Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2015 (2014)[1]
Final version

The functioning of democratic institutions in Georgia

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the smooth conduct of the 2012 parliamentary elections and the 2013 presidential elections in Georgia, which, despite a polarised and acrimonious election environment, were largely 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 United National Movement (UNM) has reported that several thousand of its activists and supporters were regularly interrogated and intimidated by various investigative agencies (some up to 30 times). A number of major opposition figures, including members of parliament, were violently attacked. It should be noted that two years on, almost the entire leadership of the former ruling party has been arrested or is under prosecution or investigation: former Prime Minister and UNM Secretary General, Vano Merabishvili, former Defence Minister, Bacho Akhalaia, and former Tbilisi mayor and UNM campaign manager, Gigi Ugulava, are in prison (pre-trial detention). The judicial authorities have brought charges against the former President, Mikheil Saakashvili – and ordered pre-trial detention in absentia – and have done the same for former Defence Minister, David Keserashvili, and former Minister of Justice, Zurab Adeishvili. 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. Moreover, on a number of occasions, the parliament 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;

1. *Assembly debate* on 1 October 2014 (32nd and 33rd Sittings) (see Doc. 13588 and addendum, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Michael Aastrup Jensen and Mr Boriss Cilevičs). *Text adopted by the Assembly* on 1 October 2014 (33rd Sitting).

4.2. urges all political forces to agree on an election system that can count on a broad consensus and that strengthens the pluralism 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 through a 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 administration of justice and the independence of the judiciary in Georgia. In that respect, it welcomes the adoption of a comprehensive reform package that aims to ensure genuine independence of the judiciary and a truly adversarial justice system. The Assembly welcomes the first signs that the judiciary is now working more independently. However, it also notes that the proceedings in sensitive legal cases, including against former members of government (some of whom are leading members of the opposition), 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 consider 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 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, and that it should not be used for political purposes. 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. expresses concern over the widespread application of asset freezing to family members of opposition figures and former government officials in criminal cases not involving allegations concerning illicit assets;

5.6. urges the Georgian authorities to implement fully the provisions of the Code of Criminal Procedure on witness testimonies and jury trials.

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 opposition 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 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. 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 against him, including requests for pre-trial detention, are not influenced by political motivation;

10.4. 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;

10.5. 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;

10.6. taking into account the considerable tension 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;

10.7. 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.

11. 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 allegations of pressure on, and intimidation of candidates to withdraw their candidatures, which created a charged and contentious campaign environment. It calls on the authorities to carry out a full and transparent investigation into the reports of pressure on, and intimidation of candidates to withdraw and, if violations are found, to prosecute perpetrators in line with Georgian legislation.

12. 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.

13. 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.

14. 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.

15. The increase of intolerant discourse and discriminatory acts against minorities, especially sexual and religious minorities, in Georgian society is of concern. The Assembly is concerned by the lack of effective investigation and prosecution of hate crimes against minorities. 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 adversely affect the situation of minorities. The Assembly welcomes the adoption by the Georgian Parliament in May of the new Human Rights Strategy and Action Plan.

16. 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 in that context welcomes the adoption by the Georgian Government of a “State Strategy on Repatriation”.

17. 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.

18. The Assembly expresses its concern about the systematic 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.

19. The Assembly takes note of the report “Georgia in transition” by Thomas Hammarberg, 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, and supports its conclusions and recommendations, as well as those contained in his follow-up report.

20. Georgia has made marked progress in its democratic development over recent years, although it has been overshadowed by the arrest and prosecution of almost the entire leadership of the former government party and former high officials, which raises questions about the possible use of the justice system for political purposes. 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.