



## International Comparative Jurisprudence



### THE ASSOCIATION AGREEMENT AND THE IMPLEMENTATION OF DOMESTIC REFORMS TOWARDS STRENGTHENING THE RULE OF LAW, IN GEORGIA, MOLDOVA, AND UKRAINE<sup>1</sup>

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**Abstract.** The European Union has an Association Agreement with Georgia, Moldova, and Ukraine. One of the important commitments of this document is to bring the rule of law, democracy, and human rights systems closer to European standards. This article discusses the reforms carried out in the above mentioned Eastern Partnership countries in the field of rule of law and the developments, achievements, and current challenges of democratic institutions. It also analyzes the role of the European Union and the legal significance of the Association Agreement in ensuring progress towards the rule of law and democratic transformation.

**Keywords:** association agreement, European Union, reforms, rule of law, Georgia, Moldova, Ukraine

#### Introduction

Georgia, Moldova, and Ukraine share challenges in developing democracy since the restoration of their independence. The main obstacles in the process of democratic transformation are corruption, economic instability, oligarchic rule, the weakness of state institutions, and the “capture” of the state (Hellman, Jones, & Kaufmann, 2000, p. 11). For the past few decades, the European Union has been cooperating with these countries in various formats in the field of building democratic institutions. Notable among them are the European Neighborhood Policy and the Eastern Partnership. In March 2003, the EU launched Wider Europe – Neighborhood: A New Framework for Relations with Neighborhoods to the East and South, as a platform for defining a political direction among new neighbors. On 14 June 2004, the Council of the European Union approved the Policy Strategy developed by the European Commission, which involved the inclusion of Georgia, Moldova, and Ukraine into the European Neighborhood Policy. One of the basic principles of the European Neighborhood Policy is the desire to help neighboring countries implement internal reforms. The European Neighborhood Policy is committed to supporting the political process between the EU and its neighbors, which serves to implement the idea of a united and free Europe by strengthening democracy. In particular, the neighborhood policy envisages enhanced cooperation in such priority areas as democracy, good governance, the rule of law, the promotion of the independence of the judiciary, public administration, and the fight against corruption.

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The second important format of cooperation between Georgia, Moldova, and Ukraine and the European Union is the Eastern Partnership Initiative, launched on 26 May 2008, which was officially declared one of the most important Eastern Partnership platforms in Prague on 7 May 2009. The first platform in this initiative is Democracy, Good Governance, and Stability. The EU's relations with its neighbors will be guided by the EU Global Strategy and the Renewed European Neighborhood Policy, according to which building resilience at home and abroad means creating a more responsive union. The EU will strengthen the resilience of states and societies by supporting good governance and accountable institutions, and by working closely with civil society (EEAS, 2018).

It should be noted that the EU formed its priorities for EU relations with the Eastern Partnership countries in the European Parliament Resolution of 12 March 2014 on assessing and setting priorities for EU relations with the Eastern Partnership countries (Priorities for EU..., 2014), where the main priorities involved strengthening democratic institutions, protecting human rights, and ensuring the rule of law. An entirely new format of cooperation between the EU and the three Eastern Partnership countries in the field of democracy and the rule of law was provided by the conclusion of association agreements, which were implemented at different times in all three countries. On 1 July 2016, the Association Agreement between the European Union and the Republic of Moldova fully came into force, following ratification by all 31 signatories (Association Agreement of Moldova, 2016). On 18 December 2014, the European Parliament approved the Association Agreement with Georgia. Member states ratified the treaty (European Parliament Decision, 2014), and the agreement entered into force on 1 July 2016 (Association Agreement of Georgia, 2016). The Association Agreement between the European Union and Ukraine – Titles III, V, VI, and VII – and the related Annexes and Protocols of the Agreement have been provisionally applied since 1 November 2014, while Title IV has been applied since 1 January 2016 (European Commission, 2015). Provisions came into force on 1 September 2017 following the ratification of the Agreement by all signatories (Association Agreement of Ukraine, 2017). The Association Agreements set out the commitments of countries on democracy, human rights, and the rule of law, and serve as a kind of agenda for countries to transform and move closer towards the EU.

In relation to the EU, it is important that under the current plan, entitled “20 Results for 2020”, a new series of long-term political objectives of the Eastern Partnership – 20 Deliverables for 2020 – focusing on key priorities and tangible results was adopted on 18 March 2020 (Joint Staff Working Document, 9.6.2017, SWD(2017)). This Communication sets out the tasks of the Eastern Partnership after 2020. These tasks are based on five priorities, the first of which is the Partnership on Accountable Institutions based on the Rule of Law and Security. This sets out that, together with accountable institutions, the rule of law and security, the good governance of democratic institutions, successful anti-corruption policies, the fight against organised crime, and respect for human rights and security (including support for populations affected by conflict) are the backbone of strong and resilient states and societies. This document particularly emphasizes that the rule of law is a key factor in ensuring an effective business climate, and an important consideration in attracting foreign direct investment (European Commission, 2020).

Today, the stages of reforms in all three countries are different, but they face the same challenges in terms of developing democratic institutions and fulfilling their obligations to the EU in the field of rule of law. This article will discuss the challenges facing Georgia, Moldova, and Ukraine in the area of democratic reforms, and the achievements and challenges that these countries face in the implementation of the Association Agreements.

## **1. The Association Agreement of Georgia, Moldova, and Ukraine with the European Union**

In several places, the texts of the Association Agreements define the commitment of states in the areas of domestic reform. Firstly, to strengthen respect for democratic principles, the rule of law and good governance, human rights, and fundamental freedoms is declared one of the main goals of political dialogue. The Association Agreement contains specific articles on the obligations of states in the areas of democracy, the rule of law, and the protection of human rights. Treaties vary from country to country in terms of the formulation of these obligations. Particularly

noteworthy in the Association Agreements are the norms on the implementation of the country's internal reforms. For example, according to Article 4 of the Agreement of Georgia, the Parties shall cooperate on developing, consolidating, and increasing the stability and effectiveness of democratic institutions and the rule of law; on ensuring respect for human rights and fundamental freedoms; on making further progress on judicial and legal reform, so that the independence of the judiciary is guaranteed, strengthening its administrative capacity and guaranteeing impartiality and effectiveness of law enforcement bodies; on further pursuing the public administration reform and on building an accountable, efficient, effective, transparent, and professional civil service; and on continuing the effective fight against corruption, particularly in view of enhancing international cooperation on combating corruption and ensuring the effective implementation of the relevant international legal instruments, such as the United Nations Convention Against Corruption of 2003. Article 13 of the Agreement, entitled "Rule of Law, Protection of Human Rights and Fundamental Freedoms", provides, more specifically, that in the area of freedom, security, and justice the Parties shall attach particular importance to further promoting the rule of law, including the independence of the judiciary, access to justice, and the right to a fair trial. The agreement states that the Parties will cooperate fully on the effective functioning of institutions in the areas of law enforcement and the administration of justice (OJ L 261, 30 August 2014, pp. 8–11). Under Article 4 of the Moldova Association Agreement, the Parties undertake to cooperate on specific internal reforms related to consolidating democratic institutions and the rule of law, human rights and fundamental freedoms, the independence of the judiciary, the reform of public administration, and in ensuring the effectiveness of the fight against corruption. The Moldovan Association Agreement places particular emphasis on public administration reform to ensure transparent decision-making and a strategic planning process, including the introduction and implementation of e-Governance, the creation of a professional civil service, effective and professional human resource management, and the promotion of ethical values in the civil service (OJ L 260, 30 August 2014, pp. 8–14).

Article 6 of the Association Agreement of Ukraine defines cooperation in the field of internal reforms of the country, where the document stipulates that the Parties shall cooperate in order to ensure that their internal policies are based on principles common to the Parties – specifically, the stability and effectiveness of democratic institutions and the rule of law, and in respect for human rights and fundamental freedoms, in particular as referred to in Article 14 of this Agreement. Article 14 of the agreement stipulates that in their cooperation on justice, freedom, and security, the Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the area of administration in general, and in the areas of law enforcement and the administration of justice in particular (OJ L 161, 29 May 2014, p. 8).

It is important to define the place of the Association Agreement as an international agreement in the national legal system. In this respect, all three countries have an essentially similar approach. According to Article 4, paragraph 5 of the Constitution of Georgia, the legislation of Georgia shall comply with the universally recognised principles and norms of international law. An international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia (Constitution of Georgia, 1995). Article 78 of the Constitution of Georgia, entitled "Integration into European and Euro-Atlantic Structures", specifically stipulates that constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization (Constitution of Georgia, 1995). Therefore, it is considered that the constitutional provision, in fact, stipulates that Georgia gives obvious priority to the Association Agreement as a choice between the state and the people of Georgia, a vector of the rule of law and legal development, otherwise there can be no European integration (Kardava, 2021, p. 25).

Especially interesting is the Constitution of Ukraine, according to Article 9 of which international treaties that are in force and are agreed to be binding by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution (Constitution of Ukraine, 1996). This provision implies that, after ratification, the EU–Ukraine association agreement will be an integral part of the Ukrainian legal order.

Pursuant to Article 19(2) of the Law of Ukraine “On International Treaties of Ukraine”, it will enjoy priority over conflicting national legislation. However, this is not the case if there is a conflict with the provisions of the Ukrainian Constitution (Petrov, Van der Loo, & Van Elsuwege, 2016, pp. 15–16). The Constitution of Ukraine went further in terms of integration with the European Union when, in February 2019, the words “and confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine” were added to its preamble. In addition, the powers of the Verkhovna Rada of Ukraine include the implementation of the strategic course of the state for the acquisition of the full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization, and the President of Ukraine is the guarantor of the implementation of the strategic course of the state for Ukraine’s full membership in these organizations. Finally, the Cabinet of Ministers of Ukraine ensures the implementation of the strategic course of the state for the acquisition of the full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization (Vedomosti Verkhovnoi Rady, 2019, No. 9, p. 50).

As yet, the Moldovan Constitution does not contain a direct reference to EU integration, although it should be noted that, according to Article 8 of the Constitution of the Republic of Moldova, the Republic of Moldova commits to observe the Charter of the United Nations and the treaties to which it is a party, to ground its relationships with other states on the unanimously recognized principles and norms of international law. The coming into force of an international treaty containing provisions which are contrary to the Constitution shall be preceded by a revision of the latter (Constitution of the Republic of Moldova, 1994).

In view of all the above, one must agree with the opinion that the relevant provisions of the Constitutions of Georgia, Moldova, and Ukraine imply that properly ratified association agreements will not only be equated to the same status as national laws, but will also enjoy a priority over conflicting national legislation (Petrov, 2015, pp. 241–253). Thus, the Association Agreement and the norms of the Constitution are an important binding legal obligation for countries to implement appropriate reforms in their domestic legislation.

## **2. Domestic Political Reforms and Democratic Development in Georgia**

Since the entry into force of the Association Agreement, Georgia has made significant changes towards the rule of law, human rights, and the building of democratic institutions. If we look at the results of the changes implemented over the years, it can be said that these reforms were not always effective and were characterized by some instability, delays, and frequent changes. The first year of the Agreement was marked by significant challenges for Georgia, primarily related to the 2016 parliamentary elections. The main challenge in this case was adopting fair election legislation and ensuring the free participation of political parties and citizens in elections. In this regard, it should be noted that amendments to the Election Code of Georgia were made in 2015, although the EU report still indicated that the calm and open campaign atmosphere was impacted by allegations of unlawful campaigning, cases of a lack of transparency and effective redress, and a number of violent incidents. The existing legal framework allows for the free establishment and operation of political parties and civil society organisations (Joint Staff Working Document, SWD (2016) 423, p. 3).

The independence of the judiciary, the qualification of judges, and effective justice remained problems for Georgia at the time of the entry into force of the Association Agreement. For this period, the drafts of the “third wave” of judicial reform, which were initiated in 2015, were considered. These changes anticipated transparency in judicial management, the functioning and accountability of the High Council of Justice, and the random allocation of cases. Also important was the issue of selecting candidates to be judges, as judges were appointed for a three-year probationary period which was the subject of criticism (Coalition for an Independent and Transparent Judiciary, 2013). The bill provided for some steps in this direction, although heavy delays to its adoption were criticized by observer organizations (Burjanadze, 2017). The EU report also stated that the transparency in the allocation of cases, in the selection of judicial candidates, and of court administrators was not fully ensured (Joint Staff Working Document, SWD (2016) 423, p. 3).

In 2015, Georgia also began reforming the prosecution system to ensure its independence. The Prosecutorial Council was established in 2016 for this purpose. However, transparency in the appointment, evaluation, transfer, and promotion of prosecutors, as well as in the correct implementation of existing disciplinary procedures and ethical standards, remains to be addressed (Joint Staff Working Document, SWD (2016) 423, p. 3). At the same time, the reform of public administration is noteworthy, first reflected in the adoption of a new law on civil service (The Law of Georgia on Public Service, 2015) by the Parliament of Georgia in 2015, which included the transition to professional public service, political neutrality, and many other significant improvements in legislation. Georgia also accepted a new Human Rights Action Plan for 2016–2017 (Human Rights Secretariat, 2015) and the Equality and Integration Strategy and its Action Plan 2015–2020 (2015). The Juvenile Justice Code (Law of Georgia on Juvenile Justice, 2015) entered into force in 2016, and provided a comprehensive legal framework for children facing judicial proceedings, child victims, and child witnesses. It is also noteworthy that Georgia has ratified the 3rd Optional Protocol to the Convention on the Rights of the Child (Additional Protocol..., 2019), providing vulnerable children with possibilities to seek redress if their rights are violated. At the same time, Georgia has adopted a National Strategy for Combating Organised Crime 2015–2018 (National Strategy..., 2015) and a related Action Plan (2015–2016), and has ratified the Budapest Convention on Cybercrime. However, in parallel with the steps taken by the European Union, it indicated that, in terms of the political transformation, attention should now gradually shift towards ensuring the full and sustainable implementation of newly adopted legislation. Further, it is increasingly important to ensure the proper functioning of and cooperation among fundamental institutions, in full respect of their independence and of the principle of separation of powers (Joint Staff Working Document, SWD(2016) 423).

The year 2017 was different for Georgia as the country underwent a fundamental constitutional reform that moved it from a semi-presidential government to a parliamentary system. It should be noted, however, that opposition parties did not take part in the preparation and adoption of the constitutional amendments, which was a problem in terms of reaching a political consensus and led to questions regarding the legitimacy of the document. The key issue in these constitutional changes was the electoral system. The opposition demanded the abolition of the mixed electoral system and the transition to a fully proportional one, but the ruling party did not agree with this, and eventually the mixed electoral system was again maintained with minor changes for the 2020 elections. In 2017, some steps were taken in the field of human rights, and in particular in the protection of women's rights. Georgia ratified the Council of Europe (Istanbul) Convention on Preventing and Combating Violence against Women and Domestic Violence (Convention..., 2017). An Inter-agency Commission on Gender Equality, Violence against Women, and Domestic Violence was established in June 2017. In the same year, a revised National Anti-Corruption Strategy and a new Anti-Corruption Action Plan for 2017–2018 were adopted by the Government on 26 September (Resolution of the Government of Georgia, No. 443, 2017). In January 2017, Georgia introduced a monitoring system for asset declarations submitted by public officials.

Justice reform remained a major challenge for Georgia after December 2016, when a package of legislative amendments on the third wave of judiciary reform was adopted. These changes concerned the publication of all rulings, the progressive introduction of the random electronic allocation of cases, and the selection of judicial candidates and disciplinary procedures, but did not address the application of the probation period (Organic Law of Georgia, 2017). At the same time, a first comprehensive Judiciary Strategy and its five-year Action Plan were adopted by the High Council of Justice in May 2017 (Decision of the High Council of Justice, No. 1/162, 2017). It should also be noted that, for the first time in the history of Georgia, the new Constitution introduced the appointment of judges to the Supreme Court by Parliament upon nomination by the High Council of Justice, as well as lifelong tenure for Supreme Court judges. In 2017, Georgia also adopted a prosecutorial strategy (Strategy of the Prosecutor's Office of Georgia, 2017), the new ethics code, and an appraisal system for prosecutors. However, these changes were not enough, and the EU report also stated that the constitutional amendments should further increase the independence of the Prosecutors Office from the Ministry of Justice (Joint Staff Working Document, SWD(2017) 371).

Although Georgia occupied the best position in the region in terms of the fight against corruption, by 2018 the focus shifted to elite corruption, and it was important to make changes in the separation of powers, an independent judiciary, and the Prosecutor's Office. Institutional changes were related to the constitutional reform that was finally adopted by Parliament in 2018, which introduced a fully proportional election system as of 2024 and abolished direct presidential elections. The same year saw significant changes in political life. In May 2018, former Prime Minister and businessman Bidzina Ivanishvili was elected as the Chair of the Georgian Dream party. The prime minister was replaced, and a new president, Salome Zurbishvili, was elected. She was formally considered an independent candidate, but in reality her victory in the second round of elections in October was secured by the open support of the ruling party. The opposition believed that the election was rigged, and that the government managed to use administrative resources to win the presidency. In 2019, the issue of the reform of the electoral system was still relevant, and was the subject of controversy between the ruling party and the opposition parties. It was important that all major political parties signed the internationally-mediated Memorandum of Understanding and the Joint Statement of 8 March 2020, which established the key features of the electoral system based on 120 proportional and 30 majoritarian seats – a fair composition of electoral districts – and enabled this system to be used for the October 2020 parliamentary elections (Civil.ge, 2020). The EU and US embassies in Georgia played an important role in reaching this agreement. In order to fully implement the agreement, President Zurbishvili pardoned two people who were considered by the opposition to have been the subject of politically motivated arrests. Amendments to the Electoral Code were also made to improve the electoral system.

In 2019, the issue of selecting judges for the Supreme Court of Georgia engendered great resistance and criticism. The public hearings of candidates in parliament revealed many shortcomings, and showed that the majority of them did not even meet the minimum criteria of qualification and professional integrity. Nevertheless, the Georgian Parliament appointed 14 candidates to the Supreme Court of Georgia for life. These appointments were made without the participation of the opposition and in the wake of protests by civil society organizations. In fact, the ruling party completed the selection of judges for the Supreme Court of Georgia in a one-party manner, which can be described as an attempt to influence the court (Nakashidze, 2020). The EU report also noted that the recent selection procedure of Supreme Court judges was not entirely in line with these recommendations and was marred by serious shortcomings, emphasizing the importance of a depoliticised judiciary free from political interference and of respect for transparency, meritocracy, and accountability in the appointment of judges to the Supreme Court of Georgia and other judicial institutions. In the same period, the issue of political polarization in Georgia was especially noteworthy, and the European Union emphasized the importance of reducing antagonism and the polarisation of politics and of ensuring constructive cooperation in the country's democratic institutions, in particular in the Parliament of Georgia. The EU also considered the improvement of the political climate to be a necessity, along with building trust among all political and institutional actors as well as between them and the Georgian people. Further, the EU called on Parliament to make full use of the opportunities available to Georgia as a priority country for the European Parliament's democracy-support activities and to engage in a dialogue to identify its needs (Committee on Foreign Affairs, 2020).

The year 2019 was marked by special tension in Georgia. The most significant protest started on 20 June, after the 26th General Assembly of the Inter-Parliamentary Assembly of the Orthodox Church (I.A.O.) opened in Tbilisi. Protests were sparked by the arrival of the Russian I.A.O. delegation to the plenary hall of the Georgian Parliament, and the decision to let a Russian lawmaker, Sergei Gavrilov, temporarily sit in the chair of the speaker. This act was considered very insulting by Georgian opposition members and the public at large, as the Russian Federation occupies 20% of the territory of Georgia, and Georgia does not have diplomatic relations with Russia. Opposition MPs protested the appearance of the Russian MP in Parliament. The government was forced to suspend the assembly and remove the Russian MP from the building, but citizens had begun gathering. Finally, tear gas and rubber bullets were used against the protesters, but to no avail, and several hundred people were injured as a result of the violent dispersal, including police officers, journalists, and peaceful protesters. Three participants of the rally lost their eyesight after being hit by rubber bullets. Later, protesters made three demands: the resignation of the Interior Minister; the adoption of proportional representation for the next parliamentary elections; and the immediate release of detainees. On the second day, Irakli Kobakhidze resigned from the position of Speaker of

Parliament and on 24 June 2019, the Georgian Dream coalition announced that the 2020 parliamentary elections would be conducted through a proportional system under a zero electoral threshold (Nakashidze, 2020, pp. 134–135). However, this promise was not eventually fulfilled.

In 2019, significant legislative changes were made in the field of human rights. In May, the Labour Code and a number of other laws were amended, with sexual harassment being defined as a form of unlawful discrimination in the workplace and administrative penalties being introduced for sexual harassment in public spaces. Amendments to improve enforcement of the Law on the Elimination of all Forms of Discrimination were adopted in May (Legislative Herald of Georgia, 25/02/2019), and in September Georgia also adopted a Child Rights' Code which fully entered into force on 1 June 2020 (Child Rights' Code of Georgia, 2019). This document introduced legal grounds, safeguards, and guarantees for the realisation of the overarching principles, rights, and freedoms of children. In addition, a cooperation mechanism involving prosecutors, police officers, lawyers, social workers, and psychologists was established to support the implementation of the Juvenile Justice Code. In the same year, the Government adopted a 2019–2020 action plan to implement the roadmap of public administration reform (Resolution of Government of Georgia, No. 274, 2019).

The issue of selecting judges remained a major challenge in the field of justice and the rule of law. In March 2019, Parliament approved amendments to the Law on Common Courts that established the necessary selection criteria. The power to select judges rests entirely in the hands of the Council of Justice. On 12 December, Parliament appointed 14 candidates for life tenures to the Supreme Court. This overall process failed to ensure the necessary transparency and meritocracy. In December, Parliament also passed amendments to the fourth wave of judicial reform, which concerned disciplinary action, the rules of procedure of the High Council of Justice, and the reform of the Council itself, especially the substantiation of decisions made by members of the High Council of Justice (Parliament of Georgia, 2019). Prior to the adoption of the law, observers had argued that this reform was not in the interests of the judiciary but in the interests of politics, and that the government was trying to maintain a friendly judiciary (Mshvenieradze, 2019). In 2019, changes were also made to the prosecution system. In particular, the powers of investigators and prosecutors were somewhat separated as part of a significant police reform that also sought to disentangle the operational and investigative functions of police officers. In July, the Anti-Corruption Council adopted a new anti-corruption strategy and action plan for 2019–2020 (Government of Georgia Resolution No. 484, 2019). The Ministry of Justice presented the first comprehensive crime prevention and penitentiary strategy in February (Order of the Minister of Justice of Georgia, No. 385, 2019). In May, the Inter-Agency Coordinating Council on Drug Abuse adopted a strategy against drug use, which included the establishment of a national monitoring centre. While civil society was discussing the liberalization of drug policies, on 2 August the Constitutional Court declared that it was unconstitutional to impose administrative detention and criminal imprisonment for the production, purchase, or storage of drugs that are for private use and do not lead to rapid addiction and/or aggressive behavior (*The Public Defender of Georgia v. Parliament*, 2019). Despite some steps towards the rule of law, the EU 2020 report noted that the implementation of the fourth wave of reforms would be important throughout 2020. Georgia's commitment to upholding the highest standards of ethics and integrity in its judiciary remains critical (Joint Staff Working Document, SWD(2020) 30).

Georgia faced a political crisis in 2020, in which the European Union ultimately played an important role. Parliamentary elections were held on 31 October 2020, where the ruling Georgian Dream party again won a majority. Elections were again held under a mixed electoral system, with 30 members elected to a 150-member parliament by majority vote. With the help of the majoritarian seats, the ruling party finally achieved the formation of a majority. Georgian Dream then formed a new cabinet led by Prime Minister Gakharia, and, in January 2021, the party's founder – billionaire Bidzina Ivanishvili – announced his departure from politics. The party then elected a new chairman, Irakli Kobakhidze. Opposition parties did not recognize the results of this election, announced a boycott of the election results, and refused to enter parliament.

Significant legislative changes have been implemented in terms of the protection of human rights. In particular, for the 2020 parliamentary elections, quotas were set for women on proportional party lists, and of 150 members

elected to parliament, 31 were women. Parliament also made changes to the Labour Code, introducing paid maternity leave, provisions protecting pregnant women and women who have recently given birth, and protection against discrimination, e.g., direct and indirect discrimination, harassment (Organic Law of Georgia, 2020). In February 2020, the Government adopted an Equality Chapter to the National Human Rights Action Plan addressing the needs of those belonging to the Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) community (Resolution No.116 of Government of Georgia, 2018). It is also noteworthy that in July 2020 the Law on the Rights of Persons with Disabilities was adopted.

The EU expressed its position on Georgia's reforms in the 2020 Association Report, which stated relatively softly that a demonstrable reform commitment as regards the consolidation of democracy and the reform of the judiciary will be crucial to further advance Georgia's European path. The EU also noted that the implementation of the fourth wave of judicial reforms, upholding the highest standards of ethics and integrity in the judiciary, the reform of the High Council of Justice, and the selection procedure for Supreme Court judges being brought into line with European standards will remain essential throughout 2021 (Joint Staff Working Document, SWD(2021)18). Thus, in 2021, the issue of selecting the members of the Supreme Court of Georgia – where reforms are necessary to ensure the independence of the judiciary and the rule of law – remains on the agenda.

In 2021, an unprecedented case of EU participation in domestic policy was observed in Georgia. European Council President Charles Michel, who has been to Georgia several times in person, had been involved in resolving several months of opposition protests against the 2020 parliamentary elections and the country's political crisis. Finally, with the involvement of the European Union, an agreement was reached between the political parties, which contained very important provisions on the rule of law, human rights, power-sharing, and accountability in Georgia's electoral system and future reforms. The signed agreement specifically mentions: addressing perceptions of politicized justice; ambitious electoral reform; election thresholds; the formation of electoral commissions; trust in electoral administration; the rule of law/judicial reform; enhanced transparency and merit-based selections in the appointment of judges; rules for the publication of judicial decisions and appointments to the supreme court; reform of the high council of justice to increase transparency, integrity, and accountability; ensuring the broadest, cross-party political support for the appointment of the prosecutors general; power sharing in parliament; and future elections. To this end, early parliamentary elections shall be called in 2022 if the Georgian Dream party receives less than 43% of valid proportional votes in the October 2021 local self-government elections (A way ahead for Georgia, 2021). This document, together with its support, represents recognition of the difficult situation in recent years in the field of democratic reform by the Georgian government and the signatory parties. Georgia needs serious work in the coming years to implement the reforms placed in the Association Agenda, especially when the government of the country announces that it plans to apply for EU membership by 2024.

### **3. Domestic Political Reforms and Democratic Development in Moldova**

Since 2016, Moldova has made a number of legislative changes to fulfill its obligations under the Association Agreement in the areas of democracy, the rule of law, and human rights. Political life marked 2016, in that the presidential election, held in October/November, was the first direct presidential election since 1996, and was conducted largely in line with international standards. However, shortcomings were evident in campaign financing, the use of administrative resources, and media coverage (OSCE, 2017, pp. 28–31). These elections were won by a pro-Russian candidate, Igor Dodon, from the Party of Socialists of the Republic of Moldova, which represented a significant delay in the implementation of legal and political domestic reforms.

Reforms in Moldova have always been difficult as a result of the political situation, but it is still worth noting that, based on the recommendations of the European Commission and development partners, the government adopted the Public Administration Reform Strategy in July 2016, together with the action plan in December 2016 (Public Administration Reform Strategy, 2016). The National Preventive Mechanism against Torture resumed its activities in December 2016, and the law on the rehabilitation of victims of torture was adopted in September 2016 and entered into force in March 2017. On 14 December 2016, the government adopted the Strategy for the



Consolidation of Interethnic Relations in the Republic of Moldova for 2017–2027 (Government of the Republic of Moldova, 2016). At the same time, Moldova has ratified most international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women and the European Convention on Gender Equality (Ratification Status for CEDAW, n.d.). Based on the Anti-Discrimination Law of 2012, an Equality Council was created in 2014 (Law of Republic of Moldova No. 298, 2012), and Parliament adopted a legislation on gender equality in April 2016 that set out a quota to ensure at least 40% of candidates in central and local elections, government ministers, and members of political parties were female (UN Women, 2016). Moldova signed the Convention on preventing and combating violence against women and domestic violence in February 2017 (Council of Europe, 2017), and adopted the Child Rights' Strategy (Government Decision No. 434, 2014) and appointed an ombudsman for children in 2016.

In 2016, Moldova began implementing changes in the direction of justice, and a reform of the judicial map was adopted in 2016 which reduced the number of courts. A new law on the Prosecution Service entered into force in August 2016, which included strengthening the independence of the prosecution, limiting the powers of prosecutors, and reducing their number. On 8 December 2016, the President appointed the new Prosecutor General in accordance with the amended constitution. With the court, corruption has been a major challenge for Moldova since the very first years of the signing of the Association Agreement. The 2011–2015 National Anti-Corruption Strategy was extended to 2016, and the adoption of a new strategy in 2017 was planned. Thus, some changes were made to the legislation in this way, although the EU noted that 2016 was a year of new beginnings. These have yet to translate into a more consistent implementation of the steps of reform. Based on this legislation, it is crucial that implementation takes place in a way that is geared towards tangible results. The importance of these reforms was also one of the main concerns of the Eastern Partnership Summit in Brussels in late 2017 (Joint Staff Working Document, SWD(2017) 110).

In terms of democratic development, it is noteworthy that in July 2017 Moldova changed its electoral system from proportional to mixed proportional-uninominal representation. The Venice Commission and the Office for Democratic Institutions and Human Rights, in a joint opinion, noted in particular a lack of consensus on this reform, and (based on specific concerns such as: risk of influence at constituency level; high thresholds; and vague criteria for the definition of constituencies) indicated that “such a fundamental change, while a sovereign prerogative of the country, is not advisable at this time” (European Commission for Democracy through Law & OSCE/ODIHR, 2017a). The Venice Commission and the OSCE/ODIHR, in another joint opinion, raised concerns related to the necessary improvement of the legal framework on the funding of political parties and campaigns, and on strengthening the implementation of, and mechanisms for, sanctions (European Commission for Democracy through Law & OSCE/ODIHR, 2017b).

Significant legislative changes in the field of human rights have continued to be implemented since 2017. In particular, in May 2017, Parliament amended the constitution on the guarantee of the activities of an Ombudsman's Office (International Ombudsman Institute, 2017), the Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Council of Europe, 2021) was signed, a new Law on persons with disabilities was adopted by Parliament, and a new Human Rights Action Plan 2018–2022 was adopted by the Government in November 2017 (National Human Rights Action Plan, 2018). In 2017, the Government also approved a new National Gender Equality Strategy 2017–2021 (Order of the Government of the Republic of Moldova No. 259, 2017), and Moldova continued to work on the 2016–2020 Action Plan for the Child Protection Strategy (Government Decision No. 434, 2014) for the adoption of relevant legislative acts and the full implementation of the document. Judicial reform and the improvement of the human rights situation were strategic issues in Moldova's cooperation with the EU Association Agreement. For this purpose, the government prepared a new justice sector reform strategy for 2018–2024.

The fight against corruption was remarkable during this period in Moldova, and a new National Integrity and Anti-Corruption Strategy for 2017–2020 came into force in May 2017 (Republic of Moldova Parliament Decision Decision No. 56, 2017). Separate anti-corruption plans were adopted for different sectors to implement the

strategy, and a new Law on preventing and combating money laundering and terrorism financing was adopted in December 2017 (Law of the Republic of Moldova No. 308, 2017). Amendments were also made to avoid conflicts of interest in the public sphere, and to introduce electronic declarations. Moldova adopted the National Programme on Cyber Security for 2016–2020 (Order of the Government of the Republic of Moldova No. 811, 2015) to bring its national legislation closer to the EU's legal standards. Despite these changes, according to the EU, considerable efforts were necessary to strengthen the rule of law in Moldova by tackling high level corruption, recovering funds from banking fraud, and bringing to justice those responsible. Ahead of upcoming parliamentary elections (at the end of 2018), it was important to ensure inclusiveness in the electoral process. Public administration reform also continued, with the goal of creating a more efficient civil service and reinforcing these respective institutions (Joint Staff Working Document, SWD(2018) 94).

One of the major challenges for Moldova in transforming democratic governance has been the electoral system and the holding of free, fair elections at all levels. Significant criticism from the EU (European Parliament resolution of 5 July 2018) and other international organizations (Eastern Partnership Civil Society Forum, 2018) emerged in 2018 after the invalidation of the election of the Chişinău mayor, which was won by an opposition candidate. The 2019 parliamentary elections took place using a mixed proportional-uninominal electoral system, following the change in the electoral system in 2017. According to the final report of the OSCE/ODIHR of 22 May 2019, these elections were competitive and fundamental rights were generally respected, but there was one recommendation: that authorities should consider a comprehensive review of the electoral legal framework to eliminate inconsistencies and ambiguities, and to address the recommendations of ODIHR and the Council of Europe (ODIHR, 2019a, p. 25).

The steps taken by Moldova since 2018 in fulfilling its obligations in the field of human rights protection should be noted. In this respect, the new 2018–2022 Human Rights Action Plan adopted by Parliament in May 2018 (National Human Rights Action Plan 2018–2022, n.d.) is noteworthy. However, the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, signed in February 2017, had not yet been ratified by Parliament by 2019. Despite this, the National Strategy for preventing and combating violence against women and domestic violence for the years 2018–2023 (Government Decision No. 281, 2018) and the first report on the implementation of the 2017–2021 National Gender Equality Strategy were adopted by the government of Moldova (Strategy, 03/09/2017). In addition, in 2018, the government also approved the 2018–2019 Action Plan for the National Council for the Protection of Children's Rights (Decision of the National Council no.1, 2018).

The Moldovan court was faced with significant challenges in the area of judicial independence, including: nontransparent decisions by the Superior Council of Magistracy on the selection, appointment, career, evaluation, dismissal, and investigation of judges; and a five-year initial appointment period for judges. In July 2018, Parliament adopted amendments improving disciplinary procedures for judges, including the strengthening of the judicial inspector's role – as in Georgia. Alongside this, in October 2018, amendments to the Law on judiciary and the Law on the status of judges, the selection criteria for judges, and the promotion of judges based on transparency were published (Law of the Republic of Moldova, No.544, 20/07/1995). In 2019, Moldova also initiated the new 2021–2024 Strategy for ensuring the independence and integrity of the justice sector and the Action Plan for the years 2021–2024 (The Strategy for Ensuring..., 2019).

The biggest challenge faced by Moldova was the fight against corruption, and the country has taken some steps in this regard. First, relevant legislative changes related to conflicts of interest and procedures were adopted. It is especially noteworthy that Moldova developed the National Integrity and Anticorruption Strategy 2017–2020 (Republic of Moldova Parliament Decision No. 56, 2017), and a mandatory system for the e-declaration of conflict of interest statements was established in January 2018. In August 2019, the government formed the Coordinating Council and Consultative Bureau for anti-corruption and justice reform (Cotidianul, 2019). Despite the existence of these documents, their actual implementation was slow and inefficient due to the political instability in the country.

After the February 2019 parliamentary elections, the country entered into a political crisis and the process of forming a government lasted three months. Finally, in June 2019, parliament sided with the government of Igor Dodon's pro-Russian "Socialists" and the left-wing pro-European bloc against the ASHUM ruling coalition of Plahotniuc, and formed a government with Maia Sandu as prime minister. However, on the same day, the Moldovan Constitutional Court declared the appointment of the Prime Minister and the formation of the government unconstitutional (The Constitutional Court, 2019a), which deepened the crisis. Later, however, on June 15, the Constitutional Court reviewed all of its decisions and declared the government of Maia Sandu constitutional (The Constitutional Court, 2019b). This court decision was followed by the resignation of the President of the Constitutional Court (The Constitutional Court, 2019c), and then the resignation of the entire court (Radio Free Europe/Radio Liberty, 2019). The political crisis in Moldova was responded to by the European Union, which was interested in ending it. The statement announced that the European Union stands ready to work with the democratically legitimate government, on the basis of a mutual commitment to reforms and to the core principles enshrined in our Association Agreement. The respect for the rule of law and democracy should remain the pillars of our relations. This is also foremost what the citizens of the Republic of Moldova expect and deserve (European Commission, 2019).

On 24 June 2019, the new government published its programme, which included following changes: releasing the state from captivity and strengthening the independence of the institutions, especially in the field of justice; consolidating elective democracy; returning to the proportional electoral system; ensuring the rule of law via priority actions, and ensuring that the rule of law will strengthen the functioning of democratic institutions; implementing the anti-oligarchic package of laws and the definitive removal of the oligarchic regime from power; and "cleaning up" the system of corrupt judges and prosecutors. This programme also noted that the immediate and determined fight against large-scale corruption is the only way in which state institutions can regain legitimacy and trust from citizens, and through which the sustainable and real implementation of future reforms in economy, education, health, social assistance, etc. can be achieved (Activity Program of the Government of the Republic of Moldova, 2019). However, this government was dissolved in November 2019 (Tanas, 2019) and replaced by the socialist-dominated government of Ion Chicu until 23 December 2020, when Ion Chicu resigned (Euronews, 2020b) after Maia Sandu, of the Party of Action and Solidarity (PAS), won the presidential election and took office the following day. The government of Ion Chicu was replaced by acting Prime Minister Aureliu Ciocoi on 31 December 2020.

With the change of government, a new government program was adopted on 16 December 2019, which also envisioned significant reforms in the area of rule of law. These reforms included: the adjustment of the Concept for the Reform of the Supreme Court; the Extraordinary Evaluation of Judges and Prosecutors; the appointment of an independent and upright Prosecutor General; the identification and removal of the vulnerabilities of justice to unjustified political, business-related, and criminal pressure; the investigation and prosecution of those responsible for the devaluation of the country's banking system; the implementation of schemes of misappropriation of public and private property; and the identification of urgent solutions to prevent blockages in the functioning of the judicial system. The program also included reforms in the field of public administration (Activity Program of the Government, 2019). In the areas of rule of law, human rights, and corruption, the Government's Action Plan for 2020–2023 was important. This plan was approved by the Government of the Republic of Moldova on 11 December 2019, and envisaged justice reform, fighting corruption, and respect for fundamental rights and freedoms. More specifically, the government focused on issues such as evaluating judges, reviewing the role of the Supreme Court of Justice, streamlining the disciplinary liability of judges and prosecutors, ensuring the successful implementation of anti-corruption policies, reviewing the legal framework for strengthening fundamental freedoms, and other issues (Government of Republic of Moldova Decision No. 636, 2019).

Currently, all attention is focused on the 2021 snap parliamentary elections, which will be held in Moldova on 11 July 2021 and were announced when President Maia Sandu signed a decree dissolving parliament on 28 April

2021. Gaining a solid majority in parliament will enable the pro-European government to implement fundamental reforms on the EU–Armenia agenda for Moldova's democratic transformation.

#### **4. Domestic Political Reforms and Democratic Development in Ukraine**

It is widely known that work on the Association Agreement in Ukraine was proposed during the presidency of Viktor Yanukovich, and there was a plan to sign this agreement at the EU Vilnius Summit in late 2013. However, due to its relationship with Russia, the Maidan protests, and subsequent Russian aggression, the Association Agreement with Ukraine, unlike in the cases of the other two countries, was signed in two stages – the political part of the document in March 2014, and then its economic component in June of the same year by the new President, Poroshenko. In the context of such a development, the offer and signing of the Association of Ukraine was a demonstration of the significant support of the European Union, and placed before the Ukrainian authorities the commitments of the most important reforms. With new free parliamentary and presidential elections, Ukraine took significant steps towards democratic development. However, the newly elected government needed to implement the democratic reforms envisaged by the Association Agreement, including constitutional reforms, to uphold the principle of separation of powers and to establish an accountable government.

In this regard, in June 2016, the Rada adopted the Law on Amendments to the Constitution towards a major reform of the political system (CMS Law Now, 2016). This law provided for significant changes to the judiciary. In particular, it strengthened the independence of the Constitutional Court of Ukraine (giving any natural or legal person the right to appeal to the Constitutional Court on the constitutionality of the law to be applied in their case by the Court of First Instance), the appointment of judges, career advancement, and new rules of responsibility. It also established that the majority of the members of the High Council of Justice will be elected by judges, abolished the five-year probationary period for the appointment of judges, extended the term of office, and appointed the President of Ukraine to replace judges (Kyrychenko, 2017). Legislative changes increased the powers of the High Council of Justice that related to the appointment of judges, disciplinary proceedings against judges, the dismissal of judges, and adjudicating a judge on arrest or detention (Vedomosti Verkhovnoi Rady, 2016, No. 28, p. 532).

In the first years after the entry into force of the Association Agreement, Ukraine began to implement significant reforms in the field of democratic governance and the fight against corruption. In this regard, the launch of a new agency – the National Anti-Corruption Bureau – was significant, along with the creation of the Specialized Anti-Corruption Prosecution Office. The National Agency for Prevention of Corruption has also been operating in Ukraine since 2016, which mainly focuses on political corruption, party funding, and conflict of interest issues. An important function of this agency is the system of declarations, the creation of which also began in 2016. Despite such changes, some experts noted that one year after the formation of the second cabinet led by Arseniy Yatsenyuk (2 December 2014), and 18 months after the inauguration of Petro Poroshenko as president (7 June 2014), the reform process in Ukraine was still moving at a snail's pace, and was far from fulfilling its post-Maidan declarations. This also provoked increasing frustration among the public due to the lack of expected effects (Olszański et al., 2015). Ukrainian society had extremely high expectations, and perhaps the EU's support for the reform process engendered even more hope. However, as Ukraine has remained at the highest level of corruption in the Transparency International Corruption Perceptions Index for the past 15 years, rapid reforms have required serious effort from the government. The judiciary, police, and state administration were largely perceived as the most corrupt institutions in the country. After the 2014 revolution, the government seems to have launched a series of reforms aimed at increasing the rule of law and preventing corruption. To this end, the state decided to open state registers and databases to the public, and to introduce an electronic public procurement system. Particularly noteworthy was the adoption of a new law on public service in 2016, which also provided for the selection of public servants on the basis of open competition and the depoliticization of public service (Vedomosti Verkhovnoi Rady, 2016, No. 4, p. 43). Work began with the help of the EU, and at the same time the issue of setting up a new anti-corruption court was actively on the agenda.

Steps towards decentralization were also important for Ukraine in the process of democratic transformation, as the country was still effectively governed by the Soviet system. Changes were made in the area of financial and budgetary decentralization, and also to the budget and tax legislation, on the basis of which significant powers were transferred to local self-government. EU assistance was important here, in particular its active support for the decentralisation process (U-LEAD with Europe: Ukraine, n.d.). In the fight against corruption, public administration reform, implemented in 2016 with the adoption of the Civil Service Law, was very important. A special part of this reform was the selection of public servants, which had not been the practice in previous years in Ukraine and was an important step forward. In particular, the 2016–2020 Strategy for Public Administration Reform and its accompanying implementation plan were adopted (Cabinet of Ministers of Ukraine Order, No. 474-r, 2016). In June 2016, constitutional amendments were adopted in the field of justice to ensure the independence of the judiciary, providing for the establishment of a new Supreme Court, increased guarantees of independence, and the start of the process of selecting new judges. At the same time, a Police Reform was launched, a number of powers were transferred from the Ministry of Internal Affairs to the National Police of Ukraine (Vedomosti Verkhovnoi Rady, 2015, No. 40–41, p. 379), and the formation of a new structure of patrol police was completed in October 2016 (Order of the National Police of Ukraine, No. 73, 2015).

In 2017, Ukraine continued the implementation of the 2015–2020 National Strategy and Action Plan on Human Rights (Decree of the President of Ukraine No. 501, 2015). In this context, it is noteworthy that the term of office of the Ombudsman expired, and a new procedure for their selection was approved in July 2017 (Kryklyvenko, 2017). Gender-based discrimination was relevant at the same time, as the Vice Prime Minister for European and Euro-Atlantic Integration was appointed to coordinate the protection of rights and the post of gender policy commissioner was created (Press Service of Vice Prime Minister of Ukraine, 2017). Of particular note was a draft law on the ratification of the Council of Europe’s Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which was signed on 7 November 2011. Then, in November 2016, the Ukrainian Parliament considered but failed to ratify the Council of Europe Convention (News Agency Unian, 2016), which was not yet accepted for 2017. In Ukraine, it was believed that ratification was postponed, in particular, because of the words “gender” and “sexual orientation” in the text of the document. According to some of the MPs, they represented the ruin of “Ukrainian identity” and the “basics of Christianity” (UCMC, 2017). In the field of human rights, it should be noted that a new Public Defender, Liudmyla Denysova, was elected in March 2018 (Ukrainian Parliament Commissioner for Human Rights, 2018). In addition, the Government Commissioner for Gender Equality Policy was officially nominated in early 2018 (Government Portal, 2018) and, in April 2018, a State Social Programme on Equal Rights and Opportunities for 2018–2021 was approved (Cabinet of Ministers of Ukraine Resolution, 2018). Parliament adopted amendments to the Criminal Code and the Criminal Procedural Code related to sexual and gender-based violence (Vedomosti Verkhovnoi Rady, 2018, No. 5, p. 34). It was especially important that a new law on domestic violence was adopted (Vedomosti Verkhovnoi Rady, 2018, No. 5, p. 35) which complied with the Istanbul Convention, although Ukraine itself had not yet ratified the Convention by 2018.

In 2018, Ukraine took a significant legislative step in the fight against corruption when legislation to establish a High Anti-Corruption Court was adopted (Vedomosti Verkhovnoi Rady, 2018, No. 24, p. 212). This law provided for the creation of a Public Council of International Experts, which assists the High Qualification Commission of Judges with the selection of judges and has the power to disqualify a candidate. In 2018, international experts were appointed (Anti-Corruption Action Center, 2018), and the renewal and reform of the judiciary continued. This was an important step, although some experts noted that it appeared that the High Qualifications Commission of Judges and the High Council of Justice, which conducted the selection of judges, were unable to ensure confidence in the fair results of the competition and the absence of political influence on them (Kuybida, 2017). In the same year, several hundred new judges were appointed to the courts of first instance and specialized courts, and, in February 2018, the Constitutional Court appointed its president (Constitutional Court of Ukraine, 2018).

On 21 June 2018, Ukraine’s Parliament adopted the Law on National Security (Vedomosti Verkhovnoi Rady, 2018, No. 31, p. 241), and a Law on Cybersecurity entered into force in May 2018 (Vedomosti Verkhovnoi Rady,

2017, No. 45, p. 403). In 2018, the reform of the National Police of Ukraine continued to be implemented. The EU maintained its support for rule of law reforms in Ukraine through the EU Advisory Mission for Civilian Security Reform (EUAM) (Council Decision 2014/486/CFSP, of 22 July 2014), and the EU-funded support programmes on Rule of Law and Anti-corruption (EEAS, 2020b). Despite legislative changes, the conflict in eastern Ukraine and the annexation of Crimea and Sevastopol by the Russian Federation had a great impact on the development of the country (Joint Staff Working Document, 7.11.2018 SWD(2018) 462). According to many experts, to achieve effective results, the EU needs to support formal institutional change with socialisation strategies targeting informal norms and institutions. Moreover, its assistance to domestic actors has to diversify beyond central government institutions and to enhance the capacity of local governments, professional organisations, civil society, and the media (Králiková, 2021, p. 12).

Reform of the electoral system was important for Ukraine, but Ukraine failed to adopt a new Electoral Code before the presidential and parliamentary elections of October 2019. As we know, a new draft electoral code was passed only for the first reading in 2017, and the Constitutional Court invalidated the provision adopted in February 2017 (Decision the Constitutional Court of Ukraine, No. 3-r/2017). Recommendations were issued for the 2016 draft law by the Venice Commission (European Commission for Democracy through Law, 2016), but since 2017 there has been a lack of consensus among MPs on the choice of electoral system for parliamentary and local elections and the procedure for establishing lower-level election commissions. As such, the adoption of the draft election code before the fall 2019 elections was not realistic (IFES, 2019, p. 6). The election code was adopted into law in July 2019, but President Zelensky vetoed this version of the Code in September 2019 and returned it to the new Parliament, together with proposals for its improvement. Finally, in December 2019, the Verkhovna Rada adopted election code (U.S.–Ukraine Business Council, 2019).

A significant change in the governance of Ukraine took place in 2019. After two rounds of presidential elections, Volodymyr Zelensky was elected President of Ukraine, who then dissolved Parliament and called early elections for July 21, 2019. On this, the International Election Observation Mission concluded that “fundamental rights and freedoms were overall respected and the campaign was competitive, despite numerous malpractices, particularly in the majoritarian races” (ODIHR, 2019b). It should be noted that, before the presidential elections, a new electoral commission of Ukraine was appointed at the initiative of President Zelensky. This change was prompted by the presidential election and the change of the parliamentary majority. As in Georgia and Moldova, however, the independence and transparency of the election commission in Ukraine remained a major challenge. Before the parliamentary election of July 2019, Parliament adopted a new Electoral Code, which introduced a full proportional system with open lists after December 2023. However, the new president vetoed this law, and parliament started working on the relevant changes.

In 2019, the Parliament of Ukraine amended the Law on Civil Service, which provided for significant changes to illegal enrichment, claims for unfounded assets (Verkhovna Rada of Ukraine, 2020, No. 2, p. 5), and management of the National Agency (Vedomosti Verkhovnoi Rady, 2019, No. 47, p. 311). At the same time, changes in the direction of e-government regarding public administration reform were noteworthy. For this purpose, a new law was adopted in 2017 on electronic trust services (Vedomosti Verkhovnoi Rady, 2017, No. 45, p. 400), an agency for the implementation of e-Governance policies was created, and a strategic framework (Cabinet of Ministers of Ukraine Order No. 37-r, 2019) for e-Governance was adopted (Cabinet of Ministers of Ukraine Order No. 67-r, 2018). A new interoperability framework called Trembita was also introduced (National Health Service of Ukraine, 2019).

In the field of justice in 2019 it was important to note that the judges of the newly created High Anti-Corruption Court (HAAC) were selected in February, following a transparent procedure that involved the Public Council of International Experts. In April 2019, the President appointed 38 judges who elected their chairperson in May. The Court began operating officially on 5 September of the same year (UCMC, 2019). An amendment to the Law on the High Anti-Corruption Court was adopted in September, limiting its mandate to high-level corruption cases and preventing its potential overburdening by minor cases. The High Anti-Corruption Court received adequate

temporary premises, pending the completion of work on permanent buildings. In February 2019, the Constitutional Court ruled the Criminal Code article on illicit enrichment to be unconstitutional (Coynash, 2020). In June 2019, the Constitutional Court of Ukraine made several decisions. In a judgement on 6 June 2019, the Constitutional Court found the norm forcing anti-corruption activists to provide declarations of their income, and that of members of their families, to be unconstitutional. In another judgement issued on 5 June, the Court found norms in the Law on the National Anti-Corruption Bureau that enabled the bureau to challenge what they believed to be corrupt dealings in court unconstitutional (Coynash, 2019). It should also be noted that, on May 14, the Constitutional Court of Ukraine dismissed Stanislav Shevchuk from office, a judge of the constitutional court who at that time was the Chairman of the Constitutional Court, and elected a new Chairman (Constitutional Court of Ukraine, 2019). In October 2019, the district administrative Court of Kyiv reinstated Stanislav Shevchuk in the post of Head of the Constitutional Court (112.UA News Agency, 2019).

According to the EU, in 2019 Ukraine underwent a democratic transition with the renewal of its key institutions and the election of new political leaders. The swift advance of the reform process by the new authorities after the 2019 electoral cycle built on achievements attained since the 2014 Revolution of Dignity. The EU expects this to continue, including in cooperation with civil society and other stakeholders (Joint Staff Working Document, SWD(2019) 433).

Following the 2019 presidential and parliamentary elections, in 2020 Ukraine met with a renewed government. The “Servant of the People” party associated with President Volodymyr Zelensky achieved parliamentary majority and formed a government. In March 2020, a new Prime Minister was appointed and a cabinet was formed. The new president, who had a solid parliamentary majority, was given a unique opportunity to implement new reforms. In 2020, Ukraine also held local self-government elections. Prior to these elections, Parliament made fundamental changes in the electoral legislation which applied to both local elections and those of all other levels, and which entered into force in December 2019 ahead of nationwide local elections in October 2020. Later, in July 2020, shortly before the election, Parliament adopted changes on electoral justice. According to the OSCE-ODIHR Election Observation Mission for 2020 local elections, the revised Code did not address a number of ODIHR’s recommendations. Consideration should be given to reviewing the Election Code to eliminate regulatory fragmentation and to address any remaining gaps, errors, and conflicting or ambiguous formulations. To ensure legal certainty and the stability of the law, the reform process should be completed well in advance of the next elections (ODIHR, 2021, p. 8).

In 2020, the Government of Ukraine continued the reform of public administration and civil service. To this end, amendments have been made to the Civil Service Law to simplify procedures for replacing and renewing civil servants. Human resource management information systems have also been set up in the ministries, a reform of public servants’ pay has been implemented, and a unified portal of public servants’ vacancies has been launched. In addition, it should be noted that in September 2020, after many years of preparation, the draft Law on General Administrative Procedure was submitted to Parliament (Verkhovna Rada of Ukraine, 2020). Ukraine has also made significant changes in the direction of digital transformation. Formed in 2019, the new Ministry of Digital Transformation (Ukrayinska Pravda, 2019) proceeded with e-government and administrative service modernisation reforms, the TREMBITA system, the creation of the new “DIYA” interface (112.UA News Agency, 2020a) for users of digital public services, and the creation of some other public services such as “e-baby” (112.UA News Agency, 2020b). One year’s worth of activity from the High Anti-Corruption Court also took place. However, in August the Constitutional Court of Ukraine declared the 2015 presidential decree appointing the Director of the National Anti-Corruption Bureau of Ukraine unconstitutional, and in September applied the same judgement to certain provisions of the law on the National Anti-Corruption Bureau of Ukraine, including the provisions empowering the President to establish the National Anti-Corruption Bureau of Ukraine, to appoint and dismiss the Director, and to delegate representatives to the panel choosing the Director (Decision the Constitutional Court of Ukraine, No.11-r, 2020). The Constitutional Court of Ukraine also declared, on 27 October, elements of the anti-corruption legislation in Ukraine related to the electronic declaration system for public officials and politicians unconstitutional (Decision the Constitutional Court of Ukraine, No. 13-r, 2020). The court rulings

hampered anti-corruption reforms, and in their wake Parliament passed amendments to the normative acts to restore the agency's authority (Euronews, 2020a). The same year, the Ukrainian government adopted a new anti-corruption strategy for Ukraine for 2020–2024, and sent it to Parliament for approval (CMS Law Now, 2020).

The EU issued a statement on the decisions of the Constitutional Court, noting that the fight against corruption is one of the key benchmarks and commitments that Ukraine has undertaken within the framework of the Association Agreement, the recently agreed Macro-Financial Assistance programme between the EU and Ukraine, and the Visa liberalisation process (EEAS, 2020c). In response to the court's actions, President Zelensky submitted to parliament a law on the reform of the Constitutional Court, on which the Venice Commission also expressed its views (European Commission for Democracy through Law, 2020).

The Constitutional Court of Ukraine was still active in 2020 with regard to the legislation on the judiciary. On 11 March 2020, the Constitutional Court adopted a decision on the judiciary and the status of judges, and found parts of the law regarding the number of Supreme Court judges, the High Qualification Commission of Judges, and the Integrity and Ethics Commission unconstitutional (Decision of the Constitutional Court of Ukraine, No. 4-r/2020). Later, on 28 July, the Constitutional Court declared a presidential decree dated 16 April 2015, on the appointment of Artem Sytnyk as National Anti-Corruption Bureau Director unconstitutional (Decision of the Constitutional Court of Ukraine, No. 9-r/2020). Such decisions of the Constitutional Court were seen by the government as hindering the reforms envisaged in the Association Agenda with the European Union.

The EU itself, in its 2020 assessment, noted that having undergone a successful democratic transition and the renewal of key institutions in 2019, Ukraine advanced swiftly in the implementation of both its Association Agreement with the European Union and reforms demanded by its citizens in the earlier part of 2020. The European Union will continue to support Ukraine's reform efforts, constantly adapting and calibrating its support through engagement and dialogue, with the all the means at its disposal (Joint Staff Working Document, SWD(2020) 329). At the same time, experts believe that there have been some important successes in conducting reforms – especially from autumn 2019 to spring 2020. However, the fundamentals of the Ukrainian political and economic system have not yet been radically changed. Oligarchs have positions of influence in Ukrainian politics, and have succeeded in slowing some reforms with the help of their supporters in parliament (Neljas, 2020, pp. 21–22).

Despite the changes, one of the main obstacles to Ukraine's reforms is the influence of oligarchs on politics (Konończuk, Cenuşa, & Kakachia, 2017, pp. 17–19). Most recently in response to this challenge, on 2 June 2021, the President of Ukraine Volodymyr Zelensky submitted to the Verkhovna Rada an urgent draft law “On the Prevention of Threats to National Security Related to the Excessive Influence of Persons Who Have Significant Economic or Political Weight in Public Life (Oligarchs)” (Office of the President of Ukraine, 2021). If the Verkhovna Rada passes this law, people recognized as oligarchs will be barred from directly or indirectly funding political parties, holding political and governmental positions, and participating in the privatization of large facilities. The decision to recognize a person as an oligarch will be made by the National Security Council of Ukraine (Draft Law on Prevention of Threats..., 2021). Weakening the influence of oligarchs was also a pre-election promise of President Zelensky, and the public expects him to fulfill this condition. Over 10 Ukrainians could be included in the list of oligarchs, including Ihor Kolomoisky, the owner of the 1+1 TV channel that gave then-comedian Zelenskiy a significant platform during the presidential campaign, and as such it is difficult to say how the president will actually end the oligarchy in Ukraine.

## **5. Objectives and Prospectives of Reform Implementation**

After considering the above changes, it is important to determine the results that these countries have achieved in the fields of rapprochement with the EU and democratic transformation. Numerous legislative changes have been made, if political decisions indicate that countries had some will, yet the second question remains as to how sustainable and consistent these reforms will be. Conclusions can be made based on the results of the EU



monitoring itself. In this respect, it is noteworthy that, on March 18 2020, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy initiated a proposal for the long-term policy objectives of the Eastern Partnership beyond 2020 (EEAS, 2020a). The aims of this proposal were: strengthening democratic institutions, the rule of law, and environmental and climate resilience; supporting the digital transformation; and promoting fair and inclusive societies (European Commission, 2020).

The results of the reforms implemented in the Eastern Partnership countries are reflected in the special recommendations developed by the European Parliament in 2020. In particular, the European Parliament recommends engagement with the EaP countries via further assistance in: strengthening institutions and their accountability; developing existing and new EU tools in the area of rule of law and good governance; enacting comprehensive reforms of the judicial and public administration aimed at ensuring the independence, competence, and merit-based recruitment of judges and civil servants; and prioritizing the fight against corruption by reducing the space for corruption through increased transparency and the acknowledgement that strong, independent, and efficient institutions at the central and local levels are key to democratic accountability, deoligarchisation, and the fight against corruption and state capture (European Parliament, 2020).

We must remember that the 2017 Eastern Partnership Brussels Summit endorsed the “20 Deliverables for 2020” as an ambitious work plan for reforms in the eastern partnership countries. According to the monitoring document on the implementation of “20 Deliverables for 2020” and the results achieved by February 2020, key achievements in the strengthening of the rule of law and anti-corruption mechanisms are: the legal frameworks on confiscation that are in place in Georgia, Moldova, and Ukraine covering different confiscation regimes; systems for declaring assets and conflicts of interest that are in place in Georgia, Moldova, and Ukraine; and the High Anti-Corruption Court set up by Ukraine, where judges were selected for this court in cooperation with international experts. Initial steps towards setting up a system to monitor the track-records of judges and prosecutors in the field of support for the implementation of key judicial reforms, including the creation of an online appraisal system for prosecutors in Georgia and planned initiatives in Ukraine, are also considered as key achievements (Joint Staff Working Document, SWD(2017) 300).

At the same time, the results in public administration reform are key achievements, as the strategies in line with the ‘Principles of Public Administration’ in Georgia, Moldova, and Ukraine were developed, paving the way for more open and accountable state administrations in the EaP countries. The document defines the following priorities for action in strong governance: tackling high-level and complex corruption across the region; setting up an anti-corruption institutional framework, which should include the creation of track records of cases and the effective use of financial investigation tools; making all registry data on beneficial ownership publicly available; encouraging merit-based recruitment; reducing case backlogs; enforcing judgments in civil and administrative cases; fighting organised crime; and addressing hybrid threats, including cyber threats, to strengthen critical infrastructure (20 Deliverables for 2020, 2020). In terms of evaluating the results achieved, it is noteworthy that, at its December 2019 session held in Tbilisi, Georgia, the Euronest Parliamentary Assembly adopted a resolution on “The Future of the Trio Plus strategy 2030: Building a Future of Eastern Partnership”. The resolution states that the Trio Plus strategy 2030 would serve as “an ambitious European geopolitical instrument employing a new generation of institutions and policies, sustainable trade and stabilisation agreements and their instruments”. This document also notes that the success of implementing EU integration reforms in the EU-associated Trio countries will create new incentives for the remaining Eastern Partnership countries to choose an ambitious path to European integration (Euronest Parliamentary Assembly, 2019).

In addition to EU assessments, studies by other international organizations should be considered to measure the results achieved in these countries. According to the World Justice Project’s Rule of Law Index, Georgia is in a leading position among the three countries. Although if we look at a more detailed comparison, Moldova and Ukraine have improved results in terms of rule of law in the last 4–5 years, while the situation in Georgia has deteriorated slightly (Rule of Law Index 2020, 2020). Another area where Georgia, Moldova, and Ukraine required significant efforts to move closer to the EU is corruption. According to the Transparency International Corruption

Perceptions Index, Georgia is at the forefront in the fight against corruption, followed by Moldova, with Ukraine falling slightly behind and having ranked last for some years. There has been little improvement regarding corruption in Moldova and Ukraine since 2015, although the situation has not changed drastically either way. For example, Moldova had a score of 33 in 2015, while it improved by just one point in achieving a score of 34 in 2020. Ukraine had a score of 27 in 2015, while it improved by just six points in achieving a score of 33 in 2020 (Transparency International, 2020). Overall, then, these three countries improved their situation in 2020 compared to previous years, and hopefully the reforms that they have implemented will further improve the corruption situation in the coming years.

## Conclusions

Georgia, Moldova, and Ukraine have implemented many changes since the signing of the Association Agreement with the European Union, although these reforms have been accompanied by considerable political tension. Effective reforms require a stable political situation in the country, and cooperation and agreement between the government and the opposition. In this regard, the situation has changed positively in Ukraine, where Zelensky was elected President with a strong parliamentary majority, which facilitates the implementation of reforms. It is important to end Plahotniuc's oligarchic capture of the state in Moldova, to elect a pro-European president, and to form a pro-European parliamentary majority and cabinet after the 2021 parliamentary elections to facilitate rapid and effective reforms. The situation is somewhat different in Georgia, where an agreement reached in April 2020 ended with a high level of EU engagement and a majority of parties had some representation in parliament, although tensions have not yet been fully overcome as early elections depend on local elections in October 2021. Georgia's ruling party is also still under the influence of Georgian billionaire Bidzina Ivanishvili, despite the fact that he has officially announced his departure from politics. For this reason, the stability of the political system and the consent and trust of citizens are necessary to continue the reform that has begun in the process of European integration.

Reforming the judiciary and ensuring the independence of the judiciary remain particular challenges for the democratic development of Georgia, Moldova, and Ukraine. Despite not a single change in recent years, the courts remain under political influence. Without achieving the independence of the judiciary, it is impossible to protect human rights, ensure the rule of law, fulfill obligations in all other strategic areas defined by the Association Agreement, and ensure the well-being of citizens. All three countries need special changes in the procedure for selecting judges impartially, free from political influence. In this regard, the reform of the High Council of Justice in Georgia, where the dominance of judges is discussed, as well as the total domination of judges in decision-making in the High Qualification Commission of Judges, the High Council of Justice, and the Superior Council of Magistracy in Moldova, is problematic because the integrity of these judges is questionable.

The main obstacle to democratic reforms for Georgia, Moldova, and Ukraine over the years has been oligarchic rule and the capture of state institutions. In recent years, the situation seemed to have changed slightly when Moldovan oligarch Plahotniuc was ousted from power, Zelensky became president in Ukraine, and Bidzina Ivanishvili announced his departure from politics in Georgia. However, perhaps this did not go far enough, because despite Zelensky's intentions in Ukraine, his election campaign was financed by the oligarch Kolomoyskyi, and getting rid of his influence completely is not an easy task. In Moldova, the victory of pro-European forces allied with President Sandu in the parliamentary elections is crucial for the final consolidation of reforms, while in Georgia the ruling Georgian Dream party is still under the influence of billionaire Ivanishvili, who has more financial resources than the entire opposition combined.

All three countries face many challenges in the fight against corruption. Whilst Georgia has achieved the best results among them, a challenge remains in terms of some high-level corruption, the involvement of high-ranking officials, and their impartial investigation, as the ruling party has access to these bodies. Although Moldova has many institutions to fight corruption, such as the National Anti-Corruption Center, the Anti-Corruption Office, the Agency for the Recovery of Criminal Property, and the Office for Prevention and the Fight against Money

Laundering, the problems of low trust in institutions and the adequate enforcement of anti-corruption laws remain. Similarly, a number of anti-corruption institutions have been set up in Ukraine in recent years, such as the National Anti-Corruption Bureau, the Specialized Anti-Corruption Office, the High Anti-Corruption Court, the National Agency for Corruption Prevention, and new legislation that restricts oligarchs. The main problems here are the systemic nature of corruption, low trust in institutions, a lack of severity in appropriate punishments, and the ineffectiveness of their execution. It is therefore essential for successful change that systemic reforms gain public support and trust.

Finally, a significant obstacle to the implementation of reforms in all three countries is the military-political aggression of the Russian Federation, which continues today in the form of the occupation of the territories of these sovereign states. Russia continues to interfere in the domestic politics of countries and weaken institutions by using various methods of disinformation. This has been well demonstrated in recent years in Georgia, Moldova, and Ukraine. The response of the Associated States must be the rapid, consistent implementation of reforms, democratic transformation, and rapprochement with the European Union. The support of the European Union is extremely important in the implementation of internal reforms, which are implemented in various formats. The consolidation of the pro-Western government in these countries and the political will of the authorities to carry out legal reforms are crucial in this regard.

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