

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## European Commission against Racism and Intolerance

### Second report on Georgia

Adopted on 30 June 2006

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For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI  
Directorate General of Human Rights – DG II  
Council of Europe  
F - 67075 STRASBOURG Cedex  
Tel.: +33 (0) 3 88 41 29 64  
Fax: +33 (0) 3 88 41 39 87  
E-mail: [combat.racism@coe.int](mailto:combat.racism@coe.int)

Visit our web site: [www.coe.int/ecri](http://www.coe.int/ecri)

## TABLE OF CONTENTS

<b>FOREWORD</b> .....	<b>5</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>6</b>
<b>I. FOLLOW-UP TO ECRI’S FIRST REPORT ON GEORGIA</b> .....	<b>7</b>
INTERNATIONAL LEGAL INSTRUMENTS .....	7
CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS .....	8
CRIMINAL LAW PROVISIONS .....	8
CIVIL AND ADMINISTRATIVE LAW PROVISIONS.....	11
SPECIALISED BODIES AND OTHER INSTITUTIONS .....	12
EDUCATION AND AWARENESS-RAISING.....	13
RECEPTION AND STATUS OF NON-CITIZENS .....	14
- Refugees and asylum-seekers .....	14
- Migrants.....	14
VULNERABLE GROUPS.....	15
- Ethnic minorities .....	15
- Religious minorities .....	15
- Refugees from Chechnya.....	18
- Meskhetian Turks .....	19
- Roma .....	20
CONDUCT OF LAW-ENFORCEMENT OFFICIALS .....	21
MONITORING OF THE SITUATION.....	22
SITUATION REGARDING PERSONS INTERNALLY DISPLACED AS A RESULT OF THE CONFLICTS WITHIN THE TERRITORY OF GEORGIA IN THE REGIONS OF ABKHAZIA AND SOUTH OSSETIA .....	23
- Areas currently not under the effective control of the Georgian authorities .....	24
<b>II. SPECIFIC ISSUES</b> .....	<b>24</b>
THE NEED TO MOVE TOWARDS A SOCIETY INTO WHICH ETHNIC MINORITIES ARE FULLY INTEGRATED .....	24
- The legal situation of ethnic minorities .....	25
- The linguistic situation of ethnic minorities .....	26
- Access to education for ethnic minorities .....	29
- The need to strengthen ethnic minorities’ sense of belonging to Georgian society.....	31
<b>BIBLIOGRAPHY</b> .....	<b>35</b>
<b>APPENDIX</b> .....	<b>39</b>



## Foreword

*The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

*The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.*

*ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.*

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 30 June 2006 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.***

### ***Executive summary***

Since the publication of ECRI's first report on Georgia on 23 April 2002, progress has been made in a number of the fields highlighted in that report. Georgia has ratified a number of legal instruments relevant to the fight against racism and intolerance, including the Framework Convention for the Protection of National Minorities. New criminal law provisions have been introduced to prohibit racial discrimination and incitement to racial hatred. The authorities have taken steps to curb violent acts of religious intolerance. A civil integration programme has been launched for the country's ethnic and religious minorities and other minority groups. It includes measures to improve ethnic minorities' knowledge of Georgian and an educational reform designed in particular to take fuller account of the country's cultural diversity.

However, a number of recommendations made in ECRI's first report have not been implemented, or have only been partially implemented. Ethnic minorities' lack of knowledge of Georgian is a major obstacle to their integration and hampers their access to information, public services, education and employment. They continue to feel like second-class citizens, take little part in the country's public and political affairs and come up against a series of problems which the state must help them to resolve. Members of non-traditional religious minorities can still be exposed to physical attacks on them or their property. They also encounter administrative and other barriers to religious worship. A number of shortcomings must be remedied in asylum law and practice. Refugees from Chechnya are subject to illegal treatment on the part of law enforcement officials. Those who live in the Pankisi region suffer difficult living conditions. The authorities are insufficiently aware of the situation of some minority groups such as Roma and migrants, and do not monitor it sufficiently. Progress towards resolving the issue of the return of Meskhetian Turks to Georgia is too slow. Persons displaced as a result of armed conflict in the country continue to experience difficult living conditions and suffer from a lack of integration. Stereotypes and prejudice liable to cause discrimination persist among the majority population, particularly against ethnic minorities, non-traditional religious minorities, refugees from Chechnya and Meskhetian Turks.

In this report, ECRI recommends that the Georgian authorities take further action in a number of areas. It recommends in particular that they continue to supplement the criminal law provisions for combating racism and intolerance and to provide officials in the judicial system with more training on the importance of applying provisions of this kind. It asks that a specialised body be set up to combat racism and racial discrimination and that the civil and administrative law provisions prohibiting racial discrimination be strengthened. ECRI recommends that efforts to effectively combat manifestations of religious intolerance be strengthened. Steps should be taken to put an end to the law enforcement agencies' illegal acts against refugees from Chechnya. Lastly, ECRI recommends that ways be found to enable ethnic minorities to participate more fully in the country's affairs and to communicate with the authorities while preserving their languages and cultures.

## I. FOLLOW-UP TO ECRI'S FIRST REPORT ON GEORGIA

### International legal instruments

1. In its first report, ECRI recommended that the Georgian authorities ratify the following international legal instruments: Protocol No.12 to the European Convention on Human Rights (ECHR), the Framework Convention for the Protection of National Minorities, the (Revised) European Social Charter and the European Charter of Local Self-Government. ECRI also recommended that the Georgian authorities make the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination which allows individual communications to be considered by the Committee for the Elimination of Racial Discrimination.
2. ECRI welcomes the substantial progress made by Georgia in acceding to the international legal instruments relevant to the fight against racism and racial discrimination. On 15 June 2001 Georgia ratified Protocol No.12 to the ECHR, which provides for a general prohibition of discrimination and entered into force on 1 April 2005. The Framework Convention for the Protection of National Minorities was ratified on 22 December 2005 and came into force on 1 April 2006. The (Revised) European Social Charter was ratified on 22 August 2005 (entry into force: 1 October 2005) and the European Charter of Local Self-Government on 8 December 2004 (entry into force: 1 April 2005). Lastly, on 30 June 2005, Georgia made the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.
3. In its first report, ECRI also recommended that Georgia ratify the following legal instruments: the European Charter for Regional and Minority Languages<sup>1</sup>, the European Convention on the Legal Status of Migrant Workers, the European Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality. Georgia has not signed or ratified any of these legal instruments. However, the Georgian authorities have stated their intention of ratifying the European Charter for Regional and Minority Languages as soon as possible, preferably during 2006. The other legal instruments mentioned here are under consideration and to date no objections have been made to ratifying them.
4. Since the publication of ECRI's first report on Georgia, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, has been opened for signature and ratification; it came into force on 1 March 2006 for states which had ratified it. In addition, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families came into force on 1 July 2003. Georgia has not signed or ratified either of these two instruments. The Georgian authorities have informed ECRI that the process for ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is well under way and that ratification of the Protocol to the Convention on Cybercrime is under consideration.

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<sup>1</sup> With regard to the European Charter for Regional and Minority Languages, see also below, in the second part of the report, "The need to move towards a society into which ethnic minorities are fully integrated – The linguistic situation of ethnic minorities".

**Recommendations:**

5. ECRI again recommends that Georgia sign and ratify the following international instruments as soon as possible: the European Charter for Regional and Minority Languages, the European Convention on the Legal Status of Migrant Workers, the European Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.
6. ECRI recommends that Georgia sign and ratify the Convention on Cybercrime and its protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

**Constitutional provisions and other basic provisions**

7. As regards the legal situation of ethnic minorities, see below under “The need to move towards a society into which ethnic minorities are fully integrated – The legal situation of ethnic minorities”.

**Criminal law provisions**

8. In its first report, ECRI recommended that the Georgian authorities strengthen protection against racially motivated crimes by means of a general criminal law provision expressly providing for the perpetrator’s racist motive to be regarded as an aggravating circumstance.
9. ECRI notes that no general provision of this kind has been adopted since the publication of its first report. However, the Georgian authorities have pointed out that the Criminal Code already provides for a racist motive to constitute an aggravating circumstance in respect of a number of offences. The offences of murder, violence, torture, inhuman and degrading treatment, serious damage to health and desecration of graves are cited by way of examples. However, ECRI notes that a racist motive cannot be taken into account as a factor incurring a heavier penalty for all types of offence.

**Recommendations:**

10. ECRI strongly encourages the Georgian authorities to enact legislation providing for racist motivation to constitute a general aggravating circumstance applicable to all types of offence, as recommended in paragraph 21 of its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination.
11. In its first report, ECRI recommended that the Georgian authorities reword Article 142 of the Criminal Code, which prohibits infringements of the right to equality, in a less restrictive manner so as to remove the requirement that the offence result in a “substantial violation of human rights” if the perpetrator is to be punished. ECRI also asked for a provision prohibiting incitement to racial hatred to be introduced into the new Georgian Criminal Code.
12. Article 142 itself has not been amended and therefore still prohibits the infringement of the right to equality on grounds including race, colour, language, sex, religion, belief, political or other opinion, membership of a national, ethnic or social group, title, membership of a public organisation, origin, place of residence or property status, which has caused a substantial violation of human



rights. The offence is punishable by a term of imprisonment not exceeding two years. Where the perpetrator uses his official authority or if the act has had serious consequences a heavier penalty may be imposed (a term of imprisonment not exceeding three years, with or without deprivation of the right to carry on his occupation for a term not exceeding three years).

13. However, the Georgian Criminal Code was amended on 6 June 2003 with the addition of Article 142<sub>1</sub> following Article 142. Article 142<sub>1</sub> § 1 provides that racial discrimination, ie an act committed for the purpose of inciting to national or racial hatred or conflict, humiliating national dignity or directly or indirectly restricting human rights or granting advantages on grounds of race, colour, social status or national or ethnic origin is punishable by deprivation of liberty for a term not exceeding three years. Under Article 142<sub>1</sub> § 2 certain circumstances lead the penalty to be increased, particularly where the perpetrator uses his official authority or if the act is accompanied by violence or threats of violence (in both cases the penalty is a term of imprisonment not exceeding five years) or if the offence was committed by a group or caused a person's death (in both these cases the penalty is a term of imprisonment of three to eight years).
14. ECRI notes with interest that through Article 142<sub>1</sub> the prohibition of racial discrimination has been reinforced with the adoption of a specific provision. This provision does not require a substantial violation of human rights in order to be applied, which is a step forward although it remains to be seen how the courts will interpret the new provision. It also enables incitement to racial hatred to be punished as ECRI requested.
15. A further improvement to the Criminal Code stems from the amendment to Article 408 introduced on 14 August 2003. This provision, which punishes crimes against humanity, has been supplemented by the inclusion in the list of criminal offences of apartheid and persecution of an identifiable group for reasons including race, national or ethnic origin and religion.
16. ECRI notes that the Criminal Code includes a series of provisions under which offences against persons for religious motives can be punished. Article 155, for example, prohibits illegal interference in religious practice and Article 156 prohibits the persecution of a person on grounds including religion or religious activities. Article 166 notably prohibits interference with the creation or activities of a religious entity and Article 259 § 3 b prohibits the desecration of a grave on grounds of race, religion or national or ethnic intolerance<sup>2</sup>.
17. As indicated in General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, ECRI considers that not only racial discrimination and incitement to racial hatred, but also other racist acts including racist insults and the public dissemination or distribution, with a racist aim, of material containing racist statements must be regarded as criminal offences<sup>3</sup>.

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<sup>2</sup> See also below, under "Religious minorities".

<sup>3</sup> See paragraph 18 of ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination.

**Recommendations:**

18. ECRI recommends that the Georgian authorities continue to revise and add to the criminal law provisions for combating racism and intolerance. As indicated above, racist insults and the public dissemination or distribution, with a racist aim, of material containing racist statements must be regarded as criminal offences, as recommended by ECRI in its General Policy Recommendation N° 7 on national legislation to combat racism and racial discrimination.
19. In its first report, ECRI recommended that the Georgian authorities ensure that the police, prosecutors and judges receive adequate training in dealing with racist offences. It also recommended that the general public be informed of the means available for lodging complaints concerning racist offences.
20. According to the information provided by the General Prosecutor's Office, Article 142<sup>1</sup> (prohibition of racial discrimination) has not been applied to date. Under Georgian law, prosecutors are required to investigate and if necessary prosecute if they receive information that this provision has been infringed. No information of this kind has reached them since 6 June 2003, when this provision was adopted. As regards Article 142 (prohibition of infringement of the right of equality), no proceedings were brought by the prosecuting authorities in 2002 or 2003. One investigation was opened in 2004, five in 2005 and four in the first three months of 2006. ECRI does not know what precise grounds of inequality arose in all of these cases or what the outcome was in the courts. Three of these cases dealt with in 2006 concern complaints by Jehovah's Witnesses against physical and verbal abuse on the grounds of their religion. Two of these cases are still being investigated and the third case ended in a reconciliation in accordance with the Criminal Code.
21. Despite the increase in the number of cases concerning Article 142, ECRI notes that there are virtually no prosecutions or convictions for racist acts or racial discrimination. The explanation sometimes given is that such acts are very rare in Georgia. It has been pointed out, however, that there is a lack of awareness in the criminal justice system, including on the part of the police, of the problem of racism, intolerance and racial discrimination. The general public itself is apparently not sufficiently aware that such acts are criminal offences and that complaints may be lodged with the police or the prosecutor on these grounds. Lastly, lack of confidence in the judicial system has been widely suggested as the reason why people in Georgia often refrain from getting involved with it: they consider that it is pointless to do so, or that applying to a court might even be counterproductive. In this domain, ECRI notes with concern the reports of NGOs and intergovernmental organisations referring to serious problems in the functioning and also the independence of the courts.
22. ECRI nevertheless notes with satisfaction that as regards offences against religious minorities, the number of cases in which the perpetrator of the offence is prosecuted and even convicted is on the increase (see below: "Religious minorities").
23. ECRI notes that there are general training courses in human rights for police officers, but that the courses do not focus particularly on the need to combat racism and racial discrimination. Prosecutors also receive training courses in human rights, parts of which deal with racism and racial discrimination. ECRI notes with interest that a "Code of Ethics for the Employees of the Office of the

Prosecutor of Georgia” was adopted on 19 June 2006. This Code contains several provisions aimed at combating all forms of discrimination, including those based on the grounds of ethnic origin and religion. For instance, it requires that prosecutors “facilitate the elimination of all forms of discrimination” (Article 5-2). The breach of this Code can lead to disciplinary measures. As regards judges, a legal service training school has just been opened and ECRI does not know the precise content of the courses to be provided to future judges. As regards the Georgian population, to ECRI’s knowledge, the authorities have not conducted any awareness campaigns, particularly on the new provision banning racial discrimination.

#### **Recommendations:**

24. ECRI recommends that the Georgian authorities substantially increase their efforts to provide training to the police, prosecutors, judges and future professionals in the judicial system on the application of the legislation on racist offences.
25. ECRI recommends that the Georgian authorities inform the general public of the existence of criminal law provisions enabling racially motivated acts or acts of religious intolerance to be punished. It recommends that they take steps to encourage victims to lodge complaints concerning such acts, particularly by substantially improving the functioning of the judicial system and strengthening public confidence in the system.

#### **Civil and administrative law provisions**

26. In its first report, ECRI recommended that the Georgian authorities adopt comprehensive civil and administrative law provisions specifically designed to combat discrimination in all areas of life.
27. ECRI notes that the Labour Code includes a provision prohibiting discrimination. Other provisions scattered through various laws also outlaw discrimination. However, ECRI is not aware of any cases in which persons have obtained compensation for infringement of their right not to suffer racial discrimination. There again, it has been suggested that this is mainly due to racial discrimination being an extremely rare occurrence in Georgia. ECRI nevertheless notes in several parts of this report that there are allegations of discrimination in Georgia, particularly against refugees from Chechnya and persons belonging to ethnic or religious minorities<sup>4</sup>. Some people apparently complain of discrimination to NGOs, but stop short of taking the matter to the courts or the Ombudsman. In the absence of a detailed study of racial discrimination in all areas of life, it is hard to know why there are no proceedings in the civil and administrative courts<sup>5</sup>. However, studies of that kind, together with reinforced civil and administrative law provisions in the matter and setting up a specialised body to monitor and promote action against racism and racial discrimination, should help to shed light on the situation and above all identify and address any problems of racial discrimination in the country<sup>6</sup>.

<sup>4</sup> See below, under “Religious minorities”, “Refugees from Chechnya” and “Specific issues: the need to move towards a society into which ethnic minorities are fully integrated”.

<sup>5</sup> With regard to problems relating to the functioning of the judicial system, see above under “Criminal law provisions”.

<sup>6</sup> ECRI draws attention to its General Policy Recommendation No.7, which states that *direct racial discrimination* means “any differential treatment based on a ground such as race, colour, language,

**Recommendations:**

28. ECRI recommends that the Georgian authorities ensure the proper implementation of the civil and administrative law provisions prohibiting racial discrimination. It also recommends that they complement these provisions by adopting further provisions prohibiting racial discrimination in a precise and exhaustive manner to ensure that all areas of life such as education, access to housing, to public services and to public places and contractual relations between individuals are covered. On this point, ECRI invites the Georgian authorities to draw on the part of its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination dealing with civil and administrative law.

**Specialised bodies and other institutions**

29. In its first report, ECRI recommended setting up a specialised body to combat racism and racial discrimination, which would *inter alia* make legal aid available to any victims of racism and racial discrimination. To date, the Georgian authorities have not taken any such steps.

**Recommendations:**

30. ECRI strongly encourages the Georgian authorities to set up in the near future an independent specialised body to combat racism and racial discrimination, in accordance with ECRI's General Policy Recommendation N°2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination. ECRI particularly emphasises the need to ensure that this body is entirely independent and has the legal capacity and the necessary human and financial resources to be able to provide victims with the required assistance.
31. ECRI notes with satisfaction that the Georgian Public Defender (hereinafter the Ombudsman) continues to be actively concerned with the situation of minority groups in Georgia, especially ethnic and religious minorities. Among many initiatives taken in this area, the Ombudsman encouraged the setting up of a Council for Ethnic Minorities and a Council for Religious Minorities at the end of 2005, both under his auspices, enabling the representatives of these minorities to publicly state their views on topics of concern to them. The Ombudsman also supervises the operation of a Tolerance Centre which regularly publishes a newsletter on the subject. ECRI is pleased to learn that the budget allocated to the Ombudsman's activities has been increased, although the Ombudsman still considers it insufficient to enable him to perform all of his functions properly. The Ombudsman has stressed that he wishes his status and independence to be reinforced. One step in this direction would be to provide for the

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religion, nationality or national or ethnic origin which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised". *Indirect racial discrimination* occurs in cases where "an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised". See paragraph 1 b. and c. of ECRI's General Policy Recommendation No.7 of national legislation to combat racism and racial discrimination.

Ombudsman's budget to be determined by parliament and no longer by the government.

32. In autumn 2004 an Ossetian was appointed Minister of State for Civil Integration. ECRI welcomes the establishment of this institution, which supervises the civil integration process chiefly in respect of ethnic minorities but also in respect of religious minorities, Meskhetian Turks, asylum seekers, refugees and internally displaced persons<sup>7</sup>. However, some representatives of civil society consider that simply setting up this institution is not enough and that two years after its inception practical steps towards civil integration still remain to be taken. In August 2005 a Council for Civil Integration comprising government and civil society representatives was set up under the authority of the President.

***Recommendations:***

33. ECRI strongly encourages the Georgian authorities to pursue their efforts to reinforce the Ombudsman's capacity for action. The Ombudsman should receive sufficient human and financial resources to perform his functions. ECRI encourages the authorities to reinforce his status and independence by means of a budget directly allocated to him by parliament.
34. ECRI hopes that the Ministry of State for Civil Integration and the Council for Civil Integration will reinforce their efforts to assist all minority groups in difficult situations and will take all the necessary steps, in co-operation with other institutions in Georgia, to hinder racism and intolerance.

**Education and awareness-raising**

35. ECRI notes in the second part of this report that the Ministry of Education and Science has embarked on the process of updating and improving school curricula and textbooks in all subjects. In view of the issues raised in other parts of this report with regard to ethnic and religious minorities in particular, it is important that this revision of school textbooks take full account of the need to educate pupils about issues relating to racism and racial discrimination. The Ministry has stated that as a result of the reform now in progress, these issues of respect for others will be dealt with in several subjects during the first seven years of schooling, after which they will be dealt with in the civil education course, which will be compulsory.

***Recommendations:***

36. ECRI encourages the Georgian authorities to ensure that the issues of mutual respect, racism and racial discrimination are properly addressed in school curricula and in teacher training on human rights.
37. ECRI recommends that the Georgian authorities pursue their work on quality control of school curricula and textbooks. Textbooks must not contain any derogatory or insulting references to any minority group at all. ECRI encourages the Georgian authorities to revise school curricula and textbooks, particularly history books, so as to make pupils aware of the advantages of a multicultural society.

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<sup>7</sup> For further information on civil integration, see below, "The need to move towards a society into which ethnic minorities are fully integrated".



## Reception and status of non-citizens

### - *Refugees and asylum-seekers*

38. In its first report, ECRI recommended that the Georgian authorities continue to co-operate closely with the UN High Commissioner for Refugees (UNHCR) on questions concerning asylum legislation. The great majority of refugees in Georgia come from Chechnya. Their situation is dealt with separately below, under "Refugees from Chechnya". Asylum applications other than from Chechen refugees are very rare. At the end of 2005 there were only 17 refugees other than those from Chechnya in Georgia.
39. In 2005 minor amendments were made to the 1998 asylum law, without taking account of the proposals for improvement made by the UNHCR. In other words, the law still does not fully comply with international standards in the matter. In the meantime, the law on foreigners has also been amended, with the result that there is now a discrepancy between the two laws. The asylum law refers to the law on foreigners for the purpose of determining various aspects of refugee status, whereas the law on foreigners now states that it does not apply to refugees, which poses a problem. ECRI notes that the Georgian authorities are again revising the asylum law and they indicated that they have consulted the UNHCR on the subject.
40. In practice, persons arriving at Georgia's borders sometimes encounter difficulties in finding out their rights, especially the right to apply for asylum, because they are not given information on asylum procedure in a language they understand. Moreover, border officials do not appear to be required to receive asylum applications. According to the UNHCR, these two factors increase the risk of being refused entry at the border without having been able to apply for asylum.

### ***Recommendations:***

41. ECRI recommends that the Georgian authorities pursue their revision of the asylum law with a view to improving it and bringing it into line with international standards in the matter. For this purpose, it invites them in particular to take account of the UNHCR's comments on improvements to be made to the law.
42. ECRI recommends that the Georgian authorities ensure that the right to apply for asylum is respected in practice, particularly by informing persons arriving at Georgia's borders of their right to apply for asylum and doing so in a language that they understand.

### - *Migrants*

43. ECRI has been able to obtain very little information on migrants, whether from government or other sources. Apart from asylum seekers and refugees, including refugees from Chechnya, referred to in other parts of this report, it would indeed seem that there are very few migrants in Georgia. In addition, non-citizens in Georgia are there only for a very short time, since their plan is generally to move on speedily to another destination. In view of the lack of reliable information, it is difficult to discuss the situation of migrants in Georgia in greater detail.

### **Recommendations:**

44. ECRI recommends that the Georgian authorities closely monitor the situation of non-citizens temporarily or permanently staying in Georgia and respond swiftly to any manifestations of intolerance or racial discrimination against such persons.

#### **Vulnerable groups**

##### **- Ethnic minorities**

45. See below: “Specific issues: the need to move towards a society into which ethnic minorities are fully integrated”.

##### **- Religious minorities**

46. According to the 2002 census, 83.9% of Georgia’s population belong to the Orthodox Church, 9.9% are Muslims and 3.9% are members of the Armenian Apostolic Church, while other religious groups such as Catholics, Jews, Lutherans and Yezids account for less than 1% each. These religions have been practised for a long time in Georgia and are therefore widely regarded as “traditional” there. More recently, especially since Georgia became independent, new religious movements have appeared such as Jehovah’s Witnesses, Baptists, Seventh Day Adventists, Pentecostals and others. The number of people practising these religions is very small.

47. In its first report, ECRI expressed concern at reports of repeated acts of violence and harassment against members of religious minorities in Georgia. It recommended that the Georgian authorities make every effort, particularly by prosecuting those responsible for such acts, to deal effectively with the problem.

48. ECRI is pleased to learn of the general view in Georgia that large-scale episodes of violence directed against members of religious minorities have markedly diminished in the past few years. It notes that the defrocked Orthodox priest, Basil Mkalavishvili, and his accomplices were arrested in March 2004 and given prison sentences (six years in Mr Mkalavishvili’s case) in 2005. Mr Mkalavishvili and his followers seem to have been the main perpetrators of the violence and openly encouraged other people to attack religious minorities. Their arrest did put an end to their activities, but ECRI has learned with regret that the manner of the arrest apparently infringed their human rights. The highest ranking Georgian authorities have stated their intention of putting an end to disturbances and violence due to religious intolerance. The General Prosecutor’s Office emphasised the importance it attaches to all cases concerning manifestations of religious intolerance. For example, the deputy general prosecutor himself has been instructed to monitor all cases of this kind and a system of official statistics on the number of cases and their outcome has very recently been set up<sup>8</sup>.

49. Despite these noteworthy advances, ECRI strongly deplores the fact that members of religious minorities, especially non-traditional religions in Georgia, are not yet safe from physical assault or attacks on their property by extremists or local people. Both the NGOs and the authorities have reported to ECRI

<sup>8</sup> See also above, under “Criminal law provisions”.

several cases in which Jehovah's Witnesses, for example, complained of such attacks. Some of these complaints are being investigated by the courts.

50. ECRI is concerned at allegations that the police do not take adequate steps to protect members of religious minorities, *inter alia* against hindrances to religious worship. However, it also notes that the Ministry of the Interior has stated its commitment to protecting everyone's freedom of worship. In some cases, the Ministry is nevertheless obliged to suggest that members of religious minorities change their place of worship as the sole means of protecting them, owing to pressure from the local community or threats from certain extremists. ECRI therefore does not regard the decrease in the number and intensity of attacks as sufficient and takes the view that members of non-traditional religious minorities still cannot live peacefully in Georgia without fear of being targeted by violent manifestations of religious intolerance.

**Recommendations:**

51. ECRI strongly recommends that the Georgian authorities pursue and reinforce their efforts to effectively combat violent manifestations of religious intolerance involving physical assault and/or attacks on property. They should above all ensure that those responsible for such acts of violence are duly prosecuted and punished.
  52. ECRI recommends that the Georgian authorities ensure that members of religious minorities are given effective protection, in particular during religious events such as gatherings for the purposes of worship.
53. Problems persist with regard to the exercise of religious activities, especially where non-traditional religions are concerned. Like many other entities, the Georgian Ombudsman has condemned the unnecessary bureaucracy that apparently still confronts minority religious groups when, for example, they wish to open or build a place of worship. The Office of the General Prosecutor declared to ECRI that law enforcement officials deal with all allegations of unnecessary bureaucracy in an appropriate way. Some denominations such as the Catholic Church and the Armenian Apostolic Church have still not recovered the property confiscated from them. Lastly, the Constitutional Agreement signed between the state and the Georgian Orthodox Church in 2002, which confers substantial privileges on the majority religion, has been criticised by the Ombudsman among others. According to the Ombudsman, the agreement includes discriminatory clauses such as the provision that it is the signatory Church which co-ordinates and secures invitations to prisons for the clergy of other churches in order to meet the needs of prisoners belonging to other denominations. To avoid any form of discrimination, according to comments from several sources, it would at least be advisable to have agreements of the same kind with other denominations. ECRI notes that an agreement of the kind was under discussion with the Catholic Church, but that no signature took place. No other agreements have been signed to date.
  54. The amendment made to the Georgian Civil Code in 2005 enabling religions to be registered as "non-profit private-law corporations" has been welcomed as a step forward which should *inter alia* facilitate the settlement of religious property issues. However, the difference between these denominations and the majority religion remains, insofar as the latter, as a public-law corporation, is alone in enjoying numerous advantages, notably in tax matters. The new rules applying to other religions are apparently not entirely suited to the specific features of religious organisations and some parties, including the Ombudsman, have



requested additional legislative adjustments to further facilitate religious activities.

***Recommendations:***

55. ECRI recommends that the Georgian authorities take stock of legislation and practice in religious matters, including the Constitutional Agreement signed with the Orthodox Church, to ensure that the current situation does not cause any direct or indirect discrimination against any religious minorities. In this connection, special attention should be paid to the allegations that some religious minorities are still subjected to unnecessary bureaucracy.
56. ECRI recommends that the Georgian authorities take the necessary steps to ensure that legislation adequately meets the specific needs of all religious associations in terms of registration and legal status, in order to allow them to practise their religion.
57. Many comments from national and international sources, including the Georgian authorities, have criticised the lack of awareness of all minority religions among the mostly Orthodox population of Georgia. ECRI regrets that some media, politicians, members of the Orthodox clergy and members of the general public have at times made intolerant statements, with impunity, against members of religious minorities. As evidenced by surveys and opinion polls among the Georgian population, such statements fuel widespread prejudice and stereotypes directed almost entirely against non-traditional religions and their members. These religions are apparently described as “aggressive” and “harmful to the country”. On the other hand, it is generally felt that the Georgian population demonstrates virtually no religious intolerance against Jews, Muslims or members of other “traditional” religions.
58. Some people deplore that too much emphasis is placed on teaching the majority religion in state schools. This issue is in a transitional phase. It would seem that there used to be an optional course of Orthodox catechism in most schools. The Ministry of Education and Science is currently revising the curriculum and school textbooks in this area so that they reflect religious and cultural diversity more accurately. However, it is apparently not yet possible to ensure that all teachers follow this approach, and some practical problems remain. In addition, under an agreement with the Ministry, the Orthodox Church apparently has the right to vet school curricula, a privilege not extended to any other religion. ECRI is concerned about allegations that children who do not belong to the majority religion are sometimes subjected to pressure and harassment by teachers or other pupils on account of that.
59. ECRI considers that a settlement of the entire range of problems encountered by members of religious minorities depends on intercultural and inter-religious dialogue throughout the country, especially dialogue between the representatives of the majority religion and those of the minority religions. Many people emphasise that the Orthodox Church, as by far the majority religion, has a crucial part to play in this area. It is also for the Georgian authorities to ensure that dialogue is possible and to encourage it. In this regard the Ombudsman’s initiative in setting up a Council for Religious Minorities under his auspices and the initiative taken by the Ministry of Education and Science concerning school textbooks are positive examples which must definitely be consolidated and followed by all authorities. Religious minorities should be given the full benefit of the civil integration process recently

launched by the Georgian government (see below: “The need to move towards a society into which ethnic minorities are fully integrated”).

**Recommendations:**

60. ECRI strongly recommends that the Georgian authorities pursue their efforts to review their approach to religious education at school. They should also ensure that no pupils are discriminated against or bullied at school on account of their religion.
61. ECRI recommends that the Georgian authorities foster intercultural and inter-religious dialogue throughout the country, especially dialogue between the representatives of the majority religion and those of the minority religions.
62. ECRI recommends that the Georgian authorities ensure that religious minorities are fully involved in the programmes designed to improve civil integration in Georgian society, referred to in other parts of this report.

**- Refugees from Chechnya**

63. In its first report, ECRI noted that the great majority of refugees in Georgia came from Chechnya. It recommended that the Georgian authorities pursue and reinforce their efforts to meet these persons' basic needs.
64. Most of the refugees from Chechnya arrived in 1999. Some of them are of Chechen origin, others are Kists, who previously lived in Georgia, then after settling in Chechnya, fled back to Georgia as a result of the armed conflict. There were initially almost 8,000 of these refugees; by the end of 2005, according to the UNHCR, there were only 2,483. This is mainly because many refugees left to settle in third countries. Most of those who remain live in the Pankisi gorges on the border with Russia. They have obtained the status of “collective refugees” or “prima facie” refugees.
65. ECRI is concerned at the hardship with which refugees in the Pankisi region are faced. They still depend on the humanitarian aid provided by the UNHCR and their situation has not improved over the years. A survey of their integration into Georgian society shows that refugees of Chechen origin do not see themselves as integrated in any sense and mostly wish to leave, since they find living conditions too hard where they are. According to the Georgian authorities, Kist refugees manage to integrate, particularly through obtaining Georgian citizenship.
66. Over and above the humanitarian problem, ECRI is mainly very concerned to learn that while refugees from Chechnya theoretically have the same rights as others, they are in practice in a much worse situation than other refugees, for two main reasons.
67. Firstly, the law enforcement agencies subject Chechen refugees to closer attention and surveillance on the pretext of combating organised crime and terrorism. According to several non-government sources, refugees from Chechnya are therefore unjustifiably harassed by law enforcement officials. ECRI has received allegations of illegal deportations to Russia and other countries, and of suspicious disappearances, arbitrary raids and excessive use of force and firearms, particularly during special operations by the law enforcement agencies. The Georgian authorities have indicated that the only Chechens who have been extradited are the five applicants in the *Shamayev* case. According to the Georgian authorities, there have been no other cases of

extradition or expulsion of persons of Chechen origin. ECRI recalls the principle that persons cannot be deported or extradited to a country in which they are likely to be subjected to torture or inhuman or degrading treatment<sup>9</sup>.

68. Secondly, refugees from Chechnya have a negative reputation among the Georgian population because they are often regarded as terrorists, especially by people living outside the Pankisi region. Stereotypes and prejudice of this kind have apparently resulted in instances of housing discrimination, with refugees from Chechnya sometimes having difficulty in finding privately let accommodation.

#### **Recommendations:**

69. ECRI recommends that the Georgian authorities look into the humanitarian situation of refugees from Chechnya and settle all the problems which they encounter in meeting their basic needs.
70. ECRI strongly recommends that the Georgian authorities take all the necessary steps to prohibit, and punish when necessary, any illegal, arbitrary or discriminatory acts committed by law enforcement officials against refugees from Chechnya.
71. ECRI recommends that the Georgian authorities conduct an awareness raising campaign aimed at the general public and Georgian officials, particularly the police, in order to combat all forms of prejudice against and stereotyping of persons of Chechen origin, especially those that equate them with criminals or terrorists.

#### **- Meskhetian Turks**

72. In its first report, ECRI recommended that Georgia adopt a legal framework permitting repatriation and integration, including the right to Georgian citizenship, for the Meskhetian Turk population deported by the Soviet regime more than 60 years ago, and consult the Council of Europe about the legal framework before its adoption. ECRI also asked the Georgian authorities to take steps to raise the local population's awareness of the issues.
73. According to estimations, there are in total between 370,000 and 400,000 Meskhetian Turks in the world, mostly living in the various countries of the former Soviet Union. The Meskhetian Turks were deported under Stalin from the region where they then lived (Meskhetia, now known as Samtskhe-Javakheti).
74. ECRI notes that the use of the term "Meskhetian Turks" to describe the population discussed here is controversial. Many other names have been proposed either by members of this community, by the authorities or by members of Georgian civil society. These names include "Meskhetian Muslims", "Meskhetian Georgians" and "Ahiska Turks". Some refer to the region in which this population lived and others to their religion or to their real or assumed ethnic origin. Among others, some of the people deported and repatriated to Georgia reject any idea of Turkish identity. It has been pointed out that the use of the term "Turk" can be a barrier to the repatriation of

<sup>9</sup> See judgment of the European Court of Human Rights, 12 April 2005, *Shamayev and 12 others v. Georgia and Russia*, particularly paragraph 335 in which the Court states that it has constantly reiterated that the Contracting States have an obligation not to extradite or deport persons, including asylum seekers, to a country where there are serious and recognised grounds for believing that they run a real risk of being subjected to treatment contrary to Article 3 of the European Convention on Human Rights.

deported persons and especially to their integration in Georgia: for historical reasons this term apparently arouses hostility among some members of the Georgian population, especially among the Armenian population living in the region from which the deported persons originated. Some analysts consider that this hostility, together with fear of problems in the event of claims for the return of property, might cause major ethnic conflict. ECRI considers that in order to avoid tension, it is above all necessary to inform and reassure the local population about the return process and make them aware of the need to resist racist prejudice and stereotypes in this connection. ECRI notes that according to several experts, most of the deported population concerned currently lay claim to the term “Meskhetian Turks” as describing them most accurately.

75. To date, only a few Meskhetian Turks (fewer than 1,000) have returned to Georgia. An intergovernmental committee for the repatriation of Meskhetian populations, headed by the Minister for Conflict Resolution, was set up in November 2004. A bill on “the repatriation of persons deported from Georgia by the Soviet regime in the 1940s” is currently under consideration, in consultation with Council of Europe experts among others. ECRI is pleased to learn that the government has stated its political will to resolve the issue. However, many commentators consider progress to be too slow and believe that much remains to be done before the members of the deported population who so wish can return under satisfactory conditions.

#### ***Recommendations:***

76. ECRI urges the Georgian authorities to pursue and reinforce their efforts to devise solutions enabling Meskhetian Turks who so wish to return and live in Georgia, in compliance with the commitments which Georgia made on joining the Council of Europe. The repatriation process must take place with due consideration for the opinion of the Council of Europe experts, but also in consultation with the main people concerned – in particular the deported persons, whether they have already returned or still live in other countries, and the populations in Georgia who are directly affected by those persons’ return.
77. ECRI urges the Georgian authorities to combat all forms of racist prejudice and stereotypes directed against Meskhetian Turks. In particular, an information campaign should be conducted among the Georgian population in general and the Armenian population living in the region from which the Meskhetian Turks originated in particular; the purpose of the campaign should be to explain the historical reasons for these persons’ return and to explain that it will be organised in such a way as to avoid any risk to the rights and safety of all the populations concerned.

#### **- Roma**

78. In its first report, ECRI recommended that the Georgian authorities look into the practical situation of the Roma population in Georgia and the problems they may face.
79. ECRI notes that there is very little information on the current number and situation of Roma communities in Georgia. According to the authorities and civil society representatives, many Roma left Georgia after independence. However, ECRI is concerned to note that the little information gathered on Roma in Georgia indicates that the Roma minority suffers from severe social exclusion.

### **Recommendations:**

80. ECRI strongly recommends that the Georgian authorities closely monitor the situation of Roma communities in Georgia, ensure that they are taken into account in government-run civil integration programmes and respond swiftly in the event of any manifestations of intolerance or racial discrimination against members of these communities.

### **Conduct of law-enforcement officials**

81. In its first report ECRI recommended that the Georgian authorities take action to improve the mechanisms for processing complaints of unlawful behaviour on the part of law-enforcement officials. In particular it recommended setting up an independent commission to investigate all allegations of human rights violations by law enforcement officials.
82. Some illegal behaviour, such as excessive use of force and firearms – particularly during special operations – are still common. ECRI is concerned to hear from numerous sources, including the Georgian Ombudsman, that torture and inhuman or degrading treatment are still commonly practised by law-enforcement officials in Georgia.
83. ECRI notes that, according to Georgian law, there is a right to the services of an interpreter during the procedure in criminal cases. In some cases, the translation of main procedural documents is compulsory if the person concerned does not understand the official language. ECRI notes the widely held view that minority groups are apparently not particularly targeted by illegal behaviour on the part of some law-enforcement officials (see, however, above, the remarks on religious minorities and refugees from Chechnya). It is nonetheless concerned about this aspect of their situation in that some members of such groups may be particularly vulnerable. For instance, poor knowledge of the official language among ethnic minorities, migrants, asylum seekers and others may make it more difficult for them to make sure their rights are respected in the event of arrest or detention. Thus it is important for everyone, including members of minority groups in Georgia, for the situation to improve regarding observance of human rights by law-enforcement officials.
84. ECRI notes with interest that a meeting intended to increase co-operation between the Office of the General Prosecutor, the police and the authorities responsible for religious minorities was held in July 2006 with representatives of the majority religion, religious minorities and national and international NGOs. In addition, a meeting on national minorities was organised in August 2006, involving such authorities as the Office of the General Prosecutor, the police and the authorities responsible for ethnic minorities, as well as representatives of these minorities. During this meeting, it was decided to pursue co-operation on a regular basis, including through the development of exchanges of information between representatives of law enforcement and representatives of ethnic minorities, and through measures to facilitate the recruitment of ethnic minorities by law enforcement agencies. The Georgian authorities have statistics on this point: in 2006, among those who passed the entrance exam to be a police officer, 3% were of ethnic minority origin. Among those who passed the final exam, 3.5% were of ethnic minority origin. In addition, 4.2% of those admitted to police patrol training were members of ethnic minorities.



85. ECRI notes that the Georgian authorities have taken a number of steps to combat illegal behaviour on the part of law-enforcement bodies, including the following: an anti-torture action plan (2003-2005) was introduced. Article 144<sub>1</sub> of the Criminal Code was adopted on 23 June 2005 to bring the definition of torture in Georgian law into line with international standards in the matter. Under Article 144<sub>1</sub> (2) f) racist motivation counts as an aggravating circumstance in sentencing cases of torture.<sup>10</sup> The authorities have introduced provisions whereby, in particular, the Ombudsman can visit places of provisional detention to check on detention conditions. The General Prosecutor systematically investigates allegations of ill-treatment by the police when these are brought to his notice. A code of ethics for the police and guidelines on the use of force are currently being prepared. The Code of criminal procedure has been modified to facilitate the prosecution of acts of torture and ill-treatment on the part of law enforcement officers. According to NGOs however, investigations still too seldom lead to punishment, which does nothing to remove the impression that law-enforcement personnel enjoy a degree of impunity.

#### ***Recommendations:***

86. ECRI recommends that the Georgian authorities take further steps to put an end to all illegal behaviour by law enforcement officials and particularly towards members of minority groups. It is important for the Georgian authorities to make clear to society that such conduct by law enforcement officials will not be tolerated and will be punished.
87. ECRI strongly encourages the Georgian authorities to provide law-enforcement officials with all the resources which they need in order to be able to operate in a satisfactory manner and in total compliance with the rights of members of minority groups with whom they are in contact. That also requires even greater efforts to provide human-rights training and to raise awareness of issues of racism and racial discrimination. ECRI encourages the Georgian authorities to continue their efforts towards setting up a constructive dialogue with representatives of ethnic and religious minorities in this framework.
88. ECRI again recommends establishing an independent body to investigate all allegations of misconduct by law enforcement officials and particularly allegations of racial discrimination, and to ensure that culprits are brought to trial and duly punished.

#### **Monitoring of the situation**

89. ECRI is worried about the lack of adequately detailed information about the situation of the various minority groups in Georgia. It finds that no specific steps have been taken to improve matters in this area. In ECRI's view, collection of data broken down by ethnic origin would make it easier to identify areas of life in which there is direct or indirect racial discrimination and to find the best means of combating those forms of discrimination.
90. Both the authorities and representatives of civil society observed that the results of the 2002 census did not reflect the present situation in the country with regard to the number of ethnic or other minorities. ECRI considers that a clear picture of the situation would allow the authorities to adapt measures destined to improve the situation of ethnic and religious minorities. ECRI has been

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<sup>10</sup> See above "Criminal law provisions".

informed that the next census will be carried out in 2010, which seems a long way off considering the minimal reliability of the data collected during the 2002 census.

### **Recommendations:**

91. ECRI strongly encourages the Georgian authorities to look into means of setting up a full and coherent system of data collection so as to evaluate the situation regarding the different minority groups in Georgia and determine the extent of manifestations of racism and racial discrimination. Such a collection system would have to conform to national law and European rules and recommendations on protection of data and private life, as stated in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. The Georgian authorities must ensure that data collection is carried out in a manner which fully respects respondents' anonymity and dignity and in accordance with the principle of informed consent. In addition, the system of data collection on racism and racial discrimination should take the gender dimension into account, in particular from the standpoint of possible double or multiple discrimination.

### **Situation regarding persons internally displaced as a result of the conflicts within the territory of Georgia in the regions of Abkhazia and South Ossetia**

92. In the first half of the 1990s Georgia underwent two armed conflicts: in the first, from 1990 to 1992, the Georgian authorities were ranged against the Ossetians following South Ossetia's 1990 declaration of independence; the second conflict, from 1992 to 1993, was between the Georgian authorities and the Abkhazian separatists. As a result of these secessionist conflicts, which caused thousands of deaths both in the civilian population and the military, Georgia is now no longer in real or effective control of Abkhazia or South Ossetia. Another result of the conflicts is that there are 234,249 displaced persons (UNHCR figure, late 2005) on Georgian territory as currently controlled by the Georgian authorities. Most of them are people of Georgian origin displaced from Abkhazia.
93. ECRI regrets that since the adoption of its first report, in June 2001, the situation of internally displaced persons has not really improved. Conditions are not yet right for peaceful return to either of these regions. ECRI notes, however, that in recent years people of Georgian origin have opted to return to the Gali region of Abkhazia (on this question see, below, "Areas currently not under the effective control of the Georgian authorities"). The others are scattered throughout the country and experiencing great difficulties, being especially vulnerable to the economic and social crisis which the country is undergoing and to the resultant high unemployment. Displaced persons have the same rights as other Georgians and no direct discrimination against them has been reported to ECRI. In addition there are various official and private schemes to help them socially and as regards access to employment. However they are mainly dependent on government aid, including the small monthly allowance paid to them. That aid is inadequate to cover their basic needs. They also face difficulties in integrating, although they are allowed to vote and stand for election in the places where they are living. While they rightly hope to be able to return home as soon as possible, which means that their present places of residence are temporary, ECRI believes that it must at all times be possible for them to feel fully part of the Georgian population. It is thus important that the majority community and the authorities should regard them as such.

94. ECRI notes that legislation on restitution and compensation drafted in consultation with Council of Europe experts is in the process of being adopted by parliament and it hopes that this will provide solutions to some of the problems arising from internal displacement as a result of the armed conflicts.

**Recommendations:**

95. ECRI reiterates its encouragement to the Georgian authorities to continue constructive dialogue with all the relevant national and international interlocutors in order to find solutions to issues raised by the return of internally displaced persons to their homes in full compliance with their rights and dignity and to the questions regarding the status of the regions of South Ossetia and Abkhazia within the State of Georgia.
96. ECRI recommends that the Georgian authorities continue and intensify their efforts to ensure that internally displaced persons have decent living conditions, in particular as regards housing.
97. ECRI encourages the Georgian authorities to take measures aimed at assisting mutual integration of displaced persons and the local population and to take particular care that displaced persons have full access to employment and education.

**- Areas currently not under the effective control of the Georgian authorities**

98. As already pointed out, the present state of affairs prevents ECRI from covering the position regarding populations in Abkhazia and South Ossetia, the parts of Georgia which at present are not actually controlled by the Georgian authorities to whom the present report is addressed. In line with its mission, however, ECRI registers its deep concern at reports of human rights violations in South Ossetia and Abkhazia. It is particularly worried about allegations from various sources that members of the non-Abkhaz population, including many people of Georgian origin who have spontaneously returned to their homes in the Gali region of Abkhazia, are victims of racial discrimination.

## II. SPECIFIC ISSUES

### **The need to move towards a society into which ethnic minorities are fully integrated**

99. According to the 2002 census ethnic minorities account for 16.7% of the population of Georgia<sup>11</sup>. Among a large number of minorities, the Azerbaijani minority (6.5%) and the Armenian minority (5.7%) are the largest. The census indicates that Georgia also has other minorities such as Russians (1.5%), Ossetians (0.9%), Yezids (0.4%), Greeks (0.3%) and other smaller groups.
100. Ethnic minorities are distributed throughout Georgia but there are parts of the country where there are particular concentrations of them. Examples are the Azerbaijanis in the Kvemo-Kartli region of south-east Georgia, on the border with Armenia and Azerbaijan, where they form a sizeable proportion of the population and even, in some places such as Marneuli, outnumber Georgians and form the majority. Another is the Armenians in the Samtskhe-Javakheti region of southern Georgia, on the border with Armenia and Turkey, who form a large majority of the population, in some districts indeed a very large one (over

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<sup>11</sup> Regarding the census, see, above, "Monitoring the situation".



90%) (as at Ninotsminda and Akhalkalaki). There is also a Greek concentration in Tsalka district (*rayon*), in the Kvemo-Kartli region.

101. In its first report ECRI stressed the need to tackle urgently and proactively the issue of integrating the different communities which make up Georgian society. In particular it emphasised the need for everyone living in the country to have an adequate command of Georgian for full participation in Georgian society, and it asked the Georgian authorities to give the matter the priority which it warranted. In the present report ECRI again encourages measures for making Georgian society an integrated one of which ethnic minorities are full members. In that connection it turns its attention to the legal situation of ethnic minorities, their language situation, the issue of access to education and the need to reinforce ethnic minorities' sense of belonging to Georgian society.

- ***The legal situation of ethnic minorities***

102. In the present report ECRI uses the term "ethnic minorities" rather than "national minorities" in describing the minority groups ethnically not of Georgian origin, such as the Azerbaijanis and Armenians. As stated above<sup>12</sup>, Georgia ratified the Framework Convention for the Protection of National Minorities on 22 December 2005. Given the recent nature of that ratification, and in the absence of any declaration or reservation on that occasion, ECRI does not yet know which minority groups Georgia will regard as national minorities. It notes, however, that the law by which Parliament ratified the Convention was accompanied by Parliamentary Resolution (*dadgenileba*) 1938-IIS of 12 October 2005. According to the Law on Normative Acts, this Resolution has less legal force than a law. The resolution states that Georgia interprets the term "national minorities" as applying solely to a group composed of Georgian citizens which differs from the majority section of the population in language, culture and ethnic identity; which has lived on Georgian territory for a long time; and which resides compactly on Georgian territory. Parliament is likewise considering a draft resolution, to be adopted shortly, entitled the "Concept for the protection and integration of persons belonging to national minorities". The authorities have informed ECRI that the Concept was prepared in collaboration with the minorities concerned. ECRI notes, however, that some experts have underlined the importance of ensuring that the legal measures currently in the process of adoption do not solely target the protection and integration of minorities residing compactly on Georgian territory. According to these experts, such an approach could exclude a large number of persons of non-Georgian ethnic origin who live spread out across the country, notably in the capital, Tbilisi.
103. ECRI welcomes the steps taken by the Georgian authorities on the legal status of ethnic minorities which should lead to a strengthening of their presence and their role within Georgian society. The creation of a Council for Ethnic Minorities under the auspices of the Ombudsman should be underlined in this field<sup>13</sup>. Nevertheless, NGOs and representatives of the concerned minorities have emphasised the importance of following up these first positive developments promptly with concrete, effective measures.

<sup>12</sup> See "International legal instruments".

<sup>13</sup> See, above, "Specialised bodies and other institutions".

**Recommendations:**

104. ECRI strongly encourages the Georgian authorities to take legal measures rapidly in order to protect and integrate persons belonging to ethnic minorities. At the same time, care should be taken to adopt an inclusive approach in this domain to allow all persons, irrespective of their situation, to take full advantage of these measures.

**- The linguistic situation of ethnic minorities**

105. Particular attention needs to be paid to the language issue, which is a key aspect of successful integration into Georgian society<sup>14</sup>. Everyone in Georgia (whether the authorities or the non-governmental sector) agrees that the major obstacle to ethnic minorities' integration is lack of knowledge of the official language – Georgian. This is a significant challenge which the central authorities must meet. The state should ensure that all Georgian citizens understand and speak Georgian so as to be able to integrate into society and have genuine equality of opportunities and at the same time it should avoid any assimilation which would deprive ethnic minorities of the possibility or capability of using their own language. Solving the language issue is of key importance if Georgia is to avoid it becoming a cause of inter-ethnic tensions and achieve a society where the different communities interact and live harmoniously.

106. Article 8 of the Georgian Constitution provides that Georgian is the official language of the country (with Abkhaz in Abkhazia)<sup>15</sup>. Georgian (with Abkhaz in Abkhazia) is thus the language to be used in all administrative dealings and measures. The Public Service Act provides that those applying for posts in the public services and local autonomous entities must be proficient in the official language. It likewise states (Article 98-1) that lack of knowledge of Georgian on the part of officials may be a ground for dismissal. The Constitution and the Courts Act provide that court proceedings must take place in the official language but that anyone taking part in proceedings who does not understand Georgian must be given the assistance of an interpreter at the state's expense. Lastly, the electoral code provides that members of parliament must know Georgian.

107. The realities of daily life have very little to do with the legislation, notably in the regions of Samtskhe-Javakheti and Kvemo-Kartli, which have, respectively, large Armenian and Azerbaijani communities. It is generally acknowledged that, outside the capital, and in particular in the regions where they have large concentrations, ethnic minorities do not speak Georgian or speak it very little. For historical reasons a large proportion of them speak Russian, which for a long time was the *lingua franca* between ethnic groups in Georgia. That state of affairs is on the way out, however, and the younger generations of ethnic minorities, no longer really learning Russian but not necessarily learning Georgian instead, now tend to speak only their mother tongue.

108. The linguistic situation of ethnic minorities is bound to affect their relations with the Georgian authorities. Those relations are seldom in line with the above-mentioned legislation requiring use of the official language in all cases. In

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<sup>14</sup> On the role of language in education, see, below, "Access to education for ethnic minorities".

<sup>15</sup> However, Article 38 of the Constitution provides that Georgian citizens have the right to use "their mother tongue in private and in public."

Javakheti, for example, the commonest language for administrative purposes is Armenian for spoken transactions and Russian for written ones. The same applies to the courts. Officials who have long been in post in regions where minorities account for a large proportion of the population generally speak their mother tongue and/or Russian, not Georgian. Up until now, this has caused major problems in transmitting information to the population and even to officials, as Georgian legislation is not translated.

109. In the police, compulsory training for officers, with an end-of-course test, has been introduced to reinforce general capability and in particular develop knowledge of international human rights instruments. That action, which is of course laudable, does pose a serious problem in that the test is solely in Georgian, which implies that staff who do not speak Georgian cannot pass. As a result many posts are vacant in regions with large concentrations of minorities. This problem of lack of staff sufficiently qualified to speak Georgian is not just a police one but affects other sectors too, such as the courts. Cases have been reported of judges being dismissed for inadequate command of Georgian in regions with a large Armenian population. To avoid having too many vacancies, posts are sometimes filled by bringing in people of Georgian origin from elsewhere who do not necessarily know the region and are unable to communicate with the local population. That situation has been described as creating frustrations and a sense of injustice among some of the local population, weakening the trust which needs to exist between the public and the administrative authorities.
110. ECRI is pleased to learn that the government is aware of the need to provide Georgian courses for staff. A school of administration opened in the town of Kutaisi in December 2005 to provide staff training, with the particular aim of teaching Georgian to those who do not know it. ECRI notes, however, that only three months' language learning is provided. In many people's view three months, even if intensive, is unlikely to be long enough for an absolute beginner to achieve proficiency in the language. In general, the government's desire to ensure that all officials speak Georgian has been well received, but there have been widespread objections that non-speakers, whether officials or members of the public, cannot learn Georgian overnight. There have been many calls for a workable, realistic provisional solution allowing the use of minority languages where necessary to remain possible and lawful.
111. In ECRI's view it is imperative to arrive at a solution which allows members of ethnic minorities to communicate with the authorities, in whatever language. For Georgian citizens who do not speak Georgian the language barrier is a significant hindrance to using public services such as health care, social assistance and employment assistance. Even though Georgian law provides for equality for all citizens in these areas of life, in practice, the lack of information and means of communication with which members of ethnic minorities are faced sometimes prevent them from fully exercising their rights.

#### ***Recommendations:***

112. ECRI strongly recommends the Georgian authorities to maintain their efforts to improve all present or intending officials' command of Georgian. In this connection it would point out that this is a long-term solution as a language cannot be learnt overnight. Alternative provisional measures are therefore necessary.
113. In view of the paramount importance of ensuring communication between the

non-Georgian-speaking public and the administrative authorities, ECRI strongly recommends that the Georgian authorities provisionally devise practical and legal arrangements allowing access to quality public services for Georgian citizens who do not speak the official language. The arrangements might provisionally include allowing officials to speak their mother tongue when necessary or, in appropriate cases, providing interpretation for members of the public in administrative proceedings.

114. ECRI recommends that the authorities review, clarify and, where necessary, adjust their language policy in administrative matters, consulting the ethnic minorities concerned and continuing to co-operate with international, national and local non-governmental organisations, and with intergovernmental organisations which are able to provide valuable advice and help in this area.
115. The language barrier likewise makes information less available about what is happening in the country and in national society, which isolates ethnic minorities, in particular those highly concentrated in certain areas. Although there are minority-language media which receive grant aid from the government, minorities do not have access to information from the capital because it is mainly circulated in Georgian. Armenians and Azerbaijanis in border areas apparently make more use of the media in their respective kin countries, while other minorities follow the news in the Russian media. ECRI notes with satisfaction that the Georgian authorities are aware of the problem and have recently made it compulsory for the state television channels to broadcast some programmes in minority languages. As a result national television now puts out short news programmes in several minority languages. There are also some private local initiatives allowing viewers to watch Georgian television news with simultaneous translation into a minority language. These measures are of course moves in the right direction but would appear to fall a good way short of solving the problem of access to information, rescuing ethnic minorities from the isolation in which they find themselves, and motivating and helping them to integrate into Georgian society.
116. Solutions should be found to allow all citizens with a mother tongue other than Georgian to learn Georgian and increase their chances of integrating and finding work in Georgia. It is important for opportunities of learning Georgian to be available to everyone interested in them and not just to school children (with regard to schooling, see below). Another challenge is to motivate all of the people living in Georgia who do not speak Georgia to learn the language by demonstrating to them that it is in their interests. In this regard, it should be noted that many representatives of ethnic minorities have said that they are aware of the importance to them of Georgian and are willing to make the necessary effort.
117. However, encouragement to learn Georgian should not result in neglect of the minority languages and cultures that need preserving in the interests of basic cohesiveness of Georgian society. Georgia's stated desire<sup>16</sup> to sign and ratify the Charter for Regional or Minority Languages without delay and if possible during 2006 is therefore to be welcomed.

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<sup>16</sup> See, above, "International legal instruments".

**Recommendations:**

118. ECRI strongly recommends that the Georgian authorities reinforce means of communication with ethnic minorities so that these minorities can receive information about national affairs and play a more active part in them. Such an approach might include increasing the number of minority-language information sources in the Georgian media.
119. ECRI strongly encourages the Georgian authorities to provide more opportunities to learn Georgian for those who want to. Measures for that purpose could include affordable evening classes or vocational language courses.
120. ECRI recommends that the authorities take care to preserve and encourage use of minority languages alongside the official language. Ways should be found to reassure ethnic minorities that learning Georgian is not tantamount to an attack on use of their mother tongues. In this connection ECRI strongly encourages the Georgian authorities to implement as speedily as possible the European Charter for Regional or Minority Languages once it comes into force in Georgia.

**- Access to education for ethnic minorities**

121. At present Georgia has 456 schools giving instruction in a language other than Georgian, mainly Russian, Armenian and Azerbaijani. In these schools (hereinafter referred to as “minority schools”), teaching of Georgian as a second language is already compulsory and around three hours a week of the curriculum are devoted to it. That situation is in line with the 2005 General Education Act, which provides that the language of instruction at institutions delivering general education is Georgian (with Abkhaz in Abkhazia), but also that citizens of Georgia whose mother tongue is not Georgian have the right to full general schooling in their mother tongue.
122. In its first report ECRI stressed the urgent need to ensure adequate teaching of the Georgian language in all schools in Georgia. In this respect the present situation is unsatisfactory in minority schools. The number of hours devoted to Georgian is insufficient, the textbooks for learning Georgian as a second language are unsuitable, there are too few teachers, and the teachers are poorly trained. As a result pupils at schools where instruction is given through the medium of another language do not attain sufficient command of Georgian by the end of their schooling, which undermines equality of access to public-sector and private-sector employment.
123. In its first report, still from the standpoint of guaranteeing equality of opportunities, ECRI likewise pointed out the need to ensure a high standard of education in minority schools, particularly with regard to the standard of textbooks. In this area the situation remains difficult in that the textbooks used at some levels in minority schools are still inferior in content and quality to textbooks in Georgian. That jeopardises the chances of pupils from minority schools of being competitive on the employment market or for entry to higher education.
124. ECRI is pleased to learn that the Ministry of Education and Sciences has taken steps to improve the education system generally. Particularly welcome is the gradual introduction every year of new school books in minority languages, which have been prepared under the supervision of the Ministry of Education



and Sciences and whose content and standard have been improved and match the programme for Georgian-speaking pupils. Further significant progress is to be noted, such as the appreciable increase in the Ministry of Education and Sciences' budget, the fact that teachers of Georgian as a second language have been trained and assigned to the regions which most needed them, with salaries high enough to make posts there attractive. Suitable textbooks for teaching Georgian to mother-tongue speakers of other languages are likewise planned. A few pilot bilingual schools have been started up.

125. As part of the current far-reaching reform of education, the 2005 General Education Act provides that by school year 2010-2011 at the latest, schools giving instruction through the medium of a non-official language must teach Georgian language and literature, Georgian history and geography, and other social sciences through the medium of Georgian. Thus schools which so far have been teaching solely in one language will effectively become bilingual schools.
126. The announcement of reform of the system and programmes at primary and secondary school has had a mixed reception from ethnic minorities. On the one hand the existence of bilingual schools potentially improves minority children's chance's of having a better command of Georgian when they leave school. On the other hand the move to make Georgian the compulsory language of instruction for certain subjects in minority schools by the year 2010 has caused some concern. Some members of ethnic minorities are afraid of Georgian taking over to such an extent that their children will no longer be proficient in their mother tongue. Others consider the date for introducing the new system unrealistic, arguing that it is not possible to find and/or train enough subject teachers with adequate command of Georgian in such a short time.
127. The 2004 Higher Education Act requires the language of instruction to be Georgian (Abkhaz in Abkhazia), while stating that instruction through other languages is allowed if it takes place under an international agreement or with permission from the Ministry of Education and Sciences. As part of the education reform a centralised system of entrance examinations for all of Georgia's state-run universities was introduced as from school year 2005-2006. Among the subjects tested are Georgian language and literature. Representatives of ethnic minorities and civil society generally have pointed out the difficulties which that change has caused for non-Georgian-speaking students. The fact of the matter would seem to be that the number of members of ethnic minorities being admitted to university has fallen significantly on account of their failing the Georgian language and literature test. In ECRI's view that situation is all the more worrying in that hitherto many pupils from ethnic minorities have opted for university education in their kin country, often staying there afterwards. If the university entrance examination actually had the effect of preventing those interested in doing so from taking higher education in Georgia it would merely accentuate the current brain drain. For that reason it is important to note that the Georgian authorities are aware of the problem and have introduced certain measures, in some cases differing according to the university, such as preparatory classes, easier Georgian-language tests and a system of financial aid to encourage pupils whose mother tongue is not Georgian to study at Georgian universities. Some commentators believe that if there is to be any increase in the number of students from minorities entering Georgian universities, much more needs to be done to encourage them to study in Georgia and reassure them that they are competing on an equal footing for places in Georgian higher education.

**Recommendations:**

128. ECRI strongly recommends that the Georgian authorities maintain their efforts towards appreciably improved education for children of ethnic minorities, in order to guarantee that when they leave school they will have equal access to higher education and employment. It is necessary to continue and extend the steps taken to improve teacher training and the standard of school textbooks and curricula in minority languages.
129. ECRI strongly recommends that the Georgian authorities press ahead with their reform of the teaching of Georgian to children belonging to ethnic minorities so as to make sure that when they leave school they have a sufficient standard of Georgian to be able to integrate into higher education, the employment market and society generally. That involves providing all the human and financial resources necessary to continue training teachers of Georgian as a second language and provide suitable textbooks.
130. At the same time ECRI recommends to the Georgian authorities that adequate room be left for teaching minority languages and cultures. In that connection the principle of setting up bilingual schools is a worthwhile idea. The Georgian authorities must therefore do everything possible to prepare for the successful introduction of the new system of bilingual education and to ensure that the ethnic minorities do not perceive it as a threat to their cultures and languages.
131. ECRI recommends that the Georgian authorities closely monitor the new higher education entrance examinations to make sure that they do not have the effect of preventing Georgian citizens who do not speak the official language from studying in Georgia or discouraging them from doing so.
132. Whatever the particular issue, in general ECRI recommends adopting an approach in which all measures concerning the schooling of children of ethnic minorities, particularly measures to promote the teaching of Georgian, are taken in consultation with the minorities concerned and with due regard for their interests.

- ***The need to strengthen ethnic minorities' sense of belonging to Georgian society***

133. In addition to solutions for overcoming the language barrier, it must be ensured that ethnic minorities consider themselves and are considered by others to be full members of Georgian society. That is of obvious importance in making sure that the situation does not deteriorate into interethnic strife. It involves dealing with a number of problems some of which are specific to particular minorities while others are common to all of them.
134. The Armenians, Azerbaijanis and other ethnic minorities in the south and south-east (see, above, "The need to move towards a society into which the ethnic minorities are fully integrated") complain of isolation not only on account of the language problem but also because of inadequate infrastructure. Transport and communications in those mountain regions are in a terrible condition and seriously underdeveloped. The same applies to schools and water and electricity supply. To bring home how tenuous is the connection to the rest of the country, the currency is said to be sometimes that of the kin country and/or Russian roubles, not Georgian lari.

135. The ethnic minorities, particularly those living in isolated areas, do not escape the economic and social crisis which Georgia is experiencing. In the absence of any statistics on this issue, it cannot be stated with certainty that the ethnic minorities are more affected than members of the majority. According to several sources, however, it is very possible that they are more vulnerable than members of the majority community, in particular on account of the above-mentioned linguistic problem regarding access to information and employment. There is in fact considerable emigration, particularly among the men, to the kin country or Russia, at least seasonal and sometimes permanent. The presence of the 62<sup>nd</sup> division of the Russian army at Akhalkalaki, in the Javakheti region where mostly Armenians live, was described as of fundamental importance to the local economy. The announcement of the division's departure in a few years' time has aroused concern. The minorities affected are anxious for a solution to be found in good time so that the departure does not mean loss of vital financial resources or any increase in insecurity in the region.
136. Several sources have stated that some members of ethnic minorities, particularly the Azerbaijanis living close to the border, were treated unfavourably when land was apportioned after the collapse of the Soviet Union. There are said to be several factors involved, including corruption, poor networking of and information to injured parties, and legislation which forbids privatisation of land along the border. Whatever the reasons, ECRI notes that the unfavourable treatment caused keen resentment among those concerned and arouses hostility, sometimes degenerating into open conflict, towards those who were given land.
137. In the district (*rayon*) of Tsalka, where the Greek community is mostly to be found, the emigration rate among the Greek minority, in particular to Greece and Cyprus, is high. Problems have been reported concerning houses which the emigrants left empty. Allegedly internally displaced persons have occupied them on their own initiative and without the state's being able to ensure payment of rent or compensation to the owners. Tsalka region has a high crime rate, and according to the Georgian Ombudsman the figures show that the Greeks who have stayed on are particular victims of criminal offences.

#### **Recommendations:**

138. ECRI recommends that the Georgian authorities keep a close eye on the situation regarding each ethnic minority in the country, in particular by regularly consulting its representatives, so as to be aware of any problems the individual minority is encountering (such as those mentioned above) and so that solutions can be jointly worked out that assist its integration into Georgian society.
139. Of the problems common to all the ethnic minorities apart from the language issue, the one most often cited is the feeling of being second-class citizens and of invariably taking second place, after people of Georgian origin, in the eyes both of the state and of society.
140. As regards society, stereotyping of ethnic minorities and prejudice against ethnic minorities are still very common. The majority population is not sufficiently sensitive to the problem and to a large extent is unaware of the culture or situation of ethnic minorities. Its basic assumption is not always that the ethnic minorities are an integral part of Georgian society. In the absence of statistics or detailed studies of the matter, it is difficult to tell whether the stereotypes and prejudice lead to racial discrimination, particularly in employment and housing etc. However, the many studies of the ethnic



minorities note that members of them complain of being, and feel that they are discriminated against. In some cases the situation in which the ethnic minorities find themselves does not seem to be different from that affecting the majority, but lack of communication, in particular with the authorities, can fuel such sentiments.

141. The feeling of sometimes being abandoned by the state results in particular from ethnic minorities' under-involvement in public and political life. It is generally admitted, even in the absence of reliable figures, that the ethnic minorities are under-represented in administration, political institutions such as parliament and the government, and also local institutions, even in those regions where they are the majority community. The situation is of course closely linked to the language issue, but that is not the sole factor: some members of ethnic minorities have stated that, quite apart from the question of command of the language, it can be very difficult for a member of an ethnic minority to gain promotion in an administrative service.
142. In general there is an urgent need to strengthen trust between the ethnic minorities on the one hand and the state and majority population on the other. Here, ECRI is pleased to see that the Georgian authorities have recently made clear their intention of taking appropriate action, in particular as part of promoting an integrated Georgian society. Specific measures have followed the official declarations of commitment to an integrated society. Some of the measures have been referred to in different parts of this report<sup>17</sup> and more particularly in the preceding paragraphs. The existence of a parliamentary commission on civil integration and the inception, in 2005, of a State Ministry for Civil Integration are clear pointers to that resolve. Mention should also be made here of the 2003-2005 action plan, adopted by Presidential Decree No.68 of 4 March 2003, "to reinforce protection of the human rights of minorities living permanently in Georgia". The Concept for the protection and integration of members of national minorities, referred to above in "Legal situation of ethnic minorities", includes provision for finding solutions to most of the language and other problems described above. The authorities are therefore aware of most of the problems and of the need for solutions to them. ECRI notes, however, that the process of civil integration is only just getting under way and that it will still take a great deal of effort to make a success of it. Declarations of intent are not enough and have to be followed by concrete, effective measures. For that, involvement not only of the state but of the whole of Georgian society and the ethnic minorities is essential.

#### **Recommendations:**

143. ECRI recommends that the Georgian authorities make provision for means, including awareness-raising campaigns, of actively combating all the prejudices and stereotypes found regarding members of ethnic minorities. In cases where prejudices and stereotypes result in active racial discrimination, ECRI recommends that the Georgian authorities take effective measures to combat it. (See, too, the recommendations made above, under "Criminal law provisions" and "Civil and administrative law provisions".)
144. ECRI strongly encourages the Georgian authorities to identify and implement all possible means of reinforcing participation by ethnic minorities in the public and political life of the country.

<sup>17</sup> See in particular, above, "Education and awareness-raising", "Specialised bodies and other institutions", "Access to education for the ethnic minorities", etc.

145. ECRI encourages the Georgian authorities to maintain their course of rebuilding and consolidating trust between the ethnic minorities on the one hand and the Georgian state and Georgian society on the other by means of contact and dialogue for bringing about an integrated society in which the ethnic minorities fully play their part.

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## APPENDIX

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

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

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

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





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

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

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

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

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

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

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

The Ministry considers it necessary to replace the targeted term “Meskhetian Turks” invented by the Soviet Union communist regime by far a civilized term: “the population expelled from South Georgia by the Soviet regime in 1940<sup>5</sup>”, as at the same period of time in parallel to that process from Georgia were deported Taraqams, Khemshilebi, Kurtz, Gypsies and Karafafagebi and in relation to them to use this term arouses misunderstanding.

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

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

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

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

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

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

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

In addition to this,

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

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

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

***Refugees from Chechnya***

**Paragraph 67**

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

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

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

operations there has not been any special operation involving the alleged use of excessive force on the territory of Pankisi Gorge, Akhmeta district where all Chechen refugees reside or on any part of Georgian national territory involving the persons of Chechen ethnicity.

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

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

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

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

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

#### **Paragraph 83**

In Paragraph 83 according to the information provided by the Government of Georgia in the Process of confidential dialogue, ECRI noted “With interest that, according to Georgian law, there is a right to the services of an interpreter in the case of criminal procedure. In some cases, the translation of main procedural documents is compulsory if the person concerned does not understand the official language.

Nevertheless in the same paragraph ECRI states that: “Poor Knowledge of the official language among ethnic minorities, migrants, asylum seekers and others may make it difficult for them to make sure their rights are respected in the event of arrest or detention.

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

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

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

### **Paragraph 88**

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

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

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

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

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

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



