

Vetting of Judges and Its Propaganda Caricature

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Introduction

A new image of the enemy has emerged in the propaganda arsenal of the Georgian Dream. In Georgian, "vetting" typically refers to the process of checking a person's suitability for a position. However, for propaganda purposes—aiming to tear society apart as much as possible—using a foreign word is deemed much more advantageous.

Prior to the European Union's request for the introduction of special mechanisms to check the integrity of high-ranking officials in the Georgian judiciary,² the issue of court personnel reform had never extended beyond discussions within civil society and remained well outside the agenda of public policy. One of the earliest contributions to these debates was Gnomon Wise's policy paper, which presents the concept of reforming judiciary personnel based on academic studies.³

Although internal pressure to address the steps expected by the European Commission from Georgia, alongside the granting of EU membership candidate status, is minimal, the Georgian Dream is engaged in a proactive campaign against some of the EU Commission's demands.

The primary target of the regime is the requirement to vet the integrity of the court elite.⁴ The Georgian Dream is justified in viewing this reform as something that poses risks to its control over the judiciary, thereby threatening the stability of the regime. Hence, the Georgian Dream's proactive campaign—aiming to create a caricature of the vetting mechanism and thus discredit it—is entirely logical.

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² 2023 Communication on EU Enlargement Policy (extract about Georgia), https://www.eeas.europa.eu/delegations/georgia/2023-communication-eu-enlargement-policy-extract-about-georgia_en

³ Vetting of the Judiciary in Theoretical and Comparative Perspective – Recommendations for Georgia. Gnomon Wise, 2022,

<https://gnomonwise.org/public/storage/publications/February2022/IXR7sfcuUBbTvqftn5gd.pdf>

⁴ Irakli Kobakhidze – The aim of vetting is clear – such processes are often used to exercise political control over judiciary – this absolutely unacceptable. 23.02.2024, <https://1tv.ge/news/irakli-kobakhidze-veitingis-mizani-natelia-aseti-procesebi-khshirad-gamoiyeneba-rata-gankhorcieldes-politikuri-kontroli-sasamartlo-sistemaze-es-absoluturad-miughebelia/>

Shalva Papuashvili – Our answer with respect to vetting is clear – nobody in Georgia will implement reforms from Adeishvili and Tsotsoria. 11.03.2024, <https://1tv.ge/news/shalva-papuashvili-veitingtan-dakavshirebit-chveni-pasukhi-mkafioa-adeishvilisa-da-woworias-reformebs-saqartveloshi-aravin-gaatarebs/>

In this way, the regime seeks to establish a public pretext to justify its refusal to implement mechanisms for vetting the integrity of the judicial elite in the future.

The caricature of the vetting mechanism, produced by the Georgian Dream's propaganda, rests on two essentially incompatible and contradictory claims. These claims can only be simultaneously true if one adheres to the framework narrative of the regime's anti-Western propaganda, which posits the existence of a "Global War Party" aiming to infringe upon Georgia's sovereignty and drag it into war.

The Georgian Dream asserts that the objective of vetting is to assist its domestic political opponents in gaining control over the judiciary. Simultaneously, they criticize and denounce as an infringement of sovereignty⁵ the European Commission's demand to give a leading role to international experts in the vetting process. This demand is aimed at preventing sabotage and hijacking of the process by domestic political actors. Therefore, the regime's propaganda seeks to portray the European Commission, the international experts responsible for vetting, and the Georgian Dream's domestic political opponents as part of the same conspiracy. The anti-vetting campaign is deeply intertwined with a wider network of propaganda, although it is entirely possible to separate and expose it.

What are EU Commission's Demands vis-à-vis Judges' Elite and Why?

The European Commission is demanding that Georgia establishes a special mechanism to check the integrity of high-ranking officials within the judiciary, including members of the High Council of Justice, Supreme Court judges, and chief justices at all levels.

What is the basis for the demand to conduct personnel reforms within the judicial leadership as a necessary precondition for Georgia's further integration into the EU?

For Georgia to become a member of the European Union, its judicial institutions must align closely with the legal systems of other EU member states in terms of implementing central constitutional values, particularly regarding the rule of law. Therefore, having an independent and impartial judiciary system is a critical condition.

⁵ Rati Ionatamishvili – Vetting means occupation of the judiciary which threatens to the country's sovereignty. 23.02.2024, <https://1tv.ge/news/rati-ionatamishvili-vetingi-nishnavs-martlmsajulebis-okupacias-rac-qveynis-suverenitetistvis-safrtkhis-shemcvelia/>

The European Commission, when providing recommendations that must be considered on the path to membership, relies on accessible, reliable, and reputable assessments of Georgia's judiciary. The Commission draws upon not only the information collected and analyzed by EU institutions, but also information and conclusions from other EU member states, as well as from other European, international, and non-governmental organizations.

Within these sources, one can find assessments indicating that Georgia has a consistently politicized judiciary,⁶ and politicized criminal prosecution of political opponents and critical media remains an ongoing issue.⁷ Furthermore, it is recognized that the High Council of Justice suffers from a lack of public trust.⁸ Additionally, the erosion of trust in judicial institutions is directly linked to the actions of incumbent or former members of the court elite and their involvement in high-profile corruption. This involvement has been cited as a reason for imposing personal sanctions against them.⁹

Based on assessments from European institutions, the majority of Georgia's Supreme Court's current judges were appointed between 2019 and 2021 through procedures that substantially diverged from European standards.¹⁰ Despite calls from the EU in 2021 to halt the appointment process until it was brought into alignment with European standards, Supreme Court judges were still appointed.¹¹

Therefore, it is evident that the European Commission's recommendation is founded on conclusions drawn by authoritative entities regarding the state of Georgia's judiciary, relying on openly accessible facts. While the Georgian Dream vehemently disagrees with these facts and the assessments derived from them, beyond employing propaganda strategies, the regime is unable to substantiate its own positions.

⁶ Nations in Transit 2020: Dropping the Democratic Façade, Freedom House.

<https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>

⁷ AMNESTY INTERNATIONAL REPORT 2022/23, Georgia, <https://www.amnesty.org/en/location/europe-and-central-asia/georgia/report-georgia/>

⁸ CDL-AD(2023)033-e Georgia - Follow-up opinion on previous opinions concerning the Organic Law on Common Courts, adopted by the Venice Commission at its 136th Plenary Session (Venice, 6-7 October 2023) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)033-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)033-e)

⁹ Public Designations of Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia, and Valerian Tsertsvadze, Due to Involvement in Significant Corruption, PRESS STATEMENT, ANTONY J. BLINKEN, SECRETARY OF STATE, APRIL 5, 2023, <https://www.state.gov/public-designations-of-mikheil-chinchaladze-levan-murusidze-irakli-shengelia-and-valerian-tsertsvadze-due-to-involvement-in-significant-corruption/>

¹⁰ Venice Commission's follow up report of October 2023.

Final report on the Nomination and Appointment of Supreme Court Judges in Georgia, Organization for Security and Co-operation in Europe, August 23, 2021, <https://www.osce.org/files/f/documents/4/b/496261.pdf>

¹¹ Georgia: Statement by the Spokesperson on the appointment of Supreme Court judges, 02.12.2021, https://www.eeas.europa.eu/eeas/georgia-statement-spokesperson-appointment-supreme-court-judges_en

Otherwise, the Georgian Dream would have been able to persuade the European Commission that its assessment of the state of the Georgian judiciary was correct.

The instrument proposed by the European Commission adequately addresses the problems that are clearly and visibly present within the Georgian judiciary. Vetting represents a tailored approach to rectifying the flaws in judicial institutions that stem from the lack of integrity among high-level judicial officials.

The European Commission's demand does not address other fundamental issues within the Georgian judiciary, such as the accountability of individual judges to court clans, or the misuse of institutional arrangements and accountability mechanisms by these clans to consolidate power. Currently, the European Commission is not insisting on vetting all judges, and its recommendations regarding institutional reform are quite general.

One specific requirement that the European Commission has for the special vetting mechanism is the substantial involvement of international experts in the vetting process. As mentioned earlier, the European Commission proposes this measure to safeguard the process from domestic political influences.

European institutions are well aware that the lack of integrity among judicial clan members serves as both the basis and symptom of their political subservience. Moreover, it is apparent that the deficit in political power democratization and accountability heightens the risks of the vetting process being hijacked and exploited. Entrusting decisive power to international experts can mitigate this risk, and relevant successful international experiences support this notion.¹²

Judicial Vetting's False Conflict with Sovereignty, Constitutional Order and Human Rights

The notion of a conflict between vetting the integrity of the judicial elite with decisive participation of international experts and sovereignty is a false contradiction often utilized for propaganda purposes. According to international best practices outlined in our policy document, special institutions tasked with vetting are established through constitutional amendments, and the legitimacy of international participation is further bolstered by international treaties signed with relevant organizations (such as the European Union), subject to ratification by the legislature.¹³

¹² See "Vetting of the Judiciary" Gnomon Wise, pp. 37-52.

¹³ *Ibid.* pp. 129-150.

By legitimizing the special mechanism for vetting judges in this manner, any formal conflict with sovereignty and the constitution is effectively avoided. Furthermore, the aim of vetting is to align the judicial branch with constitutional values, and vetting for suitability for the position is a proportional means to achieve this objective. Therefore, there is no inherent conflict with the constitutional order, despite the false assertions propagated by the regime.¹⁴

The Georgian Dream's propaganda also disseminates false factual claims regarding EU membership candidate countries like Albania, Ukraine, and Moldova, which have implemented vetting processes for judges as part of their European integration efforts. The regime contends that vetting has led to a decline in the quality of judicial systems in these countries and that they lag behind Georgia's judicial system in terms of quality. However, the falsity of these claims is plainly contradicted by the European Commission's reports on the preparedness for EU membership of both Georgia and these countries.¹⁵ Assessments of the state of judicial institutions and preparedness for EU membership have ranked higher for these countries than for Georgia.

As outlined in our policy document, the best international practice entails vetting judges through a court institution that safeguards the procedural and substantive rights of the judges undergoing vetting.¹⁶

Clearly, if the Georgian Dream is willing, there are no obstacles preventing them from considering this knowledge and experience to establish vetting institutions that fully adhere to constitutional and international standards. Our policy paper offers a clear argument for how this is entirely achievable. The recommendation from the European Union is also predicated on this assumption.

¹⁴ Irakli Kobakhidze – As a lawyer, I find “vetting” categorically unacceptable as it contradicts constitutional and legal principles. 12.03.2024, <https://1tv.ge/news/irakli-kobakhidze-piradad-chemtvis-rogorc-iurististvis-kategoriulad-miughebelia-vetingi-romelic-konstituciur-samartlebriv-principebs-ewinaaghmdegeba/>

¹⁵ 2023 Communication on EU Enlargement policy, Georgia 2023 Report, Brussels, 8.11.2023 SWD(2023) 697 final, https://neighbourhood-enlargement.ec.europa.eu/document/download/388e01b7-e283-4bc9-9d0a-5600ea49eda9_en?filename=SWD_2023_697%20Georgia%20report.pdf

2023 Communication on EU Enlargement policy, Republic of Moldova 2023 Report, Brussels, 8.11.2023 SWD(2023) 698 final, https://neighbourhood-enlargement.ec.europa.eu/document/download/d8ef3ca9-2191-46e7-b9b8-946363f6db91_en?filename=SWD_2023_698%20Moldova%20report.pdf

2023 Communication on EU Enlargement policy, Ukraine 2023 Report, Brussels, 8.11.2023 SWD(2023) 699 final, https://neighbourhood-enlargement.ec.europa.eu/document/download/bb61ea6d-dda6-4117-9347-a7191ecef3f_en?filename=SWD_2023_699%20Ukraine%20report.pdf

2023 Communication on EU Enlargement policy, Albania, 2023 Report, Brussels, 8.11.2023 SWD(2023) 690 final, https://neighbourhood-enlargement.ec.europa.eu/document/download/ea0a4b05-683f-4b9c-b7ff-4615a5fffd0b_en?filename=SWD_2023_690%20Albania%20report.pdf

¹⁶ „Vetting of the Judiciary” Gnomon Wise, pp. 58-68.

Another crucial issue is the necessity of a special vetting mechanism. This necessity arises from the fact that institutions responsible for guaranteeing the integrity of judges do not function effectively, partly due to being hijacked and politically subservient. Furthermore, even when the legal framework for combating corruption operates smoothly, it cannot prevent instances of political hijacking of the courts, similar to those in Georgia's context.

A biased court operates on the informal logic of judicial clientelism. According to this scheme, the judicial elite (clan) gains full formal power over the court in exchange for loyalty to their political patrons, while other judges maintain their positions and privileges by remaining loyal to the clan.¹⁷ This informal mechanism, based on the exchange of personal benefits, extends far beyond actions¹⁸ legally defined as corruption, making it much more challenging to expose and prevent.

To fulfill its stated objective, the vetting mechanism demanded by the European Commission must uncover the attitudes of the ruling elite of judges towards their political patrons, which is often based on the exchange of personal benefits. This entails holding the judicial clan accountable to their political sponsors. Merely studying corruption and unexplained wealth will not suffice to expose such informal exchanges.

Without conducting a thorough examination of a judge undergoing vetting, including analyzing their complete history of being incentivized or punished, it will be impossible to ascertain their accountability to political patrons. This accountability, judged by the reasonable suspicion standard of an outside observer, often leads to systemic biases within the judiciary.

Regime Facing the Pandora's Box

Personnel integrity problem in Georgia's courts is much deeper than the limited vetting mechanism, suggested by the European Commission, can potentially solve. In addition, the Georgian Dream, until it has firm hold on power, has wider capabilities to misuse and arbitrarily use any legal instruments. The regime has mastered this art being in power for more than a decade.

¹⁷ See Institutional Reconstruction of the Georgian Judiciary: A Comparative Perspective Gnomon Wise, 2023, pp. 76-96, <https://gnomonwise.org/public/storage/publications/November2023/kCBskmuppMiu4X1M2U6Z.pdf>

¹⁸ Tsereteli, Nino. "Backsliding into Judicial Oligarchy? The Cautionary Tale of Georgia's Failed Judicial Reforms, Informal Judicial Networks and Limited Access to Leadership Positions." *Review of Central and East European Law* 47, no. 2 (2022): 167-201.

Then how can we explain the Georgian Dream's outstanding resistance against the demand of to vet integrity of the judges? The leaders of regime are perhaps aware of the internal logic of vetting, as instrument of judiciary of transitional period. Checking integrity targets status-quo, incompatible with the constitutional values and seeks its transformation. It seeks to transform dilapidation of institutions into building of institution, via replacing unsuitable individuals with those who are suitable.

As little as feigning agreement on even a limited version of this mechanism would be at least indirect acknowledgement of the regime's nature. Such acknowledgement would be able to open Pandora's box without real goal of transformation (that is democratization and consolidation into constitutional democracy) and usher the regime towards irreversible disintegration: "Perestroika" did not bring transformation, but the regime collapsed.

Conclusion

The Georgian Dream's propaganda campaign against vetting the integrity of the judicial elite reveals the regime's true lack of commitment to Georgia's European integration and the necessary systemic transformations, especially within judicial institutions.

By integrating the vetting of judges into the regime's framework anti-Western propaganda narrative, it becomes evident that the regime is willing to sacrifice crucial aspects of Georgia's European integration to bolster its internal political dominance and garner plebiscite support.

It is noteworthy that the campaign against vetting judges is also utilized to discredit EU institutions. The regime orchestrates a parallel propaganda effort, explicitly emphasizing that the EU institutions fail to uphold the principle of the rule of law and accuses them of applying "double standards" against Georgia. To support this narrative, the regime exploits visits by a former Minister of Justice, who was convicted in Georgia, to EU institutions and member states, as part of the delegation from Ukraine's Prosecutor's Office.¹⁹

¹⁹ Prime Minister – The Georgian people want to ensure that European bureaucracy respect fundamental principles – We expect an appropriate response, whether it concerns Adeishvili, Kezerashvili, or any other criminal. 12.03.2024, <https://www.interpressnews.ge/ka/article/790959-premieri-kartvel-xalxs-surs-darcmundes-imashi-rom-evropuli-biurokratia-pativs-scems-pundamentur-principebs-velit-shebabamis-reagirebas-es-exeba-adeishvils-kezerashvils-tu-nebismier-sxva-damnashaves>

Shalva Papuashvili – The European Union should not become an area where Georgian criminals find shelter. I hope, all partners will think about it and extradite criminals to us. 11.03.2024.

By intertwining these two propaganda lines, the regime's message becomes clear: the EU itself does not adhere to the rule of law and hypocritically demands meticulous adherence from Georgia. This underscores the Georgian Dream's lack of genuine commitment to European integration and its willingness to employ any means, including smear campaigns against the EU, to advance its agenda.