobilisation since independence, the Rose Revolution. At this stage, it was clear to everyone, both outside and inside the government, including members of parliament and even ministers, that Shevardnadze had lost his capability and willingness to govern²³¹. Indeed, since the 2000 presidential elections, factions of the majority party, such as Justice Minister Saakashvili, defected to the opposition, further weakening the now fractured government²³². However, there was no consideration of street actions or ousting conspiracies. Instead, there were expectations and hopes that through the vote, the democratic process would run its course, ensuring a transition of power at the end of the president's term. Therefore, the parliamentary elections scheduled for November 2003 represented a crucial moment for Georgian citizens, offering them the opportunity to achieve a political breakthrough ahead of the 2005 presidential elections²³³. On this occasion, being aware of having no chance to win, the government resorted to large-scale fraudulent elections to maintain power. The voting process was extensively monitored by international and Georgian observers, who noted serious discrepancies between their exit polls, showing a clear and overwhelming lead for the opposition parties, and the official results²³⁴. The election fraud had never been more evident, prompting protests from the opposition who rode the popular outrage by calling on Georgians to gather in the streets. Mass demonstrations began with political opposition leader Saakashvili at the forefront, who incited demands for Shevardnadze's

²²⁹ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 15.

²³⁰ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 16-18.

²³¹ Association for Diplomatic Studies and Training, "Georgia and The Rose Revolution," Association for Diplomatic Studies and Training, Accessed May 12, 2024, <https://adst.org/2015/11/georgia-and-the-rose-revolution/>.

²³² Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 18.

²³³ Association for Diplomatic Studies and Training. "Georgia and The Rose Revolution."

²³⁴ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 19.

resignation²³⁵. After the announcement of the election results, the opposition boycotted the first parliamentary session and joined demonstrators in occupying the parliament during the president's opening speech to block its activities²³⁶. People were carrying roses to underscore the non-violent intent of their protest, and the roses eventually became the symbol of this pivotal event in Georgian history²³⁷. In this regard, while the Rose Revolution failed to ensure a smooth transfer of power according to the Constitution, it nevertheless succeeded in mobilising a peaceful demonstration to defend democratic values, starkly in contrast with the previous bloody and abrupt change of power²³⁸. The following day, Shevardnadze was forced to resign, and the election results were invalidated. In the March 2004 elections, Saakashvili's uncontested leadership stood out prominently among other opposition leaders and garnered widespread popular support, leading to the decision of his nomination as a unified candidate. Under this political momentum, Saakashvili gained an unprecedented popular mandate with 96% of the vote, and his party, the new United National Movement (UNM) won the legislative elections with 66% of the vote²³⁹.

The Saakashvili era remains highly controversial. While it undeniably initiated substantial institutional improvements that aligned Georgia closer to European standards, an overly centralised power structure contributed to the emergence of another hybrid regime. The new government, led by pro-Western young politicians, launched an ambitious reform programme since taking office. In foreign policy, it charted a clear direction for Georgian integration by explicitly declaring EU and NATO membership as the country's strategic goals for the first time²⁴⁰. Domestically, the budget increase, made possible by international support, allowed adequate payment for civil servants. Despite some disparities in wage distribution, higher salaries attracted qualified officials and improved the efficiency of the state bureaucratic apparatus. In addition, a portion of the budget was allocated to new investments in public infrastructures which, despite the lack of transparency in procurement procedures, enabled the construction of new roads and buildings²⁴¹. In the economic sphere, the government removed obstacles that had previously prevented the emergence and prosperity of new businesses by liberalising the economy. An overarching priority was the fight against corruption and organised crime, pursued through structural reforms that paved the way for new legislation facilitating timely proceedings in such cases²⁴². Indeed, one of the greatest achievements of the Saakashvili administration has been the drastic reduction in the corruption rate,

²³⁵ Association for Diplomatic Studies and Training. "Georgia and The Rose Revolution."

²³⁶ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 20.

²³⁷ Association for Diplomatic Studies and Training. "Georgia and The Rose Revolution."

²³⁸ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 20.

²³⁹ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 21.

²⁴⁰ Teona Lavrelashvili, *Party Passport: Georgia, European Party Monitor* (Leuven: KU Leuven, 2020), 3.

²⁴¹ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 24.

²⁴² Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 25-26.

positioning Georgia as one of the least corrupt countries in the region. In 2012, Georgia was ranked 52nd by Transparency International, climbing over 50 places since 2003²⁴³. In sum, while recognising Saakashvili's merits in Georgia's transition from the post-Soviet to the modern era, the expansion of the state's institutional capacity, and the definition of a pro-European stance²⁴⁴, decisions were usually made hastily and justified by the urgent need for rapid action²⁴⁵. The process of adopting and implementing reforms did not adhere to clear and transparent democratic oversight, as evidenced by the distortions in the aforementioned reforms, but rather followed preferential paths shaped by a vertical and elitist power structure. In other words, the new government aligned itself with its predecessor, concentrating authority among a small circle of like-minded individuals to swiftly push forward its comprehensive reform agenda²⁴⁶. However, this *modus operandi* fuelled the already existing informal practice of clientelism, which has been reflected in several aspects of Saakashvili's politics. On the institutional side, frequent governmental reshuffles and periodic personnel reviews were implemented, establishing a narrow category of high-ranking civil servants and government officials loyal to the administration²⁴⁷. This persistent turnover underlines an imperative to exert greater control over the decision-making process, which was further accomplished through a progressive strengthening of governmental institutions. Such centralisation of power was formally enshrined in the 2004 constitutional reform²⁴⁸, which will be examined in detail in the next subparagraph. In political terms, the ruling party occupied more than two-thirds of the parliament, while the small number of seats held by the only opposition party that surpassed the 7% threshold provided an insufficient and weak counterweight²⁴⁹. This political landscape effectively constituted a single-party parliamentary system capable of unilaterally adopting all government decisions, including the 2004 amendment to the Georgian Constitution²⁵⁰. These described aspects have progressively exacerbated the divide between the governed and the governing elite, whose decisions were not based on popular accountability, balancing the interests of different social groups, but instead responded exclusively to the interests of their politically isolated governing circle²⁵¹. From the economic point of view, state interventionism, facilitated by deregulation reforms, has led to a fusion of the public and private spheres based on mutual influence and a logic of exchanging favours²⁵². The close

²⁴³ Transparency International, "Corruption Perception Index 2012," Transparency International, Accessed July 24, 2024 <https://www.transparency.org/en/cpi/2012>.

²⁴⁴ Stephen F Jones, *Democracy in Georgia: Da Capo* (Maastricht: The Cicero Foundation, 2013), 4.

²⁴⁵ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 26.

²⁴⁶ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 28.

²⁴⁷ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 27.

²⁴⁸ Anna Fruhstorfer, "Paradoxes of Constitutional Politics in the Post-Soviet Space," 786.

²⁴⁹ The opposition party won 15 seats and the UNM 135.

²⁵⁰ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 29.

²⁵¹ Stephen F Jones, *Democracy in Georgia: Da Capo*, 6.

²⁵² Stephen F Jones, *Democracy in Georgia: Da Capo*, 7.

interdependence between the two spheres has made “political power [...] a source of self-enrichment; economic power [...] a source of political patronage”²⁵³. This state pressure was also translated into media manipulation by replacing television network owners with individuals close to the government, thereby compromising their independence. Finally, despite some improvements in their competencies and organisational capacities, CSOs were still largely confined to a narrow social circle of young urban elites rather than being rooted in a broad social membership base²⁵⁴. This isolated political apparatus progressively abused its exclusive power, leading to frequent arrests of those whose political views were unwelcome to the government. The arrest of the former Defence Minister on corruption allegations in September 2007 triggered anti-government demonstrations that were harshly repressed by the police, resulting in hundreds of injuries and the proclamation of the state of emergency²⁵⁵. The population’s discontent with the excessive verticalisation of power was reflected in the 2008 presidential elections, where Saakashvili’s popularity dropped to 53,5% of the vote, and in the loss of some UNM seats in the parliamentary elections²⁵⁶. Furthermore, the strategy aimed at rapidly reintegrating the separatist regions of Abkhazia and South Ossetia quickly intensified tensions²⁵⁷. The confrontational approach adopted towards Sukhumi and Tskhinvali²⁵⁸, perceived not as having real political autonomy but rather as Moscow puppets, resulted in a lack of dialogue and exacerbated factional divisions²⁵⁹. These tensions culminated in a five-day war between Kremlin-backed separatist militias and the central government forces, with far-reaching aftermath²⁶⁰. The conflict ended with Russia’s recognition of the independence of the two regions and the deployment of its military troops in the territories, which progressively increased over the years²⁶¹. In 2021, Russian bases housed around 10,000 military personnel²⁶². Therefore, the frozen conflicts remained among the primary challenges to Georgia’s state-building and the consolidation of its institutions. Overall, the Saakashvili administration cannot be regarded as a promoter of openness, stability, and pluralism. Conversely, defined by some as dangerously mirroring Putin’s vertical power model, it has failed to bring democratic momentum to Georgia²⁶³. Unlike Shevardnadze’s era, often labelled as “democracy without democrats”, the current government led by Western-educated youths is seen

²⁵³ Stephen F Jones, *Democracy in Georgia: Da Capo*, 6.

²⁵⁴ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 29-30.

²⁵⁵ Teona Lavrelashvili, *Party Passport: Georgia*, *European Party Monitor*, 4.

²⁵⁶ University of Central Kansas, “Georgia (1991-present).”

²⁵⁷ Cory Welt, *Georgia: Background and U.S. Policy*, 13.

²⁵⁸ The capitals of Abkhazia and South Ossetia respectively.

²⁵⁹ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia: New Emphases in Domestic and Foreign Policy* (Munich: Stiftung Wissenschaft und Politik, 2013), 6.

²⁶⁰ On the 2008 war, see *supra* chapter I, subparagraph 1.2.1, footnote 97.

²⁶¹ Teona Lavrelashvili, *Party Passport: Georgia*, *European Party Monitor*, 4.

²⁶² Amanda Paul and Iana Maisuradze, “Thirteen years on – 20% of Georgia is still occupied by Russia,” Euractiv, August 6, 2021, <https://www.euractiv.com/section/eastern-europe/opinion/thirteen-years-on-20-of-georgia-is-still-occupied-by-russia/>.

²⁶³ Stephen F Jones, *Democracy in Georgia: Da Capo*, 4.

by many as entering a phase of “democrats without democracy”²⁶⁴. Indeed, the described features reveal a dualism characterised by a facade of democracy, equal rights, and a free market, masking a hierarchical, pervasive, and repressive system of control. Saakashvili’s super-presidentialism, along with the rise of monopolies due to a drastic neoliberal turn and extensive means of intimidation against the opposition, has perpetuated poverty in suburban areas, high unemployment, and neglect of rural areas, resulting in a persistent political and economic marginalisation of the majority of the population²⁶⁵. Consequently, in 2012 the population ended Saakashvili’s rule through legislative elections in the hope of prompting a genuine democratic transition, ushering in the current Georgian Dream era.

2.1.3 2012 – Today: Witnessing a Democratic Backsliding?

The 2012 parliamentary elections marked a historic turning point in Georgian politics, as the transfer of power occurred through a peaceful and democratic process in accordance with the Constitution²⁶⁶. The now politically weakened Saakashvili faced a decisive blow with a prison torture scandal two weeks before the elections, which not only cast serious doubts on the integrity of the judiciary, but also extinguished any chance of victory for the ruling government²⁶⁷. In October 2012, the UNM was defeated by a coalition of six pro-western opposition parties united under the name of Georgian Dream (GD), which won 85 seats compared to the 65 seats gained by Saakashvili’s party. No other party managed to cross the threshold to enter parliament, resulting in the configuration of a bipolar parliamentary system that offered hope of showcasing Georgia’s democratic maturity through future alternations in power²⁶⁸. The GD coalition was formed and headed by the billionaire Bidzina Ivanishvili²⁶⁹, an entrepreneur known for his charitable projects and who made his fortune in Russia and returned to Georgia in the early 2000s²⁷⁰. In particular, he is identified as an oligarch, i.e. an influential personality capable of exerting direct or indirect control over a country through the mobilisation of his vast resources²⁷¹. Oligarchy is a typical phenomenon in post-Soviet states, serving as an informal institution that shapes decision-making through opaque and behind-the-scenes political

²⁶⁴ Ghia Nodia and Álvaro Pinto Scholtbach, *The Political Landscape of Georgia*, 28.

²⁶⁵ Stephen F Jones, *Democracy in Georgia: Da Capo*, 4.

²⁶⁶ Teona Lavrelashvili, *Party Passport: Georgia*, *European Party Monitor*, 4.

²⁶⁷ Stephen F Jones, *Democracy in Georgia: Da Capo*, 6.

²⁶⁸ Teona Lavrelashvili, *Party Passport: Georgia*, *European Party Monitor*, 4.

²⁶⁹ Its assets are equivalent to about a third of Georgia's GDP. Wojciech Konończuk, Denis Cenuşa and Kornely Kakachia, *Oligarchs in Ukraine, Moldova and Georgia as Key Obstacles to Reforms* (Tbilisi: Georgian Institute of Politics, 2017), 1.

²⁷⁰ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 2.

²⁷¹ Konończuk, Cenuşa, Kornely Kakachia, *Oligarchs in Ukraine*, 1.

and economic processes, which often makes it difficult to ascertain its exact degree of influence²⁷². Indeed, Ivanishvili remained publicly on the political scene for only a year before retiring in 2013. He then returned in 2018 as GD party chairman and permanently retired in 2021²⁷³. However, he has been widely perceived as one of the most influential figures in Georgia, exerting strong pressure on institutions despite not formally holding any political position²⁷⁴. Following the 2012 elections, Ivanishvili assumed the role of prime minister while Saakashvili remained president until the next presidential elections in 2013, resulting in a year of so-called cohabitation²⁷⁵. This term describes a situation where the head of state and the head of government differ in their political orientations²⁷⁶. A constitutional amendment initiated during Saakashvili's second term in 2010, which aimed to shift the form of government towards a more parliamentary system, would only come into force in 2013. Thus, despite a solid majority in parliament, the government had to contend with a hostile presidency with still strong executive and veto powers²⁷⁷. This coexistence was undermined from the outset by the personal enmity between the two leaders, which prevented them from engaging in constructive cooperation²⁷⁸, and deteriorated with the new government's decision to prosecute and arrest former high-ranking UNM military and political officials for corruption and abuse of office, raising further concerns about judicial impartiality²⁷⁹. As in the 1990s, personal rivalries rather than ideological differences have continued to dominate the political landscape over the years, becoming a distinct trait of the Georgian political system. Indeed, parties are less anchored in specific political doctrines or programmes, rendering the traditional left-right divide largely formal. Instead, clashes often arise over personal issues, reflecting a lack of political culture and a tendency towards the personalisation of the party system and its leaders²⁸⁰. Unlike Saakashvili's government policy of continuous cabinet renewals, Ivanishvili's approach appeared more focused on maintaining continuity²⁸¹. In general, the new government intended to curb the centralisation of political power by depoliticising the judiciary and the media and enhancing the system of checks and balances²⁸². In this regard, the parliament accelerated the finalisation of the 2010 constitutional amendment, which was adopted after the 2013 presidential elections, also aiming to prevent the emergence of future political dualism due to cohabitation. This latter reduced the president's powers and redistributed them to the government,

²⁷² *Ibidem*; See also Henry Hale, *Patronal Politics: Eurasian Regime Dynamics in Comparative Perspective* (Cambridge: Cambridge University Press, 2014).

²⁷³ Cory Welt, *Georgia: Background and U.S. Policy*, 2.

²⁷⁴ Konończuk, Cenuşa, Kornely Kakachia, *Oligarchs in Ukraine*, 12.

²⁷⁵ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 2-3.

²⁷⁶ Maurizio Cotta, Donatella della Porta and Leonardo Morlino, *Scienza Politica* (Bologna: il Mulino, 2017), 347.

²⁷⁷ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 2-3.

²⁷⁸ Stephen F Jones, *Democracy in Georgia: Da Capo*, 10.

²⁷⁹ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 2-3.

²⁸⁰ Teona Lavrelashvili, *Party Passport: Georgia, European Party Monitor*, 2.

²⁸¹ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 4.

²⁸² Stephen F Jones, *Democracy in Georgia: Da Capo*, 9.

which became the sole supreme body of the executive power, and to the prime minister as its head²⁸³. The new government also advocated for a significant economic change that, while upholding free market principles, would place greater emphasis on the state's role as a social actor to combat poverty, unemployment, and the prohibitive costs of public services, thereby improving the welfare capacity of public institutions²⁸⁴. Another shift in approach concerned foreign policy, especially Georgia's relationship with the independentist regions of Abkhazia and South Ossetia. Whereas the Saakashvili's government viewed the conflict through the lens of Russian-Georgian relations, involving the EU and the United States in strengthening Georgia's position against Russia and downplaying Sukhumi and Tskhinvali's political role, the new government sought to distance itself from what was perceived as an excessively nationalistic and confrontational stance²⁸⁵. It announced a "de-isolation strategy" aimed at progressively building social, economic, and political ties with the breakaway regions while combining Euro-Atlantic integration with the normalisation of relations with Russia²⁸⁶. However, internal divisions within the majority coalition over the territorial issues became evident from the outset, significantly limiting the government's ability to act in this policy area²⁸⁷. As a result, the territorial issue remained in a persistent stalemate, with no agreement reached with Moscow regarding the presence of Russian troops in the disputed regions. Today, in addition to its military occupation and formal recognition of the regions' sovereignty, 60% of Abkhazia's and 81% of South Ossetia's budgets are funded by Russia²⁸⁸. Moreover, Russia's commitment to maintaining the status quo has led to a so-called borderisation policy, characterised by abusive border definitions, such as the erection of border fences and transit restrictions, and disinformation campaigns, which has exacerbated territorial disintegration and increased Georgia's vulnerability to Russian security threats²⁸⁹.

In 2013, Saakashvili completed his term as president, and Giorgi Margvelashvili, the GD candidate, won the election with 62% of the vote. As promised during his election campaign, Ivanishvili also stepped down after the transition of power was completed, handing over his position to Irakli Gharibashvili, another GD member, who assumed the office again in 2021²⁹⁰. However, despite ambitious initial intentions and public optimism, Georgia soon experienced a new wave of democratic

²⁸³ Giorghi Kverenchkhiladze, "Georgian Constitutionalism," in *The Constitution of Georgia*, ed. Zurab Matcharadze and Lucio Pegoraro (Tbilisi: Istituto Giuridico Principe Davide, 2014), 8.

²⁸⁴ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 5.

²⁸⁵ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 6-7.

²⁸⁶ Sabine Fischer and Uwe Halbach, *Change of Government in Georgia*, 7.

²⁸⁷ *Ibidem*.

²⁸⁸ Andre W. M. Gerrits and Max Bader, "Russian patronage over Abkhazia and South Ossetia: implications for conflict resolution," *East European Politics* 32, no. 3 (March 2016): 297-313.

²⁸⁹ Natia Seskuria, "Russia's "Hybrid Aggression" against Georgia: The Use of Local and External Tools," Center for Strategic and International Studies, September 21, 2021, <https://www.csis.org/analysis/russias-hybrid-aggression-against-georgia-use-local-and-external-tools>.

²⁹⁰ Teona Lavrelashvili, *Party Passport: Georgia, European Party Monitor*, 5.

backsliding rather than consolidation. Before examining the factors behind it, it is worth noting that Georgian political history reveals a recurring systemic cycle. The democratic renaissance proclaimed by a new leader emerging from a period of crisis and uprisings as a new saviour, capable of turning the country's fate around, periodically gives way to a regression into a new form of authoritarianism²⁹¹. The democratic downturn became apparent in the 2016 parliamentary elections, the first held after the introduction of the 2010 constitutional amendment. The GD ran without a coalition and obtained a supermajority of 115 parliamentary seats, representing over 75% of the total, which implied the possibility of unilaterally enacting constitutional reforms. In contrast, the UNM saw a decline of more than 50% in its parliamentary representation, obtaining only 27 seats²⁹². This scenario re-established a system of one-party dominance²⁹³, resulting in a parliament that functions as a sounding board for the government rather than serving as its counterpart. Indeed, leveraging its 'supermajority', the parliament adopted a new constitutional reform in 2018 that further entrenched a parliamentary system, increasingly concentrating power within the government at the expense of the president, including the abolition of the latter's direct suffrage²⁹⁴. Accordingly, the 2018 presidential election was the last of its kind, with Salome Zurbashvili, an officially independent candidate backed by the GD, winning 59,5% of the vote in the second round²⁹⁵. The government's coercive methods emerged in June 2019 during the violent suppression of peaceful protests against the visit of Russian State Duma deputy Sergei Gavrilov, who delivered a speech from the speaker's chair at the Interparliamentary Assembly on Orthodoxy, hosted in the Georgian parliament²⁹⁶. Further protests broke out after the government's failure to fulfil its promise to conduct the 2020 parliamentary elections under a proportional electoral system, whose amendment was rejected by parliament at its first reading²⁹⁷. In March 2020, an agreement was reached with the mediation of the US and the EU, albeit leaving discontent, establishing a transitional electoral system for the 2020 elections that would become fully proportional in the 2024 elections²⁹⁸. The GD lost a great deal of credibility, not only due to its failure to commit to the 2020 proportional electoral system, but also to controversial judicial appointments that raised international concerns, particularly within the EU²⁹⁹. Furthermore, the persistent personal conflict between the two main parties led to damaging each other's image rather than directing their efforts to address critical social issues of interest to the

²⁹¹ Stephen F Jones, *Democracy in Georgia: Da Capo*, 5.

²⁹² Teona Lavrelashvili, *Party Passport: Georgia*, *European Party Monitor*, 5.

²⁹³ Stephen F Jones, *Democracy in Georgia: Da Capo*, 3.

²⁹⁴ Cory Welt, *Georgia: Background and U.S. Policy*, 2.

²⁹⁵ Teona Lavrelashvili, *Party Passport: Georgia*, *European Party Monitor*, 5.

²⁹⁶ Cory Welt, *Georgia: Background and U.S. Policy*, 5.

²⁹⁷ Teona Lavrelashvili, *Party Passport: Georgia*, *European Party Monitor*, 6.

²⁹⁸ *Ibidem*.

²⁹⁹ Ioannis N. Grigoriadis and Mariam Gugulashvili, "EU-Georgia Relations at a Critical Juncture."

electorate³⁰⁰. The 2020 parliamentary elections, in which the GD secured 60% of the seats (thanks to the majoritarian component of the electoral system), were followed by a boycott of the second round by the UNM alleging electoral irregularities and fraud. The already tense political climate with the opposition worsened further in February 2021 following the arrest of Nika Melia, the newly appointed president of the UNM³⁰¹. Only an EU-mediated dialogue managed to reach an agreement on the two issues in April 2021, bringing the opposition back into parliament and allowing Melia's release, but the UNM never signed it³⁰². Overall, although the GD administration has achieved significant improvements in economic conditions, and reductions in poverty and unemployment, the events just described suggest an abuse of power through the concentration and monopolisation of authority, the manipulation of independent institutions, and the reduction of space for political opposition through instruments of intimidation³⁰³. Indeed, the state of democracy in Georgia has progressively deteriorated, particularly since 2018, as explicitly stated in the 2022 Freedom House report³⁰⁴. The permanence of a hybrid regime is further demonstrated by the adoption of the Law on Transparency of Foreign Influence in May 2024³⁰⁵ under the newly appointed GD prime minister Irakli Kobakhidze³⁰⁶. The law mandates the registration of NGOs and media entities that receive more than 20% of their annual income from foreign sources as "organisations serving the interests of foreign agents"³⁰⁷. Similarly to the Foreign Agents Law adopted in Russia in 2012, the Foreign Agents Law, often referred to as the 'Russian law' for this reason, increases the risk of violations of the rights to freedom of expression and association by the Georgian government, drastically reducing the CSOs' dependency and political autonomy³⁰⁸. Broadly speaking, although GD identified itself as a socialist party, it increasingly adopted a conservative, nationalist and populist stance, confirming an

³⁰⁰ Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *Honouring of obligations and commitments by Georgia*, AS/Mon (2021) 10 REV, September 15, 2021.

³⁰¹ Cory Welt, *Georgia: Background and U.S. Policy*, 5.

³⁰² Cory Welt, *Georgia: Background and U.S. Policy*, 6.

³⁰³ According to the United Nations Development Programme (UNDP), Georgia "outperforms neighboring Armenia and Black Sea country Moldova with the lower poverty rate (2021 results) and is close to the poverty rate of neighboring Turkey (14.4% in 2020)". In the 2018-2022 period, under the GD government, Georgia's economy increased by 25% and the poverty rate decreased from 6% to 15.6%. See Givi Adeishvili and Bazluh Khonder, *Ending Poverty in Georgia: New Economic Modeling* (New York: UNDP, 2023), 6. As for the above-mentioned abuse of power, see Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

³⁰⁴ Sarah Repucci and Amy Slipowitz, "Freedom in the World 2022: The Global Expansion of Authoritarian Rule," Freedom House, February, 2022, https://freedomhouse.org/sites/default/files/2022-02/FIW_2022_PDF_Booklet_Digital_Final_Web.pdf.

³⁰⁵ Viktoriia Lapa and Justin Frosini, "Challenges to Georgia's EU Integration: Is the Georgian 'Russian Law 2.0' contrary to the Georgian Constitution?" *Verfassungsblog*, May 13, 2024, <https://verfassungsblog.de/challenges-to-georgias-eu-integration-is-the-georgian-russian-law-2-0-contrary-to-the-georgian-constitution/>.

³⁰⁶ Kobakhidze is the new prime minister of Georgia as of 8 February 2024.

³⁰⁷ Lapa, Frosini, "Challenges to Georgia's EU Integration."

³⁰⁸ Viktoriia Lapa and Justin Frosini, "Challenges to Georgia's EU Integration,".

ideological inconsistency³⁰⁹. This approach consisted of asserting non-interference in domestic matters and respect for identity and traditions in order to disguise authoritarian tendencies, maintain internal power balances, and limit international oversight, while also fuelling anti-Western conspiracies of destabilisation to defend itself against criticism³¹⁰. For instance, after the EU's rejection of Georgia's candidate status, the political elite resorted to a "game-blame-mode" through mass media, accusing the EU itself of obstructing the country's European aspirations and even of planning to drag the war to the Georgian front, only to claim credit once the status was granted the following year³¹¹. In this regard, this nationalist narrative has influenced the Western orientation in Georgian foreign policy. Formally, the GD did not break with the country's Europeanisation tradition, and, under its governance, European integration was established as a constitutional obligation, the AA was signed in 2014 and the visa-free regime was concluded in 2017³¹². However, while continuing to reaffirm this commitment to the overwhelmingly pro-European majority of the population, the normalisation of relations with Russia led to an appeasing policy³¹³, reflected in the abstention from international sanctions following the 2022 Russian invasion of Ukraine and the reopening of direct flights between the two countries³¹⁴. According to many experts, this decision reflects a pragmatic approach that prioritises security concerns, aiming to maintain a peace strategy that avoids irritating Moscow and reduces the risk of possible counteractions³¹⁵.

In conclusion, it is possible to identify three main trends that continue to characterise Georgian politics today, albeit to varying extents. The first is the progressive centralisation of power, achieved through institutional reforms that shift the balance of power from the legislative to the executive branch, securing a firm parliamentary majority for the ruling party and consolidating decision-making within the governing elite³¹⁶. Connected to this first, the second element involves the fusion of politics with the private sphere, the media and the judiciary, which has led to a monopolisation of financial, mediatic and jurisdictional resources by the government. As a result, such a network of interdependencies, subject to governmental pressure, has become a tool for political manipulation³¹⁷. Finally, the third trend concerns strong polarization, evident in the sharp division between civil society, which advocates for democratic change and European integration, and the political elite,

³⁰⁹ Teona Lavrelashvili, *Party Passport: Georgia, European Party Monitor*, 2; Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

³¹⁰ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

³¹¹ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

³¹² Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

³¹³ See Bidzina Lebanidze and Kornely Kakachia, "Bandwagoning by Stealth? Explaining Georgia's Appeasement Policy on Russia," *European Security* 32, no. 4 (January 2023): 676-695.

³¹⁴ Neil MacFarlane and Stephen Jones, *Values and Interests in Georgian Foreign Policy* (Tbilisi: Georgian Institute of Politics, 2023), 4.

³¹⁵ Neil MacFarlane and Stephen Jones, *Values and Interests in Georgian Foreign Policy*, 11.

³¹⁶ Stephen F Jones, *Democracy in Georgia: Da Capo*, 5-6.

³¹⁷ Stephen F Jones, *Democracy in Georgia: Da Capo*, 6.

which skews decision-making to serve its clientelist interests³¹⁸. Such polarization is also reflected in the political debate, where discussions often leave room for personal attacks rather than arguments on substance³¹⁹.

2.2 Reforms on Institutional Checks and Balances

This section will primarily address those reforms, specifically constitutional ones, that have impacted the Georgian form of government, with a focus on the balance of power between the legislative and executive branches. The Georgian Constitution has undergone three major amendments in this regard, in 2004, 2009/2010 and 2017/2018. The analysis of these reforms in terms of their compliance with DRoL principles and the current outcomes they have shaped will provide insight into these constitutional bodies' path towards democratic development, progress and possible setbacks.

2.2.1 The 2004 Constitutional Reform: Verticalizing Georgia's Political System

As conceived in 1995, the Georgian Constitution established a presidential form of government based on the United States model³²⁰. The president is the sole holder of executive power, assuming upon himself both the offices of head of state and government, while legislative power is exercised by parliament. The two branches are intended to be separate and independent of each other, as they are legitimised through two distinct popular investitures: parliamentary elections, every four years, and presidential elections, every five years³²¹. The strict separation of powers is combined with a mutual interdependence established indirectly through a system of checks and balances, which distributes all the most relevant powers between the two bodies ensuring that neither can operate entirely in isolation from the other. For instance, the president has veto power over laws passed by parliament (which can be overridden by a three-fifths majority), and parliament must give its consent to the president's appointment of ministers or ambassadors³²². Before delving into the first major reform of the Georgian supreme law, it is worth mentioning one previous reform that paved the way for the strengthening of the presidential figure. In July 1999, the Shevardnadze government amended the

³¹⁸ *Ibidem*.

³¹⁹ Natalie Sabanadze, "EU-Georgia Relations: A Local Show of the Global Theater."

³²⁰ Ghiorghi Kverenchkhiladze, "Georgian Constitutionalism," 8.

³²¹ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia, in Armenia and Azerbaijan: Political Elite and Voices of the People* (Tbilisi: International IDEA and Caucasus Institute for Peace, Democracy and Development, 2005), 11.

³²² *Ibidem*.

Constitution for the first time by raising the parliamentary elections threshold from 5% to 7%³²³. Such an increase benefited the ruling party in the 1995 election, allowing it to achieve the constitutional majority with only 23% of the vote due to the redistribution of those votes from parties that had not met the threshold. The raised 7% threshold was thus designed to further marginalise competing parties and provide the president's party with a more solid parliamentary majority capable of fully supporting its political agenda³²⁴. Since the beginning of its relations with Georgia, the EU has been involved in monitoring the democratic state of Georgia's institutions, and in view of the above-mentioned scenario, it expressed "concerns about insufficient progress with democratic reform in Georgia. In particular, it was disappointing that commitments to introduce electoral reforms, undertaken following the presidential elections in 2000, were not respected"³²⁵. Riding the wave of the post-revolutionary momentum, the new political leaders of the Rose Revolution decided to draft a new constitutional amendment, shaping a trend that would become typical of subsequent governments in imprinting their stamp on the Constitution once in power³²⁶. The approval of this latter in February 2004 occurred very quickly, in breach of the established one-month period for the examination and publication of draft constitutional laws. This haste was justified by the amendment's similarity to the Shevardnadze draft law presented in 2001, which had not been adopted by parliament³²⁷, and further demonstrates the aforementioned tendency of the Saakashvili's government to act beyond democratic boundaries under the pretext of urgently overcoming the crisis³²⁸. The 2004 constitutional reform resulted in a semi-presidential shift in the political system, which was supposed to rebalance presidential power and create additional counterweights³²⁹. This was to be achieved through two main changes: the introduction of the office of prime minister as head of government, configured as a collegial body, with whom the president, as head of state, would share executive power; and the institution of a relationship of confidence between the government and parliament, which imposes political responsibility of the former to the latter and leads to the cessation of government action in the event of a loss of such confidence³³⁰. However, these changes were accompanied by a significant expansion of the president's powers, which encroached on the competencies of the other two branches, the legislative and the judicial, leading to distortions in the

³²³ Karlo Godoladze, "Constitutional Changes in Georgia: Political and Legal Aspects," *Humanities and Social Science Review* 2, no. 3 (2013): 444-445.

³²⁴ Gaul Wolfgang, *Drafting and Adoption of Constitution of Georgia* (Tbilisi: Berliner Wissenschafts-Verlag, 2002), 113-115.

³²⁵ Official Journal of the European Union, *Written-Question E-1512/02 by Olivier Dupuis (NI) to the Commission. Political and institutional situation in Georgia*, 92002E001512, February 6, 2003.

³²⁶ Karlo Godoladze, "Constitutional Changes in Georgia," 447.

³²⁷ Marina Muskhelishvili, *Constitution and its Discursive Legitimization* (Tbilisi: Center for Social Sciences, 2006), 16.

³²⁸ Karlo Godoladze, "Constitutional Changes in Georgia," 447.

³²⁹ Kverenchkhiladze, "Georgian Constitutionalism," 8.

³³⁰ *Ibidem*.

principle of the separation of powers³³¹. The president appoints the prime minister and has the authority to dissolve the government and remove its ministers as deemed appropriate³³². Formally, the president's appointments must be approved by parliament for the relationship of confidence to be realised. However, if elections result in a supermajority for the president's party, a scenario made even more likely by the increased threshold, the parliament's involvement in the process becomes largely symbolic³³³. Previously, the president held the right of veto, while the legislative initiative was formally limited to "exclusive cases"³³⁴. However, the lack of a clear definition of what constituted such cases allowed the president considerable flexibility in the interpretation of this power, potentially leading to an unlimited right to initiate legislation³³⁵. While the extent of the president's interference in the legislative sphere was already ambiguous, the 2004 reform further extended his powers in this regard. The president was granted the authority to dissolve parliament at his discretion³³⁶, thereby imposing constant pressure on the legislative body and maintaining substantial leverage over it³³⁷. Consequently, if the parliamentary is politically opposed to the president and does not express confidence in the government he appoints, the president would be inclined to dissolve parliament rather than choose a prime minister aligned with that political majority. This escape route reduces the executive-legislative relationship of confidence to a mere formality, effectively preventing the opposition parliamentary majority from forming a government that is not politically homogenous with the president³³⁸. Although parliament is formally vested with the power to issue a vote of no-confidence against the government, provided it secures a three-fifths majority³³⁹, a parliament with such a politically opposed composition, as already noted, would likely be short-lived. Indeed, having consistently enjoyed a 'loyal' parliamentary majority that never obstructed any of his legislative initiatives, Shevardnadze never had the opportunity to exercise his veto power³⁴⁰. Furthermore, the president assumed the authority to promulgate decrees with the force of law on fiscal and budgetary matters and to approve the state budget by decree should parliament fail to do so within a specific timeframe³⁴¹. This prerogative extends beyond the scope of emergency cases³⁴², representing a significant delegation of powers constitutionally entrusted to the legislature

³³¹ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 13.

³³² Parliament of the Republic of Georgia, *Constitutional Law of Georgia*, 3272, February 6, 2004, art. 5. Hereinafter "Georgian Constitutional Amendments of 2004".

³³³ Karlo Godoladze, "Constitutional Changes in Georgia," 444.

³³⁴ Georgian Constitutional Amendments of 2004, art. 5.

³³⁵ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 15.

³³⁶ Georgian Constitutional Amendments of 2004, art. 5.

³³⁷ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 16.

³³⁸ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 13.

³³⁹ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 14.

³⁴⁰ Karlo Godoladze, "Constitutional Changes in Georgia," 450.

³⁴¹ Georgian Constitutional Amendments of 2004, art. 5.

³⁴² As it was in the previous constitutional dictate.

which enables the president to exercise decision-making power in these domains³⁴³. Lastly, the reform authorised the president to suspend or repeal any act approved by the government if it is deemed to be non-compliant with the “Constitution of Georgia, international agreements and accords, laws and normative acts issued by the president”³⁴⁴. This provision empowers the president to exercise constitutional control, a role traditionally assigned to the Constitutional Court, thereby assuming “quasi-judicial functions”³⁴⁵ that effectively constitute an intrusion into the judicial sphere³⁴⁶. Moreover, given the lack of precise guidelines for such presidential constitutional oversight, it could become a dangerous instrument for arbitrary interpretation of the Constitution and overriding of any provision considered inconvenient³⁴⁷.

Overall, instead of introducing new checks and balances, the 2004 constitutional reform in Georgia resulted in a vertical power structure dependent on a single charismatic leader, leaving the so-called “powerful presidential hand”³⁴⁸ unchanged and rather evolving into a super-presidential system³⁴⁹. The dualism of executive power stemming from the establishment of the office of prime minister as the head of government “skewed in the president’s favour”³⁵⁰. The president is *de facto* the sole driving force of the executive power and holds full control over the government, which inevitably becomes a secondary body that abides by its decisions and whose members can be replaced at its total discretion³⁵¹. In addition, the increased interference and influence of the president over parliament led to a drastic weakening of the latter’s prerogatives in the legislative sphere, reducing it to a mere executor of presidential directives³⁵². The outcome of the reform demonstrates that the semi-presidential form of government can, paradoxically, experience a greater centralisation of power than the presidential one. Indeed, this institutional configuration allowed the president to exercise the rights associated with both the presidential and parliamentary systems, thereby circumventing the principle of separation of powers³⁵³. Finally, based on the consideration presented, it can be deduced that the pressure exerted by the EU has been minimal. This unwillingness to address the Commission’s concerns is further evidenced by the fact that, as previously stated, the reform retained the content of Shevardnadze’s 2001 constitutional proposal. Therefore, it can be concluded that the

³⁴³ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 15.

³⁴⁴ Georgian Constitutional Amendments of 2004, art. 5.

³⁴⁵ No author, *Process of Constitutional and Political Reform in Georgia: Political Elite and Vox Populi* (Tbilisi: no publisher available, 2005), 22.

³⁴⁶ Karlo Godoladze, “Constitutional Changes in Georgia,” 450.

³⁴⁷ Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (Tbilisi: IRIS Georgia, 2003), 79.

³⁴⁸ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 8.

³⁴⁹ *Ibidem*.

³⁵⁰ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 14.

³⁵¹ *Ibidem*.

³⁵² Karlo Godoladze, “Constitutional Changes in Georgia,” 451.

³⁵³ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 13.

2004 constitutional amendment was not driven by European appeals for more democratic governance, but rather aimed at enhancing the political instruments at the president's disposal. On the other hand, as a strong supporter of the Rose Revolution, the EU enthusiastically endorsed what appeared to be a post-revolutionary shift of power towards the West³⁵⁴, warmly welcoming Saakashvili's new government and initially expressing optimism about the new reform, as reflected in the Commission's working paper of March 2005 highlighting a "strong commitment of the Georgian authorities to implement their reform plans, notably in the field of good governance"³⁵⁵. Indeed, such sustained support seemed to blind the EU to the emerging political and social repercussions of the reform³⁵⁶.

2.2.2 *The 2009/2010 Constitutional Reform: An Anomalous Rationalisation*

As the 2004 reform's distortions favouring vertical centralisation of power became apparent, European concerns about potential autocratic tendencies began to resurface. This is suggested by the EU's encouragement for Georgia to "engage in a debate about the separation of powers in the political system"³⁵⁷, thus inviting the country to consider potential reforms to its form of government. Subsequently, the Commission's staff working document of April 2008 explicitly criticised Georgian institutions as being "characterized by a strong presidential system, a weak separation of institutional powers and an ineffective system of democratic checks and balances"³⁵⁸, and called on Georgia to realign its path towards democratisation in accordance with the principles of the Action Plan and the recommendation outlined by the Venice Commission³⁵⁹. Therefore, the launch of a new constitutional reform in 2009 with the aim "to build democratic state system and constructed effective government framework"³⁶⁰ was perceived as a positive development towards a renewed expectation of democratic consolidation³⁶¹. The internal debate focused on the necessity to clarify the constitutional status of the government within the political system and the issue of the executive branch's independence. These discussions were prompted by the Venice Commission's guidance to transfer executive powers

³⁵⁴ Association for Diplomatic Studies and Training, "Georgia and the Rose Revolution".

³⁵⁵ Commission of the European Communities, Annex to "European Neighborhood Policy" – Country Report – Georgia, COM(2005) 72 final, March 2, 2005.

³⁵⁶ Stephen F Jones, *Democracy in Georgia: Da Capo*, 4.

³⁵⁷ European Parliament, *European Parliament resolution of 29 November 2007 on the situation in Georgia*, P6_TA(2007)0572, November 29, 2007.

³⁵⁸ Commission of the European Communities, *Accompanying the Communication from the Commission to the Council and the European Parliament 'Implementation of the European Neighbourhood Policy in 2007' Progress Report Georgia*, SEC(2008) 393 COM(2008) 164 final, April 3, 2008.

³⁵⁹ See European Commission for Democracy through Law (Venice Commission), *Opinion on the Draft Amendments to the Constitution of Georgia*, CDL-AD(2004)008 Opinion no. 281/2004, March 29, 2004.

³⁶⁰ See Karlo Godoladze, "Constitutional Changes in Georgia," footnote 41.

³⁶¹ Karlo Godoladze, "Constitutional Changes in Georgia," 451.

from the president to the government³⁶². Eventually, in October 2010 the parliament adopted a new amendment to the supreme law that came into effect in 2013, resulting in what some experts have described as rationalised parliamentarianism³⁶³. The new constitutional draft envisaged a clearer definition of the competencies of the various bodies, ensured through the establishment of balancing mechanisms³⁶⁴. This was achieved by dismantling the dualist executive structure and redistributing powers among constitutional bodies. The government became the supreme body of executive authority, which was consequently withdrawn from the president's prerogatives³⁶⁵. Its formation as a collegiate body was exclusively entrusted to parliament, and its legitimacy was derived solely from the relationship of confidence, thereby creating an effective instrument of parliamentary oversight over the executive's conduct³⁶⁶. Accordingly, the constitutional status of the president was also considerably redefined, with his role now limited to head of state, supreme commander of the armed forces, and his foreign policy duties. In general, the president was largely vested with representative responsibilities and served as an arbiter overseeing the proper functioning of the state bodies³⁶⁷. Furthermore, the legislative initiative, the authority to suspend or abolish governmental acts in contrast to the Constitution, the right to dismiss the government or its ministers, and functions in budgetary matters have been permanently removed from the spectrum of presidential powers, delineating and reinforcing the role of parliament as the highest legislative body³⁶⁸. In sum, considering the above-mentioned changes, while the 2004 reform faced strong domestic and international criticism, the new constitutional framework introduced by the 2010 reform seemed to have partly incorporated the remarks from the EU and the Council of Europe (CoE), and was viewed by experts as a positive step forward in Georgia's democratic transition³⁶⁹. Indeed, in its country monitoring report the European Commission, gave an overall positive assessment despite some critical observations, emphasising that "Georgia made progress in the implementation of the ENP AP priorities throughout 2010"³⁷⁰.

³⁶² Kverenchkhiladze, "Georgian Constitutionalism," 6.

³⁶³ Karlo Godoladze, "Constitutional Changes in Georgia," 453. Rationalisation involves a set of constitutional mechanisms designed to ensure the continuity of government actions, thereby establishing the conditions for a stable political leadership. Parliamentary forms of government are typically subject to varying degrees of rationalisation to enhance stability and governability.

³⁶⁴ Kverenchkhiladze, "Georgian Constitutionalism," 9.

³⁶⁵ *Ibidem*.

³⁶⁶ A.K. Dudaiti, A.A. Bagaeva, B.G. Koibaev, and B.G. Tauchelov. "Political Processes in Georgia and Interaction with the European Union in 2004-2014," in Proceedings of the International Session on Factors of Regional Extensive Development (FRED 2019), Atlantis Press 113, (January 2020): 586-587.

³⁶⁷ *Ibidem*.

³⁶⁸ Karlo Godoladze, "Constitutional Changes in Georgia," 456.

³⁶⁹ Karlo Godoladze, "Constitutional Changes in Georgia," 453.

³⁷⁰ European Commission & High Representative of the Union, *Implementation of the European Neighbourhood Policy in 2010 Country report: Georgia*, 52011SC0649, May 25, 2011. Hereinafter "2010 Georgia Report".

However, a careful analysis of the specific rationalisation mechanisms introduced by the reform reveals that this expansion of the government powers has become excessively unbalanced, resulting in an uncontested dominance of the prime minister, as its head, and ultimately affecting the legislative-executive balance of power. The main cause of such centralisation is to be attributed to the inclusion in the Constitution of a non-ordinary formula for the constructive vote of no-confidence³⁷¹. Developed mainly after the Second World War for Central and Eastern European countries, primarily in Germany, the constructive vote of no confidence allows for the replacement of the prime minister only if parliament elects a ‘reserve’ candidate who can ensure a certain majority of votes³⁷². This instrument is termed ‘rationalising’ as it places greater responsibility on parliament and reduces the likelihood of frequent governmental crises³⁷³. The procedure that emerged from the new Georgian constitutional dictate is a unicum with no analogies in global constitutionalism³⁷⁴. The amended Constitution provides for two-fifths of the members of parliament to raise the question of no-confidence³⁷⁵, an unusually high threshold compared to what is typically expected in democratic states that contemplate such an instrument³⁷⁶. This first request does not imply the automatic initiation of the constructive vote of no confidence, which involves the appointment of a new prime minister, but requires an additional vote instead³⁷⁷. In order to take office, the new prime minister must be supported by half of the members of parliament, a majority that once again exceeds constitutionally recognised standards³⁷⁸. Moreover, the procedure, including the request and the actual declaration of no-confidence, must occur within a specific time limit, i.e. no less than 20 and no more than 25 days³⁷⁹. Lastly, even if all procedural steps were successfully completed, the president can exercise a veto on the constructive vote of no-confidence, a power never established before and outside of any constitutional logic, granting the president the right to interfere in parliament’s exclusive legislative authority³⁸⁰. For the aforementioned reasons, some scholars define the Georgian model of parliamentarianism as super-rationalised, thus oriented towards the “maximal solidity and “permanency” of the prime minister’s position”³⁸¹ to the detriment of parliament. While the

³⁷¹ Karlo Godoladze, “Constitutional Changes in Georgia,” 454.

³⁷² Werner Ebke and Matthew W. Finkin, *Introduction to German Law* (The Hague: Kluwer Law International, 1996), 61.

³⁷³ Dmitry Gegenava, “Georgian Model of Constructive Vote of No-Confidence: Gordian Knot in the Constitution of Georgia,” *Journal of Law*, no. 1 (February 2013): 291.

³⁷⁴ Dmitry Gegenava, “Georgian Model of Constructive Vote of No-Confidence,” 293.

³⁷⁵ Parliament of the Republic of Georgia, *Constitutional Law of Georgia*, 3710, November 5, 2010, art. 379. Hereinafter “Georgian Constitutional Amendments of 2010”. See also Constitution of Georgia, art. 81.

³⁷⁶ Karlo Godoladze, “Constitutional Changes in Georgia,” 454.

³⁷⁷ Dmitry Gegenava, “Georgian Model of Constructive Vote of No-Confidence,” 293.

³⁷⁸ Georgian Constitutional Amendments of 2010, art. 379; Constitution of Georgia, art. 81.1; Karlo Godoladze, “Constitutional Changes in Georgia,” 455.

³⁷⁹ Georgian Constitutional Amendments of 2010, art. 379; Constitution of Georgia, art. 81.1.

³⁸⁰ Dmitry Gegenava, “Georgian Model of Constructive Vote of No-Confidence,” 302-303.

³⁸¹ Dmitry Gegenava, “Georgian Model of Constructive Vote of No-Confidence,” 303; Karlo Godoladze, “Constitutional Changes in Georgia,” 454.

constructive vote of no-confidence is supposed to ensure a proper separation of powers by respecting parliament's authorities and duties, the mechanism as conceived undermines its own essence and reverses its effect, protecting the government, even in its unpopular actions, and obstructing meaningful parliamentary scrutiny³⁸². The lengthy procedure, along with the stringent quorums and timeframes, not only makes it highly unlikely for this mechanism to succeed in bringing down the government, but it also increases the risk of adverse consequences for parliament, such as dissolution, in the event of failure to meet the procedural requirements, thereby enhancing the prime minister's leverage over the legislative body³⁸³. The EU itself noted an insufficient strengthening of parliament's counterbalancing powers, observing that "the new amendments do not guarantee parliament's oversight function as they make it very difficult for parliament to mount a vote of no confidence in the government"³⁸⁴. This constitutional shortcoming was reflected in Georgia's political landscape in the years that followed, solidifying a balance of power as persistently skewed in favour of the prime minister. As shown in the previous historical overview, under the GD administration and the ongoing pattern of one-party dominance, the only notable change from the past has been the transfer of authority from the president to the prime minister, who has become the leading figure in the current political system. Consequently, the reform has not differentiated the responsibilities among the constitutional branches, but instead preserved a strongly hierarchical balance by merely altering the apex of the power structure. The prime minister is now the central driving force upon which all other spheres of power depend, primarily the parliament and the presidency. It was thus appropriate to highlight the presidential veto power on the constructive vote of no-confidence in this context, as, with the exception of the cohabitation period, all successive presidents have aligned politically with the ruling party, turning such presidential veto into a strategic tool to further ensure the permanence of the government and its political agenda.

In light of this institutional outcome less favourable than expected from the DRoL perspective, one last reflection seems appropriate. Considering that Saakashvili would have finished his second and final term as president in 2013, this transfer of power to the prime minister could appear suspicious. There is some speculation that Saakashvili designed this draft reform both to accommodate international pressure and to be able to run in the upcoming parliamentary elections and win, thus tailoring the reform to his ambitions of retaining political leadership³⁸⁵. Although this strong claim cannot be entirely confirmed, it may suggest an instrumentalisation of constitutional reforms by the

³⁸² Dimitry Gegenava, "Georgian Model of Constructive Vote of No-Confidence," 291, 303.

³⁸³ Dimitry Gegenava, "Georgian Model of Constructive Vote of No-Confidence," 303.

³⁸⁴ See 2010 Georgia Report.

³⁸⁵ Thomas de Waal, "So Long, Saakashvili: The Presidency That Lived by Spin- And Died by It," *Foreign Affairs*, October 29, 2013, <https://www.foreignaffairs.com/eastern-europe-and-former-soviet-union/so-long-saakashvili>.

ruling majority for its political interests³⁸⁶. This hypothesis will be explored in depth in the next subsection and further corroborated by the forthcoming constitutional reform.

2.2.3 The 2017/2018 Constitutional Reform: an Instrumentalization of the Electoral System?

On one front, the unprecedented and constitutionally flawed formulation of the constructive vote of no-confidence led to the absence of government and prime minister turnover. Meanwhile, the crystallisation of a ‘super-rationalised’ form of government was further ensured through an electoral system that secured a one-party parliamentary majority, and often a ‘supermajority’, for the ruling elite³⁸⁷. Since 1995, Georgia has employed a mixed electoral system, which has consistently been the subject of numerous debates³⁸⁸. The last amendment before 2017 dates back to 2011, establishing that parliament³⁸⁹ would consist of 77 members elected through the proportional system and 73 members elected through the majoritarian system³⁹⁰. In the run-up to the 2012 elections, the GD itself made the revision of the allegedly “unfair electoral system”³⁹¹ one of the priorities of its political programme. Indeed, unlike the mixed electoral systems existing in many democracies, the Georgian model appears to favour a ‘winner-takes-all’ approach³⁹². Specifically, it involves the “mechanical summing up”³⁹³ of each party’s proportional and majority mandates, resulting in distortions in representation that do not reflect the real preferences of the electorate. The majoritarian voting system particularly benefits the ruling party, as it enables the mobilisation of its extensive administrative and financial resources during the election campaign, enhancing its chances of creating a one-party parliamentary majority³⁹⁴. For instance, in the 2016 parliamentary elections, despite obtaining 46.7% of the proportional vote (44 seats), the GD party accumulated a total of 115 seats by winning 71 of the 73 majority constituencies (44+71), thereby reaching the constitutional majority in parliament³⁹⁵. This mechanism also hindered the development of coalition government trends in Georgia, where the 2012 legislature, as subsequent elections demonstrated, should be considered more an exception than

³⁸⁶ Karlo Godoladze, “Constitutional Changes in Georgia,” 447.

³⁸⁷ Malkhaz Nakashidze and Davit Sirabidze, “Constitutional Reforms on Electoral System for Consolidation of Parliamentary Democracy in Georgia,” *International Comparative Jurisprudence* 6, no. 1 (April 2020): 9.

³⁸⁸ Malkhaz Nakashidze and Davit Sirabidze, “Constitutional Reforms on Electoral System,” 23.

³⁸⁹ The Georgian parliament is unicameral and comprises a total of 150 members.

³⁹⁰ Malkhaz Nakashidze and Davit Sirabidze, “Constitutional Reforms on Electoral System,” 11.

³⁹¹ Georgian Dream, *Founding declaration of the Georgian Dream political coalition*, February 21, 2012. Hereinafter “GD Founding Declaration”.

³⁹² Siamak F. Shahandashti, “Electoral Systems Used around the World,” in *Real-World Electronic Voting: Design, Analysis and Deployment*, ed. Feng Hao and Peter Y. A. Ryan (Boca Raton: CRC Press, 2016), 79.

³⁹³ Malkhaz Nakashidze and Davit Sirabidze, “Constitutional Reforms on Electoral System,” 22.

³⁹⁴ George Goradze, “Separation of powers according to the new amendments to the constitution of Georgia-problems and prospects,” *Bratislava Law Review* 3, no. 1 (June 2019): 83.

³⁹⁵ *Ibidem*.

confirmed the prevailing rule³⁹⁶. The EU itself began to advocate for the necessity of ensuring a proper electoral system, especially after the 2016 parliamentary elections' outcome, and continued to urge efforts towards refining the country's parliamentary form of government, "addressing [...] remaining shortcomings in the legislative framework and election administration as identified by [...] the recommendations of the Organisation for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) Election Observation Mission report"³⁹⁷. It should be recalled that in 2014 Georgia signed the Association Agreement with the EU, which entailed a greater definition of the partner state's specific commitments in implementing domestic DRoL reforms. Article 4 of the treaty explicitly outlined the parties' obligation to "cooperate on developing, consolidating, and increasing the stability and effectiveness of democratic institutions and the rule of law"³⁹⁸. This milestone in EU-Georgia relations placed substantial emphasis on the forthcoming constitutional reform, which would bear the responsibility of demonstrating continuity with this advancement and meeting both national and international expectations. Therefore, after some previous unsuccessful attempts, the GD government's final proposal was to enact a new constitutional amendment that would achieve the long-awaited transition to a fully-fledged parliamentary model and a proportional electoral system from the 2020 parliamentary elections³⁹⁹. These adjustments were deemed essential to transition the country to a fully "European parliamentary State System"⁴⁰⁰ and aspire to EU membership. This latter objective was explicitly enshrined in the 2017 amended Constitution as one of Georgia's primary commitments, reflecting a government ostensibly dedicated to advancing democratic change⁴⁰¹. However, the ruling party's true intentions were soon called into question when, in September 2017, the GD parliamentary 'supermajority' approved the new constitutional amendment, bypassing opposition stances and unilaterally deciding to postpone the implementation of the fully proportional electoral system until 2024⁴⁰². The event was followed by fierce domestic and international criticism, including the EU which "regrets the postponement of the implementation of a fully proportional electoral system until 2024 [and] reiterates its readiness to [...] assist the Georgian authorities in following up on and implementing the recommendations that will be presented"⁴⁰³. After a series of internationally mediated negotiations, it was agreed that, during such a transitional period, the electoral system for the 2020 parliamentary

³⁹⁶ Malkhaz Nakashidze and Davit Sirabidze, "Constitutional Reforms on Electoral System," 13.

³⁹⁷ Official Journal of the European Union, *Recommendation No 1/2017 of the EU-Georgia Association Council of 20 November 2017 on the EU-Georgia Association Agenda [2017/2445]*, 22017D2445, December 23, 2017.

³⁹⁸ Georgia AA, Art. 4.

³⁹⁹ Michael Emerson and Tamara Kovziridze, *Deepening EU-Georgian Relations. What, why and how?* 15.

⁴⁰⁰ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia," 81.

⁴⁰¹ Michael Emerson and Tamara Kovziridze, *Deepening EU-Georgian Relations. What, why and how?* 15.

⁴⁰² *Ibidem*.

⁴⁰³ European Parliament, *European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Georgia (2017/2282(INI))*, P8_TA(2018)0457, November 14, 2018.

elections would remain mixed, with 120 seats elected proportionally and 30 by majority constituency, along with 1% threshold⁴⁰⁴. Another noteworthy aspect is the EU's unprecedented direct intervention in Georgian domestic politics in the context of the 2020 political crisis⁴⁰⁵, aimed at mediating political dialogue between opposition and government forces⁴⁰⁶. The agreement reached in April 2021 provided several important guidelines for an "ambitious electoral reform"⁴⁰⁷, including a 2% threshold⁴⁰⁸. However, the agreement was soon disavowed by the ruling party, which attributed its reversal to the EU's decision not to grant candidate status to the country in December 2022⁴⁰⁹. Subsequently, the EU itself remained ambiguous in its recommendations outlined in the Enlargement Report on Georgia published in November 2023, merely advising "further improving the electoral framework"⁴¹⁰. Therefore, a fully proportional electoral system will be implemented for the 2024 elections as envisioned in the 2017 constitutional reform, which established a 5% threshold and a ban on pre-election blocs⁴¹¹. Rather than promoting party pluralism and the formation of governing coalitions, the reform thus conceived could lead to distorted effects on representation. In other words, the high threshold could once again cause the redistribution of votes from parties that fail to overcome it, potentially benefiting the strongest GD and MNU, and further consolidating the entrenched extreme party polarisation underlying Georgia's political culture⁴¹². Nevertheless, this concern will remain uncertain and cannot be fully validated until the actual outcome of the elections is witnessed. Overall, European pressure to secure fairer electoral reform proved insufficient, clashing with the Georgian government's strong resistance to complying with these demands. Prior to assuming office, the GD party sharply criticised the prevailing one-party politics, actively fought for the abolition of the existing electoral framework as heavily penalising opposition parties, and supported the introduction of a proportional system to improve its chances of defeating the dominant UNM. However, once in power, even the GD became reluctant to alter the electoral formula, justifying its stance by claiming that the country would require more time to complete its transition to a multi-

⁴⁰⁴ See Giorgi Lomsadze, "Georgia Adopts Landmark Election Reform," Eurasianet, June 29, 2020, <https://eurasianet.org/georgia-adopts-landmark-election-reform>.

⁴⁰⁵ It broke out from the opposition's boycott of parliament following the 2020 parliamentary elections and the arrest of Nika Melia; See *supra*, p. 48.

⁴⁰⁶ Malkhaz Nakashidze, "The Association Agreement and the implementation of domestic reforms towards strengthening the Rule of Law, in Georgia, Moldova, and Ukraine," *International Comparative Jurisprudence* 7, no.1 (April 2021): 58.

⁴⁰⁷ European Union External Action Service, "A way ahead for Georgia," EEAS, April 16, 2021, https://www.eeas.europa.eu/sites/default/files/210418_mediation_way_ahead_for_publication_0.pdf.

⁴⁰⁸ *Ibidem*.

⁴⁰⁹ Civil Georgia, "Ruling Party Under Fire for 'Breaking Promise' on Election Threshold," Civil Georgia, November 22, 2023, <https://civil.ge/archives/570879/amp>.

⁴¹⁰ European Commission, *Georgia 2023 Report, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions '2023 Communication on EU Enlargement Policy'*, SWD(2023) 697 final, November 8, 2023.

⁴¹¹ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 83.

⁴¹² Civil Georgia, "Ruling Party Under Fire."

party system⁴¹³. Therefore, it appears that this electoral system has become functional for the government's political purposes, serving as yet another instrument for the preservation of power, thereby imposing a reconsideration of the true rationale behind Georgia's political elite decisions⁴¹⁴. The electoral reform was not the only change included in the 2017 constitutional amendment. Another important provision introduced was the abolition of the president's direct election, effective from 2024 when the current presidential term will expire⁴¹⁵. The revision stipulates that the president will henceforth be elected by a 300-member Electoral College comprising "all members of the parliament of Georgia and of the supreme representative bodies of the Autonomous Republics of Abkhazia and Ajara [as well as] bodies of local self-governments"⁴¹⁶. However, the majority in almost all local self-governing bodies belongs to the ruling party, except for the representative body of the autonomous republic of Abkhazia where the legitimate representative has been expelled from the region without renewing the elections⁴¹⁷. Therefore, experts suggest that it is highly plausible that the ruling party will be significantly over-represented in the Electoral College and that the election of the next president will result from its indirect decision⁴¹⁸. Hence, while universal suffrage afforded the president a certain degree of autonomy by maintaining his independence from any political body, the new constitutional dictate renders him implicitly accountable to that political faction that elected him, turning the presidency into a potential pawn of the government party in furthering its political agenda. Further relevant changes have affected the legislative-executive balance of power. The newly amended Constitution has removed the requirement for a government that undergoes a renewal of at least one-third of its members to be subject to a subsequent vote of confidence by parliament⁴¹⁹. The removal of such obligation effectively grants the prime minister the authority to alter the government's composition at will, even immediately after the establishment of the relationship of confidence, undermining the substantive counterbalancing function of the parliamentary scrutiny at the beginning of the legislature⁴²⁰. Furthermore, the timeframe for exercising the constructive vote of no-confidence has been further shortened. If the previously fixed 25-day period between the no-confidence proposal and the election of a new prime minister was already tight, the newly set 14-day limit further restricts parliament's capacity for political initiative, undermining the constitutional

⁴¹³ Malkhaz Nakashidze and Davit Sirabidze, "Constitutional Reforms on Electoral System," 22-23.

⁴¹⁴ Malkhaz Nakashidze and Davit Sirabidze, "Constitutional Reforms on Electoral System," 15.

⁴¹⁵ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 84.

⁴¹⁶ Constitution of Georgia, art. 50.3.

⁴¹⁷ As demonstrated by the 2017 local elections, in which the ruling party failed to achieve the majority in only one of the 64 local self-government bodies. George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 84.

⁴¹⁸ *Ibidem*.

⁴¹⁹ See Georgian Constitutional Amendments of 2010, art. 379.

⁴²⁰ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 85.

autonomy of the legislative body⁴²¹. A last notable modification provides the prime minister with the possibility to present an issue of confidence. If parliament does not approve it, there is a maximum of 7 days to submit a motion of no-confidence against the government and elect a new prime minister⁴²². However, should parliament fail to act within this very short period, it will face dissolution by the president, which again strongly discourages it from pursuing such measures⁴²³. Hence, it is evident that while these instruments seemingly confer some decisional and discretionary power upon parliament, they serve as de facto constraints that subordinate it under the government's control. This reinforces the parliament's role as a mere sounding board for executive action, perpetuating the persistent imbalance in the executive-legislative relationship.

Finally, it is appropriate to draw some concluding remarks on the current state of DRoL in Georgia's executive and legislative institutions. First, based on the analysis presented, the degree of effective European Union pressure in directing and advancing such reforms appears to have remained rather low. Georgia has introduced several reforms aligned with European DRoL standards, particularly the constitutional reforms under scrutiny which broadly marked the transition to a parliamentary form of government. However, a preliminary observation suggests that the Georgian government has approached the implementation of these reforms superficially, without delving into their substantive merits. In other words, instead of addressing the core issues of ensuring greater pluralism, separation and balance of powers, this strategy seems to prioritise the short-term goal of international assent and domestic endorsement. Indeed, the distortions identified reveal mostly façade reforms, designed primarily to create an appearance of compliance rather than achieving their objectives effectively and establishing enduring changes in the long term⁴²⁴. Therefore, within the context of the theoretical framework employed, it appears that the Georgian political elite has merely focused on the formal adoption of such DRoL reforms, showing a lack of genuine commitment to their substantive implementation and even less their internationalisation⁴²⁵. This means that the signing of the AA does not necessarily reflect internal progress, and that the introduction of constitutional reform in a parliamentary sense does not automatically signify a move towards democratic development if the potential behind such reforms is not properly exploited. Such façade reforms not only indicate a reluctance towards real progress but rather underscore a persistence of conservatism, embodying the principle of 'changing everything so that nothing changes'. Indeed, a thorough examination of the

⁴²¹ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 85-86.

⁴²² See Georgian Constitutional Amendments of 2010, art. 379.

⁴²³ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 86-87.

⁴²⁴ See Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*. See also Jaba Devdariani, "Georgia: Rise and Fall of the Façade Democracy." *Demokratizatsiya The Journal of Post-Soviet Democratization* 12, no. 1 (December 2004): 79-115.

⁴²⁵ See *supra*, para. 1.1.

three reforms at issue and their negative repercussions on the balance of power suggests that their true motive lies not in European pressure or a sincere desire for democratic improvement, but rather in the political interest of preserving the status quo, understood as the progressive strengthening and consolidation of the ruling party's primacy⁴²⁶. With a considerable array of instruments at its disposal, such as the constructive vote of no-confidence, the indirect election of the president, and the 5% electoral threshold, the GD government has progressively built an informal governance based on a firm network of interdependencies that expand the ruling party's influence over both parliament and the president and politically unify them⁴²⁷. The recent smooth approval of the Law on Transparency of Foreign Influence, despite the threat of European sanctions, could thus be attributed to such a robust power structure solidified through these constitutional reforms adopted over the years. In this context, therefore, the political elite's behaviour defines it as a veto player to the democratic transition.

2.3 Reforms on the Judicial System

To corroborate and further enhance the previously stated hypothesis of only apparent compliance with the EU's DRoL demands in the implementation of domestic reforms, this section will focus on the judiciary, analysing its independence from the perspective of the separation of powers. Indeed, to fully address the balance of powers, it is necessary to also consider the third constitutional branch. The judiciary is a fundamental counterweight to the executive and legislative powers in any democracy, as it oversees the proper implementation of the law and its conformity with the Constitution. Given its crucial role as the arbiter and administrator of Georgia's judicial system, the High Council of Justice (HCoJ) will serve as the benchmark for the analysis. Any possible flaws identified within it are likely to have a knock-on effect on the other judicial courts, affecting the entire judicial system and its overall functioning.

2.3.1 The State of the High Council of Justice in 2012

As previously discussed in the historical section, the influence of politics on the judiciary has been one of the major trends in Georgian political history. Arrests for alleged corruption or abuse of office were often directed at opposition party members, raising doubts about the fairness of the trials⁴²⁸.

⁴²⁶ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 81.

⁴²⁷ George Goradze, "Separation of powers according to the new amendments to the constitution of Georgia", 87.

⁴²⁸ Stephen F. Jones, *Democracy in Georgia: Da Capo*, 6.

However, substantial reforms in this regard have been slow to materialise, and indeed, the judicial system was the least affected by the 2004 and 2009/2010 constitutional amendments⁴²⁹. Therefore, the first significant changes were only noticed with the advent of the GD in government. Before reviewing the reforms concerning the HCoJ, it is appropriate to dwell on the description of this organ's role and functions in order to lay the foundations for a proper understanding of its evolution. Of the various judicial bodies assigned administrative functions by law, this power is primarily concentrated in the hands of the HCoJ. The administration of the court system is organised in a top-down structure headed by the Council, which thus serves as the main authority in its management⁴³⁰. With the 2009/2010 constitutional reform, the HCoJ became a constitutional body, and its main features were broadly defined by the newly amended Constitution⁴³¹. The Organic Law of Georgia on Common Law Courts (OLG) delineates its composition and functions in detail, entrusting it with the responsibility to “appoint and dismiss judges, to organise judicial qualification examinations, to formulate proposals towards implementing a judicial reform, and to accomplish other objectives determined by law”⁴³². The HCoJ consists of 14 members and the Chairman of the Supreme Court. The members hold a four-year term, and all three branches of power are involved in their appointment. Nine of the members are from the judiciary, including the Chairman of the Supreme Court, a member *ex officio* who presides over the Council. This latter figure has the exclusive right to propose the other eight judicial members, who are then appointed by the Conference of Judges⁴³³. Among the remaining six non-judicial members, four are parliamentarians appointed by the legislative body itself, while the president of the Republic appoints the last two⁴³⁴. The first noteworthy changes to the judiciary, particularly to the HCoJ, were introduced by the 2012 amendments to the OLG, which however left several issues unresolved. While the Council's political neutrality was enhanced by imposing restrictions on the political activities of the two members appointed by president, such restrictions did not apply to all non-judicial members, including parliamentarians, potentially leaving the judiciary administration influenced by their political interests and objectives⁴³⁵. Furthermore, the amended legislation did not provide for any changes in the procedure for the election of judicial members within the Council. The norms did not grant the

⁴²⁹ Karlo Godoladze, “Constitutional Changes in Georgia,” 457.

⁴³⁰ No author, *The Judicial System in Georgia Report 2012* (Tbilisi: Coalition for an Independent and Transparent Judiciary, 2012), 2-3.

⁴³¹ Georgian Constitutional Amendments of 2010, art. 379. See also Constitution of Georgia, art. 86.

⁴³² Parliament of the Republic of Georgia, *Organic Law of Georgia on Common Courts*, No 2257-IIS, December 4, 2009, art. 47.1. Hereinafter “OLG”.

⁴³³ The Conference of Judges is a judiciary's self-governing body tasked with administrative functions. It is specifically a forum that by law meets annually, except for extraordinary sessions, and it brings together all court judges. It is chaired by the Chairman of the Supreme Court. No author, *The Judicial System in Georgia Report 2012*, 3.

⁴³⁴ OLG, art. 47.4.

⁴³⁵ OLG, art. 47.13. See also Parliament of the Republic of Georgia, *Organic Law of Georgia No 5920 of 27 March 2012*, OL no. 5920, March 27, 2012; No author, *The Judicial System in Georgia Report 2012*, 13-14.

Conference of Judges any power of choice in the election of judicial members, and its role is limited to either consenting to or rejecting candidates unilaterally proposed by the Chairman of the Supreme Court⁴³⁶. This largely constrains the involvement of this body and attributes significant discretion to a single individual, without ensuring adequately diverse representation among judicial members, who are instead subject to one person's leverage⁴³⁷. Key responsibilities in the administration of the judiciary concerning the appointment and dismissal of judges, including promotion and transfer, are all assigned to the HCoJ⁴³⁸. However, the 2012 legislation still lacked detailed regulation on the appointment process, leaving the Council with considerable room for manoeuvre and no clearly defined boundaries to its powers⁴³⁹. The 2012 legislative amendment establishes two general rules in this regard: individuals who have passed the admission contest for the High School of Justice, conducted by the Council, may be appointed as judges based on the evaluation of an independent board of the School and, if necessary, an invitation to a sitting of the Council; certain categories of individuals exempt from attending the School may be appointed as judges after passing a two-stage contest, which may possibly include an interview with the Council for candidates who have successfully completed the first stage⁴⁴⁰. This accumulation of prerogatives by the Council does not ensure an appropriate distribution of core competencies and rather leads to a centralisation of power in the hands of a single authority without the necessary counterweights from other bodies in the administration of the judicial system⁴⁴¹. Lastly, the insufficient transparency of the judges' appointment process, particularly regarding the interview stage, hinders the assessment of the impartiality of the Council in its decisions and the criteria used for the selection⁴⁴². In conclusion, in this scenario, there was a risk that the entire judicial system's internal composition would be shaped by a single body with limited representation, due to a verticalised power structure under the Chairman of the Supreme Court as its head. Moreover, the appointment of the latter by parliament also suggests a certain degree of political uniformity across the three branches of power, i.e. between the parliamentary majority supporting the government, which appoints non-judicial members, and the Chairman of the Supreme Court appointing the judicial members⁴⁴³. Therefore, the following section

⁴³⁶ No author, *The Judicial System in Georgia Report 2012*, 12-13.

⁴³⁷ *Ibidem*.

⁴³⁸ No author, *The Judicial System in Georgia Report 2012*, 18.

⁴³⁹ No author, *The Judicial System in Georgia Report 2012*, 20.

⁴⁴⁰ Those exempted from attending the High School of Justice are the following: individuals running for a position of a Supreme Court judge; individuals formerly judges for at least 18 months and having passed qualification exams; justice students included in the official list; judges and former judges of the Constitutional Court. OLG, art. 34.3. See also Parliament of the Republic of Georgia, *Organic Law of Georgia No 1489 of 1 November 2013*, OL no. 1489, November 1, 2013.

⁴⁴¹ No author, *The Judicial System in Georgia Report 2012*, 19.

⁴⁴² No author, *The Judicial System in Georgia Report 2012*, 22.

⁴⁴³ "The chairperson and judges of the Supreme Court of Georgia shall be elected for a period of not less than 10 years by Parliament, by a majority of the full list of MPs, on the recommendation of the President of Georgia." See Georgian Constitutional Amendments of 2010, art. 379.

seeks to briefly demonstrate that this network of interdependence extends beyond the executive-legislative relationship to involve the judiciary, thereby undermining the DRoL principle of separation of powers.

2.3.2 Judicial Reform Waves on the High Council of Justice post-2012

Since 2012, the EU has paid progressively more attention to the state of the Georgian judiciary, identifying an “insufficient degree of independence”⁴⁴⁴, and such necessity was subsequently enshrined within the core DRoL objectives outlined in the Association Agreement⁴⁴⁵. Indeed, since the transfer of power in 2012, efforts in this direction gradually intensified, with the stated intention of “freeing the judiciary from the influence of political authorities”⁴⁴⁶ and were directed towards the refinement of relevant legislation and consequent institutional renewal⁴⁴⁷. The Georgian judicial system underwent four stages of reforms consisting of clusters of legislative amendments, referred to as “waves”, from 2013 to 2017⁴⁴⁸.

The first wave of reforms was recognised as the first major step forward, raising optimism about the new government’s intentions for a concrete transformation of the judiciary⁴⁴⁹. Given its central role in the system, the HCoJ was the primary target of the reforms⁴⁵⁰, as its complete renewal was viewed as the essential first step that would enable all subsequent changes, as also affirmed by the Venice Commission⁴⁵¹. Relevant changes included transferring the power to elect judicial members of the Council solely to the Conference of Judges by secret ballot and a two-thirds majority, assigning the nomination of candidates for judicial membership to each member of the Conference, instead of the Chairman, and requiring a two-thirds majority in parliament for the election of four non-judicial members, who were no longer selected from among parliamentarians based on political party quotas⁴⁵². Therefore, there appeared to be more constraints on political interference and fairer

⁴⁴⁴ European Commission, *Implementation of the European Neighbourhood Policy in Georgia Progress in 2011*, SWD(2012) 114 final, May 15, 2012.

⁴⁴⁵ Georgia AA, Art. 4

⁴⁴⁶ See GD Founding Declaration.

⁴⁴⁷ Sopho Verdzeuli, *Judicial System Reform in Georgia: 2013-2021* (Tbilisi: Georgian Young Lawyers’ Association, 2021), 4.

⁴⁴⁸ Tinatin Erkvania and Bidzina Lebanidze, *The Judiciary Reform in Georgia and its Significance for the Idea of European Integration* (Tbilisi: Georgian Institute of Politics, 2021), 3.

⁴⁴⁹ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 13.

⁴⁵⁰ Parliament of the Republic of Georgia, “Draft Organic Law on Amendments to the Organic Law of Georgia ‘On Common Courts’,” Parliament of Georgia the Republic of Georgia Official Website, December 29, 2012, <https://info.parliament.ge/file/1/BillReviewContent/158436>.

⁴⁵¹ European Commission for Democracy through Law (Venice Commission), *Opinion On the Draft Amendments to the Organic Law on Common Courts of Georgia*, CDL-AD(2013)007 Opinion no. 701/2012, March 11, 2013, para. 68.

⁴⁵² Parliament of the Republic of Georgia, *The Draft Organic Law on Amendments to the Organic Law of Georgia on Common Courts of Georgia*, 580-Ilb, May 1, 2013. Hereinafter “OLG 2013 Amendments”.

representation within the HCoJ, along with a more balanced distribution of administrative competencies, which was previously skewed in favour of Council⁴⁵³. Despite these positive changes, existing power dynamics seemed resistant to fully adapting to the new legal framework, as it was clear during the process of selecting new HCoJ members from May to July 2013. Particularly, the lack of transparency in parliament's selection of non-judicial members, with interviews conducted behind closed doors, raised concerns about potential concessions made through informal agreements with certain judiciary groups⁴⁵⁴. Furthermore, the constrained behaviour of the Conference of Judges in the appointment of judicial members gave the impression of restrictions being imposed by these groups, instrumentalising the concept of self-government to enforce their own directives⁴⁵⁵. These circumstances cast doubt on the judiciary's effective independence from internal influences, challenging the assumption that pressures can only come from external sources, such as other branches of power⁴⁵⁶. Another important innovation was the introduction of a secret ballot and the increase in the majority required to two-thirds of the HCoJ members for the appointment of judges, aimed at ensuring a greater degree of autonomy in the judgement of each Council member⁴⁵⁷. However, the practice of unanimous adoption of judicial appointments once again sheds light on the presence of such 'political strands' within the judiciary, particularly in chair positions, capable of exerting leverage over individual judges⁴⁵⁸. This issue appeared to undermine a more democratic decision-making process within the Council and, more broadly, to be the main systemic cause of the limited impact of the reforms⁴⁵⁹.

The 2009/2010 constitutional reform established lifetime appointments for judges, marking the end of the previous ten-year term, which was subordinate to the pursuit of a three-year probationary period⁴⁶⁰. Therefore, the second wave of reforms approved in 2014 was developed within this context, and devised a three-stage procedure for assessing candidates to be appointed as judges for this probationary period⁴⁶¹. This measure provoked fierce domestic and international criticism, including

⁴⁵³ Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System: Past Reforms and Future Perspective* (Tbilisi: Coalition for an Independent and Transparent Judiciary, 2017), 10.

⁴⁵⁴ Transparency International Georgia and Georgian Young Lawyers, *Monitoring Report of the High Council of Justice Three-Year Summary (2012-2014)* (Tbilisi: USAID, 2015).

⁴⁵⁵ Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System*, 11; Sopho Verdzeuli, *Judicial System Reform in Georgia*, 23.

⁴⁵⁶ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 9.

⁴⁵⁷ OLG 2013 Amendments, art. 1.7.

⁴⁵⁸ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 29.

⁴⁵⁹ *Ibidem*.

⁴⁶⁰ Georgian Constitutional Amendments of 2010, art. 1.34.

⁴⁶¹ Parliament of the Republic of Georgia, *The Draft Organic Law on Amendments to the Organic Law of Georgia on Common Courts of Georgia*, 2647-რბ, August 1, 2014.

from the EU, which reiterated the concerns expressed by the Venice Commission⁴⁶². In its opinion on the drafted constitutional amendment, this latter international body observed that “it is notoriously difficult to reconcile the independence of the judge with a system of performance appraisal. If one must choose between the two, judicial independence is the crucial value”⁴⁶³. In other words, while a probationary period in other democratic states is intended to provide practical training to future judges, culminating in their conferral of judicial functions upon successful completion, Georgia’s system allows for the direct exercise of such judicial functions during this period⁴⁶⁴. This approach carries the risk of inadequate competencies, due to insufficient prior training, and exposes judges to a constant evaluation process which, as noted by the Venice Commission, might “pressure [them] to decide cases in a particular way”⁴⁶⁵, potentially undermining their independence⁴⁶⁶. Therefore, unlike the first, this second wave revealed a lack of willingness within the ruling class to enhance the integrity of the judiciary and the quality of the judicial process⁴⁶⁷. Despite criticism, more than one hundred judges were appointed for the probationary period as of 2017⁴⁶⁸.

The third wave represented the most critical juncture for the Georgian judicial system, as the change of course hinted at by the second wave became evident in the relationship between political power and the judiciary and consequently in the direction of judicial reforms⁴⁶⁹. This wave can be considered the result of a “truce”⁴⁷⁰ strategy between the two spheres of power, which emerged in the attempts to tailor amendments to the interests of a particular group and was further demonstrated by the slow process of passing new legislation, began in 2015 and completed only in 2017⁴⁷¹. The delay was attributable to numerous substantial revisions to the initial draft, resulting from closed-door negotiations and informal agreements, probably made in advance, intended to dilute the proposed

⁴⁶² European Commission, *Implementation of the European Neighbourhood Policy in 2010 Country Report: Georgia*, SEC(2011) 649 final, May 25, 2011.

⁴⁶³ European Commission for Democracy through Law (Venice Commission), *Draft Opinion on the Draft Constitutional Law on the changes and amendments to the Constitution of Georgia*, CDL(2010)062 Opinion no. 543/2009, July 31, 2010, paras. 71-74.

⁴⁶⁴ Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System*, 40-41.

⁴⁶⁵ European Commission for Democracy through Law (Venice Commission), *Final opinion on the draft constitutional law on amendments and changes to the constitution of Georgia - Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)*, CDL-AD(2010)028-e Opinion no. 543/2009, October 15, 2010, para. 90.

⁴⁶⁶ Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System*, 40-41.

⁴⁶⁷ Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System*, 10.

⁴⁶⁸ *Ibidem*.

⁴⁶⁹ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 13.

⁴⁷⁰ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 12.

⁴⁷¹ No author, “Delayed Judicial Reform and Related Political Processes,” Human Rights Education and Monitoring Center, May 27, 2016, <https://emc.org.ge/ka/products/gachianurebuli-sasamartlo-reforma-da-tanmdevi-politikuri-protseebi>; Sopho Verdzeuli, *Judicial System Reform in Georgia*, 12.

initiatives⁴⁷². Indeed, the final version failed to incorporate most of the recommendations from international and local organisations and even represented a step backwards compared to the initial improvements achieved in the first wave to weaken and depoliticise the HCoJ's powers⁴⁷³. Specifically, among the new amendments approved, the most notable were the restoration of the right of court chairpersons to membership in the HCoJ, the refusal to establish a mechanism for electing court chairpersons, a prerogative retained by the Council, and the reduction of the parliamentary quorum required for the election of all Council non-judicial members to a simple majority, justified by the aim of "avoiding delays in the process"⁴⁷⁴. The modifications hindered adequate representation of ordinary judges, instead strengthening the position of court chairmans and their favourites, and consequently consolidating power in the hands of this group of influential judges within the Council⁴⁷⁵. Therefore, this latter group of administrative high-level judges, apart from aligning opinions among the HCoJ judicial members, was now able to engage more easily in informal dialogue with non-judicial members. This measure effectively rendered the previously established abolition of direct political representation in the Council meaningless, as non-judicial members became all expressions of the ruling majority⁴⁷⁶. Consequently, since 2015, a gradual merging of positions between judicial and non-judicial members has increasingly emerged, leading to the erosion of the Council's pluralism and the crystallisation of an internal hierarchical power structure⁴⁷⁷. In sum, such a third wave laid the legal foundations for the so-called "isolation"⁴⁷⁸ of the judicial system, which, according to De Sousa Santos, does not conceive independence in the sense of political neutrality, but rather emphasises "professional privileges of independence [instead of] the democratic potential of the judiciary within the political system"⁴⁷⁹.

The fourth and final wave of reforms, approved in 2019, specifically concerned the definition of the HCoJ's general rules on its functioning, introducing the obligation for this latter to submit an annual report on its activities to the Conference of Judges and to provide detailed motivations for each

⁴⁷² Coalition for an Independent and Transparent Judiciary, "Statement of the Coalition about Delay of the Third Wave of Judicial Reform," Coalition for an Independent and Transparent Judiciary, January 31, 2016, <<http://bit.ly/2b6nMsM>>

⁴⁷³ Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System*, 11.

⁴⁷⁴ Parliament of the Republic of Georgia, "The explanatory note to the "Draft Organic Law on Amendments to the Organic Law of Georgia 'On Common Courts'," Parliament of the Republic of Georgia Official Website, July 2, 2015, <https://info.parliament.ge/file/1/BillReviewContent/84869>, p. 8; Parliament of the Republic of Georgia, *The Draft Organic Law on Amendments to the Organic Law of Georgia on Common Courts of Georgia*, 255-IIIb, February 8, 2017.

⁴⁷⁵ David Kosař, "Politics of Judicial Independence and Judicial Accountability in Czechia: Bargaining in the Shadow of the Law between Court Presidents and the Ministry of Justice," *European Constitutional Law Review* 13, no. 1 (March 2017): 115.

⁴⁷⁶ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 15.

⁴⁷⁷ Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System*, 11; Sopho Verdzeuli, *Judicial System Reform in Georgia*, 24.

⁴⁷⁸ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 13.

⁴⁷⁹ Boaventura de Sousa Santos, "The Gatt of Law and Democracy: (Mis)Trusting the Global Reform of Courts," *Oñati Papers*, no. 7 (1999): 75.

judicial appointment decision, specifying on what criteria these reasons are based⁴⁸⁰. However, this legislation appears to be more of a superficial attempt to improve the perception of the judiciary without implementing meaningful qualitative changes to alter the internal distribution of power or initiate a genuine democratic shift in its administration⁴⁸¹. For instance, although the HCoJ's process of appointing judges has improved in terms of transparency, it remains problematic due to the continued use of secret ballots for final decisions. This practice obscures the specific criteria behind the Council's motivations and potentially counteracts such increased regulation of the evaluation procedures⁴⁸².

Lastly, the 2017-2018 constitutional reform offered only a positive sign related to the increase of the parliamentary majority to three-fifths for the election of the HCoJ's non-judicial members, which, however, was clearly not sufficient to dismantle the existing governance logic and decision-making processes⁴⁸³. Furthermore, the reform integrated into the Constitution a series of HCoJ's features previously regulated by the OLG, such as the number of members and their four-year term of office, as well as the exclusive entitlement to hold the Council's high offices (the chairperson and the secretary) for judicial members⁴⁸⁴, significantly narrowing the scope for any future changes and consequently solidifying the present balance of power within the judiciary at the constitutional level⁴⁸⁵.

In conclusion, it is worth noting that, in this case as well, the political system has focused on implementing what have been previously described as façade reforms, primarily aimed at fine-tuning the judiciary's institutional framework, without delving into the merits of judicial independence. This latter issue is thus perceived merely as a matter of design rather than being addressed in its substantive terms of reorganisation of power⁴⁸⁶. The new legislation does not seek to expand decision-making to a broader consensus, thus subjecting it to democratic legitimacy, but instead limits itself to specifying those procedures for action that keep it firmly under the control of the majority in power⁴⁸⁷. In other words, despite the positive outcomes in terms of legal detailing, these simply clarified the established

⁴⁸⁰ Parliament of the Republic of Georgia, *The Draft Amendments to the Organic Law of Georgia on Common Courts of Georgia*, 5569-Іb, December 13, 2019.

⁴⁸¹ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 14.

⁴⁸² Irine Imerlishvili, Giorgi Kverenchkhiladze and Maia Kopaleishvili, *Dissenting Opinion of the Members of the Constitutional Court of Georgia concerning Decision N3/2/717 of the Plenum of the Constitutional Court of Georgia*, N3/2/717, April 7, 2017, para. 20.

⁴⁸³ Parliament of the Republic of Georgia, *Constitutional Law of Georgia on Amendments to the Constitution of Georgia*, 1324-6b, October 13, 2017, art. 64.2; Sopho Verdzeuli, *Judicial System Reform in Georgia*, 15.

⁴⁸⁴ The chairman of the Supreme Court is no longer automatically also the chairman of the Council.

⁴⁸⁵ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 14.

⁴⁸⁶ David Kosař and Samuel Spáč, "Conceptualization(s) of Judicial Independence and Judicial Accountability by the European Network of Councils for the Judiciary: Two Steps Forward, One Step Back," *International Journal for Court Administration* 9, no. 3 (December 2018): 39.

⁴⁸⁷ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 38.

practices of power without substantially changing its distribution through an efficient system of checks and balances⁴⁸⁸. Therefore, this rationale behind the refinement of legislation is consistent with the persistence of a system of informal hierarchies that monopolised the decision-making apparatus⁴⁸⁹. The new institutional design has indeed managed to achieve judicial independence interpreted as the autonomy of the unified body from external influences, isolating it from the other political branches. However, this does not necessarily guarantee independence understood as the integrity of individual judges' decisions from possible internal influences, a systemic issue that goes beyond the institutional set-up and can be as dangerous as direct political pressure⁴⁹⁰. Indeed, precisely this isolation enables such informal governance to persist, defining the history of the Georgian judiciary as a system characterised by “dependent judges of the independent court”⁴⁹¹. Therefore, it appears that this institutional shaping of a façade of independence, rather than addressing the root of the problem, has been tailored to the interests of such influential groups within the judiciary that collaborate with political power, exploiting the judiciary as a bargaining chip to sustain their dominant position⁴⁹². Overall, while EU pressure may have acted as a catalyst for reforms, their observed impact on the concrete pursuit of DRoL principles remains low, in line with the previously noted strategy of ‘changing everything so that nothing changes’, functional to appease international expectations, that again classifies the political elite as a veto player. Furthermore, this institutional isolation of the judiciary allows the latter to evade responsibility, complicating the process of identifying blame as lost in the maze of informal internal processes that are difficult to identify⁴⁹³. Finally, the judiciary case also illustrates a focus on the mere adoption of the reforms, without fully leveraging their potential for implementation in a genuinely democratic sense, thereby precluding any prospect of their internationalisation.

Conclusion

The present chapter traced the main stages in the formation of Georgian democratic institutions, initially from a historical angle and subsequently, delving into the core of the thesis, from the perspective of the constitutional branches of the legislative, executive and judiciary. The analysis of

⁴⁸⁸ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 40.

⁴⁸⁹ Sopho Verdzeuli, *Judicial System Reform in Georgia*, 24.

⁴⁹⁰ David Kosař, “Politics of Judicial Independence and Judicial Accountability in Czechia,” 98, 117.

⁴⁹¹ David Kosař, *Perils of Judicial Self-Government in Transitional Societies* (Cambridge: Cambridge University Press, 2016), 407.

⁴⁹² Ana Abashidze, Anna Arganashvili, George Beraia, Sopho Verdzeuli, Ketik Kukava, Oliko Shermadini, Ekaterine Tsimakuridze, *The Judicial System*, 10.

⁴⁹³ Ran Hirsch, “The Judicialization of Politics,” in *The Oxford Handbook of Political Science*, ed. Robert Gooding (Oxford: Oxford University Press, 2011), 269.

the reforms under scrutiny was conducted with respect to the principle of separation of powers, a fundamental component of both DRoL reference dimensions of institutional capacity and judicial independence. In light of the outcomes observed from monitoring both the succession of constitutional reforms affecting the executive-legislative relationship and the waves of legislative reforms impacting the role and position of the High Council of Justice, some general remarks emerge concerning the behaviour of political elites in their domestic democratisation efforts. The observations common to both sets of reforms primarily pertain to their only apparent transformation ideals, which however remain on the surface, failing to identify deeper root causes underlying systemic issues. In the case of constitutional reforms, moving towards a more overtly parliamentary system is pointless if the legislature is not empowered to perform its functions independently, rather than serving as the executive's shadow. Similarly, in the case of judicial reforms, it is pointless to better define the functions of each organ within the judiciary's administration if the individual judge's independence continues to be compromised by the influences of a dominant group of judges. This strategy is reflected in the political elite's interaction with the EU, which formally acquiesces to its directives, advancing changes that appear to align with the requirements, but ultimately pivoting on mere institutional aestheticism. This lack of responsiveness to external pressures reveals the political elite's unwillingness to fully exploit the potential of these reforms in order to embed substantial long-term effects into their implementation that can be internalised within the country's political culture. Connected to this first aspect, the second and final observation concerns the enduring fusion between politics and justice, specifically between the ruling party, thus the government and its parliamentary majority, and the judicial factions in leadership positions, crystallising a system of informal governance that ensures the safeguarding of their respective interests. This explains the reluctance on the part of the political system to trigger democratic change, which would inherently allow for the transfer of power and the renewal of the ruling class, as well as the absence of judicial protection. In conclusion, Georgia still seems to be struggling to take a decisive step towards democratic transition, as evidenced by the deliberately flawed approach in the adoption and implementation of DRoL's reforms concerning its form of government and judicial system. More broadly, the chapter underscores an escalating tension between two main actors: a political elite that, regardless of its European aspirations, firmly stands in continuity with the previous regimes' political strategy of using the guise of reformism as a means of preserving and entrenching its hold on power; and a strongly pro-European civil society, particularly among the younger generation, which views EU integration as the only viable path to decisively and permanently steer the country toward democratic progress. The EU will have to engage with a deeply polarised country, essentially divided into two opposing forces: a top-down process of authoritarianism backsliding driven by the political elite, and a

grassroots, bottom-up movement of progressive democratisation led by civil society. This contraposition of processes between veto players and change players renders Georgia highly unstable at the institutional level, incapable of anchoring its roots within the country's social fabric and thereby adopting a clear and coherent trajectory toward democratisation.

Chapter III. Democratic rule of law reform adoption, implementation, and internalisation in Armenia: progress, setbacks, and stalemates

Introduction

The following chapter adopts the same structure previously used for Georgia but centres on Armenia, dealing with those internal dynamics that have shaped its DRoL reform path. The first paragraph attempts to provide a comprehensive historical overview, specifically emphasising the main foreign and domestic policy events that steered the country's process of political transformation. The paragraph is divided into four sections, each corresponding to a transfer of power and the associated political context, in an attempt to identify the entrenchment of certain political trends throughout the administrations. Particular attention is directed toward the Nagorno-Karabakh issue, the evolution of which has significantly influenced domestic policy decisions and the consolidation of a specific power structure. The second paragraph delves into the core of the thesis, examining the principal constitutional reforms that accompanied the gradual transition from a semi-presidential to a parliamentary form of government, with a particular focus on the executive-legislative relationship. Specifically, the analysis of the reforms is conducted with a critical eye on the distribution of competencies and the possible configurations in terms of the balance of power between the two branches. A pertinent point relates to the distinction between normative dictates and political practices, underscoring how the former may be subject to distortions depending on the prevailing political context. Furthermore, in light of the latest developments, it is deemed necessary to establish a final section devoted to the current political debate in Armenia regarding a potential new constitutional reform, drawing conclusions about the likely trajectory the government may pursue and the obstacles it must confront. The third paragraph is dedicated to the constitutional and non-constitutional reforms that have impacted the judiciary in its internal and external independence, as a fundamental factor underpinning the principle of the separation of powers. Similarly to the case of Georgia, reference is made to the Supreme Council of Justice (SCJ), its predecessors and its current organisation, serving as the highest authority responsible for the process of appointing judges and, ultimately, the composition of the entire judicial system. Finally, the monitoring of both the judiciary and the executive-legislative relationship in terms of DRoL compliance is ultimately intended to assess the extent of interaction between internal actors and the EU as an external actor as well as the extent of the EU's contribution in determining such outcomes.

3.1 Armenia's Political Transition: Historical Overview since the Collapse of the USSR

After having explored the main dynamics and trends shaping the Georgian political system, Armenia, another state in the post-Soviet space in the South Caucasus region, has been chosen as a reference. This latter country shares a range of historical and political characteristics with Georgia, making it a valid subject for comparative study. Accordingly, Armenia will undergo a similar examination of its historical context to identify the distinctive features that have become entrenched within its system of governance over the years. This historical overview will thus serve as the necessary foundation for a comprehensive understanding of the evolution of reforms, which will be discussed in the subsequent paragraphs.

3.1.1. 1991-1998

Armenia's post-independence history has likewise been marked by severe turbulence, though this time not related to its ethnic composition, which is instead largely homogeneous⁴⁹⁴, but rather to its state-building process, particularly in terms of border definition⁴⁹⁵. Indeed, the Nagorno-Karabakh conflict has been pivotal in determining the trajectory of Armenia's political history, significantly hindering the country's efforts towards democratic stabilisation and highlighting the substantial impact of foreign policy on domestic developments.

After a brief period of self-governance from 1918 to 1920, followed by its incorporation into the Soviet Union, Armenia ultimately declared its independence in September 1991⁴⁹⁶. By the late 1980s, the national movement seeking the reunification of Nagorno-Karabakh with the rest of Armenia evolved into a broader liberation movement⁴⁹⁷. One of its leaders, Levon Ter-Petrosyan, who was also a member of the Karabakh Committee and later chairman of the Supreme Council of the Armenian Soviet Socialist Republic (SSR), was elected as the first president of the newly independent Republic of Armenia in October 1991 with 83% of the vote⁴⁹⁸. Concurrent with Armenian independence, the Nagorno-Karabakh issue began to exacerbate. As previously explained in the first

⁴⁹⁴ The Armenian population is comprised of approximately 98.1% ethnic Armenians, 1.1% Yezidis, and 0.8% other ethnicities. Central Intelligence Agency, "Armenia," Central Intelligence Agency (The World Factbook 2024), August 2024, <https://www.cia.gov/the-world-factbook/countries/armenia/summaries/>.

⁴⁹⁵ Kiyak Figen, *Problems of Democratization in Armenia (1991-2019)* (Ankara: Graduate School of Social Sciences, Middle East Technical University, 2019), 1.

⁴⁹⁶ Kiyak Figen, *Problems of Democratization in Armenia*, 1-2.

⁴⁹⁷ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," *Journal of Democracy* 30, no. 2 (April 2019): 88.

⁴⁹⁸ Congressional Research Service, *Armenia: Unexpected Change in Government* (Washington DC: The Library of Congress, 1998).

chapter, since the early 1920s, the territory had been designated as an autonomous region within the Azerbaijani SSR⁴⁹⁹. The full extent of the Armenian inhabitants' discontent, due to the discriminatory treatment they received from the Azerbaijani authorities, became apparent with the advent of *glasnost* and *perestroika*, specifically in February 1988⁵⁰⁰. In that context, the Karabakh regional Soviet adopted a resolution calling for the region's secession and transfer to the Armenian SSR, which consequently sparked widespread demonstrations of support in Yerevan⁵⁰¹. Tensions escalated when, shortly after Azerbaijan's declaration of independence, the Republic of the Nagorno-Karabakh was proclaimed in early September 1991⁵⁰². However, this latter's independence was neither recognised by Armenia, Azerbaijan, nor any other country in the international community, leading instead to a direct confrontation between the two states⁵⁰³. The war resulted in Armenia's control over Nagorno-Karabakh and other seven surrounding Azerbaijani districts, including the Lachin corridor⁵⁰⁴, causing the forced displacement of the resident Azerbaijani populations⁵⁰⁵. Hostilities ended in 1994 with a cease-fire brokered by Russia, which, however, did not yield any decisive outcomes, as evidenced by the failure to reach an agreement on the deployment of peacekeeping forces⁵⁰⁶. Indeed, Russia, the international actor with the most active diplomatic role in the dispute and a vested interest in maintaining good relations with both countries, did not manage to station peacekeepers in the conflict zone due to the parties' refusal⁵⁰⁷. Even the mediation efforts of the Minsk Group⁵⁰⁸, established within the OSCE framework in 1994 with the conclusion of the war, proved unsuccessful⁵⁰⁹. Both sides not only remained resolute in their positions, but also unequivocally rejected their respective cultural and historical claims to the territory, rendering the conflict far more intractable and enduring than any other in the post-Soviet space⁵¹⁰. This unwillingness to compromise was further underscored by the repeated ceasefire violations, suggesting the purely formal nature of the term 'frozen conflict', also employed here⁵¹¹. By that time, Nagorno-Karabakh, which had become almost exclusively

⁴⁹⁹ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 61.

⁵⁰⁰ *Ibidem*.

⁵⁰¹ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 1.

⁵⁰² Kiyak Figen, *Problems of Democratization in Armenia*, 7.

⁵⁰³ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 2.

⁵⁰⁴ It connects the Nagorno-Karabakh with the rest of Armenia.

⁵⁰⁵ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 62-63.

⁵⁰⁶ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 64.

⁵⁰⁷ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 2.

⁵⁰⁸ The Minsk Group includes Azerbaijan, Armenia, Türkiye, Germany, Italy, Sweden, Finland, Belarus, the United States, France and Russia as member countries. The co-chairmanship model operates under a trilateral structure with Russia, France and the United States.

⁵⁰⁹ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 64.

⁵¹⁰ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 2.

⁵¹¹ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 63.

inhabited by ethnic Armenians, continued to rely heavily on Armenia for political, financial, and military assistance, with the latter also representing its cause in international negotiations⁵¹².

Therefore, Ter-Petrosyan had to contend with the Nagorno-Karabakh issue from the very beginning of his presidency. It was under his leadership that the 1994 ceasefire agreement with Azerbaijan was signed⁵¹³. Particularly, his foreign policy strategy was aimed at a rapid and realistic resolution of the conflict. To pursue this objective, Ter-Petrosyan welcomed the ‘step-by-step’ approach proposed by the Minsk Group in the context of the 1996 OSCE Lisbon Summit. This latter envisaged a compromise solution that would place Nagorno-Karabakh formally within Azerbaijani territory while substantially keeping it under the control of local Armenians⁵¹⁴. Such a decision, however, faced fierce opposition from the Armenian people, the political class and even government ministers, whose strong nationalist sentiment advocated instead for the full secession of the region. Consequently, Ter-Petrosyan’s moderate approach to Nagorno-Karabakh was the primary reason behind his resignation in February 1998⁵¹⁵. Coherently with the prevalent ideology, a drastic shift in foreign policy was endorsed by his successor, then Prime Minister Robert Kocharyan, who instead privileged a more hardline stance on the issue⁵¹⁶. However, discontent with Armenia’s first independence presidency was rooted in several other reasons. Indeed, the Nagorno-Karabakh war also significantly impacted the country’s economic conditions, due to extensive military expenditures, the closure of the border with Türkiye⁵¹⁷, and the consequent energy crisis⁵¹⁸. Employment and poverty rates further deteriorated with the adoption of a privatisation programme shortly after Armenia’s independence, which aimed to facilitate the transition from a Soviet-style planned economy to a market economy⁵¹⁹. The dysfunction of these reforms resulted in a skewed distribution of wealth, exacerbating disparities between rich and poor, and in a sharp increase in prices⁵²⁰. The latter factor triggered a protest in Yerevan against the government’s economic policies prior to Levon Ter-Petrosyan’s resignation⁵²¹. Meanwhile, this misdistribution of wealth led to the enrichment of the ruling elites and a

⁵¹² Franziska Smolnik and Uwe Halbach, “The Nagorno-Karabakh Conflict,” 63, 67.

⁵¹³ Kıyak Figen, *Problems of Democratization in Armenia*, 26.

⁵¹⁴ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia* (Buenos Aires: Centro Argentino de Estudios Internacionales, 2006), 17.

⁵¹⁵ *Ibidem*. Ter-Petrosyan was forced to resign following the so-called ‘soft coup’, which was supported by the ‘Land-Defence’ forces. This group was created by the incumbent prime minister Robert Kocharyan, the defence minister Vazgen Sargsyan and the security minister Serge Sargsyan, and comprised hardline proponents of the Nagorno-Karabakh issue, many of whom were formerly members of the APNM.

⁵¹⁶ *Ibidem*.

⁵¹⁷ As a historical ally of Azerbaijan, Türkiye closed its borders with Armenia in 1993 in response to the latter’s occupation of Nagorno-Karabakh and discontinued its gas supplies. Aybars Görgülü, *Türkiye-Ermenistan ilişkileri: bir kısır döngü* (İstanbul: TESEV Yayınları, 2008).

⁵¹⁸ Kıyak Figen, *Problems of Democratization in Armenia*, 3-4.

⁵¹⁹ Hasmi Grigoryan, *Democracy in Armenia. EU's Eastern Partnership as a Supportive Tool Towards Democracy* (Yerevan: Institute of European Studies and International Relations, 2019).

⁵²⁰ Kıyak Figen, *Problems of Democratization in Armenia*, 21-22.

⁵²¹ *Ibidem*.

concentration of a large portion of the Armenian economy in the hands of businessmen, commonly known as oligarchs, closely affiliated with them. This network of personal acquaintances gave rise to a clientelist system characterised by the fusion of business and politics and based on the mutual protection of each other's interests, which consolidated and permeated the country⁵²². Specifically, Armenian power structures became increasingly dominated by the so-called Karabakh clan, which gained influence during the 1991-1994 conflict and established its power with the successive presidencies of Kocharyan and Sargsyan⁵²³. Such informal ties spread the practice of corruption across all public sectors, further fuelled by the low salaries of civil servants who were forced to resort to bribery, and ultimately contributed to the proliferation of the shadow economy⁵²⁴. Even electoral corruption was widespread and remained a persistent trend in Armenian politics well into contemporary times, at least until 2018⁵²⁵. Since the first presidential election in 1991, there have been concerns regarding the democratic nature of the process⁵²⁶. In 1994, the government leveraged the Supreme Court's jurisdiction to suspend the opposition party, the Armenian Revolutionary Federation (ARF), following its organisation of anti-government demonstrations against economic reforms and the drafting of the new Constitution⁵²⁷. The ban prevented the party from competing in the parliamentary elections of July 1995, which were held on the same day as the referendum on the Constitution⁵²⁸. The fairness of both ballots was questioned by the OSCE, which cited violations of vote counting and electoral law, as well as the exclusion of certain candidate parties from participation, eventually assessing them as "free but not fair"⁵²⁹. The Republic Bloc coalition led by Ter-Petrosyan's party, the Armenian Pan-National Movement (APNM), secured a two-thirds majority of seats in parliament, thereby ensuring its hold on the government⁵³⁰. Such censorship was also directed at the press, resulting in the closure and banning of independent and opposition media, especially those linked to the ARF⁵³¹. However, great social unrest emerged with the presidential elections of September 1996, in which Ter-Petrosyan was re-elected with 51.8% of the vote according to official figures⁵³². Indeed, the legitimacy of this second mandate faced fierce criticism both at the

⁵²² Kiyak Figen, *Problems of Democratization in Armenia*, 22-23.

⁵²³ David Petrosyan, "The Political System of Armenia: Form and Content," *Caucasus Analytical Digest*, no. 17 (2010): 9.

⁵²⁴ Kiyak Figen, *Problems of Democratization in Armenia*, 47.

⁵²⁵ David Petrosyan, "The Political System of Armenia: Form and Content," 8.

⁵²⁶ Peter Rutland, "Democracy and Nationalism in Armenia," *Europe-Asia Studies* 46, no. 5 (June 1994): 839-861.

⁵²⁷ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 16.

⁵²⁸ *Ibidem*.

⁵²⁹ Commission on Security and Cooperation in Europe, *Armenia's Parliamentary Election and Constitutional Referendum*, July 5, 1995.

⁵³⁰ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 16.

⁵³¹ Freedom House, *Nations in Transit: Armenia* (Washington DC: Freedom House, 1998).

⁵³² University of Central Kansas, "Armenia (1991-present)," University of Central Kansas, Accessed May 12, 2024. <https://uca.edu/politicalscience/home/research-projects/dadm-project/europerussiacentral-asia-region/armenia-1991-present/>.

international and local levels. Internationally, the OSCE condemned the regularity of the elections, denouncing “very serious violations of electoral law”⁵³³. Locally, opposition parties made allegations of electoral fraud and intense popular protests poured into the capital for several days. In response, the government attempted to restore order through violent repression of dissent, including police beatings and arrests⁵³⁴. Combined with the unresolved Nagorno-Karabakh issue, these elections contributed to the gradual erosion of public trust in the incumbent president⁵³⁵. From 1996 onwards, the ruling party, in addition to declining popular support, gradually began to fracture and withdraw its political backing from Ter-Petrosyan, ultimately leading to his resignation⁵³⁶.

3.1.2 1998-2008: the Progressive Domination of the Karabakh Clan

As Ter-Petrosyan’s successor, the incumbent prime minister Robert Kocharian was appointed interim president and reconfirmed in the new presidential elections of March 1998, securing about 60% of the vote despite not being affiliated with any political party⁵³⁷. The elections were also noted for certain inconsistencies by international observers, although they acknowledged an improvement compared to 1996 and generally regarded them as a peaceful transfer of power⁵³⁸. The subsequent parliamentary elections held in May 1999, though not without flaws, were nonetheless deemed a “commitment to democracy confirmed” by the Council of Europe⁵³⁹. These favoured the so-called Unity Bloc⁵⁴⁰, which obtained a majority of seats in parliament and, together with the ARF, formed a government that supported the president⁵⁴¹. Kocharian was born in Nagorno-Karabakh as part of the ethnic Armenian population and played an active role in the 1991-1994 war, subsequently being elected as the first president of the Nagorno-Karabakh Republic in 1994⁵⁴². Kocharian emerged as one of the most influential personalities within the Karabakh clan. Under his leadership, clan members began to acquire prominent positions, particularly in critical areas such as the ministries of Defence or Interior and National Security, progressively establishing their influence across all

⁵³³ OSCE Office for Democratic Institutions and Human Rights, *Armenian Presidential Elections Final Report*, September 24, 1996.

⁵³⁴ Kiyak Figen, *Problems of Democratization in Armenia*, 23-24.

⁵³⁵ Kiyak Figen, *Problems of Democratization in Armenia*, 24.

⁵³⁶ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 17.

⁵³⁷ University of Central Kansas, “Armenia (1991-present).”

⁵³⁸ Kiyak Figen, *Problems of Democratization in Armenia*, 24.

⁵³⁹ Council of Europe, *Armenia’s application for membership of the Council of Europe*, Doc. 8747, May 23, 2000, Appendix III.

⁵⁴⁰ The Unity bloc stemmed from the alliance between the Republican Party of Armenia with its parliamentary allies from the ‘Land Defence’ and the Popular Bloc, namely the People’s Party of Armenia.

⁵⁴¹ Central Intelligence Agency, “Armenia,” Central Intelligence Agency (The World Factbook 2001), May 8, 2002, <http://www.cia.gov/cia/publications/factbook/geos/am.html>.

⁵⁴² Kiyak Figen, *Problems of Democratization in Armenia*, 29-30.

branches of power⁵⁴³. For instance, Serzh Sargsyan, also a native of Karabakh and a member of the clan, served as security minister, defence minister, and prime minister before succeeding Kocharian as president, perpetuating such a factionalist and anti-democratic political system⁵⁴⁴. Considering his origins in Nagorno-Karabakh and his great activism in its defence, the new president's foreign policy strategy in this regard was notably more radical. The failure and public disapproval of his predecessor's conciliatory approach prompted him to leverage national identity and historical memory, rather than opting for a realistic compromise that might even slightly affect them⁵⁴⁵. Indeed, Kocharian did not even contemplate any other solution that did not unequivocally benefit Armenia, categorically leaving no possibility for a peaceful resolution of the issue⁵⁴⁶. As he declared: "there is no solution that will make all parties happy in the Karabakh conflict"⁵⁴⁷. In other words, this intransigent stance turned into an aggressive and accusatory attitude towards Azerbaijan, further souring relations with its neighbour. As previously mentioned, the narrative promoted by the political leadership in both countries has led to the crystallisation in the respective societies of an identity intrinsically linked to the denial and erasure of the other⁵⁴⁸.

Although the country was in a politically and economically precarious state under the Ter-Petrosyan presidency, the Kocharian administration not only failed to reverse these emerging trends but further accentuated them. From an economic perspective, despite observable growth during this period, it became deeply intertwined with the now entrenched oligarchic system, fuelling the shadow economy and consequently exacerbating corruption⁵⁴⁹. From a political standpoint, the 1998 crisis was followed by a parliamentary shootout in October 1999 that resulted in the assassination of several high-ranking political officials, including the two leaders of the Unity bloc, prime minister Vazgen Sargsyan and parliament speaker Karen Demirchyan⁵⁵⁰. This tragic event strained Armenia's political stability and its implications caused a serious retreat in the country's democratic transition. Kocharian faced threats of resignation, as he was suspected of orchestrating the incident due to his rivalry with the two victims, particularly with Demirchyan, his competitor in the recent presidential elections⁵⁵¹. Although the truth behind the assassination remains unclear and no evidence has been found against

⁵⁴³ David Petrosyan, "The Political System of Armenia: Form and Content," 8.

⁵⁴⁴ *Ibidem*.

⁵⁴⁵ Aram Terzyan, "The Evolution of Armenia's Foreign Policy Identity: The Conception of Identity Driven Paths. Friends and Foes in Armenian Foreign Policy Discourse," in *Values and Identity as Sources of Foreign Policy in Armenia and Georgia*, ed. Kornely Kakachia and Alexander Markarov (London: Universal Publishing, 2016).

⁵⁴⁶ Kıyak Figen, *Problems of Democratization in Armenia*, 35.

⁵⁴⁷ Selçuk Ural and Güzin Çaykiran, "Armenian Foreign Policy in the Ruling Period Robert Kocharyan," *Journal of the Institute of Social Sciences*, no. 8 (Autumn 2011): 107–136.

⁵⁴⁸ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 3.

⁵⁴⁹ Kıyak Figen, *Problems of Democratization in Armenia*, 31.

⁵⁵⁰ Eurasianet, "Chief Defendant in Armenian Shootings Case Says Plans Went Away from Start," Eurasianet, May 15, 2001, <http://www.eurasianet.org/resource/armenia/hypermail/200202/0044.shtml>.

⁵⁵¹ No author, "Power Transition at the Expense of Democracy," *Civil Georgia*, August 8, 2002, <https://civil.ge/archives/102186>; Kıyak Figen, *Problems of Democratization in Armenia*, 33.

Kocharyan, the emergency situation effectively allowed the ruling president to centralise power around himself without confronting any counterweight⁵⁵². Furthermore, serious infringements on freedom of expression were reported, marked by an intensification of repression against independent media and an expanding encroachment by the ruling elite within the media sector⁵⁵³. Consequently, in April 2000 Kocharian was subjected to a failed impeachment attempt by the parliament, which accused him of exceeding the constitutionally established boundaries of power⁵⁵⁴. Shortly afterwards, the president implemented several countermeasures, including the discretionary replacement of the new prime minister appointed to succeed Vazgen Sargsyan and the approval of a new electoral law⁵⁵⁵. This legislation reduced the proportional seats while increasing the number of parliamentarians elected as formally independent candidates, effectively enabling the president to “appoint almost half of the parliament according to his preferences⁵⁵⁶”. Kocharian maintained this authoritarian approach during the handling of the 2003 presidential elections, in which he was re-elected in the second round with 67.5% of the vote⁵⁵⁷. While the previous elections had raised hopes that Armenia would continue its path towards electoral progress, the 2003 elections marked a significant regression. Both domestic and international observers considered these elections fraudulent due to various violations, including pressure and intimidation of the media, with the OSCE stating that they “fell short of international standards in several key respects”⁵⁵⁸. On the grounds of electoral unfairness, Stepan Demirchyan, son of the murdered parliament speaker and political opponent of Kocharian in the last presidential election, filed a case before the Constitutional Court to challenge the legitimacy of the presidency⁵⁵⁹. In response, in April 2003 the Court ruled that a referendum shall be conducted to assess citizens’ confidence in the incumbent president. However, the government refused to implement the Court’s decision and persisted in using coercive measures to suppress the resulting opposition controversy⁵⁶⁰. Eventually, Kocharian managed to impose his hold on power once more, and even though the Armenian people acquiesced to the outcome, the succession of anti-democratic actions during his first term progressively eroded public trust⁵⁶¹. The second term further solidified the repressive and corrupt regime created under Kocharian’s leadership, characterised by dominance by a select elite and unilateral monopolisation of decision-making. This was first evidenced by the 2003

⁵⁵² David Petrosyan, “The Political System of Armenia: Form and Content,” 8.

⁵⁵³ *Ibidem*.

⁵⁵⁴ No author, “Power Transition at the Expense of Democracy.”

⁵⁵⁵ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 20.

⁵⁵⁶ No author, “Power Transition at the Expense of Democracy.”

⁵⁵⁷ University of Central Kansas, “Armenia (1991-present).”

⁵⁵⁸ OSCE Office for Democratic Institutions and Human Rights, *International Electoral Observation Mission Republic of Armenia Presidential Election 19 February 2003*, February 20, 2003.

⁵⁵⁹ David Petrosyan, “The Political System of Armenia: Form and Content,” 8.

⁵⁶⁰ *Ibidem*.

⁵⁶¹ Kıyak Figen, *Problems of Democratization in Armenia*, 34.

parliamentary elections, where the Republican Party of Armenia (RPA), led by Kocharian's right-hand man and future president Serzh Sargsyan, secured the majority of seats, facilitating a solid political unity between government and parliament⁵⁶². The tendency for electoral manipulation manifested again in the alleged falsification of the 2005 constitutional referendum and in the 2007 parliamentary elections⁵⁶³. In this latter instance, RPA reaffirmed itself as the preeminent party, with its leader Sargsyan becoming the new prime minister of a coalition government that retained a stable parliamentary majority⁵⁶⁴. In sum, none of the electoral processes during the Kocharian period were deemed fully legitimate, and overall, the transparency of governance and the independence of public and private institutions, including media outlets, dramatically declined⁵⁶⁵. According to Walker, Armenia's democratic rate rose steadily from 4.79 to 5.21 (where 7 is the worst score) from 1999 to 2007⁵⁶⁶. The Kocharian regime has been defined as a 'patronal' authoritarian system, akin to the Russian model⁵⁶⁷. The lowest point was reached with the 2008 presidential elections, which culminated in yet another unlawful entrenchment of power by the Karabakh clan.

3.1.3 2008-2018: between Centralisation of Power and the Boiling of Civil Society

In the February 2008 presidential elections, Serzh Sargsyan competed against former president Ter-Petrosyan, securing victory with 52.8 % of the vote⁵⁶⁸. The full extent of the electoral fraud could not be determined with certainty, largely due to the stringent censorship of independent media⁵⁶⁹. While the OSCE expressed some critical remarks, such as an "insufficient regard for standards essential to democratic elections and devalued the overall election process"⁵⁷⁰, the CoE highlighted "improvements to the legal framework [...] mostly in line with Council of Europe standards"⁵⁷¹. However, given Kocharian's connection with Sargsyan, a member of the Karabakh clan and his closest ally during the presidency, it is reasonable to infer that the power transition was somehow

⁵⁶² University of Central Kansas, "Armenia (1991-present)."; David Petrosyan, "The Political System of Armenia: Form and Content," 9.

⁵⁶³ David Petrosyan, "The Political System of Armenia: Form and Content," 8.

⁵⁶⁴ David Petrosyan, "The Political System of Armenia: Form and Content," 10.

⁵⁶⁵ Kiyak Figen, *Problems of Democratization in Armenia*, 34; 39.

⁵⁶⁶ Freedom House, *Nations in Transit: Armenia* (Washington DC: Freedom House, 2007).

⁵⁶⁷ No author, "Good News from the Caucasus? An Introduction to the Special Issue," *Demokratizatsiya: The Journal of Post-Soviet Democratization* 26, no. 4 (Fall 2018): 43-440, 438.

⁵⁶⁸ International Foundation for Electoral Systems, "Republic of Armenia Election of Armenian Presidency," Election Guide Democracy Assistance and Election News, February 19, 2008, <https://www.electionguide.org/elections/id/2067/>.

⁵⁶⁹ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 89.

⁵⁷⁰ OSCE Office for Democratic Institutions and Human Rights, *Republic of Armenia Presidential Election 19 February 2008 Election Observation Mission Report*, May 30, 2008.

⁵⁷¹ Parliamentary Assembly of the Council of Europe, *Observation of the Presidential Election in Armenia (19 February 2008)*, Doc. 11564, April 14, 2008.

arranged in advance⁵⁷². Indeed, unlike the uncertain assessment of international observers, the legitimacy of the elections was unequivocally rejected by the Armenian people. Incited by the opposition and particularly by Ter-Petrosyan, who gathered considerable support, especially among the youth, the population mobilised in mass anti-government demonstrations in the streets of Yerevan, challenging the alleged electoral improprieties⁵⁷³. After several days of protests, on 1 March 2008, the government decided to disperse them by force and declared a state of emergency. The police acted indiscriminately, using physical violence or even resorting to shooting at the crowd⁵⁷⁴. According to the International Federation of Human Rights report, ten individuals were killed, over two hundred were injured, and more than one hundred were arrested or prosecuted on charges of organising the disorders⁵⁷⁵. Among these latter was the future prime minister Nicol Pashinyan, who was the chief editor of an opposition newspaper and emerged as one of the most charismatic leaders of the protests⁵⁷⁶. Once released from prison in 2011, Pashinyan entered parliament in 2012 alongside Ter-Petrosian, and subsequently departed to establish his own party, Civic Contract, in 2015⁵⁷⁷. International monitors such as Human Rights Watch condemned the government's unjustified use of force and its failure to adequately investigate those responsible for the deaths⁵⁷⁸. Only between 2018 and 2019 Kocharyan, deemed the principal perpetrator of the government's countermeasures in 2008, was arrested three times by the national courts on accusations of "overthrowing Armenia's constitutional order"⁵⁷⁹ during the last weeks of his administration⁵⁸⁰. The significance of the event was underscored by Ter-Petrosyan's appeal to the European Court of Human Rights, which, although dismissing the complaint because of lack of sufficient evidence "to allow the Court to accept unhesitatingly the applicant's version of events"⁵⁸¹, recognised the existence of violations of Articles 11 and 13 of the European Convention on Human Rights. Nevertheless, despite the controversies surrounding the incident, the elections were upheld and Sargsyan regularly assumed office as the new

⁵⁷² Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 88.

⁵⁷³ *Ibidem*; Kiyak Figen, *Problems of Democratization in Armenia*, 40-41.

⁵⁷⁴ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 89.

⁵⁷⁵ International Federation for Human Rights, *Administration of justice in the Republic of Armenia* (Paris-Yerevan: FIDH Briefing Papers, 2010), 1-3.

⁵⁷⁶ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 90.

⁵⁷⁷ *Ibidem*.

⁵⁷⁸ Human Rights Watch, "Democracy on Rocky Ground: Armenia's Disputed 2008 Presidential Election, Post-Election Violence, and One-Sided Pursuit of Accountability," 25 February 2009.

⁵⁷⁹ Artak Hambardzumian, "Kocharian Charged Over 2008 Crackdown," Azatutyun, July 26, 2018, <https://www.azatutyun.am/a/29392588.html>.

⁵⁸⁰ See Hambardzumian, "Kocharian Charged Over 2008 Crackdown"; No author, "Armenian Ex-President Kocharian Back In Custody," Radio Free Europe, June 25, 2019, <https://www.rferl.org/a/order-for-former-armenian-president-kocharian-to-be-arrested/30019317.html>; No author, "Armenian court orders arrest of ex-president Kocharyan: RIA," Reuters, June 25, 2019, <https://www.reuters.com/article/us-armenia-kocharyan/armenian-court-orders-arrest-of-ex-president-kocharyan-ria-idUSKCN1TQ1IK/>.

⁵⁸¹ European Courts of Human Rights, *Ter-Petrosyan v. Armenia (Judgment)*, Application no. 36469/08, April 25, 2019.

president⁵⁸². In sum, while the previous transfer of power concluded in a relatively orderly manner, this case of a violent takeover, which prevented the protests' potential from evolving into a 'colour revolution', showed the Armenian people that "the government was ready to kill its own citizens to remain in power"⁵⁸³. Consequently, the public trust in Sargsyan was undermined since the very beginning of its presidency⁵⁸⁴. Experts regard the popular uprising of 2008 as the precursor to the 2018 Velvet Revolution, serving as a learning point for progressively developing a broader and more effective social mobilisation strategy⁵⁸⁵.

As president, Sargsyan ensured continuity with the political regime established by Kocharyan, maintaining a centralised power structure within an elite circle and his patronage network. Indeed, the 2008 elections demonstrated that the ruling class aimed to confine the control of political affairs to such a circle of loyalists, preventing the emergence of new political actors who might challenge their monopoly on power⁵⁸⁶. The same corrupt practices, including harsh pressure on the media, were suspected in the conduct of all elections of this period, which appeared to secure Sargsyan's victory despite his low popular support⁵⁸⁷. First, the official results of the 2012 parliamentary elections recorded 44.08% of the vote in favour of the RPA, which managed to gain the majority of the seats in parliament⁵⁸⁸. While international observers presented conflicting reports, national organisations such as the Policy Forum Armenia denounced a broad range of violations, primarily bribing and intimidation⁵⁸⁹. The outcome of the 2013 presidential elections, in which Sargsyan was re-elected to a second term with 58.64% of the vote, was again contested, particularly in light of the great campaign success of his competitor Raffi Hovannisian⁵⁹⁰. Alleging electoral fraud, the latter initiated a hunger strike and organised anti-government demonstrations that continued on the day of Sargsyan's presidential inauguration, though failing to prevent it⁵⁹¹. Following the events of 2013, civil society, and especially the youth, seemed disengaged from politics, and their claims were exclusively directed at addressing social issues. The most relevant demonstrations in this regard were carried out by the 'Electric Yerevan' movement in the summer of 2015 to protest against the increase in electricity prices⁵⁹². The resistance to political involvement was apparently reflected in the passive acceptance

⁵⁸² Kiyak Figen, *Problems of Democratization in Armenia*, 41.

⁵⁸³ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 89; 87.

⁵⁸⁴ Kiyak Figen, *Problems of Democratization in Armenia*, 41-42.

⁵⁸⁵ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 87-88.

⁵⁸⁶ David Petrosyan, "The Political System of Armenia: Form and Content," 9.

⁵⁸⁷ Kiyak Figen, *Problems of Democratization in Armenia*, 43; 45; *Ibidem*.

⁵⁸⁸ Corinne Deloy, "The Republican Party of Armenia (HHK) of Serzh Sargsyan, President of the Republic retains power," Foundation Robert Schuman, May 7, 2012, <https://www.robert-schuman.eu/en/monitor/1300>.

⁵⁸⁹ Kiyak Figen, *Problems of Democratization in Armenia*, 43; Policy Forum Armenia, Armenia's 2012 Parliamentary Election Special Report (Washington DC: Policy Forum Armenia, 2012), 9.

⁵⁹⁰ Marilisa Lorusso, *Presidential Elections in Armenia and the Opposition's Long March* (Rome: Istituto Affari Internazionali Working Paper, 2013).

⁵⁹¹ *Ibidem*.

⁵⁹² Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 90-91.

of both the 2015 referendum results, which allowed the transition from a semi-presidential to a parliamentary system with 63% of the vote, and another majority win by Sargsyan's party in the 2017 parliamentary elections, where it obtained 49.08% of the vote⁵⁹³. Despite assertions that the constitutional amendments were a manoeuvre by the president to retain power by shifting to the role of prime minister, and despite international and national concerns about the integrity of the 2017 parliamentary elections and the resulting fictitious multipartyism, these issues did not raise any public demonstrations⁵⁹⁴. In sum, since 1 March, the authoritarian practices of power preservation remained unchanged, and it rather appeared that Armenia was caught in a spiral of progressive retreat from democratic standards⁵⁹⁵. Besides that, the country experienced severe economic regression due to the global crisis of 2008 and the war between Russia and Georgia the same year, leading to a sharp increase in poverty⁵⁹⁶. According to the World Bank's 2017 report, nearly 70% of the Armenian population was living in poverty in 2015⁵⁹⁷. The recession proved difficult to overcome due to the deep-rooted cohesion between the ruling elite and the oligarchic system. Their intertwined interests fostered the proliferation of monopolies and cartels instead of prioritising reforms aimed at truly improving the living conditions of the population⁵⁹⁸. The economic situation was further aggravated by the four-day war in April 2016 in Nagorno-Karabakh, which marked the first large-scale clash since the 1994 ceasefire agreement⁵⁹⁹. In this regard, Sargsyan adopted the same nationalist foreign policy as his predecessor⁶⁰⁰. The aggressive and exclusionary rhetoric, underlying a zero-sum mentality, persisted in both Armenian and Azerbaijani politics, amplifying the perception of threat from their respective neighbour⁶⁰¹. Consequently, the issue not only remained unresolved, as it had during the Kocharyan's presidency, but also deteriorated in 2014 with the annexation of Crimea by the Russian Federation, leading to a progressive intensification of tensions that eventually culminated in the 2016 escalation⁶⁰². Once again, Russia intervened to broker a truce on the fourth day, which was signed by the chiefs of staff of the two countries, albeit shortly followed by reported violations⁶⁰³. This four-day period of conflict had devastating consequences for Armenia, which endured not only

⁵⁹³ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 91-92; Helsinki Committee of Armenia, *Republic of Armenia Parliamentary Elections 2017 Report* (Yerevan: Helsinki Committee of Armenia), 13.

⁵⁹⁴ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 91-92.

⁵⁹⁵ Kiyak Figen, *Problems of Democratization in Armenia*, 45-46.

⁵⁹⁶ Kiyak Figen, *Problems of Democratization in Armenia*, 46.

⁵⁹⁷ World Bank Group, *Republic of Armenia: Drivers of Dynamism. Macroeconomics and Fiscal Management Europe and Central Asia Region*, Report no: 97520, June 2015.

⁵⁹⁸ Kiyak Figen, *Problems of Democratization in Armenia*, 47; Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 79.

⁵⁹⁹ Kiyak Figen, *Problems of Democratization in Armenia*, 50.

⁶⁰⁰ Kiyak Figen, *Problems of Democratization in Armenia*, 48.

⁶⁰¹ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 80.

⁶⁰² Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 65.

⁶⁰³ Franziska Smolnik and Uwe Halbach, "The Nagorno-Karabakh Conflict," 78; 66.

economic, but also human and territorial losses due to a reduction in its military capabilities⁶⁰⁴. Furthermore, discontent with the outcome prompted a nationalist group of Karabakh War veterans to occupy a police station in Yerevan, resulting in their arrest and the subsequent suppression of internal disorders⁶⁰⁵. According to many scholars, including Smolnik and Halbach, the persistence of the Nagorno-Karabakh conflict throughout successive presidencies suggests a lack of sincere commitment from the ruling class towards achieving a final and definitive resolution⁶⁰⁶. Indeed, the identification of an “external enemy”⁶⁰⁷ is often deployed as a tactic to keep the country in a constant state of alert that can justify the imposition of restrictions on civil and political rights. In other words, the perpetuation of the status quo was congenial to the political and economic elites to establish and then secure their position of power⁶⁰⁸.

Overall, political repression, manipulation of electoral processes, the oligarchic control over a substantial portion of the economy and the consequent socio-economic degradation, further exacerbated by the Four-Day War, fuelled a growing popular dissatisfaction that was initially latent and later erupted vigorously in 2018. Therefore, although the protests in 2008 and 2013 did not produce immediate effects, the apparent civic resignation towards such political and economic deadlocks was part of a process of maturing awareness that eventually culminated in Armenia’s “social awakening”⁶⁰⁹ with the Velvet Revolution.

3.1.4 2018-today: from Revolution to Progressivism?

Before discussing the Velvet Revolution, it is appropriate to consider the alarming state of affairs that preceded this pivotal event in Armenia’s political history to gain a comprehensive understanding of the rationale behind it. Therefore, it is necessary to provide an overview of the key political trends that shaped Armenia in the years following the three presidencies, particularly the latter two, which solidified the political and economic hegemony of the Karabakh clan and steered the country into a state of progressive decline in DRoL standards. In this regard, the first trend to emphasise is the increasing centralisation of power in the hands of a clannish administration, which unilaterally assumes the role of the sole architect responsible for determining the course of political

⁶⁰⁴ Kiyak Figen, *Problems of Democratization in Armenia*, 50-51; Miriam Lansky and Elspeth Suthers, “Armenia’s Velvet Revolution,” 91.

⁶⁰⁵ Miriam Lansky and Elspeth Suthers, “Armenia’s Velvet Revolution,” 91.

⁶⁰⁶ Franziska Smolnik and Uwe Halbach, “The Nagorno-Karabakh Conflict,” 79.

⁶⁰⁷ See Anna Maria Dynner and Konrad Zashtowt, “The Escalation of the Conflict in Nagorno-Karabakh: Causes and Probable Course,” *Polish Institute of International Affairs Bulletin* 26, no. 876 (September 2017): 1-2.

⁶⁰⁸ Franziska Smolnik and Uwe Halbach, “The Nagorno-Karabakh Conflict,” 79.

⁶⁰⁹ Kiyak Figen, *Problems of Democratization in Armenia*, 45.

developments⁶¹⁰. Two subsequent features derive from this primary one. The second tendency pertains to the low level of popular legitimacy and trust in the political elite, which, to purge the political arena of opposing intrusions, exacerbates the divide from civil society through flawed electoral processes and coercive methods to suppress dissent⁶¹¹. Finally, the third and final consolidated trend concerns the presence of a dense network of informal interdependencies serving the ruling class, which extends its influence across the business, judiciary and mediatic sectors, resulting in pervasive corrupt practices in their management and adversely affecting society⁶¹². It is thus within this critical context that the Velvet Revolution unfolded, pushing the population to the brink of its endurance and inducing it to channel its frustration into a demand for radical change. Following the shift from a semi-presidential to a parliamentary form of government through the 2015 constitutional referendum, suspicions arose that the true reason behind this transition was to enable President Sargsyan to circumvent the two-term presidential limit and retain power as prime minister, the newly preeminent figure of the executive branch. Hence, to appease and reassure the population, Sargsyan pledged not to put himself forward as a candidate for such a position⁶¹³. Under the revised Constitution, both the president and prime minister were to be appointed by the newly elected 2017 parliament, which held a majority in favour of Sargsyan's RPA party⁶¹⁴. Indeed, for the first time in March 2018, the parliament elected Armen Sarkissian as the new president, a role that had now assumed primarily representative functions⁶¹⁵. However, during this same period, contrary to his earlier promise, Sargsyan hinted at the possibility of seeking the office of prime minister. This concern, perceived as the "final consolidation of the ruling regime's political dominance"⁶¹⁶, served as the breaking point that gave the population the necessary impetus to react⁶¹⁷. On 14 April 2018, a group of activists led by Pashinyan resorted to social media to engage the broader public, thereby initiating in Yerevan a nationwide campaign of civil disobedience titled 'Take a Step, Reject Serzh'⁶¹⁸. Nevertheless, on 17 April, Sargsyan was elected prime minister by the parliament with 77 votes, an outcome deemed inevitable given the RPA's dominant parliamentary presence⁶¹⁹. In response to this appointment, protests escalated radically demanding his resignation and culminated in a march in Yerevan on 22 April, which was met with violent government repression leading to

⁶¹⁰ David Petrosyan, "The Political System of Armenia: Form and Content," 9.

⁶¹¹ David Petrosyan, "The Political System of Armenia: Form and Content," 8; Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 89; Kiyak Figen, *Problems of Democratization in Armenia*, 56.

⁶¹² Kiyak Figen, *Problems of Democratization in Armenia*, 56.

⁶¹³ Kiyak Figen, *Problems of Democratization in Armenia*, 58-59.

⁶¹⁴ Kiyak Figen, *Problems of Democratization in Armenia*, 59.

⁶¹⁵ *Ibidem*.

⁶¹⁶ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 92.

⁶¹⁷ *Ibidem*.

⁶¹⁸ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 85, 92.

⁶¹⁹ Eurasia Partnership Foundation, *Velvet Revolution and Political Developments in Armenia* (Yerevan: Eurasia Partnership Foundation, 2018), 1-18; Kiyak Figen, *Problems of Democratization in Armenia*, 59.

Pashinyan's arrest. Despite that, the protests persisted resolutely and eventually prevailed⁶²⁰. The following day Pashinyan was released and Sargsyan was compelled to resign, acknowledging that "Nikol Pashinyan was right, I was wrong"⁶²¹. The Velvet Revolution is regarded as the most substantial political transformation in Armenia since its independence⁶²². Scholars argue that this social mobilisation cannot be categorised among the colour revolutions, nor can it be strictly defined as a revolution, as its primary objective was neither to overthrow the political system nor to revolt against the oppressive interference of an external power⁶²³. Rather, the Velvet Revolution was exclusively domestically motivated and aimed to reform the existing authoritarian and corrupt system to lay the foundations for a renewed process towards democratisation⁶²⁴. Although the RPA's parliamentary majority made it difficult to reach an agreement to elect a new prime minister, Pashinyan was appointed to the position on 8 May 2018⁶²⁵. However, the RPA's leverage over the parliament prompted him to resign, ushering in a three-month period marked by a form of direct democracy⁶²⁶. Notably during this time, he effectively exploited his personal popularity and mobilised the people to counter the obstructionist actions of the ruling parliamentary elite, ultimately obtaining a call for early elections⁶²⁷. In December 2018, parliamentary elections were held, and the 'My Step' alliance led by Pashinyan secured 70 % of the vote, equivalent to 88 seats in parliament, thereby reaffirming his broad popular support. In contrast, the RPA failed to surpass the 5% threshold required for parliamentary representation⁶²⁸. Consequently, in January 2019, Pashinyan was re-elected prime minister with a parliamentary majority allowing him to advance his governing agenda unhindered⁶²⁹. These elections represent a historic turning point in Armenian electoral history, as for the first time they were reviewed by international observers as truly free and fair. The OSCE reported the absence of those irregularities that had typically characterised the electoral process and noted that

⁶²⁰ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 93.

⁶²¹ Serzh Sargsyan, "Resignation Official Statement," transcript of the speech delivered at Yerevan, April 23, 2018, <https://epress.am/en/2018/04/23/mass-protests-and-strikes-continue-in-armenia-despite-threats-and-warnings-live-thread.html>; Kiyak Figen, *Problems of Democratization in Armenia*, 60-61.

⁶²² Laure Delcours and Katharina Hoffman, "Armenia's 'Velvet Revolution': Whither Change?," EU-Strat, October 2018, <http://eu-strat.eu/wp-content/uploads/2018/10/Policy-Comment-No.-5.pdf>.

⁶²³ Kiyak Figen, *Problems of Democratization in Armenia*, 60.

⁶²⁴ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 85.

⁶²⁵ Kiyak Figen, *Problems of Democratization in Armenia*, 61.

⁶²⁶ Kiyak Figen, *Problems of Democratization in Armenia*, 62; Joe Nersessian, "Can Direct Democracy Work in Armenia?" EVN Report, December 6, 2018, www.evnreport.com/politics/can-direct-democracy-work-in-armenia. See also No author, "2018: The Year That Could," EVN Report, December 27, 2018, www.evnreport.com/politics/2018-the-year-that-could.

⁶²⁷ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 93.

⁶²⁸ Miriam Lansky and Elspeth Suthers, "Armenia's Velvet Revolution," 86.

⁶²⁹ Kiyak Figen, *Problems of Democratization in Armenia*, 63.

public television had acted more independently, ensuring equitable access for all candidates' campaigns, including those of the opposition⁶³⁰.

Although it ushered in a positive momentum, the Pashinyan presidency encountered several impediments in its stabilisation efforts, with the first major obstacle being the political crisis of 2020-2021 related to the Nagorno-Karabakh issue. Pashinyan's foreign policy in this regard remained consistent with that of his predecessors, maintaining a firm and hostile stance against the neighbour's territorial claims⁶³¹. Indeed, despite the initial détente in relations between the two countries following the Velvet Revolution, Azerbaijani authorities' renewed hope that the newly elected Armenian leader might be more amenable to compromise was soon dispelled by Pashinyan's hard-line attitude⁶³². Therefore, tensions between the two leaders progressively intensified, reverting to a state where a peaceful resolution of the conflict appeared unattainable⁶³³. The hostilities that erupted in September 2020 were sparked by four days of border clashes, triggering a military response from the Azerbaijani government. The conflict lasted 44 days and, given Azerbaijan's clear technological and military superiority, resulted in its reconquest of approximately one-third of Nagorno-Karabakh and the seven surrounding districts previously occupied by Armenia, excluding the Lachin Corridor, with the consequent displacement of the ethnic Armenian population⁶³⁴. The war ended in November with a ceasefire declaration sanctioning a distinct victory for Azerbaijan. The ceasefire was brokered once again by Russia, which for the first time, stationed its peacekeeping forces in the Nagorno-Karabakh territory in a mediating capacity⁶³⁵. However, the agreement did not produce a lasting settlement between the parties, as minor clashes along the borders persisted in the following months, nor did it address the unresolved issue of the region's status⁶³⁶. Nagorno-Karabakh continued to be administered by Armenia, although its forces withdrew and Azerbaijan imposed transit restrictions on the Lachin corridor, now regarded it as part of its own territory⁶³⁷. Even negotiation efforts within the Minsk Group proved to be unsuccessful⁶³⁸. The war inevitably had domestic repercussions, as the signing of the penalising ceasefire declaration incited anti-government protests demanding the prime

⁶³⁰ OSCE Office for Democratic Institutions and Human Rights, *Election Observation Mission. Republic of Armenia – Early Parliamentary Elections, 9 December 2018, Statement of Preliminary Findings and Conclusions*, December 10, 2018.

⁶³¹ Kiyak Figen, *Problems of Democratization in Armenia*, 71.

⁶³² Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 3-4.

⁶³³ Kiyak Figen, *Problems of Democratization in Armenia*, 72.

⁶³⁴ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 4-6.

⁶³⁵ The peacekeepers were supposed to remain for an initial period of five years subject to extension. The forces have been stationed continuously since then and are currently in the process of being phased out. Gabriel Gavin, "Russia announces total withdrawal of troops from Nagorno-Karabakh," Politico Europe, April 17, 2024, <https://www.politico.eu/article/russia-withdrawal-troops-nagorno-karabakh-azerbaijan-armenia/>; Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 1,6.

⁶³⁶ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 7-8.

⁶³⁷ Thomas de Waal, *The Nagorno Karabakh Conflict in its Fourth Decade*, 8.

⁶³⁸ *Ibidem*.

minister's resignation. In response to the internal unrest, Pashinyan decided to resign from office and call for early elections. These were held in June 2021 and saw the Civic Contract party prevail and obtain 71 seats in parliament, leading to the re-election of its leader Pashinyan as prime minister in August of the same year⁶³⁹. However, the configuration of the legislature included again the political parties from the previous regime, thus underlining the persistence of such a political legacy⁶⁴⁰. Since the 2020 war, it appears that a real truce between Armenia and Azerbaijan has never been achieved. Among the recurring ceasefire violations, the most significant occurred during a two-day conflict in September 2022, when the two states exchanged mutual accusations of territorial incursions⁶⁴¹. In December 2022, Azerbaijani forces escalated their actions by blocking access to the Lachin corridor, thereby depriving the Nagorno-Karabakh population of essential medical and food supplies⁶⁴². The decisive blow was delivered by the Azerbaijani 'anti-terrorist' offensive in Nagorno-Karabakh on 19 September 2023, launched under the justification of reported casualties attributed to Armenian military installations that were considered necessary to neutralise⁶⁴³. The military operation was not resisted by Russian peacekeepers and concluded within two days with the surrender of the Nagorno-Karabakh authorities and Azerbaijan's full control of the entire region for the first time⁶⁴⁴. This consequently caused the near-total evacuation of the ethnic Armenian population and further demonstrations in Yerevan, accusing the government of failing to advance their cause and once again demanding Pashinyan's resignation⁶⁴⁵. This rapid offensive effectively terminated the *de facto* independence of Nagorno-Karabakh, marking the conclusion of the brutal and contentious dispute between the two countries over the region⁶⁴⁶. Following the defeat in the 2020 war, and especially the ultimate loss of Nagorno-Karabakh, Pashinyan has begun to progressively change his political discourse on the matter, resulting in significant implications for Armenia's international relations. Particularly, the Pashinyan administration appears to have recognised the necessity of definitively setting aside the long-standing Nagorno-Karabakh issue, acknowledging that claims of reunification could potentially pose a threat to Azerbaijan's established territorial integrity and consequently

⁶³⁹ IPU Parline, "Armenia National Assembly 2021 Election Results," IPU Parline, August 2, 2021, <https://data.ipu.org/parliament/AM/AM-LC01/election/AM-LC01-E20210620/>.

⁶⁴⁰ Anna Khvorostiankina, "Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform: policy resilience and relevance perspectives," *International Politics* (July 2023): 12.

⁶⁴¹ Council on Foreign Relations, "Nagorno-Karabakh Conflict."

⁶⁴² Council on Foreign Relations, "Nagorno-Karabakh Conflict."

⁶⁴³ Walter Landgraf and Nareg Seferian, "A 'Frozen Conflict' Boils Over: Nagorno-Karabakh in 2023 and Future Implications," Foreign Policy Research Institute, January 18, 2024, <https://www.fpri.org/article/2024/01/a-frozen-conflict-boils-over-nagorno-karabakh-in-2023-and-future-implications/>; Council on Foreign Relations, "Nagorno-Karabakh Conflict."

⁶⁴⁴ Landgraf and Seferian, "A 'Frozen Conflict' Boils Over."

⁶⁴⁵ Council on Foreign Relations, "Nagorno-Karabakh Conflict."

⁶⁴⁶ Landgraf and Seferian, "A 'Frozen Conflict' Boils Over."

Armenia's security⁶⁴⁷. Indeed, there seems to be a growing awareness that the Nagorno-Karabakh conflict has increasingly rendered Armenia internationally isolated and dependent on Russia, thus exposing it to substantial political pressure from Moscow and precluding it from pursuing other regional projects, such as signing the Association Agreement with the EU. Furthermore, the absence of Russian support during the Nagorno-Karabakh wars underscores its unreliability as a security guarantor, undermining the primary reason for Armenia's sustained cultivation of an economic and military alliance with Moscow over the years⁶⁴⁸. However, Pashinyan continues to face the challenging task of reconciling the prevailing Armenian nationalist sentiment with Azerbaijan's assertive demands, which will be discussed in more detail in the next section in relation to constitutional changes. This ongoing struggle has eventually led to the failure of finalising the peace agreement with the neighbouring country, which had been scheduled for 2023⁶⁴⁹. Meanwhile, the recent rapprochement towards the West has confirmed such a shift in foreign policy, as evidenced by the opening of negotiations with the EU on visa liberalisation⁶⁵⁰. Indeed, leveraging the increased manoeuvring space due to Russia's concentration of efforts on the war in Ukraine, the revised approach to the Nagorno-Karabakh issue is part of a broader strategy aimed at enhancing Armenia's independence and regional standing⁶⁵¹. Finally, Pashinyan emphasised the necessity of complementing this new geopolitical reality with a corresponding internal change, to be achieved first through a promised constitutional reform that, however, has been slow to materialise⁶⁵².

In sum, although the Pashinyan government's Western-oriented foreign policy does not necessarily indicate internal advancements in terms of DRoL, there is evidence of a positive trajectory in the Armenian state reform process compared to previous presidencies. For instance, Armenia stands as the sole country in the region to exhibit a satisfactory level of press freedom, ascending from 90th place in 2018 to 49th in 2024 on the Reporters Without Borders press freedom index, despite persistent issues with the quality of information disseminated⁶⁵³. Moreover, the comprehensive anti-corruption programme and supporting new infrastructure have notably reduced the corruption rate, elevating Armenia from 105th to 65th place in Transparency International's corruption perception

⁶⁴⁷ Mehmet Fatih Oztarsu, "Pashinyan Between Armenia and Azerbaijan: The Curse of Radical Changes," *The Central Asia-Caucasus Analyst*, February 27, 2024, <https://www.cacianalyst.org/publications/analytical-articles/item/13792-pashinyan-between-armenia-and-azerbaijan-the-curse-of-radical-changes.html>.

⁶⁴⁸ Oztarsu, "Pashinyan Between Armenia and Azerbaijan."

⁶⁴⁹ Oztarsu, "Pashinyan Between Armenia and Azerbaijan."

⁶⁵⁰ Directorate-General for Neighbourhood and Enlargement Negotiations, "Commission launches a dialogue on visa liberalisation with Armenia," *European Commission*, July 23, 2024, https://neighbourhood-enlargement.ec.europa.eu/news/commission-launches-dialogue-visa-liberalisation-armenia-2024-07-23_en.

⁶⁵¹ Oztarsu, "Pashinyan Between Armenia and Azerbaijan."

⁶⁵² Oztarsu, "Pashinyan Between Armenia and Azerbaijan."

⁶⁵³ Aren Melikyan, "Pushing for Press Freedom Among Authoritarian Neighbors," *DW AKADEMIE*, November 10, 2023, <https://akademie.dw.com/en/pushing-for-press-freedom-among-authoritarian-neighbors/a-67273937>.

index from 2018 to 2023⁶⁵⁴. Nevertheless, concerns persist regarding the transparency and accountability of government decision-making processes, particularly in the administration of justice, a matter that will be further addressed⁶⁵⁵. Therefore, while significant room for improvement remains, including addressing the increased poverty stemming from the COVID-19 pandemic and the subsequent Nagorno Karabakh war, it is also fair to underline the notable positive trends observed in several areas⁶⁵⁶. However, it should be reiterated that drawing definitive conclusions about the Pashinyan administration is premature, and that a more extended period is required to thoroughly assess the exact extent of Armenia's democratic development or, potentially, regression. In conclusion, while a more detailed analysis of the actual democratic improvements within Armenian institutions will be provided in the following paragraphs, it is possible to affirm that the government's willingness to address the Nagorno-Karabakh issue permanently might represent an attempt to turn over a new leaf and implement radical change, thereby breaking with the status quo long safeguarded by the previous ruling elites.

3.2 Reforms on Institutional Checks and Balances

This section will assess the legislative-executive relationship, with a focus on DRoL compliance, as outlined in the Armenian Constitution, tracing its evolution over time through the amendments it has undergone. The analysis will cover the 2005 constitutional reform, though of lesser significance, and especially that of 2015, whose enactment of a change in the form of government warrants detailed scrutiny. Initially, particular attention will be paid to reviewing the adoption process of the 1995 Constitution to gain a comprehensive understanding of the foundational flaws that have affected the balance of power in the Armenian form of government since its inception.

3.2.1 The 1995 Constitution and its First Amendment in 2005: Unbalancing the Power

The process of conceiving and devising the new Constitution began following the Declaration of Independence in August 1990 and lasted until 1995⁶⁵⁷. The Constitutional Commission, tasked with

⁶⁵⁴ Transparency International, "Corruption Perception Index 2018," Transparency International, Accessed September 3, 2024, <https://www.transparency.org/en/cpi/2018>; Transparency International, "Corruption Perception Index 2023," Transparency International, Accessed September 3, 2024, <https://www.transparency.org/en/cpi/2023>.

⁶⁵⁵ Accountability Research Center, "From Revolution to Reform—Tracing Armenia's Anti-Corruption Landscape - Accountability Research Center," June 26, 2024, <https://accountabilityresearch.org/publication/anti-corruption-armenia/>.

⁶⁵⁶ World Bank Group, *Poverty & Equity Brief Europe and Central Asia Armenia 2024*, April 2024.

⁶⁵⁷ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 2.

drafting the new constitutional text, was established by the Supreme Council in November 1990, though its first session was not held until two years later. The Commission would be chaired by Ter-Petrosyan, who concurrently served as president of the Supreme Council itself⁶⁵⁸. During this period, the newly formed Republic of Armenia undertook a series of significant legislative acts aimed at structuring governance bodies and guiding the country through its ongoing economic and political transition⁶⁵⁹. In accordance with the principle of the separation of powers enshrined in the Declaration, the first pivotal step was the establishment of the presidential office by the Supreme Council in June 1991, followed by presidential elections in October 1991⁶⁶⁰. In the same year, a more precise interpretation of such a principle was consolidated through two subsequent laws: ‘On the President of the Republic of Armenia’ and ‘On the Supreme Council of the Republic of Armenia’⁶⁶¹. During the discussions of the former bill, two principal perspectives emerged within the Supreme Council regarding the extent of presidential authority in relation to the other branches of power and the consequent configuration of the form of government. Two draft proposals were put forward in this regard: one aligned with the dominant position, advocating for an efficient concentration of powers around a strong presidential figure, and the other representing the opposition stance, emphasising the necessity of delineating clearer boundaries between each constitutional branch, thereby introducing more robust checks and balances by the legislative vis-à-vis the executive function⁶⁶². Ultimately, the Supreme Council voted in favour of the majoritarian draft in August 1991, arguing that Armenia’s widespread crisis⁶⁶³, further exacerbated by the conflict in Nagorno-Karabakh, required the presence of a strong leader capable of addressing it with great effectiveness and expedience⁶⁶⁴. In November, the Supreme Council also approved the second bill ‘On the Supreme Council of the Republic of Armenia’, which definitively sanctioned the distribution of powers between parliament and government, marking a first step toward a balance largely skewed in favour of the executive branch and its head, the newly elected President Ter-Petrosyan⁶⁶⁵. However, the debate over the presidential issue remained highly contentious during the whole constitution-making process and, more broadly, has persisted throughout Armenian political history. Particularly, it contrasts the ruling elite, which has typically supported the continuation of a presidential-style

⁶⁵⁸ Alexander Markarov, “Regime Formation and Development in Armenia,” in *Empire, Islam, and Politics in Central Eurasia*, ed. Tomohiko Uyama (Hokkaido: Slavic-Eurasian Research Center, 2007), 304; M. V. Khachatryan, “Institutional Transformation in Armenia in 1990—2012,” *RUDN Journal of Political Science*, no. 3 (2013): 59.

⁶⁵⁹ M. V. Khachatryan, “Institutional Transformation in Armenia in 1990—2012,” 58.

⁶⁶⁰ Alexander Markarov, “Regime Formation and Development in Armenia,” 304-305.

⁶⁶¹ M. V. Khachatryan, “Institutional Transformation in Armenia in 1990—2012,” 58.

⁶⁶² *Ibidem*; Alexander Markarov, “Regime Formation and Development in Armenia,” 305-306.

⁶⁶³ See *supra*, subparagraph 3.1.1.

⁶⁶⁴ Alexander Markarov, “Regime Formation and Development in Armenia,” 305-307.

⁶⁶⁵ M. V. Khachatryan, “Institutional Transformation in Armenia in 1990—2012,” 58; Alexander Markarov, “Regime Formation and Development in Armenia,” 306.

regime, with the opposition, which has sought to shift toward a system akin to parliamentarianism⁶⁶⁶. Once the framework of the new form of government had been defined in its essential underpinnings through the aforementioned laws, it became necessary to formalise it through a comprehensive constitutional design. On the one hand, the Constitutional Commission presented a draft that adhered to the existing governmental conception of centralising the political system around the preeminent figure of the president. On the other hand, one of the more prominent counterproposals was the so-called ‘Draft of Six’, advanced by a minority coalition of six parties, which envisaged a purely representative role for the president and a more balanced relationship between parliament and government as the leading institutions⁶⁶⁷. The draft considered official was inevitably that of the Constitutional Commission, having received the endorsement of Ter-Petrosyan and the Supreme Council, whose parliamentary majority was held by the president’s APNM party⁶⁶⁸. During the Supreme Council’s deliberations in May 1995, no alternative drafts were presented for consideration. The passed resolution ‘On the Draft Constitution of the Republic of Armenia’, conferred precedence upon the draft prepared by the Constitutional Commission, which was ratified by a parliamentary majority and subsequently submitted to a referendum in July of the same year⁶⁶⁹. The popular results showed that 68% of voters, constituting 37.6% of the total eligible electorate, supported the proposed new constitutional dictate, which eventually came into effect⁶⁷⁰. In short, the unequal treatment of the opposition suggests that the constitution-making process was not the outcome of a constructive and coordinated engagement among all political actors, but rather a unilateral imposition of conditions favoured by a single political faction⁶⁷¹. In other words, since the enactment of the two foundational laws in their preferred version and their embedding into the constitutional draft, the Constitution was strategically employed to advance the ruling elite’s interests and permanently entrench its will within the constitutional framework⁶⁷². As a result, the Armenian Constitution was not the product of a genuinely consensual process, but rather an “instrument in the struggle for power”⁶⁷³, which made its democratic aspirations fallacious from the outset. These distortions can be further corroborated through a detailed analysis of the constitutional text itself.

⁶⁶⁶ Alexander Markarov, “Regime Formation and Development in Armenia,” 306.

⁶⁶⁷ M. V. Khachatryan, “Institutional Transformation in Armenia in 1990—2012,” 59; Alexander Markarov, “Regime Formation and Development in Armenia,” 310.

⁶⁶⁸ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 8.

⁶⁶⁹ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 9; Alexander Markarov, “Regime Formation and Development in Armenia,” 313.

⁶⁷⁰ Alexander Markarov, “Regime Formation and Development in Armenia,” 313.

⁶⁷¹ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 2.

⁶⁷² Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 11; Alexander Markarov, *Armenian Constitutional Changes: Slight Amendments or Heavy Reforms?* (Varsaw: Sprawy Polityczne, 2002).

⁶⁷³ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 2.

The Armenian Constitution of 1995 formally establishes a semi-presidential form of government, which in principle implies the sharing of executive power between the president and the government led by the prime minister, the clear separation of competencies between the president and parliament, affirmed by two distinct popular investitures, and the government's accountability to parliament through the relationship of confidence⁶⁷⁴. The president is vested with a wide range of constitutionally conferred powers, including representing the state in international negotiations, serving as commander in chief of the armed forces, and, most notably, appointing or dismissing the prime minister and other government ministers, calling for the early dissolution of parliament and new elections, as well as signing legislation and exercising veto⁶⁷⁵. As previously noted in the Georgian case, the constitutional framework as provided, when applied to the political context of an emerging state undergoing democratic transition, risks dramatically tilting the balance in favour of the presidential figure, with potentially detrimental repercussions on the principle of the separation of powers⁶⁷⁶. The political practice leading to a verticalised structure of power in the hands of a single individual, frequently observed in those countries, arises from the political homogeneity between the parliament and the presidency⁶⁷⁷. Indeed, should this scenario materialise, the president could appoint a government aligned with his own political orientation, assured of securing the confidence of the parliamentary majority. Accordingly, the relationship of confidence would be instrumental for the president in using the government as a bridgehead in parliamentary affairs and ensuring uniform political action across all branches of power. This leads to a presidential encroachment upon the constitutionally distinct powers of each body, whose independent roles are depersonalised and stripped of their counterbalancing functions, ultimately reducing them to mere pawns of presidential directives⁶⁷⁸. For instance, the president can exert influence over the legislative process through both the veto power and the vaguely defined conditions for invoking the early dissolution clause, resulting in a presidential discretion that keeps parliament constantly under pressure⁶⁷⁹. Furthermore, being the government reduced to a mere shadow of the president's authority, this latter can leverage the government's prerogatives to decide on the promulgation of laws related to the budget and resource allocation (essentially the majority of legislative matters), thereby intervening directly in the law-making process under the guise of the prime minister⁶⁸⁰. Hence, it is clear that the parliamentary

⁶⁷⁴ The presidential elections occur every five years, with the possibility of holding office for a maximum of two terms, while parliamentary elections are conducted every four years. Alexander Markarov, "Regime Formation and Development in Armenia," 314; Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 13.

⁶⁷⁵ Armenian Constitutional Commission, *Constitution of the Republic of Armenia*, 5 July 1995, chapter III. Hereinafter 'Constitution of Armenia'.

⁶⁷⁶ See *supra* subparagraph 2.2.1.

⁶⁷⁷ Alexander Markarov, "Regime Formation and Development in Armenia," 315.

⁶⁷⁸ *Ibidem*.

⁶⁷⁹ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 14; Constitution of Armenia, art. 55.

⁶⁸⁰ *Ibidem*; Constitution of Armenia, art. 75.

mechanisms of no-confidence in the government and impeachment of the president are highly improbable and practically unattainable⁶⁸¹. In sum, the aforementioned political circumstances, suggest a substantial super-presidential form of government, which, as previously discussed in the Georgian case, paradoxically establishes a predominance of the president that even exceeds that found in a presidential system⁶⁸². In conclusion, the functioning of the Constitution has proven congenial for the presidency in perpetuating authoritarian practices that would ensure the subordination of the other branches of power to its authority, thereby underscoring that “the Constitution is viewed exclusively from the political standpoint, to the detriment of its legal role”⁶⁸³. A positive aspect of the Armenian case is that the Constitution allowed for the emergence of a second scenario, characterised by increased parliamentary autonomy. This occurred during the gradual dissolution of the parliamentary majority that led to president Ter-Petrosyan’s resignation, demonstrating the potential of parliamentary dissent against the presidency and facilitating a rather orderly transfer of power within the same institutional framework⁶⁸⁴. However, even in this instance, parliament swiftly realigned itself politically with the newly elected president Kocharyan, reverting the country to the usual pattern of presidential hegemony.

Shortly after his election, Kocharyan established a preparatory committee for a new constitutional reform that worked closely with the Venice Commission. In July 2001, the committee presented a draft constitutional amendment to parliament which, due to the extent of the proposed changes, was referred to by experts as a ‘new version’ of the Constitution⁶⁸⁵. The constitutional project did not question the semi-presidential nature of the form of government, which proved its capacity to address the political crises of 1998-1999⁶⁸⁶. Rather, it aimed to ensure a more balanced relationship among the branches of power and, in general, to enhance the clarity and independence of the competencies of each⁶⁸⁷. Specifically, the most significant changes include: the introduction of a mechanism that guaranteed the formation of the government in alignment with the parliamentary majority, thus reducing the president’s discretionary power in the appointment process; a more detailed regulation of the conditions and grounds in which the president may resort to the early dissolution of parliament⁶⁸⁸. Overall, this revised version of the Constitution was deemed very positive, representing

⁶⁸¹ Constitution of Armenia, art. 57, 84.

⁶⁸² Alexander Markarov, “Regime Formation and Development in Armenia,” 315.

⁶⁸³ *Ibidem*; Henrik Khachatryan, *The First Constitution of the Republic of Armenia* (Yerevan: United Nations High Commissioner for Refugees, 1998), 22.

⁶⁸⁴ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 21; Alexander Markarov, “Regime Formation and Development in Armenia,” 315-316.

⁶⁸⁵ Alexander Markarov, “Regime Formation and Development in Armenia,” 318.

⁶⁸⁶ See *supra*, subparagraph 3.1.1.

⁶⁸⁷ M. V. Khachatryan, “Institutional Transformation in Armenia in 1990—2012,” 60; Alexander Markarov, “Regime Formation and Development in Armenia,” 319-320.

⁶⁸⁸ M. V. Khachatryan, “Institutional Transformation in Armenia in 1990—2012,” 60-61; Alexander Markarov, “Regime Formation and Development in Armenia,” 321-323.

a step forward in the democratic development of Armenia's institutions, in line with the principle of the separation of powers. However, when the parliamentary debates on the matter concluded in 2003 and the new constitutional design was submitted to a referendum, it did not meet the required vote threshold for its approval⁶⁸⁹. Paradoxically, the draft satisfied neither the government authorities, who were hesitant to impose further restrictions on the president's powers, nor the opposition, who perceived no substantial differences from the existing constitutional text. As a result of this disinterest from the political class, also accentuated by the concentration of efforts on the simultaneous parliamentary elections, the almost non-existent support campaign did not adequately inform the population, thereby limiting its awareness and engagement in the constituent process⁶⁹⁰. Although the failure of this constitutional reform might suggest its limited significance, the events surrounding it once again reveal a prioritisation of self-interest among the political elite, motivated by a desire to preserve the existing favourable conditions rather than by a genuine commitment to DRoL advancement.

International pressure from the CoE and, to a lesser extent, the EU, continued to support the need for a new constitutional reform that would undergo the Venice Commission's assessment⁶⁹¹. The amendment process was resumed by the new coalition government under Kocharyan's second presidential term through the temporary parliamentary committee on European Integration⁶⁹², but it properly began a year later when the new draft was presented to parliament⁶⁹³. Following the completion of parliamentary oversight in 2005, a propaganda campaign was launched to avoid the same public indifference observed during the previous referendum and raise awareness of the new constitutional project's beneficial changes⁶⁹⁴. Indeed, the referendum held in November 2005 achieved the intended outcome, resulting in the first effective constitutional modification since 1995, which came into force in 2007-2008⁶⁹⁵. The approved constitutional reform, in its most relevant provisions, closely resembled the draft amendment previously rejected and was considered indeed nearly identical⁶⁹⁶. Similarly, the role of parliament in government formation was reinforced by institutionalising the political tradition established by Kocharyan, which required the president to appoint as prime minister a member of the parliamentary majority, typically the leader of the

⁶⁸⁹ M. V. Khachatryan, "Institutional Transformation in Armenia in 1990—2012," 61.

⁶⁹⁰ Alexander Markarov, "Regime Formation and Development in Armenia," 323.

⁶⁹¹ Commission of the European Communities, *Commission Staff Working Paper Annex to 'European Neighborhood Policy' Country Report Armenia*, SEC(2005) 285, March 2, 2005, 7.

⁶⁹² The commission was responsible for ensuring the fulfilment of the legislative obligations assumed by Armenia upon its membership in the Council of Europe.

⁶⁹³ Alexander Markarov, "Regime Formation and Development in Armenia," 325.

⁶⁹⁴ M. V. Khachatryan, "Institutional Transformation in Armenia in 1990—2012," 61.

⁶⁹⁵ *Ibidem*.

⁶⁹⁶ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 123.

victorious party⁶⁹⁷. Consistent with this approach, the relationship of confidence became the sole mechanism for determining the government's survival, subjecting it exclusively to parliamentary dismissal and no longer to presidential intervention⁶⁹⁸. Lastly, as with the 2003 constitutional draft, a number of specific cases were outlined to regulate the president's resort to the early dissolution of parliament⁶⁹⁹. Given such analogies, it may be pertinent to question what motivated the political class to advocate for the adoption of this constitutional reform over the previous one, aside from the diversion caused by the 2003 parliamentary elections. Although there is no conclusive evidence, speculations suggest that president Kocharyan sought to secure the political dominance of the RPA, led by his close ally and Karabakh clan member Sargsyan⁷⁰⁰. The objective appeared to be the creation of a politically cohesive government, built on the relationship of confidence with parliament, and a shift in the balance of power in favour of the prime minister, should a president from the opposite political faction be elected⁷⁰¹. Considering the political turmoil of that period, during which Kocharyan faced accusations of seeking to control the transfer of power, it is reasonable to think that even this constitutional amendment was instrumental in advancing the political interests of the ruling leadership⁷⁰². A second supposition is that the constitutional reform originates from the political elite's attempt to formally accommodate international pressure, while avoiding any significant changes that would lead to substantial democratic progress⁷⁰³. Indeed, the constitutional amendment was met with international optimism, as reflected in the opinion of the CoE, endorsed by the EU, which described it as a "good basis for ensuring the compliance of the Armenian Constitution with the European standards in the fields of respect for [...] democracy and the rule of law [that] would pave the way to further European integration"⁷⁰⁴. However, looking ahead in Armenian political history, it is possible to observe that such positive constitutional modifications were undermined by the prevailing political practice. In other words, the predominant authority of Sargsyan, who was eventually elected president, was not curtailed by the constitutionally introduced checks and balances, as the persistent political homogeneity across all branches of power during his two terms automatically nullified any potential for the parliament or the government to function as independent political actors. For instance, as the parliamentary majority was composed of his party, the parliament

⁶⁹⁷ Armenian Constitutional Commission, *Constitution of the Republic of Armenia (rev. 2005)*, November 27, 2005, art. 55. Hereinafter 'Armenian Constitutional Amendments of 2005'; Alexander Markarov, "Regime Formation and Development in Armenia," 324.

⁶⁹⁸ Armenian Constitutional Amendments of 2005, art. 74.

⁶⁹⁹ Armenian Constitutional Amendments of 2005, art. 74.1.

⁷⁰⁰ Nikolay Borisov, "Potentials and Limits of Political Competition: Institutional Transformations in Georgia and Armenia in the 2000s," *Central Asia and the Caucasus* 16, no. 3-4 (November 2015): 18.

⁷⁰¹ *Ibidem*.

⁷⁰² See *supra*, subparagraph 3.1.2; Nikolay Borisov, "Potentials and Limits of Political Competition," 18.

⁷⁰³ Armineh Arakelian and Ghia Nodia, *Constitutional/Political Reform Process in Georgia*, 123.

⁷⁰⁴ European Commission for Democracy through Law, *Draft Final Opinion on the Constitutional Reform in the Republic of Armenia*, CDL(2005)054, July 21, 2005, 6.

effectively served as a sounding board for his decisions, granting confidence to his chosen government and potentially withdrawing it if he deemed it necessary. Furthermore, unlike Kocharyan, who lacked a personal party and was thus compelled to secure the support of a party coalition, the RPA leadership facilitated a smoother centralisation of power for Sargsyan⁷⁰⁵. This illustrates how political circumstances can affect the institutional outcome in terms of the balance of power, even overriding the potentially beneficial effects of a constitutional reform.

3.2.2 *The 2015 Constitutional Reform: How to Centralise a Parliamentary System*

Over the years, international observers have come to recognise the limited substantive impact of the 2005 constitutional reform in terms of DRoL advancement. Particularly, the EU, which had increasingly begun to engage with the country, identified the “proper implementation of the Constitutional Reform providing better separation of powers”⁷⁰⁶ as one of the key priorities in the 2006 Action Plan. Accordingly, the EU aligned with the CoE’s concerns about the “functioning of democratic institutions”⁷⁰⁷ following the 2005 constitutional reform that, as evidenced by the tragic events of 2008, “failed to create the necessary constitutional prerequisites for the more consistent implementation of the rule of law principle”⁷⁰⁸. Ultimately, with the renewal of the political debate on the issue, the Sargsyan administration became convinced of the necessity for a shift towards a parliamentary form of government, finally bringing to fruition the political vision long pursued by opposition forces since Armenia’s independence. The most apparent reasons behind this decision appear to be an effort to rehabilitate the image of the Sargsyan presidency, which was harmed by the contentious circumstances of its rise to power and a gradual decline in public trust. The transition was presented as a means to rebalance a system overly dependent on a dominant and unchallenged leadership, thereby contributing to the enhancement of the separation of powers in a truly democratic sense⁷⁰⁹. Moreover, there was likely an intention to restore Armenia’s international standing in Europe through a reform that would be favourably viewed by both the CoE and the EU, especially after the unsuccessful attempt to sign the Association Agreement. This approach would have enabled

⁷⁰⁵ Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice* (Stockholm: International IDEA, 2023), 11.

⁷⁰⁶ European Union External Action Service, *EU/Armenia Action Plan*, May 25, 2005, 4.

⁷⁰⁷ Commission of the European Communities, *Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament and the Council Implementation of the European Neighborhood Policy in 2008 Progress Report Armenia*, SEC(2009) 511, April 23, 2009, 4.

⁷⁰⁸ European Commission for Democracy through Law, *Concept Paper on the Constitutional Reforms of the Republic of Armenia*, CDL-REF(2014)033, September 11, 2014, 4.

⁷⁰⁹ Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 12; Yevgenya Jenny Paturyan, “The 2015 Referendum in Armenia,” *East European Quarterly* 43, no. 4 (December 2015): 294.

Armenia to continue to strategically balance its engagement with both Eastern and Western partners, consistently with the country's foreign policy strategy of the time⁷¹⁰. Therefore, the 2015 constitutional reform resulted from a top-down process initiated and directed by the ruling elite⁷¹¹. In September 2013, Sargsyan established a specialised commission tasked with drafting a new constitutional amendment, unilaterally appointing all its members without including any opposition representatives or requesting popular participation⁷¹². The parliamentary discussion, which extended over two years, included the participation of the Venice Commission, the sole external body authorised to provide opinions⁷¹³. Eventually, leveraging his constitutional majority, the president secured the draft's overwhelming approval by parliament in October 2015⁷¹⁴. The new constitutional project was subsequently ratified in a referendum held in December of the same year, with 63.5% of the votes cast by the 50% of the eligible electorate, despite strong allegations of electoral fraud⁷¹⁵. The new Constitution has marked a transformation from a semi-presidential to a parliamentary form of government, thus transferring all executive authority exclusively to the government and its head, the prime minister, and drastically reducing the president's role to a purely ceremonial and symbolic capacity⁷¹⁶. Specifically, the alterations of the president's status to "observe compliance with the Constitution" and "be impartial and [...] guided exclusively by state and national interests"⁷¹⁷ also involves the shift to his indirect election by three-quarters of parliament and the loss of unilateral appointment or law-making powers⁷¹⁸. In contrast, emphasis is placed on the central role of parliament as the sole body to which the government is accountable through the relationship of confidence, thus responsible for its formation and continuity of action⁷¹⁹. In this regard, several rationalisation mechanisms are introduced to ensure the efficient and sustained performance of its functions. Notably, electoral rules have been codified at the constitutional level, establishing a proportional system⁷²⁰ aimed at securing "the formation of a stable parliamentary majority"⁷²¹. In

⁷¹⁰ See *supra*, para. 1.2.

⁷¹¹ William Partlett, "Reforming centralism and supervision in Armenia and Ukraine," in *Annual Review of Constitution-Building Processes: 2015* (Stockholm: International IDEA, 2016), 88.

⁷¹² Sumit Bisarya and Ellen Hubbard, "Constitution-building processes in Armenia and Georgia," in *Annual Review of Constitution-Building Processes: 2016* (Stockholm: International IDEA, 2017), 66.

⁷¹³ Yevgenya Jenny Paturyan, "The 2015 Referendum in Armenia," 295.

⁷¹⁴ *Ibidem*; Sumit Bisarya and Ellen Hubbard, "Constitution-building processes in Armenia and Georgia," 66-67.

⁷¹⁵ No author, "Protesters Gather in Yerevan, Claim Fraud In Armenian Referendum," Radio Free Europe, December 7, 2015, <https://www.rferl.org/a/armenia-referendum-sarkisian/27410980.html>; No author, "Armenian President Sets Date Of Constitutional Referendum," Radio Free Europe, October 8, 2015, <https://www.rferl.org/a/armenia-president-constitutional-referendum/27295710.html>.

⁷¹⁶ William Partlett, "Reforming centralism and supervision in Armenia and Ukraine," 89.

⁷¹⁷ Armenian Constitutional Commission, *Constitution of the Republic of Armenia (rev. 2015)*, December 6, 2015, art. 123. Hereinafter 'Armenian Constitutional Amendments of 2015'.

⁷¹⁸ Armenian Constitutional Amendments of 2015, art. 125, 166.

⁷¹⁹ Sumit Bisarya and Ellen Hubbard, "Constitution-building processes in Armenia and Georgia," 67.

⁷²⁰ According to the Electoral Code, the threshold to access parliament is 5% for each party and 7% for each multi-party alliance.

⁷²¹ Armenian Constitutional Amendments of 2015, art. 89.

accordance with the constitutional provision, further regulated by the electoral code, if no party or multi-party alliance achieves such a stable majority, defined as 54% of the seats, in the first round of the elections, and if no coalition is formed within a tight timeframe of six days, a second round is conducted as a runoff between the two parties with the highest votes shares⁷²². However, the constitutional mandate for a stable majority, along with the possibility of forming government coalitions only after the first round, once again allows political practice to overshadow the potentially beneficial effects of the revised constitutional framework⁷²³. Indeed, in a political culture lacking a shared conception of power, as evidenced by Armenia's history, such electoral rules risk reinforcing the tendency toward a single-party government⁷²⁴. For this reason, scholars criticise the electoral system enshrined in the 2015 constitutional amendment, as appeared to have been designed to pave the way for the consolidation of one-party parliamentary dominance, thereby enabling its leader to assume the office of prime minister and centralise both legislative and executive powers in his hands⁷²⁵. Furthermore, the continuity and stability of government action are further assured by the introduction of the constructive vote of no-confidence, which stipulates the removal of the incumbent prime minister simultaneously with the conferment of confidence upon the new candidate. While generally consistent with Western constitutionalism principles, this clause applied to the Armenian political context seems to safeguard and entrench the one-party rule conditions created by the electoral reform, again fuelling the prevailing political practice⁷²⁶. Having said that, it is also worth highlighting that the prime minister's authority is no longer subject to those constraints that were previously imposed on the president, such as the two-term limit or the eventuality of cohabitation⁷²⁷. Indeed, the new Armenian constitutional dictate does not envisage any term limit for the prime minister, as long as the government enjoys parliamentary confidence, and avoids possible clashes in sharing executive power with a potentially cumbersome presidential figure⁷²⁸.

In conclusion, rather than fostering party proliferation and promoting a culture of compromise, the 2015 constitutional reform further erodes the checks and balances on the executive branch and intensifies electoral restrictions on pluralism, thereby crystallising the decision-making monopoly of

⁷²² See OSCE Office for Democratic Institutions and Human Rights, *Republic of Armenia Parliamentary Elections, 2 April 2017, Needs Assessment Mission Report*, January 12, 2017.

⁷²³ Sumit Bisarya and Ellen Hubbard, "Constitution-building processes in Armenia and Georgia," 68.

⁷²⁴ Artak Galyan, "Gearing towards Consensualism or Unrestrained Majoritarianism? Constitutional Reform in Armenia and its Comparative Implications," ConstitutionNet, October 23, 2015, <https://constitutionnet.org/news/gearing-towards-consensualism-or-unrestrained-majoritarianism-constitutional-reform-armenia>.

⁷²⁵ Sumit Bisarya and Ellen Hubbard, "Constitution-building processes in Armenia and Georgia," 67.

⁷²⁶ Armenian Constitutional Amendments of 2015, art. 15; Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 17.

⁷²⁷ Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 12-13.

⁷²⁸ *Ibidem*; Yevgenya Jenny Paturyan, "The 2015 Referendum in Armenia," 295.

the ruling majority⁷²⁹. As a result, experts have described the new political system as “super-prime-ministerial”⁷³⁰, as it has preserved, and even accentuated, a verticalized power structure while only transferring its apex from the president to the prime minister⁷³¹. Indeed, although Sargsyan already held nearly unlimited authority under the previous constitutional version, the entry into force of the latest amendment would have allowed his RPA party, whose parliamentary majority was already firmly entrenched, to permanently secure key government positions, primarily the prime minister’s office, and maintain an uncontested and prolonged grip on power⁷³². Therefore, it is reasonable to assume that political reasons underpinned the decision to subject the state to such a transition in its form of government. Foremost, there arises a well-founded suspicion that Sargsyan’s real intention, nearing the end of his second presidential term, was to retain power by shifting from the presidency to the premiership⁷³³. Moreover, it is plausible that the political elite found it desirable to reduce the frequency of elections, particularly given the scarcity of resources available to address growing popular discontent and the resulting challenges, such as domestic and international controversies over election outcomes and the ensuing social unrest⁷³⁴. In sum, it appears that the ruling elite once again sought to appease international demands for greater commitment to democratisation by introducing those formal elements typical of Western parliamentary constitutionalism⁷³⁵. However, the constitutional reform merely incorporated their superficial contours, without effectively leveraging their potential for substantive democratic impact, but rather exploiting them as a façade to present the state as formally aligned with European DRoL standards⁷³⁶. As a result, instead of being genuinely committed to an improvement of the democratic quality of state institutions, the political elite seems to have interpreted the constitutional reform according to the logic of ‘change everything so that nothing changes’ to reproduce and perpetuate their rule⁷³⁷. To summarise, the Armenian case demonstrates that even a parliamentary form of government can paradoxically exhibit a higher degree of centralisation than a semi-presidential system, dramatically skewing the balance of power in favour of a prime minister with an encroaching and constitutionally unconstrained authority.

⁷²⁹ Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 12-13; Artak Galyan, “Gearing towards Consensualism or Unrestrained Majoritarianism? Constitutional Reform in Armenia.”

⁷³⁰ Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 13.

⁷³¹ Ruzanna Stepanian and Astghik Bedevian, “Ruling party figures oppose Sarkisian’s retirement in 2018,” Radio Free Europe, September 16, 2015, <https://www.azatutyun.am/a/27251665.html>.

⁷³² Artak Galyan, “Gearing towards Consensualism or Unrestrained Majoritarianism? Constitutional Reform in Armenia”; Yevgenya Jenny Paturyan, “The 2015 Referendum in Armenia,” 299.

⁷³³ Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 12.

⁷³⁴ *Ibidem*.

⁷³⁵ William Partlett, “Reforming centralism and supervision in Armenia and Ukraine,” 90; Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 24.

⁷³⁶ William Partlett, “Reforming centralism and supervision in Armenia and Ukraine,” 90.

⁷³⁷ Sumit Bisarya, *Transitions to Parliamentary Systems: Lessons Learned from Practice*, 13, 20.

3.2.3 *Any Room for a New Constitutional Reform?*

From the very outset of its tenure, the Pashinyan administration sought to address the distortions of the 2015 reform through new constitutional modifications. In December 2019, a Constitutional Reform Council was established to prepare the draft amendment, involving for the first time experts from civil society as well as members of the parliamentary opposition⁷³⁸. However, the Council's work was progressively hampered by the COVID-19 pandemic, followed by the 44-day war in Nagorno-Karabakh, the ensuing political crisis, and the early elections in 2021, ultimately leading to its dissolution in December of the same year⁷³⁹. At the beginning of 2022, a new Council was formed, re-engaging both extra-parliamentary parties and civil society representatives and soliciting public recommendations through a specially designed consultation process. Even opposition parties, including the RPA, were invited to participate, but their refusals were accompanied by boycotts, alleging an attempt of power consolidation by the ruling party⁷⁴⁰. The debate over the configuration of the political system was soon reignited, with the prospect of a return to semi-presidentialism looming once more. While Pashinyan initially seemed to reconsider this hypothesis, by the end of 2022, it was decided that there would be no alteration to the form of government⁷⁴¹. However, the escalation of the conflict in Nagorno-Karabakh in September 2023 and the subsequent military reconquest of the region by Azerbaijan once again halted the constitution-drafting process⁷⁴². Therefore, the central issue emerges distinctly: Nagorno-Karabakh. The ongoing negotiations for a peace agreement with Azerbaijan highlight how Armenia's domestic politics is intrinsically connected to, and potentially adversely impacted by, its foreign policy developments. In January 2024, Pashinyan expressed his intention to go beyond a mere constitutional reform, providing Armenia with an entirely new Constitution that would be submitted to a popular vote for full democratic legitimacy, while retaining a parliamentary system of government⁷⁴³. To this end, he convened a Constitutional Reform Council for the third time, entrusting it with drafting a new constitutional framework from scratch by January 2027⁷⁴⁴. However, detailed specifications of the

⁷³⁸ Harout Manougian, "Armenia's Constitutional Journey Continues," Constitutionnet, January 31, 2022, <https://constitutionnet.org/news/armenias-constitutional-journey-continues>.

⁷³⁹ Harout Manougian, "Armenia's Constitutional Journey Continues."

⁷⁴⁰ Liana Avetisyan, "The Announced Constitutional Reforms in Armenia: Recent Developments," Caucasus Watch, July 25, 2022, <https://caucasuswatch.de/en/insights/the-announced-constitutional-reforms-in-armenia-recent-developments.html>; Harout Manougian, "Armenia's Constitutional Journey Continues."

⁷⁴¹ Gayane Saribekian, "Armenia To Remain Parliamentary Republic," Radio Free Europe/ Radio Liberty, December 5, 2022, <https://www.azatutyun.am/a/32162738.html>.

⁷⁴² RFE/RL's Armenian Service, "Armenian Prime Minister Calls for New Constitution," Radio Free Europe/Radio Liberty, January 19, 2024, <https://www.rferl.org/a/armenia-pashinian-new-constitution/32783767.html>.

⁷⁴³ RFE/RL's Armenian Service, "Armenian Prime Minister Calls for New Constitution."

⁷⁴⁴ Gayane Saribekian, "Pashinian Orders Drafting Of New Armenian Constitution," Radio Free Europe/ Radio Liberty, June 19, 2024, <https://www.azatutyun.am/a/32999804.html>.

new constitutional provisions have not yet been determined, as their definition is significantly dependent upon the progress of the negotiations with Azerbaijan over Nagorno-Karabakh. Specifically, the new constitutional project must first reconcile the contentious issue of the preamble to the Armenian Constitution, which Baku strongly demands be removed, as it references the 1990 Declaration of Independence calling for the “Reunification of the Armenian Soviet Socialist Republic and the Mountainous Region of Karabakh”⁷⁴⁵. Indeed, Pashinyan had already referred to the potential confrontational rhetoric stemming from the declaration, aligning with a new foreign policy approach aimed at achieving a definitive resolution of the Nagorno-Karabakh conflict and broadening Armenia’s regional horizons⁷⁴⁶. This stance was further confirmed by his statement emphasising the necessity for a “more competitive and viable Constitution reflecting the new geopolitical environment”⁷⁴⁷. However, the Pashinyan administration must contend with, on the one hand, an opposition that accuses him of bowing to Azerbaijan’s will and on the other hand, the deep-rooted intransigent and nationalist mentality among the Armenian population, which already caused severe setbacks in his popularity after the two defeats in Nagorno-Karabakh⁷⁴⁸. This last aspect could potentially become a major obstacle to the approval of the referendum on the new Constitution, particularly if the electorate perceives the motivation behind it as yielding to pressure from Baku⁷⁴⁹. Furthermore, even though Pashinyan succeeds in convincing Armenian citizens of the necessity of peace through the new constitutional project, voter participation remains a significant issue, as the referendum requires not only a majority of votes cast in favour but also a minimum turnout of 25%⁷⁵⁰. In conclusion, although the new constitution-making process cannot yet be deemed fully consensual, given its substantial control by a one-party government that retains the final say over its formulation, some modest steps forward compared to the 2015 process are noteworthy. These include the invitation to the opposition parties in the discussions, and, albeit still limited, an expansion of dialogue with civil society⁷⁵¹. Ambitious proposals for constitutional provisions, such as the removal of the ‘stable majority’ system and the introduction of a term limit for the prime minister, bring a new wave

⁷⁴⁵ Supreme Council of the Republic of Armenia, *Armenian Declaration of Independence*, August 23, 1990; Onnik James Krikorian, “Armenia, Pashinyan pushes for new constitution, opposition screams foul,” Osservatorio Balcani e Caucaso Transeuropa, February 15, 2022, <https://www.balcanicaucaso.org/eng/Areas/Armenia/Armenia-Pashinyan-pushes-for-new-constitution-opposition-screams-foul-229926>.

⁷⁴⁶ Onnik James Krikorian, “Armenia, Pashinyan pushes for new constitution, opposition screams foul.”

⁷⁴⁷ No author, “The Republic of Armenia needs a new Constitution,” Radio Free Europe, January 19, 2024, <https://www.azatutyun.am/a/32783364.html>.

⁷⁴⁸ Onnik James Krikorian, “Armenia, Pashinyan pushes for new constitution, opposition screams foul”; RFE/RL’s Armenian Service, “Armenian Prime Minister Calls for New Constitution.”

⁷⁴⁹ Onnik James Krikorian, “Armenia, Pashinyan pushes for new constitution, opposition screams foul.”

⁷⁵⁰ Onnik James Krikorian, “Armenia, Pashinyan pushes for new constitution, opposition screams foul”; Onnik James Krikorian, “Baku insists on Constitutional change for Armenia peace accord,” Osservatorio Balcani e Caucaso Transeuropa, July 27, 2024, <https://www.balcanicaucaso.org/eng/Areas/Armenia/Baku-insists-on-Constitutional-change-for-Armenia-peace-accord-232254>.

⁷⁵¹ Harout Manougian, “Armenia’s Constitutional Journey Continues.”

of optimism and hope for a renewed commitment towards DRoL principles⁷⁵². However, until the drafting of the Constitution actually begins and there is tangible evidence of a genuine willingness to advance these constitutional reforms, it remains uncertain how they evolve, the possible effects of their implementation, or the degree to which they will be internalised by the population. Regarding the extent of EU intervention in the launch of the new constitutional initiative, its role does not appear to be actively influencing Armenian institutions' trajectory. Instead, this latter has been shaped by domestic political imperatives, which have prompted post-revolutionary government authorities to enact a shift in approach, thereby indirectly increasing the relevance of European values and drawing Armenia closer to EU initiatives⁷⁵³. Indeed, a new Constitution could further fulfil Armenia's obligations under CEPA, thereby underscoring the country's reliability as a European partner. In response, the prospects for additional 'rewards' from the EU could potentially extend beyond the recent start of visa liberalisation negotiations to a broader enhancement of their relations and the country's European integration⁷⁵⁴. Regardless of the final considerations, the core question remains the difficulty in predicting whether the country will follow a more or less democratic trajectory and whether it will be able to sustain its current promising direction, as long as the Nagorno-Karabakh impasse continues to hinder Armenia's chance to fully progress in its transitional process.

3.3 Reforms on the Judicial System

This final section will explore the main developments in Armenia's judiciary, specifically in relation to its interaction with the executive and legislative branches. Particularly, to facilitate the comparison, it is appropriate to consider the equivalent body to Georgia's HCoJ, namely Armenia's Supreme Judicial Council (SJC). Its functions, primarily the appointment of judges, are similarly responsible for overseeing the organisation and operation of the judicial system in its entirety. Aside from a few limited changes made in 2005-2006, there were no substantial innovations prior to the 2015 constitutional amendment, which established the SJC. Therefore, the following section will primarily focus on the period from the existence of this body up to the 2019-2022 and 2022-2026 waves of reforms, which encompass the potentially most significant changes with respect to adherence to the DRoL principles.

⁷⁵² Harout Manougian, "Armenia's Constitutional Journey Continues"; Gayane Saribekian, "Armenia To Remain Parliamentary Republic."

⁷⁵³ Anna Khvorostiankina, "Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform," 18.

⁷⁵⁴ Liana Avetisyan, "The Announced Constitutional Reforms in Armenia: Recent Developments."

3.3.1 The Predecessors of the Supreme Council of Justice

In the original version of the 1995 Constitution, the organ entrusted with the administration of justice was the Judicial Council. Its functions mainly involved selecting candidate judges and candidates for the court presidencies, along with formulating recommendations for the removal of judges from office and the initiation of disciplinary proceedings⁷⁵⁵. However, most of its decisions required the approval of the president, who held the ultimate authority over judges and court presidents⁷⁵⁶. Indeed, the Council was heavily subject to presidential oversight, as it was chaired by the president himself, who also had the power to appoint or dismiss all its 14 members⁷⁵⁷ and, in general, to oversee its activities⁷⁵⁸. This raised strong concerns about the body's actual degree of independence⁷⁵⁹. The presidential influence on the judiciary was not only apparent but explicitly enshrined in Article 94 of the Constitution, which designated the President as "the guarantor of the independence of the judicial bodies"⁷⁶⁰, thereby institutionalising a breach of the principle of the separation of powers directly at the constitutional level⁷⁶¹. With the 2005 constitutional reform, a new Council of Justice was established to enhance the impartiality of the judicial power⁷⁶². The formation procedure aimed to ensure a more balanced representation of powers: of its 13 members, two legal scholars were appointed by the president, two by parliament, and the remaining nine judges were elected by the General Assembly of Judges (GAJ)⁷⁶³ by secret ballot⁷⁶⁴. However, although the Council of Justice was no longer presided over by the president, its functions, largely unchanged from those of its predecessor, remained significantly dependent on his last word over the judiciary's composition⁷⁶⁵. Furthermore, the improvements in terms of representation were potentially undermined by the presence of a parliamentary majority aligned with the president, which ensured the political homogeneity of the four Council members appointed by them. Even the attempt to guarantee collective involvement of the judiciary in the appointment of judicial members by the GAJ did not provide a meaningful counterbalance in the reallocation of powers among the three branches. The

⁷⁵⁵ Constitution of Armenia, Art. 95.

⁷⁵⁶ Constitution of Armenia, Art. 55.11.

⁷⁵⁷ The members of the Judicial Council were appointed for a five-year term and comprised two legal scholars, nine judges and three prosecutors.

⁷⁵⁸ Constitution of Armenia, Art. 94; Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 14.

⁷⁵⁹ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 14.

⁷⁶⁰ Constitution of Armenia, Art. 94.

⁷⁶¹ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 14-15.

⁷⁶² See OSCE Office for Democratic Institutions and Human Rights, *Armenia, Constitutional Referendum, 27 November 2005, Report*, November 27, 2005.

⁷⁶³ The General Assembly of Judges is a self-governing body of judiciary, thus composed of all the judges of the Republic of Armenia.

⁷⁶⁴ Armenian Constitutional Amendments of 2005, Art. 94.1.

⁷⁶⁵ Armenian Constitutional Amendments of 2005, Art. 55.

selection process remained intrinsically conditioned by executive pressure, inevitably leading to a convergence of interests between the judiciary and politics⁷⁶⁶. In sum, until the 2015 constitutional reform, the Council cannot be described as having any significant degree of autonomy in organising the judicial system's administration⁷⁶⁷. Rather, the Judicial Council and the subsequent Council of Justice appeared more as fictitious entities that allowed presidential interference in their internal affairs. Indeed, by leveraging the process of appointment and dismissal of judges, which directly impacted the judiciary's structure and composition, the president was able to steer its activities in the preferred direction. Therefore, at least until 2018, the judicial branch in Armenia has been strongly subjected to political pressure, especially from the dominant role of the president, resulting in a highly corrupt system entrenched within those oligarch networks that controlled Armenian public life⁷⁶⁸. A glaring example of the judiciary's inefficiency during that period was its total inability to initiate legal proceedings against the perpetrators of the 2008 tragic events and properly investigate the violations committed⁷⁶⁹.

3.3.2 *The Establishment of the Supreme Council of Justice and its Recent Evolutions*

Following 2005, two judicial and legal reform strategies were adopted for 2009-2011 and 2012-2016, without, however, achieving substantial progress worth a detailed analysis⁷⁷⁰. The EU itself raised serious doubts about the state of judicial independence in Armenia, where “the influence of the executive over judicial nominations remains a concern”⁷⁷¹ and “results in the fight against corruption remain somewhat unconvincing, including among [...] the judiciary”⁷⁷². The 2015 constitutional reform introduced the first comprehensive overhaul of the judicial system, aimed at redefining the roles and powers of judicial bodies and structuring the new SJC⁷⁷³. According to the new constitutional dictate, the SCJ is “an independent state body that shall safeguard the independence of courts and judges”⁷⁷⁴. It consists of 10 members, each serving a non-renewable five-year term: five judges elected by the General Assembly of Judges from among those with at least 10 years of

⁷⁶⁶ Syuzanna Vasilyan, *Towards Constitutionalism for the Republic of Armenia*, 15.

⁷⁶⁷ No author, *Supporting Judicial Reforms in Armenia: A Forward Look* (Washington D.C.: International Bank for Reconstruction and Development/The World Bank, 2023), 10.

⁷⁶⁸ Kiyak Figen, *Problems of Democratization in Armenia*, 29, 55.

⁷⁶⁹ Anna Khvorostiankina, “Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform,” 16-17.

⁷⁷⁰ Syuzanna Sghomonyan, *Justice Reform Monitoring in Armenia – JUREMONIA Project: Baseline Study of the RA 2019-2023 Strategy for Judicial and Legal Reforms* (Yerevan: Netherlands Helsinki Committee, 2022), 5

⁷⁷¹ European Commission, *Implementation of the European Neighborhood Policy in Armenia Progress in 2013 and recommendations for action*, SWD(2014) 69 final, March 27, 2014, 6. Hereinafter ‘ENP Report 2013’.

⁷⁷² ENP Report 2013, 7.

⁷⁷³ Katherine Viti, *Country Report: Armenia's Complete Structural Revolution* (Stanford: Stanford Law School, n.d), 1.

⁷⁷⁴ Armenian Constitutional Amendments of 2015, Art. 173.

experience, and five legal scholars appointed by parliament by a three-fifths majority⁷⁷⁵. The 2015 constitutional amendment was implemented in the aftermath of the Velvet Revolution, with its formulation significantly shaped by the post-revolutionary ruling class's renewed efforts towards comprehensive institutional and judicial reforms⁷⁷⁶. Indeed, the 2018-2023 strategy for judicial and legal reforms, developed with EU assistance to implement the 2015 constitutional modifications with respect to the judiciary, reflected such key priorities⁷⁷⁷. The fundamental principles enunciated in the strategy included “independence, impartiality of the judiciary, quality justice, public accountability and [...] transparency”⁷⁷⁸, with the ultimate goal of ensuring an “independent, impartial, corruption- and sponsorship-free judicial system”⁷⁷⁹. Particularly, it was essential to purge the system of those individuals nostalgic for and loyal to the pre-revolutionary regime as, similarly to the Georgian case⁷⁸⁰, such influential groups obstructed substantial judicial reform by exerting pressure on other judges in favour of the perpetuation of their vested interests⁷⁸¹. Within the framework of this strategy, the 2018 constitutional law on the judicial code instituted the SJC, specifying its scope and functions⁷⁸². Based on the new version of the constitutional text, the judicial code designates the SJC as the central authority responsible for overseeing the appointment, advancement, and removal of judges, as well as the overall administration of the courts⁷⁸³. The code has revised the procedure for appointing judges, assigning the SJC primary oversight. Specifically, the SJC is tasked with verifying the minimum application requirements, establishing the evaluation criteria upon which the evaluation committee, convened by the SJC, has to assess applicants' written examination, and ultimately inviting successful candidates to an interview⁷⁸⁴. Lastly, the SJC approves the list of those eligible through a vote, and after completing training at the Judicial Academy, they are proposed to the president⁷⁸⁵. Although the Constitution still requires the presidential final approval for the appointment of a judge, the judicial code specifies that if the president rejects the candidate, the SJC, after considering his objections, may nonetheless proceed with the appointment⁷⁸⁶. The override of presidential objection can also be applied in cases involving the promotion of a first-instance judge

⁷⁷⁵ Armenian Constitutional Amendments of 2015, Art. 174.

⁷⁷⁶ Katherine Viti, *Country Report: Armenia's Complete Structural Revolution*, 2.

⁷⁷⁷ Anna Khvorostiankina, “Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform,” 18.

⁷⁷⁸ Government of the Republic of Armenia, *Decision on Approving the 2018-2023 Strategy for Judicial and Legal Reforms in the Republic of Armenia and the Action Plan deriving Therefrom*, Draft 2017, December 2017, 9.

⁷⁷⁹ Syuzanna Soghomonyan, *Justice Reform Monitoring in Armenia*, 9.

⁷⁸⁰ See *supra*, para. 2.3.

⁷⁸¹ Katherine Viti, *Country Report: Armenia's Complete Structural Revolution*, 3.

⁷⁸² No author, *Supporting Judicial Reforms in Armenia: A Forward Look*, 5.

⁷⁸³ Armenian Constitutional Amendments of 2015, Art. 164; Republic of Armenia, *Judicial Code of the Republic of Armenia*, February 7, 2018, art. 89. Hereinafter ‘Judicial Code of Armenia’.

⁷⁸⁴ Judicial Code of Armenia, art. 95-108.

⁷⁸⁵ Judicial Code of Armenia, Art. 109; Art. 110; Art. 117.

⁷⁸⁶ Judicial Code of Armenia, Art. 117.

to an appellate judge and the appointment of court chairpersons⁷⁸⁷. With regard to these latter, the 2015 constitutional reform, in addition to better delimiting their role to the management and supervision of administrative matters, introduced a three-year term limit without the possibility of immediate reappointment⁷⁸⁸. This measure was intended to prevent abuses of power associated with indefinite tenure and to encourage greater turnover, thereby expanding opportunities for other judges to assume the position⁷⁸⁹. Hence, there have undoubtedly been improvements in circumscribing presidential interference in judicial affairs, particularly concerning the judiciary's structure and composition. The president's authority has been counterbalanced by the centralisation of powers upon the SJC, which is expected to operate as an autonomous body within the judiciary and to represent the judicial branch independently from the other branches. However, concerns arise regarding the significant degree of discretion afforded to the SJC in the judicial recruitment process, specifically due to non-codification within the judicial code of the application requirements and the evaluation criteria for the written examination, potentially compromising the transparency of the selection procedure⁷⁹⁰. Indeed, the new composition of the SJC continues to present challenges, as the power to appoint half of its members is vested in the parliament, which, as evidenced by Armenian political tradition, typically reflects a solid majority aligned with the government. This arrangement not only places judicial and non-judicial members on equal footing without granting precedence to these latter in such a key judicial body, but also leaves the Council susceptible to potential political influence, thus lacking an effective guarantee of the principle of separation of powers⁷⁹¹. This may also affect other functions of the SJC, such as decisions concerning promotions or appointment to the presidency, potentially impacting the turnover-oriented objectives of the constitutional reform. In sum, while the appointment process is moving in a positive direction, it is not yet possible to definitely ascertain whether the recruitment is genuinely merit-based and free from potential favouritism or political interests⁷⁹². A further innovation introduced by the judicial code is the evaluation of performance through a clearly defined procedure, wherein judges are assessed every four years based on "the quality and effectiveness of the work [...] as well as the professionalism and ethics"⁷⁹³. In the event of misconduct, this evaluation may ultimately lead to the initiation of disciplinary proceedings, resulting in various sanctions specified by the judicial code itself and commensurate with the seriousness of the violation⁷⁹⁴. The three bodies responsible for initiating disciplinary action are the

⁷⁸⁷ Judicial Code of Armenia, Art. 129; Art. 121.

⁷⁸⁸ Armenian Constitutional Amendments of 2015, Art. 166.7.

⁷⁸⁹ No author, *Supporting Judicial Reforms in Armenia: A Forward Look*, 11.

⁷⁹⁰ No author, *Supporting Judicial Reforms in Armenia: A Forward Look*, 79-80.

⁷⁹¹ No author, *Supporting Judicial Reforms in Armenia: A Forward Look*, 10, 81.

⁷⁹² No author, *Supporting Judicial Reforms in Armenia: A Forward Look*, 79.

⁷⁹³ Judicial Code of Armenia, art. 138.

⁷⁹⁴ See Judicial Code of Armenia, chapter XIX.

Ethics and Disciplinary Commission of the General Assembly of Judges, the Corruption Prevention Commission, and the Ministry of Justice⁷⁹⁵. Their cases are subsequently forwarded to and reviewed by the SJC, which holds the final authority to decide, through a voting process, whether such a violation has occurred and to impose disciplinary sanctions if deemed necessary⁷⁹⁶. While the introduction of this procedure represents a notable advancement by ensuring continuous oversight of judges' performance and the appropriate exercise of their powers, it is pertinent to acknowledge certain shortcomings. The authority to initiate disciplinary proceedings conferred on a political body such as the Ministry of Justice might induce the latter to leverage this instrument, ultimately exerting pressure on the process of judicial appointments and the overall composition of the system⁷⁹⁷. Although similar provisions also exist in other Western legal systems, possible impairments to the SJC's actual degree of independence could render such an eventuality likely, resulting in their misuse and consequent distortions on the balance of power. Furthermore, this procedure appears to lack adequate safeguards for accused judges, raising the risk of exploitation of the SJC's pre-eminent position. First, no appellate mechanism to a higher court following the SJC's decision is provided⁷⁹⁸. Second, the evaluation criteria are once again determined by the SJC, without a clear and precise detailing of the rules of conduct constituting disciplinary offences at either the constitutional level or within the judicial code. Such omission leaves a discrete room for manoeuvre to the SJC in establishing and amending the methodology at its discretion⁷⁹⁹. Indeed, both shortcomings would be further compounded by, again, the SJC's imperfect composition, posing the risk that a judge accused of misconduct for non-transparent and politically motivated reasons might be denied a constitutionally guaranteed due process. These concerns find legitimate ground, as following the 2018 transition of power, the judiciary's functioning has remained entrenched in the informal power structure that characterised the pre-revolutionary period⁸⁰⁰. Consequently, although an attempt to overhaul the judicial system was evident and internationally recognised by the EU, the reforms faced significant criticism from Armenian civil society due to perceived inadequacies in the rigour of the judges' vetting process⁸⁰¹. The major issue was not related to the efficiency of the process for the newly appointed judges, but rather to its constrained ability to purge groups of veteran judges who remain entangled in the clientelist networks of the previous regime. Therefore, reforms were seen as

⁷⁹⁵ Judicial Code of Armenia, art. 145.

⁷⁹⁶ Judicial Code of Armenia, art. 148.

⁷⁹⁷ Katherine Viti, *Country Report: Armenia's Complete Structural Revolution*, 4, 10.

⁷⁹⁸ European Commission for Democracy through Law (Venice Commission), *Armenia Joint Opinion on the Amendments to the Judicial Code and Some Other Laws*, Opinion no. 963/2019, October 14, 2019, para. 31.

⁷⁹⁹ Syuzanna Soghomonyan, *Justice Reform Monitoring in Armenia*, 5.

⁸⁰⁰ Anna Khvorostiankina, "Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform," 18.

⁸⁰¹ Katherine Viti, *Country Report: Armenia's Complete Structural Revolution*, 6.

not sufficiently incisive for a more radical transformation, rather allowing these judges to retain their influence over the entire system⁸⁰². The difficulty of eradicating such a systemic issue was evidenced by the gradual escalation of tensions between the post-revolutionary government and the judiciary⁸⁰³. Some examples of the courts' ruling against the government are the authorisation of Kocharyan's release from pre-trial detention in 2019 and the reinstatement of the SCJ's president after his suspension in 2021⁸⁰⁴. Therefore, a new judicial and legal reform strategy for 2022-2026 has been recently inaugurated, maintaining continuity with the priorities of the previous one while also aiming to address its shortcomings⁸⁰⁵. It was also developed in consideration of recommendations from international institutions, including the EU, through evaluation reports such as the EU Justice Monitoring project, as well as input from civil society⁸⁰⁶. In this regard, it is appropriate to consider that while the ongoing reform of the judiciary by the current ruling class is essential to foster the proper, impartial and independent conduct of judicial activities, it is imperative to ensure that political intervention does not cross the boundary established by the principle of the separation of powers. Care must be taken to avoid a shift from concentrating power within a particular group of judges to concentrating control over the judiciary in the hands of the government. Overall, while ambitious and promising, the strategy's recent adoption renders it premature to make definitive predictions regarding its potential success in terms of DRoL compliance. Nonetheless, based on current developments, it is reasonable to optimistically review Armenia's progressive alignment with CEPA, as it would facilitate the advancement of the government's reform agenda, and a consequent improvement of EU-Armenia relations⁸⁰⁷. Indeed, even in this instance, European pressure has not exerted a direct influence on the trajectory of judicial reforms. Instead, such reforms have become "endogenously driven"⁸⁰⁸ rather than "reactive to EU requirements"⁸⁰⁹, given the correspondence of these latter with the national goals identified by the political elite⁸¹⁰. In sum, the intensification of EU-Armenia cooperation in judicial matters has resulted from a translation of the increased relevance of DRoL reforms to Armenia's post-revolutionary ruling class into a greater commitment to the implementation of CEPA goals. This, in turn, has garnered greater recognition of Armenia's progress

⁸⁰² *Ibidem*.

⁸⁰³ Katherine Viti, *Country Report: Armenia's Complete Structural Revolution*, 11.

⁸⁰⁴ Parliamentary Assembly of the Council of Europe, *The Functioning of Democratic Institutions in Armenia*, 2021, para. 100.

⁸⁰⁵ No author, *Supporting Judicial Reforms in Armenia: A Forward Look*, 8.

⁸⁰⁶ *Ibidem*.

⁸⁰⁷ Anna Khvorostiankina, "Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform," 12, 17.

⁸⁰⁸ See T.A Börzel and Y. Pamuk, "Pathologies of Europeanization: Fighting Corruption in the Southern Caucasus," *West European Politics* 35, no. 1 (2011): 79–97.

⁸⁰⁹ Anna Khvorostiankina, "Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform," 18.

⁸¹⁰ *Ibidem*.

by the EU, manifested through enhanced financial and technical assistance to support the country's advancement toward European standards⁸¹¹.

Conclusion

The purpose of this chapter was to provide a general overview of the current state of Armenia's institutions in relation to their adherence to the DRoL's principle of separation of powers. In light of the findings derived from the analysis of the reforms shaping the developments of both the legislative-executive relationship and the judicial system, in a more or less democratic direction, it is appropriate to conclude with some final considerations relevant to both dimensions. Prior to the watershed event of the Velvet Revolution, democratisation efforts were largely cosmetic, primarily aimed at instrumentalising change for the political elite's advantage. As a result, DRoL reforms were not pursued constructively to exploit their substantive meaning, but rather left without the necessary safeguards to resist prevailing political practices. When embedded in a political context characterised by the subordination of the legislative to the executive, a parliamentary form of government loses its 'democratising' rationale. Without a robust network of checks and balances to constrain the authority of the prime minister, such a system can become even more verticalised than a presidential or semi-presidential one. Similarly, modifications to membership or composition of the SJC, as well as the procedures for judicial appointments, in a system that still operates based on informal governance, cannot preclude political interference unless the systemic issue of power perpetuation within a select group of influential judges is addressed. Furthermore, the absence of a strongly pro-European political ideal, as observed in Georgia, coupled with Armenia's clear geopolitical positioning at the time, meant that democratic progress was perceived more as an internal matter rather than tied to closer relations with the EU, as evidenced by the Velvet Revolution. Therefore, the political elite's strategy of acquiescence to the EU's demands also underscored the limited impact of EU influence on genuine democratic change. The relationship between the EU and Armenia intensified at a later stage, largely driven by changes in Armenia's domestic policy priorities and objectives which gradually aligned with EU requirements, prompting a shift in the country's approach towards the West. Indeed, under the post-revolutionary government, improvements have been observed in both DRoL dimensions under scrutiny. However, it remains premature to make predictions about the potential for genuine democratic consolidation for two main reasons: several recently adopted reforms are still in the early stages, and their full effects have yet to be realised; the ongoing

⁸¹¹ Anna Khvorostiankina, "Assessing performance of the EU-Armenia cooperation on the rule of law and judicial reform," 12, 18.

negotiations surrounding the Nagorno-Karabakh peace agreement represents a critical issue whose resolution is imperative before any decisive and permanent change of pace can occur. Having said that, although the outcome of the negotiations remains uncertain, the Pashinyan administration's attempt to finally resolve the Nagorno Karabakh question appears to signal an encouraging first step toward a commitment to democratisation. While the identification of an external threat has enabled previous political elites to sustain a perpetual state of alert, diverting attention from domestic political concerns and justifying a centralised and unilateral seizure of power, the definitive loss of the region could potentially spark a renewed democratic spirit, refocusing efforts on addressing domestic challenges without channelling blame for such deficiencies onto an external scapegoat.

Conclusion

The present thesis sought to trace the process of transformation and redefinition of Armenian and Georgian institutions by monitoring a series of reforms adopted over the years according to Western standards of constitutionalism. Therefore, it is appropriate to conclude with a final comparative assessment of the findings derived from the analyses of each state. Since their independence from the USSR, both Armenia and Georgia have experienced a turbulent nation-building process, marked by wars that swept through both states in their early years. Such circumstances necessitated the establishment of a governance framework centred on a strong, charismatic leader, capable of directing swift and decisive actions during times of crisis. Accordingly, the original Constitutions of both states enshrined a centralised institutional structure anchored around the figure of the President of the Republic. This inclination to concentrate authority in the hands of a single individual and their loyal elite became an entrenched tendency, perpetuating itself within the political culture of Georgia and Armenia and intertwining with a system of clientelist alliances that has largely permeated all facets of power. It was in this context that the first constitutional reforms were adopted, in both cases with the declared intention of initiating a genuine democratic transition. With the Georgian and Armenian constitutional reforms in 2004 and 2005 respectively, the changes further exacerbated the imbalance of power among the branches in favour of the president, effectively emptying the government and parliament of their counterbalancing functions and relegating them to recessive roles, subordinate to the presidential political will. Particularly, this occurred in the Georgian case through the shift from a presidential to a semi-presidential form of government, which proved to be even more verticalised than its predecessor, while in the Armenian case through a theoretically positive rebalancing attempt that was ultimately ineffective in achieving substantive change. With the Georgian constitutional changes of 2009/2010, later complemented by the 2017/2018 adjustments, and the Armenian constitutional reform of 2015, both states underwent a transformation of their governmental system from a semi-presidential to a parliamentary model. However, the introduction of numerous rationalisation mechanisms, most notably the constructive vote of no-confidence, which in the Georgian case went far beyond the established tradition of parliamentary constitutionalism, alongside predominantly majoritarian electoral systems, further undermined the constraints of checks and balances on the prime minister, thereby conferring him potentially unlimited powers in the name of enhancing stability. Hence, in both cases, it appears that the political elites sought to project an appearance of change through a formally radical restructuring of the government system which, however, essentially retained the same pyramidal logic by merely shifting the apex of power from the

president to the prime minister. Indeed, there was speculation in both countries regarding a possible architecture for the transfer of the president, at the time Saakashvili in Georgia and Sargsyan in Armenia, to the office of prime minister. In sum, up to this point, the outcome of the DRoL reforms can be described as pure institutional aestheticism, which does not enter into the merits of the transformation it claims to represent, but instead limits itself to the construction of a superficial façade that is inevitably overridden by a context and a political culture still insufficiently solid at the democratic level. This precludes not only the meaningful implementation of the reforms at their substantive level, to genuinely address the systemic issues underlying the functioning of the political system, but also the internationalisation of the core democratic values the reforms are supposed to embody. Overall, it is possible to identify a prevailing conception within the Eurasian tradition of the constitution as an instrument for the top-down imposition of the will of the political elite and the perpetuation of its grip on power⁸¹². The difference is that, while the Georgian Rose Revolution did not result in an effective democratic breakthrough and instead led the country into a vicious circle of optimism for democratic progress, only to relapse into authoritarian drifts, the Armenian Velvet Revolution continues to offer hope for sustaining its democratic trajectory, without yet falling victim to the same cyclical pattern. Such renewed hope lies in the new constitution currently under discussion, which may serve as the decisive turning point in permanently steering the country's transition in a democratic direction. With regard to the judicial system, the reforms undertaken in both states thus far have not been sufficiently incisive to eradicate those 'political strands' of influential judges aligned with the ruling class. This affiliation has resulted in significant repercussions for the proper and transparent functioning of their respective Councils, the highest bodies responsible for overseeing the composition and administration of the entire judicial system, thereby undermining its overall independence. However, if in Georgia there persists a fusion of politics and justice, which has crystallised the practice of political interference in judicial affairs, Armenia, since the Velvet Revolution, exhibits a dichotomy between a judicial system still anchored to the pre-revolutionary regime and the post-revolutionary government. Therefore, while until 2018 the reforms in both states primarily aimed at preserving this fusion for mutually beneficial purposes, from 2018 onward, the reforms in Armenia have sought to implement a radical purge of the existing system, resulting in a power relationship between politics and justice characterised by ongoing tensions. Nevertheless, Armenia's forthcoming strategy for judicial reform, which promises a comprehensive and final overhaul of the judiciary, must be cautious to avoid the opposite distorting effect, namely the ruling class's control over the judiciary to pursue its political aims.

⁸¹² William Partlett, "Reforming centralism and supervision in Armenia and Ukraine," 86.

Concerning the role of the EU, it is evident that prior to the Velvet Revolution, the phenomenon of “instrumentalization of EU support”⁸¹³ was prevalent in both Georgia and Armenia. In other words, institutional aestheticism was also functional to formally embrace EU demands for alignment with democratic standards with the ultimate goal of improving the countries' images at the European level, exploiting the potential benefits of cooperation, and, in the case of Georgia, appeasing an overwhelmingly pro-European civil society. Since the Velvet Revolution, although its causes were not rooted in Armenia's geopolitical positioning, the country began to leverage EU standards not for a purely formal openness to the European model, but to facilitate the achievement of its own policy objectives as actually aligned with these standards. Regardless of how EU demands were domestically exploited, it is clear that EU pressure did not exert a significant direct impact on shaping the trajectory of DRoL reforms in either state. Even in the Armenian case, where the EU appeared to have driven some positive change, this should not be attributed primarily to the effectiveness of EU influence, but rather to a shift in the approach of Armenian domestic politics and a consequent different perception of EU policies. Therefore, on the one hand, the Georgian case illustrates that its greater proximity to the EU, at least on a formal level, does not necessarily correlate with a commensurate advancement in terms of DRoL, and indeed, recent developments have evidenced a serious authoritarian backsliding. Conversely, the Armenian case demonstrates that the two dimensions, proximity to the EU and adherence to DRoL values, can be interlinked, as European policies, in this case, have been congenial in advancing the post-revolutionary government's democratic agenda. In conclusion, the Velvet Revolution shows that a primal sign of democratic change did not arise from a top-down constituent process imposed by the political elite, but rather from a bottom-up revolutionary movement. Hence, arguably, the primary miscalculation made by the EU in its attempt to guide both states toward a path of democratic reform was the exclusive involvement of the political elite in this process, which ultimately emerged as the main veto player in such a transition. This misperception of the political elite's potential has contributed to the perpetuation of the Eurasian tradition of top-down reform adoption, while failing to encourage greater participation from civil society and local CSOs. To close with an open-ended question, the limited influence of the EU as an external actor might raise doubts about the actual extent of such a ‘genuine desire’ for democratisation in the Eastern Neighbourhood from the European side.

⁸¹³ See T.A Börzel and Y. Pamuk, “Pathologies of Europeanization: Fighting Corruption in the Southern Caucasus.”

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