

**Comments by the Georgian Government on the Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Georgia from 20 to 25 January 2014**

The Georgian authorities would like to thank Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, for the valuable Report and reassurance for the serious commitment of the Georgian authorities in implementing his recommendations.

Georgian authorities have made the following comments:

**Notes and Comments:**

**Page 3**

**Dealing with allegations of human rights abuses**

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

Since 2012 elections, hundreds of complaints have been submitted to the Prosecutor’s Office of Georgia concerning the unlawful deprivation of property as well as inhuman and degrading treatment of prisoners. The Prosecutor’s Office of Georgia has prioritized the said complaints and started investigation in relation to each of them. The number of investigative actions has been conducted per each investigation. Due to the volume and complexity of these investigations the final decisions, in terms of convictions, are not made yet in respect to all cases. However, the criminal prosecutions have been initiated against significant number of officials participating in torture and unlawful deprivation of liberty. Some of the said officials have been convicted as well.

Currently the Prosecutor’s Office of Georgia proactively continues the investigation into the facts provided in the complaints.

Due to the fact that there is a high public interest in respect to the above-mentioned category of cases, the Prosecutor’s Office of Georgia periodically informs the public about the developments of respective investigations.

**Page 3** The MoC considers the eradication of torture and fighting against ill-treatment crucial in protecting human rights of inmates, therefore has been making substantive efforts and obtained good results since October 2012 in improving the situation.

Prison population since October 2012 was reduced by 60%, ending overcrowding. Current figures of prison

population remained stable during the entire 2013 up to date.

#### **Page 4**

#### **Ethnic and religious minorities**

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

After the meetings in Strasbourg of the Georgian PACE delegation with the leaders of NGOs represented Meskhetian population deported by the Soviet regime, a special contact person was appointed by the interagency governmental council on repatriation issues for exchanging views and preparing high level meeting of the Georgian authorities with the representatives of Meskhetian population NGOs.

**Paragraph 13** The Criminal Procedure Code of Georgia provides the absolute guarantee to the defence to be familiarized with the case files by obliging the prosecutor to provide the copies of all evidence which are to be presented by the prosecutor in the court.

The CPCG guarantees the judicial control over the observance of the above-mentioned procedural rule. Namely, failure to submit the copies of the above-mentioned evidence to the defence directly results in the finding them inadmissible by the court.

Therefore, neither in the law nor in practice there is a problem with respect to access to evidence by the defence.

**Paragraph 14** By Decree No. 591 of 13 December 2008 and with the support of the European Commission, the President of Georgia established a Criminal Justice Reform Inter-Agency Coordination Council that has been entrusted with the elaboration and implementation of the reforms in line with the international standards, as well as with the coordination of inter-agency activities in criminal justice sphere. The members of the Council are representatives of governmental agencies, NGOs, international organizations and independent experts. Set of procedural law amendments aimed at enhancing the principle of adversariality have gone through the usual consultative and participatory process (particularly in close cooperation with the Georgian Bar Association) in the framework of the Criminal Legislation Working Group under the Criminal Justice Reform Council and were adopted by the Parliament of Georgia in June 2013. The amendments are to ensure equality of arms of the defence and prosecution in the criminal procedure, particularly in part of obtaining evidence and information critical for defence from third parties, as well as obtaining records of witness interview and court hearings.

With respect to the postponement of amendments as mentioned in the same paragraph of the Report, the Parliament has postponed the entry into force until September 2014 only of those amendments allowing the defence the possibility to seek evidentiary materials through a number of investigative measures to be carried

out by the competent authorities, such as search and seizure. From the moment of entry into force of these amendments defence lawyers will not have the possibility to submit evidence of special importance during the trial stage if such evidence had not been presented during the preliminary hearing. However, it should be noted that the abovementioned amendment does not aim at limiting the rights of defence but rather it is necessary due to the fact that there is no need to have such a provision anymore as far as the defence will be granted with the possibility to seek evidentiary materials through a number of investigative measures to be carried out by the competent authorities, such as search and seizure (such a possibility was not available before these amendments). Furthermore, as stated above, the procedural law amendments entered into force in June 2013 increase the rights of defence by ensuring the possibility of obtaining evidence and information critical for defence from third parties, as well as obtaining records of witness interview and court hearings.

**Paragraph 19** The draft law aiming at introducing more clarity in negotiation process of plea agreement and increasing the role of judge in its approval has been prepared by the Ministry of Justice of Georgia with an active participation of the Prosecutor's Office of Georgia. The draft law has been approved by the Government of Georgia and it will be shortly submitted to the Parliament of Georgia.

**Paragraph 20** It should be noted that the amendments on plea bargaining to the Criminal Procedure Code of Georgia were finalized and approved by the Government of Georgia on April 4, 2014 and consequently submitted to the Parliament for adoption.

**Paragraph 26** It should be noted that in the framework of the legislative reforms of 2012 the Venice Commission recommended changing the transitional provisions to allow for a more gradual transformation of the HCJ membership, rather than terminating the membership of all the current members prior to the expiry of their mandates and assembling the HCJ anew. It is noteworthy that in general the drafts were revised according to the suggestions of the Venice Commission and to some extent the amendments followed the recommendations of the Venice Commission with regard to the gradual transformation of the HCJ membership as well. In particular, while the first draft of the amendments stated that upon the enactment of the Law the authority of all members of the HCJ (except the chairman of the Supreme Court) would be terminated, the final version of the amendments applied more steady approach. Instead of terminating the authority of all members of the HCJ, the final wording of the amendments provided specific criteria that determined whose term of office would be ended. For instance, the judge members of the HCJ who were elected by the Administrative Committee instead of the Conference of the Judges were removed from office. Such a solution tried to deal with the flawed composition of the HCJ.

Besides, all the judge members whose authority as members of the HCJ was terminated were given the right to be nominated as candidates in the new election procedures.

**Paragraphs 27 and 38** The Report mentions some NGOs concerns about the transparency of the sessions of the HCJ, the substantiation of its decisions and the process of the appointment of the judges. It should be mentioned that the Government of Georgia plans to continue its efforts to secure true independence of judiciary from any outside interference and increase public trust towards the court system of Georgia. To that affect, the Ministry of Justice initiated the second stage of the institutional reform of the judiciary. In the framework of the said reform, the MoJ developed draft amendments modifying the procedure of the

appointment of the judges and increasing the transparency of the HCJ. In particular, the draft amendments give equal opportunities to the Graduates of the High School of Justice (HSJ) and people released from studying at the HSJ in the selection process. Besides, the candidates will be more informed in the process. All the candidates who provide the required information and documentation will be interviewed. In addition the draft regulates background check during the selection of the candidates. As a result, the MoJ expects that the appointment of the judges will be more objective and transparent process.

As for the transparency of the HCJ, the draft imposes an obligation on the HCJ to publish information about its activities, including the adopted decisions, session dates and agendas on the website.

**Paragraphs 28 and 38** The Report highlights the importance of the appointment of the judges based on the merits and according to objective criteria where recruitment is made for a probationary period. The MoJ is currently preparing the draft amendments to the Law on Common Courts with the aim to provide clear and objective criteria for the lifetime appointment of the judges who serve for a three-year probationary period. The draft imposes an obligation on the HCJ to be objective and impartial in assessing the performance of the judge. In addition, the draft provides legal guarantees for the protection of the rights and interests of the judges. The criteria and the appraisal system are in compliance with the best international practice according to which the evaluation of the judges should be based on the predetermined and impartial procedure and fair and exhaustive criteria.

After consulting with the relevant stakeholders, including the members of the HCJ, the draft amendments will be initiated for the adoption in the Parliament.

**Paragraph 31** There has not been even a single case when prosecutor was dismissed due to the investigation of high profile cases and allegations of abuses committed with regard to property rights.

Since November 2013, 99 persons left the Prosecution Service of Georgia. Among them, 57 persons left the office based on their own requests, 32 (interns) – due to the expiry of internship terms, 2 moved to other public institution and 8 persons were dismissed due to the disciplinary violations. 5 out of the above-mentioned persons appealed their dismissal to the court. It's noteworthy, that 3 person's appeals have not been granted by the court and one personally withdrew his application. The 5th person's case is currently pending before the court.

**Paragraph 34 and 40** Police revealed the persons preventing the representatives and supporters of opposition parties to properly conduct pre-election campaigns.

The acts of the above-mentioned persons have been classified as administrative violation and all of them were subjected to administrative sanctions equivalent to seriousness and nature of their respective conducts.

**Paragraph 36** CPCG provides right to defence to cross-examine witness. The judge is the guarantee of safeguarding adversariality and equality of arms during trial. Respectively, judge ensures the exercising of rights by the defence, including the right to cross-examine witness.

**Paragraph 37** The inquiry in the case of Ivane Merabishvili was carried out by the Ministry of Corrections. The inquiry established that Ivane Merabishvili was not taken out from the prison cell. Therefore there was no necessity of conducting separate investigation by the Prosecutor's Office of Georgia.

The motion of the Prosecutor's Office of Georgia to remove Giorgi Ugulava from his office was based on the provisions of the CPCG. The compatibility of the above-mentioned provisions with the Constitution of Georgia is to be established by the Constitutional Court of Georgia based on the application of Giorgi Ugulava.

**Paragraph 39** The Prosecutor's Office of Georgia largely uses internship program for recruitment of a new staff. The said program gives opportunity to any criminal law educated person to participate in internship competition and start working in Prosecutor's Office of Georgia.

Currently there is an ongoing process of appointment of interns on the respective positions of prosecutors and investigators. In parallel, the Prosecutor's Office of Georgia has announced internship programme for recruitment of new interns.

Promotion and encouragement within the Prosecutor's Office depends on the recommendation of supervisor and analyzes of the work performed by the respective employee.

At the same time it is a priority for the Prosecutor's Office of Georgia to facilitate the study and qualification raising of its employees. In 2013-2014 the respective investigators and prosecutors had training in number of priority areas, including criminal law, investigation and prosecution techniques, trafficking in human beings, human rights, witness interrogation techniques, jury trial skills and juvenile justice.

At the same time the Prosecutor's Office of Georgia has prepared the document on training needs, which identifies the necessary types of trainings. Currently the Prosecutor's Office of Georgia in association with competent international organizations is actively engaged in arranging the above-mentioned trainings.

**Paragraph 47** Due to the political will and affords of the new leadership of the Ministry of Corrections the practice of ill-treatment and impunity of prison personnel was terminated. During 2013 reported cases of ill-treatment have been few, including cases named in the 2013 Parliamentary report of the Public Defender.

Since October 2012 the overall prison population was reduced by 60%.

During October 2012 – December 2013 the follow-up internal investigations into possible HRs violations of prisoners led by the MoC internal control mechanisms resulted in the dismissal of 97 staff members and the issuing of different administrative penalties for 176 staff members. (To compare: from January 1, 2010 to October only 25 staff members received different administrative penalties).

From October 2012 to December 31, 2013, the Human Rights Unit of the General Inspections Department received 1317 formal complaints from inmates. Majority of complains (90%) received in autumn 2012 related

to the allegations of torture and ill-treatment conducted before September 2012. Consequently the General Inspections Department has forwarded 169 cases containing allegations of ill-treatment to the Main Prosecutors Office. It should be noted, that during 2013 the majority of complaints received from inmates have been related to the request to re-consider court decisions.

It should be noted that dramatic improvement in reduction of mortality rate followed the developments since October 2012. Therefore simple comparison of the annual numbers of deaths for 2012 and 2013 is not fully informative. The latest figures for deaths in prisons look as follows: In 2010 – 144, in 2011 – 140, in 2012 – 67 and in 2013 – 25.

**Paragraph 54** Both, the official correspondence sent to the Ministry as well the first annual report of the Personal Data Inspector indicates on one case, where some shortcomings have been identified. The recommendation made in November 2013 was followed by the legislative initiative by the Ministry of Corrections in December 2013. Consequently, amendments to Imprisonment Code were adopted by the Parliament of Georgia in April 2014. The mentioned amendment was developed in accordance with the recommendations and in close consultation with the Office of the Data Protection Inspector.

**Paragraph 58** If the recommendation is addressed to the situation in prisons, as already stated since the change of the government few complains has been received containing allegations of possible ill-treatment. Vast majority of similar complaints received since October 2012 referred to the facts that took place before September 2012.

**Paragraph 62** "Abkhazia and South Ossetia" - the terminology should correspond to the text of the Association Agreement with Georgia as well as the recent CMD Decision on "The Council of Europe and the Conflict in Georgia" and therefore should read "Georgian regions of Abkhazia and Tskhinvali Region/South Ossetia".

**Paragraphs 66 and 74** It should be noted that some provisions of the drafted antidiscrimination legislation have been changed since the visit of the Commissioner. According to the draft submitted to the Parliament, supervision over elimination of discrimination and ensuring equality shall be vested with an independent body - Public Defender of Georgia.

To this effect, the Public Defender shall be authorized to:

- a) Consider complaints and statements from alleged discrimination victims;
- b) Inspect the alleged facts of discrimination in accordance with the complaints or on its own accord;
- c) Prepare and send to the particular institution or person recommendation of general character on issues of combating and preventing discrimination;
- d) Prepare and present to the Parliament its opinions on necessary legal amendments in the sphere of tackling discrimination;
- e) Invite alleged discriminator and discriminated for consultation and mediation;
- f) Make recommendations to the discriminator institution or person on the steps necessary to stop discrimination and eradicate its consequences if evidence provided verifies facts of discrimination;
- g) Apply to court in accordance to Administrative Procedure Code if an administrative institution fails to follow its recommendation on discrimination issue;

- h) Maintain statistical data on discrimination cases;
- i) Conduct awareness-raising campaigns on elimination of discrimination issue;
- j) Cooperate with national and international public and civil organizations on the issue of combating discrimination.

The draft law proclaims that it should cover the state institutions as well as actions of private and public legal entities. Any form of discrimination, being it direct, indirect or multiple, shall be prohibited in Georgia. Purpose of the Law shall be elimination of all forms of discrimination and ensure for every person equal enjoyment of rights prescribed by law irrespective of any ground.

When it comes to the wider public inclusion in the process of elaboration and consideration of anti-discriminative legislation representatives of civil sector have been actively involved in its elaboration. Among them were organizations working on human rights issues, gender equality, ethnic and religious minority representatives and etc. At the same time, the draft law went through international expertise: recommendations from ODIHR, ECRI, OHCHR and international experts have been received and reflected in the draft.

The draft law was presented to the Parliament of Georgia for adoption. It was accompanied with set of amendments to other legislative acts, including Law on Gender Equality, to harmonize provisions of all relevant statutory acts regulating elimination of inequalities. The hearings underwent with very active engagement of civil society. On 2 May 2014 the Law of Georgia on Elimination of all Forms of Discrimination was adopted by the Parliament. On May 7 the President of Georgia signed the statute and on the same day it came to force.

**Paragraph 77** In regard to proficiency of ethnic minorities in Georgian language, it must be noted that Georgian language houses are operating that provide state language courses for ethnic minority representatives. These Houses have been functioning in Kvemo Kartli, Kakheti and Samtskhe-Javakheti regions of Georgia since 2009.

**Paragraph 78** In terms of Education, the state supports and finances a full general education in Armenian, Azeri and Russian languages in respective schools and sectors. National curriculum is provided in Armenian, Azerbaijani and Russian languages. Moreover, representatives of minorities have specific benefits and access to the higher education system.

**Paragraph 79** In regard to the individuals proficient in the Georgian language in Kvemo Kartli and Samtskhe Javakheti, it must be noted that as of today 8 regional centers are in operation to provide state language courses for ethnic minorities. At this moment more than 500 public servants from local governments are enrolled for those courses for free.

**Paragraph 80** In tackling the problem of fluency in Georgian language, the National Center for Teacher Professional Development (TPDC) under the Ministry of Education and Science of Georgia, implements two programs "Georgian as a Second Language" and "Georgian Language for Future Success". The first program sends qualified Georgian language specialists to ethnic minority regions to deliver classes, teacher Georgian language to students, teachers and community members, carry out various extracurricular activities, organize

summer camps and exchange programs etc. "Georgian Language for Future Success" program sends volunteer co-teachers of all subjects to ethnic minority regions.

Within the TPDC program "Georgian Language for Future Success", textbooks for all grade subtends (I-XII) in Georgian as a second language had been developed and distributed free of charge to all ethnic minority schools in Georgia, based on requests submitted by the schools. Development of textbooks for all XII grades took quite some time, more than a year, since these were the first series of books of this type. Sets of textbooks included students book, students workbook, teacher's guide, audio recording of texts in Georgian language.

**Paragraph 81** There was an increase in the number of Georgian language teachers sent to the regions and additional hours allotted for learning Georgian, as well as specific programmes aimed at minorities called "Georgian Language for Future Success" and "Georgian as a Second Language program".

**Paragraph 82** Resources invested for general education of pupils is regulated by the Decree #9 of the Government of Georgia from 29 January 2013 "On Defining Amount of Financial Ratio and the relevant Standard Voucher for Financial Provision of General Education per pupil". Financial provision is defined according to the number of pupils registered at concrete public school, study hours, administrative and other expenses. The Decree defines the increased value of voucher for non-Georgian public schools and non-Georgian sectors of public schools. In case of non-Georgian schools the value of ordinary voucher is multiplied by 1.13 and in the case of non-Georgian sectors – multiplied by 1.14.

**Paragraph 87** Article 85 of the Constitution of Georgia provides that an individual not having a command of the state language shall be provided with an interpreter during legal proceedings. In the districts, where the population does not have a command of the state language, teaching of the state language and solution of the issues related to the legal proceedings shall be ensured. The same rights are envisaged by the Criminal Procedure Code, which provides that the participant, who does not know or does not speak the language of the criminal justice process, shall be provided with an interpreter, as prescribed by this Code. In addition, the Criminal Procedure Code provides the sentencing verdict to be translated into the native language or other language the defendant understands, in cases where he cannot speak the language of the criminal justice process. Also, the suspects will be notified in a language they understand, of which criminal offense under the Criminal Code they are being charged with during or prior their arrest.

**Paragraph 93** In the text 10.2, E of the document, defining obligations of Georgia (PACE Opinion N 209, 27 January, 1999), taken by the country upon becoming a member of the European Council in 1999, the term "Meskhetian population deported by the Soviet regime" is defined. Among the population deported from the Southern Georgia in 1944 there were representatives of different ethnic groups, in particular: Turks, Kurds, Azeri, Yezidi, Tatars, Khimshils and Muslim Georgians. The latter comprised the majority of deported population. **Consequently, legal term "Meskhetian population deported by the Soviet regime" shall be used in the given document.**

**Paragraph 94** On 11 July, 2007 the Georgian parliament adopted a law on "Repatriation of the Forcefully Deported Persons from the SSR of Georgia by the Former USSR in the 40s of the 20<sup>th</sup> Century". Under the Law,



a seeker of repatriation was to submit an application and an ID card, however according to the same Law, in case an applicant was unable to submit any of these documents, he/she should have reported on it in a written form, which on its behalf would free an applicant from obligation of submitting the necessary documents. **Consequently, a list of required documents or absence of any document did not affect the number of applicants.**

Persons seeking repatriation had a right to fill in the application in any language, however, it was necessary to translate it into Georgian or English languages and get the translation acknowledged by the notary, which is available in all countries.

**Paragraph 95** Over the last years, different NGOs (ACF, ECMI, Tolerant etc.), with EU funds and other donor support, have implemented several integration projects, focusing on raising the awareness on repatriation. Along with other activities, a few documentary films were produced and special TV spots were prepared on the issue of repatriation of deported Mesketians Georgia.

About 1000 deported Meskhetians returned in Georgia during different times and continue living in the country up to now. For example, up to 50 families live in Samtskhe Javakheti, about 60 in Adjara, 45 in Guria, 40 families in Imereti etc.; They peacefully cohabitate with the local population in these settlements.

**Paragraph 97** Currently, 1349 individuals have a repatriate status. They have an opportunity to return to Georgia, purchase a residential property in a desirable region and obtain Georgian citizenship through the simplified procedure. They can also obtain Georgian citizenship through the simplified procedure in the countries of their current residence, through the local Georgian diplomatic missions in those countries. It is also noteworthy, that the absolute majority of deported Meskhetians, returned to Georgia, already have the Georgian citizenship.

**Paragraph 101** Since 2007 the Ministry of Education and Science of Georgia has been implementing the “Youth Civic Participation Development Program”. Its key objective is to socialize/integrate youth from different social categories. The program is being implemented in the schools adjacent to the orphanages or to the settlements with various ethnic or religious minorities. The beneficiaries of the program are vulnerable groups - adolescents with disabilities, as well as ethnic minority youth also the stateless teens, including 125 Meskhetian young people living in different regions of Georgia.

**Paragraphs 109-110** With regard to allegations of indoctrination and forced conversions to Christianity of children belonging to other religion, in some general educational institutions, the Ministry would like to highlight the following: In order to prevent such cases, the Ministry of Education and Science of Georgia systematically recommends its Education Resources Centers (ERC) to call on school principals to protect the rights of school children as envisaged by the Law of Georgia on General Education. In accordance with Law of Georgia on General Education, the State ensures independence of public schools from religious and political unions. Compliant to the same law, indoctrination and conversion from one to another religion is prohibited at public schools. Public schools are obliged to follow the rules and regulations set by the law. If concrete abuses are recorded and confirmed, the Ministry deals with such cases in the scope of its competence.

**Paragraph 113** Registration and granting the status of cultural heritage monuments to various buildings is in progress. In 2009 up to 50 Armenian churches, 10 mosques and 5 synagogues were registered. In 2011 the status of cultural heritage monument was granted to the Armenian Church in Batumi, Batumi synagogue, Orta Jame mosque in Batumi, Rabati district in Akhaltsikhe, including two ancient synagogues. Tbilisi synagogue “Didi Lotsava” and a synagogue in Kutaisi were also granted a status of cultural heritage monument.

**As the report refers to the issues pertaining to minorities, tolerance and non-discrimination in Georgia, it should also encompass the minorities living in occupied territories of Georgia with particular focus on Gali and Akhalgori districts where the violation of minority rights is persistent.**