

# *Council of Europe contribution for the 37<sup>th</sup> UPR session (2-13 November 2020) Regarding Georgia*

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## Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

### Georgia (September 2018)



CPT\_Inf\_2019\_16\_1 CPT\_Inf\_2019\_16\_2 CPT\_Inf\_2019\_17\_1

## Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

On 20 June 2019, in the context of growing tensions around the announced Pride march, the Commissioner issued a [statement](#) recalling that all citizens in Georgia enjoy the same human rights to freedom of expression and right of peaceful assembly, free from discrimination, violence and hate. She called on the authorities to ensure the safety of the participants and to investigate death threats made against the Public Defender.

On 12 January 2016, the Commissioner published his [observations](#) on the human rights situation in Georgia following his [visit](#) from 9 to 13 November 2015. The observations, addressed to the Prime Minister of Georgia, provided an update on justice reforms, tolerance and non-discrimination, as a follow-up to the Commissioner's [report](#) published in 2014.



CommDH\_2016\_2

CommDH\_2014\_9

The Commissioner welcomed the dynamic pace of the justice reforms, noting that certain positive trends continued, such as the decrease in the concordance between the opinions of judges and those of the prosecutors. Moreover, the reform of the juvenile justice system had led to decreases in the number of convictions, the use of custodial sentences and recourse to pre-trial detention for juveniles.

However, a number of concerns regarding the independence and functioning of the justice system persisted, including shortcomings in relation to the selection, appointment and transfer of judges. Recalling that the selection, appointment and transfer of judges should be transparent, merit-based and carried out in accordance with clear criteria, the Commissioner encouraged the Georgian authorities to enact the necessary changes, on the basis of the [recommendations](#) provided by the Venice Commission and the Directorate of Human Rights of the Council of Europe.



**CDL-AD\_2014\_031**

The Commissioner recommended the introduction of a procedure for the random allocation of cases among judges, with a view to improving the functioning of the judiciary and better shielding judges from internal and external interference. He also reiterated that the probationary period for judges before their appointment for life should be reviewed. He further reiterated the need to deal adequately with the allegations of unlawful interference with the work of judges and to apply sanctions as appropriate. At the same time, the Commissioner underlined that it is important for judges to remain accountable and that disciplinary mechanisms should function properly.

Referring to allegations of politically-motivated measures and a biased approach vis-à-vis members of the opposition, in particular the United National Movement (UNM), the Commissioner observed that despite an overall decrease in recourse to pre-trial detention as a preventive measure, certain problems could be observed in the use and extension of pre-trial detention in relation to members of the opposition.

He encouraged the authorities to undertake resolute efforts to increase the impartiality and accountability of the work of prosecutors, as well as to strengthen their competences and capacity to perform effective investigations into allegations of human rights violations in accordance with the criteria defined in the case-law of the European Court of Human Rights. This notably pertains to alleged abuse, including ill-treatment, in some penitentiary institutions and police stations. He also encouraged the authorities to provide a detailed and comprehensive account to the public regarding the scale of human rights violations which were the subject of complaints received after October 2012, including those which have occurred under the former administration, as well as the actions undertaken to end the violations, punish the perpetrators, provide redress and compensation to the victims and prevent similar occurrences.

Finally, the Commissioner urged the Georgian authorities to establish the necessary conditions for an effective implementation of the anti-discrimination law, notably by adopting the amendments to the law which would strengthen the role of the Public Defender and extend the deadline for the submission of cases to courts. Law enforcement and judicial bodies should have a good understanding of the anti-discrimination law and be able to adequately identify, qualify and investigate hate crimes. The bias motive should be taken into account as an aggravating circumstance and perpetrators should receive punishment commensurate to the gravity of the offence. It is also crucial for the authorities, public figures and community leaders to send an unambiguous message in favour of human rights and tolerance, and against violence, hate speech and discrimination. Noting with regret persistent reports of intolerance and discrimination against members of religious minorities, the Commissioner stressed that this issue should be tackled urgently and in line with a human rights-based approach.

## Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance ([ECRI](#)) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI’s monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI’s country reports.

Conclusions on Georgia (adopted on 5 December 2018 / published on 5 March 2019)



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## Protection of minorities

### Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

The Advisory Committee on the Framework Convention also adopted the [3<sup>rd</sup> Opinion on Georgia](#) on 7 March 2019.



ACF-OP-2019\_0  
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The Resolution related to this opinion has not been adopted yet

## European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals (since 1 July 2019). A committee of independent experts examines the state’s periodical report and addresses an evaluation report to the Committee of

Ministers, including proposals for recommendations.

n/a

### **Ad hoc Committee of Experts on Roma and Traveller Issues (CAHROM)**

Following the High-Level meeting, intergovernmental work on Roma issues has been upgraded: on 16 February 2011 the Ministers Deputies adopted terms of reference for a new Committee of Experts (CAHROM) to be answerable directly to the Committee of Ministers. The [terms of reference](#) - which have been renewed by the Ministers Deputies for the years 2018-2019 - place emphasis on the analysis and evaluation of the implementation of national policies and thematic exchanges of experience and good practices. European Union institutions, international organisations, the European Roma and Travellers Forum and other relevant (Roma and Traveller) organisations are associated as observers to the CAHROM.

### **Action against trafficking in human beings (GRETA)**

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.



GRETA's latest report on Georgia is in the process of adoption and should be published later this year. The previous reports are four to five years old, hence not relevant.

## **Preventing and combating violence against women and domestic violence (GREVIO)**

The Council of Europe Convention on preventing and combating violence against women and Domestic violence ([Istanbul Convention](#), CETS No. 210) is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond safer. Preventing violence, protecting victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change their attitudes. In essence, it is a renewed call for greater equality between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of intolerance and denial.

The Council of Europe Istanbul Convention provides for two types of monitoring procedures:

1. a country-by-country evaluation procedure;
2. and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention.

[GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

The GREVIO evaluation procedure in relation to Georgia was launched in February 2020. Georgia is expected to submit its state report on the implementation of the provisions of the Istanbul Convention by 30 June 2020.

## **Protection of children against sexual abuse (Lanzarote Convention)**

The Council of Europe's [Lanzarote Convention](#) on the Protection of children against sexual exploitation and sexual abuse is an international treaty dedicated specifically to the protection of children against all forms of sexual violence. It requires States to offer a holistic response to sexual violence against children, through the "4 Ps approach":

- **Prevention** (through awareness-raising, training, screening and intervention programmes)
- **Protection** (through reporting, support programmes, child-friendly judicial proceedings)
- **Prosecution** (through substantive criminal law requirements), even when the crime is committed abroad
- **Promotion** of national and international cooperation.

The “[Lanzarote Committee](#)” (i.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) is the body established to monitor whether Parties effectively implement the Lanzarote Convention. To do so, the Committee evaluates the information which has been provided by the national authorities and other sources in their replies to questionnaires developed by the Committee itself. This monitoring procedure is divided into thematic rounds. At the end of each round, the Lanzarote Committee adopts “implementation reports” which contain its assessment of the situation with respect to the monitored Parties.

To mark the different level of action required by Parties to improve the situation, the recommendations addressed by the Lanzarote Committee to Parties in its implementation reports use the verbs to “urge”, “consider” and “invite” as follows:

- “**urge**”: when the situation is not in compliance with the Convention, or when, despite the existence of legal provisions and other measures, the implementation of a key obligation of the Convention is lacking;
- “**consider**”: when further improvements are necessary in law or in practice to fully comply with the Convention;
- “**invite**”: when one or several promising practices are highlighted to suggest enhanced protection of children.

Georgia was not a party to the Convention when the 1<sup>st</sup> monitoring round on the “Protection of children against sexual exploitation and sexual abuse in the circle of trust” was carried out.

The second monitoring round is underway. It is on “The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)” and focuses more specifically on self-generated sexually explicit images. The information submitted by Georgia in the context of the 2<sup>nd</sup> monitoring round is available [here](#). The implementation report with respect to this theme should be adopted by the end of 2020.



T-ES-2017\_ICT-Ge  
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As to the urgent monitoring round on “Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse”, Georgia has taken satisfactory action with respect to the 5 urge recommendations addressed to it. The Lanzarote Committee is now assessing its compliance with the 10 following “**consider** recommendations”, requesting that Georgia:

- put in place effective mechanisms for data collection with a specific focus on children affected by the refugee crisis who are victims or presumed victims of sexual exploitation and sexual abuse and review the possible removal of obstacles to the collection of such data, in particular, where they exist, legal restrictions to do so, with due respect for the requirements of personal data protection (R7).
- while providing adequate protection to child victims irrespective of where the exploitation/abuse occurred, should do their utmost to be able to distinguish between sexual exploitation and sexual abuse occurring prior to the entry of the child victim on their territories and after the entry (R11).
- fulfil obligations to prosecute the offenders and to provide international co-operation between the Parties in instances where the offence occurred prior to arrival on the territory for the purpose of investigation and prosecution (R12).
- encourage the co-ordination and collaboration of the different actors who intervene for and with children affected by the refugee crisis to ensure that preventive measures in regard to protection from sexual exploitation and sexual abuse are in place and protective measures are taken as speedily

as possible (R13).

- provides information and advice concerning prevention of and protection from sexual exploitation and sexual abuse to children affected by the refugee crisis in a manner adapted to their age and maturity, in a language they understand, and which is sensitive to gender and culture (reiteration of 1st implementation report, Recommendation R23) (R15).
- exchange information on awareness raising activities which specifically focus on the risks faced by children affected by the refugee crisis with respect to sexual exploitation and sexual abuse (R17).
- ensure that its specific recommendations on the child friendly handling of proceedings involving children victims of sexual abuse be implemented also in the context of proceedings involving children affected by the refugee crisis (R31).
- encourage and support the setting up of specific information services such as telephone or Internet helplines to child victims of sexual exploitation and sexual abuse affected by the refugee crisis as well as persons wishing to help them to provide advice in a language which is understandable to them (R32).
- agree on common strategies/procedures to effectively deal with the phenomenon of cross-border missing children (R35).
- reinforce or put in place a coordinated approach between the different agencies in charge in order to facilitate the prevention and protection of children affected by the refugee crisis from sexual exploitation and sexual abuse (R37).

### ***Fight against corruption (GRECO)***

*The 'Group of States against Corruption' (GRECO) monitors all its 50 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.*

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

The latest compliance report was published in July 2019:



Some positive developments have taken place regarding the prevention of corruption in respect of members of parliament, with various measures taken to further enhance the transparency of the legislative process and the adoption of a code of ethics for members of parliament. However, further clear rules on a public consultation procedure for draft legislation, an enforcement mechanism of the code of ethics for members of parliament, practical measures for implementation of the aforementioned code as well as more comprehensive rules on ad hoc disclosure of conflicts of interest of Members of Parliament, are still to be developed.

In respect of judges, “the third wave of judicial reform” has brought certain amendments to the Law on Courts, providing for clearer criteria for the selection of judicial candidates for the three-year probation period (notwithstanding the criticism expressed of the decision-making process within the HCJ in this respect). Further safeguards have been introduced against possible misuse of the transfer of judges to another court without their consent; a mechanism introduced for the random assignment of cases; the establishment of an Independent Inspector <sup>2</sup> which should make a more in-depth examination of complaints against judges possible <sup>2</sup> and the abolishment of the authority of the secretary of the HCJ to single-handedly end disciplinary proceedings. That said, more is required, in particular, in establishing clear and objective criteria for the promotion of judges, updating the Norms of Judicial Ethics (accompanied by practical measures for its implementation), taking measures to increase the effectiveness of disciplinary proceedings (inter alia by defining disciplinary offences more clearly) and limiting the immunity of judges to “functional immunity”.

Regarding prosecutors, GRECO is pleased that further measures have been taken to reduce the influence of the government and/or parliamentary majority on the appointment of the Chief Prosecutor and the Prosecutorial Council and that criteria have been introduced for the assignment and withdrawal of cases to/from prosecutors. It also welcomes that the Code of Ethics for the prosecution service has been updated and complemented by further training and confidential counselling on the required conduct, as well as written guidance and explanations with yet-to-be adopted commentary to the Code. However, even if a new Law on the Prosecution Service has entered into force in December 2018, GRECO cannot yet say that the concerns it expressed in the Evaluation Report as regards the process of recruitment and promotion of prosecutors have been sufficiently addressed. Similarly, GRECO still expects the disciplinary regime applicable to prosecutors to be further reviewed and the asset declaration regime to cover all prosecutors.

As a final point, GRECO welcomes the work that has been carried out to improve the Law on Conflicts of Interest and Corruption in Public Institutions. The various measures contained therein should allow for a more effective monitoring of asset declarations of members of parliament, judges and prosecutors.

## ***Execution of judgments and decisions of the European Court of Human Rights***

### ***Statistical data***

As of 31 December 2019, there were 49 (41 cases on 31/12/2018) cases against Georgia pending before the Committee of Ministers (“CM”) for supervision of their execution. Among these cases, 20 cases were “leading cases”, that is, cases revealing new structural or systemic problems.

In 2019, the CM was seized by three new leading cases and the amount of just satisfaction awarded was € 101 970 (€ 36 603 awarded in 2018). In 2019, six cases were closed by the adoption of a Final Resolution.

## Main cases / groups of cases under the Committee of Ministers' supervision

The main cases presently under the Committee of Ministers' 'enhanced' supervision cover notably the issues presented below. (For a more complete overview see:

### ECtHR factsheet for Georgia:



**CP\_Georgia\_ENG.**

### Country Factsheet of Georgia - Execution of ECtHR judgments:



**EJCHR\_Factsheet**

## Important cases

### ➤ Lawfulness of detention and use of restrictions on rights for illegitimate purposes

**Merabishvili** (72508/13) Judgment final on 28/11/2017

This case concerns the applicant's continued pre-trial detention in the absence of sufficiently reasoned decisions, and abusive use of pre-trial detention as a pressure mean to get information on matters unrelated to the criminal case.

### ➤ Lack of effective investigations into allegations of violations of the right to life and of ill-treatment, or excessive use of force by the police during arrest and/or custody

**Tsintsabadze group of cases** (35403/06) (ex Gharibashvili group) Judgment final on 18/03/2011

### ➤ Freedom of religion and freedom of assembly and association

**Identoba and Others group of cases** (73235/12) Judgment final on 12/08/2015

These cases concern the absence of State protection against physical assaults on persons of a religious community (Jehovah's Witnesses) and lack of adequate protection against homophobic bias-motivated attacks during an LGBT demonstration, ineffective criminal investigations into the events and allegations of ill-treatment.

## Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.



## Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Concerning **Georgia**, since 2015 the Commission adopted 3 opinions on the constitutional reform, six opinions on the functioning of the judiciary and prosecution service, one opinion concerning the electoral reform and one – functioning of the Constitutional Court.

## Constitutional reform

1. CDL-AD(2018)005  
*Draft constitutional amendments as adopted on 15 December 2017 at the second reading by the Parliament of Georgia, adopted by the Venice Commission at its 114th Plenary Session (Venice, 16-17 March 2018)*



2. CDL-AD(2017)023  
*Opinion on the draft revised Constitution as adopted by the Parliament of Georgia at the second reading on 23 June 2017, adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017)*



3. CDL-AD(2017)013  
*Opinion on the draft revised Constitution*



**CDL-AD\_2017\_013**

## Judiciary and prosecution service

1. CDL-AD(2019)009  
*Urgent Opinion on the selection and appointment of Supreme Court judges*



**CDL-AD\_2019\_009**

2. CDL-AD(2019)006  
*Opinion on the concept of the legislative amendments to the Criminal procedure code concerning the relationship between the prosecution and the investigators*



**CDL-AD\_2019\_006**

3. CDL-AD(2018)029  
*Opinion on the provisions on the Prosecutorial Council in the draft Organic Law on the Prosecutor's Office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts*



**CDL-AD\_2018\_029**

4. CDL-AD(2018)012  
*Amicus curiae brief for the Constitutional Court of Georgia on the effects of Constitutional Court decisions on final judgments in civil and administrative cases*



**CDL-AD\_2018\_012**

5. *CDL-AD(2015)039*  
*Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia*



**CDL-AD\_2015\_039**

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6. *CDL-AD(2015)016*  
*Amicus Curiae Brief for the Constitutional Court of Georgia on the non ultra petita rule in criminal cases*



**CDL\_AD\_2015\_016**

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## **Electoral issues**

*CDL-AD(2016)003*

*Joint opinion on amendments to the Election Code of Georgia as of 8 January 2016*



**CDL\_AD\_2016\_003**

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## **Constitutional justice**

*CDL-AD(2016)017*

*Georgia - Opinion on the Amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings*



**CDL-AD\_2016\_017**

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