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

Honouring of obligations and commitments by Georgia

Information note by the co-rapporteurs on their fact-finding visit to Tbilisi (20 to 22 November 2017)

Co-rapporteurs: Ms Kerstin LUNDGREN, Sweden, Alliance of Liberals and Democrats for Europe and Mr Titus CORLĂȚEAN, Romania, Socialists, Democrats and Greens Group

I. Introduction

1. The recent political developments in the country continued to be dominated by the constitutional reform process that was initiated by the ruling majority following the last parliamentary elections in 2016. In this context, we also looked at the implementation of related reform processes, especially with regard to the judiciary. Important issues during our visit were the cases of Afgan Mukhtarli and Musafa Emre Cabuk, and in general the protection of the rights of persons from neighbouring countries residing in Georgia that could face politically motivated prosecutions if they returned to their home countries. In addition to our meetings, we visited the Administrative Border Line between the breakaway region of South Ossetia and the rest of Georgia. The selection process for the new Public Defender (Ombudsperson) of Georgia to replace Mr Ucha Nanuashvili, whose term ended on 7 December 2017, was taking place at the time of our visit. Given the important role of the Public Defender in Georgia, the selection process was an important topic of our discussions with political factions and civil society organisations.

2. During this visit, we met with, inter alia, the President of Georgia, the Foreign Minister, the Minister of Justice, State Minister of Georgia for Reconciliation and Civic Equality, Deputy Minister of Internal Affairs the Deputy Chief Prosecutor, the Public Defender of Georgia; the Director General of the Georgian Public Broadcaster, the Chairperson and members of the Human Rights and Civil Integration Committee and members of the Legal Affairs Committee of the Parliament of Georgia, the Chairperson and members of the Georgian Delegation to PACE; individual meetings with all parliamentary factions; representatives of non-parliamentary opposition parties; as well as members of the diplomatic community and representatives of civil society organisations in Georgia. In addition, a briefing programme was organised by the European Union Monitoring Mission (EUMM) at the occasion of our visit to the ABL. The programme of our visit is attached to this note in Appendix 1.

3. We would like to thank the Georgian Parliament for the organisation of our programme and hospitality, and the Head of the Council of Europe Office and his staff for the support given to our delegation, including with the organisation of the programme. We would also like to thank the (EUMM) in Georgia and its staff for organising the visit to the ABL. Lastly we wish to express our gratitude to the Ambassador of Romania for the hospitality extended. The statement we issued at the end of our visit is attached in Appendix 2.

II. Recent political developments and constitutional reform

4. Local elections took place in Georgia on 21 October 2017, with a second round on 12 November 2017, for those municipalities where none of the mayoral candidates had obtained an absolute majority.

¹ Document declassified by the Monitoring Committee at its meeting on 25 January 2018.

These local elections were observed by the Congress of Local and Regional Authorities of the Council of Europe in the framework of an international election observation mission with the OSCE/ODIHR. The international election observation mission concluded that fundamental freedoms were respected and candidates were able to campaign freely during these elections which were efficiently administrated. However, the dominance of the ruling party characterised the elections. Regrettably isolated cases of violence and pressure on voters had been recorded. Domestic observers concluded that the elections had taken place in line with international standards and generally without serious incidents or violations. We recall that isolated cases of violence and pressure were also noted during the recent parliamentary elections. There can be no impunity for such actions in order to prevent that they turn into a pattern during elections in Georgia. Opposition representatives have alleged that, in their view, opposition supporters were treated differently than supporters of the ruling majority by judicial authorities for similar offences, in violation of the principle of equality before the law.

5. The local elections were won in all but one of the mayoral races by the Georgian Dream (GDDG) which also came out on top in all city council elections. Countrywide, the GDDG won 55.73% of the vote, the United Nations Movement (UNM) 17.07%, European Georgia 10.41%, the Alliance of Patriots 6.56%, Labour Party 3.27%, Democratic Georgia-Free Georgia 2.58%, Unity New Georgia 1.23%, Development Movement 0.76% and the Republican Party 0.76% of the vote. These results corresponded largely to the results projected by the exit polls and parallel vote tabulation exercises. As also noted by some interlocutors, the combined number of voters for UNM and European Georgia is 27.5% which is the same percentage as they obtained in the parliamentary elections before their split. Similarly the Republican Party and Development Movement scored together 1.5% which is practically the same percentage as that obtained by the Republican Party in the parliamentary elections. This indicates that the split of these parties has not resulted in an overall increase in voters for the resulting entities but in a distribution of the previous voters' base among the factions that resulted from the split of the respective parties. Only the GDDG increased its voters' share in comparison to the parliamentary elections.

6. The constitutional reform process and its outcome have dominated the political developments in the country. On 22 April 2017, the Constitutional Commission adopted its proposal for the constitutional amendments. Many of the items of this proposal were already outlined in the information note on our previous visit that took place in March this year, just before the proposal was adopted². On 21 April 2017, seven political parties who had in total 13 members on the Constitutional Commission formally announced that they left the Constitutional Commission because of lack of agreement on a number of issues that were contained in the draft proposal of the Constitutional Commission. As a result, these representatives were removed from the membership list from the Commission and did not participate in the vote on 22 April 2017. On this occasion, the majority of the civil society representatives in the Constitutional Commission, as well as the Ombudsperson, voted against the proposed constitutional amendments due to their disagreement with some of the main aspects of the proposal.

7. The proposal adopted by the Constitutional Commission considerably changed the electoral system in Georgia, both for Parliament and the President of the Republic. The proposed constitutional amendments drastically reduce the powers of the President of Georgia. As a consequence, the Constitutional Commission proposal abolishes the direct election of the President and instead provides for the President to be elected by a 300 member Electoral Council consisting of members of parliament as well as representatives of local and regional governments. This proposal created some controversy especially given the fact that the current President has been very openly critical of the government and the ruling majority. In response to the controversy, the Constitutional Commission proposed that indirect elections for the President would only come into effect after the next presidential elections, which are due to take place in October 2018.

8. As outlined in the information note, following our previous visit, the reform of the electoral system for the Parliament was a key objective of the constitutional reform process. The Commission proposed to introduce a fully proportional system, based on closed party lists in a single nationwide constituency, instead of the current mixed proportional-majoritarian system. At the same time, and more controversially, the Commission proposed to prohibit electoral blocs, while maintaining a relatively high threshold of 5% for parties to enter parliament. In addition, the Commission proposed that all the votes for parties that would not make it past the threshold would be awarded to the winner of the elections (the so-called bonus system). This distribution formula, in combination with the prohibition of party blocks and a relatively high threshold, could give a considerable number of bonus seats to the largest party after an election and could undermine the proportionality of the election results. This in turn would have a negative effect on the pluralist make-up of the parliament and ultimately the political environment in the country.

² AS/Mon(2017) 16

9. The Venice Commission adopted its opinion on the draft constitution prepared by the Constitutional Commission during its plenary meeting on 16 and 17 June 2017. The Venice Commission concluded that the proposed new constitution was a positive step forward in consolidating and improving the country's constitutional order. With regard to the main issues in the proposed constitution, the Venice Commission welcomed the introduction of a fully proportional system before the next elections as a positive step forward to increase pluralism in the Georgian parliament. It therefore questioned the combined introduction of the prohibition of party blocs; the relatively high threshold of 5%; and the distribution formula where the winner of the elections would be awarded all votes of the parties that did not make it past the threshold. The Venice Commission therefore recommended that, as a minimum, the bonus system be abolished or changed.

10. With regard to the indirect election of the President, the Venice Commission noted that this was in line with European standards, but should be seen in the context of checks and balances, especially in a fairly centralised country with a potential domination of the work of the parliament by one party. The Venice Commission therefore recommended that, in future, reforms consideration should be given to strengthening the system of balances, for example by introducing a second chamber³, and to further strengthening the role of the opposition in the parliament.

11. The proposal of the Constitutional Commission was discussed in the Georgian Parliament on the first reading on 22 June 2017. During that discussion, the ruling Georgian Dream party proposed to postpone the introduction of a fully proportional election system until after the next elections so effectively from 2020 to 2024. As expected, this postponement of the fully proportional election system until the 2024 elections was decried by the opposition. The fact that this decision was taken by the ruling majority after it had received a favourable opinion from the Venice Commission on the draft prepared by the Constitutional Commission – which was also based on the fact that the election system would change – raised questions about the commitment of the ruling majority to achieving a consensus which was as wide as possible on the new constitution. For its part, the ruling majority stated that without the votes of the opposition – which had announced that they would vote against the constitutional amendments proposed by the Constitutional Commission – the ruling majority would not have enough votes to pass the constitutional amendments in the face of a stiff internal opposition from its own majoritarian MPs against the abolishment of the majoritarian component of the elections. It asserted it had therefore no other choice than to make a compromise with its majoritarian wing, which was to introduce fully proportional elections only in 2024, in order to ensure that the entire proposal for constitutional reform would have the required 4/5 majority to be adopted.

12. Regrettably, all efforts, including by the Venice Commission, to reach a consensus between the ruling majority and the opposition failed. According to several interlocutors, this was due to the fact that neither ruling majority, nor opposition, were seriously interested in moving away from their maximalist positions, particularly in the context of the upcoming local elections, which were announced for 21 October 2017.

13. On 26 September 2017, the Georgian parliament adopted in final reading the Constitutional amendments, including the introduction of fully proportional elections in 2024. The opposition boycotted the vote.

14. As a concession towards the opposition, the ruling majority agreed to allow election blocs for the 2020 elections, which will still take place under a mixed system, and agreed to lower the threshold for those elections to 3% instead of 5%. Moreover, the authorities agreed to drop the introduction of the controversial bonus system for the proportional elections. However, as these “compromise” provisions had not been introduced during the first reading of the Constitutional amendments, they could not be adopted as part of the Constitutional reform package on 26 September 2017. The ruling majority had suggested that the President would veto the corresponding articles in the constitutional amendments adopted on 26 September, which would have allowed for their immediate change. However, on 9 October 2017, the President vetoed the constitutional amendments all together on a far broader set of arguments, and his proposals for change contained elements that were unacceptable to the ruling majority. On 13 October 2017, the Parliament overrode the Presidential veto. A new amendments procedure was subsequently introduced to incorporate the above-mentioned concessions proposed by the ruling majority.

15. As per the proposal of the Constitutional Commission, the indirect election of the President will only be introduced after the next Presidential elections in 2018, in which the President will still be elected directly. In its opinion on Constitutional amendments, as adopted by the parliament, the Venice Commission reiterated its positive assessment of the constitutional amendments which it considers an improvement of the country's

³ It should be noted that it is a long standing position of successive Georgian governments that an upper chamber of parliament can only be introduced when the breakaway regions of Abkhazia and South Ossetia return to be fully under the control of the Georgian authorities.

constitutional order. At the same time it considered the postponement of the proportional election system until 2024 highly regrettable and a major obstacle to finding consensus on the new constitution between the different political forces in Georgia.

16. We much regret the decision by the ruling majority to postpone the introduction of the fully proportional election system, which is a key component of the constitutional reform and crucial to ensure a continuing pluralist political environment in the country. We similarly regret the apparent lack of political will of both the ruling majority and opposition to come to move away from their starting positions and to reach a compromise agreement that would have ensured a consensus which was as broad as possible on the new constitutional agreements, which we concur with the Venice Commission, is a considerable improvement of the previous situation.

17. On 14 December 2017 the parliament adopted in first reading the “compromise” amendments as well as a series of other amendments that had been drawn up in consultation with the Venice Commission to address the concerns expressed in their opinion. However, during the discussion on the first reading, a number of other amendments were introduced that had not previously been discussed with the Venice Commission. While some of them were not contentious, an amendment prepared by the Ministry of Justice raised controversy as it aimed, in effect, to limit the Constitutional Right to Freedom of Information. This amendment was strongly opposed by Civil Society as well as by several members of the ruling majority. The amendment was considerably weakened in the second reading, but remained controversial. These additional constitutional amendments were subsequently adopted in final reading on 15 December 2017, including the weakened amendment on freedom of information. The opposition again boycotted the vote on these amendments.

18. We welcome concessions made in the compromise amendments which can contribute to a more pluralist political environment after the 2020 elections in the absence of fully proportional elections. We also welcome the prompt adoption of the amendments to address Venice Commission recommendations but regret the inclusions of controversial amendments that had not been previously discussed with the Venice Commission, which could easily be construed as an attempt by the ruling majority to introduce amendments that would not have had the agreement in the Constitutional Commission or adhere to European standards. We intend to propose to the Monitoring Committee to request the opinion of the Venice Commission on these additional amendments.

19. As also mentioned by the Venice Commission, given the fact that the political environment is dominated by one party which has a constitutional majority -even if democratically elected – it is important that a proper system of checks and balances is in place. We have therefore called upon the authorities to continue exploring mechanisms to further strengthen the system of checks and balances. This is of particular importance with regard to the security and intelligence services. Several interlocutors pointed to the fact that the importance of the security services in the governance of the country has considerably increased, and they are increasingly being consulted on policies and appointments before they are made. While this is to a certain extent understandable, given the geo-political situation of the county, this needs to be counterbalanced by a strong mechanism ensuring civilian oversight over the security services, including by the opposition. During our visit, the possibility of a merger of the security and intelligence services into a single service was considered by the ruling majority, about which we expressed our concern. In a welcome development, we were informed that, following our visit, the authorities have decided to drop this proposal.

20. Especially when a ruling majority has a constitutional majority, it is crucial that the rights of the opposition are respected and that they are consulted on the governance of the country. At the same time, the opposition should respect the mandate given to the ruling majority by the citizens and go beyond merely opposing all policies originating from the government. During our visit, we were informed by several interlocutors that government ministers, including the Prime Minister, have often not made themselves available to appear before parliamentary committees, especially when their presence is requested by members of the opposition. Without wanting to discuss the merits of these claims, we wish to emphasise that, for the proper functioning of a parliamentary democracy, where the Parliament has full oversight over the government and able to hold it accountable, it is essential that the parliament is fully informed and consulted by government members, including the Prime Minister. This cannot be replaced by internal party consultations within the ruling majority. At the end of our visit we therefore called upon the authorities to ensure that the rights of the opposition were respected and where possible strengthened.

21. In the context of the on-going reforms, it is important to note that, on 10 November 2017, the EU adopted its second Association Implementation Report on Georgia⁴, in which it concluded that Georgia was

⁴ https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_georgia.pdf.

successfully delivering on its reform commitments. It welcomed the consolidation of democratic institutions as well as the adoption of a comprehensive legal framework for Human Rights and anti-discrimination.

III. Human Rights and Media

22. With regard to the ownership dispute over Rustavi 2, the government is respecting the suspension of the Supreme Court decision in the case of Rustavi 2 ordered by the ECtHR under rule 39, and all parties are now awaiting further decisions of the Court in this case. As a result, the controversy surrounding ownership dispute has somewhat subsided in the public attention. Currently the discussions about the media environment are dominated by the developments around the Georgian Public Broadcaster. Several interlocutors from civil society organisations expressed their concern that, in their view, key management and journalistic positions within the Georgian Public Broadcaster are being filled with persons that they considered to be close to former Prime Minister Ivanishvili and his family. In the view of these organisations, this has led to a considerably less critical tone of reporting by the Public Broadcaster on the government and its work.

23. During our visit, we met with the Director of the Georgian Public Broadcaster as well as with members of the Management Board and the Board of Auditors. The Director of the GPB noted that the services and programming provided by the GPB lagged far behind international standards and that reforms were therefore necessary which was not always welcomed by vested interest. In that respect, he stressed that he was the only new member of the executive board while the other members had been appointed before him. He emphasised that in his view genuine financial independence of the GPB was necessary to ensure its independence and quality of programmes and this was currently not the case. While the GPB by law was guaranteed a budget of 0.15% of the Georgian GDP to finance its operations, in practise it was not independent in the manner in which it could spend its budget and was restricted by procurement rules and decisions by the government. The GPB had proposed a number of amendments to the Law on Public Broadcasting to remedy this situation, which are currently being discussed in the Georgian parliament.

24. Georgia has been an example for the region with regard to the respect for freedom of expression and has been a safe haven for persons from other countries who fear prosecution for their beliefs and thoughts. Therefore the case of Azerbaijani journalist Afgan Mukhtarli, who was kidnapped in Georgia and illegally transported over the border with Azerbaijan to face trial in Baku, attracted considerable attention inside and outside Georgia, especially due to allegations that Georgian Security Officials could have been involved (or at least turned a blind eye) to this kidnapping. The kidnapping and allegations of collusion by Georgian border and security officials were at first investigated by the police, but later taken over by the General Prosecutor's office in line with legal provisions to prevent the police from investigating cases in which it was a suspect. During our visit we met with the Deputy Prosecutor General responsible for these investigations. While at the moment of our visit the investigation was still ongoing, we were informed that two high level officials from the state security service and border control services of the Ministry of the Interior had already been dismissed. We urged the authorities to continue the investigation and with full transparency.

25. In this context we are concerned about reports by civil society representatives of harassment of Azerbaijani residents and asylum seekers in Georgia by persons that are allegedly linked to the Azerbaijani authorities. These reports of harassment should be fully and resolutely investigated and any harassment of Azerbaijani citizens residing in Georgia should be brought to an immediate halt, irrespective of whom the victims or perpetrators may be. There can be no impunity for such actions. Equally of concern are reports that the extension of residence permits of Azerbaijani asylum seekers have been refused by the Georgian authorities on unclear and possibly questionable grounds, or that known Azerbaijani activists are refused entry into Georgia.

26. In this context we also looked at the case of Mustafa Emre Çabuk, whose extradition is requested by the Turkish government for alleged links to the Gülen movement. At the time of our visit, the Tbilisi City Court issued a decision in which it upheld the decision by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, not to grant refugee status to Mr Çabuk. Given the questions about the possibility for Mr Çabuk to receive a fair trial in Turkey, we stressed to the authorities that any decisions with regard to asylum and extradition requests should be fully in line with humanitarian and human rights law, including the European Convention on Human Rights. We were informed that in many cases, as was the case for Mr Çabuk, persons requesting asylum, or subject to an extradition request, are placed in pre-trial detention, despite there being little risk of them absconding or committing any of the other actions that would justify the pre-trial detention in line with European standards. We have urged the Prosecutor General's office to ensure that pre-trial detention is only applied for in exceptional circumstances. In a written reply after our return, the Office of the Prosecutor General stresses that, in its view, all requests for pre-trial detention in asylum and extradition cases are fully in line with

international law and standards, including the Convention, and only requested in cases where there is a high risk of absconding, as was considered to be the case for Mr Çabuk.

27. The term of the, at the time of our visit, sitting Public Defender (Ombudsperson), Mr Ucha Nuashvili, expired on 7 December. According to the amended constitution, in order to ensure the independence of the institution, the term in office of the Public Defender is limited to a single term. In the recent period some government officials and politicians of the ruling majority have harshly criticised both the person of the Public Defender and his office itself, following reports by the Ombudsperson that were critical of government policies and actions. While it is to be expected that authorities at times disagree with reports of their ombudsperson, we regret that some of the criticism was aimed at the credibility of the institution itself, which is harmful to its proper functioning and work.

28. As a result of the increasing criticism of the authorities of Mr Nanuashvili, some of our interlocutors expressed their fear that the ruling majority would attempt to appoint a new public defender that would be less independent and less critical in its actions towards the authorities. According to legal provisions, each parliamentary faction can propose a candidate – and one candidate only – for the post of Public Defender. The Georgian NGO community had proposed to the different factions a joint list of four candidates for the post of Public Defender. On 27 November 2017, the Georgian Dream faction decided to nominate one of the four NGO candidates, Ms Nino Lomjaria⁵, for the post of Public Defender. On 30 November Ms Lomjaria was appointed Public Defender by the Georgian Parliament. Her appointment was welcomed by the President of Georgia as well as by the NGO community. In a statement following her appointment we welcomed the inclusive and open process through which she was appointed, which will help maintain the high level of public trust in this important institution.

29. On 28 November 2018, the Grand Chamber of the European Court of Human Rights delivered its judgment in the case of Merabishvili⁶ vs Georgia⁷. The Grand Chamber upheld the Court judgement of 14 June 2016 that found that there had been a violation of Article 5 § 3 (entitlement of a detainee to trial within a reasonable time or to release pending trial) with regard to his continuing pre-trial detention from 25 September 2013 onwards as well as a violation of Article 18 (limitation on use or restriction of Rights), as the Court considered it established that the purpose of the pre-trial detention of Mr Merabishvili had changed over time from an investigation of offences based on reasonable suspicion to obtaining information about former Prime Minister Zurab Zhvania's death and Mr Saakashvili's bank accounts. It should be noted that this appeal and judgment concerned Mr Merabishvili's arrest and placement in pre-trial detention and not his trial and conviction itself which is subject to a separate appeal by Mr Merabishvili to the ECtHR.

30. During our roundtable with civil society organisations on the Human Rights environment in Georgia, representatives of the LGBTI community informed us that, regrettably, hate crimes against LGBTI people were on the rise. Unfortunately such cases were often not registered by the police as hate crimes and not properly investigated. In addition a number of legal hurdles still exist for LGBTI people to live, including with regard to obtaining official documents for transgender persons after a sex change operation.

IV. Judiciary

31. The new constitution contains a number of provisions that aim to improve the independence of the judiciary in the country. With regard to the Supreme Court, the members are still to be elected by parliament but now based on the proposal of the High Council of Justice (HCJ) instead of by the President of Georgia. The Chairperson of the Supreme Court is no longer ex-officio the Chairperson of the HCJ, on the contrary, the chairperson of the HCJ is now elected by the HCJ itself from among the judge members. The non-judge members of the HCJ are now to be elected by a qualified majority of 3/5 of the total number of MPs.

32. Despite the three waves of judicial reforms, which have resulted in considerable and welcome progress in establishing an independent and efficient judiciary, public trust in the judiciary continues to be low and a number of obstacles to a genuinely independent judiciary remain. According to different political actors, including from the opposition, as well as civil society organisations, the administration of the judiciary is still dominated by a number of influential individual judges and groups of judges that can shape the administration of justice and that can exercise control over individual judges. External dependence has been replaced by internal dependence, which needs to be addressed. This is compounded by the ambiguous

⁵ Ms Lomjaria is a former director of the International Society for Fair Elections and Democracy (IFSED) and former Deputy General Auditor.

⁶ Mr Merabishvili is a close ally of Mr Saakashvili and a former Minister of the Interior and Prime Minister when the UNM held the ruling majority. After the 2012 elections he became the Secretary General of UNM when it went in opposition.

⁷ Application no 72508/13.

regulations for the appointment of court chairs, which have considerable powers granted to them by law, as well as lack of clarity about the rules governing appointments, the transferring of judges between courts⁸, and initiation of disciplinary proceedings by the HCJ

V. Georgian Regions of South Ossetia and Abkhazia

33. During our stay in Georgia we paid a visit to the Administrative Border Line separating the breakaway region of South Ossetia with the rest of Georgia. This visit was organised by the European Union Monitoring Mission (EUMM) that is tasked with observing the cease fire agreement at both sides of the ABL with South Ossetia as well as Abkhazia. We deeply regret and condemn that the Russian Federation and the de facto authorities in Sukhumi and Tskhinvali continue to refuse to grant the EUMM access to the areas under their de facto control.

34. We visited the ABL in the Mtskheta area which borders the Alkhagori district of the area under control of the de facto authorities in Tskhinvali. The Alkhagori district, while administratively part of the South Ossetia oblast, was, before the war, and is still, predominantly inhabited by ethnic Georgians. It was occupied by Russian troops only after the cease fire agreement was signed, and in gross violation of it. As a result of its remoteness to Tskhinvali and its predominantly ethnic Georgian population, cross ABL traffic has been less restricted in comparison with the rest of South Ossetia, although the increasing borderisation is making that process increasingly more difficult. During our visit we could witness first hand this increasing borderisation which seems to foremost aim at making the contacts and travel between the two sides of the ABL more cumbersome and time consuming.

35. During our meeting with the State Minister for Reconciliation and Civic Equality, she highlighted the increasingly dire social and Human Rights situation of ethnic Georgian Communities in South Ossetia and Abkhazia. In Abkhazia schools teaching in the Georgian language were being closed at an alarming rate and only 11 of the 58 schools in the region inhabited by ethnic Georgians continued to teach in Georgian with the help of the Georgian authorities. She also highlighted the problems emanating from the fact that ethnic Georgians that do not accept, or are refused, an Abkhaz "passport" are deprived of inheritance rights and can only sell their property to Abkhaz "citizens" Regrettably, the mechanisms for dialogue and people to people contacts between the two sides of the ABL with Abkhazia were increasingly being dismantled by the de facto authorities in Sukhumi.

36. At the occasion of our visit, we reiterated the Assembly's respect for the territorial integrity of Georgia and inviolability of its borders and condemned to continuing borderisation and creeping annexation of the breakaway regions by the Russian Federation. We intend to make a fact finding visit to the breakaway regions of Abkhazia and South Ossetia in the framework of the formula agreed by the Committee during a visit in the near future.

VI. Additional remarks and conclusions

37. As mentioned after our last visit, over the last decade Georgia has made considerable and consistent progress in honouring its accession commitments and membership obligations and has done so in excellent co-operation with the Council of Europe. These efforts should be rightfully recognised. At the same time, a number of items remain to be fully addressed, including with regard to the independence of the judiciary.

⁸ The transfer of judges has allegedly been used, under both previous and current administrations, to punish or reward judges

Appendix 1: Programme of the fact-finding visit to Tbilisi (20-22 November 2017)

Monday, 20 November 2017

- 12:00 Briefing by the Head of the Council of Europe Office in Tbilisi
- 13:30 NGO/Expert Roundtable on Constitutional Reform (*)
- 14:30 NGO/Expert Roundtable on Media (*)
- 15:30 NGO/Expert Roundtable on HR, including on Mukhtarli and Çabuk cases (*)
- 16:30 NGO/Expert Roundtable on judicial independence (*)
- 17:30 Meeting with representatives of the extra-parliamentary opposition (*)
- 20:00 Dinner with members of the Diplomatic Community hosted by the Romanian Ambassador to Georgia (*)

Tuesday, 21 November 2017

- 09:00 Meeting with Ms Tamar CHUGOSHVILI, First Deputy Chairperson of the Parliament, Head of the Georgian Delegation to the PACE
- 10:00 Meeting with Ms Ketevan TSIKHELASHVILI, State Minister of Georgia for Reconciliation and Civic Equality
- 11:00 Meeting with Members of the faction "European Georgia"
- 11:35 Meeting with Members of the faction "National Movement"
- 12:10 Meeting with Members of the faction "The Georgian Dream"
- 13:00 Meeting with Ms Tea TSULUKIANI, Minister of Justice of Georgia
- 14:00 Working lunch with the Members of Legal Affairs Committee of the Georgian Parliament
- 15:00 Meeting with the Chairperson and Members of High Council of Justice of Georgia
- 17:00 Meeting with H.E. Giorgi MARGVELASHVILI, President of Georgia
- 18:00 Meeting with Ms Nino JAVAKHADZE, Deputy Minister of Internal Affairs of Georgia
- 20:00 Dinner hosted by Ms Sophio KILADZE, Chairperson of the Human Rights and Civil Integration Committee of the Parliament of Georgia and the Members of the Committee

Wednesday, 22 November 2017

- 09:00-09:45 Meeting with Mr Ucha NANUASHVILI, Public Defender of Georgia
- 10:00-10:45 Meeting with Mr Vasil MAGLAPERIDZE, Director General of the Georgian Public Broadcaster
- 12:00-13:30 Lunch hosted by Ms Tamar CHUGOSHVILI, First Deputy Chairperson of the Parliament Head of the Georgian Delegation to the PACE with Members of the Delegation
- 14:00 Briefing programme and visit to the administrative Boundary Line (ABL) organised by the EU Monitoring Mission (EUMM)
- 19:00 Meeting with Mr Mikheil JANELIDZE, Minister of Foreign Affairs
- 20:30 Meeting with Deputy Chief Prosecutor Mr Giorgi GOGADZE

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

Appendix 2: Statement by the co-rapporteurs issued on 28 November 2017

Georgia: call for stronger system of checks and balances, including for security services

The monitoring co-rapporteurs for Georgia of the Parliamentary Assembly of the Council of Europe (PACE), Kerstin Lundgren (Sweden, ALDE) and Titus Corlăţean (Romania, SOC), ending a visit to the country (20-22 November 2017), have welcomed the improvement of the constitutional framework in Georgia as a result of the adoption of the Constitutional amendments. At the same time, they regretted that the introduction of proportional elections, which they consider essential to ensure the pluralism of Georgia's democratic environment, was postponed until after the next general elections. In this respect, the co-rapporteurs called upon the Georgian parliament to consider adopting additional measures with a view to improving the system of checks and balances and to further strengthen the position of the opposition with regard to the governance of the country.

"In the context of the need to strengthen the system of checks and balances, we expressly call upon the authorities to ensure proper parliamentary oversight and control over the national security services. This is especially important given the reportedly increasing prominence of the security services in the governance of the country, as shown by the planned merger of the Foreign Intelligence and the State Security Services in Georgia," emphasised the co-rapporteurs.

The co-rapporteurs reiterated their concerns with regard to the abduction of the journalist Afgan Mukhtarli. They were informed about the investigation into his abduction by the office of the Chief Prosecutor and, noting the dismissal of two high-level officials of the state security and border control services of the Ministry of the Interior, exhorted the Chief Prosecutor to continue his investigation into this abduction in full transparency. In the context of the abduction of Mr Mukhtarli, the co-rapporteurs were especially concerned about reports of harassment of other Azeri residents and asylum seekers in Georgia by persons allegedly connected to the Azerbaijani authorities. "Georgia until now has rightfully had an excellent reputation as a safe haven for persons from other countries who fear prosecution for their beliefs and thoughts. Therefore the authorities should fully investigate these allegations and resolutely and promptly put a stop to any harassment of Azeri citizens in Georgia, irrespective of who the victims or perpetrators may be," stated the co-rapporteurs.

The co-rapporteurs took note of the decision by the Tbilisi City Court to uphold the decision, by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, not to grant refugee status to Mustafa Emre Çabuk, whose extradition is requested by the Turkish government for alleged links to the Gülen movement. The co-rapporteurs stressed that any decisions with regard to asylum requests or possible extradition should be based only on humanitarian and human rights law, including the European Convention on Human Rights, whose requirements should be fully applied. In that regard, they questioned the use of pre-trial detention for asylum seekers and refugees while their cases are being heard, and asked the authorities to ensure that such measures are taken only in exceptional circumstances.

At the occasion of their meeting with the Public Defender the co-rapporteurs reiterated their strong support for this important institution. Noting that the process for the election of a new Public Defender has started, they called for an open and inclusive election process and urged all political forces in the country to try to agree on a consensual candidate that would have the trust of the Georgian public and be able to maintain the independence and high quality of the work of this institution.

In the framework of their mission, the co-rapporteurs visited the Administrative Boundary Line with the breakaway region of South Ossetia, jointly with the EUMM. On that occasion they wished to reiterate their strong support for Georgia's territorial integrity and the inviolability of its borders: "We remain concerned by the on-going borderisation of the ABL. Instead of bringing people together, this process artificially increases tensions and separates people. This is unacceptable." In this context, the co-rapporteurs welcomed and expressed strong support for the important work of the EUMM in defusing tensions.

During their visit the co-rapporteurs met, among others, with the President of the Republic, the Ministers of Justice and Foreign Affairs, the State Minister for Reconciliation and Civic Equality and the Deputy Minister of the Interior, the Public Defender, the Management Board of the Public Broadcaster, representatives of individual political factions in the parliament and parliamentary committees, as well as representatives of the diplomatic community and civil society in Georgia.

The co-rapporteurs intend to return to the country in the first part of 2018.