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The functioning of democratic institutions in Georgia

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Michael Aastrup JENSEN, Denmark, Alliance of Liberals and Democrats for Europe, and Mr Boriss CILEVIČS, Latvia, Socialist Group

Summary

Despite a polarised and acrimonious election environment, the 2012 parliamentary and 2013 presidential elections mark the first time in Georgia's recent history that the political power has changed hands peacefully and democratically through the ballot box. The emergence of a strong and experienced opposition, combined with a well-organised ruling coalition, has strengthened the role of the parliament and parliamentarianism in the political system in Georgia. The parliament has held ministers accountable, modified government policies and, on several occasions, used its right of initiative to introduce new legislation. Moreover, on a number of occasions, it has managed to find consensus solutions to major political challenges. These are important developments and a major evolution of the political environment in the country.

The Monitoring Committee takes note of the large number of allegations of possible criminal conduct by former government officials during their tenure. At the same time, it is seriously concerned about allegations that the arrests and prosecution of a number of former government officials are politically motivated and amount to selective and revanchist justice. The Georgian authorities are called upon to ensure that the investigation and prosecution of former government officials are conducted impartially, transparently and in full respect of the principles of a fair trial, as enshrined in the European Convention on Human Rights.

The committee welcomes the comprehensive reforms announced by the Georgian authorities, including constitutional reform, to further strengthen the democratic institutions in the country and to ensure a genuinely independent judiciary and adversarial justice system. Georgia has made marked progress in its democratic development over recent years. It is now important for it to overcome the antagonism, polarisation and sense of revenge that are still present in the political environment and for political stakeholders to contribute constructively to the further democratic consolidation of the country.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution[2]

1. The Parliamentary Assembly welcomes the smooth conduct of the 2012 parliamentary and 2013 presidential elections in Georgia, which, despite a polarised and acrimonious election environment, were overall democratic and in line with European standards. These elections mark the first time in Georgia's recent history that the political power has changed hands peacefully and democratically through the ballot box. All the political forces should be congratulated on this achievement, which should be an example for the whole region.

2. The otherwise smooth handover of power was accompanied by a polarised and antagonistic political climate, especially during the period of cohabitation between the then President Milheil Saakashvili and the Georgian Dream coalition government. The Assembly regrets that these tensions sometimes overshadowed the many positive changes that were taking place in the democratic environment of Georgia. The emergence of a strong and experienced opposition, combined with a well-organised ruling coalition, has strengthened the role of the parliament and parliamentarianism in the political system in Georgia. The parliament has held ministers accountable, modified government policies and, on several occasions, used its right of initiative to introduce new legislation. Moreover, on a number of occasions, it has managed to find consensus solutions to major political challenges. In the view of the Assembly, these are important developments and a major evolution of the political environment in the country.

3. The Assembly welcomes the comprehensive reforms announced by the Georgian authorities, including constitutional reform, to further strengthen the democratic institutions in the country and to ensure a genuinely independent judiciary and an adversarial justice system. In the view of the Assembly, it is important that all political forces are consulted on, and can contribute to, these planned reforms.

4. With regard to the reform of the Constitution, the Assembly:

4.1. calls on the parliament to ensure that the changes to the Constitution address all the remaining recommendations of the European Commission for Democracy through Law (Venice Commission) on the 2010 Constitution as well as the concerns of the Assembly regarding the remaining ambiguities in the division of powers and the systemic vulnerability to inter-institutional conflict;

4.2. urges all political forces to agree on an election system that can count on a broad consensus and that strengthens the pluralistic nature of the country's political institutions. In this respect, the Assembly invites all stakeholders to consider the proportional–regional election system, based on open lists, which seems to have the agreement of most, if not all, political forces in the country;

4.3. urges all the parties concerned to refrain from adopting amendments with contentious or divisive language or that would undermine the rights of any minority in the country;

4.4. welcomes the establishment and composition of the State Commission for Constitutional Reform as a clear sign that the authorities wish to amend the Constitution in an consensual and inclusive process and calls on all stakeholders to contribute constructively to this process;

4.5. recommends that the State Commission for Constitutional Reform closely co-operate with the Venice Commission in the drawing up of the constitutional amendments and request a formal opinion by the Venice Commission on the proposed amendments before they are adopted by parliament.

5. The Assembly recalls its concerns about the independence of the judiciary and administration of justice in Georgia. In that respect, it welcomes the adoption of a comprehensive reform package for the judiciary and justice system that aims to ensure genuine independence of the judiciary and a truly adversarial justice system. The Assembly welcomes signals that the judiciary is now working more independently. However, it also notes that the proceedings in sensitive legal cases, including against former government members, have revealed continuing vulnerabilities and deficiencies in the justice system that need to be addressed. Moreover, it regrets that the Georgian Parliament could not find the consensus necessary to elect all of its six members in the High Council of Justice. Further reforms of the judiciary, including of the prosecution services, are therefore necessary. In this respect, the Assembly:

5.1. suggests that the parliament considers a further amendment to the organic law of Georgia on the courts of general jurisdiction that would require at least two rounds of voting, with sufficient time for negotiations in-between, before lowering the threshold from a two-thirds majority to a simple majority to

2. Draft resolution adopted by the committee on 24 June 2014.

elect the parliament's appointees to the High Council of Justice. In the view of the Assembly, this will facilitate and encourage agreement between the ruling majority and the opposition on the members of the High Council of Justice elected by the parliament;

5.2. calls on the parliament to contemplate considerably lowering the three-year probation period for judges to be appointed to a life term of office, in order to bring it into line with European standards;

5.3. urges the parliament to amend the law on administrative offences with a view to removing the possibility of custodial sentences for such offences;

5.4. while welcoming the recent decrease in its use, expresses its concern about the continued widespread use of pre-trial detention in Georgia. The Assembly emphasises that detention on remand should only be used as a measure of last resort, when there is a clear risk of absconding, interference with the course of justice, or a serious risk that the person will commit a serious offence or pose a threat to public order. It calls on the authorities to adopt clear guidelines for the prosecution and courts for the use of detention on remand, in order to ensure full adherence with the requirements of Article 5 of the European Convention on Human Rights (ETS No. 5) and Committee of Ministers Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

5.5. welcomes the reforms of the law-enforcement sector initiated by the authorities**.**

6. The Assembly notes that the media reforms initiated by the authorities are considered by the Representative for the Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) to be an improvement over previous legislation and in line with international standards. The Assembly welcomes the fact that these reforms address several of its previous recommendations. It regrets that these reforms were unnecessarily politicised in the tense pre-electoral political environment.

7. The Assembly expresses its concern about the apparent politicisation of the public broadcaster and the recent difficulties experienced by the parliament in appointing an independent and impartial board of trustees to oversee its work. It considers this to be a signal that both the majority and the minority in parliament are attempting to politicise the composition and work of the board of trustees and ultimately the public broadcaster itself. Further amendments to the Law on Broadcasting need to be adopted obliging the parliament to appoint a board of trustees on the basis of the candidates proposed by the independent and impartial public selection committee that is foreseen in the law. In this context, the Assembly urges the Georgian Parliament to adopt the transitional measures necessary to implement the Constitutional Court decision with regard to the dismissal of the previous board of trustees.

8. With regard to the recently adopted organic law on local self-government, the Assembly:

8.1. welcomes the fact that all *gamgebeli* and mayors of self-governing cities are now directly elected. In this respect, it suggests also considering the election of regional governors;

8.2. expresses its concern about the provisions that allow for the impeachment by the local councils of mayors and *gamgebeli* on any grounds. The Assembly considers that the impeachment of directly elected local officials, as well as the grounds on which this can be initiated, should be clearly prescribed and circumscribed by law;

8.3. takes note that this law, which affects the election procedure in local elections, was adopted only a few months before local elections were due to take place.

9. The Assembly takes note of the numerous changes in local governments in Georgia as a result of local councillors and city officials resigning or switching sides following the change of power at national level. While resignations and switching between parties is part of the democratic process, it is unacceptable if it is the result of duress. The Assembly is therefore seriously concerned by credible reports that a number of these changes were the result of undue pressure on local United National Movement (UNM) activists by supporters of the ruling coalition. The Assembly is also concerned by reports of violent disturbances of the campaign activities of the UNM, allegedly by Georgian Dream supporters, as well as reports that a considerable number of opposition candidates in the local elections, mainly from the UNM, withdrew their candidatures, allegedly under pressure from the authorities. There can be no place for such actions in a democratic society. The authorities should take prompt and effective measures to immediately halt such action and remedy the situation where necessary. The leaders of the ruling majority should give a clear and unambiguous signal to their supporters that any undue pressure on local officials, and disturbances of the political activities of the opposition, will not be tolerated.

10. The Assembly takes note of the large number of allegations of possible criminal conduct by former government officials during their tenure. At the same time, it is seriously concerned about allegations that the arrests and prosecution of a number of former government officials are politically motivated and amount to selective and revanchist justice. The Assembly:

10.1. underscores that there can be no impunity for ordinary crimes, including – and especially – those committed by government officials and politicians, whether current or past;

10.2. calls on the Georgian authorities to ensure that the investigation and prosecution of former government officials are conducted impartially, transparently and in full respect of the principles of a fair trial, as enshrined in the European Convention on Human Rights. It emphasises that not only should selective or politically motivated justice not take place, it should also be seen to be not taking place;

10.3. urges the authorities to investigate fully and in a transparent manner any allegations of improper conduct by law-enforcement agencies or the prosecution in relation to these cases;

10.4. considers that the introduction of jury trials for former government officials accused of having committed ordinary crimes is an important and positive step to help guarantee the impartiality of their trials;

10.5. taking into account the considerable tensions in the political environment created by these prosecutions, welcomes the suggestion by the authorities of a possible amnesty for all but serious crimes committed by former government officials.

11. The Assembly underscores the importance of an independent and impartial civil service. The alleged practice of hiring and dismissing civil servants on the basis of party affiliation by both previous and current governments runs counter to this principle and should be stopped.

12. The Assembly takes note of the large number of complaints filed by ordinary citizens with the prosecutor general for alleged miscarriages of justice and abuses of the justice system under the previous authorities, including forced plea bargaining, violations of property rights and ill-treatment while in prison. These allegations need to be properly investigated and, if need be, addressed. However, the Assembly wishes to underscore that any mechanism established to address these allegations should be a judicial procedure that fully respects the separation of powers, the independence of the judiciary and the obligations of Georgia under the European Convention on Human Rights.

13. The Assembly welcomes the law on the elimination of all forms of discrimination that was adopted on 2 May 2014 and which significantly enhances the legal framework for the protection of persons from discrimination. It takes note of concerns by civil society that the draft law would lack effective mechanisms to implement its provisions. The Assembly therefore suggests that the authorities conduct a comprehensive evaluation of the results of this law one year after its adoption, with a view to improving the effectiveness of the implementation mechanisms contained in it, if need be.

14. The increase of intolerant discourse and discriminatory acts against minorities, especially sexual and religious minorities, in Georgian society is of concern. The authorities need to make clear that such behaviour will not be tolerated and that any perpetrators of violent or discriminatory acts will be prosecuted. There can be no impunity for such acts, irrespective of who committed them. All stakeholders, and especially representatives of political parties and institutions that hold high moral credibility in Georgian society, should refrain from divisive language and acts that could incite intolerance or deteriorate the situation of minorities.

15. With regard to the repatriation of the deported Meskhetian population, the Assembly considers that the repatriation programme has mostly focused on providing a legal repatriate status to the eligible applicants and not on facilitating the actual repatriation itself. In addition, the Assembly takes note of the long delays in the granting of citizenship to those who have received repatriate status. The Assembly therefore reiterates the need for a comprehensive repatriation strategy and takes note of the recent initiatives taken by the Georgian authorities in this respect.

16. The Assembly calls on the Georgian authorities to sign and ratify, without further delay, the European Charter for Regional or Minority Languages (ETS No. 148), which is an accession commitment of Georgia to the Council of Europe. Noting the misconceptions that exist in Georgian society regarding the Charter, the Assembly recommends that the Georgian authorities organise an awareness campaign, with the involvement of civil society and the media, targeted at the different stakeholders in this process, with a view to clarifying the provisions of the Charter and its requirements.

17. The Assembly expresses its concern about the systemic illegal surveillance of citizens by the Georgian law-enforcement agencies, which violates the country's obligations under the European Convention on Human Rights. While welcoming recent measures to address this issue, the Assembly considers that comprehensive legislation is urgently needed to regulate data collection and surveillance by law-enforcement agencies.

18. The Assembly takes note of the report "Georgia in transition" by the European Union's Special Adviser for Legal and Constitutional Reform and Human Rights in Georgia, and former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, and supports its conclusions and recommendations.

19. Georgia has made marked progress in its democratic development over recent years. It is now important for it to overcome the antagonism, polarisation and sense of revenge that are still present in the political environment and for political stakeholders to contribute constructively to the further democratic consolidation of the country. The Assembly stands ready to assist the Georgian authorities and Parliament in this work.

B. Explanatory memorandum by Mr Jensen and Mr Cilevičs, co-rapporteurs

1. Introduction

1. Since the last report on the honouring of obligations and commitments by Georgia,[3] and especially in the last 18 months, the political environment and the democratic architecture of Georgia have undergone profound changes.

2. On 1 October 2012, parliamentary elections took place in Georgia. These elections, which were deemed to be generally in line with international democratic standards by the international community – including by an ad hoc committee of our Assembly – resulted in a landslide victory for the opposition united in the Georgian Dream (GD) coalition over the United National Movement (UNM) of President Mikheil Saakashvili, which had dominated the political landscape in Georgia since the Rose Revolution in 2003.

3. The handover of power after the elections, which took place in a smooth and constructive manner, introduced Georgia to a period of cohabitation, in which President Saakashvili, who, according to the constitutional provisions in force at that time, wielded considerable political power, represented a different political force than the government and the ruling majority in parliament. Regrettably, as a result of the unique constitutional situation, neither opposition nor majority were able to move beyond the polarisation and acrimony that was created between them during the election period.

4. A number of developments exacerbated the tense relationship between the new ruling majority and the opposition. Important among these developments were, *inter alia*, the criminal investigations that were started against some former government officials and reports of undue pressure being applied on local UNM officials by Georgian Dream supporters to either switch sides or resign.

5. Regrettably, these contentious issues overshadowed the positive developments that took place in the country, including a number of far-reaching reforms that were initiated by the new authorities. Constitutional reform with a view to addressing some of the particularities of the 2010 Constitution – which was drafted when the UNM had a constitutional majority – was one of the authorities' priorities. A number of constitutional amendments were adopted with the support of the UNM to defuse the tense political environment. An overall reform, based on the results of a constitutional working group established by the parliament, is scheduled to be finalised in 2016.

6. The political change of power was further consolidated with the presidential election on 27 October 2013. This election resulted in President Saakashvili,[4] who had been the figurehead of the country since the 2003 Rose Revolution, being replaced by the Georgian Dream candidate for the presidency, former Education Minister Giorgi Margvelashvili. The International Elections Observation Mission, of which the Assembly was part, considered the presidential election to be in line with international standards and far less tense and polarised than the previous parliamentary elections.

7. Following the presidential election, the political environment became somewhat less polarised and contentious, although the relationship between the opposition and the ruling majority remains tense. It is hoped that the relationship between the different political forces in the country will normalise following the forthcoming local elections that will complete the election cycle in Georgia.

8. With the local elections that took place on 15 June 2014, the election cycle that started in 2012, and which resulted in a profound change of powers in Georgia, is complete. Given the impact of this change of powers, as well as the fact that it is the first time that power has changed hands in Georgia peacefully and democratically via the ballot box, we feel that this is an opportune moment to take stock of the political environment and political developments in the country as well as the challenges faced by all political stakeholders in Georgia.

9. Following the parliamentary elections in 2012, we visited the country three times,[5] in addition to our *ex officio* participation in the pre-election and election observation missions of the ad hoc Committee of the Assembly for the observation of the presidential election on 27 October 2013. The information notes[6]

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3. Doc. 12554, April 2011 (co-rapporteurs: Mr Kastriot Islami (Albania, SOC) and Mr Michael Aastrup Jensen (Denmark, ALDE)).
4. Mr Saakashvili could not run in these elections because of the constitutional two-term limit.
5. From 5 to 7 December 2012, 8 to 11 April 2012, 13 to 16 January 2014.
6. AS/Mon (2013) 04 rev, AS/Mon (2013) 20, statement by the co-rapporteurs following their visit from 13 to 16 January 2014, published on 20 January 2014.

prepared on the basis our fact-finding visits were debated and declassified by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). On 13 December 2013, the committee held an exchange of views with the European Union's Special Adviser for Legal and Constitutional Reform and Human Rights in Georgia, Thomas Hammarberg, based on his report “Georgia in Transition” that was published on 22 September 2013.

2. Political developments

10. The parliamentary elections in Georgia, held on 1 October 2012, resulted in a landslide victory for the Georgian Dream coalition of Mr Bidzina Ivanishvili, which won initially 85 seats in the parliament. The ruling party before the elections, the United National Movement of President Saakashvili, gained 65 seats and announced it would go into opposition.

11. In line with promises made before the elections, the ruling majority split into three factions in parliament: Georgian Dream, Georgian Dream–Republicans and Georgian Dream–Free Democrats. An additional faction, Georgian Dream–Conservatives, was established on 4 December 2012, and on 29 May 2013, the Georgian Dream–Industrialist faction was established within the Georgian Dream coalition. All the factions have their own identity and policy focus, but closely co-operate and co-ordinate their work as a ruling majority. Until now, only one member has quit the majority group and continues as an independent MP.[7] Concerns that the GD coalition could falter after the elections were over were clearly unfounded.

12. Similarly, the United National Movement split into three factions during the first sitting of the parliament: UNM; UNM–Regions; and UNM–Majoritarians. This split is mostly technical and driven by pragmatic arguments (each faction gets the same privileges and a vote in the Bureau of the parliament). Initially, five UNM MPs refused to join any of the factions. They were later joined by several other UNM MPs, mostly UNM Majoritarian MPs. As a result of these changes, the UNM currently has 51 seats in the Georgian Parliament.

13. In general, the independent MPs vote with the ruling majority on crucial issues. Therefore, the latter has a comfortable majority in the parliament to govern the country,[8] but it has never had a constitutional two-thirds majority. Following the coming into force of the 2010 Constitution, after the inauguration of the new President, the constitutional majority was increased to three-fourths of the total number of members of parliament. Therefore, the Constitution can only be changed if these changes have the consensus of both the ruling majority and the opposition. This is an important safeguard for the constitutional stability of the country.

14. The formation of the new government was smooth and efficient, but the subsequent process of cohabitation was difficult and characterised by outbreaks of tension and antagonism, especially between the Prime Minister and the President. The leaders of the ruling majority and the minority regrettably were not able to overcome the polarised political climate and rancorous rhetoric that characterised the electoral environment. The difficult co-habitation was initially also negatively affected by the unique constitutional context, which was subsequently resolved by the constitutional amendments adopted on 25 March 2013.

15. Both sides eventually started to take steps to ensure a minimal level of co-operation and dialogue in order to govern the country. Two important areas where the opposition and the ruling majority tried to come to a common agreement were foreign policy and constitutional reform.

16. On 25 March 2013, with strong bipartisan support, a constitutional amendment was adopted that removed an important source of mistrust and tension between the ruling majority and the opposition, namely the possibility for the President to change the government without the consent of the parliament.

17. In order to address the concern of the UNM that the GD coalition would introduce radical changes in Georgia’s foreign policy – especially with regard to the country’s European orientation and relations with Russia – a joint declaration of the majority and minority was adopted on 7 March 2013 which affirmed Georgia’s European orientation and non-recognition policy vis-à-vis the breakaway regions of South Ossetia and Abkhazia.

18. Following the parliamentary elections, demonstrations were held in several municipalities demanding a change of power in local governments, which were dominated by the UNM. In several local administrations, mayors and local councillors resigned or switched sides. In a number of cases we received credible reports

7. Koba Davitashvili on 2 August 2013.
8. Including the power to override presidential vetoes, which it had to resort to on a regular basis during the cohabitation period.

that these changes were the result of undue pressure being exerted on UNM activists. This has been a continuing source of tension between the majority and the minority, especially in the context of the run-up to the 2014 local elections.

19. The 2012 parliamentary elections were overshadowed by the prisoner abuse scandal, when video recordings emerged of – reportedly systematic – torture and maltreatment of prisoners at the hands of prison guards. Furthermore, following the 2012 parliamentary elections, the authorities received over 20 000 criminal complaints from citizens against members and officials in the previous government. These complaints ranged from abuse of power, politically motivated prosecution and illegal confiscation of property to maltreatment, torture and allegations of manslaughter and murder. The new authorities repeatedly stated that the "restoration of justice" would be a key priority for the new administration.

20. In this context, criminal investigations were started against a number of leading opposition members and former government officials, including members of the UNM leadership who were considered to be part of former President Saakashvili's inner circle, such as former Prime Minister and Interior Minister – and current UNM Secretary General – Vano Merabishvili; former Defence and Interior Minister, as well as former Head of the Penitentiary Service, Bacho Akhalaia; and the Mayor of Tbilisi, Gigi Ugulava. Both Vano Merabishvili and Bacho Akhalaia were placed in pre-trial detention by the courts.

21. The arrests and prosecution of former government officials were decried by the UNM as political prosecutions and as revanchist justice. The possibility that politically motivated prosecutions would take place in Georgia raised concern among Georgia's international partners, including the Assembly. For its part, the authorities stressed that no selective or political motivated justice had taken place, or would take place, in Georgia, but that the persons in question were accused of serious ordinary crimes,[9] for which the authorities had sufficient proof to warrant an investigation or initiate prosecution, and for which there could be no impunity. We will discuss this issue in more detail in one of the next sections of this report.

22. The authorities claim that a considerable number of people had been sentenced to prison in either politically motivated or deficient legal proceedings during the term of the previous government. Addressing these so-called miscarriages of justice is an important priority for the authorities, but understandably controversial with the opposition.

23. The contentious political climate and above-mentioned developments overshadowed a number of important legal and administrative reforms that were initiated by the authorities, including the reforms of the judiciary, media environment (including the public broadcaster) and local self-government. Since the Rose Revolution in 2003, and up until the parliamentary elections in October 2012, all aspects of the political environment in Georgia had been dominated by the United National Movement, which was firmly in control of most State institutions and regulatory bodies in the country. The fact that the reforms initiated by the authorities affected the UNM's hold over these bodies – and some were allegedly initiated exactly for that purpose – added to the tense political climate in which they were debated.

24. On 27 October 2013, the presidential election took place in Georgia. This election was won, with 61% of the vote, by GD candidate and former Education Minister Giorgi Margvelashvili, who was inaugurated on 17 November 2013. The UNM candidate and former Speaker Davit Bagradze won 21.8% of the vote, and former Speaker Nino Burjanadze came in third with a surprisingly high 10.2% of the vote. The other candidates failed to obtain substantial support.

25. The inauguration of the new President heralded the second phase of the political transition that had started with the parliamentary elections. In addition, the outcome of these elections, even if affected by a low turnout, confirmed the UNM's position as the main opposition party in Georgia at this moment.

26. As announced before the elections, Prime Minister Ivanishvili resigned[10] after the inauguration of President Margvelashvili. On 20 November 2013, former Interior Minister Irakli Garibashvili, who is a close confidant of Mr Ivanishvili, was confirmed as the new Prime Minister of Georgia. Following the 2010 changes to the Constitution, which came into effect with the inauguration of the new President, the Prime Minister is now the most powerful position in the government. With the exception of a new Minister of the Interior, no changes took place in the new Cabinet.

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9. The charges range from premeditated murder, torture and inhuman treatment to exceeding official functions and obstructing the work of a journalist.

10. Technically, he did not resign but did not reapply for the post of prime minister after the presidential inauguration. According to the new constitution, the government needs to be re-appointed (or re-confirmed) after a presidential inauguration.

27. Following the inauguration of the new President, a new Secretary of the Security Council and a new Chief of the Armed Forces were appointed by the President. On 21 November 2013, Otar Partskhaladze was appointed Prosecutor General to replace Archil Kbilashvili, who had resigned, ostensibly over policy differences with the new Prime Minister. On 30 December 2013, Prosecutor General Partskhaladze resigned over allegations that he had a criminal record for robbery and theft in Germany. This was denied by Mr Partskhaladze, who however admitted that he had been convicted for a "verbal altercation" with a German police officer.

28. There had been considerable speculation about the roles that former President Saakashvili and former Prime Minister Ivanishvili would play after the presidential election. Many were concerned that they would continue to guide the policies of the majority and opposition, but without being publicly and democratically accountable any longer. In addition, this could have perpetuated the tense relations between the opposition and the ruling majority which, in no small part, are the result of the tense relationship between these public figures. Luckily, it seems that these concerns were largely unfounded. While Mr Saakashvili was re-elected as leader of the UNM, he left the country after the inauguration of President Margvelashvili. On 21 December 2013, it was announced that he had accepted a professorship for (at least) the 2014 spring semester at the Fletcher School of Law and Diplomacy at Tufts University in Boston (United States). He has not returned to Georgia since the presidential election. For his part, Mr Ivanishvili announced that he would focus on strengthening civil society in Georgia and he seems to have largely disappeared from public view.

29. Regrettably, intolerance and discrimination of minorities, especially sexual and religious minorities, which were largely absent from the official political discourse in the country, came more to the forefront in 2013. This was highlighted by the violent attacks on an LGTB rally on 17 December 2013 and the controversy surrounding the removal of a minaret in Chela. These issues will be discussed in more detail below. We regret that minority issues quickly became a politicised topic in the context of the standoff between the GD and the UNM, which neither contributed to resolving these problems nor to improving the situation of minorities.

30. In February 2013, on an initiative of Commissioner Štefan Füle and Baroness Ashton, the European Commission appointed former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, as the European Union's Special Adviser for Legal and Constitutional Reform and Human Rights in Georgia. In addition to providing the Commission with an independent and impartial view on developments in Georgia, Mr Hammarberg is tasked, on behalf of the Commission, with advising Georgian State institutions on such issues as judicial reform, legal reforms and constitutional reform, as well as law-enforcement, the penal system and human rights. Mr Hammarberg published his report entitled "Georgia in Transition"[11] on 23 September 2013.

31. While the recent period has been characterised by tension and polarisation between the main two political forces, it is important to stress the positive impact that many of the developments have had on the political environment. The existence of a strong and experienced opposition and a well-organised ruling coalition has strengthened the role of the parliament and parliamentarianism in the political system in Georgia. Parliament has called ministers for questioning and grilled them over policy issues. It has rejected and modified government policies and, on several occasions, has used its right of initiative to introduce new legislation. Moreover, on a number of occasions it has managed to find consensus solutions to major political challenges. This is a development that the Assembly has called for repeatedly in previous reports and a major evolution of the political environment in the country.

32. On 29 November 2013, during the Vilnius Summit, Georgia and the European Union initialled an association agreement which included a Deep and Comprehensive Free Trade Agreement (DCFTA).

3. Constitutional reform

33. The constitutional amendments, adopted on 15 October 2010, significantly altered the balance of power between State institutions. They changed the system of government from a strong presidential system to a mixed system, where most of the power was in the hands of the government, which was solely accountable to the parliament. However, according to the transitional provisions, the constitutional changes that affected the balance of power between the government and the President would only take effect after the 2013 presidential election.

11. http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf.

34. This situation was originally a source of great tension between the new government and the President and dominated the cohabitation process. Under the transitional provisions, the President maintained very wide discretion in dismissing the government without the approval of the parliament. In addition, he maintained the right to appoint a caretaker government of his choosing, without needing parliamentary approval. The ruling coalition feared that the President would use these constitutional powers to reinstate a UNM government and change the outcome of the last elections in the small time window[12] available for him to do so, despite repeated public statements from the President that he had no intention of doing so. At the same time, the President and his supporters feared that the ruling majority would try to obtain a large enough majority in the parliament to reduce the presidential powers ahead of time.

35. In the light of these tensions, the ruling majority in parliament, after consulting with the opposition, proposed constitutional amendments aimed at ensuring that neither side would be able to change the power-sharing arrangements before the presidential election in October 2013. President Saakashvili and the UNM responded positively to these proposals. The talks between both sides initially broke down, reportedly over the scope of an amnesty for public officials for non-violent crimes committed before 1 October 2012[13] that was demanded by the United National Movement. However, both the GD and the UNM indicated that both sides agreed, or were very close to agreement, on the content of the constitutional amendments. The constitutional amendments were subsequently tabled in the parliament by the ruling majority.

36. The proposed constitutional amendment left the division of powers between the President and the government intact, with one exception: it removed the possibility for the President to dismiss a sitting government and appoint a new one without the consent of the parliament. In the event that the President wished to dismiss the government without the support of the parliament, he could call for pre-term elections but the sitting government would continue in place until after the elections. Originally, it was foreseen that the President would gain the power to also call for new elections in the six months before a presidential election, but this was not maintained.

37. On 20 March 2013, the UNM announced that it would support the constitutional amendment, on the condition that a non-binding vote be organised before the debate to see whether or not the GD coalition had enough votes to adopt the constitutional amendment without the support of the UNM faction. The GD reluctantly agreed to this. On 25 March 2013, the constitutional amendment was adopted unanimously with the support of all UNM members present. This was a major achievement and at the same time underscored that constitutional change is not currently possible without support from the UNM. These two issues removed an important source of mistrust and tension between the ruling majority and the opposition.

38. As mentioned above, the 2010 Constitution was drafted and adopted when the UNM had an overwhelming constitutional majority in parliament. In the view of many political forces, the 2010 Constitution was especially adapted to suit the UNM's interests at that time. This was strengthened by a number of subsequent constitutional amendments, adopted between 15 October 2010 and 1 October 2011, often for party political reasons.[14] The current authorities have expressed their wish for a reform of the Constitution in order to address what they consider to be deficiencies in the current Constitution.

39. On 15 June 2013, the ruling majority proposed a number of amendments to the Constitution dealing, *inter alia*, with double citizenship and public functions, confidence votes in the government, approval of the State budget and the requirements for changing the Constitution. The authorities stated that they wanted these amendments to be adopted before the 2010 Constitution came fully into effect, as it would require a three-fourths majority to change the Constitution. Most of these amendments were not controversial and were supported by the UNM. However, one set of amendments, which would alter the majority for constitutional amendments after the presidential inauguration, was strongly opposed by the opposition

40. On 31 July 2013, the authorities requested an opinion of the Venice Commission on these amendments. In its opinion,[15] the Venice Commission concluded that there were no objections from a legal point of view to most of the proposed changes, although in relation to the provisions regarding the adoption of

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12. The President could not call for elections in the first six months after an election or in the last six months before the presidential election. Outside of this period, he had large discretionary powers to call for new elections.

13. Reportedly, the main stumbling block was the extent to which this amnesty would apply to high-level public officials. The UNM had reportedly asked for an unconditional amnesty for all public officials (including government members and MPs) for all wrongdoings, except violent crimes, committed before 1 October 2012. For its part, the ruling majority was willing to offer a full amnesty for lower and mid-level public officials for all but violent crimes and a partial amnesty for high-level officials and political figures. The latter category would be exempt from prosecution if they admitted wrongdoings, but would be banned from taking office for a period of five years.

14. Including in the run-up to the 2012 parliamentary elections.

the budget, the Venice Commission felt that these weakened the budgetary powers of the parliament. With regard to the proposed change of the majority vote needed to change the Constitution, the Venice Commission was more critical. While it noted that there were no clear European standards for such provisions, it emphasised that European standards and best practice would suggest that a reasonable compromise should be found between the need for flexibility for constitutional reform on the one hand, and constitutional stability on the other. In this respect it was felt that the three-fourths majority that would come into force after the presidential inauguration was indeed high and could inhibit constitutional reform. At the same time it was felt that a two-thirds majority in one vote could undermine constitutional stability, especially in the current political context in Georgia. The Venice Commission therefore recommended introducing provisions which would require two votes with a two-thirds majority at a three-month interval in order to change the Constitution. In the event, the amendment to change the constitutional majority was not tabled and, following the inauguration of President Margvelashvili, a three-fourths majority is now needed to change the Constitution.

41. On 27 December 2013, the Georgian Parliament established a special State Commission for Constitutional Reform. This commission, chaired by the Speaker of the Parliament, is composed of members of both the majority and the opposition in the parliament, representatives of non-parliamentary parties and civil society, as well as legal experts. It held its inaugural meeting on 3 March 2014. During the meeting, the Speaker stressed that the authorities had no predetermined outcome in mind for the constitutional reform, but that it was important to start the discussions on the territorial structure of the State and not to make that subject hostage to the ongoing situation regarding Abkhazia and South Ossetia. From the side of the opposition, Mr Davit Bagradze stressed that all “positive changes” to the Constitution proposed by the State Commission would be supported by the opposition in the parliament.

42. The authorities have indicated that they will propose amendments to the Constitution that would allow the seat of the parliament to be moved back from Kutaisi to Tbilisi, given the logistical difficulties of having the seats of government and parliament in two different cities. This is a highly symbolic, and therefore potentially contentious, issue, especially for the previous UNM authorities.

43. In our 2011 report, we already expressed our concern about a number of provisions in the 2010 Constitution that made the system vulnerable to inter-institutional conflict, especially when a President and government do not share the same political priorities and direction, which unfortunately was the case during the cohabitation period. We therefore call on the State Constitutional Commission and the parliament to adopt amendments that strengthen the separation of powers between the different branches of government and that remove the vulnerability of systemic inter-institutional conflict.

44. Another issue that will need to be addressed in this context is electoral reform. In the past, we have suggested the adoption of a regional–proportional election system, as that was supported by the overwhelming majority of political forces in Georgia. In addition, the current disparity in the size of the election districts runs counter to European standards and needs to be addressed. This reportedly may involve changing the Constitution.

45. On 28 March 2014, Prime Minister Garibashvili announced that the government would propose an amendment to the Constitution to prohibit same-sex marriages. We hope that the government will seriously reconsider its position on this issue and call on the parliament not to adopt any amendments to the Constitution that would include such provisions.

46. We expect the Georgian authorities to closely co-operate with the Venice Commission in the drafting of the constitutional amendments and to ask for a formal opinion of the Venice Commission on these amendments before they are tabled in parliament.

4. Judicial reform

47. The independence of the judiciary and the administration of justice in Georgia have been long-standing points of concern for the Assembly. As mentioned in our 2011 report to the Assembly, the criminal justice system was largely prosecution-driven and the judiciary was under the control of the then ruling majority. This lack of independence of the judiciary and occasional interference in the justice system actually hindered, and possibly even undermined, several important reforms initiated by the previous government in this field. The absence of an impartial judicial arbiter negatively affected public trust in the independence of the justice system and fairness of governance.

15. CDL(2013)038.

48. The authorities have declared that reform of the justice system, with a view to making it truly independent from any political influence, be it from parliament or from the executive, is one of their main priorities. An ambitious reform package has been drafted by the Ministry of Justice. Most interlocutors have expressed their satisfaction with these reforms and underscored their pertinence for ensuring the independence of the judiciary and the pre-eminence of the rule of law.

49. An important component of the judicial reform package was the reform of the High Council of Justice, which is central to the new government's efforts to depoliticise the justice system. The original draft prepared by the Ministry of Justice proposed a new composition formula that would abolish the four seats filled by MPs as well as the two presidential appointees. In addition, court chairpersons and their deputies, as well as chairpersons of chambers and collegiums, would be barred from being elected to the High Council of Justice by the Judicial Conference.[16]

50. The reform of the High Council of Justice was understandably politically sensitive and controversial, especially in the context of the reported abuses of the system under the previous government. On 3 December 2012, the authorities thus requested the opinion of the Venice Commission on the amendments to the organic law of Georgia on the courts of general jurisdiction. In addition, following a request by the Monitoring Committee, the authorities agreed to delay adopting these amendments until the opinion of the Venice Commission had been received.

51. The Venice Commission adopted its opinion[17] at its plenary meeting on 8 and 9 March 2013. In the view of Venice Commission, the proposed amendments improve the law on the judiciary overall and bring it closer to European standards, including guaranteeing the independence of the judiciary.

52. According to the Venice Commission, the amendments on the composition of the High Council of Justice address several existing shortcomings and represent progress over current legislation. However, it considered that the proposed ban on chairpersons of courts and chambers being elected to the High Council of Justice was overbroad. Instead, the Venice Commission suggested limiting the number of court and chamber chairpersons on the High Council of Justice to a maximum number and allowing chairpersons elected in surplus of this quota the option of resigning from their position as court chairperson after their election. In addition, in order to further reduce the chances of politicisation of the High Council, the Venice Commission recommended that those of its members that are elected by parliament be elected by a two-thirds majority, including a fail-safe mechanism against possible political deadlocks or obstruction.

53. A controversial issue was the early termination of the mandates of the then sitting members of the High Council of Justice that was foreseen in the draft law. In this respect, the Venice Commission expressed its concern that the early termination of the mandates of the members of the High Council of Justice as a result of these amendments could undermine the independence of the judiciary, creating a precedent that could be used by any new government that has sufficient votes in parliament to change the composition of the High Council of Justice. It therefore recommended that the current members, with the exception of those who in the view of the Venice Commission were appointed in violation of the rules by the Judicial Conference, would be allowed to finish the remainder of their term on the Council.

54. On 19 March 2013, the Ministry of Justice tabled with the parliament revised amendments to the organic law of Georgia on the courts of general jurisdiction, on the basis of the opinion of the Venice Commission. The revised amendments incorporated all but two of the Venice Commission's recommendations. Only the proposal that the parliament elects its appointees with a two-thirds majority was not taken into account and, more importantly, the provision that terminated the mandates of the members of the High Council of Justice upon the enactment of the new composition was maintained. The authorities argued that delaying the implementation of the new composition of the High Council of Justice was in contradiction with the overall objective of depoliticising the High Council.

55. The amendments to the organic law of Georgia on the courts of general jurisdiction were adopted by the parliament on 5 April 2013. During the debates in parliament, it was decided after all to implement the Venice Commission's recommendation to elect the six members appointed by the parliament with a two-thirds majority. However, in order to avoid a possible deadlock, for four of these seats, a simple majority would be sufficient in the second round of voting, in the event none of the candidates obtained the required two-thirds majority in the first round of voting. For the two remaining places, a two-thirds majority would be needed in all rounds of voting, which meant that, in the current parliament, these vacancies can only be filled with the support of the opposition. While we fully understand the need for a fail-safe mechanism to avoid deadlocks,

16. The Judicial Conference is the self-governing body of Georgian judges.
17. Document CDL-AS(2013)007.

we would suggest that the parliament consider requiring at least two rounds of voting, with sufficient time for negotiations in-between, before lowering the threshold from a two-thirds majority to a simple majority for its appointees. This should facilitate and encourage agreement between the ruling majority and the opposition on the members of the High Council of Justice elected by the parliament. The bill was vetoed by President Saakashvili on 23 April 2013, but the parliament overturned his veto on 1 May 2013, and it was given force of law by the Speaker of the Parliament.

56. On 10 June 2013, the Judicial Conference elected its seven members on the 15-member High Council of Justice. On 14 June, the parliament elected four of its six appointees in a second round of voting with a single majority. The other two vacancies could not be filled as the UNM was boycotting the vote and therefore the two-thirds majority to fill these vacancies could not be obtained. Taking into account the criticism of the Minister of Justice regarding the members elected by the Judicial Conference, it seems that the fears that the reforms would result in a control of the ruling majority over the High Council of Justice are unfounded.

57. On 4 October 2013, the parliament adopted an amendment to the law on the judiciary that introduced a three-year probationary period (the maximum allowed under the 2010 Constitution) for judges before they can be appointed for life. This probationary period is also applicable for sitting judges (who are currently appointed for a ten-year period) before they can be appointed for life. The Chairperson of the High Council of Justice (and Chairperson of the Supreme Court) cautioned against adopting this amendment as did several civil society and expert groups. It should be noted that the Venice Commission, in its opinion on the 2010 Constitution (as well as with regard to similar legal provisions in other countries), has criticised long probationary periods, which can affect the independence of the judiciary. We therefore urge the parliament to substantially lower the probation period in line with European standards.

58. On 26 December 2013, the parliament agreed to postpone the introduction of a legal provision in the criminal procedure code that would allow only courts to compel witnesses to be questioned and testify before it. As a result, the old provision, dating from 2009, that allows prosecutors to force persons to testify, remains in force. We regret that the implementation of the new provision, which removes the possibility of undue pressure by the prosecution, has been postponed several times, first under the UNM and later under the Georgian Dream authorities.

59. The law on administrative offences continues to be a point of concern. According to this law, people can receive up to 90 days' detention for administrative offences. The possibility of prison sentences for administrative offences, especially of such long duration, has repeatedly been criticised by Georgia's international partners, including by the Venice Commission and the Assembly. Given the numerous allegations that prison sentences were used as an illegal coercive instrument, we would recommend that the parliament revise the law with a view to abolishing prison sentences for administrative offences.

60. Many interlocutors have reported that there seems to be less political interference in the work of the courts and that the judiciary has become increasingly more independent, including in relation to the prosecution, which has been a point of concern in previous reports. This seems to be confirmed by the court proceedings against former government members, where requests of the prosecution have regularly been denied. There has been a decrease in the granting of pre-trial detention by the courts, combined with a decline of requests by the prosecution service. According to the authorities, in the first half of 2013, the prosecution service made 9% fewer requests for pre-trial detention than in the same period the previous year, and only 46% of the requests for measures of constraint, such as pre-trial detention or bail, were granted by the courts. However, despite this positive trend, the use of pre-trial detention is still too widespread in Georgia. We wish to underscore that, in line with European standards, pre-trial detention should only be used as a last resort when there is a clear risk of absconding, interference with the course of justice, or serious risk that the person will commit a serious offence or pose a threat to public order. Guidelines need to be developed by the authorities for the prosecution and the courts that will ensure that pre-trial detention is applied in full adherence with the requirements of Article 5 of the European Convention on Human Rights (ETS No. 5) and Committee of Ministers Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

61. Despite overall improvements, the justice system is still too prosecution-driven, often with too little respect for the presumption of innocence. This was also highlighted during the legal proceedings against former government officials. In addition, the manner in which witnesses and suspects are summoned and interrogated by law-enforcement bodies, especially by the financial police, have raised questions. In this context, it should be noted that a large number (more than 300) of the current prosecutors are implicated in the complaints made by citizens with regard to miscarriages of justice, which are still being investigated by the

Prosecutor General. It is clear that further reforms are necessary, including of the prosecution service, to ensure that all legal proceedings take place in full accordance with the requirements of the European Convention on Human Rights and other European standards and principles.

62. The role and controversial use of the law-enforcement agencies under the previous government has been a point of strong criticism in Georgia. In response, the new authorities have embarked on a far-reaching reform of the law-enforcement sector. The Constitutional Security Department and the Special Operations Departments, which were widely accused of being responsible for alleged wrongdoings in the past, were abolished and, on 4 October 2013, a new law on the police was adopted that, *inter alia*, provided a coherent legal framework for an impartial and politically independent police force in line with European standards. In addition, on the same date, a law on international law-enforcement co-operation was adopted by the Georgian Parliament. A code of ethics for the Georgian police was also drawn up by the Ministry of Internal Affairs in co-operation with the Council of Europe. These reforms are to be welcomed.

5. Media reform

63. The authorities have embarked on a far-reaching reform of the media environment, including the public broadcaster. These reforms – which addressed shortcomings in the media environment as noted, *inter alia*, by the Assembly – were unnecessarily politicised, especially with regard to the reform of the public broadcaster, as a result of the tense political climate before the presidential election.

64. Since 13 April 2011, a group of independent media experts (Media Advocacy Group) has been working on proposals for the reform of media legislation in Georgia. Their proposals dealt with such issues as licensing procedures, media pluralism, independence of the media and the functioning of the public broadcaster. In early March 2012, the Media Advocacy Group published a proposal for a number of amendments to the media law that were taken on board and tabled by the ruling majority in the parliament.

65. International election observation missions lauded the public broadcaster for its impartial broadcasting and news coverage during the 2010 local and 2012 parliamentary elections. However, public polls commissioned by the National Democratic Institute (NDI) have shown that, over recent years, public trust in the public broadcaster has remained very low, and that it is mostly seen as a mouthpiece of the authorities. This low level of public trust has resulted in calls for the reform of the public broadcaster by the new authorities, but also by civil society organisations, including by the Media Advocacy Group, the group of independent experts which drew up proposals for the reform of the media legislation.

66. The amendments to the Law on Broadcasting, which were adopted by the parliament on 1 June 2013, stipulate a reduction in the number of members of the board of trustees of the public broadcaster from 15 to nine and propose a new mechanism for their appointment. Previously, the board members were appointed by the President, who had large discretion in his choice. Under the new procedure, two members are appointed by the parliament on proposal of the ombudsperson, three on proposal of the majority in the parliament, three on proposal of the minority and independent MPs and one on proposal of the Adjara Regional Council.

67. The Representative for the Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) commissioned an independent expert assessment of the amendments to the Law on Broadcasting. This report considered that the amendments were an improvement over previous legislation and in line with international standards. The provisions governing the appointment process of the board of trustees were welcomed, but the report recommended adopting transitional measures with regard to the change of board of trustees of the public broadcaster, especially in the light of the, at the time upcoming, presidential election. In response, the parliament decided that the changes to the board of trustees would only take effect on 1 January 2014, namely after the presidential election had taken place. However, on 4 October 2013, two members of the board of trustees resigned, depriving it of its legal quorum to make decisions. Therefore, on 13 November 2013, the parliament adopted an amendment to the Law on Broadcasting that would allow the procedures for the appointment of a new board of trustees to start earlier than foreseen, on 25 November 2013.

68. On 27 December 2013, following the selection procedure stipulated by the law,[18] the parliament failed to appoint a new board of trustees, as neither the ruling majority nor the opposition managed to select the full number of candidates they were entitled to by law. In addition, of the six candidates who were proposed (two by the UNM, one by Georgian Dream, two by the public defender and one by the board of the Adjara public

18. The candidates are selected by a non-partisan nine-member committee, composed of media and civil society representatives.

broadcaster), only three were confirmed by the parliament, bypassing the recommendations of the selection commission, which had reportedly executed its work in an impartial and professional manner. Regrettably, on 23 January 2014, the parliament again failed to appoint the board of trustees when it rejected two candidates proposed by the UNM and the candidate proposed by the Adjara Regional Council, and only appointed the second candidate nominated by the public defender. In addition, the parliamentary majority did not nominate the additional two candidates for its quota and a – last minute – third candidate nominated by the opposition was rejected on procedural grounds.

69. The failure to select the board of trustees was strongly criticised by the OSCE Representative for Freedom of the Media and by civil society organisations. These developments are also of concern to us, as it is a clear indication that the Georgian Parliament, from the side of both majority and opposition, intends to politicise the composition and work of the board of trustees and ultimately the work of the public broadcaster. We strongly believe that the public broadcaster and its governing bodies should be independent and impartial, and free from political interference. The media law should be amended in such a way that the parliament is obliged to appoint the candidates nominated by the four entities that have the right to nominate from a pool of candidates selected by the public selection commission after an impartial and transparent competition. In this respect, we also find it questionable that the national parliament can invalidate, *de facto*, the choice of a candidate made by another legislative body, namely the Adjara Regional Council.

70. A new completion for candidates for the remaining five seats on the board of trustees was announced on 11 March 2014. However, on 11 April 2014, the Constitutional Court ruled unconstitutional the provisions that terminated the previous board of trustees before its term was over. It is not clear how the parliament will address the ruling by the Constitutional Court.

71. On 17 April 2014, the parliament appointed three more members to the board of trustees, as proposed by the ruling majority and by the Adjara Regional Council. However, it rejected the two candidates proposed by the opposition.

72. The public broadcaster has amassed a considerable debt vis-à-vis the State, reportedly in contravention of its statutes. On 14 December 2012, the Director of the public broadcaster presented his resignation. He denied allegations that he had been put under pressure or that his resignation was the result of the financial audit of the public broadcaster. On 26 December 2012, the board of trustees appointed Mr Giorgi Baratashvili, a long-standing employee of the public broadcaster as its new Director.

73. On 1 March 2013, the director of the public broadcaster fired the head of the news service, allegedly over biased reporting against the authorities (the head of the news service was employed shortly afterwards by the Mayor of Tbilisi). In reaction, the board of trustees fired Mr Giorgi Baratashvili. He appealed to the court against his dismissal and was reinstated by court order. On 6 September 2013, the board of trustees fired Mr Baratashvili for a second time, this time on the grounds that he had failed to provide the board with sufficient information relating to programming and the budget. His dismissal followed the controversial cancellation by Mr Baratashvili of two popular talk shows of two anchors who are considered close to the previous authorities. In a public statement, civil society organisations called on the public broadcaster to "overcome partisan games".

74. In our view, the ongoing standoff between the board of trustees and the director of the public broadcaster underscores the politicisation of the public broadcaster and shows a clear need for the parliament to appoint, without delay, an impartial, professional and independent board of trustees that will leave the public broadcaster free from political interference and interests.

75. Transparency of media ownership continued to be a problem in Georgia for much of the reporting period, despite legislation adopted in November 2010 that prohibits offshore companies from owning more than 10% of a holder of a Georgian broadcasting license. Transparency International reported in 2012 that many media outlets were still owned by shell companies. In its report of 16 April 2014, Transparency International noted that media ownership was now far more transparent, with only one media outlet, Tabula, continuing to be owned by an offshore company. The report notes that most media conglomerates operating in Georgia have strong links to either the UNM or to Georgian Dream.[19]

76. On 7 March 2013, the parliament decided to set up an investigation commission into "serious allegations" about the functioning of the Georgian National Communications Commission (GNCC), which is the licensing authority for the media and electronic communications sectors, and responsible for the oversight of this sector. The allegations partially centred on the conflict of interest of the Head of the GNCC, Irakli

19. Transparency International, "Who Owns Georgia's Media?", April 2014.

Chikovani, who was also owner of a major advertising company, whose activities he was charged to oversee as head of the GNCC.[20] Mr Chikovani resigned from his post on 15 April 2013. The parliamentary investigation commission was established on 1 May 2013 and published its report on 31 October 2013, which concluded, *inter alia*, that the GNCC lacked transparency and impartiality.

6. Local authority reform

77. Local authority reform and the reform of the territorial organisation of the country have been a declared priority of the new government. To this end, the government tabled, on 23 November 2013, a draft for a new organic law on local self-government. This law was fiercely criticised by conservative groups and the Georgian Orthodox Church for giving too much power to local and regional governments, which in their view would undermine the unity of the State. In reality, the fact that the provisions of the new law would, *de facto*, give increased rights of self-government to distinct compact ethnic and religious minorities, seems to have been the underlying reason for this criticism.

78. On 13 December 2013, the parliament passed in first reading, and on 24 January 2014 in second reading, a watered-down version of this draft law. The revised bill dropped the proposal for elected governors and local councils at the level of villages. In addition, the number of self-governing cities was reduced in comparison with the original draft, from 18 to 12. However, it is important to note that, even if watered down, the law still contains several important improvements over previous legislation, some of these addressing recommendations made by the Assembly in previous resolutions. Importantly, the new law introduced the (direct) election of the mayors of 12 towns (prior to this law only the Mayor of Tbilisi was directly elected) as well as the *gamgebeli*[21] of all municipalities.

79. Some provisions are of concern, especially those that allow local councils – *sakrebuli* – to start impeachment procedures against elected mayors and *gamgebeli*. This raises questions with regard to democratic principles. In our view, impeachment procedures, including the grounds on which they can be started, should be clearly circumscribed by law.

80. The law on local authorities has a considerable impact on the context and conditions for local elections. Reportedly, most discussions in parliament focused on the election system for local authorities. The threshold for mayors to be elected in the first round was increased from 30% to 40%, although it fell short of the 50% demanded by civil society. In addition, the threshold for a party to enter local councils was lowered from 5% to 4%.

81. The law was adopted on 5 February 2014, only four months before local elections were due to take place. While we welcome the positive changes that are part of this new law, we regret that it was adopted so close to the local elections, given the impact of this law on these elections.

7. Undue pressure on local government officials

82. Following the 2012 parliamentary elections, there were numerous changes in local governments when mayors and local councillors resigned or switched sides. There were several allegations, some of them substantiated, that these changes were the result of undue pressure being exerted on UNM officials by supporters of the new ruling majority.

83. Allegations have also been made that the MPs that were elected as UNM MPs but who either did not join, or left, the UNM faction afterwards, did so under pressure of the ruling majority. During our visit to Georgia, from 8 to 11 April 2013, we met with the members of the “independents” faction in the parliament. All of them strongly denied that pressure had been exerted on them. According to them, they were *de facto* independent candidates who had agreed to run under the UNM banner during the last elections. Party allegiance was therefore not an issue and, according to them, after the elections they felt that they could represent the interest of their voters better by not joining any of the factions. They asserted that party allegiance was similarly not very strong at the local level, which could partly explain the switching between parties of local councillors and officials.

20. Mr Chikovani is also former General Director and co-owner of the Rustavi 2 television station.
21. Head of the municipality executive. This post is left over from Soviet times.

84. Several of the cases where councillors and mayors have formally switched sides may be indicative of the still continuing habit among some local officials of supporting the ruling power, whoever that may be. However, we have received reliable reports of other cases that seem clearly to be the result of coercion. While resignations and switching between parties is part of the democratic process, it is unacceptable if this is the result of duress.

85. The Georgian Dream leadership concede that local supporters have put pressure on local officials to resign or switch sides, but deny that this was centrally organised or sanctioned. Moreover, they assert that, even if politically questionable, none of the calls on the local authority members has been outside the limits of the law. However, even if the ruling majority did not centrally organise or sanction these activities, in our view it also did not do much to resolutely stop such lamentable practices. On several occasions we urged the ruling majority to make unambiguous public statements to their supporters that undue pressure on local officials belonging to the opposition would not be tolerated. Prime Minister Ivanishvili announced that he would establish a task force under direct responsibility of the Prime Minister to investigate all allegations of undue pressure on local officials with the aim of stopping and remedying such practices when necessary. Until now, we have received no indications that such a task force has been set up. This is regrettable as, if established, such a task force would send a strong preventive signal to party activists from all sides that undue pressure on local officials will not be tolerated.

86. Civil Society organisations have reported that close to 2 000 ordinary employees of ministries and agencies and local government administrations have been dismissed, including, allegedly, for political reasons. In this context we wish to emphasise the importance of a non-politicised and impartial civil service. The dismissal and hiring of government employees, be it at national or local level, on the basis of party affiliation undermines such an impartial and professional civil service and is unacceptable. All allegations of political dismissal and hiring should be properly investigated and remedied where necessary.

87. During the campaign for the presidential election, there were several reports of attacks on, and violent disturbances of, UNM campaign activities by supporters of the Georgian Dream coalition. A limited number of people were arrested by the police for these incidents and given negligible fines of GEL 100 each, which raised questions about effective deterrence and punishment.[22] As a result, the 2013 Human Rights Report of the US State Department concluded that the government's respect of the fundamental human right of freedom of association was selective. Regrettably, such incidents were also witnessed during the campaign for the local elections that took place on 15 June 2014. We call on the authorities to promptly take all necessary measures to bring such practises, which have no place in a democratic society, to an immediate halt.

88. On 31 March 2014, a UNM MP, Nugzar Tsiklauri, was reportedly attacked by unknown assailants. The UNM blamed the ruling majority for this attack, but did not offer proof for these allegations. The public defender and civil society organisations called on the authorities to fully and transparently investigate the attack in order to dispel any allegations that it was politically motivated. The attack was strongly condemned by the authorities and in particular by the Speaker of the Parliament, Davit Usupashvili, who promised a prompt investigation into this incident.

89. In the weeks before the local elections of 15 June 2014, a significant number of opposition candidates, mostly from the UNM but also from the Christian Democratic Party and Ms Burjanadze's United Opposition, withdrew their candidatures, allegedly under pressure.[23] On 30 May 2014, leading civil society organisations issued a statement about the pattern of the withdrawal of candidates, allegedly under pressure, that could result, in some municipalities, in the full election list of these parties being invalidated.[24] The authorities, through the Inter Agency Task Force on Elections, announced a full investigation into these allegations. It is clear that, if proven true, such a pattern of withdrawals under duress would negatively affect Georgia's democratic credentials.

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22. Country reports on Human Rights Practices for 2013, Georgia 2013 Human Rights Report, section 2.*b*, United States Department of State; See also the European Commission's report on the implementation of the European Neighbourhood Policy in Georgia in 2013, p. 10.
23. More than 30 opposition candidates allegedly withdrew under pressure.
24. Election lists for local elections should consist of at least 10 candidates in municipalities with less than 75 000 inhabitants and at least 15 candidates in municipalities with more than 75 000 inhabitants.

8. Prosecution of former government members and ministerial officials

90. Following the 2012 parliamentary elections, more than 20 000 complaints were lodged with the prosecutor general by citizens claiming to have been victims of abuses committed by, or under, the previous authorities. More than 4 000 claims concern allegations of torture and ill-treatment in prisons, while more than 1 200 concern violations of property rights and approximately 1 000 complaints were filed against in total 322 prosecutors by persons claiming that they were forced to accept plea-bargain agreements.

91. The authorities announced that the "restoration of justice" would be one of their key priorities and underscored that there would be no impunity for former officials for past abuses. In the following months a number of leading members of the former governing party and ministerial officials were arrested for alleged crimes committed under their responsibility during their tenure in office. The United National Movement has decried these arrests as political prosecutions and as revanchist justice. For its part, the authorities have stressed that no selective or political motivated justice is taking place, or will take place, in Georgia, but that these people are accused of serious ordinary crimes,[25] for which the authorities have sufficient proof to warrant an investigation or initiate prosecution.

92. In support of their position, the authorities point to the fact that both the Minister of Defence and the Minister of Justice left the country in a hurry the day after the elections, as did a number of high-level officials from the Ministry of the Interior. While the former Minister of Defence voluntarily returned to Georgia, the others are still on the run and are the subject of an Interpol Red Notice.

93. There has been some confusion regarding the number of former officials concerned by these investigations. Until now, 35 officials of the former authorities have been charged with criminal offences. Of these, 14 are in pre-trial detention, 13 have been released on bail, one was released without restrictive measures, five have fled the country and three have been convicted, one of whom was pardoned[26] by President Saakashvili. In addition, charges have been brought against a considerable number of former civil servants.

94. The allegations of selective and politically motivated justice and revanchist policies by the new authorities are of concern. In addition, they considerably raise emotions and tensions in an already politically tense climate, which is not beneficial for the political environment and democratic development of the country.

95. The most publicised cases against former UNM government officials are those against former Minister of Defence Bacho Akhalaia, former Prime Minister and Interior Minister – and current UNM Secretary General – Vano Merabishvili, and former Tbilisi Mayor Gigi Ugulava, who were all influential members of former President Saakashvili's inner circle.

96. In November 2012, former Minister of Defence Bacho Akhalaia was charged with "exceeding official powers" in relation to alleged abuse of soldiers, as well as illegal deprivation of freedom. Later that month, charges of torture were added in relation to a separate case of alleged abuse of servicemen. On 1 March 2013, a separate case was opened against Mr Akhalaia for abuse of power on the grounds that he allegedly beaten up several prisoners when he was chief of the prison system, which eventually lead to the notorious prison riots in 2005. On 25 October 2013, additional charges were brought against him for giving "privileged" conditions in prison to four former interior ministry officials who had been convicted in the murder case of Sandro Girgvliani,[27] and, on 13 January 2014, additional charges of torture of prisoners were filed. The multiple cases brought against Mr Akhalaia are seen by the UNM as proof that the prosecution of him and other high-level UNM officials is politically motivated. In August 2013, Mr Akhalaia was acquitted of the original charges of abuse of soldiers and servicemen, but, on 28 October 2013, he was found guilty of inhumane treatment of prisoners and sentenced to three years and four months in prison. On 3 November 2013, in a controversial decision, Mr Akhalaia was pardoned by outgoing President Saakashvili. The prosecutor appealed against his acquittal for inhumane treatment of servicemen, but his acquittal was confirmed by the Court of Appeal on 17 April 2014. The verdicts in the other cases against Mr Akhalaia, who remains in pre-trial detention, are still pending at the moment of writing.

97. On 23 February 2013, the Mayor of Tbilisi, Gigi Ugulava, a close confidant of former President Saakashvili, was charged with misspending and embezzlement of State funds as well as with money laundering. A request by the prosecution to suspend him from his function as Mayor of Tbilisi and to ban him

25. The charges range from premeditated murder, torture and inhuman treatment to exceeding official functions and obstructing the work of a journalist.
26. Mr Bacho Akhalaia was pardoned by President Saakashvili after being convicted for inhumane treatment of inmates, but he remains in pre-trial detention for other charges.
27. For more information on this case, see AS/Mon (2011) 24 rev 3, paragraphs 23 and 24.

from leaving the country was originally rejected by the Tbilisi City Court, and confirmed on appeal. However, on 22 December 2013, the Tbilisi City Court suspended him from his function because of the charges of misspending public funds. The prosecution asserted that, by remaining in office, Mr Ugulava would potentially have been able to destroy evidence. A separate motion by the prosecution for pre-trial detention was declined. The decision to suspend Mr Ugulava, who had been elected as Mayor of Tbilisi, was made without hearing the oral arguments of the prosecution and defence, which led to allegations of politically motivated decisions by the courts. Mr Ugulava alleged that the judge in question made this decision under pressure from the head of the Ministry of the Interior's internal investigations unit. Civil society organisations called for the authorities to investigate these allegations transparently in order to avoid any doubts with regard to due process in this politically sensitive case. Mr Ugulava has filed an official complaint against his suspension with the Constitutional Court of Georgia. In our view, as a matter of principle, the suspension of an elected official by a court, without having been convicted of any crime, is of serious concern.

98. On 21 May 2013, former Prime Minister and Interior Minister, Vano Merabishvili, and former Minister of Health, Labour and Social Affairs, Zurab Tchiaberashvili, were arrested and charged with misusing and embezzling public funds in order to pay UNM activists during the 2012 parliamentary elections. On a separate count, Mr Merabishvili was charged with misappropriation of private property. The prosecution demanded pre-trial detention for both men. However, the court in Kutaisi rejected the request of the prosecution with regard to Mr Tchiaberashvili, who on, on 23 May 2013, was released after posting GEL 20 000[28] bail. In the case of Mr Merabishvili, the court agreed with the prosecutor's arguments that, *inter alia*, as former Interior Minister, he would potentially be in a position to influence former subordinates in the law-enforcement agencies with the aim of impeding the investigation. Mr Merabishvili appealed this decision, but the appeals court in Tbilisi confirmed the decisions of the court in Kutaisi. On 28 May 2013, separate charges were brought against him in relation to the controversial breakup of a protest rally in Tbilisi on 26 May 2011. On 17 February 2014, Mr Merabishvili was found guilty of illegally funnelling GEL 5.2 million of public funds into the campaign budget of the UNM for the 2012 parliamentary elections, as well as the misappropriation of private property for personal benefit, and he was sentenced to a five-year prison term. Mr Tchiaberashvili was convicted of a lesser charge of neglect of official duty and given a GEL 50 000[29] fine. On 27 February 2014, Mr Merabishvili was sentenced to a prison term of four years and six months for exceeding official powers in relation to the breakup of the 26 May 2011 protests. Mr Merabishvili has appealed against both convictions. In addition, the court proceedings against him on charges in relation to the murder of Sandro Girgvliani are still proceeding.

99. On 17 December 2013, Mr Merabishvili claimed that he had been moved from prison at midnight to an unknown location where Prosecutor General Partskhaladze allegedly threatened to arrest his family members if he did not co-operate in the case of the death of former Prime Minister Zvhania. These allegations were dismissed by the Prosecutor General's Office as well as by the Prime Minister and Speaker of Parliament. Following a call by several civil society organisations, including Transparency International and the Georgian Young Lawyers' Association (GYLA), and the public defender, the Minister in charge of the penitentiary system announced, on 23 December 2013, that he had initiated a formal investigation into the claims by Mr Merabishvili. However, on 15 January 2014, he announced that the video records of the camera in Mr Merabishvili's cell had been destroyed as the camera records in a 24-hour loop.[30] As a result, there is no conclusive video evidence that can either support or contradict the allegations made by Mr Merabishvili. Taking into account the prisoners abuse scandal, it is clear to us that precise legal rules and procedures should be in place regarding the collection and keeping of video records in prisons. These are issues of serious concern. The allegations by Mr Merabishvili and the absence of a clear policy on the collection and keeping of video records in prisons need to be fully investigated. The Minister of Corrections informed us that video footage from CCTV cameras along the route from the prison does not seem to confirm the allegations made by Mr Merabishvili, and prison records do not show any movement of persons, Based on, *inter alia*, these findings, the Ministry of Corrections has concluded that the claims were unfounded and ceased further investigation.

100. On 22 March 2014, the Prosecutor's Office announced that it had subpoenaed former President Saakashvili, who currently resides in the United States, in relation to 10 different cases. Georgia's international partners, including the European Union and the US State Department reacted with concern to this subpoena for such a large number of different cases at the same time, which could create the impression of political retribution given the fragile state of Georgia's judiciary. On 27 March 2014, the Prosecutor's Office

28. Approximately €9 200.
29. Approximately €21 000.
30. Mr Merabishvili made his allegations three days after the incident was alleged to have taken place. In the view of the authorities, this delay was deliberate, as Mr Merabishvili, given his previous functions, should obviously have been aware that any recordings were deleted after 24 hours.

offered to interview former President Saakashvili – who had refused to return to Tbilisi for questioning – via video link or Skype. This was originally refused by Mr Saakashvili. However, on 29 March 2014, he announced, via Mr Ugulava, that he was ready to be questioned in court via video link.

101. On 16 January 2013, a draft amendment to the Criminal Procedure Code allowed for the possibility for former officials facing criminal charges to request a trial by jury. Jury trials were introduced by the former government as a measure to strengthen the impartiality of the justice system and are already available as an option for aggravated murder and sexual violence cases in the Tbilisi and Kutaisi city courts. This amendment gave defendants the free choice between a trial by jury or a trial by judges.[31] A controversial amendment was tabled in the parliament that would re-introduce the provision that requires the consent of the prosecutor for a trial by jury. However, this amendment was rejected in final reading by the parliament, which is to be welcomed.

102. We wish to emphasise that there cannot be any impunity for ordinary crimes including, or even especially, for government members and politicians, whether current or past. However, especially in the current political context, it is important that in the criminal cases against former government officials, any perception of politically motivated or revanchist justice is avoided. The authorities should therefore ensure that the legal processes are conducted transparently and in a way which fully respects Georgia's obligations under Articles 5 and 6 of the European Convention on Human Rights. Not only should selective or politically motivated justice not take place, it should also be seen as not taking place.

103. The authorities have emphasised on several occasions that they guarantee that the legal proceedings will be transparent, impartial and in full compliance with the European Convention on Human Rights. They have invited the international community, including the Council of Europe and its Parliamentary Assembly, to send observers to monitor the legal proceedings. The OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has monitored the trials against several prominent former government officials and will issue a report when the cases have been finalised. In addition, these proceedings are closely followed by the European Union's Special Adviser for Legal and Constitutional Reform and Human Rights in Georgia, Mr Hammarberg.

104. Given the political costs – in terms of controversy and antagonism – that each arrest and subsequent prosecution entails, the wisdom of prosecuting former government members and civil servants for even the smallest misdemeanours is questionable and should be discouraged. In that respect, the authorities have informed us on several occasions that they are willing to consider a full amnesty for lower and mid-level public officials for all but violent crimes and a partial amnesty for high-level officials and political figures. This was also part of the negotiations with the opposition in the context of the constitutional reform. We welcome such initiative as it could considerably reduce tensions in the political system. In this context, we wish to emphasise that the principle of presumption of innocence should also in these cases be strictly adhered to, including, and especially, by current government officials, which unfortunately has not always been the case.

105. The legal proceedings against former government officials continued to be an issue during the election campaign for the local elections, as it did during the campaign for the presidential election. Therefore, on 14 April 2014, Prime Minister Garibashvili announced a moratorium on legal proceedings against former government officials during the campaign for the local elections that took place on 15 June 2014.

9. Amnesty and review of possible miscarriages of justice

106. The Parliamentary Assembly, as well as other international bodies and personalities, such as the Council of Europe Commissioner for Human Rights, have in previous reports[32] expressed their concern about the administration of justice and independence of the judiciary in Georgia. In our 2011 report to the Assembly, we expressed our continuing concern about "the pressure on the judiciary and limitations on the independence of the judiciary".[33] We also noted that: "Allegations are increasingly made, mainly by opposition parties, as well as some NGOs, that opposition figures and civil society representatives critical of the government, as well as their families are targeted by politically motivated criminal investigations and that political pressure and motivations have influenced the charges brought and the sentences passed."[34] In the light of the deficiencies noted in relation to the administration of justice and the independence of the judiciary,

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31. Previously, the prosecutor needed to give his consent to a trial by jury.
32. See, for example, CommDH(2011)22 of the Council of Europe Commissioner of Human Rights, and Assembly Resolution 1801 (2011).
33. Doc. 12554, paragraph 90.
34. Ibid., paragraph 153.

we therefore noted that "[t]he borderline between uneven justice and selective justice is vague. The problems in the administration of justice could easily give credence, especially in the current charged political environment, to the allegations that political motivations can influence the application of justice in Georgia".[35]

107. On 5 December 2012, the parliament adopted a controversial resolution in which it recognised 190 persons as political prisoners and another 25 as "political exiles". This was strongly contested by the opposition which, understandably, objected to the notion that political prisoners existed during UNM's term in government. We are concerned that, by declaring persons political prisoners and exiles without proper judicial review, the parliament may have overstepped its constitutional role by directly interfering in what should be first and foremost a judicial process. Following international criticism, including from the Assembly, the Georgian authorities announced that they will not consider adopting another resolution declaring persons "political prisoners" to address what the parliament considers to be cases of miscarriage of justice.

108. A key policy of the previous government was its zero-tolerance policy towards crime. This zero-tolerance policy and the consecutive prison sentences that it entailed, compounded by the deficiencies in the administration of justice, led to Georgia having one of the highest per capita prison populations in Europe. This in turn has resulted in serious overcrowding of prisons which has given rise to human rights concerns. The human rights situation with regard to the exceptionally, if not excessively, high prison population came to the forefront with the prisoners abuse scandal that erupted in September 2012, when videos surfaced that documented the systemic mistreatment and torture of prisoners in a Georgian prison.

109. The reform of the prison service and a reduction in the number of inmates are therefore priorities for the new authorities. In order to do this, the parliament adopted an amnesty law that would release prisoners convicted for minor crimes and reduce sentences for recidivists and persons convicted of serious crimes. While the principle of reducing the prison population can count on bipartisan support, the amnesty law, which was adopted on 22 December 2012, was controversial because of the inclusion of the persons that had been declared political prisoners in the resolution that was adopted by the parliament on 5 December 2012. The inclusion of this provision in the amnesty law also raised legal issues, as it essentially adds an arbitrary list of individuals, convicted on widely varying grounds, to a general amnesty. This was also criticised by the Venice Commission in its opinion on the amnesty law.[36] As a result of the amnesty, as well as successive pardons by former President Saakashvili and President Margvelashvili, the prison population in Georgia has been more than halved, to less than 10 000 prisoners.

110. The authorities have emphasised the need for an appropriate mechanism to review and, if necessary, address cases of miscarriage of justice. As justification for such a mechanism, they point to the over 20 000 complaints that have been filed with the Prosecutor's Office by Georgian citizens who claim that they have been victims of miscarriages of justice and abuse of the legal system by the previous authorities. These complaints include allegations of forced plea-bargaining, violations of property rights and ill-treatment while in prison. Even if many of these claims are unfounded, the sheer number of complaints and their pattern indicate that serious miscarriages of justice indeed took place on a more systemic level than previously realised. This is also confirmed by reports of several reputable Georgian non-governmental organisations (NGOs) as well as the public defender (Ombudsperson).

111. On 14 May 2013, the Minister of Justice requested the opinion of the Venice Commission on the draft law on the temporary State commission on miscarriages of justice of Georgia. In its opinion on this draft law,[37] the Venice Commission strongly criticised the idea that a non-judicial body would review cases in order to decide which cases should be re-opened by the courts, as this would infringe on the independence of the judiciary and the separation of powers.

112. We fully support the principle that alleged miscarriages of justice should be addressed and, where found, remedied. However, we emphasise that any mechanism established to do so should be a judicial procedure that fully respects the separation of powers, independence of the judiciary, and the obligations of Georgia under the European Convention on Human Rights. This was also stressed by Mr Hammarberg in his report "Georgia in Transition". Mechanisms to address miscarriages of justice that respect the above principles do exist in other countries, such as the United Kingdom and Norway, which could be examples for Georgia.

35. Ibid., paragraph 155.
36. Document CDL-AD(2013)009.
37. Document CDL-AD(2013)013.

113. On 29 November 2013, the Minister of Justice announced that she would delay the setting up of a mechanism to deal with miscarriages of justice on the ground that the government did not have the financial resources needed to compensate persons whose claim of miscarriage of justice was upheld. However, on 14 April 2014, the Minister of the Economy, George Kvirikashvili, stated that the government was working actively with the Prosecutor General's Office on the issue of property confiscated under the previous government.

10. Minority issues and repatriation of the Meskhetian population

114. As already mentioned, intolerance and discrimination against minorities, especially sexual and religious minorities, which were largely absent from the official political discourse in the country, have become more prevalent in the recent period, which is very regrettable. Minority organisations reported that, while intolerant speech had indeed become more common in public discourse than was previously the case, the authorities continued in general to be open and committed to minority rights. We wish to express our concern about the increase, and apparent acceptance, of intolerant discourse and the number of initiatives, including by high-level members of the government, that would potentially limit the rights of minorities in Georgia. The proposal by the current Prime Minister for a constitutional ban on same-sex marriages[38] is a good example in this respect.

115. On 17 May 2013, a rally to mark International Day against Homophobia was violently attacked by participants in a counter demonstration organised by the Georgian Orthodox Church. The chaotic situation during these events raised questions about the preparedness of the police to respond to such violence. We strongly condemn the homophobic and blatant intolerance that have no place in a democratic society. We especially regret the participation of members of the clergy in this violence, given the high moral authority the Georgian Orthodox Church enjoys in Georgian society. We urge the Georgian authorities to prosecute all perpetrators in full compliance with the law. In that respect, we welcome the statement by the Georgian Prime Minister that there will be no impunity for the perpetrators of the violence on 17 May, whether they belong to the clergy or not. However, we regret that, until now, very few people have been formally charged for their role in the violence on 17 May, despite the existence of ample video recordings of the events on that day. This raises questions about the authorities' commitment to prosecuting the instigators and perpetrators of the violence that occurred. During our visit in January 2014, we were informed by the authorities that criminal proceedings had been started against some of the clergymen who had been involved in these violent incidents.

116. There has also been a noticeable increase of intolerance against religious minorities, which is of concern. In the first half of 2013, there were several incidents of Georgian Orthodox groups preventing Muslim communities from holding prayer services. These incidents took place in, *inter alia*, Samtatskaro, Tsintskaro and Nigvziani.[39]

117. These incidents cumulated on 26 August 2013 with the dismantling by the police, on questionable grounds, of the newly build minaret of a mosque in Chela. Originally, it was thought that this was the result of a decision by the local *sakrebulo*, which had declared the construction of the minaret illegal and ordered its removal. However, it later became clear that its removal was ordered by the revenue service of the Ministry of Finance over alleged import violations. The removal of the minaret led to a number of protests against its removal, as well as against its possible reconstruction. These protest and counter-protests underline the continuing sensitivity of issues related to minority religions. The minaret was reinstalled on 28 November 2013. It is important that the authorities draw lessons from this incident and implement measures to avoid any repetition.

118. On 10 April 2014, the Georgian Government tabled with the parliament a draft law on "elimination of all forms of discrimination". The adoption of comprehensive anti-discrimination legislation was one of the European Union's requirements in the Visa Liberation Action Plan, in order for Georgia to be granted a visa-free regime with the European Union. The draft law was criticised by a number of reputable civil society organisations as being watered down from the original draft prepared by the Ministry of Justice, which had received favourable comments from the international community. The draft law presented to parliament no longer foresees the establishment of a special inspectorate for the implementation of anti-discrimination legislation and now tasks the office of the public defender – reportedly without assigning extra resources to the office – to oversee this. In addition, the possibility of applying financial penalties for violators of the anti-discrimination law has been removed from the draft proposed to the parliament.

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38. Georgia's civil code already defines marriage as a union between a woman and a man.
39. Georgian Democracy Institute, Report on Human Rights and Freedoms, 2013, First Half-Year and Second Half-Year.

119. The anti-discrimination law was adopted in first reading on 18 April 2014. A major point of controversy in the draft law is the fact that it explicitly prohibits discrimination on the grounds of sexual orientation, which is opposed, *inter alia*, by conservative and orthodox groups in Georgian society. Many interlocutors expected that the law would undergo further amendments when adopted in second reading. The law was adopted on 2 May 2014 and came into force on 7 May. To our satisfaction, sexual orientation as a prohibited ground for discrimination was maintained in the law.

120. The issue of the possible signing and ratification of the European Charter for Regional or Minority Languages (ETS No. 148), which is an accession commitment of Georgia to the Council of Europe, created some controversy early in 2013. There is a considerable amount of incorrect information and misconceptions circulating in Georgia regarding the Charter. Part of society fears – incorrectly – that the signing and ratification of the Charter would weaken national unity and mean that courts would automatically hear cases, and city councils hold sessions, in all minority languages. Similarly, minorities fear – also incorrectly – that signing and ratifying the Charter would weaken the extensive policies that are already in place to protect minority languages and minority rights in Georgia. The authorities have emphasised that they remain committed to signing and ratifying the Charter, but that this needs to be a carefully planned process given the opposition to the Charter among several social forces. It should be noted that the legislation required to implement the Charter will be relatively modest given that many aspects of Georgia's language legislation already exceed the demands of the Charter. Taking into account the many misconceptions about the Charter that exist in Georgian society, we recommended that the authorities organise, jointly with the media and civil society, an awareness campaign targeted at the different stakeholders in this process, in order to clarify the provisions of the Charter and its requirements. We hope that this will allow Georgia to honour this accession commitment in the very near future.

121. We have continued to closely follow the issue of the repatriation of the departed Meskhetian population, which is also an accession commitment of Georgia. In total, 5 841 eligible applications for repatriation – concerning 9 350 individuals – have been received by the Georgian authorities. Approximately 1 500[40] repatriate statuses have been granted. However, only very few persons have actually repatriated until now. Various reasons were given for this, including the high cost associated with repatriation[41] for which no, or limited, financial assistance is available. Of those having received repatriate status, only very few have been granted citizenship.[42] Until now, the repatriation programme seems to have been mostly focused on providing repatriate status, and not on facilitating the actual repatriation itself.

122. On several occasions, we have urged the authorities, current and previous, to develop a comprehensive repatriation strategy. After the change of government, the co-ordination for the repatriation of the deported Meskhetian population moved from the National Security Council to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. The State Minister for Reconciliation and Civic Equality informed us that the development of a comprehensive repatriation strategy, as suggested by us, is one of the main priorities of the inter-agency task force set up to co-ordinate the Meskhetian repatriation. We suggested that the authorities negotiate the removal of any barriers to repatriation that may exist in countries of origin within the Council of Europe framework.

11. Illegal surveillance

123. In August 2013, the Ministry of the Interior announced that it had found in several locations more than 24 000 illegal video and audio tapes which had been made by law-enforcement officials without court authorisation and in contravention of the law. The contents of the recordings indicate that they were made for political purposes, including for blackmailing. The sheer extent of this politically motivated illegal surveillance constitutes a systemic violation of Article 8 of the European Convention on Human Rights.[43]

124. A special ad hoc committee was established to investigate this illegal surveillance. This committee recommended that the illegal recordings be destroyed after the investigation was completed. The recordings were subsequently destroyed on 5 September 2013, although illegal copies of these recordings may continue to exist in private hands. On 27 July 2013, an amnesty was adopted by the parliament for those who were involved in illegal surveillance as well as for those who voluntarily hand over any illicit copies of the recordings

40. Figures of January 2014.
41. Including, reportedly, export fees charged by the countries of origin to allow repatriates to take their belongings with them out of the country.
42. See COMDH(2014)9, paragraph 97.
43. Thomas Hammarberg, Georgia in Transition, p. 21.

within three months of the amnesty declaration. On 12 May 2013, a deputy Minister of the Interior was dismissed and arrested after leaking one of these videos targeting a critical journalist. This incident underscored the danger of these recordings and of the possible existence of illicit copies.

125. The potential for massive illegal surveillance continues to be a point of serious concern. Despite statements to the contrary, the new authorities do not seem to have introduced any large-scale systemic changes to the surveillance capabilities of the law-enforcement agencies. For instance, equipment that gives the Ministry of the Interior direct access to private communications of citizens continues to be in place at the telecommunications operators. The authorities have established an independent data protection inspector, but this is not enough. Comprehensive legislation needs to be adopted to regulate data collection and surveillance by the authorities. On 6 March 2014, a large group of reputable civil society organisations started a campaign called "This affects you", which aims to establish proper legal oversight over the authorities surveillance capabilities. In response, the authorities have indicated that they were preparing a draft package of laws that will increase judicial oversight over surveillance operations.

12. Consequences of the war between Russia and Georgia

126. In line with the decision of the Monitoring Committee of 27 January 2011, we prepared, together with the co-rapporteurs responsible for Russia, and under the aegis of the Chair of the committee, an information note on the recent developments in relation to the consequences of the war between Russia and Georgia. This note was prepared on the basis of a fact-finding visit to Tbilisi and Moscow from 12 to 16 May 2013. We regret that the *de facto* authorities in Sukhumi and Tskhinvali refused to meet with our delegation. The information note, containing our joint findings[44] was declassified in June 2013. No further relevant developments have taken place since the publication of the note.

127. Jointly with the co-rapporteurs for Russia, we met, in November 2013, representatives of the Office of the Prosecutor General of the International Criminal Court in The Hague, who briefed us about the possibilities for the opening of a formal investigation on possible war crimes and crimes against humanity committed in the course of the war between Russia and Georgia.

128. Like its predecessor, the Georgian Dream administration is strongly committed to further European integration and to membership of the North Atlantic Treaty Organization (NATO). It has ruled out the re-establishment of any diplomatic relations with Russia as long as the territorial integrity of Georgia has not been restored. At the same time, it has publicly stated on several occasions that it wishes to improve relations with the Russian Federation in other areas that are not directly related to the ongoing conflict over the breakaway regions of South Ossetia and Abkhazia. Former Prime Minister Ivanishvili has appointed a special envoy for relations with the Russian Federation. This envoy regularly meets with high-level officials from the Russian Ministry of Foreign Affairs, often in the framework of the Geneva Talks. These meetings have led to some positive developments in the relations between the two countries, mostly in the spheres of economy and trade. At the same time, the Geneva Meetings, under joint chairmanship of the OSCE, United Nations and European Union, established following the war between Russia and Georgia, remain the main forum for negotiations between the two countries on the consequences of the war.

129. On 1 January 2014, the State Ministry for Reintegration was renamed the State Ministry for Reconciliation and Civic Equality. This ministry remains in charge of relations with the breakaway regions of South-Ossetia and Abkhazia. One of the reasons for this name change was that the authorities hope that this will facilitate the relations with the *de facto* authorities in Tskhinvali and Sukhumi, who objected to the notion of reintegration.

13. Concluding remarks

130. The 2012 parliamentary elections marked the first time in the history of Georgia since its independence that the political power has changed through the ballot box in a peaceful and overall democratic manner. In a short period of time, Georgia changed both government and president and embarked on an ambitious reform process to address past mistakes and strengthen the plurality of the political system. All the country's political forces should be complimented for this democratic change of power, which, understandably, has not been easy for anyone.

44. AS/Mon (2013) 14.

131. The change of power was accompanied by considerable tensions and polarisations in the political environment in Georgia that sometimes masked the positive changes that were taking place. The existence of a strong and experienced opposition, combined with a well-organised ruling coalition, has strengthened the role of the parliament and parliamentarianism in the political system in Georgia. The parliament has called ministers for questioning and grilled them over policy issues. It has rejected and modified government policies and, on several occasions, has used its right of initiative to introduce new legislation. Moreover, on a number of occasions, it has managed to find consensus solutions to major political challenges. This is a development that the Assembly has called for repeatedly in previous reports and a major evolution of the political environment in the country.

132. We welcome the many reforms, including constitutional reform, initiated to further strengthen the democratic institutions in Georgia and to ensure a genuine independent judiciary and an adversarial justice system. It is important that all political forces are consulted about, and can contribute to, these reforms. In this regard, we expect the constitutional reform to address the remaining recommendations of the Venice Commission and of the Assembly with regard to the division of powers as well as the electoral system.

133. We understand the need to investigate and address past mistakes and misdeeds. There can be no impunity for ordinary crimes including, or even especially, for government members and politicians, whether current or past. However, it is important that the investigations, legal proceedings and the mechanisms to address past mistakes take place transparently, impartially and are fully in line with European standards and principles. Any perception of revanchist justice or political retribution needs to be avoided.