Venice Commission: New acts on “de-oligarchisation” in Ukraine, Georgia and Moldova should not be enforced

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Following the adoption, in 2021, by Ukraine of specific “de-oligarchisation” legislation, the commitment to eliminate the excessive influence of vested interests in economic, political and public life has also become an objective in Georgia and Moldova. Georgia has prepared a draft statute and Moldova both a draft statute and later an action plan, which alongside the relevant Ukrainian statute, underwent a review by the Venice Commission of the Council of Europe on 9-10 June 2023.

As defined in the Ukrainian statute, which served as a model in the other two cases, an “oligarch” (or “a person wielding significant economic and political weight in political life”) is a person meeting three of four criteria outlined in the statute, including the criteria of “exerting significant influence over mass media”, which in Article 4 of the statute is defined as being an owner, or founder, or beneficial owner or controller of a mass medium, or as having been such an owner, or founder, or beneficial owner or controller at the time of the adoption of the statute, but in the grace period provided (the first six months) lost this status to another person who does not enjoy “an impeccable business reputation”, as formally defined by the statute (including the denial of such a reputation in the case of persons under national or international economic sanctions).

The consequences of being designated as an oligarch include being entered in a public register and being subject to a series of limitations, such as being prohibited from financing political parties and election campaigns and participating in large-scale privatisation. Such persons also fall under additional public scrutiny, including an obligation to submit an asset and interest declaration, while public officials are required to disclose any communication with the listed oligarchs through the filing of a specific “declaration of contacts”. The Ukrainian Government decided to launch the register of oligarchs three months after the final opinion of the Venice Commission.

The final opinion, though, recommends that the statute should not be implemented as it is difficult to reconcile with principles of political pluralism and the rule of law, as it has the potential of being misused for political purposes. It noted, in particular, that the statute may infringe rights under Article 10 of the ECHR.

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The draft statutes on de-oligarchisation in Georgia and Moldova are not dissimilar from the statute adopted in Ukraine. Therefore, the conclusions of the Venice Commission recommend that the drafts should not be adopted. The key problem is the “personal” approach to solving the existing real problems with attempts to “capture the states”, as opposed to the systemic approach recommended in the opinions of the Venice Commission. They all refer to “the great paradox of de-oligarchisation laws”, which is presented as follows:

“If the administration and the judiciary are strong and independent enough to support the implementation of 'personal measures' of the kind described, then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary have been 'captured' by the interests that the 'personal measures' are intended to fight, then such measures are either ineffective or – having to be adopted through executive acts that are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.”

The Venice Commission noted that in the three legal acts the oligarchs are defined by their influence on the media. A “central issue” therefore is the need to strengthen media pluralism, including by the enforcement of competition law and merger control procedures, as well as to ensure transparency of media ownership, in line with the Recommendation of the Committee of Ministers of the Council of Europe on media pluralism and transparency of media ownership. Such ownership information should cover all media actors and be easily available and accessible to the public.

On 13 June 2023, the Georgian Parliament passed the draft statute “On de-oligachisation” at the second reading (there should also be a third reading). The draft law defines an “oligarch” as a natural person who matches the following criteria: he/she a) participates in political life, b) exerts influence on media services, and c) owns significant economic resources (Article 1). The decision to enter a person in the registry of oligarchs is taken by the Anti-Corruption Bureau following specific criteria, provided by the statute. In this regard, “exerting influence on media services” means that the person is (directly or indirectly) an owner/co-owner of the share in the provider of the audiovisual media service or radio broadcaster, or has exerted influence on media services in Georgia during the past year (Article 2).

Moldova’s action plan on de-oligarchisation, adopted by the National Commission on European Integration under the President of Moldova on 26 May 2023, aims, in particular “to counteract the phenomenon of excessive concentration of the mass media in the hands of a single owner and the manipulation of public opinion to the advantage of a narrow political group”. It envisions a “consolidation of the internal normative framework regarding the application of international restrictive measures, by expanding the possibilities of intervention of the competent state

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authorities and making their intervention more efficient, as well as excluding some gaps detected in the implementation process of the existing legal provisions" only by May 2024. The new measures would include a change in the Audiovisual Service Code of Moldova to lower the cap for the share of the "dominant position in the formation of public opinion" from 35% to 25%.

Georgia - Final Opinion on the draft law on de-oligarchisation, adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)017-e

https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)017-e

Republic of Moldova - Final Opinion on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)019-e

https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)019-e

Ukraine - Opinion on the Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)018-e

https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)018-e

Про запобігання загрозам національній безпеці, пов'язаним із надмірним впливом осіб, які мають значну економічну та політичну вагу в суспільному житті (олігархів)

https://zakon.rada.gov.ua/laws/show/1780-IX#Text

Statute of Ukraine on the prevention of threats to national security associated with the excessive influence of persons who have significant economic or political weight in public life (oligarchs), N 1780-IX

Revised draft Law of Georgia on de-oligarchisation, second reading on 13 June 2023

https://venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)010rev-e

Plan of measures to limit the excessive influence of private interests on economic, political and public life (de-oligarchisation). Adopted by the National Commission on European Integration on 26 May 2023,

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