



EUROPEAN CENTRE
FOR
MINORITY ISSUES

‘Towards Ratification’

CONFERENCE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Report on the International Conference,
19 September 2005 in Tbilisi

By Tom Trier & Eleonora Sambasile

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Background

With resolution 1415 of January 2005, the Council of Europe encouraged Georgia to keep up with its commitments and obligations following the change of leadership with the 'Rose Revolution', *inter alia*, by recommending that the Georgian Parliament sign and/or ratify a number of pending European conventions, honouring the obligations made when Georgia joined the Council of Europe in 1999. In the resolution, the Council of Europe urges Georgia to: *a.* sign and ratify the European Charter for Regional and Minority Languages and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, before September 2005; and to *b.* ratify the revised European Social Charter and the Framework Convention for the Protection of National Minorities, also before September 2005 (see the full text of the Resolution in Annex D).

While Georgia ratified the Social Charter on 22 August 2005, discussions on the minority and language conventions in parliament and government circles simultaneously reached a peak during the summer. Discussions largely focused on the Framework Convention for the Protection of National Minorities (FCNM), to which several leading members of Government and Parliament had made generally favourable statements, albeit with some reservations expressed. In contrast, the European Language Charter and the Convention on Transfrontier Co-operation both appear to be controversial to an extent that makes it highly unlikely that any of those two documents will be signed and ratified this year.¹

¹ Future ECMI working papers and reports will address the issue of signing and ratification of the European Charter for Regional and Minority Languages and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. ECMI expects that the Language Charter will be signed in 2006, although the question of possible recognition of the Megrelian and Svan regional

Significant hesitations as to the FCNM remained amongst Georgian decision-makers, however, and some politicians expressed concerns that the ratification of the FCNM could oblige Georgia to policies that would be counter productive to policies aimed at regional integration.

Anticipating the ratification of the FCNM by the Parliament of Georgia by October 2005,² and to assist in overcoming some of these concerns and support the Parliament and Government efforts to ratify and implement the Convention, ECMI in September organized a series of seminars and workshops involving representatives from the executive and legislative bodies engaged in the process of ratification. These meetings were designed to bring the FCNM high on the political agenda and generally enhance awareness of minority rights protection, but also to identify some of the practical obstacles that could arise during the early implementation phase.

A workshop, co-organized by the Public Movement “Multinational Georgia”, the leading umbrella association for minority organizations in Georgia, was held on 15-16 September. This workshop provided training on the FCNM for representatives of leading non-governmental organizations that are concerned with minority rights and leaders of several of the minority communities in Georgia.

In the weekend of 17-18 September a seminar was organized at the Gudauri ski resort for members of parliament and government representatives. This event brought to light a series of concerns as to the

languages remains one major obstacle for Georgian decision-makers in signing and ratifying the Charter.

² The Parliament of Georgia subsequently ratified the FCNM on 13 October 2005. A resolution was passed by Parliament upon ratification outlining seven points as to the interpretation of some of the specific provisions of the Convention. See the text of the resolution in Annex A.

implications of the Framework Convention, although by the end of the weekend it appeared that many of these worries had been allayed.

Finally, on 19 September 2005 ECMI organized a major conference on the Convention. The conference was attended by 140 participants, and served to bring public attention to the process of ratification and to the Convention as such. By the time of the conference, Georgia remained one of the few Member States of the Council of Europe that yet had to ratify this important convention. Ratification would mark a milestone in the country's declared commitment towards protecting the rights of all its citizens. Ratification would also seem an important step in Georgia's transition towards a stable democracy that keeps up with the European standards of transparent and inclusive policies.

ECMI was fortunate to engage the services of one of Europe's leading experts on the Framework Convention, Mr. Alan Phillips from the United Kingdom, and former Vice-President of the Advisory Council – the body of the Council of Europe which monitors the implementation of the Convention. Mr. Phillips played a key role on all three occasions and provided a series of detailed briefings on the purpose, spirit and nature of the Convention.

The outcome of this series of seminars and the conference was that there is a groundswell of opinion that the Georgian Parliament should, as a matter of some urgency, ratify the Framework Convention for the Protection of National Minorities as this would send a clear signal of intent, both domestically and internationally, that Georgia is committed to promoting genuine harmony and inclusiveness of all members of society regardless of their ethnic background.

ECMI was delighted to host this conference and thanks all the speakers and participants for their precious contributions and for the lively and interesting debate they generated. The present report provides the major presentations of the conference as well as a summary of the discussions.

Conference Format

The conference took place on 19 September 2005 at the Marriot Courtyard Hotel in Tbilisi, Georgia. The conference was structured as follows:

Introductory speeches:

- **Tom Trier**, ECMI Regional Representative for the Caucasus.
- **Igor Gaon**, Ambassador, Special Representative in Georgia of the Council of Europe Secretary General.
- **Teimuraz Lomsadze**, ECMI Senior Analyst and former Acting Ombudsman of Georgia (Chairman of the Conference).

Conference presentations:

- “The provisions of the FCNM, description of articles of specific interest, their interpretation and how they meet needs in Georgia in managing diversity,” by **Alan Phillips**, ECMI Consultant and former Vice President of the Council of Europe Advisory Committee for the FCNM.
- “Bringing Georgia closer to European standards for the protection of the minority rights and governance on minorities, A brief overview of the Concept on the Policy Regarding the Protection and Integration of National Minorities,” by **Eka Kemularia**, Committee on Human Rights and Civic Integration, Parliament of Georgia.

- “National minorities in Georgia – Towards equal participation,” by **Arnold Stepanian**, Chairman of the Public Movement “Multinational Georgia”.
- Discussion.
- Closing remarks, **Tom Trier**, ECMI Regional Representative for the Caucasus.

Introductory Speeches

Mr. Tom Trier, ECMI's Regional Representative for the Caucasus, welcomed the participants and introduced the speakers of the conference. He noted that the international community welcomes the progress made by Georgia in the preparations for ratification of the FCNM and that following the 'Rose Revolution' the international community has high hopes for progress with regard to the protection of minority rights in Georgia. Protection of national minorities and the implementation of European standards for governance on minority issues are high priorities of European institutions, and state practices on national minorities play an important role in the process of integration of neighbouring countries into European structures, he stated.

Mr. Trier also emphasised that the FCNM is the first legally binding multilateral instrument devoted to the protection of national minorities in general. The Convention aims to specify the legal principles which states undertake to respect in order to ensure the protection of national minorities, and following ratification by individual Council of Europe member states, the provisions of the Convention are translated into national legislation to enhance protection of national minorities.

Mr. Igor Gaon, Council of Europe Ambassador and Special Representative of the Secretary General in Georgia, emphasised the progress made by Georgia since the Rose Revolution and noted that the Council of Europe, having positively assessed Georgia's efforts, has increased its trust as well as its expectations with regard to Georgia's commitments to meet European legislative standards in general. Mr. Gaon drew attention to the international treaties Georgia has already ratified, such as the European Social Charter, which is a demanding

document requiring signatory states to undertake considerable efforts in order to comply with its provisions. In contrast to this treaty, Mr. Gaon described the FCNM as a convention whose ratification requires limited efforts in terms of ensuring compliance with its content, scope and provisions. Mr. Gaon urged Georgia to keep up with its commitments to the Council of Europe and to refrain from any further delay in the ratification process. He emphasised that ratification of the FCNM was one of the commitments when Georgia joined the Council of Europe in 1999, and that six years have passed without any progress in this field. He expressed that now the FCNM must finally be ratified without further delays, emphasizing how the FCNM will be a valuable instrument for Georgia to efficiently address the entire set of problems faced by minorities, such as the lack of knowledge of the state's official language which in turn results in unemployment, negatively affecting minority groups.

The Council of Europe Ambassador emphasised that Georgia ought to ratify the Convention without declarations on specific articles as was done by Latvia, when this country earlier in the year ratified the Convention. Mr. Gaon concluded his introductory remarks by stressing that the FCNM is a key instrument for minorities to overcome their sense of exclusion, and urged Georgia, subsequent to the ratification of the FCNM, to set up a legislative framework that can guarantee minority groups' participation into the country's socio-cultural, as well as political and economic life.

Mr. Teimuraz Lomsadze, ECMI Senior Analyst and former Acting Ombudsman of Georgia, serving as the Chairman of the event, also welcomed the participants to the conference. Recalling the progress in democratization already achieved by Georgia during the two years following the 'Rose Revolution', he highlighted how the convened

assembly is one of the many clear signs that Georgia holds a manifest interest in enhancing minority protection standards. He called for further action to be undertaken by Georgian authorities to complete the ratification process, and concluded by emphasizing the importance of implementing concrete policies that can ensure the country's stability by enhancing the level of integration of all groups, regardless of their ethnic origin, into Georgia's socio-political life, thereby celebrating Georgia's diversity and multiculturalism as a precious resource for growth and development.

The provisions of the FCNM, description of articles of specific interest, their interpretation and how they meet needs in Georgia in managing diversity.

Alan Phillips, Former Vice-President of the Advisory Committee for the FCNM.

Introduction

As a leading expert on minority issues, Mr. Phillips briefed the participants on the content and scope of the FCNM, describing it as the only comprehensive instrument of international law that protects minorities and as an effective tool for domestic legislation, policies and programs, helping governments to manage diversity with well-balanced tools that can promote integration but are strategic in preventing either assimilation or attempts at separatism.

Member States of the Council of Europe drew up the FCNM in the early 1990's while violent conflicts raged in the Balkans and the Caucasus at a time when it was feared that other conflicts might emerge. At that time

many academics and some minority organisations argued that the Convention was a weak instrument that would fail to recognise key rights, to incorporate collective rights, to address issues of autonomy, to define its beneficiaries, and to lead to an effective implementation or monitoring regime.

Mr. Phillips' presentation focused on the objectives and international political context of the FCNM, the provisions of the FCNM and how it may be interpreted with subtlety in Georgia to strike the right balance for both minorities and the society as a whole. He gave account of the architecture and content of the FCNM, the implementation of the FCNM, monitoring procedures, and ways of strengthening domestic practice.

Looking at many European countries it could be noted, Mr. Phillips said, that in many sectors of society intolerance still persists towards asylum-seekers, immigrants and towards certain ethnic minorities. The fear of the outsider is a natural phenomenon that can be exacerbated in the media or by some populist politicians concerned only about short-term advantage. One example is the discrimination against the Roms, which has continued across Europe at governmental and community levels. Rightist xenophobic political parties have attracted growing support in parts of Western Europe, and their attitudes are often left unchallenged by the State. In other parts of Europe, some States have denied the language or the very existence of minority communities. Until recently this was one of the major sources of injustice fuelling the conflict in the Kurdish regions of Turkey. Estonia and Latvia constitute other cases where there have been major tensions with the Russian-speaking community. While Estonia in the last few years has been successful in adopting a more thoughtful and liberal regime, Latvia still conducts a

policy based on exclusion of a large portion of the Russian-speakers, which continue to be non-citizens of the country.

Mr. Phillips noted that if the FCNM were effectively applied, it would help end tensions and ensure that members of minorities feel they are valuable members of the wider society in which their language and culture are respected alongside the majority language and culture. The psychology of minority protection is as important as the substance; this is crucial in showing that everyone is treated with dignity, and at the same time it undermines the agenda of extremists and political opportunists which exist in every community.

The Council of Europe adopted the text at the 95th Ministerial Session on 10 November 1994. The Council of Europe's Member States opened the Framework Convention for signature on 1 February 1995 and today 37 of the 46 members of the Council of Europe have ratified it.

The FCNM was designed to create a legally binding Convention to protect national minorities, and to promote tolerance throughout society. The FCNM Preamble refers to the protection of national minorities as being essential to stability, democratic security and peace. It emphasizes the components of a pluralist and genuinely democratic society and identifies the need for tolerance and dialogue to enrich society.

Mr. Phillips pointed to the importance of ratifying and implementing the Convention in the spirit of the Preamble to the FCNM. The Preamble, *inter alia*, emphasises that “the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage”; that the signatory states to the FCNM are “resolved to protect within their respective territories the existence of national

minorities”; and consider “that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace”. The Preamble also states that “a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity”; that “the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society” and that “the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State”. The individual articles and the implementation of these provisions should be seen in the light of the spirit of the preamble. Mr. Phillips expressed confidence that a European oriented state like Georgia would have no obstacles in subscribing to these guiding principles.

Drawing attention to article 2, Mr. Phillips also emphasized the importance of undertaking ratification in good faith to enable Georgia to become integrated smoothly into European structures and fulfil the EU Copenhagen criteria for pre-accession agreements for entry into the EU in the long term.

The effective implementation of the FCNM is essential for the development of a stable and inclusive Europe, Mr. Phillips continued, and the apparent weakness of this instrument is rather academic. Indeed, the Convention allows the flexibility needed in the real world to meet all situations, including those in Georgia.

The Convention

Describing the architecture of the Convention, Mr. Phillips noted that the aim of the FCNM is to specify the legal principles, which States undertake to respect to ensure the protection of national minorities. It contains mostly program-type provisions setting out objectives that States must fulfil. These are State obligations, not individual or collective rights, leaving the States a measure of discretion in the implementation of the objectives. States have at their disposal what is known by lawyers as a “margin of appreciation”.

The structure and the dynamics of the monitoring process have helped to create vigilance over this concern. Harmonization and consistency have been key elements in the approach of the Council of Europe. Additionally, the link with the European Union’s accession monitoring process has provided an incentive to some States to be more proactive in implementing the FCNM.

Only in article 3 of the FCNM is there a clearly expressed right. This is for every person belonging to a national minority to freely choose whether or not to be treated as such. Otherwise, the provisions are worded in general terms and contain qualifications such as ‘substantial numbers’ (articles 10.2, 11.3 and 14.2); ‘sufficient demand’ (articles 11.3 and 14.2); ‘a real need’ (article 10.2); ‘where necessary’ (article 4.2, 18.1 and 19); ‘where appropriate’ (articles 11.3 and 12.1); and ‘as far as possible’ (articles 9.3, 10.2 and 14.2).

The language focuses on persons belonging to national minorities and the Explanatory Report makes it clear that no collective rights of minorities are envisaged. However, most of the articles of the Convention have a collective dimension (e.g. article 5 on culture or

article 15 on participation) and, in practice, can only be enjoyed as a joint exercise by two or more persons belonging to a national minority.

The monitoring of the implementation of the FCNM is conducted by a non-political group of experts selected from all over Europe. Careful monitoring by the Council of Europe is essential to ensure that the Convention is being implemented in good faith and to ensure that demands from minorities are examined to see if they are reasonable. The FCNM imprecision has provided excellent opportunities like this one for non-governmental organizations (NGOs) to have a constructive dialogue with governments and the Advisory Committee (AC) on its implementation. This has placed a greater emphasis on the AC's role. It is important to scrutinize how States, the AC and the Council of Europe have interpreted the Convention. Similarly its imprecision and its margin of appreciation have enabled the very large majority of States to ratify the FCNM without any declaration on substantial issues.

The content of the FCNM

Addressing the individual articles of the FCNM, Mr. Phillips listed some of the main issues covered, including the right to self-identification (article 3); non-discrimination (article 4); full and effective equality (article 4); cultural development (article 5); freedom of association (article 7); the right to religious belief and practice (article 8); access to media (article 9); the right to use minority languages (article 10); the right to receive education in minority languages (article 12); effective participation in public affairs (article 15); effective participation in economic, social and cultural life (article 15); prohibition of measures altering proportions of population (article 16); cross-frontier contacts (article 17), etc.

Definitions of national minorities

Addressing the issue of finding a definition of what constitutes a national minority, Mr. Phillips noted that as with other international instruments for the protection of minorities, the FCNM does not define a 'national minority'. It was clear from the outset that the approach of those States that had entered declarations on whom they identified as national minorities could be problematic. This might reduce the protection that was implied in the Preamble of the Convention and could lead to different standards. Nevertheless, it would have been very difficult to reach agreement among all Council of Europe member states on what constitutes a national minority. This flexible approach has helped to ensure that the majority of member states have signed and ratified the FCNM.

Mr. Phillips emphasised that there is no need for a State to enter a declaration on who is a national minority at the time of ratification. Some will be obvious and already provided for under programs for ethnic minorities; the government should hold discussions with other groups and at the time of its first report - one year after the Convention's entrance into force - list those who are beneficiaries, while noting there should be no arbitrary distinctions made.

Mr. Phillips added that he has "always applauded those States that have used the language of article 6 to define who are national minorities, i.e. those sharing an *ethnic, cultural, linguistic or religious identity*. However, this should be interpreted widely to include minorities in compact minority areas, including Georgians".

The FCNM is a well-balanced Convention that recognizes the rights and duties of minorities as well as the benefits and responsibilities of States for good inter-ethnic relations, Mr. Phillips said and concluded: “I recommend it to you and to Georgia as a tool for cementing good inter-ethnic relations and offering principles and standards that might help discussions on conflicting issues.”

Bringing Georgia closer to European standards for the protection of minority rights and governance on minorities

A brief overview of the Parliament of Georgia Concept on the Policy Regarding the Protection and Integration of National Minorities.

Eka Kemularia, Committee for Human Rights and Civic Integration, Parliament of Georgia.

Stressing the importance of minority rights protection, especially in those regions of Georgia where minorities reside compactly, Ms. Kemularia called the attention to the insufficient participation of minority groups both in governmental affairs and in the social, economic and cultural life of the country. She called for further integration of minorities within the framework of the existing international legislation of human rights protection, to ensure that Georgia complies with the standards set by the international community. Membership of the Council of Europe as well as of other international bodies was understood by many as an incentive for Georgia to develop an effective approach that can favour integration of minorities. Yet, because of the delay in the ratification process of the FCNM, Georgia still lags behind the international community's expectations and standards. Ms. Kemularia explained that one of the main reasons for this setback lies in the absence of conceptual tools able to frame the problem of minority groups, to define the very notion of what constitutes a minority and consequently to identify the needs of minorities. The absence of a conceptual framework has, for a long time, negatively affected Georgia's legislative practice; this is why the Parliamentary Committee on Human Rights and Civic Integration, while developing the "National Minorities Civic Integration Program", has decided to set as a priority

the elaboration of a conceptual framework, which is available now as a draft document, namely the “Concept on the Policy Regarding the Protection and Integration of National Minorities”.

While drafting the Concept, the Committee has taken into very high consideration the international community’s best practices in the field of minorities’ protection, drawing on the experience of other states, especially those which, similar to Georgia, have just begun to build their democracy, Ms. Kemularia said. At the same time, the Concept takes into due account the provisions contained in several international human rights instruments that Georgia has either already recognized by means of ratification or is planning to recognize in the near future.

Ms. Kemularia further noted that the Concept that has so far been circulated is a draft version; the comments and amendments will be included in the final version with the purpose of compiling a comprehensive document, which includes:

- Conceptual principles;
- General statements;
- A chapter on self-identification of national minorities;
- Chapters on: language, education, mass media, socio-political life, justice and penitence system;
- A conclusive statement.

With respect to the definition of the constitutive elements of the concept on the notion of “national minority”, Ms. Kemularia noted that the definition proposed in the drafted Concept is open to amendments and is by no means a final one. According to the draft’s definition, a person belonging to a national minority is someone who:

- permanently resides in the State;
- belongs to a group which in number is smaller than the State's majority population;
- has a different language and/or religious belief;
- is not dominant on the entire territory of the country and does not have any other specific status;
- is settled either compactly or dispersed;
- is keen, together with other members of his group, on preserving and developing the community's self-identification.

Ms. Kemularia explained that the Concept affirms the right of every person to take part in the State's socio-economic and political life, regardless of his or her ethnic origin. Moreover, the Concept stresses that policies directed at the protection of national minorities should refrain from assimilation and make sure that the integration of national minorities takes place on a voluntary basis. Georgian language and culture should coexist with minority languages, cultures and identities. In other words, the Concept's ultimate goal is to enhance the civic integration of national minorities and to foster their participation in Georgian society as a whole; in this respect the Concept attaches great importance to the role of information understood as a vehicle of participation. Article 8 guarantees the right of persons belonging to national minorities to seek, to receive, and to disseminate information and ideas either in oral, written or printed form, and to establish their own printed media and other sources of information, which will be subject to State regulations for their creation and functioning.

Ms. Kemularia stressed that the Concept intends to address a set of large-scale problems, and therefore, it contains a series of guidelines that can serve as a legislative basis for the elaboration and implementation of concrete policies. The Concept's practical relevance is exemplified in

those provisions regulating the right of national minorities to receive financial assistance from the State's central and regional budget to support the implementation of those initiatives whose scope is to prevent the violation of minority rights. Furthermore the Concept also comprises the possibility for minority representatives and organizations to engage in fundraising activities seeking the support of any national or international donor.

Among the other problems addressed by the Concept, particular importance is attached to the issue of protecting minorities' cultural and linguistic traditions. In its chapter on languages the Concept states that "every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and public life, both verbally and in writing (art. 5.1)". In its chapter on languages, the Concept guarantees the right of persons belonging to national minorities to display announcements, street signs and topographical indications, inscriptions of both a private and a public nature, in the language of the national minority which is dominant in a given region.

The Concept further affirms the right of persons belonging to national minorities to receive education in their mother tongue; however, given the fact that the lack of command of Georgian language seems to be one the major factors hindering the participation of national minorities in State affairs, special attention is paid to the necessity of increasing the knowledge of the State's official language among persons belonging to national minorities. In this respect Georgia has already attempted to develop some effective policies: in regions where minorities reside compactly, the State provides for inclusion of minority language in the local school programs. The school program concerning minorities is worked out together with persons belonging to national minorities.

Moreover, the Georgian government has allowed the establishment of about 450 non-Georgian schools, as a result of the government's efforts to ensure minorities the right to preserve their culture. Despite these positive elements, more efforts are required to improve Georgian legislative practice and policies in the field of minority rights.

When drafting the Concept, special attention was paid to the elaboration of provisions that can regulate the participation of minorities in the public and political life of the country. Article 9 states the right for national minorities to establish their own NGOs, associations and other public organizations, and to take part in the decision-making processes with respect to the elaboration of policies affecting the field of minority rights protection. Moreover, the Concept envisages the creation, both regionally and locally, of special advisory bodies in which minorities will be represented in a relevant number, and whose main focus will be the implementation of policies specifically addressing the minority issue.

The amended version of the Concept comprises a special chapter on the participation of minorities' representatives into the governmental bodies and public administration offices. In regions where minorities reside compactly, persons belonging to national minorities have the right to use their language in administrative bodies. Regional administrative bodies will comprise a given number of employees able to speak the minority language. In the same spirit, the use of minority language in public debates will be guaranteed; however, the written documentation related to those debates will be translated into the State's official language.

Ms. Kemularia noted that, overall, Georgia already meets several of the pre-conditions to the implementation of the above-mentioned principles; nevertheless, further steps need to be taken to improve Georgia's legislative framework. Many agree that the elaboration of a

comprehensive legislative text on minority rights protection might be problematic given the highly diverse composition of Georgian society. Minority groups residing in Georgia differ in number, type of settlement, history of migration, etc; all these complexities and differences could hardly be comprised in one all-inclusive legal act, hence it is advisable to elaborate a package of laws which could better reflect this wide variety.

Ms. Kemularia drew attention to the Concept's final statements, according to which a follow-up on the Concept's provisions is envisaged through the elaboration of corresponding legislative acts, amendments to current obsolete legislation, creation of state programs, decrees, orders and other relevant acts to be emanated by central, regional and local authorities. More precisely the Concept anticipates the development of the following programs:

- 1) State Program for strengthening and promoting the use and knowledge of the State's official Language
- 2) State Program concerning the employment of persons working in Russian military basis on the territory of Georgia
- 3) State Program for the establishment of a network of civic education centres
- 4) State Program for the development of a network of governmental and non-governmental organizations addressing the issue of national minorities' integration into Georgia's civil society.
- 5) State Program for the establishment of centres for the promotion of both Georgian and national minorities' culture.

The concept has been submitted to several Parliamentary Committees; in October it is to be read by the Parliament. While drafting the Concept, consultations were held with members of the Government and

Parliament, with NGOs, international organizations and institutions, such as the Council of Europe, as well as with representatives of minority groups. All their remarks have been taken into account and will be reflected in the Concept's final version.³

National Minorities in Georgia – towards equal participation

Arnold Stepanian, Chairman of the Public Movement “Multinational Georgia”

In his speech, Arnold Stepanian began by drawing attention to the links between Georgia's historical developments and the progress and drawbacks characterizing Georgia's current policies for the protection of minority rights.

Mr. Stepanian noted that after Georgia regained its independence, the civil society building process became an issue of high concern for many politicians; yet, up to the present moment, despite the attention drawn to minority issues, the main problems affecting minority rights protection remain unsolved. Attempts to strengthen civil society and enhance the development of democratic governance has undergone several contradictory stages, which have resulted in the rise of tensions, intolerance and mutual mistrust resulting in fragmentation of society at the expense of peace and stability. During the last decade the issue of national minorities has often been manipulated in the political discourse.

³ By early December 2005, the Concept is still to be completed by the Committee and submitted for adoption by Parliament. On 7 November 2005, ECMI submitted a number of comments and recommendations to the Committee for Human Rights and Civic Integration, with a special view to its adherence to the FCNM and *the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*, which Georgia is also a signatory state.

Hence, minority groups have often been presented as a factor of destabilization and as a threat rather than as a resource that could contribute to the state-building process.

During the last 15 years of independence, Mr. Stepanian suggested, three stages can be distinguished in the evolution of the State's attitude towards minority groups and their position in Georgian society.

The first stage coincides with the immediate aftermath of the Soviet Union's breakdown: the radical nationalist forces that came into power in Georgia implemented discriminatory policies undermining the position of national minorities in society (at that time national minorities constituted over 30% of Georgia's population). This negative attitude resulted in the escalation of conflict and the exclusion of national minorities from decision-making powers and from the State administrative bodies. As a result, while acquiring all necessary attributes of sovereignty, the newly created independent state of Georgia lacked one of the most important components of modern statehood, i.e. a developed civil society, and one third of the population - the ethnic minorities - were excluded from the civil society building process.

The second stage took place after the radical and nationalist president Zviad Gamsakhurdia was dismissed, and the former leader of the Georgian Soviet Republic, Eduard Shevardnadze, who had a broad understanding of Georgian society's problems and concerns, came to power. His appointment resulted in the reasserted control over the interethnic confrontations that had just started in Kvemo Kartli and in Samtskhe-Javakheti regions as well as in Tbilisi. Perceptions that stability closely depended on the President's mediating role increased the belief or fear that his eventual removal from office would open the

way to new interethnic conflicts. Undermining the President's position would mean undermining the country's stability.

Although the President's role was regarded as a guarantee for interethnic stability in Georgia, in practical terms no concrete action or policy aiming at fostering peaceful interethnic coexistence ever took place; neither did any attempt to consolidate the civil society, which meant that the country's stability rested on a cult rather than on concrete policies and legislative provisions.

The third stage of Georgia's independence began with the 'Rose Revolution'. The period preceding the Rose Revolution was marked by a radicalization of interethnic distrust and intolerance, which brought into question the very existence of national minorities in Georgia. Since 2004, the society has calmed down, and the declaration of equality of all citizens, regardless of their ethnic and religious background, has regained a new emphasis. However, up to the present moment many problems of ethnic minorities remain unsolved.

In summary, the last 15 years of Georgia's history have seen the exacerbation of interethnic problems, Mr. Stepanian said; the government's inability to find effective solutions and to implement concrete policies has resulted in drastic demographic changes: between 1989 and 2002 the number of ethnic minorities in Georgia has declined from 1.613.000 to 710.000 people, i.e. national and ethnic minorities' presence has decreased by 56%, while according to official statistics, the ethnic Georgian population has decreased by only 3% during the same period.

Factors influencing the inactivity of minorities

Mr. Stepanian underlined that Georgia's future development depends on the level of integration of national minorities and that the government has to find a solution to preserve the ethnic identity and culture of national minorities, granting them equal rights and conditions.

Some of the major factors hindering the integration of national minorities are the lack of knowledge of Georgian language and, related to this issue, the lack of access to information. Despite the implementation of a language program, major problems still persists; this leads to the conclusion that the new language program itself is ineffective. The Georgian government has proved, up to the present day, incapable of efficiently addressing these and other problems.

Notwithstanding the fact that representatives of the largest ethnic groups can receive education in their mother tongue, and have the possibility to fulfil their cultural needs, there is still an urgent need to achieve the democratic standards in the field of human and minority rights protection.

Inefficiency of the education system, inefficiency of the land reform process, scarce control over natural resources, insufficient participation, weak infrastructure, lack of communication/ information - all of these problems are the results of the negative attitude of both the government and the national minorities, Mr. Stepanian said.

Towards equal participation

Mr. Stepanian went on to say that another very urgent issue concerns the lack of participation of minorities in the political decision-making process. National minorities are still underrepresented in governmental, parliamentary and public administrative bodies. Mr. Stepanian drew the

attention on statistical data providing an account of the national minorities' representation: according to official statistics, representatives of national minorities represented in the supreme legislative body of the country have never exceeded 6% of the members' total number.

Mr. Stepanian pointed out that a general attitude in society is based on prejudices towards representatives of national minorities and their participation in the country's political life. Different ethnic origins are still regarded negatively by the majority population; hence discriminative attitudes are widespread and this fact nurtures the minorities' feeling of being excluded.

As a matter of fact, in central bodies of governance there are only very few representatives of ethnic minorities; in regions they are denied the right to take part in the political life; the legislation of Georgia prohibits the organization of the national minorities into ethnic political parties.

The Georgian Constitution provides for general guarantees for the protection of basic minorities' rights. For instance article 14 recognizes the principle of equal treatment before the law for all persons regardless of ethnic origin. In the same spirit, article 38 recognizes equal rights for all members of national minorities in the economical, political, cultural and other spheres of life.

Despite the existence of this and other constitutional guarantees, Georgia's legislative framework still lacks the full range of more specific provisions that could ensure the effective protection of the rights of national minorities: there are no legal provisions concerning the necessary knowledge of the state language, no legislative act accounts for the possibility of establishing political parties and organizations on the basis of ethnicity; there are no mechanisms that institutionalize

dialogue between minority groups and the State's central, regional and local authorities.

Mr. Stepanian urged the implementation of specific measures that can reduce the distance between the political elite and the representatives of national minorities, thereby creating an incentive for their inclusion into the socio-political life of the country.

Legislative basis of Georgia in the field of human rights protection.

Georgia has to a certain extent complied with the standards set by the international community for the protection of minority rights. As a proof of Georgia's compliance, reference can be made to both Georgia's internal legislation as well as to the international treaties Georgia has already ratified. Mr. Stepanian, however, highlighted that despite the existence of a fairly rich legislative framework, Georgia's engagement in the field of minority rights remains characterized by the weaknesses in the implementation mechanisms.

Mr. Stepanian further noted that the two basic European documents in the field of minority rights, namely the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, have not yet been ratified. The delay in the ratification process is a sign that Georgia still needs to improve and work on awareness raising measures to make sure that national and ethnic minorities are granted the necessary attention and degree of protection.

Practical measures must be taken, Mr. Stepanian urged, in order to enhance dialogue among all the parts of society, to ensure that Georgian authorities engage in a constructive dialogue with representatives of

national minorities, and to guarantee the exercise of equal rights to members of all the groups constituting Georgian society.

Mr. Stepanian regretted the prevalent attitude according to which “minorities are either less active or socially less important” and the perception that they are “a threat to the national unity”. On the contrary, he noted, minorities’ inclusion into Georgian society is a key element in allowing the country to achieve stability, increase democratic standards and build a heterogeneous and enriched civil society.

Discussion

The presentations triggered a lively debate. Among the discussed issues, the definition of what constitutes a minority group generated a wide range of contributions and opinions. Some argued that the term “ethnic/national minority” in itself is discriminatory, implying that ethnicity needs to be understood as a negatively distinctive element. Some suggestions were made concerning the possibility of replacing the term “ethnic minority” with more neutral terms, such as for example “ethnic community”.

Comments were also made with regard to certain provisions of the FCNM, especially those provisions directed at the protection of minority languages. Some argued that encouraging the use of minority languages could further increase the lack of command of the Georgian language among minority groups. In his response, Mr. Phillips recalled the lessons learned in Finland, where excellent results had been achieved during the process of implementation of the FCNM, and where the Swedish minority learn Finnish and Swedish side by side. He also highlighted that the FCNM, while encouraging the signatory States to refrain from

assimilation policies, does not encourage the creation of linguistic or cultural ghettos; on the contrary, it emphasizes the importance of maintaining minority languages together with the State's official language.

Concerns were raised with regard to the possibility of manipulating the content of the FCNM to turn it into an instrument for supporting secessionist and separatist discourses, thereby undermining the country's territorial integrity. Again Mr. Phillips called the attention on the fact that, far from encouraging separatism, the FCNM is based on the assumption that when minority rights are protected, this will in fact provide for further guarantees of the integrity and stability of the State.

Drawing on the examples of other signatory States, some participants envisaged the possibility of ratifying the Convention with certain declarations. In this respect, the Chairman of the Conference, Mr. Lomsadze, noted that Georgia has already undergone a series of relevant efforts to comply with the international legislation. The FCNM, he continued, is a flexible document whose ratification should not pose any problem to the extent that it does not conflict with Georgian internal legislative and constitutional provisions. Mr. Lomsadze urged the FCNM to be ratified without any declarations.

Mr. Stepanian's speech gave rise to mixed reactions. Some argued that he had presented a biased view of the current Georgian scenario, over dramatizing the drawbacks of Georgian legislative and executive practices, and at the same time omitting the progress Georgia has achieved recently. Others welcomed and applauded Mr. Stepanian's frankness and his critical approach, and in harmony with his speech, called for Georgian authorities to engage in further efforts to improve the country's democratic standards, enhance the level of civil society's

participation and elaborate a systematic action plan that can ensure an effective implementation of the legislative framework for the protection of minority rights. In the same spirit, some remarks were made with regard to the need of granting representatives of national minorities the right to organize along ethnic lines, so that the representation of their specific interests can be better pursued. Mr. Stepanian added that, with regard to the question of self-identification and definition, representatives of ethnic communities do not, and indeed never did, want to be perceived as a minority. They feel that they belong to the country; they feel as Georgians and they want to be regarded as such. According to Mr. Stepanian, however, the question of self-identification, although controversial to a certain extent, is not the most urgent one; the current state of things requires a new strategic thinking, it requires changes in mentality to overcome the existing prejudices. Mr. Stepanian, therefore, urged the establishment of implementation mechanisms that can consolidate an effective practice of integration and promote civil society capacity-building process for ethnic/national minorities, in accordance with the country's constitutional guarantees and the provisions contained in other legislative documents that the country will hopefully adopt (such as the 'Concept', the FCNM, the European Charter for Regional or Minority Languages and others).

Some of the participants expressed doubts as to Georgia's preparedness to implement the FCNM, and suggested to interpret the delay in ratification as proof of the fact that Georgia might not yet be ready for such a commitment. Mr. Phillips, addressing some of the concerns raised, drew attention to the Preamble of the FCNM and article 2, and noted that he was convinced of Georgia's readiness for ratification. He further noted that the lively debate, in which the participants had engaged, largely mirrored the discussions many other European countries faced at the time of ratification. Mr. Phillips said that he firmly

believed that a constructive debate could help Georgia find solutions to the expressed concerns, in line with the catalogue of consolidated European experiences and best practices. He also stressed that the government could benefit from the work of ECMI and other international organizations in making the FCNM come into life in Georgia.

Mr. Trier concluded the discussion by once again emphasizing the importance of the FCNM, urging Georgia not only to ratify it, but equally importantly, to establish corresponding mechanisms for its implementation. Mr. Trier expressed faith in Georgia's future developments and the willingness in the country to engage in a constructive majority-minority dialogue to the mutual benefit of the citizens of the country and offered ECMI support in the process of implementation.

Mr. Trier closed the conference by thanking the speakers for their informative presentations and all the participants for their engagement in the discussions.

Annex A

Resolution of the Parliament of Georgia⁴ On the ratification of the Framework Convention for the Protection of National Minorities

(Unofficial translation from Russian original version by ECMI)

The Parliament of Georgia resolves:

1. To ratify the Strasbourg Framework Convention for the Protection of National Minorities of 1 February 1995.

2. To take into account, with the ratification of the Framework Convention for the Protection of National Minorities (further “the Convention”) the following:

a) Georgia bases the interpretation of the term “national minorities” on the below mentioned criteria and considers that the status of “national minority” can only be conferred to a group of individuals in case members of the group:

- are Georgian citizens;
- differ from the dominant part of the population in terms of language, culture and ethnic identity;
- have been living on the Georgian territory for a long time;
- live in compact settlements on the Georgian territory;

b) In conformity with article 10 of the Convention, Georgia assumes the obligation to guarantee to persons belonging to a national minority the assistance of a translator in relations with administrative organs and in legal proceedings, thereby enabling them to enjoy the right to use the minority language as granted to them by the above mentioned article. Georgia also assumes the obligation to create, as far as possible, the conditions enabling persons belonging to national minorities to learn the State language;

c) In conformity with article 11.1 of the Convention, the obligation to write, in official documents, first names and surnames of persons

⁴ The Resolution of the Parliament was passed on 13 October 2005 with a 125-5 vote. Although the Resolution provides a definition of the notion of ‘minority’ and enlists a number of declarative statements on the interpretation of the FCNM, the Chairman of the Committee for Human Rights and Civic Integration, Mrs. Elena Tevdoradze, at a meeting with ECMI on 8 November, stressed that the resolution was been passed as an internal resolution, and that the document has not been submitted as a declaration contained in the instrument of ratification deposited to the Council of Europe.

belonging to national minorities in Georgian language in a way that respects, as far as possible, their pronunciation in the minority language is established by internal legislation;

d) In conformity with article 11.3 of the Convention, situations concerning the use of street names and other topographical indications in Georgian and in minority languages in regions traditionally inhabited by a significant number of representatives of national minorities are settled by internal legislation. Georgia does not consider this right granted to national minorities as obliging the State to change existing names of territorial units and considers it inappropriate to sign further international treaties on the above-mentioned issue;

e) Georgia shares and agrees with the goals and the spirit of article 16 of the Convention. At the same time this article shall not concern settlement processes that may take place after resettlement of victims of ecological or technical catastrophes on the territory of the country, and of persons living in zones considered dangerous for their life and health. In addition the above-mentioned article shall not concern temporary or permanent settlement of refugees and forced displaced persons;

f) In relation to article 18 of the Convention, Georgia declares that the protection of national minorities' rights is recognized by the Constitution, the legislation of Georgia, conventions, treaties and agreements to which Georgia has acceded and which recognize and protect the rights of national minorities. Accordingly, Georgia recognizes the requirements envisaged by the Convention, but considers it inappropriate to sign further international treaties on the above-mentioned issue;

g) In relation to article 30 of the Convention, 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. The requests foreseen by point 2 of the present resolution form an integral part of the decision of the Parliament of Georgia on the ratification of the Convention for the Protection of National Minorities.

Speaker of Parliament

Nino Burjanadze

Tbilisi

13 October 2005

Annex B

ECMI Press Release 21 September 2005

GEORGIA PREPARING FOR RATIFICATION OF FRAMEWORK CONVENTION ON MINORITIES

The European Centre for Minority Issues on 19 September organised a major conference on the Council of Europe Framework Convention for the Protection of National Minorities at Marriott Courtyard Hotel in Georgia's capital Tbilisi. Georgia's parliament is expected to ratify this international convention next month, honouring the obligations made when Georgia joined the Council of Europe in 1999. Ratification will mark a milestone in the country's declared commitment towards protecting the rights of all of its citizens. Georgia remains one of the few member states of the Council of Europe that has yet to ratify this important convention.

The Council of Europe's Ambassador to Georgia and Special Representative to the Secretary General, Mr. Igor Gaon, said in his opening speech that he welcomed the ratification and that he hoped the ratification would finally take place in October after 6 years of delay. Mr. Gaon also emphasised that Georgia should ratify the minority convention without declarations as was done by Latvia, when this country earlier in the year ratified the Convention.

The Regional Representative in the Caucasus for the European Centre for Minority Issues, Mr. Tom Trier, said at the conference that the ratification of the Minority Convention would be a milestone in enhancing the standards for Georgia's policies on national minority issues. He also emphasised that "protection of minority rights and the provision of European standards for governance on minority issues are high priorities of European institutions, and state practices on national minorities play an important role in the process of integration of neighbouring countries into European structures".

The Framework Convention for the Protection of National Minorities is the first legally binding multilateral instrument devoted to the protection of national minorities in general. The Convention aims to specify the legal principles, which states undertake to respect in order to ensure the protection of national minorities.

The conference, which was attended by 140 participants, marked the end of a series of events organized by the European Centre for Minority Issues in Georgia that were designed to raise awareness over the contents of the Minority Framework Convention. A workshop was held on 15-16 September in Tbilisi for the leading non government organisations that are concerned with minority rights issues and leaders of many of the minority communities in Georgia.

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On 17-18 September a working retreat took place in the Gudauri mountain resort for members of parliament and government representatives. This occasion brought to light a series of concerns regarding the Framework Convention, although by the end of the weekend it appeared that many of the concerns had been allayed.

ECMI was fortunate to engage the services of one of Europe's leading experts on the Framework Convention, Dr. Alan Phillips from the United Kingdom, who is former Vice-President of the Advisory Council on the Convention, the body that monitors the implementation of the Framework Convention. Dr. Phillips addressed all three occasions and explained in length the purpose, nature and spirit of the Convention.

The events were all marked by lively debate over the issue of the Framework Convention and the broader issue of minority rights in Georgia. It became apparent that while the Georgian parliament and government is committed to seeking ratification of the Framework Convention it does not wish for this to be a mere paper signing exercise. Several parliamentarians and government officials noted that ratification would presage a series of policy initiatives and reforms that will lead to the further integration of minorities into Georgian society while also respecting and protecting diversity. Hence, the Parliamentary Committee for Human Rights and Civic Integration is currently preparing a "Concept on the Policy Regarding the Protection and Integration of National Minorities", which is expected to be passed by parliament shortly after the ratification of the Framework Convention.

The outcome of the seminars and the conference is that there is a groundswell of opinion that the Georgian Parliament should as a matter of urgency ratify the Framework Convention for the Protection of National Minorities as this would send a clear signal of intent both domestically and internationally that Georgia is committed to promoting genuine harmony and inclusiveness to all members of society irrespective of their ethnic background.

For further information, please contact Mr. Tom Trier, ECMI Regional Representative for the Caucasus at tel. +995 32 22 38 33.

Annex C

Framework Convention for the Protection of National Minorities

Strasbourg, February 1995

Introduction:

The Framework Convention for the Protection of National Minorities, drawn up within the Council of Europe by Ad Hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1 February 1995. Non-member States may also be invited by the Committee of Ministers to become Party to this instrument.

Framework Convention for the Protection of National Minorities

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on

Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.

3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2 The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

Article 18

1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Section III

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Section IV

Article 24

1 The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.

2 The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

1 Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.

2 Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.

3 The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

1 In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.

2 The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

Section V

Article 27

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

1 This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

1 After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.

2 In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 30

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

1 Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 32

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;
- d. any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.



Annex D

Parliamentary Assembly Resolution 1415 (2005)¹

Honouring of obligations and commitments by Georgia

1. A year after coming into power, the new Georgian authorities continue to demonstrate an unyielding resolve to carry out far-reaching political, legal, social and economic reforms. They continue to enjoy the broad support of the general public and the international community. The authorities' achievements so far, in particular the peaceful reintegration of Adjara, are positive developments, but the authorities should maintain, and even accelerate, the pace of reforms in accordance with Council of Europe standards and principles. The Parliamentary Assembly welcomes the progress the Georgian authorities have made in the fight against corruption, the reform of police forces and the protection of religious freedom. It also welcomes the election of the new ombudsman; the creation of civil monitoring groups at police stations throughout the country; the harmonisation of media legislation with Council of Europe standards; the full decriminalisation of libel; and the steps taken to transform state television into a public broadcasting service.

2. The government's efforts to carry out reforms are conducted against the background of persisting instability in South Ossetia and Abkhazia. The co-rapporteurs fully understand the problems the authorities are facing because of the unresolved conflicts with the two breakaway regions. They urge the Georgian leadership to maintain their restrained approach and continue to seek a peaceful political solution. At the same time, it is essential to preserve the momentum of political and economic reforms. A successful, open, tolerant and democratic Georgia is the best asset in the efforts to peacefully resolve the confrontation with the present South Ossetian and Abkhaz regimes and restore the country's territorial integrity.

3. In this regard, the Assembly is encouraged by President Saakashvili's initiative to propose a peace plan for the two breakaway regions. It calls on the Georgian authorities to negotiate its terms with representatives of South Ossetia and Abkhazia, who should seize every opportunity to end the two long-standing conflicts and their damaging consequences for all the citizens of Georgia. The Assembly also calls on the Russian Federation to do its utmost to support the peace process and the restoration of the territorial integrity of Georgia.

4. Full compliance with membership obligations will help Georgia to reinforce its political stability and democratic security. The list of remaining commitments contains obligations

¹ *Assembly debate* on 24 January 2005 (1st Sitting) (see Doc. 10383, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Eürsi and Mr Kirilov).

related to virtually every major challenge Georgia is facing today, from the fight against corruption, the protection of human rights and rights of minorities and the reform of the judiciary, to the efforts to restore the territorial integrity of Georgia through peaceful means.

5. In Resolution 1363 adopted in January 2004, the Parliamentary Assembly agreed to reconsider deadlines for Georgia's commitments to the Council of Europe as a sign of understanding and support to the new authorities. These deadlines are listed in paragraph 9 below. It should however be clear from the outset that there will be no subsequent negotiations and extensions and that the Assembly expects the Georgian Government to honour their promises fully and in time.

6. The extent of corruption and lawlessness in Georgia under the previous government resulted in the extraordinary character of the transition – the Rose Revolution. A year later, it is time to normalise the situation and bring the political process firmly back to the country's institutions. The post-revolutionary situation should not become an alibi for hasty decisions and neglect for democratic and human rights standards. The priority is to build solid and lasting foundations for a stable, prosperous and democratic Georgia for the generations to come.

7. The Rose Revolution and the two subsequent elections, viewed on the whole as free and fair by the international observers, resulted in a very strong government, which may be an asset in dealing with the country's political, economic and security problems, provided that a strong government is accompanied by an effective system of checks and balances. This is not yet the case. Today, Georgia has a semi-presidential system with very strong powers of the president; a weak parliamentary opposition; a weaker civil society; a judicial system which is not yet sufficiently independent and functioning; underdeveloped or non-existent local democracy; a self-censored media and an inadequate model of autonomy in Adjara.

8. The Assembly therefore asks the authorities to create conditions in which a strong and efficient system of democratic checks and balances will emerge and begin to function. They should have a positive attitude to dialogue, be open to advice and also be prepared to engage in discussions on issues that have aroused public criticism. In the present circumstances this is one of the key requirements for the success of the reforms.

9. The Assembly, after having consulted the Georgian authorities, sets the following deadlines for the compliance with commitments and obligations and asks Georgia to:

i. with regard to Council of Europe conventions:

a. sign and ratify the European Charter for Regional and Minority Languages and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, before September 2005;

b. ratify the revised European Social Charter and the Framework Convention for the Protection of National Minorities, before September 2005;

ii. with regard to constitutional issues:

a. commit itself to the creation of a second parliamentary chamber to provide for the representation of its autonomous regions at state level, once South Ossetia and Abkhazia are politically and administratively reintegrated into Georgia;

b. revise the recently adopted autonomous model for Adjara in the context of territorial and administrative reform of Georgia, in line with the opinion of the Venice Commission;

iii. with regard to the Meskhetian population: create, without any further delay, legal, administrative and political conditions for the start of the process of their repatriation with a view to its completion by 2011;

iv. with regard to the 1990-94 conflicts:

a. adopt a legal framework for the restitution of ownership and tenancy rights or compensation for the property lost during these conflicts, by September 2005;

b. ensure that internally displaced persons enjoy equal rights with the rest of the population, particularly when it comes to employment and housing;

v. with regard to local self-government: complete the territorial and administrative reforms before the next local elections and ensure that they are carried out in line with the European Charter of Local Self-Government, especially concerning the election of all mayors;

vi. with regard to the functioning of the judiciary and the police:

a. complete the reform of the judicial system, the public prosecutor's office and the police, in strict compliance with Council of Europe standards and in close co-operation with the Organisation's experts;

b. before the entry into force of the recent constitutional amendments regarding the appointment of judges of the Supreme and the Constitutional Courts of Georgia, consult Council of Europe experts in order to ensure their compatibility with Council of Europe standards and principles. The Assembly is particularly concerned that some of the proposed changes, in particular the exclusive right of the President to nominate candidates for judges combined with the provision that all sitting judges will be dismissed upon entry into force of the new rules, but also the possibility that judges may serve two consecutive instead of one single mandate, may have a negative effect on the independence of these crucially important judicial institutions;

vii. with regard to the fight against corruption: intensify efforts to eradicate this phenomenon through long-term structural measures, in line with the GRECO recommendations and fully respecting the rule of law and human rights;

viii. with regard to the rule of law and human rights:

a. critically review the present practice of the "plea bargaining" system which – in its present form – on the one hand allows some alleged offenders to use the proceeds of their crimes to buy their way out of prison and, on the other, risks being applied arbitrarily, abusively and even for political reasons;

b. consider taking urgent measures to alleviate the dramatic overcrowding in prisons and pre-trial detention centres, including through amnesty for some vulnerable categories of prisoners, such as ill, young and elderly offenders, expanded criteria for, and use of, non-custodial sentences, and broader application of alternatives to pre-trial detention;

c. eradicate the "culture of violence" which continues in Georgian prisons and pre-trial detention centres and has included incidents of torture and ill-treatment by law-enforcement officers, through effective preventive measures, systematic investigation of allegations, including timely medical examination, and forceful sanctioning of proven incidents;

d. immediately eradicate all forms of torture.

10. The Assembly recalls that the decision to reconsider these deadlines for Georgia's commitments, taken in January 2004, was a result of the extraordinary events that occurred in the country. Consequently, this decision should in no way be considered as a precedent for reconsidering deadlines set by the Assembly in its opinions concerning the accession of other member countries.

11. In order to consolidate the system of democratic checks and balances, the Assembly asks the Georgian authorities to review the constitutional changes of February 2004, by taking into account the opinion of the Venice Commission, especially with regard to the strong powers of the President. Before the next parliamentary elections, they should also lower the electoral threshold of 7% in order to create conditions for a pluralist and genuinely representative parliament.

12. The Assembly finally encourages the Georgian authorities to intensify their efforts to resolve the outstanding conflicts with South Ossetia and Abkhazia in a peaceful and political manner. At the same time, it calls on the Russian Federation to use its substantial influence to back these efforts and help to create conditions to guarantee the broad autonomy of South Ossetia and Abkhazia and to restore the territorial integrity of Georgia. The Assembly welcomes the recent initiative for bilateral parliamentary dialogue between Russian and Georgian authorities and offers its good offices to help this initiative to bear fruit.

13. The Assembly resolves to continue its monitoring procedure and to review Georgia's compliance with its commitments and obligations in October 2005.

Text adopted by the Assembly on 24 January 2005 (1st Sitting).