EUROPEAN MASTER'S PROGRAMME IN HUMAN RIGHTS AND DEMOCRATISATION

ARMENIAN COMMUNITY IN THE CONTEXT OF GEORGIAN DEMOCRATISATION

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ABSTRACT

Notwithstanding the progress that Georgia has made in the field of democratisation, issues pertinent to persons belonging to national minorities remain among the most topical issues in this country's political agenda. Due to the separation of Abkhazia and South Ossetia, the nationalism of significant segments of the ethnically Georgian population, the lack of civil cohesion in the society, and the consideration of minorities through the prism of state security, persons belonging to national minorities have been unable to secure their legitimate stake in the process of Georgian nation-building and democratic consolidation. Moreover, minorities are being discriminated against by the State institutions, and the authorities of the independent Georgia have proved unwilling to accommodate legitimate concerns of persons belonging to national minorities.

The vast majority of persons belonging to the Armenian community in Georgia can be characterised as persons belonging to a national, linguistic and religious minority. Instances of discrimination against Georgian citizens of Armenian origin are multifaceted and include both direct and indirect discrimination. International human and minority rights monitoring bodies perpetually mention shortcomings in the Georgian authorities' approach towards national minorities in Georgia, and the fact of repetitive mentioning of the same problems by various monitors makes it evident that the authorities lack the political will to adopt and implement appropriate policies vis-à-vis Georgian citizens belonging to national minorities.

KEYWORDS

Armenian community in Georgia, Armenian Church in Georgia, national minority, democratisation, human rights, direct discrimination, indirect discrimination, Samtskhe-Javakheti.

ABBREVIATIONS

AC/FCNM	Advisory Committee on the Framework Convention for the Protection of National Minorities
Belgian linguistics case	European Court of Human Rights case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium"
Bolzano/Bozen Recommendations	Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations
CERD	Committee on the Elimination of Racial Discrimination
COE	Council of Europe
COE/CM	Committee of Ministers of the Council of Europe
Constitutional Agreement	Constitutional Agreement between the Georgian State and the Georgian Orthodox Church
CSCE	Conference for Security and Co-operation in Europe
Declaration on Minorities	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECMI	European Centre for Minority Issues
ECRI	European Commission against Racism and Intolerance
ECRML	European Charter for Regional or Minority Languages
ECtHR	European Court of Human Rights
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
GOC	Georgian Orthodox Church
HCNM	High Commissioner on National Minorities of the Organisation for Security and Co-operation in Europe

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICG	International Crisis Group
National Concept	National Concept for Tolerance and Civil Integration of Georgia
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PR	Personal Representative
SR	Special Representative
UN Sub-Commission	United Nations Sub-Commission on the Promotion and Protection of Human Rights
UN	United Nations
UPR	Universal Periodic Review
Venice Commission	European Commission for Democracy through Law of the Council of Europe

INTRODUCTION

Since two decades after the restoration of Georgian statehood, issues pertinent to human rights and democratisation have been among the most topical items in the country's political agenda. Georgia has made some progress on its way towards democratisation. However numerous problems still need to be settled and in this connection the Government's determination to correctly adopt appropriate policies is of fundamental importance. For further development of Georgian democracy and proper nation-building processes the country's political leadership needs to promote civil cohesion and the culture of Georgian citizenship. This general axiom is deemed especially important vis-à-vis those segments of the society who identify themselves with ethnic, linguistic and religious minority groups. Examination of Georgia's profile by various international human rights monitoring bodies makes it evident that notwithstanding its achievements, challenges faced by representatives of minority groups have been among the most problematic issues. Unsettled legitimate concerns of large segments of the society are defective for all members of Georgian society, and first of all for the Georgian State.

This study seeks to propose an answer to the question concerning the extent to which the Georgian State, which has the legal and moral responsibility to respect, protect, and fulfil its human rights obligations vis-à-vis its citizens without any harmful discrimination, and with due consideration of specific needs of representatives of vulnerable groups, considers legitimate interests and needs of ethnic, linguistic and religious minorities in Georgia. This study is mainly focused on Georgia's second largest minority group - the Armenians, however some of its findings are applicable to other minority groups as well.

This study covers the territory under the effective control of the Georgian central Government, where Tbilisi is able to exercise its jurisdiction. Its findings are mostly based on data provided in various reports concerning the situation on human and minority rights in Georgia, as well as on information received from various experts, representatives of international organisations and special mandate holders.

The study consists of three parts, devoted to the personal scope of the legislation related to national minorities, the recent history and current conditions of the Armenian

community in Georgia, and the international legislation and institutions which have mandates that are applicable in Georgia. The first part refers to the general outline of *ratione personae* of *hard* and *soft law* international, European and Georgian domestic legal instruments related to minorities. The second part aims to provide information pertinent to factual conditions of the Armenian community in Georgia, its members' attitude towards the Georgian state, and some information concerning the most important provisions of the Georgian domestic legislation on minorities. The last part of the study outlines the international monitoring bodies' and special mandate holders' positions vis-à-vis minorities in Georgia and their recommendations concerning further democratisation of the Georgian society and proper integration of persons belonging to minority groups within the Georgian common political and societal space.

DEFINITION OF A MINORITY:
RATIONE PERSONAE

1. DEFINITION OF A MINORITY: *RATIONE PERSONAE*

Within the framework of the current chapter the general overview of issues pertinent to *ratione personae* of minorities' related international and Georgian legal acts will be provided. Furthermore, the compatibility of the Georgian authorities' position concerning the personal scope of legislation on minorities will be studied through the prism of requirements established by the international law and human and minority rights monitoring bodies.

General international law leaves open the issue of definition of the term 'national minority', and in those States where minorities make part of the society, the question of personal scope of the legislation on minorities belongs to these States' margin of appreciation. However, this margin is not unlimited and States, while making decisions with regard to *ratione personae* should take into consideration applicable international law and practice in order to adopt inclusive policies vis-à-vis minorities. The general rule is that States shall not adopt regulations which limit the possibility of persons who can objectively claim the status of a representative of a minority group, and who express personal will to belong to such a group, to enjoy the status of a minority.

In relation to the issue of definition of a minority in international law Joshua Castellino and Jérémie Gilbert mention that "[f]or the last few decades, human rights lawyers, lawmakers and academics have been unsuccessfully struggling to find a concise legal definition for a 'minority'."[1] While this general assertion is deemed true, as we shall see later, there is nevertheless one legally binding document in international law, which contains a specific definition of national minority, albeit with rather limited geographical scope.

The European Commission for Democracy through Law of the Council of Europe (hereinafter referred to as Venice Commission) mentions that the attitude towards strict definition of the concept of 'minority' in international public law has transformed and the international community has made a decision to leave the issue of personal scope relatively open in order not to create strict limitations for the *ratione personae* of legislative corpus potentially applicable to minorities. This approach has been chosen mostly because of the variety of minorities in the world, but also because of the

[1] J. Castellino and J. Gilbert, 2003, p. 165.

desirability of extension of the minorities' related legal regime to the largest possible number of specific situations. Actually, this could be deducted from the Venice Commission's assertion that "[w]hereas until the early nineties, it was felt that a legally binding concept of 'minority' was needed in international law, it has become increasingly clear in the last decade that efforts to bring about such a definition would not be successful and could even lead to a weakening of the minority rights regime".[2]

1.1. DEFINITION OF A MINORITY IN UNIVERSAL INTERNATIONAL LAW

The first international legal norm explicitly related to minorities has been included in article 27 of the International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR). Stating that "[i]n those States in which ethnic, religious or linguistic minorities exist...", the United Nations (hereinafter referred to as UN) on the one hand did not propose any definition of those human beings whose rights were to be protected by virtue of this article, and on the other hand left undefined the meaning of 'existence' of minority in the State, and thus various interpretations could have been made with this regard. A relevant question, for instance, would be whether formal or *de jure* recognition on behalf of the State should have been considered as the condition *sine qua non* for a minority to enjoy protection under article 27 of the ICCPR. Another question could have been related to the eligible subject to make decisions concerning 'existence' of a minority in a given jurisdiction and which could have been the criteria to be utilised for confirmation/negation of such an existence? These are two questions, which immediately come to mind, while many others could have been posed to clarify the meaning of the article and even to commence discussions for further instrumentalisation of its provisions.

However, if until 1994 this provision could have been (but not necessarily should have been) interpreted as a formal confirmation of the supremacy of States' discretion in recognising the existence of minorities within their respective jurisdictions, after adoption of the General Comment 23 by the UN Human Rights Committee, which is the ICCPR's monitoring body and its main interpreter, no one-sided restrictive interpretations are possible anymore, as the Committee has unequivocally mentioned

[2] COE Document CDL-AD(2007)001, 2007, para. 127.

that "existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria".[3]

The UN Human Rights Committee in its General Comment 23 on the rights of minorities, without giving a definition of the term 'minority', has nonetheless given a number of indications with regard to the personal scope of article 27 of the ICCPR. The Committee mentions that the *ratione personae* of article 27 comprises persons "who belong to a group and who share in common a culture, a religion and/or a language",[4] but this assertion must be read in conjunction with paragraph 3.1 of the General Comment 23, which states that minority rights are conferred on individual human beings by virtue of their objective belonging to the group. These rights are "conferred on individuals as such",[5] and thus they are individual rights. With this regard Senior Researcher at the Institute for the Law of Peace and Armed Conflict at the Ruhr-University Bochum, Mr. Hans-Joachim Heintze mentions that "[minority] rights are viewed as individual rights - i.e. the rights of an individual member of a minority group - and not group rights."[6] It seems to be doubtless that, this assertion should be considered within the context of real life situations where effective realisation of individual minority rights requires the existence of a group, whose members share common characteristics which allow them to enjoy collectively their identity via realisation of personal minority rights.

In the view of the UN Human Rights Committee, the minority rights by virtue of individuality of the respective right holders are contraposed to collective rights of peoples, such as for example the right to self-determination.[7] This right does not belong to individual human beings *per se*, but belongs to the groups of human beings known as 'people'. So, realisation of the right to self-determination should ideally be based on free collective expression of will (often political will) by the members of the group. It is worth mentioning that as in the case of the term 'minority' in this case too, international law does not contain any definition of the term 'people', and the lack of definition

[3] UN Document CCPR/C/21/Rev.1/Add.5, 1994, para. 5(2).
[4] Ibidem, para. 5(1).
[5] Ibidem, para. 3(1).
[6] H. Heintze, in OSCE Yearbook 2000, p. 261.
[7] See UN Document CCPR/C/21/Rev.1/Add.5, 1994, para. 3(1).

creates fertile ground for instrumentalisation of the right to self-determination by various actors. However, insofar as the right to self-determination and its instrumentalisation in international relations are beyond the scope of this study, I will not go into details on these issues.

According to the Human Rights Committee the formal citizenship of a State party should not be seen as a precondition for a human being to be considered as a right holder within the framework of article 27 of the ICCPR. It seems clear that this does not mean that non-citizen minorities should be conferred political rights, as this category of rights is reserved exclusively for those members of the society, who are politically 'affiliated' with the State, and whose democratically established organs have discretionary power for making decisions concerning the personal scope of the political rights' holders under their jurisdiction. This attitude is maintained *inter alia* by the UN Human Rights Committee,[8] the International Convention on the Elimination of all Forms of Racial Discrimination (hereinafter referred to as ICERD),[9] and the Committee on the Elimination of Racial Discrimination (hereinafter referred to as CERD),[10] as well as by other UN bodies and regional organisations.

Moreover, the Human Rights Committee considers non-residents and migrant workers among the right holders, declaring the mere fact of their 'existence' within the jurisdiction of a State party as a sufficient precondition for the conferral of rights envisaged by article 27.[11]

In 1979, in order to define the personal scope of article 27 of the ICCPR, Special Rapporteur (hereinafter referred to as SR) of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities Mr. Francesco Capotorti has elaborated a definition of the term 'minority' and proposed it for the Sub-Commission's consideration. According to the SR minority was "a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of

[8] See Ibidem, para. 5(2).
[9] See UN Document A/RES/20/2106, 1965, art. 1(2).
[10] UN Document contained in A/51/18, *General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms*, 1996, para. 3
[11] UN Document CCPR/C/21/Rev.1/Add.5, 1994, para. 5(2).

solidarity, directed towards preserving their cultures, traditions, religion or language."[12] Even though Capotorti's suggestion is largely quoted in the literature, it has never been accepted and the definition has not gained legally binding nature in international public law.[13]

It is worth mentioning that in order to be considered as a right holder under article 27 of the ICCPR, a human being does not need to avow his/her belonging to all the three categories mentioned in the ICCPR, and affiliation with one or some of them would be enough to constitute a representative of the protected target group. To conclude on the personal scope of article 27 of the ICCPR, a minority would be a human being, who physically 'exists' within the jurisdiction of the ICCPR State party, and whose culture, religion and/or language differ from those of the majority.

Another universal[14] legal document related to the rights of minorities is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter referred to as the Declaration on Minorities).[15] In general terms, the personal scope of the Declaration on Minorities is identical with that of article 27 of the ICCPR. However, the drafters of the former decided to 'enlarge' the *ratione personae* and introduced the additional term 'national minority' which is not present in the ICCPR. In relation to this the UN Sub-Commission on the Promotion and Protection of Human Rights (hereinafter referred to as UN Sub-Commission) mentioned that the "addition does not extend the overall scope of application beyond the groups already covered by article 27."[16]

As in the case of *ratione personae* of article 27 of the ICCPR, in the Declaration of Minorities' case as well in order to be considered as a right holder a human being does not need to avow his/her belonging to all the four categories enumerated in the Declaration on Minorities, and affiliation with one or some of them would be enough to constitute a representative of the protected target group. However, rights of various

[12] UN Document E/CN.4/Sub.2/384/Rev.I, 1979, para. 568.
[13] See COE Document CDL-AD(2007)001, 2007, para. 10.
[14] Universal in this case is used to distinguish the UN documents from regional documents, such as the COE or the OSCE documents.
[15] See UN Document A/RES/47/135, 1992.
[16] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 6.

categories of minorities might have "somewhat different content and strength,"[17] meaning that for example rights of religious minorities might differ from those of linguistic minorities. In order to comply with the international law requirements the duty bearers should adopt different approach towards legitimate needs of various minority groups, based on specific characteristics of respective right holders.

The Venice Commission presumably has a discordant opinion on the issue of the overall scope of persons covered by article 27 of the ICCPR and the Declaration on Minorities. In its *Report on Non-Citizens and Minority Rights* the Venice Commission mentions that "different categories may be covered by this [minority] term: in the UN system, the beneficiaries of the rights under article 27 ICCPR are persons belonging to 'ethnic, religious or linguistic' minorities and the 1992 Declaration adds the category 'national' minorities."[18] The Council of Europe's (hereinafter referred to as COE) advisory body on constitutional matters'[19] position could be interpreted as contradicting the Declaration's explanation made by the UN Sub-Commission.[20] While different interpretations could theoretically be made, the following paragraph clarifies that the UN Sub-Commission itself admits the existence of different minorities. Actually, minority groups objectively might not be that different, however their subjective perception might differ on the basis of political preferences and different legal systems in which minorities exist. So far, the inclusion of the category 'national minority' into the pre-existing three categories of minorities should presumably be based on the need to cover the largest possible groups of minorities within the framework of various political formations. This idea is asserted *inter alia* by the UN Sub-Commission when it mentions that "even if a group is held not to constitute a national minority, it can still be an ethnic, religious or linguistic minority and therefore be covered by the Declaration."[21]

The UN Sub-Commission's affirmation that "[w]hile only individuals can claim the rights, the State cannot fully implement them without ensuring adequate conditions for

[17] For substantial discussion on different rights of various minorities see Ibidem, paras. 6-7.
[18] COE Document CDL-AD(2007)001, 2007, para. 126.
[19] Source of the epithet is the Venice Commission's official website, available at http://www.venice.coe.int/site/main/Presentation_E.asp (accessed on 30 June 2012).
[20] See UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 6.
[21] Ibidem, para. 8.

the existence and identity of the group as a whole"[22] could be considered as the UN Sub-Commission's confirmation of the ICCPR treaty body's Human Rights Committee's approach regarding the individual nature of minority rights and their placement within the context of right holders' objective belonging to a non-dominant group.

Further, the UN Sub-Commission confirms the distinction made by the Human Rights Committee between personal minority rights and collective rights of peoples. In this connection the UN Sub-Commission mentions that "[t]he rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights."[23] The UN Sub-Commission continues by asserting that minorities can potentially become the subject of the right to self-determination, but in such a case their status will transform into the status of people, and the appropriate legal framework for them will equally transform into common article 1 of the two Covenants on Human Rights.[24] The Sub-Commission highlights the Declaration on Minorities' neutrality vis-à-vis the right to self-determination by mentioning that "[it] neither limits nor extends the rights to self-determination that peoples have under other parts of international law."[25]

The UN Sub-Commission makes a distinction between the rights of minorities and those of indigenous peoples, and it mentions that the latter can enjoy the minority rights regime should they wish so.[26] The interrelation between the rights of minorities and the rights of indigenous peoples could be explained as following: all the rights of minorities can be enjoyed by indigenous peoples, but the rights of indigenous peoples cannot be enjoyed by minority groups. Perhaps the main difference between the rights of minorities and those of indigenous peoples is that some of indigenous peoples' rights belong to the category of collective rights, while rights of minorities are individual

[22] Ibidem, para. 14.
[23] Ibidem, para. 15.
[24] Although in connection with the right to self-determination the UN Sub-Commission mentions only article 1 of the two Covenants on Human Rights, it should be mentioned that the law applicable to the right to self-determination is much wider.
[25] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 19.
[26] See Ibidem, para. 16.

rights of members of a group.[27]

Ultimately, to conclude the section concerning the personal scope of minorities' related universal legislation a provision from the ICERD is deemed appropriate. Paragraph 1 of article 14 of the ICERD tackles the issue of complaints against States parties of the Convention and it mentions that CERD, i.e. the Convention's treaty body, with regard to States who have recognised its authority, has competence "to receive and consider communications from individuals or groups of individuals".[28] This provision might be interpreted as a formal recognition of limited international legal personality of 'groups of individuals', as according to this specific *hard law* document they are eligible to enter into legal relations with the UN treaty body and to lodge a complaint. However, this assertion could be questionable as such a capacity should be considered within the ICERD's more general scope whose rationale is based on the need to fight against racial discrimination interpreted in the paragraph 1 of article 1 of the very same document as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin".[29] Thus the *ratione materiae* of this legal provision *per se* implies the existence of potential collective nature of an eventual victim as the mentioned references belong to representatives of groups who bear these characteristics.

1.2. DEFINITION OF A MINORITY IN EUROPEAN LAW

Not only the universal international law lacks legally binding definition of the term 'minority', but also the European regional system as well does not contain any legal norm which defines 'minority'. European human rights system contains quite strong and multidimensional minority rights component which has been established with the vision of protection and promotion of minority rights, as well as consideration of security risks related to minorities.

The most relevant legally binding document adopted within the COE's institutional framework and explicitly related to minorities is the Framework Convention for the Protection of National Minorities (hereinafter referred to as FCNM), which according to Mr. Jonathan Wheatley from the European Centre for Minority Issues (hereinafter

[27] See Ibidem, para. 18.
[28] See UN Document A/RES/20/2106, 1965, art. 14(1).
[29] See Ibidem, art. 1(1).

referred to as ECMI) "itself provides a rather flexible conception of what a national minority is, suggesting as it does (in Article 3) that national minorities are defined by a combination of subjective and objective factors."[30]

FCNM's Explanatory Report in connection with the lack of definition of the right holders under the FCNM mentions that "[i]t was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all [COE] member States."[31] Nonetheless, the drafters of the FCNM included some characteristics of national minorities in article 3, and further interpreted them in the Explanatory Report. Departing from the supremacy of subjective voluntary choice[32] of an individual whether to be considered as a national minority or not, the drafters have also highlighted indispensability of existence of objective criteria[33] which should be taken into consideration when decisions concerning *de facto* existence of minorities are being made.

Furthermore, the notion of 'national minority' has neither been defined in the mandate of the High Commissioner on National Minorities (hereinafter referred to as HCNM) of the Organisation for Security and Co-operation in Europe (hereinafter referred to as OSCE). With this regard the current HCNM stressed that "[m]y mandate does not define the notion of a 'national minority', and I am aware that a number of participating States even have a problem with this term, but I would like to refer to Max van der Stoel's[34] keynote address at the opening of the OSCE Minorities Seminar in Warsaw in 1994, when he stated that he "[…] won't offer you [a definition] of my own. I would note, however, that the existence of a minority is a question of fact and not of definition. In this connection, I would like to quote the Copenhagen Document of 1990 which […] states that 'To belong to a national minority is a matter of a person's individual choice.' […] I would dare to say that I know a minority when I see one. First of all, a minority is a group with linguistic, ethnic or cultural characteristics, which distinguish it from the majority. Secondly, a minority is a group which usually not only

[30] J. Wheatley, ECMI Working Paper No. 28, 2006, p. 20.
[31] COE Document, ETS No. 157, 1995, para. 12.
[32] Ibidem, para. 34.
[33] See Ibidem, para. 35.
[34] Mr. Max van der Stoel was the first HCNM.

seeks to maintain its identity but also tries to give stronger expression to that identity."[35]

Hence, notwithstanding the fact that the HCNM's mandate does not include any definition of a 'minority', the HCNM has however identified specific criteria related to the existence of minority in practice. Thus, he considers a minority being "a group with linguistic, ethnic, or cultural characteristics distinct from the majority and that usually not only seeks to maintain its identity but also tries to give stronger expression to that identity".[36]

Actually, the HCNM's position has further strengthened the pre-existing approach that the existence of a minority is a matter of fact and for this reason recognition and subsequent protection and promotion of specific rights of persons belonging to minority groups should not be based on arbitrary considerations. In this connection the Venice Commission mentions that in 1930 the Permanent Court of International Justice (the predecessor of the International Court of Justice), has already "concluded that the existence of a minority was a question of 'fact' and not of 'law', which made state 'recognition' [of minorities] irrelevant under international law".[37]

Having ascertained that general international public law lacks any definition of the notion of 'national minority' whatsoever, it should be mentioned that the positive international law however contains one specific provision which defines the notion of 'national minority' even though its geographical scope is limited. This document is the 1994 Convention on Rights of Persons Belonging to National Minorities,[38] adopted by the Commonwealth of Independent States. Article 1 of the Convention declares that a national minority is a permanent resident of the State party of the Convention, who possess its citizenship, and differs in his/her ethnic origin, language, culture, religion or traditions from that State's main population.

1.3. DEFINITION OF A MINORITY IN GEORGIAN DOMESTIC LEGISLATION

This section is devoted to issue of defining the notion of 'minority' in Georgia. Detailed information on this topic is available in the First Opinion on Georgia prepared

[35] K. Vollebæk, in OSCE Yearbook 2008, p. 326.
[36] OSCE HCNM - Factsheet, 2008, p. 2
[37] COE Document CDL-AD(2007)001, 2007, para. 9.
[38] The Convention is available at: http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=361 (in Russian, accessed on 30 June 2012).

by the Advisory Committee on the FCNM (hereinafter referred to as AC/FCNM).[39]

On 13 October 2005 Georgia ratified the FCNM by virtue of the Georgian Parliament's Resolution No.1938-II.[40] This Resolution was rather problematic[41] as some of its provisions were incompatible with the letter and the spirit of the FCNM. Jonathan Wheatley mentioned that "[w]hen Parliament finally submitted a Resolution on the Ratification of the [FCNM] on 13 October 2005, this Resolution included seven declarations that appeared to be designed to limit the interpretation of the FCNM."[42]

Actually, the Resolution had *inter alia* established a number of criteria for a human being which he/she must satisfy in order to be considered as a national minority. These criteria were Georgian citizenship, difference from the dominant part of the population in terms of language, culture and ethnic identity, residence in Georgia for a long period of time, and compact inhabitancy on the Georgian territory. As this Resolution represents an attempt to give a definition of the notion of 'minority' at Georgian national level, the Venice Commission's assertion concerning domestic definitions in the COE member States is deemed appropriate. It points out that a domestic definition could be "acceptable in international law, provided that the definition does not result in arbitrary or unjustified distinctions or, indeed, in a standard of protection that is inferior as compared to the international standards concerned."[43] The objective pursued by the criteria included in the Georgian Parliament's Resolution was maximum limitation of the personal scope of the right holders. On this issue Jonathan Wheatley stressed that such an expression of political will "appears to tilt the balance rather too far in favour of ascribed group membership over voluntary membership."[44] Actually the Resolution displayed the hesitance of the Georgian State to provide duly protection and promotion of rights of minorities under its jurisdiction.

It seems clear that all decisions of arbitrary limitation of the *ratione personae* of the FCNM within any domestic jurisdiction contradict with the international community's perception of minority rights regime. For this reason the Georgian Parliament's

[39] See COE Document, ACFC/OP/I(2009)001, 2009, paras. 22-31.
[40] The Resolution is available in S. Minasyan, 2007, pp. 80-81.
[41] See COE Document, ACFC/OP/I(2009)001, 2009, paras. 25-29.
[42] J. Wheatley, ECMI Working Paper No. 28, 2006, p. 14.
[43] COE Document CDL-AD(2007)001, 2007, para. 128.
[44] J. Wheatley, ECMI Working Paper No. 28, 2006, p. 20.

Resolution became an object of harsh critics from various non-governmental organisations (hereinafter referred to as NGO), academia and international society. In this connection the European Commission against Racism and Intolerance (hereinafter referred to as ECRI), in its Second Report on Georgia stressed that "care should be taken to adopt an inclusive approach in this [minorities' related] domain to allow all persons, irrespective of their situation, to take full advantage of these [legal] measures."[45]

Keeping in mind the negative attitude towards the restrictive provisions of the Resolution, the Georgian Government decided not to include this provision into the FCNM ratification instrument submitted to the COE. In the First State Report on implementation of the FCNM it mentioned that "[t]he government [of Georgia] started to work on the definition of the term 'national minorities'. The definition contained in the Resolution of the Parliament No.1938-II of 13 October 2005 did not conform to the spirit of the [FCNM], and experts, representatives of NGOs and the minorities did not agree with its content. As a result, when depositing the ratification note, Georgia refrained from presenting its definition of the term to the [COE]."[46] Moreover, the Government pledged to elaborate new definition which will be compatible with the letter and the spirit of the FCNM.

On 30 May 2012 Georgia submitted its Second Report on the implementation of the FCNM.[47] Despite the pledge to elaborate an appropriate definition of the notion of 'minority' the Report lacks any indication with this regard. Nevertheless, an interesting provision has been included in the Principles of the National Concept for Tolerance and Civil Integration (hereinafter referred to as the National Concept) adopted on 8 May 2009. According to the document the National Concept is based *inter alia* on the principle of the "right of minorities to freely choose whether or not to be treated as such".[48] This assertion of the Government of Georgia could be interpreted as a formal declaration that in case of expression of individual's will to be considered as a person belonging to minority group, the State will not apply arbitrary exclusionary criteria to

[45] COE Document CRI(2007)2, 2007, para. 104.
[46] COE Document ACFC/SR(2007)001, 2007, para. 2.
[47] See COE Document ACFC/SR/II(2012)001, 2012.
[48] *National Concept for Tolerance and Civil Integration* of Georgia, 2009, p. 3.

those human beings who can objectively constitute a representative of minority.

Hence, keeping in mind that the National Concept is the main domestic document - albeit it is a *soft law* - explicitly related to minorities in Georgia, it could be presumed that the problem of *ratione personae* of applicable minority related legislation in Georgia could be considered as formally settled.

To conclude the section devoted to the Georgian State's approach towards the personal scope of the minorities' related legislation the Venice Commission's assertion that "through a pragmatic approach the corpus of international norms protecting minorities is workable in practice, even without a legally binding definition"[49] is deemed appropriate. Actually, this assertion highlights importance of the firm political will to make good policies, which is much more important than the mere fact of existence of whatever written legal provisions. For this reason it is worth mentioning that to make minority related norms operational, the Georgian State has to express its political will to keep in mind these provisions while doing its daily business.

[49] COE Document CDL-AD(2007)001, 2007, para. 127.

MINORITIES IN GEORGIA

2. MINORITIES IN GEORGIA

This section is devoted to issues pertinent to *de facto* situation faced by the Armenian minority in Georgia and its attitude towards the Georgian State, the Government's position vis-à-vis objectively existing challenges, the role of the kin-State, and the possible ways of solution of the problems.

Georgian society is the most diverse society in the South Caucasus and historically various national, linguistic and religious groups have been living in Georgia making the society the model of peaceful coexistence and exemplary multiculturalism. The fact that since centuries the soil of Georgia has been a common home to persons belonging to various ethnic, linguistic and religious groups should be interpreted as Georgians' tolerant attitude towards diversity. However, the centuries-old tradition of peaceful coexistence began to change in the late 80s of the twentieth century when "nationalist discourse came to dominate political life in Georgia,"[50] and after almost two decades which passed since that period the repercussions of those events are still very much present in modern Georgian society.

In order to understand what exactly went wrong in Georgia and why after more than two decades since restoration of its statehood, the integration of remaining minorities has been among the most topical issues in the political agenda both, within Georgia as well as on international arena, one has to look at the root causes of the current situation, and to go back to the period of re-establishment[51] of independent Georgia during and after the collapse of the Soviet Union.

The 'patriotic' euphoria of prominent figures, and more generally the lack of political experience created preconditions for such an environment where minorities felt extremely unwanted. Almost total exclusion from the ongoing processes and chant of the motto 'Georgia for Georgians' (meaning ethnic Georgians, and not citizens of Georgia) laid the foundations for further division of the society where minorities have been unable to secure their own stake in the process of initiation of 'their' State and became even more alienated from the majority. The OSCE HCNM Knut Vollebæk mentions that "[f]or minorities to have a common stake in their shared State the process

[50] J. Wheatley, ECMI Working Paper No. 26, 2006, p. 4.
[51] Georgia was already independent in 1918-1921.

of adaptation and evolution must also be a common endeavour,"[52] however within the context of all-devouring Georgian nationalism there was no place for minorities to play any active role and to contribute to the ongoing processes during the critically important period of State conception and consequent processes related to democratic consolidation.

The then existing atmosphere was explained by Jonathan Wheatley in the following terms: "[o]ne strand of discourse, which prevailed in the early 1990s following the election (and subsequent removal) of Georgia's first President Zviad Gamsakhurdia, was exclusivist and emphasised the privileged position of ethnic Georgians over non-Georgians. Within this discourse, minorities were portrayed as guests who were expected to feel grateful for being allowed to remain on Georgian territory."[53] Short-sighted rhetoric of the then political leadership not only deteriorated inter-ethnic relations within the Georgian multiethnic society, but also played an important role in fomenting military conflicts in two parts[54] of the newly reborn independent Georgia, and played into Georgia's enemies' hands who were interested in its dismemberment. Fairly enough this has been acknowledged by the Georgian Government in its First State Report on implementation of the FCNM, which states that "[i]mmediately after the independence, as a result of strong nationalistic policies exercised by the then government, a few conflicts have erupted. Though politically motivated, they carried along ethnic features as well."[55]

Without going into details of the conflicts which emerged on the Georgian soil, it is deemed appropriate to mention some of their consequences which have been influencing Georgian policies vis-à-vis minorities all over the period of state independence and even after the so called Rose Revolution known as the milestone of Georgian democratisation. Actually the minorities in Georgia were unable to secure real benefits from Georgian post-revolutionary processes, and this fact has partly been acknowledged by the Government itself which recognised the pressing need to settle legitimate concerns of minorities and to ensure their effective integration by mentioning

[52] K. Vollebæk, *An Integrated Future?*, 2011, p. 4.
[53] J. Wheatley, ECMI Working Paper No. 28, 2006, p. 6
[54] These are the Autonomous Region of South Ossetia and Autonomous Republic of Abkhazia.
[55] COE Document ACFC/SR(2007)001, 2007, para. 1.

that "[i]n the aftermath of the 'Rose Revolution', full integration of all ethnic minorities in Georgia remains a continuous challenge for the current government."[56]

The first factor which has been marking State-minority relations in Georgia since restoration of the statehood is fear. Georgia is not the only European country whose society is made up of various ethnic groups as "[m]ost states of Europe are comprised of a majority-dominant ethnic group (a titular-nation) and one or more ethnic groups in a non-dominant position or ethnic minorities."[57] In all these countries the majority-minorities relations are different and in a way reflect the level and maturity of democracy and national cohesion. In modern Georgia, notwithstanding its centuries-old history of tolerance and multiculturalism, the majority-minorities relations, and mutual perception of each other, could be characterised as uneasy and problematic and even defective for the common home of all the Georgian citizens - the Georgian State. One of the main preconditions of this situation is that the ethnic majority as well as significant segments of largest minority groups[58] are still living in fear of each other, originated from, in the case of majority, illusionary suspicion of ethnic minorities as disloyal elements, and in the case of minorities, *de facto* perception of the State "as a *threat*... rather than a *provider of* their security."[59] For sure the mentioned general categorisation is not applicable to all the representatives of the mentioned groups, however it outlines the existing framework in which Georgian young democracy has been developing since two decades.

The majority's perception is fuelled *inter alia* by dense inhabitancy of a part of largest minority groups in Georgian border regions[60] which are poorly integrated within the common Georgian political and societal space. Ethnic Georgians' both, conscious and subconscious preoccupation about these regions partly derives from the recent Georgian history related to ethnic conflicts occurred on the Georgian soil, and it is understandable. In its 2006 Report *Georgia's Armenian and Azeri Minorities*

[56] UN Document CERD/C/GEO/4-5, 2011, para. 2.
[57] P. Roter, in F. Palermo and N. Sabanadze (eds.), 2011, p. 46.
[58] Two largest minority groups in Georgia are Armenians (5.7 per cent of total population), and Azeris (6.5 per cent of total population).
[59] N. Sabanadze, in OSCE Yearbook 2010, p. 296.
[60] These regions are Samtskhe-Javakheti and Kvemo Kartli, with respectively ethnic Armenian and ethnic Azeri population.

International Crisis Group (hereinafter referred to as ICG) mentioned that "[m]any Georgians are wary of the minorities' claims. Feeling betrayed by the Ossetians and the Abkhaz, who have already declared independent states on Georgian territory, ethnic Georgians have a deeply rooted, if unfounded, fear that other minorities may do the same."[61] Indeed, it is comprehensible that the majority, on the basis of recent historical events occurred in the lifetime of the living generation, is preoccupied with the future of the country and the perspective of its further dismemberment, even though the latter perception is 'manifestly ill-founded'. The dubiousness of the ethnic majority and consequently of the Government, leads to violations – albeit sometimes they might not be desired - of human rights of significant segments of the Georgian society, and this is unacceptable, as in no democratic formation such subjective perceptions may "excuse violations of basic human rights and freedoms."[62]

Actually many ethnic Georgians and Georgian authorities, instead of considering minorities "as vital human capital that could contribute to the future development of the country"[63] via elaboration of effective ways of civil integration, inclusion, protection and promotion of human rights of representatives of minority groups, suspiciously look at them through the prism of state security and believe that "any minority activism is a prelude to more serious challenges to the territorial integrity of the state."[64] This affirmation has been confirmed *inter alia* by the ICG. While talking about overt securitization of state-minority relations in Georgia, this think tank pointed out that "Georgian officials confirm that law enforcement and security measures have been beefed up in Javakheti[65] as a precautionary measure to head off potential instability."[66] Such an approach of the Georgian authorities' was partly explained by the OSCE HCNM Senior Adviser Dr. Natalie Sabanadze who mentioned that Georgia "is a weak, democratizing state where the treatment of minorities is, above all, a question of national security...,"[67] and "unless Georgia becomes a viable and functioning state, there

[61] ICG Document, Europe Report No. 178, 2006, p. 1.
[62] F. De Varennes, 2012, p. 14.
[63] J. Wheatley, ECMI Working Paper No. 22, 2004, p. 32.
[64] F. De Varennes, 2012, p. 14.
[65] Javakheti is the part of the larger Georgian region Samtskhe-Javakheti with majority of Georgian citizens of Armenian ethnicity.
[66] ICG Document, Europe Briefing No. 63, 2011, p. 4.
[67] N. Sabanadze, in F. Palermo and N. Sabanadze (eds.), 2011, p. 171.

is no realistic prospect for the protection and integration of persons belonging to national minorities."[68] While I agree with Dr. Sabanadze's former affirmation, and confirm the unfortunate reality of minorities' consideration through the prism of State security, I would argue that the latter is not correct. Moreover, in the long term perspective it is defective for the Georgian State itself, because such an approach would contribute to further marginalisation of *per se* vulnerable minority groups. Actually, minorities have to be given a possibility to contribute to the process of creation of a viable and functioning Georgian State. Protection, integration and equal participation of national minorities in Georgia is deemed extremely important for the well-being of the State, and neither the majority, nor the minorities should wait until Georgia magically becomes a democratic State, without proper participation of minorities in the democratisation processes. In relation to this the Declaration on Minorities proclaims that "States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country."[69] Therefore, protection and integration of persons belonging to national minorities in Georgia should be considered from the angle of indispensability of their full inclusion into the ongoing processes of nation-building, rather than from the point of view of their undesirability or impossibility or inability for participation in these processes.

Effective participation of minorities in the processes of democratic consolidation is a pre-requisite for Georgia to become a viable and functioning state. Without being able to secure a proper stake within the process of post-totalitarian nation-building in Georgia, minorities risk to stay the second-class citizens, which, taking the most optimistic view, will be conferred some rights by the majority, who at best will, and at worst will not make the project happened. It could be argued that in the case of Georgia there is no realistic prospect for this country to become a genuine and functioning democracy unless its minorities, which notwithstanding above mentioned historical events, emigration and *de facto* alienation still constitute quite a significant part of the society, are not involved on equal footing in the processes of democratic consolidation

[68] Ibidem, p. 175.
[69] UN Document A/RES/47/135, 1992, art. 4(5).

and do not feel equally protected by the State. Minorities in Georgia need to be perceived and accepted as equals to the majority, and this equality should not be 'theoretical or illusory but practical and effective.'[70]

Furthermore, consideration of minorities' related issues within the framework of state security and conflict prevention was criticised by the international community. In this connection the AC/FCNM stated that "certain representatives of the authorities [of Georgia] systematically consider minority issues from the perspective of conflict prevention and management. While it is aware of the complex context currently prevailing in Georgia, the Advisory Committee takes the view that it would be desirable to avoid such an association, which may be simplistic and have negative effects on the persons concerned and the majority population."[71] Actually this Opinion of the AC/FCNM was prepared after the visit carried out in Georgia when only four months passed after the August 2008 military conflict[72] which "unfolded to a significant degree along ethnic lines."[73] For this reason the treaty body mentions the 'complex context currently prevailing in Georgia'. It is understandable that such a context might have existed in a society which has recently passed through the military conflict, but this context should not remain and become characteristic of the society. Unfortunately, it is still there and this fact has been acknowledged *inter alia* by the ICG.[74]

Unless the minorities' legitimate interests are not perceived as those of State *per se*, it is impossible to imagine whatever prospect of feasible democratisation in Georgia. The UN/GA stressed that "[n]ational policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities,"[75] and this provision of the Declaration of Minorities is very much needed to be taken into account by the Georgian politicians. In relation to making domestic policies the civil cohesion plays an extremely important role. Even though sometimes accommodation of the legitimate interests of minorities is regarded as limiting factor of

[70] See *Airey v. Ireland*, ECtHR Judgment of 9 October 1979, para. 24.
[71] COE Document ACFC/OP/I(2009)001, 2009, para. 59.
[72] See Ibidem, para. 3.
[73] *Human Rights in the War-Affected Areas Following the Conflict in Georgia*, Report prepared by the OSCE ODIHR, 2008, p. 18.
[74] See ICG Document, Europe Briefing No. 63, 2011, p. 4.
[75] UN Document A/RES/47/135, 1992, art. 5(1).

the majority's space, an appropriate balance must be found in order to make Georgia's heterogeneous society function as a single organism. Actually accommodation of both the minorities' and majority's interests should be considered as a cementing factor of the State and these interests should not be opposed to each other, but rather should be seen as complementary. An important indication on this account has been made by the UN Sub-Commission which pointed out that "[w]hile the authorities are required to take only "legitimate" interests into account, this is no different from what is required in relation to majorities: an accountable Government should not promote "illegitimate interests" of any group, whether majority or minority. The interests of minorities should be given "due regard", which means that they should be given reasonable weight compared with other legitimate interests that the Government has to take into consideration."[76]

Notwithstanding, the Armenian community of Georgia has always been loyal to the Georgian State. *De facto* loyalty of the local ethnic Armenian population to the Georgian State has been acknowledged by scholars. Jonathan Wheatley in his report *Obstacles Impeding the Regional Integration of the Javakheti Region of Georgia* mentions "[i]t is interesting to note that even in 1991, when tension between Javakhk [co-ordination committee of local public organisations] and the Georgian government was at its height, a motion demanding independence for Javakheti was rejected by the Provisional Council [of Representatives of local ethnically Armenian population]. Local Armenians maintain that the establishment of the council was merely a response to events in other part of Georgia and was not a manifestation of separatism."[77] In fact, that Council was established in order to coordinate actions of various actors in the region and to prevent any provocation in the name of the local ethnically Armenian population. For the time being it could be objectively acknowledged that it has made a positive contribution within the context of explosive atmosphere of inter-ethnic relations in the newborn Georgian Republic.

It should be mentioned with this regard that another compactly living large minority group in Georgia - the Azeris, have equally initiated a 'popular front' to face

[76] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 73.
[77] J. Wheatley, ECMI Working Paper No. 22, 2004, p. 14.

challenges coming from the then Georgian nationalist politicians and "[a]s a result of this initiative, the organisation *Geyrat* held its inaugural conference in February 1990".[78]

2.1. FROM THE POLITICAL TURBULENCE TOWARDS GRADUAL DETERIORATION

Mr. Eduard Shevardnadze's return to Georgia marked commencement of another stage of development of inter-ethnic relations in Georgia. Unlike his predecessor Mr. Shevardnadze was an experienced politician and former Foreign Minister of the Soviet Union. His arrival to Georgia contributed to a practical end of active military actions and lead to the conclusion of ceasefire agreements with South Ossetia and Abkhazia. However, even after coming to power of such an experienced politician as Mr. Shevardnadze, the situation of minorities has not improved, and in the cases of both Samtskhe-Javakheti and Kvemo Kartli the policy of the Georgian State could best be classified as one of benign neglect.[79] Such an attitude has been acknowledged *inter alia* by the ICG in its Report *Georgia's Armenian and Azeri Minorities*, in which the think-tank mentions that "[t]he Armenian and Azeri populations, together with other minorities, have suffered from nationalistic and discriminatory policies under Zviad Gamsakhurdia and from neglect under Eduard Shevardnadze."[80]

Not only the Government and the ruling party used to be hesitant to approach minorities, but the opposition political parties as well were all very reluctant to establish constructive dialogue with them. In both regions densely inhabited by representatives of national minorities, existence of Georgian political parties in a meaningful sense was feasible only during the pre-election period.[81] However, this was not an impediment for the party, which was in power in Tbilisi, to get the lion's share of votes in the elections in these regions. Of course, this does not mean that the local population unconditionally supported the policies of the central government, and the best evidence of this was the elections before and immediately after the Rose Revolution. In the former case local population of both Samtskhe-Javakheti and Kvemo Kartli regions 'voted' for

[78] J. Wheatley, ECMI Working Paper No. 23, 2005, p. 13.
[79] See Ibidem, p. 31 and J. Wheatley, ECMI Working Paper No. 22, 2004, p. 31.
[80] ICG Document, Europe Report No. 178, 2006, p. 1.
[81] See J. Wheatley, ECMI Working Paper No. 23, 2005, p. 21 and J. Wheatley, ECMI Working Paper No. 22, 2004, p. 18.

Shevardnadze's political party, and in the latter they 'voted' for Saakashvili's party.

Actually, instead of promoting integration and involvement of minorities in all spheres of public and societal life of the Georgian State, the Government of Georgia has proved to be keen on limiting its citizens' of Armenian origin participation in political life by all the means that it considers to possess at its disposal. An illustrative example of this is the extremely low representation of Georgian citizens' of Armenian origin in public institutions, especially at the central level.

Furthermore, the right to education should equally be mentioned in this context. According to the February 2011 Georgia's report to CERD, there were 140 Georgian public schools with the Armenian language as the main language of instruction,[82] and according to the May 2012 Georgia's report to the AC/FCNM there were 116 public schools with the Armenian language as the main language of instruction.[83] Actually, in a slightly more than one year period of time the number of public schools where the children of Armenian origin could have gotten the education in their mother tongue has diminished by almost 20 per cent, and their number continues to decrease. Furthermore, in the capital of Georgia where the 30 per cent of Georgia's Armenians live and constitute the second largest community after the ethnic Georgians, the number of Armenian schools has dramatically decreased by 50 per cent.

One of the reasons of the decrease is the lack of appropriate attention from the State towards the special needs of those schools. Because of the negligence from the State, the general situation and perception of the perspectives related to these schools have significantly deteriorated. As the budgets of public schools in Georgia are mainly financed by the vouchers provided by the State for each pupil that is registered in a school, the above mentioned situation contributed to further aggravation of the situation, because some parents started to send their children to other schools perceived to be able to provide their children with better perspectives, and thus the minority schools have lost any possibility of existence due to the lack of financial resources. As a result, some formerly Armenian schools have been merged with non-Armenian schools,

[82] See UN Document CERD/C/GEO/4-5, 2011, para. 29.
[83] See COE Document ACFC/SR/II(2012)001, 2012, para. 223.

accompanied with the concomitant changes in the schools' administration, while some others have just ceased their existence.

However, as it was mentioned before, according to Georgia's most recent report on minority rights situation in the country, there are still 116 public schools with the Armenian language as the main language of instruction. This might be considered as a paradox, especially in more general context of Georgia's policies vis-à-vis the Armenian community. However, to comprehend this fact, its preconditions have to be taken into account. First of all, these schools have been established during the Soviet period, and thus their creation was not based on the political will of the Georgian State. With this regard a reasonable question would be: if the existence of these schools did not derive from the political will of the Georgian State, than it had two decades after the restoration of its independence to close them down. However, the Government could not have done so because the large number of children of Armenian origin would then have lost any possibility to get their education, especially in the Samtskhe-Javakheti region, and this seems to be the main incentive to 'tolerate' the minority schools.

In this connection it should be mentioned that in order to contribute to creation of an inclusive democracy, the Georgian State should allow and support by all possible means the existence of schools with the Armenian language as the main language of instruction in those regions and cities, where Armenian communities live and contribute to the local society's well-being. In the meantime, the State institutions have to increase their efforts directed at promotion of the Georgian language instruction in these schools, and have to consider various possibilities of inter-school communication among pupils of the so called non-Georgian and Georgian schools.

To conclude this section some information concerning to the demography of Georgia is deemed appropriate. According to the 2002 census, two largest minority groups in Georgia are 284,761 ethnic Azeris (6.5 per cent of total population), and 248,929 ethnic Armenians (5.7 per cent o total population). Together they constitute 12.2 per cent of the total population. Of these, 124,831 ethnic Armenians live in Samtskhe-Javakheti and the adjacent Tsalka district, and 224,606 ethnic Azeris reside in

Kvemo-Kartli.[84] Furthermore, 82,586 Georgian citizens of Armenian ethnicity live in Tbilisi, 7,517 live in Batumi, the capital of the Autonomous Republic of Adjara, etc.

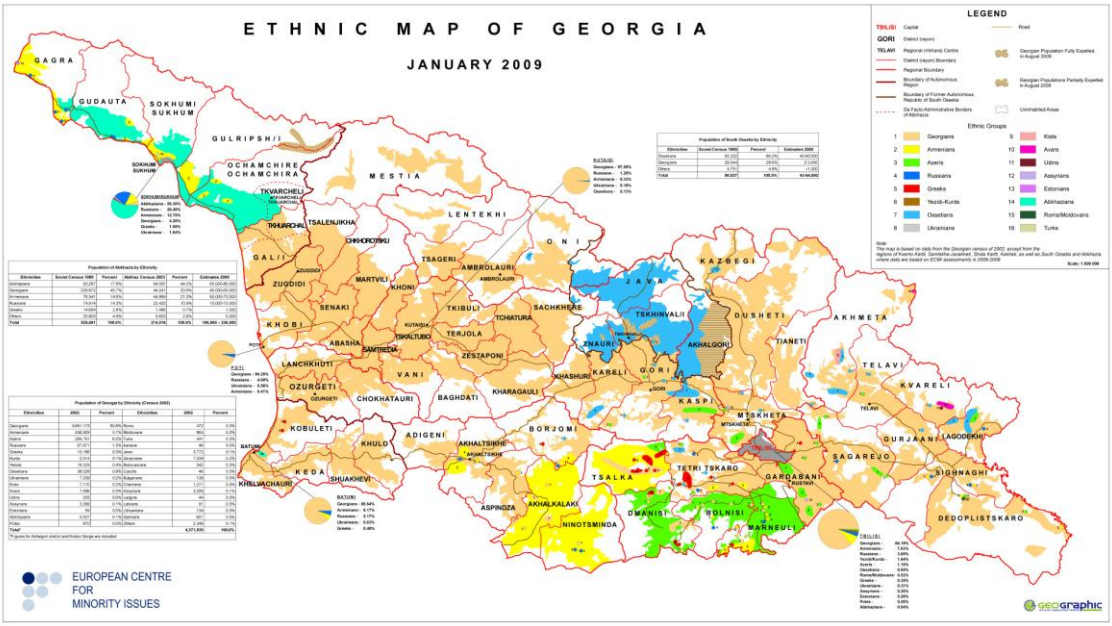
The last census showed that the number of representatives of minority groups in Georgia in comparison with data from previous census conducted in 1989 has significantly decreased. Three main reasons of such transformation are the conflicts in Abkhazia and South Ossetia, emigration and assimilation. Information concerning the population of Georgia in 1989 and 2002, as well as increment in absolute numbers during the mentioned period is provided in the table below:[85]

Table 1 - Ethnic composition of Georgian society

Ethnic group	1989		2002		Increment in 1989-2002
	thousands	%	thousands	%	thousands
Georgian	3 784.4	70.1	3 661.2	83.8	-126.2
Abkhaz	95.9	1.8	3.5	0.1	-92.3
Ossetian	164.1	3	38.0	0.9	-126.0
Armenian	437.2	8.1	248.9	5.7	-188.2
Russian	341.2	6.3	67.7	1.5	-273.5
Ukrainian	52.4	1.0	7.0	0.2	-45.4
Azerbaijani	307.6	5.7	284.8	6.5	-22.8
Greek	100.3	1.9	15.2	0.3	-85.1
Jewish	24.8	0.5	3.8	0.1	-20.9
Kurdish	33.3	0.6	2.5	-	-30.8
Total population	5 400.8	100	4 371.5	100	-1 029

[84] Detailed information concerning ethnic composition of Georgia by major administrative-territorial units is available in the COE Document ACFC/SR(2007)001, 2007, pp. 66-71.
[85] Source - S. Minasyan, 2007, p. 16.

Map 1 - Ethnic map of Georgia[86]



2.2. THE ROLE OF THE REPUBLIC OF ARMENIA AS THE KIN-STATE

Notwithstanding the above mentioned conditions, the situation in those regions where minorities constitute the local majority has developed peacefully and a crucial role in this belongs to respective neighbouring kin-states. With this regard the ICG mentions that "Yerevan and Baku do not publicly advocate on behalf of their respective minorities. Their priority is good relations with Tbilisi and short-term stability,"[87] and in another more recent report the same think-tank positively acknowledged the role of the Government of Republic of Armenia and mentioned that "Armenia has consistently played a stabilising role in Javakheti, which it considers an internal Georgian issue."[88] The Republic of Armenia and Georgia have concluded a number of bilateral agreements and some of them are related with issues pertinent to Georgian citizens of Armenian origin.[89]

The neighbouring Republic of Armenia has been behaving as the responsible actor of international relations and has always considered its friendly relations with Georgia

[86] Source - ECMI Caucasus Regional Office.
[87] ICG Document, Europe Report No. 178, 2006, p. i.
[88] ICG Document, Europe Briefing No. 63, 2011, p. 12.
[89] The list of bilateral agreements between Armenia and Georgia is available in the COE Document ACFC/SR/II(2012)001, 2012, para. 253(2).

as one of its foreign policy priorities. In this connection the *Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (hereinafter referred to as Bolzano/Bozen Recommendations), published by the OSCE HCNM should be recalled.[90] These recommendations represent the most recent set of non-binding provisions elaborated within the OSCE institutional framework by its main minorities' related conflict prevention mechanism in order to provide OSCE member States with guidelines for their comportment in relations involving an ethnic component in other States.

Although all the provisions of the Bolzano/Bozen Recommendations have equal importance, I would argue that the most important disposition was included in its second paragraph which declares that "[t]he respect for and protection of minority rights is primarily the responsibility of the State where the minority resides."[91] The first paragraph of the same document places this responsibility within a more general framework of States' sovereign authority over the territory and its inhabitants, which could be limited only by appropriate provisions of international law. Keeping in mind this fundamental provision of the State-minority relations, the drafters of the Bolzano/Bozen Recommendations have further declared that "[t]he protection of human rights, including minority rights, is also a matter of legitimate concern to the international community,"[92] which means that in the post-Westphalian system of international relations the States' sovereignty is not absolute and the international community could intervene in *prima facie* domestic affairs if the State is unwilling or unable to duly respect and protect the legitimate interests of human beings under its jurisdiction, via paying due attention to the principles of equality and rule of law, and without any discrimination whatsoever. Actually, the same philosophy, albeit vis-à-vis

[90] Since the establishment of the OSCE HCNM mandate the HCNM has been working on *inter alia* standards setting in the field of minorities. Within this framework the HCNM has elaborated six sets of thematic recommendations, including *the Hague Recommendations Regarding the Education Rights of National Minorities* (1996); the *Oslo Recommendations Regarding the Linguistic Rights of National Minorities* (1998); the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999); and the *Guidelines on the use of Minority Languages in the Broadcast Media* (2003); the *Recommendations on Policing in Multi-Ethnic Societies* (2006); and the most recent the *Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (2008).
[91] Bolzano/Bozen Recommendations, 2008, para. 2.
[92] Ibidem, para. 3.

more limited *ratione materiae*,[93] urged the international community to elaborate the concept of Responsibility to Protect,[94] which notwithstanding its recent introduction has already been used in practice.

For the reasons highlighted in the above mentioned ICG reports, and taking into account the Bolzano/Bozen Recommendations, I would argue that the Republic of Armenia, notwithstanding the fact that it is the kin State for the Armenian minority in Georgia, and as other kin States for the respective minorities in Europe and beyond, has its legitimate concerns with regard to the level of protection and promotion of rights of Georgian citizens of Armenian origin, has developed friendly and good neighbourly relations with Georgia, in full compatibility with the *UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*.[95] The Republic of Armenia has been elaborating and implementing its policies vis-à-vis Georgia's Armenian minority on the basis of the right perception of the fact that this community, which has centuries-old history of peaceful coexistence with ethnic Georgians on the Georgian soil, needs to become further integrated into the common Georgian space, and that through proper integration and accommodation of legitimate interests of this vulnerable group, the Georgian State will be able to enjoy its multifaceted diversity.

However, the position of Dr. Sabanadze on this issue seems to be different as she mentions that "Georgia is... suspicious of Armenia's role as a kin-state since its attempt at irredentism with Azerbaijan."[96] Actually, Georgia has no objective precondition whatsoever for being suspicious, especially if it will express its political will and acknowledge "one of the central principles of the Bolzano/Bozen Recommendations [which] is that "the respect for and protection of minority rights is primarily the responsibility of the State where the minority resides",[97] and that this provision of the most recent OSCE HCNM's policy recommendations is "uncontested in international

[93] According to the concept of Responsibility to Protect, foreign countries can intervene to domestic affairs when the home State itself is unable or unwilling to protect its population from the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity.
[94] See UN Document A/60/L.1, 2005, paras. 138-140.
[95] See UN Document A/RES/25/2625, 1970.
[96] N. Sabanadze, in F. Palermo and N. Sabanadze (eds.), 2011, p. 176.
[97] N. Sabanadze, in OSCE Yearbook 2010, p. 292.

law[98] and represents a "precondition for peace, security and democratic governance, especially in multi-ethnic States".[99]

As for the so called 'Armenia's attempt at irredentism with Azerbaijan', it should be mentioned that in the case of Nagorno-Karabakh conflict, and Dr. Sabanadze was meaning this conflict while she was talking about the 'Armenian irredentism', the Republic of Armenia behaved as a responsible actor of international relations. It acknowledged the necessity of protection of the peaceful civilian Armenian minority population of the then Soviet Socialist Republic of Azerbaijan in the region which first, was forcefully transmitted under the jurisdiction of Azerbaijan by the Soviet rulers immediately after Sovietisation of the South Caucasus, and later exercised its right to self-determination on the eve of collapse of the USSR. Actually, because of the use of the right to self-determination the peaceful civilian Armenian population became a victim of large scale military aggression not only in Nagorno-Karabakh itself, but also in other parts of the Republic of Azerbaijan.

Taking into account the background of the Nagorno-Karabakh conflict and the unwillingness of the Azeri authorities to respect rights of the Armenian minority, as well as the initiation and direct participation in the large scale human rights violations, it could be argued that actions of the Republic of Armenia were based on the same values which urged the international community to elaborate the concept of Responsibility to Protect. Actually, it could be argued that the Republic of Armenia was guided by the spirit of this concept, even though at that time the concept itself had not been yet formally elaborated. But, insofar as the Nagorno-Karabakh conflict is beyond the scope of the present study I would return to the case of Georgia.

2.3. ATTITUDE TOWARDS THE GEORGIAN STATE

Even though the recent history of ethnic nationalism and subsequent negligence from the State created preconditions for large scale alienation of minorities, the Armenian community, unlike the Abkhaz and Ossetian minorities, have never advocated for either *de facto* or *de jure* separation from the Georgian State and never

[98] See *inter alia* UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 3.
[99] N. Sabanadze, in OSCE Yearbook 2010, p. 292.

questioned its territorial integrity.

If we look at the case of compactly living Armenian community in Samtskhe-Javakheti we can acknowledge that some of their problems are very similar to those of the rest of the population. For example the lack of appropriate infrastructure in Georgian provinces is a common problem for all the Georgian regions. However, the local Armenian population, due to its specific needs as of a minority, faces some special challenges which are uncommon to the majority population. This includes the low level of knowledge of the official language[100] by vast majority of the local population, which creates significant problems in their proper integration within the common political and societal space of the Georgian State. Actually, this problem has been acknowledged *inter alia* by the CERD which mentioned that "the Committee is concerned by the low level of knowledge of Georgian as a second language among minorities and the obstacle that this represents to their integration into society, education, employment, and representation in State institutions and public administration. It is also concerned at the insufficient number of trained teachers of the Georgian language."[101]

Actually, the local population in Samtskhe-Javakheti does not speak the State language because of various different and interconnected reasons. It is not because of their unwillingness to learn the Georgian language, but rather because of impossibility to have learnt it in the past. In this connection a distinction between two constitutive parts of the region should be made. These are Samtskhe and Javakheti. According to the 2002 census,[102] about a third of the population of Samtskhe is ethnic Armenian, while in the case of Javakheti ethnic Armenians constitute more than 95 per cent of the local population. Actually, ethnic Armenians have been densely living in Javakheti since many generations, and due to this fact they have been unable to communicate in Georgian language as they never knew it. Moreover, insofar as the State during both the

[100] According to article 8 of the Constitution of Georgia "The state language of Georgia shall be Georgian, and in Abkhazia - also Abkhazian." In the case of Samtskhe-Javakheti the official language is Georgian.
[101] UN Document CERD/C/GEO/CO/4-5, 2011, para. 15.
[102] The most recent census took place in 2002. The next census was scheduled to take place in 2010, but it was not conducted and according to the Georgia's Second Report on implementation of the FCNM 'the State Coordination Commission on the Census of the Population was created by the governmental decree No. 157 of the 30 April 2012. The Commission is tasked to conduct the census by the year 2014. Source - COE Document ACFC/SR/II(2012)001, 2012, p. 11.

Soviet and post-Soviet periods have never paid enough attention to implementation of special programmes of the Georgian language instruction in this region, the local population have never had a chance to learn the State language. If during the Soviet period, when the main State language was Russian, this region was a border area with the North Atlantic Treaty Organisation (hereinafter referred to as NATO) member Turkey, and thus it was a 'closed' area with very specific regulations, after the restoration of Georgian statehood the Government had too many other problems to settle and too little resources at its disposal, and for this reason the problem of language instruction to the minority population have not been in the top of the political agenda. Furthermore, it could be claimed that all the three Governments of independent Georgia have never expressed their firm political will to provide proper instruction of the State language to the Georgian citizens of Armenian origin from Javakheti region.

It should be mentioned that the lack of knowledge of the Georgian language is not common to all the representatives of the Armenian community in Georgia. As it was mentioned above, according to the last census ethnic Armenians constitute 5.7 per cent of the population of Georgia and more than half of them live in various regions and cities of Georgia together with their ethnic Georgian and non-Georgian compatriots. Everywhere, without any exception whatsoever, where Georgian Armenians live with ethnic Georgians, the formers do speak Georgian language, even without having attended Georgian schools. This is quite illustrative of the systemic problem that exists in relation with the State language instruction to the minority population within the State institutions, rather than in the Javakheti's Armenian community. For this reason I would argue that sometimes outspoken opinion regarding the Javakheti Armenians' presumed unwillingness to learn the Georgian language is just incorrect because of the two mentioned reasons: firstly Georgian Armenians in other parts of Georgia haven taken the chance to learn Georgian when such an opportunity was available, and secondly it is important to emphasize that the Armenian population of Javakheti has never had a real chance to learn the Georgian language.

Because of the lack of knowledge of the State language by the local Armenian population some persons have been dismissed from their positions in State institutions. In this connection the UN Human Rights Committee expressed its concern mentioning

that "lack of knowledge of the Georgian language could lead to marginalisation and underrepresentation of minorities in different public and private spheres"[103] and the ICCPR treaty body recommended to the Government to "[c]onsider the possibility of allowing minorities to use their own language at the level of local government and administration".[104]

In fact, the level of participation of minorities in public life is quite low and this has been repeatedly mentioned by numerous international organisations.[105] Instead of dismissing representatives of ethnic minorities from their positions, the State needs to promote their participation in public affairs to the largest possible extent. The lack of knowledge of State language should not be considered as an impediment for representatives of national minorities to contribute to the Georgian democratisation. As it was mentioned before, it is crucial that all parts of the society are able to get their stake in the nation-building process, because otherwise those who do not play a role in it will be further alienated and marginalised, and such a situation will more likely bring lose-lose rather than win-lose or win-win results.

The problem of lack of knowledge of State language and its negative consequences on minorities has been highlighted by scholars as well. In relation to this Dr. Fernand De Varennes mentioned that "[a]s for the linguistic preferences of state authorities, there has been a similar gradually exclusionary and nationalistic evolution."[106]

2.4. DISCRIMINATORY PRACTICE IN THE FIELD OF USE OF LANGUAGE

As it was mentioned above, according to the Georgian positive legislation the official and the only administrative language in Georgia (with exception of Abkhazian language in Abkhazia) is Georgian.[107] Actually, this provision could be interpreted as discriminatory because its implementation causes indirect discrimination vis-à-vis those representatives of linguistic minorities who do not speak the Georgian language. In this connection Kristin Henrard, professor of minority protection at the Erasmus University

[103] UN Document CCPR/C/GEO/CO/3, 2007, para. 17.
[104] Ibidem, para. 17(a).
[105] Most recently this fact was acknowledged by the European Union. See EU Document SWD (2012) 114 final, 2012, p. 7.
[106] F. De Varennes, 2012, p. 10.
[107] See *General Administrative Code* of Georgia, art.14, 1999.

of Rotterdam, mentioned that "[i]n so far as differentiations on the basis of language or religion would not be considered as amounting to a direct differentiation on the basis of race (amounting to racial discrimination), they could be considered as instances of indirect racial discrimination."[108]

Democratisation and minority protection are interrelated and reluctance to guarantee minority rights would make any democratisation attempt incomplete. Minority rights protection includes *inter alia* non-discrimination. In order to show why the mentioned provision of the Georgian legislation amounts to discrimination I will first make a general overview of issues related to various types of discrimination and further argue why the above mentioned provision of the Georgian domestic legislation is discriminatory.

It is widely acknowledged that discrimination is different treatment of equal situations and equal treatment of different situations. While this is the general framework elaborated to define discrimination, the latter itself differs and includes direct and indirect discrimination. The European Court of Human Rights (hereinafter referred to as ECtHR) in its jurisprudence has made detailed interpretation of various types of discrimination, and insofar as the ECtHR's jurisprudence is applicable in Georgia, I would elaborate my argument on its basis.

It is worth mentioning that the material law used by the ECtHR with regard to claims of discrimination is included into the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as ECHR) in its article 14, which makes reference to rights and freedoms protected by the ECHR by mentioning that "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination..." A relevant question with this regard might be why the ECHR's drafters included this article into the ECHR if it does not protect a specific right or freedom, and just refers to other provisions of the ECHR which are *per se* protected. Actually, this article's added value is in its supplementary nature as it creates an extra 'shield' for the right holders against arbitrary decisions of the duty bearers should the latter resolve to base their decisions on the subjective perception of right holders' sex, race, colour, language, religion, political or other opinion, national or

[108] K. Henrard, in F. Palermo and N. Sabanadze (eds.), 2011, p. 95.

social origin, association with a national minority, property, birth or other status. Thus, the article 14 protects only those rights and freedoms which have been included in the ECHR, and for this reason it could be said that it has rather limited *ratione materiae*. However, in order to universalise the protection against discrimination conferred by the ECtHR, on 4 November 2000 the Protocol 12 to the ECHR has been adopted which enlarged the material scope of the anti-discriminatory norm. Its article 1 states that "[t]he enjoyment of any right set forth by law shall be secured without discrimination on any ground..." Actually, this provision has included all the rights, which exist within the respective jurisdictions, into the general framework of non-discriminatory enjoyment by respective right holders, meaning that not only the ECHR rights and freedoms were to be enjoyed without discrimination, but also those conferred by national authorities within their sovereign jurisdictions as well shall be conferred and protected on equal footing. Within the context of the above ECHR anti-discriminatory provisions "not all differentiation amounts to a prohibited discrimination. Hence it is important to identify the criteria that are used to distinguish between a legitimate differentiation and a prohibited discrimination."[109] Actually, these criteria have been identified by the ECtHR in the case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" (hereinafter referred to as Belgian linguistics case), and further accepted by other international monitoring bodies, such as the UN Human Rights Committee.[110] In the Belgian linguistics case the ECtHR mentioned that "the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised."[111] Thus, the ECtHR, taking into account the real life

[109] Ibidem, p. 89.
[110] See UN Document, *General Comment No. 18: Non-discrimination*, Human Rights Committee, 1989, para. 13.
[111] See case *"Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium"*

situations has allowed certain types of differentiations, however it placed them within very strict framework of objective indispensability, and mentioned that for a different action to be considered as compatible with the ECHR, the State should prove that its actions can pass the tests of reasonability, objective justifiability, and strict proportionality. In any case when the duty bearer applies different treatment vis-à-vis *prima facie* equal right holders, the former has to adopt the heightened scrutiny for its decision, and in order to be compatible with the ECHR requirements. It has to be able to prove that the difference in treatment is legitimate, and this legitimacy can only be ascertained on the basis of the results of the above mentioned three tests.

My next argument in support of the idea concerning discriminatory practices in Georgia regards the so called indirect discrimination, which is deemed one of the most topical issues in modern Georgian realities. Indirect discrimination is mostly about the *de facto* consequences of policies adopted on the basis of *prima facie* non-discriminatory legal acts, which notwithstanding their seemingly neutral character cause a disproportionally negative impact only on specific segments of the society. The ECtHR, in the case of *Thlimmenos v. Greece* has further developed the concept of non-discrimination elaborated in its previous case-law, and through the inclusion of the notion of unacceptability of equal treatment of different situations, has advanced the material scope of the protection against discrimination conferred by the ECHR. Hence, the ECtHR ascertained that any prohibition of discrimination has a multi-faceted character, and "[t]he right not to be discriminated against in the enjoyment of the rights guaranteed under the [ECHR] is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."[112] This notion has subsequently been developed in the ECtHR jurisprudence, and in the case of *Kelly and Others v. United Kingdom* the ECtHR ascertained that "[w]here a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed or directed at that group."[113]

So, on the basis of the ECtHR jurisprudence concerning discrimination I would

v. Belgium, ECtHR Judgment of 23 July 1968, para. 10.
[112] See case *Thlimmenos v. Greece*, ECtHR Judgment of 6 April 2000, para. 44.
[113] See case *Kelly and Others v. the United Kingdom*, ECtHR Judgment of 4 May 2001, para. 148.

argue that the above mentioned provision of the Georgian positive legislation which states that Georgian is the only administrative language in Georgia (except the Abkhazian language in Abkhazia) is discriminatory. It constitutes a legal precondition for indirect discrimination of very large segments of the Georgian society, which due to the specific history of regions, and the State's inability to provide adequate teaching of the Georgian language to these segments of society, do not speak the only administrative language, and thus are deprived of the possibility to be hired in public service. Even though, the mentioned legal provision is not specifically aimed or directed at those groups, it nonetheless has disproportionately prejudicial effects on them, and for this reason it is discriminatory. The Georgian Government, if it wishes to build a real inclusive democracy should extend "the prohibition of discrimination to instances of indirect discrimination [as it] is particularly important in order to get to the root of the problem and also to deal with systemic instances of discrimination."[114]

It should be mentioned that indirect discrimination in Georgia was criticised by international monitoring bodies. For example the AC/FCNM mentioned that "the [AC/FCNM] finds that the implementation of the various laws on the use of the Georgian language in the public sphere disadvantages persons belonging to national minorities who do not have a sufficient command of that language. It therefore considers that the authorities should ensure that the implementation of the relevant legislative provisions does not result in direct or indirect discrimination against persons belonging to national minorities."[115] Furthermore, the CERD in its recent Concluding Observations on implementation of ICERD by Georgia expressed its concern regarding the fact that Georgian domestic "legislation does not provide for a clear definition of direct and indirect discrimination,"[116] and in order to improve the existing situation the CERD recommended the Government to "[i]ntroduce a clear definition of direct and indirect discrimination into the country's civil and administrative laws."[117]

Actually, the Georgian Government can tackle this problem and the resources that it disposes are enough for the commencement of implementation of effective integration

[114] K. Henrard, in F. Palermo and N. Sabanadze (eds.), 2011, p. 94.
[115] COE Document ACFC/OP/I(2009)001, 2009, para. 177.
[116] UN Document CERD/C/GEO/CO/4-5, 2011, para. 11.
[117] Ibidem, para. 11(b).

policies. Besides giving due regard to the recommendations of international human rights monitoring bodies, the Parliament should ratify the European Charter for Regional or Minority Languages (hereinafter referred to as ECRML). Ratification of this document was among Georgia's COE membership commitments, as in 1999 Georgia pledged to "sign and ratify, within a year after its accession, ... the European Charter for Regional or Minority Languages."[118] Non-compliance with this commitment has been highlighted by numerous international organisations, such as the CERD,[119] the COE Secretary General, who mentioned that "[an] important issue with regard to national minorities is the accession to the European Charter for Regional or Minority Languages one of the remaining accession commitments of Georgia,"[120] and the COE Parliamentary Assembly (hereinafter referred to as PACE) which mentioned that "[t]he Assembly regrets that Georgia, ten years after joining the Council of Europe, has not yet honoured its accession commitment of signing the European Charter for Regional and Minority Languages. It calls upon the Georgian authorities to sign and ratify the charter without further delay."[121]

Besides the ratification of the ECRML the Government of Georgia should consider a possibility of allowing the use of minority languages in local administration in those regions where the minorities constitute a significant part of the local population. It should be mentioned that the Constitution of Georgia, in the case of Abkhazian allows use of the Abkhazian language at local level. Thus, why other minorities which densely live in certain regions under Georgian jurisdiction should not be allowed to enjoy the same right? Actually, recommendations with regard to use of minority language at local level were made by the UN Human Rights Committee[122] and the ICG in its report *Georgia's Armenian and Azeri Minorities*.[123] Use of minority languages at local level should not be considered by the ethnic majority as an impediment for popularisation and dissemination of the official language, and the minorities on the other hand should not think that, and they have never done so, if communication with local authorities in

[118] PACE Opinion No. 209 (1999), 1999, para. 10(id).
[119] See UN Document CERD/C/GEO/CO/4-5, 2011, para. 15.
[120] See COE Document SG/Inf(2011)14, 2011, para. 46.
[121] COE Document, PACE Resolution 1801(2011), para. 20.
[122] See UN Document CCPR/C/GEO/CO/3, 2007, para. 17(a).
[123] See ICG Document, Europe Report No. 178, 2006, p. ii.

minority language is allowed, there is no need to learn the State language. Actually, for effective participation in public and societal life of the Georgian State all Georgian citizens should be able to communicate in the State language and knowledge of the State language by minorities could play an important role for their integration into the common Georgian space. In this case I deliberately used the term 'could', because the practice shows that unfortunately even those representatives of minority groups who perfectly speak the State language are not being promoted in the State institutions. This shortcoming was also highlighted by the NATO Parliamentary Assembly, which mentions that "[s]enior government posts tend to be occupied by ethnic Georgians, and there is a firm perception of ethnic discrimination in personnel appointments, especially in law enforcement agencies."[124]

As it was mentioned above, quite a significant number of persons belonging to minority groups, including ethnic Armenians, have been living in various Georgian regions and cities and they have good command of the State language, and objectively could satisfy the requirements for various positions in State institutions. Nonetheless, the minorities are underrepresented in virtually all spheres of public life, and this fact has been acknowledged by all the human and minority rights monitoring bodies. In this connection the UN Human Rights Committee recommended to the Government to "[t]ake all appropriate measures to ensure adequate political representation and participation of minorities".[125]

Another workable solution would be the adoption of special measures or affirmative action, aimed at raising the level of minorities' participation in public affairs, which has been underlined *inter alia* by the ICG[126] and numerous international organisations. Venice Commission mentioned that "[a]ffirmative action in connection with the national minorities can be defined as conferring special benefits upon individuals by virtue of their membership in a certain minority group. Viewed from the individual or from the group standpoint this principle seems of essential importance for the establishment of *de facto* not only *de jure* equality."[127] Indeed, the affirmative action

[124] NATO Document 166 CSCDG 05 E, 2005, para. 17.
[125] UN Document CCPR/C/GEO/CO/3, 2007, para. 17(b).
[126] See ICG Document, Europe Report No. 178, 2006, p. ii.
[127] Council of Europe Document CDL-AD(2005)009, 2005, para. 10.

in the case of minorities in Georgia can potentially contribute to the achievement of *de facto* equality and eradication of direct and most importantly indirect discrimination. But in order to achieve this goal the will of the political leadership of the country is crucially important, and until now this will has been expressed only in very limited instances and only vis-à-vis limited target groups.[128] The mere fact that the political leadership has acknowledged the potential of affirmative action in Georgia is positive. However in order to implement effective inclusionary integration policies the affirmative action in Georgia should not be limited in its scope of applicability, neither *ratione personae*, nor *ratione materiae*.

Actually, democracy, minority rights and decentralisation are interrelated and in many democratic societies they reinforce each other in the context of common constitutional framework. Armenians in Georgia have always seen a solution of their problems within the Georgian constitutional framework. They have expressed different opinions in this connection and one of the possible ways for resolving of their problems was seen in the creation of a local autonomy in the Samtskhe-Javakheti region. Such demands caused dissatisfaction and suspicion on the side of ethnic Georgian population. However, the preoccupations were extremely exaggerated and unfounded. In this connection the Georgian media has played a negative role as it contributed to creation of the enemy image. Objectively, demands for autonomy raised by representatives of the Armenian population of the region should be considered within the context of article 3 of Georgian Constitution which represents the fundamental legal provision concerning distribution of state authority among central and local governmental bodies. Furthermore, such demands should be considered as a logical development of decentralisation processes in a State which *de jure* allows existence of certain autonomous administrative-territorial entities on its territory, such as the Autonomous Republic of Adjara and the Autonomous Republic of Abkhazia. Strangely, the Government formally allows for existence of the Autonomous Republic of Abkhazia, which is out of Tbilisi's jurisdiction, and proves to be intolerant vis-à-vis the

[128] See *inter alia* UN Document CERD/C/GEO/4-5, 2011, paras. 27-28; COE Document ACFC/SR/II(2012)001 2012, para. 3(4); UN Document A/HRC/WG.6/10/GEO/1, 2010, paras. 103 and 106; UN Document A/HRC/17/11, 2011, para. 88; and ICG Document, Europe Briefing No. 63, 2011, pp. 10-11.

autonomous formation of the Samtskhe-Javakheti region, whose population has proved its loyalty towards the political centre, and whose claims for an autonomy derive from the need of better respect of their human rights and freedoms within the Georgian constitutional framework. Actually, the importance of decentralisation as of an effective tool for political participation of minorities has been highlighted *inter alia* by the UN Sub-Commission which mentions that "[d]ecentralization of powers based on the principle of subsidiarity, whether called self-government or devolved power, and whether the arrangements are symmetrical or asymmetrical, would increase the chances of minorities to participate in the exercise of authority over matters affecting themselves and the entire society in which they live."[129]

Democratic consolidation requires the full inclusion of minorities. This can be illustrated by looking at the case of Georgia, where the interconnectedness of both factors is particularly visible. As it was mentioned above, the main precondition of the demands for territorial autonomy by the Javakheti ethnic Armenian population consisted in the need of sound protection of human rights by representatives of the very same right holders, keeping in mind the specific nature of their minority condition. However, as far as "[t]he experience of the autonomies that Georgia inherited from the USSR gave it plenty of reasons for fearing this phenomenon"[130] the authorities in Tbilisi proved to have an extremely negative attitude towards legitimate and lawful claims of this group of their citizens. Such an attitude was explained by Dr. Sabanadze in terms of central authorities' mistrust caused by the lack of democratic consolidation. She points out that "[c]onsolidated democracies are less threatened by their own ethno-cultural diversity since they give minorities a stake in their respective societies and tend to be more successful in accommodating minority demands, including those of autonomy and devolution."[131] It is true that consolidated democracies can potentially provide more possibilities to both, the majority and minorities, however it is difficult to imagine the proper democratic consolidation when the State in the process of democratisation decides to violate minority rights. According to various non-governmental organisations, as well as international human rights monitoring bodies the Georgian

[129] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 46.
[130] A. Iskandaryan, in S. Minasyan, 2007, p. 9.
[131] N. Sabanadze, in F. Palermo and N. Sabanadze (eds.), 2011, p. 178.

State has made this wrong decision vis-à-vis ethnically Armenian young political activists from the Samtskhe-Javakheti region.[132] Furthermore, in June 2012 police arrested a businessman of the Armenian origin from Javakheti for deeds claimed to have taken place as early as in 2005.[133] Actually, a few days before his arrest, the businessman had rented some real property to the opposition political party which decided to set up its local office in Javakheti. Without going into details of the acts claimed to be conducted by the businessman, the fact of commencement of the law enforcement after seven years had elapsed since the claimed deed have presumably taken place, and just a few days after the renting of the property to the opposition political party, shows that the State would not tolerate any significant, even passive involvement of the Georgia's Armenian community in the country's political life, especially if such an involvement proves to be pro-opposition. In this connection it should be mentioned that the political pluralism is the fundamental component of any democracy, and in those societies where minorities exist, they have to be given an opportunity to take part in their society's democratic governance. However, the mentioned fact evidences the selective enforcement of Georgia's legal provisions, and this is especially harmful for those segments of the society, whose special needs must be given special attention in the process of development of an inclusive democracy. It should be mentioned that the above mentioned Georgian businessman of Armenian origin was not the only citizen of Georgia persecuted seemingly for his political views. Presumably many ethnic Georgians as well have been persecuted within the same context. However the State must be especially careful when it deals with issues related to political participation of minorities, especially in the context where the level of minorities' participation in public affairs is limited, as any limitation of legitimate political activity of minorities contributes to their further alienation from State's public affairs, which is extremely defective for the country's development in the long-term perspective.

[132] See *inter alia* F. De Varennes, 2012; COE Document SG/Inf(2010)1, 2010, para. 43; COE Document ACFC/OP/I(2009)001, 2009, para. 89; and *Country Reports on Human Rights Practices for 2011: Georgia*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2012.
[133] See *Georgian Authorities Target Javakhk Armenians Aligned with Opposition*, Hetq Online, 25 June 2012, available at: http://hetq.am/eng/news/15924/georgian-authorities-target-javakhk-armenians-aligned-with-opposition.html (accessed on 30 June 2012).

Objectively it is true, that Georgia had extremely negative experience of inter-ethnic relations which left its traces on the collective psychology of the nation, and that "the fear was expressed that to grant special privileges to national minorities would further threaten Georgia's territorial integrity."[134] However according to the Member of the Sub-Committee on Rights of Minorities at the PACE, Mr. Boriss Cilevičs "minorities can cause problems only when they do not have sufficient rights and freedoms, and I cannot remember any case where minorities were able to enjoy their legitimate human rights and nonetheless were keen to cause problems to the State".[135]

The last census conducted in Georgia showed that the Georgian society is composed of at least 16 per cent of ethnically non-Georgian population and the Georgian State, which equally belongs to all its citizens, must adopt and implement such policies which will allow representatives of minority groups to fully integrate and share a stake in the common Georgian State. In this connection Dr. Sabanadze's assertion that "States need to boost their legitimacy by democratizing state-minority relations and offering genuine protection of human rights, including those of minorities"[136] is deemed appropriate and. The State, with active participation of representatives of minorities, has to develop programmes "which allow for peaceful and constructive group accommodation based on equality in dignity and rights for all and which allows for the necessary pluralism to enable the persons belonging to the different groups to preserve and develop their identity".[137] Such programmes should be aimed at prioritisation of political affiliation of Georgian citizens to the Georgian State, and should unequivocally refuse any negative discrimination[138] of its citizens of different backgrounds. In other words "proper weight should be given to the interests of the minorities, all factors taken into account."[139] Otherwise it would be extremely difficult to accommodate Georgian diversity within the common heterogeneous society, and so far on the soil of the historically tolerant and multicultural Georgian State three

[134] J. Wheatley, ECMI Working Paper No. 28, 2006, p. 7.
[135] Interview with the Member of the Sub-Committee on Rights of Minorities at the PACE Mr. Boriss Cilevičs on 24 April 2012.
[136] N. Sabanadze, in F. Palermo and N. Sabanadze (eds.), 2011, p. 169.
[137] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 13.
[138] As opposed to positive discrimination or affirmative action.
[139] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 74.

categories of victims will perpetually exist, and these victims will be the State itself, the majority population and representatives of minority groups. The majority and minorities will be victims of the lack of civil cohesion and consequently fear of each other, while the Georgian State will 'suffer' from the lack of civil cohesion which at best will make it a quasi democracy.

2.5. GEORGIAN DOMESTIC LEGISLATION AND INSTITUTIONS

The purpose of this section is to illustrate the level of formal protection of minorities according the Georgian domestic legislation, and the State's position vis-à-vis the COE's recommendations concerning this issue. It helps to better comprehend the overall State policy in the field of minorities and the place of minority rights within the Georgian domestic legislation.

Persons belonging to minority groups in Georgia formally enjoy the same legal regime which generally exists for its citizens. The Georgian State's formal approach towards legislative regulation of issues related to minorities is based on the perception that minorities are equal citizens of Georgia, and for this reason persons belonging to minorities have to enjoy the same legal status as the majority. However the State, if not with very few exceptions,[140] does not recognise the fact that minorities might have specific needs, and in order to guarantee *de facto* equality of all Georgian citizens in practice, the State might need to adopt some special provisions and to implement specific policies vis-à-vis its minority citizens.

In 1999 the PACE in its opinion concerning *Georgia's application for membership of the Council of Europe* mentioned that it expects Georgia "to adopt, within two years after its accession, a law on minorities based on the principles of Assembly Recommendation 1201(1993)."[141] Mr. Tom Trier from ECMI mentioned in this connection that "political decision-makers seem reluctant to move forward on this issue and remain undecided as to the appropriateness of adopting a separate Law on Minorities, in spite of the explicit commitment and obligation to the Council of

[140] See UN Document CERD/C/GEO/4-5, 2011, paras. 27-28.
[141] PACE Opinion No. 209 (1999), 1999, para. 10(ii).

Europe."[142] Actually, PACE's recommendation has not been implemented, and in the COE/SG 2010 report on *Compliance with obligations and commitments by Georgia* it was mentioned that "[t]here [were] no plans to adopt a separate law on national minorities."[143] Further, in 2011 PACE resolution on *the honouring of obligations and commitments by Georgia* the PACE decided to adopt more flexible position vis-à-vis this specific COE accession commitment and mentioned that "[t]he Assembly would be prepared to consider this accession commitment as fulfilled if a comprehensive legal framework for the protection of national minorities, contained in a number of specialised laws, was in place, and, according to the opinion of the Advisory Committee on the Framework Convention, adequate and fully in line with European standards."[144] So, taking into account that Georgian positive legislation lacks specific law on minorities as such, in this chapter I will just mention those fundamental legal provisions, which are deemed especially important for persons belonging to minorities due to their anti-discriminatory character.

It should be mentioned that by virtue of paragraph 3 of article 7 of the Law of Georgia on Normative Acts, international treaties ratified by Georgia constitute an integral part of the Georgian legislation and prevail over the whole legislative corpus with exception of the Constitution, the Constitutional law, and the Constitutional Agreement between the Georgian State and the Georgian Orthodox Church (hereinafter referred to as GOC).

Inasmuch as it concerns Georgian positive domestic legislation, two articles of the Georgian Constitution have to be highlighted, which are considered as most relevant to minorities. First of all this is article 14 which represents the fundamental Georgian domestic legal anti-discriminatory provision. According to this article everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, property and title, place of residence. Secondly it is article 38 of the Constitution that has more limited *ratione personae* and is applicable only to citizens of Georgia. Its first paragraph contains a general declaration of equality and enumerates some rights. According to

[142] T. Trier, in European Yearbook of Minority Issues Vol 7, 2010, p. 680.
[143] COE Document, SG/Inf(2010)1, 2010, para. 42.
[144] COE Document, PACE Resolution 1801 (2011), para. 18.

paragraph 2 of article 38 rights of minorities shall be realised in compliance with universally recognised principles and norms of international law, and shall not be contrary to the sovereignty, state structure, territorial integrity, and political independence of Georgia.

Actually, I would not further enumerate all the anti-discriminatory legal provisions included in various normative acts,[145] as the mentioned articles of the Constitution are considered as a sufficient legal basis for the State to protect and promote *de facto* equality, should it wish so.

Having ascertained that Georgian domestic legislation lacks any *hard law* document explicitly regulating rights, freedoms and responsibilities of persons belonging to minorities, I have to mention that on 8 May 2009 the Government of Georgia adopted the National Concept for Tolerance and Civil Integration and its Action Plan. It could be said that this National Concept represents the main legislative act - albeit of *soft law* nature - which has been adopted to deal explicitly with issues pertinent to minorities *per se*.

To conclude this section I would like to tackle the issue of those State institutions that have been mandated to deal with minority issues. Within the institutional framework of the Georgian State numerous bodies have an appropriate mandate. These bodies are the State Minister for Reintegration, Parliamentary Committee on Human Rights and Civil Integration, Civil Integration and Tolerance Council at the President of Georgia, the Adviser on National Minorities to the President of Georgia, the Public Defender and its Tolerance Centre, including the Council of National Minorities and the Council of Religions. Such a multiplicity of State institutions working on minority issues is deemed unnecessary as the bloated bureaucracy could be harmful for proper implementation of correct policies. The most important is to express firm political will to execute correct policies, and the mere fact of existence of State institutions cannot help in achieving the formal goals mentioned in their mandates. The issue of bureaucratic exaggeration has been highlighted by the AC/FCNM which mentioned that "[a]ccording to the representatives of national minorities, the existence of several State

[145] The list of anti-discriminatory clauses of Georgian positive legislation is provided in the UN Document CERD/C/GEO/4-5, 2011, para. 72.

structures with responsibilities in this field complicates their dialogue with the authorities. They believe that decision-making capacity and responsibility are thereby dispersed and weakened."[146] Actually, in order to contribute to improvement of the situation the large quantity of State institutions should be replaced with the higher quality of State policies in the field.

[146] COE Document ACFC/OP/I(2009)001, 2009, para. 144.

INTERNATIONAL LEGISLATION AND INSTITUTIONS RELATED TO MINORITIES

3. INTERNATIONAL LEGISLATION AND INSTITUTIONS RELATED TO MINORITIES

This chapter is dedicated to those international *hard* and *soft law* documents which by virtue of their universality or ratification are applicable to minorities in Georgia. International law will be researched substantively, together with appropriate interpretations of its provisions. After considering the legal issues related to rights of persons belonging to minority groups I will provide some general information concerning those universal[147] and regional institutions[148] which have been set up to carry out activities in the field of protection and promotion of rights of persons belonging to national, linguistic and religious minorities and whose geographical scope covers *inter alia* Georgia. This is deemed particularly important as these institutions evaluate the situation in the field of rights of minorities, interpret formal provisions included in various *hard* and *soft law* documents, and give specific recommendations concerning improvement of human rights situation in the world. Actually, their considerations help not only to better comprehend the level of protection and promotion of minority rights in Georgia, but also to understand the State's readiness to respect its international obligations in the field of minority rights. They also provide invaluable source of information for better comprehension of the current minority rights discourse at international, as well as at Georgian levels.

As persons belonging to minority groups are *per se* human beings, any human

[147] Only those special procedures whose mandate is related with rights of persons belonging to minority groups will be tackled within the framework of this study. There are two categories of mandate holders. Some of them have limited geographical scope of activity, and others' mandate is not limited in terms of political geography. Hence, the main difference among them is that the mandates of the first category are devoted to human rights issues in countries or territories in which the human rights situation is deemed by the UN Human Rights Council requiring international community's special attention, in other words where the human rights situation is considered as particularly alarming. While in the second category, which consists of thematic mandate holders, both individual (called 'Special Rapporteur' or 'Independent Expert') and collegial (working group), are those special procedures whose mandates provide for addressing violations of specific human rights issues explicitly covered by their mandate, which is 'valid' in the whole world. For the time being there are 10 country and 36 thematic mandate holders acting as 'eyes and ears' of the Human Rights Council.

[148] Due to the non-applicability of the European Union (hereinafter referred to as EU) legislation and specific mandates in Georgia, the EU regime will not be tackled under this section, however some information concerning the issues pertinent to rights of persons belonging to minority groups in Georgia within the more general framework of protection and promotion human rights as a part of EU-Georgia cooperation is provided on the basis of the most recent Report on *Implementation of the European Neighbourhood Policy in Georgia*, prepared by the Office of the High Representative of the European Union for Foreign Affairs and Security Policy. See EU Document SWD(2012) 114 final, 2012.

rights' related document is applicable to them.[149] In accordance with article 1 of the Universal Declaration of Human Rights (hereinafter referred to as UDHR) "all human beings are born free and equal in dignity and rights."[150] For this reason, minority rights by virtue of specific nature of both their personal and material scopes are 'additional' legal guarantees for representatives of especially vulnerable groups to fully enjoy the existing regime of protection and promotion of their human rights. This assertion derives *inter alia* from the Sub-Commission's interpretation of the *ratione materiae* of minority rights, according to which "[t]he rights of specific categories of persons are supplementary to the universally recognized rights of every person."[151] The *erga omnes* anti-discrimination clause is especially relevant and generates an extra 'shield' necessary for sound protection and promotion of rights of persons belonging to minority groups in the more general context of human rights.

As issues pertaining to *ratione personae* of minority rights have been tackled previously in this study[152] I will not repeat them here, and for this reason this chapter is mostly focused on issues pertinent to *ratione materiae* of minority law.

Before going to the substantial issues, some preliminary observations are deemed appropriate in order to provide some specific data concerning the Georgian State's attitude towards legitimate concerns of the Armenian community. First of all it should be mentioned that in the case of Georgia the level of cooperation with international organisation and proper consideration of their recommendations is deemed inappropriate. The Government of Georgia sometimes provides international organisations with incomplete and sometimes even with inaccurate information concerning the issues pertinent to minorities in Georgia.

For instance, in response to the AC/FCNM observation that the AC/FCMN "notes the particular concern of national minorities as to the situation of their religious and historical buildings and the absence of appropriate state support"[153] the Government answered on 10 October 2009 that "[t]o this day numerous monuments of national

[149] See *inter alia* UN Document CCPR/C/21/Rev.1/Add.5, 1994, para. 4.
[150] UN Document A/Res/3/217, 1948.
[151] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 81.
[152] See Chapter 1 of this study.
[153] See COE Document ACFC/OP/I(2009)001, 2009, para. 64.

minorities have been registered, including 50 Gregorian (Armenian) churches...,"[154] while in Georgia's Universal Periodic Review (hereinafter referred to as UPR) Report, submitted on 8 November 2010 the Government stated that "[h]ouses of worship in Georgia include ... 32 Armenian Apostolic churches..."[155] Actually, this is not the only misrepresentation of the facts.[156]

Another example regards the case of inaccurate representation of facts by a Deputy Minister of Justice of Georgia, provided to the international mandate holder concerning the position of the Diocese of Armenian Apostolic Church in Georgia vis-à-vis the issue of registration as a legal entity. The Personal Representative (hereinafter referred to as PR) of the OSCE Chairman-in-Office on Combating Racism, Xenophobia and Discrimination on 29 and 30 April 2010 conducted a visit to Georgia in order "to discuss measures taken by the Government of Georgia to promote an inclusive and non-discriminatory policy towards persons belonging to religious and ethnic minority communities."[157] In his report *Country Visit to Georgia* the PR mentioned that "[t]he Deputy Minister of Justice explained the government's view that the registration issue is a problem mainly for the Armenian Apostolic Church, which desires the same legal status granted to the Georgian Orthodox Church."[158] Actually, the Armenian Apostolic Church has never claimed the same status as that of the GOC, and this position has been proved by the Head of the Diocese. Actually, the high level Georgian public servant has provided incorrect information in order to mask the then existing lack of political will to provide religious organisations with status compatible with their specific nature as that of the religious organisation. Moreover, insofar as the Government's representative stressed that "[s]ince the Armenian Apostolic Church has so far chosen not to register, the issue of its legal status and, consequently, the restitution of properties, is not on the

[154] See COE Document GVT/COM/I(2009)002, 2009, p. 11.
[155] UN Document A/HRC/WG.6/10/GEO/1, 2010, para. 56.
[156] As for July 2012 there are 42 acting Armenian Apostolic Churches in Georgia. During the Soviet period there were 2 acting Armenian Churches in Tbilisi where more than 80,000 Georgian citizens of Armenian ethnicity live, and notwithstanding numerous requests of restitution of the Armenian Diocese's religious property confiscated during the Soviet period, this issue remains one of the most topical problems in the Diocese's agenda. It should be mentioned that the Government of Georgia has returned to the Georgian Orthodox Church its confiscated property, and has even given to the Georgian Orthodox Church some property which before the Sovietisation of Georgia belonged to the Armenian Diocese.
[157] OSCE Document CIO.GAL/137/10, 2010, p. 1.
[158] Ibidem, p. 3.

agenda",[159] presumably through providing inaccurate information the Government intended to decline the responsibility for restitution of property of the Diocese of Armenian Apostolic Church in Georgia confiscated during the Soviet Period. As far as issues related to freedom of religion and rights of religious minorities in Georgia are provided under the section dedicated to the UN SR on freedom of religion or belief, in this part I would not further go into details thereto.

3.1. ARTICLE 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Hence, first of all I would like to mention article 27 of the ICCPR. The ICCPR is a *hard law* document adopted on 16 December 1966 by the UN/GA[160] and entered into force on 23 March 1976. For the time being it has 167 States parties, and Georgia acceded to it on 3 May 1994.[161] The legal norm similar to that of the article 27 of ICCPR has been included into the Convention on the Rights of the Child.[162] The main difference among these two provisions consists in their respective *ratione personae*, as the former protects all persons belonging to minority groups under the jurisdiction of States parties of the ICCPR, while the later explicitly concerns the rights of children belonging to ethnic, religious or linguistic minorities or persons of indigenous origin within the respective jurisdictions.

Pursuant to the article 28 of the ICCPR the Human Rights Committee has been established as its treaty body.[163] Its main functions consist in consideration of regular reports submitted by the States parties of the ICCPR on issues concerning implementation of rights included in it,[164] consideration of inter-state complaints lodged by the States parties[165] and the ability of examination of individual complaints regarding alleged breaches of the ICCPR's provisions by the States parties who have ratified its

[159] Ibidem, p. 3.
[160] See UN Document A/RES/21/2200, 1966, annex 2.
[161] Source - UN Treaty Collection Database, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (accessed on 30 June 2012).
[162] See UN Document A/RES/44/25, 1989, annex, art. 30.
[163] See UN Document A/RES/21/2200, 1966, annex 2, art. 28.
[164] Ibidem, art. 40.
[165] See Ibidem, art. 41.

First Optional Protocol.[166] Moreover, the Human Rights Committee, insofar as it represents the ICCPR's main monitoring and interpretative body, publishes general comments on thematic issues deriving from the content of human rights provisions included in the ICCPR.

On 3 May 1994 Georgia acceded to the First Optional Protocol to the International Covenant on Civil and Political Rights and by virtue of its participation in the Protocol it recognised the competence of the Human Rights Committee to receive and consider communications from individuals, as well as due to the fact that Georgia has not made any reservation it recognised the Committee's authority to examine inter-state complaints lodged against Georgia by other States parties of the Protocol.[167]

According to the dispositions of article 27 an Armenian in Georgia, which believes being a Georgian citizen of Armenian ethnicity, belongs to the parish of the Diocese of Armenian Apostolic Church in Georgia, and whose mother tongue is Armenian, is as well protected by this article as if he lacked any of these characteristics, and possessed only one or some of them.

The UN Human Rights Committee identifies two categories of possible offenders. These are the State itself, and third persons within the State party's jurisdiction.[168] In any case, for whatever violation conducted within the State party's jurisdiction, this State is *ipso facto* responsible for taking appropriate measures to guarantee human rights, meaning to respect them, to ensure their sound protection and to fulfil human rights obligations to the largest possible extent.[169] Human Rights Committee is not the only one which highlights States' responsibility to ensure protection of minorities under their jurisdiction from illicit deeds of both State and non-state actors. With regard to protection of minority rights the UN Sub-Commission mentions that "[m]inority protection is based on four requirements: protection of the existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned",[170] and further

[166] See UN Document A/RES/21/2200, 1966, annex 3, art. 1.
[167] Source - UN Treaty Collection Database, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en (accessed on 30 June 2012).
[168] UN Document CCPR/C/21/Rev.1/Add.5, 1994, para. 6(1).
[169] See UN Document CCPR/C/21/Rev.1/Add.13, 2004.
[170] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 23.

continues that protection of minority "identity means not only that the State should abstain from policies which have the purpose or effect of assimilating minorities into the dominant culture, but also that it should protect them against activities by third parties which have an assimilatory effect."[171]

With this regard I would like to give an example of Georgian State's failure to perform its duties to protect and to fulfil rights of country's non-Orthodox religious minorities violated by a non-state transgressor. Hence, in Georgia the Georgian Orthodox priests do not allow persons of non-Orthodox religion to participate in administering Sacraments in an Orthodox temple. For instance, if a person has been baptised in an Orthodox temple by an Orthodox priest he is considered as deserving to take part in administering Orthodox Sacraments, such as for example being a godfather or witness in the wedding. However, if a person belongs to a non-Orthodox religious denomination, such as for example the Armenian Apostolic Church or the Roman Catholic Church, such person will not be allowed by the Orthodox priest to participate in a Sacrament, unless he/she 'changes' his religion through the emergency conversion into Orthodox Christianity via urgent re-baptism executed by an Orthodox priest. Thus, if a citizen of Georgia of Armenian origin who belongs to the parish of the Diocese of Armenian Apostolic Church in Georgia, was asked by an Orthodox friend to be his/her godfather, one of the friends will definitely become a victim of the majority Church's discriminatory attitude towards non-Orthodox Christians. If the Armenian consents to be re-baptised than his/her, as the representative's of religious minority's freedom of religion will be violated. Otherwise he will not be allowed participating in administering the Sacrament of baptism and so far his Orthodox friend's freedom of religion will be violated, as this freedom presumably comprises *inter alia* liberty to choose the godfather. Since more than two decades of Georgian independence the State has been tolerating such an attitude of the Georgian Orthodox Church, and for this reason this example is deemed illustrative of flagrant violation of rights of religious minorities and lack of State's respect of its duty to protect human rights violated by third persons. According to representatives of Georgia's non-Orthodox Christian denominations, many representatives of their respective parishes have been psychologically forced to

[171] Ibidem, para. 28.

'sacrifice' their freedom of religion for the sake of duly continuation of the Orthodox ceremony, and for this reason it could be asserted that since the restoration of Georgia's statehood the majority Church, with silent consent from the State has been committing proselytism. It is not out of place to mention here the UN Sub-Commission's position that "[c]ultural or religious practices which violate human rights law should be outlawed for everyone, not only for minorities."[172] This is but one example of violation of rights of religious minorities in Georgia, and many others have been singled out by virtually all the international organisations working on human rights' relates issues.

The last periodic examination of Georgia under the ICCPR occurred in 2007. On 15 and 16 October 2007 the Committee considered the third periodic report submitted by Georgia[173] and after careful scrutiny included some important provisions related to national, linguistic and religious minorities into its concluding observations.[174] While mentioning problems faced by religious minorities in Georgia, such as discrimination and property issues, the Committee recommended to the State party to *inter alia* "address the problems related to the confiscation of places of worship and related properties of religious minorities."[175] Furthermore, the Committee stressed that Georgia "should take steps to ensure equal enjoyment of the right of freedom of religion or belief and ensure that its legislation and practices conform fully to article 18 of the Covenant."[176]

Moreover, the Committee singled out issues pertaining to cultural rights and political representation of minorities, as well as acknowledged danger of marginalisation of minorities and recommended to Georgia to *inter alia* allow use of minority language at the local level, and "take all appropriate measures to ensure adequate political representation and participation of minorities".[177]

Georgia's fourth periodic report was due on 1 April 2011. However as of 30 June 2012 the State has not yet submitted its report for the consideration of UN Human

[172] Ibidem, para. 57.
[173] See UN Document CCPR/C/GEO/3, 2006.
[174] See UN Document CCPR/C/GEO/CO/3, 2007, paras. 15 and 17.
[175] Ibidem, para. 15.
[176] Ibidem.
[177] Ibidem, para. 17.

Rights Committee.[178]

3.2. UNITED NATIONS DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

The next legal act that I would like to tackle is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which is, according to its preamble,[179] inspired by article 27 of ICCPR. This is a *soft law* document unanimously adopted by the UN/GA on 18 December 1992, and it is the first universal act adopted completely and precisely for representatives of minority groups.

Acknowledging that the "relationship between the State and its minorities has in the past taken five different forms: elimination, assimilation, toleration, protection and promotion"[180] the commentators of the Declaration *a priori* outlaw the elimination, as it includes elements of the crime of genocide. Furthermore, the UN Sub-Commission mentions that "the Declaration is based on the consideration that forced assimilation is unacceptable".[181] This assertion derives *inter alia* from the Declaration's four-dimensional minority protection approach, composed of "protection of the existence, non-exclusion, non-discrimination and non-assimilation" of minorities.[182]

Due to the Declaration's *soft law* nature the political and legal 'weight' of its monitoring body has less influence in international affairs than that of the Human Rights Committee which is based on a *hard law* provisions of ICCPR and its Additional Protocol. However, even though the Declaration of Minorities is a *soft law* document and for this reason it is not legally binding for the UN member States, it has been conferred crucial importance from the UN bodies. Two specific organs exist for monitoring the sound respect of the Declaration on Minorities' by member States and elaboration of special recommendations with this regard. These organs are the Independent Expert on minority issues and the Forum on Minority Issues. Furthermore, the SR on freedom of religion or belief is equally relevant in connection with religious

[178] See information concerning Georgia's reporting status, available at: http://www.unhchr.ch/tbs/doc.nsf/5038ebdcb712174dc1256a2a002796da/9ccbc8a64748fa85c1257433002e7c3b?OpenDocument (accessed on 30 June 2012).
[179] See UN Document A/RES/47/135, 1992, preambular para. 4.
[180] UN Document E/CN.4/Sub.2/AC.5/2005/2, 2005, para. 21.
[181] Ibidem.
[182] Ibidem, para. 23.

minorities, and for this reason issues pertinent to this mandate holder as well will be tackled in this chapter.

3.2.1. UNITED NATIONS INDEPENDENT EXPERT ON MINORITY ISSUES

The mandate of the Independent Expert was established in 2005. In its resolution 2005/79 the then Commission on Human Rights requested "the [UN] High Commissioner for Human Rights to appoint an independent expert on minority issues."[183] The very same resolution contained also the Independent Expert's mandate. In carrying out her mandate, the Independent Expert can *inter alia* visit particular countries and conduct *in situ* examination of the minority rights. Since establishment of the mandate, the Independent Expert on Minority Issues has not yet paid an official visit to Georgia.

3.2.2. UNITED NATIONS FORUM ON MINORITY ISSUES

The Forum on Minority Issues has been established in 2007 pursuant to the Human Rights Council resolution 6/15.[184] Since its establishment it functions as the global platform for cooperation and constructive dialogue on issues pertinent to representatives of national, ethnic, linguistic and religious minorities. Being the universal platform for dialogue among representatives of virtually all the stakeholders in the field of minorities' related issues, the Forum is considered as the unique source for providing the expertise on sound implementation of the Declaration on Minorities' provisions and it has been recognised as such by the Human Rights Council.[185] Since its establishment numerous representatives of the Georgian civil society have taken part in the Forum on Minority Issues' sessions and have presented their vision of minority rights in Georgia.

3.2.3. UNITED NATIONS SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF

The UN SR on freedom of religion or belief was the only one among those UN special procedures whose mandate is explicitly related with issues pertinent to rights of

[183] See UN Document E/CN.4/RES/2005/79, 2005, para. 6.
[184] See UN Document A/HRC/RES/6/15, 2007.
[185] See Ibidem, para. 1.

persons belonging to minority groups, who have paid an official visit to Georgia.[186]

The post of this special procedure has been established in 1986 by the then Commission on Human Rights in virtue of its resolution 1986/20,[187] and "subsequently the mandate has been gradually expanded."[188]

This special procedure accepts individual complaints from persons whose rights have allegedly been violated and transmits urgent appeals and letters of allegation to the concerned Governments under whose jurisdiction such breaches are presumably taking place.

In 2003 the SR on freedom of religion or belief has paid an official visit to Georgia and upon conclusion of his *in situ* examination of issues related to his authority, the then mandate holder Mr. Abdelfattah Amor prepared and published the report entitled *'Visit to Georgia'*[189] in a form of an addendum to his 2004 Annual Report.[190] In his 2003 Annual Report Mr. Amor mentions that "[d]uring 2002, the [SR] requested invitations to visit Georgia and Romania".[191] Actually, the Georgian Government's official invitation was necessary to carry out the visit, as in that period Georgia had not yet extended a standing invitation to the then Commission on Human Rights' Special Procedures. Hence, in the current section I would like to examine the Report prepared in 2003 and to provide some updated information vis-à-vis issues mentioned in the Report. This information is deemed important for better comprehension of situation of religious rights of the Armenian community.

Thus, it was a visit conducted at the SR's request and it was carried out on 31 August - 7 September 2003. It is noteworthy that the SR's visit to Georgia took place after the signature and consequent ratification of the Constitutional Agreement between the Georgian State and the Georgian Orthodox Church (hereinafter referred to as the

[186] On 30 March 2010 Georgia extended a standing invitation to all thematic special procedures, and by virtue of this act the Government announced that any request from special procedures to visit the country and to conduct *in situ* examination of the human rights situation related to their specific mandate will always be accepted. Source - http://www.ohchr.org/EN/HRBodies/SP/Pages/Invitations.aspx (accessed on 30 June 2012).
[187] See UN Document E/CN.4/RES/1986/20, 1986, para. 2.
[188] M. Wiener, in Religion and Human Rights, 2007, p. 3.
[189] See UN Document E/CN.4/2004/63/Add.1, 2004.
[190] See UN Document E/CN.4/2004/63, 2004.
[191] UN Document E/CN.4/2003/66, 2003, para. 88.

Constitutional Agreement).[192] As it was mentioned before, the Constitutional Agreement prevails over the whole legislative corpus of Georgia except the Constitution and the Constitutional law.

One of the main considerations of crucial importance underlined by the SR regards the issue of state-church relations in Georgia. The mandate holder mentioned that "Orthodoxy is not a State religion in the formal sense. Nonetheless, the importance of the [GOC] at all levels of Georgian society and the constitutional agreement make it a State religion de facto".[193] Indeed, the situation regarding freedom of religion or belief in Georgia, and more particularly rights of religious minorities should be regarded through the prism of the GOC's questionable relations with the State institutions, which often negatively affect rights and legitimate claims of representatives of religious minorities in Georgia. I would argue that Mr. Amor's affirmation concerning the rarity of Georgian politicians "who had thus far taken an overtly critical attitude towards the [GOC] or some of its intrigues"[194] prove the above mentioned consideration about the GOC's negative influence on other religious denominations, and the State's hesitance, and even inability or unwillingness to address on equal footing situations involving non-dominant religious organisations.

Another preoccupation of the SR regarded the place of the Constitutional Agreement in the system of Georgia's positive legislation. Mr. Amor mentions that "[b]eing of constitutional rank, the agreement sits above laws and international treaties in the hierarchy of Georgian rules, but the SR has not been given precise, consistent information on the exact relationship between the Constitution and the agreement: whether, in other words, the agreement ranks on a par with the Constitution or just below it."[195] Exactly, the determination of the Constitutional Agreement's position within the Georgian legislative corpus has crucial importance as its provisions, even though they do not *prima facie* affect religious minorities in Georgia, can be interpreted as influencing minorities' standing under the Georgian jurisdiction. Insofar as the

[192] The *Constitutional Agreement* is provided on the official website of the Patriarchy of Georgian Orthodox Church, available at: http://www.patriarchate.ge/_en/?action=eklesia-saxelmcifo (accessed on 30 June 2012).
[193] UN Document E/CN.4/2004/63/Add.1, 2004, para. 28.
[194] Ibidem, para. 41.
[195] Ibidem, para. 29.

Georgian constitutional legislation places the Constitutional Agreement on almost equal footing with the Constitution itself, the privileges exclusively conferred to the GOC might negatively affect the religious minorities, especially in spheres which represent mutual interests of the GOC's and religious minority organisations, and both claim their rights thereto. For instance, the provision of the Constitutional Agreement which states that "the State shall take responsibility to partly compensate material damage (Order 1183 issued by the Council of Ministers of Soviet Socialist Republic of Georgia on 24 December 1990)"[196] has been instrumentalised by the GOC as the legal basis for its claims vis-à-vis the property of religious minorities confiscated during the Soviet Era. Actually, it was the Order 1183 issued by the Council of Ministers of Soviet Socialist Republic of Georgia on 24 December 1990, which has been included to the Constitutional Agreement and which *de jure* allowed to the GOC to claim the ownership of the temples of the Roman Catholic, Armenian Apostolic, and Lutheran Churches after restoration of Georgia's state independence. This should be mentioned that for almost two decades after the restoration of Georgian statehood, the GOC has been the exclusive consumer of the *de jure* and *de facto* preferences conferred by the Georgian State, and financed by all the Georgian taxpayers, including representatives of religious minorities.

Actually, the situation in which only one religious organisation has right to restitution of property and compensation of material damage constitutes a clear case of direct discrimination and this has been confirmed by the UN SR on freedom of religion or belief.[197] This affirmation is equally confirmed by the ECtHR case-law, which states that "a distinction based essentially on a difference in religion alone is not acceptable."[198]

With this regard I should mention that the Georgian Government has to promote equality in the country and in order to avoid the Constitutional Agreement's negative impact on religious minorities Georgian authorities must express their firm political will, keeping in mind the primary importance of the fundamental principle of equality before the law, to guarantee democratic comportment with all the natural and legal

[196] See the Constitutional Agreement, 2002, art. 11(1).
[197] Interview with the UN SR on freedom of religion or belief Mr. Heiner Bielefeldt, 3 May 2012.
[198] See case *Hoffmann v. Austria*, ECtHR Judgment of 23 June 1993, para. 36.

persons under its jurisdiction, without any *de jure* or *de facto* discrimination whatsoever.

It should be mentioned that the question of compliance of the Constitutional Agreement with the universally recognised human rights provision has been raised *inter alia* by the Venice Commission within the framework of the Constitutional Agreement's examination. The Swedish member of the COE's advisory body on constitutional matters, Mr. Hans-Heinrich Vogel stressed that "[i]t is obvious that the Constitutional Agreement should comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Protocols to this Convention and other applicable international human rights instruments. But compliance with the Convention is not easy to achieve - especially if both Article 9 on freedom of religion and Article 14 on prohibition of discrimination (or similar provisions in other human rights instruments) are in question."[199] Consequently, the Secretariat of the Venice Commission's in its Note on the draft Constitutional Agreement declared that *"[l]'accord doit être subordonné à la Constitution et au droit international"*.[200] Unfortunately, the Venice Commission's recommendation has not been taken into account by the Georgian authorities, as the Law of Georgia on Normative Acts places the Constitutional Agreement over international treaties ratified by Georgia.[201]

Until recently only the GOC was registered as a religious organisation, and all other religious denominations could have been registered either as legal entities of private law, in a form of NGOs or foundations, or *de facto* exist without registration. Another possibility was to register as a commercial legal entity, but this possibility seems completely incompatible with the very nature of a religious organisation, and for this reason I will not go into details of the last option. Actually, the position about the possibility of registering as either commercial or non-commercial legal entity was expressed by the delegation of Georgia during the UPR. While answering to the Holy See's recommendation to "take steps to ensure the legal recognition of all religions and

[199] Council of Europe Document, Venice Commission, CDL(2001)063, 2001, p. 1.
[200] *"The Agreement shall compel to the Constitution and the international law"*, Source - COE Document, Venice Commission, CDL(2001)079, 2001, p. 3.
[201] See Law of Georgia *On Normative Acts*, 2009, art. 7(3).

grant each religious minority the possibility of legal registration with a specific ministerial office as a legal public entity"[202] the Government of Georgia declared that "Georgia cannot accept this recommendation and no further steps will be taken inasmuch as the existing Georgian legislation already provides all organizations, be it of religious or other character, with the ability to register legally as a for profit or a non-profit entity. Should a religious organization choose to register as a non-profit entity (as is the practice in numerous democracies) it can take advantage of various tax benefits."[203] This position of the Government was expressed on 31 May 2011, and as soon as on 5 July 2011 the authorities seem to have changed their opinion and they adopted amendments to the Georgian Civil Code,[204] by virtue of which two categories or religious organisations have got a possibility to register as legal entities of public law and to be called religions instead of previously available options. According to these amendments, the title of a religious organisation and the legal entity of public law could be conferred only to those religious organisations which are recognised as religious organisations in the COE Member States or which have close historic ties with Georgia. These amendments left intact the pre-existing right of religious organisations to register as legal entities of private law, or to exist without registration. After these amendments many religious organisations, such as the Armenian Apostolic Church, the Roman Catholic Church, the Evangelical-Baptist Church, the Muslim Community, etc., have finally gotten their certificates of state registration which recognised the fact that there are 'religious organisations'. After the registration the next step should be conferral of rights to the religious minority organisations, or in other words the formal registration should be completed with factual content which has not been done yet.

It should be mentioned that this was not the first attempt to resolve the issue or state registration of religious minorities. In 2003 the Government of Georgia had decided to adopt a separate law on Freedom of Conscience and Religious Entities and it has even asked the Venice Commission to prepare an opinion on the draft[205]. Even though this

[202] UN Document A/HRC/17/11, 2011, para. 106(47).
[203] UN Document A/HRC/17/11/Add.1, 2011, p. 7.
[204] See *Bill on Religious Minorities Legal Status Becomes Law*, Civil Georgia, 7 July 2011, available at: http://www.civil.ge/eng/article.php?id=23711 (accessed on 30 June 2012).
[205] See the Draft Law of Georgia *On Freedom of Conscience and Religious Entities and Explanatory Note*, available at: http://www.venice.coe.int/docs/2003/CDL(2003)090-e.pdf (accessed on 30 June

draft has lost its importance from both political and legal points of view, the comments prepared by the Venice Commission are deemed nonetheless very important as they touch upon some fundamental questions for the Georgian society. Without entering into details of the Opinion, I would like to highlight an important issue, which remains topical and unresolved even now. The Venice Commission underlines the importance of non-discrimination, when it says that "[t]he prevailing attitude, expressed in a general comment of the UN Human Rights Committee is that states can acknowledge the special role that a particular church or denomination has played in their society, or even proclaim a religion to be its State religion, provided that this does not lead to discrimination based on religious beliefs."[206] Objectively, the situation which exists in Georgia is very much discriminatory vis-à-vis religious minorities. The preconditions of the discrimination are laid in the Constitutional Agreement and the rights that the State exclusively confers to the GOC.[207] The discriminatory nature of the Constitutional Agreement was mentioned *inter alia* by the Ombudsman of Georgia.[208] I would not go into details of examination of rights that the GOC enjoys and other religious organisations are deprived of. However, I would like to focus on one issue which is of crucial importance for representatives of some traditional[209] religious minority organisation in Georgia. This is the issue of restitution of property which belonged to them before Georgia's Sovietisation and which has not been returned to their historical owners after the restitution of Georgian statehood.

The problem of restitution of property has been highlighted by the SR Amor. The SR mentions that the Armenians in Georgia have "had problems with the ownership of property, some of their churches having been confiscated during the Soviet period".[210] Actually, the Armenian Apostolic Church is not the only religious entity which was unable to resolve the property problem, and the SR mentioned that "[f]ive Roman

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2012).

[206] Council of Europe Document CDL-AD(2003)020, 2003, para.12.

[207] See F. De Varennes, 2012, p. 9.

[208] See J. Wheatley, ECMI Working Paper No. 28, 2006, pp. 48-49.

[209] The notion 'traditional religious organisation' is mentioned without any prejudice or discriminatory attitude vis-à-vis other religious organisations. This nomination is deemed appropriate to single out those religious organisations which have been existing in Georgia since country's pre-Sovietisation period, and for this reason have lost their property due to the confiscation by the Soviet Government.

[210] UN Document E/CN.4/2004/63/Add.1, 2004, para. 48.

Catholic Churches (in Bathumi, Kuthaisi, Gori, Ude and Ivlita), said to have been confiscated during the Soviet period and handed over to the Orthodox Church, have not yet been returned."[211]

Various international organisations have mentioned this issue as one of the main problem that the religious minorities have been unable to resolve notwithstanding the position of both the religious minorities which represent quite large segments of the Georgian society and the international community. The UN Human Rights Committee,[212] the AC/FCNM,[213] the ECRI,[214] the PR of the OSCE Chairman-in-Office on Combating Racism, Xenophobia and Discrimination,[215] the EU,[216] etc., all have mentioned this problem among the most topical issues to be tackled when considering Georgia's human rights records. This issue has been highlighted by the Georgian Ombudsman as well.[217] In this connection a recent PACE recommendation included in the resolution on *the honouring of obligations and commitments by Georgia* states that the "[PACE] therefore calls on the Georgian authorities to ... resolve the outstanding issues regarding the return to their respective denominations of historic religious properties confiscated during the Soviet era."[218]

Nonetheless, the religious minorities unfortunately have been unable to progress in this issue even after their *de jure* registration. The position of the Georgia's Deputy Minister of Justice to this issue, expressed in April 2010 was that "[s]ince the Armenian Apostolic Church has so far chosen not to register, the issue of its legal status and, consequently, the restitution of properties, is not on the agenda."[219] Actually, if the registration of the Diocese of the Armenian Apostolic Church was considered as a precondition for restitution of property, then on 12 March 2012 the registration problem

[211] Ibidem, para. 46.
[212] See UN Document CCPR/C/GEO/CO/3, 2007, para. 15.
[213] See COE Document ACFC/OP/I(2009)001, 2009, paras. 96-97 and 187.
[214] See COE Document CRI(2010)17, 2010, paras. 69-70.
[215] See OSCE Document CIO.GAL/137/10, 2010, p. 5.
[216] See EU Document SWD (2012) 114 final, 2012, p. 7.
[217] The Public Defender (Ombudsman) of Georgia has been including information concerning the problem of religious minorities' property restitution in his annual report on human rights situation in Georgia. Most recently this problem has been reflected in the 2011 Annual Report on the Situation of Human Rights and Freedoms in Georgia, 2012, p. 105, available at: http://www.ombudsman.ge/files/downloads/ge/dzympimgpvvrngdlhnno.pdf (in Georgian, accessed on 30 June 2012).
[218] COE Document, PACE Resolution 1801 (2011), para. 19(2).
[219] See OSCE Document CIO.GAL/137/10, 2010, p. 3.

has been resolved as the Diocese registered as a religious organisation in a form of legal entity of public law. Unfortunately, neither before, nor after the registration the Armenian Apostolic Church, as well as the Roman Catholic Church and other religious denominations were able to secure the restitution of their historical property. Moreover, due to the negligence from the State institutions which are obliged to take care about the cultural heritage of the country without any discrimination based on the origin of the monuments, in 2009 the Mughnetsots Surb Gevorg Armenian Church which was built in 1356 collapsed in the center of Tbilisi, and this unfortunate fact was reflected in the PR of the OSCE Chairman-in-Office on Combating Racism, Xenophobia and Discrimination Report, mentioning that "[t]he Roman Catholic and Armenian Apostolic Churches have reportedly been unable to secure the return of their churches and other facilities that were closed during the Soviet period, many of which later were reportedly given *de facto* to the Georgian Orthodox Church by the government. This problem affects in particular the Armenian Apostolic Church, whose representatives mentioned the demolition of St. George Church in Tbilisi as an example of a cultural and historical loss for the community."[220] Another loss for the Armenian community which occurred after the registration of the Armenian Church was the bell tower of the Surb Nshan Armenian church built in 1703, which is situated in the historical centre of Tbilisi. Actually, this situation is a clear case of discrimination of the Armenian community of Georgia, because the negligence of appropriate State institutions negatively affects the cultural heritage of this community.

Ultimately, I would like to conclude this section with Mr. Amor's assertion that "[t]he situation in Georgia gives rise to some contradictory impressions, sometimes suggesting that the State manipulates the Orthodox religion and sometimes that the State is subordinate to the Orthodox Church which uses the State as its organ."[221] Even after almost a decade which passed since the SR's visit to Georgia, the last affirmation seems to be the best characterisation of church-state relations in the Georgian society. The GOC's and State's mutual manipulation, and their mutual hiding behind each others' back when issues of resolution of legitimate concerns of religious minorities are

[220] Ibidem, p. 3.
[221] UN Document E/CN.4/2004/63/Add.1, 2004, para. 116.

being raised, have been the main impediments of democratic settlement of minority concerns and hamper the attempts of democratic consolidation in the Georgian heterogeneous society.

3.3. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The next document that is deemed appropriate is the International Convention on the Elimination of All Forms of Racial Discrimination. This is a *hard law* document adopted on 21 December 1965 by the UN/GA[222] and entered into force on 12 March 1969. For the time being it has 175 States parties, and Georgia acceded to it on 2 June 1999.[223]

Pursuant to article 8 of the ICERD - the Committee on the Elimination of Racial Discrimination has been established as its treaty body.[224] Its main functions consist of consideration of regular reports submitted by the States parties of the Convention on the legislative, judicial, administrative or other measures concerning implementation of the provisions included into the ICERD,[225] consideration of inter-state complaints lodged by the State parties[226] and the ability of examination of "communications from individuals or groups of individuals" regarding alleged breaches of the Convention.[227] An interesting addition to the mission of the Committee has been included in 1993 which regards the so called 'early warning measures and urgent procedures'.[228] The main rationale of this addition is to pay more attention to realisation of preventive measures in order to preclude eventual large scale violation of the Convention's provisions. The same philosophy urged the OSCE to set up the post of the HCNM, which is described later in this chapter. In 2007 the CERD adopted revised guidelines concerning the early warning and urgent action procedures.[229]

[222] See UN Document A/RES/20/2106, 1965.
[223] Source - UN Treaty Collection Database, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en (accessed on 30 June 2012).
[224] See UN Document A/RES/20/2106, 1965, Annex, art. 8.
[225] See Ibidem, art. 9.
[226] See Ibidem, art. 11.
[227] See Ibidem, art. 14.
[228] See UN Document A/48/18, Annex III, 1993.
[229] See UN Document A/62/18, 2007, Annexes, Chapter III.

On 30 June 2005 Georgia, in accordance with article 14, paragraph 1 of the ICERD made the declaration of recognition of the competence of the Committee for the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals.[230]

The last examination of Georgia under this treaty body occurred in 2011. On 16 and 17 August 2011 the Committee considered the fourth and fifth periodic reports submitted by Georgia[231] and after careful scrutiny adopted important minorities' related provisions into its concluding observations.[232]

Before the tête-à-tête examination of Georgia's report the Committee addressed some specific issues[233] which were drafted to guide the examination process. These issues were prepared by the Country Rapporteur and some of them tackled *inter alia* the adoption of domestic legislation concerning protection of ethnic, linguistic and religious minorities,[234] use of minority languages in public administration, as well as enhancement of knowledge of the State language, and prevention of discrimination in public sphere and participation in political life.[235]

Later, as a result of examination of Georgia's report the Committee, in its concluding observations, made very important recommendations for improvement of the existing situation vis-à-vis minorities and for the promotion of their integration and effective participation in all spheres of public life. The treaty body acknowledged the lack of appropriate legal provisions in Georgian legislative corpus and recommended to "speed up the adoption of specific legislation to protect minorities."[236] Moreover, the Committee recommended the introduction of "a clear definition of direct and indirect discrimination into the country's civil and administrative laws".[237] This provision is deemed extremely important for ensuring the factual equality, and more detailed information on cases of indirect discrimination in Georgia and State's insufficient

[230] Source - UN Treaty Collection Database, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en (accessed on 30 June 2012).
[231] See UN Document CERD/C/GEO/4-5, 2011.
[232] See UN Document CERD/C/GEO/CO/4-5, 2011.
[233] See UN Document CERD/C/GEO/Q/4-5, 2011.
[234] See Ibidem, para. 1.
[235] See Ibidem, para. 2.
[236] UN Document CERD/C/GEO/CO/4-5, 2011, para. 10.
[237] Ibidem, para. 11.

treatment of *de facto* inequality is provided under the chapter dedicated to minorities in Georgia. Furthermore, the Committee recommended recognition of "racial, religious, national or ethnic grounds as a general aggravating circumstance, in connection with all crimes and offences."[238] This recommendation has been accepted by the State and the Parliament of Georgia has made appropriate amendments to the country's Penal Code.[239] While the mere fact of formal adjustment of a country's legislation with recommendations of an international human rights treaty body *per se* represents a positive development, it is not enough however, and in order to face challenges which caused the adoption of this recommendation by the treaty body, the Government above all should express its firm political will to guarantee sound implementation of the existing formal legal provisions. For being able to estimate the outcome of the amendment more data is deemed necessary, and in this connection information concerning the prosecution of offenders is considered as an important indicator to measure the authorities' attitude towards minority compatriots. It should be mentioned that at least in one case of racist statements made during the public session of the Georgian Parliament by a member of the legislature and a representative of the country's ruling party, the State seems to be reluctant to implement its anti-discriminatory provisions.[240]

Furthermore the Committee acknowledged the indispensability of increasing knowledge of the State language by representatives of minorities as their second language in order to remove this barrier on the way of minorities' integration within the common Georgian space.[241] The Committee expressed its concern about the "insufficient number of trained teachers of the Georgian language,"[242] and recommended to intensify efforts directed at teaching Georgian among persons belonging to minorities.

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[238] Ibidem.
[239] See the Law of Georgia on Amendments to Certain Legal Acts adopted on 27 March 2012, available at: http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=5281 (in Georgian, accessed on 30 June 2012).
[240] Information concerning the public racist statements by the Georgian MP is provided by the Georgian Young Lawyers Association, available at http://www.gyla.ge/index.php?option=com_content&view=article&id=1276%3A2012-04-25-12-11-36&catid=1%3Alatest-news&Itemid=177&lang=ka (in Georgian, accessed on 30 June 2012).
[241] See UN Document CERD/C/GEO/CO/4-5, 2011, para. 15.
[242] See Ibidem.

The Committee on the Elimination of Racial Discrimination like the Human Rights Committee has recommended to the Government "to ensure greater political representation and participation of members of minority groups, especially the Azeri and Armenian communities, in public life".[243]

Further, the Committee expressed its concern about the preservation of minorities' heritage and recommended to the Georgian authorities to adopt necessary measures to ensure protection of minorities' cultural heritage and monuments.[244] This recommendation corresponds to the Human Rights Committee's position regarding religious heritage of representatives of minority groups.[245]

Ultimately, the Committee's recommendation, which actually 'haunts' Georgian delegations in various international monitoring bodies, was related to the ratification of the European Charter for Regional or Minority Languages.

This treaty body invited the Georgian Government to submit its sixth, seventh and eighth periodic reports, in a single document, by 2 July 2014.[246]

3.3.1. UNITED NATIONS SPECIAL RAPPORTEUR ON RACISM

In connection with the ICERD another UN mandate holder which deals with issues pertinent to racism and intolerance is deemed appropriate. This is the SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The initial decision concerning the appointment of this special procedure was made in 1993 by the then Commission on Human Rights, and it was included in its resolution 1993/20.[247]

Some of the SR's working methods include consideration of individual complaints from persons whose rights have allegedly been violated and transmission of urgent appeals and letters of allegation to the concerned Governments under whose jurisdiction such breaches have presumably taken place, caring out of thematic researches related to the SR's mandate, undertaking of country visits for *in situ* examination of issues related to the mandate, etc.

[243] See Ibidem.
[244] See Ibidem, para. 16.
[245] See UN Document CCPR/C/GEO/CO/3, 2007, para. 15.
[246] See UN Document CERD/C/GEO/CO/4-5, 2011, para. 32.
[247] UN Document E/CN.4/RES/1993/20, 1993, para. 10.

Since the establishment of the mandate, this SR has not yet paid an official visit to Georgia.

3.4. UNIVERSAL PERIODIC REVIEW OF GEORGIA

This section is devoted to issues pertinent to minorities raised during the first UPR of Georgia. The UPR is the main global human rights forum, established within the UN institutional framework and conducted by the Human Rights Council, where States are being examined by other States on the basis of the wide range of information concerning the human rights situation in the States under examination. Information concerning the minority rights component of the UPR of Georgia is deemed particularly important as it allows understanding to which extent the international community is aware about the challenges faced by minorities in Georgia. Moreover, it provides information regarding the international community's vision concerning possible ways of solution of problems faced by minorities.

The review of Georgia was held on 28 January 2011.[248] The *National Report Submitted by Georgia* included a number of provisions related to minorities.[249]

Rights of ethnic, linguistic and religious minorities in Georgia have been raised before the Georgian delegation by various delegations from different continents of the world. Information in the current section will be provided according to the UPR procedure, thus firstly I will tackle those questions which have been submitted in advance by various delegations and which concern rights of minorities in Georgia. Later, two documents will be mentioned prepared by the Office of the High Commissioner for Human Rights (hereinafter referred to as OHCHR) concerning Georgian international human rights profile. Further, I will review minorities' related issues raised during the interactive dialogue with the Georgian delegation in the Human Rights Council which represents the most important part of the Georgia's first UPR. In conclusion I will provide some information concerning the recommendation made by various delegations and the Georgian Government's reaction thereto.

Hence questions related to rights of minorities in Georgia have been posed in

[248] See UN Document A/HRC/17/11, 2011, para. 1.
[249] UN Document A/HRC/WG.6/10/GEO/1, 2010, paras. 18, 54, 55, 56, 98, 99, 100, 103, 105, 106, and 108.

advance by representatives of various countries, such as Belgium, Norway, Slovenia, United Kingdom, and Russian Federation. These questions include the low level of political participation of minorities and the use of minority languages in public administration raised by Russian Federation, equal enjoyment of the freedom of religion or belief raised by Belgium and United Kingdom, ensuring proper knowledge of ethnic minority languages raised by Belgium, indirect and direct discrimination of religious minorities raised by Norway, the rights of Roma children raised by Slovenia, guaranteeing proper implementation of anti-discrimination provisions included in the Georgian domestic legislation raised by Slovenia.[250]

Minorities' related issues have been included also in the *Compilation prepared by the OHCHR*[251] and the *Summary prepared by the OHCHR*[252] which reflected the position of other treaty bodies, special procedures, etc. Insofar as information concerning different treaty bodies' position vis-à-vis minorities in Georgia is provided in other parts of the study, here I would not go into details of the mentioned two documents.

The most interesting part of the first UPR of Georgia was the interactive dialogue on Georgia's human rights profile. The *Report of the Working Group on the outcome of the UPR* shows the great interest of the international community towards issues pertinent to minorities in Georgia. Actually, representatives of various countries from virtually all continents have raised issues concerning minorities and have given specific recommendations to the Government on how to deal with these issues in order to improve Georgia's human rights profile. Here I would like to cite just some of the questions raised before the Georgian delegation at the *Palais des Nations*. The delegation of Italy asked for "an update on the measures to address the ownership and maintenance of places of worship and related properties claimed by religious minorities."[253] Concerns regarding the legal status of religious minorities in Georgia

[250] A list of preliminary questions is provided in two files: *Questions Submitted in Advance, and Questions Submitted in Advance: Addendum 1,* available on the official website of the UPR of Georgia at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/GESession10.aspx (accessed on 30 June 2012).
[251] See UN Document A/HRC/WG.6/10/GEO/2, 2010.
[252] See UN Document A/HRC/WG.6/10/GEO/3, 2010.
[253] UN Document A/HRC/17/11, 2011, para. 35.

have been raised by the delegation of The Holy See.[254] The need of sound protection and promotion of rights of religious minorities was underlined by the delegations of the United Kingdom, Slovakia, Denmark, and Argentina.[255] Further, issues related to low minority representation in State bodies and participation in public affairs have been raised by the delegations of Brazil, Cyprus and Serbia.[256] Delegations of Jordan, Pakistan and Bolivia[257] raised issues related to legislative and law-enforcement measures taken by the Government of Georgia. The Armenian delegation as well focused its attention on the situation of minorities in Georgia.[258]

The Government of Georgia informed the Human Rights Council about the domestic measures that it is implementing in the field of minorities' related issues. With this regard it noted the importance of the National Concept,[259] affirmative action aimed at recruiting representatives of ethnic minorities in police departments in those regions, where minorities constitute the local majority, the role of the Zurab Zhvania School of Public Administration, etc.[260] It mentioned also the legislation concerning the registration of religious minorities[261] and some progress in the field of the restitution of property of religious organisations confiscated during the Soviet period,[262] however the Governments answer concerning the last two issues was too much exaggerated in comparison with the real situation existing at that time in Georgia.

Besides the issues raised by various delegations, they have also made specific recommendations to the Government of Georgia which have been either formally accepted or declined by the Georgian Government. The following recommendations enjoyed the Georgian delegation's support. They include strengthening non-discrimination and enhancing participation of minorities in public life (Philippines),[263] promotion of equal enjoyment of the right of freedom of religion of belief (Bulgaria,

[254] See Ibidem, para. 80,
[255] See Ibidem, paras. 48, 51, 77, and 81 respectively.
[256] See Ibidem, paras. 36, 45 and 94 respectively.
[257] See Ibidem, paras. 47, 72 and 99 respectively.
[258] See Ibidem, para. 71.
[259] See Ibidem, para. 87.
[260] See Ibidem, para. 88.
[261] See Ibidem, para. 89.
[262] See Ibidem, para. 90.
[263] See Ibidem, para. 105(27).

Slovakia, Denmark),[264] promotion of minorities' participation in public, cultural, social and economic life (United Kingdom, Pakistan, Bolivia, Kazakhstan),[265] ensuring that the measures taken in the field of popularisation of the Georgian language do not detrimentally affect the linguistic rights of minorities (Pakistan).[266]

Moreover, some recommendations did not enjoy the Georgian Government's support, and they include the recommendation of Bangladesh concerning the elimination of discriminatory legislation and adoption of specific legal acts concerning the status of the languages in Georgia, including the minority languages,[267] and Bolivia's recommendation concerning the dissemination of negative image of minorities in media.[268]

Furthermore, the Georgian delegation asked for additional time, no later than June 2011 to elaborate its position vis-à-vis the recommendations made by Bolivia with regard to legislative amendments to comply with international commitments concerning *inter alia* minorities,[269] the recommendations of Ecuador on effective measures for protection of children, especially those who belong to religious minorities,[270] Russia's recommendations on increasing the level of minorities' representation in public bodies,[271] the Holy See's and Ecuador's recommendations with regard to ensuring appropriate legal recognition of religious minorities and resolving the problem of restitution of religious minorities' properties confiscated during the Soviet Era,[272] and the Republic of Armenia's recommendation concerning the promotion of rights of the Armenian minority in Georgia in line with the recommendations of human rights monitoring bodies and "with close consultations with representatives of the Armenian community and the Armenian Apostolic Church".[273]

In its responses to the last set of recommendations provided on 31 May 2011, the Georgian Government accepted some of them, and rejected some others. Thus, in

[264] See Ibidem, paras. 105(60), 105(61), and 105(62) respectively.
[265] See Ibidem, paras. 105(76), 105(77), 105(78), and 105(80) respectively.
[266] See Ibidem, para. 105(79).
[267] See Ibidem, para. 107(1).
[268] See Ibidem, para. 107(2).
[269] See Ibidem, para. 106(19).
[270] See Ibidem, para. 106(23).
[271] See Ibidem, para. 106(24).
[272] See Ibidem, paras. 106(47), 106(48), and 106(49).
[273] See Ibidem, para. 106(59).

response to the Holy See's and Ecuador's recommendations the Government mentioned that "[w]hile Georgia recognizes the importance of addressing the problem regarding the confiscation of places of worship, it notes that confiscations took place during Soviet rule, remain highly contested among the various religious confessions and that restitution can only result from careful study and investigation. This process is currently underway and has already yielded positive results."[274] With regard to the recommendation concerning the adoption of appropriate legislative framework in order to allow religious minorities to get appropriate legal recognition, the Government's position was that "Georgia cannot accept this recommendation and no further steps will be taken [with this regard]."[275] It is noteworthy that in July 2011 Georgian Parliament has however adopted amendments which allowed religious minorities to register as legal entities of public law, which was significantly different from the previously available registration possibility as legal entities of private law. More information on this subject is provided under the section dedicated to SR on freedom of religion or belief.

Ultimately, the Georgian delegation formally supported Armenia's recommendation concerning the Georgia's Armenian minority,[276] however as the subsequent developments show the formal acceptance of the recommendations have not yet been translated into the factual actions by the Georgian authorities.

3.5. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

FCNM is a *hard law* instrument adopted in 1995. This is the main European document precisely devoted to the protection and promotion of minority rights. For its proper implementation States parties to the FCNM should adopt a domestic level legal document which would give effect to the 'framework' provisions of the FCNM at the national level. Former President of the AC/FCNM Alan Phillips mentions with this regard that "States are expected to implement the principles set out in the [FCNM] through national legislation and appropriate governmental policies."[277] For the time

[274] See UN Document A/HRC/17/11/Add.1, 2011, pp. 2-3.
[275] See Ibidem, p. 7.
[276] See Ibidem, p. 3.
[277] A. Philips, in F. Palermo and N. Sabanadze (eds.), 2011, p. 115.

being the FCNM has 39 States parties and Georgia ratified the FCNM on 22 December 2005.

FCNM provides for creation of an advisory committee (hereinafter referred to as AC/FCNM) which should assist the COE Committee of Ministers (hereinafter referred to as COE/CM) in carrying out the monitoring of FCNM's implementation under the respective jurisdictions of the States parties.[278] The AC/FCNM represents a treaty body created within the COE's institutional framework. In order to understand how this body works, it has to be considered within the more general context of the COE/CM human rights monitoring mandate, as due to its 'advisory' character the AC/FCNM represents a subsidiary body to the COE/CM.

Georgia presented its First State Report[279] on 16 July 2007 and the AC/FCNM commenced its examination "at its 31st meeting, on 25-29 February 2008."[280] Pursuant to paragraph 1, article 25 of the FCNM the Georgian Government must have provided the COE/SG with "full information on the legislative and other measures taken to give effect to the principles set out in [the FCNM]."[281] Actually, it has included the required information into the report, but it remained silent about some of the most important challenges faced by persons belonging to minority groups in Georgia. Furthermore, in some cases the Government provided inaccurate information. Without going into details of these issues, as they are discussed under the chapter devoted to minorities in Georgia, I would like to highlight the indirect discrimination in public life, the discriminatory approach towards preserving religious minorities' heritage, and the low level of political participation of minorities, to mention just a few areas which have been inaccurately presented in the Georgian Government's First State Report. For example, the report mentions that the State's attention was focused on *inter alia* "preservation of cultural diversity".[282] However, notwithstanding this affirmation, the facts uncover a different reality. For instance, in the period between the first and the second state reports[283] the

[278] See COE Document ETS No. 157, 1995, art. 26.
[279] See COE Document ACFC/SR(2007)001, 2007.
[280] COE Document ACFC/OP/I(2009)001, 2009, para. 1.
[281] See COE Document ETS No. 157, 1995, art. 25(1).
[282] COE Document ACFC/SR(2007)001, 2007, para. 26.
[283] Georgia's Second State Report has been submitted on 30 May 2012, see COE Document ACFC/SR/II(2012)001, 2012.

architectural heritage of the Armenian minority in Georgia has been significantly damaged due to the negligence from State institutions. In this timeframe the Mughnetsots Surb Gevorg Armenian church (built in 1356), and the bell tower of Surb Nshan Armenian church (built in 1703), both of them situated in the capital's downtown,[284] have collapsed due to a lack of proper maintenance.

The AC/FCNM has adopted its first Opinion on Georgia[285] on 10 October 2009. Before adopting the Opinion, from 8 to 13 December 2008 the AC/FCNM has paid an official visit to Georgia[286] to conduct *in situ* examination of issues covered by its mandate. This country visit was specific because it took place on the territory of the State involved in the "recent armed conflict between two States Parties to the [FCNM]".[287] However, despite this abnormal situation the AC/FCNM was able to obtain information necessary for examining Georgia's state report. With this regard the monitoring body mentions that "[n]otwithstanding that the Advisory Committee could only visit Georgia after the armed conflict of August 2008, it obtained a full picture of the situation during its visit."[288]

Actually, the Opinion adopted by the AC/FCNM, in case of its proper consideration by Georgian authorities can potentially contribute to a significant improvement of situation of rights of persons belonging to minorities in Georgia, and can contribute to further developing Georgian democracy and rule of law. However, according to some of the provisions of the *Comments of the Government of Georgia on the First Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Georgia*[289] the State party is not keen to dedicate considerable attention to improvement of situation in the field of rights of minorities and their proper integration in the common Georgian political and societal spaces. As I mentioned above, some of the most important challenges faced by minorities include low level of political participation, indirect discrimination, preservation of religious heritage, etc. Unfortunately, not only the Government's above mentioned Comments,

[284] See the press-release of the Diocese of Armenian Apostolic Church in Georgia, 14 May 2012.
[285] See COE Document ACFC/OP/I(2009)001, 2009.
[286] See Ibidem, para. 3.
[287] See Ibidem, para. 8.
[288] See Ibidem, para. 7.
[289] See COE Document GVT/COM/I(2009)002, 2009.

but also the recently submitted Second State Report[290] on implementation of the FCNM do not seem to prove that the Government realises the necessity to adequately tackle most topical issues pertinent to sound protection and promotion of rights of persons belonging to national, linguistic and religious minorities under its proper jurisdiction.

As it was mentioned above the AC/FCNM is an advisory body to the COE/CM which in accordance with the rules concerning the monitoring arrangements of the treaty, following the receipt of an opinion "shall consider and adopt its conclusions concerning the adequacy of the measures taken by the Contracting Party concerned to give effect to the principles of the framework Convention".[291] However, notwithstanding the fact that for Georgia the second monitoring cycle has already commenced, and that almost three years passed since the adoption of the AC/FCNM's first Opinion on Georgia, the initial resolution of the COE/CM has not yet been adopted. This fact caused the AC/FCNM's dissatisfaction and in its 7th Activity Report the treaty body expressed its regret for the fact "that a few resolutions are not yet adopted".[292]

3.6. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE

ECRI was established in 1993 following the Vienna Declaration of the Heads of State and Government of the COE member States.[293] In 2002 the COE/CM[294] granted to "ECRI an autonomous Statute, thereby consolidating its role as an independent human rights monitoring body."[295] According to its current Statute the ECRI is a COE body "entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law."[296]

[290] See COE Document ACFC/SR/II(2012)001, 2012.
[291] COE Document, COE/CM Resolution (97) 10, 1997, para. 24.
[292] Source - COE Document ACFC/INF(2010)001, 2010, para. 46.
[293] See Vienna Declaration of the Heads of State and Government of the member States of the COE, 1993, appendix III, para. 3.
[294] See COE Document, COE/CM Resolution Res(2002)8, 2002.
[295] COE Publication, Combating Racism and Intolerance: An Introduction to the Work of European Commission against Racism and Intolerance, 2009, p. 3.
[296] COE Document, COE/CM Resolution Res(2002)8, 2002, appendix, art. 1.

A review of ECRI's country-by-country activities allows for an understanding of this body's approach to the rights of minority groups, and fight against racism and racial discrimination in Georgia. ECRI's country-by-country monitoring is conducted in five year cycles. As the current number of the COE member States is 47, the Commission manages to examine nine or ten countries per year. Georgia has already gone through three rounds of examination by the Commission,[297] and ECRI has so far published three reports on Georgia.[298] The most recent report on Georgia was published on 15 June 2010. The report mainly focused on issues pertinent to the implementation and evaluation of predefined[299] topics.[300] The report provides an analysis of "the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken."[301] In general terms it includes information on domestic legal provisions in the fields covered by the Commission's mandate, issues pertinent to direct and indirect discrimination, racism, conditions of various vulnerable groups, as well as information concerning implementation of recommendations included in the previous report and new recommendations to the Government in the fields covered by the report.

ECRI mentioned some areas where the State party has made progress, and commended Georgian authorities for *inter alia* having adopted the National Concept for Tolerance and Civil Integration and its Action Plan. Activities carried out by the Ombudsman of Georgia have also been highlighted as commendable within the framework of fulfilment of Georgia's international obligations in the field of issues covered by ECRI's mandate. Moreover, the Georgian Government was urged to heed recommendations elaborated by the Council of Religions and the Council of Ethnic Minorities affiliated with the Office of the Ombudsman.[302]

In connection with religious minorities ECRI mentioned *inter alia* that "disputes related to the restitution of religious property to some Churches"[303] remain among the

[297] See COE Document, CRI(2010)17, 2010, p. 5.
[298] See COE Documents, CRI(2002)2, 2002, CRI(2007)2, 2007, and CRI(2010)17, 2010.
[299] Topics defined by ECRI in its previous report, see COE Document, CRI(2007)2, 2007.
[300] See COE Document, CRI(2010)17, 2010, p. 5.
[301] Ibidem.
[302] See Ibidem, para. 26.
[303] Ibidem, para. 69.

most topical issues for them.

Furthermore, ECRI expressed its dissatisfaction with regard to the fact that notwithstanding its previous recommendations, the COE State party has not yet ratified a number of international legally binding instruments, including the European Charter for Regional or Minority Languages.[304]

Another issue highlighted by the Commission was related to the Georgian domestic criminal legislation in the field of fight against racism and intolerance. As it was mentioned before, Georgia has already amended its penal law with this regard, and for the time being the firmly expressed political will is deemed necessary to enact these provisions. While talking about the *de facto* existing situation in Georgia ECRI mentioned that according to the Government the main reason of rare application of antiracist legislation in Georgia derives from the rarity of deeds committed on racist grounds. However, in this connection the Commission recommended *inter alia* strengthening "public confidence in the [law enforcement] system",[305] which means that reasons of formal rarity of racism related cases might consists also in the problems related to the system itself. Actually the State institutions must express their firm political will to guarantee equality and non-discrimination of all before the law, and to prosecute those who violate this fundamental principle.

In the field of institutions mandated to fight against racism and racial discrimination ECRI recommended establishing "in the near future an independent specialised body" with an appropriate mandate and according to ECRI's General Policy Recommendations regarding this issue.[306]

Another important problem raised by ECRI concerns the low level of political participation of persons belonging to the two largest minority groups in Georgia.[307] In its report the Commission highlights the potential of a special school of public administration[308] established to *inter alia* provide training in public administration to

[304] See Ibidem, para. 5.
[305] Ibidem, para. 17.
[306] ECRI mentions General Policy Recommendation No. 2 and General Policy Recommendation No. 7, See COE Document, CRI(2010)17, 2010, para. 27.
[307] See COE Document, CRI(2010)17, 2010, para. 75.
[308] This is the Zurab Zhvania School of Public Administration which has been established in 2005 and based in the second largest city of Georgia Kutaisi.

persons belonging to minority groups. However, in this context it is crucially important that persons trained in the school are able to get an opportunity to implement what they learn in practice, and the State, at its turn, has to promote the alumni's appointment in various State institutions. It seems that this was not the case, and ECRI mentioned that it "takes note of worrying allegations according to which many persons belonging to ethnic minorities who have successfully completed their studies in this school encounter serious difficulties in finding a job in public administration upon graduation",[309] and recommended to the Government developing appropriate mechanisms to face this challenge.[310]

3.7. OSCE HIGH COMMISSIONER ON NATIONAL MINORITIES

The HCNM focuses his attention on Georgia because of the two main preconditions. First of all it is the two armed conflicts that emerged on the Georgian soil after the collapse of the Soviet Union. These conflicts remain unresolved as two Georgian regions are out of Tbilisi's control, and they even have been recognised as independent countries by some States, including the OSCE member Russian Federation. The second reason for the HCNM's special interest in Georgia derives from the fact that two other Georgian regions - Samtskhe-Javakheti and Kvemo Kartli - are densely inhabited by persons belonging to minority groups, and the majority of these Georgian citizens are not integrated into the common Georgian political and societal space. Due to the specific location of these regions during the Soviet Era, and the *de facto* negligence from the Georgian State institutions after the restoration of Georgia's statehood, inhabitants of these regions today face very important challenges which do not allow them to feel equal with their ethnic majority compatriots. In order to help the Georgian State to face challenges related to integration of population from these regions the HCNM has elaborated and implemented Conflict Prevention and Integration Programme, and as his advisers mention "[t]hese programmes aim at the integration of Armenian and Azeri minorities into the mainstream Georgian society."[311]

The post of the OSCE HCNM as "an instrument of conflict prevention at the

[309] COE Document, CRI(2010)17, 2010, para. 75.
[310] See Ibidem, para. 78.
[311] K. Drzewicki and V. De Graaf, in European Yearbook of Minority Issues Vol 6, 2008, p. 453.

earliest possible stage"[312] has been established in 1992 by virtue of adoption of the Helsinki Summit Document within the framework of the then Conference for Security and Co-operation in Europe (hereinafter referred to as CSCE, since 1995 known as OSCE).[313] The Helsinki Summit Document provided for the appointment of a HCNM which shall guarantee "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into a conflict within the CSCE area, affecting peace, stability, or relations between participating States."[314] Procedural and substantive issues related to the HCNM's mandate as well have been reflected in the Helsinki Summit Document.[315]

According to his mandate the HCNM shall be free in his judgements related to carrying out his activities and shall consider *inter alia* the applicable "democratic means and international instruments"[316] while implementing the mandate. Even though the HCNM is free in making decisions, based on his personal judgments,[317] the Helsinki Summit Document has however defined particular limitations for the HCNM's mandate, including the non-applicability of the HCNM's mandate in situations involving terrorism,[318] and the prohibition of consideration of individual complaints lodged by persons belonging to minority groups.[319] In this connection the acting HCNM Mr. Knut Vollebæk mentioned that "my function is not that of an ombudsman for national minorities or an investigator of individual minority rights violations and therefore I am the OSCE's High Commissioner *on* National Minorities and not *for* national minorities."[320] The above mentioned restrictions are of a general nature and the HCNM has no competence at all to deal with such situations. Moreover, there is another 'relative' limitation of the HCNM's mandate, and this concerns issues involving

[312] CSCE Helsinki Summit Document, 1992, *Helsinki Decisions*, part II, para. 2.
[313] During the Budapest Summit the Heads of State or Government of the States participating in the CSCE made a decision to change the name of the Conference for Security and Cooperation in Europe into the Organization for Security and Co-operation in Europe. This change came to effect on 1 January 1995. See Document the Budapest Summit Document *Towards a Genuine Partnership in a New Era*, 1994, Budapest Decisions, para. 1.
[314] CSCE Helsinki Summit Document, 1992, *Helsinki Decisions*, part I, para. 23.
[315] See Ibidem, part II.
[316] Ibidem, part II, para. 6.
[317] See Ibidem, part II, para. 3.
[318] Ibidem, part II, para. 5(b).
[319] Ibidem, part II, para. 5(c).
[320] K. Vollebæk, in OSCE Yearbook 2008, p. 326.

country of citizenship or residence of the HCNM, or those involving a national minority to which the HCNM belongs. If such situations emerge the HCNM can act only "if all parties directly involved agree, including the State concerned."[321]

Another important feature of the HCNM's mandate consists in the confidential character of his activities. For this reason they are called 'quiet diplomacy'. This feature is crucially important for effective realisation of the mandate, as it provides for a possibility to engage in cooperative environment where the parties concerned can be frank and express themselves without any fear of public opinion.[322] Nonetheless, the secrecy of the HCNM's activities is not absolute as the mandate holder regularly briefs the OSCE Permanent Council about the activities undertaken by the HCNM during the reporting period.[323]

Georgia has been in the focus of the HCNM since quite a while and in each of his recent Statements made before the OSCE Permanent Council, the mandate holder mentions Georgia as a country which requires his special attention. Advisers for the HCNM Krzysztof Drzewicki and Vincent de Graaf mention with this regard that "[s]ince taking up his post in July 2007, the new High Commissioner has visited, *inter alia*, the Balkans, the Caucasus and Central Asia, signalling his priorities and concerns,"[324] and in their most recent contribution to the European Yearbook of Minority Issues they confirm that "Georgia continued to be one of the HCNM's priorities and he visited the country twice in 2009 (in January and November)."[325]

The HCNM cooperates with various governmental bodies, such as the Ministry of Education, the Ministry for Reintegration, the Police Academy, etc., and the conflict prevention programmes of the HCNM, as well as cooperation with governmental structures were "important for boosting stability in the country".[326]

Another important contribution of the HCNM was his participation in the Human Rights Assessment Mission to Georgia conducted upon request of the OSCE Chairman-

[321] CSCE Helsinki Summit Document, 1992, *Helsinki Decisions*, part II, para. 5(a).
[322] See the HCNM official website, available at: http://www.osce.org/hcnm/43201 (accessed on 30 June 2012).
[323] See Statements of the HCNM to the OSCE Permanent Council, available at: http://www.osce.org/hcnm/66055 (accessed on 30 June 2012).
[324] K. Drzewicki and V. De Graaf, in European Yearbook of Minority Issues Vol 6, 2008, pp.435-436.
[325] K. Drzewicki and V. De Graaf, in European Yearbook of Minority Issues Vol 7, 2010, p. 634.
[326] K. Drzewicki and V. De Graaf, in European Yearbook of Minority Issues Vol 6, 2008, p. 453.

in-Office in cooperation with the OSCE Office for Democratic Institutions and Human Rights (hereinafter referred to as ODIHR). This mission was mandated to assess the human and minority rights situation in the territories affected by the August 2008 armed conflict which "was a harsh reminder of the consequences of conflicts involving interethnic issues."[327] As a result of this mission the ODIHR has published report on *Human Rights in the War-Affected Areas Following the Conflict in Georgia*,[328] in which the OSCE acknowledged that "[t]he August conflict had clear minority implications. Ethnic Ossetians and Abkhaz are minority communities within Georgia, while as of the writing of this report ethnic Georgians are, in fact, minority communities in both South Ossetia and Abkhazia. The conflict unfolded to a significant degree along ethnic lines."[329] Additionally, this report includes a number of general recommendations for all parties involved and specific recommendations elaborated explicitly for Government of Russian Federation, *de facto* authorities of Abkhazia, South Ossetia, Government of Georgia, OSCE and other international organisations.

Unfortunately, the August 2008 conflict has contributed to a deterioration of majority-minorities relations because it fuelled the perception of minorities as potential threats to the Georgian State, which might contribute to further alienation of minorities from the Georgian society, and harm the efforts in the field of civil integration.

[327] K. Drzewicki and V. De Graaf, in European Yearbook of Minority Issues Vol 7, 2010, p. 559.
[328] See *Human Rights in the War-Affected Areas Following the Conflict in Georgia*, Report prepared by the OSCE ODIHR, 2008.
[329] Ibidem, p. 18.

CONCLUSION

While ratifying the FCNM the Parliament of Georgia mentioned that "Georgia... considers it inappropriate to sign further international treaties on the [minority] issue."[330] The non-compliance with one of the main COE membership commitments - the ratification of the ECRML - could be explained in the light of the above mentioned expression of the Georgian authorities' political will with respect to persons belonging to national minorities in Georgia. As can be seen from the information provided in this study, the Georgian Parliament's declaration proved to be illustrative of the State's hesitant approach towards legitimate concerns of minority groups in the country.

Notwithstanding the fact that the international community is ready to support Georgia in its policies related to minorities, and that persons belonging to minority groups are keen to get their stake in Georgian democratisation and to take part in the nation-building process, the State lacks political will to implement appropriate policies. Instead of building an inclusive democracy in the post-totalitarian space, the political leaders of independent Georgia have continuously proved their unwillingness to create equal opportunities for their citizens. Unfortunately, such approach is defective not only for Georgia's civil cohesion and integration, but also for its reintegration policies vis-à-vis Abkhazia and South Ossetia. The Georgian State has to prove its attractiveness for the inhabitants of these regions, and one of the components of Georgia's allure is the level of protection and promotion of rights of those minority groups which live under the Georgian jurisdiction.

If the Georgian authorities wish to build a genuine democracy they must express their political will to respect, protect and promote the rights of persons belonging to minorities, as the State's sovereignty derives from the will of the people of Georgia, and the national minorities make part of the people, and thus constitute an integral part of the source of the Georgian State's sovereignty.

[330] See Georgian Parliament's Resolution No.1938-II, 2005, para. 2(f).

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