

Recommendations to the Government of Georgia

By Special Advisor to Georgia on Human Rights, Constitutional and Legal Reforms – Thomas Hammarberg

(Follow up on the final mission – 4-9 June, 2014)

Within the framework of the final visit, the Special Advisor met representatives of government, parliament, judiciary, civil society and diplomatic corps, namely: Prime Minister; President, Speaker of the Parliament; Minister of Interior; State Minister for Reintegration; Minister of Corrections and Probation; Deputies of the Minister of Justice; Deputy Prosecutor General; Minority Leader of the Parliament and other representatives of the opposition; Public Defender; representatives of the Constitutional Court; Prime Minister's Special Representative to Russia; representatives of non-governmental organizations, representatives of international organizations and ambassadors.

Most of the meetings have been attended by Eva Pastrana (EU representative) and Tamar Chugoshvili (Georgian Government representative).

The Special Advisor has during his engagement noted **significant improvement** in many of the human rights related areas, including, but not limited to: the adoption of the National Human Rights Strategy and Action Plan; increased judicial independence; improved election environment and separation of the State and party political interests (in contrast with past abuse of administrative resources); progress on protection of privacy; progress on prison conditions; adoption of the new labor legislation; adoption of the new anti-discrimination legislation; open and inclusive cooperation with the CSOs and free media.

The Special Adviser also notes that there remain **challenges** in reforming and strengthening democratic institutions, among them the following: judicial independence remains fragile and responsibility of individual judges needs to be strengthened; law-enforcement institutions still require significant reform, including establishment of an effective and independent mechanism for investigation of the complaints against law enforcement officials; development of new legislation on surveillance has to be finalized and right to privacy ensured; frequency of inter-personal cases of violence, both political and domestic, require adequate response; cases of past abuses require effective and credible response. Implementation of the labour code is also key: On top of setting up specific inspections on safety at work, there is the need to create an effective mechanism to oversee core labour standards. These issues are linked to the EU-GE DCFTA/AA and will in turn attract investors and business, who value legal and judicial security. Incipient social improvements need to be

sustained, particularly focusing on vulnerable groups like IDPs, minorities, rural population, poor children, elderly or people with disability.

After the local elections, the electoral legislation needs further improvements and clarifications. The interpretation of the two-year residence requirement provision has been problematic. The possibility of the municipal council to remove the directly elected majors with two thirds of the voting should be revoked.

The Special Adviser has a number of recommendations for the Government of Georgia and its relevant structures. This document briefly describes these recommendations on some key topics.

1. Implementation of the National Human Rights Strategy and Action Plan

Georgia has to be congratulated on the adoption of the seven-year National Strategy on Human Rights and two-year Action Plan of the Government, as well as on the establishment of the Human Rights Council and secretariat in the PM's office. The Action Plan is one of the best in Europe, detailed and built on serious consultations. Effective implementation of these documents requires strong political will and has to be prioritized by the Government of Georgia:

- The Human Rights Council needs to develop an effective structure, organize itself into working groups, develop rules of action in order to be able to ensure effective implementation of the action plan;
- The Human Rights secretariat has to be equipped with adequate human and financial resources in order to support Human Rights Council on a continuous basis;
- The political leadership of Georgia should express strong political support towards implementation of the HR Strategy and Action Plan;
- The role of the PM Assistant on human rights and gender equality is proving crucial to liaise with international and national actors, to structure the work of the HR Strategy and Action Plan and to give warning flags to the PM and/or other authorities in order to timely address issues and de-escalate tensions; her prompt replacement should be ensured;
- Active involvement of the NGOs and the Public Defender in implementation of the Action Plan has to be ensured. Parliament should monitor the implementation of the plan.

2. Judicial Independence

Georgia is clearly benefiting from the increased judicial independence, better substantiated judgments, increased transparency in the court rooms and a democratically elected High Council of Justice. Despite this, progress in judiciary remains fragile. The PM and his Government should serve as guarantors of non-interference in the justice system and ensure further guarantees for individual independence and authority of the judges:

- Rules of appointment of judges have to be further improved. Criteria of selecting judges, as well as assessing their performance during the probation period have to be objective, transparent and fair, with minimal possibility of subjective judgment and unfair decisions and avoiding any politicization of criteria, such as looking into the reasoning and the outcome of the judgments. Otherwise Georgia will risk creating new mechanisms of intimidating judges and influencing their performance - as was the case during the dysfunctional system of past years which made numerous abuses possible;
- Special attention should be paid to the appointment of new members of the Supreme Court of Georgia. New judges have to be selected on impartial bases, taking into account their professionalism, experience, reputation and integrity. It is important to have an adequate number of acting judges in the Supreme Court; decision on two vacant positions has to be taken without delay. Appointment of a new Chief Justice early next year is of vital importance for safeguarding and further enhancing progress at the Judiciary and ensuring independent and effective justice system in Georgia. All the stakeholders, including the President and Parliament carry responsibility for a constructive process;
- Working processes at the High Council of Justice still remain tense. There is still one vacancy. The ruling coalition and the opposition have to find compromise and fill the vacant seat, thus contributing to the establishment of the cooperative and result-oriented approaches at the council.

3. Law Enforcement Agencies

Law enforcement institutions have a challenging heritage in Georgia; among past accusations were: misuse of power, impunity, political influence and abuse of human rights. This type of a background requires strong and effective response from the government, through carrying out fundamental reforms. Political impartiality, professionalism and accountability are a must.

- Lack of accountability of the Prosecutor's Office remains a problem. After separating the office from the Ministry of Justice there is lack of institutional oversight on their performance, which tends to damage the reputation of the whole justice system. The quality

of prosecutors' work needs to be enhanced. In previous years the investigation skills among prosecutors were little developed. Since October 2012 the prosecutor's office has had different leaders with strong differences in vision and tactics. This has slowed down the institutional strengthening. Lack of public trust in the PO is a major concern.

- The fact that integrity is not sufficiently valued during recruitment or promotion in law enforcement agencies undermines people's confidence. For instance, various current prosecutors or investigators have come from the finance police which reportedly had many members who used to coerce citizens into plea bargain agreements or practice extortion-like measures against persons in the business community. Staffs linked to the notorious - and fortunately abolished - Constitutional Security Department, were promoted to key positions in law enforcement agencies. Professionalism and integrity of key law enforcement office-holders should counterbalance security requirements when staffing such positions.
- Oversight over the law enforcement structures remains a problem. There is a need for an independent and effective complaints system to which one can turn knowing that the complaint will be dealt impartially. This should not only cover police but also prison staff and prosecutors. Various models in other countries can provide ideas of effective approaches. Sometimes, when the general inspections send complaints to the Prosecutor's Office due to suspicion of crime, they are returned back by the PO. This practice contributes to the current public mistrust in the system.
- Investigations against former officials can be perceived as selective if there is no clear and transparent strategy on the priorities of the Prosecutor's Office. The principle of impartiality must be honored. Prosecutors should follow legally based procedures strictly and prepare evidence professionally.
- It is unfortunate that the improvement of the questioning rules for witnesses will not be enforced until the end of 2015. For the sake of truly adversarial procedure and ensuring equality of arms, the best place for questioning witnesses are trials, rather than police stations or prosecutors' offices.
- Administrative detention, a reminiscent from the past, should be totally abolished.
- The efforts to decrease custodial measures (increase of diversion, mediation, reduction of pre-trial detention), and to humanize criminal and penitentiary policies need to be persevered.
- Further discussions are needed on the anti-drug policy. Worldwide, the trend goes for persecuting drug-dealers strictly while decriminalizing personal possession of drugs, treating such addicts as patients rather than criminals.

Politicians should refrain from any comments on on-going investigations and on cases in court, apart from general remarks such as calls for law enforcement to investigate any case with signs of crime or categorical condemnation of violence. Particularly important is the respect of judiciary's decision by the executive, even when government may dislike the outcome.

4. Restoration of Justice

Complaints on past abuses have to get proper response from the state. Prosecutor's Office informed that it has gone through the complaints received after the government change 2012 (ca. 3.500 after grouping several complaints on same cases) and is concluding a process of categorization. A number of the complaints were about the 'involuntary' transfer of property to the state (ca. 700), and such transfer was done, as complainants argue, under pressure. Complaints also relate to torture or ill-treatment or illegal detention, and others about misuse of the plea bargain system. Government should be clear on how it plans to react in response to the complaints. Absence of clear policy with fair solutions might promote an increase of unnecessary tensions within society, as well as continually violate the rights of the victims. The state needs to elaborate a compensation strategy, even if it may face financial constraints to adequately compensate all victims.

5. Privacy and Surveillance

Protection of privacy and personal integrity should be among the priorities, especially taking into account the wounds of past violations. Georgia managed to consolidate discussions around the new Law on Operative Investigative Activities and to appoint a personal data protection inspector. Though achievements have been made, a lot more remains to be done.

- The issue of the direct access of the law enforcement authorities to the telecommunication servers is complicated, not only in Georgia but worldwide. However, it is possible to find technical solutions and secure both national security (fight against crime, or terrorism) and human rights (respect for the integrity and privacy of people, freedom of expression). It would be wise to start discussions on technical dimensions, explore other countries' experience and continue involving Council of Europe experts for more specified and effective results.
- Due to the massive extent of illegal eavesdropping in the past (revealed with the thousands of illegal recordings found after the change of government), authorities have the extra task of convincing people that, unlike before, their private lives are theirs and therefore authorities will not tolerate any abuse of surveillance activities (as in the past when recordings were made with the intention to collect material for the purpose of blackmailing opponents or other targeted persons).

- Plans on how to deal with the thousands of past illegal recordings, not yet destroyed and currently at the PO, should be clarified and made public. Two interests should dominate: investigating the responsibility for ordering and conducting these unlawful recordings; and protecting the integrity of people targeted by these recordings. The Personal Data Protection Inspector must enjoy enough independence and enough financial resources from the state budget to fulfill his/her duties effectively. Since no institution of this type has ever existed in Georgia before and the office of the inspector in charge of protection of personal information is created from scratch, it is necessary to allocate sufficient amounts of state financing for its further build-up.

6. Campaign Against Violence

Incidents of inter-personal violence expressed in different forms are observed across Georgia.

- Authorities should launch a campaign against inter-personal violence in order to avoid spiraling of violence in all its forms: election-related incidents, violence between private individuals, domestic violence (at least 14 women killed in first half of 2014) and society's approval of corporal punishment to discipline children.
- There is a need for much firmer position to look into all complaints on violence - particularly by MIA - and to mobilize the whole society against violence.
- It is important that leaders take a very clear anti-violence position.
- Various professionals, from police officers to medical staff, social workers and teachers, need to be educated on how to handle situations when there are indications that a child has been subject to inter-personal violence;
- Ahead of elections, or whenever there are allegations of pressure on candidates for withdrawal, disruption of opposition gatherings and episodes of violence against election-related individuals, law enforcements should address them promptly and effectively to avoid sending signals to people that such violence is accepted.
- Hate crimes deserve much stricter follow up from the side of law-enforcement institutions. Police officers and prosecutors have to get additional training on identifying the hate crimes and dealing with the victims. The legal definition of hate crime remains a problem.

7. Vulnerable Groups and equality

Georgia has to be congratulated with the adoption of the Anti-discrimination legislation. Still a lot remains to be done:

- The Government of Georgia should ensure effective implementation of the anti-discrimination law and gradually prepare for imposing more effective mechanisms for implementing the anti-discrimination provisions;
- Participation of women in politics remains dramatically low. Georgian society deserves more equal representation of men and women in decision making process. Unfortunately, the June local elections did not improve the overall picture. The government and the parliament should take active and strong steps to overcome this inequality;
- The PM created a new Agency on Religious Affairs while religious minorities and NGOs expressed skepticism. The more important that this agency prove its impartiality towards all of the religious groups, by equal treatment and a cooperative approach;
- Authorities should avoid a security prism to overly dominate when dealing with the minorities. Integration - as opposed to assimilation - of national minorities should be the purpose.
- Concern for the human rights of people in the break-away regions is an argument for an engagement policy. Informal contacts with de facto authorities may benefit from more public formats of dialogue and expansion of areas of collaboration. Parallel release of prisoners of concern would promote a humanitarian element in the contacts.

8. Government and administration

- In order to promote an independent and competent civil service, it seems necessary to reform the civil service code and to establish a fair bonus system, based on effectiveness and professionalism, and discarding political reward.

- Senior politicians should serve as role models for society. They have to cope with greater exposure to criticism than ordinary citizens. Condemning criticism from non-partisan civil society organizations – as happened in the past - sends wrong signals as if dissent voices are unacceptable.
- Real social gains already achieved need to be sustained, particularly those contributing to poverty reduction (for instance, rural and agricultural development, increase of pensions, expansion of the universal health coverage and reduction of child poverty). Public awareness of social development plans and achieved results can be enhanced, as well as recognizing progress made by the responsible line ministries responsible, including those in the fields of health and agriculture.
- Following the radical change from a Presidential to a Parliamentary system, adjustments may require time. Deeper dialogue and coordination among all powers are needed. While no longer in an executive function, the President's role as a mediator in situations of polarization and internal conflict should be recognized as well as his representative role in relations to other countries.
- Georgia should of course use the opportunities (including financial support) provided by the upcoming Association Agreement and DCFTA to strengthening institutions.
- Responsible politicians focus on real problems of the people. While it is understandable that, after the change of power, the primary focus is put on reacting against earlier abuses and taking steps to avoid such policies in the future, it is important that focus gradually shift to economic development and urgent social concerns.