

Background

A. Introduction: the Georgian state and minorities

The aim of this background section is to give a brief overview of the situation in the Samtskhe-Javakheti region of Georgia, and to provide references to relevant documentation.

Georgia is a multiethnic society. At least one sixth of its inhabitants belong to national minorities. Today, the problems of the ethnic minorities have to do not so much with direct discrimination but with issues of their integration and the determination of the political, cultural or legal terms on which they are to be involved in the civic or political life of Georgia. Samtskhe-Javakheti is an isolated region in the south of Georgia, predominantly populated by ethnic Armenians. Assessments by different organizations have identified a conflict potential in Samtskhe-Javakheti that stems from the dominance of the Armenian population in this part of Georgia, and the absence of broad social-political consensus in the country on political issues connected with ethnic diversity of Georgia and its internal political and administrative systems.

Constant migrations and deportations mark Samtskhe-Javakheti's recent history. Armenians have compactly resided in Southern Georgia for almost 170 years. When after the war with Turkey (1828-1829) Russia got hold of the Black Sea coast and the largest portion of the Georgian provinces of Samtskhe and Javakheti, it used the area to settle thousands of Christian Armenian families from eastern Anatolia to establish a security bell against the Ottoman Empire.

The Soviet regime made Javakheti included in the Soviet Georgian Republic. However, some districts of Samtskhe-Javakheti, along with other southern parts of Georgia, were declared a border zone that restricted the region's communication with the rest of the country. It was possible to enter the region only with the permission of Soviet border guards, which deployed their posts near the Turkish border.

B. Javakheti during Gamsakhurdia's rule

As Georgia gained independence, the rule of the first president Gamsakhurdia was marked by building of the newly independent Georgian statehood around a mono-ethnic nation through ethnic nationalism.

Gamsakhurdia's regime advocated 'Georgia for the Georgians', excluding national minorities from the state-building process by discriminative legislation as well as policies such as restrictions on land ownership by representatives of national minorities. However, one positive step was taken during Gamsakhurdia's regime – all those living in the country at the time Georgia's independence was proclaimed were automatically conferred citizenship under the so called 'zero option' regardless of how many years they had been in the country.

During Gamsakhurdia's presidency, Samtskhe-Javakheti was beyond the jurisdiction of the centre. The most serious conflict between Tbilisi and this region concerned prefects (the position introduced by the president): Armenians refused to accept prefect candidates sent from the capital because they were Georgian. Before Tbilisi agreed to make some concessions, the Provisional Council of Representatives governed the region. In February 1991 each of the 64 villages of the Javakheti region elected their representative and eight representatives were elected by the city, out of which the Council of Representatives was created.

C. Shevardnadze period

The nationalist wave of Gamsakhurdia's times started to slowly fade as Eduard Shevardnadze came to power, and in the period between 1992-1994. Shevardnadze was not a bearer of nationalist agendas, denouncing the Gamsakhurdia time policies towards national minorities as 'provincial fascism'.

There seems to have been no conscious targeted discrimination policies against national minorities under Shevardnadze. However, even as the state consolidated after 1995, the approach and policies to national minorities and their integration did not seem to address the issues of a multiethnic Georgia in a constructive way.

In 1995 a Parliamentary Committee on Human Rights and National Minority Issues was established and replaced, in 1999, by a Committee on Civic Integration that worked on, but never finalized, a very fluid concept of integration.

In 1993, even before a new constitution was adopted, the Georgian government began to divide the country into provinces and assign state commissioners to each of them. The office of state commissioner (rtsmunebuli) was established in Samtskhe-Javakheti in 1994. Boundaries of the regions were drawn on the basis of historical-ethnographic and economic factors. The territories settled by the Armenians were included in the region of Samtskhe-Javakheti (or Meskhet-Javakheti) embracing the historical Meskheta and Javakheti (six districts). By merging ethnic enclaves into larger multi-ethnic administrative bodies, the country's leadership hoped to prevent trends towards ethnic autonomies at the district level. There is no legislative base for the institution of state commissioners appointed by presidential decrees.

The Constitution of Georgia adopted on August 24, 1995 states that the administrative-territorial arrangement of the country based on the principle of the separation of powers shall be determined after the full restoration of Georgian jurisdiction on the entire territory of the state (Article 2, paragraph 3).

Article 2 of the Constitution stipulates "the territory of the Georgian state is determined by the condition of the country on December 21, 1991. The territorial integrity of Georgia and the inviolability of state borders is confirmed and recognized by the Constitution and the laws of Georgia, and also by the world concord of states and international organizations." But when the Constitution was adopted, two territorial entities had split from the country, Abkhazia and Ossetia. Constitutional Art. 2.3 delayed the territorial organization of the country until after the reconstitution of the entire territory with these two regions included. Likewise, Art.3 enumerated only the competencies of the central power of Georgia, omitting regional and local governments.

In 1993, Shevardnadze signed the enactment "On regulation of some social problems of deported peoples". The Cabinet of Ministers of the Republic of Georgia had to undertake measures aimed at facilitating the return of those families of the Meskhetian Turks who were unlawfully and forcibly deported from Georgia. Shevardnadze's subsequent decree in 1996 proposed the start of a repatriation movement of 5,000 Meskhetian Turks, who were to return by 2000. However, both provisions remained paper accords, as no actions envisaged in them have ever materialized.

Two versions of draft laws on repatriation were prepared by the head of the Georgian Repatriation Service Guram Mamulia and by the Georgian Young Lawyers' Association (GYLA). To date such agreements have not been signed with any country concerned. The law was never adopted and the issue was put on hold.

D. Saakashvili policy

The present authorities have inherited a quite complex legacy: in addition to a collapsing economy and weak state institutions, there are also the two frozen separatist conflicts in South Ossetia and Abkhazia as well as the uncertain question of how to approach Georgia's national minority issues. As Anna Matveeva has noted¹, the Georgian government has feared since the 1990s that Samtskhe-Javakheti may well also end in separatist conflict, because of the closeness of the border to Armenia, and the existence of the dominant Armenian minority, along with cultural and physical isolation from the rest of Georgia.

¹ Matveeva, Anna (2003), "Javakheti, Georgia: Why Conflict Prevention," in: Sriram, Chandra Lekha and Karin Wermester (eds.) From Promise to Practice: Strengthening UN Capacities for the Prevention of Violent Conflict. Boulder: Rienner, here: 163.

In the last Parliament the number of representatives of national minorities decreased. Under ex-president Shevardnadze their presence was strictly formal (the principle of nonparticipation through participation), and while the current Parliament cancelled the formal manipulative involvement of national minorities, it did not have a formulated strategy for facilitating their participation. However, the January 2004 Presidential election was the first in the history of Georgia when ballots were printed also in some languages of national minorities (Armenian, Azeri and Russian), thus taking the first steps to facilitating their engagement in the election process.

President Saakashvili announced that ethnic minority and integration policy would be a priority of his government. He invited non-governmental organizations to cooperate with his government on minority and conflict resolution questions. He also announced the reconstruction of the important road link between Tbilisi and the isolated Armenian-populated region of Samtskhe-Javakheti.

As Georgia has proclaimed that it is determined to do everything to integrate into Europe and declared itself a champion of democratic, pro-western changes in the post-soviet space, it is obliged to accelerate a process aimed at fulfilling the obligations it assumed upon accession to the Council of Europe (CoE). In its Resolution 1415 (2005), the CoE, while commending Georgia for succeeding in implementing some of its commitments, urged it to establish “without any further delay, [the] legal, administrative and political conditions for the start of the process of their [Meskhetian Turks] repatriation with a view to its completion by 2011”.² During his visit to Georgia in April 2005, Terry Davis, General Secretary of the CoE, once again called on Georgian officials to speed up the work on this matter. As a result, the spring of 2005 has seen some progress in Georgia’s effort to address the repatriation issue.

In November 2004, a special Governmental Commission was established to deal with the issue of repatriation of Meskhetian Turks to Georgia. However, the work of the Commission only really started when, in March 2005, the Georgian State Minister for Conflict Resolution Issues Georgi Khaindrava was appointed head of the Commission.

E. Current Situation

1. Introduction

Georgia is an ethnically diverse country. The proper handling of ethnic minorities is vital for the country’s future cohesion. Georgia’s two internal conflicts in Abkhazia and South Ossetia involve two of Georgia’s smaller minority groups. There are also important Armenian and Azeri minorities concentrated on the borders of those countries. The Muslim Meskhetians – deported from Georgia in 1944, many of which now aspire to return – represent “waiting minority”.

One of the most serious problems the ethnic minority face is the lack of knowledge of Georgian that precludes their participation in the country’s social and political life – access to media, higher education, government employment opportunities, etc.

The situation in Samtskhe-Javakheti is also quite complex by the presence of the Russian military base in Javakheti. According to the 1999 OSCE Istanbul Summit commitments, Russia has to withdraw her military bases from Georgia. On 10 March 2005, the Georgian parliament adopted a resolution on the Russian military bases deployed in the country. This aroused some unequivocal reaction in Javakheti. As early as 13 March, a mass demonstration of several thousand participants was held in the town of Akhalkalaki, the region’s centre, at which representatives of the local Armenian political organizations protested the Georgian decision. What is more, they demanded that the country’s leadership take urgent measures to improve the socioeconomic and political situation in Javakheti and recognize the 1915 Armenian genocide that took place in Turkey. The issue of withdrawal of the base is sensitive for local population not only because of their fear of loss of employment opportunities but also because of perceived insecurity vis-à-vis neighboring Turkey.

² CoE Resolution 1415 (2005) at <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta05/ERES1415.htm>

The return of Meskhetians or “Meskhetian Turks” is another issue influencing the current inter-ethnic balance in Samtskhe-Javakheti. The return of this Muslim ethnic group is perceived with fear on the part of both the ethnic Georgian as well as ethnic Armenian populations of Georgia, and Samtskhe-Javakheti in particular.

The region has two political groups, Javakh and Virk. Javakh was influential in the early 1990s and is reputed to have played a calming role during the rise of nationalism under Gamsakhurdia. Since then it has lost most of its influence. Virk is now a more credible political force. Virk advocates the administrative separation of Javakheti from Samtskhe, and the formation of an autonomous Javakheti within Georgia. Autonomy is regarded as a security guarantee rather than a means of change. Virk applied to be registered as a political party in Georgia but was rejected. The Constitution in fact prohibits any party founded on a regional basis (art. 26 para.3). It is this provision that is put forward as justification for the refusal to register Virk.

2. Status of international documents to be signed or ratified

The Council of Europe Framework Convention for the Protection of National Minorities (FCNM) was ratified by Georgia in December 2005. Even before ratification, the government has had the following position on the issue: Georgia will be able to properly observe the convention only after conflicts are solved in Abkhazia and South Ossetia. This position was indeed underlined on 18 November 2005 by the Georgian Parliament in its Declaration to the Council of Europe Framework Convention for the Protection of National Minorities. In its Declarations to the Council of Europe Framework Convention for the Protection of National Minorities, the following language can be found. “...Georgia declares that it may ensure full and guaranteed observance of the Convention’s provisions on the whole territory of the country only after the recovering of the territorial integrity of the state and the resolution of the Abkhazia and former South Ossetia autonomous region conflicts. Georgia asks for the assistance of the council of Europe and its member states to enable the full compliance with the spirit and the provisions of the Convention in regards to the population of the Abkhazia and former South Ossetia autonomous region.”³ A further problem is to define the notion of ethnic minority and develop a list of the country’s ethnic minorities. The Georgian government lacks experience in this field. The very fact that Georgia committed itself to speedily ratify the convention may be considered an illustration of such inexperience. Against this backdrop, experts of the CoE and Georgian officials reached an informal agreement to begin consultations on the problem of ratification, but these consultations have yet to commence.

In addition, the Parliamentary Committee of Civic Integration considers the possibility of adopting a National Concept on Civic Integration that will define government policies aimed at fully integrating minority populations into the Georgian society.

3. Domestic legislation

There is no specific legislation in Georgia to regulate minority rights, although the elimination of discrimination and the right to cultural individuality are secured by general laws: Georgia’s **Constitution**, specifically its Articles no. 14, 34 and 38 emphasize social, cultural and political equality of all Georgia’s citizens regardless of their national, ethnic or religious self-identification. The Constitution stipulates the state has to assist citizens in unlimited participation and emphasizes the freedom of Georgian citizens to develop their culture and use their mother tongue at home and publicly with no interference or limitation. The Constitution also stipulates that implementation of the rights of national minorities must not contradict the sovereignty or statehood of Georgia, its territorial integrity and political independence.

The Law on Citizenship (25 March 1993) granted all individuals residing in the country citizenship the moment the law was adopted. No requirements have been defined for the receipt of citizenship, and no language tests have been provided for to check whether applicants for positions of different kinds speak the state language.

³ Cited from: Georgia’s Declarations to the Council of Europe Framework Convention for the Protection of National Minorities, 18 November 2005, ECMI Press Release. URL: <http://www.ecmi.de/download/Pressrelease20051118.pdf>, downloaded: 13 December 2005.

The Criminal Code (articles 72 and 75) bans the encouragement of national, racial or religious discrimination. The right to use interpreters during trials is granted by the constitution (Article 4.2).

The Law on Education (1997) states: 'The state, pursuant to recommendations extended by self-government bodies, establishes conditions for citizens of Georgia who are not native Georgian-speakers, allowing them to receive primary or secondary education in their own ethnic language'.

The Law on Culture, adopted in 1997, proclaims the equality of all citizens of Georgia in cultural life, irrespective of nationality, ethnic affiliation, religion or language. Minorities are given comprehensive authority to set up their own organizations in the area of culture (Article 19). Article 9 grants full freedom in creative activities. Article 33 states that international cultural cooperation is a right conferred to both the state and the national minorities residing in it.

There are no specific laws on national minorities in Georgia. Provisions relating to national minorities are specified under separate organic laws, such as on education etc.

4. Selected aspects of legal implementation

National minority representatives often face problems in the legal sphere in terms of their access to legal and public information as well as to justice in as much as both the laws and all documentation in any state institutions in Georgia are in the Georgian language. There are no or very few translations of laws into minority languages.

a.) Participation

Ethnic injustice/discrimination is to a great degree expressed through the lack of participation of representatives of ethnic minorities in the country's social, political and economic life, mainly on the decision making level, typically for instance in the work of legislative and executive bodies.

There are significant regional differences in the patterns of representation of national minorities in decision-making positions. While regional governors, the 'rtsmunebuli', are ethnic Georgians as a rule, the heads of local administrations of larger regional centers can be of minority origin and in this respect the Javakheti part of Samtskhe-Javakheti is an exception: the 'gamgebeli', head of town administration, of Akhalkalaki and Ninotsminda -- the two Armenian strongholds in Javakheti -- have always been ethnic Armenian and so are other high ranking civil servants in Javakheti.

b.) Language

Language issues are among the most problematic and point out the lack of integration of the bulk of representatives of national minorities inhabiting the regions. Both in Samtskhe-Javakheti and in Kvemo Kartli the level of knowledge of Georgian among representatives of national minorities is very low, that, as a result hampers their integration into the Georgian state.

The language barrier prevents representatives of national minorities from engaging in the social and political life of the country.

c.) Education

Currently the so-called 'national schools' exist in Georgia, supported from the state budget, in which instruction is carried out in the language of national minorities. 361 national schools and 190 independent 'national' sections attached to Georgian schools currently operate.

There do exist structural issues around the institute of national schools in the Georgian educational system. Due to the low level of proficiency in the state language most students from among national minorities are disqualified from higher education in Georgian universities, and typically choose to study in their respective kin state or in Russia. This adds to the brain drain and general population 'out-flow' from the regions and further lowers the chances of young representatives of national minorities to integrate into the Georgian society.

There has been no clearly formulated strategy and tactics for the improvement of teaching of Georgian in national schools, especially in communities whose isolation prevents creation of a Georgian language environment.

In the Spring 2004 the Minister Lomaia made statements about transition of all minority schools to Georgian as the language of instruction. Although the Minister later qualified there would be at least a 10 year transition period and subjects such as the minority mother tongue and literature would be kept in the curricula, these statements initiated a wave of heated debates -- especially among national minorities and criticism by institutions such as the OSCE High Commissioner on National Minorities whose Hague recommendations advocate the possibility for national minorities to chose their language of instruction.

d.) Media

National media coverage of the regions inhabited by national minorities is low both in terms of quality and quantity, showing little appreciation of real developments in the national minority communities. The regions are virtually cut off from Georgian national media due to the language barrier.

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