Comments of the Government of Georgia to the Concluding Observations on the Fifth Periodic Report of Georgia submitted to the Human Rights Committee on the Implementation of the International Covenant on Civil and Political Rights (ICCPR)

Prepared by the Government of Georgia

July 26, 2022

Introduction

Georgia submitted its fifth Periodic Report to the UN Human Rights Committee (hereinafter – the Committee) on the implementation of the International Covenant on Civil and Political Rights (hereinafter – the Covenant) prepared under Article 40 of the Covenant, on 14 February 2020. Furthermore, Georgia replied to the list of issues in relation to the above-mentioned fifth periodic report on 26 July 2021 and based on the examination of report and responses submitted by the State Party, the Committee hold a constructive dialogue with Georgia on July 5 and 6, 2022.

Since the process is followed by the Concluding Observations adopted by the Committee, the Government of Georgia recalls the Rules of Procedure of the Committee (CCPR/C/3/Rev.12) and the Guidelines for State Reports under the ICCPR (CCPR/C/66/GUI/Rev.2), stating that the Committee elaborates and publishes its concluding observations on the basis of the report submitted by the state party and the constructive dialogue held during the plenary session.

Comments of the Government of Georgia to the issues raised in the Concluding Observations

While acknowledging that the concerns and recommendations are assessment by the Committee, the Government would like provide comments on the following paragraphs whereby the information and submissions provided by the Government were not accurately or sufficiently reflected:

Paragraph 5. The Committee appreciates the measures taken by the State party to ensure the respect of human rights in the regions of Abkhazia, and the Tskhinvali region/South Ossetia, which are not under the effective control of the Georgian Government. It is nevertheless concerned that the human rights of individuals residing in these areas do not enjoy the same level of protection under the Covenant as those of their counterparts in the rest of Georgia. While noting the measures taken by the State party, such as a peace initiative called "A Step toward a Better Future", the Committee remains concerned by the difficulties encountered by individuals in those areas, including violations of their right to life, liberty and security and freedom of movement, and further challenges in the context of the COVID-19 pandemic (art. 2).

Comments of Georgia

The Government of Georgia have been sparing no effort to employ all means available for the purposes of protection of human rights of individuals residing in and around occupied territories. Such means include two inter-state applications introduced against the Russian Federation that concern mass human rights violations of Georgian population during august 2008 conflict as well as afterwards in the courts of creeping occupation, that continues today.

"Georgia v. Russia (II)"[1] - On 21 January 2021 the European Court of Human Rights (ECtHR) adopted the landmark Judgment on the case of *"Georgia v. Russia (II)*". In its judgment the ECtHR established

[1] *Georgia v. Russia (II)*, application no. 38263/08, Judgment of 21 January 2021, available at: https://hudoc.echr.coe.int/fre#{%22docname%22:[%22Georgia%20v%20Russia%22],%22documentcollectionid2%22:[%22JUDGMENTS%22],%22itemid%22:[%22001-207757%22]}

and unequivocally confirmed the fact of Russia's occupation and effective control over Abkhazia and Tskhinvali regions of Georgia; Russia's responsibility for killing, torture, ill-treatment, and arbitrary detention of Georgian civilians and military personnel, looting and burning of houses of Georgians and inhuman treatment of Georgian population *"targeted as an ethnic group"*. Russia was also found responsible, as an occupying power, for the inability of Georgian IDPs to return to their homes. On 20 January 2022 the Georgian Government submitted to the Court its position on the "Just Satisfaction" (compensation for the victims) together with complex supporting evidence. The execution of the Court's above judgment is supervised by the Committee of Ministers of the Council of Europe and the Government of Georgia shall continue engaging every effort to ensure that the serious violations committed against Georgian population during and after the August 2008 war do not go unpunished.

"Georgia v. Russia (IV)"[2] - On 22 August 2018 the Government of Georgia lodged a new inter-State application against Russia with the ECtHR - the so called "*continuous occupation case*". The Georgian Government claim, *inter alia*, that Russia has engaged (and continues to engage) in an administrative practice of harassing, unlawfully arresting and detaining, assaulting, torturing, murdering and intimidating ethnic Georgian population residing adjacent to the occupation line in the territories of Abkhazia and South Ossetia. Within the application the Georgian Government devoted special attention to individual cases of abduction, torture and murder of three Georgians - Archil Tatunashvili, Giga Otkhozoria and Davit Basharuli. On 25 May 2021 the Court renewed the proceedings on the afore-mentioned inter-state application, after their temporal suspension pending the adoption of judgment on the *Georgia v. Russia (II)*. On 15 December 2021 and 25 February 2022 Georgian Government presented their observations on the admissibility of the case accompanied with complex evidentiary material. Currently, the case is in the active phase of adjudication.

Based on the application all violations would be addressed by the ECHR and by the mentioned approach the Government of Georgia ensures the recognition and protection of the rights of people living in the occupied territories.

Paragraph 7. While also noting the implementation of the National Human Rights Strategy for the period 2014-2020, the Committee remains concerned about the lack of assessment conducted based on human rights indicators and the delay in finalizing the second Strategy for the period 2021-2030 and consulting relevant stakeholders, such as the Public Defender's Office (art. 2).

Comments of Georgia

The assessment of the implementation of the Strategy was conducted. The annual monitoring reports of the latest action plan 2018-2020 were approved by Government Decrees as follows:

2018 Action Plan Monitoring Report – Decree N 2740 of December 30, 2019;

[2] *Georgia v. Russia (IV)*, application no. 39611/18, available at: https://webcache.googleusercontent.com/search?q=cache:e6wvVlOOcfUJ:https://hudoc.echr.coe.int/app/conversion/pdf/%3Flibrary%3DECHR%26id%3D003-6176209-8005403%26filename%3DNew%2520inter-state%2520application%2520brought%2520by%2520Georgia%2520against%2520Russia.pdf+&cd=1&hl=ka&ct=clnk&gl=ge

2019 Action Plan Monitoring Report – Decree N 718 of April 24, 2020;

2020 Action Plan Monitoring Report – Decree N 669 of April 12, 2022.

The reports contain detailed information on implementation of each strategic goal and indicator of the action plan.

Due to the delay in the adoption of the second national human rights strategy, the document will cover the period from 2022 to 2030. The draft strategy hasn't been shared with the Public Defender's Office and any of the civil society organizations yet, but it will be presented to all of them for their feedback in the nearest future.

Paragraph 9. While noting the State party delegation's information about the increased budget provided to the Public Defender's Office and the progress made in implementing its recommendations, the Committee remains concerned about the low rates of implementation of such recommendations by public and private actors (arts. 2-3 and 25-26).

Comments of Georgia

The State party monitors the implementation of the binding recommendations which are issued by the parliament or relevant state body. Amount of the PDO's recommendations shared by the Parliament gradually increased from 13.5% in 2014 to 91% in 2020. As a rule, shared recommendations are transformed into tasks in the decree annually issued by the parliament. Implementation of the decree is monitored each following year. Within the period of 2014-2019 the amount of unaddressed recommendations varied from 4% to 10%. Others were either fulfilled, partly fulfilled or in progress by the time of monitoring. The difference between data provided by the PDO and the state might be explained with the different counting methodology and the nature of the recommendation.

Paragraph 11. While noting the adoption of the Law on Conflict of Interest and Corruption in the Public Service of 2015 and the establishment of the Anti-Corruption Council, the Committee remains concerned about continuing reports of corruption and bribery with impunity. It is particularly concerned about the failure to promptly and effectively investigate all cases of corruption, including those involving high-ranking officials, and to prosecute perpetrators, reportedly due to the lack of sufficient independence among law enforcement bodies and the judiciary. It also notes with concern the weak nature of whistleblowing laws and reports of the inefficacy of the asset declarations monitoring system in preventing corruption, the lack of transparency and corruption in the land privatization process, such as the case of Teleti village, and ineffective oversight of the National Agency of State Property (arts. 2 and 14).

Comments of Georgia

The Prosecution Service of Georgia (PSG) together with the Anti-Corruption Agency of the State Security Service of Georgia effectively addresses all forms of corruption, including those committed at the highest level. There is a strict criminal justice policy in place for fighting corruption, with the strong enforcement.

Throughout 2021, a number of significant results were achieved in terms of effective law enforcement response to all forms of corruption, including the ones involving high-ranking officials. In 2021, 218 investigations were launched, 197 individuals were prosecuted and 117 individuals were convicted in connection to corruption. Out of the 2021 prosecutions and convictions, 14 high-ranking officials, including the deputy minister, deputy district prosecutor, head and deputy head of the legal entity of the public law, governors, deputy governors, deputy mayor and members of the local councils *(at the time of committing the crime)* were prosecuted and 7 were convicted for corruption.

In 2020, 14 persons were convicted in the context of corruption involving high-ranking officials. The Chairman of Tskaltubo Municipality Assembly, Deputy Head of Vake District of Tbilisi City Hall, Borjomi Municipality Mayor; Chairman of Borjomi Municipality Assembly; Governor of Oni Municipality, Mayor of Batumi, Head of Financial and Economic Service of Batumi City Hall, a prosecutor and acting Head of the Tbilisi Unit of the Patrol Police were among those convicted for this offence.

As a transparency and public accountability measure, the PSG and SSSG Anti-Corruption Agency actively publish *(through the activity reports, websites and social media)* information about the investigated and prosecuted corruption cases. Please visit the following links, which additionally demonstrate the concrete results in fight against corruption and the level of transparency and public accountably of the anti-corruption bodies:

- https://pog.gov.ge/en/news/prokuraturam-qrTamis-micemis-faqtze-advokati-daakava
- https://pog.gov.ge/en/news/saqarTvelos-generaluri-prokuraturis-generalurma- inspeqciam-Tbilisis-didube-chuRureTis-raionuli-proku
- https://pog.gov.ge/en/news/saqarTvelos-generalurma-prokuraturam-jgufis-mier-gansakuTrebiT-didi-odenobiT-ukanono-shemosavlis-le
- *https://pog.gov.ge/en/news/prokuraturam-gansakuTrebiT-didi-odenobiT-qrTamis- aRebisa-da-jgufurad-chadenili-ukanono-shemosavlis-1*
- https://pog.gov.ge/en/news/prokuraturam-samsaxurebrivi-mdgomareobis-gamoyenebiT-didi-odenobiT-sabiujeto-Tanxis-miTvisebis-faqt
- *https://pog.gov.ge/en/news/prokuraturam-winaswari-sheTanxmebiT-jgufis-mier-didi-odenobiT-saxelmwifos-kuTvnili-qonebis-TaRliTu*
- *https://pog.gov.ge/en/news/saqar-1*
- https://pog.gov.ge/en/news/prokuraturam-gansakuTrebiT-didi-odenobiT-qrTamis-aRebis-faqtze-Tbilisis-didube-chuRureTis-raionuli

In view of the above-mentioned, there are no reasons for criticizing the competent law enforcement agencies of Georgia for the lack of independence and effectiveness in fighting high-level corruption. The existing results prove the opposite.

In light of the foregoing, the PSG disagrees with the text and the subsequent recommendation in paragraphs 11 and 12 (a) of the Concluding Observations on the Fifth Periodic Report of Georgia.

Paragraph 13. While noting the more recent developments before the International Criminal Court, the Committee remains concerned about the slow progress in domestic investigations of human rights violations committed during or in the immediate aftermath of the 2008 armed conflict. While also noting the progress made in relation to the 2006 "prison riot" cases, the Committee expresses its serious concern about the substantial delay in bringing the perpetrators to justice, which creates a climate of impunity. It regrets that 24 cases concerning the Rustavi prison No. 6 are still under investigation. […].

Comments of Georgia

The investigation at the national level is ongoing in parallel to the investigation conducted by the International Criminal Court.

In 2016, Pre-Trial Chamber I granted the ICC's Prosecutor's request to open an investigation *proprio motu* in the situation in Georgia, in relation to crimes against humanity and war crimes within the jurisdiction of the International Criminal Court ("The ICC") in the context of an international armed conflict between 1 July and 10 October 2008.[3] The Government of Georgia undertakes intensive efforts on a daily basis to match the increasing needs of the investigation.

On 10 March 2022 ICC Prosecutor, Karim A.A. Khan QC, announced application for arrest warrants in the Situation in Georgia against high officials of the *de facto "South Ossetian administration*" for allegedly committing crimes of unlawful confinement, torture; inhuman treatment; outrages upon personal dignity; hostage taking and unlawful transfer – **against ethnic Georgian civilians in the context of an occupation by the Russian Federation**. As the Prosecutor announced the investigation also uncovered the alleged role of Vyacheslav Borisov, Major General in the Armed Forces of the Russian Federation and Deputy Commander of the Airborne Forces at the time of events, who is believed to have intentionally contributed to the execution of some of these crimes, and is now deceased.[4]

On 24 June 2022, Pre-Trial Chamber I considered, based on the Prosecutor's application of 10 March 2022, that there were reasonable grounds to believe that each of three high officials of the de facto "South Ossetian administration" bears responsibility for war crimes committed against ethnic

[3] Available at: https://www.icc-cpi.int/georgia

[4] Available at: https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-announces-application-arrest-warrants-situation-georgia

Georgians. Therefore, on 30 June 2022, Pre-Trial Chamber I of the International Criminal Court issued the public redacted versions of arrest warrants for the afore-mentioned three officials: Mr Mikhail Mayramovich Mindzaev, Mr Gamlet Guchmazov and Mr David Georgiyevich Sanakoev. The Chamber directed the ICC Registrar, to prepare a request for cooperation seeking the arrest and surrender of the suspects and transmit, in consultation and coordination with the ICC Prosecutor, the request to the competent authorities of any relevant State, or to any international organisation, to cooperate with the Court for the purpose of executing the request for arrest and surrender of the suspects.

Based on the principle of complementarity, investigations should not overlap the same issues, hence, while the international investigation by the ICC will be closed, national investigation will have the solid grounds for identification of the relevant perpetrators.

Concerning the so called ,,prison riot" cases

The case regarding the so called ,,prison riot" is being investigated by the PSG. In the course of the investigation, the former head of the Penitentiary Department and 3 other prison employees were charged and later convicted under Article 144^3 (inhuman and degrading treatment, committed under aggravating circumstances) of the CCG.

In the course of the investigation, the PSG obtained all necessary information regarding the conducted special operation from the Ministry of Interior, Penitentiary Department and other agencies. The investigation further questioned tens of witnesses who possessed information about the operation conducted during the so called ,,prison riot". Based on the obtained information, the relevant examinations were appointed by the investigation.

In addition to this, the investigation took all other necessary and reasonable measures for the collection of evidence. The evidence and information collected in the case were examined and assessed thoroughly and objectively. However, as of today, still there is not sufficient evidence for bringing charges against other perpetrators. Despite this, the PSG actively continues investigation and takes all necessary measures to bring other perpetrators to justice.

Paragraph 17. While noting the 2020 policy document on sexual orientation and gender identity rights and the legislative efforts underway to strengthen protection, the Committee remains concerned about the prevalence of discrimination, harassment, intimidation and attacks against lesbian, gay, bisexual and transgender persons, in particular violent attacks committed against these persons, advocates of their rights and journalists during the Tbilisi Pride march on 5 and 6 July 2021. It is further concerned by the homophobic and transphobic rhetoric by politicians, other public officials and religious figures conducted with impunity. Furthermore, it regrets the lack of definition of legal recognition of gender reassignment and reports that individuals are thus required to undergo gender reassignment surgery in order to change their civil status (arts. 2, 7, 17, 21 and 26).

Comments of Georgia

The conclusion given in the mentioned paragraph regarding the prevalence of of crimes committed on the grounds of discrimination is not exactly accurate, since the production of statistics of the crimes committed on a discriminatory basis with the unified methodology only started from 2021. As the committee has already been informed, with the support of the Council of Europe, on September 23, 2020, a memorandum of cooperation was signed between the Ministry of Internal Affairs, the General Prosecutor's Office, the Supreme Court and the National Statistics Office for the creation of a unified data system on crimes committed on the grounds of intolerance. Therefore, since the processing of complete statistics by this methodology was not carried out before, it is impossible to compare the old and new statistical data to each other and to draw the conclusion that there is a prevalence of crimes of a similar category. It should be noted that this information was provided to the committee both verbally and in writing.

Aside from that, the Prosecution Service of Georgia (PSG) together with other investigative agencies effectively address all forms of discrimination and violence. Below is give the statistical data which prove the effectiveness of the Georgian authorities in the fight against discrimination.

Statistical data on intolerance based on discrimination, 2016-2021 (Prosecutor's Office of Georgia):

As a result of rigorous policies implemented by the Prosecution Service of Georgia, including consistent monitoring of cases of intolerance based on discrimination, for crimes motivated by intolerance on the grounds of discrimination, 1509 individuals have been prosecuted in 2016-2021 and 1388 persons, including 10 legal and 1378 natural persons were granted a victim's status in 2019-2020.

These numbers break down into the following annual data:

2016 - 44 defendants:

2017 - 44 defendants:

2018 - 151 defendants:

2019 - 183 defendants; 221 victims, including 217 natural persons and 4 legal persons.

2020 - 253 defendants; 272 victims, including 268 natural persons and 4 legal persons.

2021 - 834 defendants: 895 victims, including 893 natural persons and 2 legal persons.

Statistical data on intolerance based on SOGIE elements, 2016-2021 (Prosecutor's Office of Georgia):

162 individuals have been prosecuted for the crimes motivated by intolerance based on discrimination on the grounds of the SOGIE elements in 2016-2021, including 34 cases of intersectional discrimination.

These numbers break down into the following annual data:

2016 – 4 defendants

- 4 individuals for the crimes motivated by sexual orientation;

2017 – 8 defendants

- 4 individuals for the crimes motivated by sexual orientation;
- 4 individuals for the crimes motivated by gender identity;

2018 – 27 defendants

- 15 individuals for the crimes motivated by sexual orientation;
- 12 individuals for the crimes motivated by gender identity;

2019 – 32 defendants

- 19 individuals for the crimes motivated by sexual orientation;
- 12 individuals for the crimes motivated by gender identity;
- 1 individual for the crime motivated by sexual orientation and gender identity;

2020 - 22 defendants

- 11 individuals for the crimes motivated by sexual orientation
- 11 individuals for the crimes motivated by gender identity

2021 – 69 defendants

- 12 individuals for the crimes motivated by sexual orientation;
- 24 individuals for the crimes motivated by gender identity;
- 31 individuals for the crimes motivated by sexual orientation and gender identity;
- 2 individuals for the crimes motivated by gender and sexual orientation;

Identifying the motive of intolerance based on discrimination:

- Prosecution Service of Georgia rigorously examines the motives of intolerance based on the elements of discrimination in the process of prosecutorial supervision.
- As a result of persistent strict policy, motive of intolerance based on SOGIE elements been identified in the indictments of 162 individuals prosecuted for various categories of criminal acts through 2016-2021. 34 indictments indicated cases of intersectional discrimination, including 32 indictments indicating motives of sexual orientation and gender identity and 2 indictments indicating motives of sexual orientation and gender.

In view of the above-mentioned, there are no reasons for criticizing the competent investigative agencies of Georgia for lacking the effectiveness in the fight against discrimination.

Concerning of definition of legal recognition of gender reassignment

According to the Georgian legislation, if a person submits a document issued by a medical institution to the Public Service Development Agency, which confirms the change of his/her biological sex, the person has the right to request a change of name/surname and make changes related to sex in the relevant act records. Improvement of rule of change of sex in the relevant act records is proceeding and it will be changed after the judgment of the European Court on Human Rights.

At the moment there are two cases pending before the ECtHR against Georgia - *"A.D. v. Georgia and A.K. v. Georgia"* (applications nos. 57864/17 and 79087/17) and *"Ghviniashviliv. Georgia"* (application no. 55353/19) that concern the change of the gender marker in official documents. In both cases the applicants requested the gender marker to be changed from "female" to "male" in their birth certificates and were denied by the LEPL State Service Development Agency on the ground that they had not undergone biological sex reassignment procedures. The Government have presented their observations and additional submissions on the above cases to the ECtHR, which has not, up to date, rendered respective judgments.

Paragraph 19. […] It is further concerned by reports of underreporting of hate crimes and a low number of investigations and convictions for these crimes.

Comments of Georgia

Please refer to the comment provided in the paragraph 17 above.

Furthermore, the mentioned opinion regarding the small number of investigations and prosecutions, is also inaccurate and does not correspond to reality, whereas, according to the statistics provided to the committee, it is clear that in 2021 the motive of alleged discrimination was identified in 1703 criminal cases, from which 834 persons have already been charged with committing such crime, and no signs of crime were found in 90 cases, which is exactly why the investigation was seized. Investigative activities are actively continuing on the rest of the cases.

Paragraph 20 (c and d). The State party should step up its efforts to:

(c) Encourage the reporting of hate crimes and hate speech and ensure that such crimes are identified and registered, including through the establishment of a comprehensive, disaggregated data-collection system;

(d) Strengthen the investigation capacity of law enforcement officials on hate crimes and hate speech, including online hate speech, and ensure that all cases are systematically investigated, that perpetrators are held accountable with penalties commensurate with the crime and that victims have access to full reparation.

Comments of Georgia

It is regrettable that the significant legislative changes implemented in the Criminal Code in 2017 on the prohibition of all forms of discrimination were disregarded by the committee when developing recommendations, as well as the fact of signing the aforementioned memorandum and processing and publishing statistics in accordance with it, which essentially changes the actual situation. Accordingly, some of the recommendations have already been implemented in practice.

Paragraph 23. The Committee notes the efforts made to combat violence against women, such as the monitoring of such cases by the Human Rights and Investigation Quality Monitoring Department of the Ministry of Internal Affairs. It nevertheless remains concerned by the underreporting of cases of violence against women, particularly cases of sexual violence, low rates of prosecution and conviction for these crimes, and insufficient protection and support services for victims, including psychological services. It is further concerned that victims of domestic violence can access shelters only if they have obtained victim status. It also regrets that current legislation fails to include the lack of consent as the core element of the definition of rape and to define "honour-crimes" (arts. 2–3, 6–7 and 26).

Comments of Georgia

The conclusion made in the mentioned paragraph, that there is an underreporting of cases of violence against women, particularly cases of sexual crimes, as well as a low rate of prosecution of these crimes, lacks a legitimate basis. The Committee was provided with detailed statistics showing that, over the years, there has been a significant increase in the number of investigations into domestic violence and violence against women. In addition to that special attention should be paid to the the numbers of issued restraining orders. If in 2017, in cases of domestic violence and violence against women, the rate of issuance of restraining orders did not exceed 5,000, today this rate reaches 10,000. Similarly, the number of investigation initiations remains high in the cases of domestic violence. For example, if in 2017 the investigation was launched up to 2,900 cases, in 2021, this figure is 5,496. Similarly, the rate of prosecution of perpetrators remains quite high today. In particular, in 2021, criminal prosecution was carried out against 5,144 persons, while this indicator was about 2,000 persons in 2017. Also, the committee did not take into the consideration the important legislative changes implemented in 2017, according to which, the definition of rape was modified to approximate it to the requirements of the Istanbul Convention. According to this amendments, the definition of rape was changed and rape, as

well as other acts of a sexual nature and coercion with violence, threats of violence or the use of the victim's helplessness became punishable. (137, 138, 139 Articles of the Criminal Code).

Paragraph 27. While noting the Prosecutor General's recommendation concerning proper classification of torture cases and statistics provided, the Committee remains concerned by the frequent application of article 333 of the Criminal Code (exceeding official powers), rather than article 144 (torture and inhuman or degrading treatment), when investigating allegations of ill-treatment or torture by law enforcement officials.

Paragraph 28 (b). The State Party should:

(b) Appropriately apply article 144 of the Criminal Code to cases of torture and ill-treatment and desist from classifying such crimes under provisions that provide for lesser penalties, including, inter alia, articles 150 (coercion), 333 (exceeding official powers), 335 (providing explanation, evidence or opinion under duress) and 378 (2) (coercion of a person placed in a penitentiary institution into changing evidence or refusing to give evidence, and coercion of a convicted person in order to interfere with the fulfilment of his/her civil duties) of the Code;

Comments of Georgia

As it was mentioned in the previous communication with the Committee, on 10 March 2017, the Prosecutor General of Georgia adopted the recommendation regarding the classification of facts of ill-treatment committed by an official or a person holding an equivalent position. The purpose of the recommendation is to classify the facts in accordance with the ECHR case law and to implement this classification in practice.

The recommendation covers elements and legal classification of torture, inhumane or degrading treatment, exceeding official powers, coercion of a person to provide an explanation, testimony, or a conclusion, as well as coercion of a person placed in a penitentiary institution or other institution restricting liberty.

The recommendation refers to the latest ECHR case law and defines instances when a case may be classified as torture. The distinction between torture and inhumane or degrading treatment, and issues related to the classification of the act as a threat of torture are also explained.

In addition, the recommendation makes a distinction between exceeding official powers and inhumane or degrading treatment. It further points out that if the investigation establishes at the initial stage that physical force used against a person in its form and essence reaches the threshold of inhumane or degrading treatment, the case must be reclassified and the ongoing investigation be continued under Article 144^3 of the Criminal Code of Georgia (CCG) criminalizing the latter offence.

According to the practice before the adoption of the said recommendation, the cases of ill-treatment committed by an official or a person holding an equivalent position were classified under articles of the CCG chapter of malfeasance.

All employees of the Prosecution Service of Georgia were familiarized with the recommendation. It is actively used in investigations under the supervision of the Prosecution Service.

It should be mentioned that after issuing the recommendation of the Prosecutor General of Georgia and familiarizing it with the employees of the PSG, the problems regarding the classification of acts committed by public officials have been significantly reduced.

In view of the above-mentioned, there are no reasons for the concerns regarding the frequent application of Article 333 rather than Article 344 of the CCG.

In light of the foregoing, the PSG disagrees with the text and the subsequent recommendation in *paragraphs 27 and 28 (b)* of the Concluding Observations on the Fifth Periodic Report of Georgia.

Paragraph 27. The Committee is also concerned about the reported failure by the authorities to conduct an effective investigation into circumstances surrounding the death of Temirlan Machalikashvili, who was killed by the State security officers in 2017 (arts. 6-7).

Paragraph 28 (c). The State Party should:

(c) Conduct independent, impartial, prompt and effective investigations of allegations of the excessive use of force, including deadly force, by law enforcement officials, and bring the perpetrators to justice.

Comments of Georgia

The case was investigated by the Investigation Department of Tbilisi Prosecutor's Office on the fact of possible abuse of power against Temirlan Machalikashvili.

The investigation established the following:

On 23 December 2017, Tbilisi City Court issued a ruling on the detention of Temirlan Machalikashvili. The court considered it confirmed that the evidence obtained on the criminal case pending at the Counterterrorism Center of the State Security Service of Georgia was enough for a reasoned assumption, that five persons, including Temirlan Machalikashvili, had committed providing services to the terrorist group and terrorist organization, providing asylum to the terrorists and providing them with resources.

On December 26, 2017, during a special operation in the village of Duisi in Akhmeta district, the Officer of the Special Operations Department of the State Security Service, as a result of the shot in the bedroom of the apartment, wounded Temirlan Machalikashvili in the head, who died later, on January 10.

To find out whether the officer of the Special Operations Department was acting properly and to find out the urgency of the shooting made by him, the Tbilisi Prosecutor's Office conducted a thorough and comprehensive investigation. In particular, 124 persons were interviewed as witnesses, dozens of investigative or procedural actions were carried out, more than a dozen different forensic examinations were conducted on the criminal case. Temirlan Machalikashvili's family members and neighbors, all

32 officers of the Special Operations Department of the State Security Service involved in the detention operation were interviewed as witnesses. The State Security Service investigators and all supervisors who had any information about the planning and implementation of the operation on December 26, 2017 were interviewed as witnesses. According to the investigation, it was revealed that Temirlan Machalikashvili did not obey the request of the Special Forces officer to show him his hands and tried to activate the hand-grenade. As a result, the Special Forces officer fired in his direction.

From the initial stage of the investigation on the fact of possible abuse of power against Temirlan Machalikashvili, both his family members and his lawyers were given the opportunity to become fully acquainted with the case files, to get information about the progress of the investigation. At the request of the lawyers, a number of investigative actions were carried out, the witnesses were interviewed and the independent experts invited by the family took part in the complex examination. During the investigation, all the issues raised by the lawyers were examined.

Finally, the investigation proved that the officer of the Special Operations Division was in a state of necessary repulse, the threat was real, imminent, and the only purpose of his action was to protect the life and health of himself and those around him. It was also confirmed that neither the members of the Special Forces nor any senior official committed any unlawful or criminal activity. As a result, the investigation was terminated.

In view of the above-mentioned, there are no reasons to assert that the relevant Georgian investigative authority failed to properly investigate the case of death of Temirlan Machalikashvili.

Consequently, it should be noted that the used language – "…who was killed by the State security officers in 2017" – is not a proper legal evaluation. A State Party would like to note that overall and all-inclusive information, including the State Security Service (SSSG)[5] and Prosecutor's Office of Georgia (POG)[6] statements as well as the Report of the Public Defender (Ombudsman) of Georgia[7] shall be considered. Therefore, the following formulation should be used: "…who was wounded by the State Security Service officer in December 2017 during the detention operation due to his attempt to activate the hand grenade and who died later, on January 10, 2018".

The committee was informed that the case is being examined by the European Court of Human Rights and any conclusion before the Court's adjudication will not be accurate.

Paragraph 29. The Committee is concerned by persisting protection gap in the Code of Administrative Offenses, including, among others, insufficient safeguards guaranteed to administrative detainees, the lack of clarity about the standards of proof, which often results in the burden of proof borne by detainees, and the absence of meaningful right to appeal detention decisions It is further concerned by information that administrative detainees are, in practice, not always afforded fundamental legal

[5] Please see: https://ssg.gov.ge/en/news/303/sus-ma--terorizmis-dafinansebis--teroristuli-saqmianobis-sxvagvari-materialuri-mxardacheris-da-resursebit-uzrunvelyofis-braldebit-5-piri-daakava; https://ssg.gov.ge/en/news/306/saxelmtsifo-usafrtxoebis-samsaxuris-gancxadeba.
[6] Please see: http://pog.gov.ge/en/news/brifingi-Tbilisis-prokuraturashi.
[7] The Public Defender does not use the terms "killed" or "killing" with regard to Machalikashvili's case in her report.
Please see: http://www.ombudsman.ge/res/docs/2019101108583612469.pdf.

safeguards, including the right to promptly access legal counsel and to be brought before the judge in a timely manner, thereby being at a higher risk of ill-treatment, both at the time of arrests and during detention (arts. 9–10 and 14).

Paragraph 30. Recalling its previous recommendation, the Committee calls on the State party to expedite its legislative process to bring the Code of Administrative Offenses into line with articles 9-10 and 14 of the Covenant, in particular with regard to the abovementioned shortcomings, with a view to ensuring fair and impartial proceedings. The State party should further ensure, in law and in practice, that administrative detainees are guaranteed the fundamental legal safeguards from the very outset of deprivation of liberty, including the rights to have prompt access to a lawyer, to notify a person of their choice of their detention and to be brought promptly before a judge. It should strengthen the protection of administrative detainees against ill-treatment, investigate all allegations of ill-treatment and bring the perpetrators to justice.

Comments of Georgia

The committee's conclusion regarding the problems with administrative detentions lacks foundation. In particular, it doesn't correspond to reality that there are insufficient safeguards to administrative detainees, that there is a lack of clarity about the standards of proof that often results in the burden of proof borne by detainees, and the absence of meaningful right to appeal detention decisions. In addition to that, it doesn't correspond to reality that administrative detainees are, in practice, not always afforded fundamental legal safeguards, including the right to promptly access legal counsel and to be brought before the judge in a timely manner.

The terms of detention and transfer to court are strictly defined by the legislation. Within 24 hours of the arrest, the police are obliged to submit the detainee and the detention materials to the court. If the 24-hour period does not turn out to be sufficient for the police to obtain evidence, for example video files, period may only once be extended by no more than 24 hours. The court will consider the submitted materials at an oral hearing, where the detainee has the opportunity to prepare for the hearing, present evidence, call witnesses, and use the services of a lawyer and / or translator. Among those, one can request a postponement of the hearing if one needs time to gather evidence, although the maximum time limit for a court hearing should not exceed 4 months.

The court examines the evidence presented in court at the hearing and based on competitiveness of the parties, makes a decision on the issue of recognizing the person as an administrative offender or, in the absence of evidence, terminating the case.

Access to a lawyer for administrative detainees, is fully granted at any time of day and night, without any limitations at the legislative level as well as practical level. The right to a lawyer is explained in the list of rights and obligations, which is handed to all detainees upon their entrance in a TDI.

Also, the right to contact the relatives is fully guaranteed at the legislative, as well as practical level.

As for the right to appeal, the decision made by the court of first instance is subject to appeal.

It lacks the foundation that administrative detainees are at a higher risk to ill-treatment as a special form was developed in compliance with the Istanbul Protocol and medical examination of detainees is conducted only in accordance with the mentioned document.

When a doctor documents possible ill-treatment committed against a detainee, he/she immediately notifies the State Investigation Service. The notification is sent even on the occasion when the detainee has not reported any acts of violence, but the doctor has reasonable doubt that such facts might have taken place.

Despite the information being provided, it is regrettable that the mentioned circumstances were not taken into the consideration by the committee.

Paragraph 31. The Committee welcomes the amendments made in March 2021 to the Law on Narcotic Drugs, Psychotropic Substances, Precursors and Narcotic Aids, which defined the amounts of eight substances under special control and their doses in order to address the problem of indiscriminately severe punishment for drug-related offences. While noting the State party delegation's reference to the 2014 decision of the European Court of Human Rights in *Natsvlishvili and Togonidze v. Georgia*, it regrets the lack of specific information on steps taken to increase transparency in the plea-bargaining process.

Paragraph 32 (a; b). Reiterating its previous recommendations, the Committee urges the State party to: (a) provide and ensure the respect of adequate legal safeguards to defendants in the context of plea bargaining, including against abuse and coercion to enter into pleabargaining agreements, in line with defendants' Covenant rights; and (b) increase transparency of plea-bargaining negotiations, and strengthen the role of the judge and the defence in this process.

Comments of Georgia

It is worth mentioning that, in the case of *Natsvlishvili and Togonidze v. Georgia*[8], a former mayor and managing director of an automobile factory, complained of having no choice but to accept a plea bargain in the proceedings brought against him for embezzlement, in order to avoid intolerable conditions of detention. In particular, the first applicant alleged that the plea-bargaining process, as provided for by domestic law at the material time and applied in practice, enabled an abuse of criminal proceedings and was unfair. Further no appeal to a higher court against the judicial endorsement of the plea-bargaining agreement, which he considered to be unreasonable, was possible.

[8] Available at: https://hudoc.echr.coe.int/eng?i=001-142672 see also: https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-4743393-5767143%22]}

In its judgement on the above case, for the first time, the ECtHR explored fully and comprehensively the compatibility of a plea-bargaining procedure as applicable in Georgian legislation and practice with the right to a fair trial under the Convention. The ECtHR, on the basis of the comparative study of domestic legislation of Council of Europe member States, found Georgia's plea-bargaining system to resemble and be compatible with European criminal-justice systems.[9] In the present case, having established that the applicant had accepted the plea bargain knowingly and of his own free will, and that the agreement had been accompanied by sufficient safeguards against possible abuse,[10] the ECtHR found no violation of the Convention.

Aside from that, according to Article 201 §1[1] of the Criminal Procedure Code of Georgia (CPCG), a plea bargain can be offered either by a defendant/convict or a prosecutor. Pursuant to §4 of the same Article, a plea bargain may not be concluded without the direct involvement of a defence lawyer and the prior consent of the defendant.

Article 45 of the CPCG provides for the mandatory participation of the defence lawyer, if the there is a negotiation with the defendant about the plea agreement.

To summarise, under the Criminal Procedure Code of Georgia, plea bargain negotiations can be carried out only with the participation of a defence lawyer.

According to Article 210 §6 of the CPCG, a written record shall be drawn up on a plea bargain, the copy of which is handed over to the defendant and his/her lawyer. They may make remarks regarding the record, which are attached. A plea bargain record shall be signed by a prosecutor, defendant and his/her lawyer.

The CPCG Article 210 §2 (a), (d) provides for the obligation of a court, to make sure before approving a plea bargain that it was concluded without torture, inhuman or degrading treatment or other violence, threat, deception or any unlawful promise, as well as to ascertain the fact that defendant was able to receive competent legal aid.

When it comes to the judge's role in approving a plea bargain, a judge delivers a decision on a plea bargain based on law and is not obliged to approve the agreement reached between the accused and the prosecutor. The motion of a prosecutor requesting to render a judgment without a hearing on the merits undergoes rigorous court review. According to article 212 of the Criminal Procedure Code of Georgia, a court is be obliged, before approving a plea bargain, to make sure that (a) the plea bargain has been entered into without torture, inhuman or degrading treatment or other violence, threat, deception or any unlawful promise; (b) the plea bargain has been entered into voluntarily and the accused voluntarily pleads guilty; (c) the accused is fully aware of the legal consequences of the plea bargain, including the legal consequences of conviction; (d) the accused had the opportunity to receive qualified legal aid; (e) the accused is fully aware of the nature of the crime of which he/she is accused; (f) the accused is fully aware of the sentence foreseen for the crime to which he/she pleads guilty; (g) the accused is aware of all the statutory requirements and plea bargain requirements with respect to a guilty plea; (h) the accused is aware that if the court does not approve the plea bargain, any information

[9] *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, paras. 62-75.

[10] Ibid., para. 97.

provided by him/her to the court during the review of the plea bargain may not be used against him/her in the future; (i) the accused is aware that he/she has the right to: (i.a) defence; (i.b) reject a plea bargain; (i.c) have the case heard on the merits by the court; (j) the accused agrees with the factual grounds of the plea bargain with respect to the guilty plea; (k) the plea bargain contains all the conditions of the agreement reached between the accused and the prosecutor; (l) the accused and his/her defence lawyer are fully familiar with case materials. The fact that these legal guarantees are in effect can be demonstrated by the fact that out of 9290 plea bargains requested for approval courts returned 96 of them to prosecution in 2021.

Paragraph 35. While noting the information provided by the State party that insolvent persons are granted legal aid in criminal proceedings and that child witnesses can now benefit from legal aid, the Committee notes with concern reports that low-income defendants who do not meet the financial criteria for receiving legal aid services are often deprived of their right to legal representation (art. 14).

Comments of Georgia

The Code on the Rights of the child adopted in 2019 gives all minors the rights to enjoy free legal aid service. An amendment to the Law on Legal Aid was introduced under the Code of the Rights of the Child, according to which a minor enjoys the right to free legal counseling and legal aid unless his/her lawyer is not involved in the case. In addition, according to the amendments to the legislation in 2019-2021, juvenile defendants, convicts, victims, witnesses and interrogators enjoy the right to free legal aid at the expense of the state, regardless of their insolvency, unless their lawyer is involved in the case.

Also, a victim of domestic violence has the right to legal aid in civil and administrative cases related to domestic violence, regardless of the victim's ability to pay, unless he or she has chosen a lawyer in general rule.

In 2022 the Parliament of Georgia adopted amendments to the Law of Georgia on Legal Aid, according to which an insolvent adult victim of domestic violence and / or domestic crime is entitled to free legal aid. The bill also provides for the possibility for a person to enjoy the right to free legal aid if, despite the lack of formal insolvency status, his or her actual income and assets do not exceed the amount specified in the law.

Paragraph 37. Despite the judicial reforms undertaken, the Committee remains concerned about the persistent lack of independence and impartiality in the judiciary of the State party. It is particularly concerned about the lack of transparency in the procedure for the selection and appointment of judges, as illustrated by the problematic nomination of judges of the Supreme Court in 2019, as well as the concentration of powers within the High Council of Justice, including the power to nominate and discipline judges. While noting the State party's information that the Independent Inspector

independently and impartially investigates judicial disciplinary cases, the Committee remains concerned that the High Council of Justice is the body that elects and dismisses the Independent Inspector, which undermines the independence of the Inspector. It is also concerned about allegations of politically motivated arrests and trials, including cases of opposition party leader, Nika Melia, and former members of the Georgian-Azerbaijani state commission on delimitation-demarcation. The Committee further notes with concern reports of denial of fair trial guarantees in the case of former President Mikheil Saakashvili.

Paragraph 38 (a). The State party should:

(a) Safeguard, in law and in practice, the full independence, impartiality and safety of judges and prosecutors and prevent them from being influenced in their decision-making by any form of political pressure, including by: (i) ensuring that procedures for the selection, appointment, suspension, removal and disciplining of judges and prosecutors comply with the Covenant and relevant international standards, including the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors; and (ii) taking necessary measures to prevent and sanction any abuse of powers granted to the High Council of Justice;

Comments of Georgia

The four waves of judicial reforms gradually implemented since 2013 have created institutional safeguards for the independence of individual judges and contributed to enhancement of independence, efficiency, accountability, transparency and accessibility of the judiciary. High Council of Justice is depoliticized; criteria of selection and appointment of judges are set up; the system of electronic random assignment of cases has been launched; the life tenure appointment of judges has been enshrined in the Constitution.

The best indicator of the results of judicial reforms is the statistics of ECtHR. 10 years ago about 4,000 applications were pending against Georgia. By March 31, 2022, the Court is considering only 154 applications, which is the lowest historic number for Georgia. 95% decrease of applications before the European Court within a decade is self-telling.

On the other hand, the number of applications before the domestic courts has been increased over years. For instance, in 2013 about 48 000 civil and administrative cases were filed in the common courts of Georgia, whereas this number was increased with 110% in a span of 8 years – reaching up to 100 000 cases by 2021.

This statistical data clearly demonstrates that the quality of the remedies for the citizens and the trust towards local institutions/judiciary at the national level has improved significantly.

Concerning the lack of transparency in the selection procedure of Supreme Court judges, the authority of the High Council of Justice to nominate and discipline judges and election/dismissal of the Independent Inspector

Georgia would like to note that the conclusions made in paragraph 37 are not based on objective and verified facts. Importantly, the mentioned issues had not been indicated in the report, neither had they been subject to discussion with the delegation of Georgia on 5th and 6th July 2022.

With regard to the reference made on alleged "lack of transparency in the procedure for the selection and appointment of judges", it is unclear for the Government what are the basis for such a conclusion and what exactly indicates on the alleged lack of transparency.

During the constitutional reform of 2017-2018, the Venice Commission had delivered its two opinions regarding Georgia. In both opinions, dated 19 June 2017 (CDL-AD(2017)013) and 19 March 2018 (CDL-AD(2018)005), the Venice Commission, although referring to the issue of the High Council of Justice of Georgia, had not provided any comments regarding the powers of the High Council of Justice. Additionally, in December 2018 the Venice Commission delivered the opinion (CDL-AD(2018)029) specifically on "the provisions on the High Council of Justice in the existing Organic Law on Common Courts." Neither had the mentioned opinion criticized the powers of the High Council of Justice. On the contrary, the commission assessed the changes related to the composition and powers of the HCJ as broadly welcomed and noted that the structure and functions of the High Council of Justice comply with the current standards and best practices for such bodies.

As regards the concerns regarding election/dismissal of the Independent Inspector, Georgia highlights that both the third and fourth waves of the judicial reforms had been focused on regulation of disciplinary proceedings in line with international standards. In June 2019 the delegation of the EU and the Embassy of United States in Georgia welcomed the final draft legislation on the "fourth wave" of judicial reforms as a result of a broad consensus achieved in the working group composed of different actors, including the international community, civil society, and the judicial sector. Therefore, the Government authorities are not able to understand as to where do the concerns of the Committee derive from.

Additionally, Georgia would like to note that none of the reports of the international organizations have ever expressed any concerns related to the election of the Independent Inspector by the HCJ. Namely, the Venice Commission has assessed for several times the issues related to the disciplinary proceedings. In its opinion issued in 2018, the Commission assessed the changes related to the establishment of the new inspectorate as broadly welcomed (CDL-AD(2018)029). The Commission has never provided the negative assessment in any of its opinions concerning the procedure for the election and dismissal of the Independent Inspector. The GRECO has never considered this issue as problematic as well.

Case against Nikonor (Nika) Melia

The PSG cannot agree with the allegations about politically motivated arrests and trials, including the case against Nika Melia.

The information about the case is given below.

On June 20, 2019, starting from 21:08, MP Nikanor Melia addressed the citizens gathered at a peaceful rally at the Parliament building in Tbilisi on several occasions.

Following these speeches, some of the participants of the rally, led by Nikanor Melia and with his direct participation, started violence against law enforcement officers deployed in front of the Parliament building, assaulting them with various objects used as weapons and damaging and destroying the gear of law enforcement officers. As a result of the violent acts, both law enforcement officers and peaceful protesters suffered injuries of various kind.

On June 25, 2019, Nikanor Melia was charged for the above described act – leading and participating in a group violence – under §1 and §2 of Article 225 of the Criminal Code of Georgia.

With the decision dated June 27, 2019, Tbilisi City Court imposed GEL 30,000 (thirty thousand) bail on Nikanor Melia as a measure of constraint. Additionally, electronic monitoring was applied against him.

On November 1, 2020, when making a public statement at a place of public gathering, Nikanor Melia demonstratively took off the bracelet for electronic monitoring, by which he violated the conditions of the preventive measure on purpose.

With the decision dated November 3, 2020, Tbilisi City Court increased the bail amount previously applied against Nikanor Melia as a preventive measure by GEL 40,000 (forty thousand) and making it GEL 70,000 (seventy thousand). The term for posting the increased bail amount was set as 50 (fifty) days.

Despite having every opportunity to post GEL 40,000 bail within the set term, up to December 24, 2020, he failed to do so.

After the expiration of the aforementioned term, the Prosecution Service gave Nikanor Melia additional time to post the bail. The Prosecution Service notified him that if he failed to post/secure the bail amount, the Prosecution would file a motion with the court to impose detention on him. Still, Nikanor Melia failed to post the bail within this term.

On February 16, 2021, the Prosecutor General of Georgia file a motion with the court, seeking to replace the measure of constraint applied against defendant Nikanor Melia – bail – with a more severe preventive measure – detention. The court granted the motion and Nikanor Melia was taken into custody on February 23.

Detaining Nikanor Melia has never been the goal of the Prosecution Service of Georgia in itself, and what is more, it was Nikanor Melia's failure to comply with a court decision that brought about the necessity to detain him. After his arrest, the Prosecution expressed its willingness on multiple occasions to file a motion with Tbilisi City Court on replacing detention, the measure of constraint applied against Nikanor Melia, with bail, a more lenient preventive measure, if the defendant complied with bail conditions.

When the bail was posted for Nikanor Melia in May 2021, the Prosecution immediately filed a motion with Tbilisi City Court, requesting to release the defendant, which was granted by the court.

Despite the Amnesty Act issued by the Parliament of Georgia in relation to the events of June 20, 2020, that fully exempts the defendant from criminal accountability and penalty, Nikanor Melia refused to take advantage of the privilege under the amnesty. His case is currently heard by Tbilisi City Court on the merits, in full compliance with the requirements set by law.

Furthermore, as the Committee was informed, the case is being examined by the European Court of Human Rights and any conclusion before the Court's adjudication will not be accurate.

Case against former members of the Georgian-Azerbaijani state commission on delimitation-demarcation

The Prosecution Service of Georgia cannot agree with the allegations about politically motivated arrests and trials, including the case against former members of the Georgian-Azerbaijani state commission on delimitation-demarcation.

On August 17, 2020, the Office of the Prosecutor General of Georgia launched investigation into the criminal case concerning an alleged act committed against Georgia that was intended to transfer a part of Georgia to a foreign country or to separate its certain part from the Georgian territory (the offense punishable under Article 308 §1 of the Criminal Code of Georgia).

According to the case files, during the course of the negotiations concerning the border with Azerbaijan, Iveri Melashvili, a member of the Georgian Governmental Commission and the head of the experts team, and Nalatia Ilichova, Commission's expert cartographer, were obliged to do geodesy and cartographic works, to find, combine, analyze and compare the relevant maps and materials, and based on them, create map albums depicting the Georgian border. Contrary to this, they failed to conduct a relevant and required expert research and failed to involve any cartography specialists in the said process.

A forensic examination revealed that a number of sections of the Georgian-Azerbaijani border agreed on during the period through 2007, do not comply with border of Georgia included in cartographic maps of 1937-1938. The difference amounted to 3,500 hectares to the detriment of Georgia.

The forensic examination also established that in the process of border delimitation, the aforementioned individuals guided themselves by the maps that substantially contradict to the historic

border of Georgia, including, in terms of David Gareja monastery complex. Therefore, their criminal act gave rise to a risk of losing the territory that historically belonged to Georgia.

As soon as relevant grounds for initiation of criminal prosecution were provided, Iveri Melashvili and Natalia Ilichova were arrested on October 7, 2020, based on Tbilisi City Court Warrant. And, on October 8, the court imposed detention against the defendants as a measure of constraint.

The criminal case against Iveri Melashvili and Natali Ilichova was sent to Tbilisi City Court for merits hearing on January 22, 2021.

On January 28, 2021, based on the motion of the Prosecution, the measure of constraint imposed on Iveri Melashvili and Natalia Ilichova – detention – was replaced with a more lenient preventive measure – GEL 20,000 bail.

The basis for filing a motion on replacing the measure of constraint imposed on the defendants with a more lenient preventive measure was the following: the investigation into the act they had committed had been completed and the fact that they committed a crime was proven under a high evidentiary standard, while the investigation into possible criminal involvement of other individuals went on.

It should be noted that neither of the defendants have been involved in politics in any manner whatsoever. Therefore, any doubt as if the criminal proceedings against them might have been politically motivated is groundless.

The case against the defendants is currently heard by Tbilisi City Court on the merits, in full compliance with the requirements set by law.

In light of the foregoing, the PSG disagrees with allegations of politically motivated arrests and trials, including in the cases mentioned above. It also disagrees with the conclusion as if prosecutors are influenced in their decision-making by any form of political pressure and they lack full independence and impartiality.

Concerning Mikheil Saakashvili's fair trial guarantees

Mr. Saakashvili is represented by the lawyers of his own choosing, equality of arms is duly respected and court hearings are transferred online. Hence, his fair trial guarantees are fully ensured.

Paragraph 39. The Committee is concerned about the lack of sufficient safeguards against arbitrary interference with the right to privacy in the form of surveillance, interception activities and access to personal data. […]

Comments of Georgia

The Personal Data Protection Service exercises its mandate to monitor covert investigative actions and activities performed within the central databank of electronic communications identification data within the scope of the Georgian Law on Personal Data Protection. Along with covert investigative actions conducted by law-enforcement authorities, the Service monitors activities performed within the central database of the Operative-Technical Agency via electronic control system and through inspections. The Service receives court rulings round-the-clock on granting authorization to carry out a covert investigative action, prosecutor's resolutions on conducting covert investigative actions due to urgent necessity, and records in writing from law enforcement bodies on covert investigative actions. The Service also receives documents from electronic communication companies about transferring the electronic communication identification data to law enforcement authorities. The submitted documents are verified and compared with the information provided in the electronic systems. The data provided in the documents are entered in the internal electronic system of registration of covert investigative actions and analyzed. The Service utilizes electronic and special-electronic control systems to monitor wiretapping and recording of telephone communications during covert investigative actions. If the Service is not provided with a judicial warrant or a prosecutorial resolution beforehand, in an electronic and/or hardcopy format, or should the data indicated in the electronic and hardcopy warrants/resolutions do not match or contain inaccuracies or are vague, it is authorized to stop covert wiretapping and recording of a telephone conversation.

Paragraph 39. […] It is particularly concerned by reports that the Operative Technical Agency, which conducts electronic surveillance, is granted both regulatory and monitoring powers and lacks sufficient independence from the State Security Service, and that the existing oversight mechanism over the Agency's activities is not effective. […]

Comments of Georgia

LEPL Operative-Technical Agency of Georgia of the State Security Service of Georgia (SSSG OTA) is in charge to ensure cybersecurity of the I Tier (Public Agencies) and II Tier (Electronic Communication Companies) Critical Information Infrastructure Subjects. For these purposes, SSSG OTA is entitled to receive and process Indicators of Compromise from I Tier Category Critical Information Infrastructure Subjects (Public Agencies) on 24/7 basis with the aim to detect, suppress and prevent the cyberattacks. SSSG OTA can also conduct information security auditing for the public or private entities under its jurisdiction although an assent is mandatory when such auditing is going to be conducted on behalf of SSSG OTA.

It shall be emphasized that the OTA does not have a direct access to the content of the communication performed by those governmental agencies and its activities are subjected to comprehensive oversight mechanism, including the Parliament, the Prime-Minister and the Personal Data Protection Service.

The Agency has exclusive competence to conduct covert investigative activities with regard to electronic communications only upon the motion submitted to it by the agencies exercising investigative, intelligence or counterintelligence functions based on respective judicial authorization, as provided for by the legislation. The Agency enjoys high degree of independence and has no investigative, intelligence or counterintelligence powers. Therefore, the Agency is not professionally interested in obtaining such information.

Besides determining the powers of the Agency, the amendments of 2017 have provided strong safeguards of its independence and accountability. The Head of the Agency is appointed by the Prime-Minister after the candidacy is selected by Special Commission of 7 Members[11]. The Commission selects one out of three candidates and nominates him/her to the Prime Minister. The Agency has its independent budget. Agency Director appoints and dismisses staff, independently manages the organization, approves technical regulation and instructions for the conduct of covert investigative and communications surveillance activities, processing, storage and destruction of the information obtained as a result of these activities. The Statute of the Agency is approved by the Government.

The agency is subject to strong oversight mechanisms. The Personal Data Protection Inspector exercises real-time control over covert eavesdropping and recording of telephone communication through electronic control system and special electronic control system and he/she is capable to suspend the ongoing covert investigative activity at any stage in case of inconsistency. The grounds for the suspension of such measures are defined by the Criminal Procedure Code. Electronic control system gives the possibility to the Inspector to obtain complete technical information in real-time on the activities of stationary technical means applied for the covert eavesdropping. The Agency is obliged to store the documentation reflecting the activities conducted by the Agency and upon request, submit it to the controller.

Moreover, the Personal Data Protection Inspector is authorized to conduct of scheduled or unscheduled inspection and thus, verify the documentation (including technical documentation and data of computer equipment) on spot. Employees of the Agency are obliged to provide the requested information to the Inspector and respond to his/her questions. Since 2017, the Personal Data Protection Service conducted eleven scheduled and unscheduled inspections. The Agency was provided with the relevant recommendations on improving the organizational-technical deficiencies.

The OTA is accountable to Prime Minister and the Parliament. Every year the Agency is obliged to present to the Trust Group and the Prime-Minister the statistics and report of conducted activities. Oversight authority of the Parliamentary Trust Group includes receiving report from the Agency, summoning its Director, requesting respective documents, making decision on inspecting the Agency's

[11] Head of State Security Service; Deputy Chair of the Supreme Court; Chairs of Legal, Human Rights Protection and Defense and Security Committees of the Parliament; Public Defender; Government Representative

activities, providing recommendations on improvement of its activities. In case of any breach of the law by the Agency, the Trust Group is obliged to address the investigatory body and submit all the relevant materials.

Considering the aforesaid, there are comprehensive independence guarantees of the SSSG OTA and effective oversight mechanisms over the Agency in place. The Agency implements its activities based on the rule of law, respect for human rights and fundamental freedoms, the principles of political neutrality and impartiality.

During 2021, the parliamentary control mechanisms over the activities of the Operative-Technical Agency were actively applied, in particular, the Trust Group of the Parliament of Georgia paid two visits to the Agency. Within the frames of visits, the members of the Trust Group got familiar with the main directions of the activities of the Agency, technical, organizational and procedural aspects of the implementation of covert surveillance activities, normative acts regulating the activities of the Agency and legal documentation of the implementation of covert surveillance activities. They also checked the functioning of electronic and special electronic control systems in test mode.

In addition, the Trust Group submitted information requests in written form in 8 cases on the implemented measures and certain activities of the Agency, which were duly responded. In 2021, in accordance with the legislation, the LEPL - Operative-Technical Agency submitted a statistical and generalized report on the activities of the Agency to the Trust Group of the Parliament of Georgia and the Prime-Minister.

Within the scope of the scheduled and unscheduled inspection powers, the State Inspector carried out the inspection of covert investigative activities of covert eavesdropping and recording of telephone communication, which took place from 25 February 2021 to 3 August 2021. The inspection did not reveal any violation of the requirements of the legislation by the Agency. In addition, the LEPL - Operative-Technical Agency was given mandatory assignments to be implemented with the aim of improving the certain organizational and procedural aspects of personal data processing.

Paragraph 40. [...] The State party should also ensure that all reports of abuse, such as the leakage, in September 2021, of wiretapping files of clergies, politicians, foreign diplomats, journalists and human rights defenders, are thoroughly investigated and that such investigations, where warranted, lead to appropriate sanctions.

Comments of Georgia

It should be noted that the case of alleged leakage of wiretapping files is currently under investigation and this fact is not ascertained yet. Therefore, in terms of proper legal evaluation, we propose to use the wording "…all reports of **alleged** abuse, such as the leakage…" in the last sentence.

Paragraph 41. It is particularly concerned that a disproportionately small amount of funding is provided to religious minorities for rehabilitating their places of worship, and that, despite the decision of the Constitutional Court of 3 July 2018, discriminatory treatment of religious organizations in terms of tax exemption persists.

Comments of Georgia

In 2018 the Constitutional Court of Georgia rendered two judgements on the unconstitutional privileges of Patriarchate of Georgia one of which was the provision of Tax Code, which entitled VAT exemption to the services of the construction, restoration and painting the Temples and the Churches, contracted only by the Patriarchate of Georgia.

After December 31, 2018 unconstitutional provisions were invalidated, thus, their annulment caused elimination of the possibility of the Georgian Apostolic Autocephalous Orthodox Church to exercise those privileges.

Paragraph 43. (a and c). The Committee is deeply concerned about increased reports of the violation of the freedom of expression, in particular reports of:

(a) Intensified polarization of media, and undue government pressure on media through administrative, financial and judicial means, **including the change of ownership or management of critical media outlets** and the initiation of criminal proceedings against media outlets and workers;

Comments of Georgia

The above-mentioned highlighted wording is a factual mistake as there has been not a single case of government pressure on media through the change of ownership or management of critical media outlets. As to the famous case of TV Channel Rustavi 2, it should be emphasized that the case was brought before the European Court of Human Rights, which has not found violation of any of the articles from the European Convention of Human Rights, among them the right to a fair trial as alleged by opposing party. The ECHR upheld the verdict of Georgian courts returning the TV Channel Rustavi 2 to its former owner.

Moreover, it is worth mentioning that numbers of employees left the channel after the above case and the Communications Commission granted authorization to two new television channels composed of former Rustavi 2 journalists within days and these channels started broadcasting shortly thereafter.

Paragraph 43 (c). The lack of independence of the National Communications Commission from political influence, and [..]

Comments of Georgia

Mentioned is a factual inaccuracy as no decision of the Communications Commission can be brought up demonstrating the lack of independence from political influence. Observing this kind of assessments in the document is truly regrettable and inappropriate, unless concrete factual grounds are presented.

Paragraph 43 (c). […] the possible restriction on media freedom under the amended Law on Electronic Communications in July 2020, particularly with regard to the power of the Commission to appoint a "special manager" to remedy certain unlawful acts by electronic communication operators (arts. 2, 6–7, 14 and 19).

Paragraph 44 (c). Bringing domestic legal and institutional framework that may unduly restrict media freedom, **including the National Communications Commission and the amended Law on Electronic Communications**, into full conformity with article 19 of the Covenant, taking into account of the Committee's general comment No. 34 (2011).

Comments of Georgia

Mentioned is a factual error.

Georgian legislation differs the broadcasting and electronic communications spheres from one another. The amendments in question were introduced to the Law on Electronic Communications, providing for special measures for the enforcement of the decisions of ComCom in the field of electronic communications. In particular it regulates enforcement of the decisions regarding mergers and acquisitions of the telecom operators and specific obligations of the telecom operators with significant market power (SMP). The measures include mechanism of the special manager, which is appointed in the telecom operator, if the operator persistently violates legislation and refuses to enforce regulatory decisions regarding mergers and acquisitions and SMP obligations.

This provision was deemed necessary in order to fill the gap in the Georgian legislation which did not provide effective mechanisms for the enforcement of the decisions of the Communications Commission. In particular, the legislation did not contain effective measures to enforce decisions when the existing penalties (written warning and fine) are not effective, and the revoking of the license/authorization endangers the proper functioning of the telecommunications market. In particular, those who hold important telecommunications infrastructure may abuse their market power because they know that the regulator is impeded in applying for the revocation of a license/authorization as it may endanger the proper functioning of the telecommunications market and harm legitimate private and public interests.

As outlined, the special manager is appointed under the Law on Electronic Communications and is entitled to take action to enforce the decision of the regulator in the field. Any decision/action made by a special manager shall be void if this decision/action is not made/taken within the scope of the authority granted to the special manager by the Communications Commission. Therefore, any action of the special manager in the field of broadcasting, concerning the editorial policy of the broadcaster will be ultra vires and void.

Paragraph 44 (b). The State party should redouble its efforts to prevent and prohibit public officials and private actors, including members of radical groups, from interfering with the legitimate exercise of the right to freedom of expression of journalists, artists, writers, human rights defenders and government critics, including through:

(b) Strengthening protection of journalists, artists, writers, human rights defenders and government critics against any kind of threat, pressure, intimidation or attack, and ensuring that all violations committed against journalists, including the events of 5 and 6 July 2021 and the case of Afgan Mukhtarli, are promptly, effectively and impartially investigated and that those responsible are appropriately charged, including under article 154 of the Criminal Code (unlawful interference in the professional activities of journalists), and brought to justice;

Comments of Georgia

Concerning the case of 5-6 July and the case of Afgan Mukhtarli

The case of Afgan Mukhtarli:

The case is being investigated by the Prosecution Service of Georgia. In 2021, the legal qualification of the alleged crime was specified and currently the investigation is being conducted under article 143 §3 (a) (illegal deprivation of liberty, committed with a prior agreement by a group of persons) of the Criminal Code of Georgia. In the course of the investigation, tens of investigative and procedural actions were carried out on the case, including questioning of up to 400 individuals; video surveillance camera footages were requested and examined; the relevant forensic examinations were conducted; within the frame of international cooperation, several mutual legal assistance requests were sent abroad.

On 7 April 2021, Afgan Mukhtarli arrived in Georgia. After his arrival, he was immediately questioned as a witness and an investigative experiment was conducted with his participation. Currently, the investigative authority conducts subsequent operative-investigative activities and is in the process of questioning various witnesses specified by Afgan Mukhtarli in his testimony.

In April 2021, Afgan Mukhtarli was also granted the victim status. The Prosecution Service of Georgia will continue the investigation in the case and take all necessary measures to bring alleged perpetrators to justice.

The case is being examined by the European Court of Human Rights and any conclusion before the Court's adjudication will not be accurate.

5-6 July events

The investigation carried out in the case has established that on July 5 2021, the individuals participating in the demonstration held in parallel with the "Tbilisi Pride "attacked journalists and cameramen representing different TV companies, internet publishers, and the press to prevent them from their journalistic activities, with the motive of intolerance based on discrimination.

The offenders also persecuted them based on their profession and did not let them perform their professional duties. To interfere with their professional work, using physical and verbal abuse, the perpetrators were forcing the representatives of the TV companies "Rustavi 2", "TV Pirveli", the publisher "Tabula", the information agency "Newpost" etc., to cease their professional activities.

More than 300 individuals have been interviewed, and personal searches and searches of the premises of 15 suspected, and their accomplices were carried out based on the court ruling, resulting in a seizure of computer and mobile devices.

52 mobile phones and 20 devices containing electronic information (memory cards and computer equipment) were seized. The information-technological examination was assigned to the mobile phones and computer equipment that were seized as a result of the search.

Criminal prosecution was initiated against, and detention as a measure of constraint was applied to 31 individuals as part of the ongoing investigation into the criminal cases on the charges of unlawful interference with a journalist's professional activities and violence committed by participants of a demonstration against "Tbilisi Pride" on 5-6 July 2021.

Based on the judgments, 31 individuals were found guilty in connection with the 5-6 July 2021 violence, out of which 27 were sentenced to prison terms ranging from one to five years. The remaining 4 individuals were fined by the court.

The Ministry of Internal Affairs of Georgia is investigating the separate case about the potential organisation and management of group violence and public incitement violence, persecution and unlawful interference with the journalist's professional activities. A number of computer forensic examinations are pending. Decision on launching criminal prosecutions depends on the degree of incriminating evidence.

The investigation is under way.

In light of the above, the PSG declares that it took all possible steps to investigate both cases and therefore, there are no grounds for the assumption that the mentioned investigations lacked effectiveness and impartiality. Hereby, the PSG further declares that the investigation will also be continued actively in future and all necessary measures will be taken in the case.

Paragraph 45. The Committee is gravely concerned at the excessive use of force by law enforcement officials against protestors, activists and journalists in dispersing assemblies, including in June and November 2019 in Tbilisi.

Paragraph 46 (a). In accordance with article 21 of the Covenant and in light of the Committee's general comment No. 37 (2020) on the right of peaceful assembly, the State party should:

(a) Ensure that all allegations of excessive use of force and arbitrary arrest and detention by law enforcement officials during peaceful assemblies are investigated promptly, thoroughly and impartially, that those responsible are prosecuted and, if found guilty, punished and that the victims obtain redress;

Comments of Georgia

Concerning the case of June 2019

The Prosecution Service of Georgia is investigating the case regarding exceeding official power, using violence and weapon by specific law enforcement officers participating in protection and restoration of public order on 20-21 June in Tbilisi. As of today, more than 1000 investigative and procedural actions have been conducted on the case; about 800 individuals were questioned; processed and unprocessed video and photo material demonstrating events of 20-21 June, as well as medical documentation were collected; forensic medical examination was appointed in relation with 340 individuals, forensic traceologic examinations were also appointed. All weapons used during the events of 20-21 June, as well as sample cartridges were seized and subsequently forensic ballistics and forensic chemistry examinations were conducted.

In total, the investigation obtained photo and video material amounting to more than 10 terabytes. Currently, the examination of the seized materials is under way, with a view to establish particular episode and to identify the relevant persons.

27 individuals were granted the victim status, including 11 journalists. The prosecution was launched against 3 employees of the Ministry of Internal Affairs, under article 333 §3 (b) of the Criminal Code of Georgia.

It should be noted that the case in question is voluminous and includes several episodes of the crime. As mentioned above, hundreds of witnesses have been interviewed (participants and police officers), and a large amount of electronic information has been obtained (video recordings).

In most cases, the injured persons and witnesses cannot provide the investigation even with minimal information necessary for the identification of the police officers (who shot, from which location, and at what specific moment).

Therefore, the investigation examines the case materials with the following chronology:

(1) The testimony of the injured person;

(2) Identifying the injured person in the footage (there are difficulties in this regard);

(3) Determining the probable location in case of identification of the injured person;

(4) Identifying police officers in a specific location (taking into account their mobility);

(5) Identifying the specific police officers, if possible.

To grant the participant of the rally a victim status, and to identify the episode (a shooter), regardless of the damage to health, it is necessary to determine the exact situation when a specific weapon was used against the participant. This aims to establish whether using a weapon against a person was legitimate and proportionate, as injuring a person by a police officer can be legitimate if there are certain grounds. This makes it difficult to identify the episode.

In light of the above, the PSG declares that there are no grounds for the assumption that the investigation in the case of June 2019 lacked effectiveness and impartiality and some delays in the investigation process were caused by the objective reasons.

The case is being examined by the European Court of Human Rights and any conclusion before the Court's adjudication will not be accurate.

Paragraph 47. The Committee is concerned by reports of ill-treatment and violence, including sexual violence, committed against children in residential institutions. It is also concerned about the continued practice of early marriage and corporal punishment (arts. 23-24 and 26).

Comments of Georgia

The committee did not take into account the information provided by the delegation about the measures implemented in the direction of fighting against early marriage. For the third year in a row, the Ministry of Internal Affairs has been conducting an informational campaign against child marriage - "Do not deprive childhood", the goals of which are to prevent child marriage, to raise public awareness, to properly enforce referral mechanisms, to strengthen inter-agency coordination, to identify and eliminate juvenile delinquency in a timely manner, and to increase reporting. The campaign has positive results, as evidenced by the increased number of reports and the significant number of positively concluded cases.

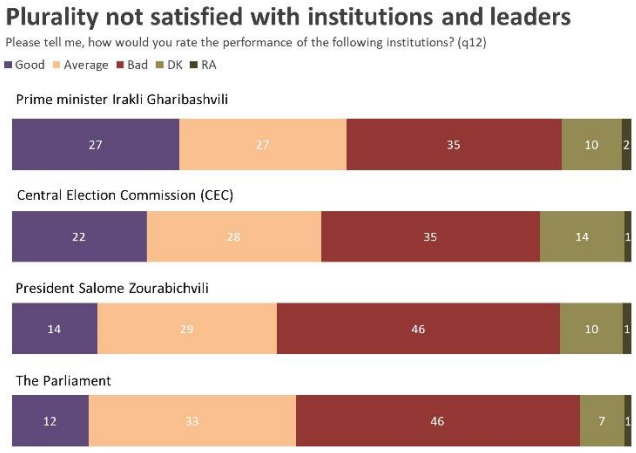
In addition, the Human Rights Protection and Investigation Quality Monitoring Department carries out in-depth monitoring of each case on a daily basis and ensures effective investigation and victim support.

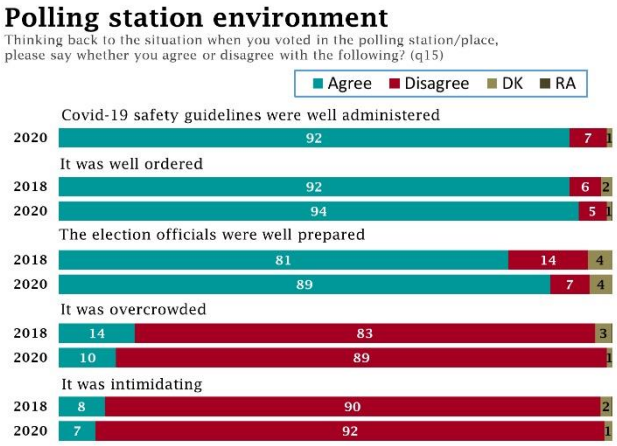
Paragraph 49. While noting the June 2021 electoral reforms, the Committee remains concerned about […] public mistrust in the election commissions […].

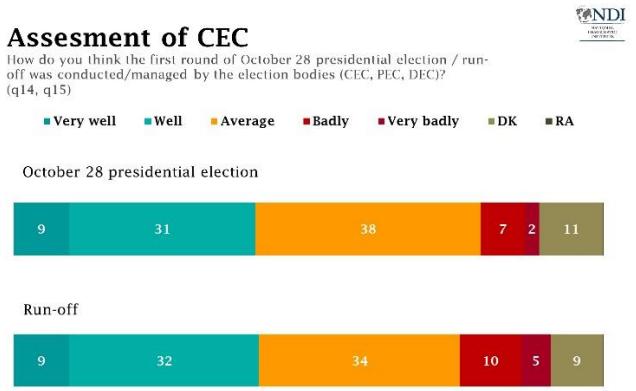
Comments of Georgia

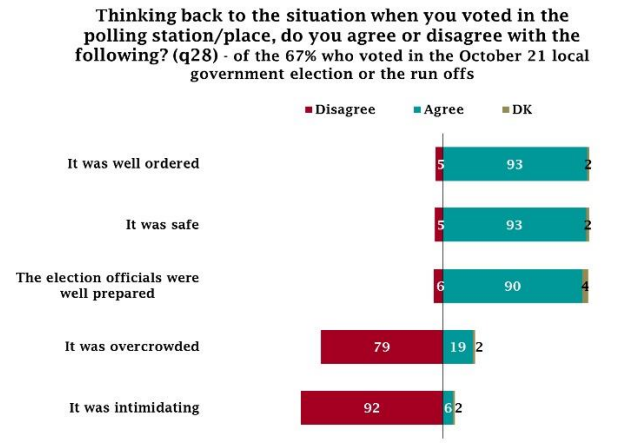
It is unclear to the election administration (EA) of Georgia what is the basis of the claim that there is "public mistrust in the election commissions"? While, according to the surveys conducted since 2015, the "good" or "average" assessment of the CEC's activity has never fallen below 50 percent.

Please see relevant slides from surveys conducted by NDI in 2017, 2018, 2020, and 2021 following general elections that confirms that not only is there public mistrust, but election administration's work enjoys quite a high level of public trust.









Please see the full version of the studies at the following links[12] in the reference.

[12] https://www.ndi.org/sites/default/files/NDI%20Georgia%20-%20December%202021%20poll_Eng_vf.pdf
https://www.ndi.org/sites/default/files/NDI%20Georgia_December%202020%20Poll_ENG_FINAL.pdf
https://www.ndi.org/sites/default/files/NDI%20Georgia_Political%20Poll%20Presentation_December%202018_English_Final.pdf
https://www.ndi.org/sites/default/files/NDI%20poll_December%202017_ISSUES_ENG_vf.pdf

Paragraph 51. Despite the Law on State Language in 2015 and the increased availability and accessibility of the Georgian language education, it [the Committee] regrets that language barriers continue to infringe the enjoyment of Covenant rights by minorities, **especially groups with lesser-used languages.** It also notes with concern the relatively low rate of birth registration among minority groups (arts. 25-27).

Comment of Georgia

The presented information does not correspond to reality and is irrelevant. The Groups with lesser - used languages (Ossetians – 0.39%, Kurds -0.04%, Avars – 0.03%, Kists -0.15%, Assyrians – 0.06%, Udins -0% -174, etc.) have no language barrier. They have a good command of the State (Georgian) language, which is widely used by them (in family and public space).