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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

OPINION

**ON THE PROVISIONS OF THE LAW ON THE FIGHT AGAINST
CORRUPTION CONCERNING THE ANTI-CORRUPTION BUREAU**

**Adopted by the Venice Commission
at its 137th Plenary Session
(Venice, 15-16 December 2023)**

On the basis of comments by

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I. Introduction

1. By letter of 22 September 2023, the Chairman of the Parliament of Georgia, Mr Shalva Papuashvili, requested an opinion of the Venice Commission on the provisions of the Law on the Fight Against Corruption concerning the Anti-Corruption Bureau ([CDL-REF\(2023\)056](#)).

2. Mr Eirik Holmøyvik, Ms Angelika Nussberger, Mr Tuomas Ojanen and Mr Panayotis Voyatzis acted as rapporteurs for this opinion. On 15 and 16 November 2023, a delegation of the Commission composed of Mr Holmøyvik and Mr Voyatzis, accompanied by Ms Tania van Dijk from the Secretariat of the Venice Commission, held meetings in Tbilisi with representatives of the Parliament (ruling party and opposition), the Heads of the Anti-Corruption Bureau and the Civil Service Bureau, the Deputy Public Defender, the Deputy Auditor General, and representatives of the Administration of the Government of Georgia, as well as representatives of civil society, international organisations and the international community present in Georgia. The Commission is grateful to the Georgian authorities and the Council of Europe office in Georgia for the excellent organisation of this visit.

3. This opinion was prepared in reliance on the English translation of the provisions on the Anti-Corruption Bureau in the Law on the Fight Against Corruption. The translation may not accurately reflect the original version on all points.

4. This opinion was drafted on the basis of comments by the rapporteurs and the results of the visit to Georgia. Following its examination by the Sub-Commission on Democratic Institutions (Venice, 14 December 2023) and an exchange of views with Mr Levan Makhashvili, head of cabinet of the Chairman of the Parliament of Georgia, it was adopted by the Venice Commission at its 137th Plenary Session (Venice, 15-16 December 2023).

II. Background and scope of the Opinion

5. On 3 March 2022, Georgia presented its application for membership of the European Union (EU). The European Commission's Opinion on the application, published on 17 June 2022 and endorsed by the European Council on 23 June, issued a recommendation that Georgia be granted EU candidate status, once 12 priorities will have been addressed.¹ These priorities cover a range of issues, with more specifically priority no. 4 requiring Georgia to "*strengthen the independence of its Anti-Corruption Agency bringing together all key anti-corruption functions, in particular to rigorously address high-level corruption cases (...)*".

6. Amendments to the Law on Conflicts of Interest and Corruption in Public Institutions were thereafter adopted on 30 November 2022 (published on 15 December 2022), which added new provisions relating to the establishment of an Anti-Corruption Bureau and changing the name of the law to the Law on the Fight against Corruption (hereafter: the Law). As is clear from the explanatory note, the new provisions in the Law aim to contribute to "*the institutional strengthening of anti-corruption activities and the fight against corruption, which, in turn, will serve to fulfil one of the priorities defined by the European Commission to grant Georgia the EU membership candidate status*". This refers in turn to abovementioned priority no. 4.

7. On 8 November 2023, the European Commission recommended that the European Council grant Georgia the status of a candidate country on the understanding that a number of steps are taken. At the invitation of the European Council, the Commission's annual enlargement report on Georgia included a detailed assessment of Georgia's fulfilment of the aforementioned 12

¹ European Commission, Commission [Opinion](#) on Georgia's application for membership of the European Union, COM(2022)405 (17 June 2022), p. 17.

priorities.² In relation to priority no. 4, the report notes the adoption of legislation on the Anti-Corruption Bureau and the appointment of its head. It furthermore states that “*Georgia should also review the legislation on the Anti-Corruption Bureau (...) addressing upcoming Venice Commission recommendations*”.³

8. The Venice Commission emphasises that the scope of this opinion covers only the provisions of the Law officially submitted for review. Thus limited, the opinion does not constitute a full and comprehensive review of the Law but focuses on the Anti-Corruption Bureau (hereafter: the ACB). The absence of comments on other provisions of the Law should not be seen as tacit approval of these provisions.

9. It should also be stressed that it is not for the Venice Commission to decide whether the new provisions in the Law meet the criteria set by the EU. However, it is relevant for the Commission to consider the stated aims of the Law when assessing the organisational set-up and powers of the ACB. As such, the opinion will assess whether the Law has institutionally strengthened the anti-corruption activities and the fight against corruption and, by doing so, has provided the ACB with the independence and powers to address high level corruption in an effective manner.

III. Relevant international standards and good practices

10. The Venice Commission has examined the new provisions of the Law in light of international standards on specialised anti-corruption bodies, as well as good practices in this field. Relevant standards and principles on bodies in charge of the prevention, investigation, prosecution and adjudication of corruption offences are:

- The **Council of Europe Criminal Law Convention on Corruption (ETS 173)**,⁴ stipulating in its Article 20 on “Specialised authorities” that: “*Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks*”;
- The **Council of Europe’s Twenty guiding principles for the fight against corruption**,⁵ which invites States “*to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations*” (Principle 3);
- The **United Nations Convention against Corruption (UNCAC)**,⁶ which in Article 6 requires States to ensure, “*the existence of a body or bodies, as appropriate, that prevent*

² European Commission, Georgia 2023 [Report](#) (SWD(2023)697).

³ *Ibid.*, p. 10. More in general as regards the fight against corruption the report (p. 25) states: “In the coming year, Georgia should in particular: *align the legislation on the Anti-corruption Bureau to the ODIHR/Venice Commission recommendations and ensure that the new Bureau, as well as the relevant enforcement agencies, operate independently and effectively, avoiding any politically selective approach; in particular, asset declarations should be audited against the legitimate income and investigations should take place in case of unexplained differences; Georgia should also develop and adopt an anti-corruption strategy and action plan, ensuring it is comprehensively implemented through realistic timelines, adequate funding and monitoring mechanisms*”.

⁴ [CETS No. 173](#), adopted on 4 November 1998; entered into force on 1 July 2002; entered into force for Georgia on 1 May 2008.

⁵ [Resolution \(97\) 24](#), adopted by the Committee of Ministers of the Council of Europe on 9 November 1997.

⁶ [United Nations Convention Against Corruption](#), adopted on 31 October 2003; entered into force on 14 December 2005; acceded by Georgia on 4 November 2008.

*corruption (...)" and that this/these body/ies is/are granted "the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided". Article 36 in turn requires States to ensure, "the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks."*⁷

11. It should be noted that none of the abovementioned Council of Europe and UN instruments requires the implementation of a single entity to cover all anti-corruption functions. States may choose a single-agency approach or allocate responsibility for different functions to several institutions, as long as all relevant aspects of corruption prevention, detection, and prosecution are considered and a comprehensive and consistent approach is followed. Indeed, in Council of Europe member states, a wide variety of specialised anti-corruption agencies exist with different types of mandates and powers. These agencies are usually classified in three broad categories⁸:

- multi-purpose anti-corruption agencies, which combine preventive functions with law-enforcement powers, such as the Corruption Prevention and Combating Bureau (KNAB) in Latvia and the Special Investigative Service (STT) in Lithuania;
- law enforcement type institutions, either in the form of specialised prosecution services, such as the Office for the Suppression of Corruption and Organised Crime (USKOK) in Croatia and the National Anti-Corruption Directorate (DNA) in Romania, or specialised police services, such as the National Anti-Corruption Bureau (NABU) in Ukraine or a combination of both, such as the National Authority for the Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) in Norway;
- corruption prevention institutions, such as the Commission for the Prevention of Corruption (KPK) in Slovenia (noting however that it also has administrative investigative and enforcement functions in relation to reporting obligations, conflicts of interest etc.), the National Anti-Corruption Authority (ANAC) in Italy (which also has a mandate to apply certain administrative sanctions) and the National Agency on Corruption Prevention (NACP) in Ukraine (which also has control of asset and interest declarations, oversight of political party financing, whistleblower protection and resolution of conflicts of interest as part of its mandate).

12. As already indicated in earlier Venice Commission opinions,⁹ key requirements for a proper and effective exercise of its functions by a specialised anti-corruption body, be it a preventive or law enforcement body, as they result from the above instruments, include:

- independence and autonomy (an adequate level of structural and operational autonomy, involving legal and institutional arrangements to prevent political or other influence);

⁷ These standards have in turn led to the elaboration of further guidance documents identifying the basic principles to ensure the independence and effectiveness of specialised anti-corruption bodies, namely [the Jakarta Principles for Anti-Corruption Agencies](#) (2012) which focuses on such issues as the mandate, collaboration, permanence, financial autonomy and resources of the body concerned, as well as the appointment, removal and immunity of the head of such a body, and the [Anti-Corruption Authority Standards](#) of the European Partners Against Corruption (EPAC) (2012), which *inter alia* outlines the need for accountability, integrity, independence and sufficient resources of an anti-corruption body.

⁸ See for the origins of this categorisation: Organisation for Economic Cooperation and Development (OECD), [Specialised Anti-Corruption Institutions: Review of Models](#) (2008), pp. 31-32. See also: Transparency International, [Anti-Corruption Agencies in Europe: typology and case-studies](#) (2020).

⁹ Venice Commission, [CDL-AD\(2014\)041](#), Interim Opinion on the Draft Law on the Special State Prosecutor's Office of Montenegro, para. 18.

- accountability and transparency;
- specialised and trained personnel;
- adequate resources and powers.

12. In addition, an adequate level of inter-agency co-operation and coordination and exchange of information between various bodies involved in the fight against corruption and co-operation with civil society and the private sector are also fundamental for the effective fight against corruption.¹⁰

13. More specifically regarding Georgia, in its earlier Final Opinion on the draft law on de-oligarchisation, the Venice Commission called upon the authorities to reinforce measures to prevent and fight corruption, in line with GRECO recommendations, “*including addressing high-level corruption by, where needed, increasing the capacities and independence of the authorities in charge*”.¹¹ It furthermore took note of the creation of the ACB and that it was tasked with overseeing the implementation of the policy and strategy documents as regards the fight against corruption, coordinating the activities of relevant state bodies and monitoring asset declarations and party financing. The Venice Commission stressed in this respect that it “*is paramount however that its political and functional independence be guaranteed, and that continued support be entrusted to it*”.¹²

IV. Analysis

A. Institutional set-up and powers of the ACB

14. Pursuant to Article 20¹³ of the Law, the ACB’s aim is to facilitate the fight against corruption. To this end, it has been tasked with developing proposals for a general anti-corruption policy (for submission to Parliament), developing a national anti-corruption strategy and action plan (for submission to the government), coordinating the activities of relevant entities to implement these policies/strategy/action plan, developing relevant proposals to avoid, identify and prevent conflicts of interest, overseeing the completion and submission of asset declarations, monitoring the financial activities of political parties, developing appropriate proposals to improve whistleblower protection and raising public awareness (Article 20¹⁵ of the Law).

15. The ACB can thus be categorised as a preventive anti-corruption institution, which – similar to for example the NACP in Ukraine – also has certain powers as regards the control of asset and interest declarations and the financing of political parties. It does not have any investigative powers. In addition to the ACB, there is an Interagency Anti-Corruption Council (Article 20²² of the Law), upon which certain advisory functions have been bestowed. On the side of law enforcement, Georgia has no dedicated body for the investigation and/or prosecution of corruption offences, with competences in this area being divided between the Prosecutor’s Office and the State Security Service.

16. In Georgia, anti-corruption functions are thus divided between the ACB, the Inter-Agency Anti-Corruption Council and law enforcement bodies. It is not for the Venice Commission to advocate in favour of a specific type of anti-corruption institution or a specific institutional set-up. The mandate of the ACB mainly focuses on proposing measures to prevent corruption in society in the long term. While the Venice Commission welcomes a long-term approach to building systems and societal resilience against corruption, it notes that the ACB has no investigative powers and no legal tools to address existing corruption cases, as confirmed by the authorities met by the Venice Commission delegation. If the aim of the Law, as stated in its explanatory

¹⁰ *Ibid.*

¹¹ Venice Commission, [CDL-AD\(2023\)017](#), Georgia - Final Opinion on the draft law on de-oligarchisation, para. 28.

¹² *Ibid.*

report, is to fulfil priority no. 4 of the European Commission in its relevant part by bringing together “all key anti-corruption functions, in particular to rigorously address high-level corruption cases”, the Venice Commission can only note that the Law falls short of its stated aim.

B. Independence and autonomy of the ACB

17. As outlined above, independence with an adequate level of structural and operational autonomy, involving legal and institutional arrangements to prevent political or other influence is considered a fundamental requirement for specialised anti-corruption bodies. The level of independence and of structural and operational autonomy would depend on the type of body. Those in charge of investigating and prosecuting corruption would normally require a higher level of independence than those in charge of preventive and policy coordination functions.¹³ However, specific “preventive” functions, such as the control of asset declarations and the prevention of conflicts of interest involving high-level officials or oversight of the financing of political parties, may require further safeguards for the independence (and thereby the perception of political neutrality) of such a body and entail further requirements for its institutional placement.¹⁴ This is the case for the ACB.

18. Various factors determine the independence of an anti-corruption body: its legal basis, institutional placement, appointment and removal of the director, selection and recruitment of staff, budget and fiscal autonomy, and accountability and transparency.¹⁵ In this respect, the new provisions in the Law contain a number of positive features. Institutionally, the ACB is established as an autonomous institution – even if during the on-site visit it became clear that the ACB is housed with the administration of the government – and Article 20¹² of the Law stipulates that the ACB is a public body which “shall carry out its activities independently”. Furthermore, the ACB has a high degree of financial independence, with Article 20²¹, para. 2 of the Law stipulating that the activities of the ACB require a separate allocation in the state budget of Georgia and that this allocation cannot be reduced from one year to the next without the prior consent of the head of the ACB. Even if it could be made clearer in the Law which entity proposes the annual budget and whether this proposal is submitted to Parliament, the Venice Commission welcomes these safeguards being included in the Law.

19. When it comes to the appointment of the head of the ACB, Article 20¹⁶ of the Law provides that any citizen of Georgia without a criminal record, with higher education in law, at least five years’ work experience in the justice system, with law enforcement bodies or in the area of human rights, and a high professional and moral reputation can be appointed to the position of head of the ACB. As indicated above and in earlier opinions, specialised and trained personnel is a key requirement for a specialised anti-corruption body.¹⁶ Relevant experience is particularly important for the head of the institution, as professional competence reflects the authority of the institution, which enhances its autonomy. In this respect, the Venice Commission considers the minimum requirement of five years’ work experience in the system of justice, law enforcement bodies or human rights quite low. The minimum requirement should reflect the fact that the ACB is intended to be the key anti-corruption institution in the country. The Venice Commission thus recommends that the authorities review in order to increase professional requirements for the position of head of the ACB.

20. The head of the ACB is selected through a public competition by a seven-member competition commission,¹⁷ whose composition is to be approved by the Prime Minister (Article

¹³ OECD (2008), p. 24.

¹⁴ OECD (2008), pp. 25.

¹⁵ OECD (2008), pp. 25-26.

¹⁶ CDL-AD(2014)041, para. 18.

¹⁷ This competition commission comprises a representative of the government of Georgia, chairpersons of two parliamentary committees, the first deputy or deputy chairperson of the Supreme Court, the first deputy or deputy

20¹⁶, paras. 2 and 5 of the Law). The Prime Minister appoints a candidate from among no less than two and not more than five candidates proposed by the competition commission but also has the possibility of a reasoned refusal, after which the competition commission will have to make a new proposal from the existing applications (Article 20¹⁶, para. 9 of the Law). The tenure of the head of the ACB is six years, which can be extended until a new head is appointed (Article 20¹⁶, para. 10 of the Law). While a pre-selection of candidates for the position of head of the ACB is indeed made by a competition commission, with four out of the seven members of this commission representing the political majority or being appointed by this majority, the composition of this commission is not sufficiently pluralistic, considering also that the final choice of a candidate is to be made by the Prime Minister, who additionally has the option of a reasoned refusal and the possibility of prolonging the mandate of the incumbent head by not appointing a new head.

21. Article 20¹⁹ of the Law provides the grounds for early termination of the term of office of the head of the ACB: voluntary resignation, loss of Georgia citizenship, death, a criminal conviction, a legally effective court decision ruling out a proper exercise of his/her powers, failure to perform the duties of the head of the ACB for four consecutive months, holding a position or carrying out activities incompatible with the position of head of the ACB and the consumption of drugs or evading a mandatory drug test.

22. The Venice Commission welcomes that the term of office of the head of the ACB is not renewable. However, it finds that the provisions on the grounds for early termination of his/her tenure would need to be amended. In particular, the wording “*s/he fails to perform the duties of the head of the head of the Anti-Corruption Bureau for four consecutive months (...)*” (Article 20¹⁹, para. 1(f) of the Law) is too wide and is not limited to the usual cases of physical or mental incapacity. The reference “*a court judgment of conviction has entered into force against him/her*” (Article 20¹⁹, para. 1(d) of the Law) appears too strict, as this can also include minor offences which do not necessarily affect the functions of the ACB or the public trust in the office. The wording on holding “*a position or carrying out activities that are incompatible with the position of the head of the ACB*” (Article 20¹⁹, para. 1(9) of the Law) needs to refer to the corresponding article outlining these incompatibilities. The phrase “*consumes drugs or evades taking a mandatory drug test*” (Article 20¹⁹, para. 1(h) of the Law) needs to be more carefully worded to include references to legislation containing the obligation to undergo such a drug test and defining drug consumption.¹⁸ Given that the power to decide early termination of the head of the ACB’s term in office rests with the Prime Minister, a wording that allows for discretion is not compatible with the intended independence of the ACB. The decision on early termination of the term in office can be appealed to a court (Article 20¹⁹, para. 2 of the Law). An appeal will not have a suspensive effect (Article 20¹⁹, para. 4 of the Law), therefore even if the court may subsequently find that the grounds for early termination were not met, the independence of the ACB will still have been compromised. The Venice Commission would emphasise in this context that independence is not a personal prerogative of the office holders, but a safeguard to ensure the independence of the institution.

23. Taken together, the above provisions provide for an inordinately strong influence of the Prime Minister over the selection of the head of the ACB and the termination of his/her term in office, casting a shadow over the independence of the ACB and perceptions of its political neutrality as well as its ability to rigorously address high level corruption. This is all the more damaging given the ACB’s mandate in the field of monitoring of asset declarations and the financing of political parties.

Prosecutor General, the Public Defender or his/her representative and a representative of a non-commercial legal person with respective knowledge and experience, selected by the Public Defender of Georgia through an open competition (Article 20¹⁶, para. 5 of the Law).

¹⁸ See in a similar vein, Venice Commission, [CDL-AD\(2011\)043](#), Georgia – Joint Opinion on the draft Election Code of Georgia, para. 28.

24. The Venice Commission furthermore notes that the Law does not provide for functional immunity of the head of the ACB or his/her deputies. The Venice Commission considers that functional immunity of office holders provides further safeguards for the independence of an institution, and it therefore recommends that such functional immunity (no prosecution in respect of activities and words, spoken or written, when carried out in the official capacity of the ACB) of the head of the ACB and his/her deputies be considered.

25. It is clear that the independence of specialised anti-corruption bodies cannot be absolute, as also outlined in the explanatory report to the Council of Europe's Criminal Law Convention on Corruption.¹⁹ Anti-corruption bodies are required to be part of a system of checks and balances. The Venice Commission notes that the ACB is accountable to Parliament and the Inter-Agency Anti-Corruption Council (Article 20¹² of the Law) (see for the latter further below), which makes the fact that the appointment and early termination of the tenure of its head is decided on by the Prime Minister even more questionable. There is effectively a triple accountability, which is unfortunate and should be reconsidered. The Venice Commission has previously preferred that the appointment and dismissal of heads of anti-corruption bodies be made by Parliament, rather than the government, as increased involvement of Parliament furthers the democratic principle.²⁰ In this respect, in earlier opinions the Venice Commission has also noted that the need to ensure independence and neutrality of anti-corruption bodies may require cross-party support of appointments of key officeholders, which may be ensured by a qualified majority, as well as a suitable anti-deadlock mechanism.²¹ It is therefore recommended that the Law be amended to oblige the head of the ACB to be appointed by a qualified majority in Parliament, coupled with a suitable anti-deadlock mechanism (requiring more than an ordinary majority), or an appropriate alternative, reflecting broad, cross-party agreement in Parliament (for example, in the form of a double majority, entailing a majority among members of parliament both from the majority and the opposition), and that any decision on early termination of his/her term in office be made by the Parliament, not the Prime Minister. As wide a consensus as possible, is all the more necessary for institutions requiring strong public trust and which, given the nature of their functions, such as oversight over the financing of political parties, need to be perceived as politically neutral.²²

C. Comments on specific provisions

1. Mandatory drug tests (new Article 13⁶)

26. Article 13⁶ requires all officials defined in Article 2(a-e²) of the Law²³ to undergo a drug test within a time limit defined by the head of the ACB and present the latter with a certificate within three days of taking the drug test, which will then be made public on the website of the ACB.

¹⁹ [Explanatory Report](#) to the Criminal Law Convention on Corruption (CETS 173) (27 January 1999), para. 99

²⁰ Venice Commission, [CDL-AD\(2023\)004](#), Ukraine – Amicus curiae brief on certain questions related to the procedure for appointing to office and dismissing the director of the National Anti-Corruption Bureau and the Director of the State Bureau of Investigation, para. 57.

²¹ *Ibid.* See also: Venice Commission, [CDL-AD\(2021\)024](#), Bosnia and Herzegovina – Opinion on the draft law on the prevention of conflict of interest in the institutions of Bosnia and Herzegovina, para. 67; Venice Commission, [CDL-AD\(2010\)030](#), Bulgaria – Final Opinion on the third revised draft act on forfeiture in favour of the state assets acquired through illegal activity of Bulgaria, para. 15.

²² Inspiration can also be drawn from specific other countries, for example Ukraine, where the head of the NACP is appointed (by the Cabinet of Ministers) on the basis of the proposal of a six-member competition commission, following an open competition. Three members in the competition commission are appointed on the basis of proposals from donors who have provided international technical assistance to Ukraine in the field of preventing and combating corruption. These three members will have a casting vote in the decisions taken by the competition commission.

²³ Article 2(a-e²) of the Law refers to the President, members of parliament, members of the government, his/her first deputy and deputy, members of the Supreme Representative Bodies, chairpersons of the government and heads of executive agencies (and their deputies) of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara.

Failure to undergo the drug test or to submit the certificate is subject to a fine of 500 GEL (approximately €170) imposed by the head of the ACB by administrative decree (Article 20.1³ of the Law). Evading a mandatory drug test (or, in general, consuming drugs) is also one of grounds for the termination of the powers of the head of the ACB (Article 20¹⁹1(h) of the Law), even if – as already noted above - there does not seem to exist a corresponding requirement in the Law for the head of the ACB to take a drug test.

27. An obligatory drug test constitutes an interference with a person's right to respect for his/her private life under Article 8 ECHR, in particular the right to the protection of sensitive personal information. Such an interference can be justified if it has been prescribed in accordance with the law, pursues a legitimate aim²⁴ and the means chosen are proportionate to the end pursued so that they can be considered necessary in a democratic society. Indeed, on at least two occasions, the European Court of Human Rights has ruled that the use of drug tests at the workplace constituted a justified interference with the rights protected under Article 8 ECHR.²⁵

28. While in Georgia the mandatory drug test is indeed prescribed by the Law (for the officials listed in Article 2(a-e²) of the Law, but apparently not the head of the ACB him/herself), questions can be raised about the clarity and foreseeability of this legal provision. Indeed, the Law and its explanatory report remain silent on the purpose and justification of this mandatory drug test, raising in particular questions regarding the relevance of a drug test for anti-corruption and the work of the ACB. More in particular, the Law does not specify the legitimate aim pursued and the conditions and procedure under which such a test may be requested and carried out. There may indeed be compelling and legitimate reasons for requiring a mandatory drug test, taking into account the special features related to the tasks of the relevant officials, but this would need to be clarified.

29. Furthermore, as to whether it can be considered necessary in a democratic society, while noting that the authorities have a certain margin of appreciation in this domain, concerns arise as to the fact that the results of this drug test are made public²⁶ (Article 13⁶, para. 2). Therefore, the Venice Commission recommends that the provisions on mandatory drug testing of officials be either further clarified or removed from the Law, that the requirement for the test results to be published be deleted from the Law and that additionally a clear basis be provided for the possible testing of the head of the ACB him/herself, provided there is a clear purpose and justification for such a test.

2. Asset and interest declarations (new Articles 14, 18, 18¹ and 19)

30. As of 1 September 2023, the ACB is also responsible for verifying declarations of asset and interests made by public officials through the Unified Declaration Electronic System and ensuring the public availability of the content of these declarations, taking over this responsibility from the Civil Service Bureau. The new Articles 14, 18 and 18¹ regulate the submission of asset declarations, the selection of asset declarations to be verified by the ACB and the type of violations of the declaration duties and the administrative sanctions, which can be imposed for this, in a great amount of detail. Taken together, these provisions give the impression of formal requirements rather than a procedure which would help reveal illicit enrichment or identify

²⁴ As provided for in Article 8(2) ECHR: “in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”.

²⁵ ECtHR, Madsen v Denmark, Application no. 58341/00, 7 November 2002; Wretlund v. Sweden, Application no. 46210/99, 9 March 2004.

²⁶ In this context, it is noted that in the abovementioned Wretlund v. Sweden judgment, when the Court rejected the application against mandatory drug testing, it considered explicitly – as regards the proportionality of the interference – that the test had been done in private and disclosed only to persons involved in the company's drug policy programme.

potential conflicts of interest in the work of the officials concerned. Indeed, interlocutors met by the Venice Commission delegation outlined that the system was not designed to expose potential corruption, focusing instead on the completeness of the declarations and the formal accuracy of data, primarily as the agency responsible for verifying the declarations (previously the Civil Service Bureau, now the ACB) does not have the power to carry out an effective verification. The Venice Commission delegation was told that it was very rare for a case to be forwarded to the Prosecutor's Office and that administrative sanctions applied for incompleteness or incorrectness of data mostly concerned small infringements.

31. Similar to the Civil Service Bureau previously, the ACB will have the authority to cross-check data from the declarations with various electronic databases administered by public authorities,²⁷ but will have no access to information held by financial institutions and other non-public legal entities, unless provided by the public official him/herself, and will have no instruments to verify whether for example the value of assets listed in the declaration is correct. The verification is effectively limited to information provided by the public official in his/her declaration form or through additional explanations provided by officials upon request of the ACB, which calls the efficacy of the requirement to submit asset and interest declarations into question. The Venice Commission recommends that measures be taken to ensure that the ACB carries out substantive and effective verifications of asset and interest declarations, assessing them in light of officials' legal income in order to further inspect cases of unexplained wealth and referring these to the Prosecutor's Office for further investigation as appropriate.

32. Moreover, the Law does not require the ACB to take a risk-based approach, by prioritising the verification of declarations of specific types of officials which may carry a high risk of corruption. Article 18¹, para. 2 instead provides that asset and interest declarations are to be verified in accordance with a random selection or a reasoned application by third persons,²⁸ with paragraph 3 additionally envisaging the setting up of a special commission²⁹ which can select at the beginning of the year up to five percent of the total number of officials whose declarations are to be verified on the basis of "*special factors*" (i.e. "*particular risk of corruption, high public interest and violations revealed as a result of the monitoring*"). However, since 2017, this special commission has only met once. A recently launched competition for this commission reportedly failed to get any candidates. While it can be welcomed that a part of the declarations to be verified are randomly selected, the Venice Commission recommends that in addition a risk-based approach is taken in selecting other declarations to be verified.

33. The ACB is, according to Article 20¹⁵, para. 1(f) of the Law, responsible for publishing the asset and interest declarations, with additionally Article 19 providing that any person may request to receive a copy of a completed official's asset declaration without obstruction.³⁰ Such transparency may help detect cases of unexplained wealth, but for that it would be easier if the data was machine readable, which currently it is not. It is clear that making declarations public has both opponents and critics, as such transparency conflicts with the privacy and data protection rights of the declarants and related persons. In this context, the Venice Commission recalls that in respect of public officials, the ECtHR has found the interference with the right to privacy as a result of these asset declarations justified, considering that running for public office was voluntary and the financial situation of persons holding such office one of legitimate public

²⁷ Pursuant to Government Decree no. 81 of 14 February 2017 this includes the register of immovable property, company registers, the register of notary services, the vehicle and weapon register, the tax payment database and the public procurement database.

²⁸ It would appear that the ACB is not obliged to accommodate such reasoned applications. Furthermore, anonymous applications cannot trigger a verification.

²⁹ According to Article 7 of government decree No. 81 of 14 February 2017, this commission comprises five members, out of which three represent civil society representatives and two are academics.

³⁰ Information on the personal identification number, address and phone number, information related to the period before the first appointment and/or the period after dismissal and the "secret field" of the declaration is not made public, nor are the declarations of persons who have a security classification (Article 19, paragraph 1 of the Law).

interest.³¹ However, in light of the Court's case-law,³² the Venice Commission recommends that precise and explicit references to the relevant provisions in data protection legislation be included in the Law.

3. *The Inter-Agency Anti-Corruption Council (new Article 20²²)*

34. Article 20²² establishes an Inter-Agency Anti-Corruption Council that shall “*facilitate the implementation of a unified state policy in the area of the fight against corruption*”, for which the Inter-Agency Anti-Corruption Council can demand periodic reports from the ACB, propose and issue recommendations on a general anti-corruption policy, strategy and action plan, as well as give recommendations to the ACB on how to improve its activities. As indicated before, Article 20¹² provides that the ACB is accountable to both Parliament and the Inter-Agency Anti-Corruption Council.

35. As already indicated in the part on the independence of the ACB above, the subordination and accountability of the ACB to the Inter-Agency Anti-Corruption Council implied by both Articles 20¹² and 20²² is not consistent with the purported independence of the ACB, in particular considering that the composition of the Inter-Agency Anti-Corruption Council is determined by the government (Article 20²², para. 3) and noting that the ACB is itself required to “*coordinate the activities of relevant bodies, organisations and officials*” to implement anti-corruption policies and supervise this implementation (Article 20¹⁵, para 1(c) and (d)).

36. According to the interlocutors whom the Venice Commission delegation met, the Inter-Agency Anti-Corruption Council is not intended to have a supervisory role, but rather to serve as a platform for exchange between the ACB, government agencies and civil society organisations. However, a purely deliberative function of the Inter-Agency Anti-Corruption Council is hard to square with the above-mentioned wording of the Law, which means that the actual and intended role of the body is not defined in the Law with sufficient clarity and precision. Given the law's emphasis on the independence of the ACB, it would be better if the ACB itself would set up an advisory council to assist in its activities and to coordinate the anti-corruption activities among government bodies and civil society organisations.³³

37. Furthermore, there is a certain overlap of functions between the ACB and the Inter-Agency Anti-Corruption Council. Both are to develop proposals for a general anti-corruption policy and are either to develop an anti-corruption strategy and action plan (in the case of the ACB) or develop proposals and recommendations thereto (in case of the Inter-Agency Corruption Council) (Articles 20¹⁵, para. 1(b) and (c) and 20²², para. 2(b) respectively). Such overlapping functions should be avoided.

38. In short, it is hard to see the usefulness of the Inter-Agency Anti-Corruption Council in its current form and as a separate anti-corruption body. Indeed, the interlocutors who met with the delegation from the Venice Commission noted that the Inter-Agency Anti-Corruption Council has yet to meet. If an advisory body to the ACB is required, then it should be for the ACB itself to set up that body and select its members. If the Anti-Corruption Council is kept as a separate body with functions distinct from the ACB, care should be taken to avoid overlapping functions.

³¹ ECtHR, *Wypych v. Poland* (Dec.), no. 2428/05, 25 October 2005. The Court further detailed “*The general public has a legitimate interest in ascertaining that local politics are transparent and Internet access to the declarations makes access to such information effective and easy. Without such access, the obligation would have no practical importance or genuine incidence on the degree to which the public is informed about the political process.*”

³² See, for example, ECtHR, *L.B. v. Hungary*, no. 3635/16, 9 March 2023, para. 128.

³³ For this purpose, inspiration can for example be drawn from the Principles relating to the Status of National Institutions ([The Paris Principles](#)), adopted by General Assembly resolution 48/134 of 20 December 1993, which recommends that the institution itself set up working groups and maintain consultation with other bodies.

V. Conclusion

39. On 22 September 2023, Mr Shalva Papuashvili, Chairman of the Parliament of Georgia, requested an opinion of the Venice Commission on the provisions of the Law on the Fight against Corruption relating to the ACB. As such the opinion is limited to the provisions of the Law on the Fight against Corruption which were added to the Law in November 2022. Therefore, even if the ACB has for example taken over the competences of the State Audit Office to oversee the financial activities of political parties, given that the Venice Commission has not been asked for an opinion on the Law on Political Associations of Citizens, it has not further assessed this competence, nor has it assessed other parts of the Law on the Fight against Corruption, which have not undergone any substantive changes, for example as regards conflicts of interest and whistleblowers. A request for a more holistic assessment of reforms in this area would thus have been welcome, in recognition of the interconnectedness of different provisions of the Law. The Venice Commission remains at the disposal of the Georgian authorities to provide an opinion on the Law on the Fight against Corruption as a whole.

40. The provisions added to the Law in November 2022 have been developed to ensure “*the institutional strengthening of anti-corruption activities and the fight against corruption, which, in turn, will serve to fulfil one of the priorities defined by the European Commission*” in its opinion on the EU membership application of Georgia (namely to “*strengthen the independence of its Anti-Corruption Agency bringing together all key anti-corruption functions, in particular to rigorously address high-level corruption cases*”). It is not for the Venice Commission to decide whether the new provisions in the Law meet the criteria set by the EU. However, it is relevant for the Venice Commission to consider the stated aims of the Law when assessing the organisational set-up and powers of the ACB. In this respect, the Venice Commission can only conclude that bringing various preventive anti-corruption functions together in the ACB falls short of the stated aim of rigorously addressing high-level corruption.

41. In this opinion, the Venice Commission outlines that independence with an adequate level of structural and operational autonomy, involving legal and institutional arrangements to prevent political or other influence is considered a fundamental requirement for specialised anti-corruption bodies. In this respect, various positive features of the new provisions of the Law have been noted, in particular the fact that the ACB has been established as a separate structure with a high degree of financial independence. Nevertheless, the Venice Commission finds that the current institutional design does not provide for a sufficient degree of independence of the ACB and considers that its competences to oversee the financing of political parties and monitor asset and interest declarations of high-level officials require additional safeguards to be included in the Law. In this connection, the fact that the appointment and dismissal of the head of the ACB is to a large extent in the hands of the Prime Minister is particularly problematic.

42. In order to increase the independence and perception of political neutrality of the ACB, and thereby public trust in this body, the Venice Commission makes the following key recommendations:

- that the Law be amended to require cross-party support for the appointment of the head of the ACB, by appointing him/her either with a qualified majority in Parliament, with an appropriate anti-deadlock mechanism (requiring more than an ordinary majority) or an appropriate alternative, reflecting broad, cross-party agreement in Parliament (for example, in the form of a double majority, entailing a majority among parliamentarians both from the majority and the opposition), and that – given that the ACB is accountable to Parliament – any decision on early termination of his/her term in office be made by the Parliament, not the Prime Minister;
- that further amendments are made to the Law regarding the grounds for dismissal, restricting the discretion of the dismissing body in this respect, in particular by limiting

the ground “*fails to perform the duties*” to usual cases of physical or mental incapacity and clarifying / delineating the provisions on criminal convictions, drug consumption and incompatibilities.

43. It is furthermore recommended to revise certain other elements of the November 2022 provisions, in particular:

- to consider providing functional immunity to the head of the ACB and his/her deputies;
- to enhance the professional requirements for the position of head of the ACB;
- to clarify the provisions on mandatory drug testing of officials (in particular their relation to the work of the ACB) and/or to remove these from the Law altogether, whereby the requirement for the drug test results to be published is to be deleted from the Law and a clear legal basis is to be provided for the possible testing of the Head of the ACB him/herself;
- to take measures to ensure that the ACB carries out a substantive verification of asset and interest declarations and, in addition to the random selection of declarations, takes a risk-based approach to ensure that the most relevant declarations are assessed against officials' legal income, in order to reveal cases of unexplained wealth or to identify potential conflicts of interest;
- to include precise and explicit references to the relevant provisions in data protection legislation in the Law;
- to define the role of the Inter-Agency Anti-Corruption Council with greater clarity and precision, ensuring that there is no overlap with the functions of the ACB and removing the accountability of the ACB to the Inter-Agency Anti-Corruption Council, whereby consideration should be given to provide the ACB with the authority to set up its own advisory council instead.

44. The Venice Commission remains at the disposal of the Georgian authorities for further assistance in this matter.