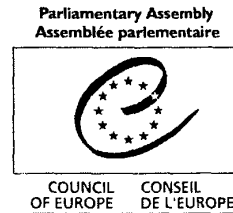


Parliamentary Assembly
Assemblée parlementaire



Doc. 10779
5 January 2006

**Implementation of Resolution 1415 (2005) on the honouring
of obligations and commitments by Georgia**

Report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Mr Mátyás Eörsi, Hungary, Alliance of Liberals and Democrats for Europe and Mr Evgeni Kirilov, Bulgaria, Socialist Group

Summary

In its Resolution 1415 (2005), the Parliamentary Assembly reconsidered the deadlines for the fulfilment of Georgia's obligations and commitments to the Council of Europe in order to take into account the extraordinary circumstances resulting from the *Rose Revolution*.

Two years later, some specific commitments have been fulfilled and, in general, large-scale and long-term reforms have been set on the right track. The post-revolutionary euphoria has given way to more pragmatism.

However, most reforms are still at the very beginning and major challenges still lie ahead. The authorities will have to demonstrate, at every step, that their solutions in overcoming the inevitable problems and obstacles along the way fully abide by the principles of democracy, rule of law and respect for human rights.

I. Draft resolution

1. In its Resolution 1415 (2005), the Parliamentary Assembly reconsidered the deadlines for the fulfilment of Georgia's obligations and commitments to the Council of Europe in order to take into account the extraordinary circumstances resulting from the *Rose Revolution*. The Assembly made it clear that this move was exceptional and that there would be no further extensions of the deadlines. Two years after the *Rose Revolution*, it is now time for the new authorities to keep their promises.

2. The Assembly notes that some specific commitments have been fulfilled and that, in general, large-scale and long-term reforms have been set on the right track. The authorities are continuing to demonstrate a clear resolve to build a stable and modern European democracy and to better integrate the country into European and Euro-Atlantic structures. The post-revolutionary euphoria has given way to more pragmatism; the hasty, sometimes even chaotic initial approach to reforms is very gradually being replaced by a clearer focus on priorities and by a better-defined strategy.

3. However, most reforms are still at the very beginning and major challenges still lie ahead. The ambitious work which has been undertaken in order to bring legislation in line with European standards still has to produce concrete results in most areas. The implementation of reforms will be just as important and the authorities will have to demonstrate, at every step, that their solutions in overcoming the inevitable problems and obstacles along the way fully abide by the principles of democracy, rule of law and respect for human rights.

4. With regard to the Council of Europe legal instruments that Georgia had to sign and/or ratify before September 2005, only the European Social Charter was ratified within the set deadline (on 22 August 2005) and the Framework Convention for the Protection of National Minorities was ratified by Parliament with a slight delay, on 13 October 2005. The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities was signed but has not yet been ratified. Regrettably, the procedure for signing and ratifying the European Charter for Regional and Minority Languages has only just started.

5. With regard to the commitments which concern long-term reforms, Georgia deserves praise for the first tangible results in the fight against corruption and the reform of the police, as well as for its efforts to improve economic performance and, consequently, to gradually improve the living conditions of the population. The Assembly welcomes the adoption, in co-operation with the Council of Europe, of a Strategy and an Action Plan for the fight against corruption and the creation of a State Commission on Decentralisation in the field of local self-government. Georgia has also undertaken encouraging steps in order to breed a new generation of magistrates, to rationalise the courts' structure, to improve the rights of detainees through changes in the criminal procedure code and to eliminate torture and generally improve conditions in prisons and pre-detention centres. It has started the operation of public service broadcasting catering for the needs and interests of the entire population. The work of the Ombudsman has produced useful results.

6. At the same time, the concerns expressed in Resolution 1415 (2005) that the strong system of government is not accompanied by efficient checks and balances are still valid. Although the ruling party no longer enjoys an overwhelming majority in parliament, as inevitably some centrifuge forces have appeared within its ranks, the opposition is still weak and has not been able to come up with valid programme alternatives. Most reforms appear to be carried out by a narrow circle of like-minded leading politicians, rather than by a broad configuration of people reflecting all the rich potential of the nation. The media are financially weak and still lack the democratic culture which would allow them to credibly perform their role of democratic watchdog.

7. Two years after coming to power, the Georgian authorities still enjoy high popular support and benefit from a broad public consensus over the objectives and goals of the democratic transition. The people's trust must not be betrayed. In a country which is emerging from decades of political hypocrisy and manipulation, any failure to deliver on promised reforms can easily result in mistrust and questioning of these same reforms, especially by the most heavily affected layers of the population. The authorities cannot afford any unnecessary delays and obstacles which could be caused by nostalgic or revengeful attitudes; they should therefore be careful to always match words and deeds and to be open to dialogue and criticism.

8. The Assembly is aware that full normalisation of the situation in Georgia is impossible without reaching a peaceful and democratic settlement of the conflicts in the breakaway regions of Abkhazia and South Ossetia. It commends the President's efforts to push forward his peace initiative, but at the same time is extremely worried that no real progress has been achieved on the ground and in the ongoing negotiations. All interested parties in the conflict, including Russia, must demonstrate their commitment, in principle and in practice, to a peaceful and democratic solution with full respect of the territorial integrity of Georgia.

9. In conclusion, Georgia's progress over the last year can be regarded generally as encouraging but it still is only a first step towards meeting its obligations and commitments. The recommendations to the Georgian authorities contained in the present resolution are therefore similar or stem from those given in Assembly Resolution 1415 (2005). It is worth noting that the greatest progress has been achieved in fields where co-operation with the relevant Council of Europe bodies has been the strongest.

10. The Assembly therefore calls on the Georgian authorities to:

10.1. with regard to Council of Europe conventions: without any further delay, ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and sign and ratify the European Charter for Regional and Minority Languages;

10.2. with regard to the functioning of democratic institutions:

10.2.1. review the constitutional changes of February 2004, by taking into account the opinion of the Venice Commission, especially with regard to the strong powers of the President;

10.2.2. ensure that the next local elections, scheduled for October 2006, are free and fair, in full compliance with Council of Europe standards; improve the state of the electoral lists beforehand;

10.2.3. before the next parliamentary elections, lower the 7% electoral threshold so that it is not higher than 5% and ensure that the composition of the electoral committees at all levels guarantees their proper and impartial functioning;

10.2.4. adopt and ensure proper implementation of the law on transparency of party funding;

10.2.5. maintain the commitment to create a second parliamentary chamber, providing for the representation of its autonomous regions at state level, once South Ossetia and Abkhazia are politically and administratively reintegrated into Georgia;

10.2.6. make necessary legal provisions to ensure that the status of Adjara is part of a comprehensive approach to Georgia's regions which strengthens their powers and sends a positive signal to the breakaway regions of South Ossetia and Abkhazia;

10.2.7. speed up the local government reform:

10.2.7.1. adopt the legislative package including core legislation on local self-government and other related laws according to the timetable agreed with Council of Europe experts, after careful analysis of all the issues at stake and appropriate consultation with all stakeholders;

10.2.7.2. implement the administrative and territorial reform of Georgia but only after the concept of the reform has been revised in accordance with the recommendations of the Council of Europe;

10.2.7.3. give real authority and the necessary means to the State Commission on Decentralisation to lead the preparation and implementation of the decentralisation strategy;

10.2.7.4. follow the recommendations of the Venice Commission relating to the election of the Tbilisi City Council and Mayor;

10.3. with regard to the Meskhetian population: pursue the work of the State Commission on the repatriation, seek actively international assistance and speed up the adoption of relevant legislation in order to create conditions for the repatriation process with a view to its completion by 2011; implement fully the recommendations set forth in Assembly Resolution 1428 (2005) on the situation of the deported Meskhetian population;

10.4. with regard to the 1990-94 conflicts:

10.4.1. adopt without further delay a legal framework for the restitution of ownership and tenancy rights or compensation for the property lost during these conflicts;

10.4.2. ensure the equal rights of internally displaced persons, along the lines of Assembly Recommendation 1570 (2002) on the situation on refugees and displaced persons in Armenia, Azerbaijan and Georgia;

10.5. with regard to the rule of law:

10.5.1. complete the reform of the judicial system, the Bar, the Prosecutor General Office and the police in full compliance with European democratic standards and in close co-operation with the Council of Europe experts;

10.5.2. guarantee a fully transparent and democratic system of replacement of judges and ensure that the new generation of magistrates is independent and highly professional; ensure successful start and functioning of the High School of Justice;

10.5.3. ensure constitutional and legislative guarantees for the independence of the members of the Supreme and Constitutional Courts; review, in consultation with the Council of Europe, the legislation allowing judges of the Supreme and Constitutional Court to resign voluntarily after, respectively, 3 and 5 years in office against life payment of their salaries and find more appropriate and dignified ways of solving human resources issues in these two bodies;

10.5.4. adopt a new criminal procedure code in co-operation with the Council of Europe;

10.5.5. pursue the fight against corruption, implement all recommendations of the Group of States against Corruption - GRECO and ratify the Council of Europe Criminal Law Convention on Corruption; step up work aimed at building a culture and ethics of civil service;

10.6. with regard to human rights:

10.6.1. implement the recommendations of the Council of Europe report of the compatibility of Georgian legislation with the provisions of the European Convention on Human Rights, in close co-operation with the Organisation's experts;

10.6.2. ensure that the newly built detention facilities and changes in the criminal legislation will solve the issue of overcrowding in prisons and pre-trial detention centres and consider supplementary measures, where appropriate;

10.6.3. build on first successes in eliminating the culture of violence and torture in prisons and pre-trial detention centres and adopt urgently further necessary measures, in particular in order to secure prompt investigation of all allegations of torture and ill-treatment and apply a policy of zero tolerance to impunity;

10.6.4. concerning freedom of expression and information:

10.6.4.1. revise legislation to ensure that any fines imposed for defamation are reasonable in quantum; that the presumption of innocence of suspects in media coverage is guaranteed; that media ownership is transparent and governed by democratic rules;

10.6.4.2. eliminate instances of obstruction of access to information for political or administrative reasons;

10.6.4.3. ensure the best quality of initial and life training for media professionals;

10.6.4.4. complete without any delay the transfer of property to the public service broadcaster and guarantee its financial sustainability and political independence;

10.6.5. grant all the necessary political and financial independence to the office of the Public Defender and consider broadening its powers;

10.7. commit themselves to a peaceful solution of the conflicts in Abkhazia and South Ossetia, in the interest of all parties concerned, of regional stability and in full respect of international law.

11. The Assembly calls on all member states of the Council of Europe to provide the necessary financial resources for the successful implementation of the Committee of Ministers' Action Plan for Georgia.

12. The Assembly further calls on all member states of the Council of Europe to get actively involved in the search for a peaceful solution of the conflicts in the breakaway regions of Abkhazia and South Ossetia, including by discussing the most appropriate framework for negotiations and for ensuring peace, law, order and respect for human rights on the ground.

13. Against this background, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Georgia until it receives evidence of substantial progress, particularly with regard to the issues mentioned in this resolution.

II. Explanatory memorandum by MM. Eörsi and Kirilov, co-rapporteurs

1. Introduction

1. Two years have now elapsed since the Rose Revolution in Georgia. In the immediate aftermath of the Revolution, the Parliamentary Assembly acknowledged that the newly elected leadership could not be held responsible for the failure of the regime of former President Eduard Shevardnadze to fulfil the country's obligations and commitments to the Council of Europe. As a sign of support to the new authorities, the Assembly therefore agreed, in Resolution 1363 adopted in January 2004, to set new deadlines for the fulfilment of these obligations and commitments.

2. The new timeframe was set one year later, in Assembly Resolution 1415. Although the Assembly made it clear that the decision to extend the deadlines was a result of extraordinary circumstances and that there would be no subsequent extensions of these deadlines.

3. Speaking before the Parliamentary Assembly in January 2005, President Michael Saakashvili confirmed the "profound and irreversible" commitment of Georgia to move forward and build a stable and modern European democracy.

4. Time has now come to take stock of the achievements over the last year. This is why the co-rapporteur Mr Kirilov¹ and the secretariat of the Monitoring Committee visited Georgia on 11 and 12 November and met the political forces and the executive authorities who are responsible for carrying out the democratic reforms. They also met the parliamentary opposition, NGOs and media representatives (see programme in Appendix I). The delegation extends its warm thanks to all its interlocutors and in particular to the Georgian delegation to the Assembly, to its secretariat, to the office of the Special Representative of the Secretary General and to the Information and Documentation Centre of the Council of Europe in Tbilisi.

2. Major developments since the adoption of Resolution 1415 (2005)

5. On 3 February 2005, the Georgian Prime Minister Zurab Zhvania was found dead in a friend's flat in Tbilisi. The Georgian investigators, backed by FBI experts, concluded that he had been poisoned with carbon monoxide caused by a faulty gas heating device. Mr Zhvania had been one of the emblematic figures of the Rose Revolution and had subsequently launched wide-ranging political reforms. His death was seen by many as the event that marked the end of the post-revolutionary euphoria.

6. On 9 February the Georgian Parliament approved, with a 175 to 24 vote, a new cabinet, headed by former Finance Minister Zurab Nogaideli. He declared that there would be no change in the government's policy.

7. Indeed, in the course of 2005 the authorities have pursued or initiated reforms in all the main spheres of public life. Economic growth has been strong (8.5% for 2004 according to data provided by the World Bank Group) and the GDP per capita for 2005, according to the President, will reach 1,300 USD, comparable to that of Latvia and Slovakia. He also claims that for 2005 and 2006 alone, the number of roads that will be built will exceed 8 times those built in the previous 15 years and that the coming winter will be the first one without electricity shortages. The government is planning the construction of two big highways, as well as a new airport which should become a regional transport hub.

¹ The co-rapporteur Mr Eörsi was prevented from participating at the last moment due to bad weather conditions.

8. Poverty is still a major problem and inflation continues to be high, around 7% for 2005. However, even if it is too early for the average citizens to feel a significant increase of their living standards, most arrears have been paid back² and pensions and salaries are now being paid regularly. All the salaries of civil servants have been significantly increased in 2004. According to the President, about one billion USD will soon be invested in Georgia's tourism sector. On the other hand, Georgia is still struggling to find alternative energy sources, as Russia is raising the prices of its gas supplies to world market rates, a move that Georgia has qualified as political. Georgia will not benefit from the Baku-Tbilisi-Ceyan pipeline except by perceiving a transit fee, which will amount to around 50 to 60 million USD per year but it is hoped that this oil pipeline will be doubled in the foreseeable future by a gas pipeline.

9. The ruling National Movement party won all the five seats in the parliamentary by-elections which took place on 1 October 2005 in five single-mandate constituencies³. The opposition complained to the co-rapporteur about certain violations but, as a whole, the by-elections were recognised as free and fair. The President considers this vote as a test for his and the ruling party's rate of approval which, in recent opinion polls, has been respectively around 60% and 40%. The by-elections were also the first test for the functioning of the new electoral commissions whose composition has been changed: they are now wholly professional and no longer manned with parties' representatives.

10. The dominant position of the President and his allies is still rather strong, although some centrifuge forces have inevitably started being felt. A new 17-member opposition parliamentary faction – the Democratic Front – was set up in October 2005 by a splinter group from the ruling coalition. The parliamentary and extra-parliamentary opposition have also started consolidating: four opposition parties – the New Rights, the Conservative Party, the Labour Party and the Freedom Party – held primaries and presented common candidates in the October by-elections. They nevertheless failed to win any seats; they explain this fact by stating that the government had used massive administrative resources from the state budget for the electoral campaign.

11. In October 2005, Foreign Minister Salome Zurbashvili, who had been seconded by the French government at the request of President Saakashvili, was dismissed. The Parliament disagreed with her management style and accused her of keeping it in the dark about her activities. Mrs Zurbashvili qualified her dismissal as "the old system's agony" and has recently set up a new political party. The administration of the President announced that the appointment of the new foreign minister, Gela Bezhuashvili, hitherto Secretary of the National Security Council, would not lead to a shift in Georgia's western-oriented foreign policy.

12. Also in October, the President asked the Parliament to develop a concept on National Consensus, which would outline the major priorities for the development of the country that could be universally accepted by all political forces. During the monitoring visit in November, the two parliamentary opposition factions stated that there were indeed areas in which consensus could be achieved, provided there was dialogue.

13. Georgia has continued its rapprochement with European and Euro-Atlantic structures.

14. In March 2005, the European Commission published its country report on Georgia in the framework of the European Union Neighbourhood Policy. It recommended intensifying significantly relations with the country through the development of an Action Plan. The priority objectives outlined by the EC in the field of democracy and rule of law coincide with the tasks set forth by the Council of Europe in the same areas. The Georgian authorities are anxious to have the Plan adopted as soon as possible; in their view the delay in the release of the plans for the three South Caucasian republics, caused by a row over Azeri flights to Northern Cyprus, is unjustified with regard to Georgia.

² It is to be noted however that according to two judgments against Georgia delivered by the European Court of Human Rights on 27 September 2005 (cases of AMAT-G Ltd and IZA Ltd), there is still a persistent problem of non-enforcement of final judgments delivered against the State budget institutions: the State's total debt in this respect amounts to over 20 million Euros. The Government tried to tackle this problem by issuing an Ordinance n°62 on 2 July 2004 setting priorities to introduce a gradual plan for the enforcement of court decisions. In both cases however the Court found violations of articles 6, 13 and article 1 of Protocol n° 1 because a) both companies had already waited over 4 or 5 years respectively without getting paid the amounts due and b) because the Governmental Ordinance was not providing a sufficiently sound legal basis for the interference in the applicants' property rights.

³ Isani in Tbilisi, Tkibuli in western Georgia, and Kobuleti, Shakhevi and Batumi in Adjara.

15. President Saakashvili is also urging the EU to help in monitoring the Russian-Georgian border.

16. In July 2005, the Parliament approved for the first time in its history a National Security Concept, which was one of the commitments under the Individual Partnership Action Plan with NATO. The document is presented as "the fundamental base of Georgia's firm national values and interests" and outlines the main directions of the foreign policy of the country. The core of it is "the full integration into the European and Euro-Atlantic community and building strong partnerships and co-operation with all of its neighbours". It is interesting to note the order of priorities in the chapter on strengthening foreign relations with individual countries: a "strategic partnership" is defined with the United States of America, Ukraine and Turkey and a "partnership" – with Armenia and Azerbaijan and the Russian Federation.

17. In May 2005, President George W Bush became the first US leader to visit Georgia. He proclaimed the country a "beacon of liberty". In addition to significant financial support, the USA is now trying to help Georgia peacefully resolve the conflicts in Abkhazia and South Ossetia.

18. In a regional context, already in January the leader of the Rose Revolution and the leader of the Orange Revolution in Ukraine Viktor Yushchenko signed a joint declaration reiterating the aspirations of their nations to European integration and further democratic development. During Mr Yushchenko's visit to Georgia, the two leaders signed a joint declaration on co-operation, which envisages the creation of, as the Ukrainian President put it, "a coalition of the democratic nations of the region."

19. Georgia has also backed strongly the initiative of Lithuania to establish close co-operation between the three countries, respectively, of the Baltic region – Latvia, Lithuania, Estonia, and the South Caucasus – Georgia, Armenia, Azerbaijan (the "three plus three" format).

20. The question of a possible withdrawal of Georgia from the Commonwealth of Independent States has been discussed in parliamentary circles recently, including by the opposition, but President Saakashvili has publicly stated that he was against such a move. He pointed out, however, that the CIS needed to be reformed in order to make its action more specific and practical.

21. An agreement on a timetable for withdrawal of the Russian military troops on Georgian territory was eventually reached in May and signed by the two Foreign Ministers. Under its terms, Russia would completely close down its bases in Georgia by 2008, starting with Akhalkalaki and then Batumi.

22. In October, the Georgian Parliament unanimously adopted a resolution in which it threatened to end the mandate of the peace-keeping forces of Russia in the two Georgian breakaway regions, South Ossetia and Abkhazia if there was no progress in their performance by 10 February 2006 in South Ossetia and 1 July 2006 in Abkhazia. There is no ready-made solution for the moment to replace the existing peace-keepers. The resolution is not legally binding for the government; officials explained to the monitoring delegation that at this stage it should rather be regarded as a declaration of intent.

23. According to several international observers, this move could complicate the further withdrawal of Russian troops, as Russia is now insisting that the agreement reached in May should be backed by a text ratified by the Russian Duma. Although the timetable for 2005 has so far been respected, the most important removal operations have to be performed in 2006.

2.1. *South Ossetia*

24. In a speech before the United Nations General Assembly in September 2004, the President of Georgia launched a peace initiative regarding South Ossetia. Subsequent versions were presented by him before the Parliamentary Assembly in January 2005 and at an International Conference on "Initiatives of the Government of Georgia on Peaceful Resolution of Civil Confrontation in the Former South Ossetian Autonomous District", organised by the Georgian government on 10 July in Batumi

(the South Ossetian side did not participate in the conference). On 27 October Prime Minister Noghaideli presented to the OSCE Permanent Council in Vienna the most recent version of President Saakashvili's proposals.

25. The main principle of the plan is a constitutional guarantee of a status of wide autonomy for South Ossetia. This implies the right of the South-Ossetian people to elect freely and directly its bodies of self-governance, including an executive branch and a parliament. The plan would also grant the district cultural autonomy, a privileged regime of border crossing with the Russian Federation and a privileged economic and tax system. The President is also proposing to secure seats for South Ossetian representatives in the Central Government, both in the legislative and executive branches. Government funds would be dedicated to the rehabilitation of the economy. The plan calls for the establishment of a special law on property restitution that would make generous payments to the victims of the 1990-92 conflicts.

26. The most recent version of the Georgian peace plan proposes drawing the United States, the EU, and the OSCE into the search for a political settlement to the conflict alongside Russia. It also advocates demilitarisation of the conflict zone and imposition of strict border controls at the Roki tunnel linking South Ossetia with the Russian Federation.

27. During his speech before the Parliamentary Assembly, President Saakashvili asked the Council of Europe to serve as a facilitator in finding a solution to the status of South Ossetia. At the beginning of 2005, a special commission was set up to work on the status of South Ossetia, chaired by Justice Minister Giorgi Papuashvili. The Venice Commission provided suggestions for the further development of the legal aspects of the plan suggested by the President. It remains ready to provide legal expertise when the Georgian authorities prepare a more detailed version of the plan.

28. The South-Ossetian side has repeatedly rejected the peace plan as a whole. The part of it which until now has been considered as the most realistic basis for any further progress, has been a three stage approach for settling the conflict proposed by President Saakashvili in his UN speech. At a meeting in Moscow in October, the Joint Control Commission (JCC), including representatives of Georgia, Russia, South Ossetia and North Ossetia, agreed that this would imply 1/ demilitarisation and confidence-building measures; 2/ social and economic rehabilitation, and 3/ political settlement including the issue of the status of South Ossetia.

29. However, the following meeting of the JCC in Ljubljana on 15-17 November 2005, which was supposed to develop these ideas further, ended in a deadlock. Discussions on all issues were controversial and led to a temporary suspension of the meeting. Except for joint support of the EC-funded economic rehabilitation programme in the zone of conflict, the sides demonstrated serious differences in their approach to fundamental questions of the future format of discussions and their attitude to the role of the Joint Peace-keeping Forces (JPKF). There was also an extensive discussion on a proposal by the Russian Co-Chairman for a meeting between Presidents Putin and Saakashvili to be attended by the leaders of South Ossetia and the Republic of North Ossetia-Alania of the Russian Federation. It was proposed that the meeting be held before the end of November. The proposal was supported by the North Ossetian and the South Ossetian Co-Chairmen. The latter also opposed the previously agreed idea, supported by the Georgian side, of a meeting between Prime Minister Noghaideli and the South Ossetian "President", putting forward the alternative of a meeting between Prime Minister Noghaideli and the South Ossetian "Prime Minister".

30. The Georgian authorities have been increasingly insistent on the need to change the format of the JCC and to involve actively the EU and the US. In their opinion, its present composition which leaves Georgia alone against three, does not allow any progress in settling the conflict. Both Russia and South Ossetia have been opposed to any change.

31. The US have indicated their readiness to use their leverage in Russia and Georgia. The EU has not yet made any commitment regarding possible direct participation in negotiations. It nevertheless is actively involved in assistance for the economic rehabilitation of the region. Economic rehabilitation is indeed seen as the most efficient and successful part of the work of the JCC so far. The OSCE, which has an active presence on the spot, also sees the need in continuing in that direction; in addition, it is insisting on better law-enforcement co-operation and the establishment of a joint police coordination centre in Tskhinvali. According to the OSCE Head of Mission in Tbilisi, most of

the everyday incidents in South Ossetia at present are criminally-related; their perpetrators are people and groups who have lost the most when the Georgian government put an end to the trafficking in Tskhinvali in 2004.

32. The 20 September events in Tskhinvali raised the tension significantly. During a military parade to celebrate the fifteenth anniversary of the "declaration of independence" in South Ossetia, the authorities of the unrecognised republic displayed heavy armoury, in violation of all existing agreements. The "festivities" involved representatives of the separatist regimes in Abkhazia, Transnistria and Nagorno Karabakh as well as deputies from the ruling party of the Russian Duma. In the evening, mortar rounds struck civilian buildings in Tskhinvali, injuring 10 people. The Georgian and South-Ossetian sides accused each other of the attack; there has not been any conclusive evidence allowing the identification of the perpetrators. Russia and Georgia exchanged angry statements; Russia focusing on the mortar attack and Georgia accusing Russia of a failure to abide by its commitment to be the principal mediator and guarantor of existing agreements. The statement of the Georgian foreign ministry also deplored the inability of the peace-keeping forces to stop the "unrestricted movement of illegal armed groupings, criminals and smuggled goods in the conflict zone", as well as the "routine" abductions of people.

33. The statement was then followed by the October resolution of the Georgian Parliament, giving an ultimatum to the peace-keeping forces (see paragraph 22). The verbal crossfire continued with a "diagram of the criminal regime" in South Ossetia released by the Georgian Interior Ministry, involving the commander of the joint peacekeeping force in the Georgian-South Ossetian conflict zone and Russian peacekeepers in general. Moreover, accusations were made that the latter were involved in terrorist acts on Georgian territory. The Russian Foreign Ministry's spokesman dismissed these accusations as absurd and unsubstantiated.

34. As a matter of fact, the latest sequence of events is seen by several observers as highlighting different approaches within the ruling party to settling the conflict. On the one hand, it appears that the Parliament is trying to enhance its role and, after having triggered the dismissal of the foreign minister, is now advocating a muscled approach towards Russia. On the other hand, several recent events have fuelled speculation that certain circles within the ruling elite might be in favour of a military solution of the South Ossetian conflict. Georgia has for instance bought military equipment from the Czech Republic, Bulgaria, Ukraine and other countries. On 9 November the Parliament approved in the first reading a draft bill that would increase the combined personnel of the Georgian armed forces⁴, in an apparent reversal of an earlier trend to downsize them for the sake of a highly trained army in line with NATO standards.

35. The Georgian President stated to the monitoring mission that even so, the Georgian army would remain much smaller than that of the other South Caucasian republics.

36. Georgia accuses Russia of channelling financial and military aid to the South-Ossetian leadership. 90% of the population has Russian passports and the key officials are Russian citizens. On 18 September the South Ossetian leader Eduard Kokoity and his North Ossetian counterpart Taymuraz Mamsurov signed a friendship and co-operation agreement which, for the first time, explicitly sets as a goal the unification of South and North Ossetia. There is no democratic opposition in South Ossetia and it is certain that the current leader will win next years' "presidential" elections.

37. In this situation, the deadline set in the most recent version of Mr Saakashvili's peace plan for solving the conflict by 2007 seems highly unrealistic. Nevertheless, the international community should not spare any effort to promote progress in the search of a peaceful solution.

2.2. *Abkhazia*

38. The October resolution of the Georgian Parliament urged the government to submit a detailed road map for the implementation of an Abkhaz peace plan by 1 May 2006.

⁴ The draft sets the maximum number of personnel at 31,868 persons, of whom 26,000 would be subordinate to the Defence Ministry and 5, 868 to the Georgian State border defence department.

39. The "presidential" elections in October 2004 in Abkhazia failed to replace the outgoing "President" Vladislav Ardzinba and were surrounded by controversy (see Doc. 10383). Under pressure from Russia, the two contenders campaigned on a joint ticket in the 12 January 2005 rerun. On 14 January Sergey Bagapsh was declared President-elect and Raul Khadzhimba Vice-President.

40. The Abkhaz conflict is dealt with within the "Geneva" framework, with meetings on security guarantees chaired by the Special Representative of the Secretary-General of the UN in Georgia and attended by representatives of the Group of Friends of the Secretary-General (France, Germany, Russian Federation, UK and the USA), as well as the OSCE. Several meetings took place in 2005. In July, the UN Security Council regretted the continued lack of progress. In his recent report on the situation in Abkhazia, the UN Secretary General Kofi Annan urged the Georgian side to address the Abkhaz security concerns and called on the Abkhaz side to accept the deployment of the UN Mission's civilian police officers in the Gali district and to open a human rights office.

41. Talks mainly focus on non-resumption of hostilities and safe and dignified return of refugees and IDPs, especially in the Gali district in its old borders.

42. An agreement was signed in July within the working group on the resumption of railway traffic between Sochi and Tbilisi via Sukhumi, in the framework of the Sochi 2003 agreements between the Presidents of Georgia and Russia.

43. Although the Abkhazian "Foreign Minister" qualified the appointment of the new Special Envoy of the President of Georgia for Conflict Resolution in Abkhazia, Irakli Alasania, as "unacceptable", Mr Alasania, who is also the Chairman of the Tbilisi-based Abkhaz government in exile, is seen as more moderate than his predecessor. Equally, Mr Bagapsh is seen as more open to dialogue than his rival and Russian favourite in the failed October 2004 elections, Mr Khadzhimba. The latest talks within the Geneva format were indeed qualified as "constructive" by the participants.

44. However, according to recent media reports, Mr Bagapsh would internally be kept "on the right track" by an opposition movement, Forum of People's Unity of Abkhazia (FNEA), which is even more uncompromising on the issue of Abkhaz independence. Formed in February, the FNEA is reported to be an umbrella organisation grouping several parties, including those of former President Ardzinba, Foreign Minister Sergei Shamba and the Abkhaz branch of Vladimir Zhirinovski's Liberal Democratic Party of Russia. The founding congress of FNEA in October adopted an appeal to Russian President Vladimir Putin and the international community to recognise the Republic of Abkhazia as an independent state, possibly as an "associate subject" of the Russian Federation.

45. On 25 June 2005, the Parliament of Abkhazia approved the government's proposal to start issuing Abkhaz passports to the residents of the unrecognised republic. On 23 September, the Parliament adopted draft amendments to the law regarding "citizenship of the Republic of Abkhazia". According to this draft, the citizens of the Republic are: – ethnic Abkhaz, regardless the place of their residence or citizenship; – persons who have been permanently living in Abkhazia for not less than five years following the adoption of the Act on Independence on 12 October 1999. Citizens of Abkhazia can only have double citizenship with the Russian Federation. According to international observers, this would pose a major problem to ethnic Georgians, who would only be able to travel abroad on a Russian passport. Earlier, in July, Mr Bagapsh declared that the Abkhaz authorities were ready to grant citizenship to Russian citizens, if they invest more than 2 million USD in the economy of the breakaway region.

46. Other matters of concern for Georgia are the sale of property owned by former Georgian residents, alleged daily violence against Georgians who have returned to Abkhazia and plans of the separatist governments to draft Georgian males for military service.

47. Abkhazia has enjoyed continuing Russian support in its endeavour for independence – for instance, speaking at a rally in Abkhaz capital Sokhumi on 30 September Deputy Chairman of the Russian Duma Sergey Baburin called on the Georgian and Russian authorities to recognise the independence of Abkhazia.

3. Fulfilment of commitments and obligations

3.1. Conventions

48. In Resolution 1415 (2005), the Assembly asked Georgia to:

i. sign and ratify the European Charter for Regional and Minority Languages (ETS 148) before September 2005. This deadline has not been respected as the procedure has only just started in Parliament;

ii. sign and ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS 106) before September 2005. This Convention was signed on 25 October 2005 but has not been ratified to date. On 2 November 2005 Georgia also signed the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities as well as Protocol No. 2 concerning inter-territorial co-operation;

iii. ratify the revised European Social Charter (ETS 163) before September 2005. It was ratified on 22 August 2005 and entered into force on 1 October 2005;

iv. ratify the Framework Convention for the Protection of National Minorities (ETS 157) before September 2005. Parliament authorised ratification on 13 October 2005. However, the Parliament separately adopted a resolution in which it refrained from undertaking a commitment to ensure the conditions allowing the use of minority languages in relations between the representatives of national minority groups and administrative authorities in areas predominantly populated by national minorities. The Georgian side also stated that it would not be responsible for implementing provisions of the Convention on the territories of Abkhazia and South Ossetia.

49. The representatives of Parliament assured us in November 2005 that this resolution was for internal use only to provide for domestic interpretation of the convention and that it was not a formal reservation or declaration that would be appended to the official ratification instrument to be deposited – hopefully soon – with the Secretary General of the Council of Europe.

3.2. Functioning of democratic institutions

50. In Resolution 1415 (2005) the Assembly qualified the political set-up in Georgia as a "semi-presidential system with very strong powers of the president; a weak parliamentary opposition; a weaker civil society; a judicial system which is not yet sufficiently independent and functioning; underdeveloped or non-existent local democracy; a self-censored media and an inadequate model of autonomy in Adjara". It insisted that the strong government currently in place should be backed by a system of checks and balances.

51. One year later these conclusions are still fully valid.

3.2.1. as regards the presidential powers

52. The Constitution of Georgia was amended in February 2004 in order to reflect the changing needs of the country. The Venice Commission had concluded at the time that the amendments did not fully correspond to a "semi-presidential model" as they retained stronger powers for the President. Its recommendations were not followed. There has been no progress over the last year.

3.2.2. as regards the Parliament

53. In February 2005, with 181 to 2 votes, the Georgian Parliament endorsed a constitutional amendment, regarding the reduction of the total number of MP seats from 235 to 150. According to this amendment, 100 MPs will be elected through a proportional, party-list system, while 50 MPs will be elected in first-past-the-post constituencies. The amendment will apply to the next Parliament, to be elected in 2008. Some NGO's were rather critical of the party-list system which was in use only in a very limited number of countries, such as Lebanon or Singapore. They were also concerned that the new system would no longer allow for independent candidates.

54. The number of parliamentarians required to set up a parliamentary faction has been downsized from ten to seven as a result of a constitutional amendment approved by the Parliament.

3.2.3. electoral issues

55. In Resolution 1363 (2004), the Assembly urged the Georgian authorities to amend the Electoral code before the March 2004 parliamentary elections. The two main recommendations were to reform the election administration and to lower the electoral threshold in the proportional representation system from 7% to at least 5%.

56. Unfortunately, these recommendations were not followed and, as a result, only one opposition party passed the threshold and won seats in the present Parliament. In our report to the Assembly in January 2005, we expressed concerns as to the efficiency and the credibility of the Parliament's control over the executive⁵.

57. The Georgian Parliament adopted amendments to the Electoral Code in April 2005. However, it did not follow the recommendations of the Assembly and the Venice Commission which, in its Code of Electoral Practice, promotes the principle of "balanced, fair and equal representation of all political forces" in the electoral administration. Instead, the Parliament opted for a professional, non-partisan composition of the Central and the district electoral commissions. Political parties only participate in the formation of precinct commissions.

58. By virtue of the adopted amendments, an open competition was organised in May 2005 for the recruitment of members of the Central Election Commission (CEC): 515 people applied. In June 2005 the Parliament elected the seven members nominated by the President from a shortlist. The opposition strongly objects to the new amendments. It boycotted the election procedure, claiming that rather than being non-partisan, the new CEC is composed of people close to the President and the ruling party.

59. The Venice Commission was not consulted in the course of preparation of the amendments concerning the CEC. However, on the request of the authorities, it is now providing technical and legal assistance to the newly formed CEC, in view of the forthcoming local elections to be held in October 2006.

60. Further amendments have to be sent to the Venice Commission before the end of the year.

61. We had extensive discussions with the President, the parliamentary Speaker, the head of the Assembly delegation and the opposition about these two issues. The main reasons given by the parliamentary representatives of the ruling party for maintaining the 7% threshold was that this was a way of strengthening the opposition. Any political formation aspiring to enter Parliament should be able to win a significant number of votes, they claimed; otherwise a lower threshold might prompt into Parliament clans or oligarch groups which do not have proper party structures throughout the country. The parliamentary Speaker also believed that such a threshold would stimulate opposition parties to unite and thus avoid bickering between minuscule formations in Parliament.

62. The President was however of the opinion, which we also share, that political pluralism within Parliament is also a way of strengthening democracy. We are glad that both he and our interlocutors in Parliament were ready to give the idea of lowering the threshold further consideration and we encourage them to do so as early as possible ahead of the next parliamentary elections.

63. The authorities do not seem ready to change their mind on the other contentious issue, the composition of the electoral commissions. They claim that the worst experiences in the recent history of the country had come from party-composed electoral administrations: there had not been a single free and fair election from 1995 to 2004, whilst the recent by-elections, managed by the newly elected professional teams, had finally produced good results. The parliamentary Speaker was adamant that

⁵ Doc. 10383 and Resolution 1415 (2005).

political parties should stay outside the CEC, but be given the right to monitor elections. It is true that there is no magic formula as regards the composition of electoral administrations; before the 2008 parliamentary elections the authorities will nevertheless have to assess thoroughly the situation.

3.2.4. "create a second parliamentary chamber"

64. The creation of a second parliamentary chamber objectively depends on the process of peaceful resolution of the conflicts in Abkhazia and South Ossetia. Bearing in mind the lack of progress in that respect, the requirement for a second parliamentary chamber does not seem relevant for the moment.

3.2.5. "revise the autonomous model for Adjara in the context of territorial and administrative reform of Georgia (Venice Commission)"

65. In our previous report, we criticised "the excessively limited autonomy" status of Adjara which was adopted by the Georgian Parliament in 2004, ignoring the recommendations of the Venice Commission. We expressed the view that the role attributed to the central Georgian authorities in appointing the region's Prime Minister and executive was a sign of unjustified lack of confidence in the citizens of Adjara. We insisted that changes were implemented not later than by the end of 2005.

66. It seems clear following our meetings in Tbilisi in November that the authorities have no intention of changing the status of Adjara. We were told that to the difference of South Ossetia and Abkhazia, Adjarians were ethnic Georgians and were not claiming any autonomy status.

67. It was also pointed out that 3 of the 5 seats that were recently contested in by-elections were in Adjara and they were all won by the ruling party. This should be regarded as an indicator of the support of the Adjarian population for the new government. It also appears that the integration of Adjara has been successful and that, as a result, there is strong public opinion which regards Adjarian autonomy as no longer relevant.

68. As the authorities had committed themselves to ensuring that the integration of Adjara would be done in the most democratic way, any further decision in that respect will have to be transparent and reached on the basis of the widest possible consensus. We believe that the failure of the authorities to deliver on the promise of a new autonomy status for Adjara sends a very bad signal to the separatist regions of South Ossetia and Abkhazia where the level of distrust towards the Georgian authorities is already extremely high.

3.2.6. Local self-government: complete the territorial and administrative reforms before the next local elections in line with the European Charter of Local Self-Government, especially concerning the election of all mayors

69. As from 1 April 2005, Georgia is a party to the European Charter on Local Self-Government (ratified on 8 December 2004). Although recent significant developments are appreciated as a clear signal of the Georgian authorities' will to fulfil their commitments in this field, the operation of the local government system is still threatened by a number of drawbacks and domestic legislation which has not yet been fully harmonised with the principles of the Charter.

70. In spring 2004, the Georgian authorities started an in-depth review of the local government system to bring it closer to European standards and make its operation more effective. To this aim, in July 2004, President Saakashvili established a State Commission on Decentralisation⁶, as the main body to promote local government reform in Georgia and co-ordinate the action of different public authorities towards decentralisation. In March 2005, the Commission agreed on a Council of Europe-proposed Action Plan, according to which it should deliver a Decentralisation Strategy – a policy document setting out the Government's medium- and long-term objectives in the field of local government reform.

⁶ The official name, as communicated by the Georgian authorities, is: "State Commission on Effective Governance Structures and Territorial Arrangement".

71. Another major step forward was achieved with the establishment of the National Association of Local Self-Government Units of Georgia in December 2004. More than 80% of the 1,100 Georgian local self-government units have already joined it. It is also represented in the State Commission.

72. The Constitution does not define the administrative and territorial organisation of the country, which, according to Article 2.3, will be done when the country's territorial integrity has been restored.

73. Currently Georgia comprises 12 regions⁷, 76 districts (*rayons*) and approximately 1,100 municipalities of various kinds and highly varying sizes. Only the latter can be considered local *self-government* units.

74. Local self-government own functions are marginal and central government exercises significant control at local level (e.g. over education, culture, health care, social welfare, public order and security). In fact, local authorities neither have the right, nor the ability "to regulate and manage a substantial share of public affairs under their own responsibilities" (article 3.1 of the Charter). In particular, most local self-government units are too small to work effectively.

75. The low level of fiscal decentralisation and of local budget independence still does not meet the requirements of article 9 of the Charter, although a law on the property of local self-government units was adopted in March 2005 and a draft law on the budget of local self-government units was transmitted to parliament in April 2005. Transfer of resources and property to local authorities has not been completed, there is no local taxation in practice and public resources are distributed in a somewhat *ad hoc* manner. The professional status, qualifications and technical ability of local authority staff is largely unsatisfactory, since there are no legal provisions requiring recruitment to be merit-based. So far, no real progress has been made in this field, although a concept paper on the status and training of local government officials has been drafted by the State Commission and submitted to the Council of Europe for an opinion.

76. The State Commission and the Parliament, in co-operation with other state bodies, are currently drafting or amending several laws, including the organic Law on local self-government, which, together with the Electoral Code, constitute the core legislation on local self-government. The legislative package also includes the draft on the supervision over local government activities and on citizen participation in the activities of local authorities. The Council of Europe is actively involved. Most recently, the members of the Georgian Parliament, in co-operation with the Council of Europe expert, proposed a timetable according to which most of these laws have to be adopted by the end of June 2006.

77. The authorities estimate that it would take about 5 years for the decentralisation strategy to be fully implemented. The first real test would be the local elections, scheduled for the autumn of 2006. One of the major issues of concern is the state of the electoral lists. This was one of the main criticisms during the recent by-elections. A Civil Registry does not exist in Georgia.

78. While the general rule is that in cities and municipalities the executive body (*Gamgeoba*) and the head of the executive body, equal to a mayor (*Gamgebeli*), are appointed by directly elected city and municipal councils, the Mayors of Tbilisi, Poti and Batumi are appointed by the President and the Mayor of Tbilisi does not have the status of elected representative. This appointment procedure infringes article 3.2 of the Charter and, on 16 February 2005, the Georgian Constitutional Court ruled that it also violates constitutional principles.

79. The preparation of new legislation regarding the election of the Mayor of Tbilisi became one of the subjects of controversy between authorities and opposition. Two alternative draft laws were tabled in Parliament: the one proposed by the ruling party envisaged indirect elections by the City Council of the capital, while the opposition insisted on direct elections.

⁷ The central Government is represented in the regions by appointed Governors. We heard strong criticisms as regards the lack of transparency and accountability of public funds put at the disposal of the Governors. We were told however that as from 1 January 2006, these extra-budgetary public funds will disappear. This does not solve the problem of private law foundations set up by certain governors in certain regions to collect funds from citizens or small enterprises by way of "voluntary contributions".

80. On 1 July 2005, the Parliament approved with its third and final hearing the government-backed proposal. The opposition parties condemned it as undemocratic. This new rule envisages the election of 25 members of the City Council, the *Sakrebulo* (i.e. 2-3 for each of the ten constituencies of the capital city) through a majority system, while the remaining 12 seats would be distributed through the so-called "compensatory list" among the parties which receive at least 4% of the votes in all ten constituencies of the capital city. The 37-member City Council would then elect the Tbilisi Mayor from among its members with at least 2/3 of votes for a four-year term.

81. The opposition made two appeals to the Central Election Commission (CEC) to allow the organisation of a referendum on direct or indirect election of the capital's Mayor. Both were turned down. Meanwhile, the Venice Commission was seized to provide an opinion on the draft amendments relating to the election of the Tbilisi City Council and the Mayor. As to the draft amendments to the Electoral code, the Venice Commission will adopt its opinion in December.

82. Work which has been carried out on the administrative and territorial reform is the key towards an effective and sustainable development of the country. The authorities' concept paper foresees by 2006-2008 a radical consolidation of the local government structure. The existing local units would simply be abolished and, as a first step, new municipalities with directly elected councils and a mayor, would be established at the actual district level. Subsequently, the biggest municipalities would have the possibility to split. Consolidation should create the conditions for assigning powers to the new municipalities in different fields, including municipal property, urban planning, education, health care, culture, civil works and utility infrastructure, social welfare services etc.

83. The concept paper also foresees the creation of 12 regions which, except for Abkhazia and possibly Adjara, would be managed by governors, appointed by the central authorities. If the reform keeps up the anticipated pace, these regions could then be turned into a proper second level of "self-governance", with directly elected bodies, by 2010-2012. The City of Tbilisi should be an administrative and territorial unit, with the status of a region. It would combine the community self-governance function with the carrying out of the government's policies for the development of the capital city.

84. The concept paper has been appraised by Council of Europe experts. They have underlined a number of important positive elements: the reduction of number of municipalities would strengthen their political, administrative and financial viability; the simple and objective approach would facilitate implementation; assignment of powers and functions would be more transparent. However, they have also expressed concerns, in particular:

– here are risks that the political costs of the "district focused" consolidation process will be very high: it will deal a severe blow to the existing local government bodies that have been democratically elected in 2003 and that have started, under very difficult and precarious conditions, to build up politically accountable local self-government structures. Moreover, the proposed strategy and timeframe⁸ for implementation seems to give little space to the consultation of existing local authorities and the population at large and allow for the full involvement of the newly established National Association.

– it is unclear what the real scope of local government powers and functions will be and whether they will be "delegated" (meaning that the owner would remain the State) or "transferred" (meaning that these functions would become true own local government functions).

85. We believe it is necessary to speed up the local government reform. However, the Georgian authorities should not rush into passing new legislation. In particular, it seems unrealistic to start implementing the administrative and territorial reform of Georgia by early 2006, when the concept of the reform itself needs to be revised in accordance with the Council of Europe's recommendations, and when a number of related issues remain unresolved. The timeframe for the preparation and

⁸ The Georgian authorities wish to organise the next local elections, due to be held at the latest in autumn 2006, according to the new administrative and territorial arrangement of the country. However, to date, no final decisions have been made regarding this issue and the drafting of a specific law has not started yet.

implementation of the territorial reform cannot be determined only on the basis of the next local elections date. The risk is too high that the reform will be disruptive and ineffective, despite the good intentions inspiring it.

86. It is regrettable that the State Commission on Decentralisation was bypassed when key topics such as the revision of the Law on Tbilisi and the Election Code of Georgia were submitted to Parliament. The co-ordination function of the State Commission and its role as a platform for institutional dialogue should be recognised, not only "on paper" but also in practice. The State Commission should be given real authority and the necessary means to lead the preparation and implementation of the decentralisation strategy.

3.3. *"Meskhetian population: create conditions for the start of the repatriation process"*

87. In its Resolution 1428 (2005) on the situation of the deported Meskhetian population⁹, the Assembly recalled that today, the Meskhetians live dispersed in several countries: the Russian Federation, Ukraine, Uzbekistan, Kazakhstan, Kyrgyzstan, Azerbaijan, Georgia and Turkey and that the situation of several thousand Meskhetian living at present in the Krasnodar region (Russian Federation) raises major concern. The Meskhetians were forcibly removed in 1944 from their homeland in south-west Georgia, now known as Samtskhe-Javakheti, to other parts of the then Soviet Union.

88. In addition to the requirements addressed to Russia, Resolution 1428 called on the Georgian authorities "to create, without any further delay, the legal, administrative and political conditions necessary for the start of the repatriation process of the Meskhetians who wish to return to their native region", stating that the essential principle should be the free choice of those concerned.

89. In our previous report, we encouraged the authorities in their intention to create a special commission with the mandate to estimate the number of families willing to return, start the process of preparation for the repatriation and to reverse the strong public objection against this process. In case the commitment was fulfilled, we were ready to consider a 2 year extension of the deadline to complete the return process, to 2011.

90. The Commission was indeed set up in March 2005 by a Presidential decree. It is chaired by the State Minister for Conflict Resolution Issues, Georgy Khaindrava. At its first meeting, it decided to send a mission to places of residence of Meskhetians in CIS countries, in order to estimate their number. Such a visit took place in October in Azerbaijan, Russia, Kazakhstan, Kyrgyzstan and Uzbekistan. The Commission is also working on the identification of potential areas of relocation in Georgia.

91. It is difficult to imagine, though, that the Georgian authorities would be able to deal with this massive task on their own. Since there are no reliable data on the demographic and social situation of the Meskhetians, it is important to stress the need for the relevant international organisations to get involved in this estimation.

92. Another Georgian commitment in this respect is the adoption of a law on repatriation of persons deported from Georgia in the 1940s by the Soviet regime. The Georgian authorities have made the fulfilment of this commitment conditional on the creation of appropriate conditions in the country for the return of this population. In February 2005 the relevant Parliamentary Committee started working on the law on repatriation. The Council of Europe, in its recently adopted Action Plan on Georgia, has foreseen to provide assistance in the preparation of a strategy for repatriation and for the adoption of a legal framework.

93. The Union of Georgian Repatriates, whom we met during our November visit, has recently completed a comprehensive database on Meskhetian repatriates in Georgia. The main findings are worth mentioning: as of 1 May 2005, there were 755 Meskhetian repatriates under Georgian jurisdiction, 163 of whom had emigrated. Not all of them had Georgian citizenship: the difficulties were related to bureaucracy in the department of Citizenship in the Ministry of Justice, as well as to

⁹ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 March 2005 (see Doc. 10451, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Vermot-Mangold).

obstacles to withdrawing citizenship of the country they came from. The study considers that the integration of the Meskhetians has been successful in several aspects, such as the Georgian language education and the ongoing recovery of their old names. However, the study also reveals that anti-Meskhetian feelings are still an everyday reality, leading to discrimination. There is not enough recognition of the deportation in history schoolbooks and museums.

3.4. 1990-94 conflicts

3.4.1. "adopt a legal framework for the restitution of ownership and tenancy rights or compensation for the property lost during these conflicts, by September 2005"

94. When presenting his peace initiative on South Ossetia, the Georgian President expressed the readiness of the Government to pay pensions to South Ossetians, including arrears since 1991, and to adopt and finance a revised version of the 2004 Draft Law on the Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict.

95. According to the Justice Minister a draft has been elaborated and a special commission will be set up to deal with practical arrangements. The approval of the restitution draft law has been postponed until the formal adoption of the Road Map for the South Ossetian peace plan. At the meeting of the JCC in Ljubljana on 15-17 November, the Georgian side distributed a draft for consideration to all participating delegations.

3.4.2. "ensure equal rights for internally displaced persons (employment and housing)"

96. In our previous report, we noted with satisfaction the assurances by the Georgian authorities that Ossetians who wished to return to their original place of residency were already provided with monetary compensation and housing.

97. We also expressed concern that internally displaced persons who fled South Ossetia and Abkhazia, almost a decade after the end of the hostilities, continue to live in very difficult conditions.

98. Our colleague Mr Cilevičs is preparing a report for the Committee on Migration, Refugees and Population on refugees and displaced persons in Armenia, Azerbaijan and Georgia. The Georgian authorities will have to give careful consideration to all its conclusions.

3.5. Rule of law

99. The reforms needed in this area remain critical for the success of the overall reform process. The first positive results are beginning to be felt – especially with regard to the fight against corruption, or some modest changes in the functioning of the judiciary. However, this also remains the area where the authorities have to face the most serious problems.

3.5.1. Reform of the judiciary

100. This undoubtedly remains one of the biggest challenges for Georgia. The President himself recognised, during our visit in November that the main weakness in the system is the state of the judiciary. Changes are needed in the legislation, in the practices and in the mentalities.

101. The legal framework is still heavily influenced by the Soviet legacy. The changes that are being gradually introduced in order to adapt it to modern democratic standards (with a strong Anglo-Saxon leaning) need to be accompanied by appropriate training of magistrates into new practices.

102. The system has been notorious for the corruption within it and the Justice Minister recognised that it still exists, although recent energetic efforts are beginning to bear fruit. Salaries of magistrates were increased significantly in 2004-2005 and a massive campaign against corruption in the judiciary was launched by the authorities. However, according to Human Rights Watch, "this campaign seems to lack a set of clear criteria for reviewing judges' performance, leading judges to fear dismissal for issuing decisions that displease the government".¹⁰ As recently as 21 November, three judges of the

¹⁰ Georgia and the European Neighbourhood Policy, Human Rights Watch Briefing Paper, 15 June 2005.

Supreme Court – Nino Gvenetadze, Davit Sulakvelidze and Merab Turava - convened a press conference and accused the Chairman of the Supreme Court, Kote Kublashvili, as well as Chairman of the High Council of Justice, Valery Tsertsvadze, of pressuring judges in both Supreme and City Courts.

103. Some judges, the most corrupt ones according to the authorities, have been removed; in parallel, young magistrates are being appointed. The High Council of Justice has already organised 4 entry exams and about 130 judges have been appointed in 2005. However, they often lack not only sufficient training but also practice and experience.

3.5.1.1 Legislation: Criminal Procedure Code

104. In our previous report we welcomed the assurances of the Georgian authorities that a new code of criminal procedure (CCP) was being elaborated. However, in February 2005 the Council of Europe experts expressed the opinion that while most of the proposed amendments were compatible with European standards, the new draft was considered to be largely unsatisfactory.

105. The Georgian authorities then decided to start by introducing amendments to the existing CCP in order to allow police officers/prosecutors/lawyers to get used to the changes and possibly revise weak points. The adoption of a new CCP is now planned for next year. We do hope that the wealth of expertise of the Council of Europe will be taken into account and that the new CCP will fully comply with the European Convention on Human Rights and other applicable standards.

106. The amendments which entered into force on 3 May 2005 in consultation with Council of Europe experts, have as main objective to strengthen the protection of detainees' rights. The burden of proof for the necessity of pre-trial detention has been placed on the prosecutor, rather than on the defence; the testimony given by the defendant in the course of preliminary investigation can only be admitted if it is confirmed in court. The maximum trial length of a person under accusation has been reduced from 24 to 12 months. The release on bail, virtually non-existent until recently, is now gradually being introduced and has reached 20% of the cases. The authorities recognise that this percentage is insufficient and has to be increased further. Another amendment, the reduction of the maximum pre-trial detention term from 9 to 4 months, is coming into effect on 1 January 2006.

107. In our previous report we expressed certain doubts about the application of the plea-bargaining system, which we believed – in its present form – on the one hand allows some alleged offenders to use the proceeds of their crimes to buy their way out of prison¹¹ and, on the other, risks being applied arbitrarily, abusively and even for political reasons. The authorities have assured us that the system would be improved through the introduction of an appeal procedure. According to information provided by the office of the Prosecutor General, draft amendments to the CCP under consideration by Parliament provide that the plea agreement can only be accepted after the court has ascertained that there has been no torture, inhumane or degrading treatment. The accused has the right to request criminal proceedings against the relevant person(s) in case of such treatment.

3.5.1.2. judicial reform

108. Concerning the reform of the Supreme Court, the High Council of Justice and the common courts, the EU has taken the lead, with a "Rule of Law Mission in Georgia" (EU JUST THEMIS) which was established in 2004 and which has recently produced a new "Concept on judiciary".

109. According to this "Concept", the Supreme Court is no longer a 1st instance jurisdiction and only deals with cassation cases. The High Council of Justice, which deals with the nomination of judges and with disciplinary proceedings against them, has its number of members increased from 9 to 18.

¹¹ According to President Saakashvili, the Georgian State budget has recouped a round 50 to 60 million USD: ex-President Shevardnadze's son-in-law alone paid back some 30 million USD.

110. A 3-stage court system has been introduced: 1/ city and district courts (with one single judge); 2/ appeal courts (with three judges) and 3/ Supreme Court, comprising 3 cassation chambers with 9-10 judges¹² each specialised in civil, administrative and criminal cases. A new disciplinary chamber has also been set up.

111. The authorities have also introduced the concept of specialised courts, starting with Tbilisi as a test case¹³. The Tbilisi Regional courts were merged and one Tbilisi City Court was created with three Specialised Court Collegiums, dealing with administrative, civil and criminal cases.

112. The three chambers of the Supreme Court are organised accordingly. Specific measures have been taken in order to avoid overloading it: for instance, the chamber dealing with civil cases will only consider property cases if the litigation value exceeds 5 times the previous amount. Civil cases will have to be solved within 2 months at first and second instance (5 months for very complicated cases) and 6 months for the Supreme Court. After the changes in the CCP, not all criminal cases would go to cassation, but only those which are considered as important for the development of legislation, contradict the practice of the Supreme Court or constitute a grave violation of procedure which might prejudice the judgement.

113. However, the fact that 60% of all cases still go to cassation reveals serious malfunctioning of the court system.

114. A serious and contentious issue continues to be the method of appointment of judges of the Supreme and Constitutional Courts. In December 2004 President Saakashvili submitted to Parliament draft constitutional amendments, according to which all judges of the Supreme and Constitutional Court would be elected by Parliament upon proposal of the President. This corresponds to the present system for the Supreme Court but differs from the present system for the Constitutional Court (one third of the judges appointed by the President, one third by Parliament, one third by the Supreme Court). In addition, all sitting judges of the Supreme and Constitutional Court would have lost their office following the entry into force of the amendments.

115. It is clear that the main objective of this last provision was to remove from office the "old guard" in the two institutions. Such an endeavour in itself is understandable, especially against the background of the corrupt and inefficient justice system that the new authorities inherited. The methods however have to be chosen in such a way that they do not contradict the democratic principles that the authorities are striving to promote in reforming the judiciary.

116. Following criticism of the draft by the Venice Commission, the provision that the sitting judges would lose their office was withdrawn from a new draft that the authorities submitted for appraisal.

117. At the same time however, in January 2005, the government proposed that the Constitutional Court should be moved from Tbilisi to Kutaisi, the second largest Georgian city. It was not difficult to see beneath the official reason advanced by the authorities – decentralisation – another attempt at solving the problem with the composition of the court. On 16 February the Parliamentary Committee for Legal Issues ruled against the proposal.

118. In an opinion adopted in February 2005, the Venice Commission found that the new draft represented a significant progress. It particularly commended the fact that the jurisdiction and powers of the Constitutional Court had been redefined and significantly increased¹⁴. However, the Venice Commission advised the authors of the draft against the appointment of members of the Constitutional and the Supreme Court by the Parliament on the proposal of the President. Although this method resembled the American system, the Venice Commission feared that in the present context, with the President enjoying an overwhelming majority in Parliament, it would not ensure a pluralistic composition of the two courts. The Venice Commission therefore recommended that a judicial council with constitutionally guaranteed independence is involved in the nomination. In order to guarantee the independence of the judiciary, the Venice Commission also advised the authorities that ordinary judges, including the judges of the Supreme Court, should hold tenure until retirement rather than have renewable terms.

¹² The 30 judges of the Supreme Court are nominated by the President and elected by Parliament for a term of 10 years.

¹³ Presidential Decree of April 12, 2005

¹⁴ see Venice Commission opinion: CDL-AD(2005)005.

119. However, soon afterwards, in March 2005, the relevant legislation for the Supreme and Constitutional courts was amended, introducing the possibility for judges to resign voluntarily after 3 years in office for the Supreme Court and 5 years for the Constitutional Court against life payment of their salaries, without any condition linked to age. According to information received at the Supreme Court, about 10 of its judges have taken advantage of this form of golden handshake, which appears to be extraordinarily generous.

120. In a country as poor as Georgia, this is not the proper way of solving the problem of the replacement of judges that are considered to be either incompetent or corrupt or both. We have also heard of plans aiming at extending the statute of limitations for disciplinary offences: according to information we received it would be possible to prosecute judges for judgments they delivered up to five years ago instead of three. For those judges who accepted the early retirement scheme proposed by the authorities, this would appear to give the authorities a possibility to reduce or cancel the lifelong salary they were supposed to receive on condition of retirement. We consider that the Georgian authorities should reengage in active dialogue with the Venice Commission in order to find, in the first place a dignified and, above all, democratic way of solving the problem with the composition of these two extremely important components of the judicial system.

3.5.1.3. Bar Association

121. Two entrance exams sessions were organised, in 2003 and 2004, by the High Council of Justice. The founding Assembly of the new Bar Association took place on 1 March 2005. It adopted a Charter and elected a Chair, but it has not started functioning yet because of legal disputes surrounding the entry examinations. These were recently resolved with an out-of-court settlement.

3.5.1.4. Training

122. Bearing in mind that the new judges can now be appointed as from the age of 28, the issue of their training is becoming critical. While the Council of Europe was not consulted on the reform of the common courts, it was strongly involved in the transformation of the present Judicial Training Centre into a High School of Justice, which will be the body ensuring the professional training of judges. The relevant law has to be adopted before the end of the year and the School should open at the beginning of 2006. In doing so, the authorities should take into account one recommendation of the VC regarding the constitutional amendments: that an independent judicial council could give an opinion on the suitability or qualification of candidates for the office of judge.

3.5.1.5. Prosecutor General Office

123. The reform of the Prosecutor General Office is conditioned by the adoption of the new Code of Criminal Procedure. The office is actively involved in the reforms introduced following the amendments to the CCP and the fight against corruption (see chapters 5.1.1 and 5.3).

3.5.2. Reform of the police

124. During the last two years the Georgian Ministry of Interior and the police as such have undergone substantial changes: the Ministry of State Security was merged with the Ministry of Interior; a new police force, the Patrol Police (public order police) has been created and is considered as a great success; the internal troops have been transferred to the Ministry of Defence; a process for combating corruption has been introduced within the ministry; the procedure for selection of police cadets as well as the basic education and in-service training is developing fast.

125. The authorities now have to modernise the Law on Police.

3.5.3. Fight against corruption: "intensify efforts, in line with GRECO recommendations"

126. Corruption was and continues to be one of the biggest problems in the country. The recent months, however, have brought the first visible and encouraging signs that the problem is beginning to be tackled.

127. Georgia was the first and only GRECO member to be subjected to the so-called non-compliance procedure¹⁵. Since then, the authorities have fulfilled one of the most important GRECO recommendations: a Strategy and an Action Plan for the fight against corruption was adopted in very close co-operation with the Council of Europe and its implementation started immediately.

128. The strategy foresees an anti-corruption element in virtually all the main sectors of public life where reforms are needed. This is why the State Minister for Reform Co-ordination, Kakha Bendukidze, has been entrusted with the implementation of the action plan. In addition to reform of legislation and improved performance of the judiciary and law enforcement institutions, it envisages direct measures such as the creation of a special unit within the office of the General Prosecutor and the Ministry of Interior which would deal with corruption crimes committed by high officials. The plan also foresees lowering of administrative barriers, ensuring transparent privatisation and better management of human resources in the civil service. An important ingredient of the plan is the compliance with international standards, including the implementation of all GRECO recommendations and the ratification of the Council of Europe Criminal Law Convention on Corruption (the Civil Law Convention on Corruption has been in force in Georgia since November 2003).

129. For the authorities, the fact that the state budget has increased five times over the last two years is the most significant indicator of the success in the fight against corruption. Over the same period, the number of civil servants has been reduced by 20,000 and their salaries have undergone a 7-fold increase; up to 20-fold for the high positions. The area in which the population has felt the greatest improvement is the work of police and traffic police. The authorities also praise themselves for eradicating corruption in public access to university, by creating a central examination committee and universal tests.

130. The biggest remaining challenges are in the field of tax and customs administration. In June, Finance Minister, Valery Chechelashvili, was sacked after several senior tax officials were detained on suspicion of corruption.

131. A new tax code has reduced the number of tax types from 15 to 7. A new customs code has lowered the tariffs. The registration process for small and medium enterprises has been simplified. According to the Vice-Minister for reform co-ordination, the new legislation aims at reducing the role of the state to the necessary minimum and promoting free trade and competition.

132. The ambition to crack down on corruption has brought some paradoxes, as the President himself acknowledged – for instance, sanitary check-ups of restaurants or technical control for cars have been suspended as it has proved impossible to prevent bribes. Sometimes, the fight against corruption has become a victim of its own success: public administration is becoming passive and is afraid of doing anything for which it could be accused of being corrupt. The President complained that for this reason it had even been difficult to obtain architectural permission for the building of the new presidential palace. This fact shows that, in parallel to legislation, the authorities need to develop codes of good practice and of ethics for public administration – another area in which the Council of Europe could also provide useful assistance.

133. The Council of Europe has also helped Georgia significantly in the field of funding of political parties. In 2003, a Group to monitor the funding of political parties and electoral campaigns was established in Strasbourg. The Group consists of representatives of political parties, media and NGOs, as well as international organisations as observers. It played an important role during the elections which triggered the Rose Revolution. A series of meetings on the question of financing political parties were carried out in Georgia in the period 2004/2005. In July 2005 the Group prepared draft amendments to the electoral code and the law on political associations. Representatives of the opposition and ruling National Movement parties, as well as officials from the Central Election Commission (CEC) signed a Memorandum on Funding of Political Parties at an event held under the auspices of the Council of Europe in Strasbourg. The law on transparency of party funding is due to be adopted in December 2005.

¹⁵ The procedure was triggered after GRECO's First Round Compliance Report on Georgia in December 2003 concluded that, despite considerable efforts, Georgia was not in compliance with GRECO's First Round recommendations. Since then, Georgia has had to submit progress reports at each Plenary Meeting and a Second Round evaluation by GRECO was made in October.

3.6. *Human rights*

134. The Council of Europe completed in February a Report of the Compatibility of Georgian legislation with the provisions of the European Convention on Human Rights and its Protocols. Several recommendations were addressed to the authorities in order to bring Georgian legislation in line with European standards and thus reduce the number of cases before the European Court of Human Rights¹⁶. It turned out, for instance, that the Georgian translation of the Convention and its Protocols does not correspond to the original texts.

135. The Human Rights Watch briefing paper on Georgia and the European Neighbourhood Policy identified six main areas of concern: torture and ill-treatment, independence of judges, media freedom, freedom of assembly, refugees and freedom of religion.

3.6.1. *Conditions of detention*

3.6.1.1. "alleviate overcrowding in prisons and pre-trial detention centres"

136. According to HRW, the lack of resources in Georgia's prisons lead to inhuman and degrading treatment of detainees. Prisoners are deprived of basic hygiene and nutrition, have to sleep in shifts and corruption is endemic. A new prison, with much better conditions, was opened in Kutaisi end of 2005. It will accommodate around 1 500 prisoners in cells designed for 2, 4 or 6 detainees. A new pre-trial detention centre which will accommodate around 3000 persons is due to open in Tbilisi in 2006. According to the authorities, once this new prison is built, the problem of overcrowding should be solved. The amendments to the Criminal Procedure Code adopted in March which promote the use of release on bail (see paragraph 106) should also help alleviate this serious problem.

137. The reform of the prisons is declared to be one of the priorities of the Ministry of Justice for the next 3 years. For the first time since 1999 an international organisation – the Council of Europe – was given the possibility to conduct a reassessment of the penitentiary service. Council of Europe experts prepared a report which was recently discussed with the Ministry of Justice and the Prosecutor's office and an Action Plan to improve prison conditions is in the making.

3.6.1.2. "eradicate the "culture of violence" in prisons and pre-trial detention centres"; "eradicate torture"

138. Torture and ill-treatment, especially in pre-trial detention centres with the aim of extracting confessions, has been a serious problem in Georgia. The amendments introduced to the CCP, in particular those according to which any statement by the accused obtained during preliminary investigation can only be admitted as evidence if confirmed in court, should help curb these practices. In June the Criminal Code was amended to define the crime of torture, inhuman or degrading treatment in line with internationally recognised standards. Torture is now punishable with imprisonment for a period of 5 to 10 years, or 7 to 15 years for aggravated torture by public official. The Prosecutor General issued Internal Guidelines which forbade any possibility of using plea agreements with respect to victims of torture and recommended increased use of release on bail.

139. Other positive developments, noted in the latest report of Amnesty International¹⁷ (released on 23 November 2005) are: the setting up of a department in the Interior Ministry which investigates cases of torture or ill-treatment; increased transparency of the relevant department at the Office of the General Prosecutor about investigations and prosecutions; the extensive monitoring of preliminary detention facilities by the Public Defender (Ombudsman) (see chapter 6.3)

140. However, in its briefing paper Amnesty considers that impunity for torture and ill-treatment is still a big problem. In dozens of cases where the procuracy has opened investigations the perpetrators have not been brought to justice. Amnesty International has obtained many examples of cases demonstrating that investigations into allegations of torture or ill-treatment have not been conducted in

¹⁶ There are currently about 100 applications against Georgia pending before the European Court of Human Rights. Five concern people detained in Abkhazia and raise similar issues as *Ilaşcu and Others v. Moldova and Russia*. Another application, already admissible, has been brought by the Gidani Congregation of Jehovah's Witnesses.

¹⁷ Georgia: Torture and ill-treatment – still a concern after the "Rose Revolution" (AI Index: EUR 56/001/2005) <http://web.amnesty.org/library/index/engeur560012005>

a prompt, impartial and independent manner. Judges often ignore torture allegations and investigations do not lead to prosecution. Amnesty International also expresses concerns that many cases still go unrecorded, either because the police hides them or because detainees are afraid to complain.

141. Statistics provided to the co-Rapporteurs by the office of the General Prosecutor indicate that the number of law enforcement officials brought to criminal responsibility for 2005 (until 1 November) is only slightly higher than in 2004 – 25 in 17 cases, compared to 22 in 11 cases. However, the court decisions against law enforcement officials have almost tripled – 17 in 8 criminal cases in 2005 as compared to 6 in 3 cases for 2004.

142. In our previous report we were seriously concerned about the alleged ill-treatment of the former head of the Audit Chamber Sulkhan Molashvili. He is now in a prison hospital, thanks to an interim measure ordered by the European Court of Human Rights in force since 26 July 2005¹⁸. Unfortunately, no progress has been made with regard to the investigation of torture and ill-treatment. The General Prosecutor said to the monitoring mission that Mr Molashvili was refusing to co-operate and had declined giving information about the persons who had tortured him. The doctors who had examined him at the beginning have been charged for negligence. Other officials hinted at the possibility of self-inflicted injuries, an allegation which we consider totally absurd. Another high profile case currently pending before the European Court of Human Rights under Article 3 of the Convention is that of former Energy Minister Mr Mirtskholava, who was also transferred to a prison hospital following an interim measure of the Court in August 2005.

143. The Georgian authorities authorised in July the publication of the Report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment of Punishment (CPT) for 2004. This is a decision which has to be commended; by making the CPT recommendations public, the government would be also publicly accountable for their implementation.

3.6.2. Media

144. Georgia boasts a large variety of print and broadcast media, ensuring pluralism of views and opinions. In recent years the legislative framework with regard to the media has been improved and some of the laws, such as the Law on Freedom of Speech and Expression, adopted in June 2004, are considered as the most democratic and liberal in the region. Several media organisations and associations are active in the protection of journalists' rights and in developing the principles of self-regulation.

145. The OSCE Representative on Freedom of the Media, who has launched a broad campaign for decriminalisation of libel throughout the OSCE area, has on several occasions praised Georgia for revoking criminal liability in July 2004. According to a comprehensive database on criminal and civil defamation provisions and court practices in the OSCE region, defamation, libel and insult are civil offences and government officials and public figures do not enjoy higher protection than other individuals. However, there is still no upper limit for fines in cases of civil defamation. The average fine is of 2,000 USD, but the maximum – 25,000 USD – seems disproportionate with regard to the financial means of most media outlets.

146. In November we met some of the most critical journalists and media representatives. The main concerns that were voiced were about what critics saw as direct and indirect governmental pressure, financial unsustainability, lack of transparency with regard to media ownership, difficult access to official information and intimidation and occasional violence by government officials, especially in the regions.

147. One of the cases which was frequently mentioned is the suspension of the talk show *Archevanis Zgvarze* (On the Verge of Choice) on Mze TV, reportedly owned by two MPs, one of them brother of the Secretary of the Georgian National Security Council and the other one the Head of the ruling Parliamentary Faction. The show had been critical of the authorities and had recently cast

¹⁸ Mr Molashvili lodged an application (n° 39726/04) with the Court on 27 October 2004 alleging under Article 3 of the Convention that he had been tortured and that he was not receiving sufficient medical care in prison. Under Art. 39 of its Rules of Procedure, the Court requested a) that he be transferred to a hospital and b) that his state of health be assessed by a joint medical commission composed of 4 doctors appointed by the authorities and 4 appointed by the applicant

doubts over the official version of the death of Prime Minister Zhvania. The show presenter, Irakli Imnaishvili, apparently was told that the show was being suspended because of low ratings. He himself denies to have been subject to direct pressure but sees a link between the suspension and the fact that the MP and head of the Georgian delegation to the Parliamentary Assembly of the Council of Europe, Georgi Bokeria, had challenged him as unprofessional in a live show. Mr Bokeria, for his part, justified his outspokenness with an outbreak of indignation – the TV presenter had compared a recent police crackdown on a demonstration of wrestlers (associated in the former Soviet world with racket and violence) to the bloody suppression of the Georgian pro-independence demonstrations by Soviet troops in 1989.

148. Both Mr Bokeria and the President maintain that the freedom of expression is total. Limits have been pushed so far that a TV channel had recently started showing live sex on television.

149. Another much-commented recent case is that of the host of the political talk-show on TV "202" Shalva Ramishvili, who was video-recorded while trying to extort money from a politician in exchange for a favourable coverage of his activities. Media commentators object to the fact that the TV coverage violated the presumption of innocence. A similar violation, according to critics, occurs in a government-sponsored reality show (called "Patrol") which illustrates the work of the law enforcement agencies in fighting corruption.

150. Lack of financial independence and of transparency with regard to ownership appears to be one of the major problems for the media in Georgia. According to most interlocutors, there is hardly any media outlet which can sustain itself financially. In such an environment, the media can become an easy instrument for money laundering. The authorities are aware of the problem and have recently exempted the print media from any taxes, except for social contributions. There are also no limits on advertising.

151. Several broadcast and print media have nevertheless closed down in recent months and this fact has been subject to intensive political speculation. The government has also been criticised for cancelling newspaper subscriptions of state organisations – this however seems to us a fully justifiable measure in the course of a reform which tries to rationalise the use of limited state resources.

152. Although it is difficult to ascertain whether this is a result of government pressure or simply of poor bureaucratic performance, access to information seems indeed to be a problem. Certain officials and government press services continue to be selective about the information provided and invitations to press conferences, depending on whether the journalists are considered as well-intended or not.

153. Another major problem, which we emphasised in our previous report, is self-censorship. Some of it undoubtedly is caused by a sort of "protocol journalism" or a "Bush syndrome": in the same way as most media in the US had considered it anti-patriotic to criticise the US President for taking the country to war in Iraq following the 9-11 events, many journalists in Georgia probably consider it politically incorrect to criticise the leaders of the Rose Revolution. But financial instability, lack of democratic practice and poor professional training are certainly also to blame for this situation. The culture of editorial independence takes time to build and so does the need to see the role of the media as a neutral and objective public watchdog.

154. With regard to the electronic media, the creation of a highly professional public service broadcasting as a benchmark of quality would be critical. Following the adoption of the Law on Broadcasting in December 2004, the former state television was transformed and started operating as Public Television in 2005. The 9 members of the Supervisory Board were elected by Parliament in April 2005 from the larger nominal list presented by the President. Subsequently, the members of the board elected the Director General of the public service broadcaster, Tamar Kintsurashvili, in August 2005. The election was also subject to controversy – critical journalists blame Mrs Kintsurashvili, who was a member of the board, for taking advantage of the failure of the board to elect a Director in the first competition and adjusting her own election bid accordingly in the second round. She denies the allegations, stating that the debates about the necessary profile of a Director had been public and anybody could have applied in the second round in the same way as she had done.

155. The meeting of the monitoring mission with the senior staff of the Public TV left the impression that the leading team is professional and well aware of the vocation of a public service broadcasting operation. In addition to political pluralism, it is trying to promote ethnic and religious diversity, notably by broadcasting news in the five minority languages once a week. However, the television faces major financial difficulties, leading some critics to predict that it will soon be bankrupt. Although it should have done so within 1 month after the adoption of the law the state has not transferred yet all the equipment, which is in any event outdated, and does not allow for a good signal transmission over all the territory of Georgia. The Public TV has furthermore inherited all the debts of its state predecessor which amount to around 20 million Lari as compared with a total budget of 60 million Lari. Although the State TV had up to 3,000 employees until 2003, downsizing to date still leaves the new public TV with around 700 staff members.

156. The annual budget is defined by Parliament as a percentage of the income tax and although there is a lower limit (the budget allocated to the Public TV should be no less than 0.15% of the income tax), there is a risk that the level of generosity of the Parliament towards the television might be conditioned by the television's degree of favourable coverage.

157. The authorities should realise that the building of strong, vibrant and independent public service broadcasting would be the best gauge of their commitment to free and highly professional media.

3.6.3. Ombudsman

158. According to the Ombudsman Sozar Subari, his office is the only state institution enjoying the full confidence of the population. The budget of the office for 2005 has been significantly increased in comparison to 2004 (400,000 USD, as compared to 100,000 USD), but he estimates that the minimum necessary in order to fulfil his functions properly would be 700,000 USD and that the amount should be allocated by Parliament. In Mr Subari's view, the independence of the institution has increased, but the competences of the institution are still rather weak and confined to monitoring. He regretted that the Ombudsman can request information from any public official but there is no punitive action if such information is not provided.

159. Since January 2005 the office has been conducting comprehensive monitoring of police divisions and sub-divisions pre-trial detention centres in Tbilisi and in the country. The objective is to unveil cases of law violations by police, namely torture, inhuman or degrading treatment, illegal detention and procedural violations. The analysis so far has shown some positive evolution – while the main violations revealed at the beginning of the monitoring were torture and beatings, now they are more of a procedural nature (for instance, failure of explaining rights to detainees). Most of the injuries occur at the moment of detention, but their rate of occurrence is still high – 40% – which according to Mr Subari means that police still applies too much violence. He believes that most of the problems stem from insufficient resources, poor management and corruption. The office has regional branches and can also entrust NGOs to enter police stations at any moment.

160. The office has recently started monitoring the conditions in mental hospitals and has found many violations.

161. We believe that the office of the Public Defender is doing important and valuable work and therefore has to be granted all the political and financial independence that it needs to perform its functions in the full interest of the society.

3.6.4 Minorities

162. One of the main problems the Georgian authorities will have to tackle once the Framework Convention is ratified is the situation of the Azerbaijani and Armenian minorities living in Georgia. A motion for a resolution¹⁹ concerning the position and social problems of Azerbaijanis compactly living in Georgia has been tabled by our colleague Mr Husynov and others to draw attention to the problem. We have not had the opportunity so far to go to these regions and will address the issue in one of our next reports.

¹⁹ Doc. 10616, 27 June 2005

163. According to the NGO's we met in November the main problem faced both by Armenians and Azerbaijanis living in Georgia is on the one hand economic integration and on the other hand education. We learnt to our great surprise that schools in the regions populated by Armenians and Azerbaijanis were offering education only in the Azeri and Armenian languages or in Russian and that a very large part of the population does not speak Georgian at all. Most of the television and radio programmes are broadcasted from the neighbouring countries and the nation wide Georgian TV only has a 20 minute news programme in every minority language once a week (there are five official minorities in Georgia so news are broadcasted only once a week for every minority).

164. On the other hand, teaching of minority languages also deserves attention. Azeri and Armenian children living outside the above-mentioned regions, but also other minorities, apart from Russians, e.g Ossetian, Ukrainian, Greek, Yezid, are rarely able to study their own languages in the schools. With those attending schools where Russian is the medium of instruction, there appears to a problem learning Georgian satisfactorily.

165. We consider it of utmost importance that the authorities ensure that all citizens of Georgia have sufficient command of the Georgian language, while at the same time respecting the cultural rights of the minorities living on Georgian territory. Apparently there are plans to introduce bilingual education in these regions by 2011 and a number of Georgian teachers have been sent to the regions as from this year to teach Georgian history and literature. The recently introduced voucher system also provides for the specific needs of minorities insofar as it foresees different rates to allow them to study near their place of residence. There is an urgent need to train teachers and to prepare new textbooks. As for the entrance exams to university we were told that the Georgian language exam every student has to take was easier for minorities.

166. Catering for minorities' needs²⁰ or wishes in the field of education while at the same time ensuring their full integration into Georgian society is one of the major challenges for the years to come and should become one of the top priorities for the authorities. This is obviously a question of budgetary resources – and we learnt with satisfaction that the budget for education has been significantly increased²¹ – but also of political will, in particular with regard to the development of good neighbourly relations with Armenia and Azerbaijan.

4. Conclusions

167. Two years after the Rose Revolution, the overall impression of the situation in the country is "less euphoria, more realism", as the Georgian President put it himself. While during our previous visit we sometimes had the feeling that reforms were chaotic and inconsistent, now one can see a much more structured approach. The pace of the reform still sometimes makes it difficult to allow for really sustainable implementation. But reform strategies have been elaborated and there is generally a better focus on what needs to be done in the long term.

168. The greatest challenges in our view remain: the building of democratic institutions with a strong and efficient system of checks and balances, including at local level; the reform of the judiciary; the fight against corruption; the creation of an efficient civil service; respect for freedom of expression and information. Last but not least, finding a peaceful solution to the conflicts in South Ossetia and Abkhazia.

169. Concerning the checks and balances, they usually come from a strong and constructive opposition and independent, high quality media. It is clear that neither of these can be bred artificially, but the authorities have the obligation to create the necessary conditions so that both can develop freely. The opposition leaders that we met acknowledge themselves that in the post-revolutionary environment, when there is a broad consensus over the objectives of the democratic reform, it has been difficult to come up with a distinctive alternative political programme. They define their role for the time-being rather as a watchdog. This is understandable. In the longer run, however, the authorities have to ensure free and fair representation of the political parties in the central and local legislative and executive branches. The electoral legislation has to be amended accordingly.

²⁰ It was also pointed out to us that much more needs to be done not only for national minorities but also for children with disabilities, both physical and mental in order to improve their integration in society.

²¹ In 2004, the education budget amounted to 80 million Lari. For 2006 it will be increased to 280 million Lari.

170. Bearing in mind the strong support that the President enjoys, it is also difficult to justify the strong powers that his institution benefits from in the nomination of key officials in different institutions or in the judiciary. The authorities should remember the old saying, according to which every ruling party should ensure that the regulation in place would guarantee its rights when one day it finds itself in opposition. It is not up to the co-rapporteurs to investigate speculations that key state positions are being occupied by people close to the ruling elite. It is for us, though, to insist that any successful leadership should be beyond suspicion with regard to the people entrusted with authority. The leadership of the country should therefore create all the necessary conditions so that new talents could emerge at every level and in every sphere; it should also allow them to develop freely, in an environment of pluralism of views and approaches.

171. Although not all the recommendations set forth in our previous report have been fulfilled, we believe that the authorities have made a serious effort to comply with their commitments and obligations. But this is only the beginning; the most serious work still lies ahead.

172. When adopting the previous report, President Saakashvili was reported as saying that the Council of Europe could give recommendations but it was up to Georgia to decide which path to follow. One year later we see that the reforms that so far have been the most successful are those where there has been strong co-operation with the Council of Europe. In the recent historic context, Georgia's aversion of anything reminiscent of a "big brother" is understandable. But Georgia is part of the Council of Europe and, like all its other members, has a responsibility in moving democracy in Europe forward.

APPENDIX I

COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY MEMBER STATES OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (MONITORING COMMITTEE)

**Programme of a fact-finding visit to Georgia
(11 to 13 November 2005)**

Co-rapporteur: Mr Evgeni KIRILOV (Bulgaria, SOC)

Secretariat: Mrs Caroline RAVAUD, Head of the Secretariat of the Monitoring Committee
Mrs Bonnie THEOPHILOVA, Co-Secretary to the Committee

| |
|----------------------------|
| Friday, 11 November |
|----------------------------|

- | | |
|-------------|--|
| 03.50 | Arrival at Tbilisi Airport Transfer to the hotel "Tori" |
| 09.00-10.30 | Meeting with Georgian NGOs (<i>Council of Europe Information Office</i>) <ul style="list-style-type: none"> - Mr Levan RAMISHVILI, Liberty Institute - Mr Arnold STEPANIAN, Public Movement for Multinational Georgia - Ms Ana DOLIDZE, Georgian Young Lawyers Association - Ms Koba NADIRADZE, Georgian NGOs Coalition of the Disabled and Veterans - Mr Andrei KHANZHIN, European Centre for Minority Issues - Mr Marat BARATASHVILI, Union of Meskhetian Repatriates |
| 10.45-12.30 | Meeting with the parliamentary opposition |
| 10.45 | "Right Opposition" <ul style="list-style-type: none"> - Mrs Pikria CHIKHRADZE - Mr Zurab TKEMALADZE - Mr Koka GUNTSADZE - Mr Giorgi TSAGAREISHVILI |
| 11.25 | "Democratic front" <ul style="list-style-type: none"> - Mr David ZURABISHVILI - Mr Levan BERDZENISHVILI - Mr Ivliane KHAINDRAVA - Mr Kakha KUKAVA |
| 12.30-14.00 | Lunch (<i>"Kopala" Restaurant</i>) <ul style="list-style-type: none"> - Ambassador Torben HOLTZE, Head of European Commission Delegation in Georgia - Mr Atanas BALTOV, Senior Political Officer, United Nations Observer Mission in Georgia (UNOMIG) - Mr Veselin NIKOLAEV, Deputy Head of OSCE Mission to Georgia - Ambassador Donald MACLAREN OF MACLAREN, United Kingdom Embassy in Georgia |

- 15.00 Meeting with:
- Mrs Nino BURJANADZE, Speaker of the Parliament
 - Mr Mikheil MACHAVARIANI, Vice-Chairman of the Parliament
 - the Delegation of the Parliament of Georgia to the PACE (Mrs Irina KURDADZE, Mrs Nino NAKASHIDZE, Mrs Elene TEVDORADZE, Mrs Pikria CHIKHRADZE, Mr Levan BERDZENISHVILI, Mrs Nino KALANDADZE)
- 16.00 Meeting with Mr Zurab ADEISHVILI, Prosecutor-General
- 17.00 Meeting with Mr Sozar SUBARI, Ombudsman of Georgia
- 18.00 Meeting with Mr Kote KEMULARIA, Minister of Justice
- 19.00-20.30 Dinner hosted by the Delegation of the Parliament of Georgia to the PACE
(*"Old House" Restaurant*)
- 21.00-22.30 Meeting with Mr Mikheil SAAKASHVILI, President of Georgia

Saturday, 12 November

- 10.00 Meeting with Media Representatives
(*Council of Europe Information Office*)
- Mr Tamar CHIKOVANI, Radio Liberty
 - Mr Mate KIRVALIDZE, TV Company Imedi
 - Mr Zaza GACHECHILADZE, Newspaper Messenger
 - Mr Zurab MACHARADZE, Newspaper Rezonansi
 - Ms Natia ABRAMIA, Georgian National Association of Broadcasters
- 11.30-12.30 Meeting with Mr Mikheil GOGISHVILI, Vice-President of the Supreme Court
- 13.00-13.50 Lunch at the Parliament with Mr Giorgi BOKERIA, Chairman of PACE Delegation
(*"Press-Café"*)
- 14.00 Meeting with Mr Paata GAPRINDASHVILI, Director of the Department for International organizations of the Ministry of Foreign Affairs
- 15.30 Meeting with Mr Djoni KHETSURIANI, President of the Constitutional Court
- 17.00 Meeting with Mr Vakhtang LEJAVA, Deputy to the State Minister for Reforms coordination
- 18.30-19.30 Meeting with Mrs Tamar KINTSURASHVILI, Director of Public TV

Sunday, 13 November

- 07.50 Departure to Vienna

APPENDIX II

**Comments by the Georgian Delegation on the
Explanatory memorandum on the
Implementation of Resolution 1415 (2005) on the honouring of
obligations and commitments by Georgia**

Paragraph 7:

Georgia's efforts to increase government revenues by reducing corruption and the shadow economy are expected to support moderate fiscal deficits of about 2.0%-3.5% of GDP in 2006-2008.

The net general government debt burden will decline to an expected 32.0% of GDP in 2006 and 28.4% in 2008, compared with a level of 61.0% in 2002, and a 2005 of 60.6% GDP Per capita 1,480 USD in 2005.

Paragraph 10:

Infrastructure rehabilitation, oppositions is complaining about, is going on not only in those places, where by-elections were held, but in all regions across the country. Government is not going to stop all legitimate activities, when elections are going on. No prove was presented by any election monitor or even those opposition parties, who make this allegations, that public funds were misappropriated.

Paragraph 11:

Prime Minister dismissed Mrs Zurabishvili after she challenged MPs right to question the minister, and demanded from president to dissolve the parliament.

Paragraph 21:

In march 2005 Parliament passed resolution warned to declare all Russian military bases illegal unless agreement on their withdrawal was concluded before May 1 2005.

Paragraph 33:

The Russian government refused to make information on officer of Russian military intelligence Anatoli Sisoiev accused of plotting Gori terrorist act under "national security considerations" despite their commitment to bilateral agreement on mutual legal assistance.

Paragraph 34:

No militarization is going on in Georgia. All these measures are part of preparations for NATO membership. There is no connection between purchasing of military equipment and policy towards ethnic conflicts President, Prime Minister, as well as whole political leadership several times reiterated firm commitment to peaceful resolution.

Georgian Armed forces even after increase will be the smallest in our region, 20 000, compared with 60 000 of Armenia and 80 000 of Azerbaijan. It's worth to remind, that under CFE treaty we can have 40 000 soldiers. We have less than half of quotas for heavy military equipment (like tanks, ACVs, artillery systems), provided by CFE treaty.

Paragraph 36:

The key officials are current or former representatives of security and military forces of Russia.

In case of decreasing the 7% threshold electoral systems are prone to generate indecisive electoral results and weak, ineffective, and unstable governing coalitions where it is difficult for voters to assign clear responsibility; create institutional checks and balances characterized by policy stalemate, administrative paralysis, and legislative gridlock; foster cautious, slow and incremental decision-making and limit the ability of policymakers to respond in timely and coherent fashion to a sudden crisis; encourage the legitimating of extremist parties on the far right and left; and weaken the ability of the electorate to throw out some 'king-making' parties that are semi permanent members of coalition governments. Fragmented parliaments and coalition governments makes it more difficult for voters to assign blame or praise for the government's performance, and to reward or punish parties accordingly, even if the public becomes deeply dissatisfied with those in power.

Georgian politics still has not overcome its main weakness – tendency to fragmentation. Even with the relatively high threshold, the composition of parliament is still Balkanized. In 1st Parliament after independence we had 28 factions sitting, in 2nd Parliament -10, in 3rd – 18 and in current – 6. This is a clear indicator that decreasing the threshold might lead to more fragmentation and will have a negative impact.

Paragraph 68:

Prime Minister of the region is approved by Supreme Council elected by residents of the region.

The decision on status of Adjara was made against the public opinion throughout the country and in Adjara itself to abolish the autonomy altogether. Major opposition groups campaigned on that platform. As already mentioned in the report, in this respect there is a substantial difference between Ajara and breakaway regions.

Paragraph 78:

Currently, district governors (gamgebelis) are also appointed by the president.

Paragraph 80:

The proposal has been approved only in second hearing. According the proposal, council manager would be elected not by 2/3rds but by simple majority of the Council.

Paragraph 81:

The Venice Commission gave positive assessment of proposed electoral system for Tbilisi Council:

"Regarding the electoral system, a municipal council election must offer two main advantages: ensure that the municipal council has real authority, and enable at the same time opposition to be represented in the Council. The redistribution of electoral seats in 10 majoritarian constituencies (with two or three elected representatives per constituency) seems to be in accordance with these principles."

DRAFT OPINION ON THE DRAFT ORGANIC LAW On "Making Amendments and Additions INTO the ORGANIC Law - ELECTION CODE of Georgia" on the basis of comments by Mrs Mirjana LAZAROVA TRAJKOVSKA (member, "the former Yugoslav Republic of Macedonia") Mr Bernard OWEN (expert, France) (Strasbourg, 17 November 2005, Opinion no. 358 / 2005, CDL-EL(2005)047)

As about rest of local government units, we adopted council-manager system. In council manager form of local government, the chairperson of the governing body and council members are political leaders and policy makers elected to represent the community and to concentrate on policy issues that are responsive to citizens' needs and wishes. The manager is appointed by the representative body to carry out policy and ensure that the entire community is being served.

The council-manager form encourages open communication between citizens and their government and neighbourhoods are able to strengthen their voice and influence. Under this form, each member of the representative body has an equal voice in policy development and administrative oversight. This gives neighbourhoods and diverse groups a greater opportunity to influence policy.

Under the council-manager form of government, involvement of the entire elected body ensures a more balanced approach to community decision making, so that all interests can be expressed and heard—not just those that are well funded. The power of special interests is diffused - it's easier for special interests to use money and political power to influence a single elected official, rather than having to secure a majority of the city council's support for their agenda.

Under council-manager government, qualifications and performance—and not skilful navigation of the political election process—are the criteria the elected body uses to select a professional manager. Thus merit-based decision making vs. partisan politics will be promoted. The professional manager, in turn, uses his or her education, experience, and training to select department heads and other key managers to oversee the efficient delivery of services. In this way, council-manager government maintains critical checks and balances to ensure accountability at local government. Functioning much like a business organization's chief executive officer, the appointed professional manager administers the daily operations of the community. Through a professional staff, the manager ensures the effective provision of services and enforces the policies adopted by the elected body. He or she, in turn, uses merit as the leading criterion for making all hiring and personnel decisions.

Paragraph 84:

These issues are addressed and solved in the new draft Law on Local Self-Government and in the amended Law on Tbilisi. The new law clearly enumerates exclusive powers of local self-government; as for “delegated” powers—this will be a subject of agreement between central and local government.

Paragraph 85:

There is strong evidence that suggests that State Commission carries real mandate and authority - the draft law on local self-government, and other pieces of reformist legislation that was prepared by State Commission are smoothly adopted by Parliament and the reform has finally been launched after a long delay. The consultation process was conducted, different proposals were discussed and finally decision was made parliamentary majority. As about Law on Tbilisi, it was initiated by member of State Commission and after its presentation in Parliament, State Commission also discussed and supported the draft.

Paragraph 102:

During the last year and six months of this year 11 judges were arrested on video-recorded facts of bribery. Intensification of criminal prosecution and disciplinary proceedings against judges on corruption charges gives clear indication of the governments will to combat this phenomenon. Acquisitions that government pressured only those judges, who were not loyal, is unfounded - there was no selective approach. On the contrary of allegations, High Council of Justice is carrying out disciplinary measures against those judges who were well-known for being government loyalist. Even more importantly-most of the judges were disciplined and dismissed for violating defendants rights.

Nino Gvenetadze, Davit Sulakvelidze and Merab Turava are under disciplinary proceedings due to concrete facts of violations. They voiced the allegations—purely groundless and unjustified — only after their disciplinary proceedings were started in accordance with law. Disciplinary Council, composed by members, elected by Conference of Judges, with half members from judiciary, will hear their case. If the will be disciplined or dismissed they will have right to appeal to Supreme Court.

The real reform of the system is connected with the establishment of the new traditions and bringing new people. The short term success of the previous reform was due to bringing of the new people in the system. The public demand for the radical reforms in judiciary are addressed in the present reform and one of the main aims is to build a confidence in the system. This is a very painful and unusual process for a democratic state, but without cleaning judicial system from discredited judges, public trust cannot be regained and the country will never have independent judiciary.

Paragraph 104:

New Code of Criminal Procedure has been highly praised as one of the most liberal laws of the post Soviet space. It is based on the principle of jury trial, adversariality and equality of arms, "fruits of poisoned tree doctrine" (the legally obtained evidence based on the evidence obtained by the prosecution illegally will not be admissible at the trial.), speedy trial rules that will reduce pre-trial detention to 45 days, enhance judicial oversight over procuracy and investigative bodies.

We are not familiar with opinion of any experts about new draft being largely unsatisfactory – only criticism we are familiar with is about delay of adoption of new Code of Criminal Procedure. This delay was due to our desire make reform less drastic and more smooth – that's why most of provisions of new code were incorporated in existing code through several package of amendments.

Paragraph 107:

There was a lot of misinterpretation of the system of plea bargaining, that was caused by lack of knowledge. We should admit that at the initial stage of reform government failed to properly educate public and legal community about essence of reform. Also, we should not under-estimate ability of wealthy officials, prosecuted for corruption, to manipulate with media and their vital interest in discrediting of the legal system that makes their prosecution more effective.

Plea bargaining procedure (procedural agreement, as it is officially called in Georgian law) was recently amended that explicitly bans the use of plea bargains to discourage complaints of torture or other illegal treatment. New provision obliges a judge in the hearing to ask whether the accused was mistreated in any way by the police or other law enforcement officers, and to tell the accused that she or he has a right to make a complaint about any mistreatment and that this will in no way affect the conclusion of the plea bargain. Amendments strengthen right of appeal against procedural agreement and there were already precedents of cancelling procedural agreements by higher courts due to violation of the defendant's rights.

Paragraph 109:

Due to the reform half of the High Council of Justice will be comprised by judges. Judges also received right to appeal ruling the council in Supreme Court. This is in compliance with requirements of the European Charter on Status of Judges. Disciplinary council already has judges as half of its membership.

Paragraph 120:

The law provides that pensions for retired judges will not be cancelled

Paragraph 129:

Other major achievements include but are not limited to holding free and fair elections. Freedom House recently has upgraded Georgia to category of "electoral democracy." Religious violence has practically been stopped. Basil Mkalavishvili, a defrocked priest, Petre Ivanidze, another leader of his old-calendarist violent religious group and head another radical organisation Jvari (Cross) Paata Bliashvili were both convicted and serve their sentence in prison. Laws preventing religious organisations to register as legal entities have been changed. Several minority groups have used the opportunity to be registered and receive all rights of legal entity. New Law on Education separated public schools and religion.

Paragraph 140:

The new CPP amendments legally commit judges to examine possibility of torture and ill-treatment as well as instruct suspects on their rights to complain in case of mistreatment. We ratified Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Several legal amendments relevant to the issue of torture and ill-treatment were adopted. For example, according to amendments to the Criminal Procedure Code that were adopted in March, testimonies given by the defendant in pre-trial detention should only be used in court if they are confirmed by the defendant in court. In addition, testimonies given by witnesses during the pre-trial investigation can only be read out in court if the witness agrees. Exceptions can only be made in particular circumstances such as in case the witness has died, is abroad or his/her whereabouts are unknown.

In January the Main Department for Human Rights and Monitoring was set up at the Ministry of Internal Affairs. The Department instructed heads of preliminary detention facilities across Georgia to inform them immediately when a detainee is brought to their detention facility with visible bodily injuries who may have been subjected to torture or ill-treatment.

In June, in another positive move, the Human Rights Protection Unit at the office of the General Procuracy began to issue a monthly newsletter providing information about investigations and prosecutions regarding cases involving allegations of torture or ill-treatment. The procuracy's recent statistics on the prosecution and detention of abusive police officers are a welcome first step toward overcoming the issue of impunity.

In the period under review Sozar Subari, the Public Defender of Georgia (Ombudsman), conducted extensive monitoring of preliminary detention facilities.

Ombudsmen's office had conducted around-the-clock monitoring in Tbilisi and the Shida-Kartli region for about nine weeks beginning in January and since then had monitored detention facilities under the jurisdiction of the Ministry of Internal Affairs, the Ministry of Justice, and the Ministry of Defence for eight hours every day and twice a week for 24 hours. The monitoring had a deterrent effect on police in those detention facilities covered by the monitoring. There had recently been notable improvements in Tbilisi, with a sharp reduction in the number of reports of mistreatment in police stations.

Minister of Interior issued new regulation, which stipulates that as soon as there is credible evidence that a police or other law enforcement officer has tortured, or ill-treated a detainee, that officer now is suspended from active duty, regardless of whether any particular stage has been reached in the criminal prosecution of the officer.

Correct and complete records are kept that specify every person who has access to a detainee, including during interrogation. This is done through recording in a journal the names of all visitors, which detainee the visitor will see, the time of entry of the visitor, and the time of departure. While this has now been instituted in log books for investigative isolators and at police stations. Further, all interrogators, medical, and other staff with access to a detainee wear identifying badges. 22

Paragraph 142:

No officials made official statements on possibility of self-inflicted injuries. The government is committed to investigate whether there was a torture and if it is proved, perpetrators will be tried. However, Mr. Molashvili refuses to testify on how injuries were inflicted. He also refuses to reveal any information on the matter to NGOs or foreign monitors. This significantly impedes progress of investigation.

²² "Human Rights Watch commends your government for the recent and significant amendments to the Criminal Procedure Code, including making out-of-court statements inadmissible as evidence unless confirmed in court, and the reduction of pretrial detention time limits. Other positive developments have included an increase in the numbers of police officers prosecuted for torture related crimes or other illegal treatment, and the monitoring system for police stations under the framework of the Public Defender's Office. ... These are all positive steps and appear to be beginning to reduce the number of complaints of torture in Tbilisi. However, it cannot be expected that Georgia's long-standing and complex problem of torture will be eradicated quickly, and a sustained and long term approach will be necessary. It is in this context that we raised several issues, detailed below, for consideration in our meetings during our mission."

Georgia Must Sustain the Campaign Against Torture
Human Rights Watch's Letter to President Saakashvili
July 14, 2005
<http://hrw.org/english/docs/2005/07/14/georgi11472.htm>

Paragraph 145:

After adoption of the new Law on Freedom of Speech and Expression, no case of monetary sanction of a media organisation has been registered. Number of suits is limited and in all cases media organisations made successful appeals. In addition, government officials and public figures have substantially less protection.²³

Paragraph 146:

Our laws set strong guarantees of independence for media and timely ensure access to public information. Transparency of media ownership is ensured by Law on Broadcasting, Chapter VII.

It's obvious that Georgian media faces significant challenges to overcome, but these challenges have nothing with governmental pressure. Main problem of Georgian media is it's inability to find proper balance between it's 3 main functions – to inform, educate and entertain public. There is notable trend,

²³ Article 19: Guide to the Law of Georgia on Freedom of Speech and Expression
<http://www.article19.org/pdfs/analysis/georgia-foe-guide-april-2005.pdf>

"This progressive and forward-looking Law is a significant step forward in terms of promoting respect for freedom of expression in Georgia. It elaborates on the content of the right to freedom of expression, explains its fundamental status in a democracy and provides clear principles on when it may be restricted and the safeguards that need to be in place to prevent abuse of those restrictions. The Law also elaborates on a number of rights and privileges that are implicit in the right to freedom of expression, such as journalists' right to protect the confidentiality of their sources and the protection of whistleblowers – individuals who release information on wrongdoing. It is unique in the region and, if properly implemented and applied, will provide Georgian journalists and others with guarantees that are fully in line with international standards.

The Georgian Law on Freedom of Speech and Expression was adopted in 2004. Its aim is to elaborate on the freedom of expression provisions found in the Georgian constitution and in the human rights treaties to which Georgia is a party, and explain how they operate in practice. To this end, the Law elaborates on both the content of the right to freedom of expression, detailing what rights and privileges fall under the general rubric of 'freedom of expression', and on the narrow circumstances under which freedom of expression may be restricted. In addition, the Law provides access to a court for persons whose right to freedom of expression has been violated or is about to be violated; and it protects 'whistleblowers' – persons who release information on wrongdoing that they have come across in the course of their employment.

Chapter I sets out the various aspects of the right to freedom of expression that it protects, specifying this right is enjoyed by all persons except for except administrative agencies. Freedom of expression is defined as including absolute freedom of thought and opinion; freedom of political speech and debate; freedom to search for, receive, create and distribute information; editorial independence and journalistic freedom to make editorial decisions based on their own conscience; academic and artistic freedom; freedom to use the language and alphabet of one's choice; and the freedom to "expose" official wrong-doing, known as 'whistle blowing'. Censorship is prohibited. Moreover, the Law makes it clear that other "generally accepted rights" related to freedom of expression are also protected, even if they are not explicitly mentioned, as long as they "can be implied from universally accepted general principles of human rights and freedoms".

In terms of implementation, the Law provides for direct enforcement via court action. Anyone whose rights under the Law have been infringed or are about to be infringed may bring a legal action to prevent such infringement or to bring the infringement to an end and to be awarded compensation for it.

Chapter II sets out the various grounds on which freedom of expression may be restricted. This elaborates substantially on the grounds listed in the Constitution – which, as described above, is itself unclear on this point. The Law permits limited restrictions on the right to freedom of expression but they must serve one of the aims set out in Articles 24(4) and 26(3) of the Constitution. Furthermore, any restrictions must be transparent, narrowly defined in law, "critically necessary for the existence of a democratic society", non-discriminatory and "proportionally limiting". Restrictions must also be proportionate in the sense that their benefits outweigh the harm to freedom of expression. The Law provides a closed list of substantive grounds which restrictions must serve, such as restricting defamation and obscenity.

Several provisions of Chapter II relate to the burden of proof in cases involving restrictions on freedom of expression. These provisions effectively create various presumptions in favour of freedom of expression which the party attempting to impose the restriction must overcome. Such presumptions include a requirement that evidence in cases involving an interference with freedom of expression must be incontrovertible, that doubt as to the applicability of a restriction shall be resolved against such application, that doubt as to whether a person is a public or private person or whether an issue is of public interest shall be decided in favour of the public option, and so on.

Chapter III of the Law deals with the issue of confidentiality from two angles: the protection of journalists sources, which it establishes as a strong privilege, and the disclosure of confidential information such as State or commercial secrets. It establishes that the privilege attached to journalists' confidential can be overcome only by a court decision and if the necessity for disclosure has been convincingly established. Chapter III also establishes that liability for disclosure of confidential information – such as State secrets, or commercially confidential information – may be imposed only where disclosure of that information would result in a direct and substantial danger to a value protected by law (such as the prevention of crime or national security).

Chapter IV of the Law contains a number of very specific rules on defamation. The provisions make a clear distinction between defamation of private person and defamation of a public figure, establishing different standards for each. A qualified privilege is established which protects the publication of false information so long as the publisher took steps to verify its accuracy and publication was in the public interest. The Law protects the publication of fair and accurate reports on events of public interest. It also provides that defamation claims must be made within 100 days of publication and it prohibits the bringing of clearly ill-founded defamation claims, for example those brought purely to harass a newspaper and to subject it to the costs and hassle associated with legal processes.

Chapter V provides two concluding provisions, stating that the Law enters into effect on the date of its promulgation – May 2004 – and that it repeals the earlier, similarly-named "Law of Georgia on Press and other Mass Media Means".

which started long before Rose Revolution, towards transforming media from democratic institution into entertainment industry – when investigative journalism or discussion programs were replaced with reality shows. That is why many people complain about TV's decreased ability to help citizens to make informed choices in public policy debates on various controversial issues. Another problem is lack of tradition of editorial independence, as well as instrumentalization of media by oligarchs to advance their political or economic interests.

The government leverage to ensure better quality journalism is quite limited - We can only create proper legislative environment and establish public service broadcasting. We adopted liberal laws, but it is hard to legislate new culture and new values.

Also it should be mentioned that weekly political debate shows are run by almost all major TV channels, where opposition regularly criticize government.

Paragraph 147:

The wrestlers' mutiny was violent and included vandalising Supreme Court building and beating patrol police officers.

Mr. Bokeria publicly appealed to the owners of MZE against dismissal of controversial talk show, called for better legal protections of journalists' rights and respect of editorial independence. He also appealed to journalistic community to establish professional solidarity as well as non-governmental mechanisms of self-regulation and public accountability. President and other leaders of ruling party, including Mr. Bokeria several times reiterated that the government will not interfere in editorial policies and press freedom will be protected.

Paragraph 153:

The present trend is quite the opposite especially in print media but also TV. There was short period of self-censorship during summer of 2004, when tensions in South Ossetia intensified and there was threat of direct military intervention from Russian side. But this trend was short lived and immediately after of this crisis media resumed criticism of the government, including tough scrutiny of its policy towards South Ossetia.

Paragraph 154:

Neither the law, nor any relevant ethical norms were in contradiction with Ms Kintsurashvili's election to the post of general director. 2 times before her election board of governors of PSB was not able to elect Director General. After this, Ms Kintsurashvili resigned from the board membership and took part in the open competition alongside with other contestants. There is no ground or evidence for bias of board members in her favour. Not only the board members, but also political opposition, journalists or public at large did not question her qualifications and credentials. For years, Mrs Kintsurashvili was deputy editor of a popular newspaper Droni (Times) and later, active member of a leading civil rights NGO, Liberty Institute and was involved together with the Council of Europe experts, in drafting of Law on Broadcasting which laid down legal foundation for transforming state TV into Public Service Broadcasting.

The process of establishment of PSB was met adversely by commercial broadcasters. They initiated massive campaign against PSB, whom they perceived it as their rival and competitor. They carry out continues efforts to discredit the institution itself, as well as any individuals associated with this institution.

Above mentioned absurd and groundless attack on Ms Kintsurashvili is a part of the negative campaign.

Paragraph 155:

The PSB's budget is 16 million GEL, not 60.

Paragraph 156:

the budget allocated to the PSB should be no less than 0.15% of the GDP and not of income tax. The PSB has guaranteed budget, which is not subject of political manipulations and can not be lowered, if government disfavours PSB.

Paragraph 169:

Political reform we are aspiring to is two way street – only governments efforts will not be enough, without responsible opposition, which will be strongly committed to rule of law, will clearly reject all forms of violence and abandon any plans to take unconstitutional revenge for its electoral defeat and will not try to come to power through undemocratic way.

All opposition political groups enjoy complete freedom to campaign freely in any region, they have access to all kind of media and there is government's strong commitment to free and fair elections, that was proven once again on the recent parliamentary by-elections.

*

* *

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

Reference to committee: Resolution 1115 (1997), Opinion 209 (1999), Resolution 1415 (2005).

Draft resolution unanimously adopted by the committee on 15 December 2005.

Members of the committee: Mr György **Frun**da (Chairperson), Mrs Hanne **Severinsen** (1st Vice-Chairperson), Mrs Naira Shakhtakhtinskaya (2nd Vice-Chairperson), Mr Mikko **Elo** (3rd Vice-Chairperson), Mr Pedro **Agramunt**, Mr Bakhtiyar **Aliyev**, Mr René André, Mr Giuseppe Arzilli, Mr Jaume Bartumeu Cassany, Mrs Mertixell Batet, Mrs Gülsün Bilgehan, Mr Rudolf **Bindig**, Mrs Mimount Bousakla, Mr Luc Van den Brande, Mr Patrick Breen, Mrs Beáta Brestensktá, Mr Milos **Budin**, Mr Mevlüt **Çavuşoğlu**, Mr Jonas **Čekuolis**, Mr Doros Christodoulides, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Joseph Debono Grech, Mr Juris **Dobelis**, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Stef Goris, Mr Andreas Gross, Mr Alfred Gusenbauer, Mr Michael Hagberg, Mr Michael **Hancock**, Mr Andres **Herkel**, Mr Jerzy Jaskiernia, Mr Erik Jurgens, Mr Evgeni Kirilov, Mr Shavarsh **Kocharyan**, Mr Konstantin **Kosachev**, Mrs Darja **Lavtižar-Bebler**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Eduard Lintner, Mr Tony Lloyd, Mr Mikhail Margelov, Mr Bernard **Marquet**, Mr Dick Marty, Mr Frano Matušić, Mr Miloš **Melčák**, Mr Neven Mimica, Mr Azim **Mollazade**, Mr João Bosco **Mota Amaral**, Mr Zsolt Németh, Mr Ibrahim **Özal**, Mr Theodoros **Pangalos**, Mr Leo **Platvoet**, Ms Maria Postoico, Mr Christos Pourgourides, Mr Anatolij Rakhansky, Mr Dario Rivolta, Mr Armen **Rustamyan**, Mrs Katrin **Saks**, Mr Kimmo Sasi, Mr Adrian Severin, Mr Vitaliy Shybko, Mr Leonid **Slutsky**, Mr Jerzy Smorawiński, Mr Michael Spindelegger, Mr Qazim Tepshi, Mrs Elene **Tevdoradze**, Mr Tigran **Torosyan**, Mr Egidijus Vareikis, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Biruté **Vésaitė**, Mr Oldřich **Vojříř**, Mr David **Wilshire**, Mrs Renate Wohlwend, Mr Marco Zacchera, Mr Emanuelis Zingeris.

N.B. The names of those members who were present at the meeting are printed in bold.

Secretariat of the committee: Mrs Ravaud, Mrs Theophilova-Permaul, Mrs Odrats