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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 May 2016)**

Co-rapporteurs: Mr Boriss Cilevičs (Latvia, Socialist Group) and Ms Kerstin Lundgren (Sweden, Alliance of Liberals and Democrats for Europe)

#### **I. Introduction**

1. This visit took place in the context of a political environment in Georgia dominated by the preparations for the next parliamentary elections, which will be the first parliamentary elections following the 2012 elections which, for the first time in Georgia's recent history as an independent country, saw a peaceful change of power via the ballot box. As to be expected, the political climate therefore remained tense and polarised, especially as opinion polls show that most of the Georgian electorate is still undecided about its choice for the upcoming elections. In addition to the preparation of the elections, we also focussed on minorities, the reform and functioning of the High Council of Justice, as well as on the – at that time draft – amendments to the laws governing the functioning of the Constitutional Court of Georgia.

2. During this visit we met with, *inter alia*, the President of Georgia, the Prime Minister; the Speaker of the Georgian Parliament; the State Minister, and his deputy, for Reconciliation and Civic Society; the Minister for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees; the Public Defender of Georgia; the Chairman of the Constitutional Court; the first and second Deputy Ministers of Justice; the Chairperson of the Central Election Committee; the Chairperson of the Human Rights and Civil Integration Committee of the Parliament of Georgia; the Georgian Delegation to PACE; the Chairperson of the State Agency for Religious Issues, individual meetings with all parliamentary factions; representatives of non-parliamentary opposition parties; 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 Appendix 1.

3. We would like to thank the Georgian Parliament for the excellent programme and hospitality, and the Head of the Council of Europe Office and his staff for the support given to our delegation, including with the organisation of the programme. We also wish to express our gratitude to the departing Ambassador of Latvia in Georgia, for the assistance and hospitality extended to our delegation over the years, including during this visit. The statement we issued at the end of our visit is attached in Appendix 2.

#### **II. Recent political developments**

4. On 23 December 2015, Prime Minister Garibashvili, whose popularity had been falling steadily, resigned. No formal reasons were given, but many interlocutors indicated that this resignation was an attempt to shore up support for the government and the Georgian Dream Coalition. Mr Garibashvili was replaced by Foreign Minister Giorgi Kvirikashvili, who is widely seen as a moderate, capable of reaching across party lines and far less confrontational than his predecessor. Mr Kvirikashvili was replaced as Foreign

<sup>1</sup> Document declassified by the Monitoring Committee at its meeting on 23 June 2016.

Minster by his first Deputy Foreign Minister Mikheil Janelidze. No further changes to the government were made, indicating that the change of Prime Minister was foremost a change of personalities and not of the political direction of the government. Following Mr Kvirikashvili's appointment, relations between the President and Prime Minister have improved, which is a welcome development for the constitutional stability of the country.

5. The ruling coalition has become increasingly fragmented in the run up to the parliamentary elections later this year. Following by-elections in Sagarejo, a major confrontation broke out between the Industrialist and Republican Parties in the ruling coalition, with the former accusing the Minister of Defence, who originates from the Republican Party, of having rigged the by-election in favour of her party's candidate. On 31 March 2016, Prime Minister Kvirikashvili announced that all coalition members would run in the upcoming elections independently and not as a coalition list. Following his announcement, the National Forum announced that it would leave the governing coalition and the GD majority group in the parliament. The other junior coalition members, the Republican Party, the Industrialists and the Conservatives continue to be part of the government until the parliamentary elections, ostensibly to ensure the continuation and stability of the government. However, these parties have increasingly been taking up individual positions in important debates.

6. On 11 April, NDI published its latest public opinion poll. Despite the change of Prime Minister, the popularity of the ruling coalition did not increase much, while, also similar to the previous poll, the main opposition party the UNM seemed incapable of capitalising on the unpopularity of the government. According to the poll, of the likely voters, 17% would vote for the GD coalition<sup>2</sup>, 14% for the UNM and 9% for the Free Democrats of Irakli Alasania. The Labour Party and the Alliance of Patriots of Georgia were each favoured by 5% of the respondents, while all other parties, failed to get more than 3% support combined. A staggering 61% of all respondents stated that they were still undecided.

7. As mentioned above, especially in the context of the upcoming parliamentary elections in the autumn of 2016, the political environment continues to be tense and polarised to the extent that most issues and developments in the Georgian society are being politicised. This is exacerbated by the fact that the largest part of the Georgian electorate has not yet decided how they will vote in the next elections, which leaves the competition between the main political forces wide open.

8. On 11 March 2016 a scandal broke out when a secretly recorded tape depicting an opposition leader having extra-marital sex, was made public on YouTube. This publication caused wide-spread public outrage and was condemned by all party leaders including the Prime Minister who promised a full investigation and severe punishment for those who published the tape. On 14 March other politicians and journalists were anonymously threatened with the release of allegedly compromising video recordings of their private lives. A full investigation was started by the Prosecutors Office. These investigations reportedly revealed that the illegal recordings were made in 2012 as part of the illegal mass surveillance of public figures that was taking place at that time. A special committee had been established in 2013 to investigate this illegal surveillance and to oversee the destruction of the audio and video tapes that had been made in the process of the illegal surveillance activities. The current publication of this material seems to confirm that not all of it was collected by the committee and/or not all of it was properly destroyed. On 8 April 2016, the Prosecutors Office charged five persons, among whom a former senior official of the former Constitutional Security Department, with making the recordings. However, up to now, no arrests have been made for the publication of the tapes and the blackmail attempts. We encourage the authorities to continue their investigation with a view to bringing the persons that published these tapes – or threatened their publication – to justice. It should be clear that there can be no impunity for such lamentable practices.

### III. Electoral reform

9. As we already mentioned in our previous information note, the possible change of the electoral system is a major issue of debate in Georgia in the run up to the elections. To recall, Georgia has a mixed proportional – majoritarian election system, where half of the parliament is elected via proportional elections in a single national constituency on the basis of closed party lists, while the other half is elected in single-mandate majoritarian districts on the basis of plurality of votes with a 30% threshold. This system is widely considered to favour the main party in power as they are most likely to win the majority of the majoritarian mandates.

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<sup>2</sup> The poll was taken before it was announced that the members in the GD coalition would run individually in the next elections. No separate figures for the members in the ruling coalition at that time can therefore be given.

10. As we also mentioned in our previous information note, before both the 2008 and 2012 parliamentary elections there were attempts by the ruling majority and opposition to come to an agreement on the election system. Each time the (then) opposition favoured the replacement of the majoritarian part of the election system with some form of a regional proportional system, which was opposed by the (then) ruling party which argued that they could not abolish the majoritarian system for various reasons<sup>3</sup>. Regrettably, even if the parties in the ruling majority and opposition have changed, the same situation seems to be being repeated in the run up to the 2016 elections.

11. Regrettably, as already expected during the last visit, the ruling majority and the opposition have not been able to come to an agreement on the change of the electoral system and it is unlikely that an agreement could still be reached before the elections, as this would imply changes to the Constitution.

12. Both sides in the debate are in effect very close and agree on the principle of abolishing the majoritarian part of the elections and moving to a purely proportional system, either in a single national constituency or in a regional proportional model. The differences in this respect are mostly on technicalities. However, the main difference lies in the timing of the implementation of the new electoral system. The ruling majority has tabled amendments that would change the electoral system as from the 2016 elections, with the 2016 elections still being held under the current mixed system. At the initiative of several parliamentary and extra-parliamentary opposition parties, more than 200 000 signatures were collected to place alternative constitutional amendments on the agenda of the Georgian parliament. The amendments proposed by the opposition via this popular initiative also foresaw the abolition of the majoritarian component and the introduction of a purely proportional election model – with only marginal variations to the model proposed by the authorities. However these amendments, called for the change in the electoral system with immediate effect, before the 2016 elections, which would then be organised under the new proportional system.

13. It seems that none of these proposals have a realistic chance to be adopted by the parliament as the ruling majority does not support the proposal of the opposition and *vice versa*. As a result, it is very likely that the reform of the electoral system will again become a topic after the elections. As we have mentioned before, it is not very likely that the next ruling majority, whoever it might be, would want to change the election system after the elections have taken place. In that context, we encourage all parties to take a strategic view over a tactical view on this issue and to come to an agreement on the election system, even if it would only come into effect after the elections.

14. As repeatedly mentioned in the reports of election observation missions of our Assembly, single mandate election districts in Georgia had an extremely large variation in size, ranging from 6,000 voters in remote areas to 120,000 voters in districts situated in the capital and other large cities. This is in contradiction with the principle of the equality of the vote and with Council of Europe standards, which stipulate that the maximum allowable variance should not exceed 10% or 15% in very exceptional cases. On 28 May 2015, on the basis of a complaint filed by the Public Defender, the Constitutional Court ruled that the variance in size of the election districts violated the principle of equality of vote as enshrined in the Georgian Constitution and ordered the district sizes to be changed to remedy this situation.

15. On 18 December 2015, the Georgian parliament adopted a series of amendments to the election code. The main purpose of these amendments was to redraw the election districts in such a manner that their variance in size would comply with the recent Constitutional Court decision on the size of election districts, as well as with long-standing Venice Commission and Assembly recommendations in this regard. In addition, the amendments raised the threshold to be elected in single mandate districts to 50% which had been a long-standing demand of most political stakeholders.

16. On 14 and 22 January 2016, the authorities sent the amendments to the election code to the Venice Commission for opinion. The Venice Commission adopted its opinion, produced jointly with the OSCE/ODIHR, at its plenary on 10 March 2016. In its opinion, the Venice Commission welcomed the introduction of the 50% threshold as well as the principle of the creation of election districts that are of a similar size, thus safeguarding the principle of equality of the vote. However, it strongly criticised the manner in which the election districts were established in law, which had taken place without in-depth consultations and consensus among all electoral stakeholders. The Venice Commission noted that this had led to allegations of possible gerrymandering by several opposition parties. In addition, the Venice Commission expressed its concern about the lack of clear legal guidelines for the drawing of the election district boundaries by the CEC in urban areas that consist of multiple majoritarian districts, as well as the lack of clarity about how the district boundaries that are set in the law would change in the future as a result of demographic changes.

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<sup>3</sup> AS/Mon(2011)24rev3 § 5 to 15.

17. The law delimitates the boundaries for the 73 election districts but leaves it to the CEC to establish the exact boundaries for the 30 election districts that are located in the four largest cities in Georgia. As mentioned by the Venice Commission, many stakeholders have criticised the process by which the boundaries for the district were established in the law, which in the view of these stakeholders lacked transparency, impartiality, consultation and consensus. It should be emphasised that in-depth consultations and an as wide as possible consensus between all electoral stakeholders are key factors to ensure trust in the electoral system, which is essential for the democratic conduct of elections. In our meetings with civil society representatives and other interlocutors, everyone criticised the lack of consultation and transparency with regard to the establishment of the election district boundaries. At the same time, they also stated that, even if the criteria on which they were established are not always clear, the boundaries as established by the law did not substantiate the allegations of widespread gerrymandering. Following the adoption of the law, the CEC established, in consultation with all stakeholders, a set of criteria for the delimitation of the 30 urban districts that fall under the CECs responsibility. On the basis of these criteria the boundaries for the 30 districts in question were established. During our visit we were not informed about any particular concerns with regard to the establishment of the boundaries by the CEC.

18. A matter that created some controversy was the appointment of the “professional” or non-party appointed members of the District Election Commissions. According to the election code of Georgia, district election commissions (DEC) are composed of 13 members, 7 of whom are appointed by qualifying political parties and 6 “professional” members that do not represent parties and that are appointed by the CEC. However, when the CEC published the list of the members it had appointed to the DEC it turned out that several members had previously been party representatives in DEC or precinct election commissions (PECs) during the 2012 elections, mostly representing the GD coalition<sup>4</sup>.

19. At the time of our visit we were informed that a number of parties – from both the ruling coalition and opposition – were discussing the possibility of tabling amendments to the electoral code that would introduce a so-called German model for the mixed majoritarian-proportional election system. In such a model, a number of the proportional seats would be set aside as compensatory seats to be awarded to parties that would receive less combined majoritarian and proportional mandates than the total share of mandates they should have received according to the results in the proportional contest. Reportedly, the introduction of such a system would not necessitate constitutional amendments. Following our return from Tbilisi, we were informed that on 19 May 2016 the Republican Party proposed a series of amendments that would introduce a system of distributing seats in line with this method. It is not clear if these amendments will have enough backing in the parliament to be adopted. Again, we would in principle support any amendments that would increase the proportionality of the distribution of mandates but counsel against any major changes of the electoral system very close to the election date itself (see also below). It is therefore of the utmost importance that these amendments be debated as soon as possible in the parliament.

20. On 5 April 2016, after a meeting with Prime Minister Kvirikashvili, President Margvelashvili announced that he had issued a decree calling regular parliamentary elections on 8 October 2016. According to Georgian legislation, the election campaign starts immediately after the presidential decree announcing the elections comes into force. From that date all political activity by election contestants will be regulated by the election legislation, but also all election administration and monitoring structures will need to be fully functional, which has budgetary consequences. As a result, elections have mostly been formally called in Georgia close to the minimum period for the election campaign that has been established in the law. According to the Prime Minister, calling the elections at this moment instead of during the summer would cost an additional 15 million GEL<sup>5</sup>, not foreseen in the State budget. According to Georgian legislation a decree to call elections needs to be countersigned by the Prime Minister. The decree of 5 April had not been countersigned and therefore has no legal validity. Following negotiations between the Prime Minister and the President a compromise was reached whereby the President will formally issue his decree to call the elections for 8 October 2016, on 8 June 2016.

21. According to the Georgian election law, a minister – including a Prime Minister – must stand down the moment he or she becomes a candidate for the parliament. In the case of the Prime Minister this would imply the resignation of the complete government. The Georgian Dream would like the new Prime Minister to head

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<sup>4</sup> According to a monitoring report on the appointment of DEC members by the CEC, prepared by the Georgian Young Lawyers organisation (GYLA), 42 of the 193 appointees (22%) had previously been members of a district or precinct election commission. Of these 42 appointees, 38 (81%) had previously been party representatives of parties belonging to the ruling coalition, while 8 appointees (19%) had previously been party representatives of parties belonging to the opposition.

<sup>5</sup> Approximately 6.2 million Euros.

its party list during the next parliamentary elections, but has argued that, after all the recent changes in the government, it would be destabilising to replace the entire government just before the elections. On proposal of the GD, parliament therefore adopted a change to the electoral code that would allow the Prime Minister (but not the other ministers) to remain in office while running for parliament.

#### IV. Justice system and the judiciary

22. A highly politicised and controversial issue was the proposal of the authorities to amend the laws that regulate the functioning of the Constitutional Court in Georgia. The government asserted that these amendments were needed to increase the efficiency and transparency of the work of the Constitutional Court, as well as to prevent judges to finalise court cases well beyond the maximum length of their mandate that is allowed by the Constitution. The opposition parties pointed out that a number of recent decisions by the Constitutional Court had gone against the interests of the current government. They claimed that these amendments were proposed in retaliation for these decisions and aimed at undermining, or even rendering impossible, the proper functioning of the Court.

23. During our visit we urged the authorities to send the amendments to the laws governing the Constitutional Court to the Venice Commission for opinion. We were informed that the amendments had been considerably changed after their discussion in first reading and that the amendments, as they would be presented in second reading, would be sent to the Venice Commission for opinion. They informed us that, if the Venice Commission would be able to adopt its opinion during its June session, it should be possible to take into account the Venice Commission's opinion before the amendments were scheduled for adoption. At the same time they emphasised that the time to adopt these amendments in parliament was short, also as a result of the upcoming elections, and that the adoption therefore would not be delayed beyond the end of this parliamentary sitting. From our side we publicly welcomed this willingness and contacted the Venice Commission to ensure the opinion could be adopted at its plenary on 9 and 10 June. However, neither the authorities nor any of the other Georgian entities that have the right to request an opinion of the Venice Commission, which includes the Constitutional Court itself, requested an opinion of the Venice Commission before the amendments were adopted, in a very hasty manner<sup>6</sup>, on 14 May 2016. While we recognise that this issue is being politicised by all sides, we do deeply regret that the amendments were not sent to the Venice Commission for opinion before their adoption, as we were promised during our visit, as well as the hasty manner in which these amendments were adopted. We subsequently issued a statement in which we called upon all stakeholders to refrain from any attempts to unduly politicise these amendments, as well as the court itself, in the run up to the forthcoming parliamentary elections and urged the authorities to request an opinion of the Venice Commission on the adopted amendments and to promptly implement the recommendations contained in that opinion.

24. Following their adoption, the President of Georgia requested an opinion by the Venice Commission on the amendments, asking it to adopt the opinion as soon as possible, as he intended to weigh this opinion during his deliberations on whether to veto these amendments or not. The Georgian parliament also requested an opinion on the amendments. The Venice Commission has announced that it would adopt the opinion at its plenary session on 9 and 10 June in Venice.

25. On 27 May 2016, the Venice Commission published a preliminary opinion<sup>7</sup> on these amendments. In this preliminary opinion, given the short time available, the Venice Commission focused on the major amendments and considered whether these could be detrimental to the functioning of the Court in the light of European standards. The Venice Commission welcomed the new election system for the President of the Court and suggested that this same formula could be used for the election of the vice-presidents. It equally welcomed the introduction of an automatic case distribution system and the publication of decisions, including dissenting and concurring opinions, on the website of the Court and in the Official Herald, as well as the clarification that Court decisions would take effect upon their publication on the website of the Constitutional Court.

26. At the same time the Venice Commission expressed its concern about the limitation for judges to hear new cases in the last 3 months of their term of office. Recognising the validity of wishing to avoid judges sitting beyond their constitutional term, the Commission noted that it would be acceptable to end the mandate of sitting judges even if their cases had not been finalised, but that in that case it would be essential for judges to leave office only when their replacement had been appointed to avoid that the number of remaining judges in the Court fall below its quorum. However, this would probably need a constitutional

<sup>6</sup> The second and third (final) reading took place in less than 24 hours from each other.

<sup>7</sup> CDL-PI(2016)005.

amendment to implement. The Venice Commission also expressed its concern about the amendment that would require that all decisions in the plenary should be taken with the presence of at least six judges, which seems excessive, especially in the context where the plenary has been given more powers. The Venice Commission therefore recommended that this quorum be lowered. In addition, the Venice Commission recommended that the provision whereby a single judge could refer a case to the plenary be amended in order to avoid that this could be abused to make the efficient functioning of the court impossible. A simple majority of the plenary should be able to reject such a request without the need to provide a motivated decision.

27. The appointment process in the High Council of Justice has become an issue of increasing controversy. On 25 December 2015, as part of a group of 38 appointments, the High Council of Justice re-appointed Levan Murusidze, whose tenure as Supreme Court judge was coming to an end, as a judge. Mr Murusidze, who is also the Secretary of the High Council of Justice, presided over the highly controversial murder case of Sandro Girgvliani that implicated several high-level members of the Saakashvili administration. The appointment of Mr Murusidze, which was opposed by the Chair of the Supreme Court but supported by most other members of the HCJ including those appointed by the current parliament, was strongly criticised by the Free Democrats and civil society, as well as the President of Georgia, who considered his appointment a travesty of justice. However, the self-governing conference of judges strongly supported his appointment, stressing that his appointment would make it clear that the judges appointed by the previous administration (90% of all judges) “will be able to continue their career and are not doomed because of the fact that they were not appointed by the incumbent government”<sup>8</sup>. This argument, as well as the strong support for Mr Murusidze within the judiciary, was also cited by the parliament-appointed members in the HJC, when justifying their vote in favour of his appointment.

28. On 22 February 2016, the HCJ dismissed the Chairman of the Tbilisi District Court from his position as Chairman of the Court (he remains a judge in that court), citing violations in the manner in which he assigned cases to judges. The judge in question alleged that the case against him was revenge for his criticism of the HCJ, as well as for the fact that he had publicly alleged that examination papers for the judge certification exams had been leaked to selected judges. These accusations were denied by the HJC, which pointed to the fact that he had been dismissed with 12 votes in favour and 1 against. It should be noted that his allegations of leaked exam questions were investigated by the Prosecutors Office, which reportedly found that violations had indeed taken place.

29. During our visit, all of our interlocutors, without exception, expressed their concern about the functioning of the High Council of Justice, which was considered a main obstacle to a successful reform of the judiciary. At the same time, many interlocutors highlighted the difficulty of implementing the needed reforms of the High Council of Justice without affecting the independence of the judiciary, or being conceived or construed as doing so. The President of Georgia, as well as a coalition of civil society groups, have called for a reform of the HCJ and the suspension of all judicial appointments until these reforms have been implemented. Similarly, the Ministry of Justice has called for further reform of the HJC and is preparing a set of amendments to this end, to be adopted in the framework of the delayed third wave of judicial reform that is currently being considered by the Georgian Parliament. Currently, any decisions of the HJC regarding appointments of judges cannot be appealed to a court. The President of Georgia has suggested that the law on the HJC be amended to allow for the possibility to appeal decisions by the HCJ regarding appointments to the Supreme Court.

30. On 27 November 2015, the Parliament of Georgia confirmed Mr Irakli Shotadze as new Prosecutor General of Georgia. Mr Shotadze was nominated by the Prosecutorial Council in line with the new law on the prosecution service. The opposition voted against the appointment of Mr Shotadze as they felt that the law on the prosecution service failed to ensure the de-politicisation of the Prosecution Service. For his part, the new Prosecutor General stressed that increasing the independence and transparency of the prosecution service would be the main priority of his tenure.

31. On 3 February 2015, the Public Defender appealed to the Constitutional Court on the constitutionality of the so-called surveillance law. On 14 April 2016, the Court passed its judgement in which it declared the current legislation – that allows security services to have direct access to the telecommunications networks – unconstitutional and ordered the authorities to change this legislation by 31 March 2017. The current legislation, which was adopted in November 2014, left in place the so-called black boxes in the communications networks that were installed by the previous government. The provisions that left these black boxes in place was severely criticised by the civil society, the President of Georgia, as well as a number of

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<sup>8</sup> Statement by the conference of judges adopted on 20 December 2015.

international partners. This judgement addresses a number of concerns that we expressed in previous information notes and in our last report to the Assembly.

## V. Minorities

32. On 8 December 2015, the European Commission<sup>9</sup> against Racism and Intolerance (ECRI)<sup>9</sup> adopted its fifth monitoring cycle report on Georgia. ECRI welcomed the progress made since its last report, in particular the adoption, in 2014, of the Law on the Elimination of all forms of Discrimination and the 2012 adoption of Article 53 of the Criminal Code of Georgia that introduced racial, religious, national, ethnic intolerance and homophobia as aggravating circumstances in a crime. In addition, it welcomed the adoption of the 2014-2020 Human Rights Strategy with its focus on freedom of religious belief, equal rights and protection of minorities.

33. While welcoming progress made, ECRI expressed its concern about the prevalence of hate speech against ethnic and religious minorities, as well as against LGBT persons, in Georgia, with physical attacks occurring with “a worrying frequency”. Regrettably, the response of the Georgian authorities has been inadequate until now: the incidents were not, or insufficiently, investigated and, until now, Article 53 of the Criminal Code has been applied in very few cases and reportedly never to cases involving gender identity or sexual orientation. Similarly, the rights of religious minorities are not always legally enforced, with the authorities giving preference to local mediation mechanisms, often involving the Georgian Orthodox Church.

34. In the view of ECRI, the National Concept for Tolerance and Civic Integration (2009 -2014) was a good first step, but lacked sufficient scale to ensure broad results. Similarly, in ECRI’s opinion, supported by a number of interlocutors we met during our visit, the newly established State Agency for Religious Issues lacks a clear mandate or action plan.

35. The State Agency for Religious Issues falls under the responsibility of the Prime Minister and is tasked with coordinating the policies of the government on religious issues, A key issue is the restitution of religious properties that were confiscated during Soviet times, which also implies providing the necessary funding for restoration work and maintenance. Moreover, the agency is tasked with mediation in conflicts of a religious nature in local communities. A number of interlocutors have criticised the agency for the fact that it tries to delegate this mediation role to civil organisations, often those related to the Georgian Orthodox Church. In this respect, on 29 February 2016, political tension emerged between the Christian and Muslim communities in the town of Adigeni. The newly established State Agency for Religious Affairs had approved a request by the Muslim community in Adigeni for a separate cemetery for Muslims. However, this was opposed by the Christian community, the tension escalating into a violent confrontation between members of the two communities. An agreement to resolve the impasse was finally reached on 2 March.

36. The authorities informed us that, in their view, they have largely honoured their commitment to the Council of Europe with regard to the issue of the Meskhetian repatriation, However, as on previous occasions, we stressed that the honouring of this commitment does not only entail the establishment of a legal framework allowing for repatriation, but also of the successful repatriation of all those Meskhetians who want to repatriate.. The implementation of the repatriation and integration strategy is therefore a key component in the assessment of the honouring of this accession commitments by Georgia. In a welcome development, since the adoption of the ECRI report, the Interagency Action Plan for the Repatriation and Reintegration of Meskhetians was adopted, but, regrettably, its implementation seems to be proceeding very slowly. We would also like to highlight in this context that the Assembly recommended that the authorities organise a comprehensive evaluation of the repatriation framework and integration strategy, and formulate additional policies if necessary, in order to ensure that all those Meskhetians that were deported and that wish to return to Georgia do indeed have had an objective chance to do so<sup>10</sup>. We wish to reiterate this recommendation to the Georgian authorities. During our visit we were informed that the authorities intend to increase from 2 to 5 years the period in which persons can provide the documentary evidence needed for their application, which is to be warmly welcomed.

37. An issue of controversy was the proposal by several high ranking officials in the Georgian Dream Coalition, led by the Prime Minister, for a constitutional amendment that would limit marriage strictly to a

<sup>9</sup> CRI(2016)2, ECRI Report on Georgia (fifth monitoring cycle), p. 9.

<sup>10</sup> According to information provided by the Minister for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, as of 3 May 2016, 5 841 applications for repatriation have been received, 1 533 applications have already been granted, 4 have been refused. In total 506 persons (494 originating from Azerbaijan) have been granted citizenship and 19 persons in 5 families have already returned to Georgia.

relation between men and women. The grounds for this initiative are hard to understand. Same-sex marriage is currently not allowed by the civil code of Georgia. There are no initiatives that seek to change the civil code in this respect, as that would not be accepted by Georgian society, which is still very conservative and homophobic. Many LGBT organisations stressed therefore that any move to legalise same-sex marriages in Georgia, would actually be detrimental to LGBT rights in Georgia, and was not on their agenda for that reason. During our meeting with him, the Prime Minister told us that his initiative had been a reaction to attempts by Moscow-backed civil organisations to undermine Georgia's further European integration by alleging that Georgia's increased European integration had resulted in a "deterioration of moral values" and "increased decadence". As proof of that they alleged, falsely, that the authorities' were planning to legalise same sex marriages in Georgia. With his initiative to codify the limitation of marriage to heterosexual couples at the level of the Constitution, the Prime Minister hoped to bring such false allegations to an end. Other interlocutors noted that this initiative also had strong electoral connotations as it could become a rallying point for conservative forces in Georgia's society, which could be of benefit to Georgian Dream during the elections. We strongly regret any misuse of minority issues by any political or civil force for electoral or any other ulterior motive, as this is nearly always detrimental to the rights of the minorities concerned, and raises intolerance in society.



**Appendix 1: Programme of the fact-finding visit to Tbilisi (3-5 May 2016)**

Mr Boriss CILEVICS, Latvia, Socialist Group

Ms Kerstin LUNDGREN, Sweden, Alliance for Liberals and Democrats for Europe

**Tuesday, 3 May 2016**

- 12:00 Briefing by the Head of the Council of Europe Office (\*)
- 14:00-14:45 Meeting with the Chairperson of the Constitutional Court of Georgia **Mr George PAPUASHVILI**
- 15:00-15:45 Meeting with the State Minister for Reconciliation and Civic Equality **Mr Paata ZAKAREISHVILI** and the First Deputy Minister **Ms Ketevan TSIKHELASHVILI**
- 16:00-16:45 Meeting with the Public Defender of Georgia **Mr Ucha NANUASHVILI**
- 17:00-17:45 Meeting with the Chairperson of the Supreme Court, Chairperson of the High Council of Justice, **Ms Nino GVENETADZE**
- 18:00-18:45 Meeting with the Chairperson of the CEC **Ms Tamar ZHVANIA**
- 20:00-21:30 Working Dinner hosted by the First Deputy Minister of Justice of Georgia, **Mr Alexander BARAMIDZE**, and Deputy Minister **Mr Gocha LORTKIPANIDZE**

**Wednesday, 4 May 2016**

- 09:00 Roundtable with civil society organisations on electoral reform (\*)
- 10:00 Roundtable civil society organisations and minority representatives on minority issues (\*)
- 11:00 Meeting with the extra parliamentarian opposition
- 12:30 Roundtable with civil society organisations on High Council of Justice reform (\*)
- 13:30 Meeting with Identoba
- 15:45-16:45 Meeting with the Minister Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia **Mr Sozar SUBARI**
- 17:00-17:45 Meeting with the Chairperson of the Human Rights and Civil Integration Committee of the Parliament of Georgia **Ms Eka BESELIA**
- 18:00-18:45 Meeting with the Chairperson of the State Agency for Religious Issues **Mr Zaza VASHAKMADZE**
- 20:00 Dinner with the Diplomatic Community hosted by the Ambassador of Latvia to Georgia

**Thursday, 5 May 2016**

- 10:00-10:45 Meeting with the Representatives *"The United National Movement"*
- 11:00-11:45 Meeting with the Prime Minister of Georgia **H.E. Giorgi KVIRIKASHVILI**
- 12:00-12:45 Meeting with the President of Georgia **H.E. Giorgi MARGVELASHVILI**
- 13:00-14:45 Lunch hosted by the Members of the Georgian Parliamentary Delegation to PACE
- 15:00-15:45 Meeting with the Representatives of the "Free Democrats" party
- 16:00-16:45 Meeting with the Representatives of the Faction "The Georgian Dream – Entrepreneurs"
- 17:00-17:45 Meeting with the Representatives of the Faction "The Georgian Dream"
- 18:00-18:45 Meeting with the Representatives of the Faction "Republicans"
- 19:00-19:45 Meeting with the Representatives of the Faction "National Forum"
- 20:00-21:30 Dinner hosted by the Chairman of the Parliament of Georgia **H.E. David USUPASHVILI**

(\*) Meetings organised by the Council of Europe office in Tbilisi

**Appendix 2: Statement by the co-rapporteurs issued on 10 May 2016**

**Georgia: co-rapporteurs welcome willingness to seek Venice Commission's opinion on Constitutional Court amendments**

At the end of their visit to Georgia, the Parliamentary Assembly of the Council of Europe (PACE) co-rapporteurs for the country, Boriss Cilevics (Latvia, SOC) and Kerstin Lundgren (Sweden, ALDE), have welcomed the intention of the Chairperson of the Human Rights and Civil Integration Committee of the Georgian Parliament to send the proposed amendments to the laws governing the Constitutional Court to the Venice Commission for opinion, before they are discussed in second reading in the parliament.

“This should allay any fears that, when adopted, these amendments would inadvertently hinder the efficient functioning of the Constitutional Court. The important role of the Constitutional Court as an independent and impartial arbiter should be ensured. By being asked for an opinion in the next couple of days, the Venice Commission would be able to adopt its opinion at its June plenary session, which in turn would allow the parliament to take the recommendations of the Venice Commission into account when adopting the amendments in final reading before the end of this parliamentary session,” said the two co-rapporteurs.

Referring to the two separate proposals for Constitutional Amendments to change the current mixed proportional-majoritarian election system, the rapporteurs regretted that the different political forces had not been able to reach a consensus on the date these changes would be implemented. “As we have said previously, since 2007 the ruling majority and opposition, irrespective of their members, have been unable to reach a consensus on the electoral system, which has been a permanent source of tension in the political environment. We therefore urge all political forces to compromise now, in order to avoid that the same exact question will return during the run-up to the 2020 elections.”

The two co-rapporteurs also noted the many proposals for changes to the electoral code that are currently circulating. While welcoming any proposals that would increase public trust in the conduct of the elections, they also stressed the importance of the stability of the electoral framework in the months before the elections. They called on all political forces and other stakeholders to refrain from any actions or discourse that could negatively affect the democratic conduct and public trust in the forthcoming elections. “With the 2012 elections, Georgia set an example for the region. That trend should be continued in 2016,” said the co-rapporteurs.

During their visit the co-rapporteurs met with several representatives of minorities and organisations working on minority issues. They urged the authorities to continue unabated their efforts to fight discrimination and prejudice, and to strengthen tolerance for minorities in Georgian society. “This is especially important in the context of the forthcoming elections, with the risk of instrumentalisation of minority issues for ulterior motives, including by interests outside of the country,” they concluded.

The rapporteurs will visit Georgia again during the pre-electoral period in the framework of the observation of the forthcoming parliamentary elections, in order to assess the pre-electoral environment.

**Appendix 3: Statement by the co-rapporteurs issued on 19 May 2016**

**Georgia: monitors regret Constitutional Court changes have not been sent to Venice Commission, as promised**

The monitoring co-rapporteurs for Georgia of the Parliamentary Assembly of the Council of Europe (PACE), Boriss Cilevics (Latvia, SOC) and Kerstin Lundgren (Sweden, ALDE), have expressed their regret at the hasty adoption in final reading, reportedly undermining the transparency of the process, of amendments to the laws governing the functioning of the Constitutional Court.

They in particular regretted that these amendments were not sent to the Venice Commission – the Council of Europe’s independent group of constitutional law experts – for opinion after they were adopted in second reading in the Committee on Human Rights and Civic Integration of the Georgian Parliament, as was originally indicated to them during their visit in the first week of May 2016.

“We wish to reiterate that a Venice Commission opinion on these amendments, and the prompt implementation of their recommendations, could help ensure the efficient functioning of the Constitutional Court and counteract any possible attempts to unduly politicise these amendments, as well as the court itself, in the run up to the forthcoming parliamentary elections. We therefore urge the authorities to request such an opinion of the Venice Commission without any further delay. If not, we will propose that the Assembly’s Monitoring Committee itself request such an opinion at its forthcoming meeting on 23 May 2016.”