

PERMANENT MISSION OF GEORGIA
TO THE UNITED NATIONS OFFICE AND OTHER
INTERNATIONAL ORGANIZATIONS AT GENEVA

OHCHR REGISTRY

17 MAR 2008

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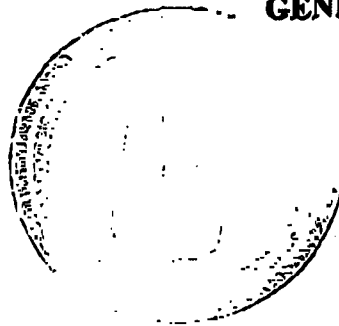
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The Permanent Mission of Georgia to the UN Office and Other International Organizations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honor to submit information in response to the Questionnaire of the OHCHR, pursuant to Decision PC.1/10 of the Preparatory Committee of the Durban Review Conference.

The Mission hopes that despite the late reply, it would be possible to take into consideration the response of the Government of Georgia to the questionnaire.

The Permanent Mission of Georgia to the UN Office and Other International Organizations at Geneva avails itself of this opportunity to express to the Office of the High Commissioner for Human Rights the assurances of its highest consideration. T.B.

GENEVA, 12 March 2008



Ant-Discrimination UNIT
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QUESTIONNAIRE TO MEMBER STATES PREPARED BY THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, PURSUANT TO DECISION OF THE PREPARATORY COMMITTEE OF THE DURBAN REVIEW CONFERENCE AT ITS FIRST SESSION

1. What measures have been taken to prohibit racial discrimination in all its forms and to guarantee the right of everyone without distinction, to equal enjoyment of human rights:

Constitution of Georgia stipulates that everyone is equal notwithstanding the race, skin color, language, religion, political and other opinions, national, ethnic and social belonging, origin, property and title status, place of residence (Article 14).

a) Equal treatment before tribunals and all other organs of administering justice;

Article 42 of the Constitution of Georgia enshrines the right of everyone to apply to a court for the protection of his/her rights and freedoms.

Article 9 of the Criminal Procedure Code of Georgia stipulates that everyone is equal before the court and law despite of race, nationality, language, sex, social origin, property and legal status, place of residence, attitude to religion, belief and other grounds/circumstances.

b) Equal right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

The Constitution of Georgia provides that the liberty of individual is inviolable. Deprivation of liberty or other restriction of personal liberty without a court decision shall be impermissible.

Prohibition of physical or mental coercion upon detainees or a person otherwise restricted in his/her liberty is guaranteed by paragraph 3 of Article 17 of the Constitution.

It is particularly notable that under the amendments of 2006 to the Constitution the aforesaid prohibition acquired an absolute character. It applies at all times and can not be suspended even in highly exceptional circumstances.

Article 144 of the Criminal Code of Georgia envisages punishment for torture, i.e. subjecting a person, his close relative or the person dependent on him materially or otherwise to such conditions or treatment that in its nature, intensity or duration causes strong physical pain or mental or moral suffering and that is aimed at obtaining information, evidence or confession, intimidate or coerce or punish a person for the actions performed or allegedly performed by this or the third person.

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Article 144² of the code sets out punishment for threatening to subjecting a person to the conditions, treatment or punishment referred to in Article 144¹, committed for the same purpose.

The Code also stipulates punishment for degrading or coercing a person or subjecting him to inhumane, degrading conditions that causes strong physical, mental pain to or moral suffering of the person.²

c) Equal rights to participate in the political process;

Article 58 of the Constitution of Georgia provides that citizens of Georgia shall be equal in political life irrespective of their national, ethnic, religious or linguistic belonging. Moreover, Article 29, paragraph 1 of the Constitution confers upon every citizen of Georgia the right to hold any state position if he/she meets the requirements established by legislation.

According to the Constitution every citizen of Georgia who has attained the age of 18 has the right to participate in referendum or elections of state and self-government bodies.³

Paragraph 2 of Article 2 of the Organic Law of Georgia on the "Local Self-Governance" provides that citizens of Georgia have the right to elect and be elected in local self-governing bodies despite of race, skin color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title status.

Law of Georgia on "Referendum" provides that everyone who has reached the age of 18 has the right to participate in referendum despite of race, skin color, language, sex, religion, political and other opinions, national and social belonging, origin, property and title status, place of residence (Article 2).

The same Act provides that citizens of Georgia shall have a right to form a political party or other political association and participate in its activity in accordance with the Organic law.⁴

Article 11 of the Organic Law of Georgia on "Political Entities of Citizens" outlaws restriction on membership of the political party on the grounds of race, skin color, language, sex, religion, national and social belonging, origin, property and title status, place of residence.

It is notable that even though citizens and foreigners in Georgia alike enjoy all basic human rights, some special rights, namely the right to participate in elections and right to be elected on state and local self-government positions is conferred on citizens alone. Article 27 of the

² Article 144¹;

³ Article 28;

⁴ Article 26;

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Constitution of Georgia provides that state shall be entitled to impose restriction on the political activity of citizens of a foreign country and stateless persons.

d) Equal rights to freedom of religion and belief:

Right to freedom of religion and belief is guaranteed by Article 19 of the Constitution of Georgia. The same Article outlaws persecution of a person on the account of religion or belief as well as the compulsion to express opinion about them.

The Criminal Code of Georgia prohibits the persecution of a person on grounds including religion or religious activities.

e) Equal rights to remuneration for work of equal value:

Pursuant to Article 50, paragraph 1 of the Constitution of Georgia labor shall be free. Paragraph 4 of the same Article provides that the protection of the labor rights, fair remuneration of labor shall be determined by law. Namely, according to paragraph 3 of Article 2 of the Labour Code of Georgia any form of discrimination in labor relations on the ground of race, skin color, language, ethnic or social belonging, nationality, origin, property or title status, place of residence, age, sex, sexual orientation, limited capacity, membership of religious or other entity, family status, political or other opinion is prohibited.

f) Equal right to adequate housing:

Legislation of Georgia envisages obligation of the State to provide persons with limited capacity with adequate housing in accordance with the individual rehabilitation programs. Such programs cover children with limited capacity who are orphans or lack parental care.⁵

g) Equal rights to highest attainable standard of physical and mental health. Equal rights to quality public health, medical care, social security and social services:

Constitution of Georgia stipulates that everyone shall have the right to enjoy health insurance as a means of accessible medical aid. In the cases determined in accordance with a procedure prescribed by law, free medical aid shall be provided.⁷

Article 6 of the Law of Georgia on the "Rights of Patients" prohibits discrimination of patients on the grounds of race, skin color, language, sex, genetic heritage, belief and religion, political or other opinion, national, ethnic and social belonging, origin, property or title status, place of residence, illness, sexual orientation or personal negative attitude. The same is provided by Article 6 of the Law of Georgia on the "Protection of Health".

h) Equal rights to all levels of quality education and training:

⁵ Article 156;

⁶ Article 27 of the Law of Georgia on "Social protection of persons with limited capacity";

⁷ Article 37;

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Article 35 of the Constitution of Georgia provides that everyone has the right to receive education and the right to free choice of a form of education.

The Law of Georgia on "General Education" foresees prohibition of any kind of discrimination with regards to students, parents and teachers³.

Paragraph 2 (h) of Article 3 of the Law of Georgia on "Highest Education" prohibits discrimination on ethnic, religious, social and other grounds.

i) Equal participation to cultural life;

Pursuant to Article 38 of the Constitution of Georgia citizens of Georgia are equal in social, economic, cultural and political life regardless of national, ethnic, religious or language origin. According to universally recognised principles and norms of International law all have the right to develop their culture freely without any discrimination and interference.

Article 34 of the same Act provides that the State fosters the development of culture, the unrestricted participation of nationals in cultural life, revelation and enrichment of cultural origins, recognition of national and generic values and the deepening of international cultural relationships.

j) Equal rights of access to places or services.

Article 41 of the Constitution of Georgia provides that every citizen of Georgia shall have access in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secret.

The information existing on official papers pertaining to individual's health, his/her finances or other private matters, shall not be accessible to any one without the consent of the individual in question except in the cases determined by law, when it is necessary for ensuring the state security or public safety, for the protection of health, rights and freedoms of others (Article 41, paragraph 2).

2. Has your Government adopted and implemented or strengthened any national legislation and/or administrative measures that expressly and specifically counter racism and prohibit racial discrimination, xenophobia and related intolerance, whether direct or indirect, in all spheres of public life, in accordance with their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, ensuring that their reservations are not contrary to the object and purpose of the Conventions and/or amended national legislation and administrative provisions that may give rise to such forms of discrimination?

³ Article 13;

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Right to equality and prohibition of racial discrimination is comprehensively regulated by the legislation of Georgia.

As mentioned above Constitution of Georgia guarantees right to equality notwithstanding race, skin color, language, religion, political and other opinions, national, ethnic and social belonging, origin, property and title status, place of residence (Article 14).

There are particular Articles in the Criminal Code of Georgia, which prohibit racial discrimination and impose sanctions on the infringement of the right of equality. Namely, Article 142 prohibits infringement of the right of equality on grounds including race, skin color, language, sex, religion, belief, political or other opinion, membership of the national, ethnic or other social group, title or membership of a public organization, origin, place of residence or property status, which caused a substantial violation of human rights. The offence shall be punishable by fine or by corrective labour for the term not exceeding one year or by imprisonment for up to two years in length. Where the perpetrator uses his official authority or if the act has had serious consequences a heavier penalty may be imposed (a term of imprisonment not exceeding three years, with or without deprivation of the right to carry on his occupation for a term not exceeding three years).

The Criminal Code of Georgia was amended on 5 June 2003 with the addition of Article 142¹ following Article 142. The aforesaid Article gave possibility to qualify any act committed with racial motive by a separate Article.

Article 142¹, which foresees racial discrimination as a crime, provides that racial discrimination is an act committed for the purpose of inciting to national or racial hatred or conflict, humiliating national dignity or directly or indirectly restricting human rights or granting advantages on grounds of race, skin color, social status or national or ethnic origin. This offence is punishable by deprivation of liberty by term not exceeding 3 years. According to paragraph 2 of Article 142¹, certain circumstances may increase the term of deprivation of liberty. Namely, act provided in paragraph 1, perpetrated by violence or threat of violence against life or health or by means of official authority. In both cases act is punishable by deprivation of liberty from 2 to 5 years. Paragraph 3 of Article 142¹ provides that acts foreseen by paragraph 1 and paragraph 2 of the present Article, perpetrated by the group of people or which caused a person's death or other grave consequence is punishable by imprisonment from 4 to 7 years.

A further improvement to the Criminal Code stems from the amendment to Article 408 - crime against humanity introduced on 14 August 2003. The Article has been supplemented by the inclusion in the list of criminal offences of apartheid and persecution of an identifiable group for reasons including race, national or ethnic origin and religion. According to this Article crime against humanity is any act when committed as part of a widespread or systematic attack directed against civilian population or persons, expressed in killing, mass killing, serious damage to health, deportation, illegal deprivation of liberty, torture, rape, holding in sexual servitude, enforced prostitution, forced pregnancy, enforced sterilization, persecution of a group of persons for their political, racial, national, ethnic, cultural, religious, gender or other grounds, apartheid or other inhuman acts, causing serious damage to the physical or/and mental condition of a person. The crime is punishable by imprisonment extending from twelve to twenty years in length or by life imprisonment.

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Article 411 of the Criminal Code envisages punishment for deliberate violation of the norms of International Humanitarian Law during armed conflict. Paragraph i) of the aforesaid Article provides that apartheid or any other inhumane action based on racial discrimination that is offensive to human dignity, shall be punishable by imprisonment extending from fifteen to twenty years in length or by life imprisonment.

Herewith, it should be underlined that the Criminal Code provides for a racist motive to constitute an aggravating circumstance in respect of a number of offences. Particularly the offences of murder, violence, torture, inhuman and degrading treatment, serious damage to health and contempt of graves and consequently, punishment envisaged is much severe.

The following laws of Georgia also contain provisions prohibiting discrimination: the Labour Code of Georgia, Article 2, paragraph 3 Criminal Procedure Code of Georgia (Article 9); Law of Georgia on "the Rights of Patients" - Article 6 (May 5, 2000); Law of Georgia on "Employment" - Article 10, Paragraph 10 (September 28, 2001); Law of Georgia on "Protection of Health" - Article 6 (December 10, 1997); Law of Georgia on the "Political Entities of Citizens" - Article 11 (October 31, 1997); Law of Georgia on "Referendum" - Article 2 (May 15, 1996); Law of Georgia on "Legal Status of Foreigners" - Article 1, paragraph 1 (b) (December 27, 2005), etc.

It is particularly noteworthy that under amendments made to the legislation of Georgia requisites confirming ethnic origin of a person were removed from identity cards and birth certificates.

Moreover, the Law of Georgia on the "Registration of the Citizens of Georgia and Foreigners Living in Georgia. Rules of issuing identity Cards and Passports of the Citizens of Georgia and Foreigners living in Georgia" (June 27, 1996) enumerates requisites of the identity and residence cards. Information related to the ethnic or national origin is not included in the list.

Similarly, Article 56 of the Law of Georgia on the "Registration of Civil Acts" (October 15, 1998) establishes the form of the birth certificate, which does not comprise information related to the national or ethnic origin of the child.

15. While taking all necessary measures to guarantee the right of freedom of opinion and expression, what steps have been taken to declare an offence punishable by law all acts of racial violence or incitement to such acts as well as the dissemination of ideas based upon racial superiority or hatred and, particularly through new information and communications technologies, including the internet?

The Constitution as well as other relevant legislative acts of Georgia guarantee the right to freedom of speech, thought, conscience, religion and belief. Pursuant to Article 19 of the Constitution persecution of an individual for their thought, beliefs or religion is prohibited as is also the compulsion to express opinions about them. Article 156 of the Criminal Code of Georgia

* Articles 14, 15

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... persecution for speech, opinion, conscience, religious denomination, faith or creed or
... public, professional, religious or scientific pursuits.

... of the Constitution of Georgia provides that everyone has the right to freely receive and
... information, to express and impart his/her opinion orally, in writing or by in any other means.
... paragraph 4 of the same. Article stipulates circumstances under which the right can be
... restricted. Prevention of crime is stated as one of them. As it was noted above Article 142¹ of the
... Criminal Code of Georgia declares as an offence any act committed with racial motive which,
... therefore, constitutes ground for restricting freedom to receive and impart information.

Consequently, in the light of the above-mentioned it is evident that the legislation of Georgia
... provides legal basis guaranteeing that dissemination of ideas based upon racial superiority or
... hatred do not go unpunished.

Annex:**Question 1.**

Under Article 14 of the Constitution every person within the territory of Georgia is equal before the law regardless of race, colour, language, sex, religion, political and other opinion, nation, ethnical or social belonging, etc. Thus, all persons regardless of race, nationality or ethnicity can enjoy the rights and legal guarantees on the equal basis without discrimination.

In accordance with the Chapter II of the Constitution of Georgia, the rights, except for those exclusively belonging to the citizens of the country, are guaranteed for all the persons present within the jurisdiction of the country and are protected by the general obligation of non-discrimination embodied in Article 14. These rights among others include: right to life, liberty, prohibition of torture, inhuman or degrading treatment or punishment, right to personal development, right to freedom of religion, belief and conscience, right to education, right to benefit from health insurance and receive free medical aid in the cases established by law, right to fair trial, etc. In accordance with Article 2(3) of the Labour Code of Georgia of 2006, any kind of discrimination on the basis of race, colour, language, sex, religion, political and other opinion, nation, ethnical or social belonging, etc, is prohibited in labour relations. The same is true for the sphere of higher education, discrimination of all kind is also prohibited in the field of higher education under Article 5(2)(h) of the Law of Georgia on Higher Education.

In order to fully guarantee equal right to fair trial for everyone, even the linguistic difference is taken into account and the right to interpreter is guaranteed under Criminal Procedure Code of Georgia. According to the Criminal Procedural legislation of Georgia the right of the participant of the criminal proceedings (suspect, accused, civil defendant, civil respondent, witness and etc.) to the services of interpreter is corresponded by the obligation of the body/official conducting the criminal proceedings (investigator, prosecutor, judge, the court) to ensure the participation of the interpreter in criminal proceedings. Under Article 100 (1)(a) the investigator, prosecutor or any official or body conducting the criminal proceeding is obliged to summon the interpreter in case, where they do not understand the language spoken by the participant of criminal proceedings (suspect, accused and etc.). Therefore, Georgian Criminal Procedural Legislation imperatively requires the involvement of interpreter in criminal proceedings when: a) the participant of criminal proceedings (suspect, accused and etc.) does not know the official language and b) the body/official conducting the criminal proceedings (investigator, prosecutor, judge or the court) does not understand the language spoken by the participant of criminal proceedings.

In addition, where Criminal Procedural legislation of Georgia requires the service of investigative and judicial documents to the participant of the criminal Proceedings (suspect, accused and etc.) all of these documents should compulsorily be translated in a language the person concerned understands (Article 17(3) of the Criminal Procedure Code of Georgia).

All the afore-mentioned rights are guaranteed for everyone within the jurisdiction of the country on the equal basis without any distinction. However certain clarifications shall be made with regard to the rights related to the participation in the political life of the country. Despite the general non-discrimination clause embodied in Article 14 of the Constitution, there are certain rights that are granted to Georgian nationals only. Based on Article 27 of the Constitution, the state retains the right to restrict the political activities of aliens and stateless persons. The rights reserved solely for Georgian nationals include the political rights, namely, the right to create political party or association, right to vote and be elected. Thus, the citizenship is indeed a precondition for granting certain political rights for every non-national within the country, regardless of their racial, ethnical, national, religious or other belongings. Otherwise, no discrimination in the execution of afore-mentioned political rights is permitted among the nationals of the country on the basis of any kind of distinction.

Question 2.

There are provided certain legislative guarantees dedicated to the protection of the right to equality before the law and the non-discrimination and combat of racism and other kind of intolerance in the Criminal Code of Georgia (hereinafter - CCG). Adoption of the new provision article 142¹ (Racism) of the CCG on June 6, 2003 is the innovation of paramount importance. It criminalized racial discrimination, as an act committed with the intention of inciting national or racial hatred or conflict, humiliating national dignity, or directly or indirectly restricting human rights or granting advantages on the grounds of race, skin color, social status or national or ethnic affiliation. Deprivation of life for a term not exceeding 3 years is determined as a sanction. The same act, committed with the use of violence that endangers life or health, or with the threat of such violence, or through abuse of one's official position, shall be punishable by deprivation of liberty for a term from 2 to 5 years; and finally, the same criminal act committed by group, or that resulted in human loss or any other grave consequences shall be punished by the deprivation of liberty from 4 to 7 years.

Besides, under the CCG, violation of the principle of equality before the law is considered as the punishable offense (Article 142). The Code further criminalizes the persecution on the basis of opinion, conscience, religion or believe, or for the political, religious, professional or scientific activities (Article 156).

Racial, religious, national or ethnic intolerance is regarded as an aggravating circumstance with regard to the wide range of offences, including Article 109 (murder in aggravating circumstances), Article 117 (intentional grave injury to health), Article 126 (violence), Article 258 (desecration of graves) of the CCG. Furthermore, the racist motive of the perpetrator is taken into account in the newly introduced provisions criminalizing torture (Article 144¹) and inhuman and degrading treatment (Article 144²). Though specific provision has not been introduced, existing provisions of criminal legislation ensure that grave offences infringing upon personal integrity of the individual because of racial motive will be adequately punished.

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Question 3.

On 19 June 2006, the Prosecutor General of Georgia issued Order No 5 approving the Code of Ethics for the Employees of the Prosecutor's Office of Georgia (hereinafter the Code). As anticipated by the European Commission against Racism and Intolerance, the Code includes several anti-discriminatory provisions. Namely, Article 5(2) of the Code prescribes the general obligation for the employee of Prosecutor's Office to facilitate the elimination of all forms of discrimination. Article 6(2) prohibits in public relations, the expression by the employee of the Prosecutor's Office, opinion intended to insult or restrict the rights of the person on the grounds of race, color, language, sex, religion, political or other opinion, national ethnical or social background, property, birth or other status. Furthermore, Article 7(3) prohibits apparent expression by the employee of the Prosecutor's office religious opinion that infringes the rights of others. Therefore, the Code reinforces the general obligation of the employee of the Prosecutor's Office (including Prosecutors, Advisors of the Prosecutor's Office, Supporting Staff and etc.) to facilitate the elimination of all forms of racial discrimination. Furthermore, it specifically prohibits the insults on racial, religious and other discriminatory grounds.

The violation of the respective provisions of the Code represents an inappropriate conduct for the employee of the Prosecutor's office and entails his/her disciplinary responsibility (Article 38 (6)) of the Organic Law on the Prosecutor's Office¹.

Question 5.

On March 4, 2003, the President of Georgia signed a decree approving a plan of action to strengthen protection of rights and freedoms of various population groups of Georgia for the period of 2003-2005. The Plan was discussed and approved at the meeting of the Government of Georgia. The preamble of this act contains a direct reference to Georgia's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and states that "an uncompromising struggle against all forms of discrimination, the protection of the rights and freedoms of various population groups is one of the most important prerequisites for the advancement¹ of the Georgian State. The Action Plan was concerned with certain major issues, including enhancement the legislative database in the related field; increase of the role of the representatives of different nationalities in the decision-making process; the protection of the rights of

¹ Under the above-mentioned Article the following sanctions can be imposed on the employee of the Prosecutor's Office:

- a. Admonition;
- b. Reprimand;
- c. Severe reprimand;
- d. Dismissal from the position held;
- e. Expulsion from the Prosecutor's Office;

General Inspection of the Office of the Prosecutor General of Georgia is investigating the cases of the violation of the Code. The materials of the investigation and the proposal on the relevance of imposing the disciplinary sanction on the employee are forwarded to the Prosecutor General who makes the final decision (Article 22 (3) of the code).

different groups in Georgia: fight against religious extremism and intolerance; activation of the social integration process; the preservation and development of the cultural identity of the different national groups in Georgia.

Question 9.

On 26 September 2007 the Government of Georgia adopted the Action Plan of 2007-2009 on the Measures for the Implementation of Gender Equality Policy in Georgia. The main goals of the Action Plan can be divided in three parts:

1. The conduct of the institutional reform - the creation of the interagency commission on the gender equality;
2. Legislative measures - the creation of the legislative database regarding the gender equality
3. Public awareness activities - the conduct of the TV and Radio discussion on the issue of gender equality; the publication of newspaper and magazine articles on the problematic issues of gender equality; covering gender equality issues in the educational programs and materials.

Question 11.

The Office of the Prosecutor General of Georgia has introduced the program for the education and retraining of the officials of the prosecutors offices throughout the territory of Georgia. The purpose of the trainings is to educate and increase the qualification of the officials of the prosecutors' offices. The trainings on different issues are gradually scheduled for the year. One of the topics in the training program is human rights with reference to different rights embodied in international instruments, like ICCPR, ECHR, and in the constitution of the country, including the prohibition of discrimination and the prohibition of racism and intolerance. Besides, it should also be emphasized that interns at the prosecutor's office undergo two week initial trainings in human rights

Question 14.

Georgia acceded to the International Convention on the Elimination of all forms of Racial Discrimination on 16 April 1999 on the basis of the Parliamentary Decree.

Question 15.

Georgia has made the declaration under Article 14 of the 1999 Convention on 13 June 2005. Under the Declaration Georgia recognized the "competence of the Committee for the elimination of racial discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation, by Georgia, of any of the rights set forth in the abovementioned Convention."

Question 17.

Racism represents a criminal act under the Criminal Code of Georgia. The crime of racism has been introduced in the Georgian criminal legislation in 2003. Under Article 142¹ is defined as the act an act committed with the intention of inciting national or racial hatred or conflict, humiliating national dignity, or directly or indirectly restricting human rights or granting advantages on the grounds of race, skin color, social status or national or ethnic affiliation. There are two more articles in the criminal code which prescribe crimes with a xenophobic and discriminatory motivation. Under the CCG, violation of the principle of equality before the law is considered as the punishable offense (Article 142). The Code further criminalizes the persecution on the basis of opinion, conscious, religion or believe, or for the political, religious, professional or scientific activities (Article 156).

Hence, the Criminal Code of Georgia in its current states provides the full criminalization of all possible manifestations of racism, xenophobia and the intolerance. The alleged violation of the afore-mentioned three articles is a sufficient ground for the initiation of criminal proceedings and prosecution. In cases of the commission of the above-mentioned three offences all the measures provided by the criminal procedure of Georgia can and shall be utilized to bring the perpetrators before the bars of justice.

Question 18.

If an act qualifies for any of the offences envisaged by Articles 142¹ (Racism), 142 (violation of the principle of equality before the law) or 156 (persecution on the basis of opinion, conscious, religion or believe, or for the political, religious, professional or scientific activities) of the Criminal Code of Georgia the criminal investigation shall be launched. Under Article 24 of the Criminal Procedural Code of Georgia, all of the afore-mentioned crimes are subject to public prosecution. Besides the legal satisfaction by thoroughly conducted investigation and in case of the establishment of the commission of crime, the punishment of the perpetrator, the victim has an opportunity to claim a compensation. Article 30 of the Criminal Procedural Code of Georgia sets aside a general rule, based on which the persons having suffered property damage, physical or moral injuries have the right to sue civil claim and demand compensation for the injuries received. The compensation for the physical injuries covers the costs of burials, medical treatment, prosthetic device and the medicine, the cost of insurance, the compensation of financial aid and pension. The moral injuries shall be refunded through the payment of monetary compensation. These general rule of seeking compensation and redress for the injuries received as a result of crime through civil action, equally applies to all category of crimes, including those three mentioned above.

Question 19.

If an act amounts to the offences envisaged by Articles 142¹ (racism), 142 (violation of the principle of equality before the law) or 156 (persecution on the basis of opinion, conscious, religion or believe, or for the political, religious, professional or scientific activities) of the Criminal Code of Georgia the criminal investigation shall be launched. On the other hand, the general inspection both at the Office of the prosecutor General of

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Georgia and the Ministry of Internal Affairs of Georgia is authorized to consider the issue of the disciplinary responsibility of the officials in certain cases prescribed by law. Namely, in pursuance of Article 38§6, the officials of the Prosecutor's Office, among others, shall be subjected to disciplinary punishment for the conduct inappropriate for the official of the Prosecutor's Office. As mentioned above, the Code of Ethics of the Prosecutor's Office includes several anti-discriminatory provisions. The violation of the respective provisions of the Code represents an inappropriate conduct for the employee of the Prosecutor's office and entails his/her disciplinary responsibility (Article 38 (6)) of the Organic Law on the Prosecutor's Office).

Question 25.

In Georgia the refugee affairs are regulated by both international treaty regime and internal legislation. Georgia is the party to 1951 Convention relating to the Status of Refugees as well as the 1967 Protocol. In February, 1998 for the purpose of implementing the obligations undertaken by the Convention and its protocol, Georgian Parliament adopted the Law on Refugees. These are the main legal instruments for the resolution of the issues related to refugees in Georgia.

Law on Refugees and all the procedures adopted under it are in full compliance and harmony with the provisions and the regime of the convention. Georgia recognizes the fact that "a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition." In this respect, both the Convention and the Law uses the same wording and meaning for the definition of refugee. Law of Georgia on Refugees of 1998 determines the legal status of refugees and persons seeking the status of refugee, the grounds and procedure of granting, termination and deprivation of refugee status, legal social and economic guarantees for refugees. The Law sets aside the procedure for the application for granting refugee status and the examination of the application as a precondition for the lawful presence within the country as refugee. This procedure serves for the implementation of the Conventional obligations on the domestic level and is in full compliance with the regime established under the same international instrument. It should also be emphasized that in conformity with the requirements of Article 34 of the 1951 Convention, the Georgian domestic legislation provides the opportunity for the refugees in Georgia to acquire the Georgian nationality by naturalization. Under Article 29 of the Georgian Law on the Legal Status of Foreigners that applies to both aliens and refugees, the latter have the right to apply for nationality in accordance with the Constitution and the Organic Law on the Issue of Nationality. Under the amendments of 27 April 2007, the refugee status were granted temporary residence permit (Article 4 of the Law on Refugees).

Question 27.

Under Article 14 of the Constitution every person within the territory of Georgia is equal before the law regardless of race, colour, language, sex, religion, political and other opinion, nation, ethnical or social belonging, etc. Thus, all persons regardless of nationality can enjoy the rights and legal guarantees on the equal basis.

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The criminal legislation of Georgia provides certain criminal measures dedicated to the protection of the right to the equality before the law and the non-discrimination. Under the Criminal Code of Georgia, racism (Article 142¹), violation of the principle of equality before the law is considered as the punishable offense (Article 142). The Code further criminalizes the persecution on the basis of opinion, conscious, religion or believe, or for the political, religious, professional or scientific activities (Article 156). As regards the institutional mechanisms, Human Rights Protection Unit at the Office of the Prosecutor General of Georgia is authorized to receive individual applications regarding the alleged offenses of discrimination and the persecution; the Unit also conducts the supervision over the bodies investigating the afore-mentioned crimes.

On 13 October 2005, Georgia ratified the 1995 Framework Convention for the Protection of National Minorities. This reflects the aim of the Georgian government to fully guarantee the protection of minority rights in the country. The Georgian legislation in its present state corresponds with the requirements and guarantees provided under the convention for the protection of the minority rights. Moreover, under the Decree on Ratification of the Parliament, the additionally undertook its obligations to protect the rights of national minorities in general. Particular attention has also been paid to linguistic minorities. In pursuance of the Decree, the Georgia took the obligation to accord all linguistic minorities with the right to interpreter in the process of the communication with administrative bodies or during the litigation; to prepare the conditions for learning Georgian language; to ensure that the names of the persons belonging to national minorities are written in Georgian in compliance with the pronunciation specificities of the language of respective minorities.

Question 28.

Fight against the crime of human trafficking, including trafficking in minors, represents one of the main priorities of the Government of Georgia. The Government of Georgia is dynamically undertaking measures for the suppression, prevention, prosecution and punishment of trafficking in persons (hereinafter - TIP) in Georgia, as well as the effective protection of the victims of trafficking and their full rehabilitation and reintegration. In order to meet the requirements of the well known "three Ps": *Prevention, Protection and Prosecution*, active measures have been taken both - at the legislative and implementation levels.

The whole range of activities conducted with the active participation and support of the Office of the Prosecutor General of Georgia were directed towards the establishment and stable development of standards corresponding to internationally recognized norms for combating the crime of TIP in Georgia in. Due to the commitment showed and the progress made, Georgia was promoted to the Tier-1 in the US Department of State Annual Trafficking in Persons Report. The Tier-1 countries are seen as fully complying with the standards for the elimination of trafficking. Hence, Georgia joined the group of countries like Belgium, Denmark, France, Switzerland, the United Kingdom, Luxemburg, etc.

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In recent years relevant Georgian authorities through effective and productive cooperation with different international organizations and the non-governmental organizations acting in Georgia, have taken various measures for the prevention and suppression of trafficking as well as the protection, rehabilitation and reintegration of the victims of trafficking. This target group also includes juveniles who happen to have been subjected to the forced prostitution, labour and other forms of trafficking in juveniles. These activities include legal, as well as institutional and purely practical measures.

Georgian Government has taken various legislative measures for the purpose of the prevention, suppression and the effective prosecution of the crime of trafficking in Georgia. The Code provides for two different articles related to the TIP: one (namely Article 143¹) refers to the trafficking in adults, in general, whereas the second article (143²) criminalizes trafficking in minors. Georgian anti-trafficking legislation is quite well elaborated and detailed. It considers anyone under 18 as a child and protects them on the equal footing with adults and taking into consideration their special situation². The Criminal Code of Georgia does not provide separate criminalization of trafficking on the basis of the sex of the victim. Hence, the trafficking in women is covered by the aforementioned two offences. The sanctions prescribed by the two articles differ: the minimum sanction provided by Article 143¹ is deprivation of liberty for 7 years, whereas the Article 143² sets as a minimum sanction deprivation of liberty for 8 years. The maximum possible sanctions, provided by these articles are as follows: Article 143¹ provides for 20 years of deprivation of liberty, whereas maximum sentence in aggravating circumstances, as prescribed by the Article 143¹ is life sentence.

The amendments of April 28 and July 25, 2006, to the Criminal Code of Georgia increased the sanctions for the crime of TIP and introduced the criminal liability of legal persons for trafficking in persons.

The amendments of April 28 and July 25, 2006, to the Criminal Code of Georgia increased the sanctions for the crime of TIP and introduced the criminal liability of legal persons for trafficking in persons.

At the same time since June 20, 2006, the following amendments to the respective Articles of the Criminal Code of Georgia (*hereinafter* - CCG) dedicated for the protection of the interests of victims are in force:

1. A TIP victim is exempted from criminal liability for illegal crossing of the state border, if he/she committed the said crime due to being the victim of trafficking in persons (Article 344, CCG);
2. A TIP victim is exempted from criminal liability for production, purchase or use of the forged document, seal or form if he/she committed the said crime due to being the victim of trafficking in persons (Article 362, CCG);

² It shall be noted here that terms "child" and "minor" are used interchangeably in the Georgian anti-trafficking legislation. Criminal Code of Georgia uses term "minor", whereas the Law on Fighting against Trafficking in Persons uses a term "child". Both terms equally refer to anyone under 18, in accordance with the UN Convention on the Rights of the Child.

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3. A TIP victim is exempted from criminal liability for refusing to testify as a witness for victim during the "think-over period" (30 days) (Article 371, CCG):

In addition, with the amendment of December 29, 2006, a person in charge of the TIP shelter is exempted from criminal liability for concealing the fact of the crime of trafficking in persons from the law enforcement bodies (Article 375, CCG: amendment).

Since May 28, 2006, the following amendment to the respective Article of the Code on Administrative Offences (Misdemeanor) (*hereinafter* - CAO) is in force:

1. A person deemed as a victim of TIP under the Georgian Law on Fight against Trafficking and Criminal Procedure Code of Georgia is exempted from administrative responsibility for the act of prostitution, if he/she committed the said crime due to being the victim of trafficking in persons (Article 172, CAO).

On April 28, 2006, as a result of the cooperation of the relevant Georgian authorities, NGOs and international organizations, the Parliament of Georgia adopted the Law on Combating Trafficking in Persons (*hereinafter* - *the Law*). The Law entered into force on June 16, 2006. The Law underlines the state policy to suppress TIP and is based on the relevant internationally recognized standards. The Law is a practical tool in the fight against trafficking in persons.

The Law regulates specificities of the criminal procedure in the course of the TIP prosecution, establishes exemption of TIP victims from criminal responsibility for wrongful acts committed by them due to being the victim of TIP, envisages the establishment of shelters, etc. What is of utmost importance about this legal instrument is that the Law directly underlines that children victims of trafficking are subject to the protection mechanisms established by the United Nations Convention on the Rights of the Child of 20 November 1989, the Council of Europe Convention on Action against Trafficking in Human Beings and guidelines adopted by international organizations in the field of protection of children victims of trafficking.

Even though the existing regulations provide for special treatment for children victims of trafficking, the responsible Georgian authorities are taking further steps to enhance the legislative basis for the protection of children victims. Thus, the relevant measures are taken to specify some of the protection mechanisms available specifically to children. To this end, in June 2007, a special drafting committee was set up, composed of the respective Government bodies, NGOs and international organizations to draft the amendments to the Law on Combating Trafficking in Persons. The bill will be submitted to the Parliament for plenary hearing in the near future. The draft amendment once again specifically outlines that, children victims of trafficking shall be provided with the social

³ So called Reflection Period: a TIP victim shall be entitled to a 30-day reflection period to decide whether he/she wants to cooperate with the law enforcement bodies in proceedings related to the given crime. Reflection period starts on the date of applying by the person to the shelter, law enforcement body or other relevant institution. During the reflection period the TIP victim shall not be subject to criminal responsibility under Article 371 of the Criminal Code of Georgia.

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and legal protection, assistance and rehabilitation, taking into consideration their special situation. The amendments will introduce the separate chapter dedicated to children victims of trafficking and will fully implement the UN Convention on the Rights of Children and the Palermo Protocol.

The draft amendments specifically states that Georgia shall undertake necessary measures to establish identity, nationality, parents and whereabouts of the family of a child victim of trafficking. In cases of need, a special guardian shall be appointed to a child by the State. The Bill provides that any identity-related information of a child is secret and cannot be revealed, unless it is necessary for establishment of the whereabouts of the parents and the family of the child, provided that disclosure of this information does not threaten security of the child victim concerned.

It should also be underlined that Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime was ratified by the Georgian Parliament on June 7, 2006. The said convention is mostly important for the fight against the trafficking in minors.

On 25 January 2007 the President of Georgia approved the Anti-Trafficking Action Plan for 2007-2008 as an active and structured tool for developing coordination among various governmental agencies and non-governmental organizations working in the sphere of trafficking. Among others, the action plan prescribes the activities that are specifically designed and concentrated in the prevention of trafficking in children. These activities include: the conduct of educational seminars in the homes of orphans and the children without parental care; research of the reasons and scales of trafficking in children.