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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 (28 to 30 March 2017)**

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

#### **I. Introduction**

1. This was our first visit following the parliamentary elections which took place on 8 and 30 October 2016. During these elections the incumbent Georgian Dream party won a constitutional majority in the incoming parliament. The post-electoral climate was dominated by the initiation of a reform of the Constitution as well questions with regard to the role of the opposition in the new political environment that emerged after the elections.

2. During this visit we met with, inter alia, the President of Georgia, the Prime Minister; the Foreign Minister, the acting Minister of Justice, the Prosecutor General, the First Deputy State Minister for European and Trans-Atlantic Integration, the Vice-Chairman of the Constitutional Court, the Public Defender of Georgia; the Constitutional Reform Commission; members of the Parliamentary Group on Amending Surveillance Regulations; members of the Sub-Committee for Amending the Broadcasting Law; the Chairperson and members of the Georgian Delegation to PACE; 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. In addition the authorities organised a special briefing by the high-level working group on the issue of the Meskhetian repatriation. 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 Ambassador of Sweden for the hospitality extended. The statement we issued at the end of our visit is attached in Appendix 2.

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

4. Parliamentary elections took place in Georgia on 8 October and 30 October (second round) 2016. These elections were observed by the Assembly in the framework of the International Election Observation Mission which also consisted of the OSCE/ODIHR, the European Parliament, OSCE-PA and the NATO-PA. According to the International Election Observation Mission, the elections were competitive and conducted generally in line with European standards for democratic elections. Regrettably, incidents of campaign violence and allegations of pressure on voters and campaign activists were reported that need to be fully and transparently investigated, and perpetrators found brought to justice, to ensure they will not re-occur during future elections. Negotiations between the ruling majority and opposition about introducing a proportional system before the elections had broken down. As a result, these elections took place under the same mixed

<sup>1</sup> Document declassifié by the Monitoring Committee at its meeting on 27 June 2017.

proportional-majoritarian system as previous elections. As we noted in previous reports, a mixed system is widely considered as favouring the largest party.

5. These elections were overwhelmingly won by the incumbent Georgian Dream/Democratic Georgia (GD-DG) party of Prime Minister Kvirikashvili, which obtained a constitutional majority of 115 of the 150 seats (44 of the 77 proportional mandates and 71 of the 73 majoritarian mandates). At the same time most of the smaller parties that participated in these elections failed to pass the threshold in the proportional elections or to win one of the majoritarian races. The United National Movement obtained 27 seats while the only other party to pass the threshold in the proportional elections was the Alliance of Patriots, which gained 6 seats. In addition one independent candidate, former MFA Salome Zourabichvili, and one candidate from the Industrialists Party entered parliament after they won in the majoritarian contests.

6. The outcome of these elections had a profound impact on the political environment in Georgia and in particular on the opposition forces. The fact that the opposition parties, and in particular the UNM were unable to capitalise on the reported unpopularity of the ruling GD-DG underscores the continuing questions among the populations with regard to the UNM and its legacy from the time it governed the country. In addition, most of the smaller mainstream parties failed to enter parliament which could hinder their long-term development. These developments, especially in the context of the constitutional majority of the ruling party, raise some concerns with regard to the long-term plurality of the political environment in Georgia. This situation is compounded by the leadership turmoil in a number of these parties that emerged after the elections (see also below).

7. Immediately after the first round of elections, Free Democrat leader Irakli Alessania announced that he was leaving the party followed, on 12 October 2016, by several other senior members of the Free Democrats leadership, including Victor Dolidze<sup>2</sup> and Irakli Chikovani. On 29 October 2016 former Speaker David Usupashvili quit the Republican Party over “political, value and tactical disagreements” and announced his intention to set up a “new political project for Georgia”. On 1 November 2016, several other leading members of the Republican Party, including Paata Zakareishvili and Tinatin Khidasheli, quit the party, with most of them announcing their intention to join Mr Usupashvili’s new project.<sup>3</sup> On 31 May the Free Democrats and the Republican Party announced that they will run on a joint list in the upcoming local elections in October 2017.

8. Many interlocutors, including inside the UNM itself, have blamed the loss in the last elections and the fact that UNM was not able to capitalise on the public discontent with the GD-DG government, on former President Saakashvili’s continuing role – and reportedly increasingly radical positions – in the running of the party<sup>4</sup>. After the first round of the election, Mr Saakashvili publicly called on the UNM candidates to withdraw from the elections. However, this was rejected by the Political Council of the UNM which decided with a large majority to participate in the second round and take up the parliamentary seats they would win. The tension between the Political Council and Mr Saakashvili continued when the Political Council announced that they wished to appoint a new chairperson of the party, while the regional and local structures of the party, under the leadership of Mr Saakashvili, decided to leave the post open to protest against Mr Saakashvili’s loss of citizenship when he accepted Ukrainian nationality. The discourse between the political leadership of the party and the supporters of Mr Saakashvili became increasingly tense. A defining moment came when, after his early release from prison, former Tbilisi mayor and prominent UNM leader Gigi Ugalava joined the majority of the Political Council in its criticism of Mr Saakashvili. After this, on 12 January 2017, a large number of UNM leaders, including, David Bakradze, Gigi Ugalava Giga Bokeria Giorgi Kandelaki and many others, split from the UNM and announced the establishment of a new political movement. By using the nominal party that was in coalition with the UNM, European Georgia, the new faction, which consists of a total of 20 members, remains a qualified party for election purposes and maintains its status of the parliamentary minority in the Georgian parliament. The seven UNM members that did not split from the party have set up a “new” UNM faction. This split of the UNM, to some extent mitigated some fears with regard to a possible decrease in pluralism within the Georgian parliament.

9. Shortly after the elections, PM Kvirikashvili formed his new Cabinet. In total 18 ministers remained from the previous government, including Justice Minister Tea Tsulukiani and Foreign Minister Mikheil Janelidze. Georgian Dream Secretary General Irakli Kobakhidze was elected the new Speaker of

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<sup>2</sup> Victor Dolidze was later appointed State Minister for European and Euro-Atlantic Integration in the new government of PM Kvirikashvili.

<sup>3</sup> Following our visit, on 1 May 2017, Mr Usupashvili announced the creation of a new centrist political party in time to compete in the next local elections in Georgia which will take place in October 2017.

<sup>4</sup> For many people Saakashvili remains the unrepentant face of many of the excesses that took place when UNM was in power. A defining moment for UNM’s loss may have been his announcement during the last days of the campaign that he would soon return to Tbilisi should UNM win the elections.

Parliament. Former Chair of the Georgian Delegation Manana Kobakhidze was appointed to the Constitutional Court by the Georgian Parliament.

### III. Constitutional reform

10. Following the elections, Prime Minister Kvirikashvili announced that the ruling majority was intending to reform the Georgian Constitution with the aim of strengthening the separation of powers<sup>5</sup> and ensuring that no single political entity could “usurp the power” in Georgia. The latter seemed to be aimed at allaying concerns that the ruling majority would use its constitutional majority to govern the country without consultation or institutional regard for the parliamentary opposition. An additional aim of the constitutional reform was to provide the constitutional framework for electoral reforms, including the establishment of a proportional election system.

11. On 15 December 2016, the parliament established the Constitutional Commission, chaired by the Speaker of the Georgian Parliament. The Commission is composed of 23 members of the ruling majority, 6 members of the parliamentary opposition (UNM/European Georgia) and 2 of the Alliance of Patriots. Non-parliamentary parties that failed to pass the 5% threshold in the last elections but obtained at least 3% of the votes – each has one seat on the Commission. In addition, the President of Georgia has two seats on the Commission in addition to the Secretary of the National Security Council, who reports to the President. The government is represented by the Minister of Justice and the government’s Parliamentary Secretary. The heads of the legislative bodies of Adjara and the government in exile of Abkhazia have one representative each on the Commission as do the chairpersons of the Constitutional and Supreme Courts, the Public Defender, the President of the National Bank and the Chairman of the State Audit Service. In addition civil society is represented by 20 NGO representatives.

12. While originally expressing his strong support for the constitutional reform initiated by the ruling majority, President Margvelashvili announced that he declined to nominate his representatives in the Constitutional Commission. The main reason for this decision was ostensibly that the parliament had rejected his proposal that the Commission be co-chaired by the President, the Speaker of the Parliament and the Prime Minister. In his view, the current composition of the Commission, contrary to his proposal, would not ensure the required pluralism to formulate a consensual proposal.

13. The Constitutional Commission worked in four working groups: on Fundamental Human Rights and Freedoms, Judiciary, Preamble and Transitional Provisions; on the President of Georgia, the Government of Georgia and the Defence; on the Parliament of Georgia, Finances and Control and Revision of the Constitution of Georgia; on Administrative-Territorial Arrangement and Local Self-Governance.

14. The reform foreseen is encompassing a wide range of subjects also evident from the four working groups. Some of the issues dealt with by the Constitutional Commission have proved to be controversial or contentious among the members of the Commission.

15. The proposal adopted by the Constitutional Commission on 22 April 2017 reduces the powers of the President of Georgia and clarifies a number of others. While the President remains Commander-in-Chief of the armed forces and retains his role as a representative of the country in international relations, he, *inter alia*, will no longer be responsible for ensuring the functioning of state bodies or have the right to place items on the agenda of the meetings of the Council of Ministers and participate in its discussions. Furthermore, in a proposal that created some controversy, the Constitutional Commission proposed to abolish the direct election of the President and instead for the President to be elected by a 300 member Electoral Council consisting of the members of parliament as well as representatives of local and regional government. In response to criticism that this change of election system was aimed at punishing the current President, who has been openly critical of the government and ruling majority, the Constitutional Commission proposed that this change only comes into effect after the next presidential elections, which are foreseen for October 2018.

16. With regard to the election system for the parliament of Georgia, the Constitutional Commission proposes to introduce a fully proportional system, based on closed party lists in a single nationwide constituency, instead of the current mixed proportional-majoritarian system<sup>6</sup>. Controversially, the

<sup>5</sup> In its opinion on the constitutional amendments, adopted in 2010, the Venice Commission stated that, while generally in line with European standards, the Constitution contained some contradictions and ambiguities that could potentially lead to tensions between the different branches of power.

<sup>6</sup> Before the elections the ruling majority and opposition parties discussed the possibility of introducing a regional proportional election system, as suggested by, *inter alia*, the Assembly. While the introduction of a fully proportional system was maintained, the Constitutional Commission opted for closed lists and a single nationwide constituency instead multiple regional constituencies and open lists.

Constitutional Commission proposed to introduce a prohibition on electoral blocs while maintaining the relatively high threshold of 5% for parties to enter parliament. In addition, it proposed that all the votes for parties that do not make it past the threshold will be awarded to the winner of the elections. This distribution formula, in combination with the prohibition of party blocks and a high threshold, could give a considerable number of bonus seats to the largest party and undermine the proportionality of the election results. We therefore strongly recommend that the remaining seats be proportionally distributed to all the election contestants that make it pass the threshold. In addition, the prohibition of electoral blocs in combination with the relatively high 5% threshold, in the current political context in Georgia, could weaken political parties and multi-party pluralism, instead of strengthening it, as is the stated aim of these provisions. We would therefore recommend to abolish the prohibition of electoral blocs or to considerably lower the threshold to enter parliament.

17. The proposal of the Constitutional Commission no longer stipulates Kutaisi as the seat of the parliament, although we were informed that there are no immediate plans to change the current situation where the parliament meets in plenary in Kutaisi but does most of its committee work in Tbilisi.

18. The Constitutional Committee has proposed that a limit of one term be introduced for the Public Defender. This was seen by some political forces as a retribution for the independent and critical stance of the current Ombudsperson. While we note that similar term limits exist for, inter alia, the Human Rights Commissioner of the Council of Europe, we would recommend that this provision only come into force after the next election of the Ombudsperson, similar to the decision on the issue of presidential elections.

19. In a move not anyhow related to the stated aims of the constitutional reform and apparently driven mostly by populism, the Constitutional Commission proposed to include an amendment in the Constitution that would limit the institution of marriage to people of the opposite sex. While there are no provisions in the current legislation that would allow same-sex marriages and it is very unlikely that this would change anytime soon in the socially conservative Georgian society, there is currently no constitutional limitation that would prevent same-sex marriages from taking place if common law were to be changed. Therefore, while, according to current jurisprudence, a constitutional ban on same-sex marriages would not violate the ECHR, it would be a clear step backwards in terms of current legislation, even if largely symbolic.

20. The parliamentary and non-parliamentary opposition strongly criticised the proposals of the Constitutional Commission on several issues with the support of the civil society organisations that had participated in the work of the Commission. They felt that the work of the Commission had been too much dominated by the ruling majority and its supporters and that only very few of the proposals of the opposition and civil society had been taken on board by the Constitutional Commission in its final proposals. In protest, on 21 April 2017, before the final meeting of the Constitutional Commission, seven political opposition parties, which had in total 13 representatives on the Commission, formally announced they had left the Constitutional Committee. Following that announcement an order was given by the Chair of the Commission that those who had announced that they had formally left the Commission would be removed from the membership list. So the membership changed from 73 to 60 members. To our knowledge this had no effect on the required voting majorities or quorum when the proposals were adopted.

21. The authorities were in close consultation with the Venice Commission during the drafting of the constitutional amendments. In a welcome development, the Speaker of the Parliament has pledged that the parliament will not adopt any norm or amendment that is negatively assessed by the Venice Commission. The proposal of the Constitutional Commission was sent to the Venice Commission for opinion after its adoption. At the time of writing the preliminary opinion of the Venice Commission has not yet been published.

#### **IV. Reform of the judiciary**

22. On 29 December 2016, the parliament adopted in final reading a package of 8 laws that formed the so-called third wave of judicial reforms. This reform package, which was substantially amended in the adoption process, introduced, inter alia, an electronic case allocation system as from 2018. Until the introduction of this electronic system, cases will from now on be assigned to judges in alphabetical order. These measures, which were also recommended by the Venice Commission, aim to significantly reduce the role of the court chairman in the assignment process which makes that process vulnerable to interference.

23. This reform package removed the three year probation period before a lifetime appointment for Constitutional and Supreme Court judges who have at least 3 years' working experience. However the package maintained this probationary period for all other judges. To recall: the Venice Commission repeatedly expressed its concern about this three year probationary period, which runs counter to European standards and could affect the independence of the judiciary. The fact that the probationary period was only

removed for Constitutional and Supreme Court judges has only led to speculations that the authorities intend to give a lifetime appointment to the Secretary of the High Council of Justice, Mr Levan Murusidze, whose position is quite controversial given that he was the presiding judge in the infamous Girgvliani case.

24. Regrettably, the reform package does not change the manner in which court chairmen are appointed, despite amendments to that effect in earlier drafts. They continue to be appointed by the High Council of Justice from a list of candidates proposed by the court judges of the court in question. We and the Venice Commission recommended that the court chairmen be elected for a single term by and from among their peers in the court. In addition, while setting a minimum amount for the number of Supreme Court Judges (17), the law allows the Supreme Court itself to decide on the size of its plenum, instead of this being set by law.

25. While welcoming the many improvements in the reform package, in particular the introduction of the electronic court assignment system, President Margvelashvili vetoed the reform package as a result of his serious concerns about, *inter alia*, the appointment process for court presidents and the failure to abolish, or at least substantially reduce, the probationary period before judges can be given a lifetime appointment. His proposed compromise amendments were rejected by the ruling majority and parliament overrode his veto on 10 February 2017.

26. We welcome the positive changes that have been introduced by the third package of reforms. At the same time we regret that some of the crucial provisions that would significantly strengthen the independence of the judiciary, foremost the election of court chairpersons by their peers, were not adopted by the parliament. In addition, as a result, the necessary balance between independence and accountability has not been achieved. The elections of the court chairpersons by their peers would have reduced the influence of the High Council of Justice over the individual courts. Many of the interlocutors we met during our visits pointed at the current High Council of Justice and its functioning, as one of the main obstacles for the independence of the judiciary, noting that the external interference and dependency of the judiciary as a concern had been overtaken by internal dependency and hierarchical interference within the judiciary itself. We urge the authorities to address these concerns and to consider further reforms of the High Council of Justice in line with European standards. The Council of Europe, and especially its Venice Commission, could be an important partner in the drafting of these reforms.

## **V. Surveillance law**

27. On 3 February 2015, the Public Defender appealed to the Constitutional Court of Georgia regarding the constitutionality of the so-called surveillance law. On 14 April 2016, the Court ruled that the current legislation – which allows the security services to have direct access to the telecommunications networks – unconstitutional and ordered the authorities to change this legislation by 31 March 2017.

28. On 10 January 2017 the parliament set up an ad hoc working group to draft the amendments to the legislation as requested by the Constitutional Court decision. This ad hoc working group, which was chaired by Eka Beselia, included representatives of the authorities and judiciary, as well as NGO representatives from the “This Affects You” campaign. This campaign had been pushing for, *inter alia*, removing the so-called surveillance key from the state security services and placing it under the control of an independent agency.

29. The ad hoc working group presented its proposals on 30 January 2017. According to these proposals a special agency under the state security services, but legally independent from them, will be established that will be responsible for the conducting video and audio surveillance as well as the surveillance of internet and telecommunications. While this agency will maintain possession of a “surveillance key”, a second key will be needed that will be controlled by a special Supreme Court judge mandated to oversee the security services. The head of the new agency would be appointed by the Prime Minister from three candidates proposed by a committee composed of the chairpersons of the Legal Affairs, the Human Rights and the Defence Committees of the Georgian Parliament, the Head of the State Security Service, the Vice-President of the Supreme Court as well as the Public Defender.

30. The proposal of the working group was criticised by the opposition and civil society which felt that the new entity lacked the required independence. Moreover, they questioned whether the demands of the Constitutional Court had been satisfied as the new agency was not totally functionally separated from the security services. They also objected to the fact that the security services, through the new special agency, would maintain the right to directly access the telecommunication provider networks. Moreover, they felt that the proposed amendments failed to ensure sufficient effective supervision over this new entity. Nevertheless, the proposed draft law was adopted by the parliament in final reading on 1 March 2017.

31. The authorities promised that they would send the adopted amendments to the Venice Commission for an opinion. In the meantime, on 11 April 2017, the civil society organisations that form the “This Affects You” campaign filed an appeal against the amendments to the surveillance law with the Constitutional Court. In addition, another 300 Georgian citizens filed individual appeals with the Constitutional Court against these amendments. We therefore urge the Georgian authorities to request, as promised, an opinion of the Venice Commission on this surveillance law after the Constitutional Court has made its decision, including on any possible further amendments to address possible demands from the Constitutional Court.

## **VI. Meskhetian repatriation**

32. In Opinion No. 209 (1999) § 10.2.e, Georgia committed itself to *“to adopt, within two years after its accession, a legal framework permitting repatriation and integration, including the right to Georgian nationality, for the Meskhetian population deported by the Soviet regime, to consult the Council of Europe about this legal framework before its adoption, to begin the process of repatriation and integration within three years after its accession and complete the process of repatriation of the Meskhetian population within twelve years after its accession”*.

33. Successive Georgian authorities have put in place the legal framework for repatriation of the deported Meskhetian population and, on our insistence, have complemented this legal framework with a comprehensive repatriation strategy to facilitate the repatriation in practice. The legal framework has been amended a number of times to extend the deadlines for the provision of the official papers required for the application process (and for those granted repatriate status, for the process of obtaining Georgian citizenship). The Georgian authorities indicated that with the putting into place of the legal framework and the repatriation strategy they have fulfilled this accession commitment to the Council of Europe. We do feel that the Georgian authorities have indeed largely honoured their commitment but also note that a number of NGOs and Meskhetian organisations have indicated that a number of practical barriers – some beyond the Georgian authorities’ competence, such as problems in rescinding Azeri nationality – continue to exist that prevent de facto repatriation.

34. According to the data provided to us, the Georgia authorities have received in total 5841 applications for repatriation totalling 8900 persons of which 3059 are adolescents. The largest part of these applications has come from persons with Azerbaijani citizenship (5389). By 10 March 2017, in total 1998 persons had been granted repatriate status, while only 4 persons were rejected. By the same date, 494 persons, all citizens of Azerbaijan, were granted Georgian citizenship by presidential decree; this decree will be enforced for each person as soon as the Georgian authorities have received proof that that person has rescinded his or her original citizenship. According to interlocutors, rescinding Azerbaijani nationality is a complicated procedure, as a result of which only a fraction of the above-mentioned 494 persons obtained their Georgian citizenship. Despite the number of applications granted, actual repatriation is rather low. As of March 2017, only 19 persons from 6 families had returned to Georgia. Of these, 12 have been granted citizenship, while the other 7 still only have repatriate status. We were informed that, in addition to these persons, a small number of Meskhetian have returned (repatriated) to Georgia on their own accord, without going through the official repatriation program and its mechanisms. In our view, it is important that the services developed in the framework of the repatriation strategy are also available for this specific group of people.

35. The small number of repatriates, despite the number of applications granted, highlights the fact that actual repatriation is a complicated and time-consuming process during which applicants face different hurdles and considerations, many of which are outside of what can be reasonably considered to be the responsibility of the Georgian authorities. It would therefore not be correct to wait for each single successful applicant to have repatriated to Georgia before the Assembly could consider that Georgia has fully honoured this accession commitment. At the same time it is important to ensure that all Meskhetian persons who wish to repatriate to Georgia indeed had a reasonable opportunity to do so. The Assembly for some time has therefore recommended stocktaking of achievements, as well as of eventual barriers and hurdles faced by potential repatriates. In our view such stocktaking could take place within the framework of the Council of Europe cooperation and assistance activities implemented in Georgia. The outcome of such stocktaking would assist us in considering this commitment to be fulfilled.

## **VII. Media environment**

36. The developments in the media environment have been dominated by the ownership dispute over the Rustavi 2 television station, which was largely put on the backburner during the electoral period. To recall, Rustavi 2 is one of Georgia’s largest broadcasters that is critical of the authorities and their policies. It is closely linked to the United National Movement and former President Saakashvili. It played a key role in the Rose Revolution in 2003 that brought former President Saakashvili to power in Georgia. Since 2003, its

ownership has changed hands many times, often in less than transparent and controversial deals.<sup>7</sup> However, all shareholders have always been reported to be close allies of former President Saakashvili,<sup>8</sup> including the current majority shareholders. Reportedly, there are a number of claims by previous owners who allege that they were forced to sell their shares in Rustavi 2,<sup>9</sup> but, until a couple of years ago, no formal civil claims had been filed with the courts to contest ownership. This changed when,<sup>10</sup> on 5 August 2015, Mr Kibar Khalvashi, who was a majority shareholder in Rustavi 2 from 2004 to 2006, filed a civil case to “reclaim” his shares in Rustavi 2 which he alleges he was forced to sell under duress far below their actual market value. His claim was denounced by the current owners of Rustavi 2 and the United National Movement – who pointed out that Mr Khalvashi’s sister is an MP for Georgian Dream – as a plot by the government to silence the main opposition-linked TV broadcaster.

37. On 3 November 2015, the Tbilisi City Court ruled in favour of Mr Khalvashi. The process in the court, as well as the judgment itself was questioned by a number of civil society organisations and condemned by the opposition. The owners of Rustavi 2 appealed against the decision of the first instance court but, on 10 June 2016 the appellate court upheld the judgement of the first instance court. Rustavi then appealed to the Supreme Court of Georgia. On 2 March 2017, the Supreme Court ruled in favour of Mr Khalvashi. Many interlocutors, while not wishing to assess the merits of the judgement of the Supreme Court, expressed their concern about the possible impact of the decision of the Supreme Court on the pluralism of the media environment in Georgia. A few interlocutors, most notably the OSCE special representative for the freedom of the media, also expressed concern about the judgment itself.

38. Following the Supreme Court judgment, Rustavi 2 filed an appeal with the European Court of Human Rights in Strasbourg and requested that, as an interim measure under Rule 39 of the Rules of the Court, the execution of the Supreme Court Judgement be suspended. It should be recalled that, on 13 November 2015, the Constitutional Court ordered the suspension of the application of the provisions in the Civil Procedure Code that would have allowed the decision of the first instance court to come into immediate effect, instead the Constitutional Court ruled that, taking into account the social importance of this case, the judgement should only take effect when the appeals process had been exhausted. Following the judgment of the Supreme Court, the national appeals process was exhausted and the court judgement could technically have been executed, even when the appeal in Strasbourg was pending. The request for interim measures was clearly meant to remedy that situation.

39. On 3 March 2017, the ECtHR judge on duty ordered the temporary suspension of the judgment of the Supreme Court until 8 March 2017. On 7 March 2017, a chamber of judges unanimously ordered the extension, until further notice, of the suspension of the Supreme Court decision in the Rustavi 2 case. According to Rule 39, interim measures can be issued at the request of a party or on the Court’s own initiative when they are found to be in the interests of the parties or the proceedings before the court. They are mostly issued in those cases where any action, or failure to act, pending consideration of a case and/or of its admissibility, could cause considerable, irreversible harm to one of the parties. While the Court has not given any justification for ordering interim measures, it is clear that it followed the same logic as the Constitutional Court of Georgia, namely that the execution of the judgement before its appeal process is finalised could cause irreversible damage to the current editorial policy of the station and possibly to the pluralism of the media environment.

40. The Georgian authorities have indicated that they will fully abide by the decisions of the Court. They insist that media freedom is fully respected in Georgia and that the media environment is pluralistic. They point to the fact that they have adopted legislation that allows anyone to register a broadcaster within a period of a couple of weeks. They argue that this low entry level into the media market as such already guarantees the pluralism of the media environment. Moreover, to allay any doubts about the government’s commitment to a pluralist media environment, Prime Minister Kvirikashvili announced the establishment of a special Media Ombudsman to monitor the media environment and ensure its freedom and pluralism. They have sought international expertise, such as from the OSCE’s special representative for the freedom of the media, for the mandate and operating procedures of this institution. In order to ensure the independence of the media ombudsperson, the authorities have indicated they intend to appoint a personality from outside Georgia to this post.

<sup>7</sup> <http://www.transparency.ge/node/3266>.

<sup>8</sup> <http://civil.ge/eng/article.php?id=28775>.

<sup>9</sup> On 9 August 2015, two co-founders, and previous owners, of Rustavi 2 issued a statement backing the legal procedures filed by Mr Khalvashi.

<sup>10</sup> Mr Khalvashi’s lawyers claim that the latter tried for years, without success, to file a criminal complaint, and only afterwards had resorted to the filing of a civil lawsuit to reclaim his shareholdings.

41. On 21 November 2016, Giorgi Baratishvili resigned as Director General of the Public Broadcaster for private reasons. A competition was organised, as provided for in the legislation on the Public Broadcaster. On 6 January 2017, Mr Vasil Maglaperidze was appointed the new Director General of the Public Broadcaster. The appointment of Mr Maglaperidze, who was previously employed by a TV station that belongs to former Prime Minister Ivanishvili, was criticised by some members of the appointment panel, including the representative of GYLA, who considered that Mr Maglaperidze had a clear political affiliation.

42. On 6 January 2017 a special working group on the law on public broadcasting was created under the auspices of the Legal Affairs Committee of the Georgian Parliament. This working group is tasked with drafting amendments to the law on public broadcasting in order to, inter alia; clarify the balance of powers between, and competences and responsibilities of the Board of Trustees and the Director General of the Public Broadcaster. Reportedly, the amendments will be drafted on the basis of suggestions made by a panel of 13 employees of the Public Broadcaster. However, a number of interlocutors have expressed concern that the amendments could give excessive powers to the Director General over the elected Board of Trustees.

### **VIII. Additional remarks and conclusions**

43. Over the last decade Georgia has made considerable and consistent progress in honouring its accession commitments and membership obligations and has done so in excellent co-operation with the Council of Europe. These efforts should be rightfully recognised. At the same time, a number of items remain to be fully addressed, including with regard to the independence of the judiciary. During our visit the authorities, at all levels, assured us of their political will to address these outstanding issues.

44. We welcome the fact that the Monitoring Committee has accepted the kind invitation of the Georgian authorities to organise one of this 2018 meetings in Georgia. In our view, this will be an excellent opportunity for all committee members to familiarise themselves with the country and its developments.



## **Appendix 1: Programme of the fact-finding visit to Tbilisi (28-30 March 2017)**

Mr Boriss CILEVICS, Latvia, Socialist Group

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

Main focus of the visit:

- Political climate and political pluralism following the last parliamentary elections
- Priorities for the new government
- Constitutional Reform
- Judicial Reform: third wave of reform
- Implementation of Constitutional Court decision on the surveillance law.

### **Tuesday, 28 March 2017**

- 11:00 Briefing by the Head of the Council of Europe Office (\*)
- 11:30 NGO Roundtable on Constitutional Reform (\*)
- 13:00-14:15 Working Lunch with **Ms Tamar CHUGOSHVILI**, Head of the Georgian Delegation to the PACE
- 14:30-15:45 NGO Roundtable on justice reforms, including surveillance reforms (\*)
- 16:00-16:30 Meeting with **H.E. Giorgi MARGVELASHVILI**, President of Georgia
- 16:45-17:50 Meeting with Constitutional Reform Commission
- 18:00-18:45 Meeting with **H.E. Irakli KOBAKHIDZE**, Chairman of the Parliament of Georgia
- 19:00 Dinner with members of the Diplomatic Community hosted by the Swedish Ambassador (\*)

### **Wednesday, 29 March 2017**

- 09:00-09:45 Meeting with **Mr Alexander BARAMIDZE**, Acting Minister of Justice of Georgia
- 10:00-10:45 Meeting with **Mr Irakli SHOTADZE**, Chief Prosecutor of Georgia
- 11:00-11:45 High Level Meeting on Meskhetian Repatriation
- 11:50-12:30 Meeting with Parliamentary Group on Amending Surveillance Regulations
- 12:45-14:00 Working Lunch with **Mr Teimuraz TUGHUSHI**, Vice Chairman of the Constitutional Court of Georgia
- 14:15-14:45 Meeting with **Mr Ucha NANUASHVILI**, Public Defender
- 15:00-16:30 NGO Roundtable on Meskhetian Issues (\*)
- 16:30-18:00 NGO Roundtable on Media (\*)
- 20:00 Dinner hosted by **Ms Tamar CHUGOSHVILI**, Head of the Georgian Delegation to the PACE and Members of the Delegation

### **Thursday, 30 March 2017**

- 09:00 Roundtable meeting with representatives of the extra-parliamentary opposition (\*)
- 10:00-10:45 Meeting with the parliamentary sub-committee for amending the broadcasting law
- 10:50-11:20 Meeting with representatives the faction "Georgian Patriots"
- 11:25-11:55 Meeting with Representatives of the Parliamentary Minority

12:00-12:30 Meeting with Representatives of the Political Group “National Movement”

12:35-13:05 Meeting with Representatives of the Parliamentary Majority

13:15-14:00 Meeting with **H.E. Giorgi KVIRIKASHVILI**, Prime Minister of Georgia  
*Attended by the Foreign Affairs Advisor of the Prime Minister*

14:10-14:55 Meeting with **Mr Archil KARAULASHVILI**, First Deputy State Minister on European and Euro-Atlantic Integration of Georgia

15:00-15:55 Meeting with **Mr Mikheil JANELIDZE**, Minister of Foreign Affairs

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

## Appendix 2: Statement by the co-rapporteurs issued on 3 April 2017

### Georgia: rapporteurs welcome progress made and hope the authorities will soon address outstanding issues

At the end of their visit to Tbilisi from 28 to 30 March 2017, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe for the monitoring of Georgia, Boriss Cilevics (Latvia, SOC) and Kerstin Lundgren (Sweden, ALDE), welcomed the consistent progress made by the country in the honouring of its accession commitments and membership obligations and the excellent co-operation between the country and the Council of Europe in doing so.

At the same time they noted that a number of items still remain to be fully addressed, including with regard to the independence of the judiciary, which is an issue closely followed by them. In this respect they expressed their confidence that the authorities, and other stakeholders would soon address these outstanding issues.

With regard to the constitutional reform process they welcomed the pledge of the ruling majority that no provisions would be adopted that would not have the approval of the Council of Europe's Venice Commission. They noted that there is now a good possibility that a broad agreement can be created on the new electoral system which is a long standing recommendation of the Assembly. The rapporteurs urged all stakeholders to overcome any outstanding differences and to ensure that the electoral system and its implementation is based on an as broad as possible consensus between all stakeholders concerned.

In this respect the rapporteurs expressed their concern that some of the issues being discussed in the framework of the electoral system, a prohibition of party blocs for elections while keeping a relatively high threshold and the rewarding of seats of parties that do not make the threshold to the winner of the elections, cumulatively would undermine the stated goal of the authorities to strengthen political parties and multi-party parliamentarism in Georgia.

The rapporteurs will continue to follow the constitutional reform process closely and expressed their hope that the constitutional amendments that will be proposed by the Constitutional Commission will be based on an as wide as possible consensus of all stakeholders in the country.

The rapporteurs also welcomed the adoption of the so called third wave of judicial reforms but expressed their regret that some recommendations of the Venice Commission that aimed to strengthen the independence of the judiciary, such as the election of the court chairpersons by their peers, were not followed by the parliament.

They expressed hope that these issues will be addressed in a future reform that should also address some of the concerns that the rapporteurs heard with regard to the functioning of the High Council of Justice.

The rapporteurs noted the concerns expressed with regard to the amendments to the laws governing surveillance, in particular that the agency responsible for the surveillance of telecommunications would lack the required independence. The rapporteurs called on the authorities to request an opinion of the Venice Commission on the law as adopted.

The rapporteurs underlined their satisfaction with the clear and univocal declaration of the Prime Minister that the authorities would fully abide by the interim measures ordered by the European Court of Human Rights in Strasbourg in relation to the Rustavi 2 case and, taking note of reports that the current owners of Rustavi 2 would be looking at changing the ownership structure of the company, expressed their hope that all other stakeholders would equally respect the spirit of these interim measures.

Lastly, the rapporteurs expressed their serious concerns about the integration of the military forces of the Russian Federation and those of the breakaway Georgian regions of South Ossetia and Abkhazia, the closure of crossings of the ABL between Abkhazia and the rest of Georgia as well as the holding of a so-called referendum with the aim of changing the name of the region of South Ossetia.

"We strongly condemn these attempts, which are a clear example of the creeping annexation of these two regions by the Russian Federation and which serve no other purpose than to increase the tensions and to wilfully isolate the people that live in these regions. We remind the Russian Federation of its obligations to the Council of Europe in this respect", the two co-rapporteurs concluded.