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**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 (22-24 March 2010)<sup>1</sup>**

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<sup>1</sup> This information note has been made public by decision of the Monitoring Committee dated 22 June 2010.

## **I. Introduction**

1. The previous visit to Georgia took place from 24-27 March 2009. That visit, which was the first regular visit under the monitoring procedure, since the August 2008 war between Georgia and Russia, focused on the political developments in Georgia since the war, as well as on the ambitious reform package, the so-called second wave of democratic reforms, which was initiated by the Georgia authorities. That visit, to some extent, was dominated by the prospect of the protest rallies by the extra-parliamentary opposition that were planned for early August 2009, and the tense political climate that resulted from it.
2. Since that visit, the monitoring procedure has continued to be overshadowed, albeit to a lesser extent, by the debate on the consequences of the war, also as a result of the report of the International Independent Fact Finding Mission on the Conflict in Georgia that was published in September 2009. This has, regrettably, shifted attention away from other important developments in Georgia.
3. It was therefore decided that the then co-rapporteurs, Mr Islami and Mr Eorsi, would visit Georgia from 21 to 24 March 2010 with a view to familiarising themselves with developments with regard to: constitutional reform; electoral reform and the local elections of May 2010; media pluralism; minorities and religious freedom, including the situation with regard to the repatriation of the Meskhetian Turks.
4. During the visit, the delegation met, inter alia, the President of Georgia, Mr Mikheil Saakashvili; the Speaker of the Parliament of Georgia, Mr David Bakradze; the Vice Prime-Minister and State Minister for Integration, Mr Temur Yakobashvili; the Minister of Refugees and Accommodation, Mr Koba Subeliani; the Deputy Minister of Foreign Affairs Mr Georgi Bokeria; the Deputy Minister of Internal Affairs, Ms Eka Zguladze; the Deputy Minister of Justice, Ms Tina Burjaliani; the Chairman of the Central Election Commission, Mr Zurab Kharatishvili; the Chairman of the State Constitutional Commission, Mr Avtandil Demetrashvili; Mr George Chanturia, Chairman of the Public Broadcaster; Mr Irakli Chikovania, Chairman of the National Communications Commission; the Deputy Public Defender; the Council for Religion and the Council for Ethnic Minorities of the Public Defender; the Chairman and members of the Georgian National Delegation to the Parliamentary Assembly, representatives of the extra-parliamentary opposition; as well as representatives of civil society and the diplomatic corps based in Tbilisi. The co-rapporteurs would like to thank the Parliament of Georgia as well as the Special Representative of the Secretary General of the Council of Europe in Tbilisi for the excellent programme, as well as hospitality and assistance given to our delegation.

## **II. Constitutional reform**

5. On 8 July 2009, the State Constitution Commission of Georgia was established by Presidential decree. The aim of the Commission is to draft a new Constitution especially with a view to, inter alia, strengthening the role of the Parliament, to strengthening the independence of the judiciary and to enhancing the system of checks over the powers of the President.
6. This Commission is composed of academics, representatives of civil society and international experts, as well as representatives of parties. Regrettably, the extra-parliamentary opposition has, at the date of writing, not taken up the invitation to participate in the work of the Commission. All parties that have accepted to participate in the Commission are represented by one representative, to ensure that no party can overrule the others. Mr Avtandil Demetrashvili, who is a former Chairman of the Constitutional Court and one of the authors of the current Constitution, was appointed chairman of the Commission on the nomination by the opposition parties that participate in the Commission.
7. The Commission drafted the new Constitution on the basis of the work done in 9 thematic working groups. No draft had been finalised at the time of our visit, but some important issues had already been agreed upon, such as the principle of life appointment of judges, the introduction of jury trials as well as the introduction of a special chapter of local self-government in the new Constitution. The issue of the political system for Georgia had not yet been finalised, but was pointing towards a semi-Presidential model. The draft was completed by the working group on 14 May 2010 and will be sent to the Venice Commission for opinion, before the public debate on the new Constitution is formally initiated. We urge the authorities to continue the dialogue with the opposition on this draft Constitution. Moreover, we wonder how this will affect the discussions about a new electoral system.
8. Given the planned local elections, the chapter on Local Self Government was already finalised at the time of our visit and sent to the Venice Commission for opinion. The Venice Commission adopted an opinion on this draft chapter during its 82<sup>nd</sup> Session (12-13 March 2010). While welcoming the proposed amendments, the Venice Commission felt that the constitutional protection for the principles of self-

government should still be strengthened and that therefore a number of provisions should be clarified or enlarged in scope.

9. We regret that the extra-parliamentary opposition has up to now declined to participate in the work of the Commission. Given the potential importance of this new Constitution for a stable political framework and an increased set of checks and balances between the different branches of power, which has also been a long standing priority issue for the opposition, we strongly urge those parties that have not done so to engage in a dialogue with the authorities and Constitutional Commission on the draft Constitution that was proposed.

### **III. Electoral reform and local elections in May 2010**

10. As was mentioned in the previous note, electoral reform is one of the priority items in the “new wave of democratic reforms” package that was launched by the authorities

11. A special cross-party working group to reform the electoral system and to draft a new Electoral Code was established by the Parliament of Georgia. The work of this group, called the Election Working Group (EWG), was moderated by the National Democratic Institute (NDI), and the basis was a code of conduct initiated by NDI. In this code of conduct, all participating parties committed themselves to constructive co-operation, consensus-based decisions and no prior pre-conditions for the discussions. In addition, 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.

12. Besides the ruling party and parliamentary opposition, the EWG, from the side of the extra-parliamentary opposition, was initially only joined by the “Industry will save Georgia party”. At a later stage, the Georgia Traditionalist Party and the Alliance for a New Georgia also joined the work of the EWG. Regrettably, the other extra-parliamentary opposition parties continued to decline to participate in its work.

13. Taking into account the preparations for the local elections in Georgia, on 30 May 2010, the EWG decided to concentrate on the reform of the municipality election system and procedures. After 10 months of discussions, consensus was reached on a number of issues, including the direct election of the mayor of Tbilisi and the election of the Tbilisi city council on the basis of a mixed proportional-majoritarian system. In the new system, 25 seats are allocated on the basis of proportional elections with a 4% threshold, another 25 seats are elected in single mandate constituencies. President Saakashvili originally announced that in other major cities the mayor would also be elected via direct elections. However this initiative was, for unknown reasons, not pursued in the negotiations.

14. In addition to the election system for the Tbilisi mayor and city council, the EWG also reached consensus on, inter alia, the election of the Chairman of the Central Election Commission, the right for the opposition to appoint the Secretaries of the Precinct Election Commissions and the extension of the deadline for submitting election complaints and appeals.

15. Regrettably, the consensus broke down on the issue of the threshold for the election of the Mayor of Tbilisi, with the Alliance for Georgia insisting on a 50%, later reduced to 45%, threshold, while the ruling United National Movement was unwilling to accept any threshold higher than 30%. In the absence of a formal agreement on the reform package, all the issues on which consensus had been reached as well as the 30% threshold were introduced in the parliament by the United National Movement and subsequently adopted. However, due to the late adoption of these amendments (28 December 2009), the Venice Commission was not in a position to adopt an opinion on these amendments in time for it to be taken into account before the local elections.

16. The work of the EWG is currently suspended until after the local elections. We would like to stress the importance that the EWG should reconvene as soon as possible now that the local elections have been held. As mentioned previously, 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 led to a significant number of contradictory or ambiguous provisions in the Electoral Code. In addition, the negotiations between the opposition and ruling majority over a new electoral system broke down before the 2008 parliamentary elections, in the polarised and tense political climate at that time. The resulting electoral system that was adopted by the Parliament in the absence of such a consensus is generally regarded as less than beneficial for an optimal pluralism in the Georgian Parliament. A new electoral code therefore needs to be drafted which includes an election system that has the consensus of as many as possible political forces in Georgia. This is a priority task for the EWG that should be finalised well before the next parliamentary elections in

2012. Given the importance of this subject, we firmly hope that all political forces will join this negotiation process in the EWG.

17. The direct elections for the mayor of Tbilisi were widely seen as a dummy run for the next Presidential elections. With the visit falling only two months before these elections it was not surprising that the political environment was dominated by the election preparations, despite the fact that the campaign period had not yet formally started. Even the most a-political person would have noticed the increased number of building and renovation projects in Tbilisi, although it should be stressed that this is customary in most of our countries and Georgia is far from unique in this respect.

18. Despite the importance of these elections, the opposition did not manage to come forward with a joint candidate for the post of mayor of Tbilisi. This fragmentation among the opposition, combined with the relative popularity of the current mayor of Tbilisi, Gigi Ugulava, who at the time of the visit was rumoured to be the United National Movement (UNM) candidate for mayor, all but ensured that the UNM would win these elections. Taking into account the still low level of public trust in the election process, the importance that these elections should be organised fully in line with European standards, and the need to address all technical shortcomings and problems, was stressed repeatedly. Furthermore, the fact that a number of opposition parties had moved away from a strategy of boycott and confrontation and decided to participate in these elections should be strongly welcomed. It is therefore important that after these elections, an inclusive political atmosphere be created that fosters dialogue on the governance of the different municipalities, and especially Tbilisi, thereby showing the benefits of participation in the democratic process.

19. Indeed, in the local elections of 30 May the UNM won the mayoral election of Tbilisi and gained the majority of seats in Tbilisi City Council. It also won the majority of city councils in the country. However, equally important was the good showing of the opposition, including the extra-parliamentary opposition. The Alliance for Georgia of Irakli Alesania won 19% of the votes in the mayoral race and did well in other elections in the country, which showed that the participation in the democratic process by opposition parties can be rewarded by the public.

20. The international election observation mission assessed the elections positively, although it noted that serious shortcomings still need to be addressed. We welcome the conclusion of the observers that the authorities had shown clear political will to improve the election process and conduct it in line with European standards. Nonetheless, we urge the authorities to swiftly and rigorously address the shortcomings found by the international election observation mission, as well as by local observers.

21. We welcome the series of democratic reforms initiated but would like to stress that such reforms should be developed and implemented in consultation with the opposition and not over their heads, which would defeat their purpose. In that respect, the need for a consensus on a new parliamentary election system, which would also take into account the Venice Commission's comments, should be stressed.

#### **IV. Ethnic and religious minorities**

22. The issue of minorities is important in Georgia and is related to a number of its accession commitments.

23. Georgia has ratified the Framework Convention on the Protection of National Minorities and the first Opinion of the Advisory Committee on the Convention was published in March 2009. Georgia has yet to fulfil its accession commitments of adopting a law on minorities and signing and ratifying the European Charter for Regional and Minority Languages.

24. Although the authorities have taken many steps in recent times to address the integration of national minorities in Georgian society, there are still a number of outstanding issues. These include, inter alia:

- improving the participation of national minorities in public life;
- improving the system of language education for minorities including the teaching of minority languages and Georgian as a second language;
- strengthening religious intolerance and providing a proper legal status for minority religions;
- the repatriation of the Meskhetian Turks.

25. We would like to highlight that these issues have been affected, and progress has been overshadowed, by the Georgian-Russian war in August 2008. That said, the authorities have continued to implement measures to improve the lives of minorities in Georgia.

26. According to ECRI, national minorities do suffer from racism in Georgia. The August 2008 conflicts in South Ossetia and Abkhazia have led to some racist discourse, exacerbated by propaganda language, against Russians, South Ossetians and Abkhazians. There is a general lack of knowledge among minorities about the existing provisions in law against racist discourse and acts, which may explain a general lack of confidence in the judicial system by persons belonging to national minorities.

27. There are approximately 1,500 Roma living in Georgia, who are reported to suffer from marginalisation, widespread discrimination and poverty. Some do not possess identification documents, which limits their access to healthcare and other services provided by the state. The government has attempted to address some discrimination against the Roma by providing training to the police force, but further steps are necessary to prevent the Roma population from becoming increasingly marginalised.

28. As part of its accession commitments to the Council of Europe, Georgia promised to sign the European Charter on Regional and Minority Languages within one year of joining. Over ten years after its accession, Georgia has yet to fulfil this commitment. According to the authorities, this is due to the extremely sensitive nature of this issue and the fear that a debate on minority languages could lead to inter-ethnic tensions and instability. However, we believe that there are many outstanding issues in Georgia, which the Charter could help to resolve if it were signed, including improving the integration of the Armenians, Azeris and other national minorities into the public sphere.

29. Georgia ratified the Framework Convention for the Protection of National Minorities on 22 December 2005. The Advisory Committee that monitors the implementation of the Convention in the Contracting states adopted its 5 yearly report on 19 March 2009<sup>2</sup>. Since that time there have been a number of positive developments such as the adoption, in April 2009, of the *National Concept for Tolerance and Integration*, which provides a framework for policies on minorities. In addition, an inter-agency commission on minority issues (headed by the Ministry for reintegration) has been established to provide support in the co-ordination of policies on minorities. The Commission is responsible for implementing the National Concept for Tolerance and Integration.

30. When acceding to the Council of Europe, Georgia committed itself to adopting a comprehensive law on minorities. This commitment is still outstanding. For their part, the Georgian authorities have indicated that they would prefer to address minority issues in the different relevant laws that concern issues that are of importance for the status and protection of minorities, but not to adopt a specific law on minorities for reasons similar to those given in connection with their reticence to sign the European Charter on Regional and Minority Languages. That said, they would commit themselves to ensure that the different provisions in the relevant laws would, taken together, protect and safeguard the minorities, in line with European standards, in the same manner as a specific law would. We have informally consulted members of the Advisory Committee of the Framework Convention. In the view of the Advisory Committee it is the legal framework for the protection of minorities that counts, and not the question whether this framework exists in one general, or several more specific laws. We could therefore in principle accept the notion that a proper legal framework, even if spread over several laws, could be seen as complying with the accession commitment that Georgia adopts a law on minorities. However, this would only be the case if the advisory committee, in its next report that is foreseen for 2012, would consider that the legal framework for the protection of national minorities is adequate and in line with European standards, including the Framework Convention. In the meantime, we would urge the Georgian authorities to continue to address the issues raised in the Advisory Committee's report of 2009.

31. We also extensively discussed the issue of religious tolerance and the situation and status of other faiths in Georgia. The Georgian Orthodox Church is the main religion in Georgia. The Church is protected as both a church and a public entity. Other religious denominations and groups can only register as non-governmental organisations and non-profit-making private-law-associations. Therefore, they are not able to enjoy the same conditions in respect of the exercise of their religious activities. The absence of a proper legal status has resulted in a number of problems, including those relating to property rights (see also below), and the situation is unsatisfactory. We have therefore called upon the Georgian authorities to adopt a specific law on religion that would give an adequate legal status and protection to other faiths than the Georgian Orthodox Church.

32. There are a number of outstanding issues regarding the return of historic religious properties confiscated during the Soviet era. The churches claimed by the Georgian Orthodox Church generally have been returned or are in the process of being returned. However, the return process is being delayed for other

<sup>2</sup> [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNDocs/PDF\\_1st\\_OP\\_Georgia\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNDocs/PDF_1st_OP_Georgia_en.pdf)

religious denominations. This is particularly the case of Armenian churches. On a number of occasions, this has led to considerable tension. This has been further compounded by the fact that the Georgian Orthodox Church has taken some churches that Armenian communities had been using since the fifteenth century. The issue is not restricted to the Armenian churches however, and other religious denominations, including the Roman Catholic Church, the Evangelical Lutheran Church and the Jewish Community, have complained about similar problems.

33. The repatriation of the Meskhetian population to Georgia, before the end of 2011, was one of Georgia's accession commitments in 1999 . Accordingly, in 2007, Georgia adopted a Law on the repatriation of persons forcefully expelled from Georgia by the former Soviet Union in the 1940s. The law initiated the process of repatriation by setting out the terms under which Meskhetians could apply for repatriation.

34. In response to some concerns about the manner in which the repatriation process was managed, a series of co-ordination working meetings were held with representatives of international organisations concerned with the repatriation process (EU, OSCE, HCNM, UNHCR, IOM, ECMI and the Council of Europe) The last meeting took place in March 2010 in Tbilisi. A number of concerns were addressed and commitments made by the Georgian authorities.

35. Originally, applications for repatriation were to be submitted by 1 January 2009, which gave people very little time to fill in forms and gather documentation, especially as forms were not distributed until quite late in 2008. The deadline was postponed twice until a final deadline for submitting papers was set for 1 January 2010. Applicants with errors found in their documentation have been granted a further extension of four months within which to rectify them. The authorities have insisted that this deadline will not be extended any further.

36. According to figures provided by the Georgian authorities, the number of applications received by the deadline was 5,806, the majority of which had come from Azerbaijan. The figure is much lower than was anticipated by Meskhetian organisations. No applications have been registered from the Russian Federation. However, Meskhetian organisations claim that approximately 2,000 applications have been sent in Russian. This causes a problem because, according to the law, all applications had to be submitted in Georgian or English.

37. The first decisions on repatriation are expected at the end of 2011. The authorities are considering giving responses sooner but will not commit to this. There are some questions with regard to the actual resettlement process for those who successfully applied. The law makes no provision for a strategy of preparation and support for the reintegration process or for any financial commitment by the state. The Georgian authorities have indicated that they will devise this strategy once they know how many people are likely to be repatriated, but a concrete plan is not expected to be produced until 2011.

38. The Meskhetian Turks were originally expelled from the Samtskhe region, which is a predominantly Armenian area. There is a great deal of hostility towards the idea of repatriation within this community which must be addressed. The government has discussed initiating an awareness campaign, possibly with support from the international community, directed at both the future returnees and the Georgian population, to avoid possible misunderstandings and tensions.

39. There were fears that those deciding to return to Georgia could end up being stateless. However, the Georgian government adopted, in March 2010, a Decree on Granting Citizenship of Georgia through Simplified Procedure to Individuals Enjoying Repatriate Status, which excludes the possibility of any individual with repatriate status being left without citizenship.

40. The willingness of the Georgian authorities to resolve the Meskhetian issue in line with its commitments to the Council of Europe should be welcomed. We would like to encourage the Georgian authorities to develop a repatriation and reintegration strategy without further delay. Moreover, we encourage the authorities to demonstrate maximum flexibility with regard to formalities and paperwork to avoid any application being refused on technical grounds only. In addition, we would like to suggest that the Georgian authorities conduct a proper evaluation once the application process has been finalised, in order to assess whether it has been successful in reaching out to all Meskhetian Turks that would be eligible for repatriation and wishing to do so.

## **V. Media pluralism**

41. Georgia's media landscape used to be an example for the region and beyond. While Georgia's media legislation is still one of the most liberal, the overall environment, especially with regard to media pluralism, has somewhat deteriorated and is a matter of concern.

42. In his latest report to the Committee of Ministers, the Director General of Democracy and Political Affairs of the Council of Europe noted that, while the media freedom in general seemed to be adequate, there are unresolved issues with regard to media ownership and whistleblowers.

43. In a report published in November 2009, Transparency International concluded that Georgia's media are less free and pluralistic than before the 2003 Rose Revolution. In particular it was critical about the lack of transparency of ownership and control over the electronic media. Moreover, according to the report, the national regulatory body is not perceived as independent and needs to be further depoliticised. In addition, the report raises questions with regard to the independence of the public broadcaster which, in its opinion, operates more like a state than a public broadcaster. Likewise, in its 2009 report, the Committee to Protect Journalists expressed its concern over increased government control over the television broadcasters - including manipulation and politicisation of TV news and obstruction of opposition aligned broadcasters.

44. We are concerned by these developments and have raised the issue with the authorities. The authorities have assured us that they are fully committed to protecting freedom of speech and the pluralism of the media. Moreover, several initiatives have been taken to increase the opposition's participation in media oversight and regulatory bodies. In addition, a new parliamentary channel has been set up that provides information about the parliament and the issues under discussion. The editorial policy has been developed in consultation with the opposition, under the aegis of NDI, to ensure that the provision of information is unbiased and equitable for all political forces.

## **VI. Conclusions**

45. It is clear that the reforms and policies to further the modernisation and democratic development of Georgia, despite some set-backs, have continued unabated, despite the war. In addition, the aftermath of the war has led to the establishment of a second round of democratic reforms that will help Georgia to further consolidate its democracy. However, we would like to stress that democratic reforms should be developed on the basis of a wide political consensus and should not be imposed by the dominant political force.

46. The recent local elections were an important step in the democratisation processes in Georgia, but should now be followed, without further delay, by a broad agreement on the election system and the adoption of a new election code that has the trust of all electoral stakeholders.

47. The recent years have been dominated by debates on the democratic institutions and other, equally important issues have been overshadowed by these discussions. We have tried to widen the scope of our fact-finding visits and intend to continue doing so in our next visit, which we hope to make before the start of the summer recess this year. We would focus, inter alia, on local government reform, human rights and anti-corruption policies.