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REPORT

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COMMISSIONER FOR HUMAN RIGHTS OF THE
COUNCIL OF EUROPE

**FOLLOWING HIS VISIT TO GEORGIA
FROM 20 TO 25 JANUARY 2014**

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SUMMARY

Commissioner Nils Muižnieks and his team visited Georgia from 20 to 25 January 2014. During the visit, the Commissioner held discussions on the administration of justice and the protection of human rights in the justice system as well as issues pertaining to minorities, tolerance and non-discrimination.

The present report focuses on the following major issues:

Administration of justice

The Commissioner supports the reforms aimed at liberalising the criminal justice system, reducing resort to pre-trial detention, and enhancing judicial independence and police compliance with human rights principles. Further efforts are needed to address remaining imbalances between the defence and prosecutorial authorities and enhance equality of arms in legislation and in practice. The Commissioner stresses the importance of proceeding with the reform of plea-bargaining, taking into account the operation of the criminal justice system as a whole, and ensuring proper safeguards and effective judicial oversight.

While noting that there has been a decrease in the concordance between opinions of judges and prosecutors, the Commissioner would like to underline that continued vigilance is needed to safeguard and reinforce judicial independence and shield judges from undue interference. The revised legislative provisions concerning the High Council of Justice appear to have made this body less vulnerable to political interference, but further improvements should be made in this area. Furthermore, the Commissioner recommends reviewing the provision related to the three-year probationary period for judges, in the interest of preserving judicial independence.

More needs to be done to bolster the effectiveness and professionalism of the Chief Prosecutor's Office, which is a key institution in the criminal justice system. While some steps have been taken to enhance the institutional independence of the Office, numerous concerns have been raised regarding frequent changes in leadership and shortcomings in investigations of alleged human rights violations. Recruitment, promotion and careers of prosecutors should follow fair and impartial procedures and be based on merit, as specified in the [Committee of Ministers Recommendation on the role of public prosecution in the criminal justice system](#).

Dealing with allegations of human rights abuses

The Commissioner welcomes the reported improvements in the treatment of prisoners and the enhanced transparency and public scrutiny of the situation in prisons. He reiterates the importance of ensuring accountability of those responsible for ill-treatment through fair, impartial and transparent proceedings and punishment commensurate to the seriousness of the offence, and of providing accurate information to the public about the proceedings concerned. The Commissioner also noted other significant reforms in the prison system, in particular with regard to the reduction of overcrowding and the provision of health care, and recommends that the Georgian authorities address the remaining areas which require urgent attention, in particular as regards the provision of activities to prisoners.

The judicial system should be sufficiently resilient so that its proper functioning is not disrupted by the transfers of power which are characteristic of any true democracy. The persistence of allegations and other information indicative of deficiencies marring the criminal investigation and judicial processes in cases involving political opponents are a cause for concern, as this can cast doubt on the outcome of the cases concerned even when there have been solid grounds for the charges retained and the final convictions. The Georgian authorities must address these issues at the systemic level, in the interests of respecting fair trial guarantees for everyone and in enhancing public trust in the institutions responsible for upholding the law.

The Commissioner encourages the Georgian authorities to assess the complaints submitted after October 2012 and prioritise cases of serious human rights abuse which are of public interest. Complainants should receive replies about the cases they submitted, and victims of violations should be provided with redress. Allegations of possible violations of Article 3 of the ECHR should be prioritised. Here, too, the public should be provided with objective and credible information about the process and the findings.

Having regard to revelations which surfaced after the October 2012 elections about the previous extensive use of surveillance without court authorisation, the Commissioner calls upon the authorities to protect privacy rights under Article 8 of the ECHR, to criminalise the possession of materials obtained as a result of illegal surveillance and to collect any such material which may have fallen into private hands. Technical and physical surveillance activities must be regulated and any such activities should only be carried out under proper judicial supervision. The Commissioner welcomes the establishment of the Office of the Personal Data Protection Inspector and recommends that adequate support and resources for the institution's work be provided. The continued presence of surveillance equipment in the premises of telecommunication operators giving the Ministry of Internal Affairs automatic access to all communications via private providers should be addressed.

Tolerance and non-discrimination

The Commissioner welcomes the plans to develop comprehensive anti-discrimination legislation. He strongly encourages the establishment of an equality body with the power to sanction instances of discrimination, including on actors from the private sector. The process of developing and finalising the draft legislation should be inclusive and comments and suggestions provided by international and national bodies having relevant expertise should be duly taken into account. The Commissioner encourages the Georgian authorities to undertake a public awareness campaign on the anti-discrimination legislation and any new mechanisms to be established.

The Commissioner supports the efforts by the Ministry for Reconciliation and Civic Equality to address issues affecting ethnic and religious minorities in Georgia. Besides the activities directed towards members of minority groups, the Commissioner encourages increased efforts to enhance tolerance and non-discrimination among the majority population. He strongly emphasises the importance for the authorities, public actors and community leaders to send an unambiguous message in favour of human rights and tolerance, and against violence, hate speech and discrimination. It should be made clear that violence against LGBTI persons is unacceptable and will not be tolerated. Hate crimes should be effectively investigated and qualified as such by law enforcement bodies. The bias motive should be taken into account as an aggravating circumstance, as already provided for by national legislation, and perpetrators should receive punishment commensurate to the gravity of the offence.

Ethnic and religious minorities

The Commissioner's visit highlighted the need to pursue integration efforts while respecting the rights of minorities to maintain their language, culture, and identity. The lack of knowledge of the Georgian language remains an impediment in accessing rights and services by persons belonging to national minorities. The Georgian authorities have made some strides in this area and the Commissioner encourages them to enhance their efforts in providing quality teaching in both Georgian and minority languages at all levels of the education system and throughout the country.

The Commissioner also wishes to stress the importance of supporting the participation of minorities in the social, political, economic and cultural life of the country. Further efforts should be undertaken to better integrate minority populations, especially those living in the regions. The Commissioner urges the Georgian authorities to resolve the remaining legal and practical obstacles to the repatriation and integration of Meskhetian Turks.

The Commissioner welcomes the possibility provided by the Georgian legislation for religious groups and organisations to register as legal entities since July 2011. He encourages the Georgian authorities to pursue the process of returning the confiscated religious properties to their owners and resolving the problem of disputed properties. However, he is concerned about the rise of intolerance and attacks against members of minority religious groups. In particular, he received complaints of interference with the religious freedoms of Muslims and impediments in establishing and using places of worship. An increase in attacks targeting members of the Jehovah's Witnesses community was also reported. It would appear that law enforcement bodies have not always provided adequate protection to members of minority groups and that there has been a lack of effective investigation into the incidents concerned. In this respect, the Commissioner emphasises that the failure to adequately sanction the foregoing violations may result in a sense of impunity among perpetrators. He recommends that the Georgian authorities make further efforts to ensure respect for religious freedoms in practice and to foster dialogue and understanding between different religious communities.

Whereas it is positive that Georgian legislation provides for non-discrimination in schools and religious education is no longer compulsory, the Commissioner did receive allegations of religious discrimination in schools, including pressure to convert to the predominant religion. The above-mentioned allegations must be addressed and, more generally, the authorities should refrain from applying policies which create a conflict for pupils between the religious education given by the school and the religious or philosophical convictions of the parents.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Nils Muižnieks (hereinafter “the Commissioner”), conducted a visit to Georgia from 20 to 25 January 2014.¹ The visit focused on two sets of issues: the administration of justice and the protection of human rights in the justice system² (section I of the present report); and human rights of minorities, tolerance and non-discrimination (section II).
2. In Tbilisi, the Commissioner met with the President of the Republic, Mr Giorgi Margvelashvili, the Speaker of Parliament, Mr Davit Usupashvili, the Minister for Reconciliation and Civic Equality, Mr Paata Zakareishvili, the Minister of Justice, Ms Tea Tsulukiani, the Minister of Foreign Affairs, Ms Maia Panjikidze, the Minister of Internal Affairs, Mr Alexandre Tchikaidze, the Minister of Corrections, Mr Sozar Subari, the First Deputy Minister of Education, Ms Ketevan Natriashvili, the Chairman of the Supreme Court, Mr Konstantine Kublashvili, the Chief Prosecutor, Mr Giorgi Badashvili, the Adviser of the Prime Minister on Human Rights and Gender Equality Issues, Ms Tamar Chugoshvili, the Chairperson of the Parliamentary Committee on Human Rights and Civil Integration, Ms Eka Beselia, as well as members of the parliamentary opposition. In addition, he held discussions with the Public Defender (Ombudsman), Mr Ucha Nanuashvili, the Personal Data Protection Inspector, Ms Tamar Kaldani, lawyers, civil society representatives, and the international community. While in Tbilisi, the Commissioner also met the spiritual leader of the Georgian Orthodox Church, Catholicos-Patriarch of All Georgia Ilia II.
3. The Commissioner visited two regions of Georgia, Kvemo (Lower) Kartli (towns of Rustavi and Marneuli) and Samtskhe Javakheti (Akhalsikhe and Akhalkalaki), where there are compact communities of minorities. In each of the regions the Commissioner met with representatives of the regional and local authorities as well as regional representatives of the Public Defender and civil society actors.
4. The Commissioner’s visit took place 15 months after the peaceful transfer of power between two opposing forces, the United National Movement (UNM) - which had dominated the country’s political scene since the November 2003 “Rose Revolution” - and the newer Georgian Dream coalition, following parliamentary elections in October 2012. The year-long cohabitation between a UNM President (Mr Mikheil Saakashvili) and a Georgian Dream Prime Minister (Mr Bidzina Ivanishvili) ended following the presidential elections in October 2013, when current President Margvelashvili (Georgian Dream) was elected.
5. The Commissioner would like to thank the Georgian authorities for their assistance in organising and facilitating the visit. He is also grateful for the useful support and assistance provided by the Council of Europe Office in Georgia. The Commissioner wishes to thank all his interlocutors for sharing their knowledge and insights with him.

¹ The Commissioner was accompanied by Ms Bojana Urumova, Deputy to the Director of his Office, and Ms Christine Mardirossian, Adviser.

² The themes of administration of justice and the level of protection of human rights therein had been previously reviewed during an April 2011 visit to Georgia by the Commissioner’s predecessor, Thomas Hammarberg. See [Report of the Commissioner following his visit to Georgia from 18 to 21 April 2011](#).

1 ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS IN THE JUSTICE SYSTEM

6. The Council of Europe has been implementing various projects aimed at assisting the protection of human rights in the Georgian justice system.³ The Council of Europe Action Plan for Georgia (2013-2015) includes components, some of which have yet to be funded, dedicated to the independence and efficiency of the judiciary as well as to the penitentiary system and police reform, including combating ill-treatment and impunity.
7. In the context of ongoing reforms of the police, several new laws, regulations, and instructions have been promulgated, including a Law on Police which entered into force in January 2014, a Police Code of Ethics (2013), and specific instructions for the border police, patrol police and staff working in temporary detention isolators. The documents concerned contain provisions on human rights and fundamental freedoms, and there is a new requirement to carry out audio-visual surveillance in temporary detention isolators as a safeguard against ill-treatment. During his meeting with the Commissioner, the Minister of Internal Affairs also referred to the different mechanisms for internal and external oversight over actions by members of the police.⁴ The Department for Constitutional Security and the Special Operative Department, which were found to be responsible for a number of human rights violations in the past, have been dismantled.

1.1 CRIMINAL JUSTICE POLICY AND PRACTICE

1.1.1 LIBERALISATION OF CRIMINAL JUSTICE POLICY AND PRACTICE

8. The policy of “zero tolerance” against crime, which had been launched in 2006, was a key feature of the criminal justice system in Georgia for several years. One of the effects of this policy was the imposition of disproportionately lengthy sentences – including through the mandatory practice of cumulative or consecutive sentencing - and, as a consequence, severe overcrowding in the prison system. The revision of the Criminal Code initiated in 2011 was among the first signs of a departure from the above-mentioned “zero tolerance” policy towards a more liberal approach. In 2013, the Criminal Reform Inter-Agency Coordination Council adopted a new Criminal Justice Reform Strategy and various Action Plans aiming at implementing the Strategy.⁵ In April 2013, legislative amendments were introduced to the Criminal Code which ended the mandatory requirement for cumulative/consecutive sentencing and permitted judges to impose concurrent sentences, whereby - in cases of multiple offences committed by the same person – only the penalty carried by the most serious offence applies. Persons convicted on the basis of the consecutive sentencing principle prior to the entry into force of the revised Criminal Code of 2013 can apply for a reduction of their sentences. According to data provided by the Supreme Court, prison sentences handed down in 2013 tend to be shorter as compared to previous years.
9. The Commissioner received information that the rate of approval by judges of preventive measures requested by prosecutors, including pre-trial detention, declined significantly from the first half of 2012 to the first half of 2013.⁶ Apparently, judges no longer tend to grant quasi-automatically the prosecution’s motion – or reproduce in their decisions the prosecutor’s reasoning - for the imposition of pre-trial detention. According to trial monitoring conducted in the Tbilisi and Kutaisi City Courts by the Georgian Young Lawyers Association, decisions to impose pre-trial detention were “adequately substantiated” in 81% of the cases observed, whereas the corresponding percentage of cases where bail had been ordered was 51%.⁷ Prosecutors themselves have become somewhat less likely to request

³ [Council of Europe Action Plan for Georgia 2013-2015](#), 18 September 2013.

⁴ The internal oversight bodies include the General Inspection, the Anti-Corruption Agency, and the Human Rights and Monitoring Main Division, while the external ones are the Parliament, the Chief Prosecutor’s Office, the State Audit Office and the Public Defender.

⁵ Website of the Ministry of Justice of Georgia on [Criminal Justice Reform Strategy and Action Plan](#).

⁶ Information provided by the Supreme Court of Georgia.

⁷ [Monitoring trials in Tbilisi and Kutaisi City Courts](#), Report N°4 (January-June 2013), Georgian Young Lawyers’ Association.

detention as a restrictive measure⁸ and, in cases where they have done so, their requests tended to be better substantiated than was previously the case.

10. The Code of Administrative Offences relates to minor offences that do not accrue a criminal record. Under the Code, administrative detention can be imposed as a penalty for a period up to 90 days. The Council of Europe and NGOs have long criticised the use of administrative detention and the application of administrative penalties in general against political opponents,⁹ and because it does not bear the minimum human rights safeguards such as the right to defence, definition of the standard of proof and securing the right to appeal.¹⁰
11. Jury trials have been introduced for certain serious crimes in first instance courts of Tbilisi, Kutaisi and Batumi. The extension of this procedure to the whole country in relation to certain violent crimes would need to be accompanied by the revision of legal procedures, including rules for appealing against a jury verdict. In this respect, it has been recommended that further efforts be made to ensure genuinely adversarial proceedings in practice, to guarantee impartial selection of jury members and to protect jury members from external influence and attempts of intimidation.¹¹

1.1.2 DEFENCE RIGHTS AND EQUALITY OF ARMS

12. In 2011, the Commissioner's predecessor reported that access to a lawyer remained problematic and that defence lawyers encountered impediments in exercising their profession. Those dealing with sensitive cases, e.g. related to allegations of ill-treatment or proceedings before the European Court of Human Rights (ECtHR), reported pressure and intimidation. It was assessed that the defence was not on an equal footing with the prosecutor in the criminal justice system in practice, despite enhanced defence rights under the 2010 Criminal Procedure Code.¹²
13. During the January 2014 visit, concerns were once again raised with the Commissioner regarding defence rights and equality of arms. In particular, the Georgian Bar Association referred to cases of intimidation and pressure against defence lawyers by officials, including prosecutors, as well as the lack of equal opportunity in practice for the defence to familiarise itself with case materials and, more generally, obtain access to documents essential to its work.
14. The Parliament has postponed the entry into force until September 2014 of amendments to the Criminal Procedure Code which in some respects expand defence rights, for example by allowing the defence the possibility to seek evidentiary materials through a number of investigative measures to be carried out by the competent authorities, such as search and seizure. However, the same amendments contain a provision depriving defence lawyers of the possibility to submit evidence of special importance during the trial stage if such evidence had not been presented during the preliminary hearing. In addition, the provision on the right to invite a witness during investigative measures carried out by law enforcement bodies, such as search and seizure was repealed in October 2011. This deprives the defendant of an important guarantee and leaves the investigative actions performed by law enforcement bodies without external scrutiny.
15. The Parliament also decided to postpone until the end of 2015 the adoption of amendments to the Criminal Procedure Code introducing new rules on the questioning of witnesses, which would stipulate that the questioning of witnesses would only be possible before a court. At present, individuals are

⁸ In the first half of 2013, prosecutors proposed detention as a restrictive measure in 9% fewer cases than in the same period in 2012. See [Georgia in Transition](#), pp. 12-13.

⁹ See [Review of the Draft Code on Administrative Offences of Georgia as of June 2012](#), prepared by the Justice and Legal Cooperation Department, Justice and Human Dignity Directorate, Directorate General of Human Rights and Rule of Law and [Administrative Error: Georgia's Flawed System for an Administrative Detention](#), Human Rights Watch, 2012.

¹⁰ According to the information provided by the Supreme Court, administrative detention was imposed on 2271 persons in 2013.

¹¹ See [Georgia in Transition](#), p. 11.

¹² See [Report of the Commissioner following his visit to Georgia from 18 to 21 April 2011](#), paragraphs 51-52, 54, 57, 62.

obliged to appear before law enforcement bodies if they are summoned as witnesses to give testimony during any stage of an investigation, before the case goes to court. This practice has long been criticised by NGOs, which have argued that it favours undue pressure or intimidation of witnesses by law enforcement bodies –in some cases leading to witnesses changing their testimony - and undermines the principle of equality of arms between the prosecution and the defence. The postponement of the new rules provoked a negative reaction by civil society organisations, the Georgian Bar Association and opposition MPs.¹³ While acknowledging the concerns about pressure on witnesses, who in many cases have unjustifiably been treated as defendants, the Speaker of the Georgian Parliament indicated to the Commissioner that the postponement of these new rules was needed because the criminal justice system was not yet ready to cope with such a change.

16. In December 2013 the Legal Aid Service was removed from the Ministry of Corrections and Legal Assistance and became an independent body under the Government of Georgia which reports to the Parliament. This step has the potential to increase the effectiveness and independence of the provision of legal aid.

1.1.3 PLEA-BARGAINING

17. The system of plea-bargaining was reviewed in the 2011 report of the Commissioner’s predecessor,¹⁴ who found its functioning to be problematic due to ineffective safeguards, a very limited role of the defence, and weak oversight from judges. Plea-bargaining remains a dominant feature of the Georgian criminal justice system.
18. Following the October 2012 elections, thousands of citizens applied to the Prosecutor’s Office claiming that they had been subject to pressure when entering plea-bargaining agreements.¹⁵ On 29 April 2014, the European Court of Human Rights issued a Chamber judgment in the case of *Natsvlshvili and Togonidze v. Georgia* (application no. 9043/05) (not final), finding that the plea-bargain concluded in that particular case had been accompanied by necessary safeguards against abuse.¹⁶
19. Monitoring of criminal trials during the first half of 2013 revealed that judges continued to take a passive role during plea-agreement hearings. At the same time, it was observed that there was a significant decrease in the number of plea agreements in which a fine was imposed and that the fines themselves were much lower.¹⁷
20. Revised provisions are being prepared to the Criminal Procedure Code in relation to plea-bargaining in order to enhance the court’s oversight, increase transparency of the negotiation between the defendant and the prosecutor, identify more effectively instances of pressure upon the defendant, define more clearly the evidentiary standard which must be met for a plea agreement to be concluded (“guilt beyond reasonable suspicion”), ensure that the defendant is informed about all its legal effects, and expand a convicted person’s right to appeal against a court judgment on a plea agreement. The Minister of Justice informed the Commissioner that the plea-bargaining system would be further reformed in light of the forthcoming judgment in the case of *Natsvlshvili and Togonidze v. Georgia*.

¹³ [The Parliament of Georgia should not support postponement of the enactment of the new rule of witness examination](#), NGO Statement.

¹⁴ Cf. paragraphs 63 to 77 of [Report of the Commissioner following his visit to Georgia from 18 to 21 April 2011](#)

¹⁵ The UN Working Group on Arbitrary Detention reported in 2011 that detainees effectively relinquished their right to fair trial because they felt pressured to enter plea bargains, believing a fair and impartial trial was not possible. Detainees reportedly believed their chance for acquittal was small and that they risked a lengthy prison sentence in a penitentiary system notorious for inmate abuse.

¹⁶ Consequently, the Court held that there had been no violation of any of the following provisions of the Convention: Article 6 § 1 (right to a fair trial), Article 2 of Protocol No. 7 (right of appeal in criminal matters), Article 6 § 2 (presumption of innocence), and Article 1 of Protocol No. 1 (protection of property).

¹⁷ [Monitoring trials in Tbilisi and Kutaisi City Courts](#), Report N°4 (January-June 2013), Georgian Young Lawyers’ Association.

1.1.4 CONCLUSIONS AND RECOMMENDATIONS

21. The Commissioner supports the reforms aimed at liberalising the Georgian criminal justice system. In addition, he welcomes the recent decrease in resort to pre-trial detention. He reiterates that pre-trial detention should be the exception rather than the norm, as provided for in the Committee of Ministers Recommendation on the use of remand in custody.¹⁸ Further steps should be taken so that pre-trial detention is used as an exceptional measure only when necessary on the basis of grounds envisaged in international human rights standards.
22. The Commissioner recommends that the Georgian authorities review the Code of Administrative Offences with a view to establishing the necessary human rights safeguards. The current maximum period for administrative detention is excessively long; preferably, administrative detention should be abolished altogether.
23. The Commissioner recommends that the authorities take further steps to enhance the equality of arms in the justice system in law and in practice. Certain envisaged amendments to the Criminal Procedure Code - the possibility for defendants to seek evidentiary materials through investigative measures to be carried out by the competent authorities, and new rules on questioning of witnesses – have the potential to address current imbalances of the system and should be introduced as soon as possible. The right to invite a witness during investigative measures performed by law enforcement bodies (searches, seizures) should be reinstated. Intimidation, pressure and abuse on lawyers and witnesses should be adequately investigated and sanctioned. The Commissioner trusts that the change in status of the Legal Aid Service will make this agency more independent and effective.
24. The Commissioner stresses the importance of proceeding with the reform of plea-bargaining, taking into account the operation of the criminal justice system as a whole. Adequate safeguards should exist in this context, and judges should exercise proper and effective oversight.

1.2 FUNCTIONING OF THE JUDICIAL SYSTEM

1.2.1 THE JUDICIARY AND THE PROSECUTION SERVICE

25. In his 2011 report, the Commissioner's predecessor found that although the legislative framework generally favoured the independence of the judiciary, with pressure on judges being punishable by law, concerns continued to be raised that the judiciary was not fully shielded from political interference. Several civil society actors highlighted that the influence of prosecutors remained comparatively strong with the majority of criminal case verdicts being very close to the request of the prosecutor.¹⁹ More recently, there appears to have been a decrease in the concordance between the opinions of judges and prosecutors. As mentioned previously (cf. paragraph 9 above), judges are less likely than before to follow the prosecutors' requests regarding preventive measures, and the rate of acquittals by court has increased tenfold since 2010.²⁰ Nevertheless, in the context of certain criminal cases against former officials (cf. paragraph 37 below), pressure on judges by law enforcement bodies has been alleged.
26. Prior to legislative reforms in 2012, presidential and parliamentary appointees within the High Council of Justice (HCJ) had the power to veto judicial candidates. Revised provisions in the Law on Courts of General Jurisdiction appear to have made the HCJ less vulnerable to political interference, as only one presidential appointee remains (as opposed to two), a secret ballot has been introduced for the election of HCJ members, and the six members to be elected by Parliament will no longer be politicians but instead be selected among nominees of more independent institutions (the Bar Association, law

¹⁸ [Recommendation Rec\(2006\)13 of the Committee of Ministers](#) to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, 27 September 2006.

¹⁹ See paragraph 27 of [Report of the Commissioner following his visit to Georgia from 18 to 21 April 2011](#).

²⁰ The Georgian Supreme Court informed the Commissioner that acquittals amounted to 2% of all criminal cases heard by first instance courts in 2013, whereas in 2010 the average acquittal rate was 0.2%. See also [Georgia in Transition](#), p. 10.

faculties of universities, and NGOs). While concluding that the proposed amendments to the Law on Courts of General Jurisdiction improved many provisions of the existing law and brought it closer to European standards, the Venice Commission recommended changing the transitional provisions to allow for a more gradual transformation of the HCJ membership, rather than terminating the membership of all the current members prior to the expiry of their mandates and assembling the HCJ anew.²¹

27. After the revised provisions of the abovementioned law entered into force, the Conference of Judges elected eight judges as members of the HCJ. Later, Parliament elected four members, among candidates nominated by civil society and legal faculties of universities. One member of the HCJ was appointed by the Georgian President in the beginning of 2014. As of January 2014, one seat remained vacant at the HCJ, as none of the nominees obtained the necessary two-thirds of the parliamentary votes. Although NGOs have acknowledged improvements in the functioning of the HCJ since the implementation of the legislative changes, they also identified several areas where further efforts should be made, in particular regarding the transparency of its sessions, the substantiation of decisions and the process of appointment of judges.²²
28. Following constitutional amendments on the issue, in November 2013 further amendments to the Law on Courts of General Jurisdiction, envisaging a three-year probationary period for newly appointed judges before their appointment for life, entered into force. The amendments had been passed through an accelerated parliamentary procedure in October 2013 in spite of calls from the Supreme Court Chairman and NGOs to engage in further consultations.²³ While the introduction of life tenure for judges is an important measure in line with international standards, the three-year probationary period gives rise to concerns with respect to the independence of individual judges. According to the Recommendation of the Committee of Ministers on judges (2010/12), security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists. The Recommendation also provides that where recruitment is made for a probationary period, the decision whether to confirm such an appointment should be made according to objective criteria and should be based on merit.²⁴ The need to reform the process of selecting and appointing judges according to objective criteria has been highlighted by several of the Commissioner's interlocutors, including the Chairman of the Supreme Court, who expressed the view that clear safeguards should be established to preserve the independence of judges, in particular as to which are the grounds for denying lifetime appointment and the manner of evaluating performance during the probationary period.
29. Under the May 2013 amendments to the Law on Courts of General Jurisdiction which concern the HCJ, this body retains the authority to initiate disciplinary proceedings, but not the authority to decide on a disciplinary sentence, which has been transferred to an independent disciplinary collegium. Members of the collegium were elected in June 2013.²⁵ The May 2013 amendments have also opened courtrooms to the media, enhancing public scrutiny.
30. In Georgia, the Prosecutor's Office is part of the Ministry of Justice. Prior to the entry into force of amendments to the Law on the Prosecutor's Office on 30 May 2013, the Minister of Justice could act as a supervising prosecutor in certain cases and had an individual prosecution function relating to a number of office holders, including at senior political and judicial level. The new amendments have

²¹ [Opinion on the draft amendments to the Law on Organic Courts of General Jurisdiction of Georgia](#), adopted by the Venice Commission on 8-9 March 2013, paragraphs 67-74, 78. It would appear that the authorities followed in some respects the Venice Commission's recommendation on the renewal of the composition of the High Council of Justice, as the judges who were members of the HCJ in its previous composition have been allowed to apply again, and two of them have been elected as members.

²² [Second monitoring report of the activities of the High Council of Justice](#), Transparency International and Georgian Young Lawyers' Association, February 2014.

²³ [Parliament passes bill setting three-year trial period for newly-recruited judges](#), Civil Georgia, 5 October 2013.

²⁴ [Recommendation CM/Rec\(2010\)12](#) of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, 17 November 2010, §§ 41, 49 and 51.

²⁵ [Georgia in Transition](#), p. 10.

limited the Minister's role in criminal investigations and curtailed the possibility for the Minister to interfere into the administration of the Prosecutor's Office. Nevertheless, several observers have highlighted the need to further enhance the autonomy of the prosecution service vis-à-vis the executive.

31. Public trust in the Prosecutor's Office in Georgia has been considerably undermined due to allegations, made in over a thousand individual complaints following the October 2012 elections, of involvement of prosecutors in illegal seizure of property.²⁶ Frequent changes in leadership - Georgia has had three Chief Prosecutors in the past year²⁷ - and personnel turnover have affected the efficiency of this institution. Concerns have also been expressed with regard to dismissals of prosecutors who started to investigate high profile cases and allegations of abuses committed with regard to property rights. More generally, there appears to be a real need for developing competence on investigative techniques within the prosecutor's office. This would reduce the reliance on confessions as the main evidence and help to safeguard against any undue pressure on defendants, witnesses and defence lawyers.

1.2.2 CONCERNS RELATED TO THE ADMINISTRATION OF JUSTICE AND ALLEGATIONS OF SELECTIVE JUSTICE

32. In his 2011 report on Georgia, the Commissioner's predecessor referred to serious deficiencies marring the criminal investigation and judicial processes in a number of criminal cases against opposition activists, and stressed in parallel the lack of accountability for serious offences, such as ill-treatment, by law enforcement officials.²⁸ Prosecutors at times failed to adequately react to procedural violations in certain investigations conducted by the Ministry of Internal Affairs, such as searches in absence of witnesses, illegally obtained evidence, errors in the protocols of search and arrest, etc. Irrespective of such violations, prosecutions continued and the individuals concerned were sentenced.
33. Following the October 2012 transfer of power, investigations were launched in relation to the May 2011 protests, including the allegedly disproportionate use of force by the police on that occasion, and into certain high-profile cases of death in custody.²⁹ On 25 October 2012, the authorities reopened the investigation into the death in 2006 of Sandro Girgvliani, where the European Court of Human Rights (ECtHR) had found a violation of the procedural limb of Article 2 of the Convention.³⁰ In the first half of 2013, statements were also made by the new authorities about their intention to investigate allegations of serious human rights violations related to the 2008 conflict.³¹ In addition, the Chief Prosecutor's

²⁶ See [Georgia in Transition](#), which further adds (p. 14): "From 2004 to 2012, 9500 private properties were according to the Prosecutor's Office handed over for free to the State, causing grounds for concern about possible coercion [...] against those who purportedly donated their properties 'voluntarily'."

²⁷ Archil Kbilashvili, who took office as Chief Prosecutor following the October 2012 parliamentary elections, stepped down from the post in November 2013. His successor, Otar Partskhaladze, resigned in December 2013 over a scandal about his past criminal record and authenticity of his diploma. The current Chief Prosecutor, Giorgi Badashvili, was appointed in January 2014.

²⁸ [Report of the Commissioner following his visit to Georgia from 18 to 21 April 2011](#), paragraphs 78 to 102.

²⁹ In the context of the dispersal on 26 May 2011 of protests by the then-opposition, many persons were injured and five death cases were reported. The cases of death in custody (unrelated to the above-mentioned protests) were those of Solomon Kimeridze and Sergo Tetradze. The former died in the Khachuri police station in February 2012 when he was being interrogated as a suspect for theft. The Prosecutor's Office reopened the investigation into that case in November 2012. The investigation into the September 2011 death of military officer Sergo Tetradze resumed in November 2012, and as a result several former prison officials were sentenced in January 2014 to nine years imprisonment for torture (Article 144¹ of the Criminal Code), violent sexual abuse that through negligence resulted in death (Article 138(3)(c)) and exceeding official powers (Article 333).

³⁰ In its judgment, the ECtHR concluded that the investigation into the ill-treatment and killing of Sandro Girgvliani by four officials of the Ministry of Internal Affairs lacked independence, impartiality, objectivity and thoroughness, and noted with particular concern how different branches of the state – the Ministry of the Interior, the prosecution authority, the prisons department, the domestic courts, and the President of Georgia, – had "all acted in concert in preventing justice from being done in [that] gruesome homicide case." [Case of Enukidze and Girgvliani v. Georgia](#), judgment of 26 April 2011.

³¹ Cf. in this regard [Monitoring of cases of investigation into cases of missing persons during and after the August 2008 armed conflict in Georgia](#), CommDH(2010)35, 29 September 2010.

Office has initiated cases - mostly on charges of misappropriation of state funds, corruption and money-laundering - against a number of former officials, certain of whom have been convicted.³²

34. Representatives of the United National Movement (UNM), currently in opposition, have been claiming that many of the criminal proceedings concerned are politically motivated. In parallel, it has been advanced that, at local level, persons associated with the UNM have allegedly been pressured to change their political affiliation and subjected to various forms of harassment and - in some cases – violence in the context of demonstrations. The Commissioner raised these issues with the Minister of Justice, who indicated that she would look into the matter.
35. The Public Defender, NGOs and international actors³³ have been following the proceedings against former senior officials and have identified certain shortcomings related to the investigation and trial processes. In his annual report, the Public Defender referred inter alia to a case where a search of a defendant and his residential property was carried out in violation of CPC provisions and where the judge nevertheless ruled that the search was lawful.³⁴ The Public Defender also noted procedural violations in the context of the criminal prosecution against the then Chief of Joint Staff of the Georgian Armed Forces.³⁵
36. According to some of the Commissioner's interlocutors, senior political leaders have flouted the principle of presumption of innocence by pronouncing themselves on the guilt of some of the former officials charged and/or standing trial. The Commissioner also received allegations that in many of the cases concerned, which relied mainly on witness testimony, the witnesses concerned had been subjected to pressure as a result of which they changed their testimony during the proceedings. In addition, certain defence lawyers complained that they had not been given the opportunity to cross-examine the prosecution's witnesses or to counter evidence presented by the prosecution; in some cases, the defence reportedly did not receive the list of witnesses in advance, which impeded it from effectively organising its strategy. However, some observers have noted that courts tended to display leniency towards former government officials when deciding on preventive measures and that the defence, which was relatively passive in ordinary cases, was actually more active than the prosecution in high profile cases.³⁶
37. The cases of Ivane (Vano) Merabishvili,³⁷ Bachana (Bacho) Akhalaia,³⁸ and Gigi Ugulava³⁹ – all of them members of or associated with the UNM - were discussed by the Commissioner during his visit. Mr

³² As of September 2013, 35 former senior officials had been charged, five of whom left the country. Of the 30 remaining in Georgia, 14 were in pre-trial detention, 14 released on bail, one released without any restrictive measure, and one pardoned by then-President Saakashvili after conviction. A number of lower-level former civil servants have also been charged or convicted. See [Georgia in Transition](#), p. 6.

³³ The OSCE/ODIHR is currently conducting a project on trial monitoring of high-profile cases.

³⁴ See case of Tengiz Gunava (launched in November 2012), [Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia 2012](#), pp. 225-228. Though the initial charges concerned illegal possession of drugs and firearms, Mr Gunava was eventually convicted of misappropriation of state property. He was pardoned by then-President Saakashvili in July 2013 and reinstated as governor of the Samegrelo – Zemo Svaneti region.

³⁵ *Ibid.*, pp. 230-232.

³⁶ [Monitoring trials in Tbilisi and Kutaisi City Courts](#), Report N°4 (January-June 2013), Georgian Young Lawyers' Association (pp. 6, 18).

³⁷ Mr Merabishvili was convicted on 17 February 2014 by a Kutaisi Court and sentenced to five years imprisonment (based on new concurrent sentencing rules) on charges related to two separate cases, one involving unlawful expropriation and another on misuse of public funds in a vote-buying scheme. In the latter case, charges were also filed against another former senior official, Zurab Chiaberashvili, who was convicted for neglect of official duty and fined 50000 GEL (approximately 20800 Euros). In yet another case – before a Tbilisi court - involving the forcible dispersal of protests on 26 May 2011 (cf. footnote 29 above), Mr Merabishvili was convicted on 27 February 2014 and sentenced to four and a half years imprisonment for exceeding official powers. Mr Merabishvili also faces charges in connection to the cover-up of the murder of Sandro Girgvliani (cf. footnote 30 above).

³⁸ Mr Akhalaia, who has been detained since November 2012, previously served as Minister of Defence, Minister of Interior, and Head of the Penitentiary Department. He was convicted by the Tbilisi City Court on 28 October 2013 of inhuman treatment and excessive use of force against prisoners during the time he was heading the Penitentiary Department, and

Merabishvili was formerly Prime Minister and Secretary General of the UNM at the time of his arrest on 21 May 2013. He has alleged that on 14 December 2013, he was taken away blindfolded from the prison by unknown individuals and brought to the Penitentiary Department of the Ministry of Corrections where he was threatened by the then Chief Prosecutor, Otar Partskhaladze. Human rights NGOs have called for an investigation into the foregoing allegations and expressed concerns that the internal inquiry by the Ministry of Corrections failed to clarify the situation and raised more questions, including regarding the unavailability of video footage from surveillance cameras in the prison.⁴⁰ In this regard, the Ministry indicated to the Commissioner that due to the fact that Mr Merabishvili made his complaint only on 17 December – three days after the alleged events – the video footage was unavailable because it was automatically overwritten every 24 hours. As for Mr Akhalaia, procedural violations in the questioning of witnesses by prosecutorial authorities and unlawful recording of lawyer-client conversations have been alleged in relation to one of the cases against him.⁴¹ In the case of the temporary suspension from office of Mr Ugulava during a nocturnal hearing by the Tbilisi City Court without the participation of the defence, a group of civil society organisations have called upon the authorities to look into allegations of pressure on the judge by the Inspection Department of the Ministry of Internal Affairs, and expressed the view that it would have been more appropriate to hold a public hearing and to give an opportunity to the defence to present their arguments.⁴²

1.2.3 CONCLUSIONS AND RECOMMENDATIONS

38. The Commissioner encourages further efforts to enhance the functioning of the judicial system in Georgia. While noting that there has been a decrease in the concordance between opinions of judges and prosecutors, the Commissioner would like to underline that continued vigilance is needed to safeguard and reinforce judicial independence and shield judges from undue interference. The revised constitutional and legal provisions concerning the High Council of Justice appear to have made this body less vulnerable to political interference, but further improvements should be made regarding the transparency of its sessions, the substantiation of decisions and the process of appointment of judges. Furthermore, the Commissioner recommends reviewing the provision related to the three-year probationary period for judges, in the interest of preserving judicial independence.
39. Following the numerous expressions of concern regarding the situation in the Chief Prosecutor's Office, the Commissioner underlines that recruitment, promotion and careers of prosecutors should follow fair and impartial procedures and be based on merit, as specified in the [Committee of Ministers Recommendation on the role of public prosecution in the criminal justice system](#). It is imperative to invest efforts to raise the professionalism of prosecutors, including in terms of investigative techniques, and to establish proper oversight over their work.
40. In light of the information in paragraph 34 concerning harassment of the opposition, e.g. in the context of demonstrations, the Commissioner recommends that the Georgian authorities send a clear message

was subsequently pardoned by President Saakashvili in November 2013. The presidential pardon of Mr Akhalaia was criticised by the Public Defender and some NGOs (see also in this regard paragraph 273 of [Case of Enukidze and Girvliani v. Georgia](#), judgment of 26 April 2011). The same court acquitted Mr Akhalaia in other cases, including one involving allegations of abuse of army personnel when he was Defence Minister. Before Mr Akhalaia was pardoned, further charges were brought against him on the basis of allegations that he provided "privileged" prison conditions to the four officials convicted for the murder of Sandro Girvliani (see paragraph 33 and footnote 30 above). Mr Akhalaia resigned in September 2012 from his post of Interior Minister following the prison abuse scandal (paragraph 42 of the present report).

³⁹ Mr Ugulava was suspended as Mayor of Tbilisi in December 2013.

⁴⁰ See [Investigation should start based on Ivane Merabishvili's allegations](#), NGO Statement of 23 December 2013, and [Joint Statement of Non-Governmental Organisations](#), 17 January 2014.

⁴¹ [Annual Report of the Public Defender](#), op. cit., p. 229. Mr Akhalaia's lawyer, Giorgi Oniani, was himself arrested a few weeks after the Commissioner's visit.

⁴² [Gigi Ugulava's statement must be reacted to](#), 22 December 2013.

that this will not be tolerated. Unlawful interference with freedoms of assembly and expressions as well as acts of violence should be duly sanctioned.

41. The Commissioner wishes to underline that the judicial system should be sufficiently resilient so that its proper functioning is not disrupted by the transfers of power which are characteristic of any true democracy. The persistence of allegations and other information indicative of deficiencies marring the criminal investigation and judicial processes in cases involving political opponents are a cause for concern, as this can cast doubt on the outcome of the cases concerned even when there have been solid grounds for the charges retained and the final convictions. The Georgian authorities must address these issues at the systemic level, in the interests of respecting fair trial guarantees for everyone and in enhancing public trust in the institutions responsible for upholding the law.

1.3 ADDRESSING AND PREVENTING HUMAN RIGHTS VIOLATIONS

1.3.1 PRISON ABUSE AND SUBSEQUENT REFORMS

42. In September 2012, videos were released showing serious abuse – including rape - of prisoners, which mostly took place in Prison No. 8 in Tbilisi (Gldani). The videos, which were released by a former prison guard at the Gldani prison, provoked a major public outcry in Georgia. The authorities at the time reacted swiftly: senior leaders unambiguously condemned the abuse; certain officials resigned – including the Minister of Internal Affairs and the Minister of Corrections - or were arrested or suspended; penitentiary establishments were opened to wider public scrutiny; and some of the persons who had been subjected to ill-treatment were referred to medical care. Mr George Tugushi, who was the Public Defender at the time, became Minister of Corrections; following the change of government after the October 2012 parliamentary elections, he was replaced by another former Ombudsman, Mr Sozar Subari.
43. On 31 October 2012, the Commissioner addressed a letter to the newly-appointed Prime Minister, Mr Bidzina Ivanishvili, in which he expressed his grave concern about the prison abuse revealed by the videos. The Commissioner also underlined that ill-treatment and other serious misconduct by prison and other public officials, as well as the related issue of impunity, were not new problems in Georgia, but had been raised on several occasions by the Public Defender and the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), as well as in the reports of the Commissioner's predecessor. The Commissioner called for an effective investigation of the prison abuse scandal, capable of leading to the identification and punishment of those responsible for the ill-treatment of prisoners. He stressed that, besides the direct perpetrators of the abuses, those officials who ordered or were informed of the abuse should also be held accountable. Further, he noted that the investigation and judicial proceedings pertaining to such cases should be compliant with human rights standards, and that victims, witnesses and their families should be protected.⁴³
44. During a November 2012 ad hoc visit to Georgia by the CPT, information was sought on the investigations of cases involving allegations of ill-treatment of prisoners. The Chief Prosecutor at the time, Mr Archil Kbilashvili, informed the CPT's delegation that over half of the 3000 complaints received by his office following his appointment on 31 October 2012 related to alleged ill-treatment of prisoners, especially at Gldani and Kutaisi Prisons. The Chief Prosecutor informed the CPT that in addition to clarifying the circumstances of the alleged ill-treatment at Gldani Prison, the investigators were concentrating on demonstrating the "systemic" character of ill-treatment in Georgian prisons.⁴⁴

⁴³ [Letter from the Commissioner for Human Rights to the Georgian Prime Minister](#), 31 October 2012.

⁴⁴ [Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment \(CPT\) from 19 to 23 November 2012](#) (paragraph 16). In this regard, the CPT commented in paragraph 18 of its report: "[...] the Committee cannot escape the impression that, since 5 November 2012, after the change in responsibility for the investigation into the Gldani events, the [...] prosecutorial authorities have focused more on proving the thesis of "systematic" ill-treatment of prisoners [...]" (and, consequently,

45. On 14 June 2013, sixteen prison officials were sentenced to prison terms ranging from six months to six years and nine months for one or more of the following offences in relation to the abuses which occurred in Gldani Prison: torture, ill-treatment, and non-notification. Eight of those who were sentenced had concluded plea-agreements with the prosecution. Out of the seventeen men standing trial, one – the former prison guard who made the videos public - avoided punishment after the prosecution decided to relieve him from criminal responsibility as a result of a plea agreement despite his own involvement in ill-treatment.⁴⁵ On 25 June 2013, the Kutaisi Court sentenced five prison officials to imprisonment up to seven years and acquitted one official in relation to abuse of prisoners at Kutaisi Prison.⁴⁶
46. The Public Defender has expressed the view that the sentences given to those convicted of torture and ill-treatment have been excessively lenient,⁴⁷ and NGOs have argued that the release from criminal liability - based on his cooperation with prosecutorial authorities - of the prison guard who issued the videos contravened Georgia's international human rights obligations. Both the Public Defender and human rights NGOs considered that there had not been sufficient information provided to the public about the investigation into the cases concerned. NGOs have called upon the Georgian authorities to provide information to the public about the nature and scope of human rights abuse that took place in the prison system, conditions of the plea-agreements concluded with the accused (with due observance of privacy interests), results of the investigation and activities implemented for the rehabilitation of victims.⁴⁸ In their response to the CPT, the Georgian authorities referred to a proposal by Open Society Georgia Foundation to prepare a comprehensive public report on ill-treatment in prisons. The report, which is currently under preparation, will be based on a survey carried out throughout Georgia with the participation of 1200 prisoners.
47. The majority of the Commissioner's interlocutors observed that the level of ill-treatment in prisons had decreased following the emergence of the scandal due to enhanced transparency and public scrutiny. In the report on its November 2012 visit, the CPT found the "the vast majority of the prisoners stressed that there had been a dramatic change for the better in the attitude by the management and the staff".⁴⁹ According to the Ministry of Corrections, a multi-layered monitoring system exists both internally (through the General Inspection Department and the Monitoring Division)⁵⁰ and externally (National Preventive Mechanism under the Public Defender and NGOs acting both collectively and individually). Problems remain in terms of conditions of detention, even though the prison population had been halved through amnesties, pardons and early releases, which appear to have ended the chronic overcrowding that previously characterised the Georgian prison system. The Commissioner was informed by the authorities that two prisons with particularly poor conditions - Tbilisi Prison No. 1 and Zugdidi Prison No. 4 - had been taken out of use, and that other prisons were undergoing substantial renovation. In addition, significant reforms have been undertaken in the prison health care system, which is better funded and more independent from the penitentiary authorities. From 2012 to 2013 the prison health care budget had increased by 60% (and by a further 40% in 2013) and health care spending per inmate by more than 450% (which was made possible by the combined effects of budget increase

criminal responsibility of former senior officials), rather than establishing whether and – if so, which – acts of physical ill-treatment had actually taken place at Gldani Prison."

⁴⁵ [Verdict Delivered into Prison Abuse Scandal Case](#), Civil Georgia, 15 June 2013. See also [Response of the Georgian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) on its visit to Georgia from 19 to 23 November 2012.

⁴⁶ *Ibid.*

⁴⁷ [Human Rights and Freedoms in Georgia 2013](#), Public Defender of Georgia, section 6, p. 4.

⁴⁸ [Joint NGO statement on investigation of facts of torture in penitentiary institutions](#), September 2013.

⁴⁹ [Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment \(CPT\) from 19 to 23 November 2012](#) (paragraph 28).

⁵⁰ According to information provided by the Ministry of Corrections, investigation by internal organs into allegations of human rights violations in penitentiary institutions resulted in the dismissal of 97 staff members and the issuance of various administrative penalties for 176 staff members since October 2012.

and releases of some 10000 prisoners through an amnesty). The Ministry of Corrections also indicated that there had been a significant decrease of mortality in prisons (from 50 to 22 for every 10 000 sentenced prisoners, and in absolute numbers from 65 in 2012 to 25 in 2013) and an increase in the proportion of prisoners referred to hospitals (from November 2012 to March 2014 there were close to 8200 referrals, as opposed to 400 to 1280 annually before October 2012).

1.3.2 MECHANISM TO DEAL WITH ALLEGATIONS OF HUMAN RIGHTS ABUSE

48. Following the October 2012 elections, the new authorities pledged to “restore justice” and called upon any persons considering themselves as victims of crimes committed prior to 1 October 2012 to submit a complaint. Thousands of such complaints were addressed to the Prosecutor’s Office, the Parliamentary Committee on Human Rights and Civil Integration,⁵¹ the Public Defender and other bodies.⁵² Allegations of abuses by the previous authorities included torture and ill-treatment of persons deprived of their liberty; unlawful or unjustified deprivation of liberty; flawed trial proceedings and politically-motivated processes; misuse of plea-bargaining; disproportionate use of force during rallies; and illegal seizure of property.
49. One of the steps taken by the new authorities in the name of restoring justice was to release a number of persons who had been sentenced in allegedly politically-motivated proceedings under the former administration. On 21 December 2012 the Parliament of Georgia adopted an Amnesty Law containing a provision on “political prisoners”, which led to the release of about 215 persons. This process was criticised because of the methodology used to select persons on the list and for being contrary to the principle of separation of powers. The Venice Commission concluded that Article 22 of the Amnesty Law - considered in connection to the Resolution adopted by the Parliament on 19 December 2012 listing names of politically imprisoned or politically persecuted persons - failed to comply with the principles of the rule of law, such as legality (including transparency), prohibition of arbitrariness, non-discrimination and equality before the law.⁵³
50. The Ministry of Justice then undertook to devise an altogether new mechanism for restoring justice in the form of a Temporary State Commission on Miscarriages of Justice (TSCMJ). The joint opinion of the Venice Commission and the Directorate for Justice and Human Dignity of the Directorate General on Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the TSCMJ underlined that the very idea of a massive examination of possible cases of miscarriages of justice by a non-judicial body raises issues as regards the separation of powers and the independence of the judiciary. The joint opinion also emphasised that any reopening of a court case and decision on the determination of criminal charges against plaintiffs who allegedly suffered a miscarriage of justice should be made by the judiciary itself.⁵⁴ For its part, the Supreme Court of Georgia criticised the proposal to establish the TSCMJ, finding that it would duplicate the court system and that it would be more appropriate to use

⁵¹ In December 2013 the Parliament examined the human rights violations committed between 2004 and 2012, in view of the applications received by its Committee on Human Rights. The latter requested the Ministry of Internal Affairs and the Chief Prosecutor’s Office to provide an appropriate response to the violations concerned.

⁵² According to [Georgia in Transition](#), p. 13, footnote 15: “[...]over 20 000 complaints were filed at the Prosecutor’s Office in the first months after 2012 elections, including around 4000 inmates or victims of alleged torture/ill treatment. Around 1000 complaints were made against 322 out of 333 active prosecutors (the latter mainly related to wrongdoings in property cases during the past administration). Complaints to the Ombudsman and the Parliamentary Committee on Human Rights also increased considerably.”

⁵³ [Opinion on the provisions relating to political prisoners in the amnesty law of Georgia](#), adopted by the Venice Commission in March 2013, paragraphs 40-58.

⁵⁴ [Joint Opinion of the Venice Commission and the Directorate for Justice and Human Dignity of the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law on the Temporary State Commission on Miscarriages of Justice of Georgia](#), 17 June 2013. While the authors of the opinion did not pronounce themselves on whether the creation of the TSCMJ was at all necessary, they stressed that, if created, the TSCMJ should only produce a report of an advisory nature indicating that it has a “reasonable suspicion” of the existence of a miscarriage of justice, and that it should be for the appellate court to establish the existence of such a miscarriage and to decide whether to reopen proceedings.

existing legislative provisions allowing for the review of a case on the basis of the submission of new evidence.⁵⁵

51. In November 2013 the Government decided not to submit to Parliament the draft law on the TSCMJ, citing financial reasons.⁵⁶ The Public Defender emphasised that redress to victims of violations and injustices should not be delayed or denied, and that existing mechanisms should be used for this purpose.⁵⁷ This view was shared by a number of NGOs who met the Commissioner, even though the decision of the Government to postpone the establishment of the TSCMJ had initially provoked discontent among human rights NGOs.⁵⁸
52. In view of the very high number of complaints received, one of the main tasks is to perform an initial assessment, categorisation and prioritisation. The Chief Prosecutor informed the Commissioner that his Office was proceeding with an assessment of complaints which would be completed in the coming months. Once categorised and prioritised, the allegations would be investigated by the prosecution services and if evidence of a violation is found, the case would go through the court system. However, several interlocutors raised doubts about the capacity of the prosecution to cope with this challenge and to perform the necessary investigations; for example, the Chairman of the Supreme Court referred to cases concerning allegations of ill-treatment when defendants had been acquitted due to the failure of the prosecution to bring convincing evidence. In this regard, it has been proposed to form a professional special investigative unit within the prosecution service.

1.3.3 ILLEGAL SURVEILLANCE

53. Evidence of extensive use of surveillance without court authorisation emerged following the transfer of power after the October 2012 elections. The new authorities identified some 24 000 video and audio tapes obtained through illegal surveillance. According to EU Special Adviser Mr Thomas Hammarberg, the illegal recordings – which in many cases served as a means for blackmail - were of three different types: recording of sexual situations; recordings of meetings, exchanges and conversations with a political element, mainly of politicians, journalists and civil society activists; and videos showing torture, including sexual abuse, of male prisoners (see previous section). Apart from concerns about this widespread practice in violation of Article 8 of the ECHR under the previous administration, there were reports that in some cases representatives of the new authorities were themselves behind leaks of the previously-recorded materials and that relevant public broadcasts initially did not observe privacy rights of the individuals affected, some of whom were victims of serious human rights violations. The illegal videos recording intimate life (110 CDs) were destroyed on 5 September 2013 by a Special Commission set up by the new government and comprising representatives of authorities, the Public Defender and the new Personal Data Protection Inspector (see following paragraph).⁵⁹ At the same time, files containing evidentiary materials to support criminal investigations and prosecutions are being retained.
54. A Personal Data Protection Law was adopted in 2011 and entered into force in May 2012, establishing the new institution of Personal Data Protection Inspector. Ms Tamar Kaldani was appointed to this office and commenced her mandate on 1 July 2013.⁶⁰ With the main objective of ensuring the protection of personal data and the right to privacy, the Inspector consults public and private organisations on issues

⁵⁵ [Comments by the Supreme Court of Georgia on the draft law on the Temporary State Commission on Miscarriages of Justice](#), June 2013. Chapter XVII of the Criminal Procedure Code foresees re-examination of judgments on the basis of newly discovered evidence (Articles 310, 311, 312, 313 and 314).

⁵⁶ [Commission on miscarriages of justice put on hold](#), Civil Georgia, 29 November 2013.

⁵⁷ [Statement of the Public Defender regarding mechanism for identifying shortcomings in the judicial system](#), 29 November 2013.

⁵⁸ [Statement on Postponement of establishment of the state commission for revision of miscarriages of justice](#), GYLA, 29 November 2013.

⁵⁹ See [Dealing with illegal surveillance material](#), preliminary advice by Thomas Hammarberg, 20 June 2013 and [Georgia in Transition](#), p. 21. On 31 January 2014, the Commission oversaw the destruction of further materials resulting from illegal surveillance and decided to send the remaining files to the Prosecutor's Office for investigation.

⁶⁰ The Inspector informed the Commissioner that a working group was preparing amendments to the 2011 law.

related to data protection, receives complaints from citizens, inspects the lawfulness of data processing and informs the public on the data protection situation in the country and related issues. Data collected for the purpose of criminal investigation activities and private data that people gather for their own purposes are excluded from the Inspector's scope of work. The institution is in the process of compiling a data collection catalogue, indicating what data is collected for which purpose, and participates in the preparation of the national human rights strategy and action plan in the area of the right to privacy. The Data Protection Inspector will have the power to impose fines on the private sector as from 2016. The institution has thus far focused on raising awareness on the law and on what constitutes a violation of its provisions. The Data Protection Inspector indicated to the Commissioner that there had not yet been an effective investigation into the aforementioned widespread acts of illegal surveillance. She also informed him about her recommendations addressed to the Ministry of Corrections concerning certain shortcomings identified in the practice of surveillance of high profile detainees.

55. Official statements have been made to the effect that phone conversations were no longer being intercepted illegally in Georgia, and that interception of phone conversations was only carried out in the context of police investigations on the basis of a court order. However, information has surfaced that major telecommunication companies continue to be equipped with "black boxes" allowing for illegal interception of phone conversations. In this regard, NGOs and the EU Special Adviser have expressed concerns about the lack of judicial oversight on investigations launched on the basis of operative information, and have highlighted the urgent need to amend the Law on Operative and Investigative Activities to bring it in line with international standards and especially with regard to privacy rights.⁶¹

1.3.4 CONCLUSIONS AND RECOMMENDATIONS

56. The Commissioner welcomes the reported improvements in the treatment of prisoners and the enhanced transparency and public scrutiny of the situation in prisons. He reiterates the importance of ensuring accountability of those responsible for ill-treatment through fair, impartial and transparent proceedings and punishment commensurate to the seriousness of the offence, and of providing accurate information to the public about the proceedings concerned.
57. The Commissioner also noted other significant reforms in the prison system, in particular with regard to the reduction of overcrowding and the provision of health care. He urges the Georgian authorities to take the necessary steps to implement the recommendations of the CPT relating to prisons, in particular as regards the provision of activities to prisoners.
58. The Commissioner encourages the Georgian authorities to assess the complaints submitted after October 2012 and prioritise cases of serious human rights abuse which are of public interest. Complainants should receive replies about the cases they submitted, and victims of violations should be provided with redress. Allegations of possible violations of Article 3 of the ECHR should be prioritised. Here, too, the public should be provided with objective and credible information about the process and the findings, and it would be desirable to discuss those issues in the Parliament with all the political parties.
59. Steps should be taken to protect privacy rights under Article 8 of the ECHR, including by criminalising the possession of materials obtained as a result of illegal surveillance and collecting any such material which may have fallen into private hands. Technical and physical surveillance activities must be regulated and any such activities should only be carried out under proper judicial supervision. The Commissioner welcomes the establishment of the Office of the Personal Data Protection Inspector and recommends that adequate support and resources for the institution's work be provided. The alleged continued presence of surveillance equipment in the premises of telecommunication operators giving the Ministry of Internal Affairs automatic access to all communications via private providers should be addressed and appropriate legal regulations as well as democratic and judicial control should apply.

⁶¹ [Georgia in Transition](#), p. 20, and [Dealing with illegal surveillance material](#), preliminary advice by Thomas Hammarberg, 20 June 2013.

2 THE SITUATION OF MINORITY GROUPS, TOLERANCE, AND NON-DISCRIMINATION

60. While some steps have been undertaken to improve the situation of members belonging to ethnic and religious minorities with the aim of decreasing discrimination and enhancing integration into the Georgian society, certain stereotypes, prejudices and negative portrayal of minority groups still occur, including in political discourse and the media. In his September 2013 report, the EU Special Adviser emphasised that dealing with minorities through the security prism should be avoided as it contributes to heightening tensions and conflicts, and stressed the importance of pursuing legislative and institutional reforms to prevent and sanction discrimination, protect freedom of religion for all, and prevent any tendency of marginalisation of minority populations.⁶²

2.1 POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

2.1.1 EXISTING POLICY AND INSTITUTIONAL FRAMEWORK

61. The Georgian Constitution contains a number of provisions related to equality, non-discrimination and freedom of religion.⁶³ The National Concept for Tolerance and Civil Integration and its Action Plan were introduced through Decree N°348 of the Georgian Prime Minister on 8 May 2009.⁶⁴ The National Concept and Action Plan aim at: creating a tolerant environment in Georgia; providing equal opportunities for all citizens; creating conditions for the effective participation of minorities in all fields of life; providing equal access of minorities to all levels of education; and providing support for the development of minorities' culture and the preservation of their identity. The National Concept and its Action Plan (2009-2014) have strategic directions in six areas: rule of law (covering access to justice, raising awareness of public officials on the rights of minorities and anti-discrimination legislation, and effectively investigating bias-motivated crimes), education and state language (which also covers minority-language education), media and access to information, political integration and civic participation, social and regional integration, and culture and preservation of identity.
62. The Ministry for Reconciliation and Civic Equality – previously Ministry for Reintegration – is responsible for the implementation of the State policy concerning the population living in Abkhazia and South Ossetia and for devising and implementing measures to enhance the integration of ethnic minorities in Georgia. Besides the Ministry, other State institutions have competence on issues related to minority groups, such as the Committee on Human Rights and Civil Integration of the Parliament. A State Inter-Agency Commission has been established under the leadership of the Ministry for Reconciliation and Civic Equality to develop, coordinate and assess policies and activities under the National Concept and Action Plan which are coming to an end in May 2014. The activities implemented in 2013 focused on the education and state language strategic direction, which is considered as a key component of integration efforts, and to media and access to information by members of minority groups who do not master the Georgian language. The Ministry is also leading the development of a new Concept and Action Plan, in consultation with governmental and non-governmental actors.
63. The Ministry for Reconciliation and Civic Equality chairs another Inter-Agency Commission, established by a Government decree in November 2013, on issues related to religious organisations.⁶⁵ The Inter-Agency Commission is tasked with work on legislation related to: religious organisations and the construction of religious objects; funding for religious organisations; religious property issues; public

⁶² [Georgia in Transition](#), pp. 8, 23.

⁶³ Article 9.1 (freedom of religion and special role of the Georgian Orthodox Church); Article 14 (equality before the law); Article 19 (freedom of religion and belief); Article 38.1 (equality in social, economic, cultural and political life; right to develop one's culture and to use one's mother tongue without discrimination).

⁶⁴ [National Concept and Action Plan for Tolerance and Civic Integration](#), Government of Georgia, 8 May 2009.

⁶⁵ The Inter-Agency Commission on religious organisations includes representatives from the Ministries of Justice, Education, Internal Affairs, Economy, Culture, Reconciliation and Civil Equality, European and Euro-Atlantic Integration, and Diaspora Issues.

worship or religious procession; and educational activities of religious organisations. In addition, a new policy-making body, the State Agency for Religious Issues, was created in February 2014 under the Prime Minister.⁶⁶

64. The Council of Ethnic Minorities and the Council of Religions under the auspices of the Public Defender (Ombudsman) were established in 2005. Furthermore, a Tolerance Centre was added to the Public Defender's Office in 2006, with the role of coordinating the activities of both Councils and advising the Public Defender.

2.1.2 COMBATING HATE CRIMES AND DISCRIMINATION

65. The Constitution and a number of laws contain anti-discrimination provisions. Discrimination was made an aggravating circumstance in the Criminal Code in 2012.⁶⁷ However, the legal provisions penalising racism and intolerance⁶⁸ as well as those relating to discrimination in the criminal, civil and administrative spheres have rarely been used.⁶⁹ According to information received by the Commissioner, law enforcement bodies avoid qualifying discriminatory acts or hate crimes as such, and in several instances, attacks against minorities or LGBTI persons have been qualified as 'petty hooliganism', which carries considerably lower penalties. To the Commissioner's knowledge, there has not been a criminal case to date where bias based on sexual orientation or gender identity has been applied as an aggravating factor. The European Commission against Racism and Intolerance (ECRI) has recommended adding to the criminal legislation provisions for combating racism and intolerance to prohibit offences such as racist insults, public dissemination of materials containing racist statements, etc. ([2010 ECRI report](#), paragraph 7). Such provisions have not yet been adopted.
66. The Ministry of Justice has been preparing a proposal for a comprehensive civil and administrative anti-discrimination law, prohibiting both direct and indirect discrimination and incorporating the concept of multiple discrimination. During the visit, the Commissioner was informed that the draft law would also establish a new independent specialised institution - the Equality Protection Inspector – with the power to take legally-binding decisions and impose fines. Several international actors having an expertise in the field of anti-discrimination have submitted their comments and recommendations, and the [Commissioner's Opinion on National structures for promoting equality \(2011\)](#) could provide useful guidance in this regard. Various interlocutors indicated to the Commissioner that raising public awareness on the new legislation would be essential.
67. Georgia is party to several international treaties on the protection of minorities and elimination of discrimination, including the Convention on Elimination of all Forms of Racial Discrimination and the Framework Convention for the Protection of National Minorities. However, the country has yet to sign and ratify the European Charter for Regional and Minority Languages, which is one of its accession commitments to the Council of Europe. The Ministry for Reconciliation and Civic Equality conducted

⁶⁶ [Establishment of a State Agency for Religious Issues](#), Office of the Minister for Reconciliation and Civic Equality, 7 February 2014.

⁶⁷ Article 53.3 of the Criminal Code: "Committing a crime on the grounds of intolerance of race, skin colour, language, sex, sexual orientation and gender identity, age, religion, political and other views, disabilities, national, ethnic or social belonging, origin, economic status or position, place of residence or other discriminatory ground is an aggravating factor for all relevant crimes addressed in this code."

⁶⁸ Article 142 (infringement of the right to equality) ; Article 142-1 (racial discrimination and incitement to racial hatred); Article 408 (crimes against humanity including apartheid and persecution of an ethnic and religious group); Article 155 (illegal interference in religious practice); Article 156 (persecution of a person on grounds of religion or religious activities); Article 166 (interference with the activities of a religious entity); Article 259 §3b (desecration of a grave on the grounds of race, religion, or national and ethnic intolerance).

⁶⁹ The European Commission against Racism and Intolerance (ECRI) reported in 2010 that Article 142-1 of the Criminal Code concerning racial discrimination and incitement to hatred had not been used since its introduction in 2003. [Third ECRI report on Georgia 2010](#), paragraph 13.

activities in 2013 to prepare the ground for ratification.⁷⁰ Georgia has not signed or ratified the Convention on the Participation of Foreigners in Public Life at the Local Level and the European Convention on Nationality.

2.1.3 THE SITUATION OF LGBTI PERSONS

68. Due to prevailing negative attitudes,⁷¹ many Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons conceal their sexual orientation or gender identity for fear of harassment and discrimination, including in the workplace and by public institutions. The Public Defender informed the Commissioner that his Office had received over 30 complaints in 2013 about attacks against LGBTI persons. ILGA-Europe, an umbrella organisation of NGOs dealing with the human rights of LGBTI persons, had collected information on seven hate crimes perpetrated against LGBTI persons during 2013, which included various types of attacks, including rape, and threats of violence, including death threats. In its report submitted to the UN Human Rights Committee in September 2013, the local NGO Identoba referred to a murder with evidence of a possible hate motive which occurred in western Georgia in April 2013. The numbers cited are most certainly lower than the actual occurrence of bias-motivated attacks against LGBTI persons, due to the reluctance of victims to report violence to police, inter alia because of fears that their sexual orientation would be disclosed to family members. NGOs have also expressed serious concerns regarding the lack of effective investigation and adequate punishment for perpetrators of attacks.
69. The violence which erupted on 17 May 2013 during a rally in Tbilisi organised to mark the International Day Against Homophobia and Transphobia illustrates clearly the need for the authorities to engage decisive and sustained efforts to promote tolerance and protect the basic human rights of LGBTI persons. As shown by widely-available video footage, a small and peaceful gathering of LGBTI rights activists was violently disrupted by a large crowd of counter-demonstrators, including some Georgian Orthodox clerics, who broke through a police cordon. While unable to contain aggressive counter-demonstrators, the police did manage to secure a safe corridor to evacuate the participants and organisers of the rally; even so, counter-demonstrators violently attacked the evacuation vehicles carrying protesters. A total of 28 persons were injured with half of them requiring hospitalisation, including at least three policemen. Some observers have noted that the police presence on that occasion was insufficient to prevent the violence.
70. Three days before the rally, then-Prime Minister Ivanishvili stated that sexual minorities were equal citizens of Georgia and pledged to provide safety for the participants in the gay rights rally. Other senior political leaders from different parts of the spectrum made similar statements. In the Commissioner's view, the above-mentioned events show how crucial it is for the authorities and political actors, but also for other community leaders and public actors, to send an unambiguous message in favour of human rights and against violence, hate speech and discrimination.
71. After the violent events, senior Georgian leaders condemned the violence and called for the perpetrators to be punished according to the law. However, the four persons arrested immediately following the rally were each ordered only to pay fines of GEL 100 (some 42 Euros) for the offence of petty hooliganism. A total of five persons, including two priests, were criminally charged for violating freedom of assembly, but the Tbilisi City Court dropped the charges against one of the priests. The trial is still under way. NGOs have criticised the authorities for being slow to prosecute, and witnesses on the side of protesters are reportedly facing intimidation from the defendants.

⁷⁰ [2013 Report](#) of the Office of the State Minister for Reconciliation and Civic Equality (pp. 25-26).

⁷¹ The attitudes may be changing for the better. According to a study published by the Institute for Policy Studies and cited in the section on Georgia of the [Annual Review of ILGA-Europe for 2013](#), "although low percentages appear for all groups on the question of [whether homosexual persons have] the right to live as they like, more youths share that view."

2.1.4 CONCLUSIONS AND RECOMMENDATIONS

72. The Commissioner supports the efforts by the Ministry for Reconciliation and Civic Equality to address issues affecting ethnic and religious minorities in Georgia and encourages the Georgian authorities to proceed with the signature and ratification of the European Charter for Regional and Minority Languages.
73. Besides the activities directed towards members of minority groups, the Commissioner encourages increased efforts to enhance tolerance and non-discrimination among the majority population. He strongly emphasises the importance for the authorities, public actors and community leaders to send an unambiguous message in favour of human rights and tolerance, and against violence, hate speech and discrimination. It should be made clear that violence against LGBTI persons is unacceptable and will not be tolerated.
74. The Commissioner welcomes the plans to develop comprehensive anti-discrimination legislation. He strongly encourages the establishment of an equality body with the power to sanction instances of discrimination, including on actors from the private sector. The process of developing and finalising the draft legislation should be inclusive and comments and suggestions provided by international and national bodies having relevant expertise should be duly taken into account. The Commissioner encourages the Georgian authorities to undertake a public awareness campaign on the anti-discrimination legislation and any new mechanisms to be established.
75. Hate crimes should be effectively investigated and qualified as such by law enforcement bodies. The bias motive should be taken into account as an aggravating circumstance, as already provided for by national legislation, and perpetrators should receive punishment commensurate to the gravity of the offence.

2.2 ETHNIC MINORITIES

76. According to the 2002 census, ethnic minorities account for 16.7% of the Georgian population.⁷² Persons belonging to the Azerbaijani minority represent 6.5% of the total population and form a significant group in the region of Kvemo Kartli. Persons belonging to the Armenian minority represent 5.7% of the total population and form a significant group in the region of Samtskhe Javakheti. Other ethnic minorities include, inter alia, Abkhaz, Assyrians, Greeks, Jews, Kurds, Ossetians, Roma, Russians, Ukrainians and Yezidis. The Public Defender's regional offices, including those in Kvemo Kartli and Samtskhe Javakheti, play an important role locally in informing and advising members of minority groups in a language they understand.

2.2.1 LANGUAGE

77. A large number of members of the ethnic minorities in Kvemo Kartli and Samtskhe Javakheti are not proficient in the Georgian language. This contributes to their isolation and impedes integration and effective participation in Georgian society.⁷³ As reported to the Commissioner during his visit, lack of knowledge of Georgian significantly impedes equal access to rights, remedies, public services (e.g. healthcare, social assistance), employment, and higher education.
78. In 2009, the Advisory Committee on the Framework Convention for the Protection of National Minorities (the Advisory Committee) concluded that the linguistic rights of persons belonging to minorities were still a challenge for the Georgian authorities. While encouraging efforts to improve

⁷² [Third ECRI report on Georgia](#), paragraph 71. A new census is expected to be held in November 2014.

⁷³ Both the Advisory Committee for the Framework Convention on the Protection of National Minorities ([Thematic Commentary No. 3](#) on the language rights of persons belonging to national minorities, 2012) and the OSCE High Commissioner on National Minorities ([The Hague Recommendations](#) Regarding the Education Rights of National Minorities and Explanatory Note, 1996) refer to the importance of having proper knowledge of the official or State language for the purpose of integration.

facilities for learning Georgian, the Advisory Committee recommended that the policy of promoting the Georgian language should not be pursued to the detriment of the linguistic rights of minorities. The Advisory Committee also recommended increasing the motivation to learn the majority language, and to offer minorities clear prospects of integration and participation.⁷⁴

79. During meetings held by the Commissioner in the regions of Kvemo Kartli and Samtskhe Javakheti, members of minority groups emphasised their motivation to learn Georgian. The Public Defender noted in his 2012 report that the number of individuals proficient in the Georgian language or interested in acquiring such skills had increased in Kvemo Kartli and Samtskhe Javakheti. It was reported to the Commissioner that persons under 40 have a better knowledge of and motivation to learn the Georgian language. However, the Commissioner received information that state-organised language courses for adults had ceased in 2012.
80. Several interlocutors, including members of minority groups, highlighted the importance of improving the quality of Georgian language teaching and indicated that there were problems in the methodology and teacher training for instruction of Georgian as a second language⁷⁵ and bilingual education. As a general principle, minority teachers who are called upon to teach in the official language or in bilingual education programmes need proper support and preparation,⁷⁶ and teachers who are trained to teach the state language as a second language should know the language of the minority pupils.⁷⁷ Further, ECRI has recommended that minority pupils should receive textbooks teaching Georgian as a second language free of charge.⁷⁸ In this regard, the Commissioner received complaints that this was not always the case. Moreover, he was informed during his visit to the regions that some teachers belonging to minority groups who did not have a good command of Georgian experienced difficulties in using the textbooks for bilingual classes and that Georgian language-teaching textbooks were not available for all school grades. The importance of exposing minority children to the Georgian language as from preschool was mentioned by many interlocutors. In 2011-2012, a pilot project for learning Georgian was implemented in some pre-school centres in Kvemo Kartli and Samtskhe Javakheti, then discontinued for lack of sufficient financing, and re-started in 2013.
81. The Commissioner was informed that the Ministry of Education continuously monitored the situation of Georgian language teaching, and that a new concept for bilingual education was being developed along with bilingual teaching materials. While meeting the Commissioner, the First Deputy Minister of Education indicated that the bilingual education programmes piloted in 40 minority schools had reached good results in some schools but less so in others. There was an increase in the number of Georgian language teachers sent to the regions and additional hours allotted for learning Georgian, as well as a specific programme aimed at minorities called "Learning Georgian for further success".
82. The Advisory Committee noted that the lack of resources invested in tuition provided in minority languages meant that the pupils concerned were not on an equal footing with other pupils (see [Opinion on Georgia](#), p.3). Sufficient attention should also be paid to the preservation and development of the culture and identity of numerically small minorities (e.g. Assyrians, Avars, Kurds, Ossetians, Roma, Yezidi, etc.).⁷⁹ According to information the Commissioner obtained during his visits to the regions, teaching of minority languages is impeded by several difficulties, ranging from the lack of adequate Georgian-curriculum textbooks in minority languages (or poor translations of the same) to the absence of quality

⁷⁴ [Opinion on Georgia](#), Advisory Committee for the Framework Convention on the Protection of National Minorities, 2009 (Executive Summary and paragraph 114).

⁷⁵ In minority schools, Georgian is taught as a second language several hours per week. The rest of the curriculum is taught in languages used by members of minority groups.

⁷⁶ See [FCNM Third Thematic Commentary](#) (paragraph 80).

⁷⁷ [The Hague Recommendations](#) (pp. 6-7) mention that the official State language should preferably be taught by bilingual teachers who have a good understanding of the children's cultural and linguistic background.

⁷⁸ [2010 ECRI report](#), paragraph 35.

⁷⁹ [Opinion on Georgia](#), paragraph 66.

training for teachers. There have also been complaints from some minority groups about obstacles in receiving textbooks on minority language and culture.

83. In its 2009 Opinion, the Advisory Committee raised concerns regarding the lack of information, or the provision of biased information about the history, religion and culture of minorities in textbooks and other school materials ([Opinion on Georgia](#), paragraph 139). ECRI has recommended that the Georgian authorities pursue quality control of school curricula and textbooks to ensure that they impart information on the culture and history of ethnic and religious minorities and are free from negative portrayals of minorities ([2010 ECRI report](#), paragraph 37). More recent reports on the situation in 2013 have also noted that schoolbooks used by secondary schools often did not reflect the existence of ethnic and religious diversity, and members of the Muslim community have complained that some educational texts treated religious accounts and figures disrespectfully.
84. The Advisory Committee has also underlined the importance of having continuity in access to teaching and learning of and in minority languages at all levels of the education system.⁸⁰ As regards access of minority students to higher education, tests in Georgian language and literature introduced in the year 2005-2006 have created difficulties for many minority students to obtain access to universities. The Public Defender has reported that following the 2009 legislative amendments on higher education allowing entrance tests to be conducted in minority languages - this has not been done for the Ossetian language as initially foreseen - there has been an increase of minorities entering higher education institutions. Several interlocutors commented positively on the Programme “4+1”, whereby Georgian is taught during one year to minority students admitted to higher academic institutions before they continue with the programme. There is further room for development of higher education in minority languages.⁸¹
85. The Zurab Zhvania School of Public Administration was created to train managers and public servants belonging to minorities. In 2010, ECRI encouraged the Georgian authorities to improve the quality of the School curriculum, especially as regards the teaching of Georgian, and to develop a mechanism to help its graduates, in particular those belonging to minorities, in finding a job in public administration corresponding to their level of education ([2010 ECRI report](#), paragraph 78). Subsequently, the School focused on Georgian language teaching for school teachers. The increase of contacts between Georgian and minority students has been identified as a successful factor for learning Georgian.

2.2.2 PARTICIPATION AND INCLUSION

86. The limited participation of persons belonging to national minorities in the country’s cultural, social and economic life as well as in public affairs was raised by the Advisory Committee in its 2009 Opinion. The Advisory Committee called upon the Georgian authorities to take measures to remove legislative and practical obstacles to the participation of persons belonging to national minorities in elected bodies and the executive, and to allow minorities to be better represented in the public service ([Opinion on Georgia](#), Executive Summary and paragraphs 151-153, 157-158, 203, 204). According to the 2013 report of the Ombudsman, full participation of ethnic minorities in political, cultural and public life remains problematic. Few representatives of ethnic minorities are involved in the executive branch of government, political parties, and civil society.
87. Stricter implementation of the legislation on the official language has restricted the right of persons belonging to national minorities to use their language at the local level, including in relation to administrative authorities and in judicial proceedings. This may contribute to maintaining members of minority groups in a disadvantaged position in public employment, political representation and the

⁸⁰ [FCNM Third Thematic Commentary](#), paragraph 75.

⁸¹ The FCNM Advisory Committee reported that members of the Armenian minority have sought to establish an Armenian-language university (or multi-lingual university) in Akhalkalaki (see [Opinion on Georgia](#), paragraph 113), but this has still not taken place.

judicial sphere.⁸² The Advisory Committee reported in 2009 that the Georgian authorities did not allow the use of minority languages as working languages in areas where minorities form a significant part of the population. Reports were previously brought to the attention of the Advisory Committee that linguistic requirements applied to various occupations (mainly through language tests) apparently resulted in the replacement of employees from national minorities with persons belonging to the majority who did not always have a good command of minority languages, leading to misunderstandings and communication problems in minority-populated areas ([Opinion on Georgia](#), paragraphs 47-48).

88. The Georgian Law on Political Associations prohibits the setting up of political parties on a regional or territorial basis,⁸³ which has a negative impact on the participation of minorities in political life at the local level. Several interlocutors in Kvemo Kartli raised the issue of low representation of members of the Azerbaijani minority in law enforcement bodies and the judiciary. Apparently, there are regional variations in the degree of representation of minorities in official bodies in areas where they form a significant part of the population.
89. According to the Advisory Committee, some persons belonging to certain national minorities (e.g. members of the Azerbaijani, Avar and Roma communities) have no identity documents, which impedes their access to rights and benefits. Some steps have been taken to rectify this problem: in partnership with the Innovation and Reform Center (IRC) and the European Center for Minority Issues (ECMI), the Georgian authorities have been proceeding with the registration of the Roma population (estimated to be around 1 500 with no more than 300 per locality⁸⁴), inter alia through field visits to gather the necessary information for registration and the issuing of identity documents.

2.2.3 MEDIA LANDSCAPE AND EXPRESSIONS OF INTOLERANCE

90. In 2009, the Advisory Committee expressed regret over the limited interaction between the majority and national minorities. Combined with the lack of participation of minorities in the Georgian society and limited access to information in a language understandable to minorities, this was found to lead to isolation and marginalisation. The Advisory Committee also noted with concern that the history, culture, and languages of national minorities received very little media coverage, though it did encounter some positive examples of television and radio broadcasts in the minority languages and efforts to disseminate information about the identity and culture of minorities.⁸⁵ The Commissioner has noted that local TV companies in Kvemo Kartli and Samtskhe Javakheti, as well as print media, provide information in minority languages. During his visit, he met with several Armenian-language media representatives in Samtskhe Javakheti who are in need of further support in order to continue their activities.
91. Some minority groups have complained about hostility and instances of discrimination towards them linked to negative stereotyping.⁸⁶ ECRI also expressed concern over stereotyping, negative portrayals and racism in public discourse by some politicians and media. Minorities are sometimes portrayed as a “threat to security” and vectors of separatism.⁸⁷ According to information received by the

⁸² However, the FCNM Advisory Committee noted in its 2009 report that even those minorities who did have good command of Georgian, such as the numerically smaller Kurds and Yezidi, were underrepresented or not represented at all. See [Opinion on Georgia](#), paragraph 147.

⁸³ The Venice Commission and the OSCE/ODIHR recommended re-assessing whether there is a need to maintain the prohibition against parties established according to regional or territorial principles. [Joint Opinion](#) of the Venice Commission and the OSCE/ODIHR on the draft law on amendments and additions to the Organic Law of Georgia on Political Unions of Citizens, December 2011, paragraph 5.D, page 3.

⁸⁴ [Georgia in Transition](#) with reference to ECMI.

⁸⁵ [FCNM Advisory Committee Opinion](#), paragraphs 68, 70, and 101-109. In this regard, the Public Defender has noted with regret that the broadcasting of a positively-toned informative programme on the life and identity of minorities (“Our Georgia”) had ceased in September 2012.

⁸⁶ [FCNM Advisory Committee Opinion](#), paragraph 75.

⁸⁷ [2010 ECRI report](#), paragraphs 50-51.

Commissioner, certain media continue disseminating stereotypes and sometimes offensive remarks about minorities.

92. Many interlocutors were concerned that minorities compactly living in the regions were rather disconnected from the Georgian media and information landscape. The Public Defender has noted that the daily news programmes provided in minority languages by the Georgian Public Broadcaster (GPC) do not give comprehensive information to minorities. The closure in October 2012 of the Russian-language channel PIK of the GPC deprived non-Georgian speaking minorities of an important source of information on Georgia and the region.⁸⁸ Given that little information from the Georgian media is available in languages understood by minorities, they do not always receive local perspectives on issues or sufficient information on the situation in Georgia, as they mainly receive information from Armenian, Azerbaijani, Russian and Turkish media.

2.2.4 THE MESKHETIAN POPULATION

93. The Meskhetian Turk population was forcibly removed in 1944 by the Soviet authorities from an area in south-west Georgia now known as Samtskhe Javakheti to other parts of the then Soviet Union, mainly in Central Asia, Azerbaijan and Russia. Upon its accession to the Council of Europe in 1999, Georgia undertook the commitment to adopt, within two years, a legal framework permitting the repatriation and integration of Meskhetian Turks, including the right to Georgian nationality, to launch a repatriation process within three years, and to complete it within twelve years.⁸⁹
94. A Law on Repatriation of Persons Forcibly Deported from Georgia by the former USSR in the 1940s was adopted on 11 July 2007. There have been problems related to the large number of documents required to apply for return and acquire Georgian citizenship. Moreover, there was the requirement to submit repatriation applications in Georgian or English, which was a major obstacle for the majority of applicants. The deadline to submit applications in order to obtain the status of repatriate was 1 January 2010. By that time, 5841 applications had been submitted.
95. In its 2010 report on Georgia, ECRI assessed the repatriation process and the climate of opinion towards Meskhetian Turks. Reportedly, segments of the Georgian population, including in Samtskhe Javakheti, had expressed hostility towards the prospect of repatriation of Meskhetian Turks. This seemed to originate partly in the lack of information provided to the general public and misconceptions sometimes conveyed by the media. At the time, ECRI encouraged the Georgian authorities to enhance efforts towards the integration of Meskhetian Turks, including by devising a strategy which would address issues such as language learning, access to education and employment. ECRI also encouraged the authorities to launch an awareness-raising campaign among the population living in the areas concerned on the repatriation process, with a view to preventing possible conflicts. ECRI called upon the Georgian authorities to continue their efforts in favour of the repatriation process, indicating that no undue limitations should impede the acquisition of Georgian citizenship by repatriation applicants ([2010 ECRI report](#), paragraph 66).
96. The Georgian authorities have informed ECRI that, on 1 March 2011, the Interagency Governmental Council on the Repatriation of Forcibly Deported Persons from the Soviet Socialist Republic of Georgia during the 40s by the Former USSR (the Council) was created in order to coordinate the activities of state agencies involved in the repatriation process. ECRI considers that the authorities have not taken all necessary measures to solve the different problems which emerged during the repatriation process, and indicated that the most important such step would be to finalise the strategy as rapidly as possible.⁹⁰ The Commissioner was informed that the draft strategy, which is one of the primary tasks of a special

⁸⁸ [Georgia in Transition](#), p. 25.

⁸⁹ [Resolution 1428\(2005\)](#) on the situation of the deported Meskhetian population, Parliamentary Assembly of the Council of Europe, 2005.

⁹⁰ [ECRI Conclusions](#) on the implementation of the recommendations in respect of Georgia subject to interim follow-up, June 2013, paragraph 2.

group established under this Council, is currently in the process of revision and will be open for public discussion in the very near future.

97. According to the information provided to the Commissioner by the World Union of Ahiskan Turks, out of the applications submitted within the deadline of 1 January 2010, 1174 repatriation statuses and seven citizenships had been granted by 6 October 2013. Most of the persons concerned had not yet physically returned to Georgia, and repatriates faced administrative obstacles in practice. Non-governmental sources have informed ECRI that the Meskhetian families who had returned on their own initiative – i.e., as “self-repatriates” - faced integration problems, since they were considered as foreign nationals with neither repatriate status nor Georgian citizenship. This created difficulties in access to education, employment or housing.⁹¹

2.2.5 CONCLUSIONS AND RECOMMENDATIONS

98. The Commissioner encourages the Georgian authorities to continue their efforts aimed at improving the Georgian language skills of persons belonging to minority groups and ensure the sustainability of results achieved to date. He also recommends that the Georgian authorities take measures to improve the quality of education in minority languages at all levels, including through the provision of proper textbooks and adequate teacher training. Information on cultures, identities and languages of minorities should be provided through the school curriculum to all pupils with a view to enhancing tolerance and cohesion. Educational materials should be free from stereotypes and prejudices against minority communities.
99. The Commissioner encourages the Georgian authorities to take further steps to promote the participation of minorities in the social, economic, political and cultural life of the country, including in elected bodies and public service. He encourages the Georgian authorities to reach out to the members of minority groups through increased visits of senior officials to the regions. More generally, systematic efforts should be undertaken aimed at promoting interaction and reducing mutual mistrust.
100. The Commissioner recommends that efforts be made to render the Georgian media landscape accessible to members of minority groups who do not understand Georgian. More information should be provided via the media, e.g. via public broadcasting, to members of minority groups in languages they understand. Furthermore, the media could play a greater role in conveying information to society as a whole about the situation, culture and identity of minorities living in the country, in the interests of integration and social cohesion. Media outlets and journalists should adopt voluntary ethical codes and standards and establish independent and self-regulatory bodies to elevate standards of journalism. In addition, there should be effective monitoring and adequate sanctions against instances of hate speech and incitement to hatred. Expressions of racism and prejudices against minorities by media actors should also be resolutely addressed.
101. The Commissioner urges the Georgian authorities to facilitate the repatriation and integration of Meskhetian Turks who applied for repatriation under official procedures. Measures should also be taken to provide a clear status to “self-repatriates” and to include them in integration programmes.

2.3 RELIGIOUS MINORITIES⁹²

2.3.1 VIOLENT ATTACKS AND MANIFESTATIONS OF INTOLERANCE

102. Already in 2009, the Advisory Committee expressed concern about religious tensions and encouraged the authorities to combat all forms of intolerance and foster mutual understanding and inter-cultural

⁹¹ [ECRI Conclusions](#) on the implementation of the recommendations in respect of Georgia subject to interim follow-up, June 2013, paragraph 2.

⁹² According to the 2002 census, 83.9% of the Georgian population belong to the Orthodox Church, [2010 ECRI report](#).

dialogue between the majority and minorities. The Advisory Committee reported manifestations of religious intolerance such as vandalism targeting religious buildings and sometimes persons. Overall, the Advisory Committee noted that serious deficiencies remained in the exercise of religious freedoms. ECRI noted cases of harassment and verbal and physical abuse against religious minorities, including interference with places of worship or private property. Such cases were said to occur throughout the country and mainly targeted “non-traditional” religious minorities such as the Jehovah’s Witnesses but also, increasingly, the Muslim population. The Council of Religions under the Public Defender has reported that the number of attacks targeting the Jehovah’s Witnesses community increased significantly in 2013.⁹³ The Commissioner also received during his visit information about acts of violence against Jehovah’s Witnesses, vandalism against their houses of worship, and a lack of a prompt and effective investigation into those acts. Several cases have been lodged at the ECtHR by members of the Jehovah’s Witnesses community for alleged human rights violations resulting from religious discrimination.⁹⁴

103. While investigations launched by prosecutors have sometimes resulted in criminal convictions of those responsible, the Commissioner received reports that the police has not always responded appropriately to manifestations of religious intolerance or attacks on religious groups. Law enforcement bodies have even been perceived as sympathising with those who have expressed hostility towards religious minorities, particularly in relation to members of the Muslim community. Several actors assessed that the reaction of the Georgian authorities both at the political and law enforcement levels has not been satisfactory when religious intolerance occurred. Statements hostile to religious minorities have also been reported, including anti-Muslim discourse by certain members of the governing coalition in the Parliament.
104. The process of re-settlement of persons (known as “ecological migrants”) displaced from the region of Adjara because of natural disasters to other parts of the country has not been always well prepared and managed. Tensions have erupted concerning the use of public places of worship (see also below) and allocation of property, as has been the case in the town of Tsalka.⁹⁵
105. The Commissioner is seriously concerned by reports of interference with prayers of Muslims in Nigvziani (November 2012),⁹⁶ Tsintskaro (November-December 2012),⁹⁷ Samtatskaro (May-June 2013)⁹⁸ and Tsikhisdziri (April 2013).⁹⁹ Some local observers have noted that the failure of authorities to react in an

⁹³ [FCNM Advisory Committee Opinion](#), paragraphs 93-95, 197; [2010 ECRI Report](#), paragraph 46; and also [Human rights situation of persons affected by and displaced as a result of natural disasters \(eco-migrants\) in Georgia](#), Special Report of the Public Defender, 2013, pp. 20-21.

⁹⁴ In this context, see the 2007 judgment of the ECtHR in the case of [97 members of the Gldani Congregation of Jehovah’s Witnesses and four others v. Georgia](#).

⁹⁵ Tsalka is situated in the Kvemo Kartli region and has seen recurrent tensions between different communities. A recent contentious issue has been the allocation of housing to eco-migrants displaced from other regions of Georgia. See for example the [Human rights situation of persons affected by and displaced as a result of natural disasters \(eco-migrants\) in Georgia](#), Special Report of the Public Defender, 2013, pp. 20-21.

⁹⁶ The local Christian Orthodox population opposed the establishment of a place of worship for Muslims and disrupted the religious activities of Muslims (eco-migrants from Adjara) in November 2012 in the village of Nigvziani (Guria region). The reaction of the state authorities including law enforcement to the verbal confrontation which ensued was inadequate according to many observers. [GYLA reacts to the developments in the village of Nigvziani](#).

⁹⁷ The incident in the village of Tsintskaro (Kvemo Kartli) was similar to the one in Nigvziani. Muslim prayers were disrupted during several weeks and a Muslim cleric was verbally assaulted and threatened. [About the incident in the village of Tsintskaro](#), Statement by the Public Defender.

⁹⁸ The Muslim population of the village of Samtatskaro (Telavi region) was prevented from praying for at least three weeks in a row. The leader of local Muslims and his family were assaulted, and police representatives reportedly did not intervene. See [The situation of human rights and freedoms in Georgia](#), Georgian Democracy Initiative, pp. 23-24 and [The Public Defender requests investigation of the incidents in the village of Samtatskaro](#), Tolerance Centre.

⁹⁹ It has been alleged that in the village of Tsikhisdziri (municipality of Kobuleti) representatives of the Georgian Military Police physically and verbally assaulted local Muslims, demanding that they become Christians. The Ministry of Defence dismissed the three persons involved and criminal proceedings were launched against them. [The situation of human rights and freedoms in Georgia](#), pp. 24-25.

appropriate manner to these violations of religious freedoms led to the repetition of such acts and may serve to spread religious intolerance. Concerning the incidents that occurred in the above-mentioned villages, non-governmental sources noted the presence of strong prejudices and misconceptions towards Muslims (in particular towards eco-migrants re-settled from Adjara) on the part of the Christian Orthodox population; serious acts of violence and violations of freedom of religion by members of the majority population, including pressure to change religion; a negative role played by the local authorities; and lack of adequate measures from the state authorities to resolve the situation and punish the perpetrators of illegal acts.¹⁰⁰

106. Other incidents in 2013 included the August removal of a minaret in the village of Chela (Samtskhe Javakheti) which resulted in a physical confrontation between law enforcement representatives and members of the Muslim community. According to the Ministry of Finance the materials used to construct the minaret had been imported from Turkey in violation of customs regulations. The issue was eventually resolved and the minaret was re-installed, thanks to mediation between the different communities. In December 2013, the celebration of Hanukkah in Tbilisi with the participation of the Georgian President was disrupted by persons hostile to the event. Some Orthodox priests had expressed their discontent with the public celebration of the Jewish holiday. The Patriarchate subsequently issued a statement condemning the violence and recalling the traditionally warm relations between the Georgian Orthodox and Jewish people.
107. The Patriarch of the Georgian Orthodox Church informed the Commissioner about the regular and continuous dialogue with other religious groups. He also expressed his commitment to help resolving problems faced by religious groups, e.g. in terms of restitution of religious properties and mediating in relation to inter-religious incidents.

2.3.2 RELIGIOUS PROPERTIES, FINANCIAL SUPPORT AND RELIGIOUS EDUCATION

108. The Georgian Orthodox Church enjoys a privileged status in Georgia. A Constitutional Agreement known as the Concordat was signed by the Georgian President and the Georgian Orthodox Patriarch on 14 October 2002. Concerns have been expressed with regard to possible discrimination faced by religious groups other than the Georgian Orthodox Church.
109. There have been allegations that religious education in public schools was only covering the Georgian Orthodox Church and was also provided to children whose families did not wish to identify themselves as Orthodox. During his visit, the Commissioner also received allegations of indoctrination and forced conversions to Christianity of children belonging to other religions, mainly Muslims from Adjara. These allegations were raised by the Commissioner with the First Deputy Minister of Education who indicated that such abuses would be dealt with if the information was confirmed.
110. While religious education is no longer compulsory following a reform of the curriculum in 2007 (schools may choose to offer elective courses on history, culture and the role of religions in society), ECRI called on the Georgian authorities to monitor the implementation of the revised curriculum and to ensure that no pupils are pressured, harassed or discriminated against on account of their religion.¹⁰¹ In this respect, the Commissioner would like to recall that the ECtHR has emphasised the principle that, where a Contracting State includes religious instruction in the curriculum for study, it is then necessary, in so far as possible, to avoid a situation where pupils face a conflict between religious education given by the school and the religious or philosophical convictions of their parents.¹⁰²

¹⁰⁰ [Crisis of secularism and loyalty towards the dominant group: Role of the Government in 2012-2013 religious conflicts in Georgia](#), Human Rights Education and Monitoring Centre, 2013.

¹⁰¹ [2010 ECRI report](#), paragraph 40.

¹⁰² *Eylem Zengin v. Turkey*, judgment of 9 October 2007, where the Court found that an “[...]exemption procedure was not an appropriate method and did not provide sufficient protection to those parents who could legitimately consider that the subject taught was likely to give rise in their children to a conflict of allegiance between the school and their own values. No

111. As regards religious properties the Advisory Committee noted in 2009 that they continued to be the subject of disputes and gave rise to tensions in relations between the different religious communities. It observed that while the properties of the Georgian Orthodox Church confiscated during the Soviet period had been - or were being - returned, this process has been delayed for other churches. The return of properties is also a sensitive matter for the other religious denominations, such as the Armenian Apostolic Church, the Roman Catholic Church, the Evangelical Lutheran Church, the Muslim community and the Jewish community.¹⁰³ The Georgian authorities have reported the return of some properties to these communities since 2009.
112. Obstacles faced by national minorities to preserve, acquire, build or apply for the restitution of places of worship had also been raised with the Advisory Committee. Members of the Armenian community reported reluctance or even refusal by certain local authorities to grant permission for the building of new churches, as well as tensions generated by these procedures. The Armenian Apostolic Church reported attempts by the Georgian Orthodox Church to appropriate Armenian religious properties, including through altering their appearance in order to erase Armenian elements, as well as acts of provocation and use of defamatory language against Armenians. There have also been complaints about the difficulty to repair and maintain some of the old Armenian churches as well as disputed ones, which are on the verge of collapse. Members of the Azerbaijani minority reported difficulties in their efforts to build and maintain mosques as well as manifestations of hostility by both the Georgian Orthodox Church and the population of the Georgian Orthodox faith. The Assyrians and Yezidis also faced strong opposition, including violent attacks and petitions signed by members of the majority, as they were seeking to establish an appropriate place of worship. The Advisory Committee also noted with concern acts of vandalism committed in April 2008 against the Jewish cemetery, and reports of disrespectful acts and provocation in some traditional Azerbaijani cemeteries.¹⁰⁴
113. During the Commissioner's visit, some interlocutors raised the absence of status for monuments and properties belonging to religious communities. Moreover, unlike the Georgian Orthodox Church, other religious groups are not eligible for financial support from the State or tax exemptions. For years, the Georgian Orthodox Church has been receiving funds from the state budget. Recently, there has been a decision by the Georgian authorities to allocate financial support to some religious groups¹⁰⁵ who suffered repression during the Soviet period.

2.3.3 LEGAL AND INSTITUTIONAL ISSUES

114. The legal status of religious groups other than the Georgian Orthodox Church was problematic prior to 2011, during which period only the Georgian Orthodox Church was protected both as a Church and as a public entity, and other religious groups could only register as NGOs or non-profit private law associations and therefore could not enjoy the same conditions in the exercise of their religious freedoms. Following the amendments to the Georgian Civil Code in July 2011, those religious groups recognised as religious organisations in member states of the Council of Europe or having close historic ties with Georgia can register as legal entities of public law, which is a welcome development.
115. Representatives of religious minorities alleged that there had been interference by the Georgian authorities – mainly security services - in the choice of their religious leaders. Muslim representatives complained that the Muslim Council was formed (in 2010) and its members selected by the

possibility for an appropriate choice had been envisaged for the children of parents who had a religious or philosophical conviction other than that of Sunni Islam, where the procedure for exemption was likely to subject those parents to a heavy burden and to the necessity of disclosing their religious or philosophical convictions.”

¹⁰³ [FCNM Advisory Committee Opinion](#), paragraph 96.

¹⁰⁴ *Ibid.*, paragraph 93.

¹⁰⁵ This concerns the Armenian Apostolic Church in Georgia, the Roman Catholic Church in Georgia, Muslim and Jewish groups.

governmental authorities, without the involvement of Muslim communities and leaders. Muslim religious leaders have asked that the legislation and practice related to the formation of the Muslim Council be changed, allowing for representatives chosen by the Muslim communities to be part of this institution. The Minister of Reconciliation and Civic Equality informed the Commissioner that this issue was being examined.

116. In November 2013, a number of NGOs and the Public Defender criticised an initiative for amending the Code of Administrative Offences to penalise “offending religious sentiment” as being unconstitutional and restrictive of freedom of expression. Discussions on the amendments have been suspended.

2.3.4 CONCLUSIONS AND RECOMMENDATIONS

117. The Commissioner encourages the Georgian authorities, and in particular the Ministry for Reconciliation and Civic Equality, to pursue and develop their efforts in fostering inter-religious dialogue and ensuring respect for religious freedoms. The Georgian authorities, including law enforcement bodies, should unambiguously protect religious freedoms as prescribed in national legislation and international instruments accepted by Georgia. Unlawful restrictions of religious freedoms, and in particular acts of violence, should be effectively investigated, properly qualified and adequately punished by the authorities according to legal provisions in force.
118. Hate speech and negative portrayal of religious minorities in media and political discourse should be addressed. More should be done to raise awareness and knowledge of the general public on the different religious groups present in Georgia and the importance of respecting religious freedom. Allegations of religious discrimination in schools should be addressed and the authorities should refrain from applying policies which create a conflict for pupils between the religious education given by the school and the religious or philosophical convictions of the parents.
119. The Commissioner encourages the Georgian authorities to pursue the process of returning the confiscated religious properties to their owners and resolve the problem of disputed properties.