Georgian Dream as a Nightmare for Democracy

Public Resistance and External Pressure as Substitutes for Effective Judicial Oversight

Nino Tsereteli

21.11.2024 doi: 10.59704/2819f7faf30fff94

The parliamentary election in Georgia on 26 October 2024 resulted in the ruling Georgian Dream party being declared the winner by the Central Elections Commission (CEC), with nearly 54% of the vote. However, independent observers identified a large-scale, multi-faceted election-rigging scheme in favor of Georgian Dream, prompting calls to annul the results. Reports highlighted voter intimidation and vote-buying during the pre-election period, and serious irregularities on the election day. These included compromised voting secrecy and instances of multiple voting. These allegations triggered protests and sparked a profound debate about the future of democracy, the rule of law, and the protection of fundamental rights in Georgia – issues vital to the country's stability and international standing.

In this blog post, I argue that formal institutions, such as courts, could have defended democracy by ensuring electoral accountability and preventing power capture. However, in Georgia, the highest courts serve the ruling party, making it highly unlikely that judges will rule against its interests. As a result, civil resistance becomes the primary means of contesting the election outcome. Its success depends on the sustained, coordinated efforts of those resisting, with better prospects if the repressive structures supporting Georgian Dream begin to defect.

I also suggest that the EU should maintain its support for those defending electoral integrity by taking a clear stance, including refusing to recognize the election results and the legitimacy of the new Parliament, while also calling for an independent, authoritative investigation into the allegations of electoral fraud.

Ultimately, in light of the absence of effective judicial oversight to address evidence of electoral fraud, public resistance and external pressure are crucial to preventing power capture by Georgian Dream and halting Georgia's autocratic shift.

Futility of Legal Mechanisms

On 29 October, the Georgian Young Lawyers' Association (GYLA) filed complaints with 24 District and City Courts, seeking the annulment of results in 73 electoral districts using electronic vote counting machines (2,263 out of more than 3,000 polling stations). GYLA argued that the CEC had failed to safeguard voting secrecy as voters' choices could be discerned by examining the back of the ballot once placed in the machine. Given the widespread nature of this issue, GYLA contended that the courts should annul the results. However, only the Tetritskaro District Court judge acknowledged the violation of voting secrecy and annulled the results in thirty contested polling stations.

These cases, along with similar ones filed by the monitoring coalition "My Vote," were then examined by the Appellate Courts, the highest authority for election-related cases. Both the Kutaisi and Tbilisi Appeals Courts consolidated all election-related cases into a single case to avoid conflicting rulings and reduce the risks of judges aligning with the above mentioned Tetritskaro District Court judge who ruled in favor of GYLA. Ultimately, both courts concluded that there were no issues with voter secrecy, placing the responsibility on the voters, rather than the CEC or third parties. The judge who ruled in favor of GYLA was then targeted in a discrediting campaign through government-friendly media.

The judges' lack of willingness to confront Georgian Dream underscores the latter's influence over courts. My earlier research (see here and here)

suggests that, in exchange for guaranteed outcomes in politically sensitive cases, Georgian Dream facilitated the concentration of power in a small group of influential judges, whom I call 'judicial oligarchs'. Georgian Dream blocked and delayed reforms that would decentralize judicial governance and increase transparency. The content and pace of reforms allowed judicial oligarchs to seize control of the judicial council, appoint close affiliates as court presidents, fill the Supreme Court and Appellate Courts with loyalists and remove disobedient judges. Loyal judges are regularly rewarded; for instance, the judges who found no irregularities in the election process received bonuses of half a million Georgian Lari shortly after their rulings.

Although rare, lower court judges may occasionally rule against the preferences of the ruling elite or senior judges. However, the impact of such isolated acts of judicial defiance is limited, given the capture of the Appellate and Supreme Courts by judicial oligarchs. Judges who express dissent are often targeted for retaliation – through verbal assaults from peers or negative media coverage. As confirmed by the European Court of Human Rights' ruling on 7 November 2024 in Bakradze v Georgia case, judges were discriminated against and denied re-appointment for being vocal critics of the decisions and policies of the oligarch-controlled judicial council. Judicial oligarchs use this strategy to isolate dissent and prevent a collective challenge to their rule.

In its 2024 enlargement report, the European Commission highlighted the urgent need for comprehensive judicial reform, particularly of the judicial council, to improve judicial independence and increase public trust in the system. The Commission also called for extraordinary integrity checks for candidates seeking leadership positions within the judiciary as well as those already appointed, such as judicial council members, the Supreme Court judges, and court presidents. However, Georgian Dream has resisted implementing these reforms, as they would dismantle the judicial oligarchs' stronghold. By supporting Georgian Dream, judicial oligarchs aim to preserve their own positions of power.

President Zurabishvili has filed a case before the Constitutional Court, claiming that the elections violated constitutional voting rights. Given the court's history of backing the government's agenda, an annulment of the electoral legislation and election results is unlikely. This complaint should still disrupt Georgian Dream's plan to convene Parliament on 25 November, validate MPs' mandates and proceed with the formation of the government. It would also delay the election of a new president through Parliament. However, Georgian Dream leaders have announced they will proceed with the plan regardless, as they do not recognize the constitutional complaint until it is declared admissible, a move that contradicts the constitution. In any case, the captured Constitutional Court will likely decide on the complaint in line with the Georgian Dream's preferences as quickly as possible and no later than 30 days.

Public contestation of election results

With the judiciary compromised, the burden of defending democracy falls on the political opposition and the public. Research shows that resistance is most effective when opposition parties and citizens join forces to form a strong, diverse network. The more heterogenous the resistance, the greater the chances of success against authoritarian tendencies.

Massive protests could pressure Georgian Dream, but for these efforts to be effective, the opposition must present a united front. They need to refuse legitimizing Parliament, clearly articulate demands, and outline a course of action if those demands are not met. On 18 November, President Zurabishvili, a strong supporter of Georgia's European path and critic of the Georgian Dream's autocratic practices proposed a plan. Her proposal calls for an international investigation into election irregularities to uncover systemic issues, the formation of a new electoral administration, and the creation of a special court to address electoral disputes before holding new elections. While seeking to achieve this, keeping momentum for sustained public protests and maintaining international engagement will be challenging.

EU's stance on Georgia

The adoption of the Foreign Agents Law earlier this year, despite widespread warnings, signalled that the EU had lost leverage over the Georgian Dream with the ruling party determined to secure electoral victory at all costs. This raises the question of whether recalibrating the EU's approach – by imposing individual sanctions on Georgian Dream's leadership or offering incentives for a return to democratic norms – could still make a difference.

Before the election, the Georgian Dream had some degree of democratic legitimacy. However, following widespread election fraud, the question arises whether the EU's continued engagement with the party is still appropriate and if so, on what terms – especially given its history of backtracking on promises. Allowing Georgian Dream to govern, even with the cancellation of a few controversial laws, is no longer acceptable.

A clear, principled stance from the EU is crucial. This should include refusing to recognize the election results, given credible evidence of fraud and warning of sanctions against Georgian Dream leaders if they proceed with convening the Parliament or taking further autocratic steps. Georgian Dream shows little concern for Georgia's stalled EU integration or the loss of financial aid. Therefore, consequences must be carefully tailored to credibly raise the costs of power capture. At the same time, internal resistance is crucial for Georgia's return to democracy. Continued support – both rhetorical and financial – for those resisting is key.

The issue goes beyond Georgia's potential EU membership – it is also a test of the EU's commitment to defending democracy and the rule of law. While the EU refused to recognize the elections as legitimate, their response was still underwhelming. On 27 October, High Representative Josep Borrell and the European Commission urged the CEC of Georgia and other authorities to transparently and independently investigate and adjudicate allegations of electoral irregularities. Borell reiterated this on 18 November, while also proposing a shift in financial aid from the government to civil society organizations. However, expecting a genuine investigation from government-controlled institutions is unrealistic. The EU must insist on the establishment of an independent investigative body with international involvement, to provide an impartial assessment. In the meantime, it should give consistent attention to the Georgian situation and clarify the consequences if Georgian Dream disregards its demands.

Conclusions

Several key lessons emerge from the situation in Georgia. (1) **The importance of independent institutions**: courts and other independent institutions capable of scrutinizing election irregularities are essential to prevent power capture. The erosion of independence is often gradual, making vigilance against early efforts to compromise these institutions crucial. Restoring independence becomes increasingly difficult once it is lost. (2) **Coordinated resistance against autocracy**: With formal mechanisms failing to challenge the election results, focus is shifted to external, political and civic resistance, mostly informal. The regime's survival depends on the effective coordination of mass protests and the Georgian Dream's reliance on repressive structures to defend fraudulent results. Autocracy will have relatively limited chances of survival if the institutions supporting Georgian Dream defect. (3) **Testing the EU's ability to respond**: Crises like this test the EU's capacity to counter the spread of autocratic patterns within the EU and candidate countries. So far, the EU's response in Georgia has lacked the necessary urgency and strength.

In recent years, Georgian Dream has gradually captured state institutions and targeted non-governmental checks on power, including civil society and independent media. These actions have been designed to entrench their hold on power and allow them to govern without accountability. The window of opportunity for reversing this trend is closing.

ABOUT THE AUTHOR

Nino Tsereteli

Nino Tsereteli ist Research Officer bei Democracy Reporting International, Berlin.Nino Tsereteli is a Research Officer at Democracy Reporting International (Berlin, Germany).

SUGGESTED CITATION

Tsereteli, Nino: Georgian Dream as a Nightmare for Democracy: Public Resistance and External Pressure as Substitutes for Effective Judicial Oversight, Verfassungsblog, 21.11.2024, doi: 10.59704/2819f7faf30fff94.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20241122-000116-0.