Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1801 (2011)[1]

The honouring of obligations and commitments by Georgia

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the significant efforts made by the Georgian authorities in honouring their obligations and remaining commitments to the Council of Europe. Considerable progress has been made since the last monitoring report adopted in 2008, despite the significant impact and the consequences of the war with Russia in August 2008.

2. With regard to the political environment in Georgia, the Assembly welcomes the initiatives taken by the authorities to overcome the polarisation and confrontational atmosphere that has regrettably dominated the political landscape, and to strengthen the position and role of the opposition. The Assembly reaffirms its belief that the existence of a vibrant, pluralist and involved opposition is essential for the political stability and democratic consolidation of the country.

3. The Assembly considers that the local elections held on 30 May 2010 were an important step for the creation of a more diverse and constructive political environment in the country. Furthermore, the upcoming presidential and parliamentary elections will be the litmus test for the consolidation of a mature, more inclusive and robust democratic system in Georgia. In relation to the electoral process, the Assembly:

3.1. welcomes the re-establishment of the Electoral Working Group aimed at reaching a wide consensus on the electoral reforms necessary for the upcoming parliamentary and presidential elections and calls upon all political parties that have not done so to join this working group and to participate in it in good faith;

3.2. considers that the Electoral Working Group should not only focus on the administration of the elections but also agree on an election system that can muster the full trust of all electoral stakeholders;

3.3. strongly recommends the adoption of an entirely new electoral code that addresses the shortcomings noted by, *inter alia*, the European Commission for Democracy through Law (Venice Commission) and the Assembly, in particular with regard to the equality of the vote, the delimitation of electoral districts and the abolition of the prohibition of individual candidacies;

3.4. urges all parties to ensure that the electoral system is agreed upon, and a new electoral code adopted well before the upcoming parliamentary elections are announced;

3.5. welcomes the willingness expressed by the authorities and the ruling party to amend the constitution, if necessary, so as to implement the amendments agreed to by the Electoral Working Group.

4. The Assembly welcomes the adoption of constitutional amendments on 15 October 2010, which, *inter alia,* better guarantee the independence of the judiciary, substantially strengthen the role and powers of the parliament and provide for a better and more comprehensive system of checks and balances between the different branches of power. However, the Assembly considers that a number of provisions should still be

1. Assembly debate on 13 April 2011 (14th Sitting) (see Doc. 12554, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Islami and Mr M.A. Jensen). Text adopted by the Assembly on 13 April 2011 (14th Sitting).

further clarified or improved to avoid any possible systemic tensions. It therefore urges the Georgian authorities to implement the recommendations of the Venice Commission. In particular, the Assembly recommends that:

4.1. the procedure for adopting a motion of no confidence in the government be revised in line with Venice Commission recommendations, with a view to strengthening the powers of the parliament in this procedure;

4.2. the role of the president in negotiating international treaties be clarified, so as to avoid possible tensions between the government and the president;

4.3. the role of the parliament in budgetary matters be strengthened.

5. The Assembly considers that the media environment in Georgia is still an example for the region, but points out that further efforts remain necessary to improve its transparency and pluralism. In this respect, the Assembly:

5.1. welcomes the draft law on transparency of media ownership, passed in a first reading on 7 December 2010, and expects that this proposed law will now be adopted without further delay;

5.2. considers that the possibility for new groups to enter the media market is essential for media pluralism and therefore recommends that the competent authorities make additional broadcasting frequencies available for public tender;

5.3. calls on the authorities to evaluate, with a view to improving its implementation, the legal framework for access to public information;

5.4. welcomes the establishment of a special political television channel under the Georgian Public Broadcaster (GPB) and the increase in members nominated by the opposition on the board of trustees of the public broadcaster.

6. With respect to the strengthening of local self-government, the Assembly:

6.1. welcomes the recent constitutional amendments regarding local self-government and urges the authorities to implement fully the recommendations of the Venice Commission, in particular those relating to the organisation of executive power and state supervision over local authorities;

6.2. takes note of the decentralisation strategy developed with the assistance of the Council of Europe, the United Nations Development Programme (UNDP) and the European Commission, and expects that this strategy will now be formally adopted by the government;

6.3. recommends that the fiscal basis of local authorities be improved to strengthen their overall independence;

6.4. supports the principle of regionalisation, which is a stated objective of the authorities, but considers that such a regionalisation process should not be implemented at the cost of the development of strong and effective self-government at the municipal level.

7. In the light of the positive experience of the direct election of the Tbilisi mayor, the Assembly recommends that the authorities study the possibility of introducing direct elections for the mayors of all municipalities or at least of the other large self-governing cities.

8. The Assembly welcomes the unabated efforts by the authorities to strengthen the independence of the judiciary, which is evident from the many reforms that have continued to be implemented in recent years. At the same time, it is concerned by the reported low level of public trust in the impartiality and independence of the judiciary and recommends that the authorities continue their efforts to further increase the level of public trust. It therefore considers that ongoing efforts to strengthen the independence of the judiciary should be vigorously pursued. In this regard, the Assembly:

8.1. welcomes the constitutional changes that have strengthened the independence of the High Council of Justice and abolished the role of the president in the nomination of all but the Supreme Court judges. In order to better guarantee the independence of the Supreme Court, the Assembly recommends that the prerogative of their nomination also be transferred from the president to the High Council of Justice;

8.2. welcomes the introduction of life tenure for judges by the 2010 constitutional amendments, but suggests that the authorities consider removing or shortening the probationary period for judges in line with European norms.

9. The Assembly welcomes the entry into force of the new Code of Criminal Procedure, which has been a long-standing recommendation of the Assembly. It notes with satisfaction that this new code will, *inter alia*, significantly strengthen the independence of the judiciary. Given the introduction of an adversarial justice system, the Assembly strongly recommends that an adequately funded and comprehensive system of free legal aid for those in financial need be established on the basis of the existing initiatives.

10. The Assembly also welcomes the entry into force of the Law on the Prosecution Service. It is, however, concerned about the considerable powers given therein to the Minister of Justice, including the power to personally conduct the prosecution of high-level officials, such as the president and members of the government. The Assembly therefore recommends that:

10.1. detailed and clear criteria for the dismissal of all prosecutors should be set out in the law;

10.2. the powers given to the Minister of Justice to personally conduct the prosecution of, *inter alia,* the President of Georgia, members of parliament, judges, members of the government, the public defender, prosecutors and high-ranking military officers be abolished;

10.3. the powers of the Minister of Justice over the prosecution service explicitly prohibit him from giving instructions or otherwise influencing the prosecution of individual cases.

11. The Assembly expresses its concern about the problems of the administration of justice that could endanger the principles of equal application of the law and the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ETS No. 5). The Assembly calls upon the Georgian authorities to address these problems which, if left unaddressed, could undermine the considerable progress made by the authorities in the field of judicial reform and the strengthening of the independence of the judiciary.

12. The Assembly also notes the questions raised about the increasing frequency of plea bargaining. It recommends that the Georgian authorities address the concerns expressed in this regard, as they affect public trust in the fairness of the justice system.

13. The Assembly reiterates its satisfaction with the ongoing efforts and clear political will to fight corruption in Georgia. It notes that these efforts have produced significant results, in particular relating to low-level corruption. The Assembly calls on the authorities to pursue their efforts unabated and to ensure that existing legislation to fight corruption is implemented fully and consistently. In relation to the fight against corruption, the Assembly:

13.1. notes the persistent allegations that high-level corruption has not been fully eradicated and calls upon the authorities to investigate all of these allegations consistently and credibly;

13.2. welcomes the investigations into alleged corruption of a number of high-level officials, which demonstrate the political will to counter any sense of impunity for high-level corruption in Georgia;

13.3. welcomes the adoption of the amendments to the Law on Conflict of Interest and Corruption in Public Service that were drawn up with the assistance of the Council of Europe, as well as the adoption of the Law on the Chamber of Control;

13.4. recommends that the Georgian authorities evaluate, with a view to improving its implementation, the legal framework for the access to public information, as this could be an invaluable tool in the fight against corruption.

14. The Assembly expresses its satisfaction with the considerable reforms that have been implemented with regard to the police force. As a result of these reforms, corruption in the police force and ill-treatment of detainees have almost been eradicated. Excessive use of force by law-enforcement officials during demonstrations and protests continues to be a point of concern, especially as complaints over the excessive use of force do not seem to be effectively and systematically investigated and convictions pursued. This should be addressed by the authorities as it could contribute to a sense of impunity among law-enforcement officials.

15. Protracted and ineffective investigations by the police forces, especially of politically sensitive cases, are also a point of concern for the Assembly. It regrets that, despite its repeated calls for credible investigations, no culprits have been found for the attacks on protesters during the 2007 and 2009 demonstrations. The Assembly stresses that the case law of the European Court of Human Rights clearly requires that investigations should not only be initiated, but also be effective in order to be considered credible. The Assembly calls upon the Georgian authorities to address this issue urgently.

16. The Assembly welcomes the efforts by, and political will of, the Georgian authorities to address the problem of overcrowding and inadequate living conditions in Georgian prisons. It considers that the continuous growth of the prison population, resulting in overcrowded facilities, is largely due to the very strict, sometimes even disproportionate, mandatory sentencing guidelines, even for minor crimes, and the provisions that dictate that sentences be served consecutively and not concurrently. The Assembly therefore:

16.1. welcomes the development by the Georgian authorities of a comprehensive strategy for the liberalisation of the prison system, prioritising such areas as crime prevention and expanding the use of various non-custodial measures, including diversion, mediation and mentoring programmes for juvenile offenders, community service, expanded parole conditions and reform of the probation system for adults;

16.2. recommends that the authorities review the mandatory sentencing guidelines, consider alternative sentencing and develop clear and improved guidelines for early release;

16.3. calls upon the authorities to continue their efforts to combat ill-treatment in prisons and to ensure the safety from retribution of prisoners who file complaints against prison guards.

17. Georgia is the most multi-ethnic country in the Caucasus. The Assembly therefore welcomes the continuous efforts by the Georgian authorities to improve the integration of the different minorities in Georgian society. The Assembly calls upon the authorities to:

17.1. step up their efforts to improve the participation of national minorities in public life;

17.2. improve the system of language education for national minorities, including the teaching of minority languages and Georgian as a second language;

17.3. take further steps to combat the marginalisation of the Roma population;

17.4. step up their efforts to fight any forms of intolerance and hate speech based on ethnicity, faith, gender or sexual orientation.

18. The Assembly welcomes the adoption of the National Concept for Tolerance and Civic Integration, as well as the establishment of an inter-agency commission on minority issues, to facilitate the implementation of the Framework Convention for the Protection of National Minorities (ETS No. 157). One of the outstanding accession commitments of Georgia is the adoption of a comprehensive law on national minorities. The Assembly would be prepared to consider this accession commitment as fulfilled if a comprehensive legal framework for the protection of national minorities, contained in a number of specialised laws, was in place, and, according to the opinion of the Advisory Committee on the Framework Convention, adequate and fully in line with European standards.

19. Religious freedom and tolerance are fundamental principles to further social cohesion and the consolidation of a democratic society. The Assembly is therefore concerned by the lack of a proper legal status of, and legal protection for, denominations and faiths other than the Georgian Orthodox Church. The Assembly therefore calls on the Georgian authorities to:

19.1. adopt a specific law on religion that would offer proper and equal legal status and protection to all faiths and denominations in the country;

19.2. resolve the outstanding issues regarding the return to their respective denominations of historic religious properties confiscated during the Soviet era.

20. The Assembly regrets that Georgia, ten years after joining the Council of Europe, has not yet honoured its accession commitment of signing the European Charter for Regional and Minority Languages (ETS No. 148). It calls upon the Georgian authorities to sign and ratify the charter without further delay.

21. The Assembly welcomes the clear political will of the Georgian authorities to resolve the issue of the repatriation of the Meskhetian population in line with its accession commitment to the Council of Europe. Taking note of the fact that the deadline for application under the Law on Repatriation expired on 1 January 2010, the Assembly recommends that the Georgian authorities:

21.1. conduct a proper evaluation of the results of the current repatriation application process, as soon as all applications have been either accepted or rejected;

21.2. show maximum flexibility with regard to formalities to ensure that no application is rejected on technical grounds only;

21.3. develop, without further delay, a comprehensive and efficient mechanism for repatriation and re-integration.

22. The Assembly reiterates its condemnation of the continuing human rights violations as a result of the 2008 war, including the grave violations of the principle of freedom of movement and right to return of internally displaced persons (IDPs) as a result of the occupation of the two breakaway regions of Georgia and the previous conflict. In line with Resolution 1683 (2009) "The war between Georgia and Russia: one year after", the Assembly calls on the Georgian authorities to initiate a credible investigation into all cases of alleged violation of international humanitarian and human rights law by persons under its jurisdiction or control during the 2008 war with Russia and to allow unrestricted access of international organisations to the two breakaway regions.

23. The Assembly expresses its concern about the manner in which IDPs were recently evicted from their residences in Tbilisi and calls upon the Georgian authorities to ensure that any evictions fully comply with international standards.

24. Pending further progress on the above-mentioned issues, the Assembly resolves to continue its monitoring procedure in respect of Georgia and reaffirms its readiness to assist the country in honouring its obligations and commitments to the Council of Europe.