



**International covenant  
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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Third periodic report of States parties due in 2006\***

**GEORGIA**

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\* For the second periodic report submitted by the Government of Georgia, see CCPR/C/GEO/2000/2; for its consideration by the Committee, see CCPR/C/SR.1986 and 2001-2002; CCPR/CO/74/GEO; and the replies by the Government of Georgia to the observations of the Committee, CCPR/CO/74/GEO/Add.1.

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## Introduction

1. Georgia became a party to the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) by virtue of a decision of Parliament of 25 January 1994. The Covenant entered into force for Georgia on 3 August 1994.
2. Pursuant to article 40, paragraph 1, of the Covenant, Georgia's initial report on measures to fulfil its obligations under the Covenant (CCPR/C/100/Add.1) was submitted in November 1995 to the Human Rights Committee, which considered it in March 1997 (see CCPR/C/SR.1564-1566 and SR.1583).
3. Georgia's second periodic report under the Covenant (CCPR/C/GEO/2000/2) was submitted in February 2001. The Human Rights Committee considered the report in question at its 1986th and 1987th meetings (CCPR/C/SR.1986 and 1987), held on 18 and 19 March 2002 and adopted its concluding observations at its 2001st and 2002nd meetings (CCPR/C/SR.2001 and 2002), held on 28 March 2002.

In May 2003, the Government of Georgia prepared its comments on the above-mentioned concluding observations of the Human Rights Committee (CCPR/C/74/GEO/Add.1), and, in conformity with article 40, paragraph 5, of the Covenant and rule 71, paragraph 2, of the rules of procedure of the Human Rights Committee, requested that these comments be included in the Committee's report for submission to the Economic and Social Council and the Third Committee of the General Assembly.
4. This report is the third periodic report and covers the period from the submission of the second report to 2005 inclusive.
5. In the course of preparation of the present report, all the concerns that had been articulated in the concluding observations of the Human Rights Committee were taken into consideration and addressed. At the same time, the most essential provisions contained in the above comments are made use of in the report.
6. This report was prepared by the Ministry of Foreign Affairs of Georgia. The factual information contained in the report has been provided by or obtained from official websites of the Ministry of Labour, Health and Social Affairs, the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of Environmental Protection and Ecology, the Ministry of Economic Development (State Department for Statistics) and the Ministry of Justice, and by the Prosecutor-General's Office, the Central Electoral Commission, the Georgian State Book Chamber (by Sulkhan-Saba Orbeliani) and the Georgian Trade Unions Association.
7. During the reporting period Georgia continued undertaking measures to build a State based on democratic values and the rule of law, and to integrate into the international community and European structures.
8. Since the 2003 Rose Revolution, a radical change has happened in the political life of Georgia. The Constitution was supplemented and amended. Detailed information in this respect may be found in the joint second and third periodic reports of Georgia under the Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/461/Add.1, paras. 3-21).

9. The new Government expressed its commitment to improving the promotion and protection of human rights and fundamental freedoms in the country, and significant steps have already been taken.

10. First of all, this is about measures aimed at combating the corruption that undermined the enjoyment of human rights in our country. Many public officials accused of corruption were brought to criminal responsibility and punished in conformity with court decisions.

11. Establishing a truly independent judiciary is one of the most challenging issues. Transformation of the judicial system is currently under way that must result in strengthening the right to fair trial, in order to ensure independence and impartiality of the court. The Government of Georgia has declared 2006 the “judicial reforms year”, and indeed, we are determined to develop a strong independent judiciary where people are given fair treatment. Significant steps are currently being taken to bring the Georgian judicial system in line with international standards and our international obligations in this field. Detailed information in this regard is contained below in the present report.

12. Law enforcement bodies are subject to reform aimed at undertaking confidence-building measures with respect to these agencies by our population. A brand new structure - patrol police - has been established that has managed, through its efficient activities, to enhance public confidence in the law enforcement system in general.

13. State bodies concerned are paying particular attention to human rights violations. For instance, human rights units were established at the Prosecutor-General’s Office and the Ministry of Interior which on an everyday basis are monitoring and implementing control over the situation in this respect.

14. The Government of Georgia continues to take steps to combat torture and human trafficking. National action plans to overcome these human rights violations, which were approved by the President of Georgia, are currently being implemented, and for the time being tangible progress has been achieved in both spheres.

15. On 9 August 2005, Georgia acceded to the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This mechanism is aimed at prevention of torture, through national and international mechanisms. Debates are currently under way regarding the establishment of a national human rights institution for conducting regular visits to the places of deprivation of liberty. The Public Defender’s Office is one of the bodies that may be vested with such competence.

16. Each fact of alleged torture and other ill-treatment becomes a matter of rapt attention on the part of prosecutors’ offices and other bodies concerned (e.g. Human Rights Monitoring Division of Georgian Ministry of Interior) that are taking every measure provided for by law to investigate these facts, bring to criminal responsibility and punish officials who committed the offences in question.

17. The same is true of anti-trafficking measures: an increased number of traffickers were brought to justice and punished. It is expedient to mention that, according to

the 2005 United States of America Department of State's annual anti-trafficking country report, Georgia was transferred into the group of countries that had made considerable steps to fight against this form of transnational organized crime.

18. Efficient steps were undertaken to fight against religious-based intolerance; perpetrators who had many times violated the rights of various religious groups present in Georgia were brought to court and sentenced to imprisonment.

19. In December 2003, the Parliament of Georgia ratified the Rome Statute of the International Criminal Court, which entered into force for Georgia.

20. In March 2005, the Parliament of Georgia ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid.

21. Most recently, the instrument of ratification or accession has been sent by the Government of Georgia to the depositary with respect to:

- The amendment to article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women;
- Protocol 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- The Protocol to the European Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin.

22. The most flagrant human rights violations still take place in the territory of Abkhazia and the Tskhinvali region/South Ossetia, Georgia, which are de facto out of the control of the Government of Georgia and where the Russian Federation exercises effective control instead. Many citizens of Georgia living there are subjected to torture and other ill-treatment; they are victims of other numerous, grave human rights violations. The Government of Georgia is doing its best to guarantee their rights, but Georgia is apparently in need of urgent and strong assistance from the international community, in order to have their rights protected. In the present report, within the framework of the respective provisions of the Covenant, broader information in this regard is provided.

## **Article 1**

### **Settlement of conflicts within the territory of Georgia**

23. In the context of this article of the International Covenant on Civil and Political Rights (ICCPR), information is provided below on the most recent developments linked to the settlement of conflicts within the territory of Georgia.

24. In order to solve the conflict in the Tskhinvali region/South Ossetia, in August 2005, the Georgian side proposed a comprehensive, time-bound Peace Plan. The Organization for Security and Cooperation in Europe (OSCE) Ljubljana Ministerial Council Meeting, held in

December 2005, adopted the Ministerial Statement on Georgia in which it endorsed the Peace Plan that will serve as a basis for the peaceful settlement of the conflict in the Tskhinvali region/South Ossetia. Thus, 55 participant nations of OSCE approved this plan, which paves the way for peaceful and comprehensive settlement of the conflict in the Tskhinvali region, including the return of refugees and internally displaced persons (IDPs).

25. The Georgian side is for a three-pillar approach: simultaneous implementation of demilitarization, economic rehabilitation and of political-status definition processes. We are for the intensification of OSCE and European Union involvement in promoting dialogue at all levels, including active human rights and security monitoring (including the control of the Rocki Tunnel). Based on its current mandate, the OSCE mission should operate in the whole Tskhinvali region, but now its activity is limited within the conflict zone.

26. Georgia is ready to implement the economic rehabilitation projects mainly financed by the EC, as well as other international donors, to facilitate the peaceful settlement process and the return of the IDPs and refugees. The Georgian side continues to stress the inalienable right of IDPs and refugees to return to their homes in secure and dignified conditions. At the same time, the Government of Georgia takes steps to integrate IDPs into Georgian society before their return to the places of permanent residence.

27. Georgia has suggested to the Ossetian side that it elaborate Georgian-Ossetian follow-up joint actions for implementing the Peace Plan, which was flatly refused by the Ossetian side. Unfortunately, the Russian Federation, which formally remains as a main facilitator of the conflict, is extremely unhelpful in the resolution of the conflict.

28. As regards the peaceful settlement of conflict in Abkhazia, Georgia, the Georgian side continues to emphasize the crucial role of bilateral contact between the Georgian and Abkhazian sides and the need for strict neutrality by the Commonwealth of Independent States (CIS) peacekeeping force in the implementation of its mandate. Georgia's proposal is to elaborate a joint peace plan for Abkhazia, Georgia, together with the Abkhazian side.

29. The Georgian side continues to stress the inalienable right of IDPs and refugees to return to their homes in secure and dignified conditions.

30. In December 2005, phase one of the Rehabilitation Programme in the Abkhazian region was launched, which is a European Commission effort where the United Nations Observer Mission in Georgia (UNOMIG) and the United Nations Development Programme (UNDP) act as the main implementers. Georgian and Abkhazian sides agreed to actively cooperate in the implementation of the programme and to work towards confidence-building and ensuring the necessary security conditions.

31. In February 2006, senior representatives of the Group of the Friends of the Secretary-General underlined at their meeting that the basis of their efforts was the settlement of the conflict by peaceful means and in the framework of relevant Security Council resolutions.

32. In line with its obligations under relevant international human rights instruments, in order to ensure effective monitoring of the human rights situation and prevention of human rights violations within the entire territory of the State, Georgia continues to insist on the establishment of a joint United Nations/OSCE Human Rights Office in Gali (Abkhazia, Georgia) and deployment of a United Nations civilian police component in this district as important confidence-building and human rights protection measures of extreme urgency. This position was shared in the Statement on Georgia adopted by OSCE Ljubljana Ministerial Council of 2005 and the recent Security Council resolution on Abkhazia. Georgia also continuously raises the question of instruction in their mother tongue for the ethnic Georgian population in Gali region - one of the basic rights, which is denied to the ethnic Georgian population there.

33. The process of political settlement of the Abkhazian conflict is still in a deadlock due to non-constructive, counterproductive approaches of the Abkhaz side, actively supported by the Russian side.

34. On 31 March 2006, the Security Council adopted resolution 1666 (2006) extending the mandate of UNOMIG until 15 October 2006. In this resolution, the commitment to sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders is reaffirmed.

#### **Resolutions of the Parliament of Georgia**

35. On 11 October 2005, the Parliament of Georgia adopted the “Resolution regarding the current situation in the conflict regions on the territory of Georgia and ongoing peace operations”. In this resolution, the Parliament of Georgia declared that an end should be put to the existence of stains on the face of democracy and violations of fundamental human rights and freedoms, and to the existence of criminal enclaves and dictatorial regimes on the territory of Georgia.

36. The Parliament of Georgia deemed it necessary to reach rapid progress in the process of peaceful political settlement of the conflicts existing on the territory of Georgia and reaffirmed that the entire spectrum of rights and freedoms for every Abkhazian and Ossetian citizen would be secured and the necessary conditions for the protection of their identity and development would be provided within a united Georgia.

37. The Parliament of Georgia expressed its hope that the Government of the Russian Federation would be able to play a real and active role in peaceful settlement of conflicts, thus proving that the Russian Federation has the will to be a worthy partner of the democratic community.

38. Proceeding from the aforementioned, the Parliament of Georgia, inter alia, resolved (a) to entrust the Government of Georgia with the task of intensifying negotiations with the Russian Federation, international organizations and interested sides on the issues regarding

the fulfilment of obligations undertaken by peacekeeping forces on the territory of the former South Ossetian Autonomous District and report to the Parliament by 10 February 2006 and (b) to entrust the Government of Georgia with the task of intensifying negotiations with the Russian Federation, international organizations and interested sides on issues regarding the fulfilment of obligations undertaken by peacekeeping forces on the territory of Abkhazia, Georgia, and report to the Parliament by 1 July 2006.

39. The Parliament of Georgia, in the event that the processes provided for in the above paragraphs are negatively assessed and no progress is witnessed, decided to demand cessation of the peacekeeping operations on the territory of the former South Ossetian Autonomous District and Abkhazia, Georgia, as well as denunciation/termination of the relevant international agreements and abolition of the existing structures.

40. The Parliament entrusted the Government of Georgia with the task of submitting a detailed road map for realization of the Tskhinvali Peace Plan and with the task of submitting a similar detailed road map for realization of a peace plan for Abkhazia, Georgia.

41. On 15 February 2006, the Parliament of Georgia adopted its "Resolution on the current situation in the former Autonomous District of South Ossetia and the ongoing peace process". According to this resolution, the Parliament of Georgia assessed the activities of the peacekeeping forces deployed in the Tskhinvali region/South Ossetia as extremely negative, and actions of the Russian Federation as permanent efforts aimed at annexation of this region of Georgia. The Parliament entrusted the Government of Georgia with the task of enforcing provisions envisaged by previous parliamentary resolution on this issue (see above), and to take steps aimed at replacing the Russian peacekeeping forces deployed in the region in question with an effective international peacekeeping operation.

42. In order to secure a comprehensive, peaceful and political settlement of the conflict on the territory of the former South Ossetian Autonomous District, the Parliament of Georgia, inter alia, entrusted the Government of Georgia with the task of intensifying the work with international organizations and partner States aimed at working out a new format for peace process and full implementation of the Peace Plan.

## **Article 2**

43. In its concluding observations on the second periodic report (CCPR/CO/74/GEO), the Committee expresses satisfaction at the creation of a Constitutional Court but it remains concerned that current procedures impede access to the Court. The Committee recommended that 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.

44. On 12 February 2002, the Constitutional Law amending the Law on the Establishment of Constitutional Court of Georgia and the Law on the Constitutional Legal Proceedings was adopted. This law entered into force on 5 March 2002. The amendments under review are



designed to eradicate the existing shortcomings in the legislative acts that regulate the work of the Constitutional Court. These legislative innovations bear equally on procedural matters and questions relating to the court's jurisdiction.

45. The most significant changes and innovations are as follows:

- Abolition of the legally sanctioned principle of “continuity”, whereby a member of the court hearing a particular case was barred from hearing others until the first case had been suspended or deferred. This procedure caused problems for the timetabling of cases. Under the amendment, a member of the court hearing a particular case is allowed to hear other cases before the suspension or deferral of the first case;
- Adoption of general and differentiated schedules for the hearing of cases, whereby a plaintiff will be informed within 10 days of bringing a case before the court, whether the court intends to consider the merits of the case. A time limit of six months has also been set for the Constitutional Court to reach a decision in a constitutional action or application;
- Broadening the competence of the Constitutional Court, through the introduction of the official institution of judicial review. Pursuant to this amendment, the Constitutional Court has acquired the right not only to verify the constitutionality of a legislative act as regards its content, but also to ascertain whether the constitutionally sanctioned procedure for the adoption of the act has been observed; and
- Broadening of the range of persons entitled to bring cases before the Constitutional Court. Legal entities are also entitled to bring cases before the court on questions falling under chapter II of the Georgian Constitution (on fundamental human rights and freedoms).

46. The amendments described above have significantly broadened the Constitutional Court's powers, enhanced the effectiveness of its work, facilitated access to the court and strengthened guarantees for the full protection of human rights.

### **Article 3**

47. In its concluding observations, the Committee remained concerned at the low level of representation of women in Parliament and in senior public- and private-sector jobs. Due to this, the State party was urged to 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 was also encouraged to consider measures, including educational ones, to improve the situation of women in society.

48. Since the Rose Revolution of 2003, considerable attention has been attached to gender equality issues in Georgia. In 2004, the Gender Equality Advisory Council was established

under the Chairperson of the Parliament of Georgia, and in June 2005 the ad hoc State Commission on Gender Equality. The coalition of women's NGOs elaborated the draft of the State Action Plan for Providing Gender Equality, in consideration of which the State bodies, as well as the interested NGOs, were actively involved.

49. The principal goals of the Action Plan are as follows:

- Establishment and development of effective institutional mechanisms and development of legislative basis promoting the gender equality;
- Providing gender equality in decision-making; introducing gender parameters into the social-economic development process; improvement of gender statistics;
- Supporting the application of gender budget principles; consideration of gender parameters in State programmes;
- Poverty elimination; supporting the implementation of migration gender policy; providing access to health care; introduction of gender approaches in educational system;
- Supporting environmental protection and ecological security;
- Creation of an effective system against violence; development of State approaches against trafficking; and
- Raising public awareness in gender issues through media; support in honouring international obligations in the sphere of gender equality.

50. The major tasks of the above-mentioned goals are as follows:

- Strengthening of institutional mechanisms for gender equality in the executive bodies of State power; development of institutional mechanisms for gender equality in legislative bodies; introduction of institutional mechanisms for gender equality at the level of local government;
- Elaboration of a law of gender equality; introduction of gender parameters in the existing State programmes and providing for their fulfilment;
- Elaboration of employment policy with due consideration of gender parameters; support for small business development and promotion of entrepreneurial woman; support of gender-sensitive social protection policy; elaboration of legal mechanisms against domestic violence; etc.

51. The special attention to the gender equality is given in the programme document of Georgia on "Economic development and poverty reduction", with special emphasis on the need

of regulation of gender-related problems, elaboration and implementation of consistent and effective gender policy, measures aimed at the strengthening of women's economic and social status, and proper consideration of gender factors that covers:

- Gender aspects in the planning and allocation of budgetary resources in regulation of labour market and in social policy;
- Enforcing labour legislation with respect to gender factors;
- Ensuring social security during the economic activity process;
- Increase of woman's economic activities, implementation of different programmes for professional development;
- Implementation of educational and preventive measures in order to change traditional gender roles, which put the woman in unequal, dependent position; and
- Reduction of women's labour and social discrimination, as well as of domestic violence and ill-treatment.

52. In 2005, the State Department for Statistics under the Ministry of Economic Development published a statistical booklet entitled "Women and men in Georgia" (in Georgian and English). It is the third statistical publication of such kind in Georgia; it reflects key trends with regard to gender-related issues in 1990-2004. The booklet is aimed at encouraging public awareness in gender problems and elaborating task-oriented State policies in the respective spheres.

53. At present, 23 women are members of the Parliament of Georgia, of which one is the Chairperson of the Parliament. Two female MPs are chairpersons of parliamentary committees (out of 13 chairpersons). Another five women are deputy chairpersons of the committees. A woman is chairperson of the largest parliamentary faction - National Movement-Democrats.

54. In the executive, women are also represented widely enough at the decision-making levels. For instance, a woman is State Minister on Civil Integration and another woman is Deputy State Minister (out of four State ministers available). Besides, seven women are first deputy ministers or deputy ministers (in total, there are 13 ministries in Georgia).

#### **Article 4**

55. Information on legislative issues with respect to states of emergency and martial law contained in the second periodic report of Georgia under ICCPR (paras. 60-72) remains valid.

56. Within the period under review, on 26 February 2006, the President of Georgia has issued Decree No. 173 on the State of Emergency in Khelvachauri District, which was approved by the Parliament of Georgia on 28 February 2006.

57. The decree was aimed at preventing further spread throughout Georgia of the H5N1 virus (bird flu) that had been recently detected in the district in question.

58. The restrictions imposed upon by the decree were fully in line with provisions of article 21, paragraphs 2 and 3 (on the restrictions related to property rights), article 22, paragraph 3 (on the restrictions related to the freedom of movement), and article 46 (on the restrictions related to constitutional rights and freedoms), of the Constitution of Georgia and respective provisions of the Law on the State of Emergency of Georgia.

59. The Secretary-General was informed of the declaration of the state of emergency in due course.

60. The state of emergency in Khelvachauri district was abolished on 16 March 2006 and the respective notification was sent to the Secretary-General on 24 March 2006.

#### **Article 5**

61. Reference is made to the comments contained in the second periodic report under the Covenant (paras. 74-78), which remain valid.

#### **Article 6**

62. During the reporting period, on 22 May 2003, Georgia ratified Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances. For Georgia, the Protocol entered into force on 1 September 2003.

#### **Mitigation of the threat of war and of associated crimes against life**

63. In accordance with the military doctrine of Georgia, Georgia firmly and uncompromisingly implements a peaceful international policy which aims to avoid a war threat, to refuse military unions against a third country and to develop international relations.

64. The military doctrine of Georgia is based on the following: (a) provisions of the Constitution of Georgia; (b) international and internal political directions determined by the Government; (c) mutually beneficial political, economic and military cooperation with all countries, first of all, with neighbouring States. Georgian military forces are based on defence principles and their main task is to defend State independence, sovereignty, territorial integrity and people's peaceful life.

65. The military doctrine of Georgia envisages: (a) the political, social, economic and military environment within the country and in its neighbouring States, the location and actual state of the respective forces, norms and legal principles of international relations officially accepted by the country; (b) the promotion of joint efforts of all countries of the world aimed at preventing wars and armed conflicts, refusal of the development, deployment and transportation of nuclear weapons in the territory of Georgia; non-involvement of armed forces in the resolution of domestic policy tasks.

66. The military doctrine of Georgia reflects the defence policy of the Government of Georgia, defines the attitudes toward the war, military threat and, hence, political tasks. Planning and development of defence and security policies, setting of military cooperation priorities, development of military industry of Georgia are the particular prerogative of the supreme State authorities.

67. At the regional level, Georgia cooperates with neighbouring States as well as with OSCE, North Atlantic Treaty Organization and Partnership for Peace countries; at the global level - with all States and United Nations Member States.

68. Georgia will never use its military forces first, and never begin war activities against other States, unless it is the case that Georgia is a target of the armed aggression.

69. Georgia guarantees fully the implementation of its military doctrine. Georgia uncompromisingly undertakes and will continue undertaking universally recognized basic principles and norms of international law and relevant United Nations regulations.

#### **Measures to safeguard the inalienable right to life**

70. On 17 March 2005, the Government of Georgia adopted Decree No. 51 (Decree on Measures to Decrease Poverty and Improve Social Protection of Population). In conformity with the decree, in order to ensure targeted planning of measures aimed at decreasing poverty and improving social protection of the population, a comprehensive database on socially vulnerable families shall be elaborated. The Ministry of Labour, Health and Social Affairs of Georgia was ordered to work out and approve the State programme for the identification, social-economic assessment and creation of a database of families below the poverty line. On 27 May 2005, the Minister of Labour, Health and Social Affairs of Georgia issued an order to approve the aforementioned programme. As regards the assessment of social-economic conditions of families, it is carried out in conformity with governmental Decree No. 126 of 4 August 2005 "On the approval of methods for assessment of social-economic conditions of vulnerable families (households)".

71. During the reporting period, the Government of Georgia continued undertaking measures aimed at safeguarding the inalienable right to life. In this respect, the activities to ensure the protection of health and availability of adequate medical services and treatment should be mentioned.

72. The Free First Aid Service Programme was launched throughout Georgia on 26 May 2005. The programme was initiated and supported by the President of Georgia. The results of a year's operation confirmed that Free First-Aid Service (so-called "03") is a highly qualified ambulance service, which operatively and professionally serves people and which is used by most of the Georgian population when necessary. Some statistical data concerning the activities of Free First-Aid Service throughout Georgia are provided below.

**Table 1**  
**Emergency calls and hospitalization**

*June-December 2005*

Period	Total number of calls	Number of hospitalizations	False calls	Cancelled calls
June	45 042	6 586	340	82
July	49 222	7 635	367	164
August	52 324	8 733	421	101
September	47 995	7 715	315	86
October	49 606	7 657	348	87
November	51 954	7 318	332	187
December	49 574	7 071	372	299
Total	345 717	52 715	2 495	1 006

*January-March 2006*

Period	Total number of calls	Number of hospitalizations	False calls	Cancelled calls
January	54 742	7 571	354	671
February	54 245	7 054	328	600
March	69 226	8 585	352	667
Total	178 213	23 210	1 034	1 938

73. In 2004, the following State programmes were implemented within the Georgian health-care system:

- State programme on assistance to outpatients included the following subprogrammes:
  - (a) Programme on the assistance to outpatients residing in mountainous regions;
  - (b) Programme on the specialized assistance to outpatients (e.g. oncology assistance, patronage for pregnant women);
  - (c) Programme on the assistance to disabled outpatients having dental problems;
  - (d) Programme on the medical examination of conscripts.
- State programme on assistance to inpatients now includes the following subprogrammes:
  - (a) Programme on psychiatric assistance;
  - (b) Programme on phthisiology assistance;
  - (c) Programme on obstetrical assistance;

- (d) Programme on medical assistance for children aged 0-3;
- (e) Programme on complementary medical assistance for needy people;
- (f) Programme on medical treatment of infectious diseases;
- (g) Programme on diagnostics and treatment of oncology diseases;
- (h) Programme on organ and tissue transplantation and dialysis;
- (i) Programme of resource-consuming and high-technology medical services;
- (j) Programme of referral assistance (obstetrics, neonatal diseases);
- (k) Programme on emergency assistance for population;
- (l) Programme on complementary medical examination of conscripts; and
- (m) Programme of medical assistance for children without parental care and children in need of continuous treatment.

74. In 2005, the following State programmes were implemented:

- Programme aimed at promoting a healthy way of life, disease prevention and prevention of socially dangerous diseases;
- State programme on the assistance to outpatients:
  - (a) Programme on assistance to outpatients residing in mountainous regions;
  - (b) Programme on specialized assistance to outpatients (e.g. oncology assistance, pregnant women);
  - (c) Programme on the medical examination of conscripts.
- State programme on assistance to inpatients:
  - (a) Programme on psychiatric assistance;
  - (b) Programme on phthisiology assistance;
  - (c) Programme on obstetrical assistance;
  - (d) Programme on medical assistance for children aged 0-3;
  - (e) Programme on medical treatment of infectious diseases;
  - (f) Programme on diagnostics and treatment of oncology diseases;

- (g) Programme on organ and tissue transplantation and dialysis;
- (h) Programme of referral assistance;
- (i) Programme on emergency assistance for population;
- (j) Programme on complementary medical examination of conscripts;
- (k) Programme on first aid;
- (l) Programme of medical assistance for children without parental care and children in need of continuous treatment;
- (m) Programme on cardiosurgery; and
- (n) Programme on organ and tissue transplantation.

75. Moreover, a State programme aimed at providing the population with special medicines, which includes nine subprogrammes, has been implemented.

76. Apart from the above-mentioned, a series of health-care programmes linked to the right to life has been implemented at the local (municipal) level.

#### **Measures to prevent the disappearance of individuals**

77. Measures to prevent the disappearance of individuals are of particular importance in the context of the obligation to prevent the arbitrary deprivation of life. Information on the procedure for investigating disappearances, as applied in Georgia, is provided in the second periodic report under ICCPR (paras. 108-109).

78. According to the Ministry of Internal Affairs, in 2005 there were 498 missing persons registered within the territory of Georgia. In the same period of time, 14 more citizens of Georgia disappeared without a trace in CIS countries.

#### **Article 7**

79. In its concluding observations, the Committee expressed its concern at the still very large number of deaths of detainees in police stations and prisons, including suicides and deaths from tuberculosis. Moreover, the Committee remained 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.

#### **Definition of torture**

80. Previously, the crime of torture (or “violence” as it was indicated in the article’s title) was criminalized under article 126 of the Criminal Code of Georgia (CCG). It was defined as systematic beating or other kind of violence that caused physical or mental suffering to the



victim, without producing the results provided for in article 117 (Intentional grave injury to health) or article 118 (Intentional less grave injury to health) of CCG. Hence, elements of that crime radically differed from those laid down in international legal norms. As a result the investigation into the acts involving the elements of torture, inhumane and degrading treatment were for the most part conducted by reference to articles 332-333 (Abuse of power or exceeding the limits of the official duty) of the criminal code without specifically invoking article 126 outlawing torture as a ground for opening a criminal case.

81. Since the definition mentioned above did not meet the requirements set in international human rights instruments, on 23 June 2005, the Parliament of Georgia passed amendments to the Criminal Code of Georgia, which brought the statutory elements of torture in consistency with the internationally recognized standards, namely with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under the current wording contained in article 144<sup>1</sup> of CCG, torture is defined as “subjecting a person, his/her close relative or the person financially or otherwise dependent on him/her to treatment or conditions of such nature, intensity or duration as to cause severe physical pain or mental or moral suffering, for purpose of obtaining information, evidence or confession, intimidating or coercing or punishing a person for an act he or a third person has committed or is suspected of having committed”.

82. By virtue of amendments dated 23 June 2005, the Criminal Code of Georgia additionally criminalizes the threat of torture (art. 144<sup>2</sup>) and inhuman or degrading treatment or punishment, i.e. humiliation or coercion of the person, placing in conditions that are inhuman and degrading to human dignity, causing severe physical pain or moral suffering (art. 144<sup>3</sup>). Criminal responsibility will also be imposed for the attempt to commit torture based on article 144<sup>1</sup> (criminalizing torture) along with article 19 (providing for criminal responsibility for the attempted crime) of CCG.<sup>1</sup>

83. As regards sanctions, torture is punishable with deprivation of liberty for a period from 7 to 10 years and a fine.

84. Georgian legislation provides for the crime of torture committed in aggravating circumstances, i.e. torture committed by public official or the person equal thereto, through abuse of power, repeatedly, with respect to two or more persons, by a group, through violating the equality of persons because of their race, skin colour, language, sex, religion, belief, political or other opinion, national, ethnic or social group, origin, place of residence, property status or social rank, knowingly against a pregnant woman, minor, a person detained or otherwise deprived of liberty, a person in a vulnerable position or financially or in the other way

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<sup>1</sup> Criminal responsibility is imposed for the attempted crime, i.e. the intentional act directly aimed at the commission of a crime that was not carried to its completion, based on respective articles of the Criminal Code contemplating responsibility for a completed crime, by reference to article 19 of the same Code.

dependent upon the criminal, for the fulfilment of the order, in connection with taking hostages. Torture committed in aggravating circumstances is punishable with deprivation of liberty for a term from 9 to 15 years, and deprivation of the right to hold office or pursue activity for a term not exceeding 5 years. The fact that the Code makes the aggravated form of torture punishable with 15 years of deprivation of liberty as a maximum penalty and thereby pertains to the category of crimes of utmost gravity, proves that the practices of torture are treated as absolutely intolerable by law.

85. Threat of torture is punishable with fine or deprivation of liberty for a term not exceeding two years. Inhuman or degrading treatment is punishable with fine, restriction of liberty for a term not exceeding three years or deprivation of liberty for two to five years. Inhuman or degrading treatment, committed in aggravating circumstances<sup>2</sup> is punishable with deprivation of liberty for a term from four to six years, and a fine, with or without deprivation of the right to hold office or pursue activity for a term not exceeding five years.

86. The newly introduced definition points to the purpose of torture, that is, obtaining information, evidence or confession and intimidation, coercion or punishment, that was absent in the previous wording.

87. Under its article 7, ICCPR imposes an obligation upon States parties to afford everyone the protection through legislative and other measures as may be necessary against the acts prohibited by it, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.<sup>3</sup> In compliance with the requirements established by the Human Rights Committee, Georgian criminal legislation criminalizes torture committed both by State officials and private persons. Along with the negative obligation, i.e. refraining from the violation of the rights guaranteed by the Covenant, public authorities of Georgia have a positive obligation that consists in ensuring protection against torture or other cruel, inhuman or degrading treatment even when committed by persons acting outside or without any official authority. Moreover, torture committed by the State official and through abuse of power is regarded as a crime of aggravated form.

88. In its general comment No. 20, the Human Rights Committee notes that prohibition of torture covers not only acts causing physical pain but also acts causing mental suffering to the victim. The newly introduced definition of torture fully complies with this requirement. Under the current wording, treatment will be qualified as torture if it is of such nature, intensity or duration as to cause severe physical pain or mental or moral suffering.

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<sup>2</sup> *Idem.*

<sup>3</sup> General comment No. 20 on article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), para. 2.

### **Solitary confinement**

89. In conformity with information provided by the Prosecutor-General's Office of Georgia, the arrested suspect has the right to notify family members and relatives regarding detention, as provided for in article 73 of the Criminal Procedure Code of Georgia (CPC). This is a right that can be exercised immediately after the arrest. Apart from the right of the arrested suspect envisaged in article 73, article 138 of CPC provides for a positive obligation of an investigator and prosecutor to inform a family member or a relative of the arrested person within five hours (within three hours with respect to minors) from the arrest. The notification is to be recorded in writing and attached to case materials. If the arrested person is a foreign citizen, the respective embassy or consulate will be informed regarding the fact of detention within the period mentioned above.

90. Significant steps have been made with the view of ensuring the effective realization of this right. It is noteworthy that the Human Rights Protection Unit of the Office of the Prosecutor-General of Georgia and the Human Rights Protection Unit of the Ministry of Internal Affairs closely cooperate with the Public Defender's Office that carries out the monitoring of temporary detention, the place where persons are kept for the first 72 hours after arrest. In the course of monitoring, special emphasis is placed upon the implementation of this right. Though there still are cases of violating the requirement of notification, the positive trend is worthy to note.

### **Conduct of medical and scientific experiments**

91. Article 7 of ICCPR expressly prohibits medical or scientific experimentation on the detained or imprisoned person. According to the Prosecutor-General's Office of Georgia, under article 12 of the Criminal Procedure Code, conducting medical experiments on detained or imprisoned persons is forbidden.

92. Please note that article 29 of CPC provides for compulsory medical treatment of the accused. However, paragraph (c) of the said article defines that the accused can be subjected to compulsory medical treatment only when the accused became mentally ill and that is confirmed/evidenced by the forensic psychiatrist's expert opinion. Furthermore, compulsory medical treatment shall only apply till the final recovery. As such, application of the compulsory medical treatment does not infringe the right guaranteed in article 7 of ICCPR.

### **Training and information relating to the prohibition on torture**

93. In 2002, retraining courses were organized for the employees of the Ministry of Internal Affairs at the Police Academy; 964 police officers (62 investigators, 748 criminal police inspectors and 154 officials) completed these courses.

94. In 2003, the following training activities were organized:

- Instruction by correspondence for the faculty of road traffic security (IV and V courses) and attended study for the same (III course);

- Instruction by correspondence for legal studies (II, III, IV and V courses) and attended study for the same (II, III and IV courses); and
- Instruction by correspondence for psychology (I course).

95. In 2004, the following training activities were organized:

- A three-stage training course for patrol police was organized at the Police Academy that included five groups (2,527 persons in total); and
- Three training courses at the Police Academy under the aegis and/or with the assistance of the Council of Europe: “Human rights and police ethics”, “Police and human rights” (training for trainers), and “Police in a democratic State” (training for trainers).

96. In 2005, the following training activities were organized:

- A six-week training course for patrol police based on materials that had been prepared at Kosovo Police School and adapted in accordance with the legislation of Georgia. In total, 817 cadets completed the course in question;
- Training courses for divisional inspectors (28 persons in total); and
- Retraining course for 1,200 acting employees.

97. Various trainings, seminars and conferences on human rights issues were held under the auspices of international organizations (United Nations, OSCE and Council of Europe).

98. Currently, retraining courses for about 60 police officers in charge of pretrial detention facilities of the Ministry of Internal Affairs are being conducted under the aegis of the Norwegian Legal Advisers Mission. The syllabus for these courses essentially focuses on human rights protection issues.

### **Guaranteeing protection against torture**

99. Under article 73 (c) of CPC, the suspect has the right to use the legal assistance of the lawyer as a consequence of the agreement with him in exchange for payment or without payment under circumstances prescribed by article 80 of CPC. In accordance with article 73 (d) of the Code, the suspect has the right to meet a lawyer directly and solely without imposition of restrictions on the number and duration of meetings. The right may be limited under reasonable terms for the interests of investigation in accordance with the motivated decree issued by the official conducting an investigation.

100. This provision was introduced on 13 August 2004 as a result of the ruling of the Constitutional Court of Georgia. Under the old wording, the meeting of the suspect with the defence counsel was restricted to a period of no longer than an hour a day.

101. Under article 84 of CPC, the defence counsel has the right to use all legal means to reveal the circumstances acquitting the suspect/accused or mitigating his/her position and provide the suspect/accused with the necessary legal assistance. Among other rights granted to the defence counsel under the Criminal Code of Georgia, the following are worthy of note:

(a) The right to meet the person under his protection alone without any hindrance, supervision or placing restrictions by the administration of the establishment for restriction or deprivation of liberty or investigative bodies, unless as provided in paragraph 1 (d) of article 73 of CPC;

(b) The right to participate in the investigative actions conducted with the participation of the suspect/accused or at the request of the defence, to put questions to the person to be interviewed and to require the inclusion of the data denying the charges or mitigating the responsibility of the suspect/accused in the record;

(c) The right to participate in bringing charges to the accused or his/her interrogation;

(d) To explain to the suspect/accused his/her rights and pay attention to the violation of such rights; and

(e) To collect necessary evidence for the defence and present it to the body conducting proceedings.

102. Under article 310 of CPC that regulates the procedure of questioning the suspect, the following is provided: The suspect has the right to give testimony in the presence of the lawyer. If it is impossible to ensure the participation of the lawyer immediately, the investigator and prosecutor are obliged to ensure the participation of the lawyer and explain to the arrested person that he/she has the right not to testify until the lawyer comes.

103. Under article 311 of CPC, the lawyer has the right to attend the questioning of the accused. In cases prescribed by the given Code, the attendance of the lawyer is obligatory.

104. Under the old wording of article 72 (5) of CPC, the lawyer was allowed to participate in the proceedings only prior to the initial interrogation of the arrested suspect as well as during the initial and subsequent interrogations. Under the amended wording of this provision that is in line with the ruling of the Constitutional Court of 29 January 2003, the arrested suspect may request the assistance of the counsel not only prior to the initial interrogation but as soon as he/she is arrested before making any kind of statement, and his/her request is to be fulfilled immediately. If it is impossible because of objective reasons, the access to the lawyer is to be ensured in reasonable time, so that the suspect has sufficient time and means to defend his/her interests.

105. Under article 80 of CPC, the body that conducts proceedings is obliged to provide the suspect/accused/convicted with the lawyer on the basis of his/her consent at the expense of the State (from the State budget), if they are indigent and cannot afford the payment for the services of the lawyer. It is to be confirmed with the documents issued by the bodies of local governance and self-governance. The State authority conducting proceedings may exempt the person from defence expenses in other cases and the lawyer will be paid from the State budget.

**Statements obtained through torture**

106. According to article 12 of CPC, in the course of investigative and judicial actions, a person shall not be subjected to duress, threat, torture or other methods of physical or mental coercion. Under article 111 of CPC, the evidence obtained in contravention of the rule prescribed by law, or through using violence, threat, blackmail or other illegal means is inadmissible. Therefore, extraction of testimony as a result of putting pressure on the witness becomes senseless.

107. Important guarantee for avoiding the application of evidence obtained through torture is provided for in article 477 of CCG (amendment dated 17 June 2005). According to the amendment mentioned, statements made in the course of preliminary investigation will not be used as evidence at the trial, if the defendant is against it. The testimony given in the course of preliminary investigation shall not be relied upon by the court unless the accused reaffirms his/her prior statements at the court session. Thus, by virtue of those changes, compulsion to confess guilt appears to lose any significance for the investigating authorities.

108. Furthermore, declaring any sort of evidence given under pressure to be inadmissible before the court does provide additional guarantees for the protection of human rights. Moreover, it is notable that compulsion to provide testimony, explanation or opinion is criminalized under article 335 of the Criminal Code of Georgia and is punishable with deprivation of liberty for a term from two to five years, deprivation of the right to hold office or pursue activity for a term not exceeding five years.

109. Moreover, in accordance with the initial wording, the aggravated form of the crime in question was formulated as follows: compulsion to provide explanation, testimony or opinion, by resorting to violence, abuse or torture, punishable with deprivation of liberty from two to eight years. In accordance with amendments dated 28 April 2006, the aggravated form of the crime in question is defined as follows: compulsion to provide explanation, testimony or opinion, committed by using violence dangerous for life or health or resorting to the threat of such violence. It is punishable with deprivation of liberty for a term from five to nine years, deprivation of the right to hold office or pursue activity for a term not exceeding five years. By virtue of the amendments mentioned, duration of deprivation of liberty to be applied was prolonged and deprivation of the right to hold office or pursue activity was introduced as an additional sanction. Therefore, this amendment will contribute to the effective suppression of torture and ill-treatment as a means of obtaining confessions.

**Impartial and prompt investigations into the complaints**

110. Georgian investigative authorities put special emphasis upon the prompt and effective investigation of cases related to torture and ill-treatment. The procedure for the initiation of preliminary investigation has been considerably simplified as a result of amendments dated 25 March 2005:

- The inquiry, as an initial stage of investigation, has been merged with the preliminary investigation; and

- Preliminary investigation and prosecution have been separated from each other. The investigation can be regarded as a continuous process without determining time limits (excluding the lapse of time for conducting prosecution).

111. The abrogation of the time limits for investigation contributes to the simplification of the procedure and provides the investigative bodies with the possibility to study the case circumstances thoroughly. It does not mean that the investigation will be unreasonably prolonged. After the identification of the person to be brought to court for criminal responsibility, the investigation will grow into prosecution that is subject to strictly defined terms.

112. As for the investigation itself, under article 261 of CPC, as soon as the report (written or verbal) of the criminal act is received, the investigator/prosecutor within his/her competence commences investigation on a mandatory basis. The information that serves as a basis for the initiation of investigation may be received from natural and legal persons, bodies of local governance and self-governance, officials, operative-investigative authorities and mass media. Preliminary investigation may also be commenced on the basis of the facts ascertained in the course of investigation of criminal cases or information received from the person making confession (art. 263, CPC). Therefore, investigation will be initiated into all potential cases of human rights violations and contribute to the effective elimination of impunity through bringing to justice the perpetrators of torture/inhuman and degrading treatment or punishment.

113. Legislative amendments to CPC that took effect at the beginning of January 2006 allow the investigation to start upon anonymous information about commission of crimes. Under the previous wording, “anonymous information shall not represent ground for commencing investigation. Anonymous statement shall be examined by operative-investigative measures”. The amendments “entitle the investigator to start investigation upon receipt of anonymous information”. However, the commencement of investigation on the basis of anonymous information in no way means commencing prosecution against a certain defendant. Investigation into anonymous communications is far more effective and respectful of the rights of person subject to investigation, as compared to application of operative-investigative measures that are entirely left beyond the control of the court.

### **Compensation and rehabilitation**

114. The Criminal Procedure Code stipulates that a person suffering from property, physical or moral damage resulting from unlawful acts, including arbitrary detention and “other unlawful or arbitrary acts of the bodies of criminal procedure”, is entitled to compensation.

115. Under articles 73 and 76 of CPC, the suspect/accused has the right to receive compensation for the damage suffered as a result of illegal detention.

116. In accordance with article 30 of CPC, the person that sustained damage as a result of the crime may raise the civil claim. Compensation may be requested for property,<sup>4</sup> physical (bodily)<sup>5</sup> or moral damage.<sup>6</sup> The civil claim is mainly presented against the accused. As stated in paragraph 4 of article 33 of CPC, even if the accused is not identified, it may not serve as an impediment for filing a civil claim. If the criminal prosecution is terminated, and the accused is hiding, his/her whereabouts are not established or the person to be brought to criminal responsibility is not identified, the claim for compensation of damage may be presented to the State as prescribed by civil procedural legislation. However, this provision will take effect only from 1 January 2007.

117. As provided for in article 219 of CPC, an illegally convicted or accused person or a person who was unlawfully subjected to compulsory medical treatment is to be restored to his/her rights (rehabilitated) if his/her innocence or the illegality of his/her compulsory medical treatment is proved. CPC provides in details the procedures of rehabilitation, mechanisms of claiming compensation for damage sustained as a result of illegal or unjustified actions of the bodies conducting criminal proceedings.

### **Situation in Abkhazia and the Tskhinvali region/South Ossetia**

118. Measures taken by the Georgian authorities with the view of ensuring human rights protection and effective elimination of torture and other forms of ill-treatment are fully implemented in the territory under effective control of the Georgian authorities (since the central Government does not enjoy such control over Abkhazia and the Tskhinvali region/South Ossetia, Georgia).

119. Although active measures are being intensively taken by the Government of Georgia in ensuring observance of international human rights law norms in Abkhazia and Tskhinvali region/South Ossetia, Georgia, as a matter of fact the central Government does not enjoy the effective control over these territories and, therefore, lacks sufficient means to guarantee the exercise of fundamental rights and freedoms to the population residing there. In the light of the foregoing, Georgian authorities requested Mr. Manfred Nowak, Special Rapporteur on the question of torture, to bring our deep concerns about the situation created in Abkhazia and Tskhinvali region/South Ossetia, Georgia to the attention of relevant bodies of the

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<sup>4</sup> Property damage is compensated fully, including salary or other income that the rehabilitated person failed to obtain, pension or financial assistance the payment of which was terminated, money, securities and income received there from expenses related to criminal proceedings, etc.

<sup>5</sup> Physical damage is compensated as expenses for funerals, medical treatment, prosthetic appliances and medicine expenses, benefits, pensions, and sums contributed for insurance.

<sup>6</sup> Moral damage is compensated in money or other forms of property as damage caused to a victim as a result of a crime including beating, mutilation, and distortion or weakening of biological and mental functions or other experiences caused by physical or moral damage.



United Nations. International mechanisms and increased international pressure are strongly believed to influence de facto authorities of the respective territories, as well as the third parties involved in the negotiation process and thus facilitate bringing an end to the persistent, grave human rights violations in the territories outside the control of the Government of Georgia. According to the United States State Department's 2005 Country Report on Human Rights Practices, despite certain important steps, both legislative and administrative, taken by the Government to improve the human rights situation, it remains difficult in Abkhazia and South Ossetia - territories beyond the control of the central Government.<sup>7</sup>

120. According to the United Nations Human Rights Office in Abkhazia, Georgia (HROAG), several cases of denied access to detainees and reluctance to cooperate with the Office from the de facto Abkhaz government have been registered: on four occasions human rights officers were not allowed to visit detainees in the Gulripshi district and Sukhumi city. The Office received credible reports of beating and abuse of detainees in the pretrial detention centre of the Sukhumi city police. HROAG provided assistance to three individuals alleged to have been victims of harassment and torture during their detention by the Abkhaz de facto militia.<sup>8</sup> Mr. Nowak, when visiting Abkhazia, expressed his concern on the existing conditions of detention.<sup>9</sup>

121. Detention and ill-treatment of ethnic Georgians by the law enforcement agents of the de facto government of the Tskhinvali region/South Ossetia is a common practice. In some cases, repression also spreads to ethnic Ossetians suspected in cooperation of any nature with Georgians. For example, in July 2004 representatives of law enforcement of the de facto government in South Ossetia detained Mr. A. Kozaev for taking Ossetian children for vacation to the Georgian seaside and other leisure sites. He was tortured while being detained during almost a year.

122. In addition to that, de facto authorities in South Ossetia are completely tolerant of criminal groups kidnapping ethnic Georgians. For example, in December 2005 the remains of four Georgian men who had been kidnapped from their village in June were returned to the Georgian side from Tskhinvali region. In July 2005, an ethnic Georgian was kidnapped from Artsevi village; his whereabouts remained unknown at year's end.<sup>10</sup>

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<sup>7</sup> United States Country Report on Human Rights Practices, Georgia, 2005, released by the Bureau of Democracy, Human Rights and Labour, 8 March 2006.

<sup>8</sup> United Nations Observer Mission in Georgia/Human Rights Office in Abkhazia, Georgia (UNOMIG/HROAG), public report, November 2004-February 2005.

<sup>9</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Georgia (E/CN.4/2006/6/Add.3).

<sup>10</sup> Ibid.

123. In most cases, victims were tortured and ill-treated before the ransom was paid by their relatives. None of these deaths/disappearances were investigated; no one was prosecuted, or punished by the de facto authorities.<sup>11</sup> All attempts of Georgian law enforcement agencies to cooperate with their de facto counterparts in the Tskhinvali region to fight this practice proved to be futile.

124. Although the overall human rights situation in the conflict zones is alarming, the case of *Levan Mamasakhlisi* in Abkhazia deserves particular attention. On 7 August 2001, a handmade grenade exploded accidentally in the hands of Mr. Mamasakhlisi. He lost an arm and three fingers on the other hand. Despite the critical health condition, Mr. Mamasakhlisi was transferred to the temporary detention centre in Sukhumi. Later he was charged with terrorism. In 2002, a military tribunal sentenced him to 14-year imprisonment. During the reporting period, Mr. Mamasakhlisi has been serving the sentence in the Dranda prison in Abkhazia, Georgia. Due to the unbearable detention conditions, he has been infected with bronchial asthma and his health conditions have dangerously deteriorated.

125. In August 2004, Mr. Mamasakhlisi lodged an application in the European Court of Human Rights against Georgia and the Russian Federation. In its written observations, the Georgian Government reiterated its strong position concerning the large scale human rights violations in Abkhazia. However, despite numerous, unremitting attempts of Georgian authorities to ensure at least minimum standard protection of human rights and freedoms which were described above in the present report, despite addressing the international community to draw due attention to the large-scale, blatant human rights violations and help create human rights situation monitoring mechanisms, the practical inability to redress the problem remains the greatest obstacle for the Georgian Government to ensure respect and protection of human rights in the conflict zones.

### **Article 8**

126. In the concluding observations, the Committee remained concerned at the continuation of practices, that involve trafficking in women in Georgia. It urged the State party to 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.

#### **Anti-trafficking measures**

127. The Action Plan on Combating Trafficking in Human Beings (2005-2006) was approved by Decree of the President of Georgia on 29 December 2004 and includes the following

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<sup>11</sup> United States Country Report on Human Rights Practices, Georgia, 2005, released by the Bureau of Democracy, Human Rights and Labour, 8 March 2006.

objectives: (a) legal regulation of labour migration related issues with a view to eliminating favourable conditions for human trafficking; (b) improvement of the existing legislative basis on combating trafficking in persons; (c) raising public awareness of irregular labour migration and trafficking in persons; (d) evaluation of the scale of the problem of irregular labour migration and trafficking in persons; (e) protection and rehabilitation of victims of trafficking in persons; (f) creation and strengthening of institutional mechanisms against irregular labour migration and trafficking in persons; and (g) monitoring the situation in the sphere of combating trafficking and irregular labour migration.

128. The plan provides for specific strategies and timeframes for their implementation, and indicates the implementers and State bodies concerned. In conformity with the plan, local NGOs are requested to participate in the implementation of various strategies, in particular, with respect to its awareness-raising and monitoring components.

129. In conformity with the Presidential Decree of 1 February 2005, the Ad Hoc Interagency Anti-Trafficking Commission under the National Security Council of Georgia was established. The Secretary of the National Security Council is Chairman of this Commission. The Commission includes senior officials of the State bodies concerned; representatives of several Georgian NGOs and international organizations are requested to take part in the activities of this Commission.

130. In January 2005, the Government of Georgia established and adequately funded a new Anti-Trafficking Division within the Ministry of Internal Affairs, with a staff of 49 operating in Tbilisi and throughout Georgia.

131. Amendments to CCG criminalizing trafficking in persons and trafficking in minors, and imposing relevant sanctions for this crime (art. 143<sup>1</sup> and art. 143<sup>2</sup>) were passed by the Parliament of Georgia. The law entered into force on 10 July 2003. In conformity with the above amendments, these crimes may be punished by imprisonment of 7 to 20 years or life imprisonment (in the case of a minor victim). To date, many criminal cases have already been instituted under the above articles of CCG; perpetrators have been brought to responsibility and, in a few cases, tried by the court and convicted. At the same time, an increasing danger of crimes related to trafficking in human beings in the conflict zones of Georgia should be emphasized proceeding from the fact that, as mentioned above, de facto these territories are out of control of the Government of Georgia.

132. In May 2006, the Law on Combating Trafficking in Persons was adopted by the Parliament of Georgia. The law aims to address deficiencies in the current anti-trafficking legislation and provides for legal measures to protect and assist victims of trafficking. The law in question has been elaborated by the Committee on Human Rights and Civil Integration of the Parliament of Georgia.

### **Labour activities of convicts**

133. Information contained in the second report submitted under ICCPR, regarding legislative norms on the labour activities of convicts, remains valid (paras. 146-150).

134. According to the Ministry of Justice of Georgia, in order to promote labour activities and re-socialization of inmates, nine various small projects (within \$4,000 each) have been launched in the penitentiary system under the auspices of Prison Reform International and Norwegian Rule of Law Mission to Georgia (NORLAG).

135. In Ksani penitentiary facility No. 7 (strict regime), the NGO Human Rights Education Centre, in cooperation with the Penitentiary Department of the Ministry of Justice, arranged car repair training courses for 15 inmates. In Rustavi penitentiary facility No. 1 the same NGO involved convicts in the renovation of a school building located in the facility.

136. In cooperation with the Ministry of Labour, Health and Social Affairs and the Ministry of Justice, with financial assistance of NORLAG, in May-June 2006 several pilot projects aimed at promoting labour activities of convicts are supposed to be implemented in three penitentiary facilities of Georgia.

### **Military and alternative service**

137. In its concluding observations on the second report of Georgia (CCPR/CO/74/GEO, para. 18), the Committee expressed 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 regretted the lack of clear information on the rules currently governing conscientious objection to military service. The Committee urged the State party to ensure that persons liable for military service who were conscientious objectors can opt for civilian service the duration of which was discriminatory in relation to military service.

138. According to the Ministry of Defence of Georgia, within the period under review the duration of military service for the recruits was 18 months, for so-called contractors (professional military servants) - not less than 3 years. According to the Ministry of Labour, Health and Social Affairs of Georgia, the duration of non-military alternative service is longer and amounts to 24 months, which is a normal practice for many European countries (e.g. in Austria, the duration of compulsory military service is 6 months and the term of non-military alternative service is longer, namely, 9 months)

139. Labour issues for soldiers employed in military service are regulated by Army General Regulations, Orders and Active Legislation. Employment of soldiers is not permitted for non-military purposes.

140. In conformity with information provided by the Ministry of Labour, Health and Social Affairs, currently the Department on Non-Military Labour Service of the said ministry is in charge of implementation of the Law on Non-Military Alternative Labour Service. The Department takes part in regulation of relationships among recruits to ensure equity in protection of human rights despite religious, ethnic or other features.

141. The activities of this department are monitored, on a permanent basis, by NGOs active in the field of human rights and representatives of the Council of Europe. On the part of the latter, in 2004-2005 the monitoring was implemented within the framework of the respective inspection project.

142. The number of volunteers in the alternative service has tended to increase. During 2000-2006, 403 persons, belonging to almost all religious and ethnic groups in Georgia, refused (on the grounds of freedom of confession, belief and religion) compulsory service and were employed for non-military alternative service. Young men recruited in this service could freely express their attitude to the military service by working in hospitals, communal service centres for disabled and vulnerable people, and in organizations active in humanitarian issues, and environmental protection.

### **Work performed in a state of emergency**

143. Information contained in the previous report of Georgia submitted under ICCPR regarding legislative norms on the work performed in a state of emergency remains valid (paras. 155-159).

## **Article 9**

### **Detailed regulation of criminal proceedings, as a mechanism for human rights protection**

144. The procedure of arrest/detention is precisely regulated, with the aim of avoiding human rights violations. As determined under article 141 of CPC, detention as a short-term deprivation of liberty is to be applied if there is reasonable suspicion that the person committed the crime for which deprivation of liberty is prescribed as a sanction, with the view of ensuring suppression of his/her criminal activities, prevention of escape or destruction of evidence.

145. In its concluding observations, the Committee expressed its concern at the length of the period (up to 72 hours) that persons can be kept in police detention and before they are informed of the charges against them. It was 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 was urged to 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.

### **First 72 hours of detention and/or arrest**

146. Police officers are obliged to take the arrested suspect to the police station immediately after the arrest and question him/her within 24 hours. The term of detention of a suspect, that is the period from the arrest to bringing charges, must not exceed 48 hours. If charges are not filed against the suspect before the expiry of the term mentioned, he/she is to be released immediately (art. 72, CPC). After filing charges, the investigative body requests the court to impose the measure of constraint upon the accused. Unless within the following 24 hours the court makes

a decision regarding the imposition of detention or any other measure of restraint, the person in question must be released immediately. During the 72 hours mentioned (48 hours as a suspect and 24 hours as an accused) the arrested person is placed at the temporary detention isolation centre. If the measure of constraint in the form of detention is applied, the person is transferred to the pretrial detention institution.

147. In accordance with the legislative amendments of 27 December 2005 that entered into force at the beginning of January, the investigator is entitled but not obliged to interrogate the accused with regard to the charges. Previously, the interrogation of the accused was mandatory and this rule used to put investigations under strain, while delays of attendance of the defence counsel were commonplace. This generally worked against the right of the defendant to remain silent if he wished so.

148. Apart from the above-mentioned, it is advisable to note in the context of this question that, according to the Prosecutor-General's Office, with regard to the 72-hour period of short-term detention, during the last two years there were six cases when judges responded to the violation of the 72-hour detention period by releasing the arrested person. Two judges who did not take the mentioned violation into consideration were dismissed. These measures will significantly contribute to the prevention of such violations and provision of adequate response to them in the future.

#### **Status of a suspect the first 12 hours of detention/arrest**

149. Amendments to article 72 of CPC dated 13 August 2004 are noteworthy as a significant step for ensuring human rights protection. The old wording of article 72 (3) of the Code allowed the law enforcement authorities to hold a person in custody without being granted any legal status until the decree recognizing him suspect was issued. Although a 12-hour time limit (since bringing a person to the police station) was determined for that purpose, the detained person was not entitled to any legal guarantees for the duration of those 12 hours. In accordance with the amendment mentioned, a person is considered suspect from the very moment of his/her arrest and no formal act is any longer determinative for conferring that status on him/her. By virtue of the mere fact of being detained, the person is a suspect from the criminal procedural perspective and benefits from all those rights guaranteed to the suspect by the Code. This amendment owes its entry to the decision of the Constitutional Court of Georgia dated 29 January 2003, which declared the existence of the so-called 12-hour vacuum contrary to the Constitution - supreme law of the country. The amendment in question was intended to fill that gap and, having been enforced since 13 August 2004, it has proved to be workable in practice and able to improve the situation persisting before.

#### **Arrest, search, seizure and inspection of the place of accident**

150. Under article 145 of CPC, law enforcement authorities are obliged to draw up the record of arrest immediately upon the arrest or, if it is impossible due to reasonable grounds, immediately after bringing the detainee to the police station. The record is to include the information regarding the physical condition of the person at the moment of detention and

the exact time of detention and delivery to the police station. If a detention is not recorded as required by CPC and if the document is not submitted to the detainee, he/she is to be released immediately. A personal search may also be conducted immediately upon the arrest if there are sufficient grounds to suppose that the arrested person is carrying the weapon or intends to get rid of the object revealing his criminal activities. Under the previous wording, the law enforcement authorities were obliged to draw up two records: one for arrest and one for search, which was often burdensome and legally unjustified. In pursuance of recent legislative amendments to article 145 of CPC adopted on 16 December 2005 that took effect at the beginning of January 2006, the single record for the arrest shall contain all data related to personal search; the corresponding standard protocol for arrest is amended accordingly.

151. In order to ensure the effective protection of the rights of the suspect and the accused, one of the notable amendments contained in article 73 (d)<sup>1</sup>, dated 25 March 2005, grants the suspect right to invite the person (not exceeding two persons) of the choice of his/her own to attend the conduct of certain investigative actions, namely search, seizure and inspection of the place of the accident. According to the old formulation of the given provision, it was the duty of the representatives of the law enforcement agencies to provide such persons and this led to establishing of an awkward practice of having one and the same persons attend the conduct of investigative actions in absolutely different cases. The amendment mentioned can be regarded as additional safeguard against human rights violations by law enforcement authorities.

#### **Basic legal safeguards**

152. CPC provides for adequate safeguards against ill treatment of persons deprived of liberty that are in full compliance with international standards. Particular importance is attached to three important guarantees:

- The right of those concerned to have the fact of their detention notified to a close relative or third party of their choice;
- The right of access to a doctor; and
- The right of access to the lawyer.

These rights are applied from the very outset of deprivation of liberty.

153. Under CPC (arts. 73 (1) (a)<sup>1</sup> and 145 (1)), the arrested person shall be informed at the time of arrest *without delay* in the understandable form about the crime he is suspected of as well as of:

- The right of access to the lawyer;
- The right to be silent and abstain from answering questions; and
- The possibility that everything he says may be used against him/her at the trial.

154. A suspect has the right to notify close relatives or other persons of his/her choice regarding the location of detention, as provided for in article 73 of the CPC of Georgia. In accordance with article 138 of CPC, investigator and prosecutor are obliged (on their own) to inform a family member or a relative of the arrested person within five hours (within three hours with respect to minors) from the arrest. The notification is to be recorded in writing and attached to case materials.

155. The time limits related to the detention period has been reduced and brought in compliance with article 18 of the Constitution of Georgia. In particular:

- Nine-month term of pretrial detention has been reduced to four months; and
- 30-month term of detention during the trial proceedings has been reduced to 12 months.

156. These provisions took effect from 1 January 2006. In addition, the law now provides that, in the course of conducting proceedings:

- At the court of first instance, the term of detention must not exceed six months;
- At the Court of Appeal, the term of detention must not exceed four months; and
- At the Court of Cassation, the term of detention must not exceed two months.

#### **Statistical data concerning arrests and detention**

157. In 2000, the total number of prisoners deprived of their liberty in Georgia amounted to 8,349, including 219 women and 98 minors.

158. In 2001, the total number of prisoners deprived of their liberty in Georgia amounted to 7,688, including 227 women and 64 minors.

159. In 2002, the total number of prisoners deprived of their liberty in Georgia amounted to 6,749, including 180 women and minors; in 2003, the total amounted to 6,274, including 158 women and 79 minors; in 2004, the total amounted to 6,654, including 184 women and 84 minors; and in 2005, the total amounted to 9,051, including 184 women and 115 minors.

160. The total number of the persons deprived of liberty currently amounts to 11,414 persons, including 11,045 men, 369 women and 176 minors.

161. In its concluding observations, the Committee notes with concern (para. 14) that domestic violence against women remained a problem in Georgia. The State party was urged to 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.



162. In May 2006, the Law of Georgia “On the elimination of domestic violence, protection of and assistance to violence victims” was adopted. The purposes of the Law on Domestic Violence are as follows:

- To create the legislative guarantees for the protection of the rights and liberties of family members and family values and for their inviolability in the light of recognition of equality of family members;
- To form effective mechanisms for the reveal, prevention and suppression of domestic violence;
- To ensure the access of justice to victims of domestic violence;
- To create conditions of the protection, assistance and rehabilitation of victims of domestic violence; and
- To ensure cooperation between various institutions in order to prevent and fight against domestic violence.

163. Notably, the law provides for the comprehensive definition of domestic violence: “Domestic violence means the violation of the constitutional rights and liberties of one member of family by another one by virtue of physical, psychological, economic, sexual violence or coercion.”

164. To highlight the essence of this law, special attention has to be paid to the efficient tools for the protection, social rehabilitation and reintegration of both protagonists in domestic violence - the victim of domestic violence as well as the oppressor:

- First the establishment of a temporary housing (shelter) for victims of domestic violence deserves special consideration. To implement the measures for the protection, psychosocial rehabilitation of victims, legal and medical assistance to these victims, temporary housing (shelter) is to be created under the auspices of the Ministry of Labour, Health and Social Affairs of Georgia. More importantly, the said shelter must meet the everyday needs of victims of domestic violence, ensuring the system of emergency medical and psychological assistance; and
- The law grants possibilities to any non-governmental organization to form a temporary housing (shelter) for victims of domestic violence on the condition that such a shelter meets the standards set by the Ministry of Labour, Health and Social Affairs of Georgia.

165. The victim of domestic violence shall be housed in a shelter by the law enforcement agencies for a period of two months upon his/her own request; additionally, a victim maintains his/her office during the period. The law guarantees confidentiality of the information obtained from a victim of domestic violence about his/her identity, health and psychological state.

166. Second, the law takes into account the specific interests of an oppressor and provides the measures for their protection and rehabilitation, mainly, the creation of a rehabilitation centre for oppressors. This rehabilitation centre represents temporary housing supporting rehabilitation, crisis intervention and medical assistance to oppressors. The law entitles any non-profit organization to found such a centre in compliance with the standards formulated by the Ministry of Labour, Health and Social Affairs of Georgia.

167. Additionally, the law accentuates the necessity of conducting information campaigns aimed at increasing public awareness of domestic violence and family matters among members of the society.

168. Interestingly, the law offers specific measures regarding the protection of minors from domestic violence.

## **Article 10**

### **Penitentiary system and pretrial detention facilities**

169. Ongoing reforms within the penitentiary system are aimed at ensuring compliance with international standards through putting special emphasis on the improvement of the conditions of persons deprived of liberty.

170. In accordance with the joint order of the Ministry of Justice and Ministry of Finances, dated 30 March 2006, the value of the daily allowance of prisoners for food increased at several establishments and amounted to 1.5 GEL. Special attention was paid to providing conditions of personal hygiene and necessary facilities to the persons deprived of liberty.

171. Most of the penitentiary facilities have been reconstructed and significantly renewed, in compliance with the international standards. In this respect, facilities in Kutaisi (No. 2) and Rustavi (No. 6) are worthy to note, where clean linen, heating and meals four times a day are provided. Prisoners are given the possibility to contact their family members and relatives in the case of necessity. Soon shops will be opened in the new establishments and persons deprived of liberty will have the possibility to acquire necessary products without paying cash. It is worthy to note that staff for these new establishments were selected as a result of competition and subsequently specially trained. In the place of the liquidated Rustavi facility No. 2, the construction of the new establishment (intended for 800 persons) will be completed in two months, provided with new premises and toilets, fully in compliance with international standards. In 2005, in the former female penitentiary facility No. 5, the new female and juvenile penitentiary facility was set up with two separate buildings. Though this facility is crowded, the life conditions are still satisfactory. The comfortable living rooms, rooms for women with children, library, bath, toilets, laundry and a place for praying are provided. Life and social conditions have been significantly improved at the juvenile facility. School No. 39 functioning under the Ministry of Education and Science with experienced, professional staff creates the possibility to get basic education. Ksani facility No. 8 (for 300 prisoners) is currently under renovation and will be completed in approximately two months.

172. The construction of a new penitentiary facility (for 3,000 prisoners) is already commenced in the capital of Georgia and is expected to be completed in 2007.

173. All the penitentiary establishments have electric generators as an additional source of energy.

174. The reforms within the penitentiary establishments are carried out on a step-by-step basis. Close cooperation between two units of the Ministry of Justice, namely, the Penitentiary Department and the Department for Reformation and Monitoring of the Penitentiary System significantly contributes to this process. The collaboration with local and international NGOs is noteworthy. In pursuance of the bilateral agreement with the Georgian Orthodox Church, there are churches/places for praying in each penitentiary establishment.

175. Since March 2005, pretrial detention facilities of regional and local units of the Ministry of Internal Affairs, together with pretrial detention facility of former Ministry of State Security were transferred under structural subordination to the respective Main Division. A series of measures are being elaborated and carried out. These measures directly focus on improvement of health condition of suspects, protection of their rights and personal dignity and putting of the unified identification-registration system in a proper order.

176. Independence of pretrial detention facilities from interference on the part of outside officials is strictly guaranteed by the Ministry of Internal Affairs; this is a result of control established on these facilities. Appropriate information on the facts of different bodily injuries that suspects in detention facilities got as a result of physical assault on them by police officers while detaining and/or after detention - in police units (as they explain) are sent to appropriate agencies, where the investigation on each mentioned fact is conducted.

177. Tbilisi pretrial detention facilities No. 1 and No. 2 have been completely repaired with comfortable ventilation systems, heating, showers and investigation rooms. Renovation works at the rest facilities are being implemented on a step-by-step basis.

178. Currently the administration of the Ministry of Internal Affairs and Prosecutor-General's Office of Georgia are jointly considering a draft of new provisions on definition of liabilities of the employees and activity and case management by pretrial detention facilities under the Ministry of Internal Affairs. The draft mentioned is elaborated on the basis of international experience and standards, establishment and harmonization of which with the present legislation will essentially improve the management and activities of pretrial detention facilities.

179. In October 2004, in compliance with the order of the Minister of Justice, the Council for Public Supervision of the Penitentiary was established, with the aim of creating an efficient and fair system to implement public control over the penitentiary and its activities. In November 2005, by the order of the Minister of Justice, the above Council was abolished, due to inefficiency of its activities. In conformity with the same order, the respective department of the Ministry of Justice was tasked with the elaboration of a draft statute for the commission of the penitentiary facility, as provided for by article 93 of the Law on Imprisonment.

180. Proceeding from the above, in December 2005, commissions for public control of the penitentiary were set up in several penitentiary facilities of Georgia,<sup>12</sup> in particular:

- The public control commission at Batumi prison No. 3;
- The public control commission at Zugdidi prison No. 4;
- The public control commission at Kutaisi prison No. 2 and a penitentiary facility of strict regime.

In other penitentiary facilities, the establishment of such commission is planned for May-June 2006.

181. According to the Decree of the President of Georgia No. 309 of 3 August 2004, in order to ensure transparency of the penitentiary, 21 public figures and representatives of NGOs were empowered to implement public monitoring of the system.

### **Medical examination of prisoners**

182. On 23 June 2005, addition has been made in a form of article 92<sup>2</sup> to the Law on Imprisonment. This article is the result of the case-law analysis, aimed at securing the physical integrity of the prisoner and determination of the fact, whether the prisoner has been abused, when the incident took place. The article reads as follows: “Medical examination of the prisoner is obligatory in each case of taking and returning of the person from the penitentiary establishment, except for his/her taking or returning to/from the court hearing. The administration of the penitentiary system should be immediately informed about the result of the medical examination.”

### **Consideration of prisoners’ complaints**

183. The procedures for considering the complaints of the prisoners are regulated by the Order of the Minister of Justice, rules regarding serving sentence, and the regulation on forwarding the applications and complaints of prisoners. The staff of the respective unit of the Penitentiary Department ensures control and coordination of responding to all applications and complaints of prisoners or transfer of such complaints to the addressees. From 2000 to 2003, about 1,900 applications and complaints were received (in 2000, 244; in 2001, 418; in 2002, 534; in 2003, 712). Sometimes, defendants request the assistance of a lawyer or are dissatisfied with the State-appointed lawyers. In such cases, employees of the Penitentiary Department meet persons making complaints and, with the assistance of the non-governmental organizations, provide them with free legal assistance. The Penitentiary Department actively cooperates with the Public Defender’s Office in connection with the complaints and applications of prisoners.

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<sup>12</sup> Members of the commissions were duly trained at the Training Centre of Penitentiary and Probation, with the financial assistance of NGO Prison Reform International.

The persons deprived of liberty mainly make complaints regarding the unfairness of investigation or judgement, or that the court proceedings are unreasonably prolonged. Sometimes, prisoners demand medical examination by the commission or transfer to the medical establishment due to the deterioration of their health state.

184. Complaints were also received by the Department of the Prosecutor-General's Office of Georgia, which exercises supervision over observance of law requirements at the establishments for deprivation of liberty. In 2000-2003, 620 complaints were received. Out of these complaints, 150 were sent to other bodies, 134 were attached to the respective criminal cases. In all, 240 complaints were satisfied. Most of the complaints referred to the question of investigation, supervision over the penitentiary establishments and/or State prosecution.

### **Occupancy rates**

185. As regards the occupancy rates, article 33 (2) of the Law on Imprisonment determines space limits per person for different institutions (prisons, places for pretrial detention, for minors/women, medical establishments) ranging from 2 to 3.5 square metres. Taking into account this requirement established by law, official limits have been determined by Georgian authorities on the number of persons to be placed at each establishment for deprivation of liberty.

### **Medical treatment of prisoners**

186. Under the joint order (dated 17 January 2006) issued by the Minister of Justice and the Minister of Labour, Health and Social Affairs, the joint medical commission was created and empowered to make decisions regarding the medical treatment of prisoners and their transfer to a medical establishment.

187. Two new medical units were formed (in Kutaisi facility No. 2 and Rustavi facility No. 6) that comply with international standards. Staff is selected as a result of competition and subsequently well-trained. Part of the necessary medical equipment has already been provided and negotiations are being conducted with donor organizations regarding the other part.

188. As regards the financial resources for the medical establishments of penitentiary system, in 2005 100,000 GEL were provided from State budget. This year 297,000 GEL are provided for medicines, and 50,000 for medical equipment and other expenses. Therefore, the situation is significantly better in comparison with 2005 (an almost fourfold increase).

189. In September 2006, the medical establishments of the penitentiary will be fully transferred to the Ministry of Labour, Health and Social Affairs. The special working group is created for the implementation of this reform.

190. As regards screening for infectious diseases, all prisoners are to be screened for tuberculosis. In this context, it should be mentioned that we greatly appreciate the efforts of the International Committee of the Red Cross to curb the spread of this disease in prisons. With ICRC assistance, within the framework of its DOTS programme, 1,831 detainees were screened for active tuberculosis in eight detention facilities; 208 detainees were under treatment by 2006.

Besides, currently the Ministry of Justice is conducting intense negotiations with the Governments of Turkey, France and Norway, in order to equip the Georgian penitentiary with adequate medical devices.

191. As for HIV/AIDS, the Georgian AIDS Centre has been implementing permanent monitoring and examination of detainees suffering from AIDS.

192. Within the framework of ongoing reform, three-level medical services are to be provided in the penitentiary depending on how serious the prisoner's illness is: (a) medical treatment at a hospital available in the penitentiary facility; (b) medical treatment at the head medical service of the penitentiary; and (c) medical treatment provided in a medical establishment of the Ministry of Labour, Health and Social Affairs.

### **Deaths in prisons**

193. The number of deaths of persons deprived of their liberty registered in the period 2003-2005 was as follows:

- In 2003, 52 cases of death were recorded (39 from illness, 13 violent deaths);
- In 2004, 43 cases of death were recorded (33 from illness, 10 violent deaths); and
- In 2005, 47 cases of death were recorded (36 from illness, 11 violent deaths).

194. Investigation is initiated in each and every case of death. Under article 63 (6<sup>3</sup>) of the CPC of Georgia, the crimes committed in the territory of the penitentiary establishment are investigated by the Investigative Division of the Ministry of Justice and supervised by the Office of the Prosecutor-General of Georgia.

### **Plan of measures to reform and develop the penitentiary system**

195. The main purpose of the plan of measures to reform and develop the penal correction system for the period 2002-2007 is to reform the Georgian penitentiary system and solve problems in this sphere. Due to the Rose Revolution, implementation of this programme commenced in 2004, which entailed some shift in its previously set terms.

196. With respect to paragraph 1 of the plan, it should be noted that, in December 2005, Kutaisi prison No. 2 and a strict regime penitentiary facility were put into operation. The facility is designed for 1,500 inmates and meets international standards.

197. In 2005, in the property of Tbilisi female penitentiary facility No. 5 a juvenile penitentiary facility was built that is designed for 110 inmates. Thus, it became possible to transfer underage prisoners from Tbilisi prison No. 5 to the new facility. In the same year, Avchala penitentiary facility No. 10 of general and strict regime, that had been built back in 1959, was repaired and put into operation. The facility is designed for 250 inmates and now its conditions are closer to the international standards in this field.

198. In March 2006, Rustavi prison No. 6 was put into operation, which had been built with the assistance of the European Union. The prison is intended for 728 inmates and meets the respective international standards.

199. According to the Decree of the President of Georgia, construction of a new penitentiary facility has been launched in Tbilisi. The facility is designed for 3,000 inmates and will meet international standards in this field. The new facility will be put into operation in the first half of 2007; accordingly, the problem of overcrowding in the penitentiary is expected to be solved. In 2008, two more prison-type penitentiary facilities will be built, in Zugdidi and Batumi, that will comply with the respective international standards.

200. With respect to paragraph 2 of the plan, it is to be noted that the construction of Rustavi prison No. 6 was finished and it is in operation now.

201. With respect to paragraph 3, it should be mentioned that several legislative amendments were elaborated to determine rules of staffing in the guard service of the penitentiary department. The amendments in question were approved by the Parliament of Georgia at the first hearing. The Ministry of Justice has worked out a plan of coordinated activities that has been agreed with the Ministry of Internal Affairs and the National Security Council of Georgia.

202. The signalling system is working properly at six penitentiary facilities. At two penitentiary facilities, signalling systems are out of order; they will not be restored, because these facilities are to be closed in the near future. The problem of installing signalling systems at the facilities currently not having them is under consideration and will be solved as soon as possible.

203. The problem of the prison escort cars was settled with the availability of new escort cars that mostly solved security-related problems. To renew car services of the penitentiary department, 800,000 GEL were allocated from the funds of the President of Georgia; in addition, the Ministry of Justice of France presented their Georgian colleagues with 10 escort cars.

204. With respect to paragraph 4, it is expedient to note that the system of food provision at the penitentiary was subjected to decentralization; consequently, all penitentiary facilities in the western part of Georgia as well as Rustavi prison No. 6 are provided with food independently. The process of decentralization countrywide will be completed by the end of 2006. The penitentiary has no problem with electricity supply; nonetheless, three correctional facilities should be provided with powerful electric generators. There is almost no problem with water supply as well, albeit in two facilities running water systems need to be repaired, and in one more facility a special well and a water pump are needed.

205. In two penitentiary facilities, psychological services have been established to ensure psychological rehabilitation of convicts. In cooperation with the Penitentiary Department and a local NGO, a rehabilitation programme for drug addicts was launched in the female and juvenile prison and penitentiary facility.

206. With respect to paragraph 5 of the plan, currently the medical services of penitentiaries are being transferred from the Ministry of Justice to the Ministry of Labour, Health and Social Affairs; the process will be completed by September 2006. In this context, it is advisable to

recall that, according to a joint order of the two ministries in question, a commission of medical practitioners was set up in January 2006 to study health conditions of prisoners and, if necessary, make conclusions on placing them in a hospital.

207. For the time being, a computerization programme has been launched in penitentiaries, with the financial assistance of the European Commission, in order to ease data processing and create a comprehensive database. The programme in question has already been put into operation in five penitentiary facilities.

208. In May 2006, it is expected that the elaboration of a long-term and detailed action plan for the reformation of penitentiaries will be finished, which is mainly aimed at complete decentralization of the system.

209. In 2005, a public contest was held in order to select employees to work at two penitentiary facilities; it was a first for Georgia. According to the Presidential Decree of 8 November 2005, a Training Centre for Penitentiary and Probation was established to select, train and retrain penitentiary personnel. Since then, 450 penitentiary employees who had been selected in the course of the public contest mentioned above were retrained under a special basic and management programme. In 2006, 86 employees from another penitentiary facility were retrained under the same programme as well.

210. The Ministry of Justice has been taking steps to settle salary-related issues, including those in the penitentiaries. As a result, in the current year the average salary in the system will amount to 350 GEL. Employees of two penitentiary facilities have already received increased salaries. In addition, a bonus system for the best penitentiary employees is to be introduced.

211. In September 2006, a draft Penitentiary Code will be submitted to the Parliament of Georgia, in order to comprehensively settle all issues linked to penitentiary relationships. The Ministry of Justice is currently working out draft internal rules for the penitentiary facilities which are to be in line with international standards in this field.

### **Medical care for patients with mental problems**

212. There are up to 19 medical institutions in Georgia dealing with mental problems. Psychiatric care is financed under the respective State subprogramme.

213. In order to avoid possible violations in the sphere of psychiatric care, article 12 of the Law on Psychiatric Assistance (Forensic Psychiatric Expertise) was amended in April 2005. Pursuant to this amendment, only a licensed medical establishment of the Ministry of Labour, Health and Social Affairs and the State forensic establishment are entitled to conduct forensic psychiatric expertise. Implementation of forensic psychiatric expertise by a preliminary investigation body or its subordinate establishment is impermissible.

214. According to the State Regulatory Agency of Medical Activities, during the reporting period, there were the following numbers of complaints on the part of patients and their legal representatives: in 2002, 1; in 2003, 3; in 2004, 3; and in 2005, 3.



### **Article 11**

215. The Committee expressed 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 was urged to bring its civil and criminal legislation into line with articles 11 and 12 of the Covenant.

216. It should be noted that during the reporting period the Law on Bankruptcy Proceedings, reviewed in the periodic report, was amended several times. Specifically, the provisions regarding the application of measures such as arrest and custody or detention for the purposes of securing a written power of attorney to insolvent debtors have been taken off the books.

### **Article 12**

#### **The freedom of movement and the right to choose one's residence within the State**

217. During the period under review, several laws that address various legal issues relating to the rights protected under this article have been adopted or amended. In particular:

- In conformity with the new Law of Georgia on Legal Status of Foreigners (December 2005), a visa-free regime has been introduced for citizens of EU, the United States of America, Canada, Japan, the Swiss Confederation, Liechtenstein, Norway, Israel and the Holy See, whose stay in Georgia does not exceed 90 days (art. 4<sup>4</sup>);
- The Law of Georgia on Legal Status of Foreigners stipulates that an alien may be granted permanent residence permit if (a) s/he has legally lived in Georgia for the last six years (excluding the periods of stay linked to educational reasons or medical treatment, or his/her work at diplomatic or equated mission); (b) s/he is spouse, parent, child, adoptive parent, adopted child, sister, brother, grandmother or grandfather of a citizen of Georgia; (c) s/he is a highly qualified specialist of the scientific field, an athlete or an artist whose arrival is in line with the interests of Georgia (art. 20). No special permission to obtain permanent residence permit is necessary for the alien if (a) s/he permanently lived in Georgia by 27 March 1993 and was not considered as a citizen of Georgia provided s/he has not been removed from permanent registration after 27 March 1993; (b) his/her Georgian citizenship was terminated (due to renunciation or loss of the citizenship) provided s/he has stayed to live in Georgia (art. 21). The alien may be refused in obtaining the permanent residence permit if (a) s/he threatens security, rights and legitimate interests of the citizens of Georgia and aliens living in Georgia; (b) s/he does not observe terms/conditions obtained through the residence permit; (c) s/he is involved in activities endangering the State security of Georgia; (d) s/he committed a crime against peace and humanity; (e) s/he is wanted for committing a crime, or was convicted for committing a crime within the last five years before lodging the respective application (unless the conviction was removed or nullified), or criminal proceedings are initiated against him/her - until the criminal case is completed;

(f) s/he suffers from a disease that may endanger the population of Georgia; (g) s/he has no sufficient legal income source to live in Georgia or s/he is not fully provided by others; (h) s/he produces false or invalid documents to obtain visa or residence permit; (i) in other cases as provided by law (art. 23);

- In conformity with an amendment to the Law on the Procedure for Registration of Citizens of Georgia and Foreigners Living in Georgia, Issuance of Identity Card (Residence Permit) and Passport of the Citizen of Georgia (June 2004, entered into force from November 2004), when changing the place of residence for more than six months, the person is obliged to report this fact, within 10 days, to the territorial organ for State registry of the Ministry of Justice according to the new place of residence (art. 4);
- In conformity with amendments to the Law on Emigration (June 2004, entered into force from November 2004), the citizen of Georgia leaves in the emigration having the passport issued by a territorial organ for State registry of the Ministry of Justice (art. 5). The person concerned shall lodge a petition on the issuance of emigration passport the territorial organ for State registry of the Ministry of Justice (art. 7, para. 2).

218. In 2004, territorial bodies of the Public Registry of Georgia issued 277,808 foreign passports to the citizens of Georgia. In 2005, 238,084 foreign passports were issued, and in January-February 2006, 28,566 foreign passports have already been issued by territorial bodies of the public registry.

219. The balance of international migration of population (thousands of persons) is set out below:

	2001	2002	2003	2004
Net migration	-31.2	-29.1	-28.6	-26.9

### Article 13

#### Expulsion

220. Issues related to the expulsion of foreigners from Georgia are regulated by the Law on the Legal Status of Foreigners. According to article 53 of the law, a foreigner may be expelled from Georgia if (a) he/she illegally entered Georgia; (b) legal grounds for his/her stay in Georgia no longer exist; (c) his/her stay in Georgia is against State security interests and public order in Georgia; (d) his/her expulsion is necessitated by the need to protect health, rights and legitimate interests of citizens of Georgia and persons lawfully within the territory of Georgia; (e) he/she systematically violated Georgian legislation; (f) he/she obtained legal grounds to enter or stay in Georgia by presenting false documents or documents not having legal force; or (g) he/she was sentenced to one-year or longer imprisonment for committing one or more premeditated crimes.

221. In conformity with article 54 of the above law, decision on the expulsion is made: with respect to paragraphs (a) and (b) of article 53 - by the Ministry of Justice; and with respect to paragraphs (c) to (g) of article 53 - by the court. The decision-making body is obliged to explain to the foreigner who is to be expelled his/her rights and responsibilities. If the foreigner does not leave the territory of Georgia within the established time frame, he/she must be expelled forcibly. Decision made on the expulsion of the foreigner can be appealed in conformity with rules established by law.

222. The number of foreigners expelled from Georgia within the last three years is as follows: in 2003, 16; in 2004, 39; in 2005, 577. The main reason for their expulsion was the violation of visa regime.

### **Extradition**

223. The Prosecutor-General's Office of Georgia is the competent body to consider the question of extradition. In the case of extradition of foreign fugitives from Georgia, it examines the compatibility of the request with Georgian legislation and the relevant international agreement binding Georgia and takes the decision accordingly. At the same time, it prepares relevant documents and transmits requests for extradition of Georgian citizens and stateless persons with permanent residence in Georgia to the relevant authorities of foreign countries.

224. In the case of disclosure of the whereabouts of a fugitive in the territory of Georgia, the Prosecutor-General's Office of Georgia, through the relevant Department of the Ministry of Justice, determines the nationality of the fugitive and checks with the Ministry of Refugees and Resettlement of Georgia whether the aforementioned person has the status of refugee in Georgia. If a person is neither a Georgian citizen nor a refugee in Georgia, the law enforcement bodies arrest him/her for the purpose of the extradition.

225. Within 48 hours, relevant district prosecutor refers the request for the application of detention for extradition to the district (city) court in accordance with the territorial jurisdiction. The court order may be appealed within 15 days from the moment the decision is handed to the arrested person. The term of detention for extradition is three months. It may be prolonged for another two months no more than twice. Thus, the overall length of detention for extradition shall not exceed seven months. During this period, the person to be extradited will enjoy all the rights of the accused given in Georgian criminal legislation. Particularly, the following procedures are to be applied. Within 48 hours of the arrest, a district prosecutor refers the request for the application of detention for extradition to the respective district (city) court. Under article 140 (19) of CPC, in order to apply a measure of restraint - detention for extradition - to the fugitive arrested in the territory of Georgia, the prosecutor presents to the district court the arrest warrant issued by the competent body of the foreign State. The judge will consider the request within 24 hours. The person to be extradited has the right to participate in the court session.

226. During the detention for extradition, the person to be extradited has all the rights granted to the accused under criminal procedural legislation of Georgia, including the access to legal assistance, interpreter, medical examination, etc. Under article 138 of CPC, if the arrested/detained person is a foreign citizen, the investigator/prosecutor within a period of five hours from the arrest and the judge within the same period from the moment of imposing detention as a measure of constraint, have the obligation to inform the respective embassy and consulate regarding this fact.

227. If the requested person is a Georgian citizen or a refugee in Georgia, and there is a reasonable doubt that he/she committed the crime in a foreign country, the Prosecutor-General's Office of Georgia will request the case file from that country for the purpose of his/her prosecution.

228. The request for extradition of a foreign fugitive arrested in the territory of Georgia shall be annexed with the following documents:

(a) The procedural documents of the criminal case, in accordance with which the fugitive is designated as an accused and the search is declared against him/her;

(b) The Court Order on the application of detention as a measure of constraint;

(c) The personal information of the fugitive such as his/her ID, his/her photo and the document establishing nationality;

(d) The extract/s from the relevant provisions of CCG of the requesting State, under which the fugitive is accused;

(e) The guarantees provided for in article 14 of the European Convention (guarantees that an extradited person would not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited);

(f) The guarantees that an extradited person would not be subject to the death penalty (if the death penalty is provided in the legislation of the requesting country for the offence a person is extradited for); and

(g) Guarantees that an extradited person would not be tortured, or subject to inhuman or degrading treatment or punishment.

229. In each particular situation, if the documentation forwarded by the foreign country appears to be insufficient for the purposes of making the decision on the extradition, the Office of the Prosecutor-General of Georgia, guided by article 13 of the European Convention on Extradition, will call for supplementary information in connection with the person subject to extradition from the Ministry of Justice (the Prosecutor-General's Office of Georgia) of the relevant State.

230. The prosecutor working on the extradition, meets the arrested person in prison and subsequently informs him/her that the Prosecutor-General's Office of Georgia is conducting proceedings in connection with his/her extradition and receives information from that person about his/her nationality.

231. After the receipt of all the necessary materials, the prosecutor working on the extradition examines thoroughly the documents determining the nationality, the identification of the person subject to extradition and the procedural documents of the criminal case. The Prosecutor-General of Georgia makes decision on extradition of the fugitive wanted by a foreign country. In this case the decree of extradition, drawn up in the language the person subject to extradition commands, is sent to the person subject to extradition, who has the right to appeal the decree at the court.

232. A person subject to extradition has all the rights of an accused person, guaranteed by the Criminal Procedure Code of Georgia. As regards the procedures related to the lodging of complaints, owing to amendments dated 25 March 2006 the new article 259<sup>1</sup> of CPC was introduced. The mentioned article establishes the rule of appealing the decision on extradition. The person to be extradited has the right to lodge a complaint in the respective district court regarding the extradition in no later than 15 days from the issuance of the decree by the Prosecutor-General. The district court will consider the complaint within 15 days. The decision of the district court may be appealed by the parties to the Criminal Cases Chamber of the Supreme Court within 10 days from its issuance. The Criminal Cases Chamber will examine the complaint within 10 days.

233. Within the period under review, the number of foreign nationals extradited by Georgia was as follows: in 2000, 4; in 2001, 21; in 2002, 18; in 2003, 3; in 2004, 13; and in 2005, 7. During the same period, the number of refusals to extradition was as follows: in 2002, 19; in 2004, 2; in 2005, 1. Foreign citizens were extradited to the following countries: Russia (40 persons); Armenia (9); Azerbaijan (8); Belarus (1); Germany (1); Lithuania (3); Moldova (2); and Turkmenistan (2).

#### **Article 14**

234. In the concluding observations, the Committee expressed its concern at the existence of factors that 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 was urged to take the necessary measures to ensure that judges were able to carry out their functions in full independence, and to ensure their security of tenure pursuant to article 14 of the Covenant. The State party was also urged to ensure that documented complaints of judicial corruption were investigated by an independent agency and that the appropriate disciplinary or penal measures were taken.

#### **Publicity for court proceedings**

235. Under article 16 of CPC, all trial proceedings for criminal cases are open as a rule. However, court proceedings may be closed to the public in whole or in part in accordance with the decision of the court. Such restriction may be aimed at ensuring the protection of State,

official or commercial secrets, when making public the personal correspondence, when bringing the defendant to justice. Conducting entirely or partly closed court proceedings may be requested by the party in connection with cases related to crimes committed by minors, sexual crimes or other categories of crimes, in order to avoid revealing the personal secrets of persons participating in proceedings, when it is required for the protection of personal security of such a person or his/her family members. The solicitations of the investigative organs regarding the application of medical compulsory measures as well as those concerning requests on the court orders and decrees are also considered at the closed hearing. The decision of the court is in any case announced publicly.

236. Amendments recently adopted with regard to the publicity of criminal proceedings are worthy of note. Under the previous wording, unrestricted and unregulated broadcasting and recording of the trial was allowed, which used to affect order in the courtroom and undermine the authority of the judge. By virtue of amendments dated 16 December 2005, a restriction or ban on stenography, audio and video-recording of the trial, and its broadcasting by media may be placed based on the grounded decision of the judge (*ibid.*, art. 16 of CPC). The amendments do not aim at restriction of participation of media in the proceedings, rather allowing the judge to set the rules and to consider the appropriateness of imposing restrictions on otherwise open broadcasting and recording of the proceedings. The corresponding provisions can be found in many jurisdictions.

237. The principle of presumption of innocence is guaranteed under article 10 of CPC. Under this principle, a person shall be presumed innocent until his/her guilt is proven by a final court judgement entered into legal force. No one shall be obliged to prove his/her innocence. The burden of proof for the charges shall rest with the prosecutor. Any doubt arising while evaluating evidence that cannot be resolved under the procedure established by law shall be settled in favour of the defendant.

### **Special measures of protection for the participants of criminal proceedings**

238. Under new legislative amendments to CPC that took effect at the beginning of January 2006, a new set of protective measures are introduced for the protection of witnesses and victims in the criminal proceedings. The judge (court) has a right to apply one or several measures of protection (from the initiation of the investigation till the end of hearing of the case in the court) upon petition of the prosecutor:

- (a) Change or withdraw information giving the possibility to identify victims or witnesses (name, address, workplace or information regarding workplace) from the Public Registrar or other public institution;
- (b) Classify as confidential procedural or aforementioned information regarding identification of the victim or witness;
- (c) Grant a pseudonym; and
- (d) Special measures of protection against physical abuse.

239. The prosecutor has also a right to apply the following measures of protection after the end of questioning session in the court, in particular:

- (a) Special measures of protection against physical abuse;
- (b) Temporary or permanent change of place of residence; and/or
- (c) Change of appearance.

240. However, a witness cannot remain fully unidentifiable throughout entire proceedings. Concealment or change of his/her identity is not permissible during questioning at the trial. After the identity of the witness is revealed at the questioning, the defendant and his lawyer are to be given reasonable time (but not exceeding seven days) for the preparation of defence. Therefore, along with the creation of an important mechanism for the protection of the rights of witnesses and victims, the principle of adversarial trial guaranteed by the Constitution of Georgia is strengthened.

### **Plea agreement**

241. The concept of plea agreement was introduced in the criminal procedural legislation by amendments dated 13 February 2004. With the view to securing high standards of human rights protection, subsequent amendments were made on 25 March and 16 December 2005. It is a new institution ensuring prompt and effective administration of justice. The CPC of Georgia precisely regulates the procedures for concluding the plea agreement, providing for effective guarantees for the protection of human rights. Agreement on guilt or agreement on sentence is the basis for the procedural agreement. Both the defendant and the prosecutor are authorized to initiate the plea bargain. When agreeing on guilt, the defendant pleads guilty to the crime. When agreeing on sentence, the defendant does not plead guilty but agrees with the prosecutor on the sentence or full immunity from sentencing. Under paragraph 1 of article 679<sup>3</sup> the plea agreement is to be concluded in writing and approved at the public hearing with the exception of cases when there are grounds for conducting the closed hearing. The procedural agreement must be reflected in the judgement passed by the court. It must be proved to the court that the agreement is made without resorting to violence, intimidation, deception or any other kind of illegal promise, on the voluntary basis and that the accused had the possibility to receive legal assistance.

242. Under paragraph 7 of article 679<sup>1</sup> of the Criminal Code of Georgia, it is prohibited to conclude the plea agreement without direct participation of the defence counsel and consent of the defendant.

243. In accordance with recent amendments of criminal procedural legislation, the plea agreement is null and void if it infringes the right of the accused to request criminal proceedings against relevant person/s in case of torture, inhumane or degrading treatment guaranteed by the Constitution of Georgia (art. 679<sup>1</sup>, para. 7<sup>1</sup> of CPC).

244. Paragraph 2<sup>1</sup> of article 679<sup>3</sup> reads as follows: “The court is under an obligation to be ascertained directly by the accused that there has been no case of torture, inhumane or degrading

treatment by the police or other law enforcement official towards the accused, before approving the plea agreement. The judge is also under an obligation to explain to the accused, that his/her suit regarding the fact of torture, inhumane or degrading treatment shall not affect approval of a procedural arrangement that has been adopted in accordance with the law.”

245. These provisions are aimed at redressing the unfortunate cases of abuse of authority with regard to plea agreements, when certain law enforcement officials enter into a plea agreement with the accused, offering lower sentence (often release on parole) in exchange for withdrawal or refusal to bring complaints of torture or ill-treatment against the State official who committed such acts.

246. On 7 October 2005, the Prosecutor-General of Georgia issued guidelines for prosecutors regulating in detail the conditions applying to plea agreements. The Prosecutor-General condemned the practice of concluding plea agreements between officials that committed the crime of torture and the victims (that were suspected, accused or convicted for the particular criminal case), in exchange for not filing a complaint regarding the fact of torture. However, a different approach is to be taken with respect to the cases when the defendant cooperates with the investigative bodies and names the persons who subjected him/her to torture/inhuman and degrading treatment. In this kind of cases the refusal to conclude a plea agreement is possible only in exceptional circumstances. Such plea agreements are fully consistent with the purposes and priorities of the fight against torture.

247. At the same time, prosecutors were recommended not to use plea agreements with respect to persons implicated with the facts of torture/inhuman or degrading treatment. Conclusion of plea agreement may still be possible, if there is no sufficient evidence to prove the guilt of the accused and the latter expresses readiness to cooperate with the investigative bodies. Besides, it is inadmissible to demand the punishment in the plea agreement that is not related to the deprivation of liberty.

### **Right and means of defence**

248. The right of a criminal suspect to consult a lawyer is applied from the outset of custody. If the suspect is unable to afford payment for the legal assistance rendered, counsel will be provided for him at the expense of the State budget (arts. 73 and 80 of CPC). As for the duration of meetings with a lawyer, under the initial wording the maximum duration of the meeting with a lawyer daily was one hour. Under the amendments of 13 August 2004, the suspect has the right to meet the lawyer, without limitation of the number and duration of meetings. Reasonable restrictions may only be made on the basis of the well-grounded decree of the competent authority.

249. As regards other rights accorded to the suspect, the following are notable: to testify or not to testify, the right to have the free assistance of an interpreter if he/she does not know and does not properly know the language used in criminal proceedings, the right to make requests and present evidence, to participate in the investigative actions conducted in pursuance of the request made by him/her or by his/her defence counsel, to make complaints regarding the actions



of the investigator with the prosecutor and regarding the actions of the prosecutor with the superior prosecutor and also before the court as determined under the given code, to receive the exhaustive explanation from the investigator regarding his/her rights and duties (art. 73, of CPC).

250. The accused enjoys all the procedural guarantees granted to the suspect. Apart from those guarantees, under article 76 of the CPC, the defendant also has the right to get acquainted with all the evidence existing in the criminal case at any stage of proceedings and to make copies at his own expense (with the exception of the materials that are related to the application of special measures of protection with respect to the participants of criminal proceedings), to demand investigative actions to be conducted in the obligatory manner and request to obtain evidence necessary for rejecting charges or mitigating criminal responsibility, and to present to the investigator, prosecutor and court the materials from private investigation that must be attached to the case history.

251. If criminal proceedings/preliminary investigation is terminated or if the criminal case is submitted to the Court together with the indictment for trial procedure, the defendant has the right either independently, or together with the defence counsel to get acquainted with case materials and material evidence. The defendant has the right not to use the assistance of the defence counsel and defend himself/herself independently, with the exception of special circumstances prescribed by law, to participate in the court proceedings, get acquainted with the record of the court session and make remarks, appeal the judgement and other decisions of the court, receive the copy of the judgement to be appealed, and to receive the explanation from the body conducting proceedings regarding his/her rights.

252. The accused person is fully guaranteed with the right to make complaints to the judge. Under articles 73 (1) (g) and 76 (2) of the CPC, the suspect/accused is entitled to make requests. Furthermore, the suspect/accused has the right to present complaints regarding the illegal activities of the investigator/prosecutor to the court, as provided for in articles 73 (1) (j) and 76 (2) of CPC.

253. In accordance with paragraph 7 of article 145 of the CPC, charges must be brought against the arrested person within 48 hours from the moment of arrest. After filing charges, the investigator is entitled to interview the accused. Subsequently, the investigator requests the court for the application of the measure of constraint, and the latter has to make a decision within 24 hours. As regulated under article 140 (8)-(10) of the Criminal Procedure Code of Georgia, when deciding the question of applying the measure of constraint the court considers the question whether the requirements of criminal procedural legislation were observed in the course of obtaining and securing evidence. If the detained person or any other person affected by the request participates in the proceedings, they have the possibility to make explanations and provide counter opinions. Under article 160 (4) of the CPC of Georgia, detention as a measure of constraint may be applied only after interviewing the defendant and examining the evidence that may influence the question of applying the measure of constraint. The Court will also consider the position of parties of the case.

254. Pursuant to article 12 of the CPC of Georgia, in the course of investigative and judicial actions, a person shall not be subjected to duress, threat, torture or other methods of physical or

mental coercion. Under article 111 of the CPC of Georgia, the evidence obtained in contravention with the rule prescribed by law, as well as through using violence, threat, blackmail or other illegal means is inadmissible. Important guarantee for avoiding the application of evidence obtained through torture is provided for in article 477 of the CCG (amendment dated 17 June 2005). According to the amendment mentioned statements made in the course of preliminary investigation will not be used as evidence at the trial, if the defendant is opposed. The testimony given in course of preliminary investigation shall not be relied upon by the court unless the accused reaffirms his/her prior statements at the court session. Thus, by virtue of those changes compulsion to confess guilt appears to lose any significance for the investigating authorities. Furthermore, declaring any sort of evidence given under pressure to be inadmissible before the court does provide additional guarantees for the protection of human rights.

### **Main directions of the judicial reform<sup>13</sup>**

255. The court reform that has been under way in Georgia since the beginning of 2005 covers all the issues related to the arrangement of the court system and to its balanced functioning. All the more or less important steps of the reform are substantially interrelated and it is necessary to implement them comprehensively and gradually to achieve the goal - creation of the independent court system.

256. In general, the reform is aimed at:

- Refining the mechanisms for struggling against corruption in the court system and ensuring the effectiveness of its functioning;
- Performing the institutional reorganization of the court system, to create a functionally balanced system and, correspondingly, ensure the principle of the sequential order of instances;
- Specializing judges for the courts of all levels;
- Increasing the number of judges, up to at least 400;
- Increasing the salaries of judges, to strengthen and enforce the guarantees of the social and legal protection;
- Refining the criteria for selecting judges and polishing up the system of judicial appointment;
- Creating a system for preparing judiciary candidates and permanent training of judge-practitioners, and to elaborate relevant long-term programmes and teaching courses and put them into practice;

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<sup>13</sup> See [www.supremecourt.ge](http://www.supremecourt.ge)

- Providing promotion opportunities for judges based on the career principle;
- Providing financial and material technical support to courts;
- Introducing the institute of *Mandaturi* (person in charge of keeping order) at courts for keeping order at courthouses and session halls;
- Improving the organizational functioning of courts, to refine the system of court management, upgrade qualification of the court staff and improve their performance;
- Creating an integrated virtual network of the court system, to upgrade the quality and improve the process of case management, ensure transparency and publicity for the activities of courts through posting public information on the Net;
- Solving the problem of lengthy court discussions to minimize the practice of spinning the cases in a circle;
- Refining the mechanisms of legal proceeding at the High Council of Justice, and of the disciplinary administration of justice, increase the number of judges (at least double it) and also ensure the effectiveness of their performance; and
- Enhancing and improving the relationship of the court with the media, to strengthen social control over the activities of the judicial power.

### **Institutional changes**

257. District (city) court - As has already been mentioned, institutional reorganization of the court system, establishment of a smooth, functionally balanced system and, correspondingly, provision of sequential order of instances, represents one of the main directions of the reform. With this purpose, it is envisaged to modernize district (city) courts as related to the cases that fall under their cognizance and the specialization of judges. The structure of the district (city) court is being established in a new manner: the enlarged district (city) courts are established for hearing criminal, civil and administrative cases that fall under their cognizance by the rule of the first instance. After the reform, 15 enlarged district (city) courts will be established in all the regions of Georgia, among them in Kutaisi, Batumi, Rustavi, Marneuli, Telavi, Signagi, Ambrolauri, Zestaponi, etc. The main advantage of this system is that the judges will be specialized in the district (city) courts. It is also significant that all the cases (except the ones under the cognizance of magistrate judges), regardless of their complexity or subject, will be heard by the specialized judges of the district (city) courts.

258. Magistrate judges - For ensuring accessibility - one of the main principles of justice - the institute of magistrate judges will be established. It constitutes part of the district (city) court and implements judicial power in the administrative territorial unit where the enlarged district (city) court is not present. The magistrate judge hears the case alone.

259. If necessary, in order to avoid the impediment of the administration of justice, the chairman of the district (city) court can order the magistrate judge to hear the case out of its area - in another administrative territorial unit of the district (city) court. Cases of less complexity fall under the cognizance of magistrate judges. Namely, according to the article 14 of the Civil Procedure Code of Georgia, the magistrate judges hear the following civil cases by the rule of the first instance: (a) property disputes, if the value of the claim does not exceed 2,000 GEL; (b) indisputable and simple cases, except adoption, also the cases of simplified payments and declaring the abeyance of property, if the value of the claim or the property exceeds 2,000 GEL; (c) disputes on the grounds of family relationships, except those of adoption, deprivation of parental rights, establishment of paternity and divorce, if there is a dispute between spouses over the right for rearing the child; and (d) disputes on the grounds of labour relationships.

260. Magistrate judges, according to article 6 of the Administrative Procedure Code of Georgia, hear the following administrative cases by the rule of the first instance: (a) those related to the village, community, town and city within the district, also cases of the legitimacy of the administrative-legal acts issued by the representative and executive bodies; (b) the legitimacy of the individual administrative-legal acts made in reference to the administrative offences (this norm will be effective since 1 January 2006); (c) issues of social state protection; (d) disputes about the execution of the court decision which has entered into the legal force; (e) disputes on the grounds of labour relationships in the public service; and (f) on the grounds of issuing an order for inspecting the entrepreneur's activity, as based on the mediation of a controlling body.

261. Magistrate judges, according to article 46 of CPC, shall hear petitions about applying and changing the means of proceedings and legal duress by the rule of the first instance.

262. Plaints (claims) and petitions concerning the civil and administrative cases that fall under the cognizance of magistrate judges, and petitions for applying and changing the means of proceedings and legal duress against the person, are taken to the court according to the location of the magistrate judge.

263. Court of Appeal - From the viewpoint of institutional changes, the reform envisages establishing a pure appeal court in Georgia. According to the legislative amendments implemented in the first half of 2005, the instance of appeal court has been put into practice since 1 November, which completely changed the existing model of district courts in the unified system of common courts. According to the system that was functioning before that, the court of so-called second instance, i.e. the district court, was not the pure appeal court as there were relevant panels for hearing the cases that were brought under their cognizance by the rule of first instance. After making changes, the essence of court instances were clearly differentiated from each other, by which the principle of "*Instanzenzug*" - the order of instances, which is predominant in the West - is observed precisely. There are no panels at the appeal courts any more for hearing the cases by the rule of the first instance. The court hears all the cases only by the rule of appeal. More precisely, the appeals in reference to the decisions made by the first instance courts, i.e. by the district (city) courts (among them by the magistrate judges) are heard only by the appeal court. With the purpose of executing prompt and effective justice, the cases

about the things with a value of not more than 1,000 GEL in case of civil disputes cannot be appealed. As for the criminal cases, the verdicts on such crimes that are not subject to imprisonment cannot be appealed. However, the exception can be considered from the viewpoint of protection of fundamental human rights, namely, a person has the right to make an appeal and require acquittal from the charge.

264. Court of Cassation - The Supreme Court of Georgia has been established as the court of the pure cassation. The panel for hearing criminal cases has been cancelled at the Supreme Court, which used to hear cases of serious crime. Presently, the Supreme Court hears the cassation appeals only, that means that the factual circumstances of the case are neither investigated nor assessed in this instance. Although Georgia is not among the Anglo-Saxon law countries, where court decisions are granted with prejudicial and obligatory power, still, the establishment of common judicial practice and its generalization is of great significance in the countries of European continental law, from the viewpoint of the correlation and explanation of legal norms. Criteria for eligibility of cassation appeals have been introduced. Mainly they are identical to all the three spheres of justice (criminal, administrative and civil). This means that the Supreme Court considers the eligible case and accepts it for hearing only if the case is significant for the development of justice and for the establishment of common judicial practice, or if the decision of the Court of Appeal is substantially different from the practice at the Supreme Court in reference to similar cases. Besides, the ongoing reform has envisaged the fundamentals of revision in democratic countries. It concluded that the complaint will necessarily be discussed by the Court of Cassation if the case has been discussed at the Court of Appeal with substantial flaws in its proceeding and if such offences could have had a major effect on the result of the case. It is worth mentioning that in civil law, the cassation appeals related to property disputes can be accepted unconditionally if the value of the dispute subject exceeds 50,000 GEL. As for the non-property disputes - appeals related to the disputes on the grounds of the freedom of speech and expression can be accepted.

265. With the changes mentioned above, the Supreme Court is in fact becoming a doctrinal court which can more effectively develop justice and establish common judicial practice through the well-argued explanation and correlation of judicial norms. This of course will guarantee the quick and balanced functioning of the court system in general. On the other hand, these changes will result in the significant eradication of the problem of case protraction in the court system. At least 35-40 per cent of the cases that are accepted for hearing will not be admitted at the Supreme Court, correspondingly, the decisions made by the courts of appeals for the same number of cases will remain effective.

266. And, finally, the principle of so-called sequential order of instances, that represents the significant mechanism for the control within the government, will more effectively be guaranteed in the reformed court system. According to this principle, the appellate and cassation (supreme) courts exercise the supervision of proceedings with the proceedings forms defined for the decisions of the courts of the first instances - first by appealing, and then by cassation. In other words, the decisions are verified, which represents the most important mechanism for revealing the offences by judges within the court system, including for struggling against corruption. This mechanism will become more instrumental after some time as the common practice of the Supreme Court related to all the norms of the justice will be established and

identified little by little. Although the decisions made by the Supreme Court will not have obligatory power, but the court of the lower instance will have to justify the decision that is different from the practice of the Supreme Court. This decision could become the subject of discussion at the Supreme Court and not face the risk of cancellation.

267. High Council of Justice of Georgia - The most important priority of the transformation is to reform the High Council of Justice through increasing the number of judges and, in general, by strengthening the “voices” of judges. This body holds great authority in judicial law, and its competence is to draw up the judiciary budget, provide and control the material and technical resources, and to nominate judiciary candidates and submit proposals about firing or promoting judges to the President, initiate the disciplinary administration of justice against judges, and employ court personnel, etc. The judges at the High Council of Justice have always represented the minority. In the fall of 2006, due to the amendments made to the legislative acts, the staff of the High Council of Justice will increase on 1 March 2006 and will consist of 18 members, 9 of whom will be judges. Ex officio, the members of the Council will also be the Chairman of the Supreme Court of Georgia, Chairman of the Committee of Legal Issues of the Parliament of Georgia, the Minister of Justice of Georgia and the General Prosecutor of Georgia. Two members of the Council are appointed by the President of Georgia, and another four members, three of whom are the members of Parliament, are selected by the Parliament of Georgia. Eight members of the High Council of Georgia are elected from the judges of common courts by the Conference of Judges of Georgia, after being nominated by the Chairman of the Supreme Court of Georgia. As a result of these changes, the judges will possess a sufficient number of votes for naming all the significant authorities of the High Council of Justice. It also has to be noted that, according to the changes, the sessions of the High Council of Justice of Georgia related to the disciplinary administration of justice against judges are presided by the head of the judiciary law, the Chairman of the Supreme Court of Georgia. The guidelines for forming the High Council of Justice and defining its activity complies with the main directions of the strategy for the reform of the criminal legislation of Georgia, which has been approved by the order No. 914 of the President of Georgia, dated 19 October 2004.

268. Disciplinary administration of justice - Another and especially important direction of reform is the existing model of disciplinary administration of justice. The mechanism defined by the law of Georgia on “Disciplinary responsibilities and disciplinary administration of justice against the judges of common courts of Georgia”, is in fact the only mechanism of internal monitoring of the court system. The existing model has changed several times, though the result achieved still was not relevant to the recommendations received from the European Committee of Ministers on 13 October 1994, “Independence, effectiveness and roles of judges”, according to which the disciplinary offences committed by judges should be examined by the relevant independent and competent body. At the same time, the examination should take place within a reasonable period and not be delayed. This is the approach shared by the changes being implemented, within the frameworks of the ongoing reform that will lead to significant changes in the existing model of the disciplinary administration of justice to ensure the prompt and effective operation of this mechanism. Moreover, the principle of judiciary supervision over the disciplinary administration of justice has been strengthened. Decisions of the Disciplinary Panel are appealed to the Supreme Court and the final decision concerning the case is made by

the Disciplinary Chamber of the Supreme Court, which consists of three judges. It is worth emphasizing that, unlike the existing model, the Disciplinary Chamber in the new system is authorized to perform the substantive investigation-evaluation of the case.

269. As a result of the changes, the procedures for preliminary examination of the disciplinary administration of justice against judges are defined. The stage of pursuing a disciplinary prosecution is cancelled and, if there are grounds for commencing the disciplinary administration of justice, the investigation of a disciplinary case is initiated. After the preliminary examination, the chairman of either the Appeal Court or the Supreme Court or the secretary of the High Council of Justice makes the decision concerning either the termination of the disciplinary administration of justice or demanding explanation from judges. After discussing the case, the High Council of Justice decides upon transferring the case to the Disciplinary Panel or constituting the disciplinary proceedings against the judge.

270. For its part, the structure and membership of the Disciplinary Council of the judges of common courts are also changed. A Disciplinary Panel will be formed within the High Council of Justice. It will consist of six members, three of which will be judges. The panel members are selected from the staff of the High Council of Justice for a term of two years. The member of the High Council of Justice who is a member of the Disciplinary Panel participates neither in the session on disciplinary issues nor in the process of decision-making.

271. As has already been mentioned, the decision of the Disciplinary Panel can be appealed to the Disciplinary Chamber of the Supreme Court of Georgia. The Disciplinary Chamber (consisting of three judges), which for its part represents the court of cassation that hears the disciplinary issues of judges, is elected by the plenum of the Supreme Court considering the recommendation of the Chairman of the Supreme Court. Here the significant novelty has to be noted once more: the Disciplinary Chamber will examine the decisions of the panel not only concerning offences in the judicial proceedings (that is, encountered in the existed model), but also within the frameworks of the appeal as a whole, both the factual and judicial foundations, and from the viewpoint of the lawfulness of the penalty as well.

### **Mechanisms for struggling against corruption**

272. The main reason for the failure of the court reform that was started in 1998 was the complete lack of political will and, correspondingly, of all the tools necessary for struggling against corruption. Alternatively, the currently ongoing reform is based on such will. The most important direction of the reform is putting the mechanisms into practice for struggling against corruption as effectively as possible.

273. The main, and in fact the only, mechanism for struggling against corruption within the court system is the disciplinary administration of justice. The so-called principle of the order of instances and supervision over the decisions of the courts of the lower instances are also very important. The reform envisages eradicating corruption within the court system and, with this purpose, improve the social and working conditions of judges to a maximum extent, increase salaries, establish a system of training and permanent upgrading of qualifications (with relevant curriculum and courses), ensure the conditions of stability and protection, without which a qualified, bona fide and objective judiciary would not be able to exist.

274. It is observable that, in the course of the proper and adequate functioning of the mechanism of disciplinary administration of justice, 19 judges have been dismissed since May 2004. This happened on the basis of gross violation of law and not because of corruption. Naturally, this is very significant as far as the activities of such under-qualified judges (who violate the material and proceedings rights of not only the parties but also of the accused) cause distrust towards the court and correspondingly, results in disastrous loss of prestige. On the other hand, it is evident that the disciplinary administration of justice and other internal mechanisms for struggling against corruption alone are insufficient for eradicating this grave problem. This is why it is necessary to improve the mechanisms of criminal justice. The effectiveness of these mechanisms is proved by the statistics since 2004, according to which about 10 judges have been detained for taking bribes and 15 judges have been brought to criminal courts. Despite the fear that the facts of the criminal prosecution of judges can result in the further loss of the prestige of the court, in fact, these facts have much impact. Revealing and punishing corrupt judges will only increase the degree of trust of the people in the court, which is very significant for the successful implementation of reform.

275. Court staff - The substantial prerequisite for the success of court reform is the radical improvement of performance of court personnel. Without implementing this component of the reform it would have been impossible to safeguard the smooth and balanced functioning of the court system and to rebuild the trust of the people in the courts. Court personnel are the ones having direct contact with citizens; they are the first people to meet the parties at the court and to some extent, represent the image of the court. The reform should result in the eradication of the problems that have been characteristic of the judges themselves for years: corruption, irresponsibility, mean treatment of citizens and inordinacy.

276. With respect to the directions mentioned, it is necessary to employ new staff and select new, qualified and honest personnel and at the same time to provide them with relevant working (from the viewpoint of material and technical provisions) and social conditions (from the viewpoint of increasing their salaries). This way corruption within the court should be eradicated and at the same time the supervision of personnel activities by the chairmen of courts and other authorized people should be enforced and become more effective. With this purpose it is necessary to in fact implement and follow the “Norms of ethics and code of conduct of the personnel of common courts of Georgia”, and ensure an adequate response in case of violation. This will greatly facilitate case management and provision of relevant working discipline. Besides, the budget of the next year enables us to improve working conditions of the staff and to significantly increase their salaries. To refine the performance of the staff, functions will be separated and within the capabilities of each, especially those of the assistant to the chairman, will be employed with maximum effectiveness.

277. Creation of an integrated virtual network will represent a very important lever for the final eradication of these problems. With its help the systems of integrated electronic circulation of documents and that of the case management will be introduced. It will improve the level of justice administration at courts, namely work overlap will be minimized, the quality of information processing will be increased at courts and the qualification of the court personnel will continuously be upgraded.



278. Implementation of all the above-mentioned will be another significant step for eradicating the events of case protraction and for ensuring the prompt administration of justice.

279. Courts and the media - Transparency, publicity and public relations for the court system represent important conditions of the success of this reform. According to the practice so far, courts did not contact the public directly and used to build relations with the individual member of the society, mainly with the party that was involved in the trial or the party bringing the case to courts. But it became evident to everybody that the relationship between courts and society should be wider and more diverse, society should know more about courts and this relationship from the side of the media should not be limited to being provided the information on specific trials only. All the changes in the court system should become the subject of discussion within society, they should feel themselves the participants of the process of the reform so that they would feel responsible toward these processes.

280. A significant step has been made towards establishing a transparent relationship between courts and society, and the institute of the Speaker Judge has been implemented in courts. Similar practices have already been introduced in Western developed countries. Through the Speaker Judge, courts will have a chance to state their position to society.

281. Besides, the relationship of courts and the media is improving gradually, towards establishing civilized contact between the court and the media. Special seats have been identified at the session halls of all the courts in Georgia where the trial can be video-recorded, and modern audio facilities in the halls enables the electronic media to prepare quality material. With the changes mentioned camcorders will not have to move in the hall during the trial, which used to disturb judges in conducting the trial.

282. Along with the reform implementation, it is necessary to upgrade the judicial level of the journalists who cover the court system. Often, the media, because they do not possess specialized education, fail to highlight events properly. Through training the journalists will be provided with information about new legislation and other problematic issues at the court.

283. Budget of the court system - Another significant prerequisite for implementing court reform is to ensure the financial and material provision of the reform. Within the framework of the reform, the salaries of judges should be increased significantly, which represents a basic guarantee of the independence of the judicial power. Also, it is necessary to improve working conditions in courts, upgrade material and technical resources and take it closer to European standards. To this end, the budget of the court system is being increased by 20 million GEL - from 13 million GEL in 2005 to 33 million GEL in 2006. First of all, the salaries of judges are to be increased to 1,450 GEL (minimum salary) at the courts of the first instance, on average; 2,000 GEL at the courts of appeal; and from 3,000 to 4,000 at the Supreme Court of Georgia.

284. Moreover, all courts will be provided with the best material and technical resources. In this respect, the works performed at the Supreme Court are to be emphasized, where the material

and technical resources have been upgraded significantly. Out-of-date computers that represent a substantial part of working conditions have been replaced with upgraded and modernized appliances. The trial halls have been equipped with computers, and sound-frequency amplifiers and microphones have been installed in the halls that represent the optional element for conducting the trial relevantly. By the end of January 2006, similar conditions have been provided at the court of appeal in Tbilisi and the united courts in Batumi, where the major repairs of courthouses and equipping them with necessary technical facilities will be over with the finances provided within the framework of the World Bank credit.

285. In 2006, 3.5 million GEL will be allocated from the State budget for major repairs to the Tbilisi City Court, and 1.5 million GEL will be provided for financing the construction and rehabilitation works at five enlarged model courts in the regions of Georgia. Computers and all other necessary technical equipment have been purchased for the courts in order to avoid the unbalanced, unorganized and ineffective functioning of courts due to technical problems. During 2006, with the financial assistance of the United Nations Development Programme, and partly with its own resources, an integrated virtual network of the court system is also planned that will solve many problems within the court system and ensure the prompt administration of justice.

286. First of all, by creating an integrated virtual network, the issue of providing judges with new information (legislative amendments, normative acts, resolutions of the Supreme Court) will be solved. Electronic versions of the legislative amendments published in the official publishing body will be posted in the network the same day and thus become accessible to the judges in any region of Georgia.

287. Creation of an integrated virtual information space will also make it possible to introduce integrated systems for electronic flow of documents and for case management. This will ensure the circulation of the proceedings, organizational or administrative correspondence, which will ultimately support upgrading the quality of case management at courts, the quality of information processing will be enhanced at courts, the speed of case management will be ensured and the qualification of judges and the personnel will be upgraded permanently. Also, the self-control of courts will be increased, i.e. proceedings deadlines and violation of rules of case management, operative processing of the analytical and statistical data will be controlled automatically. And finally, publicity will be provided by posting the information about resolutions, session schedules and case proceedings on the Internet, which will be accessible to any interested citizen. While planning the court budget, main directions of criminal legislation reform are considered, which has been approved by the order No. 914 of the President of Georgia dated 19 October 2004.

288. Human resources and training (High School of Justice) - Even the successful implementation of all the components of the court reform will not give the desired result, if the most important thing cannot be achieved: staffing the system with impartial, honest, and, more importantly, qualified human resources. In general, the judge, his/her professionalism, honesty and objectivity represent the main objective of the reform, as far as their performance is the foundation of the success of the reform. And only such judges can rebuild the trust of the

population in the courts, struggle against corruption through implementing the mechanism for internal control within the court system - disciplinary administration of justice, to thus rebuild and strengthen the prestige of the courts.

289. Two stages stand out in this cornerstone of the reform: selection of judges, with exceptional attention and responsibility within the frameworks of the existing model during the transition period (during the reform - 2005-2006); and creation of the new system of selecting and preparing judges for the future that should become effective as of 2007 within the framework of the High School of Justice.

290. The first stage envisages making significant changes to the composition of the judges' staff and at the same time increase the total number of judges to at least 400 judges. The results of two exams for judges held in 2005 showed that there are few human resources among the lawyers above 30; it is necessary to decrease the age requirement in order to appoint at least 150 new judges and to provide complete staffing for the new system. Constitutional amendments that have been presented to the Parliament considered the decrease of age requirement to 28, though at the same time all other requirements that are applicable to the candidates remain unchanged. It is notable that, in the current model, the candidates are selected on the grounds of personal merits, honesty, qualification, ability to think independently and other similar criteria. The High Council of Justice pays particular attention to these features of the candidate. The same will be effective in the future model. This amendment does not mean that 28-year-old judges be appointed directly at the Supreme Court, as the reform of the court reform envisages that the career principle of promoting judges be strictly observed.

291. In the new model of selecting judges, that is, the second stage of the reform, the age limit will become devoid of any significance. In the future, after the candidate passes the selection process, s/he will not be appointed judge directly, but will be enrolled in the High School of Justice and undergo a complete and fundamental 14-month training (both theoretical and practical) for performing the judiciary functions. After completing this course, the wholly trained judge will be nominated by the President to a vacant position without any selection process or interview.

292. By creating and running the High School of Justice, another important issue envisaged in the court reform will be solved - elaboration and application of special programmes necessary for training judges and upgrading their qualification. This represents another guarantee for the independence and objectivity of judges. Along with the preparation of judges, the main function of the school is to conduct training courses for judges according to the schedule that will be preliminarily set out at the beginning of the year. Each judge will take part in the teaching programme twice a year where the material prepared by trainers will be delivered to them through a special methodology (analysis of legislation, review of the practice of the Supreme Court, study of the problem based on particular cases, etc.). It is worth noting that since 1999 no finances have ever been allocated from the State budget for training and no training programme has been elaborated, either. The Training Centre of Justice used to do it only with the finances provided by donors, but this assistance was not coordinated.

293. The High School of Justice is managed by the Independent Council, which consists of six members. Three of them will be judge practitioners. Another two members will be nominated by the High Council of Justice and the last one by the General Prosecutor of Georgia. The membership of the Independent Council is approved by the President of Georgia. The school has its own management body and administration headed by the director.

294. Jurors - According to the revised edition of CPC that is presented for the public hearing and will be passed to the Parliament in 2006, it is envisaged that criminal cases of specific category are discussed by the jurors. This way, the degree of public trust and faith in court decisions will be raised. The court of jurors will consist of 12 jurors to be selected from the register of voters. Any citizen of Georgia (other than the exceptions defined by the law) will have an opportunity to participate in the administration of justice and support the court in making the objective and fair verdict. The jurors will only decide upon the culpability or innocence of a person, but the sentence will be imposed by the judge. The verdict of the court of jurors will be appealed to the Supreme Court only in relation to the legal defects taking place during the case discussion. It is worth noting that, according to the proposed bill, the verdicts of “not guilty” made by the Court of Jurors is final and cannot be appealed.

### **Hearing of protracted trials**

295. Apart from other problems, the citizens are especially dissatisfied with the protraction of case discussions. This issue is very problematic as some cases are prolonged for years and they often “move in a circle” and are returned to the lower instance for hearing anew, etc. A person who wins the case after some years is so tired of such procedures and has had so much expenses that the verdict loses any sense for him/her. This is why another objective of this reform is to solve this complicated issue. Besides, the problem is so large-scale that it is necessary to achieve success in all other directions of the reform to solve them afterwards and, finally, all these steps taken together will solve the issue of protraction. In this regard, we can list the following means of eradicating protraction of court discussions:

- Increase the number of judges to at least 400, which will reduce the workload of each judge and the cases will be discussed faster;
- Specialization of judges, their permanent training and upgrading their qualification: a highly-qualified, professional judge hears the cases far better and faster;
- Changes in the system related to judicial power, for example, creation of the eligibility prerequisite at the Supreme Court after which at least 30-40 per cent of the cases will not be discussed, as compared to the current situation and the verdicts made by the court of appeal will enter into force;
- Amendments to CCG and CPC: amendments to the first has already been implemented and the 30-month period of court detention has been reduced to 12 months that will become effective on 1 January 2006; the amendments to be made to the civil proceedings are being prepared and they aim at simplifying the process in order to eradicate the legal rights for prolonging the case by the dishonest party;

- Organizational refinement of the performance of the court staff, improvement of orderliness and upgrading their qualification; and
- Creation of the integrated virtual network within the court system, correspondingly, introduction of electronic programmes for case management and document flow that will greatly enhance the quality and speed of case management.

296. In the concluding observations, the Committee expressed its concern at the difficulties that detainees and persons charged with an offence have in gaining access to lawyers, particularly court-appointed lawyers, and urged the State party to 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.

297. Under article 73 (c) of the CPC of Georgia, the suspect has the right to use the legal assistance of the lawyer as a consequence of the agreement with him, in exchange for payment or without payment under circumstances prescribed by article 80 of CPC. In accordance with article 73 (d) of the Code, the suspect has the right to meet the lawyer directly and solely without imposition of restrictions on the number and duration of meetings. The right may be limited under reasonable terms for the interests of investigation in pursuance of the motivated decree issued by the official conducting investigation. This provision was introduced on 13 August 2004 as a result of the ruling of the Constitutional Court of Georgia. Under the old wording, the meeting of the suspect with the defence counsel was restricted to a period of no longer than an hour a day.

298. Under article 84 of CPC, the defence counsel has the right to use all legal means to reveal the circumstances acquitting the suspect/accused or mitigating his/her position and provide the suspect/accused with the necessary legal assistance. Among other rights granted to the defence counsel under the Criminal Code of Georgia, the following are worthy of note:

- (a) The right to meet the person under his protection alone without any hindrance, supervision or placing restrictions by the administration of the establishment for restriction or deprivation of liberty or investigative bodies, unless as provided in subparagraph (d) of paragraph 1 of article 73 of CPC;
- (b) The right to participate in the investigative actions conducted with the participation of the suspect/accused or at the request of the defence, to put questions to the person to be interviewed, require the inclusion of the data denying the charges or mitigating the responsibility of the suspect/accused in the record;
- (c) The right to participate in bringing charges to the accused or his/her interrogation;
- (d) To explain to the suspect/accused his/her rights and pay attention to the violation of such rights; and
- (e) Collect necessary evidence for the defence and present it to the body conducting proceedings.

299. Under article 310 of CPC, which regulates the procedure of questioning a suspect, the following is provided: The suspect has the right to give testimony in the presence of the lawyer. If it is impossible to ensure the participation of the lawyer immediately, the investigator and prosecutor are obliged to ensure the participation of the lawyer and explain to the arrested person that he/she has the right not to testify until the lawyer comes.

300. Under article 311 of CPC, the lawyer has the right to attend the questioning of the accused. In cases prescribed by the given code, the attendance of the lawyer is obligatory.

301. Under the old wording of article 72 (5) of CPC, the lawyer was allowed to participate in the proceedings only prior to the initial interrogation of the arrested suspect as well as during the initial and subsequent interrogations. Under the amended wording of this provision, in line with the ruling of the Constitutional Court of 29 January 2003, the arrested suspect may request the assistance of counsel not only prior to the initial interrogation but as soon as he/she is arrested, before making any kind of statement and his/her request is to be fulfilled immediately. If it is impossible because of objective reasons, access to a lawyer is to be ensured in reasonable time, so that the suspect has sufficient time and means to defend his/her interests.

302. Under article 80 of CPC, the body that conducts proceedings is obliged to provide the suspect/accused/convicted with a lawyer on the basis of his/her consent at the expense of the State (from the State budget), if they are indigent and cannot afford the payment for the services of the lawyer. It is to be confirmed with the documents issued by the bodies of local governance and self-governance. The State authority conducting proceedings may exempt the person from defence expenses in other cases and the lawyer will be paid from the State budget.

303. In conformity with Order No. 308 of the Minister of Justice dated 17 February 2005, a legal person of public law - the Service of the Public Advocate - was established. Within the framework of a pilot project, initially two territorial bureaus of the Service were opened in the capital and one of Georgian districts (11 advocates in total) that started working since 1 July 2005. In the cases envisaged by articles 80 and 81 of CPC, the advocates shall defend persons who are suspected and/or accused of committing crimes by investigatory bodies of the respective district, as well as convicts, at all stages of legal proceedings. At the same time, these advocates provide legal consultations on criminal, civil and administrative cases for the public in general. Apart from the above-mentioned, the public advocates working at the bureaus render free professional assistance to socially vulnerable persons at all stages of legal proceedings.

304. Since February 2006, the existing bureaus have enlarged their territorial frames and currently include three Tbilisi districts and three districts outside the capital.

#### **Article 15**

305. Reference is made to the comments contained in the second periodic report under the Covenant (CCPR/C/GEO/2000/2, paras. 390-393), which remain valid.

### **Article 16**

306. Reference is made to the comments contained in the second periodic report under the Covenant (paras. 394-397), which remain valid.

### **Article 17**

307. Reference is made to the comments contained in the second periodic report under the Covenant (paras. 398-429), which remain valid.

### **Article 18**

308. In the concluding observations, the Committee noted 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 Committee urged the State party to take the necessary measures to ensure the right to freedom of thought, conscience and religion, as provided in article 18 of the Covenant, and (a) to investigate and prosecute documented cases of harassment against religious minorities; (b) to prosecute those responsible for such offences; (c) to conduct a public awareness campaign on religious tolerance and prevent, through education, intolerance and discrimination based on religion or belief.

### **Criminalization of the violence, interference or persecution on religious grounds**

309. Article 19 of the Constitution of Georgia reinforces freedom of speech, thought, conscience, belief and religion, from which no derogation is allowed in state of emergency or state of war in accordance with the article 46 (1) of the Constitution. As such, the relevant provision of the Constitution reinforces one of the fundamental guarantees envisaged in article 18 of ICCPR and meets the requirement of non-derogation set forth in article 4 (2) of ICCPR. Furthermore, the Constitution of Georgia, in paragraph 2 of article 19, prohibits persecution on the grounds of expressed opinion, thought, religion or belief. Hence, the CCG criminalized interference with the freedom of faith and religious belief in the following ways:

- Article 155 criminalizes illegal interference with a worship service, through violence or threat of violence, or accompanied by the abuse of religious feelings of a believer or a minister of religion and is punishable with fine or correctional labour for a term up to one year or deprivation of liberty up to two years. The same criminal act, committed through abuse of power is punishable with fine or deprivation of liberty from one to five years with or without deprivation of the right to hold office or pursue activity for a term up to three years;
- Article 156 of CCG criminalizes persecution of a person because of speech, thought, religion, faith or belief or in connection with his political, public, professional, religious or scientific activities and is punishable with fine or restriction of liberty up to two years or deprivation of liberty for the same term. The same criminal act committed through resorting to violence or threat to violence, by abuse

of power or causing significant damage, is punishable with a fine or restriction of liberty up to three years, or deprivation of liberty up to three years, with or without deprivation of the right to hold office or pursue activity for a term not exceeding three years;

- Article 166 of CCG criminalizes illegal interference with the establishment or activities of political, social or religious organizations through resorting to violence, threat of violence or abuse of power. It is punishable with a fine or correctional labour up to one year or restriction of liberty up to two years or deprivation of liberty for the same term; and
- Article 142 of CCG criminalizes violation of equality between individuals based on race, colour, language, sex, religion, political or other opinion, national, ethnic and social belonging, rank or public affiliation, origin, place of residence or property status that resulted into substantial infringement of human rights; this is punishable with a fine or correctional labour up to one year or deprivation of liberty up to two years. The same criminal act, committed through the abuse of power or causing grave consequences - is punishable with a fine or deprivation of liberty up to three years, with or without deprivation of the rights to hold office or pursue activity.

310. In its general comment No. 22, the Human Rights Committee notes that “the fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the populations, shall not result in any impairment of the enjoyment of any of the rights under the Covenant”. Georgia has no State religion and declares freedom of faith and religious belief. However, as a State it acknowledges the particular role of the Georgian Orthodox Church in the history of the country as well as its independence from the State.<sup>14</sup> The relationship between the Georgian State and Orthodox Church has been regulated through a special Constitutional Agreement - the Concordat. The Constitution of Georgia states that the Concordat shall satisfy universally adopted principles of international law, namely human rights norms. Therefore, the existing legislation itself obliges the Government of Georgia to act in accordance with the international human rights obligations.

311. Since the Rose Revolution of 2003, the new Government has paid particular attention to the endorsement of such freedom and prosecution of any kind of violence, interference with or persecution of persons based on their religious belief or faith. For example, prosecution of such cases has been identified as one of the priorities by the Office of the Prosecutor-General of Georgia. Impunity for this type of crimes shall not be tolerated and the law enforcement authorities, including police, investigators and prosecutors have been instructed in that respect.

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<sup>14</sup> See article 9 (1) of the Constitution of Georgia.



312. One of the best-known examples is the prosecution of Basil Mkalavishvili and his followers who assaulted religious minorities on a systematic basis, namely Jehovah's Witnesses. On 23 March 2001 the Prosecutor-General of Georgia entrusted Tbilisi City Prosecutor's Office with the task of investigating cases of violence against Jehovah's Witnesses allegedly committed by Basil Mkalavishvili and his followers. On 4 October 2001 these persons were indicted and on 4 June 2003 Vake-Saburtalo District Court imposed pretrial detention upon Mkalavishvili, who was wanted by law enforcement agencies. The Government did not express the will to arrest the wanted Mkalavishvili, who, on a number of occasions, appeared in public and continued violent activities with respect to religious minorities.

313. Mkalavishvili was arrested and charged on 12 March 2004. On 27 January 2005 Vake-Saburtalo Regional Court found Mkalavishvili guilty of crimes provided in articles 125,<sup>15</sup> 130,<sup>16</sup> 155 (2),<sup>17</sup> 156 (2) (a),<sup>18</sup> 160 (2) (a) and 160 (3) (a),<sup>19</sup> and 187 (2).<sup>20</sup> Mkalavishvili was sentenced to six years' imprisonment. The decision (regarding sentence) has been upheld by the court of appeal and recently it has been submitted to the court of cassation for final appeal.

314. The Case of Mkalavishvili serves as one more example that, due to the reluctance of the ruling power and general situation of impunity before, it took four years for a well-known criminal to appear before the court, while evidence proving his guilt was more than enough.

315. Today, political will and the sheer readiness of the new Government to protect rights of minorities by active measures are obviously aimed at ensuring prosecutions and convictions for all criminals like Mkalavishvili. That is why, as stated above, the Prosecutor-General's Office of Georgia pays considerable attention to the prosecution of this type of crime along with the

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<sup>15</sup> Beating.

<sup>16</sup> Failure to care for the sick.

<sup>17</sup> Interference with practising religion by use of violence or threat thereto.

<sup>18</sup> Persecution based on the opinion, thought, belief, or related to political, social, professional, religious or scientific activities of the victim committed in aggravating circumstances, i.e. by use of violence or threat thereto.

<sup>19</sup> Illegal incursion into the flat or other residence contrary to the will of the owner, illegal search or any other act interfering with the right by use of violence or threat thereto committed jointly by group.

<sup>20</sup> Destruction of property by making a fire, exploding or any other means commonly accepted as dangerous.

crimes related to the facts of torture and ill-treatment. Similarly, as stated below, the Office disseminates via its mailing list information related to the criminal cases regarding violence towards religious minorities.

### **Article 19**

316. Within the reporting period, on 24 June 2004, the new Law on Freedom of Speech and Expression was adopted in Georgia. According to the law in question (art. 3), the State shall recognize and protect the freedom of speech and expression as eternal and supreme human values. Everybody, except for administrative bodies, has the freedom of expression, which includes (a) absolute freedom of thought; (b) the freedom of political speech and debates; (c) the right to seek, receive, create, store, process and impart any form of information; (d) the inadmissibility of censorship, the right of journalists to protect the secrecy of the information source and accept editorial decisions according to his/her conscience; (e) the freedom of education, instruction and research; (f) the freedom of art, creative activities and invention; (g) the right to speak any language and use any written language; (h) the right to charity; (i) the freedom of exposure; (j) freedom from coercion to express his/her opinion regarding belief, religion, conscience, attitudes, ethnic, cultural and social affiliation, origin, marital, property and rank status as well as any other circumstances which might serve as grounds for the violation of his/her rights.

317. In compliance with the law, freedom of speech and expression protected under this legal act may only be restricted if it is provided for by clear and predictable, precisely targeted law. The good protected by the restriction prevails over the damage caused by this restriction. The law restricting the rights and freedoms recognized and protected by this law should be (a) directly aimed at achieving legitimate goals; (b) critically necessary for the existence of democratic society; (c) non-discriminatory; and (d) proportionally restrictive.

318. The law envisages particular provisions regarding the protection of classified information, the protection against slander.

### **Public broadcasting<sup>21</sup>**

319. For the time being, 85 per cent of our country's population receives the programmes of the First Channel of Georgian TV, 55 per cent receive the programmes of the Second Channel. European countries, the Commonwealth of Independent States among them, and Asia Minor receive these programmes through the satellite system and the Internet.

320. Now, according to the new Law on Public Broadcasting of December 2004 and in connection with transition to the public broadcasting, reforms are going on in this field. The strategic aim is to carry out essential measures in implementation of non-binding instruments of the Council of Europe in the media field.

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<sup>21</sup> See [http://www.gpb.ge/eng\\_version/pirveli\\_arxi/index.html](http://www.gpb.ge/eng_version/pirveli_arxi/index.html)

321. Public broadcasting is based on the principles of independence, impartiality and honesty. The purpose has been to produce and make available for the public high-quality TV and radio programmes free from political and commercial pressure, openly (in a balanced way) presenting the different views of the public and allowing various social groups to make more noticeable their involvement in the process of development of a democratic society. Public broadcasting will promote the introduction of democratic values and institutions, civil integration of the country, and formation of a well-informed society with active citizenry.

322. Hence, the priority objectives of the public broadcasting are: (a) adequate information for the public on social, political and cultural processes taking place both in the country and abroad; (b) showing the diversity of interests, values and views existing in the country, promotion of the public dialogue and discussion; (c) to promote civic education, providing an active participant in public life with adequate knowledge on science, history, and different areas of public thought; and (d) to provide the public with high quality products of modern and classic arts.

323. For 2006, special emphasis was placed on strengthening and renewing the information programmes. The broadcasting information service should necessarily cover proportionally the problems and novelties of cultural or religious life of the main national and religious groups living in Georgia.

324. In 2006, the public broadcasting will carry out its activity in four main strategic directions:

- *Promoting the inculcation of democratic values:* To achieve this objective the public broadcasting shall provide the customer with reliable, many-sided and significant information enabling the well-informed citizen to make a conscious choice. Through debates it should promote the broader engagement of the public in the process of solving the problems they face;
- *Providing the public with cultural values:* The public broadcasting should ensure that Georgia, a country with centuries-old history and culture, is presented as a full member of the international community of world's civilized nations. Along with popularization of cultural heritage, the broadcasting should form a creative environment for revealing unknown talents;
- *Promoting the increase of the public education level:* The broadcasting should provide the Georgian population with programmes of cognitive and educational natures that are adequate for different age and interest groups, thus facilitating the increase of the public education and erudition; and
- *Promoting the introduction of diversity and social integration values:* The broadcasting should demonstrate the diversity of the society and facilitate the formation of the environment of social unity and tolerance.

325. In the tables below, some statistical data relevant to the implementation of the right under review is provided.

**Table 2**

**Publishing of books, magazines and newspapers in Georgia**

	2002	2003	2004
Number of copies ( millions of copies)	0.3	0.2	0.3
Annual circulation of magazines and other periodicals (millions of copies)	1.1	0.5	0.7
Number of newspapers	175	149	122
Single circulation (millions of copies)	0.9	0.6	0.6
Annual circulation (millions of copies)	29.0	24.9	35.4

*Source:* Geogian State Book Chamber by Sulkhan-Saba Orbeliani.

**Table 3**

**Public libraries in Georgia**

	2002	2003	2004
Total number of public libraries	2 160	2 123	2 090
Total number of readers (thousands)	1 625.9	1 421.3	1 528.9
Average number of readers per library	752.7	669.5	731.5
Total number of books and magazines (millions of volumes)	30.6	29.6	28.5

*Source:* Ministry of Culture, Monument Protection and Sport of Georgia.

**Article 20**

326. In addition to the information provided in the second report under the Covenant (paras. 468, 471 and 472), the following should be noted: In July 2003, the law amending the Criminal Code of Georgia entered into force in compliance with which article 142 (racial discrimination) has been included in the Code. The article reads as follows:

“1. Racial discrimination, that is, an act committed with the intention of inciting ethnic or racial hatred or conflict, injuring national dignity, or directly or indirectly restricting human rights or granting advantages on the grounds of race, skin colour, social status or national or ethnic affiliation, shall be punishable by deprivation of liberty for up to three years;

2. The same act, committed with the use of violence that endangers life or health, or with the threat of such violence, or through abuse of one’s official position, shall be punishable by deprivation of liberty for up to five years;

3. The acts referred to in paragraphs 1 and 2 of this article, if committed by an organized group, or if they resulted in the death of the victim or other serious consequences, shall be punishable by deprivation of liberty from three to eight years.”

### **Article 21**

327. The constitutional and legislative guarantees of freedom of assembly described in the second report under the Covenant (paras. 473-478) are still in force.

328. During the reporting period, a single amendment has been made to the Law on Assemblies and Demonstrations, namely, with respect to article 1 that previously read: “The right to peaceful assembly is withheld from persons serving in the armed forces, the police and the security services.” Since February 2004, provisions of the article under review cover representatives of financial police of Georgia as well.

### **Article 22**

#### **Registration of non-commercial legal entities and political parties**

329. In June 2004, the Law on State Registries was adopted, which determines the system of national registries, the organizational and legal principles of its duties and responsibilities of the registry agencies.

330. In compliance with this law, a registry of non-commercial legal entities of private law, that is, the totality of the data about unions and funds, was created, which includes the registry of unions and the register of funds (art. 4). According to article 5 of the same law, the registry of the political associations of citizens (parties), that is, the system totality of the data about the political associations of citizens (parties) was created as well.

331. In conformity with article 10 of the law, the State registries are conducted by the Ministry of Justice of Georgia through the appropriate structural subdivision, territorial agency and the legal person of public law functioning within the management sphere. The following bodies shall manage the State registries: the Ministry of Justice; territorial registry agencies; and the legal person of public law - the National Agency of State Registries - under the management of the above Ministry.

332. Proceeding from the Law on State Registries, the Ministry of Justice shall implement registration of the following legal entities: funds; branches (representations) of funds; unions (associations); branches (representations) of unions (associations); political associations of citizens (parties); creative unions; and branches (representations) of non-commercial legal entities of a foreign country.

#### **Trade unions**

333. The table below describes the trade union membership dynamics in Georgia for 2001-2005.

**Table 4**  
**Trade union membership**

	2001	2002	2003	2004	2005
Ajara Republican Workers' Union	71 687	61 060	60 154	38 552	24 637
Abkhazia Republican Workers' Union	2 633	2 711	2 722	2 738	1 386
Aviation Workers' Union	1 922	1 995	2 010	2 199	1 520
Service Sector, Local and Utilities Service Workers' Union	18 255	19 323	19 388	-	20 125
Architecture, Construction and Construction Materials Workers' Union	10 300	5 377	1 508	715	715
Banks, Financial-Investment and Insurance Companies Workers' Union	1 405	1 380	1 395	1 180	1 180
Education Workers' Union	126 857	127 925	125 944	118 948	-
Geology, Geodesy and Cartography Workers' Union	1 427	1 408	500	1 012	680
Energy, Electro-technical and Coal industry Workers' Union	12 307	11 445	13 258	11 608	11 608
Trade and Consumer Corporation Workers' Union	36 921	28 651	16 589	11 938	11 845
Defence and Radio-Electrical Industry Workers' Union	1 610	1 510	1 280	790	765
Communications System Workers' Union	13 668	13 668	11 436	9 056	9 056
Recreation and Tourism Workers' Union	1 967	1 619	1 670	590	590
Metro Workers' Union	3 971	3 825	3 953	3 800	3 800
Machine and Tools Industry Workers' Union	4 815	3 504	1 748	2 053	2 053
Light Industry Workers' Union	6 833	6 407	3 880	4 692	4 692
Metallurgy and Mining Workers' Union	10 397	10 367	6 685	6 426	6 671
Academy of Sciences Workers' Union	3 300	3 300	3 300	-	-

**Table 4 (continued)**

	2001	2002	2003	2004	2005
Small Business Workers' Union	1 660	1 233	240	-	-
Oil, Gas and Coal Industry Workers' Union	7 063	5 832	7 532	7 912	7 912
Coal Industry Workers' Union	2 500	1 200	900	-	-
Railway Workers' Union	22 868	20 999	22 329	20 187	17 789
Sportsman's and Sports Workers' Union	3 240	3 700	4 500	6 180	5 180
Auto-Transportation and Roads Workers' Union	16 000	14 400	5 410	4 200	4 200
Auto-Transportation and Agricultural Machine Industry Workers' Union	7 050	7 800	1 500	2 800	1 800
Water Transportation and Fishery Workers' Union	8 307	8 327	6 153	5 362	5 885
Forestry, Paper and Timber Industry Workers' Union	8 200	6 400	3 647	2 580	2 580
Public servicemen and NGO Workers' Union	39 774	38 341	36 710	26 920	24 374
Agriculture and Convention Industry Workers' Union	106 722	89 764	33 713	44 532	36 206
Soccer Players' Union	1 000	370	360	211	300
Chemical, Medicine and Heating Industry Workers' Union	6 272	5 931	4 475	4 363	4 363
"Tbilaviamsheni" (an aircraft-construction plant) Workers' Union	683	773	631	432	428
Labour, Health and Social Care Workers' Union	35 650	49 262	44 366	45 458	46 370
Military Servicemen Professional Union			4 800	1 547	450
<b>Total</b>	<b>597 264</b>	<b>559 807</b>	<b>454 686</b>	<b>388 981</b>	<b>259 160</b>

334. In 2005, the total number of those employed amounted to 1,814,800 persons, out of which 604,500 (33 per cent) were hired workers. The number of trade union members was 259,160, that is, 14 per cent of the total quantity of the employed and 43 per cent of all hired workers.

### Article 23

335. Except for certain exclusions that occurred in the legislative area and are discussed below, the data provided in previous report with respect to the enjoyment of rights protected under this article of ICCPR remain valid (paras. 501-513).

336. During the reporting period, some amendments were introduced in the Civil Code which, inter alia, have touched upon the marriage and related issues.

337. In particular, pursuant to an amendment of December 2005, article 1106 of the Civil Code stipulates that marriage is the voluntary union of a man and a woman for the purposes of founding a family, which should be registered at a territorial agency of the legal person of public law - the National Agency of State Registries - under the management of the Ministry of Justice.

338. Proceeding from the establishment of the National Agency of State Registries and its territorial agencies, several amendments have been made to provisions of the Civil Code that deal with issues of formulation, registration and procedure of marriages and divorces (in particular, arts. 1100-1114, 1117, 1119, 1124, 1125, 1132, 1134, 1135, 1137-1139, 1145 and 1151). The same is true of a few articles covering relations between children and parents (in particular, arts. 1190, 1217, 1244 and 1271).

339. Statistical data in connection with marriages and divorces in Georgia is provided in tables 5 and 6 below.

**Table 5**

#### Marriages and divorces

Years	Marriages (thousands)	Divorces (thousands)	Per 1,000 population		Average length of marriage before divorce (years)
			Marriages	Divorces	
2001	13.3	2.0	3.0	0.5	11.8
2002	12.5	1.8	2.9	0.4	11.2
2003	12.7	1.8	2.9	0.4	11.6
2004	14.9	1.8	3.5	0.4	12.2

**Table 6**

#### Average age at first marriage

Years	Males	Females
2001	28.8	25.0
2002	28.9	25.2
2003	29.0	25.1
2004	29.3	25.6



## Article 24

340. During the reporting period, the Ministry of Education and Sciences of Georgia launched the Material-Technical Rehabilitation Programme for Public Schools in Georgia (Iakob Gogebashvili Programme). The programme is aimed at creating a secure environment for 400,000 schoolchildren by rehabilitating school buildings and bringing them up to international standards. In 2004-2005, 27 new schools were built and 100 schools (19 in the capital and 81 in the regions of Georgia) were renovated. In 2006, rehabilitation of 60 Tbilisi schools, 145 schools in regional centres, as well as construction of 45 new school buildings will be implemented; 60 million GEL are allocated to reach these goals. In accordance with the programme, in 2007-2008, rehabilitation of 43 orphanages, 49 schools located in remote mountainous regions, and 1,200 schools in rural areas is planned.

341. In 2001, the Programme on Alternative Forms of Care for Orphans and Children Deprived of Parental Care in Residential Institutions was developed to render assistance to vulnerable children and encourage their social integration. Pursuant to the programme, these children and their families are provided urgent aid, the material-technical basis of residential institutions (orphanages, special boarding schools, infant houses etc.) is strengthened, and deinstitutionalization, further education and leisure for orphans and children without parental care is ensured.

342. Currently, there are 48 residential institutions with 5,200 children under the Ministry of Education and Sciences of Georgia. Several more institutions (four of them) are currently functioning under the Ministry of Labour, Health and Social Affairs. These institutions encompass various categories of children - orphans, social orphans, children with physical and mental disabilities, and children deprived of parental care. Mainly, the children in question are placed to the institutions due to poor economic conditions. That is why, in accordance with a decree of the Government of Georgia of April 2005 on the approval of a governmental plan for the protection of children and their deinstitutionalization, reform of the State childcare system has started. A special governmental commission has been set up with the aim of ensuring an increase in well-being of children, in particular by introducing community-based child services and deinstitutionalization. In conformity with the aforementioned action plan, the Ministry of Education and Sciences of Georgia elaborated a set of measures aimed at optimization of the institutions; some of them are transformed into daytime centres, temporary shelters, and small family-type houses to create a more child-friendly environment. In this process, special attention is attached to the needs of children with disabilities. During the reporting period, with the support of donor organizations, certain steps have been undertaken to solve the problems of these children, and to provide them with high quality education.

343. The programme of deinstitutionalization is the first attempt in Georgia to introduce and provide different forms of family-based alternative care for children. The programme under review is being implemented in three main directions: (a) *reintegration* of institutionalized children into their authentic families, providing necessary conditions for the children in a less restrictive and more socially inclusive environment; (b) *prevention* of child placement to the residential institutions and assistance to the family; and (c) *fostering*, that is, placement of institutionalized children in foster families. For the time being, 850 children have been assisted within the framework of the deinstitutionalization programme.

344. Institutionalized children form a segregated underclass and face significant disadvantages in adapting to mainstream society once they “age out” of the institution at 18. To solve this problem, the Ministry of Education and Sciences has carried out a project on further education of institutionalized children and children deprived of parental care. The primary goal of the project in question is not only to provide those children with education, but to facilitate their socialization and integration.

345. Until recently, there were few alternatives to institutional care or education in special schools for children with disabilities in Georgia. However, the situation has changed with enactment of new Law on General Education which stipulates that “general educational institutions are authorized to create conditions for inclusive education” (art. 31, para. 4). This provision has created an unprecedented opportunity for Georgia to reduce the need for institutionalization that often was the only option for children with disabilities. Based on the legislative basis, pilot projects on inclusive education have been launched in 10 Tbilisi schools to involve the children with special needs in the teaching process. Monitoring of these projects has shown that, due to inclusive education, socially isolated, alienated and disabled children are becoming more integrated into society.

346. One of the key priorities among the programme activities of the Ministry of Education and Sciences of Georgia is the integration of national minorities into the common social environment, on the one hand, by teaching the official language and, on the other hand, through enhancing their opportunities to preserve linguistic and cultural identity. For these purposes, during the reporting period, the Ministry has been annually spending some 1.8 million GEL.

347. With the financial assistance of the OSCE High Commissioner on National Minorities, in 2005-2006 the Ministry of Education and Sciences of Georgia implemented a programme within the framework of which new Georgian language and literature standards for non-Georgian schools have been worked out. All Georgian language and literature teachers in schools of Samtskhe-Javakheti - the region densely populated by the Armenian minority - have been retrained to acquire new language teaching methods. Some of the teachers have been trained as trainers, thus becoming qualified professional resources for their colleagues. Apart from this, the programme under review includes activities to promote the instruction of Armenian as a mother tongue in Armenian schools of the region. Since May 2006, a similar programme component has been launched to support the instruction of the Georgian and Azerbaijani languages in schools of Kvemo Kartli - the region densely populated by Azerbaijani minority.

348. In addition to the aforementioned, it should be mentioned that, within the framework of providing non-Georgian schools with textbooks, all teachers and pupils of those schools have been given a free Georgian-language textbook entitled *Tavtavi* (first part). In September 2006, all schools will receive the second part of this textbook.

349. During the reporting period, in 2005, unified national admission examinations were first held in Georgia, with the aim of ensuring equal access to education. The unified national admission examinations provided all entrants with equally competitive conditions. Through

the new system of admission examinations, the vicious circle of systemic corruption has been transformed into a virtuous circle of meritocracy. The new generation of students who truly earn their places at higher education institutions of Georgia will turn into constructive partners and consumers of knowledge and services offered by these modernized institutions.

350. In order to provide similar conditions for all entrants, certain special measures are implemented. In particular, the Ministry of Education and Sciences is carrying out a programme aimed at preparing for the unified national university admission examinations. Within the framework of this programme, the following groups of entrants are involved in the preparatory courses: (a) persons residing in the conflict zones; (b) representatives of national minorities residing in regions densely populated by minority groups; (c) persons residing in mountainous and remote regions; (d) children of persons who missed or were killed defending territorial integrity of Georgia; (e) descendants of the people deported from Samtskhe-Javakheti during the Soviet times; and (f) ethnic Georgians who are foreign citizens.

351. In March 2005, the Ministry of Education and Science of Georgia, with the assistance of Estonian experts of the Tiger Leap Foundation of Estonia, has launched the Georgian State schools computerization programme entitled “Deer leap”. The main aim of the programme is to facilitate the modernization of the education system in Georgia by creating a countrywide school-based ICT infrastructure, and building capacity in modern information technology.

352. The “Deer leap” school computerization programme is conceived as a highly effective modernization initiative that will substantially reflect on the educational, economic and societal rejuvenation of Georgia. The use of new information technologies in education is a key factor in the processes of the overall reconstruction of the Georgian State and its connection to the globalization process.

353. In compliance with the Decree of the President of Georgia, the Deer Leap Foundation was established at the Ministry of Education and Science in September 2005. The supervisory board of the Foundation is extremely representative, and includes senior officials from the Ministry of Education, the Ministry of Economic Development, the Georgian National Communications Commission, and the Parliament, as well as prominent representatives of the civil society organizations and business associations, universities, and the teachers’ community.

354. The “Deer leap” is a four-year programme with a strong prospective of at least one more four-year extension phase will cover 2,300 State schools currently in existence in Georgia.

355. The ongoing phase of the programme (2005-2009) will provide:

- Access to computers and the Internet in each school;
- Availability of educational software and services;
- Availability and quality of technical support;

- ICT skills of teachers and students;
- Integration of ICT into curriculum;
- Integration of education management information system at school, district and national levels.

356. Accomplishments to date include:

- Purchase of the first batch of 1,200 modern PCs, through an open tender;
- Distribution of the PCs to 200 Georgian schools located in eight cities;
- LINUX-based free operational system specifically designed for school needs, by the best local programmers, and installed on the PCs;
- The localization/translation of the above operational system and software applications is in process and will result in the first-ever fully Georgian PC experience for all ages of pupils and teachers;
- An extensive teacher training programme to cover 2,000 teachers with computer skills by the end of the current academic year; and
- A number of workshops covering different issues of ICT integration into learning process and web-based educational projects (conducted by leading experts from Estonia).

357. Programme implementation budget is 26,459,200 GEL for the period of 2005-2009. Three million GEL were allocated for programme financing from the 2005 State budget. Additional contributions from donor organizations and countries are essential and welcome. In 2006, budgetary allocations for the programme purposes have increased almost threefold making up to 8 million GEL.

### **The right to legal assistance**

358. During the reporting period, in July 2003, a significant amendment was made to the Civil Code of Georgia, in order to ensure the right of the child to legal assistance. Namely, article 1198<sup>1</sup> (The right of the adolescent to protection) added paragraph 1, which reads as follows: “The adolescent has the right to protection against the abuse of powers on the part of the parents (other legal representatives). In the case of violation of adolescent’s rights and legitimate interests, inter alia, if the parent(s) fail(s) to perform or unduly perform(s) his/her/their duties linked to upbringing or education of the child, or abuse(s) parental rights, the adolescent has the right to apply independently to guardianship/trusteeship bodies, and after he/she attains the age of 14 - to the court.”

## **Citizenship issues**

359. In compliance with the Constitutional Law of Georgia of 6 February 2004, the wording of paragraph 2, article 12, of the Constitution was amended and currently reads as follows: “A citizen of Georgia shall not at the same time be a citizen of another State, save in cases established by this paragraph. Citizenship of Georgia shall be granted by the President of Georgia to a citizen of foreign country, who has a special merit before Georgia or grant the citizenship of Georgia to him/her is due to State interests.”

## **Article 25**

### **Allocation of powers<sup>22</sup>**

360. Georgia has been a democratic republic since the presidential elections and constitutional referendum of October 1995. In February 2004, the Constitution was amended to provide for a presidential/prime ministerial (or President/PM-led cabinet) structure of executive governance similar in some respects to that of France.

361. *Legislative:* All legislative power is vested in the Parliament, which is the highest representative body of the State. It exercises legislative power, determines the main directions of domestic and foreign policy, exercises general control over the Government and other functions within the framework of the Constitution. The Parliament consists of 150 members elected in a nationwide vote on the basis of proportional representation from party lists and 85 members elected from single-mandate, geographically defined districts. Members of Parliament are elected for a term of four years on the basis of free, universal, equal and direct suffrage by secret ballot.

362. The Parliament, for the term of its authority, elects from its membership a Chairperson of the Parliament.

363. Parliamentary committees are established for preliminary preparation of legislation; monitoring of fulfilment of previously adopted Parliamentary decisions and supervision of activities of State bodies accountable before the parliament and controlling over all other governmental activities. The Parliament can set up ad hoc Parliamentary Committees.

364. *Executive:* The executive functions in Georgia comprise the President of Georgia who serves as Head of State, and Prime Minister who serves as Head of Government (except that the President functions as Head of Government with respect to the Ministries of Internal Affairs and Defence).

365. The President of Georgia is the Head of State of Georgia and is charged by the Constitution with the responsibility of exercising the internal and foreign policy of the State. He/she must ensure the unity and integrity of the country and the activity of the State bodies

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<sup>22</sup> See [www.president.gov.ge](http://www.president.gov.ge)

in accordance with the Constitution. The President of Georgia is the supreme representative of Georgia in foreign relations and is the Supreme Commander-in-Chief of the Armed Forces of Georgia.

366. The President of Georgia is elected on the basis of universal, equal and direct suffrage by secret ballot for a term of five years. The same person may be elected President only for two consecutive terms.

367. The Government of Georgia is charged by the Constitution, as amended in February 2004, with ensuring the exercise of executive power, the internal and foreign policy of the State in accordance with the legislation of Georgia. The Government is responsible to the President and the Parliament of Georgia.

368. The Government is composed of the Prime Minister and the ministers. The Prime Minister is the head of the Government. The State ministers may be in the Government. The Prime Minister charges one of the members of the Government with the exercise of the responsibilities of the Vice Prime Minister.

369. The Prime Minister determines the directions of the activity of the Government, organizes the activity of the Government, exercises coordination and control over the activity of the members of the Government, submits report on the activity of the Government to the President and is responsible for the activity of the Government before the President and the Parliament of Georgia. The Prime Minister appoints other members of the Government by the consent of the President and is authorized to dismiss the members of the Government.

### **Right to free and fair elections**

370. In compliance with the Constitutional Law of Georgia of 6 February 2004, wording of paragraph 2, article 46, of the Constitution was amended and currently reads as follows: "In case of introduction of a state of emergency or martial law throughout the whole territory of the state, elections of the President of Georgia, the Parliament of Georgia or other representative bodies of Georgia shall be held upon the cancellation of the state. In case of introduction of a state of emergency in a certain part of the state the Parliament of Georgia shall adopt a decision on holding the elections throughout the other territories of the state."

371. In 2004, two elections were held in Georgia: extraordinary presidential elections of 4 January and repeated parliamentary elections of 28 March.

372. In 2002-2003, the main problem faced by the Central Election Commission (CEC) was the financing of elections. Due to the absence of money in the State treasury, it was difficult to transfer funds allocated from the State budget to hold elections to the CEC account; in its turn, it affected the logistical support of the election commissions. During the years mentioned above, all logistic-related issues as well as the support with all the necessary documentation and equipment was done by means of the personal contacts of the election administration officers. All kind of debts that arose during the preparation and holding of elections were covered by CEC during the following months, with the exception of salary debt of November, from parliamentary elections of 2 November 2003, that was taken as a State debt.

373. In 2004-2005, OSCE provided assistance to Georgia in terms of complete and timely financing of elections and in solving the logistic and related issues. The grant for this special purpose was allocated by OSCE to the Ministry of Finances of Georgia for the preparation and holding of elections.

374. Pursuant to paragraph 1 of article 51 of the Election Code of Georgia, the ballot papers are to be printed in the Georgian language; in Abkhazia, in the Abkhazian language too; and as necessary in other languages understandable to the local population.

### **Article 26**

375. Article 14 of the Constitution of Georgia states that all people are born free and equal before the law irrespective of their race, colour, language, sex, religion, political and other beliefs, national, ethnic and social affiliation, origin, property and class status or place of residence.

376. Under the Constitution, citizens of Georgia enjoy equal rights in the social, economic, cultural and political life of the country, regardless of language or national, ethnic or religious affiliation. In keeping with the generally recognized principles and norms of international law, they are free under the law to develop their own culture and to use their native language both in private and in public, without discrimination or interference of any kind (art. 38, para. 1).

377. According to paragraph 2 of article 85 of the Constitution, in areas where the population does not speak the State language, the State shall provide teaching and explanations of matters pertaining to legal proceedings in that language. The inclusion of this provision in the Constitution can be seen as a product of the Soviet period, when Russian (and not Georgian) was the lingua franca for minorities living in Georgia.

378. The Constitution provides for observance of the principle of non-discrimination in respect of non-citizens as well, in that it states that aliens and stateless persons living in Georgia have the same rights and obligations as Georgian citizens except where otherwise stipulated by the Constitution and the laws (art. 47, para. 1).

379. One such exception provided for in the Constitution is the authority of the State to place restrictions on the political activity of aliens and stateless persons (art. 27).

380. In June 2003, the Parliament of Georgia passed an amendment to the Criminal Code, in accordance with which a new article (142<sup>1</sup> - "Racial discrimination") was added. This article contains a definition of discrimination which is in compliance with the interpretation of this term under the International Convention on the Elimination of All Forms of Racial Discrimination and will allow punishment for the commissioning of the crime of racial discrimination with imprisonment from 3 to 10 years, depending on whether there are aggravating circumstances.

381. On 19 March 2005, the Parliament of Georgia ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid.

### Article 27

382. In its concluding observations, the Committee expressed its concern with respect to obstacles facing minorities in the enjoyment of their cultural, religious or political identities. The Committee urged the State party to 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.

383. The present leadership of Georgia has inherited an incredibly complex legacy: in addition to a collapsing economy and weak State institutions and two conflicts, there was the unsolved question of how to address minority-related issues.

384. Several institutional and practical measures to address efficiently these issues have been undertaken during the reporting period. A non-exhaustive list of these activities is given below.

385. Within the Parliament that was elected in March 2004, the Committee on Human Rights and Civil Integration is established. Its main tasks include the creation of a legislative framework on the basis of which integrative processes in the society will be developed, more active involvement of minorities in the construction of democratic State will be arranged, and protection of their rights and freedoms will be provided.

386. During the period under review, the Division of Interethnic Relations and Civil Integration was established within the Administration of the President of Georgia, which has mainly dealt with issues of national reconciliation, human rights and relations among various ethnic group problems related to civil integration. Recently, the position of Adviser to the President of Georgia on Civil Integration Issues was introduced as well.

387. At the Cabinet of Ministers of Georgia that has been established following the recent amendments to the Constitution (February 2004), the position of State Minister for Civil Integration was introduced to address the respective matters at the governmental level.

388. Along with the establishment of State bodies to address integration issues, it should be noted, for instance, that the first steps to facilitating national minorities' engagement in the election process were made. For instance, the extraordinary presidential elections of 4 January 2004 were the very first in the history of Georgia when ballots were printed also in some minority languages (Armenian, Azeri and Russian).

389. The President of Georgia, Mikheil Saakashvili, announced that ethnic minority and integration policy would be a priority of his Government. He invited non-governmental organizations to cooperate with the Government on minority and conflict resolution questions.

390. In 2004, the Ministry of Education and Sciences approved its Civil Integration Programme to guarantee the right of national minorities to use their native language and enjoy their culture, on the one hand, and to give them an opportunity to learn the State language, on the other hand. The programme that includes several components (situation analysis of



non-Georgian schools, elaboration of new teaching programmes and organization of training for teachers, creation of teaching and knowledge assessment system, programme of school partnership, etc.) aims to promote the process of social integration and raise public-mindedness through teaching the State language to all citizens of Georgia.

391. In 2005, the Government of Georgia established a higher education institution targeted to national minorities - Z. Zhvania School of Public Administration. The primary aim of this educational establishment is to offer lifelong learning opportunities to potential or acting public servants employed in representative and State administration bodies at the central, regional and local levels (with special emphasis on the representatives of national minorities). The school also provides representatives of national minorities with the State language courses. Currently, some 400 people from different regions of the country study in this school, together with representatives of the Georgian majority.

392. In November 2005, the Parliament of Georgia approved a document entitled "Concept for human rights and integration of national minorities", which is aimed at achieving more active involvement of national minorities permanently residing in Georgia, especially in places of their dense settlement, in all spheres of political, economical and cultural life.

393. The Parliament of Georgia has ratified the Framework Convention of the Council of Europe for the Protection of National Minorities and is going to follow the provisions of this document in practice.

394. In April 2007, Georgia will submit its initial report on the implementation of the Convention to the Council of Europe. The preparation of this report is to be implemented under the auspices of State Minister for Civil Integration.

395. Domestic procedures are under way in order to sign and ratify one more Council of Europe document - the European Charter for Regional or Minority Languages.

396. Special attention has been paid to matters related to the repatriation of Meskhetian population. Significant steps were made by the members of the State Commission on Repatriation, which is preparing an action plan on repatriation. During the period under review, the Georgian State Minister for Conflict Resolution visited Central Asian republics and southern regions of the Russian Federation, in order to evaluate social, economic and cultural conditions, and to estimate the number of the Meskhetian population, to identify the potential areas of their relocation in Georgia. It is also important to stress the need for the relevant international organizations to get involved in this process.

397. During the reporting period, in collaboration of the Public Defender of Georgia and European Centre for Minority Issues, a representative Council of National Minorities has been established, which engages in consultations and dialogue between minority representatives and government officials on issues of concern to national minorities. The Council functions through conferences and the proceedings of four working groups on thematic issues, which review existing legislation and policy and provide recommendations.

398. In May 2005, the Religions Council of Georgia was created with the support of the Public Defender of Georgia. Members of 19 faiths existing in Georgia participate in the Council (except the Georgian Orthodox Church and Jehovah's Witnesses). The Council is divided into three committees: (a) social-humanitarian, (b) cultural-educational, and (c) analytical-informational.

399. The main goal of the Council is to help the process of integration of the members of religious minorities into the civic society and to find ways of approaching issues related to religious minorities. It should be noted that religious minorities existing in Georgia for years have had an outspoken wish of coming together as a kind of entity. The Public Defender's Office of Georgia became the organization that facilitated institution of this kind of body. The Ombudsman's office, also committed itself to play the role of mediator between the religious minorities and State, executive Government and society. The membership in the Council is based on free will. Any religious movement whose doctrine does not contradict the constitution of Georgia can become a member. The Council gathers in every three months; however, a special meeting might be held in case of emergency.

400. Below are certain statistical data reflecting ethnic composition of Georgia and the enjoyment by minorities of their right to education.

**Table 7**

**Population by ethnic origin (based on population census data)**

	Thousands			Total population (in per cent)		
	1979	1989	2002	1979	1989	2002
Total population	4 993.2	5 400.8	4 371.5	100	100	100
Georgian	3 433.0	3 787.4	3 661.2	68.8	70.1	83.8
Abkhaz	85.3	95.9	3.5	1.7	1.8	0.1
Ossetian	160.5	164.1	38.0	3.2	3.0	0.9
Russian	371.6	341.2	67.7	7.4	6.3	1.5
Ukrainian	45.0	52.4	7.0	0.9	1.0	0.2
Azerbaijani	255.7	307.6	284.8	5.1	5.7	6.5
Armenian	448.0	437.2	248.9	9.0	8.1	5.7
Jewish	28.3	24.8	3.8	0.6	0.5	0.1
Greek	95.1	100.3	15.2	1.9	1.9	0.3
Kurd	25.7	33.3	20.8	0.5	0.6	0.5

**Table 8**  
**Preschool institutions by language of instruction**

	At the end of year			
	2003		2004	
	Preschool institutions - total	Number of children	Preschool institutions - total	Number of children
Total	1 225	74 309	1 247	75 361
Instructed in:				
Georgian	1 143	65 027	1 159	65 095
Russian	5	112	6	225
Azeri	2	75	-	-
Armenian	1	20	2	99
Georgian - Russian	67	8 541	72	9 424
Georgian - Armenian	2	152	2	140
Georgian - Azeri	1	33	2	88
Russian - Armenian	1	98	1	80
Georgian - Russian - Azeri	2	219	2	175
Ossetian	1	32	1	35

**Table 9**  
**Public day general educational school students by language of instruction (excluding schools for mentally and physically retarded children, at the beginning of school year)**

	2000/01	2001/02	2002/03	2003/04	2004/05
Number of students - total (thousands)	697.4	680.8	664.0	647.9	620.6
Of which are instructed in:					
Georgian	595.1	584.0	572.1	560.1	530.8
Russian	38.1	35.9	34.0	32.1	34.1
Azeri	38.2	36.8	35.4	34.3	33.5
Armenian	25.8	23.9	22.3	21.2	21.6
Abkhaz	...	...	...	...	0.4
Ossetian	0.2	0.2	0.2	0.2	0.2
In per cent to the total number of students	100	100	100	100	100
Georgian	85.3	85.8	86.2	86.4	85.5
Russian	5.5	5.3	5.1	5.0	5.5
Azeri	5.5	5.4	5.3	5.3	5.4
Armenian	3.7	3.5	3.4	3.3	3.5
Abkhaz	...	...	...	...	0.07
Ossetian	0.03	0.03	0.03	0.03	0.03

Source: Ministry of Education and Science of Georgia.

401. More comprehensive information regarding the minority issues in Georgia may be found in second and third periodic reports of Georgia under the International Convention on the Elimination of All Forms of Racial Discrimination (see CERD/C/461/Add.1).

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