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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Georgia

Information note by the co-rapporteurs on their fact-finding visit to Tbilisi (12 to 14 October 2015)

Co-rapporteurs: Co-rapporteurs: Mr Boriss CILEVIČS, Latvia, Socialist Group, and Ms Kerstin LUNDGREN, Sweden, Alliance of Liberals and Democrats for Europe

I. Introduction

1. This was the first visit following Ms Kerstin Lundgren's appointment as co-rapporteur in respect of Georgia. The main purpose of this fact-finding visit was to be updated about political developments in the country since the last visit, especially with regard to judicial reform, reform of the police and security services, electoral reform and the developments on reconciliation and relations with the breakaway regions of South Ossetia and Abkhazia. Our visit took place against the background of an ongoing ownership dispute over the Rustavi 2 television station, which is an important voice of the opposition in Georgia's media landscape. As a result the discussions on this case and on Georgia's media landscape in general, were important topics on our agenda.

2. During this visit meetings were organised with, inter alia, the President of Georgia, the Prime Minister; the Minister of Foreign Affairs; the Minister of Justice, the State Minister for Reconciliation and Civic Society; the Prosecutor General; the Chairman of the Constitutional Court; the Deputy Minister of Internal Affairs; the First Deputy Speaker of Parliament; the Deputy Public Defender; the Head of the State Security Service; the Georgian Delegation to PACE; individual meetings with representatives of the UNM and the Free Democrats; the Head and senior staff members of the EU Monitoring Mission in Georgia (EUMM); as well as members of the diplomatic community and representatives of civil society organisations in Georgia. The programme of our visit is attached to this note in Appendix 1 and the statement issued after our visit in Appendix 2.

3. We would like to thank the Georgian Parliament for the excellent programme and hospitality, and the Head of the Council of Europe Office and his staff for the support given to our delegation, including with the organisation of the programme.

[1] Document declassified by the Monitoring Committee at its meeting on 28 January 2016.

II. Recent political developments

4. Regrettably, the political environment continues to be tense and polarised, especially between the opposition and majority, but also within the ruling coalition and between opposition parties themselves. Increasingly, the dynamics between government and opposition seem to be placed in, and affected by, the context of Russia's regional policies and the perceived or alleged stance the parties take towards the Russian Federation. This is compounded by the fact that there is increased activity of parties and civil organisations that are reportedly close to - and financially supported by - the Russian Federation. While this is of some concern as it can affect the stability of the country, the allegations and incriminations made by political actors in this context often mask the deeper domestic issues and differences that are at the basis of the divide between the opposition and ruling majority.

5. The next parliamentary elections will take place in October 2016. The early preparations and positioning of the political forces for these elections is already having a clear impact on the political environment in the country with the positions of the political forces increasingly hardening. A key issue in this respect is the debate on the reform of the election code. These reforms are, inter alia, needed to address a decision of the Constitutional Court with regard to the size of the election districts. In addition to electoral reform the political agenda at the time of our visit was, as mentioned, dominated by the developments around the TV broadcaster Rustavi 2. We will discuss these developments as well as the electoral reform in more detail later in this note.

6. On 13 October 2015, the National Democratic Institute (NDI) published the results of its August 2015 public opinion poll on public attitudes in Georgia. This poll showed, inter alia, that the ruling Georgian Dream Coalition has been losing considerable support, but that at the same time this has not led to a marked increase of support for the UNM and other parliamentary opposition parties. This poll showed that a clear majority of the population is undecided about its political preference if elections were to be held at this moment. This underscores the importance of the upcoming period in the run up to the elections, but also highlights the apparent dissatisfaction of a large segment of the population with the political environment and dynamics as such, which is of concern.

7. While the situation will undoubtedly change and positions become clearer when the election date comes closer, many interlocutors expect that the upcoming elections could see an increase in support for those opposition parties that are reportedly close to, and financed by, Moscow. In their view, this could change the political environment in the country and complicate the forming of a government after the elections if none of the main parties has a clear majority.

8. In the period since the last rapporteurs' visit the President of Georgia has increasingly been taking up his constitutional roles as non-partisan arbiter and guardian of the constitution. He has vetoed a number of laws which, in his view – often with support of the civil society - did not sufficiently safeguard civil liberties. This in turn has increasingly brought him into open conflict with the ruling majority which in most cases decided to overrule the presidential vetos.

9. Following the departure of the Free Democrats from the ruling coalition, the differences between Georgian Dream and its junior coalition party, the Republicans, have come increasingly to the foreground. While the Republicans on a number of occasions dissented from the coalition line, they have, until now, refused to break the coalition agreement over these differences, as stressed by Speaker Usupashvili in the context of the electoral reform (see below).

III. Electoral reform

10. Georgia has a mixed proportional – majoritarian elections system, where half of the parliament is elected via proportional elections in a single national constituency on the basis of closed party lists, while the other half is elected in single-mandate majoritarian districts on the basis of plurality of votes with a 30% threshold. This system is widely considered to favour the main party in power as they are most likely to win the majority of the majoritarian mandates.

11. Before both the 2008 and 2012 parliamentary elections there were attempts by the ruling majority and opposition to come to an agreement on the election system. Each time the (then) opposition favoured the replacement of the majoritarian part of the election system with some form of a regional proportional system, which was opposed by the (then) ruling party which argued that they could not abolish the majoritarian system for various reasons.[2]

[2] AS/Mon(2011)24rev3 § 5 to 15.

12. Regrettably, even if the parties in the ruling majority and opposition have changed, the same situation seems to be repeated in the run up to the 2016 elections. The Georgian Dream Coalition entered the 2012 elections with the campaign promise that they would change the electoral system if elected. However, at the moment, the Georgian Dream party has rescinded on its position, while the UNM has now joined those parties calling for the replacement of the majoritarian component. The change of the election system can only be effectuated by a change of constitution. Taking into account the contentious political climate in the country, the Assembly has therefore systematically called on all political forces to start working towards seeking an as wide as possible consensus on the election system as immediately after the last elections. However, until the start of this year no specific action was taken in that direction

13. The importance of the reform of the election system is compounded by the extremely large variation in size of the single-mandate districts, which vary in size between 6,000 and 120,000 voters. This is in contradiction with the principle of the equality of the vote and with Council of Europe standards, which stipulate that the maximum allowable variance should not exceed 10% or 15% in very exceptional cases. As we warned before the 2012 parliamentary elections, majoritarian elections based on districts with such a large variance in size cannot be considered to comply with international standards for democratic elections.[3] On 28 May 2015, on the basis of a complaint filed by the Public Defender, the Constitutional Court ruled that the variance in size of the election districts violated the principle of equality of vote as enshrined in the Georgian Constitution and ordered the district sizes to be changed to remedy this situation. While the Constitutional Court order can be implemented without changing the electoral system and thus the constitution, it could/should be an important impetus for all stakeholders to reform the system as such.

14. Following the previous fact-finding visit by the co-rapporteurs in December 2014, several non-parliamentary opposition parties made a joint statement in which they called for the abolition of the majoritarian component of the election system. On 18 March 2015, Parliamentary Speaker Usupashvili announced his personal support for this initiative by the non-parliamentary opposition parties and reportedly started negotiations within the ruling coalition and with the parliamentary opposition parties about a possible change of the election system.

15. On a separate track, on 30 May 2015 President Margvelashvili organised a conference of political parties and NGOs, with a view to replacing the mixed election system with a proportional system. Following this conference, 14 political parties and 8 civil society organisations signed a joint petition to change the majoritarian component of the election system for a regional proportional system.

16. On 5 June 2015, the government coalition published its initiative for electoral reform. It proposed to abolish the majoritarian component after the 2016 elections. However, the 2016 parliamentary elections would still be organised under the current mixed – proportional - system. In order to adhere to the Constitutional Court decision, election districts would be redrawn to ensure equality of the vote. In addition, majoritarian mandates would be elected with majority instead of plurality of the votes. That would effectively raise the threshold for majoritarian seats to 50%, from the current 30%. It should be noted that the introduction of plurality of the vote for majoritarian mandates for the 2012 elections was, at that time, criticised by opposition parties who saw it as favouring the ruling party. Mr Usupashvili announced that he and his party, the Republicans, favoured abolishing the majoritarian component already before the 2016 elections, but that this was opposed by the Georgian Dream Party. However, the Republicans had decided not to break the governing collation over this difference in views. During our visit, we were informed that within Georgian Dream the abolition of the majoritarian component was strongly opposed by the MPs elected on majoritarian seats. Other interlocutors indicated that Georgian Dream feared that the abolition of the majoritarian component would pose a risk to the possibility of the ruling coalition maintaining its majority after the elections.

17. On 21 September 2015, on initiative of the ruling coalition, the parliament started the constitutional procedure to prepare the constitutional amendments necessary for the introduction of the ruling coalition proposal for electoral reform. At the same time, the opposition parties started a drive to collect the 200,000 signatures needed to introduce in the parliament, by popular initiative, a constitutional amendment that would abolish the majoritarian component already for the 2016 parliamentary elections. Given that neither side has the required constitutional majority in support of “their” amendments there seems to be serious risk that no structural electoral reform will take place before the upcoming elections. The absence of agreement on electoral reform does not put at risk the resizing of the election districts as required by the decision of the Constitutional Court. The majoritarian districts can be resized by ordinary law, for which the ruling majority has the necessary majority for adoption. A number of interlocutors informed us that no consultations between

[3] Idem.

the ruling majority and opposition about the district resizing had taken place by the time of our visit and expressed their concern that the ruling majority could be tempted to draw the new district boundaries in a manner mainly, or only, benefitting the ruling coalition. This was strongly denied by the members of the ruling coalition.

18. We note that, possibly for the first time in recent history, there is a broad agreement between all parties - ruling majority and opposition - about the most suitable election system for the country. The main disagreement, largely for tactical reasons, is on the moment that the new system will come into force,- just before or just after the 2016 elections. At the same, we also noted that nearly all interlocutors doubt that any changes to the electoral system will be adopted after the elections, if the decision on a new electoral system is postponed until that time, irrespective of who wins these elections. Given the importance of electoral reform and the establishment of an electoral system that has the consensus of an as broad as possible range of political forces, we call upon all parties to continue the negotiations on the election system, as well as the resizing of the election districts, and to adopt the required constitutional amendments for a new election system before the 2016 elections, even if no agreement can be found on which date they will come into effect.

IV. Media environment

19. A major political controversy has emerged with regard to an ownership dispute over TV Broadcaster Rustavi 2. Given the importance of Rustavi 2 in the political and media landscapes in Georgia, these developments have been highly politicised and instrumentalised by all sides. In turn, this has resulted into a number of conflicting questions and allegations about media pluralism and independence of the judiciary.

20. Rustavi 2 is one of Georgia's main broadcasters that is critical of the authorities and their policies and closely linked to the United National Movement. It played a key role in the Rose Revolution in 2003 that brought former President Saakashvili to power in Georgia. Since 2003, its ownership has changed many times, often in less than transparent and controversial deals.[4] However, all shareholders have always been reported to be close allies of former President Saakashvili,[5] including the current majority shareholders. Reportedly there are a number of claims by previous owners who allege that they have been forced to sell their shares in Rustavi 2,[6] but until recently, no formal civil claims were filed with the courts to contest ownership. This changed when,[7] on 5 August 2015, Mr Kibar Khalvashi, who was majority shareholder in Rustavi 2 from 2004 to 2006, filed a civil case to "reclaim" his shares in Rustavi 2 which he alleges he was forced to sell under duress far below their actual market value. His claim was denounced by the current owners of Rustavi 2 and the United National Movement - who pointed out that Mr Khalvashi's sister is an MP for Georgian Dream - as a plot by the government to silence the main opposition-linked TV broadcaster before the next parliamentary elections and during a period when the ruling coalition is losing popularity.

21. On 7 August 2015, following a request from the claimant, the judge in this case froze the assets of Rustavi 2. This decision banned the current owners from selling their shares and also banned the company from selling or renting out its property and other assets. An additional request to freeze the bank accounts of Rustavi 2 was refused by the court The decision by the court was questioned by a number of civil society organisations who felt that the compound effect of the injunctions was damaging the corporation and could hinder the operations of the broadcaster, which, as the main voice of the opposition, also has a public function. The current owners own 40% of the shares directly and 51% through a holding company. Reportedly, following indications that the current owners intended to sell the holding company, the court, at the request of the claimant, also ordered the assets of this company frozen. This decision was strongly contested by the owners who questioned the legal reasoning behind its application and stated that this injunction effectively prevented the broadcaster from obtaining a considerable amount of investment needed to maintain its operations. The court proceedings - which indeed raise a number of questions - took place in a rather acrimonious and contested atmosphere. The defendants openly questioned the independence of the judge hearing the case and claimed that the government had instructed the National Agency of Public Registry to purposefully delay the registration of the sale of the shares of the media holding committee in order to allow the claimant to ask for a freezing of the shares by the court. These accusations were strongly denied by the authorities, who criticised the pressure being exerted on the judge with these accusations.

[4] http://www.transparency.ge/node/3266.
[5] http://civil.ge/eng/article.php?id=28775.
[6] On 9 August 2015, two co-founders, and previous owners, of Rustavi 2 issued a statement backing the legal procedures fled by Mr Khalvashi.
[7] Mr Khalvashi's lawyers claim that the latter tried for years, without success, to file a criminal complaint, and only afterwards had resorted to the filing of a civil lawsuit to reclaim ownership.

22. On 17 October 2015, the owners of Rustavi 2 filed a motion for the judge to recuse himself from the case. The current owners claimed the judge was biased against the defendants and susceptible to pressure from the authorities as criminal investigations had been started against his mother in a case of domestic violence that allegedly happened a year ago. This motion was denied by the judge who accused the defendants of politicising what was in essence an ownership dispute. In a development which is indicative of the politicisation of this case by all sides, on 29 October 2015, telephone conversations between former President Saakashvili, UNM leader Giga Bokeria, and the Director of Rustavi 2 were leaked on the internet. In these conversations, Mr Saakashvili is reportedly calling for a "revolutionary scenario" to be implemented and for resistance, including with violent means, against any attempt to seize Rustavi 2 by the authorities if the judge should rule against the current owners. The persons concerned confirmed the authenticity of the conversations, but accused the authorities of illegal surveillance and subsequent leaking of the tapes.

23. On 2 November 2015, following an appeal from the Rustavi 2 owners, the Constitutional Court temporarily suspended, in the public interest, the provisions of the Georgian Civil Procedure Code for this case, which would have allowed the immediate enforcement of a first instance court decision, even if this decision was appealed to a higher level court. This decision was seen as an attempt to lower the tensions surrounding the case as it would allow the legal process, including appeals, to take place without having an immediate effect on the make-up of the media landscape in Georgia.

24. On 3 November 2015, the Tbilisi City Court ruled in favour of the claimant Mr Khalvashi. The current owners of Rustavi 2 announced that they would appeal the verdict.

25. However, to our surprise in the light of the above, on 5 November 2015, the Tbilisi City Court ordered an interim injunction in which it allowed the replacement of the management of Rustavi 2 by interim managers selected by Mr Khalvashi, despite the fact that the verdict on the ownership dispute had been appealed. This decision, and the manner in which it was made, was strongly criticised by a large number of domestic and international organisations, including by your rapporteurs in a statement which is attached to this information note in Appendix 2. On 13 November 2015, the Constitutional Court ordered the suspension of the application of the provisions in the Civil Procedure Code which had been at the basis of the Tbilisi Court's decision to appoint interim mangers for Rustavi 2, in effect overruling the decision of the Court. At the time of writing the appeals process is ongoing, with Rustavi 2 functioning under the management appointed by the current owners

26. In all our meetings and statements we stressed that we do not wish, or have the competence, to comment on the merits of the case and the ownership dispute that is at its heart. However, at the same time, we emphasised the importance of a vibrant and pluralist media environment for the proper functioning of a democratic society, especially in the run up to elections, and we expressed our concern about the possible negative impact of this case on the media environment in the country. Regrettably, the politicisation of this case, the statements and allegations made, the pressure exerted on the judge by all sides, as well as a number of decisions by the court, have exacerbated the tensions in the political environment and damaged the image and independence of the judiciary, which is in nobody's interest. We therefore call on all political forces to allow the appeals process to run its normal course and to refrain from unduly politicising the proceedings.

V. Justice system

27. The reform of the justice system remains one of the main priorities of the current authorities. To that end, the Ministry of Justice has implemented an ambitious reform of the judiciary with a view to strengthening its independence and, in the authorities' words, to "depoliticise" the justice system. Until recently, the reforms focussed mostly on the courts and judges and have reportedly led to a marked improvement in the justice system. Increasingly, judges are seen to act more independently from the prosecution service. During our visit, many interlocutors noted that, while shortcomings continue to be encountered at some trials in first instance, marked improvements were noticeable at the appeal and cassation levels. Most interlocutors expressed their satisfaction with the choice of the new Chairwoman of the Supreme Court.

28. Despite these improvements, a number of concerns remain with regard to the independence of the judiciary, as evidenced by some of the developments outlined in this information note.

29. As we already mentioned in the previous information note, the prosecution service, and its functioning, continue to be a source of serious concern. In a number of cases, especially politically sensitive cases, the actions – and their timing – of the prosecution service with regard to the charges brought, pre-trial detention requested, arrests ordered and investigations started, raised questions of possible political motivation and

adherence to legal principles. This is all the more of concern given the still too dominant position of the prosecution in the justice system.

30. Since the reform of the prosecution service in Georgia in 2010, the Prosecutor General is no longer an independent institution, but subordinated to the Ministry of Justice. While this does not run counter to international standards, and also exists in other European countries, the absence of interference in the work of the prosecution service by outside interests, including the executive, should be safeguarded in law and practice.[8]

31. In the light of these concerns, we have repeatedly recommended a far-reaching reform of the Prosecutor General's Office, with a view to ensuring its de-politicisation and independence from any external influence or interference in its work. The reform of the prosecution service, including the manner in which the Prosecutor General is appointed, is also one of the main priorities in the visa liberalisation action plan between Georgia and the EU.

32. We therefore welcome that the authorities have initiated the reform of the Prosecution Service. The Ministry of Justice has prepared a set of amendments to the law on the Prosecutor's Office of Georgia. These amendments were adopted and signed into law on 28 September 2015. The authorities requested an opinion of the Venice Commission on these amendments.[9] Several of the recommendations by the Venice Commission on the draft law were included in the law that was finally adopted, but a number of other recommendations still remain to be addressed.

33. It should be stressed that the reform adopted by the parliament is only a partial reform which focuses on the appointment procedure for the General Prosecutor, as well as on the grounds and procedure by which the Prosecutor General can be dismissed. These reforms alone, while a clear improvement over the previous situation, cannot by themselves fully ensure the de-politicisation and independence of the prosecution service. Further reforms are necessary in this respect. The authorities have informed us that the current amendments are only the first phase of the reform of the Prosecution Service and a second phase should be presented to the parliament during the next year. This is to be welcomed. In its opinion, the Venice Commission makes a number of recommendations[10] with regard to issues that should be covered in the second phase of the reforms. We have urged the authorities to take these recommendations into account when drafting their proposals.

34. The amendments to the law on the Prosecutor General establish a new appointment procedure for the Prosecutor General, who will be appointed for a non-renewable six-year term. Until now, the Prosecutor General was appointed and dismissed by the Prime Minister after consultation with the Minister of Justice. The law establishes a new Prosecutorial Council, whose functions are limited to the appointment and dismissal of the Prosecutor General. This Prosecutorial Council is composed of 8 members proposed by the newly established Conference of Prosecutors, 2 members appointed by the parliament (one by the majority and one by the parties not belonging to the majority), 2 judges selected by the High Council of Justice and 2 members coming from civil society and academics, selected by the parliament. In addition, the Minister of Justice is ex-officio member of the Council and its Chair. While most Venice Commission recommendations regarding the composition were taken on board, its recommendation that the Minister of Justice should not be the Chair of the Council (and preferably not a member of the Council at all) was not. While the membership of the Minister can be justified[11] the authorities should be urged to have the chair of the Council elected by, and from among, the other members of the Council.

35. According to the amended law, the Minister of Justice proposes three candidates to the Prosecutorial Council, which in turn nominates, by a 2/3 majority, one candidate which is presented to the government. The government can refuse the candidate selected by the Council, in which case the nomination process restarts. If the government endorses the decision of the Council, it sends this nomination to the parliament which appoints the Prosecutor General with a simple majority of all members of parliament (i.e. 76 votes). The new procedure is a clear improvement over the previous one. However, the role of the government and ruling majority in the appointment process is still too strong. Special consideration should be given to abolishing the need for the government to endorse the nomination of the Prosecutorial Council before it is sent to the parliament.

[8] CDL-PI(2015)014 § 15.
[9] CDL-PI(2015)014.
[10] CDL-PI(2015)014 § 87-91.
[11] The Prosecutor General remains subordinated to the Ministry of Justice.

36. On 18 November 2015, the Minister of Justice, after a month of public consultations, proposed to the Prosecutorial Council three candidates - selected from a list of seven candidates proposed by NGOs, experts and academic circles – for the post of Prosecutor General. On 18 November the Prosecutorial Council nominated one of these persons, current Deputy Prosecutor General Irakli Shotadze, for the post of Prosecutor General for a non-renewable 6 year term. If his nomination is endorsed by the government he will need to be appointed by the parliament with a majority of its total number of members. NGOs that monitored the nomination process suggested that the transparency of the process could be improved by having the Prosecutorial Council interviewing the candidates in public and by clarifying the basis on which the Minister of Justice makes the initial selection of the original three candidates.

37. The amendments also foresee the possibility for the Prosecutorial Council to appoint a special prosecutor to investigate alleged criminal acts by the Prosecutor General. This is a welcome proposal in itself, but as noted by the Venice Commission, questions remain about the exact powers and mandate of this special prosecutor, which needs to be further clarified.

38. The requests for, and use of, pre-trial detention have considerably decreased in Georgia over the last two years and the situation has improved overall in that respect. However pre-trial detention is still used too regularly and easily, in certain cases, including, in the politically sensitive case involving former government officials.

39. One of the more serious and questionable uses of pre-trial detention was the filing of consecutive charges, each accompanied by a request for pre-trial detention, resulting in – or in order to ensure that – a person being kept in pre-trial detention for a longer period than the nine months allowed by the Criminal Procedure Code. This practice, which was allowed by the law but reportedly never used before, was strongly criticised by the rapporteurs and the Assembly in the report and resolution adopted in October 2014.

40. In September 2015, following a complaint filed by former Tbilisi mayor Gigi Ugulava, the Constitutional Court ruled[12] that the provisions in the law that allowed this practice were unconstitutional, and Mr Ugulava was subsequently released. However, less than 24 hours after his release the Tbilisi City Court reached its verdict in the case against him regarding the misappropriation of city funds, and convicted him to a four and a half year prison term. A number of questions have been raised by both sides regarding the timing of these two verdicts. The Chairman of the Constitutional Court denounced the protests organised by several civil organisations in the close vicinity of the houses of Constitutional Court members against, in his view, the law governing protests and demonstrations. This was rejected by the authorities, who stated that the protests took place in line with legal requirements. In our view, and as we stated in relation to the Rustavi 2 case, any actions that can be seen as putting undue pressure on judges and their families are regrettable and should be avoided.

41. On 5 October 2015, the Kutaisi City Court granted a request of the prosecution for pre-trial detention of three UNM activists who had been involved in a, allegedly violent, confrontation with a GD member of parliament. This was decried by the UNM and others who noted that in similar cases when confrontations against UNM MPs had taken place the perpetrators were not placed in pre-trial detention. In a statement on 8 October 2015, the Public Defender of Georgia said that these detentions were not justified. When we asked the authorities for clarifications, we were informed by the Prosecutor General's Office that the main difference was that the confrontations in Kutaisi had been aimed at obstructing the GD MP from entering parliament which could not be tolerated. Pre-trial detention had therefore been requested "to set an example". While violent confrontations with elected officials can never be condoned, we wish to stress that "setting an example" falls outside the strict grounds on which pre-trial detention can be justified, as set by the Committee of Ministers of the Council of Europe and the case law of the ECtHR.

42. The Minister of Justice informed us that her Ministry has developed a number of initiatives to further reduce the use of pre-trial detention in Georgia. According to the Ministry, Georgia has no legal provisions for house arrest or other methods of restraint that can be used as an alternative to pre-trial detention. A system of house arrest would now be introduced in the juvenile justice system as an alternative to pre-trial detention. If successful, this could be extended to the general criminal justice system. In addition, pre-trial detentions are now automatically reviewed every 2 months. A working group on pre-trial detention is foreseen to be set up under the new Prosecutorial Council and, with the help of the United States government, a pre-trial board

[12] In a very rare situation, a member of the Constitutional Court, who was recently appointed, refused to sign the ruling claiming that he needed more time to study the case. In an equally rare development, the Constitutional Court had reportedly announced that it would make a ruling before it had come to a verdict. These developments could indicate a politicisation of the Constitutional Court which would be of concern as it has largely been spared such developments until now.

to advise judges on possible alternatives when pre-trial detention is considered. For the record, the Ministry underscored that, after the implementation of the first set of reforms, pre-trial detention is now only requested in 32% of cases and, of these requests, only 64% have been granted by the courts.

VI. Police and security services

43. In a recent reform of the Ministry of the Interior, the security services have been removed from the ministry and brought together in specialised department directly accountable to the Prime Minister. The aim of this reform was to increase the civil oversight over the security forces in the wake of the mass surveillance scandal. However, a number of civil society organisations we met felt that civil oversight was still too weak given the importance and powers of this new agency.

44. With regard to the police, steps have been to ensure the investigation of any allegations of abuse of power and excessive use of force by police officers. However these investigations are taking place under the aegis of the police itself, which falls short of the independent complaints mechanism that was recommended by, inter alia, the Assembly and the Council of Europe Commissioner for Human Rights. In our discussions on this subject, many interlocutors expressed their view that there is a need for a proper legal framework to protect whistle-blowers. The Deputy Minister of the Interior informed us of a number of reforms that had been implemented with a view to increasing internal oversight and public trust in the police forces.

45. In our previous information note we reported on the amendments that were adopted to the laws governing mass surveillance. The amended law leaves the physical access of the security services to the telecommunications infra-structure – the so called black boxes – in place, but introduces a two-key system of judicial authorisation before this method can be used by the security services. In the opinion of a number of interlocutors, the law does not sufficiently guarantee against a repetition of the mass surveillance abuses that came to light after the 2012 elections. In that context, the Public Defender's Office informed us that it had filed a Constitutional Complaint against this law as its mechanisms for protection against potential human rights abuses cannot be considered sufficient.

VII. Occupied territories

46. The creeping annexation of the breakaway regions of South Ossetia and Abkhazia by the Russian Federation regrettably continues unabated. Agreements on "alliance and integration" have been signed between the two breakaway regions and the Russian Federation. It should be noted that, reportedly, there was quite a lot of opposition against this treaty inside the *de facto* parliament of Abkhazia, as it was seen as detrimental to the "sovereignty" of Abkhazia. On 19 October 2015 the de facto President of South Ossetia announced that he intended to organise a "referendum" on the breakaway region joining Russia. If such a "so-called referendum" were to take place it would violate international law and constitute a considerable, and in our view unacceptable, escalation of the situation with regard to the breakaway regions.

47. Another issue that has been of concern is the still ongoing "borderisation" process and moving of the boundary line by the Russian Federation deeper into Tbilisi-controlled Georgian territory. In a recent development the administrative boundary was moved in such a manner that a 1.5 kilometre section of the strategically important Baku-Supsa pipeline is now under Russian control. This is of very serious concern.

48. On 13 October 2015, following several years of conducting a preliminary investigation, the Office of the Prosecutor General of the International Criminal Court, announced that it had requested the court to authorise the opening of a formal investigation into the 2008 war between Georgia and the Russian Federation, in particular with regard to[13] :

a. *Killings, forcible displacements and persecution of ethnic Georgian civilians, and destruction and pillaging of their property, by South Ossetian forces (with possible participation by Russian forces);*
b. *and Intentionally directing attacks against Georgian peacekeepers by South Ossetian forces; and against Russian peacekeepers by Georgian forces.*

[13] 2015 Report on Preliminary Examination Activities, the Office of the Prosecutor, International Criminal Court, p 52 -60

APPENDIX 1 – Programme of the fact-finding visit to Tbilisi (12 to 14 October 2015)

Co-rapporteurs: Mr Boriss CILEVICS, Latvia, Socialist Group
Ms Kerstin LUNDGREN, Sweden, Alliance for Liberals and Democrats for Europe

Monday, 12 October 2015

13:00 Briefing by the Council of Europe Head of office (*)

14:00 Meeting with Identoba

14:30 Roundtable on recent political developments, including reform of the justice system and police and security forces (*)

- TI Georgia
- GYLA

16:00 Roundtable on reconciliation and relations with the breakaway regions of South Ossetia and Abkhazia; (*)

- GYLA
- Saferworld
- PDO

17:00 Roundtable on electoral reform (*)

- IFES
- ISFED
- TI Georgia

18:00 Roundtable on developments in the media environment in Georgia

- GYLA
- TI Georgia
- EMC
- Media Development Foundation (MDF)
- Tbilisi Bureau of the Radio Liberty
- Caucasian School of Journalism and Media Management
- Open Society Georgia Foundation

20:00 Dinner with representatives of the international community (*)

Tuesday, 13 October 2015

10:00-10:45 Meeting with the Minister **Mr Giorgi KVIRIKASHVILI**

11:00-11:45 Meeting with the President of Georgia **H.E. Giorgi MARGVELASHVILI**

12:00-12:45 Meeting with the Minister **Mr Paata ZAKAREISHVILI**

13:00-13:45 Meeting with the Prime Minister of Georgia **H.E. Irakli GARIBASHVILI**

14:00-15:30 Working Lunch with the First Deputy Chairperson of the Parliament of Georgia **Ms Manana KOBAKHIDZE**

16:00-16:45 Meeting with Ambassador Kęstutis **JANKAUSKAS**, Head of EUMM (*)

18:00-18:45 Meeting with Deputy Ombudsman of Georgia **Mr Paata BELTADZE**

19:00 Meeting with representatives of the Free Democrats Party

20:00 Working dinner with the members of the Georgian delegation to the PACE

Wednesday, 14 October 2015

09:00-09:45 Meeting with the Chairman of the Constitutional Court of Georgia **Mr Giorgi PAPUASHVILI**

10:00-10:40 Meeting with the Minister of Justice of Georgia **Ms Thea TSULUKIANI**

11:00-11:45 Meeting with the Deputy Head of the State Security Service **Mr Levan IZORIA**

12:15-13:00 Meeting with the Deputy Minister of the Interior **Mr Archil TALAKVADZE**

13:00 Working lunch with members of the Private Office of the Speaker of the Parliament

15:00-15:45 Meeting with the General Prosecutor of Georgia **Mr Giorgi BADASHVILI**

15:45 Departure for Didi Khurvaleti

16:30-17:30 Visit to the ABL
(Organised by the State Security Service of Georgia)

19:00 Meeting with representatives of the UNM

(*) Meetings organised by the Council of Europe Office in Tbilisi

APPENDIX 2 – Statement issued after the visit by the co-rapporteurs

Georgia: co-rapporteurs urge all political forces to find a compromise on election system before the next elections

19/10/2015: At the end of their fact-finding visit to Tbilisi from 12 to 14 October 2015, the Parliamentary Assembly of the Council of Europe (PACE) co-rapporteurs for Georgia, Boriss Cilevics (Latvia SOC) and Kerstin Lundgren (Sweden, ALDE), urged the ruling majority and opposition to find a mutually acceptable compromise on the electoral system and timing of its implementation before the next elections take place.

"It is essential that such a compromise is found before the next elections take place," said the co-rapporteurs, who added that "since 2007, the Assembly has been urging the ruling majority and the opposition to reach a consensus on the election system. Regrettably, since 2007, the ruling majority and opposition, irrespective of their members, have been unable to reach such a consensus, which has been a permanent source of tension in the political environment. We are therefore glad to see that there is a principle agreement on the system itself. It is essential that any new electoral system is codified in the constitution before the next election takes place, otherwise this issue will return for the 2020 elections".

The co-rapporteurs also stressed the importance of a pluralist media environment reflecting the different views existing in society in the run up to the elections. They noted the on-going court case with regard to the ownership of Rustavi 2, and, without wishing to judge on the merits of this case, expressed their hope that the outcome would not undermine a vibrant and genuinely pluralist media environment in the country. "We will follow the developments regarding this case closely," they stressed.

With regard to the judiciary and justice system, the rapporteurs welcomed the reforms that have been implemented over recent years and which, in the view of most interlocutors, have had a very positive impact on the independence of the judiciary. At the same time, the rapporteurs emphasised that a number of serious deficiencies still exist in the justice system - as inter alia noted in the OSCE/ODIHR trial monitoring report - and these need to be urgently addressed. "We are therefore encouraged by the assurances of the authorities that the reforms will continue, and we will follow these developments closely," said the co-rapporteurs.

In this respect, the rapporteurs noted that the recent changes in the law on the Office of the General Prosecutor, while being a clear step forward, are only the first phase of the reform of this important service and should be followed-up by further reforms, especially with a view to strengthening its independence from any undue influence by the executive. While considering the appointment process for the Prosecutor General to be clear progress from the previous situation, the rapporteurs questioned the continuing strong influence of the executive in this process. They therefore recommended that the authorities consider removing the requirement that the government needs to agree with the nominee elected by the Prosecutorial Council, before he or she is sent to the parliament for appointment with a majority vote.

Finally, the rapporteurs welcomed the recent decision of the Constitutional Court with regard to the use of pre-trial detention, which resolves an important concern expressed by the Assembly and its rapporteurs in their report last year. While the rapporteurs acknowledged the progress made with regard to the use of pre-trial detention, they were concerned about reported cases where pre-trial detention ostensibly continues to be applied for reasons other than the strict framework that is set by the case law of the European Court of Human Rights. In this context, the rapporteurs stressed that pre-trial detention should never be used as a form of punishment or deterrent. Further reforms, and especially more training about the use of pre-trial detention for both judiciary and prosecution service is necessary. The rapporteurs welcomed the stated plans of the authorities in this respect.

During their visit, they met the Speaker of Parliament, President, Prime Minister, and Ministers of Foreign Affairs, Justice, Internal Affairs and Reconciliation, as well as the heads of the Constitutional Court and the State Security Service, the General Prosecutor and the Public Defender. They also had meetings with Georgian civil society groups, the head of the EU monitoring mission to Georgia, and the members of the Georgian delegation to PACE.

The co-rapporteurs will present their information note on this visit to the Monitoring Committee meeting on 9 December 2015, and intend to return to the country in early 2016.

APPENDIX 3 – Statement by the co-rapporteurs issued on 6 November 2015

Georgia monitors deeply concerned by court decision allowing change of management at Rustavi 2

06/11/2015

The co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of Georgia, Boriss Cilevics (Latvia, SOC) and Kerstin Lundgren (Sweden, ALDE), have expressed their deep concern at yesterday's Tbilisi City Court decision in the ownership dispute over the Rustavi 2 television station that allows the replacement of Rustavi 2's current management before the appeal process has been completed.

"This decision in effect allows for a change of editorial policy at Rustavi 2, while the appeals process is on-going. This unduly impacts the pluralism of the media environment in Georgia. While we do not wish to pass judgment on the merits of the ownership dispute, we have always stressed that pluralism in Georgia's media environment should be safeguarded," they said.

"Moreover, this decision by the Tbilisi court seems to contradict, at least in spirit, the decision by the Constitutional Court to suspend immediate enforcement of court verdicts in civilian cases while the appeals process is going on. We are deeply concerned by the implications of this decision, and the questions that are raised about the judicial process as a result of it," said the two co-rapporteurs, pledging to continue to follow developments in this case closely.

The co-rapporteurs intend to present an information note on their last visit to Georgia, which took place from 12 to 14 October 2015, at the next meeting of PACE's Monitoring Committee, which will take place in Paris on 9 December 2015.