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Honouring of obligations and commitments by Georgia

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
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Summary

In its draft resolution, the Monitoring Committee considers that the Georgian authorities have continued to make significant progress in honouring their obligations and remaining commitments to the Council of Europe, despite the significant impact and the consequences of the war with Russia in 2008. However, despite this progress, the Committee recommends that the Parliamentary Assembly continues its monitoring procedure in respect of Georgia pending further progress on the issues highlighted in the draft resolution.

[1] Reference to committee: Resolution 1115 (1997)

A. Draft resolution[2]

1. The Parliamentary Assembly welcomes the significant efforts made by the Georgian authorities in honouring their obligations and remaining commitments to the Council of Europe. Considerable progress has been achieved since the last monitoring report adopted in 2008, despite the significant impact and the consequences of the war with Russia in August 2008.

2. With regard to the political environment in Georgia, the Parliamentary Assembly welcomes the initiatives taken by the authorities to overcome the polarisation and confrontational atmosphere that has regrettably dominated the political landscape and to strengthen the position and role of the opposition. The Assembly reaffirms its belief that the existence of a vibrant, pluralist and involved opposition is essential for the political stability and democratic consolidation of the country.

3. The Assembly considers that the local elections held on 30 May 2010 were an important step for the creation of a more diverse and constructive political environment in the country. Furthermore, the upcoming presidential and parliamentary elections will be the litmus test for the consolidation of a mature, more inclusive and robust democratic system in Georgia. In relation to the electoral process, the Assembly:

3.1. welcomes the reestablishment of the Electoral Working Group aimed at reaching a wide consensus on the electoral reforms necessary for the upcoming parliamentary and presidential elections and calls upon all political parties that have not done so to join this working group and to participate in it in good faith;

3.2. considers that the electoral working group should not only focus on the administration of the elections but also agree on an election system that can muster the full trust of all electoral stakeholders;

3.3. strongly recommends the adoption of an entirely new election code that addresses the shortcomings noted by, inter alia, the European Commission for Democracy through Law (Venice Commission) and the Assembly, in particular with regard to the equality of the vote, delimitation of electoral districts and abolition of the prohibition of individual candidacies;

3.4. urges all parties to ensure that the election system is agreed upon, and a new election code adopted well before the upcoming parliamentary elections are announced;

3.5. welcomes the willingness expressed by the authorities and the ruling party to amend the constitution, if necessary, so as to implement the amendments agreed to by the Electoral Working Group.

4. The Assembly welcomes the adoption of constitutional amendments on 15 October 2010, which, inter alia, better guarantee the independence of the judiciary, substantially strengthen the role and powers of the parliament and provide for a better and more comprehensive system of checks and balances between the different branches of power. However, the Assembly considers that a number of provisions should still be further clarified or improved to avoid any possible systemic tensions. It therefore urges the Georgian authorities to implement the recommendations of the Venice Commission. In particular, the Assembly recommends that:

4.1. the procedure for adopting a motion of no-confidence in the government be revised in line with Venice Commission recommendations with a view to strengthening the powers of the parliament in this procedure;

4.2. the role of the President in negotiating international treaties be clarified, so as to avoid possible tensions between the government and president;

4.3. the role of the parliament in budgetary matters be strengthened.

5. The Assembly considers that the media environment in Georgia is still an example for the region, but underscores that further efforts remain necessary to improve its transparency and pluralism. In this respect the Assembly:

[2] Draft resolution adopted [unanimously] by the committee on 25 March 2011.

5.1. welcomes the draft law on transparency of media ownership, passed in a first reading on 7 December 2010, and expects that this law will now be adopted without further delay;

5.2. considers that the possibility for new groups to enter the media market is essential for media pluralism and therefore recommends that the competent authorities make additional broadcasting frequencies available for public tender;

5.3. calls upon the authorities to evaluate, with a view to improving its implementation, the legal framework for the access to public information;

5.4. welcomes the establishment by the authorities of a special parliamentary television channel and the increase of members nominated by the opposition on the board of trustees of the public broadcaster.

6. With respect to the strengthening of local self-government, the Assembly:

6.1. welcomes the recent constitutional amendments regarding local self-government and urges the authorities to implement fully the recommendations of the Venice Commission, in particular those relating to the organisation of executive power and state supervision over local authorities;

6.2. takes note of the decentralisation strategy developed with the assistance of the Council of Europe, UNDP and the European Commission and expects that this strategy will now be formally adopted by the government;

6.3. recommends that the fiscal basis of local authorities be improved to strengthen their overall independence;

6.4. supports the principle of regionalisation of the country, which is a stated objective of the authorities, but considers that such regionalisation process should not be implemented at the cost of the development of strong and effective self-government at the local municipality level.

7. In the light of the positive experience of the direct election of the Tbilisi mayor, the Assembly recommends that the authorities study the possibility of introducing direct elections for all mayors of municipalities or at least of the other large self-governing cities.

8. The Assembly welcomes the unabated efforts by the authorities to strengthen the independence of the judiciary, which is evident from the many reforms that have continued to be implemented in recent years. At the same time, the Assembly is concerned by the reported low level of public trust in the impartiality and independence of the judiciary and recommends that the authorities continue their efforts to further increase the level of public trust. The Assembly therefore considers that ongoing efforts to strengthen the independence of the judiciary should be vigorously pursued. In relation to the strengthening of the independence of the judiciary, the Assembly:

8.1. welcomes the constitutional changes that strengthened the independence of the High Council of Judges and abolished the role of the President in the nomination of all but the Supreme Court judges. In order to better guarantee the independence of the Supreme Court, the Assembly recommends that the prerogative of their nomination is also moved from the President to the High Council of Justice;

8.2. welcomes the introduction of life tenure for judges by the 2010 constitutional amendments, but suggests that the authorities consider removing or shortening the probationary period for judges in line with European norms.

9. The Assembly welcomes the entry into force of the new Criminal Procedure Code, which has been a long standing recommendation of the Assembly. It notes with satisfaction that this new code will, inter alia, significantly strengthen the independence of the judiciary. Given the introduction of an adversarial justice system, the Assembly strongly recommends that an adequately funded and comprehensive system for free legal aid for those in financial need be established on the basis of the existing initiatives..

10. The Assembly also welcomes the entry into force of the law on the prosecution service. It is however concerned about the considerable powers given therein to the Minister of Justice, including the power personally to conduct the actual prosecution of high level personalities, such as the President and members of the Government. The Assembly therefore recommends that:

10.1. detailed and clear criteria for the dismissal of all prosecutors should be set out in the law;

10.2. the powers given to the Minister of Justice personally to conduct the actual prosecution of, inter alia, the President of Georgia, members of Parliament, judges, members of the Government, the Public Defender, prosecutors and high ranking military officers be abolished;

10.3. the powers of the Minister of Justice over the prosecution service explicitly prohibit him from giving instructions, or otherwise influencing, the prosecution of individual cases.

11. The Assembly expresses its concern about the problems of the administration of justice that could endanger the principles of equal application of the law and the right to a fair trail, as enshrined in article 6 of the European Convention on Human Rights. The Assembly calls upon the Georgian authorities to address these problems which, if left unaddressed, could undermine the considerable progress made by the authorities in the field of judicial reform and the strengthening of the independence of the judiciary.

12. The Assembly also notes the questions raised about the increasing frequency of plea bargaining. It recommends that the Georgian authorities address the concerns expressed in this regard, as they affect the public trust in the fairness of the justice system.

13. The Assembly reiterates its satisfaction with the ongoing efforts and clear political will to fight corruption in Georgia. It notes that these efforts have produced significant results in the fight against corruption in particular against low-level corruption. It calls upon the authorities to pursue their efforts unabated and to ensure that existing legislation to fight corruption is implemented fully and consistently. In relation to the fight against corruption the Assembly:

13.1. notes the persistent allegations that high level corruption has not been fully eradicated and calls upon the authorities consistently and credibly to investigate all allegations in this respect;

13.2. welcomes the investigations into alleged corruption of a number of high-level officials which demonstrates the political will to counter any sense of impunity for high-level corruption in Georgia;

13.3. welcomes the adoption of the amendments to the Law on Conflict of Interest and Corruption in Public Service that were drawn up with the assistance of the Council of Europe, as well as the adoption of the Law on the Chamber of Control;

13.4. recommends the Georgian authorities to evaluate with a view to improving its implementation, the legal framework for the access to public information, as this could be an invaluable tool in the fight against corruption.

14. The Assembly expresses its satisfaction with the considerable reforms that have been implemented with regard to the police forces. As a result of these reforms, corruption in the police forces and ill-treatment of detainees have been almost eradicated. Excessive use of force by law enforcement personnel during demonstrations and protests continues to be a point of concern, especially as complaints over the excessive use of force do not seem to be effectively and systematically investigated and convictions pursued. This should be addressed by the authorities as it could contribute to a sense of impunity among law enforcement personnel.

15. Protracted and ineffective investigations by police forces, especially of politically sensitive cases, are also a point of concern for the Assembly. It regrets that, despite its repeated calls for credible investigations, no culprits have been found for the attacks on protesters during the 2007 and 2009 demonstrations. The Assembly stresses that the case law of the European Court on Human Rights clearly requires that investigations should not only be initiated, but also be effective in order to be considered credible. The Assembly calls upon the Georgian authorities urgently to address this issue.

16. The Assembly welcomes the efforts by, and political will of, the Georgian authorities to address the problem of overcrowding and inadequate living conditions in Georgian prisons. It considers that the continuous growth of the prison population, resulting in overcrowded facilities, is largely the result of the very strict, even sometimes disproportionate, mandatory sentencing guidelines, even for minor crimes, and the provisions that dictate that sentences are served consecutively and not concurrently. The Assembly therefore:

16.1. welcomes the development of a comprehensive strategy for the liberalisation of the prison system by the Georgian authorities, prioritising such areas as crime prevention and expanding the use

of various non custodial measures, including diversion, mediation and mentoring programs for juveniles, community services, expanded parole conditions and reform of probation system for adults"

16.2. recommends that the authorities review the mandatory sentencing guidelines, consider alternative sentencing and develop clear and improved guidelines for early release;

16.3. calls upon the authorities to continue their efforts to combat ill-treatment in prisons and to ensure the safety from retribution of those prisoners that file complaints against prison guards.

17. Georgia is the most multi-ethnic country in the Caucasus. The Assembly therefore welcomes the continuous efforts by the Georgian authorities to improve the integration of the different minorities in Georgian society. The Assembly calls upon the authorities:

17.1. to step up their efforts to improve the participation of national minorities in public life;

17.2. to improve the system of language education for national minorities, including the teaching of minority languages and Georgian as a second language;

17.3. to take further steps to combat the marginalisation of the Roma population;

17.4. to step up their efforts to fight any forms of intolerance, and hate speech, on the basis of ethnicity, faith, gender or sexual orientation.

18. The Assembly welcomes the adoption of the National Concept for Tolerance and Integration, as well as the establishment of an inter-agency commission on minority issues, to facilitate the implementation of the Framework Convention for the Protection of national Minorities. One of the outstanding accession commitments of Georgia is the adoption of a comprehensive Law on National Minorities. The Assembly would be prepared to consider that this accession commitment has been fulfilled provided a comprehensive legal framework for the protection of national minorities contained in a number of specialised laws be in place that is, in the opinion of the Advisory Committee of the Framework Convention, adequate and fully in line with European norms and standards.

19. Religious freedom and tolerance are fundamental principles to further social cohesion and the consolidation of a democratic society. The Assembly is therefore concerned by the lack of a proper legal status of, and legal protection for, denominations and faiths other than the Georgian Orthodox Church and therefore calls upon the Georgian authorities to:

19.1. adopt a specific law on religion that would offer proper and equal legal status and protection to all faiths and denominations in the country;

19.2. resolve the outstanding issues regarding the return, to their respective denominations, of historic religious properties confiscated during the Soviet era.

20. The Assembly regrets that Georgia, 10 years after joining the Council of Europe, has not yet honoured its accession commitment of signing the Charter on Regional and Minority Languages. It calls upon the Georgian authorities to sign and ratify the Charter without further delay.

21. The Assembly welcomes the clear political will of the Georgian authorities to resolve the issue of the repatriation of the Meskhetian population in line with its accession commitment to the Council of Europe. Taking note of the fact that the deadline for application under the law on repatriation expired on 1 January 2010, the Assembly recommends that the Georgian authorities:

21.1. conduct a proper evaluation of the results of the current application process, as soon as all applications have been decided upon;

21.2. show maximum flexibility with regard to formalities and paperwork to ensure that no applications are refused on technical grounds only;

21.3. develop, without further delay, a comprehensive and efficient mechanism for repatriation and re-integration.

22. The Assembly reiterates its condemnation of the continuing human rights violations as a result of the 2008 war, including the grave violations of the principle of freedom of movement and right to return of IDPs

as a result of the occupation of the two breakaway regions. In line with Resolution 1683 (2009) the Assembly calls upon the Georgian authorities to initiate a credible investigation into all alleged violations of international humanitarian and human rights law by persons under its jurisdiction or control during the 2008 war with Russia and to allow unrestricted access of international organisations to the two break away regions.

23. The Assembly expresses its concern about the manner in which IDPs were recently evicted from their residences in Tbilisi and calls upon the Georgian authorities to ensure that any evictions fully comply with international standards.

24. Pending further progress on the above-mentioned issues, the Assembly resolves to continue its monitoring procedure in respect of Georgia and reaffirms its readiness to assist the country in honouring its obligations and commitments to the Council of Europe.

B. Explanatory memorandum by Mr Islami and Mr Jensen, co-rapporteurs

Contents

1. Introduction

1. Georgia joined the Council of Europe on 27 April 1999, following the adoption of a positive opinion on its membership request by the Parliamentary Assembly in Opinion 209(1999). After the Rose revolution, which brought President Saakashvili and his United National Movement (UNM) into power, the Assembly considered that the new government should not be held accountable for the failure of the previous authorities to fulfil Georgia's obligations and commitments in the timeframe specified upon accession. In support of the new government and in recognition of the task faced by it the Assembly therefore adopted, in Resolution 1415 (2005), a series of revised deadlines for Georgia's commitments to the Council of Europe.

2. The previous report on the "Honouring of obligations and commitments by Georgia" was debated in the Assembly in January 2008, in the aftermath of the political crisis that ensued after the declaration of a state of emergency in November 2007. This report led to the adoption of Resolution 1603 (2008). The period after the adoption of this Resolution has regrettably been characterised by a continuing political confrontation, as well as upheaval following the tragic war between Georgia and Russia in August 2008.

3. The consequences of the war between Russia and Georgia have been dealt with in a number of separate reports to the Assembly and were covered in the Monitoring Committee under a separate mandate. The Monitoring Committee, at its meeting on 27 January 2011, decided that from then on the consequences of the war, as well as the implementation of the demands of the Assembly in that respect, will be followed in the ongoing monitoring procedures for Georgia and Russia. We fully subscribe to the conclusions of the Assembly as expressed in Resolutions 1633 (2008), 1647 (2009) and 1683 (2009) and will not revisit their implementation in the context of this report. It is clear that the tragic war and occupation of the Georgian regions of South Ossetia and Abkhazia, and the subsequent recognition of their independence by the Russian Federation, have had an important impact on the political developments in Georgia. However, democratic reforms and progress in fulfilling the country's accession commitments and obligations have continued unabated. To a certain extent, the democratic reforms even got a new impetus as the Georgian authorities felt that the August war was also a direct attack on the democratic nature of the Georgian society and therefore initiated an ambitious reform programme, called "the second wave of democratic reforms".

4. In this report, we therefore wish to outline the developments, both progress achieved and concerns remaining, with regard to Georgia's fulfilment of its obligations and commitments to the Council of Europe. This report is also based on the findings from our fact-finding visits to the country, which took place on 26-27 April 2008, 24-27 March 2009, 21-24 March 2010 and 12-16 July 2010.[3] In our view, the delay in producing this report for the Assembly as a result of the August 2008 war and its consequences has therefore been kept to an absolute minimum.

2. Main political developments

5. As mentioned above, our previous report was published just after the extra-ordinary Presidential elections on 5 January 2008. These elections were called following the resignation of President Saakashvili after the politically contentious declaration of a state of emergency that followed a tense period of protests and political standoff between government and part of the opposition. With his resignation, President Saakashvili aimed to allow the Georgian electorate to make a verdict on his and his government's actions in November 2007. These Presidential elections were examined in detail in our previous report. However, for the comprehensiveness of the present report, we would like to recall the conclusions of international observers. According to their assessment, while the Presidential elections were in essence in line with democratic standards, some shortcomings and violations encountered during the elections were serious challenges that remained to be addressed, as they had tainted the overall election process. As a result, the stand off between opposition and ruling party, with the resulting climate of distrust and polarisation, continued unabated after the elections.

6. At the same time as the Presidential elections, a consultative referendum was held with the aim to determine the date for the parliamentary elections in Georgia: either in the spring of 2008 - as demanded by the opposition - or in autumn 2008 as foreseen in the 2007 amendments to the Constitution. In the referendum, 79% of the voters expressed their preference for the organisation of parliamentary elections in the spring of that year. As a result, parliamentary elections were called for 21 May 2008.

[3] See also the information notes AS/Mon(2008)14rev2, AS/Mon(2009)16rev, AS/Mon(2010)24rev, and AS/Mon(2010)27rev, that were produced after each visit and which were each time declassified by the Monitoring Committee on our proposal.

7. In order to resolve the ongoing political crises after the November 2007 events and Presidential elections of January 2008, a dialogue was started between the opposition and ruling party on the change of the electoral system for the parliamentary elections, with a view to ensuring a more pluralist parliament. Originally, the dialogue between authorities and the united opposition led to an agreement to change the election system for the 50 majoritarian seats[4] in Parliament from a first-past-the-post system to a system of regional proportional lists. However this dialogue broke down and the opposition refused to end their boycott of the parliament and vote for the necessary constitutional amendments that would have implemented the agreement on the election system. As a result, new amendments were introduced by the majority and they not only maintained the first past-the-post system for majoritarian seats, but also increased the number of majoritarian seats from 50 to 75, while the number of proportional seats was reduced from 100 to 75 seats. These amendments were decried by the opposition and led to allegations that these changes were driven by a desire of the ruling party to maintain a constitutional majority in the new parliament by changing the electoral system in its favour.[5] This further deteriorated the relationship between the opposition and authorities, which continued to be characterised by a deepening lack of trust and polarisation.

8. On 21 March 2008, a series of changes were introduced to the Electoral Code. They reflected the above-mentioned constitutional changes but also addressed several shortcomings noted and recommendations made by international observers, including the Assembly, after the January 2008 Presidential elections. The changes introduced to the Election Code included *inter alia*: the abolition of the supplementary voters' lists and voter registration on Election Day; the lowering of the threshold from 7% to 5%, as well as the simplification and clarification of the procedures with regard to election related complaints and appeals. Contrary to European Commission for Democracy through Law (Venice Commission) recommendations, the amendments abolished the possibility for individual candidatures in the Parliamentary elections and did not address the question of the vastly unequal size of the single mandate constituencies, which runs counter to the principle of equality of the vote.

9. International observers, including an ad hoc Committee of the Parliamentary Assembly, that observed the parliamentary elections on 21 May 2008, concluded that there had been an overall improvement in the election process in comparison with the Presidential elections. However, they also noted that, despite the efforts of the authorities to comply with international standards, some outstanding problems and shortcomings resulted in uneven and incomplete implementation of those standards.

10. The parliamentary elections were overwhelmingly won by the ruling United National Movement, which obtained a constitutional majority of 119 out of 150 mandates in the new Parliament. The joint opposition won 17 seats, the Christian Democrats 6 seats, the Labour Party 6 seats and the only two majoritarian seats that did not go to the United National Movement were won by the Republican Party.

11. Regrettably, while the holding of early presidential elections in January 2008, as well as parliamentary elections in May 2008, was meant to be a mechanism to reduce the political schism that had emerged after the November 2007 events, these elections did not resolve the polarised nature of the political climate in Georgia for most of the reporting period. This was exemplified by the regrettable decision of 14 opposition members not to take up their mandates in the newly elected parliament.

12. It has to be emphasised that the authorities announced a number of initiatives to strengthen the parliamentary opposition and to re-start the dialogue that had broken off before the elections. In particular, they adopted changes to the parliamentary rules of procedure that allowed the lowering of the number of MPs to establish a faction and proposed the setting up of a working group to revise the Election Code for future elections.

13. However, the domestic political developments were soon overshadowed by the escalating tensions and deteriorating security situation in Georgia's regions of Abkhazia and South Ossetia, culminating in the tragic war between Russia and Georgia in August 2008. The sequence of events has been succinctly outlined in Doc 11724 (2008) and falls outside the scope of this report. Moreover, as mentioned before, the consequences of the war between Georgia and Russia have been the subject of a number of reports[6] and Assembly resolutions.[7]

[4] The Georgian parliament consists of 150 seats. According to the legal provisions valid at that time, 100 of these seats were distributed on the basis of a proportional election system and 50 on the basis of a majoritarian election system.
[5] The prognoses at that time, later confirmed by the election results, were that the ruling party was most likely to win the majoritarian races in a first past the post system.
[6] Doc. 11724 (2008), Doc. 11800 (2009), Doc. 11876 (2009) and Doc. 12010 (2009)
[7] Resolution 1633 (2008), Resolution 1647 (2009) and Resolution 1683 (2009)

14. While the war and its immediate consequences undeniably had an enormous impact on national policies and reforms, it was a matter of priority for the Georgian authorities, and a large part of its political class, to ensure that these events should not scuttle needed reforms or hinder democratic development in the country. On the contrary, in the view of the Georgian authorities, the war had also been a direct attack on the democratic nature of Georgian society. In response, they therefore proposed an elaborate reform package, the so-called "new wave of democratic reforms" with the aim of strengthening the democratic process and institutions in Georgia.

15. The opposition in Georgia, in general, stood united behind the government in its support for the actions undertaken in August 2008. However, at the same time, a large part of the opposition strongly differed with the government over its handling of the situation in the period leading to the war, as well as its handling of the consequences in its aftermath.

16. At the same time, the political landscape changed in the aftermath of the parliamentary elections and the war with the establishment of new opposition parties, mainly founded by former high-level officials from the ruling party and authorities, such as the "Democratic Movement-United Georgia" and the "Alliance for Georgia". The "Democratic Movement-United Georgia" was formed by former parliamentary speaker Ms Nino Burganadze, who left the governing United Movement on the eve of the parliamentary elections over political differences with President Saakashvili. The "Alliance for Georgia" was formed by the former Georgian Ambassador to the UN and presidential envoy for the relations with the separatist representatives in the Georgian regions of Abkhazia and South Ossetia, Mr Irakli Alasania. He was joined by several other administration officials who resigned from their positions after the war in protest at, in their opinion, the closed style of decision-making by the administration, as well as the handling of the relations with Abkhazia and South Ossetia in the period before the war. Mr Alasania's movement formed the "Alliance for Georgia" jointly with the New Rights Party and the Republican Party.

17. It is undeniable that the war and its consequences galvanised a large part of the opposition in their resolve to change the political power in Tbilisi, although many of them differed about the exact manner in which to achieve this political change. Starting on 9 April 2009, opposition parties organised a series of protest rallies and demonstrations with the declared aim of forcing early parliamentary elections and the resignation of President Saakashvili. These protest actions, which lasted well into the summer of 2009, eventually died out without achieving their declared goals.

18. Despite assurances of both authorities and participants that the rallies would be peaceful and that the law and constitution would be respected, they were held in a very tense atmosphere. Both sides expressed concerns and fears that provocations would take place and that the protests could escalate into violence. Regrettably, a number of isolated incidents were recorded. Of serious concern were the recurrent reports that protesters were attacked by unknown assailants in the vicinity of the rally venues. In a letter to the authorities, Human Rights Watch expressed its concern about the "striking patterns" that were followed in all these attacks, as well as the apparent lack of effective investigations into these attacks and measures to guarantee the safety of the protesters. Although the police started investigations into the attacks, these investigations were at the time of writing – more than a year after the events – not yet concluded and had not led to any charges being brought.

18. Differences of opinion among opposition parties on the continuation of the protests, as well as over the possibilities for co-operation with the authorities, split the extra parliamentary opposition in roughly two camps, which are often referred to as the "moderate" and "radical" opposition. While this categorisation is a misnomer – the "radical" opposition may have moderate views on certain issues and vice versa – and can be open to subjective interpretation, for clarity we will use the same differentiation in our report.

19. While categorically rejecting the possibility of organising early parliamentary and presidential elections, the authorities offered to implement a number of other proposals aimed at strengthening the role of the opposition in the democratic process, as well as the possibility for constitutional changes to increase the powers of the Parliament at the cost of those of the President.

20. An electoral working group (EWG) was initiated by the authorities with the aim of reaching a broad agreement among the different political forces on the electoral framework for the local elections, which were later set for 30 May 2010. The EWG was moderated by the National Democratic Institute (NDI), and worked on the basis of a code of conduct elaborated by them. Initially, most of the extra-parliamentary opposition did not participate in the work of the EWG, but at a later stage the Georgia Traditionalist Party and the Alliance for Georgia also joined the EWG.

21. After 10 months of discussions, consensus was reached on a number of issues, including the direct election of the mayor of Tbilisi and the election system for the city councils, the election of the Chairman of the Central Election Commission, the right for the opposition to appoint the Secretaries of the Precinct Election Commissions and the extension of the deadline for submitting election complaints and appeals. These changes to the electoral legislation on which consensus was reached in the EWG were introduced into Parliament by the ruling United National Movement[8] and subsequently adopted. No consensus could be reached on the threshold for the election of the Mayor of Tbilisi. In the end, a 30% threshold was adopted by the parliament.

22. On 30 March 2010, President Saakashvili called for local elections to be held on 30 May 2010. The direct election of the mayor of Tbilisi was considered to be a dry run for the next Presidential elections in 2013 and therefore of special importance. Despite the importance of this election, the opposition could not agree on a single candidate to challenge the incumbent candidate of the United National Movement.

23. The international election observation mission assessed the local elections on 30 May positively, although it noted that significant shortcomings still needed to be addressed. In particular, it noted that the authorities had shown clear political will to improve the election process and conduct elections in line with European standards. The United National Movement won the majority of the city councils in the country including in Tbilisi. In addition, the UNM candidate, Mr Gigi Ugulava, won the mayoral race for Tbilisi. Equally important were the relatively good results obtained by the opposition forces which indicates that the public was willing to reward those parties that chose to participate in the democratic process.

24. In order to overcome the schism between authorities and opposition and in response to the persistent calls for institutional reforms which were voiced by the opposition during the spring 2009 protest actions, the authorities initiated a constitutional reform process. This reform aimed at strengthening the powers of the Parliament at the cost of those of the President and, in general, to improve the system of institutional checks and balances, as well as at strengthening the independence of the judiciary. President Saakashvili, on 8 July 2009, established the State Constitution Commission of Georgia to draft the constitutional amendments.

25. The State Commission presented its draft for the amendments to the Constitution on 14 May 2010. This draft was presented to the Venice Commission for opinion. After a series of consultations with the Venice Commission, as well as with the Georgian public and civil society, the amendments to the Constitution were adopted by the Parliament on 15 October 2010. While most of the Venice Commission recommendations were implemented, some, remain to be addressed.

26. Following the adoption of the constitutional amendments, the political attention is shifting to the forthcoming parliamentary elections in 2012 and the Presidential elections of 2013. The parliamentary elections have gained new importance given the increased powers of the parliament after the constitutional changes. Also under the new Constitution the President continues to wield considerable power. The upcoming Presidential elections are therefore widely seen as an indicator of the political direction of the country.

3. Democratic institutions

3.1. Constitutional reform

27. On 8 July 2009, the State Constitution Commission of Georgia was established by Presidential decree. The aim of the commission was to draft a new constitution especially with a view to, inter alia, strengthening the role of the Parliament; strengthening the independence of the judiciary and enhancing the system of checks over the powers of the President.

28. The State Constitutional Commission was composed of academics, representatives of civil society and international experts, as well as representatives of parties. Regrettably, most of the extra-parliamentary opposition declined to participate in the work of the Commission, which is a missed opportunity. All parties that accepted to participate in the Commission were equally represented with one representative. Mr Avtandil Dematrashvili, a former Chairman of the Constitutional Court and one of the authors of the previous constitution, was appointed chairman of the Commission on the nomination of the opposition parties that participated in the Commission. Close co-operation was established with international partners, most notably the Venice Commission of the Council of Europe. The authorities should be commended for their efforts to

[8] The United National Movement had publicly committed itself to introduce into Parliament, and support, any changes to the electoral code on which the EWG had reached a consensus. Given the constitutional majority enjoyed by the UNM, this guaranteed the adoption of any agreement reached in the EWG.

create a drafting structure and working method that were specifically aimed at avoiding the domination or politisation of the drafting process by any single political force or interest.

29. The first draft of the Constitutional amendments was completed by the working group on 14 May 2010 and was sent to the Venice Commission for opinion on 17 May 2010. This draft was discussed with the Venice Commission, as well as other international experts, in Berlin from 15 to 17 July 2010. Subsequently, the State Constitutional Commission submitted its final draft of the proposed constitutional amendments to the Parliament on 21 July 2010.

30. According to Georgian legal provisions, a public consultation process, lasting at least one month, should be organised before the amendments can be discussed in Parliament. To this end, the Parliament established a commission to conduct this public debate consisting of MPs - of both the ruling party and opposition -, civil society representatives and academics. The Commission was chaired by the speaker of the Georgian parliament, Mr Davit Bakgradze. This commission organised a comprehensive consultation process including a series of public debates – 27 in total – in all regions of Georgia. On 13 September 2010, the State Constitutional Commission adopted a number of changes to its proposal in order to reflect the outcome of the public debate.

31. On 24 September, the amendments to the Constitution were passed in a first reading by the Georgian parliament and on 1 October 2010 in a second reading. The text adopted in the second reading was sent to the Venice Commission for opinion on 2 October 2010. The constitutional amendments were adopted by the Parliament in a third and final reading on 15 October 2010, a day after the Venice Commission adopted its opinion in plenary.

32. While all statutory requirements, including those relating to a proper public consultation process, were abided by, the speed with which the constitutional amendments were adopted after they were presented by the Constitutional Commission, and the fact that the consultation process took place over the summer holiday period, gave the impression that the constitutional changes were rushed through. Civil society organisations and opposition parties in Georgia felt that the public debate had not been sufficient both in depth and scope. While we realise that the public debate on the constitutional changes was not limited to the official public consultation period, but was already in full swing when the State Constitutional Commission was drafting the new constitution, we still regret the perception of haste that was generated by the rapid adoption of the constitutional amendments after they were presented by the Constitutional Commission. This is particularly so as such haste seems to have been unnecessary given that many of the key provisions of the new constitution will only come into force when the next President is installed in office.

33. The new Constitution significantly alters the balance of powers between state institutions. It moves away from a strong presidential system of government to a mixed system, where the power is in the hands of the government which is solely accountable to the Parliament. The President's role is now that of the guarantor of the unity and national independence of the state and the functioning of the democratic institutions, as well as that of a neutral arbiter between state institutions.

34. The powers of the government have been substantially strengthened at the expense of those of the President. The government, which now fully exercises the domestic and foreign policy of the state, is headed by a prime minister, who is nominated by the President on the proposal of the political grouping that obtained the most mandates in the elections. The candidate prime minister then composes his government and presents it to the Parliament for a vote of confidence.

35. The President no longer leads and defines the internal and foreign policy of the state, which is now set by the government. He no longer appoints or dismisses ministers and members of the government and his consent is no longer required for the state budget and most of his acts and decisions need to be countersigned by the Prime Minister.[9]

36. While the role and powers of the President of Georgia have been reduced, the office remains – in line with a mixed parliamentary-presidential system – a powerful and influential institution. The President maintains his powers to declare war and a state of martial law, and as guarantor of the independence and unity of the state, continues to be the commander-in-chief of the armed forces. In addition, the President maintains an important role on the foreign policy of the state as the constitution accords him the powers to hold talks with foreign states and to conclude international conventions and agreements. Following

[9] However, the declaration of war and the declaration of martial law as well as the suspension of institutions of self-government are exempt from counter signature.

recommendations of the Venice Commission, countersignature for his decisions in this sphere by the Prime Minister is needed in most, but not all, cases.

37. Besides introducing the above-mentioned mixed Presidential-Parliamentary system, the new constitution also makes important changes and improvements, inter alia, in the fields of the judiciary, property rights and local self-government.

38. The constitutional changes in the field of local self-government will be outlined below in a separate chapter. In the field of the judiciary, the new constitution introduces the principle of life tenure for judges, which will greatly improve their independence. In addition, the list of entities that can directly apply to the constitutional court has been enlarged and includes, inter alia, city councils (Sakrebulos) and the High Council of Justice.

39. New constitutional provisions have also strengthened the powers of individual political forces by reducing the number of MPs necessary to initiate a parliamentary investigation committee and by simplifying the procedures necessary for the impeachment of the President by the Parliament.

40. The Venice Commission assisted[10] the State Constitutional Commission and authorities throughout the drafting process. The Venice Commission's assessment of the constitutional amendments was requested, and was given in the form of two draft opinions[11] and a partial opinion on the local self-government chapter.[12] Following these opinions, a number of changes were made to the Constitutional amendments by the State Constitutional Commission. Most notably, these changes included the abolition of the right of legislative initiative of the President[13] – which was seen as a potential source of institutional conflict – and the reintroduction of organic laws.[14] In addition, the requirement that most Presidential acts need to be countersigned by the Prime Minister was introduced.

41. In its final opinion[15] on the constitutional amendments as adopted by the Georgian Parliament in a second reading, the Venice Commission welcomed the proposed constitutional changes as important improvements and an important step from a presidential system to a mixed system, where the government is accountable to the Parliament.

42. We warmly welcome the constitutional changes which have led to a stronger role and increased powers of the parliament. While the mixed presidential- parliamentary system implemented by the new constitution, as such, is in line with European standards, we note that this system is vulnerable to inter-institutional tension and conflict in the event that the president and parliament do not share the same political priorities and direction. It would be of concern if systemic tension were to develop. We raised this concern on different occasions with our Georgian interlocutors, who recognised this vulnerability and stressed that they were ready to take corrective action in the – in their view unlikely – event that systemic tensions would develop.

43. The possibility of systemic tensions was also raised in the opinion of the Venice Commission which therefore recommended to further strengthen the role and powers of the parliament. The Venice Commission *inter alia* questioned the need for the president to have the powers to negotiate treaties, and noted that the role of the parliament in budget manners is, in its opinion, too limited. These recommendations were not addressed in the Constitutional amendments that were adopted by the Georgian Parliament.

44. A key concern of the Venice Commission relates to the procedure for a motion of no confidence in the government, which is overly complex and, in the view of the Venice Commission *"gives too much power to the President and diminishes not only the power of the parliament, but also the political responsibility of the Prime Minister that should be the cornerstone of the new system"* .[16] We do share these concerns of the Venice Commission and recommend that they be addressed by the Georgian Parliament.

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[10] See CDL-AD(2010)028 for a full description of the Venice Commissions involvement in the drafting process.
[11] CDL(2010) 062 and CDL(2010)062-rev
[12] CDL-AD(2010)008
[13] Including abrogation of the right to call extra-ordinary sessions of the parliament, influence the agenda of the parliament or initiating the holding of a referendum.
[14] Organic laws are fundamental laws that govern the institutional arrangement of the state and that have a higher status than ordinary laws in the hierarchy of legislation. As a result, the requirements for adoption and change of organic laws are more stringent than for ordinary laws. In the Georgian system organic laws need to be adopted with a majority all listed members of the parliament, instead of with a majority of MPs present as required for a normal law.
[15] CDL-AD(2010)028
[16] CDL-AD(2010)028 § 79

Doc.

45. A main tenet of the draft for the new constitution was the strengthening of the powers of the Parliament and Prime Minister at the cost of those of the President. There have been speculations and allegations that these changes in the balance of powers were motivated by a possibility that President Saakashvili, who is prohibited from running for the presidency for a third consecutive term in 2013, is considering returning as Prime Minister after the next Presidential elections. In that context, we would like to concur with the Venice Commission that dismissing the constitutional reform as a mere attempt to circumvent limitations on holding power is belied by the depth and the scope of the constitutional reform.

3.2. Electoral reform

46. A key component of the "second wave of democratic reforms" package is electoral reform. An Electoral Working Group (EWG) was established with the task to reform the electoral framework and legislation. In order to ensure the independence of this group, it was convened and moderated by the National Democratic Institute (NDI) on the basis of a Code of Conduct developed by NDI. In this Code of Conduct, all participating parties committed themselves to constructive co-operation, consensus-based decisions and no prior pre-conditions for the discussions. In addition, the ruling United National Movement, which has a constitutional majority in Parliament, publicly committed itself to supporting any consensus agreement reached by the working group, which guaranteed its adoption in Parliament.

47. Besides the ruling party and parliamentary opposition, the EWG was initially only joined from the side of the extra-parliamentary opposition by the party "Industry Will Save Georgia". Also at a later stage, the Georgia Traditionalist Party and the Alliance for Georgia joined the work of the EWG. Regrettably, the other extra-parliamentary opposition parties continued to decline to participate in its work.

48. With the local elections being announced for 30 May 2010, the EWG agreed to focus on electoral reform relevant for the conduct of these local elections. After 10 months of discussions, consensus was reached on a number of issues, including the direct election of the mayor of Tbilisi and the election of the Tbilisi city council on the basis of a mixed proportional-majoritarian system. In the new system, 25 seats are allocated on the basis of proportional elections with a 4% threshold, another 25 seats are elected in single mandate constituencies. The authorities originally announced that the mayor would also be elected in other major cities via direct elections. However, this initiative was not pursued in the negotiations.

49. In addition to the election system for the city councils (Sakrebulo's) and the direct election of the Tbilisi mayor, the EWG also reached consensus on, *inter alia*, the election of the Chairman of the Central Election Commission, the right for the opposition to appoint the Secretaries of the Precinct Election Commissions and the extension of the deadline for submitting election complaints and appeals. No consensus could be reached on the issue of the threshold for the election of the Mayor of Tbilisi, with the Alliance for Georgia insisting on a 50%, later reduced to 45%, threshold, while the ruling United National Movement was unwilling to accept any threshold higher than 30%. In the absence of a formal agreement on the reform package, all issues on which consensus had been reached, as well as the 30% threshold were introduced in the parliament by the United National Movement and subsequently adopted. However, due to the late adoption of these amendments (28 December 2009), the Venice Commission was not in a position to adopt an opinion on these amendments in time for it to be taken into account before the local elections.

50. The work of the EWG was suspended after the local elections were formally called for. Given the positive results of the work in, and of, the EWG, as well as taking into account the need for further electoral reform, on several occasions we have called upon all political forces to re-convene the EWG as soon as possible after the local elections. The convening of the EWG at an early stage is important to ensure that the electoral reform can be finalised well before the upcoming parliamentary and presidential elections in respectively 2012 and 2013, and not at the last moment just before the elections. Last minute changes to the Election Code have regrettably been the rule in Georgia and this has given rise each time to a certain amount of tension in the electoral process itself.

51. On 4 October 2010, 8 opposition parties published a joint proposal for electoral reform and called for negotiations with the ruling party on the items contained in their proposal. The opposition parties had all, except one, participated in the local elections and included the main parliamentary opposition party: the Christian Democratic Movement.[17] In their proposal, they call for a mixed election system where half of the seats are allocated via a proportional party-list based system. The other half of the mandates should, according to this proposal, be allocated on the basis of a multi constituency (regional) proportional system. In addition, the proposal foresees a CEC that is reduced in size and composed on a parity basis of

[17] The 8 parties were: National Forum, Conservative Party, Republican Party, Our Georgia-Free Democrats, Georgia's Way, New Rights, Christian-Democratic Movement and Party of People.

representatives of qualifying parties and calls for the introduction of a biometric voting system to reduce the possibility for electoral fraud and manipulation.

52. We strongly welcome that, in line with our recommendations, on 10 November 2010, the ruling party and the 8 opposition parties came to an agreement on the establishment of an electoral working group to draft a proposal for the electoral reform. This working group consists of qualifying[18] parties that have agreed to participate in its work. International (non governmental) organisations are involved as observers in the work of this group as are local NGOs on the basis of a formula agreed between the ruling and opposition parties in the working group. Moreover, it was agreed that all decisions will be made on the basis of consensus. We are particularly satisfied with the fact that, on initiative of the authorities, the Venice Commission will be consulted on an ongoing basis regarding the issues discussed in the EWG.

53. The Presidential and Parliamentary elections of 2008 as well as the Local elections in 2010 clearly showed that shortcomings are still present in the election legislation. In addition, due to the many cycles of amendments to the Election Code, a significant number of contradictory or ambiguous provisions have been included in the electoral legislation. It is therefore strongly recommended that a completely new Election Code, based on the positive experience of previous elections and the work of the EWG, is drafted and adopted. An important aspect that this code needs to address is the election system itself. As outlined above, negotiations on the election system broke down in the run up to the 2008 parliamentary elections, and the current system is strongly criticised by the opposition for being favourable to the ruling United National Movement.

54. On 4 June 2010, the Venice Commission adopted a joint opinion[19] with the OSCE/ODIHR on the Georgian Election Code as amended in March 2010. In its opinion, the Venice Commission concluded that the Georgian Election Code, as amended, is generally conducive to democratic elections and allows for elections to be conducted in a transparent and open manner. Moreover, recent amendments addressed a number of shortcomings that were noted during previous elections. This is an improvement. However, at the same time, serious concerns remain regarding a number of provisions that run counter to European norms and standards, including electoral norms articulated in the European Convention on Human Rights.[20]

55. According to constitutional provisions, 75 of the 150 members of the Georgian Parliament are elected in single mandate constituencies. The election law does not contain any requirements with regard to the size of these constituencies. Currently these election constituencies coincide with the historical districts in Georgia which are vastly different in size, ranging from 4 000 to 140 000 voters per constituency, which undermines the important principle of the equality of the vote. According to Council of Europe standards, the maximum deviation allowed from an equal distribution of voters per single mandate constituency should seldom exceed 10% and never 15%. This situation could be remedied by either creating single mandate constituencies that are largely equal in size or by introducing multi-mandate constituencies. As a matter of principle, it is important that any electoral boundaries are created in an impartial and transparent manner.

56. The current election legislation does not allow independent candidacies, even in the majoritarian races, which seems to defy the logic behind the majoritarian system. This restriction of the passive right to vote runs counter to European standards. In addition, residency requirements for public office are considered to be excessive by the Venice Commission and OSCE/ODIHR, while the blanket restriction on the right to vote[21] of prisoners runs counter to the case law of the European Court of Human Rights.

57. The Venice Commission notes that its appears from the election code that, under some circumstances, a party or election bloc can cancel the registration of a candidate after he/she has been elected.[22] On several occasions, the Assembly has reiterated that the principle of an imperative mandate runs counter to European norms and standards. These provisions should therefore be brought in line with European standards.

58. The Venice Commission opinion highlights the progress made with regard to ensuring a balanced and impartial election administration. This should be welcomed. However, the law still allows parties to recall their nominees on the election commissions up to 15 days before the vote. This could undermine the

[18] According to Georgian legal provisions "qualifying parties" are parties that have received at least 4% of the votes in the last parliamentary elections or at least 3% of the votes in the last local elections.
[19] CDL-AD(2010)013
[20] CDL-AD(2010)013 § 10
[21] According to the Election Code, persons who are in prison as the result of convictions in a court of law are not eligible to take part in elections.
[22] CDL-AD(2010)013 § 24 -25

independence, stability and impartiality of the election administration and we therefore recommend that it be changed.

59. The sanctions for violations of campaign finance regulations include the possibility of cancelling the election results of the violating party, which seems disproportional and could easily be misused. In general, regulations regarding the cancellation of the election results in precincts and districts should be modified to ensure clarity and consistency and should allow for the possibility of appealing such decisions to a competent court.

60. A broad agreement between all political forces on an election system that is seen as impartial and fair by all electoral contestants will be the key to creating a more inclusive and constructive political climate. This is an important task for the electoral working group. All participants in the EWG should engage in these negotiations without any preconditions and without excluding any possible solution beforehand. It is important to note that the election system is affected by Constitutional provisions. Although the constitutional reform process has been finalised, the authorities have repeatedly assured us that this would not be an obstacle for further constitutional changes to accommodate any election system the electoral working group will agree upon.

3.3. Political parties

61. As mentioned, the ruling United National Movement (UNM) has a constitutional majority of 119 out of 150 mandates in the current parliament. The opposition in Georgia is divided and fragmented and has not been able to present itself as a viable alternative to govern the country to the Georgian voters. At the same time, also as a result of its overwhelming majority, the ruling majority has dictated the political agenda and at times ostracised other political forces and opinions. This has helped fuel the tense and polarised political climate in Georgia. In several previous monitoring reports to the Assembly, we have therefore stressed the importance of improving the role, and strengthening the capacity, of the political opposition as a mechanism to improve political stability and assist democratic consolidation.

62. It should be noted that this issue, and its importance, has been recognised by the authorities. In the context of the second wave of democratic reforms that were announced after the August 2008 war with Russia, a comprehensive package of democratic reforms was introduced with a view to, *inter alia*, strengthening the role of the opposition in the work of the Parliament as well as in state oversight institutions – including those that oversee the defence and national security sectors.

63. In order to strengthen the role of the opposition in the work of the Parliament, the opposition has been granted the right to nominate up to three vice-chairpersonships of the Georgian Parliament, as well as the right to nominate a vice-chairperson on each parliamentary committee. Also the procedures to set up a parliamentary faction have been simplified and the number of MPs to form a faction has been reduced from 10 to 6. In addition, a member of the parliamentary minority has been elected to the High Council of Justice, which manages the judiciary, and the number of MPs from the parliamentary minority has been increased on the Trust Group, which supervises information in the defence area. A new Law on the Chamber of Control was adopted which guarantees the independence of the country's main auditing body and strengthens the public oversight over budgetary expenses of the state. In addition, an Anti-Crisis Council was formed to oversee the post-war reconstruction and the distribution of aid to the IDPs, as well as to elaborate proposals for further democratic reforms. This Council is composed of representatives of the government, as well as members of the parliamentary majority and opposition.

64. The reforms not only sought to strengthen the role of the parliamentary opposition but also to strengthen and empower the extra-parliamentary opposition. Of importance were the amendments to the organic law of political unions of citizens that, *inter alia*, restored the budgetary funding for parties that had refused to take their seats in the Parliament after the May 2008 elections and allowed for the provision of budgetary funding to 6 additional opposition parties in addition to the 9 parties that already received state funding. In addition, the amendments created a fund to finance a wide range of capacity building activities of parties, think tanks and NGOs that are affiliated with political parties.

65. These reforms, as well as the electoral reform for the local elections mentioned above, have, at the moment of writing, resulted in the strengthening of the so-called moderate opposition and have in general improved the political climate in the country. In our view, the work of the cross-party group preparing the electoral reform in the run up to the parliamentary elections, especially with regard to the election system to be agreed upon, is going to be crucial for the consolidation and further normalisation of the democratic political environment in the country.

3.4. Media pluralism

66. Georgia's media landscape continues to be an example for the region, but regrettably has also witnessed some negative developments. While Georgia's media legislation is still one of the most liberal, the overall media environment, especially with regard to media pluralism, has deteriorated in the recent period.

67. In a report published in November 2009, Transparency International (TI) criticised the lack of transparency of ownership and control over the electronic media and noted that the national regulatory body is not perceived as independent and needs to be further depoliticised. In addition, TI expressed its concern with regard to the independence of the public broadcaster which, in its opinion, operates more like a state than a public broadcaster. Likewise, in its 2009 report, the Committee to Protect Journalists expressed its concern over increased government control of the television broadcasters, including manipulation and politicisation of TV news and obstruction of opposition aligned broadcasters. In its annual freedom of the Media index, published on 20 October 2010, Georgia had fallen from the 81st to the 99th place in the ranking of 178 countries. Similarly Freedom House lists Georgia as partly free in its 2010 report.

68. However, several positive developments have taken place since our last report. Election observers during the local elections in 2010 noted an improvement in the media environment during the elections, which was confirmed by the findings in other reports. In that respect, the balanced coverage of the elections by the Public Broadcaster was highlighted[23] and welcomed.

69. A special parliamentary state channel has been established which aims to provide full time information on the work of the Parliament and the views of the different political forces on the issues that are on the agenda. The editorial policy has been developed in consultation with the opposition, under the aegis of NDI, to ensure that the provision of information is unbiased and equitable for all political forces. In addition, a number of legislative initiatives have been taken to increase the participation of opposition parties in Media oversight and regulatory bodies.

70. In the course of the protest actions in April 2009, four members of the board of trustees of the public broadcaster resigned over what they considered to be biased coverage in favour of the authorities by the public broadcaster of the political events at that time. Following that, the authorities offered, in the framework of the announced democratic reforms, to allocate half the seats in the board of trustees of the public broadcaster to the opposition. Subsequently, on 23 September 2009, the Parliament adopted a decision that increased the number of members of the board of trustees of the Public Broadcaster from 9 to 15, with the intention that 7 of these places would be filled by persons nominated by the opposition and 1 by civil society. In their original proposal, the authorities had also indicated that they favoured increasing the powers of the board of trustees[24], but no such proposals were tabled in Parliament.

71. A group of independent experts on the media and media legislation has developed a legislative package with the aim of improving the media environment in the country. The legislative package, which has reportedly gathered considerable support among experts, addresses such diverse and important issues as: media ownership, access to public information, licensing issues, conflict of interest and guidelines for advertising. The package was presented on 27 October 2010 to the Public Defender of Georgia, who praised its contents.

72. A persistent problem in Georgia's media environment is the lack of transparency of media ownership. On 26 October 2010, the Chairman of the Georgian Parliament, Mr Davit Bakradze, while stressing that the current media legislation was in line with international standards, announced a draft law to make media ownership fully transparent. Subsequently, on 12 November 2010, the UNM tabled a draft law that would restrict media ownership by offshore companies to 10% of the shares in any given media outlet that has a Georgian broadcasting license. After extensive consultations in the relevant parliamentary committees and in response to recommendations of the civil society, it was decided to completely abolish the possibilities for off shore ownership of media outlets that have a Georgian broadcasters license. This new law is a welcome and important improvement in the media environment. However, it does not address all issues and concerns that have been brought up in relation to the media environment in recent times, such as those mentioned in the proposal of the group of independent media experts. In this respect, the authorities, in the very near future, should address the issues raised by the expert group, especially – but not only – as far as the right of access to information is concerned.

[23] http://www.osce.org/documents/odihr/2010/09/46040_en.pdf

[24] The board of trustees' powers are limited to setting the overall programming priorities and has little influence on the editorial policy.

73. While increasing the transparency of ownership and editorial control of the media is indeed essential in a democratic society, legislation to this effect can only offer a partial solution, especially in an increasingly global media market with a plethora of offshore media holdings. Equally important for the pluralism of the media environment is the possibility for new groupings to enter the media market relatively easily. A number of initiatives for new broadcasters, which have reportedly sufficient economic backing exist. However, no new frequencies have been made available by the authorities for quite some time. We would therefore recommend that the authorities organise, as soon as possible, a fully transparent tender for broadcasting frequencies with a view to diversifying the media landscape and increasing its pluralism.

3.5. Local self-government

74. Georgia ratified the European Charter on Local Self-Government on 8 December 2004, and it came subsequently into force on 1 April 2005. Since then, the authorities have undertaken a number of initiatives with a view to bringing Georgian national legislation in line with the provisions of the Charter. In this context, a decentralisation strategy was developed with the assistance of the Council of Europe, as well as UNDP and the EU. However, to the present date, this strategy has not been officially adopted, although government policies seem to be guided by its provisions. We have been informed by the authorities that they intend formally to adopt the strategy in the very near future.

75. The constitutional changes adopted on 15 October 2010 included a special chapter on local self-government. This chapter was significantly strengthened with the help of the Venice Commission and Council of Europe experts. It provides for, *inter alia*, the independence and autonomy of local self-government, the distinction between own and delegated powers and the possibility for representatives of local self-government to apply directly to the constitutional court, which are welcome developments. Some areas would however need further expansion and clarification as outlined in the opinion of the Venice Commission.[25]

76. The reform of the organic law on local self-government has been pursued with a view to bringing it in line with the Charter. This reform is taking place in close co-operation with the Council of Europe. While an overall improvement over the pervious law, a number of concerns still remain to be addressed, particularly with regard to, *inter alia*, the organisation of executive power and state supervision over local authorities. Part of the problem with regard to the executive power is related to the fact that the Gamgebelli[26] and Gamgeoba[27] continue to hold executive authority despite the fact that they are not elected and therefore are not accountable to the citizens of the community. Moreover, the appointment procedures of these persons are ambiguous and potentially run counter to the provisions of the Charter. In addition, the fact that the executive power is shared between three people – the Gamgebelli, the Gamgeoba as well as Chair of the Sakrebulo – undermines the transparency and accountability of the system. These issues run counter to the provisions of the Charter. It is important that they are addressed in the near future.

77. At the moment, only the mayor of Tbilisi is directly elected. Mayors in other municipalities are indirectly elected by the city councils. Originally, the authorities had also proposed that the mayors of other large self-governing cities would be directly elected, but no follow-up was given to this proposal. In view of the positive experience of the direct election of the mayor of Tbilisi, it is recommended that the authorities consider the direct election of mayors for all municipalities in Georgia and particularly for the large self-governing cities, as also recommended by the National Association of Local Authorities in Georgia.

78. While members of the opposition were elected in a significant number of city councils across the country during the last elections, their structures are often considered weak and not well organised on the local level, especially in the smaller municipalities. This hinders their ability to play a strong role on the local level and in local self-governance. The strengthening of the structures of the opposition parties at the local level is a priority in that respect. In this context, the 2009 Freedom House report notes that, as a result of the domination of the city councils by the ruling party, the central government maintains tight control and supervision over city councils, which undermines the very logic of self-governance.

79. The fiscal basis of local authorities is weak and needs to be strengthened. While some taxes, such as property taxes, are levied directly and collected by the municipalities, the cost of collection of these taxes is often higher than their revenue. As a result, practically all city councils receive additional funding from the central budget, which limits their independence. In this respect, the Venice Commission opinion on the Constitutional amendments recommends that the transfer of relevant financial resources should not only be

[25] CLD-AD(2010)028
[26] Head of the Executive branch of the local self-government unit
[27] Head of the municipality district administration

compulsory in the case of delegation of competences, but also in the case of transfer of competences.[28] In addition, regulations on local budgets and equalisation formula in the Budget Code and the local taxes chapter in the Tax Code need to be revised. Co-operation on these issues has been established between the Georgian authorities and the Directorate for Democratic Institutions of the Council of Europe.

80. The authorities have expressed their interest in developing strong regions, especially in view of the still rather weak municipalities in the country. There is currently no constitutional arrangement for regions in Georgia. However, the authorities nonetheless started to draft a regional development strategy. A number of organisations and bodies, including from the Council of Europe, have expressed some concern about the possible regionalisation of Georgia, in the light of the still very weak financial and human resources at the regional and local levels. It is feared that the development of strong regions could undermine the development of local self-governance at the municipality level. While supporting the principle of regionalisation in the country, care should be taken by the authorities to ensure that the regionalisation process is not implemented at the cost of the development of strong and effective self-government at the local municipality level.

81. A Regional development Strategy for 2010-2017 was adopted by the Ministry of Regional Development in June 2010 and a corresponding action plan is foreseen to be adopted end of 2010 or beginning 2011. Regrettably, despite the close co-operation with the Council of Europe in the field of local self-government, no consultations took place on these important strategy documents.

82. The priority given to the economic social-economic development of the regions is also evident in the decision of the Georgian Parliament to split its seat between Tbilisi and Kutaisi, Georgia's second largest city, which is situated in western Georgia. According to this decision, parliamentary sittings will take place in Kutaisi, while committee meetings will continue to take place in Tbilisi. This partial relocation of the Parliament is foreseen to enter into force with the convocation of the new Parliament after the 2012 parliamentary elections in Georgia.

4. Rule of Law

4.1. Independence of the Judiciary

83. The strengthening of the independence of the judiciary has been a long-standing priority of the Georgian authorities and measures and reforms to this effect have continued unabated in the reporting period.

84. In 2007 and 2008, a series of constitutional amendments were passed with the aim of strengthening the independence of the judiciary. The High Council of Justice, which is responsible, inter alia, for appointment of judges and disciplinary measures against them, ceased to be an advisory body of the President and became an independent body composed in its majority of judges. The President and Minister of Justice are no longer members of the High Council of Justice, which is now chaired by the Chairperson of the Supreme Court. The High Council is composed of the Chairperson of the Supreme Court, 8 members elected by the Conference of Judges, 2 appointed by the President and 3 appointed by the parliament. In addition, the chairperson of the legal affairs committee of the parliament is an ex-officio member of the Council. Following constitutional amendments in the framework of the second wave of democratic reforms, one of the 3 appointees by the parliament should come from a faction in parliament that belongs to the opposition. Thus, in line with European standards, the majority of the members of the High Council of Justice are judges elected by their peers.

85. In a further effort to strengthen the independence of judges, the principle of life tenure of judges was introduced by the 2010 Constitutional amendments. However, these provisions also introduce a probationary period of "not more than 3 years[29]". In its opinion on the recent constitutional amendments, the Venice Commission underlined that, according to the European Charter on the Statute of Judges, any trial period - if unavoidable - should be short and the criteria for not confirming an appointment after a probationary period should be clearly defined in the law. In addition, the decision to confirm, or not, an appointment should be taken by an independent authority. We would therefore suggest that this probationary period is removed, as recommended by the Venice Commission, or altered in order for it to be fully in line with European norms.

86. While the appointment of judges is the prerogative of the High Council of Justice, all judges of the Supreme Court continue to be appointed by the parliament upon the proposal of the President. Transferring

[28] CLD-AD(2010)028, § 103 - 105
[29] Article 86 § 2 of the Constitution

the right to nominate the judges for the Supreme Court to the High Council of Justice would better guarantee their independence.[30]

87. The new Criminal Procedure Code (CPC), which entered into force on 1 October 2010, also contains important provisions to strengthen the independence of the judiciary. The new CPC introduces the adversarial principle in the justice system, as well as jury trials for certain categories of cases. As a result of these, and other provisions, the role of the judge in the court proceedings has changed into an impartial arbiter between prosecution and defence. These changes will help to further isolate the judiciary from undue influence by third parties.

88. In February 2010, amendments were adopted that outlaw ex parte communication with judges concerning a case and introduce severe sanctions for any infringements. In addition, the Criminal Code of Georgia was amended to criminalise interference in the work of the judiciary by state officials.

89. However, despite all these important reforms and legislative changes and the many efforts of the authorities to improve the public perception in this respect, this perception remains that the independence of the judiciary is limited and that they are open to pressure of the executive. The public perception of a judiciary that is impartial and independent is crucial for both public trust in, and the functioning of, a state of rule of law. In addition, the pressure on the judiciary and limitations on the independence of the judiciary continue to be of concern as is emphasised in the latest report[31] of the Public Defender of Georgia and the 2009 Human Rights Report of the US State Department. Further reforms continue to be necessary in this respect.

4.2. Criminal Procedure Code

90. In the previous Resolution on the honouring of obligations and commitments by Georgia, Resolution 1603 (2008), the Assembly called upon the authorities to *"adopt the new comprehensive code of criminal procedure elaborated in co-operation with the Council of Europe*[32]". This Criminal Procedure Code (CPC), was adopted by the parliament in the autumn of 2009 and came into force on 1 October 2010. It was developed in close co-operation with the Council of Europe and adopted after an elaborate consultation process, including with the civil society in Georgia.

91. A key principle of the new CPC is the introduction of an adversarial court system where the judge functions as an impartial arbiter between the prosecution and defence. Moreover, the right under the previous CPC of a judge to question witnesses, and thereby to direct the investigation, has been abolished under the new CPC. As a result, the judges no longer have any role in the prosecution, or defence, in the cases before the court, which helps to isolate the judiciary from undue influence by third parties.

92. As an innovation, the new CPC introduces jury trials, initially for serious murder cases. It is hoped that the introduction of the jury system will further enhance the independence of the judiciary.

93. Several provisions in the new CPC aim at strengthening the right to a fair trial and due process. The CPC protects against self-incrimination and excludes the possibility that a defendant is convicted solely on the basis of his or her confession. In addition, the new CPC grants equal rights to both prosecution and defence in collecting and presenting evidence before the courts. In addition, strict deadlines and timeframes have been set in the CPC for court proceedings.

94. In their overall positive assessment of the final draft of the Criminal Procedure Code experts of the Directorate General of Human Rights and Legal Affairs of the Council of Europe raised some questions with regard to the system of plea-bargaining that is part of the CPC, as well as the role of the victim in the criminal proceedings and the sometimes rather short deadlines foreseen in the law. In addition, it was highlighted that, especially in an adversarial system, the role of a defence lawyer is crucial and therefore a comprehensive system of free legal aid for those in need is essential. We encourage the authorities to continue, and where necessary strengthen, their efforts and initiatives in this respect.

[30] Se also CDL-AD(2010)028, § 87
[31] Report of the Public Defender of Georgia on "The situation of Human Rights and Freedoms in Georgia – 2009 Second Part", presented to the Georgian Parliament on 16 July 2010.
[32] Resolution 1603 (2008) § 21.3

4.3. Reform of the Prosecution Service

95. In October 2008, the Georgian Parliament adopted the Law of Georgia on the Prosecution Service. In addition, in March 2009, a series of constitutional amendments were adopted that changed the status of the prosecution service in the institutional framework of the Georgian state.

96. In 2010 a Public Council was established that participates in the selection of prosecutors and oversees the application of ethical standards by the prosecution service. In addition, a pilot programme for victim assistance centres was started this year and the Community Prosecution initiative expanded to cover 15 regions.

97. As a result of these, as well as previous reforms, the prosecution service generally has been reduced and its efficiency improved. Prosecutors are generally well paid, and positions in the service are well sought after by lawyers. As a result, corruption in the prosecution services, which used to be problematic in the past, has almost disappeared.

98. The prosecution service remains a powerful institution but its general oversight powers about which we expressed concerns in our previous report[33], no longer exist, which we warmly welcome.

99. The constitutional changes in 2009 transferred the responsibility for the prosecution service from an independent Prosecutor General to the Minister of Justice, who, at the same time, also has the role of prosecutor general. Such arrangement is in principle in line with European norms and standards, if there are sufficient safeguards to ensure the impartiality and transparency of the prosecution service and its independence from political interests.

100. In its opinion[34] on the 2009 constitutional changes that affected the prosecution service, the Venice Commission noted that the law on prosecution grants considerable powers to the Minister of Justice over the prosecution service. This could be at variance with the above-mentioned principle. While the overall management of the prosecution service is in the hands of the Chief Prosecutor, the Minister has the power to appoint or dismiss individual prosecutors, to approve the principles of criminal law policy, as well as to issue normative legal acts and to abolish illegal orders, instructions and directives by the prosecutors.

101. In its opinion, the Venice Commission recommended that further provisions be adopted with the aim of explicitly codifying that the Minister should not have the power to act in individual cases, following what in practise is already the case. Moreover, the Venice Commission expressed its concern that the absence of clear legal criteria for the dismissal of Chief Prosecutor, Deputy Chief Prosecutors, prosecutors of the autonomous republics, and the district prosecutors could undermine their independence. In addition, the Venice Commission opinion recommends that the possibility for all prosecutors to appeal against a decision to dismiss them before a court should be explicitly provided for by law. We were informed by the Georgian authorities that this possibility is already provided for by the Code on Administrative Procedure of Georgia.

102. The law on the prosecution service gives the power to the Minister of Justice to conduct the actual prosecution of, *inter alia*, the President of Georgia, members of parliament, judges, members of the government, the Public Defender, prosecutors and high-ranking military officers. These powers are problematic and of concern as the minister could potentially obstruct or initiate prosecutions based on political motivations. We would strongly recommend that these powers of the Minister of Justice be abolished through amendments to the Law on the Prosecution Service.

4.4. Administration of Justice

103. Despite the many positive reforms in the justice area, the issue of the administration of justice has increasingly become a point of concern and of public debate. Many interlocutors we met during our visits, including the Public Defender of Georgia, have expressed concern with regard to this question. Problems in this respect have, at times, led to uneven application of justice which undermines the principle of a fair trial as guaranteed by Article 6 of the European Convention on Human Rights. The main difficulties noted are, *inter alia*, the lack of, or inadequate, reasoning given in court decisions, obstacles to the right of defence, the use of standardised templates for decisions by the courts, as well as court decisions based on meagre or contradictory evidence.

[33] Doc. 11502 (2008) rev
[34] CDL-AD(2009)017rev

104. The problems in the administration of justice are compounded by the fact that the justice system is still biased in favour of the prosecution, which challenges the principle of the presumption of innocence until proven guilty. In response to allegations that persons have been prosecuted on non-existent or fabricated evidence, the National Democratic Institute (NDI) has started a trial monitoring project for those cases where people have been charged for possession of illegal weapon or drugs, as these charges were highlighted as problematic by several human rights organisations. While this trial monitoring project is still ongoing, preliminary results show that there is a significant number of cases where persons are convicted only on the basis of police testimony, without corroborating evidence. In a number of cases, the prosecution was reportedly not able to produce the weapon or drugs that were at the basis of the charges. We would like to note that the Assembly, on other occasions, has expressed its view that convictions based solely on police evidence without corroborating evidence are unacceptable, in line with the case law of the European Court of Human Rights.

105. The fact that the justice system in Georgia is still very much "prosecution driven" is also clear from the statistics given to us by the Chair of the Supreme Court. These statistics show that the conviction rate in Georgia is 98%, 75% of which based on plea bargain agreements. The very high percentage of plea bargain agreements is, in our view, also an indication that public trust in the fairness of the justice system is still low. In the meantime, Georgian law allows persons to appeal their conviction and sentencing, even in cases where this has been based on a plea bargain agreement, and a number of provisions with a view to safeguard against the possible misuse of the plea-bargain procedure have been adopted in the new Criminal Procedure Code.

106. We urge the Georgian authorities to address the problems with the administration of justice indicated by several national and international bodies and organisations, including by the Georgian Public Defender. The problems outlined here negatively affect the right to a fair trial and public trust in the fairness and independence of the justice system. This in turn could undermine the considerable progress made by the authorities in the field of judicial reform and the strengthening of the independence of the judiciary.

4.5. Fight against corruption

107. The fight against corruption, since the Rose Revolution, is considered to be a Georgian success story and low-level corruption has been practically eradicated. At the same time, we note that, allegations of high-level corruption continue to persist and many NGOs still consider political corruption to be a problem in Georgia. Further efforts to counter this are therefore needed.

108. We welcome that, in January 2009, the Anti-Corruption Council, which includes civil society groups, was established under the Ministry of Justice and given the task of updating and further developing the Government's anti-corruption strategy. While this strategy is generally very good, some interlocutors noted that more efforts need to be deployed to inform the public of this strategy and to enforce its provisions in practice.

109. The latest compliance report for Georgia of the Group of States against corruption (GRECO) was adopted in May 2009. In this compliance report, GRECO welcomes the adoption of several legislative initiatives to address previous GRECO recommendations. In the same report, GRECO also notes that the Georgian authorities "now face the challenging task of ensuring that existing legislation is vigorously implemented in practice".

110. It should be noted that the shortcomings mentioned do not necessarily imply that a climate of impunity for high level corruption exists in Georgia. On a number of occasions, the Prosecutor General has initiated investigations into allegations of corruption, including by high officials, and a number of high-level political figures have been convicted. At the same time, several interlocutors indicated to us that, in their view, these investigations are not always initiated or conducted in a consistent manner when high-level corruption is alleged.

111. On 26 October 2010, Transparency International released its 2010 Corruption Perception index. In this index, which has a scale from 0 (highly corrupt) till 10 (no corruption) Georgia ranked 68th with a score of 3.8. According to Transparency International, a number of issues remain to be addressed in this respect such as the need for further judicial reform, better protection of property rights, lack of transparency in public spending, high-level corruption as well as a low level of civil society involvement in the execution of public policy.

112. In a welcome development, the Georgian Parliament adopted, on 27 March 2009, a series of amendments to the Law on Conflict of Interest and Corruption in Public Service. These amendments, which

were developed in close co-operation with the Council of Europe, clearly regulate the question of gifts received by civil servants of all levels and offer protection for whistleblowers. In addition, a new Law on the Chamber of Control has been adopted in December 2008 which gives the right to the chamber to financially audit local authorities and state enterprises.

113. Further amendments to the Law on Public Service have been developed which would introduce a code of conduct for civil service based on the model code as adopted by the Committee of Ministers of the Council of Europe. The Georgian authorities have informed us that these amendments were passed on 12 June 2009. Moreover, as already mentioned in the chapter on Media Pluralism, we would like to recommend that the Georgian authorities now adopt a proper law on access to public information. Such a law can be an important tool in the fight against corruption.

4.6. Execution of court decisions

114. In its 7th report on the "Implementation of judgements of the European Court of Human Rights"[35], the Committee of Legal Affairs and Human Rights notes that the main problems in Georgia in this context are the lack of new investigations into ill-treatment by the police and inadequate medical treatment in prisons.

115. In relation to the lack of new investigations into ill-treatment by the police, it is underlined that investigations should not only commence, but also be effective as required by the Court. In that respect, investigations often are found to have failed to seek independent medical expertise, interview all parties and there is a lack of expediency in opening a case. In this context, we welcome that the New Criminal Procedure Code allows the re-opening of cases based on decisions of the European Court of Human Rights.

116. With regard to inadequate medical treatment in prisons, the report of the Committee of Legal Affairs and Human Rights notes that action has been undertaken by the Georgian authorities but that this issue remains under scrutiny by the Committee of Ministers until a permanent solution has been found.

5. Human Rights

5.1. Prison conditions and police reforms

117. The Georgian authorities have adopted an elaborate Pebetary Reform Strategy and Action plan to address the conditions in penitentiary institutions. However, the overcrowding of, and living conditions in, prisons continue to be a point of concern, despite the many efforts of the Georgian authorities in that respect. A new "Mega" prison has been built and will be opened shortly. This new, very large prison complex has been developed with the assistance of the international community and adheres to European standards for prisons. However, as a result of the continuous growth of the prison population, many old prisons remain in use, the living and health conditions of which are of concern as they are far below European standards. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported that the conditions in old facilities are considered to be inhumane and life-threatening. A new comprehensive strategy to liberalise the prison system and parole conditions is therefore planned by the authorities to address this problem.

118. While considerable progress has been made in this respect, problems still remain with regard to the ill-treatment of persons in prisons, as well as at the time of their arrest. The previous Public Defender reported that victims are at times afraid to speak up and file official complaints out of fear of retribution. Addressing this issue should be a priority for the Georgian authorities to underscore that no climate of impunity for ill-treatment in detention centres and prisons will be allowed to exist.

119. In order to underscore the resolve of the authorities to fight crime, very strict, and in our view somewhat excessive mandatory sentences are prescribed in the law, even for minor crimes. In addition, sentences are served consecutively and not concurrently, as is the case in many other European countries. As a result, Georgia has proportionally one of the largest prison populations in the Council of Europe area, which continues to grow with an average of 200 persons per month. This growth is hindering the efforts of the government to bring the conditions in all prisons up to European standards. The authorities have tried to address the growing prison population with parole measures and pardons, but the work of the State Parole Commission has been criticised, including by the Public Defender of Georgia, as chaotic and ad-hoc. In October 2010 a new Code of Imprisonment entered into force that established a new system of parole boards that were drafted taking into account Council of Europe norms. In our view, it would be important for the Georgian legislator to revisit the mandatory sentencing guidelines, consider alternative sentencing as a

[35] As/Jur(2010)36, adopted in the committee on 17 November 2010. For Georgia, see § 181-182

means to reduce the growth in prison population and develop improved guidelines for early release, especially for minor crimes.

120. Considerable progress has been made with the reform of the police, transforming it from a strict instrument of force into a societal service organisation. A key aspect of these reforms has been to make the police forces more accountable and transparent, going as far as the construction of completely transparent police stations. As a result, corruption in the police force has been almost completely eradicated.

121. A point of concern with regard to the law enforcement services are the protracted and ineffective investigations, some of which have been going on for more than 10 years without producing any results. This may be partly explained by a remnant of the soviet mentality whereby the police do not want to close unsuccessful cases in order to maintain a statistically high success rate of investigations. However, these protracted investigations feed allegations and concerns about uneven investigations and lack of willingness of the police to investigate politically sensitive cases. In that respect, it should be noted that neither the attacks on protesters during the November 2007 demonstrations, nor those during the demonstrations of April 2009, have been concluded or led to any charges being brought. These protracted investigations should be addressed as a matter of priority by the authorities.

122. Excessive use of force and torture by law enforcement personnel, which used to be a systemic problem several years ago, has disappeared, although isolated cases regrettably still occur. Excessive use of force by the police during large protest events remains a problem, which was illustrated during the spring 2009 protest actions. While the prosecutor general has started a number of investigations into excessive use of force by members of the law enforcement agencies, several NGOs, including such reputable ones as Human Rights Watch, allege that, in a number of cases, investigations have not been conducted systematically or convictions have not been pursued. This should be addressed in order to ensure that this could not lead to a climate of impunity among law enforcement personnel.

5.2. Freedom of Assembly

123. In response to the prolonged, and often tense, protest rallies and road blockades organised by the opposition in the spring and early summer of 2009, the Georgian parliament adopted, in July 2009, a set of amendments to the Law on Assembly and Manifestations. These amendments foresaw, *inter alia*, a blanket prohibition of demonstrations within 20 meters of the entrances of a considerable number of public buildings; the prohibition to block traffic; the prohibition to call for the forced change of the constitutional order or territorial integrity of the country; as well as the automatic termination of assemblies by the law enforcement agencies in case the law is violated in the course of the demonstration.

124. The Venice Commission, on 14 August 2010, was asked to assess these amendments. In its interim opinion[36], the Venice Commission found that a number of the new provisions could be excessive and at variance with the European Convention on Human Rights and the case law of the court. Based on the recommendations of the Venice Commission, the Georgian authorities prepared further amendments to the law. On 1 March 2010, these amendments were presented to the Venice Commission, which adopted its opinion[37] on 13 March 2010. We welcome this constructive co-operation between authorities and Venice Commission in addressing the shortcomings encountered in the amendments.

125. The original amendments established a blanket prohibition on manifestations within 20 meters of the entrances of a large number of public buildings as well as a prohibition to block traffic in the course of a demonstration. The Venice Commission found this blanket prohibition excessive, and potentially disproportionate, as no criteria, similar to those mentioned in article 11 § 2 of the ECHR, were given in the law on the basis of which the right to freedom of assembly could be restricted by the authorities. The March 2010 amendments in general address this concern of the Venice Commission, although they do not fully lift the blanket restriction for all public buildings.[38] However, in a welcome development, the prohibition for demonstrations to block traffic was removed from the law.

126. The July 2009 amendments prohibited manifestations that call for "*subversion or forced change of the constitutional order of Georgia, infringement of the independence or territorial integrity of the country*[39]" or to make appeals "*which constitute propaganda of war and violence and trigger a national, ethnical, religious or*

[36] CDL(2009)152 and CDL(2009)153
[37] CDL(2010)025
[38] Blanket restrictions are maintained within 20 meters of the courts, prosecutors office, police stations, detention facilities, railways, airports and ports.
[39] Article 4 § 2

social confrontation". The Venice Commission noted that, in line with European standards, such calls can only be a legitimate reason to prohibit a manifestation if the calls are for a violent overthrow of the constitutional order and if such action is imminent. We welcome that language to that extent was subsequently added to the law in the March 2010 amendments.

127. The 2009 amendments to the law on manifestations provided for the immediate termination of a demonstration in the event of the law being violated during a demonstration. The recently amended law now provides for a period – albeit very short – for the organisers to stop the violations of the law before the manifestation is terminated. However, these provisions still leave too little scope for discretion on deciding when a demonstration should be terminated. Whilst being a step forward in comparison to the original amendments, these provisions could still excessively restrict the freedom of assembly. We encourage the authorities to continue their constructive co-operation with the Venice Commission in addressing this, and other remaining issues, mentioned in the opinion.

5.3. National minorities

128. Georgia is a multi-ethnic state with more than 16% of its population[40] belonging to ethnic minorities. The largest ethnic minority groups are the Armenians, Azeris, Russians, Abkhaz and Ossetians. As result of being the most multi-ethnic country in the Caucasus, minority relations and the implementation of a coherent policy addressing minority issues are important priorities for the current authorities.

129. The relations with national minorities and their integration in the Georgian society has been a priority for the current administration. Despite the many welcome initiatives by the authorities to address the integration of national minorities in the Georgian society, there are still a number of outstanding issues. These include, *inter alia*:

- further improving the participation of national minorities in public life;
- further improving the system of language education for national minorities including the teaching of minority languages and Georgian as a second language;
- strengthening measures against religious intolerance and to provide for a proper legal status for minority religions.

130. The issue of national minorities is sensitive, especially in the light of the 2008 war with Russia. However, while minority issues have been affected, and progress overshadowed, by the war, the authorities have continued to implement wide-ranging measures to improve the situation of national minorities in Georgia.

131. According to the European Commission against Racism and Intolerance (ECRI), racism against national minorities exists in Georgia, which underscores the need for ongoing efforts in this respect. The report also notes allegations that the August 2008 conflict in South Ossetia and Abkhazia has led to some racist discourse, exacerbated by propaganda language, against Russians, South Ossetians and Abkhazians. There is a general lack of knowledge among minorities about the existing provisions in law against racist discourse and acts. This may partly explain a general lack of confidence in the judicial system by persons belonging to national minorities.

132. There are approximately 1,500 Roma living in Georgia, who are reported to suffer from marginalisation, discrimination and poverty. Some do not possess identification documents, which limits their access to healthcare and other services provided by the state. The government has attempted to address some of the discrimination against the Roma by providing training to the police force, but further steps are necessary to prevent the Roma population from becoming more marginalised.

133. Georgia ratified the Framework Convention for the Protection of National Minorities on 22 December 2005. The Advisory Committee, which monitors the implementation of the Charter in the signatory states, adopted its first opinion on 19 March 2009.[41] Since that time, there have been a number of positive developments such as the adoption, in April 2009, of the *National Concept for Tolerance and Integration*, which provides a framework for policies on national minorities. In addition, an inter-agency commission on minority issues (headed by the Ministry for Reintegration) has been established to provide support in the co-ordination of policies on national minorities. The Commission is responsible for implementing the National Concept for Tolerance and Integration.

[40] According to the 2002 census
[41] http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_Georgia_en.pdf

134. As part of its accession commitments to the Council of Europe, Georgia agreed to sign the European Charter on Regional and Minority Languages within one year of joining. More than ten years after its accession, Georgia has yet to fulfil this commitment. According to the authorities, this is due to the extremely sensitive nature of this issue and the fear that a debate on minority languages could lead to inter-ethnic tensions and instability. However, we believe that there are many outstanding issues in Georgia, which the Charter could help to resolve if it were signed, including improving integration of the Armenians, Azeris and other national minorities into the public sphere. We therefore call upon the authorities to fulfil this accession commitment without further delay.

135. When acceding to the Council of Europe, Georgia committed itself to adopt a comprehensive law on national minorities. This commitment is still outstanding. For their part, the Georgian authorities have indicated that they would prefer to address minority issues in the different relevant laws that concern issues that are of importance for the status and protection of minorities instead of adopting a single specific law on national minorities. The reasons for this are similar to those given regarding their reluctance to sign the European Charter on Regional and Minority Languages. At the same time, the Georgian authorities are committed to ensuring that the provisions in the relevant laws are in line with European standards and, foremost, the Charter.

136. We have consulted with the Secretariat of the Advisory Committee of the Framework Convention on this issue. According to the Secretariat, the Advisory Committee generally takes the view that the basis for an assessment of countries fulfilment of the Charter's provisions should be the combined legal framework. The question whether this framework is contained in one or several specific laws is of no importance. In this situation, in our view, Georgia could therefore be seen as having fulfilled its accession commitment to establish a law on minorities, even if the provisions are contained in several specialised laws. However, this can only be the case if the Advisory Committee, in its next report foreseen for 2012, would consider that the legal framework for the protection of national minorities is adequate and in line with European standards, including the Framework Convention. In the meanwhile, we would urge the Georgian authorities to continue to address the issues raised in the last Advisory Committee report.

137. The issue of religious tolerance and the situation and status of other faiths in Georgia is an important subject and still a point of concern. The Georgian Orthodox Church is the main religion in Georgia. The Church is protected as both a church and a public entity. Other religious denominations and groups can only register as non-governmental organisations and non-profit-making private-law-associations. Therefore, they are not able to enjoy the same conditions in respect of the exercise of their religious activities. The absence of a proper legal status has resulted in a number of problems, including in regard to property rights, and is unsatisfactory. We call upon the Georgian authorities to adopt a specific law on religion that would give proper legal status and protection to other faiths than the Georgian Orthodox Church.

138. There are a number of outstanding issues regarding the return of historic religious properties confiscated during the Soviet era. The church buildings claimed by the Georgian Orthodox Church generally have been returned or are in the process of being returned. However, the return process is being delayed for other religious denominations. The issue is not isolated to the Armenian churches, whose situation has been more extensively reported on, and other religious denominations including the Roman Catholic Church, the Evangelical Lutheran Church and the Jewish Community have complained of similar problems.

139. Jehovah's Witnesses have been able to register as Jehovah's Witnesses[42] since December 2008 and do not face any legal problems in importing literature or carrying out their activities. However, prejudice still exists in society and acts of violence, including vandalism of their places of worship, still occur. These deplorable acts do not seem to be diligently investigated and prosecuted by police and the prosecution service. In addition, Jehovah's Witnesses report difficulties in renting space for their places of worship, especially in Tbilisi, as well as the fact that the construction of places of worship is hindered.

140. While the authorities strive to ensure an adequate legal framework for LGBT people, and discrimination, including in the working place, on the basis of sexual orientation is prohibited, same-sex households do not yet have the same level of legal protection as opposite sex households. At the same time, LGBT people continue to face prejudice and intolerance in the context of Georgia's generally conservative society. Of concern is the openly homophobic discourse, without any political or legal backlash, of some political and civil society actors, such as for instance by the People's Orthodox Movement that was founded just before the May municipal elections. In a welcome signal that hate speech is not acceptable, the Council on Media Ethics ruled that a journalist had violated the Charter on Journalism when he failed to adequately

[42] Since 2003, they were registered as a branch of the Watch Tower Society.

respond to homophobic remarks by the leader of the People's Orthodox Movement during a talk show debate. Regrettably, the police is reportedly reluctant to intervene against hate speech and other acts against LGBT people. Reportedly, when they do intervene, criminal cases are hardly ever brought against the perpetrators.

5.4. Repatriation of the Meskhetian population

141. When acceding to the Council of Europe, Georgia committed itself to repatriate the Meskhetian population before the end of 2011. In 2007, Georgia belatedly adopted a Law on the repatriation of persons forcefully expelled from Georgia by the former Soviet Union in the 1940s. The law initiated the process of repatriation by setting out the terms under which Meskhetians could apply for repatriation.

142. A series of co-ordination meetings were held with representatives of international organisations concerned with the repatriation process (EU, OSCE, HCNM, UNHCR, IOM, ECMI and the Council of Europe) in order to respond to concerns that were raised regarding the manner in which the repatriation process was managed. The most recent meeting took place in March 2010 in Tbilisi. This meeting resulted in the Georgian authorities making a number of commitments to address some of the pressing concerns that were raised.

143. Originally, applications for repatriation were to be submitted by 1 January 2009, which gave people very little time to fill in forms and gather documentation, especially as forms were not distributed until quite late in 2008. The deadline was postponed twice until a final deadline for submitting papers was set at 1 January 2010. Applicants with errors found in their documentation have been granted a further extension of four months within which to rectify them. The authorities have publicly ruled out any further extension of the deadline for applications after these dates.

144. According to figures provided by the Georgian authorities, the number of applications received by the deadline was 5,806, the majority of which had come from Azerbaijan. In total 64 applications have been received from persons in the Russian Federation. The figure is much lower than was anticipated by Meskhetian organisations. However, Meskhetian organisations claim that approximately 2,000 applications have been sent in Russian. This could cause a problem because, according to the law, all applications had to be submitted in Georgian or English. However, following amendments to the law, all supporting documents can be provided in any language in which they are available. Georgian authorities report that no applications have been refused on the basis of the language in which they were submitted.

145. The first decisions on repatriation are expected at the end of 2011. The authorities are considering giving responses sooner but will not commit to this. There are some questions with regard to the actual resettlement process for those who successfully apply. The law currently makes no provision for a strategy of preparation and support for the reintegration process or for any financial commitment by the state. The Georgian authorities have indicated that they will devise this strategy once they know how many people are likely to be repatriated, but a concrete plan is not expected to be produced until 2011.

146. The Meskhetian population was originally expelled from the Samstskhe region, which is now predominantly inhabited by ethnic Armenians. There is a great deal of hostility towards the idea of repatriation from this community and this problem must be addressed. The government has discussed initiating an awareness campaign, possibly with support from the international community, directed at both the future returnees and the Georgian population, to avoid possible misunderstandings and tensions.

147. There were fears that those deciding to return to Georgia could become stateless. In response, the Georgian government adopted, in March 2010, a Decree on Granting Citizenship of Georgia through Simplified Procedure to Individuals Enjoying Repatriate Status, which excludes the possibility of any individual with repatriate status being left without citizenship.

148. Meskhetian organisations reported to us that the number of applications received by the Georgian authorities represents only a small percentage of the number of Meskhetians that wish to return to Georgia. In their view, the reasons for the low number of applications are the result of, *inter alia*, unfamiliarity with the application process and administrative requirements which were difficult to comply with. In addition, these organisations informed us that Meskehtians that attempt to immigrate to Georgia outside the repatriation procedure are facing more barriers than non-Meskhetian immigrants from the same countries.

149. The willingness of the Georgian authorities to resolve the Meskhetian issue in line with its commitments to the Council of Europe should be welcomed. In this respect, we would like to encourage the Georgian authorities to develop a repatriation and reintegration strategy without further delay. Moreover, we

encourage the authorities to show maximum flexibility with regard to formalities and paperwork to avoid any application being refused on technical grounds only. In addition, we would like to suggest that the Georgian authorities conduct a proper evaluation once the application process has been finalised, in order to assess whether it has been successful in contacting all Meskhetian and other deported persons that would be eligible for repatriation and wishing to apply.

5.5. Public Defender

150. The role and work of the institution of the Public Defender – ombudsman – has become increasingly important and visible in Georgia. The mandate of the previous Public Defender, Sozar Subari, who occasionally had tense relations with the authorities, ended in September 2009. He was replaced by George Tugushi, who is a member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

151. On 16 July 2009, the parliament adopted amendments to the Law on the Public Defender, to reflect this institution's designation as National Preventive Mechanism under the United Nations Optional Protocol to the Convention Against Torture (OPCAT). These changes to the law on the Public Defender increased the rights and the responsibilities of this institution to monitor the conditions in prisons and other detention facilities.

5.6. Alleged politically motivated detentions

152. Allegations are increasingly made, mainly by opposition parties, as well as some NGOs, that opposition figures and civil society representatives critical of the government, as well as their families, are targeted by politically motivated criminal investigations and that political pressure and motivations have influenced the charges brought and the sentences passed. They therefore claim that political prisoners de facto exist in Georgia.

153. While we cannot comment on the merits of the individual allegations and consider that a judgment about such alleged human rights violations is foremost a prerogative of the European Court of Human Rights, we note that allegations of the existence of political prisoners are increasingly used as a political strategy by political parties in several countries.

154. On the other hand, we have already highlighted our concerns regarding the problems with regard to the administration of justice in Georgia, which, in our opinion are related. The borderline between uneven justice and selective justice is vague. The problems in the administration of justice could easily give credence, especially in the current charged political environment, that political motivations can influence the application of justice in Georgia. We therefore call upon the authorities to address problems in the administration of justice that give rise to such allegations and, at the same time, to investigate fully, and remedy where necessary, any alleged miscarriage of justice.

5.7. Human Rights issues in relation to the consequences of the war in 2008

155. The consequences of the war are formally part of a separate mandate, and for that reason beyond the scope of this report. However, it would be impossible for this report not to pay attention to human rights concerns as a consequence of the war and the occupation, and subsequent recognition of independence, of the break away regions of South Ossetia and Abkhazia.

156. As mentioned in several Assembly reports and resolutions on the war between Russia and Georgia, and also stated in the report of the Independent International Fact Finding Mission on the Conflict in Georgia, violations of international human rights and humanitarian law were committed by both sides during the course of the war. In addition, violations, including ethnic cleansing, continued in areas under Russian de facto control in the weeks after the war. Under international law, it is the legal responsibility of each state to investigate and prosecute violations of human rights and international humanitarian law that are allegedly committed by persons under its jurisdiction. The investigation initiated by the Georgian prosecutor's office into violations committed by all sides during and after the conflict seems to have been stalled on the grounds that the investigation services lack access to the former conflict region. We deeply regret this lack of investigation and we find it hard to accept that human rights violations of such severity would go unpunished.

157. The right of freedom of movement is violated on a large scale since the occupation of both break away regions. The crossing by civilians from both sides of the administrative boundary lines has become nearly

impossible in most places and has become increasingly more difficult in the Akhalgori region[43], since FSB border guards have taken over the control of the administrative boundary line in the break away regions.

158. The right of return of IDPs from the 2008 conflict, as well as from the earlier conflicts in the 1990's, continues to be violated. In his latest report on "Human rights issues following the August 2008 armed conflict in Georgia[44]", the Commissioner for Human Rights of the Council of Europe, Mr Thomas Hammarberg, expressed his deep regret that the South Ossetian de facto authorities, despite earlier promises, clearly disallow the return of ethnic Georgian IDPs to their place of residence in the areas under their de facto control. Similarly, as mentioned in Doc. 12012 (2009), the de facto Abkhaz authorities have indicated that they would allow a return of IDPs to the Gali district, but that returns beyond that area would not be permitted.

159. In total, approximately 22.000 IDPs as a result of the 2008 conflict can not return to their place of residence. In addition, there are about 230.000 IDPs from the previous conflicts in the early 1990's. The Georgian authorities have made great efforts in the recent years to alleviate the plight of these IDPs and to improve their overall living conditions, especially as far as accommodation is concerned. This will necessarily imply the relocation of a number of IDP, especially those currently accommodated in collective centres. However, the manner in which this relocation was carried out is a matter of concern. Between 26 July and 16 August 2010, more than 5.000 IDPs were evicted from their temporary places of residence in a manner that, according to international organisations as well as the Georgian Public Defender, was at variance with international standards as well as Georgian law. Only after repeated intervention by these actors were the evictions halted in the end of August 2010. We call upon the Georgian authorities to ensure that any relocation of IDPs takes place in full compliance with international standards and Georgian law and that the recommendations made by the UNHCR and Georgian Public Defender are fully taken into account in that respect.

6. Preliminary conclusions

160. Despite the consequences of the August 2008 war with Russia, and the political standoff that has plagued the political environment during much of the reporting period, the Georgian authorities have made great efforts, and achieved considerable progress, in honouring their obligations and commitments to the Council of Europe.

161. Georgia still has to implement some of its formal accession commitments. In addition, concerns remain with regard to the independence of the judiciary and the effective and even administration of justice. Despite the considerable progress booked in the field of strengthening of democratic institutions, further democratic reforms to resolve the charged political climate are still necessary, and the robustness of the democratic system will need to be confirmed in the upcoming parliamentary and presidential elections. We therefore recommend to the Assembly to continue the monitoring procedure in respect of Georgia.

[43] Initially cross boundary movement was possible without too many hardships in the Akhalgori district, which is a predominantly ethnic Georgian area that was fully under the control of Tbilisi before the war and which was only occupied after the August 2008 cease fire agreement was signed.
[44] CommDH(2010)40

APPENDIX

Georgia

Treaties signed and ratified or having been the subject of an accession as of 17/3/2011

No.	Title	Opening of the treaty	Entry into force	E.	N.	U.
001	Statute of the Council of Europe	5/5/1949	3/8/1949			
	Ratification or accession: 27/4/1999 — Entered into force: 27/4/1999					
002	General Agreement on Privileges and Immunities of the Council of Europe	2/9/1949	10/9/1952			
	Ratification or accession: 25/5/2000 — Entered into force: 25/5/2000					
005	Convention for the Protection of Human Rights and Fundamental Freedoms	4/11/1950	3/9/1953			X
	Signature: 27/4/1999 — Ratification or accession: 20/5/1999 — Entered into force: 20/5/1999					
009	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	20/3/1952	18/5/1954			
	Signature: 17/6/1999 — Ratification or accession: 7/6/2002 — Entered into force: 7/6/2002					
010	Protocol to the General Agreement on Privileges and Immunities of the Council of Europe	6/11/1952	11/7/1956			
	Ratification or accession: 25/5/2000 — Entered into force: 25/5/2000					
018	European Cultural Convention	19/12/1954	5/5/1955	X		
	Ratification or accession: 25/4/1997 — Entered into force: 25/4/1997					
024	European Convention on Extradition	13/12/1957	18/4/1960	X	X	
	Signature: 22/3/2000 — Ratification or accession: 15/6/2001 — Entered into force: 13/9/2001					
028	Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe	6/3/1959	15/3/1963			
	Ratification or accession: 25/3/2008 — Entered into force: 25/3/2008					
030	European Convention on Mutual Assistance in Criminal Matters	20/4/1959	12/6/1962	X	X	
	Signature: 27/4/1999 — Ratification or accession: 13/10/1999 — Entered into force: 11/1/2000					
044	Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions	6/5/1963	21/9/1970			
	Signature: 27/4/1999 — Ratification or accession: 20/5/1999 — Entered into force: 20/5/1999					
045	Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention	6/5/1963	21/9/1970			
	Signature: 27/4/1999 — Ratification or accession: 20/5/1999 — Entered into force: 20/5/1999					
046	Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto	16/9/1963	2/5/1968			
	Signature: 17/6/1999 — Ratification or accession: 13/4/2000 — Entered into force: 13/4/2000					
055	Protocol No. 5 to the Convention for the Protection of Human Rights and	20/1/1966	20/12/1971			

	Fundamental Freedoms, amending Articles 22 and 40 of the Convention						
	Signature: 27/4/1999	Ratification or accession: 20/5/1999	Entered into force: 20/5/1999				
061	European Convention on Consular Functions			11/12/1967	9/6/2011	X	
	Signature: 25/6/2010	Ratification or accession: 8/3/2011	Entered into force: 9/6/2011				
062	European Convention on Information on Foreign Law			7/6/1968	17/12/1969	X	X
		Ratification or accession: 18/3/1999	Entered into force: 19/6/1999				
070	European Convention on the International Validity of Criminal Judgments			28/5/1970	26/7/1974	X	X
	Signature: 8/6/2000	Ratification or accession: 25/3/2002	Entered into force: 26/6/2002				
085	European Convention on the Legal Status of Children born out of Wedlock			15/10/1975	11/8/1978	X	X
	Signature: 7/11/2001	Ratification or accession: 30/4/2002	Entered into force: 31/7/2002				
086	Additional Protocol to the European Convention on Extradition			15/10/1975	20/8/1979	X	X
	Signature: 22/3/2000	Ratification or accession: 15/6/2001	Entered into force: 13/9/2001				
090	European Convention on the Suppression of Terrorism			27/1/1977	4/8/1978		
	Signature: 11/5/2000	Ratification or accession: 14/12/2000	Entered into force: 15/3/2001				
092	European Agreement on the Transmission of Applications for Legal Aid			27/1/1977	28/2/1977	X	X
	Signature: 20/3/2006	Ratification or accession: 17/7/2006	Entered into force: 18/8/2006				
097	Additional Protocol to the European Convention on Information on Foreign Law			15/3/1978	31/8/1979	X	X
	Signature: 4/11/1999	Ratification or accession: 20/6/2000	Entered into force: 21/9/2000				
098	Second Additional Protocol to the European Convention on Extradition			17/3/1978	5/6/1983	X	X
	Signature: 22/3/2000	Ratification or accession: 15/6/2001	Entered into force: 13/9/2001				
099	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters			17/3/1978	12/4/1982	X	X
	Signature: 7/11/2001	Ratification or accession: 22/5/2003	Entered into force: 20/8/2003				
104	Convention on the Conservation of European Wildlife and Natural Habitats			19/9/1979	1/6/1982	X	X X
	Signature: 18/5/2009	Ratification or accession: 19/11/2009	Entered into force: 1/3/2010				
106	European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities			21/5/1980	22/12/1981	X	
	Signature: 25/10/2005	Ratification or accession: 24/7/2006	Entered into force: 25/10/2006				
108	Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data			28/1/1981	1/10/1985	X	X
	Signature: 21/11/2001	Ratification or accession: 14/12/2005	Entered into force: 1/4/2006				
112	Convention on the Transfer of Sentenced Persons			21/3/1983	1/7/1985	X	X
		Ratification or accession: 21/10/1997	Entered into force: 1/2/1998				

114	Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty			28/4/1983	1/3/1985		
	Signature: 17/6/1999	Ratification or accession: 13/4/2000	Entered into force: 1/5/2000				
117	Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms			22/11/1984	1/11/1988		
	Signature: 17/6/1999	Ratification or accession: 13/4/2000	Entered into force: 1/7/2000				
118	Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms			19/3/1985	1/1/1990		
	Signature: 27/4/1999	Ratification or accession: 20/5/1999	Entered into force: 20/5/1999				
121	Convention for the Protection of the Architectural Heritage of Europe			3/10/1985	1/12/1987	X	X X
	Signature: 17/9/1999	Ratification or accession: 13/4/2000	Entered into force: 1/8/2000				
122	European Charter of Local Self-Government			15/10/1985	1/9/1988		
	Signature: 29/5/2002	Ratification or accession: 8/12/2004	Entered into force: 1/4/2005				
126	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment			26/11/1987	1/2/1989	X	X
	Signature: 16/2/2000	Ratification or accession: 20/6/2000	Entered into force: 1/10/2000				
127	Convention on Mutual Administrative Assistance in Tax Matters			25/1/1988	1/4/1995	X	X
	Signature: 12/10/2010	Ratification or accession: 28/2/2011	Entered into force: 1/6/2011				
135	Anti-Doping Convention			16/11/1989	1/3/1990	X	X
	Signature: 2/7/2001	Ratification or accession: 22/5/2003	Entered into force: 1/7/2003				
141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime			8/11/1990	1/9/1993	X	X
	Signature: 30/4/2002	Ratification or accession: 13/5/2004	Entered into force: 1/9/2004				
143	European Convention on the Protection of the Archaeological Heritage (Revised)			16/1/1992	25/5/1995	X	X X
	Signature: 17/9/1999	Ratification or accession: 13/4/2000	Entered into force: 14/10/2000				
147	European Convention on Cinematographic Co-Production			2/10/1992	1/4/1994	X	X
	Signature: 21/11/2001	Ratification or accession: 15/10/2002	Entered into force: 1/2/2003				
151	Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment			4/11/1993	1/3/2002		
	Signature: 16/2/2000	Ratification or accession: 20/6/2000	Entered into force: 1/3/2002				
152	Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment			4/11/1993	1/3/2002		
	Signature: 16/2/2000	Ratification or accession: 20/6/2000	Entered into force: 1/3/2002				
155	Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby			11/5/1994	1/11/1998		
	Signature: 27/4/1999	Ratification or accession: 20/5/1999	Entered into force: 20/5/1999				
157	Framework Convention for the Protection of National Minorities			1/2/1995	1/2/1998	X	X
	Signature: 21/1/2000	Ratification or accession: 22/12/2005	Entered into force: 1/4/2006				

161	European Agreement relating to persons participating in proceedings of the European Court of Human Rights			5/3/1996	1/1/1999		
	Signature: 10/5/2001	Ratification or accession: 10/5/2001	Entered into force: 1/7/2001				
162	Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe			5/3/1996	1/11/1998		
	Signature: 25/5/2000	Ratification or accession: 20/6/2000	Entered into force: 21/7/2000				
163	European Social Charter (revised)			3/5/1996	1/7/1999		
	Signature: 30/6/2000	Ratification or accession: 22/8/2005	Entered into force: 1/10/2005				
164	Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine			4/4/1997	1/12/1999	X	X X
	Signature: 11/5/2000	Ratification or accession: 22/11/2000	Entered into force: 1/3/2001				
165	Convention on the Recognition of Qualifications concerning Higher Education in the European Region			11/4/1997	1/2/1999	X	X X
	Signature: 11/4/1997	Ratification or accession: 13/10/1999	Entered into force: 1/12/1999				
167	Additional Protocol to the Convention on the Transfer of Sentenced Persons			18/12/1997	1/6/2000	X	X
	Signature: 17/9/1999	Ratification or accession: 13/4/2000	Entered into force: 1/8/2000				
168	Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings			12/1/1998	1/3/2001	X	X X
	Signature: 11/5/2000	Ratification or accession: 22/11/2000	Entered into force: 1/3/2001				
173	Criminal Law Convention on Corruption			27/1/1999	1/7/2002	X	X X
	Signature: 27/1/1999	Ratification or accession: 10/1/2008	Entered into force: 1/5/2008				
174	Civil Law Convention on Corruption			4/11/1999	1/11/2003	X	X X
	Signature: 4/11/1999	Ratification or accession: 22/5/2003	Entered into force: 1/11/2003				
176	European Landscape Convention			20/10/2000	1/3/2004	X	
	Signature: 11/5/2010	Ratification or accession: 15/9/2010	Entered into force: 1/1/2011				
177	Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms			4/11/2000	1/4/2005		
	Signature: 4/11/2000	Ratification or accession: 15/6/2001	Entered into force: 1/4/2005				
183	European Convention for the protection of the Audiovisual Heritage			8/11/2001	1/1/2008	X	X X
	Signature: 11/5/2010	Ratification or accession: 15/9/2010	Entered into force: 1/1/2011				
186	Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin			24/1/2002	1/5/2006	X	X X
	Signature: 25/3/2002	Ratification or accession: 18/12/2002	Entered into force: 1/5/2006				
187	Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances			3/5/2002	1/7/2003		
	Signature: 3/5/2002	Ratification or accession: 22/5/2003	Entered into force: 1/9/2003				
190	Protocol amending the European Convention on the Suppression of Terrorism			15/5/2003			

	Signature: 15/5/2003	Ratification or accession: 8/12/2004						
194	Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention			13/5/2004	1/6/2010			
	Signature: 13/5/2004	Ratification or accession: 10/11/2004	Entered into force: 1/6/2010					
195	Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research			25/1/2005	1/9/2007	X	X	X
	Signature: 21/2/2005	Ratification or accession: 8/4/2010	Entered into force: 1/8/2010					
197	Council of Europe Convention on Action against Trafficking in Human Beings			16/5/2005	1/2/2008	X	X	X
	Signature: 19/10/2005	Ratification or accession: 14/3/2007	Entered into force: 1/2/2008					
199	Council of Europe Framework Convention on the Value of Cultural Heritage for Society			27/10/2005	1/6/2011	X	X	X
	Signature: 1/9/2010	Ratification or accession: 4/2/2011	Entered into force: 1/6/2011					
204	Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms			27/5/2009	1/10/2009			
	Signature: 27/5/2009	Ratification or accession: 1/9/2009	Entered into force: 1/1/2010					
208	Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters			27/5/2010	1/6/2011	X	X	
	Signature: 3/11/2010	Ratification or accession: 28/2/2011	Entered into force: 1/6/2011					

63 treaty(ies) found

Notes:
Convention(s) and Agreement(s) opened to the member States of the Council of Europe and, where appropriate, to the : E. : **European** non-member States - N. :**Non-European** non-member States - U. : European Union. See the final provisions of each treaty.

Source : Treaty Office on http://conventions.coe.int