

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Georgia

ECRI wishes to point out that the analysis contained in its second report on Georgia, is dated 30 June 2006, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Georgia was subject to a confidential dialogue with the Georgian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Georgian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

Comments of the Committee of Human Rights and Civil Integration of the Parliament of Georgia on the ECRI's draft second report on Georgia

To our opinion, the above-mentioned report adequately reflects the main aspects of both legislative measures and practical steps implemented against racism and intolerance in Georgia.

Particularly, the Committee agrees with the view that the whole actuality of this problem has not been acknowledged entirely in our country. Accent is made on the racial relations and, accordingly, not a quite correct conclusion is made: as a result of various objective reasons, there is no collision on this part in Georgia. But the situation is not so enviable. Despite the fact that Georgia has distinct position on this issue, which denies racism, incorrect formulations in the statements of some politicians can nevertheless be found. Such facts are mentioned by the democratic states. They are becoming topics of society as well as courts discussions.

Concerning the “wider” weaning of the issue as given in the relevant international documents, we have to mention that though Georgia has reached the notable results in the struggle against religious intolerance, there is still negative attitude towards the non-traditional religious confessions in Georgian society. The fact that discussion on some themes is connected with political risks and causes unhealthy resonance in society is an important message. This is about the problem of languages of ethnic minorities. Because of the abovementioned reason, Georgian legislation doesn't cover this sphere. We must also mention about gaps in the work of all administrative structures, when there is violation of the dignity of ethnic minorities.

Observations of the Ministry of Refugees and Accommodation of Georgia on the draft second report on Georgia of the European Commission against Racism and Intolerance (ECRI)

The Ministry expresses its gratitude towards taking into consideration the most remarks stated by us in the Project of the European Commission against Racism and Intolerance (ECRI).

Here noteworthy is the fact that for uncertain reasons Article 74 of the Project did not fix the stand substantiated by the Ministry in the letter (24.07.06 01/01-17/5134) concerning the change of the term “Meskhetian Turks”.

The Ministry considers it necessary to replace the targeted term “Meskhetian Turks” invented by the Soviet Union communist regime by far a civilized term: “the population expelled from South Georgia by the Soviet regime in 1940S”, as at the same period of time in parallel to that process from Georgia were deported Taraqams, Khemshilebi, Kurtz, Gypsies and Karafafagebi and in relation to them to use this term arouses misunderstanding.

We would like to point out hereby that planting of term “Meskhetian Turks” will cause their return by a separate ethnic group and bring out additional misunderstanding, which will in the end hinder their integration in the Georgian State.

Observations of the Ministry of Internal Affairs of Georgia on the draft second report on Georgia of the European Commission against Racism and Intolerance (ECRI)

21. In result of reforms - for 2005 - rating indicator of police reached 70% within population. The past indicator did not exceed 10%. For the last period more and more citizens refer to the police with applications and claims, which again prove arising of trust to the police by population. Currently, with purpose to reach the better coordination in the sphere of public security - cooperation among citizens, non governmental organizations, private sector and governmental institutions is an issue of importance. Thus, transparency, focusing on protection of human rights, permanent daily information of the society is the principle, on the base of which the Ministry intends to continue its activity.

81. With purpose of initiating criminal case, its investigation and proper response to it a special unit is functioning within the Ministry of Internal Affairs – General Inspection. The mentioned Inspection provides with reveal and adequate response to the facts of violation of disciplinary provisions, improper implementation of service duty and other certain offences within the system of the Ministry.

Hereto, in January of 2005 the Main Division of Protection of Human Rights and Monitoring was established in the Administration of the Ministry of Internal Affairs. In 2005-2006 25 facts of serious violation of human rights and illegal actions against detained suspected representatives of ethnic minority by police officers were revealed and materials were accordingly transferred to the General Inspection and General Prosecutors Office. Investigation on the mentioned facts is started.

109. In the police, compulsory training for officers, with an end-of-course test, has been introduced to reinforce general capability and in particular develop knowledge of international human rights instruments. Introduction of the mentioned test in Georgian language is reasonable by all means for police officers and for those, willing to be recruited in the police service. Study course at the Police Academy is implemented in Georgian language, as well as entrance examination and exit exams are conducted in Georgian language. Legal proceedings are conducted in Georgian language and the employees of public services are required to know Georgian language fluently, though the Ministry of Internal Affairs admits usage of Russian language in practice till the period, when the representatives of national minority will have learned an official language. Citizen of Georgia with poor knowledge of Georgian language can apply in Russian language as well for obtaining permits and public information. In regions, mainly inhabited with national minority usage of Russian language is accepted.

The ministry of Internal Affairs considers that designation of representatives of national minority in certain position should be implemented in accordance with their qualification. In the current period number of representatives of ethnic minority employed within the structures of Internal Affairs amounts 1222 persons, which is 4% of the total number of employees within the system. Also, technical staff amounts 225 persons, among them 72 persons represent ethnic minority. Staffing in different regions with personnel from another region is resulted not due to lack of qualified specialists, but regular rotation of staff from one region into another appears as one of the important issues for the policy of the Ministry of Internal Affairs. Though, in the regions staff is mainly recruited with local personnel.

In addition to this,

- To be removed the last two sentences from paragraph 50;
- To be removed 2nd and 3rd sentences from paragraph 67;
- To be removed the last sentence from paragraph 85;

Observations of' the Office of the Prosecutor General of Georgia on the Draft Second Report on Georgia of the European Commission against Racism and Intolerance (ECRI) to be adopted at its plenary session.

The Office of the Prosecutor General of Georgia, having familiarized with the Draft Second Report on Georgia (hereinafter draft report) of the European Commission against Racism and intolerance (hereinafter ECRI) welcomes the fact that ECRI has taken into consideration some of the Clarifications and additional information provided by the Government of Georgia in the process of confidential dialogue and subsequently amended the relevant parts of Draft Report. At the same time we expresses our concern in respect of the fact that ECRI has not taken into account the reasonable arguments of Georgian Government in connection with a number of key issues highlighted in the Draft Report. The Office of the Prosecutor General of Georgia is of the opinion that the judgments on these issues in Draft Report are not adequate and accurate and lack sufficient factual evidence to be regarded as persuasive. Therefore, we avail ourselves to the opportunity, prescribed in the procedures of the Commission and present to the latter our observations on the most important issues underlined in the Draft Report, to be reproduced in a separate annex to the Final Second Report on Georgia to be adopted at its plenary Session.

Refugees from Chechnya

Paragraph 67

In this Paragraph ECRI declares that: “[Georgian] Law enforcement authorities subject Chechen refugees to closer attention and surveillance on the pretext of combating organized crime and terrorism. According to several non-governmental sources, refugees from Chechnya are therefore unjustifiably harassed by law enforcement officials. ECRI has received allegations of illegal deportations to Russia and other countries, and of suspicious disappearances, arbitrary raids and excessive use of force and firearms, particularly during special operations by the law enforcement agencies.

Excessive use of force and firearms by law enforcement officials against Chechen Refugees

The Government of Georgia affirms that during the reporting period none of its law enforcement bodies has conducted any special operation in any part of Georgian national territory against any person of Chechen origin who having the status of Refugee obtained under the relevant legislation of Georgia. During the reporting period, in Pankisi Gorge, Akhmeta District where all Chechen Refugees reside, Georgian law enforcement agencies have conducted only 2 special operations involving alleged excessive use of force. All suspects, against whom there has been alleged use of excessive force, were citizens of Georgia and not Persons of Chechen origin having Refugee status. The investigation/inquiry into these cases established the legality of the use of force by law enforcement officials. Except these 2 special operations there has not been any special operation involving the alleged use of excessive force on the territory of Pankisi Gorge, Akhmeta district where all Chechen refugees reside or on any part of Georgian national territory involving the persons of Chechen ethnicity.

In the light of the above and in the absence of any factually evidenced allegation confirming the contrary, the Government of Georgia declares that any statement accusing Georgian law enforcement authorities in using excessive force, harassing and conducting arbitrary raids against Chechen Refugees is groundless.

Alleged illegal deportations to Russia and other countries and of suspicious disappearances of Chechen refugees

The government of Georgia once more underlines that according to its national law “The return of the refugee to his/her country of citizenship or place of residence without his/her will is not permitted” (Article 8(2) of the Law of Georgia on Refugees), the same principle is established by the international treaty Georgia is state party, namely Article 33 (principle of non-refoulement) of the UN Convention Relating to the Status of the Refugee of 1951: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or free loin would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. In this connection Georgian Government emphasizes again that Pursuant to article 6 of the constitution of Georgia the international treaties to which Georgia is a state party, are the parts of Georgian legal System and are directly applicable unless they contravene the Constitution. Additionally, Georgian Government is fully aware of its obligations under both customary and conventional international law and is fully committed to fulfill them.

Georgian government repeatedly affirms that the only extradited Chechens are the 5 applicants in the Shamayev case. There was no any other extradition or deportation of person/s of Chechen ethnicity re has not been even an allegation of substantial nature of any suspicious disappearance except that contained in Shamayev case. Ruslan Gelogayev was the only one in respect of whom there existed the Decree on extradition. Since the Georgian state terminated the said Decree on March 7, 2006. accordingly the issue of possible violation of the right to be free from torture inhuman and degrading treatment, of persons of Chechen ethnicity, as a result of their extradition was completely resolved. Neither the European Court, nor any other international or domestic organization challenged the extradition of Chechens to Russian Federation as discriminatory and biased. Furthermore, Georgian Government has fully complied with the judgement of the ECtHR on Shamayev case and adequately redressed all human rights violations of the persons of Chechen origin, applicants in the mentioned case.

Taking into consideration of all above stated, and in the absence of any evidence that should confirm the validity of the mentioned allegation, Georgian government means that the accusation that Chechen Refugees are subject to illegal deportations, expulsions and suspicious disappearance is totally unsubstantiated.

Paragraph 83

In Paragraph 83 according to the information provided by the Government of Georgia in the Process of confidential dialogue, ECRI noted “With interest that, according to Georgian law, there is a right to the services of an interpreter in the case of criminal procedure. In some cases, the translation of main procedural documents is compulsory if the person concerned does not understand the official language. Nevertheless in the same paragraph ECRI states that: “Poor Knowledge of the official language among ethnic minorities, migrants, asylum seekers and others may make it difficult for them to make sure their rights are respected in the event of arrest or detention.

In this respect Georgian Government clarifies that according to the Criminal Procedural legislation of Georgia the right of the participant of the criminal proceedings (suspect, accused, civil claimant, civil respondent, witness and etc.) to the services of interpreter is corresponded by the obligation of the body/official conducting the criminal proceedings (investigator, prosecutor, judge, the court) to ensure the participation of the interpreter in criminal proceedings. Under Article 100 (1)(a) the investigator, prosecutor or any official or body conducting the criminal procedure is obliged to summon the interpreter in case, where they do not understand the language spoken by the participant of criminal proceedings (suspect accused and etc.). Therefore, Georgian Criminal Procedural

legislation imperatively requires the involvement of interpreter in criminal proceedings when: a) the participant of criminal proceedings (suspect, accused and etc.) does not know the official language and b) the body/official conducting the criminal proceedings (investigator, prosecutor, judge or the court) do not understand the language spoken by the participant of criminal proceedings.

In addition, where Criminal Procedural legislation of Georgia requires the service of investigative and judicial documents to the participant of the criminal Proceedings (suspect, accused and etc.) all of these documents should compulsorily be translated in a language the person concerned understands (Article 17(3) of the Criminal Procedure Code of Georgia).

Therefore, taking into account the fact that Georgian Legislation imperatively requires the involvement of an interpreter in criminal proceedings when the person participating in criminal proceedings does not know official language and provides for compulsory translation of all investigative and judicial documents to be served to any participant of criminal proceedings, there is no room to doubt that the lack of knowledge of official language will in any way make difficult for any person having no or poor knowledge of official language to make sure that his/her rights are respected and properly observed in case of arrest or detention.

Paragraph 88

In Paragraph 88 ECRI recommends the Government of Georgia establishing an independent body to investigate all allegations of misconduct by Law enforcement officials and particularly allegations of racial discrimination. Office of the Prosecutor General informs ECRI that Investigative Department at the Office of the Prosecutor General of Georgia is a specialized body having the investigative jurisdiction over all offences committed by public officials. The investigative functions of the Prosecutor's Office have undergone substantial changes and today, we have absolutely different well coordinated structure, the Investigative Department with nine regional units empowered to fight against the crime committed not only law enforcement but also all public officials. Thus, the investigative functions of the Prosecutor's Office are now limited to the crimes committed by public officials. **Investigative Department**, the central organ of the Office of the Prosecutor General of Georgia, is headed by the Deputy Prosecutor General. On regional level, there are investigative units in eight Regional Prosecutor's Offices plus Prosecutor's Office of the Autonomous Republic of Adjara.

The Investigative Department at the Office of the Prosecutor General of Georgia has jurisdiction over the territory of Georgia, while the regional units are limited to their geographic boundaries. However, Prosecutor General and Deputy Prosecutor General are entitled to take a case from one unit to another. Prosecutors from the Investigative Department at the Office of the Prosecutor General of Georgia appear before the court of cassation on behalf of the regional units. This further proves that the system is unified and well coordinated.

In addition to the above-mentioned, the General Inspectorates entitled to conduct inquiry in the alleged misbehavior of the staff members are created in almost every law enforcement organ. For instance, the General Inspectorate at the Office of the Prosecutor General of Georgia, guided by the Code of Ethics for the Prosecution Service, has the obligation to respond adequately to every discriminatory behavior. If the General Inspection finds an element of crime in the behavior, it is obliged to refer the case to the investigative Department at the Office of the Prosecutor General of Georgia.

Therefore, the government of Georgia regards that the Investigative Department of the Office of the Prosecutor General on the one hand and General Inspectorates of the Office of the Prosecutor General and Ministry of Interior on the other, effective mechanisms for fighting the crime and enforcement but also by all public officials.

bodies already empowered with such duties, but also substantially infringe the principle of Checks and Balances and generate a serious threat of abuse of power by it.

Therefore it is the position of Georgian Government that there exist independent bodies to investigate all allegations of misconduct by law enforcement officials as provided by the relevant recommendation of ECRI.