

GEORGIA

CCPR A/52/40 (1997)

228. The Human Rights Committee considered the initial report of Georgia (CCPR/C/100/Add.1) at its 1564th to 1566th meetings (fifty-ninth session), held on 26 and 27 March 1997, and at its 1583rd meeting, on 9 April 1997, adopted the following concluding observations.

1. Introduction

229. The Committee notes with interest the initial report submitted by Georgia and welcomes the dialogue it has had with a high-level delegation. It notes with satisfaction that the delegation of Georgia was able to supplement the report and provide clarifications concerning the legal provisions in force and their scope, and on the reform that is under way, which has enabled the Committee to have a somewhat clearer picture of the human rights situation in Georgia.

2. Factors and difficulties affecting the implementation of the Covenant

230. The Committee notes that Georgia is still experiencing the influence of the totalitarian past, which has created feelings of mistrust and insecurity among the citizens. In addition, the State party is still suffering from the effects of conflicts in South Ossetia (1992) and Abkhazia (1993-1994), which gave rise to serious violations of human rights, including massive population displacements, and the Government is having difficulty exercising its jurisdiction in those areas in respect of the protection of human rights.

3. Positive aspects

231. The Committee notes the assurances given by the head of State that the enjoyment of human rights would become a priority in Georgia.

232. The entry into force of the 1995 Constitution - even though it does not fully reproduce the rights guaranteed under the Covenant - and the establishment of the Constitutional Court, to which any citizen alleging a violation of his constitutional rights can have recourse, are viewed by the Committee as encouraging signs.

233. The Committee notes with satisfaction the abolition of the internal passport (propiska), which was an impediment to freedom of movement as provided for under article 12 of the Covenant.

234. The reform of the Criminal Code and the Criminal Procedure Code, coupled with the restructuring of the Prokuratura with the aim of limiting its role to that of a prosecuting body stripped of the prerogatives which it formerly enjoyed and which enabled it to interfere in judicial

decisions, are viewed by the Committee as signs of progress.

235. While regretting the under-representation of women in the organs of government and the inequalities which persist in the economic and social spheres, the Committee is pleased that discrimination against women before the law and in education has lessened.

236. The Committee welcomes the State party's efforts to afford more active protection for the human rights of minorities with a view to guaranteeing them the free expression of their cultures and use of their languages.

4. Principal subjects of concern

237. The Committee deplores the fact that no remedies were available to victims of events occurring in 1992, 1993 and 1994, enabling them to seek redress for violations of their rights as provided under article 2 of the Covenant. In that connection, the Committee notes that the State party was bound by the provisions of the Covenant from the date on which the country became independent, and hence also during the period preceding its declaration of accession, since it must be considered to have succeeded to the obligations undertaken by the former Soviet Union, of which it was an integral part until it proclaimed its independence.

238. The Committee regrets that the Covenant, although directly applicable under domestic law, is not invoked before the courts. In addition, it considers that the failure to nominate anyone to the post of Ombudsman, which was established in May 1996, denies an effective remedy to persons alleging a violation of their fundamental rights.

239. The Committee regrets that, in spite of the elimination of inequalities before the law, women continue to be the victims of unequal treatment and discrimination in the political, economic and social spheres. It further notes with concern that methods of contraception other than abortion are very difficult to obtain.

240. The Committee fears that the moratorium that has been instituted on the carrying out of death sentences is a weak palliative. In spite of the reduction in the number of offences carrying the death penalty, those offences are still too numerous and some of them do not come within the category of the most serious crimes envisaged in article 6 of the Covenant. The Committee also deplores the fact that some capital sentences appear to have been imposed in cases in which confessions were obtained under torture or duress or following trials in which the guarantees provided under article 14 of the Covenant were not respected, particularly the right to have a case reviewed by a higher court (art. 14, para. 5, of the Covenant).

241. The Committee is deeply concerned about cases of torture inflicted on individuals deprived of their liberty, including torture used to extract confessions. It deplores the fact that those cases and other acts of torture usually go unpunished and that in many cases lack of confidence in the authorities keeps the victims from lodging complaints.

242. The Committee deplors the abuse of pre-trial detention and police custody. The limits placed on those measures by the Constitution are often not observed in practice, in disregard also of the provisions of article 9 of the Covenant.

243. The Committee is deeply concerned about the disastrous prison situation; crowding, poor sanitary conditions and lack of medical care have resulted in a high rate of infectious disease and a very alarming mortality rate, in particular among juvenile detainees. The Committee stresses that the State party does not comply with the provisions of article 10 of the Covenant, according to which all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

244. The Committee is concerned at the continuing close relationship between the procurator and the judges; it fears that, in the absence of any statute enforcing the independence of the judiciary, the impartiality of decisions cannot be guaranteed and that the executive may exert pressure on the judiciary.

245. The Committee notes with disquiet that court proceedings do not meet the conditions required by article 14 of the Covenant; for example, although the law provides for access to the assistance of counsel, in practice this is made difficult because of excessive bureaucracy.

246. The Committee regrets that, despite the elimination of the propiska, obstacles to freedom of movement remain within the country. It notes with concern that there continues to be a great deal of corruption in this area.

247. The Committee emphasizes that the vague and overly general characterizations of crimes and the difficulty of determining their constituent elements (insubordination, sabotage, etc.) have allowed political opponents of the Government to be prosecuted.

248. The Committee regrets that because of the absence of legislation concerning the exercise of freedom of association, it has not been possible to establish free trade unions so that workers may exercise their rights under article 22 of the Covenant.

249. The Committee is concerned at the increase in the number of children affected by poverty and social dislocation and the concomitant increase in the number of street children, delinquents and drug addicts.

5. Suggestions and recommendations

250. The Committee invites the Government to provide all individuals under its jurisdiction with an effective remedy and compensation for violations of their human rights found to have occurred since independence in 1991.

251. The Committee recommends that the State party appoint an ombudsman as soon as possible and that procedures be established to give effect to the Committee's findings under the Optional

Protocol. The Committee urges the Government to ensure the legitimacy and authority of the Committee for Human Rights and Ethnic Relations and to define the relationship between that Committee and the Ombudsman.

252. The Committee urges the authorities to continue the moratorium on executions and to continue the serious efforts that have been made towards abolishing the death penalty.

253. The Committee recommends that the State party undertake systematic and impartial investigations into all complaints of ill-treatment and torture, bring to trial persons charged with violations as a result of those investigations, and compensate the victims. Confessions obtained under duress should be systematically excluded from judicial proceedings and, given the admission of the State party that torture had been widespread in the past, all convictions based on confessions allegedly made under torture should be reviewed.

254. The Committee recommends that detention and pre-trial detention should be carried out in accordance with the requirements of the Constitution and the Covenant. It stresses, *inter alia*, that all persons who are arrested must immediately have access to counsel, be examined by a doctor without delay and be able to submit promptly an application to a judge to rule on the legality of the detention.

255. The Committee urges the State party to take urgent steps to improve the situation in prisons, in particular, sanitary conditions. It invites the State party to reduce the use of imprisonment as a punishment for minor violations and of pre-trial detention for excessive periods.

256. The Committee recommends that the authorities put an end, once and for all, to the restrictions on freedom of movement within the country and on the right to leave the country.

257. The Committee urges the State party to enact a law guaranteeing the independence of the judiciary and providing for its total autonomy vis-à-vis the procurator and the executive.

258. The Committee urges the State party to guarantee the rights set forth in article 14 of the Covenant, in particular by remedying the deficiencies with regard to the exercise of the right to defence and the right to appeal. The creation of an independent legal profession is, in the Committee's view, a necessary precondition for the effective enjoyment of such rights.

259. The Committee earnestly recommends that the State party, in connection with the revision of the Penal Code, repeal those provisions which make it possible to prosecute political opponents for their beliefs under cover of upholding the law.

260. The Committee invites the State party to enact laws making it possible for trade unions to be formed and to carry out their activities freely in defence of the rights of workers.

261. The Committee urges the State party to take urgent steps to protect children, in accordance with the provisions of article 24 of the Covenant.

262. The Committee recommends that educational and training programmes be drawn up with a view to developing a culture of respect for human rights in all sectors of the population, inter alia, judges, the security forces and prison personnel. Those programmes should also emphasize that women are entitled to full enjoyment of their fundamental rights.

263. The Committee recommends that the report of the State party, together with these concluding observations adopted by the Committee, be widely disseminated and that the text of the Covenant be disseminated in all languages commonly used in the country.

CCPR A/57/40 vol. I (2002)

(78) Georgia

(1) The Committee considered the second periodic report of Georgia (CCPR/C/GEO/2000/2) at its 1986th and 1987th meetings, held on 18 and 19 March 2002. At its 2001st and 2002nd meetings, held on 28 March 2002, it adopted the following concluding observations.

Introduction

(2) The Committee welcomes the detailed report and its timely presentation by the State party. It regrets, however, that although information is provided on legislation relating to the Covenant obligations, the necessary information on the practical implementation of the Covenant is lacking.

Positive aspects

(3) The Committee appreciates the significant progress achieved in Georgia since the submission of its previous report. That progress is the basis for a positive political, constitutional and legal framework for the implementation of rights enshrined in the Covenant.

(4) The Committee commends the State party for its abolition of the death penalty and the ratification of the Second Optional Protocol to the Covenant.

(5) The Committee welcomes the creation of the Rapid Reaction Group, the function of which is to visit police stations and other places of detention to carry out investigations promptly in response to complaints.

Principal subjects of concern and recommendations

(6) The Committee expresses satisfaction at the creation of a Constitutional Court, but it remains concerned that current procedures impede access to the Court.

The State party should reform the procedures for access to the Constitutional Court in order to guarantee full protection of the human rights enshrined in the Covenant.

(7) The Committee expresses its concern at the still very large number of deaths of detainees in police stations and prisons, including suicides and deaths from tuberculosis. The Committee also remains concerned about the large number of cases of tuberculosis reported in prisons.

The State party should take urgent measures to protect the right to life and health of all detained persons as provided for in articles 6 and 7 of the Covenant. Specifically, the State party should improve the hygiene, diet and general conditions of detention and provide appropriate medical care to detainees as provided for in article 10 of the Covenant. It should also ensure that every case of death in detention is promptly investigated by an independent

agency.

(8) The Committee remains concerned at the widespread and continuing subjection of prisoners to torture and cruel, inhuman or degrading treatment or punishment by law-enforcement officials and prison officers.

(a) The State party should ensure that all forms of torture and similar ill-treatment are punishable as serious crimes under its legislation, in order to comply with article 7 of the Covenant;

(b) The State party should also set up an effective system to monitor the treatment of all prisoners, in order to ensure full protection of their rights under articles 7 and 10 of the Covenant;

(c) The State party should also ensure that all complaints of ill-treatment are properly investigated by an independent authority, that those responsible are brought to justice and that victims are appropriately compensated;

(d) Immediately upon first being deprived of liberty and during all stages of detention, free access to a lawyer and to doctors should be ensured;

(e) All statements obtained by force from detained persons should be investigated and may never be used as evidence, except as evidence of torture; and

(f) The State party should provide training in human rights, particularly on the prohibition of torture, to police and prison officers.

(9) The Committee is concerned at the length of the period (up to 72 hours) that persons can be kept in police detention before they are informed of the charges against them. It is also concerned at the fact that, until the trial takes place, the accused cannot make a complaint before a judge regarding abuse or ill-treatment during the period of detention.

The State party should ensure that detainees are informed promptly of the charges against them, in accordance with article 9 of the Covenant. Detainees should be given the opportunity to make a complaint before a judge regarding any ill-treatment during the investigation phase, as required by articles 7 and 14 of the Covenant.

(10) The Committee expresses its concern at the fact that a person may be detained and imprisoned or prevented from leaving his or her residence because of non-fulfilment of contractual obligations.

The State party should bring its civil and criminal legislation into line with articles 11 and 12 of the Covenant.

(11) The Committee expresses its concern at the difficulties that detainees and persons charged

with an offence have in gaining access to lawyers, particularly court-appointed lawyers. Although the law provides for the latter, budgetary problems are obstructing the enjoyment of this right.

The State party should ensure the full enjoyment of the right to be represented by a lawyer in accordance with article 14, paragraph 3 (d), of the Covenant; this includes appropriate budgetary provisions for an effective system of legal aid.

(12) The Committee expresses its concern at the existence of factors which have an adverse effect on the independence of the judiciary, such as delays in the payment of salaries and the lack of adequate security of tenure for judges.

The State party should take the necessary measures to ensure that judges are able to carry out their functions in full independence, and should ensure their security of tenure pursuant to article 14 of the Covenant. The State party should also ensure that documented complaints of judicial corruption are investigated by an independent agency and that the appropriate disciplinary or penal measures are taken.

(13) Although the Committee recognizes that some progress has been made in efforts to achieve equality for women in political and public life, it remains concerned at the low level of representation of women in Parliament and in senior public - and private-sector jobs.

The State party should take appropriate measures to fulfil its obligations under articles 3 and 26 in order to improve the representation of women in Parliament and in senior positions in the public and private sectors as provided in article 3 of the Covenant. The State party should also consider measures, including educational ones, to improve the situation of women in society.

(14) The Committee notes with concern that domestic violence against women remains a problem in Georgia.

The State party should take effective measures, including the enactment and implementation of appropriate legislation, training of police officers, promotion of public awareness and, in more concrete terms, human rights training to protect women against domestic violence, in accordance with article 9 of the Covenant. The State party should provide concrete information on the situation of domestic violence.

(15) The Committee remains concerned at the continuation of practices which involve trafficking in women in Georgia.

The State party should take measures to prevent and combat this practice by enacting a law penalizing trafficking in women, and should fully implement the provisions of article 8 of the Covenant. The Committee recommends that preventive measures be taken to eradicate trafficking in women and provide rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.

(16) Although the Committee welcomes the appointment of an Ombudsman, it notes with concern that her functions are not clearly defined and her power to implement recommendations is limited.

The State party should clearly define the functions of the Ombudsman, ensure her independence from the executive, provide for a direct reporting relationship with the legislature, and give her authority in relation to other State agencies in accordance with article 2 of the Covenant.

(17) The Committee notes with deep concern the increase in the number of acts of religious intolerance and harassment of religious minorities of various creeds, particularly Jehovah's Witnesses.

The State party should take the necessary measures to ensure the right to freedom of thought, conscience and religion as provided in article 18 of the Covenant. It should also:

(a) Investigate and prosecute documented cases of harassment against religious minorities;

(b) Prosecute those responsible for such offences; and

(c) Conduct a public awareness campaign on religious tolerance and prevent, through education, intolerance and discrimination based on religion or belief.

(18) The Committee expresses its concern at the discrimination suffered by conscientious objectors owing to the fact that non-military alternative service lasts for 36 months compared with 18 months for military service; it regrets the lack of clear information on the rules currently governing conscientious objection to military service.

The State party should ensure that persons liable for military service who are conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant.

(19) The Committee expresses its concern with respect to obstacles facing minorities in the enjoyment of their cultural, religious or political identities.

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection from discrimination and that the members of such communities can enjoy their own culture and use their own language, in accordance with article 27 of the Covenant.

(20) The Committee is concerned at the harassment of members of non-governmental organizations, particularly those defending human rights.

The State party should ensure that non-governmental organizations can safely carry out their

functions in a manner consonant with the principles of a democratic society.

Dissemination of information about the Covenant

(21) The Committee requests the State party to publicize the text of these concluding observations in the appropriate languages and to ensure that the next periodic report is widely disseminated among the public at large, including non-governmental organizations active in Georgia.

(22) Pursuant to article 70, paragraph 5, of the rules of procedure of the Committee, the State party is requested to transmit, within 12 months, information on measures adopted to deal with the issues raised in paragraphs 7, 8 and 9 of the present concluding observations.

(23) The Committee requests the State party to submit its third periodic report by 1 April 2006.