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The honouring of obligations and commitments by Georgia

Report[1]

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Summary

[1] Reference to Committee: Resolution 1115 (1997).

A. Draft Resolution[2]

1. The Assembly welcomes the continued and marked progress made by Georgia in honouring its membership obligations and accession commitments since the adoption of Resolution 2015 (2014). It particularly welcomes the cordial and constructive co-operation of all Georgia's political forces with the Assembly's monitoring procedure. At the same time, notwithstanding the substantial progress made, a number of concerns and shortcomings remain that need to be addressed for the country to fully honour its membership obligations and accession commitments.

2. The extremely tense and polarised political environment in Georgia is an issue of serious concern. This polarised political environment, driven by zero sum political strategies and a lack of understanding and accommodation by both opposition and ruling majority for their respective position and rightful roles, precludes any constructive cooperation between them. It also affects the implementation of crucial reforms and is a key impediment for Georgia's democratic consolidation. In this regard the Assembly emphasises that the democratic consolidation of the country is the responsibility of all political forces together, not of the authorities or opposition alone. It therefore urges all political forces to place the common good of the nation over any narrow party-political strategies and to co-operate jointly to fully honour Georgia's membership obligations and accession commitments. This is all the more important as much of the required reforms cannot only be legislated but will also require a commensurate change in attitude and behaviour.

3. The Assembly welcomes the constitutional reform implemented in Georgia, which resulted in a much-improved constitutional framework that provides a solid basis for the strengthening of the democratic process and the independence of the judiciary in the country. However, it regrets the lack of consensus and inclusiveness apparent during the drafting of the constitutional amendments, especially with regard to the timeline for the introduction of a fully proportional election system, an issue which has continued to dominate, and has had a detrimental impact on, the political environment in the country.

4. The Assembly reiterates its strong support for a fully proportional election system for parliamentary elections in Georgia. It therefore welcomes that such a fully proportional election system will now be introduced as from the 2024 parliamentary elections. All political forces should now fully commit themselves to the implementation of this system as from the next general elections. The Assembly urges all political forces to ensure that the required changes to the Constitution and electoral legislation to implement this election system are made on the basis of broad consultations and consensus between all political stakeholders.

5. While considering that successive elections in Georgia have in general been conducted in line with European standards, the Assembly regrets that recent elections have been a source of political tensions and instability. The conduct of elections is an important indicator of the democratic consolidation of a society and the Assembly therefore expresses its concern about recurrent shortcomings in the electoral process. In this regard, reports of the abuse of administrative resources, including pressure on state employees; the use of negative and confrontational campaigning, at times passing the boundaries of hate speech; as well as reports of isolated violent incidents during election campaigns, are of particular concern. The Assembly therefore calls upon the Georgian authorities to:

5.1. fully investigate, and where relevant prosecute, any reported violence, pressure on voters, as well as other electoral violations and jointly with all other stakeholders give a clear signal that there cannot be, and will not be, any impunity for electoral violations and malpractice;

5.2. revise the legal framework for party and campaign funding in line with GRECO recommendations and standards;

5.3. continue to strengthen, in close co-operation with all stakeholders, the independence, impartiality and transparency of the election administration. In this context, the Assembly underscores that the election administration should not only be acting impartially but it should also be perceived as being independent and impartial by all stakeholders;

5.4. implement and address all recommendations made by the Venice Commission in their opinions on the electoral legislation, as well as those made in the reports of the international election observation missions of PACE and the OSCE/ODIHR following previous elections.

6. The Assembly welcomes the consensual adoption of the new rules of procedure of the parliament, which are an important instrument to strengthen parliamentary oversight that have already shown positive dynamics.

[2] Draft resolution adopted by the Committee on 29 March 2022.

However, further efforts are needed to continue strengthening parliamentary oversight, especially with regard to the security services and their operations. At the same time the Assembly underscores that a well-functioning system of parliamentary oversight depends on a strong parliament, which, in turn, needs strong and diverse political parties that are willing to dialogue and co-operate with each other within the democratic institutional framework.

7. The independence of the judiciary and the impartial and efficient administration of justice have been long standing points of attention for the Assembly in the framework of the ongoing monitoring procedure for Georgia. The Assembly therefore welcomes the clearly present political will to address these issues, and consecutive waves of judicial reforms implemented by the Georgian authorities. Despite the marked and tangible progress achieved by these reforms, a number of concerns remain. The Assembly therefore calls upon the Georgian authorities to implement a comprehensive and independent evaluation of the first four waves of judicial reforms with a view to identifying areas of success, as well as remaining deficiencies, and to commit itself to addressing the findings and recommendations resulting from this evaluation.

8. Despite improvements in the legal framework, the functioning of the High Council of Justice in Georgia, and reports of internal dependence and control over the judiciary, remain an issue of concern for the Assembly. Further substantial reform of High Council of Justice is needed to ensure proper accountability and transparency of its decision-making processes. This is especially relevant with regard to the appointment of judges and other decisions affecting their careers. The Assembly regrets that the Georgian legislature has not implemented in time the recommendation of the Venice Commission with regard to the appointment of Court Chairpersons, as the current method is vulnerable for abuse and allows for undue influence by the High Council of Justice over the courts. The Assembly calls upon the Georgian parliament to adopt the necessary amendments to the Law on the General Courts of Georgia to ensure that the chairpersons of district and appeals courts will be elected directly by and from among the judges of each court for a single non-renewable term.

9. The Assembly regrets the controversy around the recent appointments of Supreme Court Judges which underscore the deficiencies in the functioning of the High Council of Justice. Despite the improvements as a result of the, belated, implementation of the relevant Venice Commission recommendations, the appointment process remains vulnerable to politization and allows for arbitrary decision-making which impede a fully transparent and merit-based selection process. The Assembly regrets that the Georgian authorities decided to continue the appointments of Supreme Court judges on the basis of a deficient process, despite the widespread calls from stakeholders, including the international community, to the contrary.

10. In this context, the Assembly remains concerned about the reports of the instrumentalization of the justice system for ulterior (political) motivations, as well as attempts to discredit the justice system for the same reasons. It reiterates that political motivations, perceived or real, have no place in the justice system of a democratic country.

11. The Assembly welcomes the reforms adopted to significantly reduce the excessive use of pre-trial detention in Georgia, including alternative methods of restraint such as house arrest and electronic monitoring. However, the number of persons in pre-trial detention per capita is still very high. Further efforts to reduce the use of pre-trial detention should be taken by the Georgian authorities and the control over its use by the Courts should be strengthened and improved. In this context, the Assembly calls upon the authorities to promptly execute the Grand Chamber judgment in the case Merabishvili vs Georgia**.**

12. The Assembly expresses its concern about the legal framework for administrative detentions in Georgia. The current Law on Administrative Offences, which dates from the Soviet era, is outdated and several of its provisions have been found to violate the Georgian Constitution. As a result, the current legal framework allows for excessive use of administrative detention, as well as excessively high fines, and is vulnerable to abuse. A new Law on Administrative Offences should be adopted without delay. The Assembly therefore welcomes the clearly expressed intention of the Georgian authorities to present a new draft Law on Administrative Offences in the very near future.

13. The Assembly welcomes Georgia's commitment to fighting corruption and encourages the authorities to continue and, where necessary, step up their efforts, especially with regard to high level corruption. The Assembly regrets that a substantial number of GRECO recommendations from different evaluation rounds remain to be addressed. It calls upon the Georgian authorities to address these remaining GRECO recommendations without further delay.

14. Freedom of expression and freedom of the media are generally well respected in Georgia. The Assembly welcomes the progress made with regard to strengthening the media environment, especially the lowering of the barriers to enter the media market, which is an important condition for a diverse media environment. At the same time it expresses concern about the polarisation of the media environment as well as a number of actions and policies by the authorities that negatively affect its pluralism. The Assembly underscores the importance of a pluralist media environment for the functioning of a democratic society and encourages the authorities to consider and weight the possible effects on media freedom and media pluralism of any policies and actions that affect the media environment and media outlets in the country. With respect to the media the Assembly calls upon the Georgian authorities, inter alia, to:

14.1. strengthen the independence of the Georgian National Communications Commission;

14.2. strengthen the independence and impartiality of the Georgian Public Broadcaster, especially during election periods;

14.3. develop, in consultation with the relevant Council of Europe departments and the Venice Commission, an adequate legal and regulatory framework to combat hate speech in the media, including in the context of election campaigns;

14.4. to re-examine, on the basis of Venice Commission recommendations, the recent amendments in the Law on Electronic Communications that govern the appointment of a special manager in telecommunications companies by the Georgian National Communications Commission.

15. The Assembly is concerned about the intolerance and violent acts against the LGTBI+ community in Georgia. These acts have not been satisfactorily tackled by the authorities. The Georgian authorities should step up its efforts to fight intolerance and hate crimes and give a clear signal that there cannot be any impunity for such despicable acts including for those instigating and inciting such heinous actions.

16. The Assembly welcomes the establishment of a dedicated human rights department in the Ministry of Internal Affairs, which, inter alia, monitors and assesses the investigations of hate crimes. With regard to religious minorities, the Assembly notes that there is a need to significantly increase trust in the State Agency for the Religious issues. The authorities need to address this matter.

17. The repatriation of the deported Meskhetian population is a commitment that Georgia took upon itself when acceding to the Council of Europe. The Assembly welcomes that the existing legal framework was complemented by a comprehensive repatriation strategy with a view to facilitating the repatriation process in practice. However, the Assembly notes that a number of practical barriers continue to exist that prevent *de facto* repatriation, many of them beyond the competence of the Georgian authorities. This has resulted in a still small number of actual repatriations. It is therefore important that the Georgian authorities conduct a comprehensive evaluation of the repatriation framework and strategy, and the results it has achieved, including identifying any unforeseen barriers and hurdles for successful repatriation to take place. If the Georgian authorities formally commit themselves to such an evaluation and addressing those barriers encountered in the process that falls under their competence, the Assembly could consider this commitment honoured.

18. The Assembly pays tribute to the important role played by the institution of the Public Defender in Georgian society. It calls upon the Georgian authorities and all State actors to continue to give support and work constructively with the Public Defender and her office, and regrets any actions aimed at undermining and hindering the work of this important institution. In this respect the Assembly urges all political forces to ensure that the successor to the current Ombudswoman, whose term will expire soon, be appointed in a nonpartisan manner based on the broadest possible consensus and support in Georgian society, in the same fashion as was the case in 2017.

19. The Assembly regrets that, to date, Georgia has not signed and ratified the European Charter for Regional or Minority Languages (ETS No. 148), to which it explicitly committed itself when joining the Council of Europe. The Assembly notes that this is most likely the result of a lack of understanding and deeply engrained misconceptions about the Charter and its implications. The Assembly therefore calls upon the Georgian authorities to sign the Charter without further delay and then organise, in co-operation with the relevant Council of Europe Departments, a proper awareness raising strategy with a view to its prompt ratification by the Georgian parliament.

20. The Assembly reiterates its full support for Georgia's sovereignty and territorial integrity within its internationally recognised borders. It deplores and condemns the *de facto* occupation and creeping annexation

by the Russian Federation of the Georgian Regions of Abkhazia and the Tskhinavili region/South Ossetia. The Assembly takes note of the decision of the Grand Chamber of the European Court of Human Rights in the case of Georgia v Russia(II) that following the active phase of the hostilities in the 2008 war between Russia and Georgia, the Russian Federation had been in effective control of South Ossetia and Abkhazia. The Assembly welcomes the development of a people-centred reconciliation strategy by the Georgian authorities and calls for the full restoration of freedom of movement of civilians between these two regions and the rest of Georgia.

21. The Assembly resolves to continue its monitoring procedure in respect of Georgia. At the same time the Assembly is convinced that the recommendations contained in this resolution and accompanying report, provide a clear perspective for Georgia's progression towards the commencement of a post-monitoring dialogue. However, it underscores that such progress is only possible if it can count on the full commitment and political will of all political forces, both ruling majority and opposition, and if there is no backsliding or regression in the progress to date.

B. Explanatory memorandum by Mr Titus Corlăţean and Mr Claude Kern, co-rapporteurs

1. Introduction

1. Georgia joined the Council of Europe on 27 April 1999, following the adoption of a positive opinion on its membership request by the Parliamentary Assembly in Opinion 209 (1999). After the Rose Revolution, which brought President Saakashvili and his United National Movement (UNM) into power, the Assembly considered that the new government should not be held accountable for the failure of the previous authorities to fulfil Georgia's obligations and commitments in the time frame specified upon accession. In support of the new government and in recognition of the task it faced, the Assembly adopted, in Resolution 1415 (2005), a series of revised deadlines for Georgia's commitments to the Council of Europe.

2. This report is the result of several visits and extensive discussions with the Georgian authorities, political parties, civil society, and other stakeholders. It was originally foreseen to be presented to the Assembly in April 2020 but was delayed as a result of the Covid-19 pandemic and the resulting impediments on the work of the Assembly and its Monitoring Committee. Further delays were related to the October 2020 parliamentary elections and October 2021 local elections. In line with the established procedure no Monitoring reports are adopted or debated in the Committee, as well as Assembly itself, during the campaign period for a national election. As we will outline below the 2021 local elections had evolved in a *de facto* national plebiscite[3] on the ruling majority and we therefore apply the same principle and wait with presenting our report until these elections had taken place. As soon as the pandemic situation allowed, we visited Georgia from 1 to 3 June 2021 and again from 8 to 10 December 2021 to finalise this report. We want to express our gratitude to the Georgian authorities, and in particular the successive Chairs and members of the Georgian delegation we worked with, for their co-operation and willingness to receive and engage with us, including under difficult pandemic conditions, which, in our view, well reflects the long-standing cordial and constructive relation that exists between Georgia and the parliamentary monitoring procedure.

3. Georgia has made continuous and marked progress in honouring its commitments and obligations to the Council of Europe since the last monitoring report on Georgia[4]. At the same time, as we will outline in this report, a number of issues and concerns, some of which are serious, remain to be addressed. However, the progress made should be recognised and indeed the country should be provided with a perspective of the outstanding commitments and concerns that remain to be addressed for the country to progress to the next stage in the monitoring process. However, two issues should be highlighted in this context. Firstly, such change would only be possible if there is no regress on with regard to the achievements made, and secondly any change in the monitoring procedure requires the full commitment and commensurate political will of both ruling authorities as well as the opposition. Genuine democratic consolidation is the responsibility of all political forces in the country, not the authorities or opposition alone. We continue to emphasise to all political forces that the common good of the nation should outweigh any narrow party-political strategies. In this context we wish to highlight that, until now, the Georgian authorities, irrespective of who formed the ruling majority or opposition, have always clearly demonstrated their wish and political will to honour their commitments and obligations and have worked cordially and constructively with the monitoring procedure of the Assembly and its rapporteurs.

4. Since the adoption of the last report, Mr Michael Aastrup Jensen (Denmark, ALDE) whose 5-year term as co-rapporteur had come to a conclusion, was replaced by Ms Kerstin Lundgren (Sweden, ALDE) on 25 June 2015. Ms Lundgren left the Assembly in December 2018 following her appointment as vice speaker of the Swedish Parliament and was replaced by Mr Claude Kern (France, ALDE) on 23 January 2019. Lastly, following the completion of his 5-year term as rapporteur Mr Boriss Cilevičs (Latvia, SOC) was replaced by Mr Titus Corlăţean (Romania, SOC) on 27 June 2017. In the reporting period, the co-rapporteurs visited Georgia 10 times. In addition, they participated in the pre-election missions and election observation missions of the parliamentary Assembly for the 2016 parliamentary and 2018 presidential elections.

5. The consequences of the war between the Russian Federation and Georgia are covered jointly under the monitoring procedures for Georgia and the Russian Federation and are only partially covered in this report. Regrettably, also as a result of the self-induced absence of the delegation of the Russian Federation in the Parliamentary Assembly, no progress has been made with regard to the demands and recommendations of the Parliamentary Assembly as expressed in Resolutions 1633 (2008), 1647 (2009) and 1683 (2009), as well as numerous other resolutions of the Assembly in the years following these resolutions. The Georgian regions of South Ossetia and Abkhazia remain occupied by military troops of the Russian Federation, which is carrying out a continuing borderisation and creeping annexation of these two regions. This continues to be a source of

[3] See § 37.
[4] Resolution 2015 (2014) and Doc. 13588 on the functioning of democratic institutions in Georgia.

tension and instability in the region at a staggering human cost for both sides of the ABL. During the reporting period we have regularly reiterated the Assembly's unwavering support for Georgia's sovereignty and territorial integrity within its internationally recognised borders and have condemned the borderisation and creeping annexation of these two Georgian regions by the Russian Federation. We express our hope and expectation that the return of the Russian parliamentary delegation to the Assembly will now facilitate the possibility for the rapporteurs for Georgia and for the Russian Federation to jointly visit to Sukhumi and Tskhinvali, as well as Moscow and Tbilisi in the framework of our mandate on the consequences of the war between those countries.

6. This tragic war and occupation of the Georgian Regions of South Ossetia and Abkhazia is a very sensitive, but also unifying, issue in Georgian society and continues to have a considerable impact on the political developments and climate in Georgia, as for example underscored by the events on 20 June 2019 that we will outline later in this report. At the same time, as we mentioned in the previous report, Georgian society widely sees the Russian aggression in August 2008, as a direct attack on the democratic nature and aspirations of the Georgian society, which continues to give an impetus for the many reforms and democratic consolidation of the country.

2. Main Political Developments

7. The political climate in the country is extremely polarised, with political parties largely adhering to zero sum political strategies[5]. This influences the functioning of democratic institutions in the country and affects the pace – and sometimes direction – of the different reform processes in the country. Additionally, the dynamics between government and opposition are affected by the context of regional policies of the Russian Federation and the perceived or alleged stance the parties take towards the Russian Federation. This is compounded by the fact that there is increased activity of parties and civil organisations that are reportedly close to – and financially supported by – the Russian Federation. While these interventions by the Russian Federation indeed affect the stability and national security of the country, the allegations and incriminations made by political actors in this context often mask the deeper domestic issues and differences that are at the basis of the divide between the opposition and ruling majority.

8. The extreme polarisation and zero-sum policies also often preclude any constructive cooperation between opposition and ruling majority[6], irrespective of who is in it, and makes lasting and stable governing coalitions difficult if not impossible. This is turn in has resulted in an increasingly tense and contentious election environment, with elections more often than not being turned into a *de facto* plebiscite on the ruling majority – and thus also on the opposition – instead of a contest between alternative visions for the future development and political course of the country. Parliamentary elections took place in Georgia on 8 October and 30 October (second round) 2016. These elections where widely seen as the first test of the endurance and popularity of the Georgian Dream led coalition that came to power in 2012. These elections took place against the backdrop of the failure of the ruling majority and opposition to reach consensus on the timeframe for the implementation of a far-reaching reform of the election system[7], which considerably hardened the electoral climate. In addition, the then ruling coalition was increasingly fragmented, with the Free Democrats having left the coalition over policy disagreements and with relations between the other coalition partners becoming increasingly tense.

9. The 2016 parliamentary 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 by domestic and international observers. These elections were won by the incumbent Georgian Dream party, which obtained a constitutional majority of 115 of the 150 seats (44 of the 77 proportional mandates and 71 of the 73 majoritarian mandates). The fragmented opposition to Georgian Dream was unable to capitalise on the public discontent with some of the policies implemented by the GD led government. The United National Movement obtained 27 seats. The bowdlerisation 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 Minister of Foreign Affairs and current President of Georgia, Salome Zurabichvili, and one candidate from the Industrialists Party entered parliament after they won in the majoritarian contests. All other parties failed to enter parliament.

10. The outcome of these elections had a profound impact on the political environment in Georgia and in particular on the opposition forces. Several leaders of the Republican Party, including former Speaker Usupashvili left the Republican Party, while Irakli Alasania and several other leading and founding members

[5] See also the section on the electoral framework below.
[6] In their comments to the preliminary draft report the ruling majority noted that these phenomena are not unique to Georgia.
[7] See the section on "Democratic Institutions" below.

of the Free Democrats left the latter. Many interlocutors at that time, including inside the UNM itself, blamed the latter's inability to capitalise on the existing public discontent with the Georgian Dream government on former President Saakashvili's continuing role – and increasingly radical positions – in the running of the UNM. The tensions between the Political Council of UNM and Mr Saakashvili mounted until, on 12 January 2017, a large part the party's leadership, split off to form a new political movement: European Georgia. However, the UNM, which benefited from the extended and well organised country wide party structure that it had established during its years in power, soon recovered and, at the moment of writing, remains the largest opposition party in the country

11. Local elections took place in Georgia on 21 October 2017. A second round[8] was held, on 12 November 2017, for those municipalities where none of the mayoral candidates had obtained an absolute majority. These local elections were observed by the Congress of Local and Regional Authorities of the Council of Europe in the framework of an international election observation mission with the OSCE/ODIHR. The international election observation mission concluded that fundamental freedoms were respected, and candidates were able to campaign freely during these elections, which were efficiently administrated. However, the dominance of the ruling party had characterised the elections. Regrettably, isolated cases of violence and pressure on voters were again recorded. Domestic observers concluded that the elections had taken place in line with international standards and generally without serious incidents or violations. The local elections confirmed the political dominance of the ruling Georgian Dream party. Countrywide, the GDDG won 55.73% of the vote, the United Nations Movement (UNM) 17.07%, European Georgia 10.41%, the Alliance of Patriots 6.56%, Labour Party 3.27%, Democratic Georgia-Free Georgia 2.58, Unity New Georgia 1.23%, Development Movement 0.76%, and the Republican Party 0.76% of the vote.

12. The political agenda immediately following the 2016 parliamentary elections was dominated by the debate and negotiations over constitutional and electoral reform. These two interlinked reforms will be outlined in detail in the next section. To recall, in the run up to the 2016 elections, the ruling majority had agreed to introduce a fully proportional election system – a long standing demand from opposition parties and civil society – as from the 2020 parliamentary elections. However, the required constitutional amendments failed to obtain the necessary support from the opposition MPs at that time, who insisted that the fully proportional election system should be introduced immediately. Following the elections, the discussion about changing the elections system restarted in the context of the reform of the Constitution initiated by the Georgian Dream authorities, after they obtained a constitutional majority in the 2016 elections.

13. The comprehensive constitutional reform implemented in 2010 by the then UNM ruling majority had introduced a mixed presidential – parliamentary system. In its opinion on the 2010 constitutional reform[9], the Venice commission had noted that the 2010 Constitution had been in general an improvement over the previous Constitution, but also noted that a number of shortcomings in the constructional framework had been left unaddressed. Addressing these remaining shortcomings, in particular with regard to the justice system, and implementing the change of the electoral system were among the priorities of the Georgian Dream majority for the Constitutional reform process.

14. The draft amendments proposed by the Constitutional Committee included the introduction of a fully proportional election system as from the 2020 parliamentary elections. However, as we will outline below, during the adoption process, the ruling Georgian Dream party decided to postpone the introduction of a fully proportional election system until after the next elections, so effectively from 2020 to 2024, which was decried by the opposition.

15. The new constitution changed the political system from a mixed presidential-parliamentary to a purely parliamentarian one. As a result, the powers of the President were substantially reduced to a mostly a ceremonial one. In addition, the 2018 Presidential elections were the last in which the President was directly elected. From that moment onwards, the President will be indirectly elected by an electoral Council. These changes took place in an increasingly acrimonious relation between the President and ruling majority, leading to allegations that the reduction in Presidential powers was a punishment for his critical approach and aimed at weakening the balance of powers between the different branches of the executive. As a result of these developments the already polarised political climate in Georgia had become increasingly more tense and contentious, and the pre-electoral climate for the 2018 Presidential elections increasingly harsh and acrimonious.

[8] Since the 2014, mayors are directly elected in Georgia. At that time also a 4% threshold was introduced for the Sakrebulos.
[9] CDL-AD (2010) 008.

16. Presidential elections took place on 28 October 2018 with a second round between the two leading candidates taking place on 28 November 2018. The Presidential elections were seen by the opposition as a possibility to challenge the ruling majority's domination of the political environment. These elections were observed by the Assembly in the framework of the International Election Observation Mission (IEOM). According to the preliminary findings and conclusions of the IEOM, the first round of the Presidential elections had been competitive and professionally administered, with voters having a genuine choice among candidates that could campaign freely. However, the IEOM expressed its concern about the uneven playing field resulting from, inter alia, the fact that shortcomings regarding campaign financing regulations allowed for a substantial imbalance in campaign donations and spending, as well as the use of administrative resources[10]. While 25 candidates participated in the first round of the Presidential elections, in reality, the presidential race centred on the three main candidates: Ms. Salome Zurabishvili, and independent candidate supported by the ruling GD party; former Speaker Mr. David Bakradze who was the candidate from European Georgia; and former Foreign Minister Mr. Grigol Vashadze, who was the candidate from the UNM. In the first round of the elections, Ms Zurabishvili obtained 38.66% of the vote, Mr Vashadze, 37.7% and Mr. Bakradze 10.97%. As none of the candidates obtained more than the 50% needed to be elected President in the first round, a second round of elections was announced for 28 November. After admitting his defeat, Mr. Bakradze called on his voters to support Mr. Vashadze in the second round.

17. The close results between Ms Zurabishvili and Mr Vaszhadze galvanised both opposition and ruling majority, but also considerably hardened the campaign environment and rhetoric[11]. The second round was won by Ms Zurabishvili with 59.5 % of the vote against Mr Vaszhadze who gained 40.5% of the vote. The turnout was 56.2%, an increase of 9% in comparison to the first round, which demonstrates the extent of voter mobilisation that took place. According to the IEOM, the 2nd round had been competitive, and candidates had been able to campaign freely, but the candidate supported by the ruling majority had enjoyed an undue advantage. The negative character of the campaign by both sides had tainted the process. The campaign was marked by harsh rhetoric and polarisation, including in the media. Regrettably, an increase in the use of administrative resources and isolated violent incidents in the run up to the elections had been witnessed.[12]

18. In spring and summer 2017, Georgia was rocked by a series of massive protests following the failure by the Tbilisi City Court to convict three youths for the group murder of another teen, allegedly as a result of deliberate interference by a member of the Chief Prosecutor's office, who tried to cover up for a family member involved.

19. The Interparliamentary Assembly on Orthodoxy (IAO) was due to meet in Tbilisi from 19 to 23 June 2019, on invitation of the Georgian parliament. When, on 20 June 2019, the President of the IAO, a Russian MP, attempted to address the Assembly from the seat of the Speaker of the Georgian parliament, opposition MPs blocked the presidium and demanded the cancelation of the meeting. They were soon joined by a considerable group of protesters outside the parliament When protesters, encouraged by opposition members, tried to storm the parliament that evening, the Police reacted with what was viewed by many as excessive and disproportionate force[13]. In the violent stand-off that followed, 240 people were injured, including 12 journalists and 80 police officers. However, this only galvanised the resolve of the protesters. On 21 June 2019, then Parliament Speaker Irakli Kobakhidze announced his resignation, taking full political responsibility for the invitation to the IAO. On 25 June 2019, he was replaced by majority leader Archil Talakvadze.

20. On 24 June 2019, in a major concession to the protesters, the Chairman of Georgian Dream – Mr Bidzina Ivanishvili – announced that his party would initiate a constitutional amendment to introduce a fully proportional election system with a 0% threshold for the 2020 general elections This initiative was welcomed by all stakeholders, as well as by civil society. In should be underscored that the introduction of a fully proportional election system in Georgia has been a long-standing recommendation[14] of the Assembly. In addition, a proportional system normally awards parties open to coalition building, which could induce a welcome change of mentality in the Georgian political environment. On 1 July 2019, the Georgian Dream

[10] International Election Observation Mission, Statement of Preliminary Findings and Conclusions, First Round of the Presidential Elections in Georgia.

[11] The idea that Mr. Vashadze, who is considered close to former President Saakashvili, could win the Presidential elections was clearly an anathema for the ruling majority.

[12] International Election Observation Mission, Statement of Preliminary Findings and Conclusions, Second Round of the Presidential Elections in Georgia.

[13] The authorities have informed us that the General Inspection service of the Ministry of the Interior suspended ten police officers from their duties, including the Head of the Special Tasks Department. Following investigations, three officers were charged with abuse of power and disciplinary penalties were applied against 11 other officers. Ten protesters were charged with criminal offences, such as use of explosives and participation in group violence.

[14] See for example Resolution 2015 (2014) and Doc. 13588, as well as Resolution 1801 (2011) and Doc. 12554, as well as Resolution 1603 (2008).

faction tabled an amendment to the Constitution proposing the introduction of the fully proportional system for the 2020 elections. However, on 14 November 2019, the Georgian parliament unexpectedly voted down the constitutional amendments to introduce the proportional system for the 2020 parliamentary elections due to the fact that all majoritarian MPs from Georgian Dream abstained during the vote. As a result, even though all opposition MPs voted in favour, the amendments failed to obtain the required ¾ majority to pass in first hearing. This renegation by the ruling party[15] of its promise to introduce the proportional election system for the 2020 parliamentary elections was decried by the opposition and civil society and deplored by the international community.

21. This sudden renegation on its promises also brought increasing tensions inside the ruling party to the foreground with several leading party members, including the then vice speaker and chairperson of the Georgian delegation to PACE Ms Tamar Chugoshvili, leaving the majority and ruling party.

22. Regular meetings took place between the opposition parties and the ruling party under joint mediation of the Council of Europe Office, the European Union Delegation, and the US Embassy in Tbilisi. On 8 March 2020, in a development we publicly welcomed[16], these negotiations bore result and an agreement was reached between the ruling majority and practically all parliamentary and extra parliamentary opposition parties on the electoral system. According to this agreement, elections until 2024 would still be held under a mixed majoritarian proportional system, but the number of majoritarian mandates was considerably reduced, and the number of proportional mandates considerably increased, while the threshold for the proportional races was reduced to 1%[17]. In addition, all parties pledged to refrain from politicising the electoral process and judiciary. The constitutional amendments necessary to implement the agreement on the electoral system – including with regard to the sensitive issue of demarcation election districts – were drafted promptly in a constructive spirit between opposition and ruling majority. On 18 March 2020, a special *ad hoc* Committee was set up by the Georgian parliament to organise the public consultations on these constitutional amendments, in line with constitutional requirements.

23. The implementation of the pledge to refrain from politicising the electoral process and judiciary was more complex and sensitive also as a result of the clearly different interpretations about the exact nature of this between the opposition and ruling majority. In a welcome development, Tbilisi City Court, on 23 March 2020, released on bail opposition activist Besik Tamlian who had been in pre-trial detention on charges of violence and resisting the police during the June 20 protests. Mr Tamlian was one of the four imprisoned opposition activists (together with Irakli Okruashvili, Gigi Ugulava and Giorgi Rurua) whose release was considered by several opposition parties an integral part of the agreement on the non-politicisation of the judiciary and election process.

24. Following a slowdown in the developments as a result of the evolving Covid-19 pandemic, the parliamentary opposition parties announced, on 13 May 2020, that they would not vote for the required changes to the Constitution to implement electoral reform as long Messrs Okruashvili, Ugulava and Rurua would not be released. To safeguard the March agreement, on 15 May 2020, President Zurabishvili pardoned Mr Ugulava and Mr Okruashvili. Following calls by the international mediators, European Georgia, at that moment the largest opposition faction in Parliament, announced that it would support the Constitutional changes during the first reading in parliament on 21 June 2020. The required constitutional changes were adopted in second and final reading on 23 June 2020, regrettably this time without the support of the opposition.

25. Regrettably, the political climate remained polarised resulting in a tense and contentious election environment. The first round of the parliamentary elections took place on 31 October 2020, in the middle of the ongoing Covid-19 pandemic. The second round of elections, for those majoritarian races where none of the candidates obtained the required majority of the votes, took place on 21 November 2020.These parliamentary elections were observed by an International Election Observation Mission – albeit in a more limited format due to the Covid-19 pandemic – of which a delegation of the Assembly was a part. These elections were also observed by a wide range of local observers and civil society organisations.

[15] Representatives of the ruling majority have claimed that the lack of support was the result of a spontaneous revolt of the majoritarian MPs in the party and not as a result of a planned change of policy. However, this seems to be belied by the speed following the vote by which leading Georgian Dream officials announced that fully proportional elections were permanently of the table for 2020. This was confirmed during the subsequent negotiations between ruling majority and opposition under the aegis of the international community in which the ruling party indicated that it wishes to abolish a fully proportional election system also for elections from 2024 onwards.

[16] Statement by the co-rapporteurs.

[17] Please see the section on electoral reform for more details.

26. The International Election Observation Mission concluded that the elections were overall competitive with fundamental freedoms respected. Regrettably observers also noted a continuing trend of pervasive allegations of pressure and intimidation of voters and party activists, and, for the first time, international and domestic observers noted several inconsistencies in the summary (results) forms[18]. Even if these shortcomings and reports of electoral malpractice do not seem to have significantly affected the overall outcome of these elections, these tendencies are of serious concern, especially as they are increasingly becoming a recurrent trend in Georgia elections.

27. The first round of the elections, which for the first time in over 20 years saw nine political parties passing the 1 percent threshold, was won by Georgian Dream with 48,23% of the votes. At the same time the opposition parties also did very well in these elections and became a serious force in the new parliament. The UNM came in in second place with 27.17% of the votes and confirmed its status as the main opposition party in Georgia. European Georgia obtained 3.8% of the votes and six other parties – all but one new party – passed the 1% threshold with results varying from 3% to 1%. In addition, in the first round, GD won 14 of the 30 majoritarian races. These results were overall congruent with pre-election polls as well as the outcome of the parallel vote tabulation conducted by ISFED[19].

28. However, the opposition, in unity, alleged that the elections were marred by widespread fraud. Despite repeated calls from the international community to the contrary, these parties decided to boycott the second round of the elections and refused to accept their mandates in the new parliament. The GD therefore ran unposed in the second round of the majoritarian elections, winning all remaining 17 majoritarian seats. The GD obtained a parliamentary majority, albeit not a constitutional majority, of 90 seats, UNM obtained 36 seats, European Georgia 5 seats and the other parties between 4 and 1 mandates (19 mandates in total).

29. Regrettably, despite the calls of the international community, the opposition parties maintained their boycott of the parliament, demanding inter alia new snap elections, the release of all persons they consider political prisoners as well as further electoral reforms. In January 2021, four members of the Alliance of Patriots defied their party's stance and took up their parliamentary mandates. Two members of the Citizens Party entered parliament on the same day following an agreement with Georgian Dream on the release of two persons whose incarceration was considered politically motivated by the opposition and further electoral reforms including lowering the threshold for proportional elections. On the basis of this agreement, a working group on the electoral reform was established on March 2, 2021. The agreement is still in force.

30. The political crisis deepened on 23 February 2021 when UNM leader Mr Nika Melia was arrested by the police. Mr Melia was being prosecuted for allegedly leading the attack on the Georgian parliament during the June 2019 protests and had been released on bail on the condition he wore an electronic bracelet. In November 2020 he removed this bracelet in an act of protest against the election results and refused to post the increased bail that the court imposed on him as a result. His prosecution following the June 2019 events is controversial. While he may have broken the law in that context, there are serious questions regarding the grounds for his prosecution and the manner in which the judicial process against them has taken place. On 12 May 2021, Mr Melia filed a complaint with the ECHR, alleging, inter alia, politically motivated prosecution. Similarly, the decision to arrest Mr Melia in February 2021 was highly controversial. While he had indeed removed his electronic bracelet in protest and refused to post bail, court proceedings in relation to this action had not been finalised while the risk of him absconding seemed to have been very small if existent at all.

31. The decision to arrest Mr Melia was widely criticised inside Georgia as well as by the international community. The decision to arrest Mr Melia was also controversial within the Ruling Party. Prime Minister Gakharia resigned on 18 February 2021 in protest over, according to him, the GD leadership decision to re-arrest Mr Melia against his advice. Mr Gakharia was subsequently replaced as Prime Minister by former PM Irakli Garibashvili.

32. International mediation efforts remain unsuccessful until March 2021, when, during his visit to Georgia European Council President Charles Michel announced that he would personally mediate between the government and opposition. A first proposal for an agreement was initially rejected by both opposition and ruling majority. The main obstacles for an agreement were the demand for snap elections and the release Mr Melia and Mr Giorgi Rurua[20].

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[18] Doc. 15210.

[19] Updated Information on ISFED's PVT Results

[20] Mr Giorgi Rurua is the founder and shareholder of Mtavari Arkhi TV a television station that is critical of the government. He was arrested for illegal weapons position, the evidence for which he claims was fabricated. The opposition views his prosecution as politically motivated and demanded his release in the context of the March 2020 political agreement on the election system. He was the only of the four so-called political prisoners that was not released by the authorities, who consider him a common criminal.

33. On 16 April 2021, the ruling majority announced that they had formally signed the compromise proposal. On 19 April 2021, EU Council President Michel published an updated proposal for an agreement to address remaining hesitations among opposition parties. This proposal included an amnesty or pardon for both Mr Melia and Mr Rurua, as well as the organisation of snap elections in the course of 2022 if Georgian Dream would obtain less than 43% of the valid votes in the 2021 local elections. The ruling party, as well as most opposition parties signed this agreement. Regrettably, the biggest opposition party, UNM, refused to sign the agreement. On 30 May, UNM announced that it would enter parliament, but that it would not sign, or be bound by, the agreement.

34. As a result of these developments, the political landscape in Georgia, as well as the political make-up of the parliament changed considerably. A number of MPs changing faction, forming new factions or groups or enter parliament as independent MPs. As a result, GD currently holds 84 seats, 6 seats short of a Constitutional majority. Unfortunately, these changes have not resulted in an increase in pluralism or dialogue, also as result of Georgia's continuing polarised climate and lack of a culture of political coalitions.

35. Following the return of the opposition to the parliament, President Zurabishvili, on 27 April 2021, pardoned Mr Giorgi Rurua. In addition, parliament started its work on an Amnesty Law for crimes committed in the context of the 20 June 2019 protests and riots, which was needed to drop the charges against Mr Nika Melia. This law created some controversy, as the amnesty also would apply to those police officers that were convicted for excessive use of force during these riots. The ruling majority emphasised that anyone convicted human rights violations would be excluded from the amnesty. While continuing to oppose the Amnesty law, Mr Melia accepted an offer by the EU to post his bail and was released on 10 May 2021. Negotiations on the amnesty law stalled as on a result of the insistence of both ruling majority and opposition on, albeit different, conditionality clauses in the law. The ruling majority wished to make Mr Melia's amnesty conditional on him accepting it, while for their part the opposition insisted that police officers could only receive amnesty if their "victims" agreed. The bill was finally adopted by the Georgian parliament on 7 September 2021. The condition that a person to be amnestied has to agree with the amnesty was maintained.

36. The 19 April agreement between opposition and ruling majority formally broke down on 28 July 2021, when Georgian Dream announced that they withdrew from the agreement as, in its view, it had exhausted itself and as it was still not supported by the main opposition parties – including the largest opposition faction led by the UNM – as a result of which only the ruling party was bound by, and responsible for upholding, the agreement. The decision by GD to withdraw from the agreement, as well as the continued refusals by UNM to join the agreement[21], are deeply regrettable.

37. The April agreement stipulates that pre-term elections would be organised in 2022 if the GD would obtain less than 43% of support in the 2021 local elections. As we feared, this turned the local elections into a *de facto* plebiscite on the ruling majority, creating an extremely polarised and contentious election climate.

38. Local elections took place on 2 October 2021 with a second round on 30 October for those races for mayors and majoritarian city council members where none of the candidates had obtained the required majority in the first round. The International Elections Observation Mission, of which the Congress of Local and Regional Authorities of the Council of Europe was a part,concluded[22] after the first round that these elections had been "*competitive and well run, but marred by allegations of pressure on voters, vote-buying and an unlevel playing field*". The new legal framework had overall been adequate for the organisation of democratic elections but was overly complex and had the tendency to over-regulate many aspects of the election process. The election administration, which had managed the elections in an efficient manner, had been more pluralist as a result of its new composition. Regrettably, the national political debate had overshadowed local issues, resulting in an increasingly aggressive rhetoric with several cases of violence and physical confrontation recorded. The IEOM concluded that "*significant imbalance in resources, insufficient oversight of campaign finances and an undue advantage of incumbency*" had resulted in an unequal playing field in favour of the incumbent authorities, and that, similar to the 2021 parliamentary elections, persistent allegations of vote buying and pressure on voters had been recorded.

[21] Only after GD had withdrawn from the agreement UNM announced, on 1 September 2021, that it would sign the agreement. However, this had little significance for the political situation in the country.

[22] See also Georgia, Local Elections, Second Round, 30 October 2021: Statement of Preliminary Findings and Conclusions | OSCE and Georgia, Local Elections, 2 October 2021: Preliminary Statement | OSCE.

39. Regrettably, increasingly acrimonious election campaigns; violent incidents between supporters of the ruling majority and opposition; as well as the abuse of administrative[23] resources and reports of pressure on voters, especially on civil servants have increasingly become a trend in Georgian elections, which is of concern. There can be no impunity for such practices and prompt action is necessary to prevent them turning into a permanent feature that would undermine the trust of the electoral contestants and voters in the election process. The authorities should fully and transparently investigate[24], and where necessary address, all alleged electoral violations and take all necessary measures to maintain and where necessary rebuild public trust in the election system. This is especially important in the context of the low public trust in the judiciary, on which the election complaints resolution system depends.

40. The polarisation of the political environment further exacerbated following the return of former President Saakashvili to the country and his subsequent arrest by the authorities. On 27 September former President Saakashvili announced on his Facebook page that he would return to Georgia on 2 October 2021, the day of the local elections, "*to protect the will of the voters*" and to "*participate in saving the country*". On 1 October 2021 he announced that he had already arrived in Georgia. While originally denying that Mr Saakashvili was in the country, the authorities in the late afternoon of 1 October announced that they had arrested as he had illegally entered the country. His return received a mixed reception, including from opposition parties, and was criticised for being disruptive of electoral process for the local elections and not contributing to the political stability in the country.

41. Mr Saakashvili was placed under arrest as he had been convicted in absentia in two criminal cases, for organising an attack on opposition MP Valeri Gelashvili and for his pardoning of the former interior ministry officials convicted in the notorious Girgvliani[25] case. Mr Saakashvili, has applied to the ECHR in Strasbourg in relation to these two cases, alleging violations of Article 6 and Article 7 of the convention. In addition, two criminal cases against him are still continuing before Georgian Courts, one case for exceeding and abusing official powers during the breaking up of anti-government protests on 7 November 2007 and subsequent seizure of Imedi TV, and one for embezzlement of funds from the State Protection Service for personal use. Following his arrest additional charges were filed against him for illegally crossing the state border[26].

42. Mr Saakashvili was incarcerated in the Rustavi Prison which is a special prison for police and military officers, as well as state officials and other inmates whose safety would be endangered if mixed with normal inmates. Mr Saakashvili, who has decried the convictions and cases against him as politically motivated announced on 2 October that he had gone on hunger strike against his detention. Without wishing to comment on the merits of the cases against him we wish to underscore that it is essential that his rights are fully respected in the same manner as should be the case for any other Georgian citizen. In that respect concerns have been raised regarding his initial treatment while on hunger strike.

43. In response to his deteriorating health as a result of his hunger strike, Mr Saakashvili's representatives requested him to be moved to a civilian hospital as the Rustavi prison hospital would lack the necessary facilities. This was refused by the authorities due to security concerns. On initiative of the Prime Minister an independent medical council was set up to monitor the health of Mr Saakashvili and to advise the authorities accordingly. On 8 November Mr Saakashvili was transferred against his will to the hospital of the Gldani prison. The Gldani prison houses prisoners convicted of very serious crimes and was one places where reportedly prisoners abuse was rife during Mr Saakashvili's government, an issue that contributed to the change of power in the 2012 elections. As a result, Mr Saakashvili was reportedly heckled, taunted, and threatened by other prisoners, amounting to mental abuse, and had good reasons to fear for his personal safety. Additionally, on two occasions the penitentiary services published, without his consent, and in clear violation of his privacy, video materials of Mr Saakashvili including of his forceful transfer to Gldani prison. These violations of his rights and of his privacy were condemned by several domestic actors and institutions, including President Zurabishvili, the Public Defender as well as by the State Inspector's Service (SIS) a body that inter alia is tasked with investigating violations of personal data protection and abuse of powers. The SIS announced it had started an investigation into Mr Saakashvili's transfer to Gldani prison hospital. However, on 17 January 2022, the overturned the Tbilisi City Court ruled that the Special Penitentiary Service had not violated privacy laws and that the information relating to Mr Saakashvili's transfer had been released with the legitimate purpose of ensuring the protection of state and public safety.

[23] In their comments on the draft report the ruling majority disagreed with our conclusion that the number of cases noted would amount to an increasing trend.
[24] In the view of most civil society organisations and opposition parties we have met no effective investigations have taken place into electoral violations.
[25] Case of Enukidze and Girgvliani vs. Georgia (Application no. 25091/07).
[26] He was reportedly smuggled into the country in a dairy truck that was unloaded in the port of Poti.

44. On 10 November 2021, the ECHR decided to indicate interim measures in the case of Saakashvili vs Georgia[27]. The Court requested the authorities to ensure his safety in prison and to provide him with appropriate medical care and to inform the Court about his state of health. At the same time the Court urged Mr Saakashvili to call off his hunger strike. On 18 November 2021, the CPT made a similar request for information regarding Mr Saakashvili's treatment. The situation was resolved when on 19 November Mr Saakashvili accepted the proposal of the Minister of Justice to be transferred to the Military Hospital in Gori and ended his hunger strike and the interim measures were lifted on 17 January 2022.

45. On 3 March 2022, Georgia's Prime Minister Garibashvili signed an Application for EU Membership on behalf of the country. This application came after the signing of the Association Agreement with the EU in 2014, which underscores the Country's clear commitment to Euro-Atlantic integration.

46. The issue of sensitive high-profile cases against former government officials as well as opposition representatives and allegations of their political motivation, have continued to be an issue of controversy during the reporting period. These cases were joined by the legal battle over the ownership of Rustavi 2, a prominent opposition linked broadcaster, which, according to opposition representatives, also was politically motivated. Regrettably, as a result of these cases, and the allegations made in their respect, the judiciary and justice system have become hostage to the political standoff between opposition and ruling majority and are increasingly instrumentalised by all sides, to the detriment of their independence. This, in turn, negatively affects public trust in this important institution. This was also severely criticised by the European Court of Human Rights in their judgment in the case of Rustavi 2 Broadcasting Company against Georgia[28].

47. The continuing extremely polarised political climate in the country, which is foreclosing any political co-operation and dialogue, is of serious concern. This is undermining the political stability and democratic consolidation of the country, putting at risk the considerable progress made by Georgia in this respect over the years. The democratic consolidation and Euro-Atlantic integration of Georgia are the shared responsibility of all political forces in the country. We therefore urge all political forces, and in particular the two largest parties, Georgian Dream, and the United National Movement, to place the common good of the nation over any narrow party-political strategies.

48. We wish to highlight again that one of Georgia's hallmarks has been the fact that the successive Georgian authorities have always maintained cordial and constructive relations with the country's international partners, and responded to their concerns and recommendations, even on issues of disagreement. This has contributed greatly to the development of the country, and we are confident that this excellent co-operation with its international partners will continue to be a cornerstone of its international policy.

3. Democratic institutions

49. In this following section we will outline the main developments with regard to the functioning of democratic institutions in Georgia, in particular with regard to constitutional and electoral reform as well as parliamentary oversight and accountability. Despite ups and downs, this has been an area in which Georgia has made sustained and marked progress since the Rose Revolution, irrespective of the government in place. This has continued over the current reporting period.

3.1. Constitutional reform

50. A far-reaching constitutional reform had taken place in Georgia in 2010, under the UNM led administration. This reform changed the country from a presidential system to a mixed parliamentary-presidential system. The reform also strengthened the constitutional framework for the independence of the judiciary and parliamentary checks over the powers of the president. The 2010 constitutional reform, as well as its remaining shortcomings and vulnerabilities, were outlined in detail in the report[29] on the Honouring of obligations and commitments by Georgia, that was debated by the Assembly on 13 April 2011.

51. Following the October 2016 parliamentary elections, then Prime Minister Kvirikashvili announced the intention of the ruling majority to reform the Georgian Constitution with the aim of establishing a fully parliamentary political system that would strengthening the separation of powers and "ensure that no single

[27] https://hudoc.echr.coe.int/eng-press?i=003-7181571-9747611.
[28] Application no. 16812: *The Court bore in mind in particular that Rustavi 2's owners had systematically introduced ill-founded recusal requests against many different judges at all three levels of jurisdiction in a probable attempt to paralyse the administration of justice, while Rustavi 2's Director General had made gratuitous and virulent attacks in the media against the domestic judges involved in examining the ownership row and against the Georgian judiciary in general"* ECHR 270 (2019).
[29] Doc. 12554.

political entity could usurp the power" in Georgia[30]. In addition, a stated aim of the constitutional reform was to provide the constitutional framework for electoral reforms, notably the establishment of a proportional election system.

52. On 15 December 2016, the parliament established the Constitutional Commission, chaired by the Speaker of the Georgian Parliament. The Commission was composed of 23 members of the ruling majority, 6 members of the official 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 who obtained at least 3% of the votes, each had one seat on the Commission. Moreover, the President of Georgia was given the possibility to appoint two representatives on the Commission[31] in addition to the Secretary of the National Security Council, who reported directly to the President. The government was 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 had one representative each on the Commission, as did 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 was represented by 20 NGO representatives. The Constitutional Commission worked in four working groups: 1) on Fundamental Human Rights and Freedoms, Judiciary, Preamble and Transitional Provisions; 2) on the President of Georgia, the Government of Georgia, and the Defence; 3) on the Parliament of Georgia, Finances and Control and Revision of the Constitution of Georgia; and 4) on Administrative-Territorial Arrangement and Local Self-Governance.

53. On 22 April 2017, the Constitutional Commission adopted its proposal for the draft constitution. In line with the objectives for the reform, the proposed new Constitution considerably reduced the powers of the President of Georgia, whilst increasing the power the Parliament and the Executive. While the President remains Commander-in-Chief of the armed forces and retains a role as a representative of the country in international relations, the President will, inter alia, 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, the Constitutional Commission proposed to abolish the direct election of the President in favour of an election by a 300-member Electoral Council. The 300-member Council is composed of members of parliament, as well as representatives of local and regional government. In response to concerns that the change of election system was introduced as a retribution towards President Margvelashvili, who had been openly critical of the government and ruling majority, the Constitutional Commission proposed that, as a transitional measure, the change of election of the President would only come into effect after the 2018 presidential elections.

54. The New Constitution no longer stipulates Kutaisi as the seat of the parliament, which allowed the parliament to relocate to Tbilisi. This allows for a more efficient functioning of the parliament and strengthens its oversight function over the executive, which had remained in Tbilisi when the parliament was based in Kutaisi.

55. Regrettably, in a move that seems to have been mostly driven by populist motives, the new Constitution limit the institution of marriage to people of the opposite sex. While there are no provisions in the current legislation that would allow for same-sex marriages, and it is very unlikely that this would change anytime soon in the socially conservative Georgian society, there was no constitutional limitation that would prevent same-sex marriages from taking place, if common law were to be changed. Even if a constitutional ban on same-sex marriages does not violate the ECHR, this provision is a clear step backwards, even if largely symbolic.

56. The Constitutional changes and electoral reform are closely interrelated. The Constitutional Commission proposed to introduce a fully proportional system, based on closed party lists in a single nationwide constituency. The Constitutional Commission also proposed a prohibition on electoral blocs and a – 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 would be awarded to the winner of the elections. This distribution formula created quite some controversy as, in combination with the prohibition of party blocks and a high threshold, it would have given a considerable number of bonus seats to the largest party, undermining the proportionality of the election results. This, in turn, would have a negative effect on the pluralist make-up of the parliament and ultimately the political environment in the country.

[30] This was seen as a response to concerns expressed by representatives of the opposition and civil society that the ruling majority would use its constitutional majority to govern the country without consultation or institutional regard for the parliamentary opposition.

[31] President Margvelashvili declined to nominate his representatives on the Constitutional Commission, reportedly because of the rejection by the parliament of his proposal that the Commission be co-chaired by the President, the Speaker of the Parliament, and the Prime Minister.

57. The outcome of the work of the Constitutional Commission was strongly criticised by the opposition parties, as well as by civil society organisations, who felt that the work of the Commission had been dominated by the ruling majority and that only very few of the proposals of the opposition and civil society had been included in the draft Constitution. In protest, the 13 representatives of the opposition parties resigned from the Constitutional Commission.

58. The Venice Commission adopted its opinion on the draft constitution as prepared by the Constitutional Commission during its plenary meeting on 16 and 17 June 2017. The Venice Commission concluded, inter alia, that the proposed new constitution was a positive step forward in consolidating and improving the country's constitutional order. In particular, it welcomed the introduction of a proportional election system, although it questioned the above-mentioned distribution formula for rest seats, the prohibition on electoral blocks and the relatively high threshold.

59. The new Constitution includes a number of important changes to the justice system and judiciary. It, inter alia, sets the minimum number of supreme court judges at 28 and introduces the life appointment of supreme court judges. It also changes the appointment procedure for Supreme Court Judges as we will outline in detail below. Suggestions to address concerns regarding this appointment procedure were not addressed by the parliament when adopting the Constitutional amendments. In a welcome development, the new Constitution introduces the lifelong appointment of common court judges, without a probation period, albeit from 2024 onwards, which addresses a long-standing Venice Commission recommendation.

60. The new Constitution established a fully independent Prosecutor General, which is only accountable to the Parliament. The Prosecutor General is appointed by a majority of all members of the parliament for a non-renewable period of six years. This strengthens the independence of this institution and reduces its vulnerability to possible instrumentalization for political purposes. Regrettably the recommendation that the Prosecutor General Would be appointed with a qualified majority was not implemented. Venice Commission recommendations to ensure that the accountability of the prosecution service to the parliament will not extend to accountability for individual cases were taken over by the Georgian legislator.

61. The amendments proposed by the Constitutional Commission were discussed in the Georgian Parliament in their first reading on 22 June 2017. During that discussion, the ruling Georgian Dream party decided to postpone the introduction of a fully proportional election system until after the next elections, so effectively from 2020 to 2024, which was decried by the opposition. The fact that this decision was taken by the ruling majority after it had received a favourable opinion of the Venice Commission on the draft prepared by the Constitutional Commission – which was also based on the fact that the election system would change – was lamented. For its part, the ruling majority stated that, without the votes of the opposition – which had announced that they would vote against the constitutional amendments proposed by the Constitutional Commission – the ruling majority would not have enough votes to pass the constitutional amendments in the face of alleged strong opposition from its own majoritarian MPs to the abolishment of the majoritarian component of the elections. Therefore, it asserted that it had no other choice than to make a compromise on the introduction of the proportional election system with its majoritarian wing.

62. On 26 September 2017, the Georgian parliament adopted[32] in final reading the revised Constitutional amendments. As a concession towards the opposition, the ruling majority agreed to allow election blocs for the 2020 elections[33], and agreed to lower the threshold for those elections to 3% instead of 5%. Moreover, the authorities agreed to drop the controversial distribution formula for "unallocated mandates" into a system of equal distribution. However, as these "compromise" provisions had not been introduced during the first reading of the Constitutional amendments, they could not be adopted as part of the Constitutional reform package on 26 September 2017. A new amendments procedure was subsequently introduced to incorporate the above-mentioned concessions proposed by the ruling majority.

63. Given the political environment that is dominated by one party with a constitutional majority -even if democratically elected – it is important to ensure that a proper system of checks and balances is in place. While much progress has been made with regard to strengthening parliamentary oversight (see below), the system of checks and balances should be further strengthened. This is of particular importance with regard to the security and intelligence services. Several interlocutors pointed out that the importance of the security services in the governance of the country has considerably increased, and they are increasingly being consulted on policies and appointments before they are made. While this is to a certain extent understandable, given the geo-political situation of the county, this needs to be counterbalanced by a strong mechanism ensuring civilian oversight over the security services, including by the opposition.

[32] This vote was boycotted by the parliamentary opposition parties.
[33] These elections will still be held under a mixed system.

64. Despite a small number of remaining issues, the new constitution has clearly resulted in a marked improvement of the Constitutional framework of Georgia. Unfortunately, its main shortcoming, the failure to introduce a fully proportional election system as from the 2020 elections, has both characterised and dominated the political environment, and is deeply regrettable.

65. As we outlined above a number of amendments were adopted to implement the changes to the electoral system that were agreed between opposition and ruling majority in the March 2020 political agreement. At the moment of writing further Constitutional amendments are being discussed in the parliament necessary to implement the 19 April 2021 agreement between opposition and ruling majority. They were discussed in first reading in September 2021, with a second reading provisionally planned for February 2022. They concern the threshold for the proportional elections as well as the appointment process for the Prosecutor General and will be discussed in the relevant chapters below.

3.2. Electoral reform

66. Historically, the debate on electoral reform in Georgia has been dominated by the question of which election system would be most adequate for the Country. In Georgia, the election system is defined in the Constitution to great, arguably excessive, detail. The electoral and constitutional reform processes are therefore intricately inter-related.

67. Georgia has a mixed majoritarian – proportional election system, where part of the parliamentary mandates is distributed based on the result of a proportional vote and remainder of the mandates on the basis of the results in single mandate constituencies. Until the March 2020 political agreement, 77 of the 150 members of the Georgian parliament are elected in proportional elections and 73 members in single mandate constituencies are elected on the basis of a majority[34] of the votes. As part of the March 2020 agreement the ruling majority and opposition agreed to a Constitutional amendment that for elections between 2020 and 2024 will change the number of proportional mandates to 120 and majoritarian mandates to 30.

68. There have been long standing attempts to change the election system in Georgia from a mixed system to a fully proportional system, as the mixed system favours the incumbent party in power, which is most likely to win the majority of the majoritarian mandates. Before all recent elections including the 2008, 2012 and 2016 parliamentary elections, there have been 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 mixed 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 part of system for various reasons[35], including the opposition of majoritarian MPs belonging to the ruling party.

69. As mentioned, in Georgia, the mixed proportional election system disproportionally favours the incumbent ruling party and has consistently created super majorities, which are of concerns as they:

a. undermine the democratic system of checks and balances;
b. encourage zero sum politics over cooperation and consensus building, leading to a perpetually polarised political climate;
c. hinder the development of political parties and multiparty democracy;
d. weaken the parliament, as decision making in the parliament is often replaced by informal decision making within the ruling party that has a supermajority.

70. Therefore, the introduction of a (regional) proportional election system has been a long-standing recommendation of the Assembly. The failure to introduce the proportional election system with immediate effect in the recent constitutional reform was very much regretted by the Venice Commission and the Parliamentary Assembly[36]. Therefore, when following the massive protests in June 2019, the ruling majority proposed the introduction of the proportional election system as early as 2020, this was strongly welcomed by the international community, not only as it considerably diffused tensions in the political system, but also as it meant a great step forward for Georgia's democratic consolidation.

71. According to the 8 March agreement, until 2024, the threshold in the proportional races in the mixed election system is 1% of the votes for political parties and for political blocs 1% times the number of parties in

[34] Until the 2016 parliamentary elections the majoritarian mandates were distributed on the basis of the plurality of votes (first past the post system), For the 2016 the requirement for a candidate to obtain at least 50% of the vote to be elected was introduced.
[35] AS/Mon (2011) 24 rev 3 § 5 to 15.
[36] Resolution 2203 (2018) § 6.5.

the bloc[37]. Majoritarian mandates are accorded to the candidate that receives the majority of the votes in the majoritarian district. In order to allay fears that the continuation of a mixed election system would result in the party winning the elections being able to obtain a disproportional number of mandates[38] in the new parliament, the parties agreed to a constitutional amendment that stipulates that the percentage of mandates received by a political party or election bloc cannot exceed 25% of the percentage of the votes received in the proportional elections[39]. The reduction of the number of majoritarian mandates also implied the need to redraw the majoritarian districts. In line with the Constitutional Court decision on election district sizes (see below) and on insistence of the international community, it was agreed that, with the exception of three particular cases, the variance in size of the majoritarian election districts would not exceed 15 %, which is the maximum allowed under Venice Commission standards[40]. The election district demarcation was subsequently outlined in the constitutional amendments to implement the agreement that were agreed upon in consensus[41]. Given the sensitivity of the demarcation of election districts in any democracy, the consensual agreement on the district boundaries for the 2020 elections should be lauded.

72. The above-mentioned system will be used for any pre-term elections that take place before the fully proportional system will be introduced with the regular 2024 elections. This led to fears that the ruling party could be tempted to trigger preterm elections just before the regular 2024 elections in order to push back the introduction of fully proportional elections beyond 2024. It was therefore agreed that no preterm elections will be held in 2024 and that the term of any parliament elected in pre-term elections between the regular elections in 2020 and 2024 will end in October 2024.

73. A main shortcoming with regard to the majoritarian system was, until the 2016 parliamentary elections, the extremely large variation in size of the single mandate districts. The election districts varied in size between 6.000 and 120.000 voters. Such variation is in contradiction with the principle of the equality of the vote. Council of Europe standards 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 votes as enshrined in the Georgian Constitution and ordered the district sizes to be changed to remedy this situation. On 18 December 2015, the Georgian parliament adopted a series of amendments to the election code for the purpose of redrawing the election districts in such a manner that their variance in size would comply with the Constitutional Court decision. In addition, the amendments raised the threshold to be elected in single mandate districts from 30% to 50%, which had been a long-standing demand of most political stakeholders. By addressing the long-standing problem of excessive variations in size between the different electoral districts, an important shortcoming with regard to Georgian elections has been resolved, which should be welcomed, even if the variations have now increased again as a result of the March 2020 agreement.

74. Following the 8 March 2020 agreement a number od electoral reforms were adopted to address OSCE/ODIHR and recommendations including with regard to the provision of free airtime, party financing, shorter deadlines for dispute resolution, and the introduction of conflict of interest rules for members of the election administration as well as mechanisms to increase women's representation.

75. On 17 December 2020, in what was seen as a knee-jerk reaction to the boycott of parliament by the opposition, the ruling majority proposed a series of amendments to the Electoral Code, Law on Political Association of Citizens, as well as the rules of procedure of the Georgian parliament. According to the proposed changes, parties that do not take up at least 50% of their mandates will lose state funding, and free airtime, during the next election campaign. In addition, if more than half of the members of a party would be absent without good reason for more than half of the plenary sessions that party or bloc would lose state funding for a period of 6 months. In the light of the criticism on these proposed changes the ruling majority agreed to send the proposed amendments to the Venice Commission for opinion and to wait with their consideration in second

[37] So, 3% for a 3-party election bloc, 5% for a 5-party election bloc etc.
[38] And, as a result, obtaining a ruling or even constitutional majority without having won more than 50% of the proportional vote.
[39] In other words, a party or bloc would need to obtain more than 40% of the proportional vote in order to obtain a majority of seats in the parliament that would allow it to govern alone.
[40] Code of Good Practice on Electoral Matters (CDL-AD (2002)023rev2-cor) Section I.2.2.-2.4. Actually, the Code proscribes a maximum variance of 10% and 15% in exceptional cases. However, given the limited validity of these election districts (until 2024) and the fact that the election districts were agreed upon in consensus between all stakeholders the variance outlined in the political agreement can be considered to be fully in line with this important European norm.
[41] On 21 April 2020, the Georgian Young Lawyers Association (GYLA) published an analysis of the implementation of the agreement on the electoral system which noted that, contrary to the agreement and European standards, the variance of the size of the election districts as agreed upon exceeds 15% not in 3 but in 18 cases, which is over half the total number (30) of single mandate districts. At the same time, it should be underscored that the electoral boundaries were agreed upon by consensus among all parliamentary factions and are only valid for a limited time (till 2024).

and third reading until this opinion was adopted. In its opinion[42], while regretting the use of parliamentary boycotts, the Venice Commission noted that these were nevertheless legitimate options for a political party and protected under the principle of freedom of expression. Depriving a party of its state funding – which is based on its electoral support in the elections – for boycotting the parliament would be a disproportional sanction that would also negatively affect the pluralism of the political environment in Georgia as most political parties are dependent on state funding. In addition, the Venice Commission considered that it would be disproportional if a political party would lose its state funding for a period of time as a result of the majority of its members not participating in the plenary sessions without a valid reason. In that context the Venice Commission noted that the remuneration of individual members was already regulated in the rules of procedure of the parliament, which currently considers a boycott as a valid reason of absence. In addition, the remuneration of MPs is guaranteed in the Georgia Constitution, so while reducing their support could be legitimate, ending it altogether would probably be unconstitutional according to the Venice Commission. Nevertheless, the Georgian parliament regrettably adopted these amendments on 22 June 2021.

76. The ruling majority originally tabled amendments to the electoral code that would have as effect that any party whose party leader would not be eligible to vote in Georgia would lose its registration as a party and be disbanded. These amendments were clearly aimed at the UNM, whose leader, former President Saakashvili, lost his Georgian citizenship, in line with Georgian law, when he obtained Ukrainian citizenship. The Speaker of the Georgian parliament requested an opinion of the Venice Commission before they were formally included in the parliamentary agenda. In its opinion[43], the Venice Commission noted that the draft amendments were a clear example of "*ad hominem"* legislation. In addition, while restrictions can be placed on active and passive voting rights of non-citizens as well as on the possibility for them to establish parties, it would run counter European standards to extend such limitations to party membership or holding positions in political parties or movements. Moreover, the Venice Commission noted that the concept of party leader was not clearly defined in the amendments while the sanction of deregistration of a party, with its effects on pluralism in the political environment, was considered disproportionate. The Venice Commission therefore recommended that these amendments not be adopted.

77. As part of a memorandum of understanding signed with the opposition parties that had returned to the parliament in January 2021, the parliament adopted in first reading a set of draft amendments to the electoral legislation with the aim to address the shortcomings noted in the October 2020 elections and to lower the threshold for the proportional elections to no more than 3%. In addition, in the 19 April 2021 agreement, the parties that signed the agreement commit themselves to a number of "ambitious electoral reforms" to address shortcomings noted in previous elections including with regard to the composition of the electoral administration. On 18 May, following an inclusive drafting process, the opposition and ruling majority reached an agreement, on the changes to the electoral legislation.

78. The election administration in Georgia has a mixed composition of party representatives and nonpartisan members appointed by the parliament. The composition formula in force since was widely seen as giving the ruling party a commanding share of the members on the election commissions, affecting the trust of the stakeholders in the impartiality of the election administration[44], the amendments agreed on 18 May 2021, maintained this mixed composition for the election commissions but increased their number of members to 17 from 12. The Venice Commission questioned the practicality if this increase on the level of the DECs[45] and PECs[46] and recommended to reconsider this increase for DECs and PECs. For the CEC, 7 of its members, in addition to its chairperson, are appointed by the parliament, on nomination by the President of Georgia, based on a 2/3 majority with an anti-deadlock mechanism[47]. The other 9 members are appointed by registered political parties that were assigned at least one mandate[48] in the parliament[49]. The composition of the DECs and PECs follows the same model as that of the CEC with the non-partisan members being appointed by the CEC for the DEC and by their respective DECs for PECs. The Chairpersons for these commissions are elected by the members on these commissions from among the nonpartisan commission members. The CEC will have two deputies, one selected by the opposition parties and one professional (nonpartisan) member.

[42] CDL-AD(2021)008
[43] CDL-AD(2021)009.
[44] CDL-PI(2021)005 § 29.
[45] District Election Commissions.
[46] Precinct Election Commissions.
[47] For the first two votes a candidate needs a 2/3 majority to be appointed, in case of a third vote a 3/5 majority is needed. A fourth vote will take place by simple majority. In that case the appointment is valid for only 6 months.
[48] Irrespective of whether they take up this mandate.
[49] In the event there are more than 9 eligible parties, those with the most mandates will have priority.

79. In its opinions[50] on the changes to the electoral legislation, the Venice Commission highlighted the need for a transparent and merit-based selection process for the non-partisan members, which until now were often seen as ruling party loyalist, which lowers public trust in the election administration. The Venice Commission therefore recommended that the selection process for members on the committee that selects the non-partisan members, as well as the manner in which this commission makes it decisions, will be proscribed by law

80. In addition to the Composition of the Electoral Administration, the amendments also improve the regulations for the drawing up of the results protocols and the regulations governing recounts. According to the Elections Observation Mission that observed the local elections in October 2021, these regulations had a positive impact in the administration and organisation of elections. Regrettably the amendments that aimed to counter the abuse of administrative resources did not have their desired effect, while legislation still does not guarantee that all decisions of the election administration in response to election complaints can be appealed before the Courts. This needs to be addressed before next elections are organised.

81. With regard to local elections, the amendments considerably increase the proportional representation in the city councils, while for majoritarian candidates for city councils the threshold to be considered elected was raised to 40%.

82. In the 19 April agreement mediated by EU Council President the parties agreed that *"All future parliamentary elections shall be fully proportional. The next two parliamentary elections shall have a threshold between natural and 2%"*. Currently the parliament is discussing the amendments to implement the lowering of the threshold. Despite having withdrawn from the agreement the Ruling Majority has stated that it is still committed to lowering the threshold[51], but may longer support this for any pre-term elections that could take place before 2024 when the constitutional amendments on fully proportional elections enter into force. While we sincerely hope that Georgia will now enter a period of relative political stability until the next regular elections, we consider that adopting the lower threshold for any future elections from now on could help lowering the tensions in the political environment and urge the ruling majority to support this.

83. While, as highlighted by successive International Election Observation Missions, elections in Georgia overall have been conducted in line with international standards for democratic elections there have been a series of recurrent shortcomings that remain to be addressed. The abuse of administrative resources, including reports of pressure on state employees, violent incidents between part activists and supporters, as well as the use of negative and confrontational campaigning, at times passing the boundaries of hate speech, have unfortunately become a trend in Georgian elections. Reports and allegations of electoral malpractice practices are often not seen to be fully, impartially, and transparently investigated, which risks creating a climate of impunity for such actions. This needs to be urgently addressed by the authorities. As outlined above, political crisis in Georgia have frequently been resolved by an agreement to change the legal framework for elections. As noted by the Venice Commission, "despite the fact that these changes were often based on consensus, the frequent amendments to "*the electoral legislation risks undermining the integrity of the electoral process and ongoing efforts to consolidate democracy"*[52]. We, therefore, fully support the recommendation of the Venice Commission that the political stakeholders in Georgia, in a consensual manner, implement holistic and systemic reform of the election legislation, with a view to establishing a coherent and stable framework that is not subject to frequent changes. Having said that, it should be noted that the legal framework for elections in Georgia has for long been adequate for the organisation of democratic elections, if coherently implemented and adhered to by all electoral subjects.

3.3. Parliamentary Oversight

84. Especially when a ruling majority has a large or constitutional majority, it is important that the rights of the opposition are respected and that they are consulted on the governance of the country. At the same time, the opposition should respect the mandate given to the ruling majority by the citizens and go beyond merely opposing all policies originating from the government. Therefore, for the proper functioning of a parliamentary democracy, where the Parliament has full oversight over the government and is able to hold it accountable, it is essential that the parliament is fully informed and consulted by government members. This cannot be replaced by internal party consultations within the ruling majority, as on a number of occasions has been the case in Georgia.

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[50] CDL-PI(2021)005 and CDL-AD(2021)026.
[51] It should be noted that lowering the threshold to no more than 3% was also part of the agreement between the ruling majority and the members of the Citizens party that returned to the parliament in January 2021. This agreement is still in force.
[52] CDL-AD(2021)026, § 13.

85. Therefore, the priority given by the ruling majority to strengthening the system of parliamentary oversight in Georgia, following the Constitutional change to a fully parliamentary system, should be welcomed.

86. The parliamentary rules of procedure are considered by the authorities the main mechanism to strengthen parliamentary oversight and the role of the opposition in these processes. To that extent, a new set of Rules of Procedure was elaborated by the parliamentary leadership in consultation with all parliamentary factions. The opposition parties have stated that, in general, they consider the new rules of procedure to be an improvement over the previous rules of procedure, but caution that the rules of procedure are often flouted by the ruling majority. This is compounded by the fact that the ruling majority has a large majority in the parliament, which diminishes the incentive to co-operate with the opposition. We urge all stakeholders to implement the new rules of procedure fully and in good faith. Proper parliamentary oversight and inclusion of the opposition in that process cannot be legislated via the rules of procedure alone, but also requires – from both sides – a change of attitude and behaviour.

87. The new rules of procedure, in line with the amended Constitution, have simplified the procedures to introduce a vote of no-confidence in the government and have reduced the number of MPs needed to create an investigative commission to 50 MPs. In addition, the rules now stipulate that no less than half of its members should represent the opposition. According to legislative provisions, these special investigative committees have full subpoena powers, and all ministries and state agencies are required to co-operate with the investigative commissions and to give them all information requested[53].

88. The rules of procedure set out, inter alia, the obligation for the Prime Minister to report to the parliament at least once a year or when the parliament requests him to do so on specific parts of the government programme. In addition, the rules of procedure foresee a new interpellation mechanism, as well as the possibility for each committee or faction, or 50 individual members, to summon a minister or government official to appear for questioning in the parliament. Moreover, Ministers and government officials can also be called to appear before a committee if so requested by the majority of the members of the Committee. In addition, the new rules of procedure give the right to a faction inside a committee to request the presence of a member of the government for questioning during a committee meeting. These new provisions strengthen the parliamentary oversight mechanisms and the rights of the opposition in them. While these rules are still relatively new, and while the current political environment is tense and taxing, the new rules of procedure seem to have had a very positive impact in practice, with ministers being called for questioning by the parliament, including by the opposition factions. At the same time, we are aware that the implementation of these new rules of procedure can, and should, be further improved.

89. Proper parliamentary oversight over the security services is crucial. The new rules of procedure enhance the role of the Trust Group of the Parliament that oversees the security services and their operations. Representatives from civil society have noted that there is no role foreseen for external experts or experts' groups, as is the case in several European countries. These experts and experts' groups could provide expertise not necessarily available inside the parliament and Trust Group[54]. The oversight over the security services is understandably a sensitive subject that needs to be followed by the assembly. The developments around the adoption and implementation of the surveillance law, which we will discuss in a section below, are appoint in case in this respect.

90. On 1 July 2020, a number of amendments to the rules of procedure were adopted that reduced the number of vice presidents of the parliament from 9 to 5 and increased from 6 to 7 the number of MPs needed to form a parliamentary faction. Further amendments, with temporary validity, were adopted on 28 January 2021 to allow for the election of Vice-Chairpersons of Committees and Vice Presidents of the parliament while most of the opposition was boycotting the parliament[55]. On 28 May 2021, an amendment to the Rules of Procedure was adopted, which allows for at least two members of the Parliament elected from one political party to form a parliamentary political group. A political group has the same powers as a political faction.

91. According to the 19 April agreement, the opposition will be assigned 5 Committee Chairpersons, 2 among the key committees. In addition, the opposition will obtain the Chair of one of the parliaments

[53] subject to some state security restrictions.

[54] In this regard the authorities have made the, in our view valid, observation that, given the current complex situation in Georgia with 20 percent of its territory under foreign occupation, intensive hybrid warfare and attempts by hostile foreign intelligence services to penetrate different segments of society, it would be inappropriate to involve external actors in scrutinising sensitive and classified activities of the defense and security institutions, while their expertise can be used via other mechanisms.

[55] The amendments allowed, for the current convocation of parliament, opposition MPs without a faction to nominate candidates for Vice-Speaker and Deputy Chairpersons of Committees.

delegations to international bodies. The ruling majority has stated that it remains committed to these power sharing arrangements after they withdrew from the April 19 agreement.

92. The efforts made by the parliament to strengthen parliamentary oversight constitute marked progress. However, it should be emphasised that a well-functioning system of parliamentary oversight depends on a strong parliament, which, in turn, needs strong and diverse political parties that are willing to dialogue and interact and not a priori exclude the possibility of forming coalition governments.

4. Rule of Law

4.1. Reform of the Judiciary

93. In the view of the current ruling majority, the judiciary had been instrumentalised for political, including coercive, purposes under the previous UNM administration. The reform of the justice system, in particular with regard to the independence of the judiciary and efficient administration of justice, are, and continue to be, a key objective for the ruling majority.

94. The reform of the judiciary has, until the time of writing, taken place in four distinct phases, often referred to as four waves of judicial reforms. The first wave of judicial reform, which aimed at depoliticising the High Council of Justice (HCJ) and changing the manner in which it was composed, was adopted on 1 May 2013. This reform, which also strengthened the role of the Conference of Judges and increased the transparency of court proceedings was outlined in the previous report on Georgia[56]. The second wave of judicial reforms mostly aimed at bringing the judicial system in line with the 2013 Constitutional amendments. This reform, which was analysed in our previous report, introduced, inter alia, lifetime appointments of judges following a 3-year probation period[57], separated the disciplinary chamber from the High Council of Justice and further increased the transference of court proceedings.

95. As we outlined in our pervious report, despite these two waves of reforms, considerable deficiencies remained in the Georgian justice system, while also some new concerns materialised, or reforms did not achieve their desired effect.[58]. At the same time, domestic monitors noted that judges themselves have become more independent from the executive, as evidenced by the marked increase in judgements that go against the state[59]. In the reporting period, two additional waves of judicial reforms were implemented with the objective of addressing the remaining deficiencies. However, as we will outline, the shortcomings with regard to the functioning of the High Council of Justice have continued to have a negative impact on the overall functioning of the judiciary and justice system.

96. The 3rd wave of judicial reforms, which consisted of a package of (amendments to) 8 laws was adopted by the parliament on 29 December 2016. This reform package, which was substantially amended during the adoption process, introduced, inter alia, an electronic case allocation system as from 2018. This measure, which was also recommended by the Venice Commission, aims to significantly reduce the role of the court chairman in the assignment process, which made that process vulnerable to interference. This change should therefore be considered an important step forward, although some interlocutors have reported that it is still be possible to bypass the electronic case assignment system, which is denied by both Ministry of Justice and High Council of Justice.

97. This 3rd wave of judicial reform also 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, it maintained this probationary period for all other judges. As mentioned, 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. Regrettably, the reform package does not change the manner in which court chairpersons are appointed, despite proposals to that effect in earlier drafts. Court chairpersons continue to be appointed by the High Council of Justice from a list of candidates proposed by the judges of the court in question. The Venice Commission recommended that the court chairmen be elected for a single term by and from among their peers in the court

[56] Doc. 13588.
[57] In its opinion on these reforms the Venice Commission emphasized that the excessively long 3-year probation period under mined the independence of the judiciary and recommended the probation period to be abolished, or at least significantly reduced to a period not exceeding six months.
[58] See also Transparency International, Assessment of the Georgian Judicial System (2012-2016) Chapters 4 and 5.
[59] Ibid p 18.

98. While welcoming the 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 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.

99. As we mentioned above, the 2017 Constitution contained a number of new provisions with a view to strengthening the independence of the judiciary. In particular, it set the minimum number of Supreme Court Judges to 28 and changed the process for their appointment. In addition, it made the General Prosecutor a constitutionally independent institution that is only accountable to the parliament. A High Prosecutorial Council (HPC), similar to the High Council of Justice, will appoint the Chief Prosecutor. However, given the hierarchical structure inherent to a prosecution service, the HPC will have more limited powers than its equivalent for the judiciary: the HCJ, which has extensive powers in appointing, transferring and disciplining individual judges.

100. In order to further the reform of the judiciary and justice system, a fourth wave of judicial reforms was initiated. While the first three waves were coordinated by the Ministry of Justice, the fourth wave was spearheaded by the Parliament. Disciplinary processes against judges, the mandate of the High Council of Justice, the High School of justice, as well as the length and efficiency of judicial proceedings, were key areas of attention in the fourth wave of judicial reforms.

101. As we mentioned previously, the functioning of the HCJ is of great concern, and remains an important obstacle to the genuine independence of the judiciary and impartial administration of justice. The HCJ is seen as functioning as a corporative body, where a small number of key judges, often referred to as “the clan” is able to control or influence the work of the HCJ and justice system as a whole. External dependence and interference have been replaced by internal dependence and interference. The broad and discretionary powers of the HCJ with regard to the appointment and transfer of judges, as well as with regard to disciplinary processes, are seen as a key mechanism allowing for such control and interference. This is compounded by the fact that the HCJ also appoints the Chairpersons of the Courts, who have considerable powers in the administration of their courts. In addition, the lack of detailed reasoning of HCJ decisions, including with regard to appointments, transfers and dismissals, hinders public oversight and impedes appeals against its decisions.

102. The HCJ consists of judge and non-judge members. The judge members are elected by the conference of judges, while the non-judge members are appointed by the parliament with qualified 3/5 majority. The recent appointment of four judge members by the conference of judges was highly criticised as being non-transparent and mostly aimed at strengthening the position of the above-mentioned group of judges that are often referred to in Georgia as “the clan”. The term of office for 5 out of 6 non-judge members in the High Council of Justice end ended and the parliament should appoint their successors. The appointment of these non-judge members is of utmost importance as they could counteract the stronghold on the control over the judiciary by the so-called “clan”. The manner in which these non-judge members are selected by the parliament is therefore crucial. It should be based on a transparent and merit-based selection process conducted in consultation with the relevant stakeholders, including civil society. In addition, the candidates should be selected based on consensus, or at least have considerable support of the opposition.

103. The High School of Justice (HJS) is the only academic institution in the country for the training of judges. Previous to the adoption of the fourth wave of judicial reforms, the HSJ was under full control of the HCJ, who could set both the number of available places in the HSJ and decide on the selection of candidates, giving it considerable leverage over new judges. It was therefore recommended that the HSJ should be fully independent from the HCJ and allow for a surplus of candidates to be trained, which would widen the number of candidates available for each open vacancy in the judiciary. This was implemented in the fourth wave of judicial reforms which we welcome. However, the High School of Justice remains *de facto* fully subordinated to the High Council of Justice. Four out of the seven members of the Independent Board, which determines the school activities, are elected by the High Council of Justice. Also, the Chairman of the Independent Council is elected by the High Council of Justice of Georgia. We urge the authorities to address this in future reforms.

104. On 22 August 2017 a special working group was established for the purpose of drafting the fourth wave of judicial reforms, which, in addition to MPs from the ruling majority and the opposition, also consisted of representatives of the judiciary, the Ministry of Justice and the Public Defender. The Georgian Bar, as well as civil society and the international community, were also represented in the working group. In a very welcome development, agreement was reached in the working group on 11 June 2019, and the 4th wave of reforms was adopted by the Georgian parliament on 19 December 2019. This 4th wave of judicial reforms, inter alia:

a) establishes clear procedures for disciplinary liability, including with regards to standards of proof and the right of appeal. Moreover, the impartiality of the Independent Inspector will be further strengthened, and an Ethics Commission will be established with the participation of judges;

b) proscribes that all decisions by the HJC on legal appointments and transfers, as well as disciplinary proceedings, are to be reasoned. In addition, with a view to enhancing the transparency of the HCJ, draft decisions and session outcomes will be made public and the composition of the HCJ will be altered to ensure representation from all court instances throughout Georgia;

c) establishes that the High School of Justice and the HCJ will be (more) separated; the programme of the High School of Justice will be modernised, and the stipend of its students doubled. The HCJ will no longer be (solely) responsible for the selection of candidates, with the right of selecting students shifting to High School of Justice;

105. Regrettably, one of the issues not addressed by the fourth wave of judicial reforms is the already mentioned appointment of the Chairpersons of first instance and appeals courts, which continues to be done by the High Council of Justice. We urge the authorities to implement the Venice Commission recommendation that court chairpersons are elected for a single non-renewable term from among and by their peers on each court.

106. On 27 December 2021, in a last-minute procedure the ruling majority tabled a number of controversial amendments to the Law on Common Courts. These amendments considerably increase the powers of the High Council of Judges, whose functioning, as we have outlined, is questionable and detrimental to the independence of de judiciary. It introduces a new, overbroad and discretionary, ground for disciplinary sanctions against judges for "*violating political neutrality by a judge in a public speech*" [60] . This is exacerbated by the new provision that allows the HCJ to decide on disciplinary matters by simple majority instead of the 2/3 majority that was required until now. Of concern is also the amendment that will allow two consecutive terms for HCJ members instead of the single term that was allowed until now. The interdiction for HJC members to serve consecutive terms was widely regarded as one of the few safeguards against the concentration of powers and excessive corporatism within the HCJ. These amendments were adopted in a hasty non transparent fashion[61] without consultation with the main stakeholders and civil society, which raises questions with regard to their objectives and adherence with European norms and standards. It is important that the Venice Commission will provide and opinion on these amendments and that its concerns and recommendations are addressed without undue delays by the Georgian parliament.

107. As outlined in, much progress has been made in the four waves of judicial reforms, nevertheless a number of, sometimes key, recommendations of the Venice Commission where not implemented, and in other cases the reforms did not give the desired results, the reform of the High Council of Justice being a point in case in this respect. This affects the independence of the judiciary and public trust in this important institution. In the 19 April agreement the political parties therefore agreed to implement an independent evaluation of the 3rd and 4th waves of judicial reforms, with a view to identifying areas of success, as well as remaining shortcomings and areas where the reforms have not achieved the expected results. In the context of the polarised political climate, it is important that this evaluation is carried out by independently from the authorities and political stakeholders to avoid that it could become instrumentalised for narrow political purposes. In our view the Venice Commission could play a key role in such an evaluation, as long as its independence is guaranteed, its scope clearly defined, and all stakeholders commit themselves to implementing the recommendations resulting from it.

4.2. Reform of the prosecution Service

108. Despite the many reforms that have been implemented, the Prosecution service is still very much the dominant actor in the justice system. However, in a welcome development, statistics show that the acquittal rates have gone up considerably and courts are increasingly seen as being more independent and less deferring to the Prosecution service. That notwithstanding, the functioning of the prosecution service, and especially its functional independence from the interest of the ruling majority, have continued to raise concerns

[60] *Originally the proposal had been "the expression of an opinion by a judge contradicting the principle of balanced approach and moderation, or in breach of the principle of political neutrality*".

[61] At no moment was the possibility of such amendments raised by the Georgian Dream representatives during our visit to Tbilisi which took place only a couple of weeks before the amendments were tabled, despite the fact that the issues of independence of the judiciary and political control over judicial institutions were main focal points of our discussions.

during the reporting period. This has been compounded by the tense political environment. In a number of cases, especially politically sensitive cases, the actions – and their timing – of the prosecution service with regard to the charges brought, pre-trial detention requested, arrests ordered, and investigations started, have raised questions of possible political motivation and instrumentalization of the prosecution service.

109. The reform of the prosecution with a view to ensuring its de-politicisation and independence from any external influence or interference in its work has therefore been an important priority, including for the authorities. This was also underscored by the fact that the reform of the prosecution service, was also one of the main priorities in the visa liberalisation action plan between Georgia and the EU.

110. In between the constitutional reforms of 2010 and 2017, the Prosecutor General was subordinated to the Ministry of Justice. As mentioned, the Constitutional amendments of 2017 re-established the institution of a fully independent Prosecutor General and prosecution service. In 2015, amendments to the Law on the Prosecution Service were adopted by the Georgian Parliament established a Prosecutorial Council and changed the appointment process of the Prosecutor General. Both Prosecutorial Council and appointment procedure were further reformed as a result of the 2017 Constitutional amendments. According to the new Constitution, which went into force when President Zurabishvili was sworn in on 18 December 2018, the Prosecution Service has become an independent, centralised, and hierarchical service led by the Prosecutor General, who is elected by, and accountable to, the Parliament.

111. On request by the Monitoring Committee, the Venice Commission prepared an opinion on the legal rules for the High Council of Justice and the Prosecutorial Council[62]. This opinion was adopted by the Venice Commission at its plenary session on 14 and 15 December 2018.

112. According to the Constitution, the role of the Prosecutorial Council is to ensure the independence, transparency, and efficiency of the Persecutors Office. Its composition has been revised and, in a welcome development, the Minister of Justice is no longer a member and ex officio Chair of the Council. The Prosecutorial Council will select the candidate for the Prosecutor General that will be sent to the Parliament for appointment. In order to be nominated, a candidate needs to receive the support of a 2/3 majority of the full composition of the Prosecutorial Council, which is to be welcomed. At the same time, the 2/3 majority requirement could potentially lead to deadlocks and the inclusion of an anti-deadlock mechanism in the law is therefore recommended by the Venice Commission. Furthermore, in its opinion on the Constitutional reforms, the Venice Commission recommended that the law provide for a qualified majority for the election of the Prosecutor General by parliament. However, this was not implemented[63].

113. In the view of the Venice Commission, the composition of the Council is not the most suitable to fulfil its Constitutional role. It noted that, the fact that it consists of a majority of Prosecutors elected by their peers ensures the required expertise of the Council, but not necessarily the public trust in its independence, especially given the strict hierarchical nature of the prosecution service set out in the Constitution. The Venice Commission therefore recommended that its membership be broadened, possibly with representatives of civil society[64].

114. The Law on the Prosecution Service gives the Prosecutor General full discretion and control over the careers of individual prosecutors, which could affect their independence. The Venice Commission has therefore suggested that the Prosecutorial Council be given a shared role and competences with regard to promotions and transfers of individual prosecutors[65]. This would be consistent with the fact that the Prosecutor General is elected by the Parliament upon nomination by the Prosecutorial Council.

115. In a centralised and hierarchical prosecution service, an appropriate level of internal independence of the individual prosecutors needs to be legally secured. A minimum set of guarantees should be: the obligation of the superior prosecutor to provide instructions in written form; the right and duty of the subordinated prosecutor to express dissenting opinions and to draw attention to the illegality of instructions received; as well as the right to be reassigned in case the prosecutor in question cannot execute an instruction out of

[62] CDL-AD(2018) 029 Opinion "On the provisions on the prosecutorial council in the draft organic law on the prosecutor's office and on the provisions on the high council of justice in the existing organic law on general courts."
[63] The authorities have argued that this recommendation was not absolute as the Venice Commission had stated that "…the election of the Chief Prosecutor by a qualified majority of Members of Parliament may not be needed if the Council has the necessary independence to avoid too much political interference and if several other guarantees are in place." [our underline] (CDL-AD(2015)039 § 24). However, from the rest of the opinion it is clear to us that appointment by qualified majority is recommended by the Venice Commission, while it can be questioned if the conditions in § 24 of that opinion indeed are in place.
[64] CDL-AD (2018) 029 § 55.
[65] Ibid.

professional or personal conscience and conviction. The Venice Commission has recommended that Prosecutorial Council will be given a formal role in ensuring these guarantees.

116. On 18 February 2020, the parliament appointed Mr Irakli Shotadze, who had been proposed by the Prosecutorial Council, as Prosecutor General for a non-renewable 6-yer term. His appointment stirred some controversy, as he had previously been Prosecutor General and had resigned over the handling of a murder of a youth by three other youths – one of them a family member of the General Prosecutor's Office – during a fight in Tbilisi in November 2017, that led mass protests and demonstrations.

117. In the 19 April agreement the ruling majority and opposition parties committed themselves to introduce constitutional amendments that would introduce the appointment of the Prosecutor General by the parliament by qualified majority, but with an anti-deadlock mechanism, in line with the recommendation by the Venice Commission in its opinion on the legal rules for the High Council of Justice and the Prosecutorial Council[66]. However, the agreement also stipulated that any appointment pursuant to the anti-deadlock provision would be valid to one year only. This later provision has proven to be controversial among a number of stakeholders, including the office of the Prosecutor General itself, who have argued that a one-year appointment[67] of the Prosecutor General would undermine their independence, and could result in many suitable candidates to reconsidering applying for this position[68]. As a result, after the 19 April agreement broke down, the ruling majority withdrew its support for this provision which was subsequently withdrawn when to constitutional amendments to implement the 19 April agreement were adopted in first reading on 7 September 2021. In our view it is important to separate the issue of appointment by qualified majority from the more controversial issue of limiting the term of those that are appointed pursuant to the anti-deadlock mechanism. We therefore urge the ruling majority to introduce, and all political parties to support, the necessary constitutional amendments to appoint the Prosecutor General with a qualified majority, with an anti-deadlock mechanism and to reflect on the issue of the term of appointment for those judicial officials appointed pursuant to the anti-deadlock mechanism in the context of the independent evaluation of the 3rd and 4th waves of judicial reform that we outlined in the previous section.

4.3 Law on Administrative Offenses

118. As mentioned in the previous report to the Assembly, the excessive use of pre-trial detention in Georgia has been an area of concern. Excessive requests for pre-trial detention and its renewal by the prosecution, on grounds beyond of what is strictly permissible by the European Convention of Human Rights, combined with a largely prosecution driven criminal justice system and weak control of the courts over its use, led to an excessive application of pre-trial detention and made it vulnerable for abuse[69]. A number of reforms and initiatives were adopted to address this issue, which resulted in a marked lowering of the use of pre-trial detention[70]. In particular, alternative methods of restraint such as house arrest and electronic monitoring were introduced as part of the liberalisation of the justice system in 2015. However, the number of persons detained on remand per 100.000 inhabitants is still very high, with Georgia ranking in the top 25% in comparison to other Council of Europe members states[71]. More and continuous efforts are needed to satisfactorily address this issue, including a change in culture about the use of pre-trial detention within the prosecution service itself.

119. Closely related to the issue of pre-trial detention is the use of administrative detention in Georgia. The Georgian law on Administrative Offenses dates from the Soviet era and its complete revision is long overdue. Many of its provisions have already been judged as unconstitutional by Georgia's Constitutional Court, while reportedly several other provisions would suffer the same fate if challenged before it. As a result, the legal framework allows for overbroad application of administrative detention, as well as excessively high fines, and is vulnerable to abuse. The problems with the law are widely recognised by the authorities who informed us last visit that they intended to propose a draft for a completely new law on Administrative Offences, immediately after the 2020 parliamentary elections.

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[66] CDL-AD(2018) 029.

[67] They have argued that in the current polarized political climate its is very likely that the next Prosecutor General will be appointed pursuant to the anti-deadlock mechanism.

[68] Constitutional provisions limit the appointment of a Prosecutor General to one, non-renewable term.

[69] See also Resolution 2077 (2015) of the Assembly and Doc 13863 on the "Abuse of pre-trial detention in States Parties to the European Convention of Human Rights".

[70] According to the World Prison Brief of the Institute for Crime & Justice Policy Research of the University of London, the number of persons in pre-trial detention per 100.000 persons in Georgia fell from 61 in 2010 to 49 in 2019, https://www.prisonstudies.org/world-prison-brief-data.

[71] Sometimes the number of pre-trail detainees is given as percentage of the total prison population, in which Georgia ranks rather low in comparison to other Council of Europe member states. However, it should be noted that Georgia still has one of the highest imprisonment rates in Europe (see https://www.prisonstudies.org/world-prison-brief-data).

120. However, on 29 April 2021 the parliament adopted a series of controversial amendments to the Law on Administrative Offences. These amendments, inter alia, considerably increase the penalties for repeated hooliganism and disobeying the police and expand the duration of administrative detention. These amendments have been criticised by the opposition and civil society, as well as international community, as running counter to the principles of freedom of expression and assembly.

121. Adopting amendments that affect such sensitive areas as freedom of expression and assembly into a law that is widely considered as overall deficient and inadequate, cannot be considered good law-making. The authorities should withdraw these amendments and instead focus on the drafting of the completely new the law on administrative offences, should be adopted expediently and without undue delays.

4.4. Reform of the Constitutional Court

122. On 27 April 2016, the Georgian parliament adopted in its first reading a package of amendments to the organic law on the Constitutional Court and the law on Constitutional legal proceedings. These amendments aimed, intern alia, to change the manner in which the President of the Constitutional Court is elected, the provisions regarding the end of term of office of Constitutional Court Judges, increased the competencies of the plenary over those the board of the Constitutional Court and changed the quorum and majority for decision taking in the plenary. These amendments were proposed against the backdrop of a series of Constitutional Court judgements which went against the interest of the authorities, who had been highly critical of them. This led to allegations that these amendments were proposed in retaliation for these decisions and aimed at reducing the powers of those Court judges that had been appointed under the previous UNM authorities. These fears were compounded by the fact that these amendments were adopted very hastily[72] and without proper consultation with all stakeholders. On 19 May, these amendments were sent to the President of Georgia for his signature. On 20 May 2016 the President requested an urgent opinion from the Venice Commission, who published a preliminary opinion on 27 May 2016. This opinion[73] was later endorsed by the plenary of Venice Commission on 10 and 11 June 2016.

123. The amendments allow a minimum of three judges of the Court to present a candidate from their midst for the position of Chairman of the Court. Before the amendments were adopted, this candidate was proposed on the basis of a joint agreement between the President of Georgia, the Speaker of the Georgian Parliament, and the President of the Supreme Court. The new election formula increased the role and choice of the Constitutional Court Judges and was welcomed by the Venice Commission, which recommended to extend this formula to the election of the Vice-Presidents of the Constitutional Court. The Commission also welcomed the introduction of an automatic case distribution system for the Constitutional Court and the immediate publication of decisions, including any dissenting and concurring opinions, on the website of the Court and in the Official Herald, as well as the clarification that Court decisions will take effect upon their publication on the website of the Constitutional Court.

124. 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, which was one of the main objectives of these amendments. Until the adoption of the amendments, judges were allowed to finalise ongoing cases after the end of their term, which prevented the new judges from taking up their function[74]. The Venice Commission recognised the need to avoid a situation whereby judges would sit beyond their constitutional term and it found that it would be acceptable to end the mandate of sitting judges even if their cases have not been finalised, as long as it was ensured that the new judge would be appointed immediately. This would be required in order to ensure that the Court would continue to have the quorum to make decisions.

125. The amendments increased the types of cases that can only be heard by the plenary (full bench) of the Constitutional Court, instead of by a bureau (normal bench). At the same time, they make it easier for individual judges to refer cases to the plenary and make it more difficult for the plenary to send these cases back to the bureau. The Venice Commission noted that the combined effect of these changes would make it more difficult for the Constitutional Court to fulfil its main task to identify and remove unconstitutional provisions from the legislation[75]. It expressed its concern regarding the amendment that requires that all decisions in the plenary be taken by at least 6 judges, which is excessive for a 9 judge Court. The Venice Commission recommended that this quorum be lowered, and that the provision whereby a single judge could refer a case to the plenary,

[72] The amendments were adopted in first reading on 27 April 2016, in second reading on 13 May 2016 and on 14 May 2016 in final reading.
[73] CDL-AD(2016)017.
[74] The exact number of Constitutional Court judges is defined by law.
[75] CDL-AD(2016)017, § 47.

be amended in order to avoid that this could be abused. In addition, it recommended that a simple majority of the plenary should be able to reject such a request without the need to provide a motivated decision.

126. On 31 May 2016, the President of Georgia vetoed the amendments and proposed a number of changes as compromised which addressed several recommendations of the Venice Commission. His suggestions were taken over by the parliament and the revised amendments were adopted by the parliament on 3 June 2016.

127. Further reforms were implemented in 2018 which, inter alia, increased the parliamentary quorum for election of Constitutional Court Judges and harmonised legislation regarding Constitutional Court proceedings by combining all regulations in a single organic law.

4.5 Supreme Court

128. Following the coming into force of the new Constitution on 18 December 2018, the Supreme Court grew in size from a minimum of 16 to a minimum of 28 judges. In addition, the Supreme Court judges are no longer to be elected by the parliament upon proposal of the President of Georgia for a period of 10 years, but by the parliament upon the nomination of the High Council of Justice for a lifetime term. In addition to the 12 judges that needed to be appointed to cover the growth from 16 to 28 judges, the existing Supreme Court had 5 vacancies and 2 judges were to retire soon. An appointment procedure, in line with the new legal provisions was therefore started at the end of 2018. This appointment procedure proved to be highly controversial and indicative for the deficiencies in the functioning of the High Council of Justice, as well as for the continuing politicisation of the leading bodies of the judiciary. These deficiencies were compounded by the fact that, due to the high number of vacancies, the current ruling majority would be in a position to elect the vast majority of judges for the Supreme Court for a life-long appointment, and therefore cement its composition for the next 20 to 30 years, which is problematic in the context of the polarised political climate in Georgia[76].

129. The appointment process for Supreme Court judges consists of two phases, the selection of candidates by the High Council of Justice and the appointment of the judges by the parliament from the list of candidates proposed by the HCJ.

130. On 24 December 2018, the High Council of Justice presented an initial list of 10 candidates for Supreme Court judges to the parliament. This list was highly controversial, and the nomination process was criticised by a wide range of actors, including the Public Defender (Ombudsperson) of Georgia and civil society organisations, who denounced, inter alia, the lack of transparency of the selection process and the absence of clear and uniform selection criteria. This criticism was also shared by several law makers of the ruling majority, including the then Chair of the Legal Affairs Committee of the Georgian Parliament, Eka Bisellia. On 26 December 2018, in response to the public outcry, the parliament suspended the consideration of the list of candidates. On 22 January, all 10 candidates called upon the parliament to no longer consider their nominations.

131. Bowing to the severe criticism of to the procedures followed, the parliament agreed, on 12 January 2019, to amend the legal framework for the appointment of Supreme Court judges and, on 11 March 2019, the Speaker of the Georgian parliament asked the Venice Commission to prepare an urgent opinion on the selection and appointment of Supreme Court Judges. The urgent opinion[77] was endorsed by the Venice Commission during its plenary on 21 and 22 June 2019.

132. In this opinion, the Venice Commission welcomed the open and inclusive selection and appointment process foreseen by the legislation but considered that it contained number of very important shortcomings that undermine a merit based and transparent process:

a) the process is vulnerable to politicisation;
b) lacks guaranties that the candidates are selected on uniform, objective merit-based criteria
c) lacks guaranties against arbitrary decision making as decisions are based on secret vote and do not need to be reasoned;
d) lacks proper guarantees against conflicts of interest.

133. Therefore, while much more open than before, the transparency of the proposed appointment process still left much to be desired.

[76] Some interlocutors noted in this respect that, in line with Constitutional Provisions, the Supreme Court nominates 3 of the 9 judges on the Constitutional Court.
[77] CDL-AD(2019)009.

134. With regards to the selection process, the Venice Commission therefore urged the authorities to ensure that, inter alia:

a) the decisions on the selection and career of judges are based on objective criteria pre-established by law;
b) the criteria for non-judge candidates for the Supreme Court are not unduly restrictive;
c) the background checks of candidates are conducted by more than one HJC member; and to ensure that these checks are not arbitrary or subjective;
d) abolish the secret ballots by the HCJ for the shortlist and final list of candidates;
e) oblige the HJC to ensure that its decisions are reasoned, transparent, based on publicly known criteria, and allow the candidate to appeal against a decision not to nominate him or her. In general, the Venice Commission recommended that the selection process should lead to a pool of eligible candidates, which would then be ranked based on the (public and reasoned) scores the candidates have obtained in the selection process.

135. In light of the fact that the appointment procedure would potentially allow the then (and current) ruling majority to cement the Supreme Court composition, the Venice Commission therefore recommended that only the minimum number of judges necessary for the court to function correctly would be appointed in first instance and that the appointment of the remainder of the judges would be postponed until after the 2021 parliamentary elections. In addition, it recommended that the Parliament consider the appointment for life of the currently sitting judges in order to avoid a series of additional vacancies.

136. Regrettably, while a number of recommendations of the Venice Commission were addressed, several others, including the most essential ones, were not implemented

137. On 5 September 2019, the HJC nominated 20 Supreme Court candidates for parliamentary approval. The interviews with the prospecting candidates were broadcast live on the internet, which improved the openness of the procedure and was a welcome improvement. However, the selection process was criticised by the OSCE/ODIHR, who had monitored the selection process on request of the Georgian Public Defender, as well as by civil society organisations that observed the selection process. They noted with regret the continued use of secret votes to first shortlist and then later select candidates, as well as the frequent clashes between the judge and non-judge members on the HJC that had marred the process.

138. In its report[78], the OSCE/ODIHR monitors highlighted the lack of clear and uniform selection criteria, excessive discretion by High Council of Justice members when it comes to who is selected, and a failure to provide reasoned decisions for both the establishment of the shortlist and the final selection of candidates. The use of secret voting also considerably undermined the transparency of the process. In addition, civil society organisations highlighted conflicts of interests and raised questions regarding the qualifications of some candidates selected by the High Council of Justice which seemed to indicate the existence of preconceived decisions and collusion between at least some of the candidates and members of the HCJ.

139. Most, if not all, of the shortcomings noted could have been avoided if the authorities had fully implemented all recommendations of the Venice Commission, contained in its urgent opinion on the selection and appointment of Supreme Court judges Despite recommendations not to appoint the judges amid a political crisis, the Georgian parliament adopted, on 13 December 2019, 14 out of the 19 candidates for Supreme Court Judge. Regrettably the process in the parliament, albeit open and conducted in public, was of serious concern and hampered by the same shortcomings as the process in the HCJ. The appointments were decried by civil society, and regretted by the international community, including by us[79].

140. OSCE/ODIHR, who also observed the appointment process in the parliament, issued its second report[80] on its monitoring of the processes in the HCJ and parliament on 15 January 2020. The selection process was deemed to have been mostly based on political affiliations and connections, not on merits. It was extremely politicised, and MPs had excessive discretion in their choices, which they neither reasoned nor substantiated.

141. In the summer of 2020, the outgoing parliament drafted amendments to the Law on the Common Courts to address the reported shortcomings. In its opinion[81] on these amendments, the Venice Commission welcomed the more transparent and inclusive nomination process outlined in the law and the obligation to provide written reasoning for each decision. However, the Venice Commission continued to question why a vote on the candidate list should take place at all, given that such a vote could alter the ranking of the

[78] OSCE/ODIHR, report. See also https://www.osce.org/odihr/443500 ODHIR, press release, 9 January 2020.
[79] Statement by co-rapporteurs, 13 December 2019.
[80] ODHIR, report. See also ODHIR press release, 9 January 2020.
[81] CDL-AD(2020)021.

candidates based on their interviews, as HCJ members were not obliged to vote in compliance with the evaluation scores. In addition, while the votes were no longer secret, the votes by the individual HCJ members were not to be published and revealing these votes by others could result in criminal liability for the person doing so. As a result, public scrutiny of the votes of individual HCJ members, or appealing a decision, would be neigh impossible. The Venice Commission therefore recommended that the law would explicitly allow for "*the disclosure, together with the votes and reasonings, of the identity of the members of the HJC who cast the relevant votes*"[82]. In addition, the Venice Commission recommended that the law would allow for a second and final appeal against a HCJ decisions. Regrettably, the Georgian parliament did not wait for the Venice Commission opinion before adopting the amendments, although it was aware that not all recommendations of the VC were addressed.

142. Further amendments to the appointment process of the Supreme Court Judges were adopted on 1 April 2021. In its opinion[83] on these new amendments the Venice Commission welcomed that that the law now makes it explicit that only those candidates that have obtained the best results according to the evaluation process are shortlisted and that the provisions of non-disclosure of the vote of individual HCJ members have been removed. The law now also explicitly states that the failure to provide the vote and its reasoning by an HCJ member upon request by the HCJ will disqualify this member from the entire selection procedure. Nevertheless, the vote on the final list to be sent to the parliament has been maintained, which seems contrary to a merit-based selection process. Lastly the Venice Commission recommended that the ongoing selection process would be restarted from the beginning as maintaining it would mean that candidates are treated on a mix of old and new rules, undermining the equality of treatment of the candidates.

143. Regrettably, despite calls from the international community to restart the selection procedure, on 17 June 2021, the High Council of Justice presented a list of nine candidates for Supreme Court Judges and on 12 July the Georgian parliament appointed 6 of the 9 High Council of Justice candidates to the Supreme Court of Georgia. This decision was widely decried by the international community as well as domestic stakeholders.

144. On 24 August the OSCE/ODIHR published its fourth monitoring report on the nomination and appointment process of the Supreme Court Judges [84]. In this report the OSCE/ODIHR concluded that, despite benefiting from improved transparency and accountability, and despite being well organised, the appointment process was marred by deficiencies in the process and a lack of equal conditions that undermined the credibility and integrity of the appointment process. It noted that, while the hearings before the HCJ had been transparent, the selection process had been characterised by *"variations in conditions, lapses in decorum, internal divisions on the HCJ and serious conflicts of interest*". With regard to the parliamentary appointment process the ODIHR noted that the process is vulnerable to politicisation and manipulation as it gives the parliament full discretion to appoint or reject any nominee without having to adhere to any criteria and without having the need to justify the decision. This was highlighted by the fact that the Legal Affairs Committee's report to the plenary lacked a reasoning for the choice of candidates selected. The vote in the plenary took place with most of the opposition parties boycotting the vote in protest of the continuation of the appointment process. ODIHR regretted the decision of the ruling majority to maintain the vote under these conditions as this challenged the inclusiveness of the appointment process and undermined the public trust in the appointments.

145. Regrettably despite the widespread expressions of concern the High Council of Justice nominated, on 12 November 2021, another three candidates for the vacant Supreme Court judge positions which were appointed by the parliament on 1 December 2021. These developments raise questions about the sincerity of the ruling majority with regard to the reform of the appointment procedure for Supreme Court Judges, as well as with regard to reforming the functioning of the HCJ as such and give credence to the allegations that the ruling majority would intend to cement its political control over the Supreme Court, and with that over a large swath of the judiciary.

146. The appointment of the Supreme Court Judges has revealed the continuing shortcomings in the functioning of the HCJ that, despite the many reforms, remains one of the main obstacles to a genuinely independent and impartial judiciary. Far reaching reforms of the High Council of Justice, based on the independent evaluation of the recent waves of reforms that we have outline in the previous section therefore remain necessary and should be a priority in the continuing reform process of the judiciary.

[82] CDL-AD(2020)021 § 24.
[83] CDL-PI(2021)007.
[84] https://www.osce.org/odihr/496261.

4.6. *Fight against corruption*

147. With regard to the fight against corruption, Georgia is often rightfully cited as an example for the region. While low level corruption has been mostly irradicated, problems, especially with regard to high level corruption remain. Georgia scored 56 out of the 100 points in the 2019 Transparency International Corruption Perception Index[85], which ranks the country number 44, together with Latvia and the Czech Republic, out of the 180 countries surveyed by Transparency International. In its 2019 Freedom in the World report, Freedom House noted that "*While the country has made significant progress in combating petty corruption, corruption within the government remains a problem. In some cases, it has allegedly taken the form of nepotism or cronyism in government hiring. Effective application of anticorruption laws and regulations is impaired by a lack of independence among law enforcement bodies and the judiciary, and successful cases against high-ranking officials who are on good terms with the Georgian Dream leadership remain rare"* [86].

148. On 22 March 2019, GRECO adopted its compliance report with regard to Georgia in the framework of the fourth evaluation round, which covers prevention of corruption in respect of members of parliament, judges and prosecutors[87]. In its report, GRECO welcomes the improvements made regarding the transparency of the legislative process and the prevention of corruption among members of parliament. However, it regrets the absence of clear rules with regard to public consultation for draft legislation, as well as the lack of more comprehensive rules for the disclosure of conflicts of interest. In addition, GRECO stresses the need for more practical, and binding, rules with regard to the code of ethics for members of parliament. It concluded that, at the time of adoption of the compliance report, the country had only satisfactorily implemented 5 out of the 16 recommendations of GRECO contained in its 4th round evaluation report. In addition, Georgia had partially implemented 8 recommendations and not implemented three recommendations at all. It should be noted that the compliance report was adopted before the agreement on the fourth wave of reforms was reached and before it could assess the implementation of the 2018 law on the Prosecution Service, which is relevant for the recommendations by GRECO.

149. Also, with regard to other evaluation rounds of GRECO, a number of recommendations remain to be addressed by Georgia, somewhat in contradiction to its image as being in the vanguard of combatting corruption. In its second addendum to the second compliance report with regard to the third evaluation round[88] – adopted in March 2018[89] GRECO concluded that only 9 out of 15 recommendations have been fully implemented, while the other 6 are only partly implemented.

150. On 1 January 2017 the provisions in the Law of Georgia on Conflict of Interest and Corruption in Public Institutions that established a monitoring system of the public officials' asset declarations entered into force. In addition, the authorities are consider introducing whistle blower protection for persons inside and outside the public sector, which would be an important anti-corruption mechanism. As highlighted in previous reports Georgia's extensive, and exemplary Public Service Hall system, is an important tool to counter corruption as well as to provide public services efficiently and effectively.

151. While the success in the fight against corruption in Georgia is undeniable, continued and further efforts remain necessary, especially with regard to high level corruption and the independence of the judiciary, which is indispensable for the fight against corruption. We encourage Georgia to promptly implement the remainder of the recommendations formulated by GRECO in its various evaluation reports.

4.7. Final Remarks on the Rule of Law

152. Georgia has in general a good track record in the implementation of judgments of the European Court of Human Rights. Of the 127 judgments against Georgia since it became member of the Council of Europe, the execution of 81 of them has been closed by final resolution by the Committee of Ministers. In 2019, a total 11 new judgements of the ECHR were transmitted for supervision to the Committee of Ministers. The main judgments that are still under enhanced supervision[90] by the Committee of Minsters deal with actions of

[85] Transparency International, Corruption Perceptions Index 2019.
[86] Freedom House Georgia (2019).
[87] GRECO Fourth Evaluation Round, Compliance Report.
[88] On incriminations provided for in the Criminal Law Convention on Corruption; its Additional Protocol and Guiding Principle 2; as well as on Transparency of Party Funding with reference to the Recommendation of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.
[89] GRECO Third Evaluation Round, Second Compliance Report, Second Addendum.
[90] Supervision procedure for cases requiring urgent individual measures, pilot judgments, and judgments revealing important structural and / or complex problems as identified by the Court and / or by the Committee of Ministers, and interstate cases. This procedure is intended to allow the Committee of Ministers to closely follow progress of the execution

security forces, lawfulness of detention and the use of restrictions on rights for illegitimate purposes, as well as freedom of religion and freedom of assembly and association.[91] Two key cases against Georgia which created substantial interest, and controversy, in Georgia were the case Merabishvili vs Georgia[92] and the case of Rustavi 2 Broadcasting Company Ltd and others v. Georgia[93]. We will discuss these two cases in more detail in the next section of our report.

153. Georgia has continued to make considerable progress with regard to the respect for the rule of law and independence of the judiciary. However, further and continuous efforts are necessary to ensure a genuinely independent and impartial judiciary. This is in particularly true for the High Council of Justice, which functioning, despite the many reforms, continues to be an obstacle for a genuinely independent and impartial judiciary. Without wishing to comment on individual cases, the instrumentalization of the judiciary as well as attempts to discredit the justice system and judiciary for political purposes by ruling majority or opposition are of concern and need to be addressed. We welcome the reforms and legislative initiatives adopted, and efforts displayed by all stakeholders, but also wish to underscore that the efficacity of the reforms – and as a result the consolidation of a genuinely independent and impartial judiciary – will equally depend on their prompt and consistent implementation, and a change in attitude and behaviour by all stakeholders concerned.

5. Human Rights

5.1. Freedom of the Media

154. Georgia has continued to make progress with regard to the freedom of the media in the reporting period. Barriers to the entry into the media market, including with regard to obtaining broadcasting licenses, have been considerably lowered as a result of the reforms implemented. However, shortcomings continue to exist which should be promptly addressed by the authorities.

155. The media environment in Georgia reflects the political environment and is highly politicised, both reflecting and contributing to the polarised political climate in the country. Most private channels reflect the economic interest and political preferences of their owners. Media representatives and experts have pointed out that the advertisement market in Georgia is too small for the number of private media outlets that exist. As a result of this, business interests and constraints are sometimes falsely projected as media freedom issues.

156. In its freedom of the press report in 2016, Freedom House conclude that "*Georgia continues to have the freest and most diverse media environment in the South Caucasus, though political polarisation and close links between media companies and politicians continue to negatively affect the sector.*". As a result of these findings Freedom House classified Georgia as partially free with regard to press freedom.[94] In its 2018 Nations in Transit report[95] Freedom House lowered Georgia's score for independent media from 4.00 to 4.25 as a result of politicised editorial policies of the Public Broadcaster, ownership consolidation among pro-governmental broadcasters and the developments around Rustavi 2 which we will outline below. Reporters without borders ranked Georgia 60 in the 2019 Press Freedom Index which was one place up from 2018, although its score was worse than in the previous year. Its report echoed the Freedom House conclusions stating that "Georgia's media landscape is pluralist but still very polarised"[96].

157. The impartiality of the Georgian Public Broadcaster during elections campaigns, and especially during the 2018 Presidential elections has been questioned. The OSCE/ODIHR election observation mission for the Presidential elections noted that that the public broadcaster displayed a clear bias against the UNM candidate and in favour of the candidate backed by the ruling majority, in violation of its legal obligations regarding editorial independence and impartiality[97]. This raises questions about the independence of the Public Broadcaster, which needs to be strengthened. Regrettably the role of the media regulator, the Georgian National Communications Commission (GNCC), which, inter alia, oversees the media during the election campaign, was also controversial and perceived as biased during the election campaign. The neutrality of the media regulator is an essential prerequisite for a genuinely democratic society. We encourage the Georgian parliament to explore possible additional measures to further strengthen the independence of the GNCC.

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of a case, and to facilitate exchanges with the national authorities supporting execution (Department for the execution of judgements of the ECHR).

[91] Department for the execution of judgements of the ECHR: country factsheet Georgia.

[92] Application no. 72508/13.

[93] Application no. 16812/17.

[94] https://freedomhouse.org/report/freedom-press/2016/georgia.

[95] Freedom House, Nations in Transit, 2018.

[96] Reporters Without Borders, World Press Freedom Index 209: Georgia.

[97] International Election Observation Mission, Statement of Preliminary Findings and Conclusions, Second Round of the Presidential Elections in Georgia.

158. A key issue for the Georgian media has been the issue of hate speech. According to legal provisions, outside the electoral period, content regulation including with regard to hate speech, takes place through individual self-regulatory mechanisms set-up by each broadcaster to regulate itself. The fact that content control and oversight depend on the willingness of each broadcaster to voluntarily regulate itself is, in the view of the GNCC, not satisfactory and should be transferred to a special regulatory body. This is a very sensitive issue. While some form of content oversight and regulation may be necessary, especially with regard to hate speech and issues relating to national security, in the context of the highly politicised media environment and the perceived bias of the media regulator, we would strongly encourage the authorities to seek Council of Europe expertise when drafting any legislation regarding media content regulation.

159. On 18 July 2019, the European Court of Human Rights delivered its judgment in the case of Rustavi2 Broadcasting Company against Georgia[98]. Rustavi 2 is one of Georgia's largest broadcasters. It was closely linked to the United National Movement and former President Saakashvili and, in general, very critical of the current authorities and their policies. Since 2003, its ownership has changed hands many times, often in less than transparent and controversial deals.[99] However, most shareholders have been reported to be close allies of former President Saakashvili,[100] including the then 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,[101] but, until a couple of years ago, no formal civil claims had been filed with the courts to contest ownership. This changed when,[102] 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.

160. 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. Rustavi2 then appealed to the Supreme Court of Georgia. On 2 March 2017, the Supreme Court ruled in favour of Mr Khalvashi.

161. 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[103], 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. 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.

162. On 18 July 2019, the court delivered a chamber judgment in this case. In its judgment the Court decided by 6 votes to 1 that there had been no violation of Art 6 § 1 (right to a free trail by an independent court) relating to the judge deciding the case in the first instance, and unanimously ruled that there had been no violation of Art 6 § 1 in the process before the appeals court. In addition, the Court ruled that there had been no violation of article Art 6 § 1 with regard to the composition of the bench deciding the cassation proceedings in the

[98] Application no. 16812/17.
[99] http://www.transparency.ge/node/3266.
[100] Civil Georgia 16 November 2015.
[101] On 9 August 2015, two co-founders, and previous owners, of Rustavi 2 issued a statement backing the legal procedures filed by Mr. Khalvashi. They claimed that also they were forced to relinquish ownership under duress. Following the ECtHR decision Mr Khalvashi offered them 40% of the Rustavi 2 shares which they refused claiming that they wished to regain ownership via legal means to avoid "turning Rustavi 2 in a state-owned channel".
[102] 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.
[103] 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.

Supreme Court. These judgments relate to the claim by Rustavi 2 that the judges that had been hearing this case at all levels had lacked impartiality and independence. The Court found that, in all but one of the cases, allegations of bias had been unsubstantiated or unconvincing, while in the one case where there had been a risk of bias "*the Supreme Court has extensively assessed these risks and convincingly dissipated them in a thoroughly reasoned ruling*"[104].

163. It is important to note the rather harsh criticism of the Court[105] with regard to what it considered the repeated attacks by Rustavi 2 and its Director General on judges hearing the case in Georgia. The Court considered that these attacks were made with no other reason than to provoke these judges, "*artificially create conditions for their recusal,*"[106] and to paralyse the administration of justice in general. In that context, the Court stressed that it had not found any manifest errors of assessment in the reasoning of the Supreme Court's judgement in this case and that the principle of a fair hearing, including equality of arms and adversarial nature, had not been infringed upon. With regard to the alleged violations of other articles of the Convention, the Court unanimously found that the complaints of violations of Art 10 (freedom of expression), Article 1 of Protocol 1 (protection of property) and article 18 (limitation on the use of the restrictions on rights) had been manifestly ill-founded, including "*in particular the allegation that the proceedings had been a State-led campaign to silence the television channel*".[107]

164. Following its decision, the Court lifted the temporary measures and the ownership of Rustavi2 was transferred to Mr Khalvashi. Mr Khalvashi fired Director General Nika Gvaramia and appointed Paata Salia as his successor. On 9 August 2019, the Prosecutor's Office formally charged Nika Gvaramia over abuse of power and criminal mismanagement of Rustavi2, resulting in considerable losses for the latter. He was subsequently released on bail. The charges against him were denounced by a number of civil society organisations as potentially politically motivated. On 10 September 2019, a new television station, set up by former Rustavi2 Director Gvaramia, and staffed by former news anchors of Rustavi2, went on air with a decidedly pro-opposition editorial line resembling that of Rustavi2 under Mr Gvaramia's leadership. The speed and ease with which this new station was established highlights the low entry barriers into Georgia's media market.

165. We wish to underscore the importance of a pluralist media environment for the functioning of a democratic society, where citizens can make informed choices and decisions based on a multitude and diversity of information, including from different media outlets. In that respect we note that there have been a number of developments with regard to media outlets and journalists allegedly because of their critical stance towards the government and ruling party. On 21 March 2020, Transparency International issued a statement[108] expressing its concern that the government had decided to levy the accounts of two independent broadcasters, TV Pirveli and Mtavari Arkhi TV, ostensibly for tax arrears, undermining their proper functioning at a very sensitive time due to the COVID-19 pandemic. In addition, on 17 March 2020, a group of over 25 leading Human Rights organisations in Georgia addressed an urgent letter[109] to the international community, expressing their "*extreme concern about the alarming processes taking place within the Adjara Public Broadcaster (APB*)". They highlighted in particular the appointment of a new director of the Adjara Public Broadcaster, allegedly on the basis of questionable procedures following the impeachment of the previous director reportedly on arbitrary grounds. This was followed by the dismissal of the Head of the News section of Adjara TV. In the view of these organisations these developments imperil the independent functioning and critical reporting by Adjara's regional broadcaster. Without wishing to pass a judgment of these cases, the fact that they are perceived as politically motivated, or at least influenced by ulterior political motives, by a considerable segment of Georgia's (civil) society should be of concern to the Georgian authorities. We encourage the authorities to consider and weight the possible effects on media freedom and media pluralism of any policies and actions that may affect the media environment and media outlets in the country.

166. Georgia has been an example for the region with regard to the respect for freedom of expression and has been a safe haven for persons from other countries, who fear prosecution for their beliefs and thoughts. Therefore, the case of Azerbaijani journalist Afgan Mukhtarli, who was kidnapped in Georgia and illegally transported over the border with Azerbaijan to face trial in Baku, attracted considerable attention inside and outside Georgia, especially due to allegations that Georgian Security Officials would have been involved (or

[104] ECHR 270 (2019).
[105] "*the Court bore in mind in particular that Rustavi 2's owners had systematically introduced ill-founded recusal requests against many different judges at all three levels of jurisdiction in a probable attempt to paralyse the administration of justice, while Rustavi 2's Director General had made gratuitous and virulent attacks in the media against the domestic judges involved in examining the ownership row and against the Georgian judiciary in general"* ECHR 270 (2019).
[106] ECHR 270 (2019).
[107] Ibid.
[108] Transparency International Georgia (21 March 2020).
[109] Social Justice Center (17 March 2020).

at least turned a blind eye) to this kidnapping. The kidnapping and allegations of collusion by Georgian border and security officials were at first investigated by the police, but later taken over by the Prosecutor General's office in line with legal provisions to prevent the police from investigating cases in which it was a suspect. While reportedly two high level officials from the state security service and border control services of the Ministry of the Interior have been dismissed over this case, the investigations into his kidnapping and the alleged collusion from Georgian official has not yet led to any tangible results. On 17 March 2020, in a welcome development, Mr Mukhtarli was released by the Azerbaijani authorities, and allowed to leave the country to be reunited with his family. Following his release, he was interviewed by the Georgian prosecutorial authorities in the context of investigation into his abduction. This investigation, including into possible involvement of state officials, is still continuing and Mr Mukhtarli was granted victim status by the Prosecutor General on 20 April 2021.

167. In November 2020, the Monitoring Committee requested an opinion of the Venice Commission on the amendments to the Law on Electronic Communications and Law on Broadcasting as adopted in the summer of 2020. The amendments to the provisions in the Law on Electronic Communications gives the GNCC the right to appoint a special manager at telecommunications companies, in order to enforce decisions of the GNCC if that company refuses to do so voluntarily. This not a hypothetical issue as on 20 October 2020 the GNCC appointed a special manager to reverse the 2019 sale of Caucasus Online to the Azerbaijani company NEQSOL, which was deemed illegal[110] and detrimental to Georgia's national security interests[111] by the GNCC.

168. In its opinion[112], the Venice Commission notes that Article 1 of Protocol 1 of the ECHR allows the right to peaceful enjoyment of property to be restricted by a state "*to control the use of property in accordance with general interest or to secure the payment of taxes and other contributions or fees*[113]". While the reversal of the sale of a telecommunications company can therefore be a legitimate objective, the appointment of a special manager, with all possible implications for the freedom of expression, may be disproportionate, especially given that this special manager does not have the legal right to change the ownership of the company or its assets. The Venice Commission also questioned the provision in the Law on Electronic Communications that stipulated that any appeal to an appointment of a special manager by the GNCC will not result in the suspension of the appointment. Based on the above, the Venice Commission recommended, while recognising the sensitivity of the situation the legislator had to deal with, to re-examine the amendments based on the recommendations contained in the opinion[114].

169. With regard to the Law on Broadcasting the draft amendment that had raised concern stipulated that an acceptance by a Court to hear a claim against a decree of the GNCC would not result in the suspension of the decree when the court case is going on. This amendment was withdrawn by parliament following concerns raised by industry and civil society representatives.

5.2. Security Services

170. The control and civil oversight of the security services are important, and sometimes controversial subjects in Georgia, especially in the context of repeated allegations illegal wiretapping and surveillance. Following the reform of the Ministry of the Interior, the security services have been taken away from the ministry and brought together in a specialised department directly accountable to the Prime Minister. The aim of this reform was to increase the civil oversight over the security forces. However, a number of civil society organisation expressed concerns that the civilian oversight mechanism implemented by the reform would not sufficiently guarantee civilian control over the security services. This was partly addressed by the strengthening of the parliamentary oversight mechanisms we outlined above.

171. A key development in relation to the control over the security forces was the adoption of the so-called surveillance law. On 28 November 2014, the parliament adopted a law regulating the access of the security and law enforcement services to the telecommunication networks and telecommunication providers' databases[115]. This bill was strongly criticised for failing to provide adequate guarantees to prevent unlawful access by the law enforcement and security forces to the telecommunications networks. On 29 November 2014, the President of Georgia vetoed the bill, but his veto was overruled by the parliament on 1 December 2014. The Public Defender appealed to the Constitutional Court of Georgia regarding the constitutionality of

[110] The sale had not been announced to the GNCC as required by law and was considered detrimental to the competitiveness of the media market.
[111] Caucasus Online owns the only fibreoptic internet cable linking Georgia to the Black Sea and rest of Europe.
[112] CDL-AD(2021)011.
[113] Art.1 Protocol 1, §2.
[114] Idem.
[115] Until then freedom of the security and law enforcement agencies to the telecommunications networks and providers databases had been practically unrestricted and with little proper oversight, which had contributed to the illegal surveillance of thousands of Georgian citizens until then.

this law and, on 14 April 2016, the Court ruled that the legislation was unconstitutional and ordered the authorities to change it by 31 March 2017 latest. The parliament set up a special ad hoc working group to draft these amendments. This ad hoc working group also included representatives from the authorities, the judiciary and civil society representatives.

172. The ad hoc working group proposed that a special agency, the so-called Operative Technical Agency (OTA) under the state security services, but legally independent, would be established and would be responsible for conducting video and audio surveillance, as well as the surveillance of internet and telecommunications for the security and law enforcement agencies. While this agency maintains possession of a "surveillance key", a second key will be needed that is controlled by a special Supreme Court judge mandated to oversee the security services. The head of the new agency is 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. The proposed agency was criticised by the opposition and civil society, which questioned whether the proposal had satisfied the demands of the Constitutional Court and felt that the new entity lacked the required independence. A new appeal was filed with the Constitutional Court by 300 individual citizens, which were joined by the Public Defender. On 29 December 2017, the Constitutional Court rejected that appeal."

173. For their side the authorities have emphasised that this special agency "is subject to powerful oversight mechanisms. The agency is accountable to the Prime Minister and the Parliament. Surveillance activities carried out by the Agency for criminal investigation purposes are overseen by a personal data protection inspector, as provided for by the Criminal Procedural Code, through special technical means, through on-site inspections and through the examination of the legal grounds for such activities. The inspector has full access to OTA technical infrastructure, documentation and the technical capability to stop surveillance activities if any procedural/legal inconsistency is detected. The Data Protection Inspector itself also submits an annual report to Parliament which is subject to scrutiny from the Legislature. Surveillance activities for counterintelligence purposes are controlled by the supervising judge of the Supreme Court and are overseen by the Trust Group of the Georgian Parliament. The Data Protection Inspector and TG, apart from scrutinizing OTA reports and responses to their information requests, also pay oversight visits to OTA premises to carry out inspections"[116]

5.3. State Inspector's Service

174. The State Inspector's Service (SIS) was established on 10 May 2019 replacing the former Office of the Personal Data Protection Inspector and was further strengthened in November 2019 when it was transformed into an independent investigative mechanism. Its main functions are the control over data processing by the authorities, supervision over covert investigations and ensuring impartial investigation over crimes committed by civil servants[117] and members of the law enforcement agencies, including for torture and degrading or inhuman treatment and abuse of power. This agency, which was supported in its functioning by, inter alia, the Council of Europe, on a number of occasions started independent investigations into alleged abuses by state institutions, most recently in relation to the treatment of former President Saakashvili in prison.

175. In a surprise development, on 24 December 2021, the ruling majority tabled a proposal to abolish the SIS and to split its functions in two separated agencies: one responsible for data protection and one responsible for the investigation of abuses of power and other crimes committed by representatives of law enforcement agencies and civil servants. The ruling majority argued that the SIS combined to radically different functions that could lead to conflicts of interest and that would be more effectively executed by separate institutions. It should be noted that, at the time of the establishment of the State Inspector's Service, a proposal by Georgian Civil Society Organisations to separate these two functions for broadly the same reasons was rejected by the Georgian Dream ruling majority. This proposal was developed in an extraordinary hasty fashion and without any consultation with the relevant stakeholders[118], which was widely criticised by the stakeholders and Georgia's international partners. The proposal was adopted by the ruling majority in a fast-track procedure in an extra-ordinary session of the Georgian parliament on 29 and 30 December 2021. The State Inspector's Service will be dissolved as from March 2022.

176. Originally the proposal included the dismissal of the State Inspector and her Deputies as well as all the civil servants working for the State Inspector's Service. However, following an outcry by national and international actors, including President Zurabishvili and the Ombudsperson, the ruling majority agreed that

[116] Comments by the authorities on the preliminary draft report, §244, provided on 17 March 2022.
[117] Or persons assimilated to the function of civil servants.
[118] Reportedly the State Inspector herself only heard of this proposal from the media when it was tabled by Georgian Dream.

the employees for the State Inspector's Service would be transferred to the two new institutions, but the dismissal of the State Inspector and her Deputies themselves was maintained in the proposal adopted by the parliament. The sudden abolishment of the SIS and dismissal of the State Inspector and her Deputies is widely seen as a punishment for the criticism and investigations started by the SIS of the authorities especially with regard to the treatment of Mr Saakashvili. It is clear that the dismissal of the State Inspector and her Deputies in this manner will have a chilling effect among other independent agencies tasked to control the authorities. This is unacceptable.

5.4. Allegations of abuse of the judiciary and prosecution service for ulterior purposes

177. As we have mentioned, allegations of the abuse of the justice system for ulterior, political, motives have continued to be made during the reporting period. We recognise that some of these allegations are also made as part of a political strategy, or to discredit the judiciary[119] in sensitive and high-profile cases, by certain actors and groups. However, that notwithstanding, and without wishing to comment on the merits of the cases, we notice that there have been a number of cases and investigations that have raised questions with regard to the genuine impartiality and independence of the judiciary and, especially, the prosecution service.

178. After the outbreak of the recent political crisis over the election system for the 2020 parliamentary elections, investigations were started against one of the leaders of European Georgia, Mr Giga Bokeria, for alleged misdoings when the UNM was in power. Similarly, in the case of another leading European Georgia member, Mr Gigi Ugulava, the Georgian Supreme Court recently overturned a decision of an appeals court to reduce a previous sentence of Mr Ugulava for embezzlement of public funds when he was the mayor of Tbilisi. He was sent back to prison for three years, more than two years after having been originally released. The timing of these decisions, if not their legal basis, raises questions about their motivation and about possible instrumentalisation of the justice system. Similarly, the charges filed against UNM MP and Nika Melia for his role in the 2019 protests in Tbilisi, and the subsequent lifting of his immunity by the Georgian Parliament, are seen by several interlocutors as disproportionate, even if they disagree with Mr Melia's arguably provocative actions and discourse.

179. On 28 November 2018, the Grand Chamber of the European Court of Human Rights delivered its judgment in the case Merabishvili vs Georgia. The Grand Chamber upheld the Court judgement of 14 June 2016 that found that there had been a violation of: Article 5 § 3 (entitlement of a detainee to trial within a reasonable time or to release pending trial) with regard to his continuing pre-trial detention from 25 September 2013 onwards, as well as a violation of Article 18 (limitation on use or restriction of Rights). The Court considered it established that the purpose of the pre-trial detention of Mr Merabishvili had changed over time from an investigation of offences based on reasonable suspicion to obtaining information about former Prime Minister Zurab Zhvania's death and Mr Saakashvili' s bank accounts. It has been argued that the Court finding a violation under article 18 would automatically mean that the Court therefore had established that Mr Merabishvili would be a political prisoner and should be released immediately. Such reading of article 18 is incorrect and overbroad. It should be noted that in its judgement, the Court held that it had not been established that his pre-trial detention had principally been meant to remove him from Georgia's political scene[120]. This was confirmed in the decision of the Committee of Ministers on 4 and 6 December 2018, regarding the suppression of the execution of the judgement, which did not order his release[121]. On 20 February 2020, Mr Merabishvili was released from prison after having served a nearly 7-year prison sentence.

180. As mentioned, former President Saakashvili has alleged that the criminal cases against him are politically motivated and revanchist. He has applied to the ECHR in Strasbourg alleging violations of Article 6 and Article 7 of the convention with regard to the two criminal cases that have exhausted the domestic appeal process. Similarly, following his arrest Mr Melia filed a complaint with the ECHR in May 20021, alleging, inter alia, politically motivated prosecution.

5.5. Meskhetian repatriation

181. 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

[119] See the ECHR judgment in the case of Rustavi2 Broadcasting Company against Georgia.
[120] European Court of Human Rights, Grand Chamber Judgment in the case of Merabishvili vs Georgia (Application no 72508/13) § 332.
[121] CM/Del/Dec(2018)1331/H46-10.

accession and complete the process of repatriation of the Meskhetian population within twelve years after its accession".

182. Successive Georgian authorities have put in place the legal framework for repatriation of the deported Meskhetian population and, also 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 argued 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. However, we also note that, as some NGOs and Meskhetian organisations have indicated, a number of practical barriers – some of them beyond the Georgian authorities' competence, such as difficulties in rescinding Azeri nationality – continue to exist that prevent *de facto* repatriation and the fulfilment of this commitment.

183. 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 each 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 persons 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. Meskhetian organisations have indicated two main problems in the repatriation process that need to be addressed by the Georgian authorities. Given the length of the process, a number of adolescents that were included in the application of their parents have become legally an adult during the application process, after which they are considered a separate applicant. Secondly, members of the same family that applied at the same time do not receive repatriate status at the same time, and in some instances some of the applications are granted while others in the same family are refused. This complicates, or even makes impossible, the actual repatriation of those that have received repatriate status**.**

184. 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. In our view, on the condition that the Georgian authorities formally commit themselves to undertake a comprehensive evaluation of the repatriation framework and strategy, and the result it has achieved, including identifying any unforeseen barriers and hurdles for a successful repatriation, we could suggest to the Assembly that it considers this commitment closed.

5.6. Minorities

185. Georgia is a diverse and multicultural society. On 8 December 2015, ECRI[122] adopted its report on Georgia as part of the fifth monitoring cycle. 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 Discriminations 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.

186. While welcoming the progress made, ECRI expressed its concern about the prevalence of hate speech against ethnic and religious minorities, as well as against LGBT persons, with physical attacks occurring with "a worrying frequency". Regrettably, according to ECRI the response of the Georgian authorities has been

[122] CRI(2016)2, ECRI Report on Georgia (fifth monitoring cycle), p. 9.

inadequate until now: the incidents were not, or insufficiently, investigated. 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. The ECRI recommended that a specialised unit be set up within the police to deal with racist and homo-/transphobic hate crimes. In December 2018, ECRI adopted its conclusions on the implementation of the recommendations in respect of Georgia[123]. In its conclusions, ECRI welcomed the establishment of a human rights department in the Ministry of Internal Affairs that, inter alia, will monitor and assess the investigations of hate crimes, organise training for law enforcement personnel and co-operate with the international community and civil society. However, ECRI underscored that this department is no substitute for the special investigative unit recommended by ECRI, as the Human Rights department does not investigate hate crimes itself but monitors them. In this context, ECRI welcomed the training organised by the Ministry of Internal Affairs and the Georgian Public Defender (Ombudsperson) for police officers that are specifically designated to investigate alleged hate crimes.

187. A special State Agency for Religious issues was established by the Georgian authorities. This Agency reports directly to the Prime Minister and is tasked with coordinating the policies of the government on religious issues. A key task is the restitution of religious properties that were confiscated during Soviet times, which also implies providing the necessary funding for restoration works 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.

188. With regard to the newly established State Agency for Religious Issues, ECRI noted that it lacks a clear mandate or action plan. This view was confirmed by practically all stakeholders we have met during our visits to Georgia. ECRI specifically called upon the authorities to ensure that this newly established state agency would co-operate closely with the Council of Religions that operates under the auspices of the Public Defender's office. Regrettably, in its conclusions,[124] ECRI noted the near total lack of co-operation of the State Agency with the Council of Religions. It further noted the refusal of the State Agency to allow the Public Defender to participate as an observer in the special commission that dealt with the tensions around a disputed Mosque in a small village in Georgia, as was requested by the Muslim Community in Georgia. Moreover, the ECRI expressed its concern about the clear lack of trust of the different religious communities in the State Agency.

189. On 17 June 2020, the Committee of Ministers adopted its Resolution on the implementation of the Framework Convention for the protection of National Minorities (FCNM) by Georgia. This Resolution was based on the third opinion on Georgia by the advisory committee of the FCNM, which was adopted by the latter on 7 March 2019. The FNCM underscored that Georgia is a diverse and multicultural society which makes it on the one hand open and tolerant to different groups, but on the other hand, due to its geopolitical location it also sees minorities in the context of regional politics and the interplay of political influences. As a result of this security perspective, based view on minority issues there is a lack of trust in certain minorities and linguistic and religious minority issues are often politicalised. Nevertheless, the Advisory Committee and Committee of Ministers note that Georgia has an "open and flexible approach towards the application of the convention "and welcomed its constructive approach to the monitoring process by the FCNM.

190. Georgia's anti-discrimination law provides a solid mechanism for the handling of discrimination complaints. Such complaints can now be filed both directly with the Courts or with the Public Defender who can intervene in cases before the Courts. Following amendments to the Criminal Procedure Code in May 2019, the time for the Public Defender to intervene has been extended to one year, which was welcomed by the CM. At the same time the Advisory Committee recommended that the consultation mechanisms falling under the Public Defender, and the resources available to her office to execute its tasks, be strengthened. In addition, the consultation of the Council of National Minorities and Council of Religions under the Public Defender should be formalised and made compulsory on matters that are of concern to minorities. Nevertheless, the generally close and constructive cooperation between the Office of the State Minister of Georgia for Reconciliation and Civic Equality with the Council of National Minorities at the Public Defender's Office was also underscored by the Public Defender's office and should be welcomed.

191. The Advisory Committee has welcomed the increase in capacity to combat hate crimes in Georgia, in particular via the creation of a specialised human rights department in the Ministry of the Interior. With regard to religious minorities the Advisory Committee has expressed its concern that religious minorities are confronted with structural discrimination in access to funding and places of worship. Allocation and construction permit processes are open to arbitrariness and lack clear and objective legal criteria. The Committee of

[123] CRI(2019)4.
[124] CRI(2019)4.

Ministers therefore called upon Georgia to ensure that the persons belonging to religious minorities can "*enjoy their right to manifest their religion or belief as well as their right to establish religious institutions, organisations and associations.*

192. The Georgian authorities have continued their efforts to strengthen the use of the state language in all areas of public life. However complementary efforts to teach and promote the use of minority languages continue to fall below the standards demanded by the Framework Convention. While the issue of the transliteration of names has been resolved the issue of the use of minority languages in communication with authorities in areas where the minorities have a substantial presence remains to be addressed. Measures to facilitate access to education on all levels have been successfully implemented but the quality of educational materials and teacher training remains inadequate.

193. In his report on" Alleged violations of Rights of LGBTI people in the Southern Caucasus", the rapporteur of the Committee on Equality and Non-Discrimination on the report Mr Christophe Lacroix (Belgium, SOC), the situation in Georgia is more favourable than elsewhere in the region due to the fact that the anti-discrimination law explicitly covers discrimination based on sexual orientation and gender identity, as well as the adoption of legislation that bans hate speech on these grounds. However, he also notes that the day-to-day situation for LGBTI persons is rather bleak. Intolerance and violence against the LGBTI remain a main concern that the authorities have not managed to address satisfactorily.

194. On 12 May 2015, the European Court of Human Rights issued its judgment in the case of Identoba and others v. Georgia[125]. On 17 May 2012, Identoba, one of the main LGBTI NGOs in Georgia, had organised a peaceful march to mark the International Day Against Homophobia. However, this march, which had been authorised by the authorities and who were aware about possible counter marches, was violently attacked by members of tow religious organisations, while the Police mostly stood by idle. Following the events on 17 May 2012, the organisers of the march, as well as several of the participants, filed criminal complaints against both the counter demonstrators and the police officers that failed to protect the march. Only two investigations, with regard to injuries sustained by two participants were ultimately opened and are still continuing. Only two of the counter demonstrators were given fines of approximately 45€ each.

195. In its judgment of the case the European Court of Human Rights found that there had been a violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment) in conjunction with Article 14 (prohibition of discrimination) as there had been clear discriminatory overtones in the counter demonstration and attacks against the marchers. Moreover, the authorities, who should have been aware of the widespread homophobic sentiments in Georgian society failed to provide the necessary protection to the marchers and had not conducted a satisfactory investigation into the events or taken satisfactory action against the perpetrators afterwards. The Court also found a violation of Article 11 (freedom of assembly) in connection with article 14 (prohibition of discrimination) as the authorities had failed to prepare properly for the march and as a result had failed to ensure the participants right to march to commemorate the International Day against homophobia.

196. On 8 November 2019, anti-LGBTI protesters blocked the entrance to the cinema for the premiere of the film "We dance Alone", which tells the story of a relationship between two male dancers. On 1 July 2021, a film showing during the Tbilisi Pride Week was violently disrupted by far-right counter protesters[126] who tried to break through the police lines to protect those in attendance. Reportedly the police made considerable efforts to protect the participants and guests, which is to be welcomed. In total 23 persons were arrested.

197. On 3 November the Georgian Orthodox Church criticised organisers and foreign diplomats over their support for "LGBTI propaganda". In 2021, An informal coalition of ultra-right-wing movements announced that they would organise a counter demonstration against the Gay Pride March that was planned for the closing of Gay Pride Week on 5 July. On 5 July, Prime Minister Garibashvili, while offering alternative venues, expressed his view that it would be "unreasonable" to organise the Gay Pride March on Rustaveli Avenue, which he claimed was organised by "radical opposition headed by Saakashvili". His offer of alternative venues to the organisers to hold their March, but this was rejected. In the morning of 5 July, a violent counter march started, which resulted in the Interior Ministry to urge the organisers to call off the march. This violent counter protest, which was described by several interlocutors, as well as the media, as a "homophobic pogrom" attacked media representatives present as well as the gay pride office which was ransacked. The Gay Pride March was subsequently cancelled to ensure the safety of the participants. According to official reports in total 55 persons were violently attacked, among which 53 journalists.

[125] Application 73235/12.

[126] It should be noted that the counter rally was reportedly called by Alt-Info a Russian linked media outlet affiliated to the ultra-conservative Levan Vaszadze.

198. These attacks were condemned by President Zurabishvili as well as the international community which lambasted the government and church officials for their failure to condemn the violence in clear terms. The authorities are urged to fully investigate these violent actions, and bring all perpetrators to justice, including with regard to the organisers of these violent actions and those forces enticing them. According to information provided by the authorities 12 criminal cases have been started regarding the events of 5-6 July. Thirty one persons have been arrested, 28 of them charged for violence against journalists and 3 for the attack on the Tbilisi Pride office.

5.7. Public Defender

199. The Public Defender (Ombudsperson), whose role and functioning are guaranteed in the Constitution of Georgia, continues to play a key role in the Georgian Society. During the reform of the Constitution in 2017, the term of the Public Defender was limited to a single 6-year term. In its opinion on the draft Constitution, the Venice Commission welcomed this provision as it "*aims at guaranteeing the independence of the institution and preventing any risk that the independent action of the person holding the post is compromised by considerations of future re-election*"[127] The Public Defender is elected by a three-fifths majority of the full composition of Parliament to ensure a wide consensus, including from opposition parties, about the person to hold this important watchdog post. The introduction of a qualified majority for the election of the Ombudsperson, instead of a simple majority that had been the case until then, was equally welcomed by the Venice Commission[128].

200. On 7 December 2017 the term of Mr Ucha Nuashvili as Public Defender came to an end. According to legal provisions, each parliamentary faction can propose a candidate – and one candidate only – for the post of Public Defender. The Georgian NGO community had proposed to the different factions a joint list of four candidates for the post of Public Defender. On 27 November 2017, the Georgian Dream faction decided to nominate one of the four NGO candidates, Ms Nino Lomjaria, for the post of Public Defender. On 30 November, Ms Lomjaria was appointed Public Defender by the Georgian Parliament. Her appointment was welcomed by the President of Georgia, as well as by the NGO community. We welcome the inclusive and open process through which she was appointed, and hope that this will serve as an example for the appointment of her successor when her post becomes vacant after her 6 year term ends.

201. To our regret, historically the reports and recommendations issued by the Ombudspersons in the pursuit of their constitutional tasks are often perceived or misconstrued as oppositionist activity by the authorities, leading to an, at times, tense relationship between the Ombudsperson and authorities. This came again to the foreground on 21 January 2020, when, following a critical report by the Ombudsperson to the parliament on the situation in penitentiary institutions in Georgia, the Minister of Justice, Ms Tea Tsulukiani, who disagreed the findings of the report, decided to publish surveillance camera recordings of the meetings between the representatives of the Ombudsperson and the inmates. This very regrettable and damaging action was in clear violation of the Law on the Ombudsperson, as well as, inter alia, the rules and regulations governing electronic surveillance in penitentiary institutions and the storage and destruction of the materials so obtained. The Public Defender filed a complaint with the State Inspector, asking for an assessment of the legality of the Justice Minister's actions. On 28 March 2020, the State Inspector fined both the Ministry of Justice and the State Penitentiary Service each GEL 500[129]. In addition, the State Inspector ordered the removal of the published materials from official websites and social media accounts. Similarly, following her criticism on the treatment of Mr Saakashvili by the penitentiary authorities, the Ombudsperson was verbally attacked by several high officials of the government and ruling majority which is regrettable. We call upon the authorities and officials to fully respect the work of the ombudsperson and make sufficient resources available for the functioning of this institution which is an important component of the system of checks and balanced in Georgia.

5.8. European Charter on Regional and Minority Languages

202. An outstanding accession commitment of Georgia is to sign and ratify the European Charter for Regional and Minority Languages (ETS No. 148). Regrettably until now, Georgia has neither ratified nor signed the Charter. This is to a certain extend surprising as the Georgian legislation regarding the use and protection of regional and minority languages seems to be largely in line with the requirements of the Charter. The current authorities, as did the previous ones, cite security concerns[130] as well as opposition from certain parts of the

[127] CDL-AD(2017)013 § 88.
[128] CDL-AD(2017)023 § 50.
[129] 145 Euros under current exchange rates.
[130] They argue that the political debate on the ratification of the Charter could upset delicate relations with and between minority communities, that could be instrumentalised by certain foreign powers.

society, including the Georgian Orthodox Church, as the main reasons for not signing and ratifying the Charter. This opposition against signing and ratifying the Charter seem to be mostly based on lack of understanding and misconceptions about the Charter itself. As we have mentioned at previous occasions, we recommend that an awareness raising strategy is established by the authorities, with the involvement of the various stakeholders, to counter misconceptions and foster understanding about the Charter and its requirements. In 2015, the Council of Europe launched an awareness raising project about the Charter in Georgia. This project involved a series of meetings and discussions on the Charter issue with decision-makers, relevant state agencies representatives, civil society actors, and public figures. In addition, information campaigns were organised in Tbilisi and Batumi as well as in the municipalities densely populated by ethnic minorities. We are, as a matter of principle, against renegotiating accession commitments and obligations, which have been willingly and voluntarily undertaking by the signatory state. All states that had similar accession commitments signed the Charter before moving to the next stage in the monitoring procedure and all but one, the North Macedonia, ratified the Charter. In that context we strongly recommend that the Georgian authorities sign the Charter without further delay and then organise, in co-operation with the relevant Council of Europe departments, a proper awareness raising strategy with a view to the ratification in due of the Charter by the Georgian parliament. We were informed by the main opposition parties that they would support the ruling majority in the event of such a decision.

6. Consequences of the war between Russia and Georgia

203. On 13 October 2015, following several years of conducting a preliminary investigation, the office of the Prosecutor General of the International Criminal Court, announced that it had requested the court to authorise the opening of a formal investigation into the 2008 war between Georgia and the Russian Federation, in particular with regard to[131]:

> 152.1. *Killings, forcible displacements and persecution of ethnic Georgian civilians, and destruction and pillaging of their property, by South Ossetian forces (with possible participation by Russian forces);*
>
> 152.2. *and intentionally directing attacks against Georgian peacekeepers by South Ossetian forces; and against Russian peacekeepers by Georgian forces.*

204. Regrettably the situation around the *de facto* occupied Georgian Regions of Abkhazia and the Tskhinvali region/South Ossetia has continued to deteriorate, as the creeping annexation of these regions by the Russian Federation continues unabated, in constant violation of the cease fire agreement signed by Russia. As a result, despite the development of a human centric policy towards these two regions by the Georgian authorities, contacts between Georgians inside and outside these two regions has become increasingly more difficult, also as a result on continuing limitations for travel across the administrative lines by Georgian civilians as well as by members of international organisations. In recent months the situation has somewhat improved with regards to Abkhazia, also as a result of the efforts by the authorities in Tbilisi to provide assistance in dealing with the Covid-19 pandemic but travel and contacts across the administrative boundary line with the Tskhinvali region/South Ossetia remain neigh impossible. We call on the *de facto* "authorities", and the Russian Federation as the country exercising effective control, to lift any restrictions on the free movement of civilians between the two regions and the rest of Georgia without further delay

205. In this context, the State Minister for Reconciliation and Civic Equality, has highlighted the increasingly dire social and Human Rights situation of ethnic Georgian communities in the Georgian Regions of Abkhazia and the Tskhinvali region/South Ossetia. In Abkhazia, schooling in the Georgian language were being closed at an alarming rate and by, November 2017, only 11 of the 58 schools in the region inhabited by ethnic Georgians continued to teach in Georgian with the help of the Georgian authorities. Ethnic Georgians who do not accept, or are refused, an Abkhaz "passport", have to register as foreigners and are deprived of inheritance rights and can only sell their property to Abkhaz "citizens". Reportedly, houses of ethnic Georgians have been destroyed in the Akhalgori district

206. In a welcome development we were informed that a number of assistance projects developed by the authorities in Tbilisi as part of their human centric approach, including support for small business projects in Abkhazia are increasingly made use of.

207. On 21 January 2021, the Grand Chamber of the European Court of Human Rights delivered its judgments in the case of Georgia v Russia(II) (applications 38263/08)[132]. In this landmark decision the European Court of Human Rights concluded that following the active phase of the hostilities in the 2008 war

[131] 2015 Report on Preliminary Examination Activities, the Office of the Prosecutor, International Criminal Court, p 52 -60.
[132] Case of Georgia v. Russia (II).

between Russia and Georgia, the Russian Federation had been in effective control of over South Ossetia and Abkhazia.

7. Concluding Remarks

208. Since accession to the Council of Europe, Georgia has made constant and substantial progress in honouring its membership obligations and accession commitments to the Council of Europe. At the same time, a number of concerns remain that need to be addressed for the country to progress to the next stage in the monitoring procedure. Recognising the progress made, we have attempted in this report to provide clear perspective of the outstanding commitments and concerns that remain to be addressed for the country to move into a post monitoring dialogue process. We are convinced that such progress is possible in the not too distant future if all political forces are committed to addressing these remaining issues. However, two important points should be made in this context. Firstly, such change can only be possible if there is no regress on with regard to the achievements made to date, something that should be clear and unmistaken. Secondly, any change in the monitoring procedure requires the full commitment and political will, including a willingness to work together, of both ruling authorities as well as the opposition. Genuine democratic consolidation is the responsibility of all political forces in the country together, not of the authorities or opposition alone. We exhort all political forces to place the common good of the nation should over any narrow party-political strategies. This is all the more important as much of the required changes cannot simply be legislated – indeed many of the required legal frameworks and mechanisms are in place and in principle adequate – but in many instances will also require a commensurate change in attitude and behaviour.

209. As we have outlined, the extremely tense and polarised political climate, driven by zero sum political strategies and frequent displays of lack of understanding and accommodation by both opposition and ruling majority for each other's position and rightful role, affects the functioning of democratic institutions and is a key impediment to Georgia's democratic consolidation. Regrettably elections have increasingly become a source of political cries, instead of a means to diffuse them, which is affecting the political stability of the country. All political forces should now focus on the governance of the country. While repeat elections and parliamentary boycotts should be avoided, all political forces should now fully commit themselves to a system of fully proportional elections as from the next general elections. The required constitutional amendments and changes to the electoral code to implement this election system in line with the political agreements of 2020 and 2021, should me made on the basis of broad consolations and consensus between all political stakeholders.

210. The extremely polarised political climate is compounded by a still fragile independence of the judiciary that remains vulnerable to politicisation and instrumentalization. Despite the marked progress made with regard to the respect for the rule of law and independence of the judiciary further and continuous efforts are necessary to ensure a genuinely independent and impartial judiciary. As originally agreed between all political forces, a comprehensive independent evaluation of the first four waves of judicial reforms should be carried out, and all stakeholders commit themselves to its conclusions and implement any recommendations resulting from it. In this context the functioning of the High Council of Justice, which is a key obstacle to a genuinely independent and impartial judiciary, remains a key concern. This needs to be addressed as a priority. In addition, as we have highlighted, the complete reform of the Law on Administrative Offences, which dates from the soviet era, is long overdue and needs to be implemented without delay.

211. While Human Rights are generally well respected a number of developments have given cause for concern. Further and continuing efforts are needed to address any deficiencies in the human rights protection framework and to ensure that the considerable progress made in this respect is both robust and irreversible. The rights of LGTBI persons should be fully ensured and respected, in the recent lamentable attacks on LGTBI persons and their organisations should be fully investigated and perpetrators and the organisers behind them brought to justice. There can be no impunity for such actions and marked and tangible actions by the authorities are needed in this respect. The autonomy and independence of all human rights protection mechanisms, and especially the institution of the Ombudsperson, should be fully respected and where needed reinforced. In this respect we urge all political forces to ensure that the successor to the current ombudswoman, whose term will expire soon, be appointed in a nonpartisan manner based on the broadest possible consensus and support in the Georgian society.

212. In addition, as mentioned in this report, to this there are still outstanding accession commitments, albeit very few, that need to be addressed before the country can move forward in the monitoring procedure.

213. Concluding, based on our finding, we recommend that the Assembly will continue its monitoring procedure in respect of Georgia. We hope and expect that, based on the clear perspective provided in this report of the outstanding commitments and concerns that remain to be addressed, we will soon be in a position

to recommend the progress into a post-monitoring dialogue for Georgia. We remain fully available and committed to assist the country in this process.