

Russian Law: An Inevitable Consequence of the Regime Dynamics

Davit Zedelashvili¹

A Game Overturned by the Regime and Doubting Thomases

Microbiologist Eilish Stack, a protagonist in "The Prophet Song"² – Booker prize-winning novel by the Irish author Paul Lynch – refuses to accept the reality of an authoritarian regime. Eilish desperately and steadfastly clings to all the pillars of the lifeworld where her life and that of her family's are unfolding.

After the disappearance of each such pillar, Eilish remains hopeful that she will find another one to hold onto. When the regime's newly founded political police visit Eilish's husband – the leader of the teachers' trade union – and when he is summoned for interrogation and intimidated, when, after cracking down on a teachers' march, the organizer of the march is abducted by the police and disappears, Eilish does not lose faith that her main priority is not to escape from the country and ensure the physical survival of herself and her three children, but to keep the family in place until her husband returns.

Neither the conscription of her elder son into the regime's army nor his decision to run away and join the opponents of the regime in the civil war result in depriving Eilish of hope. The last pillar of the world for Eilish is destroyed only when her teenage son – whom she brought to the regime's military hospital herself – is abducted, and she finds him in the morgue, tortured and mutilated. The death certificate issued by the regime cynically states that the reason for death is heart failure, a standard template applicable for such cases, as she is told.

After the enforced disappearance of her husband, when Eilish talks to his colleague, an intimidated leader of the trade union, the author makes a remark about the latter: "... the man has been trained for the rules of the game but the game has been changed so what now is the man?"

A free social order and its rules are necessary elements of our humanity and our societal coexistence. Their collapse poses a fatal threat to our humanity and our peaceful coexistence. Therefore, humans are inclined not to believe in the unavoidable threat of the collapse of the rules of this game, as this is part of their moral psychology.

¹ Research Institute Gnomon Wise, University of Georgia, e-mail: d.zedelashvili@ug.edu.ge

² Paul Lynch, Prophet Song (2023), <https://thebookerprizes.com/the-booker-library/books/prophet-song>

Regimes that are enemies of freedom weaponize this moral psychology against the people themselves. Through hypocrisy and systemic fraud, they convince the people that the rule of law still shapes the game's framework, whereas the substance from that game is long gone.

The regime is aware that humans are inclined not to believe in unmistakable signs that augur the inevitable collapse of the rules of the societal game. However, the regime guarantees a place for doubting Thomases under the overturned cart.

Totalitarian Aspirations of Illiberal Regime

In a Plebiscitarian Leader Democracy, the continuous and regular ritual of approving the leader through plebiscite feeds futile hopes of further democratization. Illiberal, plebiscitarian regimes may remain more or less stable for decades, although the dynamic of their development more likely gravitates towards despotism and totalitarian control.³

The complete capture of public authority by the regime, overwhelming personalization around the leader's persona, dismantling of institutions, and constant fraudulence through the law require passive, atomized, polarized, and regime-dependent individuals.

The totalitarian nature of an illiberal regime is hostile to the diversity of its people. Pluralism, in any of its manifestations, is its mortal enemy, and the regime fights against all of its forms.

For an illiberal regime, an ideal subject is a person who is emotionally, materially, and totally dependent on the regime. The regime constantly aspires to homogenize the people and make them similar in terms of their dependence on the regime. The logical end of this aspiration is total control over society, complete absorption of people's lifeworld by the regime's arbitrary power.

Therefore, the Georgian Dream's decision to reintroduce the Russian Law and add another Russian constitutional amendment that undermines Georgia's constitutional order even in its formal sense is a natural dynamic of an illiberal regime.

The opposite belief is explained by human moral psychology, although this explanation is doomed to failure from the very beginning. Certainly, inclinations of moral psychology are also encouraged by the

³ Wagrاندl, Ulrich. "A theory of illiberal democracy." In Routledge Handbook of Illiberalism, pp. 94-117. Routledge, 2021.

regime's hypocrisies. It is precisely the regime's fraudulent nature and mode of actions that give rise to the fateful self-confidence that emerged after the tactical withdrawal of the Russian Law in 2023.

This tactical retreat, along with granting EU member state candidate status, helped the regime to underpin a number of false perceptions regarding its nature and future dynamics.

In particular, it shaped a false perception that under the pressure of popular protest, it is possible to change the agenda of a plebiscitary regime at least partially.

It also gave rise to another false perception that European integration for the regime holds higher value and function compared to using it as an instrument to maintain personal power indefinitely. This, in turn, engendered a naïve faith that the regime will conduct the integration process with the EU in a constructive manner.

However, the deepest false perception that feeds the others is turning a blind eye to the level of the regime's dependence on Russia. Through feigned flirtation with the European Union, the regime succeeded in pretending – despite an upward wave of facts pointing to the opposite – that Russian influence on it is not stronger compared to influence from the West and that the regime masterfully maneuvers between major global or regional powers (Russia, European Union, USA, and lately China too) which have equal influence over it.

All these perceptions are false. They have bolstered people's confidence that after the tactical retreat, the regime was not going to attempt to cement the framework of the Russian Laws and establish total control over the population through those laws.

The Illusion of Affecting Political Agenda Through Protests

In March 2023, due to public protests, the regime opted for a tactical retreat. They voted down the Russian Law at the second reading and removed it from the agenda. The regime reluctantly pledged that they would not revisit the issue. However, given its deceitful nature, the opposite behavior was immediately expected.

Unfortunately, several factors hindered the recognition of this. Firstly, the regime's response to the protests and its retreat created the illusion that despite institutional accountability crumbling, the democratic mechanism was still available to the public in a broader sense of protest accountability.

Regrettably, the public failed to learn from the regime's previous tactical retreats, such as the fraudulent promise to hold the 2020 elections in a fully proportional manner without an electoral threshold.

A tactical retreat to neutralize pressure from protests does not imply that the regime is subject to protest-driven democratic accountability or relinquishes a central instrument to maintain its power – monopoly over the political agenda.

If, as a result of protests, the regime allows the opening of a channel to determine the political agenda, even in such a non-institutional way, and allows the possibility to democratically determine the political agenda, it would have to reject its own nature and declare self-dissolution.

In a Plebiscitarian Leader Democracy, the regime sets the political agenda, and for the masses participating in plebiscites, referred to as elections, there is only one issue on the agenda: approving the Caudillo. The latter will oversee and guide politics in its fundamental understanding.

Bargaining on Fundamental Issues of Constitutional Importance: Russia's Client European Regimes and European Union

Following the regime's attainment of candidate status for Georgia in December 2023, expectations of further escalation from the regime appeared to diminish. However, the Georgian Dream achieved its goal at the expense of a tactical retreat regarding the Russian Law, temporary mitigation of strong anti-Western propaganda and partial release of political prisoners, without implementing the important reforms required by the European Union.

Undoubtedly, most observers anticipated the regime to activate its electoral manipulation machinery, turning the 2024 elections into another plebiscite for the approval of the Caudillo. However, not everyone believed that the regime would once again exploit European integration as a means of indefinitely retaining power and provoke another crisis in relations with the European Union.

Nevertheless, by initiating the Russian Laws, the regime opted for escalation and crisis. Observers of Bidzina Ivanishvili's regime, accustomed to providing instrumental assessments of the regime's behavior and explaining its actions within the context of maintaining power, were seemingly perplexed by this decision.

However, if we examine not only Ivanishvili's regime but also the paradigm employed by Hungary and Serbia – allies of Ivanishvili's regime and clients of Russia – we will observe that escalation and crisis with the EU actually benefit those regimes.

Viktor Orbán, who has led Hungary's illiberal regime since 2010, is a master of this strategy. For years, Orbán has managed to overcome crises resulting from Hungary's democratic backsliding through the strategy of escalation.

The rules of the game are as follows: the regime engages in maximum escalation by infringing on democracy and fundamental constitutional values, sparking a crisis with the European Union's institutions. Subsequently, EU institutions initiate dialogue. During the dialogue process, the regime typically "compromises," although ultimately it is the one that benefits.⁴

The regime achieves two objectives through the crisis: it increases its leverage through maximum escalation and, even after significant compromise, it does not relinquish vital issues for the regime's survival. This forces EU institutions to engage in negotiations and compromise on the EU's constitutionally fundamental values (democracy, rule of law, protection of human rights), which should not be subject to ongoing political compromises and bargaining.

This is precipitated by the EU's internal structural weaknesses, which illiberal regimes are aware of and masterfully exploit. Orbán's regime, for example, handled its continuous crisis with the EU over the Rule of Law and migration in a similar manner.

Alexandar Vučić's regime in Serbia is more comparable to Georgia's, as Serbia is not yet an EU member state. Since Vučić came into power in 2013, Serbia initiated accession negotiations with the EU, but progress has been minimal over more than a decade, resulting in negotiations being at a deadlock.⁵ Vučić's regime has even threatened additional escalation against Kosovo and has shown no urgency in meeting conditions necessary for the restoration of negotiations.

The European Union, interested in avoiding conflict in the Balkans, seeks to find a compromise with Vučić. As a result, Vučić's regime faces less pressure regarding manipulated elections, which the opposition

⁴ Kochenov, Dimitry, and Petra Bárd. "Rule of law crisis in the member states of the EU: The pitfalls of overemphasizing enforcement." (2018). Renáta, Uitz. "The perils of defending the rule of law through dialogue." *European Constitutional Law Review* 15, no. 1 (2019): 1-16.

⁵ Statement by President von der Leyen at the joint press conference with Serbian President Vučić, 31 October 2023, https://neighbourhood-enlargement.ec.europa.eu/news/statement-president-von-der-leyen-joint-press-conference-serbian-president-vucic-2023-10-31_en

claims to be illegitimate, allowing him to maintain control over the government⁶ for another electoral cycle. The strategy is clear – escalation of the crisis with the European Union yields results: although the integration process is harmed, the regime ensures its self-survival, achieving its most important goal.

The same pattern of actions regarding relations with the European Union is also characteristic of the Georgian Dream regime. Through a cycle of escalation and compromise, Ivanishvili managed to navigate through crises such as manipulated elections in 2020, the Charles Michel mediation process, the scrapping of Charles Michel's accord, the crisis of political prisoners, and the fallout from failing to obtain candidate status simultaneously with Ukraine and Moldova, achieving it after 1.5 years.

Throughout all these crises, Ivanishvili's regime engaged in maximum escalation with the European Union. Within this framework, it participated in dialogues with EU institutions, agreed on compromises, but never compromised on issues vital for the regime's survival.

Currently, as the European Union demands substantial reforms to continue integration, implementing these reforms may risk the collapse of the regime and escalate tensions with the EU. This makes the Russian Laws, once again, a useful instrument for Ivanishvili.

Besides its direct and essential instrumental function within the country to solidify the regime's power by creating mechanisms for total control over the public, the Russian Law may also help alleviate external pressure.

Specifically, the regime may use it to negotiate with the European Union, either to remove important issues from the agenda or to change priorities, such as systemic judicial reform and vetting of the judicial elite. However, it should not be assumed that the regime will fully surrender on the framework of the Russian Laws. It will strive to protect, preserve, and implement their essential elements.

In this regard, the successful experience of the Georgian Dream and its friendly regimes further emboldens Ivanishvili – now holding a formal position – and his subordinates to provoke a full-scale crisis with the European Union using the Russian Laws regarding central constitutional values.

Obviously, the regime has calculated the potential for a stringent and uncompromising response from EU institutions, though they view such a development as less likely. While such behavior from the

⁶ Frauke Seebass, Serbia Has Crossed the EU's Rubicon; Germany and Its Allies Must Respond, German Council on Foreign Relations, Feb 20, 2024, <https://dgap.org/en/research/publications/serbia-has-crossed-eus-rubicon-germany-and-its-allies-must-respond>

European Union is theoretically possible, for the regime, it is less expected and therefore deemed worth the risk.

Under the Kremlin's Shadow: Assymetrical External Constraints of the Georgian Dream's Regime

Another misconception regarding the Georgian Dream is the perception of the European Union and Western countries' constraining power over the regime as excessively strong. Ivanishvili himself ascended to power through elections, partially due to Georgia's strong dependence on Western countries and the expectation that non-democratic behavior would not be tolerated.

During the initial years of Ivanishvili's tenure, the foreign policy of his regime was often seen as attempting to balance between the West and Russia. However, the regime gradually shifted its maneuvering trajectory to systematically dismantle Western influence, both in domestic and foreign policy. Consequently, while at the outset of Ivanishvili's rule, external constraints on Georgia's political regime were asymmetrically in favor of the West, after 12 years in power, this asymmetry has clearly tilted in favor of Russia.

The West possesses potent tools to influence Georgia's regime, yet the regime's dependence on Russia far surpasses the influence of Western countries and institutions. This factor constitutes another prominent element in the essential determinants of the Georgian Dream regime dynamics, leading to the inevitable initiation and adoption of the Russian Laws in the regime's current trajectory.

Therefore, halting this trajectory and steering Georgia towards an irreversible path of European integration is only possible by dismantling the existing political regime and effecting its substantive transformation into a constitutional democracy.