



# Information Documents

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## **Compliance with commitments and obligations: the situation in Georgia**

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Bi-annual report prepared by the Directorate of Strategic Planning (DSP),  
(July 2004 - February 2005)

### **Executive Summary**

Over the period covered by this report, the Georgian authorities continued to carry out efforts for institutional, legal and socio-economic modernisation of the country. This process has been developing against the background of persisting instability in the break-away-regions of South Ossetia and Abkhazia, re-integration of which is considered as a key priority by the Georgian leadership. In line with efforts to achieve a peaceful solution of conflict in South Ossetia, the Georgian authorities started to work on the future autonomous status of the region in consultation with the CoE Venice Commission. At the end of January 2005, the CoE Parliamentary Assembly adopted Resolution 1415 (2005) containing a comprehensive list of recommendations on outstanding accession commitments by Georgia. Three priority areas remain central for Georgia's democratic evolution: consolidation of democratic institutions (including those related to regionalisation), reform of the judiciary and law-enforcement agencies and the fight against corruption and organised crime.

- **Functioning of democratic institutions (including those related to regionalisation):** The election of the Supreme Council of Adjara, held in late June 2004, marked a step forward in terms of transparency and political freedom. Nevertheless, the review of the autonomous status of Adjara in line with the Venice Commission's opinion, as recommended by Parliamentary Assembly, is still expected. Reform of the electoral system, including electoral administration, is ongoing, although the Venice Commission has not yet been able to comment on recent draft amendments to the electoral code. Notwithstanding encouraging developments overall, the decentralisation reform is advancing slowly and not always in a coherent way. Particular attention should be paid to the preparation of the local elections envisaged for 2006 and, in particular, to the issue of election of the Mayor of the capital, the details of which are being elaborated.
- **Judiciary and law enforcement:** Reform of the major judicial institutions raises questions regarding respect for judicial independence. More emphasis should be put on the follow-up to CoE experts' recommendations on the issue. Reform of the Code of Criminal Procedure is pending and its conformity with CoE standards, notably the ECHR, is still to be ensured. Proper application of the plea-bargaining procedure remains an issue of concern. Human rights and professional training of law-enforcement and prison staff should become a priority area of co-operation with the CoE.
- **Fight against corruption, organised crime and impunity:** An active case-by-case campaign against corruption raised optimism within the Georgian population. However, the time has come for comprehensive anti-corruption policies and profound institutional reforms. Also, it is essential to ensure that the fight against corruption is carried out in full compliance with human rights and rule of law principles. An overall assessment by GRECO is envisaged for June 2005. The second round evaluation report, adopted by MONEYVAL in January 2005, acknowledged progress in the creation of basic anti-money laundering prerequisites. Local and international human rights defenders welcomed the conviction of the priest responsible for incidents of religious violence during the late nineties as a sign of the authorities' commitment to put an end to impunity. However, impunity appears to persist with respect to the alleged ill-treatment of detainees in pre-trial detention centres and prisons. The report of the CPT on its second periodic visit to Georgia has not yet been made public.
- **Outstanding conventions:** The CoE stands ready to assist the Georgian authorities in the preparation for the ratification of the outstanding CoE conventions, in particular, the Framework Convention for the Protection of National Minorities, the European Charter for Regional and Minority Languages and the Revised European Social Charter.
- **Repatriation of the Meskhethian population deported in 1940-1944:** A special Council to deal with this issue under the President of Georgia was established in December 2004 and work on the draft law on repatriation has started. The CoE stands ready to provide assistance in the elaboration of this law.
- **Freedom of the media:** Pluralism and independence of the electronic media needs to be preserved and reinforced. In this context, the creation of an authentic public service broadcaster, already started by the Georgian authorities following adoption of the relevant legislation, is of the utmost importance. The CoE will provide assistance to this end, if requested.
- **Minorities:** The authorities are urged to pay careful attention to the concerns of national minorities, so as to avoid a deterioration in inter-ethnic relations.

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## I. INTRODUCTION

1. In accordance with a decision of the Committee of Ministers (826<sup>th</sup> meeting, 5 February 2003, item 2.1 a), the Secretariat was instructed to proceed with a six-monthly assessment of the progress achieved by Georgia in fulfilling its commitments as a member state of the Council of Europe. In accordance with the decision of the Ministers' Deputies of 8 July 2004 (CM 892<sup>nd</sup> meeting, 8 July 2004, item 2.1a), the regular monitoring focuses on the following three priority areas:

- functioning of all democratic institutions (including those linked to regionalisation);
- functioning of the judiciary and law enforcement agencies;
- the fight against corruption and organised crime.

2. In November 2004, a GR-EDS delegation visited Georgia. On 25 February 2005, following discussions, the GR-EDS agreed to a list of recommendations put forward in the report on the visit (see doc. GR-EDS (2004)32), which were adopted by the Ministers' Deputies at their 917<sup>th</sup> meeting of 2 March 2005. At the end of January 2005, following a debate on the report prepared by its Monitoring Committee, the Parliamentary Assembly adopted Resolution 1415 (2005) containing a comprehensive list of recommendations on outstanding accession commitments by Georgia.

3. Bearing in mind these developments, the Secretariat decided to postpone publication of its regular report, to take into account the recent deliberations of the two organs (Committee of Ministers and Parliamentary Assembly). In January 2005, a new Special Representative of the Secretary General in Georgia, Mr. Igor Gaon, took up his duties in Tbilisi and assisted the Secretariat in the preparation of the report.

4. The present report aims to give an overview of the most recent developments in priority areas and contains proposals as to how to optimise co-operation between Georgia and the Council of Europe. It does not deal in depth with the issue of break-away regions, but gives a brief survey of the most substantial developments over the period observed.

## II. POLITICAL CONTEXT

5. The drafting of the report coincided with a period of government reshuffle, following the tragic death of Prime-Minister Zurab Zhvania. On February 17, the Georgian Parliament gave its vote of confidence to the new Council of Ministers, led by the new Prime-Minister Zurab Nogaideli. This was the third reshuffling of the government in the past year, following which no policy changes are anticipated.

6. Over the last eight months, the Georgian authorities continued to carry out efforts for institutional, legal and socio-economic modernisation of the country. This process has been developing against the background of persisting instability in the break-away-regions, re-integration of which remains a key priority for the Georgian leadership. Foreign relations are characterised by Georgia's declared European integration aspirations, continued strained relations with the Russian Federation over the issue of Russian military bases in Georgia, and the Russian Federation's refusal to renew the mandate of the OSCE border monitoring mission over the Georgia-Russian state border segment in the Caucasus. During the recent visit to Georgia of the Minister of Foreign Affairs of the Russian Federation, the two sides agreed to discuss in a most proactive way the outstanding issues and propose concrete solutions within a two-month period.

7. Substantial developments took place over the period observed in **South Ossetia**. Since 5<sup>th</sup> November 2004, the political process was re-launched through a direct meeting between the late Georgian Prime-Minister, Zurab Zhvania and the South Ossetian leader, Eduard Kokoity. Both sides expressed their commitment to a peaceful, comprehensive resolution of the conflict, which would have to pass through a phased demilitarisation of the conflict zone.

8. On 26 January 2005, while addressing the Parliamentary Assembly of the Council of Europe, President Mikhail Saakashvili unveiled the South Ossetia Peace Initiative, a proposal for re-integration on the basis of broad autonomy of the region. The Initiative envisages, *inter alia*, introduction of direct elections for local self-government, participation of South Ossetian representatives in the Georgian executive and legislative bodies, as well as cultural and linguistic autonomy for the region. The Secretary General of the Council of Europe was invited by President Saakashvili to assist in the implementation of the plan. The details and extent of CoE involvement will certainly be discussed during the Secretary General's visit to Tbilisi in April 2005.

9. In this context and upon a request by the Georgian authorities, a Venice Commission delegation visited Georgia on 27 and 28 January 2005 with a view to providing assistance to the working group set up by the Georgian authorities to prepare a more detailed text on the autonomous status of South Ossetia, on the basis of the plan put forward by President Saakashvili. Preliminary written comments on the draft were transmitted to the Georgian authorities on 9 February. It is therefore expected that the Georgian authorities will soon prepare a new, more comprehensive version.

10. The *de facto* South Ossetian authorities have so far showed a negative attitude towards the Peace Initiative and the situation in the region remains complex. The Georgian State Minister for Conflict Resolution Issues Goga Khaindrava said at the Parliamentary session in February 2005 that the demilitarization process in South Ossetia had been halted. Concerns are expressed about a possible increase of regional tensions in the Spring.

11. **Abkhazia:** In October 2004, a presidential election in the second break-away region of Georgia resulted in the victory of the opposition candidate, Sergey Bagapsh. The post-election political crisis ended in December 2004, with an agreement, according to which the former presidential rivals, Sergey Bagapsh and Raul Khajimba, would participate in a repeat election as one team. On 12 January 2005, Sergey Bagapsh won with over 90 percent of the vote and Raul Khajimba took the post of Vice-President.

12. Media sources reported in January 2005 that the UN Secretary General's Special Representative to Georgia Heidi Tagliavini discussed with the *de facto* Abkhazian authorities the resumption of peace talks between the Georgian and Abkhaz sides in the framework of the Geneva process, with the participation of the UN Secretary General's Group of Friends for Georgia. The last meeting of this group was held in December 2004 in the absence of any Georgian or Abkhaz delegation. The next meeting is scheduled for March 2005.

### III. FUNCTIONING OF DEMOCRATIC INSTITUTIONS (INCLUDING THOSE RELATED TO REGIONALISATION)

13. **Regional autonomy:** Peaceful re-integration of **Adjara** is considered as one of the main achievements of the Georgian leadership over the past year. The opinion of election observers from the Congress of Local and Regional Authorities of Europe on the election of the Supreme Council of Adjara, held in June 2004, was largely positive (see CG/BUR(11)40; see also previous Secretariat report, doc. SG/Inf(2004)19). The ballot resulted in overwhelming victory for the Saakashvili-Victorious Adjara bloc. The review of the status of Adjara as recommended by the Parliamentary Assembly (see PACE Res1415(2005) is still expected.

14. **Electoral issues:** In late February 2005, the Parliament of Georgia adopted a constitutional amendment providing for the reduction of the *number of members* of Parliament from 235 to 150. The initiative to downsize the Parliament was approved by the majority of Georgian citizens at the November 2003 referendum. According to the amendment, 100 parliamentarians will be elected on the basis of a proportional system and the remaining 50 in single mandate constituencies. Changes to the Electoral Code on delimitation of electoral districts are being discussed in parallel. The amendments will apply to the next parliamentary election scheduled for 2008.

15. Reform of the *electoral commissions* is ongoing. In November 2004, the Parliament adopted, in its first reading, 'Changes to the Electoral Code of Georgia'. According to the draft amendments, the President will appoint the Chairman of the 7-strong Central Election Commission (CEC) and will propose 12 candidates for the 6 remaining seats for approval by the Parliament. Those 12 candidates will be chosen by the President from a wider pool of candidates created for the purpose. The new regulations enable organisations with more than 50 members to nominate a candidate. District Election Commissions will be formed along similar lines by the Chairman and members of the CEC. The parties will play a role in the formation of the precinct commissions only. The authors of the draft argue that the new regulations will allow for formation of a professional, non-partisan election administration. At the same time, the opposition parliamentarians voiced concern that the new regulations risk to allow the election administration to be controlled by the parliamentary majority. The Venice Commission has not yet been requested to provide an opinion on this issue.

16. As regards the reduction of the current *7% electoral threshold*, at the Parliament's session of 7 February 2005, the Speaker of the Parliament said that the political will to lower the threshold exists and active consultations to propose the relevant constitutional amendment would be launched soon.

17. **Local democracy:** On 8 December 2004, Georgia ratified the European Charter of Local Self-Government (entry into force on 01.05.2005). In its Recommendation 157(2004), the Congress of Local and Regional Authorities of Europe praised ratification and welcomed the Georgian authorities' commitment to proceed with the decentralisation reform. The Congress stressed that substantial changes were needed to put the existing Georgian legislation in conformity with the spirit and provisions of the Charter. Furthermore, the Congress gave a number of specific recommendations (see CLRAE Recommendation 157(2004)). Following the Committee of Ministers' decision of 2<sup>nd</sup> February 2005, the CLRAE recommendation has been transmitted to the Georgian authorities (see CM/Cong(2005)Rec157final).

18. The Georgian authorities made reservations to several important provisions of the Charter, in particular, Article 5 (consultation with local authorities in case of changes in the territorial arrangements) and Article 10, para. 3 (co-operation with local authorities from foreign countries). This approach is not in contradiction with the requirements of the Charter, though it may hamper the administrative and territorial reform and development of transfrontier co-operation. Also, the Georgian authorities confirmed that the European Outline Convention on Transfrontier Cooperation will be signed and ratified within the extended time frame, as envisaged by PACE Resolution 1415 (2005).

19. Reform of local self-government is pending. The reluctance of middle-level public officials is tangible, though the political will to reform local self-government exists. The process is being complicated by the persistent deadlock in the efforts to solve the regional conflicts of Abkhazia and South Ossetia but also by the lack of consensus about the future of such a reform (see CLRAE Rec157(2004)).

20. The Decentralisation Strategy has still to be elaborated. The State Commission, created for this purpose on 22 July 2004, failed to hold its first organisational meeting and has not yet adopted its rules of procedure. Two additional entities were created: one bringing together key ministries with responsibility for local government related matters and a 'Liaison Committee with NGOs and international partners'.

21. While the Action Plan on the decentralisation reform has not yet been formally adopted, its first stage is being implemented. The draft laws on local government property and on local budgets have been prepared with the assistance of CoE experts and will be discussed by the parliament during its Spring session. The National Association of Local Authorities of Georgia (NALA) was established on 17 December 2004, providing for an institutional mechanism for dialogue between the state and local authorities. The Training Co-ordination Agency will be formally established within the framework of the NALA and will take overall responsibility for

implementation of the objectives of the national Training Strategy. The Georgian representatives' delegation to the CLRAE has been constituted and the list of delegation members transmitted to the CoE.

22. Elaboration of the concept of territorial-administrative arrangements is envisaged under the second stage of the Action Plan. Consideration of this issue has already started and a first exchange of views with CoE experts took place in October 2004. Two laws are being prepared: a general law on local communities' units and the law on Tbilisi which will provide, *inter alia*, for fiscal independence of the capital.

23. The local experts underline that particular attention should be paid to the local elections planned for 2006. The promotion of a proportional system is considered potentially beneficial in view of the forthcoming local elections. As regards the election of the Mayor of Tbilisi, two alternative draft laws were discussed by the Parliamentary Committee for Regional Policy and Self-Government on 18 February 2005. The draft law presented by the ruling party provides for the indirect election of the Mayor by the elected City Council (Sacrebulo), whereas the question is left open whether the members of the Council will elect the Mayor among the Sacrebulo's members or whether there will be an appointment in the spirit of a 'managerial' model. The opposition insists on the direct election of the Mayor of Tbilisi.

24. While acknowledging the overall encouraging recent developments, it should be noted that the reform is still advancing at a rather slow pace and not always in a coherent way. It is argued that the major local government reforms can only be implemented after the local elections of 2006. According to certain stakeholders, one of the factors for the existing incoherencies is the absence of a specific governmental institution in charge of co-ordination and implementation of the reform. Reluctance to pursue the reform can also be explained by the persistence of certain stereotypes, insufficient and inadequate information about decentralisation and a not always clear understanding of its implications for medium and low level administrations. In this context, awareness raising among public officials and work to broaden support in society for the reform are of the utmost importance.

#### IV. FUNCTIONING OF THE JUDICIAL, LAW ENFORCEMENT AND PRISON SYSTEMS

25. **Reform of the judiciary:** A new "*Concept on the Judiciary*" has been elaborated by an operational group involving the Ministry of Justice, the Supreme Court and the High Council of Justice in consultation with EU JUST THEMIS resident experts. The CoE stands ready to provide an opinion on this text.

26. *Reform of the Courts:* Reform of the Supreme Court, Constitutional Court and common courts is pending. CoE experts' comments on the reform of the Supreme Court, the High Council of Justice and common courts were transmitted to the Ministry of Justice in early February 2005.

27. In late December 2004, constitutional amendments related to the reorganisation and reform of the Supreme and Constitutional Courts were discussed by the Bureau of the Parliament and sent back for improvements. At the request of the Constitutional Court, the Venice Commission examined these draft amendments which provided, *inter alia*, for the nomination of all Constitutional Court judges by the President and the dismissal of all current Constitutional Court and Supreme Court judges (except for the Supreme Court President). The Venice Commission delegation, during its visit to Georgia at the end of January 2005, expressed reservations vis-à-vis this draft. The Minister of Justice informed the delegation that a revised draft would be presented taking into account their observations on which the Venice Commission would soon be invited to comment.

28. The Venice Commission received the new draft on 2 March 2005 and adopted its opinion at its 62<sup>nd</sup> plenary session on 11-12 March 2005 with the participation of the President of the Constitutional Court and the Deputy Minister of Justice of Georgia (see doc. CDL-AD(2005)005). The principal change in what is proposed in the revised amendments is the establishment of the Constitutional Court separated from the ordinary judiciary as a body of constitutional review. The Constitutional Court will be enlarged to comprise 15 judges who will be nominated by the President and approved by the Parliament with a 3/5 majority.

29. According to the opinion of the Venice Commission, the revised amendments present a significant progress as compared to the previous text. The Venice Commission welcomed in particular the introduction of a "real" constitutional complaint and the limitation of the tenure of judges of the Constitutional Court to a single term. However, some other issues remain subject to concern, notably the nomination of all of the judges of the Constitutional and Supreme Court by the President, the near-total immunity from prosecution conferred on judges and the provision for renewable terms of office – rather than tenure until retirement – for ordinary judges including the judges of the Supreme Court.

30. *High School of Justice:* Reform of the educational system for judges is ongoing. The reform aims at transforming the present structure into a European style school of magistrates, which will be obligatory for judges. The CoE appraisal of the Law on the High School of Justice was transmitted to the Georgian authorities in 2004. Following a request of the Georgian authorities to assist in preparation of the curricula and the organisation of training for trainers, a workshop in Strasbourg on the methodology and curricula of the School is planned for March 2005.

31. *Bar association:* Following the adoption of the Law on the Bar Association, the Founding Assembly was planned for end of February/beginning of March 2005. It is expected that the Code of Ethics for Advocates will be adopted by the Assembly. However, further work is needed on the development of lawyers' ethics. The CoE stands ready to assist the Bar Association in this field upon request.

32. *Reform of the legal aid system:* A concept for the future system of free legal aid already exists. Pilot projects for several Georgian regions have been planned for early 2005 with a view to extending them to the whole country. The CoE re-iterates its offer for further co-operation to develop the system of free legal aid. A more proactive attitude is expected from the Georgian authorities in order to move forward with the reform.

33. **Reform of the Code of Criminal Procedure:** The 'surgery' amendments made to the existing Code of Criminal Procedure (CPC) in 2004 introduced the practice of plea-bargaining, which has been largely applied during anti-corruption operations. The Parliamentary Assembly, in its Resolution 1415 (2005), and local human rights defenders argue that its application is dubious and call for its revision. The Georgian authorities, for their part, defend the new model (see also doc. GR-EDS(2004)32), while recognising the need for a prudent use of the new rules and for further work with the prosecutors on the details of their application. The plea-bargaining system is likely to evolve. Introduction of an appeal procedure is envisaged, the plaintiff would have to prove that coercion was applied to accept the deal or that he/she had not received appropriate legal advice. The bargain could then be annulled by the judge.

34. Further changes to the current Criminal Procedure Code will be discussed by the Parliament at the next Spring session. The Parliamentary Committee on Legal Issues is elaborating proposals on simplification of investigative procedures, reduction of pre-trial custody from the current nine to a maximum of four months, introduction of defendant status term, etc. These amendments were discussed by the CoE experts in late February 2005 in Tbilisi.

35. Along with the 'surgery' amendments to the current Code, the Ministry of Justice continues working on a new Code of Criminal Procedure, in consultation with EU JUST THEMIS resident experts. The CoE experts participated in discussions of the draft. The experts were

critical as to the conformity of the draft legislation with CoE standards and modern European legal practice. According to the Parliamentary Committee on Legal Issues the new draft will be presented to the Parliament not later than next autumn. The CoE stands ready to provide further assistance to the operational sub-group of the Ministry of Justice in the elaboration of the draft in cooperation with EU JUST THEMIS experts.

36. **Reform of the Public Prosecutor's Office:** The elaboration of the concept of the reform started in January 2004. Certain structural reforms related to the Public Prosecutor Office's internal organisation and optimisation have been carried out already. The next step will be the introduction of new selection procedures. Training of prosecutors in plea-bargaining is also needed. Moreover, the adoption of the Law on the Public Prosecutor's Office is conditioned by the adoption of the new Code of Criminal Procedure.

37. **Reform of the police:** The Georgian authorities give priority to radical reorganisation of the police forces (see also doc. GR-EDS(2004)32). Reform of the Patrol Police (Traffic Police) is an example of the new approach and has raised broad support within the Georgian population. In future, the Patrol Police will become municipal. General administrative reform of the police force has not yet been carried out. The CoE stands ready to provide expert assistance to the elaboration of the Law on Police.

38. At the same time, efforts are being made to eradicate corruption and illegal practices within the police staff. The General Inspection of the Ministry of Interior reported in September 2004 on the results of its four month working period: 68 cases of drug-dealing have been revealed and 15 persons, including high rank officers, were subsequently detained.

39. As regards human rights violations, the General Inspection has filed 36 criminal cases, arrested 26 alleged perpetrators and dismissed 82 persons. The case of G. Inasaridze's suicide and that of K. Kvirikashvili's death, while in detention (see previous Secretariat report, doc. SG/Inf(2004)19), were sent by the General Inspection to the Tbilisi Prosecutor's Office for legal review in August 2004. No results of any investigation have yet been made available.

40. Concerns remain with respect to certain police attitudes, notably disproportionate use of force. The civil activists have asked for an impartial investigation of the incident occurred when police dispersed a social protest rally on 1 July 2004, as well as for non-tolerance of such practices in the future. It is essential that such an impartial investigation takes place.

41. The Concept of Police Ethics needs to be developed. Training of policemen on new working methods should be organised and the CoE can play a more active role in this field. The seminars on human rights curricula and police ethics, organised by the CoE at the request of the Police Academy, should continue.

42. **Reform of the prison system:** A new strategy for prison reform is underway. An Action Plan for Prison Reforms, prepared by the CoE following the meeting of the Steering Group on Prison Reform in September 2004, has been transmitted to the Georgian authorities. On 3 February 2005, the working group of the Ministry of Justice presented the major lines of the plan to international donor organisations. Its finalisation by the Georgian authorities is expected by March 2005.

43. In October 2004, the Georgian authorities informed the CoE that certain measures were being undertaken to alleviate overcrowding in prisons: renovation of Rustavi prison No. 6, creation of separate pre-trial detention centers, a new women's prison, a prison for juveniles and a new prison in the Western Georgian regions. Special efforts have been made regarding logistic aspects.

44. More active cooperation between the CoE and the Georgian authorities should be envisaged as concerns the training of staff for new penitentiary institutions and training of trainers.

45. The Law on Imprisonment passed in its first reading in September 2004. The Georgian Ombudsman voiced concern against the provisions of the law, according to which the accused persons would serve their pre-trial detention on the same premises as sentenced persons. No consultation has taken place with the CoE regarding the Law on Imprisonment. An operational subgroup on execution of sentences was recently established within the Ministry of Justice. The CoE stands ready to provide further assistance, notably as concerns evaluation of draft legislation on enforcement of sentences.

46. The report of the CPT on its second period visit to Georgia, which began in November 2003 and was completed in May 2004 (see previous Secretariat report, doc. SG/Inf(2004)19), has not yet been made public. Local and international observers voice concern at impunity over alleged ill-treatment of detainees in pre-trial detention premises and prisons. Following a one-week visit to Georgia in late February 2005, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment stated to the press that despite "a number of substantiated cases, in no instance have the perpetrators been brought to justice". The UN envoy discussed the issue with the Georgian authorities at the highest level and the latter acknowledged the existence of the problem (see also PACE Resolution 1415(2005) and doc. GR-EDS(2004)32).

47. In August 2004, the President signed a decree, establishing a public council to monitor prison institutions. While acknowledging the importance of this initiative, certain civil activists with experience in monitoring detainees' rights regret their marginalisation from the process.

## V. FIGHT AGAINST CORRUPTION, ORGANISED CRIME AND IMPUNITY

48. **Fight against corruption** : Since the "rose revolution", the Georgian authorities have embarked upon an active campaign against corruption and organised crime, putting an end to the climate of impunity. According to the Transparency International Barometer of 2005, Georgia has seen the highest increase in optimism of any country surveyed that corruption will diminish in the next three years. However, the prosecution of corruption on a case-by-case basis is not sufficient to eradicate this practice. Profound systemic reforms to effectively address corruption at all levels in response to GRECO recommendations and the ongoing non-compliance procedure are still needed. An overall assessment of the measures adopted is likely to be made by GRECO in June 2005. The ratification of the Criminal Law Convention on Corruption is still expected.

49. No unified anti-corruption strategy exists. A working group under the President was created on 18 January 2005 with the task to elaborate a new Anti-Corruption Strategy and a relevant Action Plan. The group will involve representatives of key ministries, NGOs and CoE experts. The strategy is due to be published on 1 June 2005, though there is uncertainty whether the time-limit will be respected.

50. A G8 working group has been created, involving the key ministries, NGOs, a CoE resident expert and representatives at ambassadorial level from the G8. The group will hold meetings in parallel with the Presidential working group to follow the progress of the Strategy. The Rule of Law Anti-Corruption sub-group, chaired by the CoE resident expert, has been created and provides a forum for interested parties to exchange details on advancement of anti-corruption fight. The Monitoring Group on Financing of Political Parties, active in 2003, has resumed its functioning since November 2004 and promises to play a vital role in elaborating new legislation on party financing.

51. Concerns still remain as to full respect of human rights and rule of law principles in the prosecution of corruption cases. Local human rights defenders allege there are cases of selective prosecution on political grounds, the most recent one being the arrest of the ex-Rector of Tbilisi State University's branch in the southern Georgian town of Akhaltsikhe, Merab Beridze,

who was charged with abuse of power and misappropriation of funds. The arrest of Beridze gave rise to a protest rally by students and, at the initiative of the Chairman of the Human Rights Committee of the Parliament, a group of parliamentarians signed a petition for the release of the ex-rector. On 23 February 2005, Mr. Beridze was released on bail pending investigation.

52. There are no developments as regards investigations on allegations of torture raised by Sulhan Molashvili, former Head of the Audit Chamber, arrested several months ago and charged with embezzling of funds (see PACE doc. 10383 and the letter by the *Organisation mondiale contre la torture* of 29.09.2004 to the President of Georgia). In November 2004, the court extended Molashvili's pre-trial detention for further 50 days.

53. Certain local observers suggest that public accountancy should be envisaged to bring more transparency to the prosecution of anti-corruption cases.

54. **Fight against money laundering:** A second round evaluation report on Georgia was adopted by MONEYVAL in January 2005. It is to be welcome that most basic anti-money laundering prerequisites have been set up. An adequate legal framework for provisional measures and confiscation of proceeds from crime is, however, expected and the Committee decided to maintain stage one of the compliance enhancing procedure until examination of the relevant draft legislation by MONEYVAL experts. The next visit is envisaged for Spring 2005. Assistance activities are being implemented at a good pace and follow-up assistance was requested by the Georgian authorities.

55. **Anti-drug trafficking and related issues:** Drug trafficking, dealing and use in Georgia deserve particular attention. The Secretariat reiterates the suggestion that Georgia adhere to the Pompidou Group. The CoE stands open to co-operation in this field.

56. **Fight against impunity:** In January 2005 the excommunicated Orthodox priest Basil Mkalashvili was convicted for violence against Georgian Christian minority groups during the late nineties and sentenced to 6 years imprisonment. Two of his closest associates received four-year and one-year sentences. Local and international human rights defenders welcomed Mkalashvili's conviction as a sign of the Georgian authorities' commitment not to tolerate religious violence. They noted, however, that despite its significance, this trial cannot be considered as fully solving the still remaining difficulties in this area.

## VI. OTHER IMPORTANT MATTERS

### A. Outstanding conventions

57. In its Resolution 1415(2005), the Parliamentary Assembly set September 2005 as the deadline for the signature and/or ratification by Georgia of the European Charter for Regional and Minority Languages, the European Outline Convention on Transfrontier Co-operation, the Revised European Social Charter and the Framework Convention for the Protection of National Minorities.

58. The Georgian authorities indicated that they had no substantial objections to signature and/or ratification of the outstanding Conventions to which PACE Resolution 1415(2005) refers. The list of reservations that the Georgian authorities intend to make is being examined.

59. A meeting to promote ratification of the Framework Convention for the Protection of National Minorities was organised on 14 February 2005 in Tbilisi. Ratification of the Framework Convention is expected to take place within the deadline stipulated in the PACE Resolution 1415(2005).

## **B. Repatriation of the Meskhetian population deported in 1940-1944**

60. A special Council under the President of Georgia to deal with the issue of the Meskhetian population's return was established in December 2004 and will be chaired by the recently appointed Minister of Justice. Content and methods of co-operation between the special Council and the Council of Europe have still to be discussed. Work on the draft law on repatriation has started (see also doc. GR-EDS(2004)32).

61. Upon the decision of the Ministers' Deputies of 2 March 2005, which reiterates the terms used in PACE Resolution 1415(2005), the Georgian authorities are asked to create, without any further delay, the legal, administrative and political conditions for the start of the process of the repatriation of the Meshketian population with a view to its completion by 2011.

## **C. Media freedom**

62. Over the period observed, the situation in the media field has been characterised by notable progress as regards elaboration of new legislation and, at the same time, continuous warnings that the pluralism of Georgian broadcasting media was diminishing (see also doc. GR-EDS(2004)32 and PACE doc.10383).

63. The new Law on Freedom of Speech and Press was adopted in late June 2004. The Law introduced a number of very progressive provisions as concerns defamation and protection of journalists' sources. Furthermore, in December 2004, the Parliament adopted the new Broadcasting Law which provides for the transformation of the state First Channel into a public service broadcaster. Financing of the new public service broadcaster raised vivid discussions. According to the Law, the public service broadcaster will have a mixed financing from the income tax revenues and commercial advertising, as recommended by the CoE experts. The Board of Governors has to be formed within the next months. The CoE stands ready to assist the Georgian authorities in the creation of the new broadcaster.

64. The independent TV station "Iberia" stopped broadcasting in 2004. The second independent TV station, 'Caucasia', is encountering serious financial difficulties, while 'Rustavi-2', loyal to the government, which was bankrupt in early summer, has been allowed a debt repayment arrangement.

65. Media representatives warn against a reduction in the electronic media's independence, this allegedly resulting from the closer links between the new authorities and media owners. The loyalty of the owners to the new authorities has reportedly resulted in an increased depoliticisation of the electronic media. Journalists acknowledge that they are more inclined to self-censorship.

66. Media professionals allege that access to information is worsening and they have substantial difficulties in obtaining information, notably from the 'power' ministries. Furthermore, new rules introduced in the State Chancellery in late February 2005, raised controversy among journalists. According to the new rules, information from the State Chancellery will be available to journalists only through the spokespersons of the Government and the President. The journalists argue that the new rules restrict the possibility to have direct interviews with government members. However, in the opinion of the Georgian authorities, the new regulations aim at introducing a necessary order and rules of behaviour in line with current international standards, without any prejudice to media freedom. The CoE stands ready to give an opinion on the matter if the Georgian authorities so wish.

## **D. Minorities**

67. The authorities are urged to pay careful attention to the concerns of national minorities, so as to avoid a deterioration in inter-ethnic relations.

68. In October 2004, during a conference on "Civic Integration in Georgia: Reflections on Problems and Solutions", the OSCE High Commissioner on National Minorities underlined the necessity of a well-designed strategy for integration of the national minorities to ensure the development of an authentic multicultural society, notably to address properly the language issue. A two-year-project, launched by the OSCE High Commissioner on National Minorities in February 2005, primarily intends to improve the situation of the predominantly Armenian population in the region of Javakheti. Media sources reported in February that the Parliament's Human Rights Committee intends to set up a co-ordination council on national minorities jointly with the Ministry of Social Integration. These measures are clearly intended to address the perennial problem of ethnic minorities in Georgia. In this context, ratification of the Framework Convention for the Protection of National Minorities and signature and ratification of the European Charter for Regional and Minority Languages by September 2005 is of utmost importance (see PACE Resolution 1415(2005) and doc. 10383).

### **E. Civil society and Ombudsman Institution**

69. The new Ombudsman, Mr. Sozar Subari, a journalist and prominent civil activist, took office in August 2004. Some local civil organisations promote the idea that the Ombudsman institution should be strengthened. A concept for the new institution is being prepared and suggests granting the Ombudsman prosecuting functions and enhanced competencies to conduct investigations.

70. Under the aegis of the Ombudsman's Office, 12 monitoring councils have been created to monitor violation of the rights of detainees at police stations. As a result of a 10-day investigation, in January 2005, 15 cases of alleged torture of detainees were revealed and should be transmitted to the Public Prosecutor's Office for follow-up.

### **VI. CONCLUSIONS AND RECOMMENDATIONS**

71. Since the last Secretariat report of June 2004, the Georgian authorities have continued to demonstrate their firm commitment to proceed with institutional, legal and socio-economic reforms aiming at Georgia's transformation into a modern European democracy. Three priority areas continue to represent the main challenges for Georgia's democratic evolution: consolidation of democratic institutions, including those related to regionalisation, reform of the judiciary, law-enforcement agencies and the fight against corruption and organised crime. Respect for media pluralism, national minority rights, and the professionalism and ethics of law-enforcement officers are issues which also worth of proper or further attention by the Georgian authorities.

72. Co-operation with the CoE develops at a good pace, although there is room for improvement on both sides. The Georgian authorities recognise the long-term experience of the CoE in shaping democratic processes in Europe. The period of intensive legislative and institutional developments that Georgia is going through necessitates rapid reaction from the CoE to dynamic changes, increased accessibility and enhanced co-operation in the fields of the Organisation's expertise.

73. An analysis of developments since the end of June 2004, has allowed the Secretariat to draw the following conclusions and recommendations which should be read in conjunction with those adopted by the Ministers' Deputies at their meeting of 2 March 2005, on the basis of the GR-EDS delegation report (see doc. GR-EDS(2004)32 and CM/Del/Dec(2005)917, item 2.1a):

*1. There is no alternative to the peaceful solution of break-away conflicts and the CoE stands ready to provide its assistance in this field, notably through the contribution of its Venice Commission in the elaboration of a model for the autonomy of South Ossetia. While recognising the difference of the situation in Adjara compared to the situation in the break-away regions, it should be re-iterated that the present level of Adjarian autonomy is limited and its review in due course is expected.*

2. The CoE Venice Commission is ready to assist the Georgian authorities, together with the ODIHR, in the reform of the election administration, as well as on the other aspects of reform of the electoral code and the Georgian authorities are invited to make full use of the CoE expertise in this field. It is to be hoped that consideration of the threshold issue will lead to its lowering as recommended by the Parliamentary Assembly.

3. It is essential to ensure that the decentralisation reform is carried out without delay, in a coherent way and with proper co-ordination. The CoE should enhance its efforts to promote this process. The expert assistance to the elaboration of the Decentralisation Strategy and of legislation compatible with the provisions and spirit of the European Charter of Local Self-Government should be pursued. Special attention should be paid to the issue of local elections, notably the election of the Mayor of the capital.

4. The CoE is ready to co-operate more actively in the reform of the judicial system, including with respect to the new Concept on the Judiciary. More emphasis should be put on follow-up action to recommendations, notably as concerns reform of the Supreme and Constitutional Courts and the High Council of Justice, to ensure that judicial independence is preserved. Comments by the CoE Venice Commission on the relevant constitutional amendments should be fully taken into account (see doc. CDL-AD(2005)005, adopted on 11-12 March 2005). Active co-operation should be developed regarding the educational system for magistrates.

5. Particular emphasis should be put on the follow-up to the CoE experts' recommendations as concerns the reform of the Criminal Procedure Code to ensure its conformity with CoE standards and modern European legal practice.

6. The CoE stands ready to provide expert assistance in the elaboration of the Laws on the Public Prosecutor's Office and the Law on Police.

7. Professional training, exchange of good practices and awareness-raising on human rights for law enforcement and prison staff should become a priority area of co-operation.

8. A more active attitude towards elaboration of a systematic approach to the fight against corruption is expected from the Georgian authorities. The CoE stands ready to furnish further assistance as concerns the conformity of Georgian legislation with the Civil and Criminal Law Conventions on Corruption, as well as the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime.

9. Human rights and rule of law principles should be fully respected in the fight against corruption and organised crime, notably through effective investigation of the cases of alleged ill-treatment of detainees and disproportionate use of force during the arrests.

10. The authorities are urged to pay careful attention to the concerns of national minorities, so as to avoid a deterioration in inter- ethnic relations.

11. More active assistance by the CoE to the development of the Ombudsman institution should be envisaged.

12. If needed, assistance could be offered to promote signature and/or ratification of the outstanding conventions, i.e. European Charter for Regional and Minority Languages, the European Outline Convention on Transfrontier Co-operation, the Revised European Social Charter and the Framework Convention for the Protection of National Minorities.

13. The CoE stands ready to provide expertise in the elaboration of the law on the repatriation of the Meskhetian population upon request, so as to assist the Georgian authorities to create the legal, administrative and political conditions for the start of the process of repatriation of the Meshketian population with a view to its completion by 2011.

14. It is essential to preserve the achievements of Georgian democracy in the media field. Pluralism and independence of broadcasting media merit serious attention. In this context, the creation of an authentic public service broadcaster, already started following adoption of the relevant legislation, is of the utmost importance. The CoE stands ready to provide further assistance in this process.

15. The CoE could offer additional assistance to the Georgian Parliament to clarify the details of its possible participation in the work of the Pompidou Group.