



AS/Mon(2009) 16 rev.

30 April 2009

amondoc16r_2009

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Georgia

Information note by the co-rapporteurs on their fact-finding visit to Tbilisi (24-27 March 2009)¹

Co-rapporteurs: Mr Mátyás EÖRSI (Hungary, Alliance of Liberals and Democrats for Europe) and Mr Kastriot ISLAMI (Albania, Socialist Group)

¹ This information note has been made public by decision of the Monitoring Committee dated 28 April 2009.

I. Introduction

1. The last resolution on the honouring of obligations and commitments by Georgia, Resolution 1603 (2008) was adopted by the Assembly on 24 January 2008. We subsequently visited Georgia on 26 and 27 March 2008 to assess the political developments since the pre-term Presidential elections in January 2008 - called after the events of November 2007 - as well as the preparations and political climate for the Parliamentary Elections which were scheduled for 21 May 2008.

2. Since our last visit, the regular monitoring procedure has been overshadowed by the tragic outbreak and consequences of the war between Georgia and Russia. This seriously interfered with the regular monitoring procedure in the second half of 2008, although we made several visits to Georgia in the framework of the Assembly's efforts to address the consequences of the war between the two countries.

3. The consequences of the war, and their implications for the Assembly are dealt with under a separate mandate by one of the co-rapporteurs with respect of Georgia, Mr Mátyás Eörsi and one of the co-rapporteurs with respect of Russia, Mr Luc van den Brande. Taking into account the short period between the January and April 2009 part-sessions, as well as the explicit wish of the Assembly - expressed in both resolutions - that the Monitoring Committee step up its monitoring procedure with respect to both Russia and Georgia, the rapporteurs decided not to make specific visits to Russia and Georgia for the purpose of this report, but, instead, to follow up the issues mentioned in Resolutions 1633 (2008) and 1647 (2009) in the framework of visits to these two countries under the regular monitoring procedure. As a consequence, we also focused on the developments with respect to the implementation of these Resolutions.

4. While the consequences of the war between Georgia and Russia undeniably has an impact on the regular monitoring procedure with respect to Georgia, we are strongly convinced that the regular monitoring procedure should not be sidelined by the Assembly's efforts to address the consequences of the war. However, it should be clear that that the progress made, or not made, by Georgia in honouring its obligations and commitments has been affected by, and our assessment should be seen in the context of, the consequences of the war and the sequence of Presidential and parliamentary elections that preceded it.

5. In this context, we visited Georgia from 24 to 27 March 2009 (see programme of the visit in Appendix I), to familiarise ourselves with the recent political developments in the country, as well as to assess the implementation of the democratic reform package that was announced by the authorities following the August war. The statement delivered after our visit is attached in Appendix II.

6. Our visit took place against the backdrop of the protest rallies by the extra-parliamentary opposition, that were announced for 9 April 2009. The resulting tense political climate between the authorities and extra-parliamentary opposition, as well as the concerns expressed by all sides that these protests could possibly lead to violence, turned out to be a main topic during our discussions with the authorities and different political forces.

7. During our visit to Tbilisi, we met with the President of Georgia, Mr Mikheil Saakashvili; the Prime Minister of Georgia, Mr Nika Gilauri; the Minister of Justice, Mr Zurab Adeishvili; the Minister of Foreign Affairs, Mr Grigol Vashadze, and Deputy Minister of Foreign Affairs, Mr Giga Bokeria; the Deputy Chairman of the Parliament of Georgia, Mr Mikheil Machavariani; the Chairman and members of the Georgian delegation to the Assembly; the Chairman and members of the Parliamentary working group to reform the Election Code; the Deputy Chairman and members of the former temporary committee of the Georgian parliament to investigate the war between Russia and Georgia; representatives of the extra-parliamentary opposition including the chairperson of the Democratic Movement-United Georgia, Ms Nino Burganadze, and the leader of the Alliance for Georgia, Mr Irakli Alasania; the Heads, or their representatives, of the UN, OSCE, EU and EUOM Missions in Georgia; as well as representatives of the civil society and diplomatic community in Georgia. We wish to thank the Parliament of Georgia, as well as the Special Representative of the Secretary General in Georgia, for the excellent programme and support provided to our delegation.

II. Recent political developments and planned protest rallies

8. While united behind the government in its support of the war with Russia in August 2008, the extra-parliamentary opposition broke with the government over its handling of the situation in the period leading to the war, as well as its handling of the consequences in the aftermath of the war. It is undeniable that the consequences of the war have galvanised the resolve of the opposition to change the political power in Tbilisi, although they differ among themselves about the manner in which this change of power should take place.

9. A number of parties that were not elected to parliament in the last parliamentary elections, or who decided not to take their seats in the newly elected parliament, have united around a common political agenda which consists of a demand that President Saakashvili steps down from office and that presidential and parliamentary elections are organised. These elections should then be followed, after a nation-wide consultation process, by the drafting of a new constitution that would strengthen the role of the parliament and reduce the presidential powers. In order to achieve these aims, a series of protest rallies in Tbilisi, starting on the 9th of April 2009, were called for.

10. The political scene in Georgia has changed after the last parliamentary elections with the entry of new opposition parties founded by former high level officials from the ruling party and authorities. The first party is the "Democratic Movement-United Georgia" of former parliamentary speaker, Ms Nino Burjanadze, who left the governing United movement over political differences with President Saakashvili and, in their opinion, his increasingly autocratic style of government. The "Alliance for Georgia" was formed in February 2009 and is an alliance of the political team of the former Georgian Ambassador to the UN and presidential envoy for the relations with Abkhazia and South Ossetia, Mr Irakli Alasania, the New Rights Party and the Republican Party. Mr Alasania, and several other administration officials who are part of his political team, resigned from their positions in the aftermath of the war in protest to what was, in their opinion, a closed style of decision-making of the President, as well as to his handling of the relations with Abkhazia and South Ossetia in the period before the war. Both parties see the continuation of Mr Saakashvili's presidency as a major obstacle to a resolution of the political crisis and joined the other extra-parliamentary parties in the protest rallies calling him to resign. However the Alliance has publicly and privately stated that they are open for a dialogue with the authorities to resolve the current political crisis, possibly via a power sharing arrangement between ruling party and opposition. We welcome the clearly expressed openness for dialogue.

11. All opposition parties we met stressed that the planned protest would be peaceful and that their objective to force the authorities to call early elections would be pursued in full compliance with the law and constitutional framework. From their side, the authorities have stated their intention to fully respect the constitutional right of the opposition to protest. Despite these publicly stated intentions from both authorities and organisers of the protest rallies, both sides expressed their concern and fear that provocations could take place and that the protests could descend into violence. Concerned about the tense environment and evident political polarisation in the country, we publicly recommended that the law enforcement agencies and the organisers of the planned protest rallies should urgently engage in a dialogue to agree upon the security arrangements for the planned protest rallies. We welcome that, in response, the Minister of the Interior invited the organisers of the rallies to discuss security arrangements, but regret that this offer was rejected by the opposition parties. In our view, this fact, as well as the concern by both sides that the other side could provoke violence, highlight the polarisation and mutual mistrust which characterise the current political climate in Georgia.

12. In the view of the Georgian authorities, the August war was also a direct attack on the democratic nature of the Georgian society. In response, they therefore proposed a reform package, the so-called "new wave of democratic reforms" with the aim of strengthening the democratic process and institutions in Georgia. While this package first of all intends to strengthen the role of the parliamentary opposition, it also aims to strengthen the extra-parliamentary opposition. To achieve the latter, amendments to the Law on Political Parties have been adopted, which restore the state funding for parties that did not qualify to enter parliament, or who refused to take their seats, after the last parliamentary elections. The "new wave of democratic reforms" will be discussed in more detail below.

13. While categorically rejecting the possibility for pre-term elections, the authorities proposed, on 31 March 2009, to start a dialogue with the opposition on issues related to the country's economy, security and national interests, as well as democratic reforms. However, as the possibility for early elections was not part of the proposed dialogue, this proposal was rejected by the majority of the extra parliamentary opposition.

14. We welcome that the still ongoing protest rallies which started on 9 April have so far taken place in a generally calm and peaceful environment. We are, however, concerned about reports that protesters have been attacked by unknown assailants in the vicinity of the rally venues. We call upon the Georgian authorities to fully investigate all these attacks and fully ensure the safety of the participants in these demonstrations.

15. At the moment of writing, the political standoff is continuing unabated, with no sign of quick resolve. In our opinion, the only solution to the current impasse is an open and genuine dialogue between all political forces in Georgia. However, such a dialogue can only be based on mutual trust, which is currently clearly lacking in the political climate in Georgia. We welcome in this respect that the leading party of the

parliamentary opposition, the Christian-Democratic Movement, has proposed a series of measures to regain this trust and to start the dialogue between the extra parliamentary opposition and the authorities. We also note that the authorities, while rejecting any possibility for early elections, have recently indicated that they are willing to start a dialogue on a wide range of issues, including possible constitutional changes that would reduce the powers of the President. We consider that the main demand of the extra-parliamentary opposition, namely that dialogue can only take place if President Saakashvili resigns from office, is not conducive to the start of such a dialogue. No dialogue can be based on the a priori demand that one side removes itself from the negotiating table. On the other hand, the a priori exclusion of the possibility of early elections as a topic for negotiations by the authorities is equally not conducive to a genuine dialogue. An agreement on the question of early elections should be one of the objectives of the dialogue and not a precondition for it.

16. As a principle, we are convinced that rapid successions of pre-term elections are not beneficial for the democratic stability in a country. On the other hand, we fully recognize the right and wish of citizens to express their view on the leadership and governance of their country after a major national crises such as a war. Without wanting to pass a judgment on the question of whether or not early elections should take place in Georgia, we would like to stress that, in our opinion, elections should only be considered in Georgia once there is a clear agreement between all political forces regarding the constitutional division of powers, the electoral system and the electoral legislation (the rules of the game). If not, elections will only serve to strengthen the current political polarisation.

17. While fully recognising the role of protests to exercise pressure on the government and achieve political change, we are concerned that a political culture is emerging in Georgia where the public and opposition forces feel that the governing power can only be changed through street demonstrations, and not through a normal democratic process. Time must come in Georgia for the public and political forces to have full trust in the democratic system in which changes of power can be achieved through the ballot boxes and in which the authorities and the opposition can engage into a normal dialogue.

III. The “new wave of democratic reforms”

18. In the view of the Georgian authorities, the war was also a direct attack on the democratic nature of Georgian society. In response, it was decided by the authorities to strengthen the functioning of the democratic institutions of the state and give a new impetus to the further consolidation of democracy in Georgia. A comprehensive package of democratic reforms was therefore introduced with a view to, inter alia, strengthening the institutional role of the parliament vis-à-vis the executive, strengthening the role of the opposition in the work of the parliament as well as in state oversight institutions - including those that oversee the defense and national security sectors -, strengthening the independence of the judiciary, enhancing media pluralism and improving the election code.

19. In order to strengthen the role of the opposition in the work of the parliament, the opposition, inter alia, has been granted the right to nominate up to three vice-chairpersonships of the Georgian Parliament as well as the right to nominate a vice-chairperson on each parliamentary Committee. Also the procedures to set up a parliamentary faction have been simplified and the number of MPs to form a faction was reduced from 10 to 6. In addition, a member of the parliamentary minority was elected to the High Council of Justice, which manages the judiciary, and the number of MPs from the parliamentary minority was increased on the Trust Group, which supervises information in the defence area. A new Law on the Chamber of Control was adopted which guarantees the independence of the country's main auditing body and strengthens the public oversight over budgetary expenses of the state.

20. As mentioned above, the reform package also aims at strengthening party building and the functioning of the extra-parliamentary opposition. Amendments were adopted to the Law on Political Parties, which restore the state funding for parties that did not qualify to enter parliament, or who refused to take their seats, after the last parliamentary elections, and to provide funding for research and development activities of political parties and NGOs.

21. An Anti-Crisis Council was formed on the initiative of the President, with the aim to oversee the post-war reconstruction and distribution of aid to the IDPs, as well as to discuss further democratic reforms. This Council is composed of representatives of the government, as well as members of the parliamentary majority and opposition.

22. In order to strengthen the role of the Parliament, constitutional amendments are proposed that would, inter alia: make it necessary for a newly elected Parliament to give its vote of confidence in the Cabinet of

Ministers; simplify the procedure for the Parliament to adopt a motion of no-confidence in the Cabinet of Ministers and limit the number of times a President can dissolve the Parliament. The representatives of the Georgian Parliament underlined that the opinion of the Venice Commission would be sought, and possible concerns addressed, before these amendments would be adopted in final reading.

23. The authorities have initiated a comprehensive package of reforms of the judiciary and justice system, with the overall aim of strengthening the independence of the judiciary in Georgia. In addition, the Minister of Justice presented us with detailed background information regarding the implementation of legal reforms that are part of the commitments of Georgia to the Council of Europe. We intend to provide a detailed analysis of these reforms in a future report.

24. While we will comment in detail on the impact of these reforms in a future report, we welcome the positive effect these reforms have had on the relations between the parliamentary majority and parliamentary opposition. During our visit, it was clear to us that a constructive and genuine dialogue has been firmly established between the ruling party and parliamentary opposition, which, in the view of both sides, has greatly contributed to the effectiveness of their work. This clearly shows that political dialogue is not only possible in Georgia, but that it also enhances, and benefits, the work of both the ruling party and parliamentary opposition. We strongly hope that this dialogue in the future will be extended to also include the extra-parliamentary opposition.

IV. Electoral Reform

25. A key element of the “new wave of democratic reforms” package is electoral reform. As mentioned in our previous reports, as well as in election observation reports of the Assembly and other international bodies, the current Electoral Code and other laws that govern the elections, have seen multiple cycles of amendments to address shortcomings noted during elections. This has resulted in at times contradictory or ambiguous provisions in the Electoral Code. Moreover, prior to the last parliamentary elections, negotiations were started between the ruling party and the opposition on a new electoral system. However, these negotiations broke down in the polarised and tense political climate at that time. As a result, an election system was adopted that is heavily criticised by the opposition as favourable to the ruling party. We therefore recommended in previous reports that a new Electoral Code be drafted and a new election system agreed upon that has the widest possible consensus among the political forces in Georgia. In addition, such a new Electoral Code should address all shortcomings and concerns noted in the last opinion of the Venice Commission on the Georgian election legislation.

26. We therefore welcome the establishment of a special cross-party working group to reform the electoral system and to draft a new Electoral Code. The work of this group is guided by a code of conduct initiated by the National Democratic Institute (NDI), in which all participating parties commit themselves to constructive co-operation, consensus based decisions and no prior pre-conditions for the discussions. In addition, NDI is moderating the work of this working group in order to enhance the mutual trust between the participating parties and to provide reasonable safeguards against the manipulation of this process by a single political force. While all parties involved acknowledge that a consensus on the electoral system and the new Electoral Code will require lengthy negotiations and compromises by all sides, the working atmosphere in the group is constructive and collegial. In a welcome initiative, the ruling United National Movement, which has a constitutional majority in Parliament, has publicly committed itself to supporting any consensus agreement reached by the working group, which will guarantee its adoption in Parliament.

27. All parliamentary opposition parties, as well as some extra-parliamentary opposition parties have joined the United National Movement in this working group. Regrettably, the majority of extra-parliamentary opposition parties have, till now, declined to join this group. Given the involvement of NDI in the work of this group, which should provide reasonable assurances that this process cannot be manipulated by one political force or the other, we call upon all opposition parties that have not yet done so to join this working group and participate constructively in its work.

V. Consequences of the war

28. Our findings in this respect are included in the information report on the “Follow up by Georgia and Russia to Resolution 1647 (2009)”. However, for clarity we would like to shortly outline some of our findings.

29. During our visit to Georgia, we met with the heads of the international monitoring organisations in Georgia. We were told that the situation around the administrative borders was calm at that moment but remained tense and provocations and incidents were regrettably still recorded. The allegations that Georgia is reinforcing its positions in the zones adjacent to the administrative border appear to be unfounded.

According to the organisations present in Georgia, the latter has not increased the number of staff in these zones and even has started to replace its special police forces with regular policemen. However, both sides have started to fortify their check and observation points, which had resulted in an increase of mistrust and tension. The EU and OSCE monitors expressed some concern about the planned deployment, close to the administrative border, of new armoured vehicles by the Georgian police, which would not be beneficial to reducing tensions.

30. With regard to the investigation of the Georgian Prosecutor's Office into possible violations of human rights and humanitarian law by all sides during and after the war, we were informed that this investigation is hindered by the lack of access of the competent Georgian authorities to the former conflict zone inside the break-away region of South Ossetia. While we understand the difficulties encountered by the Georgian General Prosecutor's Office in the conduct of the investigations, we nevertheless expect that the investigation will be completed within a reasonable timeframe.

31. We had in depth discussions with the relevant Parliamentary Committees on the Law on the Occupied territories in which we stressed the need to fully address the concerns expressed by the Venice Commission in its recent opinion on this law. We welcome the clear intention of the authorities expressed during these meetings to co-operate closely with the Venice Commission in order to clarify and address all concerns raised in the latter's opinion.

VI. Conclusions

32. We remain seriously concerned with the tense political climate and ongoing polarisation between authorities and a large part of the extra-parliamentary opposition, as evident from the current political standoff. In our opinion, the only solution to this political crisis, which is affecting the democratic stability and consolidation of democracy in Georgia, is an open and genuine dialogue between all political forces in the country. No preconditions for such a dialogue should be made and no subject should be a priori off-limits for negotiation. We call upon all political forces to agree on the establishment of a dialogue based on these principles.

33. We welcome the democratic reforms initiated by the authorities. While it is difficult at this time to assess their full impact, we welcome the clear positive effect this has had on the relations between the ruling party and the parliamentary opposition. A similar relation, based on mutual trust, needs to be established urgently between the authorities and extra-parliamentary opposition, once the dialogue between them has started. We will return to these issues and, where necessary, make further recommendations, during a future visit to the country.

34. We call upon all parties that have not yet done so to join the working group on electoral reform and to participate in it in good faith, in order to come to an agreement on a new electoral system and Electoral Code that will have the widest possible consensus between the political forces in the country.

APPENDIX I

Programme of the fact-finding visit to Tbilisi (25-26 March 2009)

Mr Mátyás EÖRSI, member of Parliament
Mr Kastriot ISLAMI, member of Parliament
Mr Bastiaan KLEIN, co-secretary of the Monitoring Committee

Wednesday, 25 March 2009

- 09:30 Briefing by the Special Representative of the Council of Europe in Georgia, Mr Borys WODZ
- 10:00 Meeting with the Chairperson of the opposition party "Democratic Movement-United Georgia", Mrs Nino BURJANADZE
- 11:00 Meeting with the Deputy Chairman of the Parliament of Georgia, Mr Mikheil MACHAVARIANI, and members of the parliamentary delegation to PACE
- 12:00 Meeting with the ex-Deputy Chairperson of the Parliamentary Temporary Commission on Military Aggression and other Acts of Russia against the territorial integrity of Georgia, Ms Khatuna GOGORISHVILI
- 13:00 Working lunch with the Heads of international organisations in Georgia
- 15:00 Meeting with the Minister of Justice, Mr Zurab ADEISHVILI
- 16:00 Meeting with the Prime Minister of Georgia, Mr Nika GILAURO
- 17:30 Meeting with the President of Georgia, H.E. Mr Mikheil SAKASHVILI
- 18:45 Meeting with the Minister of Foreign Affairs, Mr Grigol VASHADZE, and the Deputy Minister of Foreign Affairs, Mr Giga BOKERIA
- 20:30 Dinner with the Ambassadors of the Council of Europe member states

Thursday, 26 March 2009

- 10:00 Meeting with the leader of "Alliance for Georgia", Mr Irakli ALASANIA
- 11:00 Roundtable with non-parliamentary opposition parties
- 12:30 Roundtable with NGOs
- 15:15 Meeting with the Chairs of the Parliamentary opposition fractions
- 16:00 Meeting with the working group responsible for the reform of the Election Code
- 16:45 Meeting with the members of the Parliament who are responsible for the implementation of the democratic reform package
- 18:00 Press conference
- 20:00 Dinner hosted by the Chairman of the Parliamentary delegation to PACE, Mr Petre TSISKARISHVILI

APPENDIX II

PACE co-rapporteurs call for restraint and calm from all sides with regard to the planned protest rallies in Georgia

Strasbourg, 30.03.2009 - "It is essential for Georgia that the planned protest rallies on 9 April 2009 take place in a calm and peaceful manner without violence or provocations. This is in the best interest of the country and we trust that both sides will show restraint in this respect," said the two Council of Europe Parliamentary Assembly (PACE) co-rapporteurs for Georgia, Mátyás Eörsi (Hungary, ALDE) and Kastriot Islami (Albania, SOC), at the end of their fact-finding visit to the country.

Concerned about the tense environment and ongoing political polarisation in the country, the co-rapporteurs recommended that the law enforcement agencies and the organisers of the planned protest rallies should urgently engage in a dialogue to agree upon the security arrangements for the events on 9 April 2009. Such dialogue can contribute to an increased mutual confidence which will minimize the possibility of violence or provocations.

The two co-rapporteurs visited Georgia from 25 to 27 March 2009 to assess progress with regard to the fulfilment of Georgia's commitments and obligations to the Council of Europe. In addition, in the framework of their visit, they also discussed the follow-up given by Georgia to the demands of the Assembly expressed in Resolutions 1633 (2008) and 1647 (2009) on the consequences of the war between Georgia and Russia.

The co-rapporteurs strongly welcomed the establishment of a working group, open to all political forces, for reform of the election code, which is a long-standing recommendation of the Assembly. After their discussions, the rapporteurs are convinced that the mechanisms developed to guide the work of this group are fully adequate to ensure the successful conclusion of its work, provided that all parties take part in good faith. "We therefore call upon all parties which have not joined this initiative to do so without further delay and in good faith," said the two co-rapporteurs.

With regard to the on-going democratic reforms, the co-rapporteurs welcomed the deep and constructive dialogue that has been established between the ruling party and the parliamentary opposition. However, the co-rapporteurs noted with concern the lack of dialogue and the ongoing political polarisation between the authorities and those parties that are not represented in the parliament. "More needs to be done, and attitudes need to be changed by all sides in this respect, in order to ensure that a constructive dialogue between all political forces can be established, which is dearly needed for Georgia's democratic development," stated the two rapporteurs.

With respect to the follow-up given to Assembly Resolutions 1633 (2008) and 1647 (2009) on the consequences of the war between Georgia and Russia, the co-rapporteurs noted with satisfaction the ongoing efforts by Georgia to fully comply with the remaining outstanding demands of the Assembly. The co-rapporteurs welcomed the clear political will of the authorities to address all concerns raised by the Venice Commission in its opinion on the Law on the occupied territories of Georgia, especially to ensure that this law would not hamper the provision of essential humanitarian aid to the civilian population in the break away regions. "We also would like to see a humanitarian approach in the implementation of this law. We were informed that, due to misunderstandings about the provisions of the law by the police, civilians are sometimes prevented from bringing with them small amounts of food and similar items, when visiting acquaintances at the other side of the administrative border. That was clearly not the purpose and intention of the legislator and should be avoided," said the rapporteurs.

The two rapporteurs will present an information note on this visit to the Monitoring Committee during the April part-session of the Assembly in Strasbourg.