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Compliance with commitments and obligations: the situation in Georgia

Six-monthly report prepared by the Directorate of Strategic Planning (DSP),
(February 2004 - June 2004)

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Executive Summary

Over the last 6 months, Georgia has gone through very radical changes, with 2 general parliamentary elections, a Presidential election, return of part of the territory under the jurisdiction of the central authorities and regional elections there. Substantial constitutional amendments have changed the respective competences of the various powers, notably of the executive and legislative branches. All these changes have taken place without violence. The final status of Adjara and the future status of South Ossetia and Abkhazia when reintegrated under the authority of Georgian authorities remain top priorities for the new Government and CoE/Venice Commission assistance will be required. In addition, further constitutional reforms are expected for which CoE/Venice Commission timely expertise should be mobilised.

Functioning of democratic institutions at all levels and elections: All observers have concluded that, in spite of serious shortcomings (in particular, as regards the voters' lists), the 28 March repeat parliamentary elections constitute the best elections Georgia has organised since independence and a serious step forward as regards respect of European norms and standards for free and fair elections. Reforms regarding the composition of the central electoral commission and the lowering of the election threshold should follow with the assistance of the Venice Commission.

Judiciary and law enforcement: CoE assistance in finalising the draft Code on Criminal Procedure to ensure compatibility with CoE standards and notably ECHR should take place during the summer months; new laws on police and the General Prosecutor's Office will be prepared after the adoption of the new code of criminal procedure also with CoE assistance. Proper coordination with the EU Rule of Law Mission (EUJUST-THEMIS) will be necessary to secure synergies and optimal use of resources. Human rights training of police forces, in particular in the region of Adjara, has been identified as a priority area of cooperation with the CoE in the near future.

Fight against corruption and impunity: Authorities have put an end to the feeling of impunity and have embarked upon a very active campaign against corruption and organised crime. The recent ratification of the Anti money-laundering European Convention is of particular importance in this context. However, this welcome active fight should fully respect the principles of human rights and rule of law (in particular, as regards presumption of innocence, banning of any form of violence and full respect of the principle of legality of procedure). Profound systemic reforms to eradicate corruption at all levels in compliance with GRECO recommendations are further needed.

Freedom of the media: Media pluralism and independence, a major achievement of Georgia's democratic development, should be respected and reinforced, in particular with the creation of a public broadcasting system in accordance with CoE norms.

The reform of local government and territorial organisation of the country, including the election of all mayors, the preparation of the forthcoming local elections and the creation of regions are among the priorities for the new government.

Freedom of conscience and religion: cases of religious violence have dramatically diminished in the recent period. CoE was requested by Georgian authorities to pay particular attention to the issue of registration of religious communities and churches and provide its assistance.

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I. INTRODUCTION

1. In accordance with a decision of the Committee of Ministers [CM 826th meeting, 5 February 2003, item 2.1 a), the Secretariat has been instructed to proceed with a six-monthly assessment of the progress achieved by Georgia in fulfilling its commitments as a member state of the Council of Europe in the following three priority areas:



- free and fair elections,
- functioning of the judiciary and law enforcement agencies and
- fight against corruption and organised crime.

2. Up to now three reports have been produced in December 2002 [doc. SG/Inf(2003)1], June 2003 [doc. SG/Inf(2003)25] and January 2004 [doc. SG/Inf(2004)4]. The last report was drafted at a moment when the new institutions following the 'rose revolution' were not yet in place, with an interim President, new parliamentary elections being planned for March 2004 and constitutional amendments being discussed. This fourth report takes stock of the important changes which have occurred in Georgia over the last 6 months.

3. The present fourth report is based on information gathered during a Secretariat Information and Assistance Mission to Georgia from 9 to 14 June 2004. Since the visit took place a week before the elections to the Supreme Council of the Autonomous Republic of Adjara, the Delegation visited Batumi where it had meetings with the authorities and civil society representatives. The composition of the Secretariat Delegation and the full programme of the visit are appended.

4. The Secretariat Delegation expresses its gratitude to the Georgian authorities for having prepared a full and very informative programme. The Secretariat mission was greatly facilitated by the work of the Secretary General Special Representative in Georgia, Mr Plamen Nikolov, who organised several meetings with NGOs and representatives of international organisations based in Georgia. Finally, the Secretariat Delegation also expresses its gratitude to H.E. Mr Steinar Gil, Ambassador of Norway to Georgia, for having organised a meeting with representatives with Council of Europe Member States Diplomatic Missions in Georgia which allowed for a very fruitful mutual exchange of information.

5. The visit of the Secretariat Delegation received a very substantial coverage both in the electronic and written media.

II. POLITICAL CONTEXT

A. General situation

6. In contrast with the previous Secretariat visit in January 2004 which took place at a moment when all institutions were still in a transitional phase, this time the new institutions were in place. The President's powers have been clarified; the position of Prime Minister has been created and the new Parliament functions in accordance with the most recent Constitutional amendments. However, at the time of the visit, a major government reshuffle took place involving all functions in the area of security and law-enforcement (Ministry of Defence, Ministry of Interior, Ministry of State Security, National Security Council, General Prosecutor). Both in Tbilisi and Batumi, the "second rose Revolution" in Adjara still dominated the political debate, not only as regards the status of autonomy of Adjara and the forthcoming elections of 20 June (see paras 10-12), but also as a possible precedent for the break-away regions of South Ossetia and Abkhazia.

7. As regards more specifically the constitutional amendments, adopted on 6 February 2004, they modified significantly Georgia's system of governance. The revision of the Constitution encompasses three main points: the creation of a post of prime minister; the introduction of a principle of governmental accountability to Parliament; offsetting this, the possibility for the President of the Republic to dissolve Parliament and call new elections in case of failure by the legislative body to pass the state budget after three attempts. The necessity for the swift constitutional changes were justified by the need for a strong executive power able to overcome the current crisis in the country.

8. In accordance with the recommendation of the Parliamentary Assembly, the constitutional amendments were submitted by the Georgian authorities to the Venice Commission for opinion before their adoption. Due to the rapidity of the reform process in Georgia, the time for providing comments was very short (one week) and the comments by the Venice Commission were only taken into account to a very limited extent. In its Opinion, the Venice Commission noted incoherencies and need for further improvement and advised the Georgian authorities to continue the constitutional reform process in Georgia (see doc. CDL-AD(2004)008). At the Conference on "the Constitutional Organisation of the state", organised in Tbilisi, on 18 and 19 May 2004, by the Venice Commission, in co-operation with the Constitutional Court, the authorities confirmed their willingness to proceed to a revision in due time.

9. As a result of two successful 'rose revolutions' and the constitutional reform, the political landscape is at present largely dominated by the figure of the President. A constitutionally weakened Parliament with a very large Presidential majority and a Government which is confronted with the very hard task of the economic and social reforms put the President in an unchallenged position.

10. Moreover, following the recent political changes, many leading personalities of the civil society, which were actively involved in the overthrowing of former President Shevardnadze, are now in high official functions. This integration of civil society in the circles of power has direct consequences on legislative reforms in Georgia; under the previous governments, all these NGOs were drafting alternative texts to the draft laws prepared by the authorities. The result is that many draft laws on which the Council of Europe had provided expert assessment are now - at least partly - obsolete.

11. A similar situation prevails in the media where the previous independent opposition media are now supporting the ruling party, whilst the state media have not yet been reformed. The result is an increasing monolithic media with little diverging opinions being debated.

B. Adjara

12. The visit of the Secretariat Delegation took place a few weeks after the second "rose revolution" which resulted in the return of Adjara under the control of central authorities and a week before the elections of the autonomous authorities of Adjara. The Secretariat Delegation discussed the Adjara issue both with the central authorities in Tbilisi and the local authorities during an one-day visit to Batumi. The discussions concentrated on two main issues: the future autonomous regime of Adjara and the preparations for the elections.

13. As regards the status of Adjara, a draft Constitutional Law of Georgia on the status of the Autonomous Republic of Adjara was due to be adopted by the Georgian Parliament on 18 June 2004, i.e. two days before the elections. At the request of the CoE Parliamentary Assembly, this draft had been submitted to the Venice Commission for an opinion. A draft opinion (adoption of the opinion being planned at the meeting of the Venice Commission on the very same day - 18 June) had been transmitted ahead of the formal adoption, to the main interlocutors both in Tbilisi and Batumi. The main concerns raised in the Venice Commission's Opinion (doc. CDL (2004) 059) relate to the relations between the central authorities and autonomous bodies which deserved to be better defined, in particular the President's prerogative to appoint the Prime Minister of Adjara (to be confirmed by the Adjara Supreme Council), as well as to cancel any decision which he considers contrary to the Georgian Constitution or legislation (a competence which should normally belong to the Constitutional Court of Georgia). Contrary to initial plans, on 18 June, the Georgian Parliament postponed the examination of the draft Constitutional Law on the Status of Adjara. The draft was approved at first reading by the Georgian Parliament one week later, on 25 June. At the moment of drafting the present report, the Secretariat had not had the possibility of verifying to what extent the text approved at first reading had taken on board the recommendations made by the Venice Commission.

14. Whatever the solution finally adopted, most interlocutors of the Secretariat Delegation made it clear that the status which will be granted to Adjara would constitute neither a precedent, nor a model for the possible future autonomous regimes to be adopted for South Ossetia and Abkhazia. They underlined that in South Ossetia and Abkhazia exist issues of inter-ethnic relations which deserve particular care and special measures; this is not the case in Adjara. In fact, there was strong move in the Georgian political leadership in favour of the abolition of the autonomous regime of Adjara. President Saakashvili considered that such a move would be a very negative political message addressed to the break-away regions. For this reason, he was in favour of maintaining an autonomous regime with a relatively limited degree of autonomy for Adjara, as a compromise between those very diverging views.

15. As regards the elections in Adjara, the Secretariat Delegation met with the Head of the Electoral Commission and discussed arrangements for the holding of the elections and the observation by the Congress. A particular problem concerned the constitution of the voters' lists which had not been completed after the March 2004 repeat parliamentary elections. Efforts were undertaken to stimulate registration of voters before the elections; this included production of posters and video-clips, as well as buses travelling in various parts of Adjara to invite voters to register. At the time of the visit, 56,000 people (roughly 25% of the estimated electorate) had registered. At election day, there were some 125,000 votes cast out of an estimate number of eligible voters of roughly 200,000. In the same way as for the March 2004 elections, the Electoral Commission allowed registration on the day of election at voting precincts; to avoid double registration, an inking system would be applied. As regards access to the media, the official electoral campaign on radio and television provided for 12 minutes' programme a day for each party taking part in the elections during the last 10 days before the elections. However, this equal treatment in the electoral campaign did not cover all news programmes. The threshold to be represented in the Adjara Supreme Council has been fixed at 7%, the same level applied for the Georgian Parliament. Seven political parties and one group took part in the elections. The Republican Party, an ally of the ruling National Movement in Tbilisi, was the main competitor of the President's Party. Preliminary results indicated that the Saakashvili-Victorious Adjara Party won 28 of the 30 seats in the Supreme Council of Adjara and the Republican Party won 2 seats. On 21 June, the Observers' delegation of the Congress of Local and Regional authorities of Europe made public its preliminary assessment of the elections. Their conclusions were positive in spite of some violations of the electoral law (such as intentional transportation of voters to electoral precincts). A full report on the observation by the Congress will be published at a later date.

C. Unresolved conflicts: South Ossetia and Abkhazia

16. Concerning South Ossetia, the situation was rather tense. Some people were speaking of a 'third rose revolution' in Tskhinvali in the near future. In order to stop smuggling and trafficking, which are the basis of the economy in South Ossetia, police forces of Georgia are controlling all access between the region and the rest of the territory of Georgia. At the same time, several humanitarian convoys led by the first lady and members of the Georgian Government were blocked by the authorities of Tskhinvali and could not deliver their assistance. In this situation of blockade, the authorities reaffirmed their commitment to solve the problem of South Ossetia by peaceful means. They also confirmed that they would not renounce to the humanitarian missions to deliver support to those in need. As regards, possible future status for South Ossetia, it would not be copied on from the Adjara status, as the level of autonomy of the local authorities in South Ossetia should be much higher.

17. Regarding Abkhazia, no major developments have occurred since the previous report, but the authorities confirmed that the objective remained the same: reintegration of the region into the constitutional, legal order of Georgia, by peaceful means and on the basis of an extended autonomous status. As regards the future status of both regions, the Venice Commission assistance and expertise will be called for, in due time.

III. ELECTIONS

18. First of all, it should be recalled that, during the period covered by the report, the parliamentary repeat election of 28 March 2004 took place. According to all observers, in particular from the CoE Parliamentary Assembly, bearing in mind the very specific conditions (in particular, the very short time available to prepare them) and in spite of serious shortcomings, these elections were considered to be the best ones organised in Georgia and they "demonstrated commendable progress in relation to previous elections" (see PACE report, doc. 10151). Particular progress was registered concerning the composition of the electoral lists, even if it was not possible to compile new, accurate, complete voters' lists in time for the elections.

19. At present, the main problem concerns the finalisation of the voters' lists. The hand-written lists which were completed during the last March repeat parliamentary elections have now to be replaced by fully computerised voters' lists. The newly-appointed Head of the Central Electoral Commission gave assurances that the work on the computerisation of the voters' list was progressing well and would be finalised well in time for the next local elections (Autumn 2005). This work was developed in parallel with the establishment of a civil registry under the responsibility of the Ministry of Justice. However, some observers indicated that the change of the Head of the Electoral Commission, followed by the departure of some collaborators, could indicate a lower priority for the work of the Commission, at a moment when it is far from having fulfilled its tasks.

20. Two main issues remain unresolved for the moment: the transformation of the Central Electoral Commission into a non-partisan, professional Commission and the lowering of the 7% threshold for representation in legislative bodies (both at central and regional levels). As regards the composition of the electoral commission, on 17 February 2004, the Venice Commission adopted its opinion on the Unified Electoral Code of Georgia; recommendations of the Venice Commission could not be implemented before the 28 March elections. However, the Head of the Electoral Commission confirmed the clear commitment to progress towards a fully non-partisan, professional commission.

Similarly, in spite of strong views expressed by the international community in favour of lowering the 7% threshold to be represented in the Georgian Parliament (see PACE report), this recommendation was not followed for the 28 March 2004 elections which resulted in the fact that only 2 political groups could overcome this hurdle so that a significant part of the political spectrum is not represented in the Parliament. Not only the threshold was not lowered for the parliamentary elections, but it has also been introduced for the elections to the Supreme Council of Adjara with the same results, i.e. that of only two political groups are now represented in this body.

IV. FUNCTIONING OF THE JUDICIAL SYSTEM AND LAW-ENFORCEMENT AGENCIES

21. Key legislative reforms and other measures: Reform the judiciary and law enforcement agencies is a long-term commitment of Georgia. In this respect three important pieces of legislation are expected by the experts of the Council of Europe: the new Criminal Procedure Code, the Law on the Prosecutor General's Office and the Law on Police.

22. The Secretariat delegation was informed that the work on the reform of the criminal procedure is on-going. Recently, in order to facilitate the fight against impunity and corruption, the parliament adopted several amendments to the present Criminal Procedure Code, notably provisions introducing plea bargaining, amendments allowing for in absentia proceedings in cases when the suspect is hiding from justice.

23. The Minister of Justice further confirmed that his Ministry, with the help of international experts, was drafting the new Criminal Procedure Code. The final draft is expected to be transmitted to the Parliament by late autumn 2004. In a letter addressed to the Secretariat, dated 11 June (appended), the Minister of Justice requested the Council of Europe to provide an "expert for the period of one month to review the draft Code of Criminal Procedure, with the purpose of its harmonisation with the European Convention of Human Rights". This request is now being examined in the Secretariat, including the necessary coordination of this assistance with the work of the newly established EU Mission on Rule of Law (EUJUST-THEMIS), which is meant to start operations during the summer.

24. With respect to the Law on the Prosecutor General's Office and the Law on Police, the Secretariat delegation was informed that they would be adopted after the new Code of Criminal Procedure. Council of Europe expertise on the final drafts of these two laws should be provided well in advance of their examination by Parliament.

25. As regards, more specifically, the reform of the Prosecutor General's Office, in January 2004, the Office started elaboration of the reform concept. Amendments submitted to Parliament recently allowed for internal structural reforms: suppression of the numerous specialised prosecutor offices, optimisation of the structure, increase in independence, increase of social protection, etc. Consequently, the Prosecutor General's Office is now divided into four sections, each dealing with a specific category of crime. The special service for criminal prosecution of illicit income investigation cases was established to detect, investigate and prosecute the cases of money laundering, tax evasion, embezzlement of the state property etc. There are also changes in procedural functioning of the prosecuting authorities due to the amendments to the Criminal Procedure Code made in January-February 2004, notably abrogation of immunities of certain categories of high public officials (i.e. prosecutors, the President of the Chamber of Control, investigators of other law institutions). However, the Prosecutor General institution will need more fundamental modifications, establishing its role and regulating its activity in the context of Jury Trial.

26. As concerns reform in the police forces, different interlocutors emphasised the necessity for radical changes within the law enforcement agencies. Efforts will be concentrated on structural changes, the optimisation of the institution and on the professional and human rights training of police officers.

27. In late May, the Georgian media reported that as a result of the administrative reform within the law-enforcement agencies, 62 Ministry of Interior staff members had been dismissed since the beginning of this year due to different law violations. 21 police officers have also been ousted on the same grounds, while documents concerning 86 investigations were sent to prosecution.

28. The reform of the Adjarian law-enforcement forces needs a particular effort. The plethoric staff of the Ministry is currently being reduced, the staff members are being screened for drug use and connections with organised crime, subsequently 130 people were dismissed. According to media reports, since the power's changes in Adjara, 21 criminal cases were built up on charges of drug addiction and seven police officers were fined with administrative penalties. The Minister of Interior of Adjara requested urgent assistance to train police forces in Adjara as regards human rights and the rule of law.

29. The question of lack of professional ethics based on the respect of human rights in the police forces was raised several times by the interlocutors of the delegation, including the relevant authorities and representatives of the corresponding ministries. Local NGOs provided the delegation with voluminous information on human rights abuses by law enforcement agents. On 7 June the OMCT (*Organisation mondiale contre la torture*) published an appeal informing the international community about two alleged cases of ill-treatment in pre-trial detention aiming at extorting confessions. The authorities abolished the Monitoring Council of Human Rights Abuses in Pre-trial Detention Facilities. The NGOs alleged that the authorities were striving to prevent access to these institutions by the local human rights activists.

30. Two cases of death in pre-trial detention (death of K. Kvirikashvili and suicide of G. Inasaridze, subsequent to alleged ill-treatment by policemen) were discussed with the Deputy General Prosecutor as a matter of particular concern. The delegation was assured that the cases would be investigated. The Secretariat Delegation was also informed that four police officers were dismissed on allegations of ill-treatment, however, criminal charges had not yet been brought against them.

31. Independence of the judiciary and fair trial: Discussions on reforming the status of judges are on-going, notably as concerns their appointment, career and disciplinary proceedings. Linked to this reform is the reform of the Council of Justice with a view to strengthening the independence of the judiciary. Draft amendments to the Organic Law on Georgian Common Courts, one chapter of which concerns the reform of the Council of Justice, are currently being examined by the Parliament. It is essential that, as agreed in April 2004, these draft amendments be transmitted as soon as possible to the Council of Europe in order to ensure that the composition and role of the Council of Justice will be in full compliance with the principle of independence of the judiciary. In the same

context, the Secretariat has not yet received the Draft Organic Law of Georgia 'On the Proceedings of the Disciplinary Responsibility and Prosecution of Judges'.

32. In April 2004 the Draft Law on the National School of Judges was transmitted to the Secretariat. A meeting between the Council of Europe and Georgian experts was organised in late May to discuss certain aspects of the Law. Further meetings are planned to discuss the status and curricula of the School in July and September.

33. According to local observers, the Georgian courts continue to face financial and logistical difficulties and public mistrust in the judicial system. Because of delays in judicial proceedings, at present, 40% of the 6 500 persons in prisons are in pre-trial detention, a situation which is considered by Georgian interlocutors themselves, to be inadmissible. The Secretariat Delegation was further informed about the intention to introduce the Jury Court system in Georgia. Some doubts were, nevertheless, expressed as to the appropriateness of such a system in the context of the Georgian realities, given its cost, slowness of the proceedings and potential vulnerability of the juries to pressure.

34. **Prevention of torture and prison system:** The delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recently returned to Georgia in order to complete the second periodic visit which had started in November 2003. The main purpose of the eight-day prolongation (7 to 14 May 2004) was to examine the treatment of persons detained in Adjara as well as conditions of detention there. The delegation of the CPT also returned to Prison No. 5 in Tbilisi in order to review the situation and interview newly arrived prisoners. Furthermore, the visit provided an opportunity for the CPT delegation to discuss in detail its findings with the current Georgian authorities.

35. The Minister of Justice informed the Delegation that an Action Plan on the Reform of the Prison System of Georgia for 2003/2004, as part of the Council of Europe/European Commission Joint Programme, is currently being implemented. Renovations were recently made in prison No. 5.

V. THE FIGHT AGAINST CORRUPTION, MONEY LAUNDERING AND ORGANISED CRIME

36. **Fight against corruption and organised crime** continues to be one of the highest priorities for the Georgian authorities. In this context, several spectacular operations were recently carried out by the law-enforcement forces: in the Imereti region 15 'criminal bosses' were arrested; in the Svaneti region, after a 40-minute gun fight, the police managed to arrest the members of the local criminal gang, the head of a criminal gang and his two sons being killed during the skirmish. More recently, near the border with Azerbaijan, an unspecified number of Azeris living in Georgia were arrested and a large consignment of drugs, weapons, and smuggled goods was confiscated.

37. Also, a series of arrests of allegedly corrupted officials continued during the last months: the former Control Chamber head Sulikhan Molashvili was remanded on a three-month pre-trial detention on charges of extortion and other financial irregularities; former Deputy Minister of State Security Levan Kenchadze was detained on charges of abuses of office, involvement in kidnapping and sale of arms; the Chief of the Georgian traffic police Shalva Ogbaldze submitted his resignation, after being interrogated over the illegal import of cars; several Adjarian high officials were arrested.

38. The determination of the Georgian authorities to eradicate corruption and organised crime should be praised, however, local human rights NGOs voiced strong criticism as to the respect of basic rights of suspects (media campaigns undermining the presumption of innocence prior to the arrests), the way in which the arrests were carried out (use of exaggerated violence) and the dubious nature of subsequent bargaining proceedings.

39. As an example, Gia Jokhtaberidze, founder of the cellular phone company MagtiCom and the son-in-law of Georgia's former president Eduard Shevardnadze, was arrested in February and charged with tax evasion up to 700 000 Lari (approximately 350 000 USD). He was released two months later pending trial after having agreed to pay a sum of 15 500 000 USD to the state budget. An MP from the opposition Industrialists-New Rightists block and businessman, Tengiz Gogichashvili, was stripped of his parliamentary immunity on an accusation of tax evasion. He also paid a considerable sum to the state budget and was released pending trial. The Secretariat delegation was told that no judicial or legal procedure had taken place previously to the payment since these sums were paid as 'voluntary contributions' to the state budget.

40. In this respect, the Deputy General Prosecutor emphasized that the amount of money paid to the state budget by the persons released pending trial reached 60 million Lari (approximately 30 million USD). He also said that use of violence during some police operations was necessary given (possible or actual) resistance of the suspects.

41. The draft law on organised crime is now being examined by the Parliament.

42. Georgian interlocutors told the delegation that, whereas fight against corruption at a high level had led to some spectacular results, people still had to pay bribes to the administration at lower level and until this practice was changed they would not be satisfied. There is thus a clear need for more profound systemic reforms to eradicate corruption at all levels.

43. In April 2004, the Georgian authorities authorised the publication of the GRECO's Compliance Report on Georgia, adopted in December 2003. The Compliance report concludes that although Georgia has made considerable efforts towards meeting the fixed objectives, it is not in compliance with the recommendations of the First Round Evaluation Report. Among the 25 recommendations only two have been implemented or at least dealt with in satisfactory manner. In this context, GRECO decided to apply Rule 32 para 2 of its Rules of Procedure and invited the Head of the Georgian Delegation to submit, as from 30 April 2004, regular additional reports on the progress made towards the adoption of measures required to comply with the recommendations of the First Round Evaluation Report (step 1 of the non-compliance procedure). The GRECO agreed to examine the above reports at each of its plenary meetings after April 2004. Overall assessment of the measures adopted will be made in July 2005. The Secretariat delegation underlined with all interlocutors the necessity of speedy and tangible progress in this matter.

44. On 4 June 2004 an 'Anti-corruption' report, to be sent to the GRECO, was approved by the Cabinet of Ministers, composed of two parts: (1) measures taken and achievements; (2) anti-corruption strategy. Some legislative measures have already been taken and even implemented such as the possibility to arrest and detain a member of Parliament without Parliamentary authorisation, in case of arrest *in flagrante delicto*. The anti-corruption strategy aims at ensuring better transparency of the state bodies and increasing involvement of the civil society in the anti-corruption fight.

45. In late January 2004, the Anti-Corruption Bureau dissolved itself and all available material was transferred to the National Security Council. The Director of the Anti-Corruption Policy Department of this Council, informed the Secretariat delegation that an external monitoring group consisting of NGOs and media representatives was formed under the direction of the Department, which would assume part of the functions previously under the responsibility of the Anti-Corruption Bureau.

46. As regards the monitoring group on party financing, a meeting was held in Tbilisi in March and another one would be held after summer.

47. Finally, a seminar on the Council of Europe conventions on corruption might be organised in the near future to respond to the demand of the Georgian authorities.

48. **Anti-money laundering measures:** On 13 May 2004 Georgia ratified the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141), thus respecting its commitment undertaken upon its accession to the Council of Europe. Preventive and anti-money laundering legislation, passed by the Parliament in June 2003, came into effect on 1 January 2004. Also, in late February the Parliament passed amendments to the law on anti-money laundering. The law provides for the creation of a Financial Monitoring Service (FMS). The FMS has analytical functions and will not be a prosecuting body. Financial institutions will have to inform the FMS about every transaction which exceeds 30 thousand Lari (approximately 13. 600 USD). The FMS will recommend the law enforcement agencies to probe financial transactions considered to be suspicious. In cooperation with the FMS, study visits to Russia and Ukraine have been organised by the Council of Europe. Whilst it should be acknowledged that significant progress has been made in the field of anti-money laundering, some further amendments to the legislation, in compliance with recommendations made by MONEYVAL, are still expected, notably as regards provisional measures.

49. **Drug trafficking and use** is considered to be a serious problem in Georgia. The Georgian authorities have announced their intention to join the Pompidou group and requested Council of Europe assistance on this issue.

VII. OTHER IMPORTANT MATTERS

A. Freedom of the media

50. The Law on Freedom of Speech was recently adopted. The law, assessed by the Council of Europe experts in 2002, represents a significant development as concerns regulation of the media matters, notably defamation issues. One of the major novelties of the document is that the burden of proof lies on the plaintiff in a defamation complaint and the responsibility lies with the owner of the media company and not with the journalist in case of slander.

51. The work on the transformation of the state television into a public service broadcaster is in progress. On March 22, the President

issued an order to create an Interim Public Monitoring Commission, supposed to be a body responsible for the transformation of the state television into a public service institution. However, it is difficult to say when the Broadcasting Law will be adopted to permit the creation of the public service broadcaster.

52. On 24 May, the experts of the Council of Europe presented their second appraisal on the Draft Broadcasting Law during a working session in Tbilisi. The most important issues discussed in this context concerned the specific remit of public service broadcasting in the areas of information, education, culture and entertainment, as opposed to commercial broadcasting, and the possible ways of securing an appropriate level of funding in order to discharge this remit properly. The experts suggested that the future public service broadcasting organisation to be established under the new law should be financed through a combination of public resources and advertising revenues, on the understanding that this latter source of revenue should be subject to certain limitations, in order not to prejudice the development of private broadcasters. Other issues discussed concerned the criteria against which the broadcasting regulatory authority to be established under the new law would grant licences to private broadcasters. The assistance of the Council of Europe for the training of journalists was specifically requested in the context of transformation of the state television to a public institution service.

53. It should be noted that the representatives of the media met by the Secretariat Delegation expressed certain scepticism as to whether and how quickly an authentic public service broadcaster could be set up.

54. On 9 June, the Chairman of the Georgian National Commission on Communications, the audiovisual sector regulatory body, resigned without giving reasons for his resignation. New Chairman was appointed on the 14 June.

55. Journalists and representatives of the civil society expressed the view that the situation of media independence has recently worsened. In their view, links between the political forces and media owners had become stronger and this had an influence on the editorial policy of the media outlets. They noted also that the post-revolution regime was less tolerant towards criticism than the previous one, which were not so image-conscious.

56. To back their assessment, interlocutors of the Secretariat Delegation referred to several recent developments, such as the closure of TV channels ("Ninth Channel" and "Iberia") and the cancellation of several political TV programmes, as well as the suppression of several publications from the Omega Group. They also expressed their concern regarding the formation of enlarged TV groups which were in their view easier to manipulate than individual TV channels.

57. Opposition factions in the Parliament expressed the view that the simultaneous suspension of political talk shows on several TV stations was the result of government pressure. In February 2004, the Parliamentarians agreed to create a special commission for studying the issues of oppression on free media in Georgia.

B. Local and regional self-government reform

58. All interlocutors of the Secretariat Delegation underlined that the reform of local self-government and of the territorial organisation of Georgia would be a high priority for the government in the months to come. As regards local self-government, an open issue is the election of Mayors. Most interlocutors confirmed that all Mayors (including the Mayor of the capital city, Tbilisi) should be elected at the next local elections, which according to most interlocutors would take place in Autumn 2005. Another important question concerns the creation of an association of local authorities as a reliable interlocutor for the central authorities in all matters relating to the functions and means of action of local self-government. The constitution of a recognised association of local authorities would certainly contribute to overcome the still-pending problem of the composition of the Georgian delegation to the Congress of Local and Regional authorities of Europe (CLRAE).

59. Beyond the question of the Autonomous Republic of Adjara and the possible future status of South Ossetia and Abkhazia, the question of creation of regions is a very topical issue. At present there are four layers of territorial administration (the State, the regions, the districts or "rayons" and local self-government). One element seems to be established which is the reduction of the number of layers of administration with only one intermediary level between the State and local self-government. In this context, most interlocutors expressed the view that a regional level with elected deliberative bodies (to replace present regions and districts) seemed to be the appropriate solution. A State Committee on Decentralisation, set up in April by Prime Minister Zhvania, should prepare a strategy and a programme for the reform within a year so that new legislation could be adopted by autumn 2005. Council of Europe expertise to assist Georgian authorities in this territorial reform was requested by most interlocutors. It should also be recalled that Georgia has still not ratified the European Charter on Local Self-Government (a commitment accepted when joining the Council of Europe).

C. Freedom of Conscience and Religion

60. Freedom of conscience and religion is an area where decisive progress has been achieved in Georgia during the last months. Violent acts and harassment against minority religious denominations have drastically diminished in the recent period. At the same time, an end was put to impunity with the arrest and trial of defrocked priest Basil Mkalavishvili.

61. However, the question of the legal status of minority churches remains open. No progress has been made in the elaboration of a draft law for religious denominations which would complement the Concordat concluded with the Georgian Orthodox Church. As mentioned in the previous report, an alternative option to the adoption of a new law could be found by an amendment to the Civil Code, facilitating registration of religious communities and churches. This issue was discussed in a Round-table on the draft law of Georgia on "Freedom of Conscience and Religious Entities", organised by OSCE/ODIHR, the Council of Europe and the Georgian Ombudsman in Tbilisi on 11 June. Whereas all participants agreed in principle on the question of registration, no agreement had been reached as to the form in which legislative changes should be introduced and in particular as to which of the two above-mentioned options should be followed. The Council of Europe was requested by the Georgian authorities to continue to pay particular attention to this issue and provide its assistance.

D. National minorities

62. According to the Georgian NGO "Public Movement Multinational Georgia" the country is still confronted with some inter-ethnic hostilities. Notably, in the Kvemo-Kartli region in spring 2004 the situation was characterised by ethnic tensions between the Georgian population and non-Georgian minorities (Armenians, Azerbaijanis, Greeks). The main question of controversy lies reportedly on the infringement of the minorities' rights in land sharing.

E. Repatriation of deported persons during the period 1940-1944

63. No new developments can be registered on the issue of repatriation of deported persons during the period 1940-1944. As already mentioned in previous reports, the issue should be seen in its larger context, including the status of persons in their present place of residence, the social and economic conditions of a freely-chosen return and the human and social situation in the places of possible resettlement.

VII. CONCLUSIONS AND RECOMMENDATIONS

64. Over the last 6 months, Georgia has gone through very radical changes, with 2 general parliamentary elections, a Presidential election, return of part of the territory under the jurisdiction of the central authorities, as well as substantial constitutional amendments which have changed the respective competences of the various branches of power, notably of the executive and legislative ones. It should be underlined that all these changes have taken place without any violence.

65. At the same time, Georgia has organised the best elections since independence. All observers have concluded that, in spite of serious shortcomings, in particular, as regards the voters' lists, the 28 March repeat parliamentary elections marked a serious step forward as regards the respect of European principles and standards for free and fair elections.

66. Finally, the new authorities have put an end to the feeling of impunity and have embarked upon a very active campaign against corruption and organised crime. The recent ratification of the Anti-Money Laundering Convention of the Council of Europe is of particular importance in this context. However, as already indicated in the previous report, the welcome active fight against corruption and organised crime should fully respect the principles of human rights and rule of law, in particular the presumption of innocence, absolute rejection of disproportionate force or any form of torture, as well as the principle of legality at every step of the procedure.

67. Whilst acknowledging the progress achieved over the recent period, substantial reforms are still in progress or expected in all fields covered by the present report. This concerns in particular the reform of the central electoral commission, the lowering of the election threshold, the reform of local government and of the territorial organisation of Georgia (including the autonomous status of Adjara, as well as of the breakaway regions of South Ossetia and Abkhazia), the full reform of law enforcement agencies, the strengthening of the judiciary and of independent media (in particular electronic media), as well as the fight against corruption and organised crime in respect of human rights and the rule of law.

68. On the basis of the report, the following specific recommendations can be drawn:

1. *Profound constitutional amendments should be submitted to the Venice Commission in due time and well in advance of their examination by the Georgian Parliament. The Opinion of the Venice Commission on the amendments adopted in February 2004 should be taken into account on the occasion of a further revision of the Constitution.*
2. *The Venice Commission's Opinion should be taken duly into consideration when adopting the final autonomous status of Adjara.*
3. *When the time comes, the Council of Europe and its Venice Commission stand ready to assist in the elaboration of future autonomous status for South Ossetia and Abkhazia; at a further stage, Council of Europe assistance could also be mobilised to promote European principles and standards and their concrete implementation in these two regions, with a view to their smooth reintegration.*
4. *The Council of Europe and its Venice Commission could provide continued assistance to the Central Electoral Commission for the preparation of the forthcoming local elections, as well as its transformation into a non-partisan, professional body and other aspects of the electoral law (including the threshold).*
5. *In response to the request by the Georgian authorities, the Council of Europe should provide appropriate expertise on the draft Code of Criminal Procedure well in advance of its examination by the Parliament. Council of Europe expertise should also be provided on the draft Law on the Prosecutor General's Office and the draft Law on Police. Proper synergies should be ensured between the legal expertise by the Council of Europe on these drafts and assistance by the newly established European Union mission on the rule of law.*
6. *Serious efforts should be made to end inhuman practices (ill-treatment or torture) and to raise the level of professional ethics within the law-enforcement agents. In response to the request by the Georgian authorities, the Council of Europe stands ready to provide its assistance for human rights training of police forces and the elaboration of a code of ethics, with urgent need in Adjara. Council of Europe activities to assist the Police Academy should be strengthened.*
7. *Draft amendments to the Organic Law on the Common Courts of Georgia should be transmitted as soon as possible to the Council of Europe, as agreed last April, in order to ensure that the composition and role of the Council of Justice will be fully compatible with the Organisation's standards as regards independence of the judiciary. The draft Organic Law of Georgia 'On the Proceedings of the Disciplinary Responsibility and Prosecution of Judges' should also be transmitted.*
8. *Profound systemic reforms to eradicate corruption at all levels should be pursued in compliance with GRECO recommendations. The Council of Europe should remain vigilant that the welcomed, increased efficiency in the fight against corruption and organised crime does not take place at the expense of the principles of human rights and the rule of law, in particular the respect for the presumption of innocence, the rejection of any form of violence and torture and the respect for the principle of legality at all levels of the procedure.*
9. *Media pluralism and independence should be respected and reinforced. The State Television should be transformed into a genuine Public Service Television in compliance with the recommendations made by Council of Europe experts on the draft law on broadcasting.*
10. *Council of Europe stands ready to assist the Georgian authorities in the reform of the territorial organisation of the country and will continue to support the reform of local self-government. In this context, particular attention should be paid to the question of election of all mayors. Georgia should ratify the European Charter on Local Self-Government without further delay.*
11. *In response to the request by the Georgian authorities, Council of Europe should continue to pay particular attention to the issue of the legal status of religious entities in Georgia and provide expert assistance in the matter.*
12. *The Framework Convention for the protection of National Minorities should be ratified.*
13. *The Council of Europe stands ready to provide, upon request by the Georgian authorities, expertise on legislation regarding the repatriation of deported persons during the period 1940-1944.*

**Appendix I: Programme of the visit of the Secretariat delegation
(9 to 14 June 2004)**

Wednesday, 9 June 2004

6.10 pm Arrival to Tbilisi

8.00 pm Dinner with the Heads of the EC, OSCE, UNOMIG Missions and Ambassador of Netherlands to Georgia

Thursday, 10 June 2004

08.45 am Depart for the Council of Europe Information Office

09.00-09.45 am Meeting with 1st group of local NGOs: Ms. M. Muskhelishvili, Center for Social Studies; Ms. N. Kakabadze, Former Political Prisoner; Mr. A. Stepanian, Public Movement-Multinational Georgia; Mr. U. Nanuashvili, Human Rights Information & Documentation Center

10.00-10.45 am Meeting with H.E. Mrs. Salome Zourabichvili, Minister of Foreign Affairs of Georgia

Parallel meetings with:

09.45-10.40 am 2nd group of local NGOs: Mrs. T. Khidasheli, Young Lawyers Association; Mr. L. Ramishvili, Liberty Institute; Ms. Tamuna Zhvania, International Society for Fair Elections and Democracy (ISFED); Mr. Z. Daraselia, Fair Elections Foundation (FEF)

10.40-11.30 am International NGOs: National Democratic Institute (NDI); Transparency International; International Foundation for Election Systems (IFES); LINKS; International IDEA; Open Society Georgia Foundation (OSGF)

1.00-2.30 pm Meetings at the Parliament of Georgia with Parliamentary Fractions:

1.00-1.50 pm Meeting with the Majority Fraction of the Parliament;

1.50-2.30 pm Meeting with the Fraction Rightists/Industrialists

4.00-4.45 pm Meeting with Mr. Zurab Nonikashvili, Chairman of the Central Election Commission

5.00-5.45 pm Meeting with Mr. Gigi Ugulava, First Deputy Minister of State Security of Georgia

6.00-7.00 pm Meeting with Mr. Giorgi Khaidraava, State Minister (on Conflict Resolution)

8.30 pm Dinner with H.E. Mr. Steinar GIL, Ambassador of Norway to Georgia

11.00 pm Participation in a TV programme, TV Company 'MZE'

Friday, 11 June 2004

10.00-10.45 am Meeting with Mr. Kakha Koberidze, First Deputy General Prosecutor of Georgia

11.00-11.45 am Opening of the Round-table on the draft law of Georgia on "Freedom of Conscience and Religious Entities" organised by Council of Europe, OSCE/ODIHR and Ombudsman of Georgia

Parallel meeting with:

11.00-11.45 am Mr. Paul Kublashvili, Director of the Anti-Corruption Policy Coordinating Department of the National Security Council of Georgia

12.00-12.50 pm Meeting with the Ambassadors accredited to Georgia organized by H.E. Mr. Gil, Ambassador Plenipotentiary and Extraordinary of Norway to Georgia, representing the Chair-in-Office of the Council of Europe Committee of Ministers

1.00-2.15 pm Meeting with the Chairmen of the Parliamentary Committees on: Foreign Relations; Legal and Constitutional Affairs; European Integration; Science and Education

3.00-3.45 pm Meeting with Mr. Teimuraz Lomsadze, Interim Ombudsman of Georgia

5.00-5.45 pm Meeting with H.E. Mr. Zurab Zhvania, Prime Minister of Georgia

Parallel meeting with:

5.00-5.45 pm Mr. Joni Khetsuriani, Chairman of the Constitutional Court of Georgia

6.00-6.45 pm Meeting with Mr. Giorgi Papuashvili, Minister of Justice of Georgia

7.00-7.45 pm Meeting with Mr. Lado Chanturia, Chairman of the Supreme Court of Georgia

Saturday, 12 June 2004

05.00 am Depart for Batumi (Adjara)

10.00-10.45 am Meeting with Mr. Levan Varshalomidze, Representative of the President to the Autonomous Republic of Adjara

11.00-11.45 am Meeting with Mr. David Glonti, Minister of Internal Affairs of the Autonomous Republic of Adjara

1.00-1.45 pm Meeting with the leadership of the "Adjara TV"

2.00-2.45 pm Meeting with the representatives of the Media in Batumi (TV Company "Mze"; Radio "Imedi"; Channel 25; newspaper "Batumelebi"; newspaper "Mtavari Gazeti")

3.00-4.00 pm Working lunch with Mr. B. Owen, Expert of the Venice Commission

4.15-5.00 pm Meeting with Mr. Irakli Paghava, Chairman of the High Election Commission

Sunday, 13 June 2004

09.30 am Depart for Tbilisi

4.00-4.45 pm Meeting with Mr. Zurab Tchikabashvili, Mayor of Tbilisi

5.00-5.45 pm Meeting with H.E. Mr. Konstantin Kavtaradze, Deputy Foreign Minister of Georgia

6.00-6.45 pm Meeting with H.E. Mrs. Nino Burjanadze, President of the Parliament of Georgia

Parallel meeting with:

6.00-7.30 pm The representatives of Media in Tbilisi (First State Channel; Rustavi 2; TV Channel "Mze"; "Civil Georgia"; written press)

7.00-8.30 pm Working Dinner with Mr. Armaz Akhvediani, Member of the Interim Presidential Council of the Autonomous Republic of Adjara, Director of the Tbilisi School of Political Studies

Monday, 14 June 2004

05.30 am Depart for Paris

Composition of the Secretariat Delegation

Jean-Louis Laurens, Director of Strategic Planning
Despina Chatzivassiliou, Deputy Head, Monitoring Department, Directorate of Strategic Planning
Leyla Zeinalova, Administrator, Directorate of Strategic Planning
Mamuka Jgenti, Coordination Unit, Directorate of Strategic Planning

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Plamen Nikolov, Special Representative of the Secretary General

Appendix II



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MINISTER OF JUSTICE

№ 1003/04-1104
Tbilisi, Georgia 2004

Mr. Jean-Louis Laurens
Director
Directorate of Strategic Planning

Dear Mr. Laurens,

We would like to inform the Council of Europe that the draft Code of Criminal Procedure was submitted to the Ministry of Justice in March 2004. It is our expectation to submit the final draft to the Parliament of Georgia for further modification in late autumn 2004.

Attached please find a soft copy of the draft Code of Criminal Procedure including the chapter on Jury Trial. Please read that the draft presented to you with this letter, does not constitute the version, which should be reviewed and commented on by the Council of Europe. The Ministry of Justice is currently working on the final draft, with the assistance of international experts. This draft will be submitted for your review as soon as it is finalized.

We believe any assistance in drafting from the Council of Europe would be very fruitful. At this stage there is a clear need to have an expert for the period of one month to review the draft Code of Criminal Procedure, with the purpose of its harmonization with the European Convention on Human Rights.

As regards to the Law on Police and the Law on Prosecutors Office, we would like to inform you that the adoption of both of these laws should be preceded by the adoption of the Code of Criminal Procedure.

Sincerely,

Giorgi PAPUASHVILI
Minister of Justice

საგარეო, შინაგან, დიპლომატიური, სამართლებრივი, საინფორმაციო და სხვა სამსახურის განყოფილება
20 Tbilisi, Georgia, Tel./fax: (00995) 79 42 27, E-mail: papuashvili@mj.gov.ge



200 1

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Sincerely,

Giorgi PAULASHVILI
Minister of Justice

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