



Strasbourg, 12 January 2016

CommDH(2016)2
English only

**Observations on the human rights situation in Georgia:
An update on justice reforms, tolerance and non-discrimination**

1. On 12 May 2014, the Commissioner for Human Rights of the Council of Europe (hereinafter the Commissioner), Nils Muižnieks, published a report on Georgia following his visit to the country in January 2014.¹ The report focused on the following major issues: the administration of justice and the protection of human rights in the justice system, including measures taken to address alleged human rights abuses; and tolerance, non-discrimination and the situation of ethnic and religious minorities.
2. The Commissioner followed up on his 2014 report during the visit he conducted to Georgia from 9 to 13 November 2015. On this occasion the Commissioner met with several members of the Government and public officials,² the Public Defender (Ombudsman), representatives of civil society and international partners. During meetings in Batumi the Commissioner discussed the human rights situation in the Autonomous Republic of Adjara. On the basis of the information he received, the Commissioner noted that while there have been a number of encouraging steps taken to improve the protection of human rights in Georgia, several concerns remain, which should be addressed as a matter of priority by the authorities. The Commissioner is committed to pursuing a constructive dialogue with the Georgian leadership in this regard.

Administration of justice and the protection of human rights in the justice system

3. In his 2014 report, the Commissioner underlined that continued vigilance was needed to safeguard and reinforce judicial independence as well as to shield judges from undue interference. In particular, he recommended improving the appointment process and reviewing the three-year probationary period for judges.
4. Since May 2014, judicial reforms have taken place at a dynamic pace. Positive trends continued, such as a decrease in the concordance between the opinions of judges and those of prosecutors as well as increased transparency in the work of the High Council of Justice (HCJ). The reform of the juvenile justice system showed several positive achievements since it was engaged, such as a decrease in: the number of convictions, the use of custodial sentences and the recourse to pre-trial detention for juveniles. The Commissioner welcomes these developments and encourages the Georgian authorities to pursue their efforts, notably in light of the Juvenile Justice Code's enactment in January 2016.
5. However, a number of concerns regarding the independence and functioning of the justice system were reported to the Commissioner. Several interlocutors of the Commissioner pointed to shortcomings in relation to the selection, appointment and transfer of judges. For example, the

¹ [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 20 to 25 January 2014, CommDH(2014)9, 12 May 2014.

² Minister of Foreign Affairs; Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees; Minister of Education and Science; Minister of Justice; Minister for Reconciliation and Civic Equality; Deputy Head of the State Security Service; Deputy Chief Prosecutor; President of the Constitutional Court and Chairperson of the Supreme Court.

interviews conducted with candidate judges appear to have a formal character and do not genuinely allow for a qualitative assessment. Recently, the decision of the HCJ to fill ten vacant judge positions in the Tbilisi Appellate Court by transfer of first instance court judges and not through competition was negatively assessed, as transfers and promotions do not appear to be regulated by specific rules and criteria. Such practices feed suspicion that arbitrary decisions are being taken with regard to the appointment, transfer and promotion of judges, undermining public trust in the judiciary. In their 2014 Joint Opinion on the draft Amendments to the Organic Law on General Courts, the Venice Commission and the Directorate of Human Rights of the Council of Europe (DHR) stressed that appointment and promotion criteria for judges should be clearly indicated in the draft amendments. Competition should be the rule for all appointments and the criteria for the assignment of a judge to another court or sending a judge on mission to another court should be clearly specified.³ Recalling that the selection, appointment and transfer of judges should be transparent, merit-based and carried out in accordance with clear criteria, the Commissioner encourages the Georgian authorities to enact the necessary changes, on the basis of the recommendations provided by the Venice Commission and the DHR.

6. The introduction of a procedure for the random allocation of cases among judges on the basis of an automatic distribution system would improve the functioning of the judiciary and contribute to better shielding judges from internal and external interference, notably when it comes to high profile cases. Indeed, concerns have been raised regarding the allocation of certain cases to judges allegedly perceived to be loyal to the executive. The Venice Commission and the DHR recommended that detailed rules should be provided in draft amendments to the Organic Law on General Courts on the functioning of the electronic system and on the review of case allocations. The rules laid down in case the electronic system is out of order should be amended in order to provide all of the necessary technical indications.⁴ The existence of a three-year probationary period for judges before their appointment for life continues to evoke concern with regard to the ability of judges to adjudicate cases independently, as this renders them more vulnerable to pressure. The Venice Commission and the DHR repeatedly recommended removing the provisions on trial (probationary) periods for judges before their life-time appointment, as this can undermine the independence of judges.⁵ The Commissioner reiterates that the probationary period should be reviewed on the basis of the Venice Commission and DHR's recommendations.
7. Specific cases of alleged pressure and interference with the work of judges were brought to the attention of the Commissioner. He notably received information about repeated instances of threats and intimidation targeting judges of the Constitutional Court in relation to decisions it has taken. For example, incidents occurred in September 2015 as the Constitutional Court decision "Citizen of Georgia, Giorgi Ugulava vs. Parliament of Georgia" was made public. Reportedly, judges and their family members experienced pressure from groups of citizens who gathered in front of the private residences of judges, threw various objects and voiced intimidating statements and threats of physical violence. Another case relates to allegations of pressure exerted on the first instance court judge in the high profile court case of the TV station Rustavi 2. These judicial proceedings sparked numerous critical remarks. Most notably, many of the Commissioner's interlocutors negatively assessed the decision providing for the intervention in the station's editorial policy and changing the management board. The Commissioner stresses that allegations of unlawful interference with the work of judges should be adequately dealt with and sanctioned through relevant procedures. He also recalls that the authorities should ensure a conducive work environment for judges.
8. Several interlocutors brought to the Commissioner's attention problems in the functioning of disciplinary proceedings against judges. The Public Defender has addressed the HCJ on several occasions recommending the launching of disciplinary proceedings against judges on the basis of allegations of misconduct or gross violations of procedural norms in the adjudication process.

³ [Joint Opinion](#) of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft Law on Amendments to the Organic Law on General Courts of Georgia, CDL-AD(2014)031, 14 October 2014, paragraph 101.

⁴ *Idem*, paragraph 80.

⁵ *Idem*, paragraphs 30-33.

However, it appears that the HCJ found no violations in the cases submitted and therefore did not initiate proceedings. Several interlocutors pointed out to the Commissioner that the disciplinary system for judges has not been used at all in the last two years. In 2014, the Georgian authorities proposed amendments to the Law on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts. The Venice Commission and the DHR assessed that the draft amendments increased judicial independence and improved disciplinary proceedings. They also made a number of recommendations regarding the power of the HCJ to send a written reprimand, the majority required for HCJ decisions on disciplinary proceedings, the grounds for disciplinary liability and procedural guarantees and that the process should be public.⁶ The Commissioner underlines that it is important for judges to remain accountable and that corresponding mechanisms should properly function with a view to addressing possible abuses and avoiding any perception of impunity. He urges the Georgian authorities to proceed with the necessary changes in the disciplinary system for judges and to take the recommendations of the Venice Commission and DHR into account in this process.

9. In his 2014 report, in the context of alleged harassment of the opposition, the Commissioner urged the Georgian authorities to adequately sanction unlawful interference with the freedoms of assembly and expression as well as acts of violence. He also stressed that allegations of deficiencies marring criminal investigations and judicial processes in cases involving political opponents should be addressed.
10. The Commissioner is concerned about the alleged use of politically-motivated measures and a biased approach when it comes to members of the opposition, in particular the United National Movement (UNM). Whereas there is an overall decrease in the recourse to pre-trial detention as a preventive measure, which is a positive trend that should be pursued, problems can be observed in the use and extension of pre-trial detention in relation to members of the opposition. For example, in the case of Giorgi Ugulava, a former mayor of Tbilisi and prominent figure of the UNM, these measures were broadly perceived as aiming to keep him in detention. It also appears that opposition members and/or sympathisers face relatively harsher treatment by law enforcement and judicial bodies for alleged offences committed. For example, in October 2015, activists of the Free Zone movement, which is affiliated to the opposition, faced pre-trial detention for incidents which occurred in front of the Parliament in Kutaisi, whereas this measure was not used in the past for similar incidents – in some cases, those who had physically attacked opposition activists were only fined. In 2014, the Commissioner recalled that the judicial system should be sufficiently resilient so that its proper functioning is not disrupted by transfers of power.
11. The work of law enforcement agencies and judicial bodies should be free from political interference and should only be guided by the protection of the public interest. Despite the fact that recent changes in the Law on the Prosecutor's Office brought some improvement to the selection, appointment and dismissal procedures of the Chief Prosecutor, concerns remain regarding the work of this key institution for the criminal justice system. The Commissioner stresses that more resolute efforts should be undertaken to increase the impartiality and accountability of the work of prosecutors in practice. It is also critical that the competence and capacity of prosecutors be strengthened in order to perform effective investigations into allegations of human rights violations in accordance with the criteria defined in the case-law of the European Court of Human Rights (the Court).
12. The Commissioner received alarming information about cases of alleged abuse, including ill-treatment, in some penitentiary institutions and police stations. It appears that repeated abuse has taken place at the Kobuleti police station. While he was in Georgia, the Commissioner met with Giorgi Mdinardze, a defence lawyer who was reportedly beaten by police officials in Tbilisi when he was defending a juvenile. The Commissioner urges the Georgian authorities to effectively investigate allegations of abuse committed by law enforcement and prison officials, including on the basis of information provided by the Public Defender. In 2014, the latter referred 28 cases of alleged ill-treatment

⁶ [Joint Opinion](#) of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on making changes to the Law on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts of Georgia, CDL-AD(2014)032, 14 October 2014.

committed by police and penitentiary personnel to the Prosecutor's Office. In this respect, consideration should be given to the establishment of an independent investigation mechanism which would look into alleged violations by law enforcement agents and prison officials, on the basis of the proposals submitted by the Public Defender and other actors, such as the Council of Europe.

13. In 2014, the Commissioner encouraged the authorities to assess complaints submitted after October 2012, to prioritise cases of serious human rights abuse, and to provide victims of violations with redress. The Commissioner further stressed that the public should be provided with objective and credible information about the process and the findings. The Commissioner was informed by the authorities that efforts were undertaken to assess, categorise and investigate the complaints submitted, including those related to alleged acts of ill-treatment and illegal seizure of property. In some instances, this resulted in punishing the perpetrators and/or returning the assets in relevant cases. A Department for investigating offences committed in the process of criminal proceedings was created in the first half of 2015 within the Prosecutor's Office and is in charge of dealing with these cases.
14. The Commissioner stresses the importance of providing a detailed and comprehensive account to the public regarding the scale of human rights violations that took place, including those occurring under the former administration - for example in relation to ill-treatment in prison, illegal surveillance and other issues of public interest - and the actions undertaken to end the violations, punish the perpetrators, provide redress and compensation to the victims and prevent similar occurrences. Such an account should be discussed with different segments of Georgian society, including all political parties. Indeed, it is essential to clearly establish facts and responsibilities on issues which affected a significant part of Georgian society. More information should be accessible on the work of the aforementioned Department within the Prosecutor's Office and further means should be explored to address remaining allegations of violations, including those resulting from flawed investigations and judicial processes.

Tolerance and non-discrimination

15. In 2014, the Commissioner supported the adoption of comprehensive anti-discrimination legislation and the establishment or designation of an equality body with effective powers. He also insisted on the need to raise the understanding and awareness of the population regarding this important piece of legislation. This is indeed essential to counter any misrepresentation of the law's content and impact, as well as to make sure that it is adequately implemented. According to the anti-discrimination law adopted in May 2014, the Public Defender can receive and process applications alleging discrimination; assess whether the allegation is founded; engage a friendly settlement procedure; submit proposals and recommendations to relevant institutions of the public and private sector; apply to the court as an interested person; record and analyse data on discrimination cases; and organise public awareness activities. The Commissioner urges the Georgian authorities to establish the necessary conditions for an effective implementation of the anti-discrimination law, notably by adopting the proposed amendments to the law which are now pending before Parliament. This would enable the Public Defender to better establish facts, to continue examining a case even if administrative proceedings have been launched and to reinforce its role with regard to the private sector. The proposed changes also provide for an extension of the deadline for submitting cases to the court from three months to one year.
16. Although it was reported to the Commissioner that instances of hate crime and hate speech had increased in the last few years, legal provisions penalising racism, intolerance and discrimination remain underused. Law enforcement and judicial bodies should have a good understanding of the anti-discrimination law. As already highlighted by the Commissioner in 2014, they should be able to adequately identify, qualify and investigate hate crimes on grounds foreseen by law. The bias motive should be taken into account as an aggravating circumstance and perpetrators should receive punishment commensurate to the gravity of the offence. In this respect, the Commissioner is looking forward to the introduction of the internal guidelines of the Prosecutor's Office regarding the application of article 53.3 of the Georgian Criminal Code establishing discrimination as an aggravating circumstance. It is also crucial for the authorities, public figures and community leaders to send an

unambiguous message in favour of human rights and tolerance, and against violence, hate speech and discrimination.

17. The Commissioner urges the Georgian authorities to combat hate crimes and hate speech also on the basis of sexual orientation and gender identity. Violence against LGBTI persons and those defending their rights should be effectively investigated and adequately punished on the basis of the case-law of the Court.⁷ This notably concerns the violent incidents that took place on 17 May 2013 in Tbilisi on the occasion of the International Day Against Homophobia and Transphobia.
18. The Commissioner notes with concern that, since the publication of his report in May 2014, further cases of disputes between majority and minority religious groups, mostly around issues pertaining to religious properties and worshipping space, have resulted in reported instances of intolerance and discrimination against members of religious minorities. For example, incidents in Kobuleti around the opening of a Muslim boarding school took the form of intimidation and pressure against members of the Muslim community, including the slaughter of a pig in front of the school and the nailing of its head to the door in September 2014. In Mokhe, the dispute over the transformation of a building that the Muslim community claims as a former mosque into a public library resulted in the detention of 14 Muslim demonstrators by the police in October 2014. Intolerance, abuse and acts of violence targeting members of the Jehovah's Witnesses community continue to rise – the Public Defender documented 45 such acts in 2014. Several interlocutors of the Commissioner pointed to the inappropriate reaction and lack of impartiality of the police in relation to manifestations of religious intolerance or attacks against minority religious groups. Recalling the judgments of the Court with respect to Georgia,⁸ the Commissioner reiterates that unlawful restrictions of religious freedoms, and in particular acts of violence, should be effectively investigated and adequately punished, according to the legal provisions in force. The investigation into earlier reported incidents of unlawful restriction of religious freedoms, including those which took place in Nigvziani and Samtatskaro, should be completed.
19. On the basis of the information provided to the Commissioner, it appears that there are several issues of concern to minority religious groups which require urgent attention from the authorities, such as the return of confiscated properties, the construction of religious objects and acts of religious intolerance and discrimination as noted above. Some interlocutors of the Commissioner reported allegations of pressure on children belonging to religious minority groups in public schools. It appears that in some instances, public officials and teachers at public schools did not respect the principles of religious neutrality and secularism. The State Agency for Religious Affairs established in 2014 does not seem to be perceived by the concerned actors as an effective tool for the resolution of the aforementioned issues and the advancement of religious freedoms for all. Recalling that the marginalisation and alienation of minority groups is a direct threat to social cohesion, the Commissioner encourages the Georgian authorities to engage in a genuine dialogue with all religious denominations and to tackle issues of concern to them along a human rights-based approach.

Other human rights issues

20. While in Batumi, the Commissioner visited a semi-formal settlement on the outskirts of the city called “dream town”, which is reportedly inhabited by 900 families who relocated from the high mountainous areas of Adjara because of poverty, difficult living conditions and natural disasters. Several families, mostly eco-migrants originally, also came from the area of Tsalka that they had to leave because of housing problems. Many of the families settled in “dream town” live in substandard conditions with no running water or sewage and lack adequate healthcare and social assistance. Concerns were also raised regarding children’s access to education and insufficient care for persons with disabilities. The Commissioner urges the authorities to assess the socio-economic situation of the population living in “dream town” and provide assistance to those who are in need. Durable solutions should be proposed to address the housing and other needs of concerned families or individuals, taking into consideration

⁷ See for example the case of [Identoba and Others v. Georgia](#), Application no 73235/12, judgment of 12 May 2015.

⁸ Case of [Begheluri and Others v. Georgia](#), Application no 28490/02, judgment of 7 October 2014; case of [97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia](#), Application 71156/01, judgment of 3 May 2007.

their wishes. Additionally, more should be done to improve living conditions in the high mountainous areas of Adjara. Finally, the Commissioner encourages the Georgian authorities to address the situation of eco-migrants who settled in the area of Tsalka with a view to avoiding the deterioration of the situation between the different groups living there.