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Protection of Constitutional Identity in Georgia vis-a-vis Negotiations on Its Accession to the EU

ABSTRACT: *Georgia's relations with the European Union (EU), with varying degrees of intensity and success, date back to the 1990s. Special dates include 8 July 2014, when the Association Agreement between Georgia and the EU was signed; 3 March 2022, when Georgia officially applied for membership in the EU; and 15 December 2023, when Georgia was officially granted the status of a EU candidate state – one of the most important events in the country's modern history. In this context, maintaining a balance between preserving Georgia's constitutional identity on the one hand and full-fledged European integration on the other is of particular importance. In this regard, the role of a litmus test may be played by the implementation of the so-called 12-point plan by Tbilisi and the assessment of this implementation by Brussels. Therefore, this article aims, on the one hand, to analyse and define the constitutional identity of Georgia via elaboration of the practice of the Constitutional Court of Georgia, and on the other, to assess the degree of impact of the implementation of the 12-point plan on that identity. The comprehensive analysis also includes a brief analysis of the fundamental principles of the Georgian Constitution and the influence of the rule of law in assessing the implementation of the 12-point plan.*

KEYWORDS: *Constitutional Identity, Candidate State, 12-point Plan, Constitutional Court, Associated Agreement (AA).*

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1.
Introduction

It is noteworthy that after the October 2024 parliamentary elections, relations between Georgia and the European Union (EU) "cooled down" sharply. Despite the fact that, fortunately, neither Georgia's status as a candidate country for EU membership nor the decision on visa-free travel to Georgian citizens was reviewed by Brussels, the level of tension between the parties was quite significant, the peak of which was the official statement made by the Prime Minister of Georgia on November 2024 that Georgia would remove the EU membership bid from the agenda until 2028. That it would fully concentrate on fulfilling the obligations set out in the Association Agreement (AA) signed between Georgia and the EU, and the candidate status, such that the country could join the EU in 2030. Here, the most important question that arises is the extent to which the implementation of the so-called 12-point agenda by the Georgian side is considered in this decision. The present article aims to address precisely this, to open a discussion on, after the Georgian state obtained the status of a candidate country for the EU in 2022, the extent to which the implementation of the so-called 12-point agenda can affect the constitutional identity of Georgia and what compromise can be made in this regard between the parties. To this end, Georgia's relations with the EU will be discussed first, starting from its post-Soviet Commonwealth of Independent States membership to the status of an EU candidate country.

1.1. Georgia's EU Path: Approximation, Association, and Political Will

From the outset, cooperation between Georgia and the EU evolved within a bilateral framework, reflecting Georgia's strategic orientation toward Europe, and its pursuit of normative and institutional convergence with EU values and standards. A significant step toward closer relations with the EU occurred in 2004, when Georgia established an institutional system to coordinate the process. The establishment of different state entities and bodies on European integration was a significant step forward, signifying a decisive political and institutional commitment to this trajectory. It embedded European integration within the national legislative agenda and signalled Georgia's readiness to operationalize its European ambitions through domestic reform structures.

The bilateral partnership matured into a legally binding framework with the signing of the AA among the EU, the European Atomic Energy Community,

and Georgia on 27 June 2014.[1] Ratified by the Georgian Parliament shortly thereafter and entering into force on 1 July 2016,[2] the Agreement formalized a new phase of political association and economic integration. The accelerated ratification by EU Member States – driven in part by the geopolitical repercussions of the Russian Federation's annexation of Crimea – demonstrated both the EU's strategic interest in the Eastern Partnership region and the political significance of Georgia's European trajectory.[3]

The AA institutionalized the key principles underpinning EU external governance: democracy, respect for human rights, the rule of law, and good governance.[4] It established a comprehensive framework for normative approximation, requiring Georgia to progressively align its national legislation with the *acquis communautaire* and to ensure the effective implementation of EU-compatible reforms.[5] This process transcends technical harmonization, functioning instead as a transformative mechanism reshaping domestic governance structures and policymaking practices.[6]

Georgia's application for EU membership on 3 March 2022,[7] followed by the European Council's decision of 14–15 December 2023 to grant EU candidate status,[8] redefined the nature of EU–Georgia relations. These developments embedded Georgia within the EU's pre-accession conditionality framework, thereby extending approximation obligations beyond the AA to encompass the entire *acquis communautaire*. The process thus evolved from a sectoral engagement into a systemic reform agenda, integrating nearly all dimensions of governance into the EU's normative sphere.

This transformation entails three interrelated challenges. First, ensuring the substantive implementation of the AA, avoiding purely formal compliance. Second, broadening the scope of legislative convergence to new policy domains. Third, maintaining policy coherence and socio-economic stability while addressing the financial and institutional costs of deep Europeanization. Success depends not only on legislative adaptation but also on institutional capacity, bureaucratic professionalism, and sustained political commitment.[9]

Ultimately, the evolution of EU–Georgia relations reflects a shift from bilateral cooperation toward structured integration governed by conditionality, policy

1 OJ L 261/4, 30.8.2014.
2 European External Action Service (EEAS), EU–Georgia Relations: Factsheet, Brussels, July 2016.
3 Delcour, 2020, pp. 164–179.
4 Association Agreement, Title II, "Political Dialogue and Reform, Political Association, Cooperation and Convergence in the Field of Foreign and Security Policy."
5 Association Agreement, Title IV, "Trade and Trade-Related Matters."
6 Börzel and Risse, 2012, pp. 1–19.
7 Government of Georgia, Application for Membership of the European Union, submitted to the Council of the EU, 3March 2022.
8 EUCO 20/23 CO EUR 16 CONCL 6, Brussels, 14–15 December 2023.
9 Schimmelfennig and Sedelmeier, 2005.

diffusion, and normative convergence. Legislative approximation is a complex process aimed at maintaining a coherent and effective national legal system while safeguarding national interests. It requires careful planning that considers time, human and financial resources, and the potential impact on both public and private sectors. According to the EU–Georgia AA, this process forms part of a broader framework for political and economic integration, requiring Georgia to align its national legislation with EU standards. For political integration, the AA framework promotes cooperation in justice, freedom, and security, emphasizing the rule of law and human rights as key foundations. It calls for reforms in areas such as judicial independence, access to justice, migration management, and the fight against human trafficking, organized crime, corruption, and terrorism financing. The AA must also foster collaboration on mutual legal assistance, Georgia's participation in relevant UN and Council of Europe instruments, and cooperation with the EU Agency for Judicial Cooperation (EUROJUST).

As practice shows, the accession process is more than a merit-based approach and involves negotiations on chapters of the EU Acquis.[10] Consequently, the state's political will plays a crucial role in ensuring the consistency, pace, and success of the membership process.

1.2. The Constitution of Georgia and the Application of the Association Agreement

By signing the AA, Georgia has accepted obligations under international law. The Agreement takes precedence over national legislation, provided that it is in line with the Constitution. Georgia must progressively align its legal and administrative framework with EU standards in areas such as human rights, environment, trade and governance.

The Constitution of the modern Georgian state was adopted on 24 August 1995, and in its preamble, recognizes the historical and legal heritage of the 1921 Constitution. Notably, the 1921 Constitution was adopted by the National Council on 21 February 1921, 4 days before the independence of Georgia, and in reality it was not in force for a single day, although it was officially in force until 18 March 1921, when the forces of the Democratic Republic of Georgia were defeated in the war against the Bolsheviks[11]. After the restoration of Georgia's independence, there were attempts to restore the 1921 Constitution to no avail. Accordingly, the modern Georgian Constitution dates back to 1995, and is not a continuation or legal successor of the constitutions of

10 Koplatadze, 2025, The EU Acquis: 2025-2030. Agenda for the opening and conduct of Georgia's EU accession negotiations and the domestic and foreign policy risks of negative impacts on it

11 Matsaberidze, 2021, pp. 336–337.

the former Georgian Soviet Socialist Republic (1924, 1937, 1978). The Constitution of Georgia was significantly amended on 19 October 2017 and 2 April 2018.

Georgia was one of the first countries of the former Eastern bloc to recognize the primacy of international law in Georgian legislation after the restoration of independence, while still formally under the conditions of the Soviet Union's existence. On 9 April 1990, by the Act of Restoration of State Independence of Georgia, it enshrined the primacy of international law over national legislation, ensuring its direct effect, and declaring it one of the constitutional principles.[12]

The rationale behind this approach was reinforced in Articles 6 and 7 of the 1995 Constitution of Georgia and retained in the 2018 revision under Article 4, paragraphs 2 and 5.[13] This provision defines the relationship between international and domestic law, outlining that Georgia's legislation must align with universally recognized principles and norms of international law. Furthermore, international treaties take precedence over domestic legal acts unless they contradict the Constitution or the Constitutional Agreement of Georgia[14].

Additionally, Article 7, paragraph 4 of the Organic Law of Georgia on Normative Acts and Article 6 of the Law of Georgia on International Treaties outline the hierarchy of legal norms, placing the Constitution at the top, followed by international treaties and agreements, and then domestic laws and other legal acts. These provisions collectively underscore Georgia's dedication to integrating international legal standards into its national legal framework.

Before ratifying or accessing international treaties, Georgia typically aligns its national legislation with treaty requirements. However, parliamentary practice has shown that the country may also ratify a treaty first and then adjust domestic laws accordingly.

Under Article 4, paragraph 2 of Georgia's Constitution, human rights and freedoms have direct and immediate legal effect. The state recognizes and upholds universally accepted human rights as fundamental values, binding both the government and the people. Additionally, the Constitution does not exclude other universally recognized rights that, while not explicitly mentioned, stem from its core principles.

In summary, the statement that 'the Constitution of Georgia corresponds to universally recognized principles and norms of international law' signifies the primacy of international law not only over domestic legislation but also in relation to the Constitution itself. By incorporating the concept of 'universal principles and rules,' the legislature affirms Georgia's commitment to international legal standards as part of a modern, civilized community. The legal system encompasses treaties,

12 Kurdadze. Kevlishvili, 2023, p. 228.

13 Kurdadze, 2001, p. 44.

14 About supervision mandate of Constitutional Court See Kezuriani, 2013, p. 12.

legal interpretations, international legal relations, and the application of norms, all of which integrate international law into national legislation. These universal principles serve as the foundation for Georgian lawmaking and must guide legislative processes. In cases where domestic law lacks specific regulations (legal vacuum), these principles function as direct legal norms, extending their influence beyond domestic law to the entire legal framework. Besides, 'by using the term "universally recognized principles and norms of international law", the Constitution helps Georgia uphold the high values recognized by the entire international community, thereby contributing to the development of international law'.[15]

The enforcement of international obligations of Georgia also affects European law, notwithstanding the latter's *sui generis* nature. The EU was established by intergovernmental treaties, making it a phenomenon of international law. The European Court of Justice (ECJ) has described the EU as a 'new order of international law':

> *'The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community.'* [16]

Obligations under the AA are not in conflict with general international law, as confirmed by the AA: '*the Parties reaffirm their respect for the principles of the rule of law and good governance, as well as their international obligations, in particular under the UN, the Council of Europe and the OSCE. In particular, they agree to promoting respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence*.'[17]

The AA between the EU and Georgia is a legally binding international agreement, based on Article 217 of the Treaty of the Functioning of the European Union (TFEU), which entails reciprocal rights and obligations, common actions and special procedures.[18] The agreement is considered a "mixed agreement", indicating that it covers

15 Korkelia, 2021, p. 23.
16 See Van Gend en Loos, v Netherland, Case 26-62. this position has reaffirmed in subsequent judgments.
17 OJ L 261/4, 30.8.2014, Art. 2 para. 3.
18 European Parliament, Study: "The meaning of 'association' under EU law", 2019, p. 13.

areas of both EU and Member State competencies. As such, it requires ratification by all EU Member States and the partner country. According to Georgia's legislation, it holds supremacy over national law, while the Constitution of Georgia remains the highest legal authority. Therefore, if a conflict arises between the AA and national law, the latter must be revised. Nevertheless, in cases where the Agreement contradicts the Constitution, the possibility of amending the Agreement cannot be ruled out. Furthermore, pursuant to the principle of the primacy of international law, a State may not refuse to comply with its treaty obligations by invoking its domestic law, including the assertion that the treaty is unconstitutional.[19] Some argue that the AA has/should have a superior force in relation to other international treaties; given the special and specific nature of the AA, Georgian legislation should contain exceptional rules in order to make the position of the AA in national law legally clear and unambiguous.[20] In practice, it is difficult to imagine the implementation of such a provision, since international multilateral treaties cannot be hierarchically subordinated. The desire to give the Association a superior position is understandable, although such a mechanism is unknown to either the international or national legal systems. This is precisely what requires the doctrine of placing universal principles above the constitution. It is noteworthy and valuable information for analysis that the Constitutional Court of Georgia has not yet ruled any international treaty or its provisions unconstitutional.[21]

The AA reaffirms Georgia's territorial integrity and commitment to peaceful conflict resolution, thereby enhancing its international standing. However, apart from the political implications, the AA requires the implementation of EU standards in key sectors, including environmental protection, consumer rights, food safety, transport, energy and competition policy.

Despite recognized achievements in implementation of AA, the challenges remain, including difficulties in adopting EU standards and political polarization, which are addressed in the so-called 12-point plan: the implementation of which will require continued efforts by the Government and support from the EU. To summarize, the AA is a key instrument guiding the Georgia–EU relationship, notwithstanding obtaining Candidacy State status.

19 VCTL Art. 27.

20 Kardava, 2021, p.21.

21 Nakashidze, G., 2022. p. 81.

2.
Constitutional Identity *vis-a-vis* EU Integration

2.1. Notion of Constitutional Identity

While discussing the protection of constitutional identity in Georgia vis-a-vis negotiations on the accession to the EU, and in particular, compliance with the implementation of the so-called 12-point Agenda, one should always bear in mind that, by signing the AA with the EU on 27 June 2014, the Georgian Government, in addition to firmly demonstrating its strategic choice, created a very important framework for systemic change in the country.[22]

For the purposes of this study, it is important to define constitutional identity precisely as it is perceived in the legislation/legal system of the EU and its member states, and in the Georgian legal system.

Before we begin to discuss constitutional identity, it should be noted that this topic has been scarcely studied in the Georgian academic space and only a couple works can be found on it.[23] Therefore, we are justified in focusing more deeply on the concept of identity and discussing the different ways constitutional identity can be formed, as well as examining the practices of other countries to draw the right conclusions. If Georgia's constitutional identity is not assessed, or at least its contours not outlined, it will be impossible to discuss the relevance of the 12-point plan as such.

As an analytical concept, constitutional identity is used to explain how a collectivity understands itself through a constitutional document or order. As a normative concept, constitutional identity focuses on the core norms and principles of a constitutional system that bind constitutional actors in a particular way, making these rules and values unamendable.[24]

In the most general sense, constitutional identity is a set of important constitutional values.[25] It is crucial for constitutional identity that society believes the constitution to be based on and reflective of its values, and that these values are the "source of its special character".[26]

There are different ways wherein constitutional identity can be formed. Some authors believe that constitutional identity can only be formed in the decisions of

22 See Maka Bochorishvili, Chair of the Committee on European Integration, Legislative Basis of Association with the European Union 2014-2023, 27.06.2023.

23 See Gegenava, 2019; Alaverdashvili, 2024.

24 Ibid.

25 Polzin, 2017.

26 Jacobsohn, 2010, p. 114.

constitutional or cassation courts,[27] as is the case in the practice of various European countries. Many EU states' constitutional courts address the issue of "constitutional identity" in the context of the application and competition of EU and national laws.[28] Thus, for them, constitutional identity is directly related to the judiciary and the legal system.[29] The constitutional courts, are regarded as the ultimate guarantors of constitutional identity.[30] However, it is worth noting that the interpretation of constitutional courts is meaningless if other processes do not take place in parallel. In practice, constitutional identity is often determined by political processes, along with the judiciary.[31]

To ensure the protection of their own constitutions and constitutional identities, the constitutional courts of the majority of EU states have taken on the additional function of discussing constitutional identity. Many constitutional courts have developed a number of theoretical foundations and arguments to legitimize their own authority, such that they, as a counterweight to the EU, can oppose certain legal acts on the grounds of protecting constitutional identity.[32]

For example, according to the Spanish Constitutional Court, the sovereign power of a state can only be "overridden" by the EU if EU law itself is consistent with the fundamental nature of the Spanish Constitution, namely its constitutional identity.[33]

In the famous Solange I-decision of 1974, the Court gave the term legal relevance by ruling that Article 24 of the Constitution (Basic Law), which authorizes Germany to transfer powers (*"Hoheitsrechte"*) to international organizations, does not permit a change of "the constitution's basic structure (*"Grundstruktur"*) on which its identity is founded".[34] Consequently, Germany may not ratify an international treaty that would negatively affect the identity of the Basic Law. Moreover, the Court declared that the primacy of European law ends where the identity of the constitution begins.[35] According to the Czech Constitutional Court, the material, substantive core of the Constitution is still superior to the regulation of the EU.[36] Furthermore, the French Constitutional Council considers it impossible to put into practice a directive that contradicts the text and content of the Constitution. In addition, the Council of State

27 For example, Prof. Dimitri Gegenava.
28 Reestman, 2009, p. 375.
29 Fletcher, 1993, p. 738; e.g. In the case of Rogers v. Richmond, the U.S. Supreme Court interpreted the American criminal justice system and compared it to the European in order to identify the identity of the American system. Rogers v. Richmond, 365 U.S. 541 (1961).
30 Giacomo Di., 2019, p. 380.
31 Jacobsohn, 2017, p. 1602.
32 Ibid.
33 SCC Declaration 1/2004, 13 December 2004, para. 37,47,50,38,58.
34 Solange I, judgement of 29 May 1974.
35 Cloots, 2016, 92; Bundes-verfassungsgericht, 2 BvR 2728/13, 14 January 2014, para.27.
36 Czech Constitutional Court, Judgment 26/114, 13 February 2014, Para II.3.

has repeatedly stated and is deliberately developing the idea that the French constitutional identity needs to be protected, including from interference by the EU.[37]

Professor Jacobson, in contrast to the above approach, considers it sufficient to examine the text of the Constitution to determine constitutional identity.[38] He believes that the text provides information about the methods of governance adopted by the founding group and, in particular, indicates future aspirations and developments.[39] Those are either the so-called "unamendable articles"[40] of the Constitution or the general spirit of the entire text.

Although it is generally believed that the constitutional unamendability is the guardian of constitutional identity, not every unamendable article expresses constitutional identity. For this, two cumulative conditions must be fulfilled: (I) first, a significant period of time must pass from the adoption of such a norm, and (II) and second, the provision must operate under several different political majorities.[41]

As such, how many years must pass since the adoption of a specific provision for it to be considered unchangeable is not specified anywhere. Therefore, in each specific case, an assessment must be made as to whether the time that has passed since the adoption of the norm is sufficient for the provision to acquire the status of constitutional identity, provided that the second component is satisfied.

In the Georgian legal debate prevails the opinion that Georgia is not yet a fully formed constitutional identity and the path towards it is rather long.[42] Therefore, to determine at least the contours of Georgia's constitutional identity, we must first determine by what means we can find it. Considering that the Constitution of Georgia has undergone significant changes in the relatively short period of its existence, such a component of constitutional identity as the existence of an "unchangeable norm" is less useful in this specific situation.

The rule on the establishment of "constitutional identity" in judicial decisions cannot be applied in case of Georgia either, since neither the Constitutional Court of Georgia nor its Supreme Court have ruled on the constitutional identity of Georgia or on any article of the Constitution as a bearer of constitutional identity in any of its decisions. Rather, the Constitutional Court has used the term "principles of the constitution". Specifically, Court stated that 'one of the main expressions of these principles, as can be seen from the preamble to the Constitution, is that the citizens of Georgia have an unwavering will to establish a democratic social system, economic

37 Reestman, 2009, p. 386.
38 Jacobson, 2011, p. 414.
39 Jacobson, 2011, p. 131.
40 Michel, Cofone, 2018, p. 137.
41 Alaverdashvili, 2024, p. 248.
42 Gegenava, 2019; pp. 340–341.

freedom, a social and legal state, and to ensure universally recognized human rights and freedoms'.[43]

Thus, the discussion of constitutional identity is possible only based on the text of the Constitution and, accordingly, its perception is possible only at the level of assumption. The contours of Georgia's constitutional identity are yet in the process of formation, and among them, the assessment of the implementation of the 12-point plan by the Georgian authorities can be used as a starting point or basis for some kinds of practice.

2.2. Practice of the Constitutional Court of Georgia

In the case of the Constitution of Georgia, the interpretation of the basic law text itself as a means of establishing constitutional identity is the most relevant way.

In general, there are several theories of constitutional interpretation, wherein preference can be given to either the substantive aspects of the Constitution that the latter had when it was adopted, the meaning of the text, the perceptions of the legislator, or practice. However, since the format of a specific work does not allow for a detailed discussion of this issue and, moreover, does not consider it as such, we will limit ourselves to a discussion of the practice of the Constitutional Court of Georgia.

Unfortunately, this case is also fraught with serious problems in research due to the lack of relevant practice of the Constitutional Court. In particular, reference is made to the relationship between the Preamble and Article 78 of the Constitution of Georgia.

The relationship between Preamble, Article 1 and Article 78 of the Constitution is an important issue. According to Preamble, one of the main goals of the Constitution is to maintain the independence of the Georgian state.[44] Article 1 titled "State Sovereignty" declares that Georgia is an independent State.[45] The question then arises as

43 „(1) Bachua Gachechiladze, Simon Turvandishvili, Shota Buadze, Solomon Sanadiradze and Levan Kvatsbaia, (2) Vladimer Doborjginidze, Nineli Andriadze, Guram Demetrashvili and Shota Papiashvili, (3) Givi Donadze v. Parliament of Georgia." Decision No. 1/1/126,129,158; Panel I - Avtandil Abashidze, Iakob Putkaradze, Nikoloz Shashkini, Besarion Zoidze, April 18, 2002.

44 Namely, the preamble states that: 'We, the citizens of Georgia – whose firm will it is to establish a democratic social order, economic freedom, and a legal and a social state; to secure universally recognized human rights and freedoms; and to enhance state independence and peaceful relations with other peoples – drawing on the centuries-old traditions of the statehood of the Georgian nation and the historical and legal legacy of the Constitution of Georgia of 1921, proclaim this Constitution before God and the nation.'

45 '1. Georgia is an independent, unified and indivisible state as confirmed by the Referendum of 31 March 1991 held in the entire territory of the country, including the Autonomous Soviet Socialist Republic of Abkhazia and the former Autonomous Region of South Ossetia, and by the Act of Restoration of State Independence of Georgia of 9 April 1991.'

to how far the aspiration for transatlantic integration, as enshrined in Article 78,[46] and the fulfilment of the obligations set out in the 12-point plan are consistent with those provisions inserted in the Preamble. The interpretation is further complicated by Article 78's placement in Chapter Eleven, "Transitional Provisions", and the issue is whether it has the same force as other "permanent" provisions. Regarding the preamble to the Constitution, generally, the practice of states varies and it is not possible to say unequivocally that the preamble 'refers to the vague aspirations of the states'.[47]

On the other hand, it is accepted in the common law tradition that the preamble constitutes a guiding framework for the interpretation of the constitution. In particular, the case law of the Federal Republic of Germany, France, Ireland, Estonia and other states assigns an important role to the preamble of the constitution for interpretation purposes. In fact, the ECJ often uses the preamble of the Treaty on the European Union (TEU) for the purposes of interpretation.

In 2013, the Constitutional Court of Georgia ruled that 'the framework of the Constitution of Georgia, on which the entire structure of the Constitution is based, is expressed in the Preamble of the Constitution of Georgia, which has a normative meaning since not only a specific norm or part of a norm but also the preamble of a law may have a normative content'.[48]

In several decisions, the Constitutional Court appeals to the establishment of a social, legal and democratic state (as stated in the preamble) as a manifestation of the unwavering will of the Georgian people.[49] Thus, it can be stated with a high degree of probability that these principles will definitely be included in the criteria defining the constitutional identity of Georgia.

As constitutionalist T. Erkvania notes in her amicus curiae, 'Constitutional submission of members of the Parliament of Georgia[50] on the issue of alleged violation of the Constitution of Georgia by the President of Georgia', nowhere is there an explanation given of the relationship between the Preamble of the Constitution of Georgia and Article 78. Moreover, the constitutional submission of the members of

46 'The constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization.'

47 Frosini, Justin, 2017, p. 603(607), as cited in the amicus curiae opinion of Albrecht Weber and Wolfgang Babek in the President of Georgia v. Parliament of Georgia, Constitutional Complaint No. 1828.

48 Minutes of the Constitutional Court of Georgia of 4 April 2013, No. 1/2/534 in the case "Citizens of Georgia Tristan Mamagulashvili and Firuz Vaniev v. Parliament of Georgia", II-16.

49 Georgian citizen Tamar Tandashvili v. Government of Georgia; Protocol No. 2/11/663; Panel II - Tamaz Tsabutashvili, Irine Imerlishvili, Teimuraz Tugushi, Manana Kobakhidze, 2017. 48 members of the Parliament of Georgia v. the Parliament of Georgia; Decision N2/35 of the Plenum, 1997.

50 In total of 80 members of the Parliament.

the Parliament itself does not address this issue, and the focus is only on the fact that 'the President of Georgia, like all other constitutional bodies, can participate in the implementation of foreign policy tasks stipulated by Article 78 of the Constitution of Georgia only within the framework of his authority, that is, only with the consent of the Government of Georgia'.[51]

It is true that, in the end, the Constitutional Court conducted its deliberations with respect to Article 78 only in the direction of whether the President violated the requirement to act "within the scope of his authority", and not directly on the meaning of this article and its compliance with the Preamble (since the requirement was not formulated in this way). The Constitutional Court recognized the primacy of the main articles of the Constitution over transitional provisions. In particular, 'In the opinion of the Court, in all cases it would be completely unjustified to seriously consider that a violation of any one norm of the Constitution could be justified on the grounds of compliance with another norm, especially a violation of the fundamental norm of the Constitution - a norm specified in temporary, transitional provisions'.[52]

In the practice of the Constitutional Court, the most in-depth discussion regarding Article 78 has begun in the case N3/3/1828,1829,1834,1837.[53] As a member of the Court stated, the Constitutional Court had not received any lawsuits regarding the compliance with Article 78 and the content of Article 78 had not been properly interpreted until this claim.[54]

The claim states that Article 78 of the Constitution of Georgia 'reinforces the value and civilizational choice of the citizens of Georgia and the obligation of all branches of government to take all measures to ensure the full integration of Georgia into the EU and the North Atlantic Treaty Organization.'[55]

51 Constitutional submission of members of the Parliament of Georgia (IKobakhidze,I., Papuashvili, Sh., Mdinaradze, M. and others, 80 members in total) on the issue of alleged violation of the Constitution of Georgia by the President of Georgia; Amicus of the Court opinion, Erkvania, T. ac1797, 2023.

52 Conclusion of the Constitutional Court of Georgia on the Violation of the Constitution by the President of Georgia; Case No. 3/1/1797; 16 September 2023, p. 72.

53 President of Georgia, Members of the Parliament of Georgia: Tamar Kordzaia, Ana Natsvlishvili, Levan Bezhashvili and others (total 38 MPs), Non-Commercial Legal Entity "Institute for the Development of Freedom of Information", Non-Commercial Legal entity "Rights Georgia", Non-Commercial Legal entity "Civil Society Foundation" and others (total 122 claimants), LLC "Network of Information Centers" and Non-Commercial Legal entity "Studio Monitor" against the Parliament of Georgia; N3/3/1828,1829,1834,1837; 4 October 2024. The constitutional complaint was filed on 18 July 2024, and the decision to initiate the case was published on 9 October 2024.

54 The Dissenting Opinion of the Member of the Constitutional Court of Georgia, Eva Gotsiridze, regarding the Recording Notice No.3/3/1828,1829,1834,1837, 4 October 2024, of the Constitutional Court of Georgia.

55 Ibid., p. 27.

Notably, this case was the first time that the position of the Parliament of Georgia was expressed regarding the interpretation of Article 78. In particular, it 'should be interpreted in accordance with and taking into account the principle of sovereignty'.[56] However, the discussion did not continue with regard to the interrelation of Article 78 to the Preamble. The Constitutional Court has not yet issued a decision or conclusion on the aforementioned lawsuit, and accordingly, we are limited in our ability to make specific conclusions.

Despite all the above, the Constitutional Court confirmed that Georgia's accession to the EU is, in essence, an issue of Georgia's foreign policy and the main direction of this policy, which is reflected, among other things, in the government program. In particular, the 'Government Program 2021-2024 for Building a European State' is considered. Moreover, among the main directions of foreign policy, it can be said that integration into European and North Atlantic structures is the most important, since taking all possible measures to achieve it is considered a constitutional obligation (Article 78).[57]

Moreover, when discussing a different issue, the position of the judges of the Constitutional Court, including the outstanding Georgian Scholar Professor Besarion Zoidze, was that '*the Constitution, the main purpose of which is to determine the foundations of the relationship between society and the government, cannot contain unrealistic goals. In this regard, the absence of certain obligations will call the goal itself into question*'.[58]

Thus, one can argue that regardless of the importance and place of Article 78 of the Constitution, it undoubtedly clearly expresses the main goal of foreign policy of independent Georgia and creates corresponding obligations for all branches of government, regardless of the current political situation.

To complete the picture, Preamble and Article 1 of the Constitution of Georgia shall be read in the context of the TEU. In particular, Article 4(2) TEU stipulates that the EU must respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. The EU must also respect the Member States' essential State functions, including ensuring the territorial integrity of the State, maintaining law and order, and safeguarding national security. As such, Article 4(2) TEU forms the legal basis for the EU's acknowledgment and respect of the

56 Ibid., p. 50.

57 Conclusion of the Constitutional Court of Georgia on the violation of the Constitution by the President of Georgia, 2023, p. 56.

58 Dissenting opinion of members of the Constitutional Court of Georgia Ketevan Eremadze and Besarion Zoidze; Dissenting opinion do1/2/434; I Panel Eremadze, K., Zoidze, B., 2009.

Member States' constitutional identities when interpreting and enforcing EU law.[59] On the other hand, there are those who claim that, 'giving Article 4(2) the broader meaning is harmful, as it opens the door to abusive and superficial uses of identity as a justification for non-compliance with EU obligation from the side of member states.'[60]

In addition, there is the assumption that the TEU speaks not on constitutional identity, but of national identity, which indicates that the Member States, as the authors of the Treaties, saw their identity endangered by the EU, not the other way round. Constitutional identity comes in insofar as national identity is declared to be 'inherent in the fundamental structures of the member states, political and constitutional'.[61]

In the well know case *Commission v. Italy*, the Court of Justice of the European Union (CJEU) stated:

> '*for a State unilaterally to break, according to its own conception of national interest, the equilibrium between advantages and obligations flowing from its adherence to the community brings into question the equality of Member States before community law and creates discriminations at the expense of their nationals, and above all of the nationals of the state itself which places itself outside the community rules.*'[62]

However, one should bear in mind the time of adoption of this decision, the fact that respect of national identity of Member States appeared only in the Lisbon amendments and that "national identity" is a stronger term rather than "national interest". On the other hand, in the case of *Bogendorff von Wolffersdorffthe*, Luxembourg judges did not insist on the scope of national identity vis-a-vis that of constitutional identity.

59 The notion of constitutional identity and its role in European integration, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 760.344- March 2024; p. 6.

60 Article 4(2) TEU as a Protection of the Institutional Diversity of the Member States, De Witte, 2021, pp. 559–570.

61 Grimm, 2024.

62 CJEU, *Commission v. Italy*, 1973, para. 24.

3.
EU Reports on Georgia's Implementation of the 12-point Plan

Although the subject of the study was supposed to be the Commission Staff Working Document (SWD), the Georgia 2023 Report Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions 2023 Communication on EU Enlargement policy, the 2024 report also became available during the research process, and we believe that comparative analyses of these two documents will reveal the broader picture of the extent of progress, if any, that Georgia has made in implementing of the 12-point plan.

In the Reports, Chapters 23 'the Rule of Law' and 24 'Fundamental Rights' are the subjects of the examination regarding the implementation of the 12-point plan. They cover a wide variety of aspects of justice, internal security, fundamental rights and the fight against corruption and organized crime.

> *'While there is no hierarchy among Union values, respect for the rule of law is essential for the protection of the other fundamental values on which the Union is founded, such as freedom, democracy, equality and respect for human rights. Respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights. There can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.'*[63]

The rule of law is a globally recognized principle, often seen as a standard for national legal systems. Compliance with the rule of law is a key requirement for EU membership, as set out in the Copenhagen criteria.[64]

The EU has established various instruments, including the wide range of the mechanisms and instruments elaborated under UN and Council of Europe (CoE), to promote and uphold the rule of law based on three key pillars:

63 CJEU, Case C-156/21, 2021, p. 18(6).
(Action for annulment – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the European Union budget – Protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States – Legal basis – Article 322(1)(a) TFEU – Alleged circumvention of Article 7 TEU and Article 269 TFEU – Alleged infringements of Article 4(1), Article 5(2) and Article 13(2) TEU and of the principles of legal certainty, proportionality and equality of Member States before the Treaties).

64 Established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.

- Promotion of a rule-of-law culture within the EU, focused on enhancing cooperation to foster a deeper understanding of the rule of law across Europe.
- Prevention of rule-of-law issues by addressing emerging problems early, minimizing the risk of escalation. This includes the European Rule of Law Mechanism, with the annual Rule of Law Report as its central tool.
- Effective response to significant rule-of-law issues in Member States, using measures such as the procedure outlined in Article 7 of the Treaty on European Union.

3.1. Notion of the Rule of law

Introduced in 2014, the Rule of Law Mechanism aims to ensure effective protection of the rule of law in EU Member States. It involves annual dialogue between EU institutions and national parliaments, with the European Commission monitoring developments and issuing recommendations when threats arise. The Commission keeps the European Parliament and Council informed on progress. When the Commission first offered a comprehensive working definition of the rule of law in a Communication published in 2014, it distinguished six core components on the basis of a number of CJEU rulings.[65]

Article 2 of the TEU states that the EU is founded on values including the rule of law, democracy, and human rights. CJEU highlights the importance of judicial review in ensuring compliance with EU law. The European Commission defines the rule of law as public powers acting within legal constraints, ensuring legal certainty, judicial independence, and respect for fundamental rights.

In 2021, the EU introduced the Conditionality Mechanism, linking rule of law violations to the EU budget. The European Commission can propose sanctions, such as suspending payments, if violations threaten the EU's financial interests.[66] Article 7 of the TEU allows for sanctions in cases of systematic violations, though these mechanisms are often limited by high decision-making thresholds and lack of member state cooperation.

Without any doubt, the EU legal framework of the rule of law is based on documents developed under auspices of the UN and CoE. In 2005, all UN Member States affirmed the importance of universal adherence to the Rule of Law at both national and international levels.[67] Founded in 1945, the UN today faces challenges that require collective action under the rule of law, ensuring accountability, transparency, and

65 9 COM (2014) 158 final (n 2) Annex I: The Rule of Law as a foundational principle of the Union.
66 EU activated those procedures against Poland and Hungary for judicial reforms.
67 2005 Outcome Document from the World Summit, paragraph 134), reaffirmed in 2024 (Pact for the Future, Global Digital Compact and Declaration on Future Generations, Action 13.)

alignment with international human rights standards. The rule of law is essential for peace, political stability, development, and protection of fundamental rights. It combats corruption, limits power abuse, and strengthens citizen–state trust. Goal 16 of the Sustainable Development Goals (SDGs)[68] highlights justice systems and reforms for marginalized groups, addressing human rights violations. Namely, the UN's "New Vision for the Rule of Law" outlined in "Our Common Agenda" focuses on people-centred justice systems, and aims to improve UN coordination and provide technical support to member states. It builds on existing agreements, addressing contemporary issues such as technology, environmental concerns, and access to justice, while maintaining established concepts. Regional organizations like the Organization of American States (OAS), African Union, and Arab League also recognize the rule of law in their frameworks.[69]

On the other hand, the CoE recognizes the Rule of Law as one of the foundational principles of genuine democracy, along with individual freedom and political liberty.[70] Moreover, the Statute of CoE mandates that respect for the rule of law is a prerequisite for any new member state seeking to join the Organization.

Rule of Law ensures that public authorities act within the law, uphold democracy and fundamental rights, and are subject to scrutiny by independent courts. The broader European aim of this framework is drawing on the experience of the European Commission for Democracy through Law (Venice Commission).

Although the CoE has not defined the rule of law or created a specific monitoring mechanism for it, it promotes the rule of law through various bodies, including the European Court of Human Rights (ECtHR), the European Commission for the Efficiency of Justice (CEPEJ), the Consultative Council of European Judges (CCJE), the Group of States against Corruption (GRECO), the Monitoring Committee of the Parliamentary Assembly, the Commissioner for Human Rights, and the Venice Commission.[71]

The Rule of Law is a fundamental principle upheld by the ECtHR and frequently referenced in its case law. Additionally, it is regarded as a shared legal tradition among European states that are signatories to the Convention. Over the decades, the Court's jurisprudence has evolved to establish several substantive guarantees derived from this concept. These include the principles of legality and foreseeability, legal certainty, equality before the law, oversight of executive power in matters affecting public liberty, justiciability, and the right to a fair trial. Many of these principles are interconnected and can be grouped under the broader categories of legality and due process. Their primary aim is to safeguard individuals from arbitrary actions,

68 2030 Agenda and Sustainable Development Goals.
69 CDL-AD (2016)007, para 10.
70 Statute of the CoE, Preamble and Article 3.
71 CDL-AD (2011) 003rev, 2016.

particularly in their interactions with the state. Since Golder v. the United Kingdom[72], the rule of law has become a guiding principle for the ECtHR; it 'inspires the whole Convention'[73] and is 'inherent in all the Articles of the Convention'.[74] It is defined as 'one of the fundamental principles of a democratic society'.[75]

The Court has highlighted the strong connection between the rule of law and a democratic society through various statements, emphasizing their interdependence: 'a democratic society respecting the rule of law',[76] 'a democratic society based on the rule of law'[77] and, more systematically, 'the rule of law in a democratic society'.[78] Linked to the concept of "democratic society", the Rule of Law is also linked to the broader concept of "European social order".[79]

The World Justice Project (WJP) Rule of Law Index is a useful source for assessing the state of the Rule of Law[80] in different countries. It allows us to identify challenges and progress in the context of Georgia.[81]

Georgia had the highest index in 2015/2016 (0.66).[82] Over the past three years, the index has remained at 0.6. Although Georgia has maintained its position as the top-ranked country among 15 countries in the regional ranking since 2014, it has decreased in certain areas, such as absence of corruption and fundamental rights.[83]

The Venice Commission has issued critical opinions on several drafts and adopted laws of Georgia, including in light of the Rule of Law standards. In the Venice commission checklist of the Rule of Law related to the relationship between the parliamentary majority and the opposition in a democracy, is stressed that 'complex and controversial bills would normally require particularly long advance notice, and

72 In the Court's view, 'it would be a mistake to see... a merely "more or less rhetorical reference", devoid of relevance for those interpreting the Convention. One of the reasons why the signatory Governments decided "to take the first steps towards the collective realization of certain rights enshrined in the Universal Declaration" was their profound belief in the rule of law', para. 34.

73 *Engel v. the Netherlands*, 8 June 1976, § 69.

74 *Amour v. France*, 25 June 1996, § 50.

75 *Klass v. Germany*, September 8, 1978, § 55.

76 *Winterwerp v. the Netherlands*, 24 October 1979, § 39.

77 *Vereiniging Weekblad Bluf v. the Netherlands*, 9 February 1995, § 35.

78 *Malone v. the United Kingdom*, 2 August 1984, § 79.

79 *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, Turkey, 30 January 1998, §45.

80 This project has presented data on Georgia since 2014.

81 The index measures adherence to the Rule of Law based on eight factors: constraints on government powers; absence of Corruption; open government; fundamental Rights; order and security; regulatory enforcement; civil justice; criminal justice. Between 2023 and 2024, the Rule of Law weakened in a majority of countries. The WJP Rule of Law Index overall score fell in 57% of countries and improved in 43%. On average, the overall score declined by 0.2%.

82 A score of 1 indicates the strongest adherence to the rule of law, while a score of 0 indicates the weakest adherence

83 See Worlds Justice Project. Rule of Law. [online] Available at: https://worldjusticeproject.org/rule-of-law-index/global/2024/Georgia/Absence%20of%20Corruption/table.

should be preceded by pre-drafts, on which some kind of consultation takes place. The public should have a meaningful opportunity to provide input [...]'.[84] The Venice Commission expresses deep concern about the fact that this human-rights sensitive Law was adopted in a rushed way (very little time separated the three readings in Parliament), with no meaningful consultation process.[85]

The Venice Commission sharply criticized Georgia's recent laws on foreign influence, including the Foreign Agents Registration Act (FARA) and amendments to the Law on Grants. The commission stated that these laws risk undermining the Rule of Law and civic space. The commission recommended repealing or substantially revising these laws, warning that they impose disproportionate restrictions, lack clarity, grant authorities excessive discretion, and were passed without sufficient public consultation. In their October 2025 opinion, the commission urged Georgia to repeal FARA and the foreign funding ban for broadcasters. They also called for a more inclusive and systemic approach to future lawmaking. The commission states the following when considering recent amendments to a certain number of laws: 'Together, these issues risk arbitrary enforcement and threaten the rule of law and democracy.'[86] The Speaker of the Georgian Parliament announced the official stance regarding the Venice Commission's expert opinion: '*Previously, the Venice Commission had clear legal opinions, but we have seen for several years now that these are political conclusions and reports. This report is the best example that the Commission has become a compiler of political conclusions rather than legal ones*.'[87] Clearly, the opinions of the Venice Commission and other authoritative international bodies are very important while assessing Georgia's relationship with the EU. However, so far, the Georgian government has not taken any steps based on above cited recommendations.

3.2. Implementation by Georgia 12-point Plan

While discussing the protection of constitutional identity in Georgia *vis-a-vis* negotiations on the accession to the EU, and in particular, the compliance of the implementation of the so-called 12-point Agenda with the Constitution of Georgia, it should be considered that, by signing the AA with the EU on 27 June 2014, the Georgian government, in addition to firmly demonstrating its strategic choice, created

84 CDL-AD (2019)015, para 74.
85 CDL-PI (2024)013, para 47.
86 CDL-AD (2025)034, para 79.
87 See Papuashvili, Sh.: Venice Commission dares not tell America that FARA contradicts rule of law, yet says so about Georgia, 16.10.2025

a very important framework for systemic change in the country.[88] However, in this case, a line must be drawn between where a state is ready for constitutional changes on the path to integration with the EU and where these changes can be considered an attempt to deviate from constitutional (and, according to some authors, national) identity.

In fact, the demands listed in the 12-point plan broadly did not contradict either the Constitution of Georgia or the government's declared policy of approximation to European standards and legislation at first glance. However, what is important here is what in-depth demands and expectations the parties actually had behind each point of the 12-point plan, and this is precisely what the 2023 and 2024 Reports provide, which reflect in detail both the progress achieved by the Georgian government, the shortcomings, and those aspects that, from the European Commission's point of view, can be considered as the fulfilment of all twelve points.

Before we get into the details, it should be noted that by 2023, the European Commission considered the reforms and legislative initiatives put forward by the Georgian side sufficient to grant the country candidate status, although with significant conditions. Notably, the factor of Georgia's population and its strong aspiration towards the EU or common European space played a major role in the granting of candidate status.

As for the recommendations given in paragraphs 23 and 24 of the report, they can be divided into two major parts. There are recommendations that do not contradict the spirit of the Constitution in any way, and even if constitutional amendments are necessary to implement them, will not have any impact on constitutional identity. However, the same cannot be said about a number of recommendations and suggestions that may be considered contrary to constitutional identity. For example, the recommendations on judicial reform also include a passage on the necessary integration of foreign experts in the High Council of Justice (HCJ) with a decisive role in the process of selecting judges.[89] This might be considered as contrary to the sovereignty, which is emphasised in the Preamble and Article 1 of the Constitution of Georgia, and independence of the judicial system, not only from internal but also from external bodies or actors.

Furthermore, on the protection of the rights of LGBTQ persons at the legislative level, anti-discrimination articles are included in the Georgian legislation, starting

88 See: Maka Bochorishvili, Chair of the Committee on European Integration, Legislative Basis of Association with the European Union 2014-2023, 27.06.2023.

89 Commission Staff Working Document, Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy. Brussels, 8.11.2023 SWD (2023) 697. p. 20.

from the Constitution,[90] although discrimination on the basis of gender and identity is not specifically mentioned among the list in Article 11 of the Constitution. However, in 2014, the law on the Elimination of All Forms of Discrimination was adopted, which prohibits of any form of discrimination, including based on race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics.[91]

Since 2017, major amendments have been made to the legislation. First, in Article 30 of the Constitution, marriage has been defined as 'a union of a woman and a man for the purpose of founding a family, shall be based on the equality of rights and the free will of spouses'; in 2024, the Law on the Protection of Family Values and Minors has been adopted, which recognizes only two biological sexes (woman and man)[92] and strictly prohibits popularization of a person's assignment to neither biological sex, and/or a sex different from his/her biological sex, or a relationship between representatives of the same biological sex with an expressed sexual orientation, or incest.[93]

In the 2024 Report, although the Commission recognizes some progress in implementation of the AA and 12-step Agenda, it still maintains its reservations regarding the independence of the HCJ, in particular, the involvement of foreign experts, and the protection of the expression and other rights of LGBTIQ persons, which were further limited by the legislative amendments discussed above in 2024.

Therefore, the requirement to adopt the Human Rights action plan ensuring the rights of LGBTIQ persons,[94] if they conflict with article 30 of the Constitution and the purpose and objective of the Law on the Protection of Family Values and Minors, may be considered a step against constitutional identity. The clearly stated position of the current Georgian government remains to protect so-called traditional values, which are reflected in the latest legislation.

90 Article 11 of the Constitution of Georgia.

91 Article 1 the Law on Elimination of All Forms of Discrimination No 2391-IIs.

92 Article 2 of the Law on the Protection of Family Values and Minors (No 4437-XVI მს -X მვ).

93 Ibid., Article 3.1.

94 Commission Staff Working Document, Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy. Brussels, 8.11.2023 SWD (2023) 697. p. 28.

4.
Conclusion

This article analyses the complex intersection between Georgia's constitutional identity and its process of European integration, particularly in the context of the EU's 12-point agenda for candidate status. Following the endorsement of the AA in 2014, Georgia has demonstrated a commitment to a program of legal and institutional transformation. This agreement was indicative of a geopolitical realignment, as well as the establishment of a framework for deep normative convergence with EU values and standards. However, the implementation of the 12-point agenda, while largely consistent with Georgia's Constitution in a formal sense, reveals underlying constitutional tensions when examined in depth.

The EU's 2023 and 2024 progress reports play a pivotal role in evaluating Georgia's adherence to European standards. Noteworthy advancements have been acknowledged, including anti-corruption measures, institutional reforms, and public support for integration. Concurrently, they identify areas of concern wherein EU expectations appear to clash with Georgia's constitutional provisions or legal culture. Among the proposed judicial reforms is the integration of foreign experts into the High Council of Justice, which would grant these individuals a significant degree of influence over domestic policy. This has led to concerns regarding the implications of such reforms for state sovereignty, as outlined in the Preamble and Article 1 of the Georgian Constitution. Furthermore, advocacy for the enhancement of the rights of LGBTIQ individuals conflicts with contemporary legislative developments, including the 2024 Law on the Protection of Family Values and Minors and the 2017 constitutional definition of marriage, which accentuate conventional values and impose limitations on gender identity expression.

This juxtaposition suggests that constitutional identity in Georgia might be perceived as a dynamic and contested concept, influenced by evolving political discourse and limited judicial interpretation. It is not yet fully crystallized into a legal doctrine. The Constitutional Court of Georgia has not played a significant role in defining the scope of constitutional identity, instead leaving much of the interpretive work to political actors and civil society. In this context, the notion of constitutional identity can serve as a protective measure for national sovereignty and as a tool to establish boundaries in response to external pressures, particularly when those pressures are seen as affecting fundamental societal norms.

Therefore, the key challenge lies in managing the delicate balance between upholding the foundational principles of the Georgian constitutional order and embracing the systemic reforms required for EU accession. A delicate balance seems to be essential, particularly given how widely supported European integration is,

which was a major reason why candidate status was awarded in 2023. Future progress will depend not only on technical compliance with EU directives but also on the ability of Georgian institutions to interpret and adapt these reforms within a constitutional framework that respects national values and public legitimacy.

Ultimately, Georgia's path to EU membership will require a nuanced approach, one that does not frame constitutional identity and European integration as mutually exclusive, but rather as potentially compatible trajectories. Ensuring this compatibility is a process that will require sustained dialogue, institutional maturity, and a robust legal culture that is capable of navigating the complex interplay between national sovereignty, constitutional principles, and supranational obligations

Bibliography

- '2005 Outcome Document from the World Summit' (2005) para. 134, reaffirmed in 2024.
- '2030 Agenda for Sustainable Development' (2015).
- Alaverdashvili, G. (2024) 'Ways of discovering constitutional identity in different jurisdictions', *Journal of Law*, 2024/1.
- Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (2014) OJ L 261/4.
- Börzel, T.A. and Risse, T. (2012) 'From Europeanisation to Diffusion: Introduction', *West European Politics*, 35(1).
- Cloots, E. (2016) 'National Identity, Constitutional Identity and Sovereignty in the EU', *Netherlands Journal of Legal Philosophy*, 2016/45, pp. 79–94.
- Commission Staff Working Document (2023) 'Georgia 2023 Report', *SWD (2023),* 697.
- Commission Staff Working Document (2024) 'Georgia 2024 Report'.
- Delcour, L. (2020) 'Dealing with the Geopolitical Dimension of EU Enlargement: The Eastern Partnership after Crimea', *Journal of Contemporary European Studies*, 28(2).
- Di Federico, G. (2019) 'The Potential of Article 4(2) TEU in the Solution of Constitutional Clashes Based on Alleged Violations of National Identity and the Quest for Adequate (Judicial) Standards', *European Public Law*, 25(3).
- European External Action Service (2016) EU–Georgia Relations: Factsheet.
- European Parliament (2019) The meaning of 'association' under EU law [online]. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608861/IPOL_STU(2019)608861_EN.pdf (Accessed: 1 December 2025).
- European Council (2023) Conclusions on Enlargement and the Stabilisation and Association Process EUCO 20/23.
- Fletcher, G.P. (1993) 'Constitutional Identity', *Cardozo Law Review*, 1993/14.
- Gegenava, D. (2019) For Understanding of Constitutional Identity. Tbilisi: Sulkhan Saba Publishing.
- Grimm, D. (2023) 'Three Meanings of Constitutional Identity and Their Prospects in the European Union', *European Yearbook of Constitutional Law*. The Hague: Springer/T.M.C. Asser Press.
- Jacobsohn, G.J. (2010) 'Constitutional Identity', *The Review of Politics*, 2010/68, pp. 361-397.
- Jacobson, G.J. (2011) 'Rights and American Constitutional Identity', *Polity*, 43(4), pp. 409–431.

- Jacobson, G.J. (2011) 'The Formation of Constitutional Identities' in Ginsburg, T. and Dixon, R. (eds.) Comparative Constitutional Law. Northampton: Edward Elgar Publishing, pp. 129–143. https://doi.org/10.1007/CBO9781107445253
- Kardava, E. (2021) 'Place of the Association Agreement as an International Treaty of Georgia in National Law', *German-Georgian Journal of Comparative Law*, 2021/2.
- Kezuriani, J. (2013) 'Constitutional Court Supervision of Georgia's International Treaties', *Bulletin of the Georgian National Academy of Science*, 7(1).
- Koplatadze, I. (2024) The EU Acquis: 2025–2030 [online]. Available at: https://gfsis.org/wp-content/uploads/2024/11/THE-EU-ACQUIS-2025-2030.pdf (Accessed: 7 December 2025).
- Korkelia, K. (2021) 'Constitution of Georgia and International Law' in Chigladze, N. (eds.) *First Constitution of Georgia: 100 Years.* Tbilisi: ISU School of Law Publishing.
- Kurdadze, I. and Kevlishvili, M. (2023) 'Implementation of Article 12 of the UN Convention on the Rights of Persons with Disabilities in Georgia' in Domański, M. and Lackoroński, B. (eds.) Models of Implementation of Article 12 of the Convention on the Rights of Persons with Disabilities. London: Routledge, pp. 228–247.
- Kurdadze, I. (2001) 'The Primacy of Universal and Regional International Law and Georgia' in Korkelia, K. (ed.) Georgia and International Law (Collection of Articles). Tbilisi: ISU School of Law Publishing.
- Matsaberidze, M. (2008) The 1921 Constitution of Georgia: Elaboration, Adoption, Conception of State Structure. Tbilisi: Akhali Azri.
- Michel, S. and Cofone, I.N. (2018) 'Credible Commitment or Paternalism? The Case of Unamendability' in Albert, R. and Oder, B.E. An Unamendable Constitution? Cham: Springer International Publishing, pp. 123–145. https://doi.org/10.1007/978-3-319-95141-6
- Nakashidze, G. (2022) 'Constitution of Georgia, Primacy of International Law and Ex Post Constitutional Review of Treaties', *Journal of Constitutional Law*. 2022/1, pp. 81–109.
- Polzin, M. (2017) 'Constitutional Identity as a Constructed Reality and a Restless Soul', *German Law Journal*, 2017/18.
- Reestman, J.H. (2009) 'The Franco-German Constitutional Divide: Reflections on National and Constitutional Identity', *European Constitutional Law Review*, 2009/5, pp. 375–386.
- Schimmelfennig, F. and Sedelmeier, U. (2005) The Europeanisation of Central and Eastern Europe. Ithaca: Cornell University Press.
- 'SCC Declaration 1/2004' (2004).
- 'The notion of constitutional identity and its role in European integration' (2024) *Policy Department for Citizens' Rights and Constitutional Affairs PE*, N. 760.344.
- Venice Commission (2011) CDL-AD (2011)003rev.
- Venice Commission (2016) CDL-AD (2016)007.

- Venice Commission (2019) CDL-AD (2019)015.
- Venice Commission (2024) CDL-PI (2024)013.
- Venice Commission (2025) CDL-AD (2025)034.

Georgian Constitutional Court judgments

- Givi Donadze v. Parliament of Georgia. Decision N. 1/1/126,129,158; Panel I – Avtandil Abashidze, Iakob Putkaradze, Nikoloz Shashkini, Besarion Zoidze, 18 April 2002.
- 48 members of the Parliament of Georgia v. the Parliament of Georgia; Decision N2/35 of the Plenum in Avtandil Demetrashvili, Gia Meparishvili, Otar Benidze, Avtandil Abashidze, NikolozShashkini, Nikoloz Cherkezishvili, Lamara Chorgolashvili, Zaur Djindzholava, 29 December 1997.
- Albrecht Weber and Wolfgang Babek in the President of Georgia v. Parliament of Georgia, Constitutional Complaint No. 1828.
- Conclusion of the Constitutional Court of Georgia on the Violation of the Constitution by the President of Georgia; Case N. 3/1/1797, 16 September 2023. https://constcourt.ge/ka/judicial-acts?legal=15923
- Constitutional submission of members of the Parliament of Georgia (Irakli Kobakhidze, Shalva Papuashvili, Mamuka Mdinaradze and others, 80 members in total) on the issue of alleged violation of the Constitution of Georgia by the President of Georgia; Amicus of the Court opinion: Author – Tinatin Erkvania; ac1797; 25 September 2023; https://constcourt.ge/ka/judicial-acts?legal=15888
- Dissenting opinion of members of the Constitutional Court of Georgia Ketevan Eremadze and Besarion Zoidze; Dissenting opinion do1/2/434; I Panel - author(s) Ketevan Eremadze, Besarion Zoidze; 27 August 2009.
- Georgian citizen Tamar Tandashvili v. Government of Georgia; Protocol No. 2/11/663; Panel II – Tamaz Tsabutashvili, Irine Imerlishvili, Teimuraz Tugushi, Manana Kobakhidze, 7 July 2017.
- Minutes of the Constitutional Court of Georgia of 4 April 2013, N. 1/2/534 in the case “Citizens of Georgia Tristan Mamagulashvili and Firuz Vaniev v. Parliament of Georgia”, II-16.
- *President of Georgia v. Parliament of Georgia, Constitutional Case N.1828; Amicus of the Court Opinion*: Authors – Albrecht Weber and Wolfgang Babek, N.ac1828, 1829; Constitutional Court of Georgia, https://constcourt.ge/ka/judicial-acts?legal=17020

- *President of Georgia, Members of the Parliament of Georgia: Tamar Kordzaia, Ana Natsvlishvili, Levan Bezhashvili and others (total 38 MPs), Non-Commercial Legal Entity"Institute for theDevelopment of Freedom of Information", Non-Commercial Legal entity"Rights Georgia", Non-Commercial Legal entity"Civil Society Foundation" and others (total 122 claimants), LLC "Network of Information Centers" and Non-Commercial Legal entity "Studio Monitor" against the Parliament of Georgia*; N.3/3/1828,1829,1834,1837; 4.10.2024. https://constcourt.ge/ka/judicial-acts?legal=17223, https://constcourt.ge/ka/judicial-acts?legal=17223
- *The Dissenting Opinion of the Member of the Constitutional Court of Georgia Eva Gotsiridze Regarding the Recording Notice*, N.3/3/1828,1829,1834,1837 dated 4.10.2024, of the Constitutional Court of Georgia.

ECtHR judgments

- *Van Gend en Loos, v Netherland Judgment*, 5 February 1963.
- *Engel v. the Netherlands Judgment*, 8 June 1976.
- *Klass v. Germany Judgment*, 8 August 1978.
- *Winterwerp v. the Netherlands Judgment*, 24 October 1979.
- *Malone v. the United Kingdom Judgment*, 2 August 1984.
- *Vereiniging Weekblad Bluf v. the Netherlands Judgment,* 9 February 1995.
- *Amour v. France Judgment*, 25 June 1996.
- *United Communist Party of Turkey and Others v. Turkey Judgment*, 30 January 1998, § 45).

CJEU judgments

- *CJEU Judgment* of 7 February 1973, Case 39/72, Commission v. Italy.
- *CJEU Judgment* of 16 February 2022, Case C156/21.
- *Solange I Judgement* of 29 May 1974.

Other judgments

- *Czech Constitutional Court Decision* 26/114, 13 February 2014.
- *Rogers v. Richmond,* 365 U.S., 9 November 1960.

International Treaties

- European Union. (2012). *Treaty on European Union (consolidated version).* Official Journal of the European Union, C 326, 13–390.
- Council of Europe. (1949). *Statute of the Council of Europe*. London.
- European Union. (2012). *Treaty on the Functioning of the European Union (consolidated version).* Official Journal of the European Union, C 326, 47–390.
- United Nations. (1969). *Vienna Convention on the Law of Treaties*. United Nations Treaty Series, 1155, 331.