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# The functioning of democratic institutions in Georgia

**Addendum to the 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

## 1. Introduction

1. The report on the functioning of democratic institutions in Georgia was adopted by the Monitoring Committee on 24 June 2014. During the debate in the committee we announced that, if needed, we would present an addendum to the report at the opening of the Autumn 2014 part-session to ensure that any relevant developments in the country are reflected in the report and in the resolution to be adopted by the Assembly.

2. Since the adoption of the report a number of developments have taken place that are of relevance to the Assembly, in particular the second round of the elections of mayors and *gamgebeli* on 12 July 2014, and the ongoing proceedings in the criminal cases against former government members. We will outline below the developments in respect of these two issues, as well as some general developments in the political environment.

## 2. General developments

3. On 7 July 2014, Eduard Shevardnadze, former President of Georgia and last foreign minister of the Soviet Union, widely credited as one of the authors of the perestroika/glasnost policy, died in Tbilisi at the age of 86. He was buried in a State funeral in the presence of government members and several foreign dignitaries.

4. On 26 July 2014, after a heated exchange between the ruling majority and the opposition, a reshuffled government under Prime Minister Garibashvili was confirmed by the Georgian Parliament. Five new ministers were appointed and two ministers were given new responsibilities. Most notably, former Public Defender, Sozar Subari, was moved from the post of Minister for the Penitentiary Services to Minister for internally displaced persons and accommodation. The post of Minister for the Penitentiary Services, which is a sensitive position, following the prisoners' abuse scandal that surfaced in 2012, was given to Giorgi Mgebrishvili, who had previously served as head of the State security agency. The key ministries of defence, justice, the interior and foreign affairs were not affected by the government reshuffle.

5. The relationship between Prime Minister Garibashvili and President Margvelashvili has become increasingly, and publicly, tense in the last couple of months. The Prime Minister and the President publicly disagreed about who should sign the Association Agreement with the European Union and about who should represent the country at the United Nations Climate Summit in New York. In addition, the Prime Minister

1. Reference to committee: Resolution 1115 (1997). Addendum to the report approved by the committee on 29 September 2014.

publicly criticised the President for the, in his view, unnecessary delay in declassifying the spending records of former President Saakashvili, and declined to participate in the Security Council meeting that was organised at the initiative of the President.

6. Early in July, Thomas Hammarberg, European Union Special Advisor for Legal and Constitutional Reform and Human Rights in Georgia, published the report of his final mission to Georgia that took place from 4 to 9 June 2014. His observations and findings coincide with a number of the findings we presented in our report. In his report, Mr Hammarberg welcomed the adoption of a Human Rights Strategy and Action Plan, the increase of judicial independence, as well as the separation of party and State interests in the election process. At the same time, he expressed his concern about the vulnerability of the judicial system to interference, as well as the lack of accountability of, and institutional oversight over, the office of the Prosecutor General. In addition, he noted that oversight over law-enforcement structures remained problematic and emphasised the need for the establishment of an independent complaints mechanism in this respect.

7. In July 2014, the Public Defender (Ombudsman) published his annual human rights report. On 1 August the parliament, after a heated debate, passed a resolution calling for the implementation of the recommendations contained in his report. In this report, *inter alia*, the Public Defender stressed the need for an independent complaints mechanism with regard to the law-enforcement structures and called for cases of maltreatment and deaths in the prison system to be properly investigated. In addition, the Public Defender called upon the Ministry of the Interior to fully and transparently investigate any reports of religious-based violence against minorities.

8. On 10 September 2014, a pig's head was nailed on the door of a Muslim School in Kobuleti in Adjara. This action was strongly condemned by the authorities. While we welcome the swift condemnation, we wish to emphasise that this incident underscores the need for continuing action by the authorities to protect the rights of religious minorities and to foster their full acceptance and integration into Georgian society.

9. The Georgian Dream–Democratic Georgia (GDDG) faction, which is the leading party in the ruling majority coalition, sacked its Deputy Speaker of the Parliament, Mr Murman Dumbadze, for his involvement in the attempts by the GDDG faction in the Adjara parliament to impeach the Head of the Adjara government. The attempts to impeach the Head of the Adjara government were reportedly not sanctioned by the national leadership of the GCCG, nor supported by any of the other parties in the Georgian Dream coalition.

10. On 27 June 2014, Georgia signed an Association Agreement, including a Deep and Comprehensive Free Trade Agreement (DCFTA) with the European Union. This agreement was ratified by the Georgian Parliament in an extraordinary session on 18 July 2014.

### 3. Second round of municipality elections

11. On 15 June 2014, local elections took place in Georgia. In our report, we already reflected on the tense pre-electoral environment and patterns of allegations that opposition candidates were put under pressure to withdraw their candidatures. In the first round of the elections, candidates proposed by the ruling Georgian Dream coalition won the race for mayor and *gamgebeli*[2] in four self-governing cities and 46 municipalities. These elections were observed by a delegation of the Congress of Local and Regional Authorities of the Council of Europe, which welcomed the improved electoral climate and calm and peaceful manner in which these elections were conducted. At the same time, they expressed concern about the harsh rhetoric and sometimes violent pre-election campaign, as well as the allegations of pressure on, and intimidation of, opposition candidates.

12. The second round of the elections for mayors in eight self-governed cities and *gamgebelis* in 12 municipalities took place on 12 July 2014. All these races were won, with a comfortable majority, by candidates proposed by the ruling Georgian Dream coalition. After the second round, the ruling majority holds the mayor and *gamgebeli* positions in all 71 municipalities and has a majority in the city council in 66 of them, consolidating its dominant position in Georgian politics.

13. These elections were not observed by the Council of Europe or the Organization for Security and Co-operation in Europe (OSCE). However, the Embassies of the United Stated of America, the United Kingdom and the Netherlands, who fielded an observation mission for the second round of the municipality elections, issued a statement in which they concluded that the election had taken place with only minor irregularities, in

2. Heads of the local executive.

a calm election environment, with the results reflecting the competitive political landscape in Georgia. At the same time, they noted that the legal proceedings against former Tbilisi mayor and prominent United National Movement (UNM) leader, Gigi Ugulava, had contributed to a tense pre-electoral environment.

14. One of the leading bishops of the Georgian Orthodox Church reportedly called, during a sermon, on voters not to vote for UNM candidates, in contradiction of the election law, which explicitly forbids campaigning by religious groups.

15. On 2 July 2014, the Tbilisi court turned down a request of the prosecution to seize the passport of former Tbilisi mayor Gigi Ugulava, who was charged with several counts of misspending and embezzlement of public funds. However, on 3 July 2014, the police arrested Mr Ugulava at the airport when leaving the country for a meeting in Ukraine, on new charges of money laundering. His arrest took place despite the moratorium on prosecutions of former government officials that was announced by Prime Minister Garibashvili on 14 April 2014. The arrest of Mr Ugulava, who was also the main campaign manager of the United National Movement for the local elections, considerably increased tensions in the pre-election environment. We deeply regret the arrest of Mr Ugulava, and its timing, which took place despite the moratorium. While not wanting to judge the merits of the case against him, his arrest seems especially unnecessary given the fact that Mr Ugulava, since originally being charged in December 2013, left the country on several occasions but always returned.

### 4. Prosecution of former government members

16. On 11 August 2014, the Court of Appeal upheld the conviction of former Prime and Interior Minister Vano Merabishvili for exceeding official powers in the break-up of the protest rallies in Tbilisi on 26 May 2011. In addition to being charged in connection to the murder of Sandro Girvliani, he was also charged, together with former President Saakashvili, in relation to the attack on the – then opposition – MP Valeri Gelashvili and for exceeding official authority in relation to the breaking up of the anti-government protests, and seizure of IMEDI-TV in 2007.

17. On 29 August 2014, former Parliamentary Speaker Bakradze was questioned by the prosecution in relation to possible undeclared financial assets, after copies of his bank statements were published on the Internet. Mr Bakradze later clarified that these accounts did not need to be declared as they were held in escrow for his children. We have some questions with regard to the need to subpoena Mr Bakradze for this issue, which could have easily been clarified by other means. In addition, we urge the authorities to fully investigate how bank statements belonging to Mr Bakradze and his family ended up being published on the Internet in clear violation of his right to privacy.

18. In a controversial development, the Prosecutor General announced, on 28 July 2014, that he had filed criminal charges against former President Saakashvili for exceeding official authority in breaking up the anti-government protests in November 2007 and for the related seizure of the IMEDI television station. The same charges were also filed against former Prime Minister and Minister of the Interior Vano Merabishvili, former Prosecutor General and Justice Minister Zurab Adeishvili, former Defence Minister Davit Kezerashvili and former Tbilisi Mayor Gigi Ugulava. On 2 August 2014, based on a motion by the prosecution, the court, ordered pre-trial detention *in absentia* of Mr Saakashvili, who is currently residing in the United States. On 5 August 2014, additional criminal charges were filed against former President Saakashvili in relation to the attack on the – then opposition – MP Valeri Gelashvili. A number of International partners of Georgia expressed their concern about the charges against former President Saakashvili and urged the authorities to ensure that the prosecution and trials against him were transparent, impartial, and without any possibility for politically motivated justice. This is in line with our repeated statements, also contained in the draft resolution, that any legal proceedings against former government officials should be conducted impartially, transparently and in full respect of the principles of a fair trial, as enshrined in the European Convention on Human Rights (ETS No. 5).[3] The charges against former President Saakashvili are serious and no one, including a former President, should be above the law. However, without wanting to pass judgment on the merits of the charges, we wish to emphasise that especially in a charged political environment such as in Georgia, all necessary steps should be taken to ensure that the legal proceedings, including requests for pre-trial detention, against a former President are not influenced by political motivations.

19. On 2 July 2014, additional charges were filed against former Minister of Defence Bacho Akhalaia for allegedly organising several detainees to be tortured. Mr Akhalaia was convicted and sentenced to a prison term in October 2013 for similar offences, but was pardoned by then President Saakashvili. At the same time,

3. Paragraph 10.2 of the draft resolution.

he has been cleared by the courts of several other charges that were brought against him by the prosecution. On 5 July 2014, the court granted the request for Mr Akhalaia to remain in pre-trial detention on the basis of these new charges. With the decision to grant pre-trial detention, the court inadvertently allowed his pre-trial detention to legally exceed the nine-month limit that is set by Georgian legislation. Indeed, Mr Akhalaia's defence attorney has alleged that this was the sole purpose of the new charges against his client. We have already expressed our concerns in general about the excessive use of pre-trial detention in Georgia and are therefore extremely concerned about the proceedings that have allowed Mr Akhalaia to remain in pre-trial detention beyond the nine-month limit that is clearly the spirit of the law. We urge the Georgian authorities to exchange his pre-trial detention for another, non-custodial, precautionary measure that is available to the courts and prosecution.

**5. Proposed amendments to the draft resolution on the functioning of democratic institutions in Georgia**

20. After paragraph 10, insert the following paragraph:

*"The Assembly welcomes the peaceful and calm conduct of the local elections on 15 June and 12 July 2014, which took place in an improved electoral environment. However, it expresses its concern about isolated violent incidents during the campaign period and about the persistent allegations of pressure on, and intimidation of, opposition candidates to withdraw their candidatures, which created a charged and contentious campaign environment. It calls on the authorities to fully, and transparently, investigate the reports of pressure on, and intimidation of, candidates to resign and, if violations are found, to prosecute perpetrators in line with the Georgian legislation."*

21. After paragraph 10.2, insert the following sub-paragraph:

*"takes note of the charges filed against former President Saakashvili and, while emphasising that no one is above the law, urges the authorities to ensure that, given the charged political climate in the country, the legal proceedings, including requests for pre-trial detention, against him are not influenced by political motivations;"*

22. After paragraph 10.5, add the following sub-paragraph:

*"expresses its concern about the length of the pre-trial detention of former Defence Minister Bacho Akhalaia and asks the authorities to use all legal means available to replace his detention on remand with some other non-custodial precautionary measure."*

23. In paragraph 18, at the end of the sentence, add the following text: ", as well as those contained in his follow-up report."