The Congress
of Local and Regional Authorities

24th SESSION
Strasbourg, 19-21 March 2013

CG(24)10FINAL
19 March 2013

Local and regional democracy in Georgia

Monitoring Committee
Rapporteurs: Nigel MERMAGEN, United Kingdom (L, ILDG)[1]
Helena PIHLAJASAARI, Finland (R, SOC)

Summary

The present report on local and regional democracy in Georgia follows upon Recommendation 157 adopted in November 2004. It expresses satisfaction that Georgia has made considerable progress since then, through a big scale reform of local government and regional development, and that the guiding principles of local democracy have been integrated into domestic legislation. It takes note, however, that the financial capacity of local authorities to generate their own resources and their discretion on the use of their finances remains low. Administrative supervision is an issue in so far as there is a lack of qualified experts specialising in local self-government audit and a lack of "value for money" audits. The report also draws attention to the adverse effects for local democracy provoked by the incidents and pressure put on opposition members among local authorities after the elections.

The Rapporteurs recommend the Georgian authorities to enhance the financial capacity of local governments and to improve the financial equalisation procedure. They encourage continuity in the existing regional development efforts, and invite the Government to put a stop to all attacks on the independence of local authorities and democratically elected representatives. They call on all political actors in the country to take a firm stance and to cooperate fully in promoting the local and regional level of governance. They invite the Georgian authorities to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), and to ratify the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159).

[1] L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Not registered

Local and regional democracy in Georgia

RECOMMENDATION 334 (2013)[2]

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.*b* of Statutory Resolution (2011)2 of the Committee of Ministers of the Council of Europe relating to the Congress, which provides that one of the aims of the Congress shall be "to submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 2, paragraph 3 of Statutory Resolution (2011)2 of the Committee of Ministers of the Council of Europe relating to the Congress, stipulating that "The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented'';

c. Resolution 307 (2010) REV on Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government;

d. Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government and Resolution 299 (2010) of the Congress on Follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009);

e. the previous recommendation on local and regional democracy in Georgia (157 (2004));

f. the explanatory memorandum on local democracy in Georgia drawn up, following an official visit to Georgia from 10 to 12 June 2012.

2. The Congress recalls that:

a. Georgia signed the European Charter of Local Self-Government on 26 October 2004 and ratified it on 8 December 2004 with entry into force on 1 April 2005, with "reservations" on Article 4 paragraph 6, Article 5, Article 6 paragraph 2, Article 9 paragraph6 and Article 10 paragraphs 2 and 3;

b. Georgia has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority;

c. A Congress delegation[3] carried out a monitoring visit to Georgia from 10 to 12 June 2012 visiting Batumi, Tbilisi and Rustavi;

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[2] Debated and adopted by the Congress on 19 March 2013, 1st Sitting (see document CG(24)10, explanatory memorandum), rapporteurs: Nigel Mermagen, United Kingdom (L, ILDG) and Helena Pihlajasaari, Finland (R, SOC).

[3] Upon decision of the Monitoring Committee, Mr Ian Micallef (Rapporteur for local democracy, Malta, EPP/CD) and Ms Helena Pihlajasaari (Rapporteur for regional democracy, Finland, SOC) were appointed Rapporteurs for Georgia and instructed to prepare and submit the report on local and regional democracy in Georgia. They were assisted by Mr Ilija Todorovski, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government. Following the termination of Mr Ian Micallef's mandate as a member of the Congress in October 2012, the current recommendation is presented by Mr Nigel Mermagen (Rapporteur for local democracy, United Kingdom, ILDG) and Ms Pihlajasaari.

d. The Rapporteurs of the Congress carried out a fact-finding visit in Georgia on 27 and 28 February 2013.[4]

3. The Rapporteurs wish to thank the Permanent Representation of Georgia to the Council of Europe and the Georgian authorities at central, regional and local levels, the National Association of Local Authorities of Georgia (NALAG), experts as well as other interlocutors for their valuable cooperation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes with satisfaction that:

a. substantial progress has been made in the field of local and regional democracy since the Congress visits to Georgia in 2003 and 2004 and that the principles of the Charter are to a high extent integrated in constitutional provisions;

b. the authorities have demonstrated a visible political will to take Congress recommendations into account, to integrate the guiding principles of local self-government into domestic legislation and, in general, to cooperate with the Council of Europe;

c. the regional development efforts have been considerable and have borne fruit, with Adjara as a dynamic and positive example;

d. the direct election of the Tbilisi mayor is considered to have been a success and might serve as an example to launch the debate on the issue of direct election of all mayors in the country;

e. the new government, formed after the parliamentary elections of 2012, have expressed their willingness to further develop and decentralise local government, indicating that the principles that drive their reform strategy are subsidiarity, financial autonomy and citizen participation in local government;

f. the initial intention to abolish the Ministry for Regional Development and distribute its component functions between the Prime Minister's office and the Ministry of Economy has been reconsidered and no longer prevails.

5. The Congress expresses concern that:

a. the principle of subsidiarity is still not enshrined in the Georgian Constitution and there are cases where some "field" laws enter into contradiction with the Organic Law. Substantial progress is still to be made through institutional and legislative changes, as regards decentralisation, local autonomy and accountability;

b. although consultation with local authorities and their representatives worked well and NALAG had good standing in negotiations with the national authorities under the previous government, some communication issues appeared after the October 2012 parliamentary elections between NALAG and the Government. If this situation persists, it could have a negative effect on the good relations between local elected representatives and the government;

c. financial autonomy of local authorities continues to be a problem and their limited "own resources" make them dependent on government grants, carrying with it, particularly during a financial crisis, the risk of a cut down on grants, which could limit their discretion in the use of their finances;

d. the equalisation formula may not be serving the interests of the weaker municipalities in that the ratio of allocations they receive are not sufficiently high to enable an acceptable level of delivery of public services;

[4] Upon decision of the Bureau taken on 3 December 2012, the Rapporteurs, Mr Nigel Mermagen and Ms Helena Pihlajasaari went to Tbilisi on 27 and 28 February 2013 and met with national and local authorities. They drew up a fact finding report submitted to the Bureau for adoption on 18 March 2013 (see CG/BUR(23)47).

e. administrative control of municipalities is an issue in so far as existing legislation does not provide for standards to apply to the auditing of local self-government entities, although international standards of auditing have been adopted and that there is a lack of qualified experts specialising in local self-government audit and a lack of "value for money" audits;

f. the recent incidents reported to the delegation during the fact finding visit, involving pressure exerted on local elected representatives to resign their posts or change their party affiliation in favour of the new ruling party, have put local democracy in danger. They indicate a flawed perception (both on the part of the public and of the politicians) of local government as being directly dependent on national politics, bringing with it an expectation that changes in the central government should immediately be reflected in local government, regardless of the mandates obtained through democratic local elections;

6. In the light of this, the Congress requests the Committee of Ministers to invite the Georgian authorities to take account of the following recommendations:

a. amend the Constitution so that the principle of subsidiarity is specifically recognised in the field of local government, by being mentioned as one of its guiding principles and streamline of the legislation, giving the Organic Law a prominent role regarding all issues touching upon local government;

b. to recognise the representative position of NALAG as an interlocutor and partner and involve them in the discussions and negotiations regarding local and regional autonomy, including the newly announced reform project, ensuring at the same time the engagement of a wide range of stakeholders representing local government, as well as their territorial, thematic and professional associations;

c. to enhance the financial capacity of local governments, including the capacity to generate their own resources, using all available means including enlarging the tax base;

d. to improve the financial equalisation procedure (both as regards distribution and increasing the equalisation fund);

e. to revise the existing legislation with an aim to provide standards for the auditing of local self-government entities, and provide training to experts in local self-government audit, with emphasis on "value for money" audits;

f. to take immediate and effective action to ensure the autonomy and independence of local authorities and democratically elected representatives, so that national election results do not influence local government representative structure. The Congress urges the Georgian authorities to ensure that the provisions of the Charter and namely, that of the Preamble and of Articles 3, 6 and 7.1, as referred in the Report of the fact-finding mission to Georgia (CG/BUR(23)47), are fully observed and respected.The Congress calls on all political forces in the country to cooperate for the promotion of the independence and democratic functioning of local government;

g. to continue the regional development efforts, ensuring a certain degree of continuity with regard to the regional development strategy and policies in existence, in order to consolidate what has been achieved;

h. to consider the issue of direct elections for all mayors, in the light of the experience provided by Tbilisi;

i. to consider signing and ratifying Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and ratifying, in the near future, the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS 159).

Local and regional democracy in Georgia

EXPLANATORY MEMORANDUM[5]

Table of contents

1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE 6
2. POLITICAL CONTEXT 7
2.1 International situation and relations with neighbouring countries 7
2.2 Domestic political situation and elections 8
2.2.1 Government structure 8
2.2.2 Elections 9
2.3 Previous report and recommendations 11
3. HONOURING OF OBLIGATIONS AND COMMITMENTS 11
3.1 Declarations made by Georgia when ratifying the Charter 11
3.2 Constitutional and legislative developments 12
3.2.1 Constitution 12
3.2.2 Legislation 13
3.2.2 Access to the Constitutional Court 13
3.3 Local self-government: competences and structure 14
3.3.1 Competences of local authorities 14
3.3.2 Local self-government structure 15
3.4 Status of the capital city 16
3.5 Citizen participation in local public life 18
4. ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN LIGHT OF THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT ON AN ARTICLE BY ARTICLE BASIS 18
4.1 Articles 2 and 3 18
4.2 Article 4 20
4.3 Article 5 22
4.4 Article 6 22
4.5 Articles 7 and 8: Exercising responsibilities and government supervision 23
4.6 Administrative supervision 24
4.6.1 Financial supervision 24
4.7 Article 9 25
Economic context for local authorities 25
Financial resources 26
Local government expenditure 27
4.8 Article 10 29
Inter-municipal cooperation 29
4.9 Article 11 30
5. REGIONAL DEMOCRACY: THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY 30
5.1 Regional architecture and competences 30

[5] Adopted by the Monitoring Committee on 13 February 2013.

5.1.1 Competences of the Governor 31
5.1.2 Regional Development Councils 33
5.1.3 Finances 33
5.1.4 Issues related to regional administration 33
5.1.5 The case of Adjara 34
Competences and government structure of the regional administration 34
Regional bodies 35
Financial resources of Adjara 35
6. CONCLUSIONS 36
Appendix 1 – Programme of the Congress Monitoring visit to Georgia (11-13 June 2012) 39
Appendix 2 – Information note on human rights 42

1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. In accordance with Article 2 of Statutory Resolution CM/Res (2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. Georgia joined the Council of Europe on 27 April 1999, signed the European Charter for Local Self-Government (ETS 122, hereafter "the Charter") on 26 October 2004 and ratified it on 8 December 2004 with entry into force on 1 April 2005 with “reservations” on Article 4 para. 6, Article 5, Article 6 para. 2, Article 9 para.6 and Article 10 paras. 2 and 3 (see paragraph 37 – 44 below).

3. Georgia ratified the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS 106) on 24 July 2006, with entry into force on 25 October 2006. It has signed (2 November 2005) but not yet ratified the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS 159).It has not signed or ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. The previous Recommendation 157 of the Congress was adopted in 2004.

5. The present report relates to a Congress delegation’s visit to Georgia from 10 to 12 June 2012, to monitor the situation of local and regional democracy in this country on the basis of the Charter. The Monitoring Committee appointed Ian Micallef (Malta, L, EPP/CD) and Helena Pihlajasaari (Finland, R, SOC), as co-rapporteurs on local and regional democracy respectively. They were assisted by Dr Ilija Todorovski, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and a member of the Secretariat of the Congress.

6. The Congress delegation met with the Minister of Regional Development and Infrastructure, the Deputy State Minister for Reintegration, the Deputy Minister of Finance, the President of the Constitutional Court, representatives of the Chamber of Control of Georgia, officials of the Government of the Autonomous Republic of Adjara, Mayors and Heads of City Councils from Tbilisi, Batumi, Rustavi, Kobulete, Khelvchauri and Shuakhevi, the Ombudsman, the representatives of the National Association of Local Authorities of Georgia (NALAG) and with representatives of NGOs. The detailed programme is appended to the present report.

7. The co-rapporteurs wish to thank the Permanent Representation of Georgia to the Council of Europe and all those whom it met on the visit for their readiness to assist the delegation and for the information they so willingly supplied. It also thanks the Georgian delegation to the Congress and the Associations of local and regional authorities for contributing to the organisation and smooth running of the visit.

2. POLITICAL CONTEXT

8. Georgia is a democratic semi-presidential republic with a population of around 4.5 million according to 2012 estimates. Georgians make up 83.8% of the population (2002 census)[6] and the majority are Orthodox Christians (83.9%). 53% of the population live in urban areas and there are 236 000 displaced persons (from Abkhazia and South Ossetia) according to 2012 figures given by the Internal Displacement Monitoring Centre.[7]

9. The country is administratively divided into 2 autonomous republics (*avtonomiuri respublika*), 9 regions (*mkhare*) and 69 local government units (*municipaliteti*). The latter comprises 64 municipalities and 5 self-governing cities[8] including the capital city Tbilisi, which has a special status, Rustavi (industrial city adjacent to Tbilisi), Kutaisi (city now hosting the Parliament) and Batumi and Poti (two Black Sea ports).



2.1 International situation and relations with neighbouring countries

10. The country's recent pas has been marked by the political turmoil related to the armed conflict in 2008 that broke out between Georgia and the breakaway regions, South Ossetia and Abkhazia, supported by Russia. This put an end to the diplomatic relations between the two countries. Georgia and most UN member States do not recognise the existence of either South Ossetia or Abkhazia as independent entities, and consider them to be under Georgian sovereignty. Their status is defined in the "Law on the Occupied Territories".

11. Georgia maintains good relations with its remaining neighbours with whom it has important regional project partnerships. As regards Armenia, bilateral economic cooperation between the two countries is centred on energy and transport. There is a sizeable Armenian population living in Georgia (5.7% of the population) in the Samtskhe-Javakheti region; there has been some tension following local demands for recognition of Armenian as an official language in the region.

12. In addition, within the framework of the Fostering Regional Development in Armenia and Georgia through Cross-Border Co-operation project, the National Association of Local Authorities of Georgia (NALAG) and the Communities Association of Armenia (CAA) established EuroCaucasus in June

[6] Ethnic minorities: Azeris 6,5%, Armenians 5,7%, Russians 1,5%, and other groups 2,5%. Religious minorities: Muslim 9.9%, Armenian-Gregorian 3.9%, Catholic 0.8%, other 0.8%, none 0.7%.

[7] See http://www.internal-displacement.org/countries/georgia.

[8] The status of a self-governing city envisages certain privileges; they can introduce local fees and enjoy higher equalisation transfer formula benefits. According to 2008 data, approximately 57% of total revenues of local government units were mobilised in the five self-governing cities and major revenues went to Tbilisi – 78% in 2010.
See http://www.georgianjournal.ge/index.php/economy/5711-misbalance-in-georgian-self-governance.

2009. This is the first entity of its kind in the region. It aims to assist local governments in the Armenian-Georgian border regions in developing cross-border co-operation initiatives, under the auspices of the EU Eastern Partnership Policy.[9]

13. Concerning Azerbaijan, one of the two foremost trading partners of Georgia together with Turkey, in particular as regards energy, there are projects including the "Baku-Supsa and "Baku-Tbilisi-Ceyhan" oil pipelines and "Baku-Tbilisi-Erzurum" gas line, as well as "Baku-Tbilisi-Kars" railway connect these countries to Europe. Some issues remain as regards the demarcation of the border between the two countries.

14. Turkey, another major trade partner, is also the second biggest investor after the US. In 2007, the two countries have signed a free trade agreement; currently, their main investment projects are the Kars-Tbilisi Railway and the Rize-Poti fiber optic cable line. Under a protocol signed between Ankara and Tbilisi on in May 2011 and effective as of December 2011, Turkish and Georgian citizens do not need to use passports while passing across border. This is the first such initiative in the region.

15. It must also be noted that Georgia enjoys particularly privileged relations with the United States which is its largest bilateral aid donor. More than 3 billion USD has been transferred to Georgia since 1992 through agencies and programmes. The US recognises "status-neutral" travel documents issued by the Georgian government to residents of Abkhazia and South Ossetia who wish to visit the US.

16. Georgia remains an "aspirant" to NATO membership since 2004. It participates in the European Union (EU) action plan within the European Neighbourhood Policy since 2006. It is also a member of the United Nations, the Council of Europe, the OSCE, the World Trade Organisation, the Organisation of the Black Sea Economic Cooperation and GUAM Organisation for Democracy and Economic Development.

2.2 Domestic political situation and elections

2.2.1 Government structure

17. The President is the chief of state and serves as head of government for the power ministries of internal affairs and defence. The President is elected by popular vote for a five-year term and is eligible for a second term. Mr Mikheil Saakashvili is the current President of Georgia after having won 53.47% of the votes in the 2008 elections (second mandate). The next election is scheduled for October 2013.

18. The Prime Minister is head of government. Mr Bidzina Ivanishvili is Prime Minister since 25 October 2012.

19. Legislative authority is vested in the Parliament of Georgia (*Sakartvelos Parlamenti*). It is unicameral and has 150 members elected by proportional representation, 77 seats to be allocated by party lists and 73 seats by single-member constituencies; members serve four-year terms.

20. In May 2010, the constitutional commission set up by the Parliament agreed on amendments which reduce the power of the President and increase the powers of the legislature and the Prime Minister. In October 2010, the Georgian legislature approved the constitutional changes; however most of the changes will not come into effect until after the next presidential election scheduled for 2013.

21. On the occasion of their visit to Georgia, the delegation has learned that important state institutions, including the Parliament and the Constitutional Court of Georgia have been relocated from Tbilisi. The Court was moved to Batumi in July 2007, as part of the "decentralisation" of state institutions; in a similar vein, the Parliament was moved to Kutaisi, some 200 km to the west of Tbilisi, in 2012. This move is explained as part of the policy of decentralisation and to relieve Tbilisi's overburdened infrastructure, at the same time providing an economic bolster for the hosting cities; the moves have been criticised by some political parties as unnecessary and expensive and susceptible of marginalising the Parliament.

[9] Contribution of local and regional authorities to the development of the Eastern Partnership framework and opportunities, Nathaniel Copsey and Dr Carolyn Rowe, Aston Centre for Europe, Aston University, 2012, see link http://xa.yimg.com/kq/groups/26604605/461409169/name/Report_Aston_final.pdf

2.2.2 Elections

22. In the legislative election held on 1 October 2012, 14 parties and 2 blocks competed for 150 seats to serve four-year terms.

23. The 1995 Constitution and the 2001 Unified Electoral Code are the primary legal instruments regarding elections in Georgia. The Georgian Dream block won the election by 54.97 % of the votes cast. 3.6 million registered voters turned out at the polls, monitored by OSCE observers. The Georgian Dream block won 85 out of 150 seats in the Parliament while the main opposition party, the United National Movement, won the remaining 65 seats.

24. The Constitution guarantees the right to participate in local elections (Article 28) for citizens over the age of 18. Eligibility age is 21 for citizens who have been residents in Georgia for at least five years.

25. Local elections were held on 30 May 2010 where 64 new municipal councils were elected including the directly elected Tbilisi Council (*Sakrebulo*) and Mayor. 26 political parties were registered. Voter turnout was 47.29% (49% for the election of the Mayor).

26. In Georgia, members of municipal councils (*Sakrebulos)* are elected for a four-year term under a mixed proportional and majoritarian system. The seats allocated under the proportional system are distributed to parties and electoral blocs, which have passed a 5% threshold in respective constituencies (4% in Tbilisi). Mandates in single-mandate constituencies are awarded to candidates who receive the highest number of votes. Mayors of municipalities and self-governing cities are elected by the *Sakrebulos*.

27. The mayor of Tbilisi is, since 2010, elected by popular vote. A candidate needs to obtain no less than 30 per cent of valid votes in order to be elected. If this requirement is not met, a second round takes place within a month, between the two candidates who obtain the highest number of votes. Georgi Ugulava, the incumbent of the post, was re-elected with 55.2% of the votes for a four year period. The direct election of the Mayor had been one of the Congress recommendations made in 2004 and took place after a legislative amendment to the law on the capital of Georgia was adopted in 2005, bringing in the principle of direct election of the mayor.

28. There are no quotas for the participation of women or of minorities in elections. In 2010 only 10.9% of the candidates in single mandate constituencies and 18.2% on the proportional lists were women.[10] 169 out of 1695 councillors elected were women (10%). In 2012, an incentive package has been launched for the first time, whereby political parties that propose lists with at least 20% of women on them, get 10% more funds for campaigning. As regards national minorities that make up approximately 16% of the population, several political parties have included them on their lists and as majoritarian candidates nominated in districts where minorities form a substantial part of the population (Azeris and Armenians living in *Kverno Kartli* and *Javakheti* respectively).

29. One noteworthy point concerning the 2010 local elections is the very low representation of opposition party members in local councils. The ruling party received 66% of the votes and 86.4% of the mandates. The situation is all the more blatant in Tbilisi, where the election system rendered it impossible to proportionally reflect the voters' will. With only 52.5% of the votes, the ruling party obtained 78% of the mandates. All councils have minimum 2 opposition members in their composition. However, according to the local government associations, 76% of all councillors belong to the ruling party. The election system continues to work in favour of single-party dominance.[11]

30. The Congress has observed several elections and published documents concerning elections at local level in Georgia since the last monitoring visit: Recommendation 205 (2006) on the local elections in Georgia (observed on 5 October 2006), Recommendation 264 (2009) Observation of the elections to the Supreme Council of the Autonomous Republic of Adjara (3 November 2008), and Recommendation 291 (2010) on Municipal Elections in Georgia (30 May 2010).

[10] http://www.osce.org/odihr/elections/georgia/32017

[11] The Venice Commission, in its joint opinion with the OSCE [362 (2005)], has already drawn attention to the problems in the electoral code.

31. In its Recommendation 291, the Congress noted with satisfaction that the "election campaign was characterised by a competitive atmosphere and lively, issue-based debates" but took issue with various shortcomings, recommending, *inter alia*, that Georgia should allow for independent candidates to run in local and regional elections, make all legislation that affects electoral processes more specific (notably the Election Code of Georgia but also the Organic Law on Local Self-Government) and to introduce proportionate measures for ensuring transparency in campaign and party financing and to support capacity building measures for political parties.

32. The Parliamentary Assembly of the Council of Europe in its 2011 monitoring report considered that the local elections held on 30 May 2010 had been "an important step for the creation of a more diverse and constructive political environment in the country. Furthermore, the upcoming presidential and parliamentary elections will be the litmus test for the consolidation of a mature, more inclusive and robust democratic system in Georgia".

33. The Rapporteurs have followed the developments in Georgia during the pre-electoral build-up with concern, when the Georgian government seized the funds from the bank accounts of the Georgian Dream political coalition and its six member parties, as well as to the Georgian Dream Civic Movement, fearing that such interventions might be a major obstacle for the opposition to participate fully in the electoral campaign However, the election itself was hailed as free and democratic and the rapporteurs heartily welcome the resulting peaceful transfer of power.

Situation after the elections

34. The October 2012 parliamentary elections created an unprecendented "cohabitation" situation not only with regard to the President and the Parliament, but also as regards the central and local levels of government, which are now controlled by opposing political parties. The UNM, as the former ruling party, had had a majority in all 69 municipalities and the chairs of all *sakrebulos* had belonged to them.

35. The elections were followed by a period of unrest, marked by calls to the President to resign and allegations of pressure put on local authorities belonging to the opposition party (and on some municipal staff) to resign their posts or change their political party affiliations. According to the director of the International Society for Fair Elections and Democracy (ISFED), during the three months that followed the elections, 31 *gamgebelis* (mayors) and 16 *sakrebulo* chairpersons resigned, replaced by candidates nominated by the Georgian Dream coalition. In 11 cases, rallies turned into illegal acts, like physical abuse, invasion of buildings, disruption of meetings and blocking of entrances, without any law enforcement intervention. And in some cases, representatives of the former ruling party left the majority faction in local sakrebulos in order to establish new factions that frequently became supporters of Georgian Dream. [12]

36. The director of NALAG drew the attention of the President of the Congress to these developments, underlining the risk of interference in democratically elected local government bodies.

37. One of the Rapporteurs, Nigel Mermagen, had the occasion to hear, during his visit to Tbilisi on 28 November 2012 for the NALAG annual conference eye-witness accounts of a group of protestor's invasion of the office of the head of administration in Martvili (his chair was thrown out of the window) and other districts and towns (Marneuli, Poti, Ckhorotsku, Tsalka municipalities have also been cited),.

38. The Rapporteurs regret that the Government has been slow in reacting to these incidents. However, the declaration of the Ministry of the Interior following similar incidents in the Tetritskaro municipality recently, stating that criminal proceedings will be initiated against those who coordinated attack and that, in future, Georgian police will not tolerate blockage of local government units and illegal actions against local officials, is encouraging.The delegation considers that any expectation that a change in the central government should be reflected in changes in the local government seems to indicate a perception of local authorities as a direct extension of the governing parties. The Rapporteurs are not insensitive to the difficulty of changing political practices in a short period of time; nevertheless, they would encourage both parties to make clear and unambiguous statements to the public, underlining the independence of local authorities as a level of governance and the need to respect the continuity of democratically elected bodies.

[12] http://dfwatch.net/local-government-after-the-parliamentary-elections-13569

2.3 Previous report and recommendations

39. The basic premise of the recommendation was that the reform of local government was progressing slowly and faced serious difficulties and challenges, complicated not only by the persistent deadlock in the efforts to solve the conflict over Abkhazia and South Ossetia but also by the internal political situation.

40. The Congress recommendations essentially highlighted three areas as requiring action:

i) amendment of legal procedures to resolve possible conflicts of interests and to protect territorial sovereignty;

ii) amendments to the Law on local self-governance in order to fully comply with the principle of subsidiarity and also to ensure a clear division of powers between the devolved state authorities and local self-governing bodies, allocating responsibilities to municipalities accounting for a substantial share of public affairs and allowing them discretion in the exercise of matters within their competence, including the enjoyment of the right to take legal action against the State when and if the State interferes with their decisions and to being consulted for matters that concern them in due time and in an appropriate manner;

iii) a series of economic initiatives including the adoption of the draft law on local government property, the drafting of the package on local government finance, and increasing the tax-raising capacity of the municipalities.

41. A major reform was undertaken in 2006 in Georgia restructuring local government (new organic law adopted in December 2005, new local elections in October 2006, and many of these issues have been dealt with in the intervening years. The rapporteurs have analysed the existing situation in the light of the previous recommendation and have come up with conclusions which highlight the progress that has been made but also some issues that remain, as set out in Section 4 of this document.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

42. In its 2011 report, the monitoring committee of the Parliamentary Assembly of the Council of Europe noted that the Georgian authorities had continued to make significant progress in honouring their obligations and remaining commitments to the Council of Europe, despite the significant impact and the consequences of the 2008 conflict but also recommended the continuation of the monitoring process pending further improvements.

3.1 Declarations made by Georgia when ratifying the Charter

43. When Georgia ratified the Charter on 8 December 2004, it declared that "till the restoration of full jurisdiction of Georgia on the territories of Abkhazia and Tskhinvali Region, Georgia declines its responsibility for performing obligations under the paragraphs of the European Charter of Local Self-Government listed [in its declaration regarding Article 12] in such territories". It did not include among the articles it declared itself bound by the following:

a. Article 4 para. 6 which concerns consultation in due time and form of local authorities on matters directly concerning them,
b. Article 5 concerning consultation of local communities (if possible by referendum) for boundary changes,
c. Article 6 para. 2 concerning the conditions of service of local government employees and,
d. Article 9 para. 6 consultation of local authorities on allocation of redistributed financial resources, and
e. Article 10 paras. 2 & 3, respectively concerning the local authorities' entitlement to belong to an association and international associations and to cooperate with their counterparts in other states.

44. The authorities the delegation has met have emphasised that although these "reservations" are still in force, the legislation and practice in Georgia is in line with the spirit of the Charter. The Law on Local self-government (Article 7 paras 1. and 2) grants the association of local authorities the right to participate in discussions with the government on issue directly affecting them. Article 4 (paras. 2 and 3) of the organic law obliges state bodies to consult with local authorities.

45. As regards Article 5, the law provides in its Article 12 that the Parliament decides on boundary related issues upon initiatives of the central government or local governments or their representative bodies. It stipulates that consultation with the population prior to tabling the initiative in the form of a public opinion pall. The Constitutional amendments (adopted in 2010 but not yet in force) under the new Chapter 7, Article 101 para. 4 say "Consultation with the unit of the local self-government is essential before making the decision".[13]

46. As regards Article 6, the reserves were justified by the Government in 2004 by the fact that the imminent local government reform was going to modify civil service structure. Following the implementation of the reform, the organic law included registry and remuneration of their staff by local authorities (Article 9 para.3), ranks and remuneration of staff (Chapter 5), and career development related issues (Chapter 9). The training of local officials is one of the priorities of the Strategy for Regional Development.

47. Concerning Article 9, taken in conjunction with Article 4 para.6, the Government maintains that the association NALAG has a memorandum of understanding with the Ministry of Regional Development and Infrastructure and with the Parliamentary Committee on Regional Policy, Local Self-Government and Mountainous Regions and that it participates in the consideration of the state budget.

48. Finally as regards Article 10, para.2, the requirements thereof are covered under Article 7 of the organic law. The NALAG was established on the basis of this law and is a member of various international organisms (Council of the European Municipalities and Regions, CERM, and Eastern European partnership of Local and Regional Authorities, CORLEAP etc.).

49. It became clear during the talks with the authorities that paragraph 3 of Article 10 constitutes the crust of the problem of reserves being kept in spite of *de facto* compliance, because the government is wary of binding itself under this paragraph which, for them, creates the risk of being used to undermine the country's sovereignty and territorial integrity, given the current political situation involving the regions that are currently not under the control of Georgia.

50. The Rapporteurs drew the attention of members of parliamentary committees to the possibility of lifting these reserves while making it clear in a specific text that the reserves would remain in place for specific regions for specified reasons, taking example from other countries, such as Belgium, which have specified in their declarations that the provisions of the Charter do not apply to a certain type of organism or territory. Such a declaration would have the merit of guaranteeing that all the other Georgian local authorities benefit fully from the provisions of the Charter. The Rapporteurs were encouraged by the positive reaction they had in this regard and hope that the Parliament may take a decision to this effect in the near future. They strongly recommend it in any case.

3.2 Constitutional and legislative developments

3.2.1 Constitution

51. Since 2004 there have been some important developments in the constitutional treatment of local self-government in Georgia. According to the Constitution as amended in 2004, the citizens of Georgia should "regulate the matters of local importance through local self-governance without prejudice to state sovereignty. Procedures and provisions on the formation of local self-government bodies, their power and relations with the central government are defined by the organic law of Georgia." The office of the superiors of executive bodies and representative offices of local self-government should be elective. The procedure of the creation of the bodies of local self-government, their authority and relation with state bodies should be determined by Organic Law.

52. In general, the Georgian constitution did not provide comprehensive rules on territorial structure. Article 2.3 provides that the territorial state structure of Georgia be determined after the complete restoration of the jurisdiction of Georgia over the whole territory of the country (i.e. including Tskhinvali region and Abkhazia). The regional and local government systems were therefore governed by organic laws before the 2010 amendments.

[13] See Venice Commission report: http://www.venice.coe.int/docs/2010/CDL(2010)017-e.pdf

53. Some constitutional amendments were adopted by the Parliament on 15 October 2010. Amendments noteworthy for the purposes of this report concern i) representative bodies which are now entitled to file constitutional claims in the Constitutional Court of Georgia (Article 89) and, ii) the new chapter on local self-government added to the Constitution (Chapter VII), which regulates local self-government at the constitutional level (previously regulated only by organic law and other legislative acts).

54. The new Chapter VII concerning local authorities entered into force in January 2011.

- *a.* defines the procedure for establishing, annulling and changing the boundaries of self-government units (Article 101),
- *b.* makes consultation with self-government units mandatory prior to decision-making on local government boundaries (in line with Article 5 of the Charter),
- *c.* defines the powers of self-government units whereby their own competences and their delegated competences are delimited at the constitutional level (without however taking into account the recommendation of the Venice Commission and Georgian experts on this subject), and
- *d.* prohibits the direct disposal by the State of property in self-government ownership. Under this new provision, the right of the President of Georgia, granted under the Law on the Local Self-Government Unit Property, to dispose of property in the self-government unit's ownership through direct sale, and at his own initiative, may be regarded as unconstitutional.

55. Overall, the presence of self-government units' rights in the Constitution can be viewed as a positive development in shaping the modern local self-government system in Georgia. However, as regards citizens' right to self-government, the phrase "citizens of Georgia registered in a self-government unit" which was added to the text limits the scope of this principle and takes unregistered citizens living in self-governed territories out of the equation (Article 2, para. 4). Moreover, the new amendment to the Constitution is silent on the subsidiarity principle, on guarantees for fiscal decentralisation and makes no specific mention of financial equalisation although Article 101/2 para. 4 stipulates that local government units "must be provided with adequate material and financial resources that are calculated according to the rules defined by the law".

3.2.2 Legislation

56. In 2005 and 2006 respectively, two key laws were adopted: Law on Local Self-government Property and the Law on the Budgets of Local Self-government Unit. These laws form the financial and material basis for local self-government. The law on property determines property categories, establishment rules, and proprietary rights of self-governing bodies, as well as establishing the basis for the division of state and local property, property transfer to municipalities. The Law on Budgets sets out the principles of the formation of local self-government budget and its procedural rules (including financial equalisation transfers) and defines the budgeting responsibilities of local self-government units.

57. As regards the organic law and other "sectoral" laws, the Rapporteurs would like to underline that since 2009 quite a high number of amendments were made to existing laws: 11 times to the Law on Self-Government, 9 times to the Law on Capital of Georgia, 4 times to the Law on Self-Government Unit Property, 3 times to the Law on Supervision of Local Self-Government bodies and twice to the law on Election Code of Georgia. Two laws were declared invalid in the same period: the law on self-government unit budget (replaced by the Budgetary Code on 18 December 2009) and the law on the status of members of the *Sakrebulo*.[14] These frequent amendments were apparently motivated by a will to comply with international obligations (bringing legislation in line with the Charter) and to regulate the voting system (direct election of the Tbilisi mayor, modifying the *Sakrebulo* election system).

3.2.2 Access to the Constitutional Court

58. The Venice Commission, in its final opinion on the draft constitutional law on amendments and changes to the Constitution of Georgia, adopted in October 2010[15], welcomed the proposed amendments to Article 89 para. 1 enlarging the list of the entities allowed to apply to the Constitutional

[14] Annual Report on Local Democracy Development in Georgia (2009 – 2010), Policy Analysis, « Open Socienty - Georgia » Foundation, Tbilisi 2011.

[15] http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.pdf

Court to encompass the city councils (*Sakrebulo*). It recommended also to clarify that such appeals should be only in the interest of the unit they represent and to allow directly elected mayors to have the same right of appeal.

3.3 Local self-government: competences and structure

3.3.1 Competences of local authorities

59. Article 15 of the Law on Local Self-Government mentions two types of competences - own and delegated. Article 16 lists local authorities' own competences, among which figure

a. land and fund management related competences (the approval of programs for investments, funds, inter-municipal projects; disposal of land resources; demarcation and alteration of borders; land use and building regulations; management of forest and water resources of local importance; issuance of permissions on constructions and supervision over their construction),
b. urban infrastructure, transport and security related competences (regulation of traffic and transport including issue of permits for passenger transport; regulation of the outdoor trade and markets; ensuring municipal fire fighting and rescue activities of the self-governing unit; regulation of outdoor lighting, sewage and garbage dumping systems, collection and utilisation of solid waste and maintenance of cemeteries; maintenance, construction and development of the roads of local importance)
c. cultural affairs (organising the work of the libraries, museums, theatres, galleries, educational (sport-recreational objects of local importance and the establishment of pre-school and non-school educational institutions); and
d. social affairs (mobilising municipal resources in the spheres of health and social care on the territory of self-governing unit).

60. According to Article 18 of the same Law, local authorities are entitled to initiate social, cultural and educational infrastructure which is not under exclusive authority of state bodies; however, the Rapporteurs have been informed that, as the scope and procedures of this article are not clear, the central government can plan and execute activities that should be within the remit of local authorities without consulting the latter.

61. An example is the Village Support Program launched in 2009, which aims to develop infrastructure in villages through consultations with the inhabitants. There has been criticism to the effect that, due to a lack of consultation, there has been misuse of funds such as the building of bus stops in a village that urgently needed drinking water pipes and road repair.[16] However, the Rapporteurs have been informed that, since 2009-2010, the setting up of spending priorities by the citizens has somewhat improved. Another example is the water supply. The central government has taken over water supply and control over tariff setting, which had previously been the prerogative of local authorities (amendment to the law in 2008). This move, planned with a view to privatising the sector, backfired when investors did not show interest, and the government had to resort to re-delegating the financing of water supply to local authorities although they now lacked the legal competence therefor.

62. Delegated competences, which should be accompanied by appropriate financial resources, encompass specific tasks such as (i) recruitment for the army; (ii) preventive healthcare, like vaccination in case of epidemics; (iii) funeral expenses of internally displaced persons (IDPs); and (iv) only in the case of Tbilisi, payment of the house rents of bus drivers. The delegated competences are exercised by the local governments with financial compensation provided from the state funds, but are in the domain of central authorities. .

63. The Rapporteurs stress that there are discrepancies between various laws and the Constitutional provisions and that harmonisation is necessary to avoid confusion. The Government is apparently aware of this situation and, to this end, as mentioned above in paragraph 37, the Parliament has amended some 20 sectoral acts in 2011 to make them compatible with the Constitution. The Rapporteurs were informed by interlocutors that, although the concept of local self-government is enshrined in the basic texts, delays inevitably occur in the execution of services and tasks under local authority responsibility because an inventory of facilities and assets of both national and local importance such as roads, public buildings, land, forests etc. have not yet been conducted.

[16] See http://www.humanrights.ge/index.php?a=main&pid=7704&lang=eng

3.3.2 Local self-government structure

64. The municipalities consist of three organs: the Council (*Sakrebulo*) is its representative and by function the legislative organ; the City Hall (*Gamgeoba*) is the local administration and is headed by the Mayor (*Gamgebeli*), the executive organ. The designations in Georgian will used throughout this text.

65. The changes to the local government structure made in 2009 and 2010 increased the role of the *Sakrebulo* and diminished the role of the executive branch, i.e. the *Gamgeoba*, with the exception of the capital where the opposite trend prevailed. This is seen as an overall positive achievement by local authorities that the rapporteurs had the opportunity to meet.

66. The *Sakrebulo* consists of members elected by Georgian citizens residing on the respective territory, in conformity with the rules established by the Georgian legislation. The council consists of 10 members elected through a mixed proportional and majoritarian system by direct, secret, and universal ballot. The seats allocated under the proportional system are distributed to the parties and election blocs, which clear a 5% threshold in provincial regions. The number of majoritarian seats varies in various municipal councils, depending on their size. If the number of voters exceeds 75 000, the number of council members rises to 15. In Tbilisi the council has 50 members, where 25 seats are distributed through the proportional system and 25 majoritarian seats are up for grab.

67. The special competences of the *Sakrebulo* can be classified in four groups:

a. Administrative functions: Definition of the local government organisation and establishment and control of functioning of other local government organs, such as adoption of the Rules of Procedure, articles concerning the staff; creation and abolition of administrative units within the self-governing unit;
b. Legislative functions: It passes all important general legal acts regulating the functioning of the local governing units including introduction local taxes and fees, regulating the rules of motor transportation, regulating parking of the motor transport means with their parking rates, outdoor advertisement; approving the list of objects to be privatized in the self-governing unit; definition the initial privatization price and rent amount of the property of the self-governing unit; definition of the rules of management of the forest and water resources, etc.
c. Financial functions: Adoption or approval of the budget and programs of local government activities, etc.
d. Operational functions: Everyday activities related to the functioning of the local government unit like concluding various types of contracts, making agreements, etc.

68. In Georgia, the Chair of the *Sakrebulo* is the highest elected representative in local government and is elected from among *Sakrebulo* members for the term of office of four years, if more than half of the listed members vote for him/her. The Chair has several types of activities ranging from providing for the Council draft budget and draft legal acts on spatial-territorial planning of the self-governing unit received in a previous procedure by the mayor, to coordinating the process of budget execution, approving acts, the management of the staff, and appointment and dismissal of the mayor (an appointed executive) with the consent of the *Sakrebulo*. The *Sakrebulo* and the *Gamgeoba* may share a joint secretariat or have separate staff.

69. The *Sakrebulo* can establish up to five commissions, the chairs of which are elected from among its members. Non-members can be invited by the Chair to work for a commission temporarily, or during the term of the authority of the commission. The work of the invited persons may or may not be remunerated. The working rules of these commissions is determined by a statute (rules of procedure), in conformity with the Georgian legislation.

70. The *Gamgeoba* implements the decisions of the *Sakrebulo*. It consists of the structural units and territorial bodies of each self-government unit. Its structure and competences are defined by its Statutes, approved by the *Sakrebulo*. It is headed by the Mayor. The heads of the structural units and the heads of the territorial bodies of the self-government bodies, as well as other employees of the *Gamgeoba* are appointed or dismissed from the positions by the Mayor.

71. *Gamgebeli*: The Mayor is the chief executive officer of the *Gamgeoba* and is a public civil servant appointed and dismissed by the Chair of the *Sakrebulo* with the consent thereof. The Mayor elaborates and presents to the *Sakrebulo* Chairperson the draft budget and proposals, conclusions

and recommendations prepared by the *Gamgeoba* and coordinates the implementation of the *Sakrebulo* decisions. As top manager of the executive body, the Mayor coordinates and organises the activity of the structural units of the *Gamgeoba* and its territorial bodies, appoints their respective heads, hears reports on implemented work, presents proposals to the *Sakrebulo* chairperson on motivating the *Gamgeoba* personnel or imposing disciplinary responsibility on them. The powers of the head of the council and the mayor sometimes duplicate and compete with each other.

72. In Tbilisi, which has a special status and is regulated by the Law of Georgia on the Capital of Georgia, the mayor, as head of executive power, is elected directly by popular vote for four years. The decision of the Mayor and the Council in Tbilisi are executed by the city government, composed of the Mayor, his/her First Deputy and deputies, the head of administration of the *Gamgeoba* and the heads of city services. The *Gamgebeli* of Tbilisi's sub-districts are also members of the city government.

73. Council chairs, deputy chairs and fraction chairs as well as council commission chairs receive remuneration for their activities; other council members are paid expenses. As regards the status of local government employees, they are either civil servants whose careers are regulated by the law on civil service or staff members recruited on a contractual basis. The remuneration of the elected representatives and civil servants is established by presidential decree while the amount of disbursements is decided by the council. Heads of Council earn 3 800 GEL monthly salary in Tbilisi, 3 500 GEL in the four big cities, 2 700 GEL in other municipalities, while the Deputy Heads earn 2 100 GEL in Tbilisi, 1 500 GEL in the four big cities, 800 GEL in other municipalities, and the Heads of Commissions and Political Groups earn 1200 GEL in Tbilisi, 800 GEL in the four big cities, and 560 GEL in the other municipalities. Comparatively, the average monthly salary in the private sector is around 6000 GEL.[17]

3.4 Status of the capital city

74. Tbilisi, the capital of Georgia has the special status, which is regulated by the Law of Georgia on Capital of Georgia – City of Tbilisi. The city constitutes a single self-governing unit, where self-governance is implemented through the elected Council (representative authority) and the elected Mayor. It is divided into five administrative units. The competences, organisation of ruling bodies and organs and the electoral system of Tbilisi have a lot in common with the other local government units in Georgia, but also certain specificities.

75. Firstly, the own (previously the exclusive) competences the city exercises, such as the approval of programs to support the employment, establishment, reorganisation and liquidation of legal entities, the management and disposal of land resources under its ownership, land use planning, division of self-government unit territories by zones (planting, recreational, industrial, commercial and other special zones), etc. are similar to those exercised by other self-government units in the country. But, Tbilisi has, according to the Article 9 of the Law on the Capital, common jurisdiction with the State on some issues, such as:

a. coordination of law and order;
b. natural resources, environmental protection and securing the ecological security;
c. implementation of the programs related to protected territories and protection of historical and cultural monuments;
d. development and revision of strategic programs for urban, building and utility industries;
e. coordination of issues in regards to education, science, culture, health care, sport and tourism;
f. coordination of the population's social security and employment;
g. liquidation of the effects of catastrophes, natural disasters and epidemics;
h. financing city development of extraordinary importance;
i. other issues provided for in the Georgian Legislation.

76. Secondly, Tbilisi, due to its size in territory and population, has five districts that are administrative or executive - administrative units unlike the other self-governing units that only have one each. This means that while other self-governing units have one representative and one executive body that organise and coordinate the work of several administrative units or departments, Tbilisi has one representative body (*Sakrebulo*) making decisions at the level of the whole city, but they are implemented in territorially divided districts that are organised entirely as special administrative –

[17] See http://www.geostat.ge/index.php?action=page&p_id=149&lang=eng.

executive units. According to Article 29 of the Statute of the City of Tbilisi, the Tbilisi district consists of the Governor, deputy Governor and heads of particular services.

77. Thirdly, the existence of these five administrative districts changes to some extent the composition of the executive body in order for it to encompass the district executive representatives. Thus, at the city level, city government consists of the premier, deputy premiers and the heads of the special Tbilisi services. The governors of Tbilisi districts are part of the Tbilisi government. The executive authority of the city of Tbilisi is headed by the Mayor and head of the city government.

78. The city government guarantees the implementation of the decisions taken by the Tbilisi city council and the Mayor, elaborates the projects of the city budget and programs for social and economic development, guarantees the implementation of the budget and the programs for social and economic development approved by the council.

79. Fourthly, the *Sakrebulo* of Tbilisi consists of 50 members (unlike the other self-governing units which consist of 25 members), 25 of whom are elected in the single-mandate majoritarian constituencies, and other 25 through the proportional system in 10 electoral constituencies of Tbilisi. And finally, the Mayor of the City of Tbilisi is elected by direct ballot unlike all other mayors that are elected by their *Sakrebulos*. Since the 2010 elections, the *Sakrebulo* of Tbilisi has more opposition members than before: 11 of the 50 members belong to four opposition parties. One of the Council chairpersons and one of the commission chairs are opposition party members, by agreement. At present, out of 50 members of Tbilisi *Sakrebulo*, eight are women. Two of them have leading positions (one of them is a chairperson of a committee, and the other of a political group).

80. In 2007, the boundaries of Tbilisi was changed to include several towns and villages by the Act of Extension, in order to integrate the surrounding towns and villages whose residents wanted to benefit from Tbilisi's infrastructure. There was prior consultation and Tbilisi city government applied to the Parliament for a decision. These municipalities became administrative units of Tbilisi while keeping their own boundaries.

81. Tbilisi also has an arrangement with Gudauri, a ski resort town two hours away from Tbilisi which receives the same services as Tbilisi although it is not within Tbilisi boundaries. For example inhabitants can obtain various documents pertaining to services both in their town and in Tbilisi. Under the agreement, the Legal Entity of Public Law, Gudauri Development Fund established by the self-governing body of Tbilisi in Gudauri, is implementing a programme envisaging the development and rehabilitation of local infrastructure and promotion of tourism capacities of the resort.

82. The organic law does not foresee the necessity for referendums for boundary changes but clear rules are cited. The Tbilisi *Sakrebulo* Chairman explained to the delegation that although Georgia had made reservations concerning Article 5 of the Charter, the spirit of the Charter was complied with in this regard.

83. The own competences granted to the local self-governing unit of Tbilisi by the Law on the Capital of Georgia – Tbilisi, allow it an independent authority over the execution of the functions invested in the law. In addition to the issues defined by law, Tbilisi has the authority to take decisions on issues that, according to legislation, do not belong to the competences of any other state authority and is not inadmissible for the local self-governing unit by law. Tbilisi draws up its own documents for priorities and drafts a budget which is adopted by the *Sakrebulo*. It independently defines its revenues and payments. When delegating tasks, the State allocates resources commensurate to the functions delegated to the local self-governing body. For example, the Tbilisi City Hall is exercising an epidemiological supervision programme, for which its receives annual funding. Also, within the scope of delegated authorities, the financial commitments to public transport drivers undertaken as part of the state debt in past years have also been financed from the central government. As to tax revenues, the financial crisis has not had a serious impact on the tax revenues to Tbilisi budget and the amount of financial transfers from the central government. Neither has it caused recentralisation of powers and competences. There has been a significant rise in tax revenues, especially in regard with property tax (in thousand Lari).

3.5 Citizen participation in local public life

84. According to the Article 28 of the Constitution of Georgia, every citizen of Georgia who has attained the age of 18 should have the right to participate in referendums or elections of state and self-government bodies. Free expression of the will of the electors is guaranteed.

85. There is a specific chapter (X1) in the Organic Law of Georgia on citizen participation. This chapter gives rights to citizens and puts an obligation on local authorities to organise citizens' general assemblies to discuss issues and invite representatives of public groups to meetings of local council committees. It also introduces the petitions to the local council, whereby a minimum of 500 residents of a local self-government unit may propose a legal act to the local council as a petition. The council is obliged to discuss this initiative in one of its sessions and the group that initiated the petition has the right to nominate a rapporteur to the council.

86. The Copsey-Rowe report, referred to in footnote 6 above, notes that, institutionally, civil society organisations are protected by law and no formal or informal obstacles exist to hinder the creation and operation of NGOs in any form. Thousands of NGOs are registered, and several hundred operate in all parts of the Georgian territory, quite a few specialising in public health, environment, gender issues, minority issues, and human rights. They claim that the influence of civil society in policy formulation remains rather low, partially due to "a reluctance of public institutions to engage in systematic public policy debates with civil society actors".[18] Apparently financial concerns are a major issue for NGOs. Since 2011 the law on grants allows ministries to issue grants directly to universities, NGOs and individuals. The State Strategy for Regional Development of Georgia 2010-2017 also mentions joint efforts involving NGOs for effective regional governance, which is a welcome development.

87. Citizen involvement in local affairs in general seems limited. One study[19] gives 14% as the number of people who declare to have participated in some form of consultation. Comparative statistics about participation indicate that, from among various forms of involvement such as attending sessions of a *Sakrebulo*, writing letters to the local media, signing petitions, internet discussions, demonstrations and attending budget related hearings, rural and urban populations have different preferences: in rural areas, the most popular form of involvement is the participation in public hearings related to the budget and the sessions of the local *Sakrebulo*. In Tbilisi and other cities, writing letters to the local media and internet discussions are higher.

88. During the visit, the Rapporteurs heard many mayors mention public petitions (itinerary of roads, commission hearings and the village support program as examples of participation.

89. Tbilisi municipality is renovating the old city centre and the project is managed by the Tbilisi Development Funds financed by the municipality. There is a specific commission on reservation of historical heritage and urban development that gives an opinion on each project. However, the project has been criticised for putting most of its insufficient budget to use in a certain lucrative part of the city (where there are shops etc.) and neglecting other, culturally important, parts. Some inhabitants criticised the "ultra-liberal" attitude of the Government and the Mayor and the Rapporteurs were informed by some interlocutors of the Government turning a deaf ear on historians and urban development experts, and favouring short term economic advantages over long term cultural and historical concerns.

4. ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN LIGHT OF THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT ON AN ARTICLE BY ARTICLE BASIS

4.1 Articles 2 and 3

Article 2 – Constitutional and legal foundation for local self-government
The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

90. The local government principle is stipulated in the Georgian Constitution in its Article 2 (4) according to which "the citizens of Georgia shall regulate the matters of local importance through local

[18] See Footnote 6.

[19] Public Opinion about Local Government in Georgia, Pawel Swianiewicz, Open Society Georgia Foundation, 2011.

self-government without prejudice to the state sovereignty. The office of the superiors of the executive bodies and a representative office of local-government shall be electoral. The procedures of the creation of the bodies of local self-government, their authority and relation with state bodies shall be determined by the Organic Law". Another article in the Constitution referring to the local government is 73/i where "the President, with the consent of the Parliament, will be entitled to suspend the activity of the institutions of self-government or other representative bodies of territorial units or dismiss them if their activity endangers the sovereignty, territorial integrity of the country or the exercise of constitutional authority of the state bodies".

91. Considerable progress has been made in the proposed Constitutional amendments adopted in October 2010 (and which have entered into force as far as Chapter VII is concerned). The new Chapter 7(1), drafted with assistance from the Venice Commission and Council of Europe experts, significantly strengthens and provides, *inter alia*, independence and autonomy of local self-government, stipulating the types of local government competences (introducing a distinction between own and delegated powers), the execution of these competences, and the principles related to financial resources and property issues (more precisely that the transfer of relevant financial resources be compulsory not only in delegation of competences, but also in case of transfer of competencies). Article 89 (1) provides the possibility for the representatives of local self-government to apply directly to the constitutional court. Thus, the principles of the Charter are to a high extent integrated in constitutional provisions.

92. The local government principle underlies a series of laws, the most important in this context being the Organic Law of Georgia on Local Self-Government. But there are many others that also regulate local government issues, such as the Budgetary Code of Georgia, Law of Georgia on State Supervision over Activities of Local Self-Government Bodies, etc. The Rapporteurs have heard some criticism highlighting the sometimes contradictory nature of a number of laws that touch upon local government. The forest code is an example. Article 16 of the Organic Law in gives local authorities exclusive competence in the management of local forests, whereas the forest code does not embrace any notion of local forests. In the latter, there are only two types of forests: State owned or private (Article 9 of the Forest Code). This is clearly a contradiction. The Rapporteurs recommend the streamlining of the legislation, giving the Organic Law a prominent role regarding all issues touching upon local government.

Article 3 – Concept of local self-government

1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

93. Article 15 of the Organic Law of Georgia on Local Self-government makes a clear distinction between two types of competences - own and delegated. The analysis of the list of own (formerly exclusive and voluntary) responsibilities contained in Article 16 of the above Law shows that the local governments regulate and manage some public affairs under their responsibility, such as local physical infrastructure or communal activities, local economic development, employment, urban planning, culture, sport, pre-school education. But, substantial public share would also imply competences in the fields of primary and secondary education, many fields of social care and protection (homeless children, care about handicapped, alcoholics, drug addicts), institutions providing primary and secondary health care, etc. Therefore, we recommend that in the next round of local self-government reform,, the latter type of competences be considered for adoption in the Georgian legislation.

94. As regards Article 3 para.2, this section of the Chapter reflects two aspects. The first refers to the local electoral rights of the citizens. Thus, the *Sakrebulo* consists of members elected by Georgian citizens residing on the respective territory, in conformity with the rules established by the Georgian legislation. According to Article 4 of the Electoral Code of Georgia elections in Georgia (including local elections) should be held on the basis of universal, equal and direct suffrage and secret ballot. This is fully in compliance with the Charter.

95. The second refers to the division of powers between the local government organs and their status in exercising their rights. In Georgia, the representative and, by function, legislative organ is the *Sakrebulo*. It has legislative functions in terms that it passes the acts of local importance such as the budget, the programs of activities of the local government units, the regulation of local importance and controls the execution of these acts. Within the organisational structure of the local governments exist executive organs or city halls. The *Gamgeoba* is constituted of structural units and territorial bodies of the self-government units.

96. The *Gamgeoba*, as an executive organ is responsible to the legislative organ as a result of two legal stipulations. The first consists of direct responsibilities in implementation of the decisions of the legislative organ as stipulated in the regulations. Thus, the *Gamgeoba* implements the decisions of the *Sakrebulo*. The structural units of the *Gamgeoba* ensure the execution of the decisions of the *Sakrebulo* and the *Sakrebulo* Chairman and tasks given by the Mayor in the respective sectors.

97. The second stipulation concerns the political prevalence of representative (legislative) organs over the executive organs, consisting of the possibility to appoint the top executive organs, to introduce control mechanisms and assessment over their work and to take measures against the executive organs that do not meet the requirements of the legislative organ. The Georgian legislation is in compliance with the Charter in so far as the right of the local government to regulate and manage public affairs is to be executed by councils composed of citizens' representatives which possess executive organs responsible to them.

4.2 Article 4

Article 4 – Scope of local self-government

1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

98. In Georgian legislation the basic powers and responsibilities are stipulated in the constitutional amendments (2010). Article 101^2 paras. 1 and 2 duly introduce the distinction used in paragraphs 4 and 5 of the Charter, between "own" and "delegated" competences. It further sets out in Article 101^2 para. 3 a "general clause of competence" of local self-government authorities, thus recognising that local self-government authorities have, as a rule, own competences and that the delegated competences are the exception which needs to be provided by the law. This general clause is to be welcomed. The distinction is also present in the Organic Law where own competences covering those in the fields of infrastructure, urban planning, local economic development and others are enumerated. The delegated competences are enumerated in the legislation dealing with the regions. In this respect, the legislation is in compliance with the Charter.

99. In relation to Article 4 para.2 of the Charter, it must be noted that the Organic Law contains a paragraph that is almost identical, to the effect that a self-governing unit has the authority to make decisions on issues – besides the ones stipulated in paragraph 2 of this article (own competences) – which, according to the law, are not part of the authorities of other government bodies and are admissible for the self-governing unit. Thus the Georgian legislation is in compliance with this paragraph of the Chapter. It works in practice as well. For example, the Rustavi municipality introduced a new project called "clean blocks", whereby they renovated the entrances of residential buildings which are under condominium ownership and which do not belong to the municipality.

However, apparently there have also been cases of municipalities providing funding for the rehabilitation of property belonging to the Ministries. When this information became public, it was officially recognised as a mistake and followed by an internal audit, and mayors were dismissed by two municipal councils.

100. The Venice Commission had recalled in its 2010 opinion (see Footnote 12) that "local self-government is an important feature of modern democracies. While the extent and form of self-government are left by international standards, notably the European Charter on Local Self-government, to the discretion of States, certain principles are essential: that public responsibilities should be exercised, by preference, by those authorities which are the closest to the citizens. In this respect the Venice Commission had concluded that "the level of constitutional entrenchment which would be brought about by these amendments is insufficient". The Rapporteurs concur with this opinion.

101. As regards Article 4 para.4, concerning full and exclusive powers, some provisions of the Organic Law are in compliance. Thus, among the basic principles of exercising local self-governance stipulated in the Organic law is the separation of the State and local self-government which implies non-interference of the State organs in the performance of local duties by local authorities. In addition to this are two other principles - that of autonomy of the local self-government bodies in making decisions on issues of local importance as determined by the law and independent responsibility of the local self-government bodies for the implementation of their own functions. The last in this context is the financial and economic independence of the local self-government units guaranteed by the State.

102. But other legislation and practice show some limitations in local authorities' possibility to exercise full and exclusive powers. This arises from some financial limitations and of their obligation to work together with the regional authority – the governor in respect of determination of their priorities, which otherwise should be an exclusive right for the local governments, because they know best what should be of the greatest importance locally.

103. Article 4 para. 5 states that "where powers are delegated to them by a central or a regional authority, local authorities shall, insofar as possible be allowed discretion in adapting their exercises to local conditions". According to the Organic Law, self-governing units exercise own and delegated authorities with the help of the representative and executive bodies, the authorities, structure and work regulations of which shall be determined by the Rules of Procedure of the *Sakrebulo* (Council) and Statute of Gamgeoba (City Hall) in conformity with the present law. This provision is indirectly in compliance with the one of the Charter provisions because the exercise of delegated functions as it is prescribed in the internal regulations means that local authorities must take into consideration local circumstances and organisation when they exercise their delegated powers, which, in turn, implies that they are allowed discretion in adapting their exercise to local conditions.

104. Article 4 para. 6 concerns consultation. The declaration of reserves notwithstanding (see paragraphs 40-47 above), in the Rapporteurs' opinion, several provisions of the Georgian legislation, and more precisely the Organic Law, are in compliance with this provision of the Charter. The first is Article 7: self-governing units have the right to establish non-commercial legal entities in legal-organizational form - associations, unions - for the coordination of their activities, in accordance with the rules established by the Georgian legislation, which are authorised to consult with bodies of the State authorities on behalf of self-governing units, as well as to participate in the process of preliminary discussions and consultations of draft laws in relation to local self-government. Another possibility for consultation of local bodies by the state authorities is in case of changing the administrative borders of the self-governing units, where the citizens should be polled about this issue (see below). The Rapporteurs have noted that, in practice, consultations with NALAG have been in line with Charter requirements. As regards consultations with individual municipalities, delays have been observed, sometimes (especially when it comes to dissemination of draft laws) due to the allegedly inefficient way in which the postal system works. Where the Ministry uses an online information system, such as the Ministry of Finance who communicate with the financial departments of municipalities and exchange of information goes on in a real time, consultations works more smoothly.

4.3 Article 5

Article 5 – Protection of local authority boundaries
Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

105. The components of this Charter provision are comprised in Georgian legislation. According to Article 12 of the Organic Law, the Government applies to the Parliament of Georgia with the recommendation on revising administrative borders of self-governing units on its own initiative, and on the basis of consultations with *Sakrebulos* or with the population, or based on the proposal of the *Sakrebulos*. The Parliament then makes the decision on the revision of administrative borders. Further down, it is quoted that in the recommendation on the revision of administrative borders of self-governing units, the following should be specified:

- the justification for the need of revising self-governing units administrative borders;
- the results of the population poll of the concerned self-governing units on the revision of the its administrative borders.

106. The above formulation shows that the central authorities are bound to consult local communities, councils or the population in general, when changing their administrative borders. The referendum requirement is met by a poll in the Georgian legislation and it can be said that the formulation in the legislation is in line with the Charter.

4.4 Article 6

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities	
1	Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2	The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

107. The right cited in paragraph 1 of the above Article exists in Georgian legislation. In so far as Article 38 of the Organic Law says that the structure and the authorities of City Hall are defined by its Statute which is approved by the *Sakrebulo* at the recommendation of the *Sakrebulo* Chairman as provided by the rules set forth by article 39 of the present law, the legislation is in line with the Charter.

108. As regards paragraph 2, the status of civil servants, rules pertaining to their activities and career development and promotion guarantees are provided in the Law on Civil Servants in Georgia. Pursuant to the legislation of Georgia local bodies of self-government define the list of staff and adopt their statute independently. The provisions related to the recruitment and conducting of competitions are also provided in the Law on Civil service. Two categories of civil servants are employed in the municipalities a) staff members, activities of which and remuneration are regulated by the Law on Civil Service; b) civil servants hired on contractual basis, who are employed for a definite term for the purpose of implementation of specific tasks.

109. The remuneration thresholds for civil servants, employed in the municipalities as well as elected public officials are established by legislation of Georgia (Presidential Decree). They differ from one to another municipality due to the financial conditions of the municipalities. This regulation of the financial status of the administrative staff in the Georgian municipalities by the highest legislators in the Georgian political system assumes criteria that would permit the recruitment of high quality staff on the basis of merit and competence, adequate remuneration and career prospects. In addition, there are a lot of vocational training programs in Georgia organised by domestic entities or foreign organizations such as UNDP, USAID, particular countries etc. providing improvement of the professional knowledge and skills of the civil servants and the other staff employed by the administrative organs of the municipalities. Therefore, these activities can be said to be in compliance with the above provision of the Charter.

4.5 Articles 7 and 8: Exercising responsibilities and government supervision

Article 7 – Conditions under which responsibilities at local level are exercised

1 The conditions of office of local elected representatives shall provide for free exercise of their functions.

2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

110. Paragraph 1 above can be interpreted as providing a legal situation where no one can exert any pressure on *Sakrebulo* representatives in the performance of their legal duties. The Organic Law provides for the representatives' free exercise of their functions, their legal position, powers, responsibilities, rule of activities and guarantees. their free mandate. *Sakrebulo* members are not bound by the charters and tasks of the political unions and electors who nominate them. They have a free mandate and their dismissal is inadmissible. It is also inadmissible to hand over the powers of the *Sakrebulo* member to another person.

111. That being said, another guarantee necessary for the provision of the free exercise of a function is missing in this law: Members of the *Sakrebulo* should not be under bear criminal liability for making statement within their duties as representatives of the *Sakrebulo* or voting on the meetings of *Sakrebulo*. It is recommended to include this guarantee in the relevant legislation.

112. As regards paragraph 2 above, according to Article 32(1) of the Organic Law, *Sakrebulo* members should conduct the authority thereof simultaneously with the official duties and without remuneration (see paragraph 69 above). The amount of remuneration and reimbursements depends on the financial capacity of the municipalities. Therefore, the Georgian legislation is in compliance with this paragraph of the Charter.

113. Concerning paragragh 3 above, the Organic Law in its Article 32(3) determines the incompatibility of the holding of representative's office with some other political or social positions. Thus, *Sakrebulo* members cannot

a. be a member of another representative body,
b. occupy a position, for which a candidate is elected, appointed or approved by the Parliament
c. Georgia,
d. occupy a position, for which a candidate is appointed by the President of Georgia or by the Prime
e. Minister of Georgia,
f. occupy a position, for which a candidate is elected, appointed or approved by the highest
g. representative bodies of the Autonomous republics of Abkhazia and Adjara,
h. work in judicial body, prosecutors' office, chamber of control, bodies of the Ministry of Interior Affairs and the Ministry of Defence,
i. be a servant of Georgian Elections administration,
j. work in the state body, which carries out state supervision functions over local self-government
k. units in compliance with the legislation, work in Sakrebulo office and the City Hall,
l. participate in the management of enterprises of self-government unit (to be a director, deputy director, a member of the Board of Directors, or the Supervisory Board, etc), also to be a director of the enterprise which is funded from the budget of self-government unit except for the educational (schools , etc), cultural (theatres, etc) and healthcare (hospitals, etc) institutions.

Article 8 – Administrative supervision of local authorities' activities

1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3	Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

114. State bodies, while providing the necessary legal, organisational, material and financial conditions for the development of self-governance and assisting Georgian citizens in exercising their right of self-governance, also exert control over local government activities and exercise sanctions in case the local governments disobey the rules of the constitutional and other legal regulations. In this respect there are two types of control – administrative and financial.

4.6 Administrative supervision

115. Georgian legislation strictly defines the procedures and cases of exerting administrative supervision over the local authorities. The Law of Georgia on State Supervision over Activities of Local Self-Government Bodies (2007) provides the definition and forms of supervision which is limited to legal (a posteriori) supervision as regards own competences and supervision of expediency over implementation of delegated competences. Supervision is to ensure that local authorities act in compliance with the principles of the rule of law, within the framework of their respective competences, consistent with the interests, targets and policies of the State within the sphere of its delegated competences, and c) ensuring that public assets are managed according to public interests.

116. According to Article 3 of this law, supervision over the activities of local self-government bodies, as a rule, are to be performed by the State Trustees – Governors (not the respective ministries) but in exceptional cases, the Government of Georgia can issue a statement authorising another body or official to exercise such supervision. Supervision over the activities of local authorities in the autonomous regions and in Tbilisi is exercised by the Prime Minister.

117. As regards sanctions, the Governor may submit to the President of Georgia a proposal for suspension or dismissal of the local government representative body, and the President of Georgia, with the consent of the Parliament, is entitled to suspend the activity of the institutions of self-government or other representative bodies of territorial units or dismiss them if their activity endangers the sovereignty, territorial integrity of the country or the exercise of constitutional authority of state bodies (Article 73 of the Constitution). In case of failure to approve the budget of local self-government unit within the period of three months after the approval of the state budget, the President of Georgia shall be authorized to terminate the powers of the representative body (Budgetary Code Article 28).

118. The amendment under paragraph 9 of the Law on Georgia on State Supervision over Activities of Local Self-Government Bodies has expanded the scope of issues that may be cause for suspension of the effect of a normative act adopted by a local authority, to include causing damage to state security, protection of cultural heritage, environment, human health and impeding proper functioning of institutions. This article also applies to delegated powers and the supervising body is entitled to perform preventive measures against damages. The Rapporteurs understand that this article has not yet been used.

4.6.1 Financial supervision

119. The Organic Law on Local Self-Government (Art.57) provides two forms of financial control of local self-governments' financial management: (external) audit and (internal) financial inspection.

120. The audit is an inspection of the financial documentation of local self-government bodies, which may be conducted by an invited (professional) auditor not more than once a year, based on a written demand on one third of *Sakrebulo* members. The law stipulates that the audit report and conclusion should be submitted to the Chair of the *Sakrebulo* who will then present it to the *Sakrebulo*. At the same time, the invited auditor is obliged to send a report and conclusion to the Georgia Chamber of Control which might be considered as an external public auditor, as opposed to the external invited auditor. The Chamber of Control supervises the spending of local budgets, management and disposal of property, and financial-economic activities of municipal companies in which a local self-government unit owns over 50% of shares (Article 6, para.2 of the Law on the Chamber of Control-2008), but only to the extent that the state budgetary funds are utilised or the delegated functions are exercised.

121. Financial inspection is an internal control and is conducted by the *Sakrebulo*'s financial commission that follows the funds' utilisation and determines the legality, expediency, and effectiveness of the reception and utilisation of the funds. According to the statistics given in the

Annual Report of the Open Society- Georgia Foundation, out of 2740 normative acts adopted by self-government units in 2010, 34.2% were given legal notice, 28.7% were amended and 8.% were annulled.[20]

122. Between 2007 and 2010 only one case came before the courts when the supervisory body annulled a resolution of the Rustavi *Sakrebulo* in June 2009 regarding the disposal and transfer of fixed assets in which the Rustavi municipality owns over 50% of shares. They maintained that the *Sakrebulo* had gone beyond its remit with this decision. Rustavi Municipality took the case to court claiming that there is a loophole in the legislation in this respect, and that the law provides for supervision for state-owned enterprises but not for local ones. The Rustavi City Court and Tbilisi Appellate Court upheld the decision of annulment.

123. In 2009 the Ministry of Justice abolished its territorial offices, transferring their functions to the Ministry's law making department, with double adverse effect: centralisation reduced the degree of independence of these bodies and it also impacted their efficiency, leaving a four-person staff to deal with an average of 10 normative acts a day.

124. In general, the rapporteurs conclude that Georgian legislation is in compliance with the Charter. The law on the Chamber of Control, Article 17, para. 2 stipulates that in connection with local government, the Chamber of Control examines revenues and spending of local authorities as regards their compliance with the local normative act on local budget adopted by a local council; the same article also says that the Chamber may audit the management of local property as regards compliance with normative acts and regulations adopted by local representatives bodies. As such, this law is an instrument for auditing whether decisions taken by local authorities are implemented; it cannot be considered a supervision or limitation of decision making power. The Chamber sends audit reports to local authorities. A copy is sent to the public prosecutor's office only if a criminal charge is brought (for example, against a *Gamgebeli* who is suspected of spending funds from the local budget for personal gain). The Rapporteurs would also like to mention that, although international standards of auditing have been adopted, the existing legislation does not provide for standards to apply to the auditing of local self-government entities. Apparently, there is a lack of qualified experts specialising in local self-government audit. The local providers of audit training or accounting are not filling this gap either.[21]

4.7 Article 9

Article 9 – Financial resources of local authorities

1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Economic context for local authorities

125. Georgia's estimated GDP was 14.3 billion USD in 2011 (official exchange rate) and GDP per capita was about 5,600 USD. It should be noted that up to 80% of this GDP is generated in Tbilisi.

[20] http://www.osgf.ge/files/publications/2011/Report_ENG_Web.pdf.

[21] Making Government Accountable: Local Government Audit in Postcommunist Europe, ed. Kenneth Davey, Local Government and Public Service Reform Initiative, Open Society Institute, Budapest, 2009.

126. Transfers from the government to local government entities increased (a continuous trend) by 14% from 2009 to 2010. In 2011, from the overall budget of 8 billion Lari (approx. 4.8 billion USD). 1,2 billion was transferred to local authorities either through equalisation or through earmarked grants. According to the law, local authorities should receive no less than 4% of the GDP in addition to their tax revenues, to be distributed in accordance with a pre-defined set of criteria (population, area, length of roads etc.).

127. Although ten-fold richer now as compared to 2003, local authorities' dependence on the central authorities has increased as their own tax revenues were reduced from 28% in 2003 to 15% in 2011, particularly as income and business taxes having been taken over by the central government (since 2007). The fact that priorities of local budgets are subject to the agreement of regional governors is another aspect of dependence. Centralised revenue management is a prominent feature of the Georgian economy.

128. The country's economy suffered from the effects of the 2008-2009 global economic crisis and also from the 2008 conflict, but the damage was limited and recovery was underway as of 2010. The scale of local economies being very small and the fact that public finances are centralised may have contributed to this state of affairs - and constitutes one of the paradoxes of local government in Georgia. The centralised public finance management allows for smaller and poorer units of local government to thrive while at the same time constituting a barrier to autonomy.

Financial resources

129. Each local self-government body has its own independent budget and property. The source of revenues are, as stipulated strictly and clearly by the Budget Code of Georgia, tax income from property tax and non-tax income from service fees and tuition for services, operation of property, operation of financial assets, administrative fines and penalties, and licensing and tender fees. Rates of the local taxes and fees are determined by the council (*Sakrebulo*).

130. The right to levy personal income tax, an important source of revenue, particularly for the more developed urban centres, was taken away from local authorities in 2008. The Government defended this centralisation by claiming that it was in any event "dead money"; in most municipalities there was no income generated and it was more practical and, in the long run, profitable to receive grants from the Government. Also, the Government does consult with local authorities when deciding the budget. The Rapporteurs understand that the problem here is that local authorities do not know what the pool of equalisation actually is (they are not attached to macro-economic indicators).

131. Another problematic fact stands out in this context is the share of the money generated locally, (property tax, administrative and service fees) in the total revenues of the local budget. In 2011 this share was 32% for Tbilisi. In the four big cities, the cumulative figure for 2011 was 19.7%. For all other municipalities, the average for 2011 was 15% (in some municipalities, like Kazbegi it was 0.7%). These are worryingly low figures for an indicator of independence of local authorities.

132. The collection of the local tax is carried out by the central tax authorities whereas the collection of other revenues and revenues from the non-financial assets – by relevant agencies of the local self-government bodies.

133. Financial assistance from central government in 2011 (from an overall budget of 8 billion Lari) to local governments was as follows:

	Money	%
Equalisation grant	GEL 627,788,300	52,0%
Specific transfer	GEL 10,424,200	0,9%
Earmarked transfer	GEL 569,109,100	47,1%
Total	GEL1,207,321,600	100,0%

Source: Law of Georgia on state budget of Georgia for 2011

According to the Budget code of Georgia, equalisation grants are recognized as "own revenues" that municipality can spend independently and under their own responsibility; they are granted "with the purpose of implementation of exclusive rights" and are allocated according to the specific formula. The guidelines for calculation of equalisation transfers (including the status and support rates used in process of calculation) are approved by the Minister of Finance of Georgia. Article 74 of the organic

law determines the volume of equalisation according to a formula.

134. Specific transfers cover the cost of delegated responsibilities. Municipalities are not free to decide spending priorities for such transfers. Their purpose is defined by specific legislation or by an agreement between a specific municipality and central government. Central government may perform audit of spending for such transfers.

135. Earmarked transfers are funds for the implementation of specific projects on rehabilitation of municipal infrastructure. Municipalities have right to spend this money according to the rehabilitation project endorsed by the Ministry on Regional Development and Infrastructure. The Ministry has the right to request the audit for spending of these funds. They are used for infrastructure projects such as rehabilitation of water supply systems, construction of roads etc. Unlike equalisation grants, municipalities have to use specific and earmarked transfers according to their appointed purpose.

136. Transfers from Georgia's national government entitles increased by 14% from 2009 to 2010 and almost the same rise in percentage between 2008 and 2009. Thus the total sum allocated to regions (covering municipalities) was 706.3 mil. GEL in 2008, 847.2 mil. GEL in 2009 and 967.9 mil. GEL in 2010 (Response to the Transparency International Report on the Use of Administrative Resources during May 30, 2010 Campaigns).

137. Other sources of funding of Self-Governance Units are the
- Village Development Fund (GEL 40 million in 2010), especially for development of the villages in 62 municipalities (projects in water supply, roads and repair of drainage);
- Regional Development Fund (GEL 66 million in 2010), for projects at regional level;
- An additional GEL 50 million for unforeseen expenditures for similar purposes as the two previous funds.

138. The last financing source that can possibly be used in the regions, is the Reserve Fund (managed by the Ministry of Finance). This fund is no more than 2% of the total budget and can be used in case of emergencies.

139. In addition to the above financing sources managed by the Ministry of Finance, the Municipal Development Fund was established 1997 to support the strengthening of the institutional and financial capacity of local government units.

140. Subsidies are another means to finance regional development. The EU-Tacis financed projects focused on the vulnerable parts in the population in Kvemo Kartli, Samegrelo and Samtskhe-Javakheti and those under the Instruments for Stability 1 and 2 subsidize to a different extent the activities undertaken under the Community Development Planning. The subsidies can be grouped into three categories: Those provided to vulnerable persons, those provided to migrants and those provided to farmer beneficiaries in Samtskhe-Javakheti.

141. As regards funds from foreign donors, there are many projects providing grants or loans to local government units in Georgia including EU-Tacis, EU-Instrument for Stability Program 1&2, funds from Norway, Czech Republic, etc (source: Regional development in Georgia: sector experience based on monitoring of Tacis, IfS and other projects, 2010).

Local government expenditure

142. Description of expenditures %

1.	Management services of general purpose	30.00
2.	Induction into military service	0.50
3.	Security and public order	2.00
4.	Business activity	9.00
5.	Environmental protection	8.00
6.	Residential and public utilities	30.00
7.	Public health services	1.50
8.	Recreation, culture, religion	10.00
9.	Education (pre-school)	4.00
10.	Municipal program of social security	5.00

143. Looking at the first two paragraphs of the Charter, the Rapporteurs consider that the local authorities in Georgia cannot have adequate financial sources of their own or commensurate with the liabilities provided for by the constitution manifested by lack of infrastructure facilities (in rural municipalities water supply system is available only for 50% of local population). This is due to several reasons. Firstly, Georgia has a relatively low GDP per capita (see paragraph 15) which cannot be sufficient to meet the modern requirements both in relation to central and local authorities' competences, especially the latter, taking into consideration that from the overall financial capacity of the country depends the functioning of all public services. Secondly, Georgia has faced many wars during the period of transition and unsettled territorial issues and these circumstances aggravate the financial condition of the country with a tendency of concentrating more public funds in the hands of central authorities to cope with these national problems including diplomatic activities, providing existence for the refugees etc. This is a problematic situation as far as the above provisions of the Charter are concerned.

144. In average 15-20% of the total amount of revenues in municipalities derive from local taxes (property tax) and fees (service fees and tuition for services, fees for operation of property and financial assets, administrative fines and penalties, licensing and tender fees. The local authorities have the power, in some cases within the limitations of the law, sometimes without any limitations, to determine the rates by themselves (rates are determined by the *Sakrebulo*). In this respect, legislation is in compliance with Charter.

145. Concerning the requirements of paragraph 4 above, the rapporteurs feel that they do not have a full picture but the most lucrative financial sources (taxes related to economic activities such as the value added tax and personal income tax) are not in the hands of local governments. It is recommended that a future reform of the financial system of Georgia should take into consideration the possibility of allocating some portion of these taxes to local authorities in order to keep pace - as far as practically possible - with the real evolution of the cost in carrying out their tasks. The Rapporteurs underline "some portion" and not all, as they are aware of the genuine economic problems of smaller municipalities which simply do not have any possibility of generating revenue and would suffer without central government's substantial equalisation or other grants. A balance needs to be found between the needs of local governments that satisfy both the economic expectations of the population and the development of local democracy

146. The fiscal equalisation funds and procedures that exist in the Georgian legislation are in compliance with paragraph 5 above.

147. The guidelines for the calculation of equalisation transfers (including the status and support rates used in process of calculation) have to be approved by the Minister of Finance. On the other hand, it appears that, about half of the equalisation transfers go to the City of Tbilisi, numbering a quarter of the total population of the country, resulting in increasing the gap between richer and poorer municipalities rather than decreasing it in accordance with the spirit of this provision of the Charter. Therefore, it is recommended that some changes in the equalisation formula be made in order to provide weaker municipalities with higher resources from these funds.

148. Concerning consultation, there is a provision in the Organic Law (Article 4) according to which, prior to making any decisions concerning the authorities established by this Law, State bodies should hold consultations in advance with the non-commercial legal entities representing more than half of the self-governing units of the country on their demand.

149. As to the provisions concerning earmarked grants, in the Georgian financial system, about 60% of the revenues in most of the municipalities are resources that can be used by the local authorities at their own discretion (revenues that derive from local sources and equalisation grants) and about 40 % are earmarked transfers. It is recommended that some of the funds that are now used for specific purposes (especially for construction of infrastructure facilities) should become part of the fiscal equalisation funds, thereby enlarging the amount of the funds that are treated as own municipal resources which can be spent according to the discretionary right of the local governments.

150. For the purpose of borrowing for capital investment, local authorities should have access to the national capital market within the limits of the law (paragraph 8 above). In Georgia they have access to the capital market within the limits of the law, getting bank loans and soft credits from various donor organisations.

4.8 Article 10

Article 10 – Local authorities' right to associate	
1	Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2	The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3	Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

151. In order to improve their capacity for performance of local government's duties, local governments may establish various forms of cooperation:

a. The Right of Local Self-government Bodies to Establish a Joint Service: Based on an agreement, and in compliance with the rule specified by the Georgian legislation, adjoining local self-government executive bodies, upon the consent from *Sakrebulo* shall have the right to establish joint services to provide public services, in order to efficiently perform their authorities as defined by the law. The local self-government bodies can delegate some of the similar functions under their authority to such bodies, as well as appropriate material and financial resources for the execution of these functions.

b. Right to establish Associations and Unions of Local Self-government: According to the Georgian legislation local authorities units have the right to establish non-commercial legal entities in legal-organisational form for the coordination of their activities, in accordance with the rules established by legislation. Non-commercial legal entities are authorised to consult with bodies of the State authorities on behalf of self-governing units, as well as to participate in the process of preliminary discussions and consultations of draft laws in relation with local self-government.

152. The National Association of Local Authorities of Georgia, NALAG, was established on the basis of the Organic law. It unites all local self-government units and is actively involved in consultations with governmental organs. It has concluded a Memorandum of Understanding with the relevant Parliamentary Committee, Ministry of Regional Development and Infrastructure, Department of Tourism. It closely co-operates with the Ministry of Economy and the Ministry of Finance.

153. Non-commercial legal entities of self-governing units are authorised to cooperate and join international unions (associations) of self-governing units, in compliance with the rules established by the Georgian legislation. NALAG is a member of the Council of European Municipalities and Regions (CERM) and a member of the Conference of Eastern European Partnership of Local and Regional Authorities (CORLEAP). The association also actively cooperates with the Congress and fulfils the role of Secretariat of the Georgian Delegation.

154. At present local self-governments do not have the right to independently set an agreement with another country's local self-government bodies.

Inter-municipal cooperation

155. Article 10, paragraph 1 of the Charter stipulates entitlement of local authorities to form consortia with other local authorities in order to carry out tasks of common interest. Georgian legislation identifies two types of inter-municipal co-operation. The first one is the right the Local Self-government Bodies to Establish Joint Services and the Right to establish Associations and Unions of Local Self-government in order to carry out tasks of common interest. This is in compliance with this paragraph of the Charter.

156. Based on an agreement, and in compliance with the rule specified by the Georgian legislation, adjoining local self-government executive bodies, upon the consent from *Sakrebulo* have the right to establish joint services to provide public services, in order to efficiently perform their authorities as defined by the law. The local self-government bodies can delegate some of the similar functions under their authority to such bodies, as well as appropriate material and financial resources for the execution of these functions.

157. The amendments made to the Constitution in 2010 improved the legal framework for such cooperation. The new wording of para 4 of Article 2 states that 'State bodies shall promote the

development of local self-government'. The delegation was informed by the Government that cooperation between self-government bodies being one of the key elements of the development of self-government, this provision could be interpreted as setting a legal obligation for state bodies to facilitate cooperation between self-government bodies. The practical application thereof however remains to be seen.

4.9 Article 11

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

158. The Organic Law on Local Self-Government stipulates that the resolution of disputes between the State and local self-government bodies will be resolved before a court. Article 89 of the Constitutional Amendments (2010) provides for the representative self-government body to be entitled to file a constitutional claim in the Constitutional Court of Georgia. Another provision of the organic law stipulates compensation for any additional expenses borne by the self-governing unit as a result of decisions made by State bodies. Local authorities are provided protection of both courts of general jurisprudence and Constitutional Court of Georgia.

159. As regards local authorities' own competences, within 15 days from the promulgation of a normative act, the supervisory body may ask the local authority to amend or abolish the said act. The local authority must then revise or abolish the act or submit a written denial. In case of non-agreement between the two bodies, the local authority may apply to court for suspension of the act. In case the court decides to annul or abolish the act, the local authority can appeal to a higher court and the Constitutional Court. A similar procedure exists in the case of delegated competences. The law has introduced a consultation mechanism assisting those municipalities which do not have legal staff to apply for free legal advice.

160. In this context it is worth mentioning that all municipalities which are not sure about the legality of their act may submit their act to the supervisory body before its promulgation and be consulted in that respect by the latter.

161. Article 5 of the Law on Georgia on State Supervision over Activities of Local Self-Government Bodies introduces the principle that State supervision should be exercised by taking into account interests of local self-governing units and provides compensation of damages caused to local self-government bodies due to the use of illegal measures of supervision.

5. REGIONAL DEMOCRACY: THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

5.1 Regional architecture and competences

162. As mentioned before, Georgia is divided into 9 regions (*mkhare)* and 2 autonomous republics (*avtonomiuri respublika)* and 69 self-governing units (*municipaliteti*). The regions of Georgia do not constitute autonomous units, but represent the de-concentrated components of central authorities. The regions each have a regional administration headed by a State Trustee or Commissioner (Governor). There are no representative bodies at regional level. Nor are there any associations of regional authorities. Each region covers several municipalities. For example, the region of Shida Kartli encompasses four municipalities (Kaspi, Kareli, Khashur and Gori).

163. The nine regions, Adjara (Abkhazia is not administered at present by the central government) and the capital city Tbilisi can be examined under the regional architecture. Adjara and Tbilisi are the two important hubs of economic activity which have witnessed an important population growth in the recent years (see graph below).

Region	2009	2010	2011	
			Number	Annual growth (%)
Georgia	**4385,4**	**4436,4**	**4469,2**	**0.7**
Tbilisi	1136,6	1152,5	1162,4	0.9
Adjara A.R.	382,4	386,9	390,6	1.0
Guria	138,8	139,8	140,3	0.4
Racha-Lechkumi and Kvemo Svaneti	47,7	47,6	47,3	-0.6
Samegrelo-Zemo Svaneti	468,0	474,1	477,1	0.6
Imereti	693,5	700,4	704,5	0.6
Kakheti	401,4	404,5	406,2	0.4
Mtskheta-Mtianeti	105,2	108,8	109,3	0.5
Samtskhe-Javakheti	208,1	211,3	212,8	0.7
Kvemo Kartli	488,8	499,9	505,7	1.2
Shida Kartli	313,0	310,6	313,0	0.8

See: http://geostat.ge/

164. The regional administration is headed by State Trustee (Governor) appointed by the President of Georgia.

165. In 2009, the Ministry of Regional Development and Infrastructure set up a government commission (made up of experts, civil servants and private sector) on regional development policy to elaborate a State Strategy for Regional Development of Georgia 2010 - 2017 “to create a favourable environment for the socio-economic development of the regions and improve the living standards and conditions of the population”. The principle of subsidiarity and effective governance are part of the basic principles of the Strategy. Establishing regional statistics, spatial planning, encouragement of inter-municipal as well as transfrontier cooperation, setting up a unified system of assessment and remuneration of public servants and introduction of e-governance and support for technological innovation are among the goals of the Strategy.

166. Since 2011, within the framework of the Strategy, Regional Development Councils have been established under the regional governors with the participation of the representatives of local self-governments, heads of the regional subdivisions of the central authorities, and representatives of local business and public who assist the governor in performance of his/her duties. A Regional Development Fund was established to provide financial support to the Strategy.

5.1.1 Competences of the Governor

167. The present functions, responsibilities and rights of Governors are defined in Presidential Decree 406 (27 June 2007), “On approval of the Regulation of the State Trustee/Governor”. In line with the Decree, the Strategy on Regional Development defines the competences of the Governor as the elaboration of a development strategy of a region, coordination of its implementation, insurance of effective regional governance and period reporting on the progress of the implementation to the Government and the Ministry of Regional Development and Infrastructure.

168. From this it is clear that the regional policy and actions are to be concentrated and co-ordinated at regional level. The Governor is both the representative of the central government in the region and at the same the representative of the self-government units at central level. In this respect the governor represents a form of decentralisation to some extent, as well as a form of de-concentration.

169. The objectives and functions of the Governor (Article 5 of the Presidential Decree #406 On the Approval of the Regulation of the State Trustee/Governor) are, *inter alia*, supervision over the activities of local self-governance organs (for lawfulness of local authority activities), coordination of public order, supervision and control of military recording and compulsory military service of the citizens in

administrative territorial units, participation in implementation of defense capacity raising and civil defense activities, elaboration and implementation of social-economic development programs and ecological stabilisation, participation in the attraction of investments and regional development activities, support to protection of historic monuments, human rights protection.

170. The Governor's responsibilities and rights are governed by Article 6 of the Presidential Decree 406 which covers the execution of the laws of Georgia and the normative acts of the President and Government of Georgia in the administrative-territorial units of Georgia. The Governor (by government assignment) implements regional social-economic development programs in the administrative-territorial units, (by Constitution) submits to the President of Georgia proposals on the suspension or dismissal of the council, if the activity thereof poses a threat the sovereignty, territorial integrity of the nation and the implementation of the constitutional rights of national government authorities, by the authority of Article 63 para.1 of the Fundamental Law of Georgia on Local Self-Government, submits proposals on termination of the council to the President of Georgia, and (upon Government request) coordinates the activities of the territorial bodies of the Ministries of Georgia. The Governor may also take part in Government meetings with an advisory vote, issue individual legal acts within the scope of his/her competence.

171. The new Article 89 (1) of the Georgian Constitution provides for the possibility for the representatives of local self-government to apply to the Constitutional Court. Although the acts of the governors are not explicitly mentioned in the text of the Constitution Law on the Constitutional Court but implicitly, by analogy, because all other state and local bodies can apply to the Constitutional Court if an act is not in compliance with the higher act, so could the governor if an act of the state bodies violates the status and functioning of the regional authorities. For any other sort of dispute the suit will be in the domain of the courts of general jurisprudence.

172. The Governor has a First Deputy and Deputies and operates through his/her administration, the composition and statute of which is endorsed by the President of Georgia. Staff of the regional administration is appointed and dismissed by a decision of the Governor. The administration of the Governor has its own seal with the coat of arms of Georgia and accounts in the State treasury and assets (for remuneration of civil servants, see para. 105 above)

173. The structural units of the Administration are the administrative service, service for coordination with local government bodies, State supervision service, Regional Development Service and the Financial Service.

174. The main objectives and functions of the Regional Development Service are as follows:

- Organising the elaboration and implementation of social-economic development regional programs of relevant administrative-territorial units;
- Support to attraction of investments and implementation of regional development and economic reforms;
- Participation in consultations to local self-governance units in the cases defined by legislation;
- Support to supervision and monitoring of investment projects considered by the state budget, support to the execution of the activities within the defined priorities (except the activities considered by exclusive and voluntary responsibilities), preparation of proposals for the Governor;
- Analysis of economic potential and development perspectives of administrative-territorial units
- Preparation of recommendations and proposals on economic development priority directions of administrative-territorial units;
- Analysis of investment possibilities, investment spheres and perspectives and elaboration of relevant proposals;
- Analysis of economic reform process and current results;
- Participation in development of foreign social-economic and cultural relations within their competence;
- Support to the development of relations between Governor and regions of the foreign countries and international organisations;
- Within its competence - implementation of the activities aimed at attraction of investments, technical and humanitarian assistance from foreign countries and international organizations, participation in coordination of these activities;
- Provision of cooperation with other regions of Georgia (administrative-territorial units);
- Fulfilment of other tasks of the Governor.

5.1.2 Regional Development Councils

175. Since 2011, within the framework of the Regional Development Strategy of Georgia, Regional Development Councils have been established under the regional governors with the participation of the representatives of local self-government, heads of the regional subdivisions of the central authorities, and representatives of local business and public. The goal of these representatives is to familiarise the governor with the situation in the local government units; they serve as consultative bodies. They develop and submit to the governor the social and economic development strategy for the region.

5.1.3 Finances

176. The activities of the Governor and of the Administration are financed from the state budget. The region receives funds from delegated transfers, Village Development Fund, Regional Development Fund, the Reserve Fund, Municipal Development Fund and from subsidies. Regional authorities are composed of employees that are paid from the central budget and dispose with the funds for the development for municipalities. The regions are included in the system of financial equalisation and can use other funds and bank loans.

5.1.4 Issues related to regional administration

177. The existence of the regions is a result of various social developmental processes that shape the different characteristics of the population from one or other geographical area. The Rapporteurs are of the opinion that the regions have no large democratic capacities. They do not have representative bodies elected by citizens, but only executive and administrative bodies. Governors are appointed and dismissed by the central authority and, as such, is more dependent on the will of the central authorities than that of local governments.

178. Regional bodies have considerable central competences such as the duty to control the execution of the central legislation at local level, intervening, in case of their disobedience, even by making a proposal to the central authorities to dismiss the local bodies. They have no professional associations. It could be said on the other hand, that they help local government units to plan their socio-economic development, which is especially important for those municipalities which lack appropriate administrative capacity and articulate their interests at central level. Also, governors and their small administrations, lacking specialised agencies, cannot do much for local economic development, particularly as regards attracting investments in favour of local governments.

179. However, the obligation of the local governments to coordinate the determination of municipal priorities with the regional administration is a serious limitation to local autonomy since this puts regional centrally-appointed bodies in a position to exert influence on local priorities which constitute the core of the local democracy – it is the local authorities who are the most familiar and motivated to define their priorities by themselves.

180. The Rapporteurs are of the opinion that the obligation on local governments to coordinate their document of municipal priorities with the regional administration, needs to be reconsidered and the law revised to include a specific mention to the effect that municipal priorities should be set only by the local government bodies themselves.

181. The Rapporteurs have been following the developments concerning the declarations made by Mr Ivanishvili to abolish the Ministry for Regional development and Infrastructure, moving the regional development component to the Prime Minister's office and transferring the infrastructure component to the Ministry of Economy. The delegation received confirmation during its fact finding visit in February 2013[22] that the abolition was no longer an option. The Rapporteurs welcome this information which they consider to be a positive sign towards the consolidation of what has been achieved with regard to regional development strategy and policies.

[22] The Bureau of the Congress decided, at its meeting on 3 December 2012 to carry out a fact-finding mission to Georgia. The visit took place on 27 and 28 February 2013 (see report CG/BUR(23)47).

5.1.5 The case of Adjara

182. Since 2004, Adjara has been the focus of serious economic development, rehabilitation and opening up to investors that have left visible traces in the region. The President of the regional government has informed the Rapporteurs that, in 2011, 1,3 million tourists came to Batumi (a town of 200,000 population) and they expect a 20% increase this year. Their budget has risen to 200 million Lari (excluding teachers). They can levy five taxes and except for the VAT and customs fees, all tax receipts remain in Adjara (as opposed to other regions which lose these to the central government).

183. A Strategic Plan 2011 – 2014 was set in motion in 2011 in order to develop the region. As an example, 100 hectares of land is now being opened to projects from all countries. The region, assisted by international donors, is setting up an unemployment agency, called "Job Centres" where employers can meet professionals (there is no system of unemployment benefits in Georgia).

184. Since 2004 the population of the region increased from 115 000 to 200 000. Apparently people are coming back to Adjara because they see a potential for development there and, also, the birth rate is rising – 6 to 7 children per family is considered an average). The Adjara government is constructing a sea promenade with hotels and hope to create 8000 jobs. Apparently there is a problem of manpower. In the above-mentioned 100 hectares opened to development, 7000 job places remain vacant. The region needs to bring part of its population living in the mountain villages to Batumi and for this they need to build social housing. The Job Centres project is linked to this need by proposing to recruit and to train the work force needed for the construction effort. For the rural municipalities, there is a "village project", whereby government grants are distributed according to a formula.

185. The Rapporteurs had the impression that Adjara is a dynamic, growing region with an important bevy of "own" powers and financial autonomy and, as such, may serve as a good example of regional development for the whole country. Adjara has representative bodies elected by the citizens with their own competencies and membership to professional associations, etc. It must be underlined however, that they are dependent on the will of the central authorities in that they can be dissolved by the latter.

Competences and government structure of the regional administration

186. The status of Adjara has been defined in the Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara and the Constitution of the Autonomous Republic of Adjara., giving the region the following competences:

a. Adopting and amending the Constitution and other normative acts of the Autonomous Republic of Adjara;
b. Election of the Supreme Council of the Autonomous Republic of Adjara;
c. Determining of structure, authorization and the rule of conduct of the Government of the Autonomous Republic of Adjara;
d. Providing support to education and science, creation and governance of the cultural and scientific institutions; maintenance of the cultural monuments of local significance;
e. Libraries and museums of local significance;
f. Tourism, culture and sport;
g. Construction and urban development of local significance;
h. Roads and other utilities of local significance;
i. Participation in resolving the sanitation, health care and social insurance issues;
j. Agriculture and hunting;
k. Quality control of groceries and food products;
l. Trade fairs, markets and exhibitions;
m. According to the rules prescribed by the legislative acts of Georgia, determining and implementation of budgetary policies within the revenues of the Autonomous Republic of Adjara; elaboration, approval and control over execution of the draft budget of the Autonomous Republic of Adjara;
n. Introduction and abolition of local taxes as prescribed by Georgian law;
o. Management and administration of property of the Autonomous Republic of Adjara;
p. Archive service required for the Autonomous Republic of Adjara;
q. Forestry management;
r. Fire protection.

187. In case Adjara does not regulate any of the items listed above, then such items may be regulated by the central government within its statutory competence limits, and according to the normative act of Georgia. The present functions show that the autonomous Republic of Adjara has the competences to support and coordinate the development of the municipalities in many social spheres. From this it is clear that the regional policy and actions are to be concentrated and co-ordinated at regional level.

188. As regards disputes, although the President of Adjara is not explicitly mentioned in the text of the Organic Law of Georgia on the Constitutional Court, since the Constitutional Court protects the constitutionality and legality of the acts passed it is bound to protect the regional self-government if an act of the state bodies violates the status and functioning of the regional authorities. For any other sort of dispute the suit will pursued be in the domain of the courts of general jurisprudence.

189. Adjara, together with three regional administrations, are members of the Association of European Regions (AER).

Regional bodies

190. The Supreme Council of Adjara constitutes the supreme representative authority of Adjara, which within its competences carries out the legislative activities and exercises control over its government. The Supreme Council of Adjara consists of 15 members elected under the proportional voting system and an additional 6 through majoritarian vote, all elected for a four-year term, on the basis of universal, equal suffrage, direct and secret ballot by the citizens of Georgia residing on the territory of the Autonomous Republic of Adjara. Elections of the Supreme Council of Adjara are convened by the President of Georgia according to the rule prescribed by the Organic Law of Georgia.

191. Subject to consent of the Parliament of Georgia, the President of Georgia is entitled to dismiss the Supreme Council of Adjara if its activity endangers the sovereignty and/or if it fails to exercise the powers prescribed by the Law and Constitution of the Autonomous Republic of Adjara and if the latter twice in a row fails to approve the nominated Chairperson of Government of Adjara.

192. The Chairperson of the Government signs and promulgates the laws. He/she is authorised to return the law with remarks to the Supreme Council which votes thereon (if voted pro by the three fifths of the entire composition of the Supreme Council). Other issues related to the law-making process and approval of the budget of Adjara are regulated by the Constitution and laws of the Autonomous Republic of Adjara, subject to observance of the requirements established by legislative acts of Georgia.

193. The Government of Adjara constitutes the executive body of the region. It is composed of the Chairperson of the Government and Ministers. The structure, authorities and rule of conduct of the Government is determined by the Law of the Autonomous Republic of Adjara. According to the constitutional law, the Chairperson of the Government of Adjara nominates ministers in consultation with the head(s) of respective central governmental authority(ies) of Georgia and submits agreed candidatures for approval to the Supreme Council of Adjara. The Chairperson of the Government is deemed as approved if supported by more than a half of the total composition of the Supreme Council.

194. The ministries of Adjara may be established only in the following fields: economy, finance and tourism, health care and social welfare, education, culture and sport, and agriculture.

195. The Government of Adjara is accountable to the President of Georgia and to the Supreme Council of Adjara. The President of Georgia is authorised to suspend or annul an act of the Government Adjara if it contradicts with the Constitution of Georgia, the Constitutional Law, international agreements and treaties of Georgia and/or legislative acts of the Presidents of Georgia.

Financial resources of Adjara

196. Adjara enjoys financial autonomy, subject to limitations prescribed by Georgian legislation. It is allowed to take part of tax and non-tax revenues in accordance with the laws of Georgia and may receive the special financing from the state budget. For the purpose of ensuring implementation of the delegated powers, Adjara administers the revenues received through collection of the levied taxes and charges. Adjara has its property, the rule of formation of which is determined by Georgian legislation.

6. CONCLUSIONS

197. The Rapporteurs would like to highlight that considerable progress has been made since the Congress visits to Georgia in 2003 and 2004. A big scale reform has taken place accompanied by a change in mentalities away from the Soviet era and into international cooperation and integration with Europe. The visible political will to take Congress recommendations into account, to integrate the guiding principles of local self-government into domestic legislation and, in general, to cooperate with the Council of Europe must be felicitated.

198. The analysis of the legislation passed in the period between 2004-2012 since the last report and recommendations of the Congress shows that very considerable progress has been made in regulating the status and functions of local authorities Georgia. Many new laws as well as new amendments within the existing laws have been passed. New regulation covers all areas of local government. The most relevant in this respect are the Constitutional amendments (2010), Law of Georgia on State Supervision over activities of Local self-Government Bodies, Budgetary Code of Georgia, Election Code of Georgia, Law of Georgia of Activity of the Government of Georgia, Organic Law on Georgia on Citizen Participation, and the amendments to the most important law in this field, that is the Organic Law of Georgia on Local Self-Government. They regulate issues dealing with the principle of local self-government, concept of local self-government, scope of local self-government, protection of local boundaries, administrative structuring, administrative and financial supervision, financial resources of local authorities, etc. The vast majority of these acts and amendments are in compliance with the Charter.

199. This being said, the Rapporteurs would recommend that the principle of subsidiarity be enshrined in the Georgian Constitution. They also recommend the streamlining of the legislation, giving the Organic Law a prominent role in order to avoid all contradiction with sectoral laws.

200. Consultation mechanisms work well and NALAG has good standing in negociations with the national authorities. It has signed a Memorandum of Understanding with Parliament and the Ministry of Regional Development and both in legislation and in practice enjoys the rights provided for by the Charter.

201. As regards competences, the changes wrought in the local government structure in 2009 and 2010 increased the role of the elected councils and diminished the role of the executive branch; however given the sometimes overlapping powers, a more efficient mode of functioning might be achieved by reconsidering the distribution of competences between the Mayor and the Chair of the *Sakrebulo* in order to avoid duplication of functions. Given the list of competences listed in the Organic law as exclusive competences of local authorities, the Rapporteurs would also recommend considering the inclusion of competences related to primary and secondary education, many fields of social care and protection (homeless children, care about handicapped, alcoholics, drug addicts), institutions providing primary and secondary health care, etc. for adoption in the Georgian legislation.

202. Given the popular success of the direct election of the Tbilisi mayor and to avoid any and all conflict, the Rapporteurs invite both the government and the elected representatives to launch a debate for establishing direct elections for all mayors.

203. The coordination of local government priorities with the regional administration could be improved and, although there are programs such as the Village Support Program which intends to allow local people to decide on their priorities, it would be an improvement in the right direction to include in the legislation the principle of municipal (spending) priorities being set only by the local government bodies.

204. The Rapporteurs express appreciation of the regional development efforts, and stress that a certain degree of continuity with regard to the regional development strategy and policies in existence is indispensable for consolidating what has been achieved. This is particularly pertinent in light of the government's intention to abolish the Ministry for Regional Development bringing it under the Prime Minister's office, although this action has been postponed for one year as of December.

205. Another issue is that of financial autonomy. Local authorities' own resources constitute approximately 20% of their total revenues, the rest coming from government grants. This is a serious limitation and carries with it, particularly during a financial crisis, the risk of a government cut down on

grants. The financial capacity of local government units including the capacity to generate their own resources need to be enhanced by introducing more lucrative assets: it is not for the Rapporteurs to make detailed proposals in this respect but, it is conceivable to attribute some portion of important revenue source taxes such as the value added tax and/or the personal income tax, etc. These are both available and convenient as regards the more developed urban local authorities and would allow them to keep pace with the real evolution of the cost of carrying out their tasks.

206. Some changes in the equalisation formula appear necessary in order that the weaker municipalities can obtain higher ratio of allocation from equalisation funds than they receive now. Insisting only on developing "own resources" might not be the solution for such localities as they simply may not have the resources. On the other hand, the competences of the five big cities need to be strengthened to ensure both local autonomy and that the equalisation procedure does not work against them (it appears that, in fact, they finance all the other towns and cities in the country). A formula which is fair to all is needed.

207. As regards earmarked transfers, the Rapporteurs are of the opinion that some of the funds that are now allocated for specific purposes, particularly for construction of infrastructure facilities can be included in fiscal equalisation funds so as to enlarge the total amount of the equalisation funds that are treated as own municipal resources which can be spent according to the discretionary right of the local governments.

208. Following from the above-mentioned limitations on autonomy, we could say that local authorities have some limitations on their discretion to the use of their finances. Although the rapporteurs have been assured by many local authorities they interviewed that there is no problem in obtaining authorisations for their projects, this may well be a result of the absence of any opposition mayors at the present time. The procedures have not been tested in conditions of adversity.

209. In a similar vein, mayors and councillors the Rapporteurs met during the visit underlined that their relations with the central authorities work smoothly in general. This was perhaps related to the fact that, at the time, there were no mayors from the opposition in place in any locality and very few councillors from the opposition in city councils. After the elections of October 2012, the local government landscape went through a complete role reversal. The majority of local government actors became opposition members. As mentioned in paragraphs 35 – 39 above, a number of incidents directed at the opposition members gave rise to serious concern. In fact, one could say that the issue of the independence of local authorities have now been tested in conditions of adversity and found lacking. Whether this will have an incidence on the financial aspects of local government remains to be seen. The Rapporteurs once again call on all political forces in the country to give support to local authorities in their bid for autonomy, financial or otherwise.

210. Administrative control of municipalities might be an issue in so far as existing legislation does not provide for standards to apply to the auditing of local self-government entities, although international standards of auditing have been adopted. There is a lack of qualified experts specialising in local self-government audit and a lack of "value for money" audits, as the existing system is based on the principle of "lowest cost offered".

211. Regarding the reservations made to the Articles of the Charter at ratification, and given the promising signs that the government may be inclined to discuss the modalities of lifting them under certain conditions, the Rapporteurs encourage the Government to lift the reservations made to the Charter. In the meantime, while awaiting a debate and decision on the subject in general, as regards prior consultation in changing administrative borders, it might also be to the benefit of the population to introduce referendum as a form of direct expression of the will of citizens in changing of administrative borders.

212. The Rapporteurs welcome the new government's intention to keep local government on its agenda and to embark upon a comprehensive reform of local government - a reform project includes, according to the Public Administration Reform Concepts Developed Under the Umbrella of the Political Coalition – 'Georgian Dream', an increase in local government competences, fiscal decentralisation, transfer of resources of local importance (land and forests) to local government, election of regional councillors by popular vote, training for local authorities and citizen participation. They recommend that a close follow-up of developments in this regard as part of the post-monitoring process.

213. Georgia has signed but not ratified the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (ETS 159). It has not signed or ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). The Rapporteurs invite the Georgian Government to consider ratifying the first and signing and ratifying the latter in the near future.

APPENDIX 1

PROGRAMME OF THE CONGRESS MONITORING VISIT IN GEORGIA
Batumi, Rustavi and Tbilisi
11 - 13 June 2012

Congress delegation

Mr Ian MICALLEF	Co-rapporteur on local democracy Member of the Monitoring Committee of the Congress Chamber of Local Authorities, EPP/CD[23] Councillor, Gzira Local Council (Malta)
Mrs Helena PIHLAJASAARI	Co-rapporteur on regional democracy Member of the Monitoring Committee of the Congress Chamber of Regions, SOC[24] Chairperson of the Board of Central Finland Regional Council, Vice-Chair of Municipal Council of Laukaa (Finland)
Dr Ilija TODOROVSKI	Consultant ("the former Yugoslav Republic of Macedonia) Member of the Group of Independent Experts of the Congress on the European Charter of Local Self-Government
Congress Secretariat:	
Mr Jean-Philippe BOZOULS	Executive Secretary, Head of Department, Chamber of Local Authorities, Table Office and Statutory Committees of the Congress
Ms Sedef CANKOÇAK	Co-Secretary of the Monitoring Committee of the Congress

Monday, 11 June 2012

Head of the Adjara government and the Minister of Finance of Adjara Autonomous Republic:
- Mr Levan VARSHALOMIDZE, Head of Government
- Ms Sophio MEGRELADZE, Deputy Minister of Economy and Finances of Adjara

Mayor of Batumi and members of the City Council:
- Mr Giorgi KIRTADZE, Head of Batumi City Council
- Mr Robert CHKHAIDZE, Mayor

Heads of the City Councils of Kobulete, Khelvchauri and Shuakhevi:
- Mr Nicolas BERADZE, Head of Kobuleti Municipality
- Mr Malkhaz PHARTENADZE, Head of Khelvachauri Municipality
- Mr Juri KATAMADZE, Head of Shuakhevi Municipality

[23] EPP/CD : European People's Party – Christian Democrats of the Congress
[24] SOC : Socialist Group

Constitutional Court of Georgia:
- Mr George PAPUASHVILI, Chairman of the Constitutional Court of Georgia
- Judges

Tuesday, 12 June 2012

Members of the Georgian National delegation to the Congress:
- Mr Mamuka ABULADZE, Head of the Georgian delegation to the Congress
- Mr David CHICHINADZE
- Mr George TKEMALADZE
- Ms Sevdia UGREKHELIDZE
- Ms Tatiana BOKUCHAVA, Secretary of the Georgian Delegation to the Congress

Joint Meeting with National Associations:
National Association of Local Authorities of Georgia (NALAG):
- Mr David MELUA, Executive Director (and GIE expert)
- Mr David KATAMADZE, member of NALAG executive board, Head of Tkibuli Municipality
- Mrs Tsaro SADZAGLISHVILI, Member of NALAG executive board, Head of Dusheti Municipality
- Ms Tamar BAGRATIA, Head of Gender equality program at NALAG

The Caucasus Institute for Peace, Democracy and Development:
- Dr David LOSABERIDZE, Project coordinator (and GIE Expert)
- Mr Lika SANIKIDZE, Project coordinator for Decentralization and participation

Working Lunch with members of NGOs:
- Mr Zviad DEVDARIANI, Civil Development Agency of Kvemo Kartly
- Dr David NARMANIA, the Caucasus Institute for Social and Economic research

Parliament of Georgia and Chairs of the Parliament Committees concerning Local government:
- Mr Otar KHINIKADZE, Deputy Chairman Regional Policy, Self-Government and Mountainous Regions Committee
- Mr Shota MALASHKHIA, Chairman, Temporary Commission on Territorial Integrity Issues
- Mr Zurab MELIKISHVILI, Chairman, Budget and Finance Committee

Chairs of the Parliament Committees concerning gender equality and human rights:
- Ms Rusudan KERVALISHVILi, Gender Equality Advisory Council under the Chairperson of the Parliament of Georgia
- Mr Tordia LASHA, Chairman of the Human Rights and Civil Integration Committee
- Ms Chiora TAKTAKISHVILI, Deputy Chairperson of the Committee on Legal Issues and the Members of the Gender Equality Council

Mayor of Rustavi and members of the City Council:

- Mr Kakha GURGENIDZE, Head of City Council
- Mr Zakro DARCHIASHVILI, Mayor
- Mr George TABATADZE, Deputy Mayor
- Mr Imeda VARDIASHVILI, Head of Economic Department

Wednesday, 13 June 2012

Mayor of Tbilisi and members of the City Assembly:
- Mr Zaal SAMADASHVILI, Chairman of Tbilisi City Assembly
- Ms Nino MATARADZE, Head of International Department of Tbilisi City Hall
- Mr Koki IONOTAMISHVILI, Chair of Foreign Relations and Economic Affairs Committee

Chamber of Control of Georgia:
- Mr Shota TARKHNISHVILi, First Deputy Chairman
- Mr Georgi ALASANIA, Head of Audit Department of Social Sphere
- Mr Giorgi MAMRIKISHVILI, Deputy Head of Local Self-governing Entities Audit Department

State Ministry for Reintegration:
- Mr Irakli PORCHKHIDZE, Deputy State Minister for Reintegration

Minister of Regional Development and Infrastructure of Georgia:
- Mr Ramaz NIKOLAISHVILI, Minister of Regional Development and Infrastructure of Georgia
- Mr Mamuka VATSADZE, Deputy Minister of Regional Development and Infrastructure of Georgia
- Mr Levan CHICHINADZE, Executive Director of Municipal Development Fund of Georgia

Ministry of Finance:
- Mr Konstantine KINTSURASHVILI, Deputy Minister of Finance
- Mr Giorgi KAKAURIDZE, Head of the Department for Budget

Meeting with the Ombudsman:
- Mr George TUGUSHI, the Public Defender of Georgia

APPENDIX 2

INFORMATION NOTE ON HUMAN RIGHTS

1. There are many articles in the Georgian Constitution dealing with human rights: Article 1 (freedom of belief and religion), 2 (relations between the state of Georgia and the Apostle Autocephalous Orthodox Church of Georgia), 14 (freedom and equality before the law), 38 (equality in social, economic, cultural and political life), 43 (Ombudsman's responsibility to defend human rights).

2. The basic rights of the citizens in respect to the freedom of expression are stipulated in the Constitution of Georgia under Articles 19 (right to freedom of speech, thought, conscience, religion and belief; prohibition of persecution; no-restriction unless infringing upon the rights of others), 24 (free access to information, expression of opinion; free mass media, prohibition of censorship; no monopoly of mass media), 34 (unrestricted participation of citizens in cultural life, protection of cultural heritage).

Internally displaced people (IDPs)

3. There are 267 265[25] displaced persons in Georgia (Abkhazia and South Ossetia). In a country with a total population of 4,5 million, this is a high number and has strained the country's resources and finances particularly at the local government level.

4. The Municipal and Internally Displaced People Infrastructure Rehabilitation Project (2011-2014) funded by the government and implemented by the Municipal Development Fund aims i) to develop and rehabilitate municipal infrastructure in certain municipalities affected by the 2008 conflict, including significant irrigation infrastructure; ii) to upgrade the homes constructed by the Government of Georgia for persons displaced during the August 2008 conflict and iii) redevelop buildings for use as durable housing for IDPs from previous conflicts; and help ensure overall sustainability of interventions

Gender equality and participation

5. While there are no legal obstacles to women's participation, Georgian politics are essentially dominated by men. In 2010 only 10.9% of the candidates in single mandate constituencies and 18.2% on the proportional lists were women.[26] 169 out of 1695 councillors were women (10%).

6. A parliamentary mechanism, the Gender Advisory Council under the Chairperson of the Parliament of Georgia, has been set up, bringing together non-governmental and governmental representatives to discuss and issue recommendations on gender issues, to help ensure an equal voice to women when formulating public policy and national and local level. It is composed of members of parliament, NGOs and representatives of the executive branch of the government. It also has a special working group on Roma issues.

Minorities

7. National minorities enjoy full (political) rights under the Constitution, and make up 16.2% of Georgia's population. The two largest national minorities in the country are the Azeris and the Armenians. There are also a variety of smaller groups living within the state borders. Due to the fact that minorities often do not speak Georgian, their level of political participation is relatively low. There are no ethnic political parties; however, several parties have included members of national minorities in lists and as majoritarian candidates, nominating them in districts where minorities form a substantial part of the population.

8. There are many welcome initiatives by the authorities to address the integration of national minorities in Georgian society. The outstanding issues include, *inter alia*, improving the participation of national minorities in national and local public life, improving the system of language education for national minorities including the teaching of minority languages and Georgian as a second language, strengthening measures against religious intolerance and providing for a proper legal status for minority religions.

[25] Figures given by the Ministry of Foreign Affairs of Georgia.

[26] http://www.osce.org/odihr/elections/georgia/32017

9. Georgia ratified the Framework Convention for the Protection of National Minorities on 22 December 2005. The Advisory Committee, which monitors the implementation of the Charter in the signatory states, adopted its first opinion on 19 March 2009. Since that time, there have been a number of positive developments, such as the adoption, in April 2009, of the National Concept for Tolerance and Integration, which provides a framework for policies on national minorities. As mentioned in the report (para. 11), the recognition of Armenian as a regional language in the Samtskhe-Javakheti region has been subject to debate. It should be noted that all legislation on minority rights has been translated into minority languages. There are free of charge legal aid services (bilingual lawyers).

10. As part of its accession commitments to the Council of Europe, Georgia agreed to sign the European Charter on Regional and Minority Languages within one year of joining. More than 10 years after its accession, Georgia has yet to fulfil this commitment. The legislation provides safeguards regarding the use of the minority languages in working with the Administration, but it insists that documents must then be translated into Georgian. In the two autonomous regions of Georgia, there is *de facto* use of minority languages; however, legal documents have to be bilingual. The Government has plans to introduce "bilingual learning" in schools with minority populations so that after graduation, they can be competitive in the labour market and enjoy equal access to higher education.

11. The Council for Civic Integration and Tolerance established in 2009, composed of representatives of national minorities, deals with issues related to minorities' political participation, education, access to media etc. They supervise the translation of school textbooks into minority languages, give information on electoral law, ballots etc.

The Public Defender (Ombudsman) and other complaint mechanisms

12. The Public Defender's Office (PDO)[27], a constitutional institution, functions in accordance with the Organic Law of Georgia on the Public Defender of Georgia. It carries out functions of a national preventive mechanism and examines the situation with regard to the protection of human rights and freedoms in custody and pre-trial detention facilities. It has specialised centres for women and children, for disabled people and a Tolerance Centre for the protection of the rights of religious and ethnic minorities, and promoting their integration.

13. The PDO deals with general human rights issues originating from state instances and with maladministration. It monitors penitentiary institutions (its most visible work) and civic education, receives complaints against state authorities, makes recommendations, publishes special reports (5-6 reports per year) and one annual report published in March every year in English. Individuals can apply to the PDO when their rights and freedoms are violated under the Georgian Constitution and/or law and/or international treaties to which Georgia is the party, against actions of government officials, representatives of state authority, local authorities, NGOs, enterprises, legal entities. The service is free of charge. The PDO can make recommendations to the relevant state body, official or legal person, submit materials to investigating units in criminal cases, submit proposals to relevant agencies regarding disciplinary or administrative procedures of its employees whose action(s) have violated a citizen's rights and freedoms, inform the media about such violations. It publishes information on violations of human rights in special reports and annual reports.

14. The PDO employs 75 well-trained staff members. It receives an important amount of EU funding. It makes use of modern technology. 6-7% of complaints are received on-line and hundreds of questions are treated online, through the PDO Mailbox. All requests are answered. On Facebook, 16000 people follow the OMB. The PDO has a YouTube channel.

15. The PDO receives around 5000 – 6000 complaints a year; 10% thereof come from regional offices and 20% from Tbilisi. Regional offices were created for easy access but people use the Tbilisi office nevertheless. The Office's outreach is high. Media outlets often (once a week on average) ask the Pubic Defender to comment on various issues on radio and television, including regional and local television. He has certain popularity and a high level of trust among the citizens. The PDO is considered to be among the top five state institutions in this respect. Awareness of its activities varies according to regions. Areas with minority populations are more aware. The PDO publishes information

[27] http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1546

and documents in minority languages. For example, its complaint forms are published in Azeri and Armenian.

16. Complaints are more and more related to economic and social rights. There are of course complaints concerning prevention of torture, ethnic minority related issues, as well as issues related to disabled people (access to local transport) and gender. There have been very few cases and those were related to the dismissal of public servants from work (in one case the dismissed person was reinstated tin her job after PDO recommendation). If the administration does not reply to the PDO recommendation within 20 days, the PDO criticizes the culprit publicly and mention them in report. The local authorities in general react positively to PDO recommendations.

17. In Tbilisi there are property related issues, such as not allowing a petrol station to operate in a recreational zone. In this case the PDO recommended paying the owner compensation for his loss. Another example concerns land registries. In Adjara (Khvelchauri), plots of land were transferred to local owners, who were then deprived of their rights because the Commission changed its decision under pressure from the government who wanted that land. At the end, the local government concerned took the case to court.

18. The PDO does not take cases to court but it can deal with them while they are before a court. It can however take cases to the Constitutional Court (Chapter II of the Constitution). Recent examples concern licencing of cable TVs, assembly and association rights and alternative military service (2012).

The Tbilisi Commission

19. The Tbilisi *Sakrebulo* has a Commission for Human Rights protection and Public Relations, which monitors the protection of human rights in Tbilisi and prepares council resolutions on human rights issues. They have a 'City lawyers' program, financed from the city budget, which allows citizens to contact especially, designated lawyers in each administrative unit of the city if they believe their rights are violated. Between 2009 and 2012, 26500 cases were dealt with by these lawyers. They have 39 offices in the different districts of the city, seven of which are located around central markets to facilitate access to small and medium-sized entrepreneurs. The lawyers report to the *Sakrebulo*.

20. Human rights' training for public servants is delivered by the Training Centre of the Ministry of Justice of Georgia.