

Information Documents

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Compliance with commitments and obligations: the situation in Georgia

Report prepared by the Directorate of Strategic Planning (DSP),
subsequent to Secretariat Delegation visit to Tbilisi on 8-11 December 2002

Executive summary

The present report concerns primarily the state of progress in the implementation of commitments undertaken by Georgia when joining the Council of Europe. However, this issue cannot be completely dissociated from the question of unresolved conflicts (Abkhazia and South Ossetia) and the situation in the region, in general.

Democratic institutions: *no progress has been made to amend the Constitution and an appropriate infrastructure (in particular, voters registration' lists) is not yet in place to ensure fair parliamentary elections in autumn 2003.*

Rule of Law: *independence of the judiciary and the functioning of the criminal justice system remain a major problem and warrant urgent attention. Corruption remains endemic, yet major reform of law enforcement and security bodies is underway. Progress has been noted as regards the penitentiary system.*

Human rights: *Protocol No.1 to the ECHR has been ratified; however, conventions protecting minorities have not. Violence towards non-traditional religions/beliefs has not been stemmed. Law enforcement agencies are strongly criticised for human rights violations. The institution of Public Defender is becoming significant & its work deserves additional support.*

Recommendations: *the reinforcement of the Council of Europe's presence and additional co-operation programmes (including joint programmes with the European Commission) should help ensure compliance with the Organisation's standards. The Committee of Ministers should review, at 6-monthly intervals, progress achieved until such time as Georgia has complied with commitments accepted in 1999.*

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ADDENDUM: Compliance with commitments & obligations: the situation in Georgia.
Principal Council of Europe texts & list of commitments [**To be issued as a separate document**]

I. INTRODUCTION

At their 806th meeting on 4 September 2002, *"the Deputies... invited the Secretary General, on the basis of paragraph 4 of the 1994 Committee of Ministers Declaration on compliance with commitments,*

a. to make contacts and gather information on the situation in Georgia,

b. to review follow-up given to the report of the Chair of the Committee of Ministers [CM/Inf (2002) 36 final] and to the recommendations contained in the report of the Secretariat Information and Assistance Mission to Georgia of December 2001 (doc. SG/Inf (2001) 45),

c. to report back to the Committee of Ministers."

In its Recommendation 1580 (2002) adopted on 25 September 2002, the Parliamentary Assembly, *inter alia*, called on the authorities of Georgia *"to take decisive measures with a view to demonstrating [...] resolution to continue democratic reforms in the country, in particular in the light of the local elections of June 2002; and to pursue their efforts towards substantial progress as regards the implementation of the commitments, which Georgia accepted when it joined the Council of Europe ..."*.

In the light of the above decision of the Ministers' Deputies, the Secretary General of the Council of Europe (CoE) took the initiative to send a mission of the Secretariat to Georgia in order to make a stock-taking of the situation, to provide him with an overview on progress achieved and to make proposals for future action.

The Secretariat delegation, which visited Tbilisi from 8 to 11 December 2002, was composed of Mr. Jean-Louis Laurens, Director of Strategic Planning, Mr. Andrew Drzemczewski, Head of the Monitoring Department, and Mr. Jeremy Moakes, Co-ordinator for Eastern Europe and the Caucasus, Directorate of Strategic Planning. The delegation was accompanied by Mr. Plamen Nikolov, the newly appointed Special Representative of the Secretary General in Georgia. The Secretariat delegation is grateful to the Georgian authorities, in particular the Ministry of Foreign Affairs and the Permanent Representation to the CoE in Strasbourg, for their assistance in organising the visit. Appreciation for assistance is also extended to the Dutch Ambassador in Tbilisi who, on behalf of the Chairman of the Committee of Ministers, organised a meeting with ambassadors of Council of Europe member states in Georgia.

As requested by the Secretary General, the present document provides stocktaking of the situation in Georgia since December 2001 (see doc.SG/Inf (2001) 45) and includes recommendations made by the Secretariat delegation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS

A. DEMOCRATIC INSTITUTIONS

- i. No progress has been noted concerning amendments to the Constitution, in particular as regards the creation of the post of Prime Minister, relations between the executive and legislative branches of power (governmental responsibility and

right of dissolution of Parliament) and the creation of a second Chamber. That said, the delegation was informed that the holding of parliamentary elections may yet be contingent on the present Parliament's adoption of these constitutional amendments (see paras 4 and 11 to 13 below).

- ii. The next parliamentary elections should take place before 4 November 2003. However, preparation for these elections is substantially behind schedule and must be undertaken without any further delay. The following points deserve particular attention: the need to establish accurate voter registration lists well ahead of time, greater professionalism and independence of the Central Elections Commission (including certification and adequate training for election officials) and, during the election campaign, appropriate access of candidates to the media, control of the counting of votes, and international observation of the electoral process as a whole (see paras 14 to 19 below).
- iii. Local Government: local elections were held in June 2002. Some progress was noted in comparison with previous elections in Georgia, despite the existence of major shortcomings, in particular problems regarding voters' registration lists. It is also to be noted that on 16 December 2002, the CLRAE suspended the Georgian delegation from participating in its work (see paras. 20 and 21 below).
- iv. With the assistance of the Council of Europe, certain progress has been registered in the elaboration of the legislative framework for local government (local property). However, much remains to be done to clarify the competences, responsibilities and financial means of local government. The nomination by the President of mayors of the major cities remains a problem. No progress has been registered as regards the ratification of the European Charter of Local Self-government (see paras 21 to 25 below).
- v. Activities of the Tbilisi School of Political Studies have developed in 2002 thanks to the Joint Programme of the European Commission and the Council of Europe. This support should be pursued and intensified so as to contribute to the improvement of a democratic political culture in Georgia (see paras 26 and 72 below).

B. RULE OF LAW

- i. As concerns the fight against corruption, Georgia has signed the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the draft laws on money laundering and on the anti-corruption bureau are soon to be submitted for CoE expertise. However, little progress has been achieved on the implementation of the GRECO recommendations and corruption remains a problem endemic in most institutions. There appear to be very few prosecutions for crimes related to corruption (see paras 10, 43 to 48, and 72 below).

- ii. The Commission for the reform of law enforcement and security bodies¹, under the Chairmanship of the President of the Supreme Court, has now completed its work - with the assistance of CoE experts - and has issued a “Concept” for reform. In conformity with a presidential decree, all draft legislation should be submitted to Parliament before 15 March 2003 to ensure the “Concept’s” speedy implementation. This concerns, in particular:
- the preliminary investigation phase (“investigation and operative services”), including reform of the Prosecutor General’s Office;
 - a new Code of Criminal Procedure (draft due by 30 January 2003);
 - three new legislative texts concerning the police;
 - replacement of the State Security Ministry by a “Security Service”;
 - reform of legal education of judges and prosecutors (including establishment of a new High Council of Justice);
 - training centres for the police, security service and others; and
 - establishment of an institution of “Inspector General” (to counter corruption and maintain internal control) (see **paras 27 to 29, 31 and 72 below**).

As concerns the new draft Code of Criminal Procedure which was prepared with CoE expert assistance, the text is virtually ready. The final draft (in English) should be sent for Council of Europe expertise in the first weeks of January 2003 so that it can be submitted to the President by the end of January 2003 (see **paras 32 to 36 below**).

- iii. Concerning the existing Code of Criminal Procedure, two matters are worthy of note. The recent proposals put forward by the Ministry of the Interior to amend the Code have been heavily criticised. Also, the constitutionality of specific provisions of the Code, e.g., the delay in having access to legal assistance and aspects of detention on remand, has been questioned before the Constitutional Court by the Public Defender. The Constitutional Court’s decisions on these issues are imminent (see **paras 37, 38 and 58 below**).
- iv. Most judicial posts have now been filled, after the implementation of a specific examination procedure; but only for an initial 10-year period. No progress has been noted as regards ‘irremovability’ of judges. Reform of the High Council of Justice and its competences are envisaged, with the assistance of CoE experts, in order to strengthen the independence of the judiciary. Work has also continued on the creation of the National School for Judges. Further support for the setting-up of judicial reforms under way is to be provided in the new EC/CoE Joint Programme for Georgia 2003-2004. (see **paras 30 to 31, and 72 below**).

¹ The full title of this Commission reads: Inter-agency Commission on the Elaboration of the Proposals for Institutional Reforms within Security and Law-enforcement Agencies [whose work is co-ordinated by the staff of] the National Security Council. This Commission is also sometimes referred to as the “Interdepartmental Reform Commission for the Security & Law Enforcement Services of Georgia.”

- v. As regards the penitentiary system, progress has been achieved on the basis of, *inter alia*, recommendations made by the CPT (the report of the CPT's visit was published in July 2002; the authorities' comments thereon are not yet available). In particular, detainees have been transferred from institutions in which living conditions were found to be unacceptable and specific prisons/colonies have and are being built for juveniles and for women (**see para. 42 below**).

C. HUMAN RIGHTS

- i. Although a "pilot project" of an ECHR compatibility study was prepared back in September 2000, a definitive version encompassing an analysis of all the substantive provisions of the ECHR and the Strasbourg Court's case-law thereon has not yet been completed. This should be given priority (**see paras 49 to 51 below**).
- ii. The Ombudsman institution (Public Defender) has the potential to play a significant role in the protection of human rights in Georgia. However, further efforts must be undertaken - with the support of the international community - to reinforce this institution's role, functions and capacities (in particular its work in the regions) (**see paras 57 to 60, and 72 below**).
- iii. The central role - to protect human rights - given to the Constitutional Court in the Georgian Constitution of 1995 provides this institution with the opportunity to develop important case-law in this field (**see para. 58 below**).
- iv. Protocol No.1 to the ECHR which guarantees, *inter alia*, the protection of property and the right to free elections, was ratified by Georgia on 7 June 2002 (**see para. 53 below**). However, the European Social Charter (Revised) has not yet been ratified (**see para. 70 below**).
- v. As concerns the freedom of expression, the "conclusions and recommendations" of experts nominated by the Secretary General - who visited Georgia in July 2002 within the framework of the Committee of Ministers' confidential thematic monitoring procedure - will be discussed on 15 April 2003. This does not prevent the Georgian authorities, already now, to declassify the said experts' report, in the context of legislative initiatives being undertaken (**see paras 61 to 65 below**).
- vi. No progress has been registered as regards the ratification of the Framework Convention on National Minorities (signed; text pending in Parliament) and the European Charter for Regional or Minority Languages (not signed). "Clarification" of this unsatisfactory situation must be sought and remedial measures taken without delay. CoE assistance to facilitate ratification of both instruments might still be needed. That said, it can be noted that Georgia was the first State Party to ratify Protocol No.12 to ECHR on non-discrimination (which is not yet in force). (**see "concerns" indicated below para. 53**).

- vii. The problem of violence with respect to religious movements does not yet appear to have been solved. The fact that legal proceedings against religious extremists are rare (only one such case in 2002) tends to reinforce the feeling of impunity. Following the adoption of the Constitutional Agreement (“Concordat”) on relations between the State and the Orthodox Church of Georgia, a draft law on religious organisations is now being finalized. This draft law should be sent for CoE expertise in due course (**see paras 66 to 69 below**).
- viii. The draft law on the repatriation of deported persons during the period 1940-1944 (Meshketian population) was discussed with CoE experts, representatives of minorities and interested parties in Georgia. A final draft is to be submitted for CoE expertise in 2003. However, this issue is also linked to the present status of these persons in their country of temporary residence; no progress can be reported on this matter (**see paras 54 to 56**).
- ix. Review of cases of persons detained or convicted in the context of the political upheavals of 1991-1992 has progressed and, so the Secretariat understands, additional information requested back in December 2001 will soon be made available (**see para. 52 below**).

D. ARRANGEMENTS TO ENSURE COMPLIANCE WITH COMMITMENTS

- i. The recent reinforcement of the CoE “presence” in Georgia, with the nomination of a Special Representative of the Secretary General, has been welcomed by both the Georgian authorities and representatives of the international community in Tbilisi.
- ii. A new substantial EC/CoE Joint Programme for the period 2003–2004 is being negotiated. It will, in particular, strengthen co-operation in the fields of the functioning of the judiciary and law enforcement agencies, activities of the Public Defender (Ombudsman), local self-government and the development of democratic culture and practices.
- iii. As concerns the need to fulfil specific commitments undertaken by Georgia, the Committee of Ministers could:
 - a. request the Georgian authorities to transmit the present Report and its Addendum to the “Monitoring Commission on the state of fulfilment of commitments undertaken by Georgia,” set-up by Presidential Decree No.553 on 3 May 2002; and
 - b. place the item “Compliance with commitments and obligations: the situation in Georgia” on the Ministers’ Deputies agenda at 6-monthly intervals until such time as all the commitments undertaken in 1999 have been complied with.

III. GENERAL POLITICAL CONTEXT

1. The mandate of the Secretariat mission sent to Tbilisi in December 2002 was to make a stock-taking of progress achieved by Georgia in fulfilling its commitments since the last Secretariat visit in December 2001. Hence the questions of the still unresolved conflicts (Abkhazia and South Ossetia) and the various problems in bilateral relations with the Russian Federation, in particular linked to the conflict in the Chechen Republic, were not at the centre of discussions. However, it is undeniable that these problems have a direct impact on internal democratic developments in Georgia. This being said, all the difficulties Georgia is experiencing today cannot be explained solely by reference to external factors. The systemic and endemic problem of corruption in all spheres of society, the inefficiency of law enforcement agencies and the deadlock in reforms undertaken are all generated by internal factors (even if they are exacerbated by the unresolved conflicts).
2. Compared to the situation at the end of 2001, the political landscape in Georgia has not radically changed. The process of ‘atomisation’ of the political forces and public authorities has continued. Following the division of the Presidential party into a dozen of factions, the Parliament is largely unmanageable. There is no clear political majority and opposition. The result of this is that decisions are not adopted on the basis of political options, but on the basis of temporary coalitions of interests.
3. The prospects of parliamentary elections in the autumn of 2003 and of presidential elections in 2005 will certainly not facilitate a rapid restructuring of political forces. Political parties are not based on clear political/ideological options. They often appear to be based on clan ties and economic connections in Georgian political life.
4. In his “State of the Nation” address on 11 October 2002, President Shevardnadze relaunched the debate on the revision of the Constitution. This revision would concern the creation of a post of Prime Minister with parliamentary responsibility, the President’s right to dissolve Parliament, and the creation of a second Chamber in order to secure proper representation of autonomous Republics. According to recent information, President Shevardnadze intends to establish a linkage between the adoption of these constitutional amendments and the holding of parliamentary elections that are to take place before 4 November 2003.
5. Corruption, insecurity and a feeling of impunity – three phenomena closely connected – are the main concerns expressed by most interlocutors (local and international). The pressure resulting from the Chechen conflict can be discerned at all levels. The clearing of the Pankisi Valley (for how long?) has not definitely solved the problem of the presence of Chechen fighters in Georgia. The recent initiative taken by the Georgian and Russian delegations to the CoE Parliamentary Assembly and their joint visit to the Pankisi Valley in October 2002 are promising signs for improved cooperation in the solution of this matter. On Sunday 8 December 2002 the Georgian law enforcement agencies launched a mop-up operation in Tbilisi against Chechens residing in the city. According to certain sources, persons arrested included children who had their fingerprints taken, as well as the assistant editor of the newspaper “The Georgian Times”. Observers consider that this operation was mainly undertaken for political, public relations motives. As a result of the operation only a few persons who had entered the country illegally were detained. One explanation for this operation was that it permitted better control of the movements of Chechens between the Pankisi Valley and Tbilisi.

6. As regards the solution of the Abkhazian conflict, no progress has been achieved following the rejection, by the Abkhaz side, of the “Boden Paper” (named after the proposals of the former UN Secretary General Special Representative, Dieter Boden). Certain observers have expressed the view that these proposals ought now to be abandoned and that new efforts should be undertaken, step-by-step, in order to progress on non-controversial issues. The nomination of a new “Prime Minister” in the breakaway Abkhaz administration, an economist, could possibly present a window of opportunity. However, this has not yet materialised. For example, an agreement between the Minister of Education of Georgia and his counterpart in the Abkhaz administration to teach the Georgian language in some schools in the Gali Region has not been implemented.

7. No significant progress has been registered in the situation in South Ossetia following the election of a new “President” in the autumn of 2001. The Minister of Culture of Georgia was able to visit Georgian monuments in South Ossetia during the European Heritage Days, but this visit was boycotted by the local administration. The Secretariat delegation was informed that an agreement had been reached for the renovation of a Georgian monastery in South Ossetia with World Bank resources. According to certain interlocutors, some of the Chechen fighters who have left the Pankisi Valley following the 23 August operations have apparently found refuge in South Ossetia. If confirmed, this could, to some extent, contribute to further efforts to solve the political problem, in order to improve law and order in the region.

8. At the time of the Secretariat delegation’s visit, debate was on-going concerning the construction of the pipeline Baku – Tbilisi - Ceyhan. The planned pipeline would affect the Borjomi Valley, famous for the mineral water, which is extracted there. Ecologists - possibly supported by forces in Georgia and outside Georgia who do not favour this project for a variety of reasons - have undertaken a campaign against the construction of the pipeline, at least with respect to its present routing. However, a compromise may now be in view which could preserve the project without damaging the ecological resources of the Borjomi Valley. At the time of the publication of the report the problem had been resolved. The Georgian authorities have great expectations concerning the economic and social impact of the pipeline (creation of several thousand jobs) and its strategic importance, including the country’s security.

9. The strategic importance of the Baku – Tbilisi – Ceyhan pipeline cannot be fully disassociated from the aspirations expressed by the Georgian authorities at the recent December 2002 Prague Summit to join NATO, as soon as possible.

10. To sum up, one year after the previous Secretariat “monitoring” mission: Georgia’s major internal and external problems have not been solved nor can any major breakthrough be registered. In addition, the country is increasingly affected by the consequences of the conflict in the Chechen Republic. The consolidation of democratic institutions and the development of rule of law and human rights will remain fragile as long as Georgia remains directly affected by these conflicts and the endemic problem of corruption is not tackled appropriately.

IV. OVERVIEW OF THE EXTENT TO WHICH RECOMMENDATIONS MADE IN THE REPORT OF THE SECRETARIAT'S INFORMATION AND ASSISTANCE MISSION TO GEORGIA [SG/INF (2001) 45 DATED 19 DECEMBER 2001] HAVE BEEN IMPLEMENTED²

A. DEMOCRATIC INSTITUTIONS

- **"Necessity to develop democratic institutions and to establish proper checks and balances between the executive and legislative branches of power with, in particular, the creation of a post of Prime Minister, governmental responsibility towards the Parliament and the right of dissolution."**

11. In May 2001, President Shevardnadze submitted a proposal to amend the Constitution of Georgia introducing, in particular, the post of Prime Minister. On 6 February 2002 the Chairman of the Parliament of Georgia, Ms Nino Burjanadze, asked the Venice Commission to provide an assessment of this text.

12. On behalf of the Venice Commission, Messrs Zahle (Denmark), Bartole (Italy) and Malinverni (Switzerland) provided written individual opinions on the text. All three opinions come to the conclusion that the aim of the reform is to be welcomed but that the proposed amendments are not sufficient to enable the government to act independently and that the President would retain too many powers. The Commission agreed, at its 51st Session in July 2002, to continue its co-operation with Georgia on this issue. At a meeting on 11 December 2002, with the Deputy Minister of State, the Representatives of Diplomatic missions in Georgia, were informed of the intention of President Shevardnadze to link the adoption of the Constitutional amendments and the holding of the next Parliamentary elections. The problem is that there is probably no majority in the Parliament to adopt these amendments to the Constitution.

13. On 21 August 2002, President Shevardnadze set up a governmental commission to examine issues concerning the territorial organisation, the electoral system and the institutional development of the country, especially with respect to the establishment of a Council of Ministers. A representative of the Commission, Mr Khetsuriani, was invited to attend the October 2002 session of the Venice Commission at which it was agreed that the Commission would co-operate with the Venice Commission. Furthermore, in October, the Georgian Parliament had defined the status of Abkhazia in the Georgian Constitution as being an Autonomous Republic.

Specific concerns and proposals

The constitutional framework and democratic institutions still need strengthening. Further Venice Commission advice should be sought by the Georgian authorities. Council of Europe advice could also be given on legal-state aspects to facilitate settlement of the conflicts in Abkhazia and South Ossetia.

- **"Transmission without further delay, for expertise by the Council of Europe (Venice Commission) of the recently adopted Electoral Code with the possible amendments to identify problems of implementation and possible solutions."**

² All quotations from this document are indicated in bullet point, in bold, in inverted commas, in the present text.

14. The present Georgian Electoral Code was adopted on 2 August 2001. The same law applies to presidential, parliamentary and local elections. On 15 January 2002, the Georgian authorities submitted the unified electoral code of the Republic of Georgia, as adopted on 2 August 2001, to the Venice Commission for its opinion.

15. According to the summary of the Commission's opinion, of March 2002, reproduced in document CD-AD (2002) 9, page 19: *"the Unified Election Code of Georgia can be considered an important step forward in the process of securing democratic standards for representative government in the country under difficult conditions. A number of recommendations made by the international community were taken into account in the Code. In comparison with the preceding legislation, the most important innovations include:*

- *the reform of the system of Election Commissions (Chapter IV);*
- *the regulations on transparency of electoral campaigning and polling (Chapter VIII);*
- *several technical adjustments enhancing the transparency and efficiency of the electoral administration (e.g. the introduction of supplementary voter lists in Chapter II).*

Notwithstanding this overall positive picture, some provisions remain highly problematic and should be altered before the next election. The most important points are the following:

- *The stipulations for "external voting" ought to be outlined explicitly and more precisely. This concerns both the general provisions of suffrage (Chapter I) and the more specific regulations of organising and counting votes from citizens being abroad (Chapter III and X–XIV).*
- *Concerning the delimitation of electoral boundaries, a maximum deviation of 10% from the average ratio of voters per single-member constituency should in principle be introduced (Chapter III).*
- *The choice between an appeal to an election Commission or to a court should be abolished (Chapter IX).*
- *In the proportional part of the parliamentary electoral system, the threshold of exclusion should be lowered to 4%-5% (with an additional option for a "differentiated threshold" for parties and electoral alliances; Chapter XIV).*
- *Withdrawal of candidates should not be allowed.*

Furthermore, the decision of the Parliament to change once again the composition of the Central Electoral Commission is a negative signal. The stability of the most sensitive features of electoral law, including the electoral system and the composition of the election Commissions, is essential to the legitimacy of the democratic process (Chapter IV)."

16. Based on the above – as well as other comments made by OSCE/ODIHR - a number of amendments to the Electoral Code were presented to Parliament. Some amendments were adopted by Parliament on 25 April 2002, which clearly improved the Code, but the two-thirds majority necessary for the adoption of the most significant amendments, in particular the elections of new members of the Central Elections Commission (CEC), could not be reached. Regrettably, the Electoral Code was not fully applied for the local elections, notably with regard to the establishment of the election commissions and in particular the CEC, and in any event the amendments adopted to the Code in April 2002 again strengthened the political character of the CEC. Unlike the previous

version, the new Election Code allows political parties to appeal directly to courts. According to Article 77 of the new Code, all decisions of election commissions may be contested at higher-level election commissions or directly in court.

17. According to many interlocutors in Tbilisi, modification in the composition of the CEC and improvements in its functioning are seen as a pre-condition for holding democratic free and fair parliamentary elections in Georgia in October-November 2003. Likewise, the local elections in June 2002 (and by-elections held at the end of November 2002) provided many examples of alleged mismanagement by the CEC, fraud and substantial proof of inaccuracies in voters' lists (see, e.g., press release issued by the International Society for Fair Elections & Democracy (ISFED) on 1 December 2002 <http://www.itic.org/isfed> and ISFED 20-page "Report on Monitoring" of bi-elections in Saburalto, Rustavi Samtredia and Abasha election districts). Hence, there is an urgent need to establish an accurate, verifiable and centralized voter registration system as soon as possible. The issue is closely related to reform of pensions and the tax codes. The finance and social Ministries have, apparently, declared their interest in assisting in the creation of accurate voters' registration lists, but no progress has been made. Instead, the political parties might try to agree on an interim solution for the next elections. Ideally, were outside assistance and funding made available for this, it would be desirable to establish an electronic version of such lists and to make them available on Internet for consultation by all political parties; this would also facilitate continual updating of the said lists.

18. It is the general view that revision of the voters' lists must be undertaken immediately if the deadline of November 2003 is to be respected. The Georgian authorities have requested financial support from the international community. Tied to this is the need to train election officials, the advance posting of voters' lists, transparency of all election processes (and immediate publication of results at precinct level) and, where necessary, prosecution of electoral fraud and those who intimidate voters. In addition, it would be desirable for international election monitors to be present in Georgia well in advance of the elections.

19. As concerns parliamentary elections in October 2003, a Tbilisi-based Technical Working Group, composed principally of international NGOs based in Georgia who specialize in election matters, is being established in order to provide a co-ordinated approach in the provision of technical assistance. Also, legislation on the equitable access to the media during the electoral campaign (in particular the audio-visual media) must be adopted in time before the forthcoming parliamentary elections.

Specific concerns and proposals

Some progress has been achieved with regard to the elaboration of regulations governing the conduct of elections. The implementation of this normative framework is nevertheless not yet satisfactorily resolved and particular attention should be paid to the questions of the composition and functioning of the Central Electoral Commission, the revision of the registration of voters, and access to media during the electoral campaign.

- **"After finalisation of the Electoral Code and constitution of the Central Electoral Commission to prepare the local elections under the supervision of international observers (in particular from the Congress of Local and Regional Authorities of Europe)."**

20. A CLRAE delegation observed the local elections in Georgia on 2 June 2002 (see report CG/Bur (9) 17 dated 10 July 2002). The delegation found that the preparations for the elections were extremely poor, in particular the voting lists were in a deplorable state. The elections seemed to be considered as a test of popular support for the various political forces before next year's parliamentary elections, rather than a means for electing genuine democratic local governments. Also, in Tbilisi, the post-electoral situation was marked by confusion. The National Movement (Mr. Saakashvili's party) submitted an appeal to the Tbilisi District Court, asking for a recount of the Tbilisi votes by the Central Elections Commission, in order to verify that the results had been consolidated correctly. Acting on a parallel complaint from the People's Party, the Supreme Court, on 5 August 2002, declared that the Tbilisi City Council elected on 2 June should not convene until the recount was finished. The Tbilisi City Council convened in November 2002 and elected Mr. Saakashvili as Chairman.

21. Finally, it should be noted that on 16 December 2002, the Bureau of the CLRAE decided to suspend the delegation of Georgia from its work, as the 6-month period for nominating new delegates after an election had expired.

Specific concerns and proposals

The suspension of the Georgian delegation from the CLRAE work needs to be looked into urgently.

The deplorable situation of registration constitutes a major shortcoming for the holding of democratic, fair and free elections.

Cases of alleged disproportionate violence used by security forces against peaceful demonstrators were registered during the electoral campaign to the local government in May 2002 (OSCE, HRW <http://www.hrw.org/europe/georgia.php>).

- **"In parallel with the preparations for the local elections, elaboration with the assistance of CoE experts of a legislative framework for the competences, responsibilities and financial resources of local authorities, in line with the European Charter for Local Self-Government. "**

22. Within the framework of the EC/CoE Joint Programme to Strengthen Democratic Stability in the Southern Caucasus, the Council of Europe has undertaken a legal appraisal of the Georgian draft law on municipal property. A working meeting to discuss the appraisal was held in Tbilisi (12-13 September 2002). Georgian and Council of Europe experts agreed on a number of substantial amendments.

23. Recently, the CoE received a revised version of the draft law on municipal property prepared by the Ministry for the Management of State Property. This did not incorporate most of the CoE proposals. The Council of Europe produced a new appraisal which was communicated to the Georgian authorities on 13 November 2002. The State Chancellery is expected to provide feedback on this issue shortly. A working meeting between the Georgian authorities and the international partners from USAID and the Urban Institute was scheduled to be held in early January 2003. Given the short notice, neither the CoE staff nor experts designated by the CoE could attend the meeting. So far, no feedback on the preparation of the law has been received. Work on the draft law on municipal property has shown that there is no consensus about the future of local democracy in Georgia at the level of central government.

24. The Council of Europe expects the draft law on local finance to be submitted for appraisal shortly. The follow-up activities necessary for the effective implementation of both draft laws were included in the Council of Europe's proposal for a new Joint Programme for Georgia in 2003-2004. Complementary assistance is also being offered to develop a national training strategy for local government in Georgia. Working groups on the preparation of the strategy were held on 9-10 September and 22 November 2002. This cooperation will continue in 2003.

25. The situation of newly elected local self-government leaves room for major improvements as regards competences and means of action. The question of the nomination by the Executive of the Mayor of Tbilisi and other major Georgian cities is still not resolved. As an example the strained relations between the newly elected Head of the Municipal Council of Tbilisi, Mr. Saakashvili, and the nominated Mayor, could lead to incapacity to undertake any concrete action.

Specific concerns and proposals

Georgia's commitment to sign and ratify the European Charter of Local Self-Government within three years after its accession has not yet been fulfilled (PACE Opinion No. 209 (1999) of 27 January 1999 and CM Resolution (99) 4 of 24 March 1999). The instrument was signed on 29 May 2002, but has not yet been ratified. On 19th November 2002, the Secretariat was informed by the Ministry of Foreign Affairs that the text had been transmitted to the Parliamentary Secretary of the President with a view to its transmission to Parliament.

There are no mechanisms for voicing at national level the concerns of local governments, as the many existing district and regional associations of local authorities are small and weak. However, there exists a divergence of views as regards the possibility, in present conditions, to create a single association of local government.

There is a need to enhance co-operation with the authorities in the field of legislative assistance so as to promote consensus about the future of local government in Georgia and to complete institutional arrangements for local self-government and ensure effective devolution of responsibilities and resources from the central to the local authorities.

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Georgia has not fulfilled its commitment to sign and ratify the European Outline Convention on Transfrontier Co-operation and its additional protocols within three years after accession (PACE Opinion No. 209 (1999) of 27 January 1999 and CM Resolution (99) 4 of 24 March 1999). The instrument has not yet even been signed.

- **"With a view to enhance the democratic debate in Georgia and to train present and future political and civic elites, support to civil society initiatives, such as the Tbilisi School of Political Studies. "**

26. The work of the Tbilisi School of Political Studies, since its creation, has been directly supported by the CoE. In 2002, support for the work of the School was also included in a joint programme between the European Commission and the CoE, including the holding of six seminars of the School. A further proposal to support the activities of the School, within the framework of a new joint EC/CoE initiative for Georgia, 2003-2004, has been made.

Specific concerns and proposals

Despite the positive role played by NGO's, some interlocutors have voiced concern at the increasing political polarisation of the non-governmental community. The further development of a mature and independent civil society in Georgia is essential to long-term stability and the healthy development of democratic institutions.

* * *

The positive work of the Tbilisi School of Political Studies, as an independent civil initiative, should be further developed with a view to enhance democratic debate.

Civil society contacts between Georgia and neighbouring countries should also be encouraged (e.g., through joint seminars between the Tbilisi and Moscow schools of political studies).

B. RULE OF LAW

27. In June 2002, a letter from the Deputy Secretary General of the Council of Europe addressed to the Minister of Justice enumerated a variety of the issues related to the improvement of the Rule of Law in Georgia and reiterated the offer of assistance on several important matters. No reply to this letter has been received.

28. That said, a special Inter-agency Commission on the Elaboration of the Proposals for Institutional Reforms within Security and Law-enforcement Agencies was established pursuant to Presidential Decree No.499, of 6 December 2001. This Inter-agency Commission was instructed by a decree subsequently issued by the President, to implement – together with members of the legal profession, NGOs and representatives of “Friend” countries – the “Concept” of reform of law enforcement and security bodies. This work has been co-ordinated by the staff of the National Security Council. The Inter-agency Commission, under the Chairmanship of the President of the Supreme Court, has now virtually completed its work - with the assistance of CoE experts - and has issued a “Concept” for reform, a copy of which was provided to the Secretariat delegation on 10 December 2002. All draft legislation proposed in this “Concept” should be submitted to Parliament before 15 March 2003 so as to ensure the “Concept’s” speedy implementation. This major legislative reform concerns, in particular:

- (i) an overhaul of the preliminary investigation phase (“investigation & operative services”), including reform of the Prosecutor General’s Office;

- (ii) a new Code of Criminal Procedure, the draft text of which is to be prepared by 30 January 2003;
- (iii) three new legislative initiatives concerning the police;
- (iv) replacement of the State Security Ministry by a “Security Service”;
- (v) reform of the legal education of judges & prosecutors, including the establishment of a re-vamped High Council of Justice;
- (vi) specific training centres for the police, security service & other investigative services;
- (vii) and the establishment of an institution of “Inspector General” in order to provide for mechanisms of internal control and anti-corruption activities.

29. The Secretariat delegation was also informed about a recent initiative taken by the Ministry of Justice, namely the decision to enable easier access to Georgian legislation by the launching of a web-site in December 2002; other legal acts, such as Presidential Decrees, will be made available in due course.

- **“A National School for Judges could be set up with CoE assistance”.**

30. Council of Europe assistance will focus on the legal framework guaranteeing the independence of the judiciary as well as proper training structures. Activities in this field are planned and have been offered. The setting-up of the National School of Judges (under the authority of a High Council of Justice) should be articulated with the reform of the appointment procedure of judges. An expert meeting on this subject was held in Tbilisi in early October 2002. The following were identified as priorities:

- The final version of the draft law on the National School for Judges, transmitted to the President, is to be forwarded to the Council of Europe for expert advice. A budget of 80.000 Lari (approximately 40,000 USD) has been earmarked for the first year of the School’s functioning, pending approval by the Ministry of Finance. The opening of the School should be accompanied by further legislative reforms, draft amendments of which have already been prepared.
- The rules concerning appointment, assignments, career management and disciplinary responsibility of judges also need reform. Furthermore, the High Council of Justice needs reform in order to guarantee judicial independence.
- It was noted that Georgian courts, despite financial aid from the World Bank, continue to encounter material difficulties: money is not available for stationery and other essential equipment.
- The Georgian authorities will set up a working party with the task to elaborate a “Concept” relating to the reform of the High Council of Justice (see above) that will be submitted to the Council of Europe for expert study.

31. The newly established European Commission for the Efficiency of Justice (CEPEJ), whose work will focus on the application of European norms related to the functioning of justice, could provide to the Georgian authorities useful assistance in this crucial field of activity.

Specific concerns and proposals

The Chairman of the Committee of Ministers, Mrs Polfer, in the report on her visit to the Caucasus, drew attention to the need, as expressed by NGOs, to monitor the effective functioning of justice in Georgia, with a view to putting an end to the culture of impunity (see CM/Inf (2002) 36 final, dated 30 August 2002).

The planned EC/CoE Joint Programme 2003-2004 will focus, in particular, on the functioning of justice. The newly appointed Special Representative of the Secretary General in Georgia will pay particular attention to this question.

The Georgian authorities may also wish to make use of the possibilities offered by the newly created CEPEJ to receive assistance in respect of European norms related to the functioning of justice.

- **"Close association and consultation of CoE experts to the work of the newly created Commission for the reform of the investigation system in Georgia and related legislation (law on the police, reform of the Prosecutor General's Office etc.) under the chairmanship of the President of the Supreme Court."**
- **"Transmission by early 2002 of the existing Code of Criminal Procedure with comments by Georgian experts (in one official language of the CoE), for analysis by CoE experts. CoE experts should be closely associated and consulted on the drafting of a new Code of Criminal Procedure and other relevant new legislation prepared by the Legislative Commission under the authority of the Ministry of Justice."**

32. As concerns the major reform of the investigative system, cross-reference can be made to information provided in paragraph 28 above.

33. Following expert appraisal of the (new) Code of Criminal Procedure (June 2002), and on invitation of Mr Lado Chanturia, President of the Supreme Court and President of the Inter-agency Commission, experts met with members of the said Commission. Discussion centred on the reforms proposed in the new Code in the context of the existing operative investigation system in Georgia: see doc. PCRED/DGI/Exp (2002) 37, dated 19 September 2002.

34. Of interest to note, in this connection, is that two Committee of Ministers Recommendations - (2000) 19 on the role of public prosecution in the criminal justice system and (2001) 10 on the European Code of Police Ethics – have been translated into Georgian and have become an integral part of the package of reforms to be presented by the Commission to the country's President by 15th March 2003.

35. Also, in the context of these reforms, Georgian experts took part in a regional (Caucasian countries) seminar organised by the Council of Europe in Strasbourg on 16-20 December 2002. Discussions covered criminal law conventions, including those relating to the combat against corruption. The seminar contributed to improve regional co-operation against crime in line with the Council of Europe standards, it helped to increase awareness on the Council of Europe penal law conventions and their implementation as well as to promote the ratification of those instruments.

Georgian participants at the seminar confirmed that official requests for legal expertise of an anti-money laundering draft law and a draft law on the Anti-Corruption Bureau would soon be forwarded to the CoE.

36. Despite the above-mentioned positive developments, the Secretariat delegation was informed – by a number of sources in Tbilisi – about the latter’s scepticism that the new Code of Criminal Procedure now being finalized has any real chance of making it onto the statute books next year. This scepticism is based on both the precedent of what happened with regard to the Code presently in force – the ‘fiasco’ of 1999 - and the coming pre-electoral situation. In their view, the authorities are quite “expert” in elaborating “grand projects” for which there exists very limited political will to implement.

37. Mention should also be made of a series of proposed amendments to the existing Code of Criminal Procedure, now being finalized for presentation to Parliament by the Ministry of the Interior.

According to Human Rights Watch (HRW) the Interior Ministry’s new proposals would further restrict detainees rights, already significantly weakened by the 1999 amendments of the Code (analyzed in the October 2000 HRW report “Backtracking on Reform: Amendments undermine Access to Justice” (<http://www.hrw.org/reports/2000/georgia/> See also HRW press release of 26 November 2002: “‘Pro-Torture’ Legislation Looms in Georgia” (<http://hrw.org/press/2002/11/georgia1126.htm>)). This HRW criticism should be seen in the light of allegations that legal procedures are regularly flouted by the police against a background of widespread reports of torture, extortion, and corruption involving law enforcement agencies.

38. Although the Secretariat delegation was promised copies of the Ministry of the Interior’s draft amendments prior to its departure from Tbilisi on 12 December 2002, the text has still not been provided (despite reminders).

39. In the report on her visit to the Caucasus, the Chairman of the Committee of Ministers, Mrs Polfer, indicated that in Georgia NGOs felt that there was a significant decline in the application of law, voicing concern about manifestations of violence and intolerance, harassment of ethnic and religious minorities and abductions as well as impunity of perpetrators of these attacks. In her conclusions, Mrs Polfer forwarded a proposal, expressed by local NGOs, to set up a specific monitoring mechanism on, i.a., the effective functioning of justice with a view to putting an end to the culture of impunity (see CM/Inf (2002) 36 final, dated 30 August 2002). Mrs Polfer referred, in this context, to the abduction of Mr Peter Shaw, and the violent attack witnessed by experts of the Council of Europe on the human rights NGO, the Liberty Institute on 10 July 2002. It would appear that little progress has been made to date in investigating the attack on the Liberty Institute. The only suspect arrested on 17 July 2002, has since been released on bail due to the lack of evidence against him. As concerns Mr. Shaw, he has been released without the elucidation of his case. It appears that Mr. Shaw’s case is not isolated and that the practice of kidnapping foreigners for ransom is becoming a major preoccupation in Georgia.

Specific concerns and proposals

The lack of progress as concerns the Rule of Law is very worrying: see, e.g., reports issued by Amnesty International, HRW, the UN Human Rights Committee & regular activity reports of the OSCE Mission to Georgia. Cases of alleged arbitrary arrests and detention, allegations of ill-treatment (torture, "to the point of being systematic" and of a lack of remedies open to victims, according to HRW) and deaths in custody have been documented (see <http://www.hrw.org/europe/georgia.php>, <http://www.hrw.org/europe/georgia.php?&209e604e13e72b7dad0b02c1da980b34page=2>, <http://web.amnesty.org/ai.nsf/Index/EUR560012002?OpenDocument> & <http://www.unhchr.ch/tbs/doc.nsf>, document CCPR/CO/74/GEO of April 2002). Prompt and proper investigations and prosecution of perpetrators of such acts must be conducted by the appropriate authorities.

Thus, whereas assistance on the reform of the criminal justice system is very important, with legislative initiatives/amendments being sent to the CoE for expert appraisal before they are submitted to Parliament, practical measures must already now also be taken by the authorities to correct the system's malfunctioning. The implementation of ECHR standards in domestic legal proceedings is necessary; this can be facilitated notably under the future EC/CoE Joint Programme.

The new Special Representative of the Secretary General – based in Tbilisi - should be asked to pay particular attention to activities aimed at the promotion of the Rule of Law in Georgia.

- **"As regards the penitentiary system, transfer of the supervisory role on execution of sentences from the General Prosecutor's Office to the Ministry of Justice, possibly with the assistance of CoE experts."**

40. The Council of Europe's offer of assistance was reiterated in the letter of the Deputy Secretary General of June 2002 (see para. 27 above).

41. Further cooperation in the field of prison reform is envisaged in the framework of the Action Plan on Prison reforms adopted by the Steering Group at its last meeting in Tbilisi, on 30 April – 1 May 2002.

Specific concerns and proposals

Cooperation should focus on the remaining fundamental questions such as the role of courts in sentencing and allocating prisoners to specific regimes as well as role of the Prosecutor's Office (Prokuratura) in the supervision of prisons and sentence execution.

Two consecutive meetings, held in Tbilisi in November 2002, addressed issues related to the recruitment and the training of prison personnel, and with the conversion of dormitories into smaller units. The need to re-assess the prison system in Georgia was identified. This should be undertaken in 2003.

- **"Georgian authorities should pay particular attention to the possible publication of the CPT's reports as an incentive for the reforms in the penitentiary system."**

42. The report drawn up by the European Committee for the Prevention of Torture (CPT) after its first periodic visit to Georgia (6 – 18 May 2001) was made public on 27 July 2002, at the request of the Georgian authorities. As regards the penitentiary system, the report contains a number of specific recommendations in respect of Prisons No 1 and 5 in Tbilisi and the Republican Prison Hospital (<http://www.cpt.coe.int/en/reports/inf2002-14en.htm>). At the beginning of November 2002, the Georgian authorities provided an interim response to the points raised by the Committee; this document has not yet been made public. The CPT has also requested a follow-up response providing a full account of the action taken to implement the Committee's recommendations. This response, which was due on 11 December 2002, has not yet been received. A second periodic visit by the CPT to Georgia is scheduled to take place in 2003.

Specific concerns and proposals

The Georgian authorities are urged to submit their follow-up response providing a full account of the action taken to implement the CPT's recommendations, and to make it public.

- **“In the fight against corruption, ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime within three years after accession; CoE assistance could be provided to help ratification of other Conventions relating to economic crime and implementation of recommendations of the GRECO.”**

43. The report of the visit of the Chairperson of the Committee of Ministers to Georgia and the South Caucasus region in July 2002 (see above) stressed the need to combat corruption effectively in Georgia and noted with concern the present destabilising effect widespread corruption is having on domestic security. This view would appear to confirm the findings of the CoE GRECO first evaluation report on Georgia (doc. Greco Eval I Rep (2001) 5E Final of June 2001 <http://www.greco.coe.int>) and the comments of the UN Committee on Economic, Social and Cultural Rights which recently also noted widespread and rampant corruption (see doc. E/C.12/1/Add.83, dated 19 November 2002 <http://www.unhchr.ch/tbs/doc.nsf>).

44. A seminar took place in Tbilisi in June 2002 on “political corruption” (financing of political parties, trade of influence). It was proposed, on that occasion, that the draft law on money laundering should be forwarded to the Council of Europe for expertise. Finalisation of this draft, in a way compatible with the European Convention, would facilitate this instrument's ratification.

45. In this connection, it may be noted that although CoE conventions on this subject have been signed by Georgia, none of them has as yet been ratified. Two are pending in Parliament (Convention on Laundering, Search, Seizure & Confiscation of Proceeds from Crime; Civil Convention on Corruption), and another is still at the Ministry of Justice (Criminal Law Convention on Corruption). The Secretariat was promised that a draft law on money laundering would be transmitted to it for expert appraisal. The Secretariat has not yet received this draft.

46. Action to fight corruption has been proposed as part of a possible new joint EC/CoE initiative for Georgia, including cooperation with the country's Anti-corruption Bureau. Discussions with the Head of the Bureau, Mr Ugulava, took place in Strasbourg in October 2002. See also paragraph 35 above.

47. A number of observers based in Tbilisi consider the Anti-Corruption Council, headed by the President, not to be very effective: programmes are good, but there is an absence of political will to make them work properly. The Anti-corruption Bureau, a non-governmental structure whose primary role has been to propose anti-corruption initiatives to the Council and to coordinate activities is now trying to involve itself in investigating cases of corruption.

48. In reply to specific questions posed about the prosecution of state enforcement officials for crimes related to corruption, the Secretariat delegation was given the following figures: no cases of corruption have been brought to light, in 2002, in the Prosecutor General's Office (but 67 prosecutors have been subjected to different forms of disciplinary sanctions); within the last three years 14 judges have been dismissed and about 50 have had disciplinary charges brought against them; in 2002 147 persons were dismissed from the police force, with criminal charges being brought against approximately 50 of them. As to allegations of impunity, the General Prosecutor's Office follows-up all reported illegal acts, based on information obtained from victims or from the media. In 2002 the General Prosecutor's Office (excluding the regional branches) considered more than 100 such cases transmitted to it by the General Inspection of the Ministry of the Interior. More detailed statistics on the follow-up given to these cases is to be provided to the Secretariat by the end of January 2003.

Specific concerns and proposals

The need to combat corruption must be a top priority, even though a number of measures have already been taken. Recommendations made in the context of the GRECO, to devise a global strategy based on prevention, education and the application of appropriate sanctions, have not yet been implemented.

With regard to the draft law on money laundering and the draft law on anti-corruption, various drafts of each appear to be in circulation. The Georgian authorities should be invited to provide the CoE Secretariat with a complete set of all current drafts or consolidated versions thereof so that effective assistance can be provided. CoE expert studies of draft legislation (and assistance on all relevant matters) should be commenced as soon as possible.

Georgia's commitment to sign and ratify the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, within three years after its accession to the CoE, has not been fulfilled (PACE Opinion No. 209 (1999) of 27 January 1999 and CM Resolution (99) 4 of 24 March 1999). The instrument was signed on 30 April 2002, but has not yet been ratified.

C. HUMAN RIGHTS

49. Chapter II of the 1995 Constitution is almost entirely devoted to the guarantee of human rights. Also, by virtue of Article 6 of the Constitution, international treaties to which Georgia is a Party, and which do not contravene the Constitution, prevail over all domestic legislation. Under the “Law of Georgia on International Treaties of Georgia”, treaties - such as the ECHR - that establish specific rights and obligations do not need to be transformed into domestic legislation and their provisions can be directly applied by judges in domestic law.

50. The ECHR is part of domestic law since 20 May 1999, but there appears to be little case-law in which reference is made to the Convention’s provisions or the Strasbourg Court’s judgments. In this context, it is interesting to observe that although a “pilot project” of an ECHR ‘compatibility study’ was prepared back in September 2000, a definitive version encompassing an analysis of all the substantive provisions of the ECHR and the Strasbourg Court’s case-law thereon has not yet been finished (see doc.HRCAD (2001) 2, of February 2001). It is understood that this is to be completed in early 2003.

51. For a recent overview of the human rights situation in Georgia, reference can be made to the concluding observations made by the UN Human Rights Committee on Georgia’s second periodic report under the Covenant on Civil and Political Rights (doc. CCPR/CO/74/GEO of 19th April 2002 <http://www.unhchr.ch/tbs/doc.nsf>). The Committee found that although significant ‘structural’ progress had been achieved, the report lacked data on the Covenant’s practical implementation. This was followed by an important Decree (No. 240) issued by President Shevardnadze “about measures on strengthening protection of human rights in Georgia” whose implementation is entrusted to the National Security Council on Human Rights Issues.

- **"The Georgian authorities should provide the Secretariat with full information on the judgments and new sentences concerning the retrial of all detainees with political charges by the Cassation Chamber of the Supreme Court."**

52. In addition to oral information provided on the occasion of the Secretariat Information and Assistance Mission back in December 2001 and supplementary information received on 19 December 2002, to the effect that “as a result of decision of the Supreme Court of Georgia another two persons and namely, Mr P. Gelbakhiani and Mr I. Dokvadze were recently freed from prison,” the Secretariat has not yet received all the written information requested. It is understood that this information – which exists in Georgian – will soon be provided to the Secretariat.

- **"Ratification without further delay of Additional Protocol 1 to the ECHR."**

53. The Parliamentary ‘ratification procedure’ provided in Article 65 of the Constitution was completed on 27 December 2001 with respect to the (First) Additional Protocol to the ECHR. Instruments or ratification were deposited on 7 June 2002 (see <http://conventions.coe.int>).

- **"As regards the situation of persons belonging to national minorities, noting the various positions expressed on the issue of the ratification of the Framework Convention on National Minorities and the European Charter for Regional and Minority Languages, a further effort of clarification of the significance and obligations under these two legal instruments could be undertaken with the assistance of CoE experts."**

Specific concerns and proposals

Georgia's commitment to sign and ratify the Framework Convention for the Protection of National Minorities within one year after its accession to the CoE has not been fulfilled (PACE Opinion No. 209 (1999) of 27 January 1999 and CM Resolution (99) 4 of 24 March 1999). The instrument was signed on 21 January 2000, but has not been ratified. It is pending before Parliament. The CoE could provide assistance to speed-up the ratification process.

Georgia's commitment to sign and ratify the European Charter for Regional or Minority Languages within two years after its accession to the CoE has not been fulfilled (PACE Opinion No. 209 (1999) of 27 January 1999 and CM Resolution (99) 4 of 24 March 1999). This instrument has not even been signed. The CoE could, without delay, organise technical working meetings with the authorities, involving local and regional authorities and non-governmental organisations, in order to inform them and to assist in the authorities in facilitating signature and ratification.

- **"Regarding the commitment relating to the repatriation of deported persons during the period 1940-1944 (Meshketian Turks), all aspects of this delicate issue - which does not concern exclusively Georgia - should be considered:**
 - **continued legislative assistance by CoE experts for the drafting of the law on the return of deported people;**
 - **encouragement to bilateral discussions and negotiations between Georgia and the countries of temporary residence, to improve the living conditions of the persons concerned (in particular, as regards their 'residence status' to avoid statelessness situations) with the support of international organisations;**
 - **possible census under international supervision, of the population concerned. "**

54. Following the second expert discussion held in April 2002, in Tbilisi, on the Law on Repatriation of Formerly Deported People, it is suggested that an amended version of the law be sent to the CoE for expert review in 2003.

55. On May 2002, an inter-agency working meeting on issues relating to the situation of the formerly deported population from the Meskheta region (the Meskheta population) by the Soviet regime was held in Strasbourg, at the invitation of the CoE, with the participation of representatives of the UN High Commissioner for Refugees, the OSCE High Commissioner for National Minorities, the International Organisation for Migration and various departments of the Council of Europe's Secretariat. During the meeting, the participants emphasized the common basic principle upon which any decision to return had to be taken namely, that this had to be a matter of individual

free choice of the returnee. Participants renewed their commitment to regularly exchange information on their respective policies and activities concerning the Meskhetian issue.

56. This issue is complex, as it is also linked to the present status of the Meskhetian population in their country of temporary residence; no progress was reported on this matter to the Secretariat delegation. Here, reference can be made to a recent reply provided by the Ministers' Deputies to a Written Question (No. 410) posed by a parliamentarian, Mr Gürkan. In their reply of 18 September 2002, the Ministers' Deputies noted that *"the situation of Meskhetians has two main aspects...: Firstly, ensuring the respect for the Human Rights and enhancing of the legal status of Meskhetians in the countries of their current residence with a view to enabling them to obtain lasting solutions, including access to permanent residency and citizenship. ... The second main aspect ... concerns the fulfilment by Georgia of obligations undertaken at the time of accession to the Council of Europe in relation to the deported population from Meskhi including the development in Georgia of a legal framework and of an appropriate environment that would provide a viable option of return."* (CM/Del/Dec 797/2.3; CM (2002)76). During the visit, the Secretariat delegation was informed about some progress concerning conditions for the possible return of deported persons. But it was made clear that return to Georgia would not necessarily mean resettlement in the region from which this population had been deported sixty years ago.

Specific concerns and proposals

CoE assistance is likely to be needed both in reviewing the amended version of the Law on Repatriation of Formerly Deported Persons, but also in the implementation stage of this law, as well as in the social re-integration process of this minority group.

Reiterate the appeal to the countries of temporary residence to improve living conditions of this population and their status.

- **"Acknowledging the positive results already registered by the Ombudsman Institution, further support should be provided in particular to develop the 'hot line' system to prevent human rights violations in critical situations and to facilitate the setting up of Ombudsman's Office regional branches/correspondents in various parts of Georgia."**

57. The Office of Public Defender (Ombudsman) was created in 1996. It's present holder, Mrs Nana Devdariani, makes use of her powers to identify and investigate violations of human rights by State bodies: every six months she presents a detailed report of her activities to Parliament in addition to her Annual Reports (see English-language Annual Reports on Public Defender's website <http://pdo.gol.ge>). See also, in this connection, Presidential Decree No.543, of 29 December 2001-2002, on measures for implementation of recommendations made by the Public Defender and Decree No.240, of 17 May 2002, referred to in paragraph 51 above, which also underlines the Public Defender's important role in ensuring the respect of human rights by state authorities.

58. In discussions with Mrs Devdariani, the Secretariat delegation was informed of several complaints she had lodged with the Constitutional Court, some together with NGOs. The Constitutional Court's decisions in two of these are imminent. They concern the alleged unconstitutionality of provisions of the existing Code of Criminal Procedure with respect to delays in access to legal assistance and the lack of a provision allowing an accused and his/her lawyer to get acquainted with evidence brought against him (compatibility of Articles 145 (2) and 162(6) of

the Code with Article 18 of the Constitution). There also appears to exist a contradiction between Article 21 (e) of the organic law “on the Public Defender of Georgia” of 1996 and Articles 234 and 594 of the Code, in that the Supreme Court refuses to take into account the Public Defender’s requests to re-examine the legality of court judgments. These matters need urgent resolution before the new Code of Criminal Procedure is finalized.

59. The ‘hot line’ system, operated by a “Rapid Reaction Group” to prevent human rights violations set-up with the assistance of the ODIHR is considered to be a success. The objective of this project to, *inter alia*, decrease human rights violations in places of pre-trial detention and to increase the transparency and efficiency of police activity, is a project which deserves further support.

60. Similarly, although five branches of the Office have opened in the regions, material support from the international community is needed to enhance its functions. The institution’s role may also need reinforcement *vis-à-vis* other organs of State. The Public Defender is, undoubtedly, an institution which has the potential to play a significant role in the protection of human rights in Georgia.

Specific concerns and proposals

As the Public Defender (Ombudsman) has stressed herself, she encounters a number of difficulties – both structural and material - in the accomplishment of her tasks. This would appear to be due, in particular, to lack of sufficient human and financial resources.

Action to support the development of this Institution in Georgia’s regions should continue to be given priority and is foreseen as part of a new proposal for a joint EC/CoE initiative for Georgia, 2003-2004.

- **"In the field of freedom of expression, which is one of the major achievements of Georgian democracy, the projected reform of the law on the press and the draft laws on telecommunications, broadcasting and public television should be submitted to CoE experts at the earliest possible stage. "**

61. Amendments to the Law on the Post and Telecommunications aimed at the liberalisation of the licensing process were adopted in May 2002 (see <http://www.gncc.ge>) without consultation of the Council of Europe’s experts. The CoE Media Division subsequently organised a workshop on broadcasting regulation in Tbilisi in July 2002 at the end of which a set of recommendation were adopted. Thereupon, a working group was set-up and met in September 2002 (see www.humanrights.coe.int). Draft amendments are to be submitted to the CoE in January 2003. After assessment of these amendments by a CoE expert mission in early 2003, the text will be submitted to Parliament by March 2003. It is understood that this text is to, *inter alia*, strengthen the role and competences of an independent regulatory body for the broadcasting sector and will provide for licensing of at least one private radio and one private television channel with nation-wide coverage.

62. The transformation of the Georgian regulation in the broadcasting sector through the above-mentioned legal reform, should lead to the transformation of State radio and television into a public service broadcaster within the next couple of years. A legal framework enabling the transformation

of the State RTV will be provided when Parliament had adopted the above-mentioned Law. The restructuring and transformation process of the State RTV should be finalised by 2005.

63. As regards the Law on Freedom of Speech and Press, CoE experts provided written expertise on a draft text, which they found to be broadly compatible with European standards (doc. ATCM (2002) 2). In April 2002, an expertise mission was organised in Tbilisi during which the draft Law was amended in order to take into account the experts' comments. After the mission, an additional set of written comments was provided by the experts to the drafters of the text (doc. ATCM (2002) 6). This text, which has been widely approved in Georgia and internationally, is presently pending before Parliament. Swift adoption of this Law in its present form by Parliament would constitute a major positive development.

64. HRW informed the Secretariat delegation that it was alarmed to hear that the authorities intend to introduce an amendment to Article 148 of the Penal Code that would provide imprisonment as a sentencing option in libel cases. This would, in their view, add a legal tool to extra-legal means of chilling journalism and human rights defence activity, such as threats and physical assaults, which have gained in frequency and severity since the Summer of 2002. Reference was made, in this connection to the HRW press release which detailed the 10 July assault upon the Liberty Institute (<http://hrw.org/press/2002/07/georgia0712.htm>).

65. Finally, note can be taken of the "conclusions and recommendations" of experts nominated by the Secretary General - who visited Georgia in July 2002 within the framework of the Committee of Ministers confidential thematic monitoring procedure - which are to be discussed on 15 April 2003. The authorities indicated their readiness to consider the declassification of the said 'confidential' report, in the context of legislative initiatives presently being undertaken.

Specific concerns and proposals

Concerns related to a number of media issues, including "recommendations", can be found in the Report of the CoE experts' visit to Georgia in the context of the Committee of Ministers confidential thematic monitoring procedure (doc.CM/Monitor (2002) 17 dated 26 September 2002).

It is understood that the authorities are presently considering declassification of this report.

- **"Concerning religious violence, the authors of these violent acts should be brought to justice and guarantees should be given for the freedom of religion, including CoE assistance in drafting a law on religious organisations."**

66. Although traditional religions such as Islam, Judaism, Catholicism and Gregorianism all form part of the country's heritage, the 'acceptance' - especially since independence - of non-traditional religions/beliefs has been the subject of intense public debate, often degenerating into violence. According to HRW, violent mob attacks on religious minority groups have continued, with impunity, and often with open police collaboration. In August 2002, so HRW claims, police and mobs mounted joint roadblocks around a town in the Shida Kartli region to prevent a Jehovah's Witness congress from proceeding there, while mobs were permitted to destroy two congress sites in the region. In answer to concern over impunity for religious violence, the authorities have cited the trial of Tbilisi mob leaders Basili Mkalavishvili and Petre Ivanidze, which opened in January 2002 (see <http://hrw.org/press/2002/03/georgia-0309-ltr.htm>). To date, there have been sixteen

hearings, all of which have been monitored by HRW. Proceedings on the merits were to commence on 12th December 2002.

67. Currently, three applications, concerning alleged violations of Article 9 of the ECHR (freedom of religion) and relating to alleged acts of collective violence against religious minority groups, are pending before the European Court of Human Rights. The first application was introduced by 4 Jehovah's Witnesses and was given priority under Rule 41 of the Rules of Court. Two of these three complaints were communicated to the government for observations. A third application has been recently filed by 98 Jehovah's Witnesses.

68. The Constitutional Agreement (“Concordat”) of October 2002 has provided the Georgian Orthodox Church certain specific functions, such as the granting of permission to construct Orthodox churches. The Secretariat delegation was informed that no objections to this Agreement had been voiced by other religions in the country.

69. A draft Law on Religious Organisations (Law on Religion) is now being prepared by the Ministry of Justice. A draft of this text was circulated during 2002. This draft law should be sent for CoE expert assessment, prior to its transmission to Parliament.

Specific concerns and proposals

In February 2001 the Supreme Court decided to de-register Jehovah's Witnesses as a legal entity in Georgia. (HRW, <http://hrw.org/press/2002/03/briefing-0315-ltr.htm>, Amnesty International, <http://web.amnesty.org/ai.nsf/Index/EUR560012002?OpenDocument>). Acts of religious intolerance and harassment of non-traditional religions/beliefs persist. See also, in this connection, similar concerns voiced within the OSCE (see <http://www.osce.org/odihp>).

Religious tolerance must be promoted actively and would appear to be a need for a specific public awareness-raising campaign.

A project on religious tolerance to be implemented by the Public Defender of Georgia has been launched. This project could be further developed in the framework of the newly proposed EC/CoE Joint Programme for Georgia, 2003-2004.

The draft Law on Religious Organisations should be submitted to the CoE for legal expertise prior to its transmission to Parliament.

- **“Ratification of the European Revised Social Charter”**

70. Two information seminars were held in Tbilisi, in December 2001 and in July 2002, in order to assist the Georgian authorities with the ratification procedure. A text, proposing ratification of the European Social Charter (Revised) is still to be sent to Parliament.

Specific concern and proposal

Georgia's commitment to sign and ratify the European Social Charter within three years after its accession to the CoE has not been fulfilled (PACE Opinion No. 209 (1999) of 27 January 1999 and CM Resolution (99) 4 of 24 March 1999). Georgia signed the European Social Charter (Revised) on 30 June 1999 but has not yet ratified it.

D. IMPLEMENTATION OF THE RECOMMENDATIONS (INSTRUMENTS AND WORKING METHODS)

- **"Bearing in mind the importance of the reforms to be undertaken and the present institutional situation in Georgia, efficient CoE co-operation and support would require increased capacities in the field by considering the possibility to second on a medium/long term basis CoE experts in key Georgian institutions and/or strengthening the workforce of the Information Office in Tbilisi to allow it to provide regular support to the implementation of CoE co-operation programmes. "**

71. On 18th September 2002, the Secretary General announced his intention to appoint a Special Representative to be sent to Tbilisi. The appointment took effect on 8 December 2002 in the person of Mr. Plamen Nikolov, who participated in the visit of the Secretariat delegation. Furthermore, the presence of a resident expert, foreseen in the proposals for a future joint programme with the EC, is also likely to facilitate a smooth follow-up of co-operation in a number of respects. The CoE Information Office plays an important role in promoting European values espoused by the CoE and the implementation of its programmes in Georgia.

- **"The EC/CoE Joint Programme for South Caucasus [...] includes a substantial amount of activities with Georgia which would respond to the wishes and needs mentioned above; however conclusion of an additional specific programme for Georgia could be necessary to respond to the challenge of full and sustainable democratic development of the country."**

72. A joint EC/CoE programme for the South Caucasus region was concluded in Spring 2002 for a two-year period. Substantial support has and is still to be provided to, *inter alia*, the promotion of European human rights standards, ratification of the European Social Charter, the Framework Convention on National Minorities, issues of freedom of expression and information, and more generally the strengthening of the Rule of Law and local democracy, social protection for vulnerable groups, education for democratic society and development of state-society relations (Conclusions of Steering Committee Meeting in June 2002, Brussels: see doc. DSP (2002)13 of 4 September 2002). A further joint EC/CoE initiative, specifically catering for Georgia, is presently being negotiated with the European Commission. The new proposal addresses the creation of structures for efficient and democratic local self-government, strengthening of local democracy; development of an independent and efficient judicial system; assistance in legal and criminal reform as well as anti-corruption measures, promotion of the Rule of Law; promotion of protection of human rights through training of legal professionals and promotion of judicial and non-judicial means to protect human rights.

Proposal

Need for speedy conclusion and efficient implementation of the new EC/CoE Joint Programme for Georgia 2003-2004.

**Appendix: programme of visit of Secretariat Delegation
(8-12 December 2002)³**

Sunday, 8 December 2002

17:20 Arrival in Tbilisi
20.00 Dinner offered by Mr Harry Molenaar, Ambassador of the Netherlands on behalf of the Chair of the Committee of Ministers

Monday, 9 December 2002

9: 30 – 10:15 Meeting with Mr Shota Dogonadze, Deputy Minister of Foreign Affairs
10: 30 – 11:30 Meeting with Mr Malkhaz Kakabadze, Minister of Special Affairs
12: 45 – 13:45 Lunch
14: 00 – 14:45 Meeting with Mr Zurab Khazhalia Deputy Minister of Internal Affairs
15: 00 – 15:45 Meeting with Mr Torben Holtze, Head of EC Delegation to Georgia, accompanied by Mr Jacques Vantomme, First Counsellor, Ms Adriana Longoni, Head of Operational Section, & Ms Julia Jacoby
16: 00 – 16:45 Meeting with Mr Gigi Tsereteli, Deputy Speaker of Parliament (in the presence of representatives of the press)
17: 00 – 17:45 Meeting with Ms Rusudan Beridze, Deputy Secretary of the National Security Council on Human Rights Issues
18: 00 – 19:30 Meeting with Mr Armaz Akhvlediani and the members of the Tbilisi School of Political Studies
20: 00 Dinner at the Ministry of Foreign Affairs, hosted by Mr Shota Dogonadze, Deputy Minister of Foreign Affairs

Tuesday, 10 December 2002

10: 00 – 10:45 Meeting with Ms Cecile Gogiberidze, Minister of Culture
11: 00 – 11:45 Meeting with Ms Nana Devdariani, Public Defender
12: 00 – 12:45 Meeting with Mr Roland Giligashvili, Minister of Justice, accompanied by Mr George Tskrialashvili, First Deputy Minister of Justice
13: 00 – 14:30 Lunch
15: 00 – 15:45 Meeting with Mr Joni Khetsuriani, President of the Constitutional Court
16: 00 – 16:45 Meeting with Ms Catherine Bertrand, UNHCR Representative in Georgia
17: 00 – 18:00 Meeting with Mr Lado Chanturia, President of the Supreme Court
18: 30 – 19:45 Meeting with Mr Mikheil Saakashvili, Head of the City Council, Tbilisi

³ The programme was organized with the help of the Georgian authorities (in particular the Ministry of Foreign Affairs and the Permanent Representation to the CoE) & the Information Office of the Council of Europe in Tbilisi.

20: 00 – 20.30 Meeting with Mr Levan Ramishvili, Director, Liberty Institute

Wednesday, 11 December 2002

9: 00 – 9.45 Meeting with Mr Alexandre Kartoza, Minister of Education
 10: 00 – 10:45 Meeting with Mr Ivar Vikki, Deputy Head of Mission, OSCE
 Mr Hans Wesseling, Head of Political and Military Affairs, OSCE
 Mr Marc Behrendt, Democratization Officer OSCE, and
 Ms Anna Westerholm, Head of Human Dimension, OSCE
 11: 00 – 11:45 Mr Mikheil Chachkhunashvili Chairman of the Executive Board, Open
 Society Georgia Foundation
 12: 00 – 12.45 Meeting with Mr Alex Rondeli, President, and Mr Archil Gegeshidze,
 Senior Fellow, Georgian Foundation for Strategic and International Studies
 13: 00 – 14:15 Working lunch with Mr Robert Gravell, Senior Political Advisor , UNOMIC
 14: 30 – 15:30 Separate meetings with Mr David Kikalishvili, Independent TV Channel
 Rustavi 2, and Ms Nana Kakabadze, former political prisoner
 16: 00 – 17:00 Meeting with Mr Georgi Tvalavadze, Deputy Prosecutor General
 17: 15 – 18:15 Meeting with Ambassadors of Council of Europe member states,
 chaired by Mr H. Molenaar, Ambassador of the Netherlands
 19: 00 – 19:45 Concluding meeting at the Ministry of Foreign Affairs
 20: 00- 22:00 Meetings with Mr Alex Anderson, Director of Tbilisi Office,
 Human Rights Watch Representative in the South Caucasus,
 & Mr Mark Mullen, Director, (US) National Democratic Institute;
 &, in parallel,
 20: 30 Dinner offered by Mr Malkhaz Kakabadze, Minister of Special Affairs

Thursday, 12 December 2002

8: 00 Departure from Tbilisi