

**Council of Europe contribution for the 23<sup>rd</sup> UPR session  
regarding Georgia**

**Prevention of torture**

*2010 periodic visit*

On 21 September 2010, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Georgia from 5 to 15 February 2010. The report and the Georgian Government's response are attached below.

The findings from the visit confirmed that the situation as regards the treatment of persons detained by the police in Georgia has considerably improved in recent years, and the CPT has welcomed the determined action taken by the Georgian authorities to prevent ill-treatment. Nevertheless, the persistence of some allegations clearly indicates that they must remain vigilant. The CPT has recommended that the Georgian authorities continue to deliver a firm message of "zero tolerance" of ill-treatment, including through ongoing training activities, to all police staff. As part of this message, it should be made clear that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions. Further, police officers must be trained in preventing and minimising violence in the context of an apprehension. In its report, the CPT also looks at the issue of investigations into complaints of ill-treatment by the police and recommends that steps be taken to ensure that such investigations fully meet the criteria of an "effective" investigation as established by the European Court of Human Rights.

Turning to prisons, overcrowding was rife in several of the establishments visited. Despite a massive prison-building programme, the continuing increase in the prisoner population undermines the efforts made to create a humane penitentiary system. The CPT has called upon the Georgian authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison. The Committee has also recommended that the authorities review as soon as possible the norms fixed by legislation for living space per prisoner, so as to ensure at least 4 m<sup>2</sup> per inmate in multi-occupancy cells in all penitentiary establishments.

In the light of information received during the visit, the CPT has recommended that the management of Prison No. 8 in Tbilisi (Gldani), Penitentiary establishment No. 7 in Ksani and Penitentiary establishment No. 8 in Geguti take appropriate steps to ensure that prison staff do not abuse their authority and resort to ill-treatment.

No allegations of ill-treatment of patients by staff were received during the follow-up visit to the hospital facility of Asatiani Psychiatric Institute in Tbilisi. However, the ever-deteriorating state of the hospital made it unfit for accommodating patients and created conditions which could easily be described as inhuman and degrading. While awaiting the implementation of projects for the transformation of the Asatiani Psychiatric Institute, the CPT has called upon the Georgian authorities to address the most urgent deficiencies as regards patients' living conditions, and in particular to improve heating throughout the hospital.

At the Institution for persons with mental and physical disabilities in Dzevri, the CPT's delegation received no allegations of ill-treatment of residents by staff and gained a generally positive impression of residents' living conditions. However, the Committee has recommended that a systematic and regular evaluation of the residents' state of health be organised with a view to offering psycho-social rehabilitative activities adapted to their needs. The report also includes an assessment of the legal safeguards applicable to persons placed in a specialised institution.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.<sup>1</sup>



Georgia report  
2010.pdf



Georgia response  
2010.pdf

#### *2012 ad hoc visit*

On 31 July 2013, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Georgia from 19 to 23 November 2012. The report and the Georgian Government's response are attached below.

High-level talks held during the CPT's visit mainly focused on the effectiveness of criminal investigations launched following the publication, on 18 September 2012, of video material containing scenes of apparent serious ill-treatment of prisoners by staff in certain penitentiary establishments. The legislative, administrative and other steps being taken (and planned) by the Georgian authorities in respect of the country's prison system were also discussed. In its report, the CPT welcomes the wide-scale prison amnesty, while stressing that the problems of prison overcrowding and prison population inflation cannot be addressed in a comprehensive and lasting way through the use of such exceptional measures; a strategy for the sustainable reduction of the prison population should include a variety of steps to ensure that imprisonment really is the measure of last resort. The CPT has also made several recommendations concerning the two prisons visited by the delegation (in Gldani and Kutaisi) and on other issues related with the prison system, especially the prison health-care services.



Georgia report  
2012.pdf



Georgia response  
2012.pdf

### **Council of Europe Commissioner for Human Rights**

#### *Letter addressed to the Prime Minister of Republic Administration*

On 12 December 2012, the Commissioner for Human Rights, Nils Muižnieks, published his letter addressed to the Prime Minister of Republic Administration of Georgia, Mr Bidzina Ivanishvili, which is attached below.

"The Georgian authorities should address long-standing concerns about ill-treatment of prisoners and other detained persons by public officials and take effective steps to repair the system of accountability. Constant vigilance is necessary to ensure the effectiveness of the absolute prohibition of torture. I intend to focus on these issues in my dialogue with the authorities, including during my next visit to Georgia" said the Council of Europe Commissioner for Human Rights, Nils Muižnieks, on upon publication of his letter addressed to the Prime Minister of Georgia.

Acknowledging that several swift measures have been taken in response to the prison abuse scandal and noting the Georgian authorities' pledge that such human rights violations would no longer be tolerated, the Commissioner stressed that it is now necessary to carry out effective investigations to identify and punish those responsible for ill-treatment of persons deprived of their liberty.

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<sup>1</sup> pp. 63-76.

"Besides the direct perpetrators of these abuses, those officials who ordered or were informed of the abuse should be held accountable. Suitable penalties, commensurate to the gravity of the offences, should follow, but justice must not be selective. The investigation and judicial processes must comply with human rights standards so as to preserve the integrity and credibility of the institutions responsible for upholding the law."

The Commissioner also underlined that it is crucial to ensure that victims, witnesses and their families be protected, including against retaliation from those officials who were implicated in the cases concerned, and be provided with adequate legal remedies, as well as medical and psycho-social assistance.

Finally, Commissioner Muižnieks stressed that the phenomenon of ill-treatment in prisons should not be viewed in isolation from the penitentiary system and criminal justice policy in general. "Georgia has the highest rate of imprisonment in Europe, which stems partly from the stringent policy of "zero tolerance" of petty crime and the disproportionately lengthy sentences imposed. A more humane and human rights oriented criminal justice policy should be adopted and the resort to detention on remand and imprisonment reduced"



CommHR letter.pdf

### *Report on visit 2014*

On 12 May 2014, the Commissioner for Human Rights, Nils Muižnieks released the report on his visit to Georgia from 20 to 25 April 2014.<sup>2</sup>

The Commissioner's report focuses on following major human rights issues:

- Administration of justice and human rights in the justice system<sup>3</sup>
- The situation of minority groups, tolerance, and non-discrimination<sup>4</sup>

The Commissioner provides specific conclusions and recommendations at the end of each section.<sup>5</sup>

Upon releasing his report, "Though Georgia has enacted important reforms in the justice system, further efforts are needed to strengthen the independence and impartiality of the judiciary," said Nils Muižnieks, the Council of Europe Commissioner for Human Rights, at the end of a six-day visit to the country. During the visit the Commissioner examined the course of reforms in the justice sector, as well as the situation of minorities and the challenge of promoting tolerance. To this end, he held discussions with government officials at national and local level, representatives of the judiciary and human rights structures, parliamentarians, non-governmental organisations and other actors in Tbilisi, Akhalkalaki, Akhaltsikhe, Marneuli and Rustavi.

"Serious efforts have been made to address the long-standing problems of ill-treatment and impunity, particularly in the prison system" said the Commissioner, while at the same time cautioning against complacency and reiterating the need for effective investigations into any misconduct. "It is important to ensure the sustainability of the positive changes which have been introduced."

The Georgian authorities have acknowledged the problem of illegal surveillance and the need to protect the privacy of individuals. Safeguards in this area are essential and the establishment of the new Data Protection Inspectorate is a welcome development.

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<sup>2</sup> A summary of the report appears on pp. 3-5.

<sup>3</sup> paras. 8-20, 25-37, 42-55.

<sup>4</sup> paras. 61-71, 76-97, 102-116

<sup>5</sup> paras. 21-24, 38 -41, 56-60, 72-75, 98-101, 117-119.

Many interlocutors, including the Ombudsman, referred to the numerous individual complaints filed by citizens alleging convictions based on coerced testimony, problematic use of plea bargaining, selective targeting of political opponents through the criminal justice system, and illegal property transfers. "Allegations about abuses must be adequately processed and addressed. Clear case-selection criteria and legal mechanisms must be conceived, in line with international standards," said the Commissioner. More generally, he underlined that further reforms should be aimed at strengthening the independence and impartiality of the judiciary, as well as the equality of arms and the rights of the defence in criminal proceedings. "The objective should be to establish firm foundations of a justice system which cannot be abused for political ends. At the same time, dissuasive criminal sanctions must be applied in respect of perpetrators of violent hate crimes. That is another reason why the prosecutorial authorities are a key actor and it is crucial that recruitment and promotion of prosecutors are based on professionalism, merit and integrity" observed the Commissioner.

The Commissioner was concerned to note reports about intolerant rhetoric, including hate speech, against certain communities, including ethnic and religious minorities and LGBTI persons. In some cases, violent incidents have been reported. "A firm stance should be taken against violence and hate speech," stressed the Commissioner. "Georgia is a diverse country and the promotion of tolerance throughout all phases of the education system is especially important to foster a cohesive society. Decisive and systematic action should be taken by the authorities to counter intolerance and discrimination. I encourage rapid adoption and vigorous implementation of a comprehensive antidiscrimination law." Sharing his initial observations from the regions of Samtskhe-Javakheti and Kvemo Kartli, Commissioner Muižnieks urged the authorities to deploy greater efforts to teach Georgian to minority communities.

Finally, Commissioner Muižnieks welcomed steps taken by the new authorities to adopt a National Human Rights Action Plan and develop a long-term vision of systematic work for implementing human rights in the country. He noted that the future Action Plan should be closely linked to the on-going justice sector reform and must involve civil society and national human rights institutions.

The Commissioner's report on his 2014 visit to Georgia appears below.



report GEO.pdf

## **Fight against racism and intolerance**

On 15 June 2010, the European Commission against Racism and Intolerance (ECRI) published its third report on Georgia.<sup>6</sup> ECRI's Chair, Nils Muiznieks, pointed out positive initiatives in fighting discrimination on the grounds of "race", colour, language, religion, nationality or national or ethnic origin, but also expressed concern that members of ethnic minorities still face exclusion due to their lack of command of Georgian and that Roma remain in a vulnerable position.

As regards positive developments, the Georgian Ombudsman continued to play a fundamental role in fighting discrimination. He was setting up regional branches in order to reach affected persons better. The general lines of a National Strategy for Tolerance and Civil Integration were adopted in 2009.

Important measures had been taken in favour of internally displaced persons. Although the August 2008 armed conflict could have resulted in significant ethnic tension, the public in general still seemed to be able to distinguish between the political leadership and individual persons living in Georgia.

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<sup>6</sup> A summary of the report can be found on pp. 7-10.

At the same time, contacts between the majority population and ethnic minorities were limited. Language was certainly one of the main obstacles and more needed to be done to ensure that ethnic-minority members speak Georgian. However, the isolation of Armenians, Azerbaijanis and others in the south and south-east was also due to infrastructure problems, transport and communication in particular. Moreover, the majority population remained to a large extent unaware of the situation of ethnic-minority groups and their culture.

Harassment and violence targeting Jehovah's Witnesses and Muslims continued to be a problem and the police did not always take appropriate action. As a result, victims were reluctant to report racist offences and attacks on religious property.

Roma faced widespread prejudice and marginalisation due to the extreme poverty in which some of them live. School attendance by Roma children was low.

The report contained findings and recommendations regarding the following issues:

- Existence and implementation of legal provisions<sup>7</sup>
- Discrimination in various fields including education, employment, administration of justice and other fields<sup>8</sup>
- Racist violence<sup>9</sup>
- Racism in public discourse<sup>10</sup>
- Vulnerable/target groups including Roma, Meskhetian Turks, religious minorities, ethnic minorities asylum seekers and refugees<sup>11</sup>
- Situation of internally displaced persons as a result of the conflicts within the territory of Georgia<sup>12</sup>
- Conduct of law enforcement officials<sup>13</sup>
- The national concept for tolerance and civil integration<sup>14</sup>
- Monitoring racism and racial discrimination<sup>15</sup>

The following three recommendations were selected for priority implementation to be revisited two years later:

- Reform the teaching of Georgian to ethnic minority pupils;
- Devise an integration strategy for Meskhetian Turks explaining the historical reasons for their return;
- Improve the teaching of Georgian to ethnic-minority students of the Zurab Zhvania Public Administration School and assist, among others, ethnic-minority graduates to find appropriate jobs.

Subsequently, on 15 October 2013, ECRI adopted conclusions on the implementation of these recommendations for which priority follow-up was requested.

ECRI's report on Georgia and the conclusions on the implementation of the recommendations subject to interim follow-up are attached below.



Report 2010.pdf



Interim followup.pdf

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<sup>7</sup> paras. 1-27.

<sup>8</sup> paras. 28-44.

<sup>9</sup> paras. 45-49.

<sup>10</sup> paras. 50-56.

<sup>11</sup> paras. 57-82.

<sup>12</sup> paras. 83-93.

<sup>13</sup> paras. 94-99.

<sup>14</sup> paras. 100-102.

<sup>15</sup> paras. 103-105.

## Protection of minorities

### *Framework Convention for the Protection of National Minorities*

On 11 June 2014, the Committee of Ministers adopted a resolution on the protection of national minorities in Georgia (attached below). The resolution contains conclusions and recommendations, highlighting positive developments but also mentioning issues of concern. Moreover, it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

The linguistic rights of persons belonging to national minorities are still a major challenge facing the authorities. Whilst they are making efforts to make it easier for those persons belonging to national minorities who are not familiar with the Georgian language to learn it, these efforts do not constitute an appropriate response to existing needs. Improving facilities for learning Georgian should therefore be a priority for the authorities. They should also ensure that the policy of promoting the Georgian language is not pursued to the detriment of the linguistic rights of persons belonging to national minorities, the effective enforcement of which requires more resolute measures, both in the legislative framework and in its implementation.

In the field of education, the lack of resources invested in tuition provided in minority languages means that the pupils concerned are not on an equal footing with other pupils. Against this background, the reforms undertaken in the Georgian education system are to be noted. In particular, the recent legislative changes to the national university entrance examination procedure and the establishment of a quota system for speakers of minority languages are to be welcomed. It must be emphasised that equal access is essential, with no unjustified obstacles, to higher education for pupils who have studied in minority language schools. More generally, the authorities should take all the measures needed to promote full and effective equality for persons belonging to minorities in the education system.

Participation of persons belonging to national minorities in the country's cultural, social and economic life and in public affairs remains limited. Their inadequate command of the Georgian language is one of several factors accounting for their marginalisation. The authorities should take vigorous measures to remove legislative and practical obstacles to the participation of persons belonging to national minorities in elected bodies and in the executive, and allow minorities to be better represented in the public service. Consultation of representatives of national minorities by the authorities, particularly through the Council for Ethnic Minorities, should be more systematic, and the recommendations and proposals of this unique body representing minorities should be given all the necessary attention. Moreover, the Georgian authorities should take more resolute measures to promote the effective participation of persons belonging to national minorities in the socio-economic life of the country.

Increased religious tensions mentioned in the opinion of the Advisory Committee, which particularly affect persons belonging to national minorities, are a cause of concern. The authorities should make every effort to combat this phenomenon and, in general, all forms of intolerance based on ethnic or religious affiliation. It is also necessary to increase efforts to promote mutual understanding and intercultural dialogue between the majority population and persons belonging to national minorities, by means of a balanced policy that takes full account of the rights of persons belonging to minorities.

The Committee of Ministers' resolution is largely based on the corresponding first Opinion of the Advisory Committee on the Framework Convention on Georgia<sup>16</sup>. The concluding remarks, contained in Section III<sup>17</sup>, serve as the basis for the Committee of Ministers' Resolution. The Opinion of the Advisory Committee is also attached below.

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<sup>16</sup> A summary of the report can be found on pp. 3 - 4.

<sup>17</sup> paras. 211 - 217.



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### *European Charter for Regional or Minority Languages*

Georgia has not yet signed or ratified the European Charter for Regional or Minority Languages. Thus, the country is not yet covered by the monitoring carried out by the Committee of Independent Experts under the Charter.

### **Action against trafficking in human beings**

On 7 February 2012, the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Georgia<sup>18</sup>, together with the final comments of the Georgian Government. Both documents are contained in the attachment below.

In its concluding remarks<sup>19</sup> GRETA welcomes the legal and institutional measures taken by the Georgian authorities to combat trafficking in human beings, the financial resources set aside to this end and the continued political will to maintain anti-trafficking actions as a priority for the country.

That said, GRETA considers that the Georgian authorities should take further steps to ensure that the human rights-based and victim-centred approach underpinning the Convention is fully reflected and applied in the national policy to combat trafficking in human beings (THB), from prevention to protection, prosecution and redress. This includes taking measures to strengthen the aspect of prevention amongst groups vulnerable to THB, such as IDPs, including children, as well as orphan children and children working and living in the street. The training of law enforcement officials, prosecutors, judges, social workers, consular staff and other relevant professionals should stress the need to apply a human rights-based approach to action against THB on the basis of the Council of Europe Anti-Trafficking Convention and the case-law of the European Court of Human Rights.

The human rights-based approach to THB also requires taking further steps to secure that all victims of trafficking are properly identified and that they benefit from a recovery and reflection period before having to decide whether to co-operate with the law enforcement authorities.

The Georgian authorities have put in place measures and programmes to provide assistance to victims of trafficking. That said, in practice, very few victims have benefitted from individual rehabilitation and reintegration plans and a small number of victims have received the one-off payment from the State Fund. Increased provision should also be made in the national policy against THB for measures to assist the reintegration and rehabilitation of victims of trafficking and to prevent re-trafficking.

Similarly, the Georgian authorities have made available the necessary investigative and legal tools to prosecute traffickers, but GRETA notes with concern the significant reduction in the number of prosecutions and convictions since 2010.

GRETA invites the Georgian authorities to keep it regularly informed of developments as regards the implementation of the Council of Europe Anti-Trafficking Convention and looks forward to continuing its good co-operation with the Georgian Government for achieving the purposes of this Convention.

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<sup>18</sup> A summary of the report can be found on p. 7.

<sup>19</sup> paras. 223 - 228.

In its report, GRETA provides a complete list of proposals to the Georgian authorities.<sup>20</sup>



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### **Preventing and combating violence against women and domestic violence**

Georgia has signed but not yet ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. For this reason, it is not yet concerned by the monitoring procedure under this Convention.

### **Fighting corruption**

#### *Second Evaluation Round*

On 27 May 2011, the Group of States against Corruption (GRECO) published its Addendum to the Compliance Report on Georgia within the Second Evaluation Round covering three distinct themes namely “proceeds of corruption”, “public administration and corruption” and “legal persons and corruption”. To conclude<sup>21</sup> GRECO considers that commendable progress has been achieved towards implementing the recommendations of the Second Round Evaluation Report. GRECO welcomes this outcome and encourages Georgia to fully implement the remaining (partially implemented) recommendation.

The Addendum to the Second Compliance Report on Georgia is attached below.



GrecoRC2(2008)9\_A  
dd\_Georgia\_EN.pdf

#### *Third Evaluation Round*

On 5 July 2013, GRECO published its First Compliance Report on Georgia within the Third Evaluation Round covering two distinct themes, namely “incriminations” and “transparency of party funding”. In its report GRECO concludes that Georgia has implemented satisfactorily six of the fifteen recommendations contained in the Third Round Evaluation Report.<sup>22</sup> In the light of this, GRECO notes that Georgia has been able to demonstrate that substantial reforms with the potential of achieving an acceptable level of compliance with the pending recommendations within the next 18 months are underway. GRECO therefore concludes that the current level of compliance with the recommendations is not “globally unsatisfactory”.

The First Compliance Report on the Third Evaluation Round is attached below.



GrecoRC3(2013)9\_G  
eorgia\_EN.pdf

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<sup>20</sup>Appendix I.

<sup>21</sup> Conclusions in Section III of the report, paras. 38-41

<sup>22</sup> Conclusions in Section III of the report, paras. 82-86.



## European Commission for Democracy through Law (Venice Commission)

The Venice Commission has adopted a number of opinions on draft laws and on the constitutional situation in Georgia since 2011.

### I. DEMOCRATIC INSTITUTIONS AND FUNDAMENTAL RIGHTS

- ❖ *Final opinion on the amendments to the law on assembly and manifestations of Georgia adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011)*

Certain problems persisted, notably as concerned blanket restrictions, blocking of traffic and spontaneous assemblies, although in part they stemmed directly from the constitution. In all, the new law represented a significant improvement. Due implementation would be crucial in this field.

- ❖ *Opinion on three Draft Constitutional Laws amending two Constitutional Laws amending the Constitution of Georgia adopted by the Venice Commission at its 96th Plenary Session (Venice, 11-12 October 2013)*

The opinion addressed in particular the suppression of the so-called “question of confidence” and the procedure of approval of the state budget by the Parliament.

However, the reform of the procedure for amending the constitution was the most controversial. The proposed amendments repealed both the reflection period of at least three months between the two votes and the need to achieve a three-fourths majority for the adoption of a constitutional reform and to reject the president's remarks opposing the reform.

The opinion stressed that, when it comes to constitutional amendment, the challenge is to balance the requirements of rigidity and flexibility; at the same time, the constitution cannot be amended in conjunction with every change in the political situation in the country or after the formation of a new parliamentary majority. The Commission had previously expressed the view that in Georgia the system of a single vote by a two-thirds majority of the total number of MPs was insufficiently protective of the constitution and had considered the introduction of a double vote separated by a period of three months as a step forward in this direction. As the proposed amendment was equivalent to a return to the pre-2010 system, it called for the same reservations.

The proposed amendments to the constitutional amendment procedure had not been adopted and therefore the amendments making constitutional amendments more difficult entered into force following the presidential elections.

### II. CONSTITUTIONAL JUSTICE AND ORDINARY JUSTICE

- ❖ *Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and Rule of Law (DGI) of the Council of Europe, on the draft Laws amending the Administrative, Civil and Criminal Codes of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014)*

The opinion welcomed the efforts made by the Georgian authorities to improve the system of cassation appeals by broadening and refining the admissibility criteria for cassation appeals. It considered that if applied in an equal and well-reasoned manner, the admissibility criteria for cassation appeals set out in the draft amendments *in abstracto* meet the requirements of proportionality and non-discrimination.

The most significant development in terms of broadening the admissibility criteria of cassation appeals had been the introduction of the possibility of cassation appeal where the decision of the appeal court contradicts the relevant decision(s) of the ECtHR [(the European Court of Human Rights)] in case(s) in which Georgia was a party.

However, in view of the vague wording of the admissibility criteria and the ambiguity of some notions therein, it was essential that in its future case-law the Supreme Court addresses that ambiguity by giving clarifications based on a consistent and non-discriminatory judicial interpretation. The Commission also considered that the admissibility criterion concerning the decisions of the ECtHR "in which Georgia was a party" should be reformulated to cover the entire case-law of the ECtHR, including cases against other contracting states.

*Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014)*

However, the opinion made certain recommendations to further improve the draft law. In particular, it advised that the appointment and promotion criteria for judges should be clearly indicated in the draft law and probationary periods for judges, which were previously criticised by the Commission, should be removed both from the Organic Law on General Courts and the Constitution. The opinion also recommended that competition be the rule for all appointments and the criteria for the assignment of a judge to another court or seconding a judge to another court be clearly indicated.

The opinion further noted that the investigative powers of the special unit of the High Council of Justice, which go beyond the search for information on professional skills of the candidates, created the risk of infringing the right to privacy of the candidates.

The opinion further criticised the draft provision concerning the dismissal of a member of the High Council of Justice by the Parliament or the President and considered it essential that dismissal due to offences committed by the post holder be investigated by an independent body and not by a political organ. Finally, the opinion also criticised the draft provisions which provided for the termination of certain judicial mandates with the enactment of the Draft amendment law and stressed that the judiciary should be protected against arbitrary dismissal and interference in the exercise of the function.

- ❖ *Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on making changes to the Law on disciplinary Liability and disciplinary Proceedings of Judges of General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014)*

The opinion recommended further improving the draft. For instance, more precise provisions concerning the grounds for initiating disciplinary liability, as well as increased procedural guarantees, should be included in the draft. The opinion further stressed that the requirement of a two-thirds majority for all the decisions of the High Council of Justice in disciplinary proceedings was too high and risked impairing the efficiency of the disciplinary

- ❖ *Opinion on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013) 11/03/2013*

The draft amendments covered three different points: media coverage of court proceedings, the composition of the High Judicial Council and the transitional provisions on the termination of functions of the current High Judicial Council of Georgia (HCJ).

As concerns media coverage of court proceedings, while recognising that there are advantages to having audio or video recordings of court hearings, in particular in the Georgian context, the opinion, adopted at the March 2013 session, stressed that the draft amendments relating to media coverage should be more precise as it was doubtful that they met, as they stood, the criteria of the “quality of the law” required by the case-law of the European Court of Human Rights.

Regarding the composition of the High Judicial Council, it was underlined that in important respects the amendments represented progress for the independence of the Council: the President of Georgia no longer appointed members of the Council; secret ballot had been introduced for the election procedure; eight judges were elected by the Judicial Conference on a proposal from the judges themselves. The main point of contention was the ban of chairmen of courts and chambers from election in the High Council of Justice.

On the very controversial issue of termination of functions of the current High Judicial Council, the opinion stated that an important function of judicial councils was to shield judges from political influence. Allowing the complete renewal of the composition of a judicial council following parliamentary elections would be inconsistent with this important task.

- ❖ *Opinion on the Provisions relating to Political Prisoners in the Amnesty Law of Georgia Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013)*

The Commission attempted to provide a legal analysis of the situation with a view to strengthening the rule of law: the Amnesty Law was analysed against the principle of separation of powers, and the rule of law principles of legality (including transparency), prohibition of arbitrariness, non-discrimination and equality before the law. It was not found to be in conformity with these principles.

However, the Commission acknowledged that it would be contrary to the principles of legal certainty and non-retroactivity of criminal law if the persons who had been released pursuant to this law were to be returned to prison. The Commission stressed that any future amnesty or mechanism to address claims of imprisonment for political reasons should comply with rule of law principles and should involve the courts.

- ❖ *Joint Opinion Venice Commission and Directorate for Justice and Human Dignity on the Draft Law on the Temporary State Commission on miscarriages of justice of Georgia adopted at the 95th Plenary Session of the Venice Commission, Venice, 14-15 June 2013*

The preamble of the draft law states that “after the parliamentary election of 1 October 2012 thousands of Georgian citizens, foreigners or stateless persons have filed complaints to the executive authorities and Parliament of Georgia stating that in 2004-2012 they were unlawfully and/or unjustly convicted of criminal offences” and the draft law on the temporary state commission on miscarriages of justice was intended to provide a mechanism to determine the cases of these people.

In its opinion, adopted at its June 2013 session, the Venice Commission underlined that the very idea of a process of massive examination of possible cases of miscarriage of justice by a non-judicial body, raised issues as regards the separation of powers and the independence of the judiciary as enshrined in the Constitution.

It further underlined that the opinion did not take a position on whether there were in fact miscarriages of justice in Georgia nor on whether such miscarriages of justice were of a systemic nature requiring the creation of a special mechanism; it stressed that any decision on the determination of the criminal charges against plaintiffs having suffered a miscarriage of justice

must be adopted by a court and that it is essential that no special “chamber for miscarriage of justice” be created specially, in order to re-examine the cases sent back to the judiciary by the State Commission.

### III. ELECTIONS AND POLITICAL PARTIES

- ❖ *Joint opinion on the draft election code of Georgia adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011)*

The opinion underlined that overall, the draft new Election Code was conducive to the conduct of democratic elections and had many positive features. However a certain number of points needed to be re-examined: the too rigorous restrictions on the passive suffrage rights of citizens; long residency requirements for candidates; lack of effective mechanisms to facilitate the participation of women in elections; remaining shortcomings in the regulation of political party and campaign finances; and shortcomings in the complaints and appeals process. The most important among these issues was the notable inequality in the size of electoral districts, which for the parliamentary elections ranged between some 6,000 and some 160,000 registered voters.

In addition, the opinion reiterated that, apart from improving the legal framework itself, full and effective implementation of the law was necessary in order to ensure conduct of elections in line with international standards.

The law adopted at the end of 2011 took into account some of the recommendations made by the Venice Commission and the OSCE/ODIHR.

- ❖ *Joint opinion on the draft law on amendments and additions to the organic law of Georgia on political unions of citizens adopted by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011)*

A certain number of changes were nevertheless recommended to help ensure that the Organic Law was fully in line with international law and best practices. In particular, replacing the ban on the delivery of goods to voters with a cap on party expenditures and prescribing with greater precision the powers of the Chamber of Control compared with the Central Electoral Commission should be considered.

The law as adopted introduced some amendments compared with the draft submitted to the Commission. In particular, it extended the powers to the Chamber of Control and made a number of new restrictions concerning the possibilities of funding of political parties

A list of adopted opinions, with a summary of the texts, appears in the attachment below.



Venice  
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### **Social and economic rights**

Georgia ratified the Revised European Social Charter 22/08/2005, accepting 63 of the Revised Charter's 98 paragraphs.

It has not yet ratified the Additional Protocol providing for a system of Collective Complaints.

## Cases of non-compliance

### *Thematic Group 1 "Employment, training and equal opportunities"*

▶ Article 1§1- Right to work - Policy of full employment

It has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

(Conclusions 2012, p. 5)

▶ Article 1§2- Right to work- Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

1. It has not been established that there is adequate protection against all forms of discrimination in employment

2. It has not been established that a worker's right to earn his living in an occupation freely entered upon is adequately protected.

(Conclusions 2012, pp. 6-7)

▶ Article 1§4 - Right to work - Vocational guidance, training and rehabilitation

1. It has not been established that the right to continuing vocational training for workers is guaranteed;

2. It has not been established that specialised guidance and training for persons with disabilities is guaranteed.

(Conclusions 2012, pp. 9-10)

▶ Article 10§4 - Right to vocational training - Long term unemployed persons

It has not been established that the right to vocational training is guaranteed for the long-term unemployed.

(Conclusions 2012, p. 12)

▶ Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community- Integration and participation of persons with disabilities in the life of the community

It has not been established that persons with disabilities enjoy effective protection against discrimination in the fields of housing, transport, telecommunications and culture and leisure activities.

(Conclusions 2012, pp. 15-16)

▶ Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

It has not been established that there is adequate protection against gender discrimination in employment.

(Conclusions 2012, p. 22)

### *Thematic Group 2 "Health, social security and social protection"*

▶ Article 11§1 - Right to protection of health - Removal of the causes of ill-health

The measures taken to reduce infant and maternal mortality rates have been insufficient; It has not been established that there is a public health system providing universal coverage.

(Conclusions 2013, p. 6)

▶ Article 11§2 - Right to protection of health - Advisory and educational facilities

Measures for counselling and screening of pregnant women and children are not adequate; It has not been established that prevention through screening is used as a contribution to the health of the population

(Conclusions 2013, p. 8)

► Article 11§3 - Right to protection of health - Prevention of diseases and accidents  
it has not been established that adequate measures have been taken to ensure access to safe drinking water in rural areas  
(Conclusions 2013, p. 10)

► Article 12§1 - Right to social security - Existence of a social security system  
The number of risks covered by the system of social security is inadequate;  
The minimum level of old age benefit is inadequate;  
The minimum level of maternity benefit is inadequate  
(Conclusions 2013, p. 13)

► Article 12§3 - Right to social security - Development of the social security system  
Inadequate measures were taken to raise the system of social security to a higher level.  
(Conclusions 2013, p. 15)

► Article 14§2 – Right to benefit from social services - Public participation in the establishment and maintenance of social welfare services  
It has not been established that measures are taken to encourage individuals and voluntary organisations to participate in the establishment and running of social welfare services.  
(Conclusions 2013, p. 17)

### *Thematic Group 3 “Labour rights”*

► Article 2§1 – Right to just conditions of work – Reasonable working time  
The Labour Code permits employers and workers to agree on working time without fixing a maximum limit on weekly working hours.  
(Conclusions 2010, p. 5)

► Article 4§2 - Right to a fair remuneration – Increased remuneration for overtime work  
The Labour Code permits employers and workers to agree on overtime hours without limitations and does not guarantee workers the right to an increased remuneration or a longer rest period in compensation for overtime work.  
(Conclusions 2010, p. 7)

► Article 4§4 - Right to a fair remuneration – Reasonable notice of termination of employment  
The Labour Code does not specify any period of notice for termination of employment nor does it make any provision for a reasonable period of notice for employees during their probationary period.  
(Conclusions 2010, p. 8)

► Article 5 - Right to organise  
An excessive number of members is required to establish a trade union, there are restrictions on the right to organise that may be included in employment contracts and protection against discrimination based on trade union membership in the context of recruitment and dismissal is insufficient.  
(Conclusions 2010, p. 11)

► Article 6§2 – Right to bargain collectively – Negotiation procedures  
It has not been established that an employer may not unilaterally disregard a collective contract and that the conclusion of collective agreements is promoted.  
(Conclusions 2010, p. 14)

► Article 6§3 – Right to bargain collectively – Conciliation and arbitration  
There is no effective conciliation, mediation or arbitration service.  
(Conclusions 2010, p. 15)

*Thematic Group 4 “Children, families, migrants”*

► Article 17§1 – Right of children and young persons to social, legal and economic protection - Assistance, education and training

Corporal punishment of children is not explicitly prohibited in the home.

(Conclusions 2011, p. 16)

► Article 19§10 and 19§12 – Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed - Teaching mother tongue of migrant

No measures to promote the teaching of the migrant worker’s mother tongue have been taken.

(Conclusions 2011, p. 24)

Please find attached below Conclusions 2010, 2011, 2012 and 2013 regarding Georgia as well as the country fact sheet.



Georgia2010\_en.pdf Georgia2011\_en.pdf Georgia2012\_en.pdf Georgia2013\_en.pdf Georgia\_en.pdf