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NOTE

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## BACKGROUND AND GENERAL INFORMATION ON THE SEMINAR

1. Human rights are one of the cornerstones upon which the EU-Georgia partnership is based. The EU-Georgia Partnership and Co-operation Agreement (PCA), concluded in 1996 and in force since 1999, stipulates that the essential elements of EU-Georgia relations are respect for democracy, the principles of international law, human rights and the market economy.
2. Matters concerning human rights are jointly discussed by Georgia and the EU within a framework made up of the provisions of the European Neighbourhood Policy (which Georgia joined in 2004) and the priorities set up by the European Neighbourhood Policy Action Plan adopted on the 14<sup>th</sup> of November 2006.
3. In 2008, the European Union and Georgia agreed to establish a human rights dialogue. The first session of this dialogue took place in Tbilisi on the 28<sup>th</sup> of April 2009.
4. Both sides also agreed to hold a dedicated civil society human rights seminar in Tbilisi ahead of the second round of the human rights dialogue (which took place in Brussels in December 2009). Both parties agreed to devote the seminar to media freedom and to matters concerning internally displaced persons.
5. The EU and Georgia decided to hold another civil society seminar before the next stage of their human rights dialogue (which was held in Tbilisi on the 26<sup>th</sup> of June 2012). It was agreed that this seminar would focus upon (1) a review of criminal policies and sentencing practices, (2) upon issues concerning the imprisonment of women and the situation of inmates sentenced to imprisonment for life and (3) upon matters concerning labour rights and legislation.
6. The aim of these civil society seminars is to contribute to and enrich the human rights dialogue through open discussions with civil society representatives. The civil society seminars are an opportunity for European and Georgian civil society representatives, academics and government officials to discuss issues concerning human rights and ways in which the application of human rights could be enhanced.
7. The civil society seminar on human rights was organized to:
  - enable academics and members of civil society to feed the agenda of the official human rights dialogue with their views through non-confrontational discussions;
  - to enhance the official human rights dialogue by creating a space for European and Georgian academic and NGO communities to have open and professional discussions at an expert level in order to formulate recommendations for future reforms based upon best practices and applicable international standards; and to

- expose academics and civil society representatives to expert analysis of areas in which the use of international human rights standards and EU practices could be further promoted in Georgia.
8. The present report summarizes the seminar's opening speeches and the ensuing discussions among those who took part. It also presents the recommendations which were formulated by the civil society representatives.
  9. Annexes to the report include those presentations given by key speakers who presented written copies of them to the seminar's organizers. The annexes also include other materials related to the seminar, including its agenda and a list of its participants.

## Executive Summary and Key Recommendations

On the 21<sup>st</sup> and 22<sup>nd</sup> of June 2012, an EU-Georgia Civil Society Seminar on Human Rights was held in Tbilisi in order to contribute to the structured human rights dialogue between the EU and Georgia which was to be held on the 26<sup>th</sup> of June. The seminar was divided into two parts: the first would deal with matters concerning criminal justice, and the second would consider labour rights issues. The criminal justice part was a day and half long and included sessions on criminal policies and sentencing practices as well as on issues concerning the imprisonment of women and the situation of inmates sentenced to imprisonment for life in Georgia. The second half of Day 2 of the seminar (22<sup>nd</sup> of June) was devoted to labour rights and legislation.

Over 70 people attended the criminal justice sessions, including representatives of Georgian civil society organizations, government officials (from the Ministry of Justice, the High Council of Justice and the Ministry of Foreign Affairs), international experts, local embassies and representatives of the European Union in Georgia. Around 40 people took part in the second day's sessions, which tended to focus more narrowly upon particular issues. Every session began with two or three presentations, followed by lively discussions. It should be noted (positively) that government officials and spokespersons actively participated in the seminar throughout and actively engaged with the civil society representatives who were present. Whilst discussions sometimes became a bit heated, the seminar's participants were unanimous in noting the positive nature of such dialogue between the government and civil society in the country. At the end of the sessions, the representatives of various Georgian civil society organizations formulated and discussed the recommendations they thought should be made to the government and to the international community.

***Criminal Justice Policies and Sentencing Practices.*** The “zero tolerance against crime” policy the Georgian authorities adopted in 2006 was intended to crack down on organized crime, change the public’s attitude towards criminality, eradicate the impunity syndrome and provide greater public security. In practical terms, the stricter criminal justice policy meant that minimum fines increased from GEL 20 (approx. EUR 10) to GEL 200; sanctions increased for a number of offences; concurrent sentencing replaced consecutive sentencing; the use of pre-trial detention became overwhelming; the maximum length of imprisonment increased from 25 to 30 years for many crimes and from 30 to 40 years for many verdicts; and judicial discrepancy was scrapped.

The policy had certain positive results, including a substantial decline in the crime rate. In 2011, the number of (reported) crimes was 32,263, almost 50% less than in 2006. Another positive result was a significant increase in public trust in the country's law-enforcement agencies. EU-funded research revealed that 98% of respondents feel safe from crime during the day and 96% during the night. Some 87% of respondents assess the work of the police as effective.

However, this strict criminal justice policy also led to a high rate of incarceration and overcrowding in Georgian prisons. The number of prisoners in Georgia has increased from just over 6,000 in 2003 to 24,114

in 2012. The country's penitentiary infrastructure was not prepared for such an influx of convicts and overcrowding has led to other human rights being violated as a result of poor living conditions, a lack of proper health care and a lack of meaningful activities. Although the authorities have built new prison facilities and have renovated some of the existing ones, this has not been enough to alleviate the overcrowding. The fight against organized crime also resulted in a number of clashes between prison administrations and inmates which had some human casualties. More importantly, investigations into such incidents have not been effective or conclusive and abusive officials have not yet been held accountable for their actions.

Yet another problem highlighted by a number of the seminar's participants included a lack of judicial independence and a very high percentage of convictions.<sup>1</sup> Court monitoring conducted from October 2011 to March 2012 by the Georgian Young Lawyers' Association (GYLA) revealed that judges accepted 100% of motions made by the prosecutor's office and only accepted those made by the defence when the prosecutor's office also agreed with them. A lack of substantiated decisions made by the judges was also highlighted as a problem, as well as an extremely high rate of conviction.

The seminar's participants welcomed the gradual liberalization of criminal policies, including measures such as mediation, diversion from criminal prosecution and the increased use of community service as well as the re-activation of parole system, with marked progress in juvenile justice. All this is reflected in the (EU-supported) Criminal Justice Reform Strategy and Action Plan. However, it was noted that a more holistic approach was needed to create a criminal justice system that would be capable of re-socializing convicts.

The seminar's participants agreed on the following key recommendations:

- To alleviate prison overpopulation and overcrowding, the government should focus more on the application of non-custodial sentences; should encourage greater use of community services; should use diversion from criminal prosecution for non-violent or petty crimes; and should replace consecutive sentencing with concurrent sentencing.
- The government should take steps towards adopting a more humane and human-rights oriented criminal justice policy; should adopt restorative justice measures with regard to adult offenders; and should introduce mediation for adult offenders.
- The government should take additional measures to prevent political influence over the High Council of Justice; to ensure genuine adversarial proceedings and the principle of equality of arms; and to ensure effective and adequate judicial control over the plea-bargaining process.
- The international community, including the EU, should provide expertise, share experience and provide financial assistance for the implementation of inmate rehabilitation projects, including those run by civil society organizations.

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<sup>1</sup> According to statistics published by Georgia's Supreme Court, criminal courts convicted 19,940 people and acquitted 8 in 2010; convicted 18,354 people and acquitted 18 in 2009, and convicted 20,804 people and acquitted 30 in 2008. The acquittal rate rose to 2% in 2011.

**Issues concerning the imprisonment of women.** There are 1,123 women prisoners in Georgia (119 of them in pre-trial custody), mostly of them in the new Prison No. 5 in Rustavi, which was opened in 2010. Local and international organizations, including NORLAG and Penal Reform International, have been involved in re-socialization programmes for women prisoners. There are several courses for female prisoners, including computer classes, felt workshops, English and Georgian language and design courses. The authorities have also opened a new library with electronic resources. NGOs highlighted the problem of providing adequate health care in the women's prison, including problems of confidentiality and informed consent and the lack of professional independence of doctors. There are no private rooms for doctors to receive patients in confidence; even if convicts display visible marks of ill-treatment, the level of detail of information to be registered does not correspond to Istanbul Protocol requirements and is not enough to conclusively establish the nature and age of such marks.

**Inmates sentenced to life imprisonment.** Life imprisonment replaced the death penalty in Georgia in the year 2000. Eighteen articles of the Criminal Code currently call for life imprisonment. 91 prisoners are currently serving a life sentence in Georgia, of whom 4 are women. They are kept in isolation; their right to fresh air is limited to only 1 hour a day; there are no special rehabilitation or re-socialization programmes for them; and prison staff dealing with this group of inmates lack special training. Several civil society organizations highlighted the fact that keeping inmates sentenced to life imprisonment isolated goes against international best practices and is often criticized by local and international groups, including the Committee on the Prevention of Torture. NGOs recommended that all inmates should be assessed individually with a view to drawing up individual imprisonment plans.

Other recommendations to the government included:

- The government should ensure that all prisoners enjoy extended visits, the right to phone calls and greater family ties;
- It should provide access to media in all prison facilities, including access to television and to a variety of printed press;
- The government should ensure that inmates sentenced to life imprisonment can enjoy extended visits and should include them in various re-socialization or rehabilitation programmes;
- It should provide access to equal and adequate health care and to a doctor in all penitentiary facilities; and, finally,
- The international community should support the introduction of re-socialization programmes and projects in Georgia's prisons.

**Labour rights.** Labour rights are an important component of the ongoing dialogue between the EU and Georgia, including the Human Rights Dialogue and within the framework of the Deep and Comprehensive Free Trade Agreement negotiations. The government takes pride in Georgia's final break with the Soviet past with the adoption of a new Labour Code in 2006, which it claims is in line with International Labour

Organization conventions. The government has also established a tripartite social dialogue in which both trade unions and employers' associations take part, and plans to introduce a mediation institution.

Trade unions have radically different assessments of the situation, claiming that the Georgian Labour Code fails to meet anti-union discrimination standards and does not provide adequate security for collective bargaining. They allege that Article 38 of the Code allows an employer to dismiss an employee without prior warning or grounds for dismissal. The Georgian Young Lawyers' Association also highlighted the lack of legal guarantees in the existing Code. They claim that it does not guarantee equality between employers and employees. The Code allows for discrimination as it does not prohibit employers from asking questions about an employee's political or religious affiliation or criminal record. The Code does also not regulate preferential treatment for certain groups (e.g. women, minors and people with physical or mental disabilities). Other problems include the non-existence of maximum work hours, over-time pay regulations, maternity leave reimbursement, verbal contracts and short-term contracts and a lack of legal guarantees, &c.

The discussion which followed presentations by the government, trade unions, employers' association and NGOs was very heated and highlighted the need for further dialogue. Different sides had different interpretations of the labour code and international standards and failed to even listen to (let alone acknowledge) each other's positions. It became painfully obvious that levels of mutual mistrust are very high and that there is a need for mediation. Social dialogue is formalistic and discussions by the tripartite commission haven't led to any agreed positions. The seminar's participants made the following recommendations to the authorities:

- The government should engage in meaningful and effective social dialogue; any important legislative amendments should first be discussed during a tripartite social dialogue prior to being adopted;
- It should set up an effective mediation system for labour conflicts and should amend the labour code or adopt secondary legislation to ensure trade unions are not discriminated against; and, finally,
- The international community should support attempts to build up the capacities of social actors and should support the work of the tripartite social dialogue by providing financial and expert-level assistance.

## Session 1: Review of Criminal Justice Policies and Sentencing Practices

### *Opening Remarks*

**H.E. Mr. Philip Dimitrov, EU ambassador to Georgia**, welcomed the seminar's participants. He underlined the fact that the seminar was being held as part of the EU-Georgia Human Rights Dialogue and pointed out that the seminar was proof of the importance the EU delegation to Georgia attributes to the messages of civil society organizations in Georgia. Mr. Dimitrov noted that significant progress had been made in reforming Georgia's criminal justice system, but also highlighted existing challenges and expressed his hope that the seminar would demonstrate the Georgian NGO community's ability to address these challenges in an innovative and insightful manner.

**Ms. Tina Burjaliani, First Deputy Minister of Justice**, also greeted the participants of the seminar. She highlighted the achievements the Georgian government had made in its attempts to reform the country's criminal justice policies and underlined the extent to which the Ministry is co-operating with civil society organizations. As an example of successful co-operation between the two, she noted the challenges Georgia faces in its attempts to reform its juvenile justice system and the role UNICEF and Georgian NGOs play in these attempts to introduce mediation and probation services. Ms. Burjaliani also underlined the government's intention to gradually move from its "zero tolerance against crime" policy to a more liberal one.

### **PANEL 1**

There were four panels on the first day (21<sup>st</sup> of June), which was fully devoted to reviewing criminal policies and sentencing practices. During the first panel, Mr. Otar Kahidze, Head of the Analytical Department of the Ministry of Justice, Ms. Caterina Bolognese, Head of the Council of Europe office in Georgia, and Prof. Monika Platek of Warsaw University addressed the seminar's participants.

**Mr. Otar Kakhidze, Head of the Analytical Department, Ministry of Justice**, gave a presentation on the criminal justice system reform agenda in Georgia. He underlined the fact that in the Justice Ministry he has been given the opportunity to implement those ideas and recommendations he had earlier as a member of a Georgian civil society organization. He stressed the fact that a key goal of criminal justice was to protect society from crime and criminals so that members of the public are safe. As a comparison, he reminded everyone of the times when the "thieves-in-law" (criminal bosses) controlled the country and said that the reforms the Georgian government has undertaken have resulted in turning the country into one of the safest countries in Europe. He recognized the fact that the fight against organized crime had had some negative side-effects such as an increase in the prison population, but argued that this should not outweigh the success of reforms. He stressed the fact that to shift from a policy of "zero tolerance towards crime" to a more liberal policy would not mean that criminals would not be punished, but that a less strict policy might

be used. Some of the steps the Georgian government has already taken towards a more liberal criminal justice policy include the introduction of a new code of criminal procedure and of the concepts of mediation and probation as well as discretionary prosecution. Mr. Kakhidze noted the particular successes which have been achieved in the introduction of these mechanisms in the juvenile justice system and noted that there were plans to gradually increase their applicability to adult offenders. He stressed the fact that the prevention of crime is the key goal of these reforms. (See the seminar notes at the end of this report for more details on Mr. Kakhidze's presentation.)

**Ms. Caterina Bolognese, Head of the Council of Europe (CoE) Office in Georgia,** reminded the seminar's participants of one of the main recommendations made by the Council of Europe's Commissioner for Human Rights following his April 2011 visit to Georgia, regarding the need to move from a retributive to a restorative approach to criminal justice. The latter approach is based upon the more humane belief that offenders are capable of modifying their behaviour and of reintegrating society upon the condition that they repair their offence and that victims of crime benefit from maximum levels of support. She continued by giving the seminar's participants examples of successful crime prevention measures in Council of Europe member-states. Ms. Bolognese described Switzerland's adoption in 1999 of a decree on the medical prescription of heroin as a form of treatment for drug abuse, and spoke of this policy's success compared to more traditional criminal procedures in reducing collateral problems linked to the illegal abuse of this drug. Another example of successful policy concerned Austria's adoption in 1997 of a legal act on domestic violence, which also involved non-governmental intervention centres for providing support to victims. She also spoke of the successful examples of restorative justice in Belgium and the Czech Republic concerning the introduction of indirect mediation between offenders and victims in penal cases. Ms. Bolognese also underlined that any policy of "zero tolerance against crime" resulted in disproportionately lengthy sentences and that efforts to reform the system should be aimed at: adopting a more humane and human-rights-oriented approach to criminal justice; introducing the use of alternative restraining measures; carrying out additional measures to prevent political influence over the judiciary; supporting effective prosecutorial supervision of police investigations and protecting the individual independence of judges; and at further reinforcing guarantees for fair trial norms and fully respecting the principle of equality of arms.

**Prof. Monika Platek, Head of Warsaw University's Criminology Department,** spoke of the myths and realities of the current criminal policies of Council of Europe and EU member-states. Prof. Platek, who was involved in programmes to reform Georgia's criminal justice system between 1995 and 2005, began by pointing out that the criminal policies of EU and Council of Europe member-states shared common legal ground in the binding provisions of the European Convention on Human Rights and in the Council of Europe's (non-binding) recommendations on European Prison Rules and European Probation Rules. Prof. Platek commented on Mr. Kakhidze's claim that the aim of Georgia's current criminal policy was to reduce crime and increase safety, stating that nowadays governments often used criminal law and imprisonment as tools to mitigate their shrinking powers and influence over society. She was adamant that Georgia's low crime rate bore no relation whatsoever to its extremely high rate of imprisonment, and attributed the latter to purely political decisions. Prof. Platek then said that when policymakers and governments argue for more

severe criminal laws based upon the notion of safety, this is usually no more than an attempt to minimize civil rights and to shrink the powers of civil society in the name of people's sense of security, and concluded by calling for efforts to reform Georgia's criminal policy to involve all ministries (including health, education, &c., and not just the criminal justice system) as a person's sense of security in a specific place is hardly reflected exclusively in criminal law but is more the result of social policy as a whole.

## **PANEL 2**

**Mr. Giorgi Tughushi, Public Defender (Ombudsman) of Georgia**, started by noting that his office closely monitors Georgia's criminal justice system and makes relevant recommendations in accordance with its mandate under the Georgian Constitution and the Law on the Public Defender of Georgia. He said that the "zero tolerance" policy and the strict criminal justice policy implemented to improve public security had had some positive results, as many public polls confirm, and that people knew that criminals would be punished. He added, however, that severe criminal policies also resulted in an increased prison population – problematic in itself – and that existing prison infrastructure has proved to be unprepared for this, leading to inhumane conditions in some of the facilities. The government has started to build new prison facilities and to renovate existing ones, but this has so far not been sufficient. The fight against organized crime has resulted in a number of clashes between the prison administration and inmates, which have caused some casualties. Mr. Tughushi noted that Georgia has gradually begun to liberalize its justice system, but stressed that this, of course, does not mean that offenders should not be punished. According to him, the system is currently focused on isolation rather than correction, and action is needed for the system to be capable of re-socializing convicts to enable them to reintegrate into their communities once they are freed. This would significantly decrease the risks of recidivism.

Mr. Tughushi welcomed the introduction of jury trials as a way in which public trust in the judiciary could be increased, but pointed to other problems in the judiciary, particularly in terms of substantiated judgments.

Finally, Mr. Tughushi also highlighted various problems with the current system of administrative detention. Although administrative offences are regulated by a different body of legislation than the Criminal Code, Mr. Tughushi noted that the possibility of being sentenced to 90 days' imprisonment for administrative offences was a criminal punishment and demands similar safeguards against arbitrary deprivation of liberty.

**Mr. Beso Bokhashvili, Team Leader of the EU-funded "Support to the Public Defender of Georgia" Project**, presented an assessment of Georgia's criminal justice system published with the support of the Open Society Georgia Foundation. He underlined the fact that the main goal of the government's "zero tolerance" policy was to fight organized crime and change the mentality of the Georgian public. Reforms carried out so far have had both positive and negative consequences. He welcomed the fact that the crime rate in 2010 had dropped by 50% compared to 2006. Other positive results included an increase in public trust in law enforcement and a change in attitudes towards "thieves-in-law". Mr. Bokhashvili noted that one

of the key problems of these reforms was a dramatic increase in the prison population, which currently stands at around 24,000. He also highlighted the fact that only 8 individuals were acquitted in 2010, although this trend is currently increasing. According to him, the reforms also meant frequent changes to the legislation; more than 700 amendments were made to the Criminal Procedures Code prior to the adoption of the new Code, often without due analysis of their effects. He noted that the overwhelming use of pre-trial detention as a restraining measure ordered by the courts was a significant problem. The courts fail to substantiate the need for such a restraining measure. Another problem noted by Mr. Bokhashvili concerned the equality of arms, with the prosecution not sharing exonerating evidence with the defence. In addition, he noted the problem of respecting the presumption of innocence and the consequences of breaching it. He also noted the contradiction between the right to remain silent and a witness's legal obligation to testify. His recommendations included guaranteeing the equality of arms in terms of obtaining and accessing evidence; the introduction of sanctions for breaching the presumption of innocence; and the need to reduce the use of pre-trial detention.

## ***DISCUSSION***

**Mr. Otar Kakhidze** responded to Prof. Platek, noting that there is a direct correlation between the number of offences and the number of criminals in prison. He claimed that statistics show that the decrease in the crime rate and the increase in prison population were simultaneous. He agreed with Mr. Bokhashvili that the rules for interrogating witnesses need to be improved, but pointed out that this takes time. He also spoke of certain innovative approaches like the electronic processing of criminal cases and complementary training. Mr. Kakhidze also noted that pre-trial detention is used as a restraining measure in only 46% of cases, although he agreed that the lack of substantiated decisions is a problem and claimed that the authorities are working to address this problem. Finally, he expressed the Ministry's readiness to listen to constructive recommendations and its willingness to seriously consider these recommendations in the reform process. He spoke extensively about various steps the Ministry is taking towards carrying out reforms such as training prosecutors, implementing an internal monitoring system, &c.

**Ms. Tamar Chugoshvili**, GYLA, noted that discretionary prosecution is used selectively and that criminal responsibility is established and criminal punishment imposed even in cases where the harm done was minimal. She also noted the negative consequences of the overwhelming use of pre-trial custody: many defendants end up in Prison No.8 in Gldani, which is notorious for problems of ill-treatment, and this contributes to the high number of defendants who wish to enter a plea bargain. She welcomed the Ministry of Justice's readiness to cooperate with NGOs, but expressed her dismay with regard to the Ministry's failure to share the draft Code on Administrative Offences with NGOs in a timely manner.

**Ms. Tamuna Tomashvili**, Ministry of Justice, asked the Council of Europe representative for experiences and examples of sentencing policies in Council of Europe countries, as standards are quite often discussed but without any reference being made to their implementation. Citing the Scandinavian example as currently being the best, she recalled representatives of the Finnish Ministry of Justice stating that in the 1960s it took

over 10 years to address the challenge of prison overcrowding and other justice-related problems and to balance the interests of prisoners and those of society i.e. safety. Ms. Tomashvili, speaking to Prof. Platek, also enquired about how these interests could best be balanced, what best practices exist, and which steps the Georgian government needed to take towards successfully liberalizing its criminal policy. She asked for an example of a country having gone through a similar experience as Georgia and highlighted the problem of practical application: 'standards are nice, but how is one to transform them into reality?'

**Ms. Maka Jishkariani** asked Mr. Otar Kakhidze what measures the government has taken to address the problem of unsubstantiated decisions imposing pre-trial detention as a restraining measure when such unsubstantiated decisions are made by judges?

**Mr. Otar Kakhidze** noted that NGOs should not be alleging that certain institutions are notorious for widespread ill-treatment, as such allegations need to be substantiated. During discretionary prosecution, harm is not the only factor which is taken into consideration by a prosecutor, but also other factors such as the personal characteristics of suspects. Regarding the question of pre-trial detention being used as a restraining measure, he noted that it should only be applied when there is risk of a suspect absconding or destroying evidence, influencing a witness or committing another crime.

**Ms. Caterina Bolognese**, answering Ms. Tomashvili's request for concrete examples of places where sentencing liberalization has worked, appreciated Ms. Tomashvili's awareness that "these things take time" and thought that it was perhaps typical in Georgia to seek quick fixes. Ms. Bolognese also agreed with Ms. Chugoshvili's comment about the importance of not limiting liberalization to final stages and of the need to use alternatives earlier in legal proceedings. She informed the seminar's participants that a probation and mediation service was set up in the Czech Republic in the 1990s which introduced social work at every stage of the justice system proceedings; these efforts resulted in an important increase in community sanctions and in a decrease in prison sentences, so although there has been an increase in the overall number of convictions since 1998 there has been a decrease in the rate of unconditional imprisonment. She also cited the Finnish example. Ms. Bolognese concluded by noting that it was important not to neglect other factors that can feed into liberalization efforts, e.g. a political will, social attitudes, reasonable attitudes in the media, a readiness on behalf of the judiciary to embrace liberalization, &c.

**Prof. Monika Platek** agreed that the process of liberalization takes time but thought it more important that people knew exactly what this process was about. Prof. Platek also argued that merely distinguishing between the best interests of society on the one hand and the interests of prisoners on the other was a flawed approach. She continued by stating that people in Poland, for example, do not want more severe forms of punishment for offenders but instead more *rational* forms of punishment.

**Mr. Giorgi Tughushi** acknowledged the need to discuss the liberalization of the justice system as a whole but added that the state usually has mechanisms to both remedy and regulate this system. After mentioning some of the problems in Georgian prisons – prisoners suffering from serious illnesses and ending their days in prison, many legal provisions not being implemented, &c. – Mr Tughushi pointed out the need to

remember that prisons in Finland, for example, were far from being up to par and that only the modern ones were "exemplary". Prisons, he argued, will never be perfect. He explained that the Georgian government needs to decrease the number of prisoners in custody so as to improve the quality of health care in prisons, save the government important financial resources, improve living conditions for prisoners, &c. After a drop in the crime rate there was now a need for significant improvement in prison conditions and social work and for a 33 per cent drop in the overall number of prisoners – not only juvenile offenders but also adults.

**Mr. Otar Kakhidze** again noted the government's efforts to reduce the country's number of prisoners by elaborating alternatives to prosecution, by introducing special mechanisms for people with prior convictions, by exercising prevention and by implementing measures to re-socialize prisoners. He argued that the Georgian government had the political will to tackle the problem of overcrowding but that the country's special conditions and relative poverty should be taken into consideration before judging these efforts. Mr. Kakhidze concluded by affirming that Georgia had chosen the path of liberalization but that in doing so the government was not willing to jeopardize its existing achievements (particularly concerning the problem of "thieves-in-law") or the sense of security of its citizens as he believed the need to protect society from violent offenders and fraudulent offences was a prerequisite of development and improvement.

### **PANEL 3**

**Ms. Tamar Chugoshvili, Chairwoman of the Georgian Young Lawyers' Association (GYLA)**, presented the results of her organization's monitoring of Tbilisi City Court's criminal chamber. The chamber was monitored for six months, from October 2011 to March 2012. The monitors focused on the following rights: the right to a public hearing, the equality of parties, the right to an interpreter, the right to liberty, the right to a reasoned decision, and the prohibition of ill-treatment. During these six months, 520 criminal trial hearings were monitored. In nearly half of these hearings the court failed to ensure the right to public hearing as they did not properly publicize the date and time of the hearing. The equality of parties was also questioned in 48 hearings. In all pre-trial hearings monitored by GYLA, judges granted all the prosecution's motions related to the admissibility of evidence. In contrast, the judges granted only those defence motions which were agreed to by the prosecution; otherwise, they were denied. None of the 113 final decisions monitored by GYLA resulted in an acquittal. In at least three cases, the hearing was conducted without the obligatory presence of a defence counsel. The right to an interpreter was violated in three cases. In all restraining measure hearings, the judges used either detention or bail, with no other restraining measures ordered. Reasoned decisions were also highlighted as a significant problem: in only 34% of 86 decisions did the judge justify his decision; in addition, the judge rarely required the prosecution to provide a rationale for requesting pre-trial detention.

**Ms. Tsira Chanturia, Regional Director of Penal Reform international**, spoke of "zero tolerance" and how it has manifested itself in concrete policy actions: fines increased from GEL 20 (approx. EUR 10) to 200; sanctions increased for a number of offences; (partly) concurrent sentencing replacing consecutive

sentencing; maximum term of imprisonment for many crimes increased from 25 to 30 years and from 30 to 40 years for many verdicts; judicial discrepancy scrapped. As a result of this policy, the number of prisoners increased from 6,274 in 2003 to 24,114 in 2012. She also noted that there were currently 56,020 convicted people in the country, with 33,372 serving conditional sentences. Ms. Chanturia also spoke about liberal approaches adopted in the Criminal justice system, including the EU-supported Criminal Justice Reform Strategy and Actions Plan, diversion from criminal prosecution (165 minors and over 556 adult offenders), the increased use of community service as well as the reactivation of the parole system. She concluded by giving the results of Penal Reform International's round-table meetings in the regions on the liberalization of criminal policies, which showed that a more liberal approach is needed.

## ***DISCUSSION***

**Mr. Giorgi Shavliashvili, Supreme Court of Georgia**, noted that several cases documented by the GYLA when a judge asked too many questions or when there were no interpreters present at the hearings were isolated cases and do not represent systemic problems. He also noted the increasing number of acquittals in Georgia (56 in 2011 compared to only 8 in 2010 and 30 in 2008; already 75 acquittals in 2012). He also noted that in 10% of plea bargained cases, the conditions were changed at trials and this was indicative of an active role taken by the judiciary. He also stressed that in 2012 alone 21 cases were returned to the prosecutor's office. Regarding the question of strict sentencing, he noted that judges can only impose sentences within the limits provided in the law.

**Ms. Lia Mukhashavria, NGO "Human Rights Priority"**, spoke about the issue of access to case materials. She asked whether hearings were filmed and recorded and if those recordings are available to the public. She noted that accessing case materials is practically impossible, particularly when the applicant is unrelated to the hearing. She also noted that despite court rooms being equipped with the necessary equipment, her requests to be allowed to access recordings were never answered.

**Ms. Tamar Khidasheli, UNDP**, underlined the importance of the need to grant judges the discretionary authority to impose less severe punishments than those envisaged by the Code as part of the liberalization process. She asked Mr. Kakhidze if there were plans to grant judges such discretionary authority in near future.

**Ms. Tamuna Kaldani, Open Society Georgia Foundation (OSGF)**, asked Mr. Kakhidze whether the issue of recidivism is being researched and if there were any observations. She also asked the Supreme Court judge what reasons were behind the increase in the number of acquittals.

**Mr. Badri Meparishvili, Supreme Court of Georgia**, noted that in January the Supreme Court analyzed the statistics on pre-trial detentions and established that 85% of those remanded to pre-trial custody were accused of grave crimes such as terrorism, causing grievous bodily harm, rape, trafficking, hooliganism and

bribe-taking. Among those remanded to pre-trial detention were also accused with prior criminal records. He also responded to Ms. Lia Muhashavria's questions, stating that all the case materials were available online at "info.court.ge".

**Mr. Otar Kakhidze** stated that the results of GYLA's court monitoring were interesting and that the flaws it had identified would be taken into consideration. Regarding the low percentage of acquittals, he pointed out that a high level of acquittals would not necessarily mean a more effective judicial system. Mr Kakhidze noted that the prosecutor's office prepares its cases well and that this might partly explain the high rate of conviction. According to the Swedish Ministry of Justice, for instance, the conviction rate there is 92%. Answering the question, Ms. Tamar Khidasheli had asked him about possible plans to give more discretionary authority to judges, Mr. Kakhidze noted that there were no such plans at this stage but that the Ministry of Justice was considering a decrease to the lower margin of penalties. He agreed that the phenomenon of recidivism was interesting to analyze, but thorough information upon which to base such analysis was insufficient. Mr. Kakhidze also underlined the fact that the gravity of a crime committed is not grounds for imposing pre-trial detention as a restraining measure.

**Ms. Tamar Chugoshvili** distinguished between what constituted isolated incidents and what constituted tendencies. She noted that there is a tendency during court hearings for judges to agree with a defence motion only when the prosecutor also agrees with it. As for the acquittal rate, she expressed concern that the statistics might be artificially inflated. She gave the example of court cases when the defence goes to court and sees many journalists in attendance, meaning that there is a high likelihood for the defendant to be acquitted.

**Ms. Tsira Chanturia** noted that although the "zero tolerance" policy has on the whole been quite beneficial, it has of course also led to overcrowding in prisons and the Georgian government recognizes this problem. The lack of living space, restrictions and the lack of socialization of prisoners has many negative consequences, and only 3% of prisoners are involved in re-socialization schemes. Achievements need to be sustained in the long run, but this will be impossible unless the overall number of prisoners is lowered and the number of prisoners involved in re-socialization programmes is increased.

#### **PANEL 4**

**Ms. Nazi Janezashvili, Director of the "Article 42 of the Constitution" NGO,** noted that Georgia ratified the European Convention for Human Rights (ECHR) in 1999, and that although many positive changes have been implemented since then, Georgia is still failing to implement decisions made by the European Court of Human Rights in a timely manner. Ms Janezashvili claimed that this is largely due to the failure of national judges, lawyers and law enforcement agencies to apply international standards at the national level. There were 47 judgments against Georgia on the grounds of ill-treatment (24%), violations of the right to liberty and security (21%), the right to a fair trial (16%), property rights (10%) and other rights of the Convention

(29%). Ms Janezashvili noted that several judgments against Georgia were relevant to the discussion of the country's "zero tolerance" policy. In *Patsuria v. Georgia*, for instance, the European Court of Human Rights noted that whilst a "reasonable" degree of suspicion that a person has committed an offence is enough to justify arresting the person, such "reasonable" suspicion may be insufficient as the basis for a judicial decision to extend the suspect's detention. The European Court of Human Rights further argued that the risk of a suspect absconding may be valid grounds for pre-trial detention, but that this risk cannot be gauged solely upon the basis of the severity of a possible sentence. Furthermore, "hampering the establishment of the truth" cannot be established upon the basis of abstract statements unsupported by any arguments. Finally, the European Court emphasized that, under Article 5 (3) of the Convention, authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring the person's appearance at trial. Ms. Janezashvili then presented some official statistics showing that although there are alternatives to detention and restraining measures envisaged by the legislation, only pre-trial detention or bail is used in practice, which goes against the European Court of Human Rights' recommendations.

*Note: The EU Delegation to Georgia considered the last presentation given by Mr. Kirill Koroteev, lawyer and litigator at the European Court of Human Rights, to be insufficiently relevant to be included in the final report.*

*The above presentations were followed by lengthy and interesting discussions between government and NGO representatives. Details of these discussions (the questions that were asked and the points that were raised) can be found in the seminar's notes in the report's appendix.*

## RECOMMENDATIONS

### ***To the Government of Georgia:***

- The policy of “zero tolerance against crime” has led to the imposition of disproportionately lengthy sentences. The government should take concrete steps toward adopting a more humane and more human rights-oriented criminal justice policy;
- Encourage a wider use of alternatives to detention and restraining measures, and pre-trial detention should only be ordered as a measure of last resort;
- Ensure equality of arms in terms of requesting and accessing evidence;
- Introduce sanctions for violating the presumption of innocence;
- Further reform the juvenile justice policy with a view to ensuring that in cases involving juveniles, deprivation of liberty and pre-trial detention will only be imposed as a measure of last resort and for the shortest possible periods of time; promote the implementation of alternative sentences; and introduce effective diversion and rehabilitation and integration programmes in line with the Guidelines of the Council of Europe Committee of Ministers on child-friendly justice;
- Adopt restorative justice measures with regard to adult offenders and introduce mediation for adult offenders. Restorative justice offers victims better satisfaction and is a more cost-effective way of dealing with certain types of offences;
- The government should not mix civil and criminal offences, as is the case when individuals are tried on criminal charges of fraud because of failure to repay debts;
- To alleviate overcrowding, the authorities should focus more on the application of non-custodial sentences; encourage more use of community services; use diversion from criminal prosecution for non-violent or petty crimes; and replace consecutive sentencing with concurrent sentencing;
- Concerning the judiciary, the government should take additional measures to prevent political influence over the High Council of Justice and to protect the individual independence of judges as well as to guarantee the effective prosecutorial supervision of police investigations;
- The criminal justice system in Georgia demonstrates an imbalance in favour of the prosecution. The authorities should take measures to address this imbalance and ensure genuine adversarial proceedings coupled with measures to reform the legal aid service. In view of the powerful role played by the prosecutor in the negotiation of plea agreements, the government should ensure effective and adequate judicial control so that the safeguards foreseen by the legislation are fully implemented in practice;

- Direct criminal justice reform efforts at further reinforcing fair trial guarantees and fully respecting the principle of equality of arms; and, finally,
- Bring the draft code on administrative offences in line with Georgia's international commitments. In the meantime, the authorities should ensure that alleged administrative offenders brought to justice under the provisions of the current code can enjoy all their rights to due process and fair trial, safeguarding them against arbitrary deprivations of liberty.

***To the International Community, including the EU:***

- Encourage the government's co-operation with civil society organization in order to ensure broader consultations in criminal justice system reforms;
- Provide expertise and share experience to alleviate the severe overpopulation and overcrowding in Georgian prisons;
- Provide financial assistance for the implementation of pilot projects on mediation, diversion and other programmes intended to liberalize the criminal justice policy;
- Provide financial assistance for the implementation of projects aiming at the rehabilitation of inmates, including those provided by CSOs; and, finally,
- Urge the Georgian authorities to implement recommendations made by civil society organizations.

## Session 2: Issues concerning the imprisonment of women

**Mr. Anton Kelbakiani, Ministry for Corrections and Legal Assistance**, underlined the fact that the Ministry's key goal is the creation of a system capable of rehabilitating and re-socializing inmates. He said that concrete steps have been taken by the government which also aim to address the question of women prisoners. Mr. Kelbakiani said that there are 1,125 women prisoners in Georgia (119 of whom are in pre-trial detention), mainly kept in the new Prison No. 5 in Rustavi (opened in 2010). Prisons in the towns of Kutaisi, Batumi and Zugdidi are also used to hold women in pre-trial custody. Mr. Kelbakiani reiterated the Ministry's main goal of re-socializing inmates and noted that many steps have been taken in that direction. He noted with satisfaction that international partners such as NORLAC, PRI and others have been the main service providers when it comes to re-socializing women prisoners. Mr. Kelbakiani told the seminar's participants that several courses have been made available for women prisoners to follow, including computer studies, felt workshops, English and Georgian language classes and design courses. Women prisoners also attend psycho-social rehabilitation classes. Mr. Kelbakiani also noted that the Government has opened a new library with electronic resources in Prison No.5 in Rustavi.

Mr. Kelbakiani also spoke about parole and noted the reforms which have been carried out to allow for cases to be automatically reviewed by local parole committees once every 6 months, irrespective of whether or not prisoners have requested such a review (19 women prisoners were released on parole last year and 8 this year.) He also noted the positive steps which have been taken towards re-socialization through the introduction of monthly family visits. The Ministry also plans to introduce open-space meeting facilities for such visits. Mr. Kelbakiani also spoke about the Ministry's plans to introduce individual assessments of the needs of every prisoner; the Ministry plans to run a pilot scheme in 2013 before implementing this measure more widely. Mr. Kelbakiani ended by pointing out the fact that the current number of inmates is a key challenge. He expressed his wish that there be fewer prisoners so that individual needs would be better assessed and re-socialization programmes could be implemented for all.

**Mr. Martin Seddon, Consultant on Justice Sector Reform**, gave an informative presentation on the numerous measures the United Kingdom and other European countries have put into practice to support the re-socialization and resettlement of prisoners and to reduce the likelihood of recidivism. Drawing up individual plans when people are imprisoned; conducting risk assessments to identify those prisoners who present the most risk on release; identifying ways in which important family relations and affiliations can be nurtured before and during imprisonment and following release; building visitor centres in prisons; changing the mentality of prison guards and training them to run small workshops or groups to teach prisoners social and practical skills to enable them to make practical contributions when they return to their families (as opposed to relying on them for all manner of support); providing a variety of specialist courses to tackle problems like aggression, drug abuse, dangerous driving, sexual offences, &c. to be delivered by suitably-trained prison guards; running one-week pre-release courses to prepare prisoners about to be released for

what they will encounter when they return to normal social life; ensuring parole supervision (including electronic monitoring and drug testing) is strict and meaningful so as to inspire confidence among society and the judiciary with sanctions for those who do not comply with the requirements of their parole; providing prisoners with information on the main social problems they will encounter when released and with contact details for organizations who can help them; and the establishment of specialized units in prisons for mothers with children.

**Ms. Maka Jishkariani, Director of the "RCT-Empathy" NGO**, gave a presentation on the situation regarding health care in prisons, paying particular attention to health care access for women prisoners. She enumerated international standards applicable to health care provision in prisons, including access to doctors; equal and adequate health care; confidentiality and informed consent; and professional independence. Ms. Jishkariani touched upon the issue of severe infectious diseases like HIV, Hepatitis C, TB, &c. She noted that the World Health Organization paid particular attention to mental health issues of inmates and spoke about relevant international standards reflected in the Council of Europe Committee of Ministers' Recommendations. Ms. Jishkariani then presented an overview of RCT-Empathy's work, partly funded by the EU, saying that they received over 2,200 applications between 2009 and 2011 and gave practical assistance to over 1,500 prisoners. RCT-Empathy also used to run a multidisciplinary medical and psycho-social rehabilitation centre for women prisoners and in a juvenile detention facility, but noted with regret that the Ministry had ended these projects in 2010. Ms. Jishkariani then touched upon the issue of deaths in custody and noted that there were no suicides during the time her programme operated in prisons. Other problems of health care provision she mentioned included a lack of private rooms for doctors to receive patients in confidence; even when there are marks of ill-treatment, the level of registered details do not correspond to Istanbul Protocol requirements and are not sufficient to conclusively establish the nature and age of the marks. Ms. Jishkariani recommended allowing photographs to be taken during the registration of prisoners to avoid inconclusive forensic exams in the future. She also made a number of other recommendations for prison reform.

### **Session 3: Inmates sentenced to life imprisonment**

**Ms. Maia Khasia, Penal Reform International**, reminded the seminar's participants that life imprisonment was introduced in Georgia in June 2000, and noted that 18 articles of the Criminal Code carry a sentence of life imprisonment. Ms. Khasia also noted that life imprisonment replaced the death penalty, but that only 8 articles of the Criminal Code carried the latter sentence. Furthermore, she also noted that the death penalty was never imposed in cases involving pregnant women, but that this exception no longer exists in current legislation for life imprisonment. Ms. Khasia told the seminar's participants that Georgia is the only country in the region in which women are currently serving life sentences. Of the 91 inmates sentenced to life imprisonment currently serving their term in Georgia, 4 are women. She explained international standards of life imprisonment and the fact that inmates sentenced to life imprisonment should be kept in an

environment as close to civilian life as possible (the principle of normalization). Ms. Khasia then gave a detailed description of the conditions in which inmates sentenced to life imprisonment serve their term in Georgia. They are kept in isolation and have the right to fresh air for only 1 hour a day; there are no special rehabilitation or re-socialization programmes for them; no individual needs assessment is conducted and prison staff dealing with them also lack special training. Ms. Khasia concluded by giving a list of recommendations which were prepared by prison staff during a workshop organized by PRI; they included cultural and sports activities for inmates sentenced to life imprisonment, professional training, employment opportunities, more family visits, regular psychological consultations, better health care provision, &c.

**Ms. Natia Imnadze, National Preventive Mechanism at the Public Defender of Georgia's Office**, agreed with the previous presenter regarding the situation of inmates sentenced to life imprisonment in Georgia. She, however, underlined the fact that the key problem is their being kept isolated from all other prisoners, based upon the assumption that they represent a particular danger to themselves and to others as they have nothing to lose. She noted that this approach is wrong and that this view has been confirmed by many international experts, including the Council of Europe's Committee for the Prevention of Torture. Ms. Imnadze explained that it was necessary to assess all inmates individually with a view to establishing individual regimes of imprisonment. She also highlighted some basic problems inmates have experienced – including problems with making phone calls, which is vital for maintaining family ties. According to the law, they are allowed two 15-minute calls a month, but in practice this right is limited as the phone cards issued to prisoners only allow them to call two numbers before automatically blocking themselves for a month. Ms. Imnadze also noted that prisoners have trouble accessing information; although they have the right to watch television, in some facilities this is limited to watching concerts or films selected by the prison's administration and televisions often show the same programme throughout a day. Ms. Imnadze shared a number of recommendations which were made by the Public Defender's office in their annual (2011) parliamentary report 2011. In conclusion, she also spoke about parole, pointing out that although the establishment of parole committees to review cases automatically was a positive step forward, the fact that they do so without actually talking to prisoners and instead merely review case materials is to be deplored and is in violation of Article 5 of the European Convention.

**Dr. Georgi Bankov, Bulgarian Helsinki Committee**, argued that life imprisonment without parole was an inhuman and degrading form of punishment. After briefly introducing the seminar's participants to the history of the death penalty and life imprisonment in Bulgaria and of the legal framework within which the sentence of life imprisonment without parole can be imposed, Dr. Bankov defined the latter sentence – which he referred to as a "sub-species" of the sentence of life imprisonment – as a deeply inhuman, exceptional and extraordinary measure utterly alien to the values and laws of modern Europe. He went on to compare the Bulgarian and European approaches to criminal justice, arguing that European standards show a higher level of humanity and a wholly different conception of imprisonment: whereas in Bulgaria people condemned to life sentences are considered a separate category of prisoner and are kept in strict physical

and social isolation, the main focus of European recommendations is to work with prisoners and to attempt their successful reintroduction into society.

*Both the session on the imprisonment of and that on the situation of inmates sentenced to life imprisonment were followed by a lively discussion between civil society organizations and the authorities. Whilst the latter tended to focus on plans for the future, NGOs were asking for more immediate steps and for a more holistic approach to reforms. Please see the seminar notes for more detail of these discussions.*

## Recommendations

### ***To the Government of Georgia:***

- Take steps to address overpopulation and overcrowding in prisons;
- Move towards a system capable of assessing the risks posed by and the needs of every prisoner and create individual programmes for each prisoner;
- Ensure greater family ties and support as an effective mechanism for reintegration;
- Promptly, thoroughly and effectively investigate all allegations of ill-treatment in custody. Ensure proper application of the Istanbul protocol, including adequate registration of all injuries;
- Ensure that all prisoners can enjoy extended visits; provide appropriate facilities for extended visits in all penitentiary facilities;
- Ensure that all prisoners can enjoy the right to phone calls and that there are no artificial barriers imposed upon the number of calls allowed;
- Ensure prisoners' access to media in all prison facilities, including access to television and to a variety of printed media;
- Take steps to ensure that inmates sentenced to life imprisonment do not serve their sentence in isolation and include them in various re-socialization and rehabilitation programmes;
- Ensure that inmates sentenced to life imprisonment can enjoy extended visits; develop individual sentence plans for every such inmate; ensure that they serve their sentences in prisons as close to their families as possible;
- Provide equal and adequate health care and access to a doctor in all penitentiary facilities; and, finally,
- Consider passing responsibility for health care in prisons to the Ministry of Health.

### ***To the International Community, including the EU:***

- Support re-socialization programmes and other similar projects in prisons; and
- Encourage the Georgian government to take into consideration recommendations made by civil society organizations.

## Session 4: Labour Rights

### *Opening Remarks*

**H.E. Philip Dimitrov, Head of the EU Delegation to Georgia**, welcomed the conference's participants to the labour rights session, a session to which the European Union attaches great importance, in anticipation of the Human Rights Dialogue and within the framework of the Deep and Comprehensive Free Trade Agreement. The question of labour rights is a "hot issue" in the ongoing dialogue between the European Union and Georgia and discussions have been difficult. Over the past few months some particular steps have been taken towards guaranteeing labour rights but these steps need to be further implemented and perfected and must respect the provisions of International Labour Organization conventions. Mr. Dimitrov understood that some amendments to the labour code will soon be adopted and hoped that further changes would be made to the right to strike and other issues. Georgia is not alone in its quest for economic growth and job creation, as the economic and financial crisis is also felt in the EU, but the European Union firmly maintains that minimum labour standards should be implemented and should be made the basis for inclusive growth and for the resolution of labour problems and disputes. In this regard, the European Union strongly encourages the tripartite commission to identify and discuss priorities, and hopes that group consultations will be held in a way which ensures the efficient participation of all three sides and that an independent mechanism for consultations will be established. Much lies ahead and there are positive signals.

**Mr. Vakhtang Lezhava, Advisory Group to the Prime Minister of Georgia**, also welcomed the seminar's participants. He reminded all those present that the Georgian government has undertaken reforms in many areas since the Rose Revolution – most of them successful, and some of them even exemplary, "world-class" reforms – and that Georgia has left its Soviet past behind quite successfully with the adoption of a new labour code to replace its obsolete 1973 Soviet-era predecessor. In terms of labour relations, Mr. Lezhava stated that the Georgian government decided to "set trade unions free" and that the latter have since then been solely responsible for their own organization, election and day-to-day management. Thanks to its contact with the International Labour Organization, the Georgian government has established a tripartite dialogue commission which meets regularly and is establishing a new tradition for Georgian society and democracy. Mr. Lezhava would wish to see the effectiveness of this commission be improved and hopes that it will become a more attractive forum in which social partners will discuss labour issues. Upon the initiative of the ILO, the Georgian government has decided to move further and to work on the establishment of a mediation institution – this is work in progress, and the Georgian government hopes that all parties will take part in this process and make the best use of this opportunity. Regarding core labour conventions – namely freedom of association and the right to organize – the Georgian government plans to undertake measures to address these issues as articulated by the committee of experts, and the first two steps have been taken: fully addressing issues raised by the committee of experts regarding commission 87, particularly limiting the

duration of strikes and setting a minimum number required for establishing a union. Both these issues were addressed in the spirit of and according to recommendations of the committee of experts. Mr. Lezhava continued by informing the conference's participants that the Georgian government plans to continue dialogue with the ILO within the framework of the tripartite commission on matters such as training judges in labour law; training workers and unions on how to conduct negotiations; amending legislation with a view to introducing more specific grounds and procedures by which unions and other associations could be suspended; enhancing the role of collective bargaining in labour law; more clearly prohibiting discrimination based upon trade union membership; removing the 90-day limit on striking (but maintaining it for lock-outs); ensuring worker participation in sympathy and protest strikes; defining a minimum age for employment in legislation; clarifying the restrictions on working hours for children; formulating minimum age requirements for hazardous work; clarifying the right of employers to make substantial changes to employer agreements; &c. Mr. Lezhava concluded by recognizing that this agenda was indeed ambitious, but felt sure that the Georgian government would meet the expectations of others and expressed his wish that all parties would take part in discussing and deciding these matters

**Mr. Kari Tapiola, International Labour Organization**, noted that the seminar's participants should consider how the Georgian government, employers and trade unions could make the best use of the time and opportunity they have before the ILO returns to consider the question of Georgia. Regarding method, Mr. Tapiola went on to point out that it would be helpful if the Georgian government's efforts to address labour issues would be in the public domain – if only to inform people that there has been progress on this front – and hoped that the Georgian government would consult the ILO on details more systematically so that accidents or misunderstandings could be avoided. Mr. Tapiola recognized that the Georgian government has achieved certain things, but pointed out that if this was not evident for employees and unions then things needed to be clarified. He then observed that it would also be useful to clarify the fact that the aim of these efforts is to further develop legislation and practice to promote the functioning of the market economy in Georgia, and that this was not a question of "either the labour code in its present form or a return to obsolete Soviet-era legislation". Mr. Tapiola stated that the ILO was of course ready to continue to assist the country but that the process as a whole must be the responsibility of the tripartite commission. He then concluded by making two final points: Firstly, a system or mechanism for mediation needs to be developed so that both employers and trade unions know where to go and what to do in cases of labour conflict; courts of law cannot be made responsible for dealing with such matters. Secondly, Mr. Tapiola drew the seminar's participants' attention to the vital importance of mutual trust and confidence, which can only exist if labour mechanisms are set up "by Georgians for Georgians". Such mechanisms need to rest upon trust, association and non-interference and upon the principle of dialogue, as without trust even the world's best system will not work.

**Mr. Irakli Petriashvili, Georgian Trade Union Confederation**, spoke about international labour standards and the situation in Georgia. He thanked the EU for organizing the seminar and for making sure that labour rights are part of the EU-Georgia Human Rights Dialogue. He said that the key question should be whether or

not the government was interested in having a strong and independent labour code, and added that striving towards independence was one of the reasons why trade unions were suffering. Mr. Petriashvili alleged that the authorities wanted the trade unions to be obedient and receptive to instructions but that this was not going to happen. Mr. Petriashvili went on to present various international reports and what they said about Georgia's labour code, including the European Social Charter report, US embassy annual human rights reports, and others. The reports said that Georgian law did not meet the standards of anti-union discrimination and did not provide adequate security for collective bargaining. Mr. Petriashvili alleged that Article 38 of the Labour Code allowed an employer to dismiss an employee without giving any prior warning or reasons for dismissal. The Code also does not oblige an employer to explain to an employee why he or she was not offered a job; interviews are a formality and discriminatory questions are often asked, including concerning the political and religious affiliations and views of prospective employees. Mr. Petriashvili further alleged that employers and employees are not equal regarding collective bargaining. As an example, he said that if several thousand employees demand collective bargaining, the law allows an employer to choose two of the employees, to strike a deal with them and to then present this agreement to the others as a result of collective bargaining. He also highlighted the problem of internships, saying that employers often use interns as they are hired on probation and since the "probation period" is not recognized by law these interns can be fired upon completion of their probationary period and not even be paid for the work they may have done. There is also a problem with overtime pay, as the existing Code does not regulate it and leaves it up to an employer and employee to agree. Mr. Petriashvili then spoke in detail about other trade unions and alleged that they are often set up or governed by the authorities (or both), and concluded that given these circumstances any social dialogue is futile.

**Ms. Tiko Avaliani, Georgian Young Lawyers' Association**, spoke about the lack of legal guarantees in Georgian Labour law. She began by saying that the existing labour legislation favours employers and that additional guarantees were needed for the rights of employees to be protected. She noted that the existing law allows for discrimination as it does not prohibit employers from asking questions about employees' political or religious affiliations or possible criminal records. The code also does not regulate the preferential treatment of certain groups like women, minors or people with physical or mental disabilities and does also not regulate byelaws and allows employers to amend byelaws without consulting their employees. Ms. Avaliani also noted problems with the reimbursement of unused holidays as it is also not regulated by the law. Other problems included the need to define a maximum number of working hours, over-time pay regulations, maternity leave reimbursement (which is currently by the state to a maximum of GEL 600 (approx. EUR 200) for 3 months), verbal contracts and short-term contracts and a lack of legal guarantees, &c. Ms. Avaliani welcomed the latest amendments made to the law which significantly lower the number of people needed to form a trade union and abolish limits to strike action. Finally, she noted that the GYLA had made legislative proposals on amendments to the labour code in March 2012.

**Mr. Elguja Meladze, Georgian Employers' Association**, started by noting that employers also need to be protected by law, as it would otherwise seem that employers are guilty of everything. He said that the Employers' Association was formed in 2002 from people who realized that labour relations needed as much regulation as the tax regulation. The Association co-operates well with the ILO and strives to put ILO conventions into practice. Since 2006, the Association has also been lobbying on tax systems rather than just labour relations. Regarding the labour code, Mr. Meladze noted that he partially agreed with the positions expressed at the seminar but that he found some specific issues unacceptable. He gave the example of an employer receiving hundreds of applications for a vacancy, pointing out that it would be impossible for him to respond to every person who was not hired. He also thought that attempts to legally define which questions employers may or may not ask candidates during interviews was a step too far. Mr. Meladze also highlighted the importance of social dialogue and welcomed the input of civil society organizations, but regretted the fact that he was not aware that the GYLA had prepared legislative initiatives related to labour code. Mr. Meladze concluded by reminding the seminar's participants that social dialogue is an equal partnership of employers, employees and the government, and that all labour issues should be decided through tripartite social dialogue.

## ***DISCUSSION***

Following the presentations there was a heated discussion between the authorities, trade unions, NGOs and the employers' association. It became obvious that the sides did not agree on anything and all had their own interpretations of the law and international standards. The discussion demonstrated the clear need for mediation between all three sides as the lack of mutual trust was obvious. Social dialogue in Georgia is difficult, to say the least, and the various parties can hardly agree upon anything. Please refer to the seminar notes to see more on the issues discussed.

## **Recommendations**

### ***To the Government of Georgia:***

- Engage in meaningful and effective social dialogue;
- Ensure that any important legislative amendments are discussed during a tripartite social dialogue prior to their adoption;
- Set up an effective mediation system for labour conflicts, bearing in mind that mediation does not replace labour rights; and
- Amend the labour code or adopt secondary legislation to ensure trade union membership cannot be discriminated against.

***To the International Community, including the EU:***

- Support the work of the tripartite social dialogue;
- Support mediation efforts between the sides by providing financial and expert level assistance;
- Urge the authorities to meaningfully engage in this social dialogue;
- Support efforts to build up the capacities of social actors; and
- Maintain pressure on the Georgian government to ensure it respects core ILO conventions within the framework of the DCFTA.