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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 (3 to 5 December 2014)

Co-rapporteurs: Co-rapporteurs: Mr Michael Aastrup JENSEN (Denmark, Alliance of Liberals and Democrats for Europe) and Mr Boriss CILEVIČS (Latvia, Socialist Group)

I. Introduction

1. This visit followed the adoption by the Assembly of the Resolution 2015 (2014) on the functioning of democratic institutions in Georgia. The main purpose of this visit was to update ourselves with regard to the latest developments in Georgia, to clarify the recommendations made in our report and to discuss the implementation of our recommendations.
2. During this visit meetings were organised with, inter alia, the Speaker of the Parliament; the Prime Minister; the Minister of Corrections; the Prosecutor General; the Deputy Minister of Internal Affairs; the Deputy Speaker and the Chairman of the Foreign Affairs Committee of the Parliament; the Deputy Public Defender; the Editorial Council of the State Commission for Constitutional Reforms; the International Secretary and members of the UNM, the Leader and members of the Free Democrats, the Head and senior staff members of the EU mission in Georgia, as well as members of the diplomatic community and representatives of civil society organisations in Georgia. The programme of our visit is attached to this note in the Appendix.
3. Unfortunately, due to illness Mr Jensen had to cancel his participation in this visit at the last moment.
4. We have included in this note major developments after the visit took place only with regard to the issues we discussed during the visit. Other, new and unrelated, developments that have taken pace since our visit have not been included and will be covered in a future information note.
5. We would like to thank the Georgian Parliament for the excellent programme and hospitality, and the Head of the Council of Europe Office and her staff for the support given to our delegation, including with the organisation of the programme.

* Document declassified by the Monitoring Committee at its meeting on 17 March 2015.

II. Recent political developments

6. In recent months there have been regular signs of mounting tension within the ruling coalition, especially between Georgian Dream and its junior coalition partners the Republican Party and the Free Democrats. This was highlighted by the fact that a number of coalition members, especially from the Free Democrats, but also from the Republican Party, voted against the controversial proposal to delay the deadline by which the currently unlimited access of security services to the networks of telecommunications providers – the so-called black boxes – need to be regulated. This delay was strongly supported by the Prime Minister and Ministry of the Interior.

7. These disagreement came to a head when, on 28 October 2014, a number of high level Ministry of Defence officials and members of the Army's general staff were arrested on suspicion of having organised a "sham tender" for a fibre-optic network. In subsequent public appearances, then Minister of Defence Irakli Alasania publicly stated that he was convinced of the innocence of his officials. On 3 November, the prosecutors interrogated the Deputy Minister of Defence in connection with this case, which added to the political controversy surrounding it. Allegedly, in order to diffuse the tension, Minister Alasania and several MPs from the Free Democrats faction met with the Prime Minister to express their concerns about this case.

8. Many interlocutors we met highlighted in this respect the similarities with a case earlier this year, when a number of officials within the Ministry of Agriculture were arraigned on similar charges. This led to the resignation of the Minister of Agriculture. However, after several months the charges against the Ministry of Agriculture officials were dropped by the prosecution due to lack of evidence. In the view of a number of interlocutors, the main reason for the charges being filed at that time had been to "force" the Minister of Agriculture to resign. Not unexpectedly, this view is strongly opposed by the authorities who maintain that no-one is above the law in Georgia, including members of the government.

9. Following the opening of an additional criminal case against the Ministry of Defence, this time against the Ministry's medical service over an alleged food poisoning of soldiers, Mr Alasania decried the cases against the Ministry of Defence as "*an attack on Georgia's Euro-Atlantic choice*" which was "*clearly politically motivated*". That same day, President Margvelashvili stated that the political confrontation in the ruling coalition was damaging the efficient function of the State as well as its Euro-Atlantic integration process. He also stated that "*We have stressed on a number of times that the country should be ruled with strong institutions and not from backstage*", clearly alluding to a possible role of former Prime Minister Ivanishvili in this crisis.

10. In our meeting with Mr Alasania, the later stated that his remarks were taken out of context, but maintained that the actions against his party were in retaliation against its strong support for Euro-Atlantic Integration and NATO membership.

11. On 4 November 2014, Prime Minister Garibashvili dismissed Mr Alasania from his post of Defence Minister over what he called "his irresponsible remarks". Following his dismissal, State Minister for European and Euro-Atlantic Integration, Alexi Petriashvili (who is a member of the Free Democrats) and Foreign Minister Panjikidze, as well as four Deputy Foreign Ministers: Davit Zalkaliani, Tamar Beruchashvili, Davit Jalagania and Vladimer Gurgenedze, resigned, stating that questions had arisen over the country's foreign policy course. Tamar Beruchashvili later withdrew her resignation after talking to Prime Minister Garibashvili. She was subsequently appointed as the new Minister of Foreign Affairs. Later also Davit Jalagania and Vladimer Gurgenedze withdrew their resignations and were reinstated. It was originally expected that Justice Minister Tea Tsulukiani, who was a member of the Free Democrats, would also resign from her post. However, she remained in her post and instead resigned from the Free Democrats.

12. On 5 November 2014, following a failed coalition meeting, in the presence of Mr Ivanishvili, to overcome the crisis, the Free Democrats formally left the ruling coalition. Originally this seemed to bring the coalition's majority in the parliament into question. However, the majoritarian MPs who had left the UNM faction in 2012 and who had formed an independent group, now formally joined the ruling coalition and two Free Democrat MPs joined the Georgian Dream faction. Combined, these actions ensured that the ruling coalition maintained the required majority to govern the country.

13. There has been public speculation over the relationship between Georgian Dream and the Republican Party within the ruling coalition, especially as the Republican Party maintained close and cordial relations with the Free Democrats after it left the coalition. However, Mr Usupashvili, the Speaker of the Georgian Parliament and one of the leaders of the Republican Party, informed us that his party would continue to support and work in the ruling coalition in order to continue the political reform process in Georgia. At the

same time he called for a change in working relations within the ruling coalition, with a view to improving internal co-ordination and communications and having a more equitable division of power between the different coalition partners.

14. The Free Democrats, now in opposition in the Georgian Parliament, see themselves as a constructive opposition and have pointedly ruled out forming an opposition coalition with the UNM. Several interlocutors pointed to the fact that the UNM does not seem to have been able to capitalise on the loss of popularity of the ruling coalition following the problems within the coalition. Regrettably, it seems that the tension and conflicts within the coalition have resulted in an increase of persons who are disillusioned with politics in general.

15. Originally, the chairpersons of parliamentary committees appointed from the Free Democrats faction remained in their posts as did the Deputy Speaker of the Georgian Parliament nominated by the Free Democrats. However, on 19 February 2015, the Georgian Dream coalition replaced Deputy Speaker Abashidze of the Free Democrats and on 23 February 2015 the three Chairs of the European Integration, the Finance and Budget and the Environmental Protection and Natural Resources Committees, who were nominated by the Free Democrats resigned, criticising, *inter alia*, the government's policy on relations with the Russian Federation.

16. The tribulations in the ruling coalition, which have raised concerns among the international community, have highlighted the still fragile and tense nature of the political environment in Georgia, as well as the informal management style within the government and ruling coalition. It has also underscored the continuing important role played by former Prime Minister Ivanishvili. While this is not of concern *per se*, it would be objectable if he were to have access to privileged information that normally is not available to non-government members. Lastly, these events show the continuing lack of independence of the judiciary - in particular the lack of independence of the prosecution service - and the often vague or absent boundaries between judicial and political decision-making processes. We have already highlighted our serious concerns with regard to these deficiencies in the justice system in relation to the prosecutions of former members of the United Movement government, and call upon the authorities to address these concerns.

III. Developments related to the conflict between Russia and Georgia

17. On 13 October 2014, the Russian authorities proposed establishing an agreement with Abkhazia on "Alliance and Integration". This agreement, which proposes further integration of Abkhazia into the Russian Federation's economic, social security and healthcare systems, was strongly criticised by the Georgian authorities and international community, including by your rapporteurs, as a clear indication of Russia's creeping annexation of Abkhazia. Reportedly, also the *de facto* Abkhaz authorities feared that this agreement would undermine the "sovereignty" of their region and proposed a number of amendments to the agreement that aim to reduce Russia's say over the region's affairs. Some of these changes, but clearly not all, were incorporated in the final text that was signed on 22 November 2014 and ratified by the Russian State Duma on 23 January 2015.

18. On 18 February 2015, Russia signed an agreement on the so-called "state-border" between the breakaway region of South Ossetia and the Russian Federation, which was strongly condemned by the Georgian Government and international community. In addition, the Russian Federation is reportedly drafting an agreement on "Alliance and Integration" with South Ossetia, similar to the one signed with Abkhazia. We strongly condemn these actions of the Russian Federation, which, as we said, amount to creeping annexation of the two breakaway regions by the Russian Federation, and which are only increasing tensions in the region, especially in the context of the events in eastern Ukraine.

IV. Justice system

19. During our visit we discussed some of the key reforms that were highlighted in our recent report to the Assembly. Unfortunately, both the Minister of Justice and her deputies were out of the country at the time of our visit due to important previously made engagements. As it was not possible to reschedule our visit, due our own full agendas, we decided to continue the discussions on the judicial reform and independence of the judiciary during our next visit to the country.

20. In response to an invitation by the Georgian Ministry of Foreign Affairs, the OSCE ODIHR have been monitoring the trial proceedings of 14 former high level government officials with regard to their compliance with international standards. After some changes in the foreseen dates for its publication, the much anticipated final report of the trial monitoring exercise was going to be presented to the authorities and Georgian public the week after our visit. Therefore, a detailed discussion of this report and the reaction of the

political forces in Georgia to the trial monitoring report are beyond the scope of this information note. This report will be covered in our next visit and related information note. However, for completeness we will outline, in summary, some of the main findings of the OSCE/ODIHR trial monitoring report¹.

21. The OSCE/ODIHR monitors observed the proceedings in the courtrooms of 14 high level cases. While explicitly not wishing to judge or comment on the merits of the cases or their outcome², the monitors noted that a number of deficiencies in the proceedings, some of which were of a systemic nature, meant that the respect for fair trial rights, in accordance with general accepted international standards for fair trials, was not fully guaranteed in the Georgian criminal justice system³. In this respect the report noted, inter alia: the frequent transfers of judges between courts during the trials in a non-transparent manner that could leave room for manipulation and interference; the violations of the principle of presumption of innocence by the courts and public officials, at times resulting in a shifting of the burden of proof to the defendant; the excessive use of pre-trial detention, to which we already referred in our last report; lack of adequate time for the defence to prepare their cases, a normative framework that failed to provide clear rules for evidence and witnesses; lack of a comprehensive written reasoning for court decisions, which undermined the transparency of the decision-making process; the generally low professional standards of the defence councils employed by the defendants; and lack of respect for witnesses and victims by both defence and prosecution.

22. On 14 May 2014, the Georgian authorities asked the Venice Commission for an opinion on the draft law on “Amendments to the Organic Law on General Courts of Georgia”. This law aims to increase the independence and impartiality of the justice system by altering the minimum number of judges in the Supreme Court. Until now this number was decided by the plenum of the Supreme Court, while the amendments set a minimum number of 28 judges, to reflect the increased workload of the Supreme Court. In addition, it regulates the appointment procedure of judges and removes the right of the High Council to appoint the chairpersons of the appeal and district courts - which it proposes be elected by the judges of the court in question - and introduces an electronic case distribution system.

23. In its opinion⁴, adopted during its October 2014 plenary session, the Venice Commission welcomed the improvements in the internal independence of the justice system that these amendments proposed. However, it strongly criticised the long probationary period for judges, which had also been one of our criticisms. Moreover, it considered that the appointment and promotion criteria should be clearly described in the law in order to reduce the discretion of the High Council of Justice. In the view of the Venice Commission, the possibility for the parliament or President to dismiss a member of the High Council of Justice should be reconsidered and transferred to a non-political, independent, body. The amendments foresee the automatic termination of the mandates of all court chairpersons when the new rules for their elections come into force. In the view of the Venice Commission this is problematic and this provision should be removed.

24. Also on 14 May 2014, the authorities asked the Venice Commission for an opinion on the draft law on “Amendments to the Law on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts”. The proposed amendments make the High Council of Justice the only body that can initiate disciplinary proceedings against a judge⁵ and install a high degree of transparency over the proceedings. In its opinion⁶, the Venice Commission considered that establishing the High Council of Justice as the sole body that can initiate disciplinary proceedings was a positive step in ensuring independence of judges. Moreover, it welcomed the clear division between the body investigating the alleged misdoings of a judge (the High Council of Justice) and the body deciding on the disciplinary sanctions, the Disciplinary Board. At the same time, the Venice Commission recommended that the authorities remove the possibility for the High Council of Justice to send a letter of reprimand in lieu of initiating a disciplinary procedure and to clearly establish, in the law, the grounds on which a disciplinary proceeding can be started.

25. As mentioned in our report to the Assembly, the independence of the prosecution service continues to be a point of concern. In Georgia, the Prosecutor General is appointed by the Prime Minister after consultation with the Ministers of Justice, who can also dismiss him from his position. We strongly

¹ <http://www.osce.org/odihr/130676?download=true>

² We note that, a number of the persons concerned have filed an application with the European Court of Human Rights

³ OSCE/ODIHR Trial Monitoring Report, § I.20

⁴ CDL-AD(2014)031

⁵ Previously, disciplinary proceedings could also be initiated by the Chairperson of the Supreme Court and by the Chairperson of the Court of Appeal.

⁶ CDL-AD(2014)032.

recommend changing the appointment procedure, which undermines the independence of the prosecution service and which make this post vulnerable to interference.

V. Surveillance

26. On 30 October the parliament voted to delay the deadline by which it should have resolved the unrestricted access of the security and law enforcement agencies to the telecommunications providers' networks and services. These so-called black boxes have been severely criticised as a mechanism that contributed to the illegal surveillance of thousands of Georgian citizens. The ruling coalition was not unanimous on this delay, and a number of MPs from the coalition at that time, mostly from the Free Democrats, voted against this delay. On 31 October 2014, President Margvelashvili vetoed the delay. The parliament subsequently decided not to overrule his veto. On 19 November, draft amendments were considered in parliament that proposed a two key solution, where access would be given, after a court order, if both the Ministry of the Interior and the Data Protection Officer, provided their keys.

27. On 28 November 2014, the parliament adopted a law regulating the access of the security and law enforcement services to the telecommunication networks and telecommunication providers' databases. This bill, which was supported by the government, was strongly criticised for failing to provide adequate guarantees to prevent unlawful access by the law enforcement and security forces to the telecommunications networks. The ruling coalition was split over this bill, with the Republican Party joining the Free Democrats and the UNM in voting against the proposal of the government, instead supporting an alternative version which would have given the "key" to access the telecommunications networks to the National Telecommunications Commission, who then could provide access to the Ministry of the Interior only on court order. Following the defeat of the alternative bill, Speaker Usupashvili called for far-reaching reforms of the Ministry of the Interior but made it clear that his party, the Republican Party, was not contemplating leaving the coalition over this issue. On 29 November 2014, the President of Georgia vetoed the bill but his veto was overruled by the parliament on 1 December 2014, after which the law came into effect.

VI. Constitutional reform

28. On 27 December 2013, the Georgian Parliament established a special State Commission for Constitutional Reform. This commission, chaired by the Speaker of the Parliament, is composed of members of both the majority and the opposition in the parliament, representatives of non-parliamentary parties and civil society, as well as legal experts. It held its inaugural meeting on 3 March 2014. However, until now no concrete proposals have been developed, the delay in its work was because of the local elections. In the view of the members of the commission, the key to constitutional reform is the reform of the electoral system. If agreement between the different political forces can be reached on electoral reform, all other issues regarding the reform of the Constitution, on which the different factions are currently split, would easily be resolvable.

29. We wish to highlight that constitutional changes are required if the next parliamentary elections, which will take place in 2016, are going to be in line with international standards. At the moment the variation in size between the single mandate election districts is so large that it violates Council of Europe standards with respect to the equal weight of votes. Many interlocutors told us that the majority of forces still support a regional proportional system but that the Georgian Dream faction is split on this issue. This issue needs to be resolved before the end of 2015, if the 2016 elections are going to be conducted on the basis of a new electoral system.

VII. Meskhetian repatriation

30. In September 2014, the government adopted its strategy for the repatriation of the deported Meskhetian population, following calls from several interlocutors, including your rapporteurs. However, we were informed that this strategy is rather brief and is lacking operative detail. We have therefore urged the authorities to develop a detailed action plan on the implementation of the strategy.

31. There has been some progress on repatriation status and in particular on the issue of obtaining Georgian citizenship. At the time of our visit, over 220 applicants had been granted citizenship, but, at that point in time, only very few persons had physically repatriated to Georgia.

Appendix

Programme of the fact-finding visit to Tbilisi (3 to 5 December 2014)

Co-rapporteurs: Mr Michael Aastrup JENSEN, Denmark, Alliance for Liberals and Democrats for Europe⁷
Mr Boriss CILEVICS, Latvia, Socialist Group

Secretariat: Mr Bas KLEIN, Deputy Head of Secretariat, Monitoring Committee of the Parliamentary Assembly of the Council of Europe

Wednesday, 3 December 2014

- 13:00 Briefing by the Council of Europe Head of office in Georgia (*)
- 14:30–16:15 Meetings with NGO representatives Mr Kakha KOZHORIDZE, Chairperson of Georgian Young Lawyers Association and Ms Eka GIGAURI, Executive Director of Transparency International Georgia, on: (*)
- reform of the justice system;
 - ongoing prosecution of former government members
 - Constitutional reform.
- 16:30 Meeting with NGO representatives on issues of Muslim minorities (*)
- Ms Tamta MIKELADZE, Human Rights Education and Monitoring Center/EMC;
 - Ms Eka CHITANAVA, Tolerance and Diversity Institute;
 - Mr Giorgi Tegushi, Georgian Democracy Initiative.
- 17:30–18:15 Meeting with Ewa CHYLINSKI, Senior Adviser and Acting Director for ECMI (*)
- 20:00 Working Dinner with the members of the Georgian Delegation to PACE

Thursday, 4 December 2014

- 09:00–09:45 Meeting with Mr Giorgi BOKERIA, International Secretary of the United National Movement (*)
- 11:00–11:45 Meeting with the Human Rights advisor to the Prime Minister of Georgia
- 12:00–12:45 Meeting with Mr Giorgi MGHEBRISHVILI, Minister of Corrections of Georgia
- 13:00–14:15 Working lunch with Mr Tedo JAPARIDZE, Head of Georgian Delegation to the PACE, Chairman of Foreign Relations Committee of the Parliament of Georgia
- 14:30–15:15 Meeting with the Members of the Editorial Council of the State Commission for Constitutional Reforms
- 15:30–16:15 Meeting with Mr Paata BELTADZE, Deputy Public Defender of Georgia
- 16:30–17:15 Meeting with Mr Levan IZORIA, Deputy Minister of Internal Affairs of Georgia
- 17:30–18:15 Meeting with Mr Giorgi BADASHVILI, Chief Prosecutor of Georgia
- 20:00 Working Dinner hosted by Mr Zviad DZIDZIGURI, Deputy Chairman of the Parliament of Georgia Community

⁷ Mr Aastrup Jensen had to cancel his participation in this visit due to illness.

Friday, 5 December 2014

- 09:00 Meeting with Delegation of the European Union to Georgia - Ambassador Janos HERMAN, Head of Political, Press and Information Section Mr Radoslaw DARKI, Head of Operations Section Mr Kaido SIREL, Deputy Head of Operations Section Mr Stephen STORK, Human Rights Focal Point and EU Liaison Officer on Human Rights Ms Eva PASTRANA, Ms Ketii KHUTSISHVILI, Ms Tamuna KHURDOLAVA (*)
- 10:00 Meeting with Mr Irakli ALASANIA, Chairman of the Free Democrats party
- 11:00–11:45 Meeting with H.E. Mr Irakli GARIBASHVILI, Prime-Minister of Georgia
- 12:00–12:45 Meeting with Mr Sozar SUBARI, Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
- 13:00–14:15 Lunch
- 14:30–15:30 Meeting with Mr Giorgi SHARABIDZE, Deputy Chairman of CEC
- 16:00–16:45 Meeting with H.E. Mr David USUPASHVILI, Chairman of the Parliament of Georgia
- 18:00 Press Conference (*)
- (*) Meetings to be organised by the Council of Europe Office in Tbilisi