

IHF FOCUS: good governance (corruption); freedom of expression, free media and information; independence of the judiciary and the rule of law; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; freedom of religion and religious tolerance; national and ethnic minorities; refugees; situation in the autonomous regions.

In 2005 the euphoria that characterized the first period after the so-called Rose Revolution in late 2003 largely subsided, and there was growing popular discontent with the government led by the west-oriented and reform-minded President Mikhail Saakashvili because of its perceived failure to deliver on its promises.

The central government held vast powers, but no functioning system of checks and balances was in place, which hampered the democratic process of the country. There was virtually no parliamentary opposition since most opposition parties had failed to meet the 7% threshold required to gain representation in parliament in the 2004 elections. The judiciary remained highly dependent on the executive, and while pro-government media often exercised self-censorship when reporting about political developments, other media was subject to pressure. At the same time, civil society was not able to effectively exercise its watchdog role.

In February Prime Minister Zurab Zhvania, who played a key role in the Rose Revolution, was found dead in a friend's apartment in Tbilisi. An investigation into the case concluded that Zhvania had been poisoned by carbon monoxide from a faulty gas heater, but the circumstances of the incident remained the subject of debate. In subsequent months, the position of President Saakashvili was further strengthened. In another major political development during the year, Foreign Minister Salome Zurasbishvili, former French diplomat born into a Georgian émigré family in Paris, was dismissed in October due to mounting criticism by parliament. After her removal from office, she launched a new

opposition movement, with the stated purpose of offering civil society a new platform of expression.¹ Moreover, in October, a new 17-member opposition force – the Democratic Front – was established in parliament and pledged to fight for the principles and ideals of the Rose Revolution, which it argued had been neglected by the ruling party.²

With support of the international community, the Saakashvili government continued its vigorous efforts to stimulate economic growth and combat corruption. The difficult legacy of the past was, however, not easily overcome and poverty and mismanagement remained serious problems. There were also concerns that the fight against corruption was sometimes carried out in disregard of the rule of law. A number of positive steps were taken to combat torture and ill-treatment, but actual progress was marginal, and a widespread culture of impunity continued to prevail for law enforcement officials engaging in abuse.

New rounds of negotiations took place with respect to the conflicts in the breakaway regions of South Ossetia and Abkhazia, but no genuine breakthroughs were achieved. Chechen refugees lived in precarious conditions and remained in danger of being returned to Russia in violation of the *non-refoulement* principle.

In January 2006, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on the progress made by Georgia toward fulfilling its obligations and commitments as a member of the Council of Europe. PACE found that the current Georgian authorities continued to demonstrate “clear resolve” to build a sta-

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ble democracy and to better integrate the country into European and Euro-Atlantic structures, and it noted that large-scale reforms had been set "on the right track" and that the chaotic reform approach of the first post-revolutionary period had been replaced by a more focused one. The assembly emphasized, however, that the reform process was still only "at the very beginning" and that "major challenges" lay ahead when it came to ensuring implementation of reforms. The PACE resolution concluded that the Georgian authorities "will have to demonstrate, at every step, that their solutions in overcoming the inevitable problems and obstacles along the way fully abide by the principles of democracy, rule of law and respect for human rights."⁵

Good Governance

Corruption

In Transparency International's "2005 Corruption Perceptions Index," which measures the degree of corruption that business people and country analysts perceive to exist in different countries, Georgia was given the ranking 130 out of 158. With a total of 2.3 points on a scale of 0-10, where the lowest number indicates that a country is highly corrupt and the highest number that it is virtually free from corruption, Georgia was ranked together with countries such as Burundi, Cambodia, Venezuela and Kyrgyzstan. Compared with the previous year, Georgia's scores had increased by 0.3 points.⁴

After taking power, the Saakashvili government launched a major anti-corruption drive, and in 2005 efforts to combat corruption continued with similar intensity as in the previous year. A National Anti-Corruption Strategy adopted in June identified corruption prevention measures, institutional reform, liberalization of the business environment, ratification and implementation of international anti-corruption treaties

and promotion of public participation in anti-corruption activities as major priorities of the continued anti-corruption campaign. The government subsequently adopted an action plan outlining specific activities to implement the strategy.⁵

While the determination of the Georgian government to root out corruption was widely welcomed, its anti-corruption campaign was also criticized for employing questionable tactics. There were reportedly arbitrary arrests of individuals suspected of corruption, and in some cases law enforcement officials used excessive force at the time of arrest.⁶ NGOs also voiced concern that the authorities were selectively targeting individuals for political reasons, and that anti-corruption legislation was not being applied equally to all.⁷

Moreover, a system of "plea bargaining" that was introduced in 2004 was a source of controversy. This system made it possible, under certain circumstances, for corruption suspects to have their charges reduced or dropped if they return the money they had allegedly embezzled. PACE expressed concern that the system created the impression that criminals could buy immunity from justice and that it was open to arbitrary implementation.⁸ In response to the criticism voiced, the authorities assured PACE that an appeal procedure would be introduced to improve the system and that it would only be applicable after a court had established that suspects had not been subjected to torture or inhuman or degrading treatment.⁹

Freedom of Expression, Free Media and Information

Following the Rose Revolution, most media outlets that had previously been pro-opposition developed a high degree of loyalty to the new government. These outlets often exercised self-censorship when reporting about political developments in the country, while media and journalists

who engaged in critical reporting faced difficulties in obtaining information from the authorities as well as different forms of direct and indirect pressure. In the aftermath of the Rose Revolution, several newspapers and TV stations closed down, a trend which opposition voices attributed to the difficult conditions of operation for non-pro-government media.¹⁰ The 2005 "World Press Freedom Index" published by Reporters without Borders ranked Georgia as country 99 out of 167, down from 94 in 2004 and 73 in 2003.¹¹

◆ On 27 August, Shalva Ramishvili, co-founder of the private TV Company 202 and anchor of the talk-show "Debates," was arrested and charged with extorting US\$ 100,000 (about EUR 85,000) from MP Koba Bekauri of the ruling National Movement Party in exchange for not broadcasting a documentary film that allegedly included footage of the latter's involvement in corruption. The charges were mainly based on a film sequence showing Bekauri handing over money to Ramishvili, which had been shot by a secret police camera attached to the MP. Ramishvili rejected the charges and stated that, in fact, Bekauri had exercised pressure on him not to broadcast the compromising documentary. He also claimed that he had taken the money from Bekauri as part of an investigative story about the wrongdoings of the MP. David Kokhreizze, director of TV 202, was arrested on similar charges as Ramishvili and both men were detained pending trial, which was scheduled to begin in early 2006. While the authorities depicted the arrest as an anti-corruption measure, opposition political parties and journalists characterized it as an attack on free media. In the context of the case, the parliament also established a commission to look into Bekauri's dealings.¹²

◆ On 6 July, the Georgian Media Club sent an open letter to the Georgian government, Western European embassies,

the Council of Europe and other international organizations criticizing violations of freedom of expression in Georgia in the aftermath of the Rose Revolution. The letter accused the Georgian government of exercising pressure on critical media outlets and of unduly interfering into the activities of media, thereby undermining democratic developments in the country. The letter was signed by a total of 76 journalists.¹³

Freedom of Expression in the Regions

Journalists working in the regions of the country were subject to pressure by local authorities and politicians, and in some cases journalists were the targets of apparently politically motivated violence.

◆ On 26 April, Saba Tsitsikashvili, a journalist working for *Akhali Versia* ("New Version"), was attacked when he was on his way to report on the impacts of a recent flood in the village of Uplistsikhe in the region of Shida Kartli. According to Tsitsikashvili, a representative of the presidential administration of the region dragged him out of his car, abused him both verbally and physically and, thereafter, ironically said: "Now you can do the article." The journalist said that numerous witnesses, including two TV crews, witnessed the attack. Tsitsikashvili announced intentions to file a complaint about the episode, demanding an official investigation.¹⁴ At the time of writing, no additional information about the case was available.

◆ In April, the administration of the city of Telavi blocked the sale of a full edition of the newspapers *Spectrum* and *24 Hours*. It was believed that this measure was taken because the editions in question featured articles about corruption within the local administration.¹⁵

◆ In April, journalist Marina Gogoladze from the TV station Imedi was assaulted in the city of Lagodekhi. According to Gogoladze, a member of the ruling Natio-

nal Movement Party tried to suffocate her, forced her to hand over a cassette that she was using for her work and destroyed the material recorded on it. The politician in question denied the accusations.¹⁶ A criminal investigation was opened into the case, but as of early 2006, its outcome remained unclear.¹⁷

◆ In June, the editor-in-chief of the Gurjaani regional newspaper *Imedi* was attacked by an unknown perpetrator on his way home. The assailant repeatedly struck him on the head with a heavy object and thereafter disappeared from the place of the incident.¹⁸ It was believed that the attack was politically motivated since the newspaper had openly criticized the regional authorities. An investigation was reportedly opened into the case, but at the time of writing, no information about its status was available.¹⁹

Independence of the Judiciary and the Rule of Law

Following the Rose Revolution, a number of reforms of the judiciary were adopted. For example, a three-stage court system was established and a trial scheme of specialized courts introduced. Despite these reforms the court system continued to function ineffectively, and lack of independence of the judiciary remained a major concern.²⁰ Constitutional amendments adopted in 2004 granted the president wide powers to appoint and dismiss judges, and efforts to combat corruption within the judiciary were implemented without any clear criteria, which gave rise to concerns about politically motivated dismissals.²¹

In a positive development, the parliament adopted a number of progressive amendments to the criminal procedure code in March. These amendments, which had been drafted with the help of international experts, *inter alia*, established new

safeguards for suspects during arrest and investigation and reduced the allowed period of pre-trial detention and trial.²² The adoption of a new criminal procedure code was planned for 2006.²³

Torture, Ill-Treatment and Police Misconduct

In the first period following the Rose Revolution, when the new government embarked upon an ambitious campaign against criminality and corruption, the already serious situation with respect to ill-treatment and torture deteriorated further. The new government appeared to give little consideration to human rights in its hunt for criminals and, in the first months after the regime change, human rights NGOs documented hundreds of cases involving allegations of ill-treatment and torture. Since the second half of 2004, however, leading government officials have openly acknowledged the problem of ill-treatment and torture and several positive steps have been taken to combat abusive practices.²⁴

In 2005, the parliament adopted amendments to the criminal code and the criminal procedure code, which *inter alia*, brought the definition of the offense of torture in line with that established by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, reduced the maximum period of pre-trial detention from nine to four months and made testimony given outside of the court inadmissible as evidence unless it is confirmed in court. Monitoring efforts were also stepped up during the year and several police officers were prosecuted on charges of torture. The overall impact of the adopted measures was, however, limited and a widespread climate of impunity continued to prevail for the use of torture and ill-treatment.²⁵

◆ On 8 April, Eldar Konenishvili, who was serving a six-year prison sentence for

“theft” and “hiding from the investigation,” was tortured in the facilities of the Gurjaani Police Department, where he was being interrogated. According to Konenishvili, the police officers who interrogated him hit his head and face and threatened to throw him off the balcony outside the room where he was interrogated. He also said that the police officers threatened to beat his wife, mother and children unless he “confessed” to the murder he was accused of committing. After being brought back to his cell, Konenishvili coughed up blood and for several days suffered from a severe headache and was not able to walk without support. An investigation was opened into the case, but at the end of the year no charges had reportedly been brought against the alleged perpetrator.²⁶

On 19-25 February, Manfred Nowak, UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment completed a mission to Georgia. During his visit, he met with government officials, representatives of international organizations present in Georgia as well as representatives of NGOs. He also visited several detention facilities, where he spoke with detainees. On the basis of his findings, Nowak concluded that torture and ill-treatment “still exist” in Georgia. He noted that abusive practices – such as beatings, electric shocks and burning with cigarettes – were commonly used within the first 72 hours of police custody to extract confessions for alleged offences and that prosecution and convictions often relied mainly on such coerced confessions. Nowak deplored the lack of serious and effective investigations into torture allegations and emphasized that this contributed to impunity.²⁷

On the positive side, Nowak mentioned legal measures such as the amendment of the torture definition included in the criminal code and efforts to establish monitoring mechanisms to visit places of

detention. The rapporteur also noted that the Georgian government had assured him that his recommendations would be seriously considered. The rapporteur, *inter alia*, recommended that the highest authorities “declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be subject to prosecution.” He also recommended that judges routinely ask detainees how they have been treated and that any allegations of torture be promptly and thoroughly investigated by an independent authority.²⁸

In its January 2006 resolution, PACE called on the Georgian government to “build on first steps taken to eliminate the culture of violence and torture in prisons and pre-trial detention centers” and to adopt “urgent” measures to ensure prompt, impartial and thorough investigations into all allegations of torture and ill-treatment, in particular in regions outside the capital.²⁹

Conditions in Prisons and Detention Facilities

Overcrowding, lack of order and poor medical assistance were some of the problems that characterized conditions in prisons and other detention facilities. According to NGOs, a negligent attitude toward the well-being of prisoners could be discerned on the part of the authorities.³⁰

Following his visit to the country in February 2005, UN Special Rapporteur on Torture Manfred Nowak expressed concern about the deplorable conditions of detention, in particular in pre-trial detention facilities. While acknowledging the lack of resources, he noted that these conditions were aggravated by existing practices, such as the readiness of courts and prosecutors to resort to pre-trial detention of suspects irrespective of the gravity of the crime. According to him, this practice contributed to the problem of overcrowding and put pressure on existing infrastructure. He also

concluded that the practice was contrary to the principle of presumption of innocence and to the exceptionality of the instrument of deprivation of liberty as laid down by international law. The rapporteur welcomed, however, a program to construct more modern detention facilities.³¹

Freedom of Religion and Religious Tolerance

The Georgian Orthodox Church continued to enjoy a privileged status, formalized by a 2002 concordat with the Georgian government. However, in April, the parliament adopted legislation that, for the first time, made it possible for other religious communities to register with the authorities. Under the new legislation, religious communities may obtain registration as non-profit organizations, a status that allows them to own property collectively, open communal bank accounts and act as entities in court. Registration is not obligatory. Some religious communities found the idea of registering as private legal persons unacceptable and demanded that they be granted the right to register as religious organizations. By late 2005, only two religious communities – the Church of Jesus Christ of Latter-day Saints (Mormons) and the Congress of Georgian Muslims – had obtained registration.³²

After the change of regime, violence against members of religious minorities that had characterized the previous era declined. A major reason was the arrest in 2004 of Basil Mkalashvili, a defrocked Orthodox priest who in 1999-2003 led up to 200 mob attacks against members of religious minorities, including attacks in which places of worship were destroyed, religious literature was burnt and believers were physically assaulted. In a long-awaited court decision, Mkalashvili was sentenced to six years imprisonment in January 2005, while his deputy was given a four-year sentence.³³

It remained a concern, however, that many other perpetrators of attacks on religious minority members had not been brought to justice. Moreover, popular attitudes toward religious minorities were often characterized by hostility, and members of such groups were subject to intolerance and discrimination in daily life. A new law on education sought to address concerns about religious education in schools, which in previous years had frequently taken the form of denominational Orthodox instruction, and prohibited teaching of Orthodoxy as part of the regular school curriculum. Implementation of the new provisions was, however, not very effective.³⁴

National and Ethnic Minorities

According to the 2002 census, ethnic minorities constituted 16% of the population in Georgia, with the largest minority groups including Azeris (285,000) and Armenians (250,000). Primarily as a result of emigration, the rate of ethnic minorities has decreased considerably during the period of independence of Georgia. At the time of the last Soviet census in 1989, about one third of the population belonged to ethnic minorities.³⁵

As a result of pressure from international organizations, the Saakasvili government gave some attention to minority protection and included it on its political agenda. However, minority protection was not a major priority of the government and relevant state structures continued to demonstrate a lack of systematic approach to the issue as well as a lack of political will to address it. There were also concerns that the government's efforts to restore territorial sovereignty were sometimes combined with rhetoric containing nationalistic overtones.³⁶ On 22 December 2005, Georgia ratified the Council of Europe Framework Convention for the Protection of National Minorities, thereby fulfilling one of the obligations it undertook when being admitted

into the Council of Europe.³⁷ A national minority law had, however, yet to be adopted.

Minority members were vulnerable to economic, social and political marginalization, a fact that reflected the failure of the authorities to implement effective measures to promote integration of minorities.³⁸ In areas where Azeris and Armenians were compactly settled such as Kvemo Kartli and Samtskhe-Javakheti, members of the two minorities often had poor knowledge of Georgian, which contributed to limiting their possibilities in economic, social and political life. While the schools in these regions used the minority languages or Russian as the language of instruction, teaching of Georgian was typically ineffective, *inter alia* because of a lack of qualified teachers and adequate textbooks. At the same time, Azeris and Armenians living outside of these regions, as well as members of most other minorities, were rarely able to study their own language.³⁹

As part of an education reform, a requirement was introduced for all students seeking admission to university to complete a Georgian language exam, also when their future language of tuition would be Russian. This reform caused concerns among the country's minority groups, in particular in the regions with compact Azeri and Armenian settlements. It was feared that the reform would mean that many talented minority students would not be able to attend university or would go abroad to study. The authorities justified the reform by saying that all residents of the country should know Georgian, which is the state language, and assured that minority members would be offered an adapted, easier version of the Georgian language exam.⁴⁰

Refugees

Chechen Refugees

Chechen refugees remained in a vulnerable situation, characterized by poor liv-

ing conditions, limited access to medical assistance, education and employment and discriminatory treatment by police.⁴¹

◆ On 28 December, Magomed Mahaev, founder of a humanitarian organization assisting Chechen refugees living in the Pankisi Gorge and himself a refugee, was detained on accusations of falsifying documents, abusing his position and misappropriating funds. According to the authorities, Mahaev's organization – Imedi ("Hope") – was funded by organizations with ties to Al Qaeda. The Georgian Human Rights Information and Documentation Center (HRIDC) depicted these accusations as "absurd" and noted that the donor organizations of Imedi included groups that were partners of the Red Cross/Crescent and were involved in humanitarian activities in many different countries. The HRIDC called on the authorities to release Mahaev pending the outcome of the investigation into his case.⁴²

The ombudsman's office disclosed numerous cases in which Chechens had illegally been deprived of their refugee status and criticism was directed toward the local office of the UN High Commissioner for Refugees for failing to deal effectively with requests for resettlement in third countries. There were also concerns of illegal deportation and returns of Chechens to Russia in violation of the *non-refoulement* principle.⁴³

◆ On 12 April, the European Court of Human Rights (ECtHR) issued its judgment in the case of *Shamaev and 12 Others v. Georgia and Russia*. In August 2002, the Georgian authorities detained the applicants for illegally crossing the border from Chechnya and soon thereafter the Russian government requested their extradition, claiming that they had been involved in terrorist activities. In October 2002, five of the men were extradited to Russia. When submitting their application, the applicants argued that they risked

treatment in violation of articles 2 (right to life) and article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention of Human Rights (ECHR) if they were extradited to Russia.⁴⁴ The ECtHR found, however, that at the time when the decision to extradite five of the applicants was made, there were “no serious and well-founded reasons” to believe that the extradition would result in treatment in violation of these articles. At the same time, the Court held that in current circumstances – when a growing number of cases of persecution and killings of people of Chechen origin has been reported in Russia – extradition would be in violation of the ECHR. The Court also found that the failure of the Georgian authorities to inform the applicants and their lawyers in a timely fashion about the extradition, thereby depriving them of the opportunity to submit complaints to a national body, constituted a violation of article 5 (right to liberty and security) taken together with article 2 and 3.⁴⁵ The Georgian government was ordered to pay EUR 80,500 to the applicants and to reimburse their legal expenses to the amount of EUR 4,000.⁴⁶

Situation in the Autonomous Regions

Adjaria

After the former leader of Adjaria, Aslan Abashidze, was forced to step down in May 2004, an autonomy scheme was worked out for the region. This scheme, which largely ignored recommendations made by the Council of Europe’s Venice Commission, afforded Adjaria only limited autonomy and granted the central authorities broad powers to interfere in the affairs of the region.⁴⁷ PACE criticized the “excessively limited” autonomy status given to Adjaria and called on the Georgian authorities to implement changes to it. However, the Georgian authorities did not take any action to comply with these calls.⁴⁸

When Abashidze resigned, President Saakashvili granted him immunity from prosecution and the ex-leader subsequently left for Russia. However, in December 2005, the Batumi City Court approved a request by the prosecutor general to issue an arrest warrant for Abashidze on charges of embezzlement, abuse of power and terrorism. According to President Saakashvili, Abashidze’s immunity from prosecution had only been intended as a temporary measure.⁴⁹

South Ossetia

In the aftermath of the Rose Revolution, the Georgian authorities have been pushing for a settlement to the conflict in South Ossetia. Talks between representatives from Georgia, Russia, South Ossetia and North Ossetia have taken place on the basis of a three-stage approach, involving demilitarization and confidence-building measures, social and economic rehabilitation and political settlement. While there has been some progress in terms of economic rehabilitation, no breakthrough has yet occurred in the other fields. In November 2005, negotiations ended in a stalemate because of serious differences in opinion regarding the continued peace process.⁵⁰ Since 1992 a tri-partite peace-keeping force composed of Russian, Georgian and South Ossetian troops has been overseeing a cease-fire agreement in the region, under the aegis of the Commonwealth of Independent States, with oversight of the Organization for Security and Cooperation in Europe.⁵¹

Abkhazia

During the year, several meetings aimed at resolving the conflict in Abkhazia were held within the so-called “Geneva framework,” chaired by the Special Representative of the UN Secretary General in Georgia. However, no real progress was achieved in these talks, which mainly fo-

cused on non-resumption of hostilities and safe return of refugees and IDPs.

Presidential elections held in Abkhazia in October 2004 were surrounded by controversy and a compromise solution could only be found after active intervention by Russia, which was the only country that recognized the elections. In new elections that took place in January 2005, Sergei Bagapsh was elected president.⁵² The new president was considered more open to dialogue than his major rival in the elections. However, his situation was made difficult by the formation of a new opposition

movement, the so-called Forum of People's Unity of Abkhazia (FNEA), which showed an uncompromising approach to the issue of Abkhaz independence. In October, FNEA appealed to Russian President Vladimir Putin and the international community to recognize Abkhazia as an independent state, or possibly as an "associate subject" of the Russian Federation. A new special envoy of the president of Georgia for conflict resolution in Abkhazia was also appointed during the year, and the new envoy – Irakli Alasania – was described as more moderate than his predecessor.⁵³

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- ⁵⁰ PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, *Implementation of Resolution 1415 (2005) on the honouring of obligations and commitments by Georgia (DOC 10779)*, 5 January 2006.
- ⁵¹ *The EU's Relation with Georgia*, http://europa.eu.int/comm/external_relations/georgia/intro
- ⁵² For more information about the elections see IHF, *Human Rights in the OSCE Region; Europe, Central Asia and North America, Report 2005 (Events of 2004)*, at www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4057.
- ⁵³ PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, *Implementation of Resolution 1415 (2005) on the honouring of obligations and commitments by Georgia (DOC 10779)*, 5 January 2006.