

### The status of minority languages in Georgia and the relevance of models from other European states

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# **The Status of Minority Languages in Georgia And the Relevance of Models from Other European States**


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## I. Introduction

The issue of language is a highly sensitive one in Georgia. The nineteenth century Georgian writer Ilya Chavchavadze (1837-1907) expressed his conception of Georgian national identity by the slogan *Mamuli, Ena, Sartsmunoeba* (Fatherland, Language, Faith), which gives clear priority to language, the secular component of nationhood, over religion. This ideological framework was further reinforced during the Soviet period when ethnicity was institutionalised and formed the basis for the administrative-territorial division of the USSR. As the USSR became consolidated and the boundaries of its constituent republics and territories became more or less fixed, native language (*rodnoi iazyk*) often served as the main indicator both for the definition of the ethnicity of the individual and for the identification of nationalities (*natsional'nosti* and *narodnosti*) with rights over particular territories.<sup>1</sup> Although this “institutionalisation of ethnicity” could not be discussed in public, its occurrence meant that ethnic identity was unwittingly reinforced by the Soviet system and language was often the principal component of this identity.

From the perestroika period of the late 1980s, nationalist discourse came to dominate political life in Georgia. This discourse was championed by Georgia’s first president, Zviad Gamsakhurdia, whose rhetoric frequently characterised non-Georgians as (often ungrateful) guests. During the early 1990s as secessionist wars engulfed South Ossetia and Abkhazia, resulting in the *de facto* loss of these territories to the Georgian state, Georgian nationalist discourse sought to justify the inalienable right of the Georgian people and the Georgian language to all of Georgia’s territory by arguing that only Georgians were truly indigenous to this territory.<sup>2</sup> This argument was backed up by (often spurious) evidence that the Georgian language had been spoken in all parts of the country from time immemorial. Although the most virulent form of this discourse reached its apogee in the immediate aftermath of the collapse of the USSR and then began to decline, the Georgian language remained a potent symbol of national consciousness. Even today as the new government under Mikheil Saakashvili ostensibly seeks to promote a civic rather than an ethnic identity, arguments over which groups were indigenous to Georgia still clouds the debate over the language issue. Thus, leading government officials and parliamentarians frequently argue that while Abkhazian may be recognized as a second state language on the territory of Abkhazia because it is an autochthonous

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<sup>1</sup> For a detailed account of this process, see Francine Hirsch, *Empire of Nations: Ethnographic Knowledge and the Making of the Soviet Union* (New York: Cornell University Press, 2005).

<sup>2</sup> See, for example, Mariam Lordkipanidze, *Essays on Georgian History* (Tbilisi: Metsniereba, 1994).

language and is not used in any other “kin state”, Armenian, Azeri and Ossetian, fulfilling neither of these criteria, cannot be given such status.<sup>3</sup>

According to the 2002 population census, ethnic Georgians make up 83.8% of the population of Georgia, Azeris make up 6.5%, and Armenians 5.7%. Large concentrations of Azeris and Armenians are located near the borders of their kin states in the southern provinces of Kvemo Kartli and Samtskhe-Javakheti respectively. This has led to fears by the Georgian government that to devolve power to regions where these minorities are compactly settled risks fuelling secessionism and eventual unification of these regions with their kin states. These fears must be understood in the context of the violent conflicts that occurred in the early 1990s and that resulted in the *de facto* secession of the former autonomous territories of Abkhazia and South Ossetia.

It is the task of this working paper to provide a feasibility study on the possibility of granting languages other than Georgian and Abkhazian some kind of administrative status within the Georgian legal framework. Already the Constitution of Georgia (Article 8) stipulates that “[t]he state language of Georgia shall be Georgian, and in Abkhazia – also Abkhazian”, thus providing official recognition to Abkhazian as well as Georgian. Moreover, in its Initiative with Respect to the Peaceful Resolution of the Conflict in South Ossetia of March 2005, the Georgian government proposed that the Ossetian language be granted official status alongside Georgian on the territory of South Ossetia.<sup>4</sup> The key question this paper seeks to address is whether other languages spoken on the territory of Georgia, most notably Armenian and Azeri, could also be recognized in some way or other, albeit without being granted full status as official state languages. This question is a particularly pertinent one in the light of Georgia’s recent ratification of the Council of Europe’s Framework Convention for the Protection of National Minorities (on 22 December 2005) and the ratification of the European Charter for Regional or Minority languages, which is planned to take place in 2006.<sup>5</sup>

This survey draws from empirical material obtained in the two *rayons* (districts) of Akhalkalaki and Ninotsminda in the Georgian province (*mkhare* in Georgian) of Samtskhe-Javakheti. Collectively these two regions are referred to as Javakheti and are populated by an Armenian majority, who make up 94.8% of the total population, according to the 2002 population census. While the focus is

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<sup>3</sup> See Britta Korth, Arnold Stepanian and Marina Muskhelishvili, ‘Language Policy in Georgia With a Focus on the Education System’, working paper for CIMERA (April 2005) at [http://www.cimera.org/en/projects/Policy\\_paper\\_FINAL.doc](http://www.cimera.org/en/projects/Policy_paper_FINAL.doc).

<sup>4</sup> Online Magazine Civil Georgia, 24 March 2005 at [www.civil.ge/eng/article.php?id=9426](http://www.civil.ge/eng/article.php?id=9426).

<sup>5</sup> However, so far Georgia has neither signed nor ratified the European Charter for Regional or Minority languages.

on the Armenian national minority, the findings of this report are likely to be applicable to other national minorities, most notably the Azeri minority, which, as mentioned above, makes up a similar proportion of the total population of Georgia (see above).

The paper will be divided into two sections. The first section will examine how the existing status quo in which Georgian is the only official language in all parts of Georgia outside Abkhazia affects the working of the courts, the local organs of state administration, the media and the education system in Javakheti. It will then assess whether or not the current situation is sustainable. The argument is that, for the present time at least, language use within state bodies in Javakheti corresponds to informal arrangements rather than formal laws. To retain the status quo, I argue, is likely to further entrench these informal practices and may hinder rather than promote integration. The paper then discusses whether it would be possible to somehow tinker with the legislation in order to mitigate these undesirable consequences in the short term while retaining the status of the Georgian language as the only administrative language at all levels of government, or whether some kind of administrative status could be granted to minority languages in those districts (such as Akhalkalaki and Ninotsminda) in which national minorities are compactly settled. It then goes on to list certain specific conditions that any new legislative arrangement should meet.

The second part of the paper will examine how the issue of minority languages is dealt with in Romania and Croatia, two countries in which the relationship between the majority and minorities has, in recent years, been highly sensitive. I show how in both of these countries, a model has been developed that grants minority languages some kind of official status at local level but falls short of granting these languages full official status at the national level. Both models, I argue, promote bilingualism and encourage integration and may be valuable models for the Georgian government to look to as it elaborates legislation on minority languages.

## **II. The Status Quo: Georgian as the Only Administrative Language in Samtskhe-Javakheti**

This section of the paper will begin by analysing the status quo in Georgia with respect to language use, first by examining existing legislation insofar as it affects the use of the official language as well as minority languages and then by looking at how this legislation is implemented on the ground in Akhalkalaki and Ninotsminda districts in terms of a) the state administration at the district level, b) the judicial system, c) access to state posts by non Georgian speakers, d) media, and e) state-accredited educational establishments. The section will close by discussing whether or not maintaining the status quo is feasible, by identifying the potential advantages and drawbacks of giving some kind of administrative status to minority languages in districts such as Akhalkalaki and Ninotsminda where national minorities are concentrated, and finally by suggesting three conditions that any new arrangement should abide by.

### ***1. Background***

Within Akhalkalaki and Ninotsminda districts the language used for oral communication is almost exclusively Armenian. Even most of the (relatively few) local Georgians living in these two districts also speak this language. Russian is also widely spoken, especially in Akhalkalaki, due to the presence of the 62<sup>nd</sup> Divisional Russian military base that is located there.<sup>6</sup> During the Soviet period, at least as many pupils attended Russian schools as Armenian schools in the two main towns of Akhalkalaki and Ninotsminda. Now the balance has shifted more in favour of Armenian schools; in Akhalkalaki there are three Armenian schools, one Georgian school and one Russian school, while in Ninotsminda there are two Armenian schools, one Georgian school and one Russian school. In the villages, most schools are Armenian, except in the villages of Gorelovka, Spasovka and Orlovka in Ninotsminda district, where traditionally the Russian Dukhobor Community have lived, and in several Georgian villages. Many members of the local (ethnic Armenian) nomenklatura attended Russian schools and some are more competent at writing Russian than writing Armenian. Other languages spoken include Turkish, spoken by the small Greek community that resides in Akhalkalaki district (mainly in the village of Khospio) and by a small number of Catholic Armenians. The overwhelming majority of Armenians living in the two districts have little or no knowledge of Georgian; according to the 2002 population census, just under a third (32.7%)

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<sup>6</sup> In May 2005, the Russian and Georgian governments came to an agreement that the both Russian military bases stationed in Georgia, including the 62<sup>nd</sup> Divisional base, would be withdrawn in their entirety by the end of 2008.



of Armenians in Georgia as a whole know Georgian, but this number is likely to be made up virtually entirely of Armenians from Tbilisi and Akhaltsikhe, most of whom are bilingual or multilingual.

## ***2. Legal Basis***

In order to analyse the legal basis of the status of Georgian as the only administrative language outside Abkhazia, it is necessary to look at the body of laws that regulate language use in state institutions. Georgian is defined as the state language in Article 8 of the Georgian Constitution (see above) and for many years there have been plans to introduce a Law on the Official Language to define its status more clearly. Although a draft law was drawn up by the Chamber of the State Language during the last years of Eduard Shevardnadze's time as president, this draft was rejected due to a lack of consensus and no final draft ever emerged.<sup>7</sup>

The language used in administrative proceedings is regulated by Articles 14 and 73 of the Administrative Code (1999, entered into force in 2000). Article 14 states “[t]he official language of administrative proceeding shall be Georgian. The additional official language of administrative proceeding in Abkhazia shall be Abkhazian.” Here administrative proceedings are defined as “activities performed by an administrative agency to prepare, issue, or enforce an administrative decree or solve an administrative complaint” (Article 2.1). According to Article 73.3, “[a]n administrative proceeding shall be conducted in Georgian” except in Abkhazia where Abkhazian can be used as well, while Article 73.4 states that “[i]f the application/statement or any other document presented by an interested party is not in the state language, the party shall present a notarized translation of the document within the term defined by an administrative agency.” This would appear to suggest that it is the responsibility of the “interested party” rather than the state to provide a translation of any document he/she presents if the original version is not in Georgian. The use of Georgian in administration is also regulated by the Law on Public Service (1998). Article 12 of this Law states that public service in Georgia is exercised using the Georgian language, except in Abkhazia, where the Abkhazian language can also be used, and Article 98.1 states that lack of knowledge of the state language can be grounds for dismissal. The Law also states that those applying for public posts (Article 15) and for posts in local self-government (Article 16) must have command of the state language (i.e. Georgian). Article 16 is backed up by the new Organic Law of

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<sup>7</sup> For more details, see Korth, Stepanian and Muskhelishvili, ‘Language Policy in Georgia With a Focus on the Education System’.

Georgia on Local Self-Government (2005), which states that “the working language and the office work of the local self-government bodies is implemented in the state language of Georgia” (Article 10). Self-government bodies here refer to elected councils, to their executive branches and to their control bodies.

The Law on Common Courts (1997) regulates the use of language in the judicial sphere. According to Article 10 of this law, adjudication must take place in the official language (i.e. only in Georgian outside Abkhazia). This article also states that any individual involved in court proceedings who does not know the official language shall be provided with an interpreter, courtesy of the state budget. This corresponds almost exactly to Article 85 of the Constitution, which states that “[l]egal proceedings shall be conducted in the state language. An individual not having a command of the state language shall be provided with an interpreter.” This provision is meant to apply to all national courts, as it is repeated in the laws regulating proceedings in courts, namely the Criminal Procedures Code and the Civil Procedures Code.

Also relevant to the official status of Georgian and other languages spoken on the territory of Georgia is the legislation on general and higher education. According to the new Law on General Education (2005), the “[l]anguage of study at the general education institutions shall be Georgian, while in the Abkhazian Autonomous Republic – Georgian or Abkhazian” (Article 4.1), although “citizens of Georgia, whose native language is not Georgian, have the right to receive complete general education in their native language” (Article 4.3). This signals the continuation of the status quo in which schools educating pupils in non-Georgian languages are permitted. However, the Law stipulates that these schools must follow the new national curriculum, which requires that Georgian language and literature, the history and geography of Georgia as well as “other social sciences” be taught in Georgian by the academic year 2010-2011 at the latest (Articles 5.4 and 58.5). This does not, of course, prohibit minority languages and the culture and history of national minorities from being taught in non-Georgian schools, as schools will be able to set their own curriculum that include subjects beyond the national curriculum providing that the core subjects of the national curriculum are included.

The sphere of higher education is regulated by the Law of Georgia on Higher Education (2004). Article 4 of this Law states that “[t]he language of instruction at a higher education institution is Georgian, in Abkhazia – also Abkhazian”, although somewhat ambiguously the same article states that “[i]nstruction in other languages, except for individual study courses, is permitted provided that

this is envisaged by international agreement or is agreed with the Ministry of Education and Science of Georgia.” Article 89 establishes national entrance examinations for all state-accredited higher education institutions and identifies four subjects in which these examinations will be held in the academic year 2005-2006, i.e. the first year in which university entrants are required to pass the examinations. These subjects are Georgian Language and Literature, General Abilities, Foreign Languages (English, German, French or Russian) and mathematics. The same Article also states that in subsequent years other subjects will be added to this list.

Turning to electoral legislation, the Unified Election Code of Georgia (as amended in August 2003) makes provision for voters that do not understand the state language. Article 51.1 states that “[a] ballot paper shall be printed on the basis of the ordinance issued, and in accordance with the sample established by the CEC, in the Georgian language, and in Abkhazia – in the Abkhazian language, and if necessary – in any other language understandable for the local population.” According to the same Code, however, those elected to the Georgian Parliament must “know the Georgian language” (Article 92.1), a provision that was due to come into force on 1 January 2005 and will therefore be effective in the next parliamentary elections scheduled for early 2008 (Article 129.1). Furthermore, amendments made to the Unified Election Code of Georgia in April 2005 states that all candidates for members of the Central Election Commission (CEC) and the District Election Commissions (DECs) must also be fluent speakers of the state language. The relevant articles in the amended Code are Articles 27.4 and 33(B).5.

Finally, in the sphere of broadcasting a new public television service was introduced in 2005 to replace the old state network. According to Article 16 of the Law on Broadcasting (2004) that regulates it, public television is obliged to broadcast in minority languages and to produce programmes for the benefit of national minorities.

### ***3. Language and the State Administration in Javakheti***

Within the administrative organs of Akhalkalaki and Ninotsminda districts, Armenian and Russian are widely used despite the provisions of the Administrative Code. In the body of the district administration (*gamgeoba*) in both districts, the majority of staff is ethnic Armenian although there are also several local Georgians working there. Local Georgians, however, generally speak Armenian and Russian as well as their mother tongue (see above); therefore the languages most commonly used in the district administration are Armenian (for oral communication) and Russian

(for written documents). Although certain key documents (especially official certificates and budgetary forms for the Ministry of Finance) must be drawn up in Georgian, it is generally possible for the *gamgeoba* to send documents to government departments in Tbilisi in Russian as they will be accepted and understood. In the case of those documents that must be drafted in Georgian, these are usually translated by the Georgian staff at the *gamgeoba* buildings, although these translations are not always accurate.

Greater problems arise within the courts and the Prosecutor's Office. In Javakheti there are two district courts – one in Akhalkalaki and one in Ninotsminda. The court that has authority over the province of Samtskhe-Javakheti remained, at the time of writing, in Tbilisi, although it was scheduled to move to Akhaltsikhe (the administrative centre of Samtskhe-Javakheti) in the near future. The local Prosecutor's office is located in Akhalkalaki and has authority over both Akhalkalaki and Ninotsminda districts, while the higher-level provincial (*mkhare*) Prosecutor's office is based in Akhaltsikhe and has authority over the entire territory of the province. In the local courts (i.e. in Javakheti), most documentation is written in Russian. This applies to the pre-trial protocol which includes witness statements and the results of the preliminary investigation. There is no legal provision for the use of Russian in such circumstances, it is done on an informal basis and is the result of necessity given the minimal knowledge of Georgian within district-level bodies. Moreover, within the local courts trials are usually conducted in Armenian (as an oral language) and Russian (for written documents). At the time of writing only one of Javakheti's four judges had full command of Georgian and defendants and plaintiffs are only very rarely able to speak Georgian. The sentence passed by the judge is usually also recorded in Russian, once again in breach of Georgian administrative law, although at the time of writing there were plans to ensure that all court documentation be recorded in Georgian.

The ambiguous situation with regard to language use in the courts and in the Prosecutor's office can lead to long delays in the court process. In the pre-trial period, the protocol presented by the local courts and the local investigative officer is sometimes rejected by the province-level court or the Prosecutor's office in Akhaltsikhe if it is written in Russian. This may have highly unwelcome consequences given the long delays that may result from such a rejection (which may occur repeatedly). In the case of very minor offences, it means that the defendant runs the risk of being remanded in pre-trial detention for three months for an offence that would not normally merit a custodial sentence. It thus provides an incentive for corruption; in such a case the defendant or his

family may simply pay a bribe to the relevant authorities in order to have the case dropped, rather than risk a delay that may mean imprisonment.

All of this leads to inefficiency, discrimination and the persistence of informal practices. The fact that court proceedings in Javakheti are not normally held in Georgian is itself a violation of the Law on Common Courts and the Constitution (see above), but the reality on the ground dictates that strict observance of these laws is not feasible. Moreover, the delays to court proceedings as well as the frequent lack of trained personnel capable of translating effectively from one language to another clearly undermines the effectiveness of the legal system in Javakheti and may even undermine the right of citizens to a fair trial. The legal right of bureaucratic bodies such as the Prosecutor's Office to reject documents on the grounds that they have not been drafted in the state language could potentially lead to a selective application of the law and a consequent risk of arbitrary pressure. While the problem of finding qualified translators will always remain, establishing a legal obligation for province-level bureaucratic bodies such as the Prosecutor's office to accept documents from lower-level bodies in minority languages could reduce delays, formalize existing informal practices, lead to smoother and more efficient administration (especially in the courts and Prosecutor's office) and reduce the possibility of abuse.

#### ***4. Language and Recruitment of Local Personnel***

Given the fact that Georgian is the only official language outside Abkhazia, it is to be expected that all state servants should be required to have full command of this language at the local as well as national level. This requirement is enshrined in the Law on Public Service (see above). However, the strict application of the law would clearly discriminate against those members of national minorities who are concentrated in areas where few Georgian speakers live and therefore do not have command of the state language. In practice, however, the law is implemented only partially. In the Azeri-populated areas of Kvemo Kartli, the post of *gamgebeli* (district administrator) is always held by a Georgian, even in Marneuli district, where 83.1% of the population is Azeri. In Javakheti, on the other hand, all the top posts (such as *gamgebeli*, local Prosecutor, three out of four judges and the chief of police) are held by Armenians. In general, an informal arrangement has prevailed, whereby a local elite consisting of wealthy and powerful Armenians has been allowed to govern the region in return for their support for the centre. As these individuals speak little or no Georgian, such an arrangement is clearly in violation of Article 15 of the Law on Public Service. However, if this article were to be followed to the letter, it is unlikely that *any* sufficiently qualified local

Armenian would be eligible for their posts. Instead the positions would have to be 'farmed out' to outsiders, probably Georgians, with little knowledge of the region, and this would undoubtedly provoke a strongly negative reaction amongst the local population. Moreover, the laws making Georgian the only working language in bodies of local self-government would be even more impossible to fulfil in Javakheti as those elected to these bodies are likely to be overwhelmingly Armenians without knowledge of the state language.

However, while these existing informal arrangements allow local government to function and Armenians to dominate at local level, they are nevertheless rather discriminatory. Critics point out that ordinary Armenians who do not belong to the networks of the powerful and wealthy individuals who hold the key posts have virtually no chance of assuming high positions within state structures. They also claim that many local Armenian bureaucrats are under-qualified, corrupt and fail to represent the interests of ordinary citizens.

By the end of 2005, there was a marked tendency for middle-ranking posts to be farmed out to Georgians from other districts of Samtskhe-Javakheti, especially Akhaltsikhe. This applied above all to staff in local branches of the central government ministries. Whilst this was part of a general tendency to replace old (and often poorly-qualified) staff by new better-qualified personnel with knowledge of the state language, it raised fears amongst the local population that within a relatively short space of time no Armenians would be employed in local state structures.

It was with the aim of establishing a stratum of well-qualified civil servants with command of the state language that a new school of public administration, named after the late prime minister Zurab Zhvania, was opened in Georgia's second city of Kutaisi in December 2005. Each student of the school is required to complete a three-month course on public administration and all those without full command of the state language are also required to take a three-month course in Georgian to begin with. In the first year, one hundred students were accepted to the course after applying to the Ministry of Education and approximately seventy-five of these began lessons on 16 January 2006. Of these, around twenty-five were Georgians from mountainous regions of the country, while the rest were members of ethnic minorities, including fourteen Armenians from Javakheti. While most observers agreed that the concept was a good one, doubts were raised whether a three-month course was sufficient for mastering Georgian, given the low starting-point as regards knowledge of the Georgian language among national minorities who have hitherto had little contact with the Georgian population.

## 5. Media

The Georgian Ministry of Culture funds several newspapers in minority languages, including the Armenian-language *Vrastan*, the Azeri language *Gurjistan* and the Russian-language *Svobodnaya Gruzija*. These are distributed to most main cities where the respective national minorities are concentrated. However, some representatives of minorities have complained that these newspapers are under-financed as central government funding has been cut back in recent years.<sup>8</sup> As for television broadcasting, the new public television network fulfilled its promise to broadcast a news report in non-Georgian languages. Thus, the news programme *Mtavari* (“The Main”) on the First Channel broadcasts in Abkhazian, Ossetian, Armenian, Azerbaijani and Russian languages every day at 3 p.m. However, this is far from peak viewing time and, given the number of languages covered, the broadcasts are inevitably rather short. In Javakheti, local private television faces no obstacles in broadcasting in Armenian and two such local channels, ATV-12 in Akhalkalaki and the Ninotsminda-based Parvana TV, not only broadcast local television programmes in Armenian but also rebroadcast news from Georgian TV channels with the help of simultaneous translation from Georgian to Armenian.

Despite this limited access to the informational network of Georgia, most inhabitants without knowledge of the state language still live in an information vacuum. Even the above-mentioned private television stations have a limited coverage area and ATV-12 is not even received across all of the town of Akhalkalaki. Most television coverage in Javakheti that is accessible to the local (Armenian) population is broadcast direct from Yerevan or Russia, increasing the tendency of the inhabitants of Javakheti to identify with the Armenian rather than the Georgian cultural sphere.

## 6. Education

The new legislation on education, and more specifically the use of Georgian as a language of instruction, has provoked unease amongst the Armenian population of Javakheti for two principal reasons. First, there is a fear that this legislation may result in *de facto* discrimination against minorities on ethnic grounds. Articles 5 and 58 of the Law on General Education stipulate that certain core subjects must be taught in Georgian in all state schools by the academic year 2010-2011 (see above); however it is widely felt that the Georgian language will not be mastered well

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<sup>8</sup> For example, the ethnic Armenian MP Van Baiburt claimed that in 2005, *Vrastan* received only 15,000 Georgian Lari, compared to the 20,000 that should have allocated to it. See Media.ge (27 January 2006) at [http://www.media.ge/eng/news\\_detailed.php?id\\_num=366](http://www.media.ge/eng/news_detailed.php?id_num=366).

enough within this rather short time frame and that pupils will be unable to follow the lessons if taught in Georgian. The result would be that Armenian schoolchildren would receive a sub-standard education compared to their Georgian counterparts. The Law on Higher Education provokes similar fears of discrimination, especially the requirement that Armenian secondary school students must take the national entrance examination in the Georgian language if they are to enrol in state-accredited universities. Indeed this requirement had an instant effect on the number of Javakheti Armenians admitted to the Akhalkalaki branch of Tbilisi State University after the first national entrance examinations were held in the summer of 2005. Of sixty-four Armenian speakers that took part in the Georgian language entry examination in Akhalkalaki district, only three were successful and just two were able to enrol at the university. Previously Armenians and Georgians made up more or less equal numbers in this university. Thus the unintended effect of the new requirements was to discriminate against non-Georgian students who, for geographical and demographic reasons, have little contact with Georgian speakers and therefore have limited command of the state language. There were plans to make the Georgian examination easier for the subsequent academic year<sup>9</sup>, but there were fears that the high failure rate in the first year had a demoralising effect that would hardly encourage Javakheti Armenians to apply in the future.

Bringing Armenian students from Javakheti into mainstream state university education is very important for their long-term integration into Georgian public life. Only after receiving a Georgian education will graduates be likely to remain in the country and add to the intellectual capital of the country by taking top jobs in the private or state sector. At the present time most of those living in Javakheti who go on to higher education either enrol in the Armenian state university in Yerevan or take courses at the Akhalkalaki branch of the Yerevan Juridical and Economic University that is based in Yerevan.<sup>10</sup> Students graduating from these universities are clearly less likely to find jobs in Georgia than those who graduate from a Georgian higher education institution (even though, according to the Bologna Agreement that aims to establish a European higher education area and that came into force in 2005, Armenian degrees are recognised in Georgia).

The second reason why the Armenian population of Javakheti is alarmed by the new legislation is that the Law on General Education in particular is perceived as a threat to the ethnic identity of the

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<sup>9</sup> In fact, even in 2005 there was an easier version of the Georgian language examination, which was intended for those enrolling for Russian language sections of certain state-accredited institutions of higher education, of which there are still a number. However, Akhalkalaki branch of Tbilisi State University had no such section and aspiring students had to sit the standard version. For the 2006 national entrance examinations, there were plans to set the same Georgian language examinations for all potential students, which would, nevertheless, be easier than the standard version of the 2005 examination.

<sup>10</sup> This is a commercial, rather than a state university.



Armenian community. Identity is seen as inextricably intertwined with language and there is a perception that it is the aim of the Georgian state to assimilate the local population by using the education system to force them to use Georgian in place of their mother tongue. The clause making it compulsory to learn the history of Georgia in the Georgian language causes particular alarm; local Armenians fear that by learning history in Georgian from a Georgian viewpoint, their children will somehow be inculcated into Georgian culture and will therefore lose their Armenian national identity.

Although fears that the new education laws will lead to assimilation are exaggerated, it is hard to escape the conclusion that they will either be ineffective or discriminatory. On the one hand, the new regulations may be quietly forgotten and give way to the hitherto prevailing informal status quo whereby minority language schools can quietly ignore the requirement that their pupils learn Georgian and the central authorities turn a blind eye to this arrangement. If, on the other hand, they are enforced according to the letter of the law, the Armenian population of Akhalkalaki is likely to be seriously disadvantaged. It is hard to imagine how the majority of Javakheti schoolchildren will understand classes given in Georgian within the short time frame specified by the law and it is equally hard to understand how secondary school graduates will be able to pass a rigorous university entrance exam in the state language unless significant changes are made to existing legislation.

### ***7. Local administrative status for minority languages? Pros and Cons***

The above discussion has highlighted some ways in which the existing legislation is likely to lead either to the persistence of existing informal arrangements whereby non-Georgian languages continue to be used routinely in bodies of state administration and educational establishments, or to *de facto* discrimination against linguistic minorities. It has also identified some instances in which the existing legislative base has already led to inefficiencies and violations (for example, in the administration of justice) or to discrimination (especially in the education sector).

If the unintended result of the administrative and educational legislation described above is that it leads to discrimination, Georgia could find herself in breach of the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), most especially Article 4, which states that signatory countries "undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between

persons belonging to a national minority and those belonging to the majority”, and in doing so they “take due account of the specific conditions of the persons belonging to national minorities.” This clause should be interpreted to mean that the Georgian state must take active measures to promote not only theoretical equality but “full and effective” equality. Specifically with regard to education, Article 12 of the FCNM states that “[t]he Parties [should] undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.” If the laws on education are fully observed it is hard to see how this condition could be fulfilled.

The question we must now address is whether allowing the continued use of Russian, Armenian and Azeri within official bodies and within educational institutions, at least in the short term, could address these problematic issues effectively at the same time as promoting integration and the consolidation of a “demos”, which is the hallmark of any democratic state. On the one hand, one could argue that allowing the official use of Armenian and/or Russian in those districts such as Akhalkalaki and Ninotsminda where knowledge of Georgian is poor would legalise existing informal practices and prevent the language legislation from being used selectively to block opponents of the local or national authorities from gaining access to political or economic power.<sup>11</sup> This argument is given added weight by the fact that if existing progress is anything to go by, it will be at least a generation before most Armenians in Javakheti master the Georgian language fully. Thus, the choice would seem to be the following: either keep the status quo whereby Georgian is the only official language but informally turn a blind eye to the fact that the law is not observed, or give Armenian or Russian official status as an administrative language at local level and allow its use to be regulated.

However, the counter-argument is that if it is no longer a requirement for those holding responsible state posts to have a good command of Georgian, there will be little incentive for the local population to learn the language. This is likely to lead to the further “ghettoisation” of the Armenian community in Javakheti and of the Azeri community in Kvemo Kartli and risks maintaining the status quo in which no common language exists for communication between the majority and the minority. This is hardly likely to bring forward the ultimate goal of integration and common citizenship.

It would appear that there are two potential ways of resolving the present deadlock. First, it may be possible to alter the existing legislative framework to a minimal degree and on a strictly temporary basis in order to mitigate the more unwelcome side-effects of the existing legislation outlined

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<sup>11</sup> There is a long tradition both in Georgia and in other republics of the Soviet Union of over-legislation leading to the selective application of the law. This tradition dates from the Soviet period. By devising legislation such that almost everyone is forced to violate the law makes arbitrary repression an easy option.

above. This could ensure that members of national minorities are not unfairly disadvantaged during a transition period during which they gradually gain mastery of Georgian. This would not require giving any form of official status to Armenian, Azeri or any other minority language. Thus, in the field of education, it would be possible to minimise discrimination against members of national minorities by phasing in the more demanding requirements of the national curriculum and the national entrance examinations over a longer period of time. As regards language use within administrative bodies, the Administrative Code and the Law on Public Service could also be altered to take into account the reality on the ground. While the repeal of Articles 14 and 73 of the Administrative Code would almost certainly violate Article 8 of the Constitution, it may be possible to amend the code to allow these articles to take effect only after a particular time frame has elapsed without making any constitutional changes.

This more pragmatic approach could also include introducing legislation to retain Russian as a language of communication between the central and the local authorities. Due to political sensitivities within Georgia that stem from the use of Russian in the Soviet Union and the complex relationship between Georgia and her former “colonial master”, this would clearly be a short-term measure that would only operate during the transition period. This approach would merely mean legalising those informal practices that are already well-established in regions where national minorities are concentrated.

The main drawback of this pragmatic approach is that it is focused on overcoming short-term difficulties and provides no direction as to how minority languages are to be accommodated in the long term. It is essential – bearing in mind Georgia’s obligation to sign and ratify the European Charter for Regional or Minority Languages – that minority languages not only be preserved but be allowed to flourish and that the worthy goal of national integration is not equated with linguistic assimilation. Allowing the use of Russian in the short term as a language of communication between Armenian and Azeri citizens and the state authorities would do little to ensure that the native languages of these citizens can develop. This is not to say that measures should not also be taken to promote the language and literature of Georgia’s small Russian population (1.5% according to the 2002 Census), but the way to promote the language of one national minority is not to devise a way for them to use the language of another!

The other alternative would be to give some form of administrative status to minority languages at local level within those territories in which the respective minorities are concentrated. In this paper,

I will not consider the option of giving Armenian and Azeri the status of official languages equal to Georgian as this would be highly unpopular amongst the titular nationality of Georgia and would almost certainly be political suicide for any government that attempted to introduce such a measure. What I will instead consider is the possibility of allowing these languages to be used alongside Georgian at district (*rayon*) and community (*temi*) level in those districts and communities where members of national minorities are concentrated and where there is a desire amongst the local population for minority languages to be used.

This approach is not cost-free either and several difficulties are at once apparent when we consider the existing situation in Javakheti. The first is technical. The written language used at present by the district-level authorities in Javakheti is not Armenian but Russian. Thus, there would need to be a change in the current practice from preparing most documentation in Russian to preparing documents in Armenian. However, some members of the existing local elite went to Russian schools and have problems writing literary Armenian even though they use the language orally (see above). This difficulty is compounded by the fact that the main dialect that is spoken in Javakheti is a western Armenian dialect, while the official written language (as in the Republic of Armenia) is eastern Armenian. Would this not mean that there would not only be a need to teach the local population Georgian but also the literary form of their own language? This could be rather costly for the Georgian government.

I do not believe that this objection is a particularly serious one. Indeed the fact that some members of the existing elite in Javakheti attended Russian schools and are therefore unable to write accurately in Armenian may be a blessing in disguise. Critics from local civil society organisations often criticise the incumbent elite for being little more than a hold-over from the old Soviet-era elite and indeed it is true that many of those who hold power today also held power during the Shevardnadze period or even previously. However, probably a majority of citizens of Javakheti went to Armenian rather than Russian schools and there are a number of educated individuals who have never been part of the local elite and could provide valuable “new blood” in the local administration by replacing members the older generation of leaders who are less in touch with contemporary reality.

A more serious objection is that if the local authorities in Javakheti were permitted to submit documents to the central authorities in the Armenian language, the latter would face major difficulties translating these documents. While most central government bureaucrats understand Russian, very few understand Armenian. Although there is a large Armenian population in Tbilisi

(7.6% of the city's population, according to the 2002 census), most of Tbilisi's Armenian population only use Armenian as an oral language and are often not proficient at writing it. It is therefore hard to see how any administrative status granted to the Armenian language could go so far as allowing the use of Armenian to extend to the state-level bureaucracy.

Certainly some translation costs would be incurred, irrespective of whether translation into Georgian occurred at district level or at the level of the province (*mkhare*) or central government departments. However, as mentioned above, certain documents such as budget forms are *already* submitted by the district authorities of Akhalkalaki and Ninotsminda in Georgian with the help of bilingual personnel working in the *gamgeoba*. With some extra training it would be possible extend this practice to other documents. Initially, while general competence in the Georgian language remains low, it may be necessary to employ at least one translator in each of the main state bodies (*gamgeoba*, Prosecutor's Office, courts, line ministries etc.) at district level. This would require perhaps fifteen or twenty translators in certain districts. However, the number of districts where knowledge of Georgian amongst members of national minorities is low remains well in the single digits. It is therefore likely that the total cost to the state of employing such translators would be relatively modest. Moreover, the demand for translators would encourage members of national minorities with knowledge of the state language to apply for state jobs, thereby promoting bilingualism and reversing earlier trends towards *de facto* discrimination.

The main advantage of this approach would, I believe, be psychological. By recognising that minority languages have a role to play within the Georgian state, the government of Georgia would be sending a clear message to members of national minorities that their languages and cultures were valued. This would dampen fears that there is a "hidden agenda" of linguistic and cultural assimilation and would provide an incentive for non-Georgians to learn Georgian and to participate in the civic and political life of the country.

Whatever official or administrative status is given to minority languages, it remains essential to the goal of national integration that members of national minorities, especially those in Javakheti and Kvemo Kartli, learn Georgian. The main problem with the existing legislation is that it appears to be based on the assumption that this can happen overnight. Teaching a highly complex (Caucasian) language like Georgian to a population whose native tongue belongs to entirely different linguistic families is a highly ambitious undertaking, particularly in a country just emerging from a deep and protracted economic crisis.

The ideal long-term scenario would be for minority languages to exist in parallel with Georgian and for bilingualism to become the norm in those regions in which national minorities are concentrated. The challenge is how to devise legislation that could make this “best case” scenario a realistic one. Whatever form this legislation may take, it is clear that firstly it must not undermine the unique status of Georgian as the official state language, secondly it must not provide a disincentive for Javakheti’s Armenians and Kvemo Kartli’s Azeris to learn Georgian and integrate, and finally it must not burden the central authorities with excessive administrative costs. It is the task of the next section of this paper to search for models in other European countries that satisfy these conditions and that may be applicable in whole or in part to the Georgian reality.

### **III. Other European Models and their Applicability to Georgian Reality**

In searching for best practice models in the field of minority language legislation from other European countries, it is advisable to choose those countries that share at least some demographic, historical and ideological preconditions with Georgia. I would therefore expect that those countries whose best practice could be most applicable to Georgia to exhibit most, if not all, of the following factors: a) one or more territorially concentrated national minority, most members of which are unable to speak or understand the state language, b) experience of an authoritarian form of government, c) recent political instability and/or ethno-political conflict, and d) strong nationalist discourse(s) in which language is seen as central to national consciousness. Countries exhibiting these factors generally share a marked reluctance to grant any form of official status to more than one language (usually the language of the titular nationality) and any concessions granted to speakers of minority languages stem from pragmatic considerations, rather than from a desire to “protect endangered languages”. Models from Western Europe in which language legislation is primarily aimed at reviving local languages that have been falling into disuse (as in the United Kingdom, Germany, Spain and even Hungary) are unlikely to be applicable because the needs they are addressing are quite different. Moreover, the linguistic provisions that such models incorporate are likely to go beyond what is considered acceptable in states in which sensitivities over the issue of language rights are high.

The countries I have chosen for analysis are Romania and Croatia, as they share several similarities with Georgia. First, both countries have recently experienced a communist system of government in which nationalist discourse was forbidden but, at the same time, ethnicity became a category for codification; secondly, both have seen the emergence of nationalist movements that have, at times, exhibited a degree of xenophobia and intolerance towards other nationalities; thirdly, both have experienced a degree of ethnic conflict (ranging from sporadic violence in Romania to civil war in Croatia); fourthly, in both cases the main national minorities make up a majority in neighbouring states (Hungarians in Romania, Serbs and Italians in Croatia); finally, both countries have signed and ratified the FCNM and as a result of their closer integration into European structures have introduced legislation to codify the use of minority languages at local level, while stepping back from giving these languages full status as official languages. Moreover, Romania, like Georgia, has (at least partly) non-integrated minorities that are geographically concentrated in a particular region of the country (most notably the Hungarian minority).

## ***1. Romania***

Romania shares several important demographic and political features with Georgia. First, while Romanians make up a majority of the population, several national minorities exist in significant numbers: namely Hungarians and Roms. According to the 2002 population census, these two groups made up 6.6% and 2.5% respectively of Romania's population. It must be emphasised, however, that the proportion of Roms given in the census is probably underestimated, due to the tendency of Roms to classify themselves as members of another group. Independent experts put the percentage of Roms between 4.3% and 11.5%.<sup>12</sup> As in the case of the Armenian population of Georgia, Hungarians are concentrated in one region of the country, namely Transylvania, where they make up 19.6% of the region's population. In two counties of south-eastern Transylvania, Covasna and Harghita, they make up a majority: 73.8% in Covasna and 84.6% in Harghita.

Like Georgia, Romania experienced a breakdown in the old communist system that fell short of a full transition to democracy. The runaway winner of the first (more or less) free and fair elections in 1990 was a communist successor party called the National Salvation Front (NSF), led by Ion Iliescu, a former colleague of the deposed leader Nicolae Ceaucescu. Iliescu was simultaneously elected President with 85% of the vote. The NSF, which later changed its name to the Party of Social Democracy in Romania (PDSR), largely preserved the Communist Party infrastructure and remained in power until 1996. Democratisation was slow and uneven and despite (more or less) free and fair elections, a rather authoritarian style of governance prevailed.

As in Georgia, there was a virulent strand of nationalist discourse, which stressed the inalienable rights of the Romanian people and the Romanian language. This discourse was already being propagated during the last years of Ceaucescu's rule and it continued unabated into the post-communist period. During the 1990s, one of the most outspoken nationalist propagandists was the poet Corneliu Vadim Tudor, who had begun his career writing sychophantic eulogies to Ceaucescu. In 1991 he established the Greater Romania Party (*Partidul România Mare*) and from 1993-96 this party was part of the governing coalition with the NSF. Tudor stood for president in the 2000 presidential elections, coming second with 28% of the vote in the first round. His rhetoric combined nostalgia for the communist past with extreme nationalism, anti-Semitism, anti-Magyarism and

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<sup>12</sup> Estimates of the Rom population were taken from a 2001 report by the Center for Documentation and Information on Minorities in Europe - Southeast Europe (CEDIME-SE) at <http://www.greekhelsinki.gr/pdf/cedime-se-romania-roma.doc>. The figure for the total population of Romania was taken from the 2002 population census, available at <http://www.insse.ro/rpl2002rezgen/1.pdf>.



hostility towards Roms. His attitude towards the Hungarian population can be gleaned from the following quote:

[A] parallel between our care about the Romanians in Bessarabia and Budapest's care about the Magyars in Transylvania cannot be drawn, for the simple reason that we have historic rights upon the land between the Prut and the Dniester, while the Hungarians have no rights either upon Transylvania, or upon the Pannonian Plain, because it was inhabited by our forefathers, the Geto-Dacians. Tolerated in Europe, these noble representatives of the most primitive Asiatic tribes came to chase people out of their homes, to police the area, to threaten and to bully populations much older and more civilized than they are.<sup>13</sup>

Here, as in Georgia, we see how spurious historical arguments were used to justify the argument that a particular nationality has no right to exist on the territory of a country. In another outburst, Tudor called for a national referendum to expel Hungarians.<sup>14</sup>

Given this sort of discourse, post-Ceausescu Romania began from a very low starting point *vis-à-vis* respect for minority rights. In March 1990 tensions between Romanians and Hungarians erupted into violent clashes in the Transylvanian town of Targu-Mures, leading to the deaths of several people. However, this marked the high point of the conflict and from then on tensions began to subside. In 1996, opposition parties won the parliamentary elections and invited the predominantly ethnic Hungarian Party, the Democratic Alliance of Hungarians from Romania (DAHR), into coalition with them. This set the scene for a marked improvement in minority protection. In 1997 a new Department for the Protection of National Minorities and a new (ethnic Hungarian) minister for national minorities was entrusted to co-ordinate this Department. A new anti-discrimination law was passed, existing laws on education and public administration were amended in order to provide greater linguistic rights to non-Romanians and restitution of real estates that had previously belonged to national minorities began. Although Romania ratified the FCNM in May 1995, like Georgia, the country is yet to ratify the European Charter for Regional or Minority Languages.

The most significant laws regarding language use, however, were passed after Ilescu and his PDSR were swept back to power in the 2000 parliamentary and presidential elections. Although the DAHR did not enter a formal coalition with the PDSR, the party provided support to the governing coalition in return for favourable legislation with respect to national minorities and in 2002 signed

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<sup>13</sup> Corneliu Vadim Tudor, "Beware of Hungary (5)", in *Romania Mare*, No. 18, Year I, 5 October 1990

<sup>14</sup> Corneliu Vadim Tudor, "Abolition of borders?", in *Romania Mare*, No. 20, Year I, 19 October 1990

an “Agreement on Co-operation” with the PDSR (now renamed the PSD). The most crucial pieces of legislation to emerge during the period of co-operation between the PSD and the DAHR were the Law on Public Administration no.215/2001 and the amendments made to the Romanian Constitution of 2003. The former established the principle whereby in administrative-territorial units in which a national minority exceeds 20% of the population, the language of that minority can be used in both written and oral communication between the local authorities and citizens, and the constitutional amendment enshrines this right into constitutional law. For the purposes of this paper, it is necessary to examine these measures in further detail and explore how they have been implemented.

The introduction of the Law on Public Administration no. 215/2001 and the 2003 constitutional amendment do not imply the introduction of official languages other than Romanian. Article 13 of the Romanian Constitution, which states that Romanian is the official language of Romania, was not amended. Instead, what the new Law means is that in *all* territorial-administrative units down to the level of local councils (i.e. commune, town and municipal councils) in which more than 20% of the population belong to a given national minority: a) members of minorities have the right to be informed in their mother tongue about the agenda of the local or county council session; b) decisions of such councils must be brought to public notice in the mother tongue of the minority; c) the names of localities and public institutions must also be inscribed in the relevant minority language; and d) in those local or county councils in which at least a third of elected councillors belong to a national minority, their mother tongue may be used in council proceedings (although it is the responsibility of the mayor to ensure translation into Romanian). Government Decision no. 1206/2001, which details the provisions needed to implement the Law also stipulates that the language of the respective minority may be used in public ceremonies in administrative-territorial units where a minority makes up at least 20% of the population and that marriage ceremonies may be performed in the minority language.

As to the constitutional amendments of 2003, these were designed to bring the Constitution in line with the new Law on Public Administration and to allow for greater use of non-Romanian languages in the courts. A new paragraph was introduced into Article 120 of the Constitution stipulating that “[i]n the territorial-administrative units where citizens belonging to a national minority have a significant weight, provision shall be made for the oral and written use of that national minority's language in the relations with the local public administration authorities and the decentralized public services, under the terms stipulated by the organic law.” Moreover, as regards

the administration of justice, while Article 127 of the original (1991) Constitution merely grants citizens of national minorities who are unable to speak Romanian the right to an interpreter in criminal proceedings, the new Article 128 that replaced it states that citizens belonging to national minorities “have the right to express themselves in their mother tongue before the courts of law, under the terms of the organic law. The ways for exercising [this right] including the use of interpreters or translations, shall be stipulated so as not to hinder the proper administration of justice and not to involve additional expenses to those interested.” This amendment was added after corresponding amendments had been made to the Penal Code.

Although the new legislation on the courts made it easier for members of national minorities to express themselves freely in their mother tongue, the law still stated that an interpreter had to be present in all cases in order to translate the proceedings into Romanian. Deputies from the DAHR argued that in localities where the overwhelming majority of the population is Hungarian this stipulation would merely slow down the proceedings as everyone understood the Hungarian language. As a result, in November 2003 Article 11 of the Bill on Court Procedure was confirmed by the Romanian Senate. This Article states that a free translator is only provided when one or all the parties request it and that if all parties want to use a minority language then the trial must be carried out in that language.

In its second report to the Council of Europe pursuant to Article 25, Paragraph 1 of the FCNM (received on 6 June 2005), the Romanian government gives details on the extent to which it has been able to implement Government Decision no. 1206/2001 in all counties of Romania. This shows that in areas compactly inhabited by members of the Hungarian minority the Decision has been implemented more or less successfully, especially in Covasna, where:

In all the 39 localities where people belonging to a minority exceed 20%, the agenda of local councils and their decisions are noticed in mother tongue, also; full and simultaneous translation is provided during councils’ meetings, weddings are celebrated in Hungarian and Hungarian speakers were hired within municipalities to ensure a proper communication. The bilingual inscriptions of localities names observe the legal provisions. Cases were recorded when the name of the locality – capital of the county was written only in Hungarian. The Hungarian name for the city was used in written correspondence and competitions were

organized for hiring personnel, a compulsory condition for the applicants being Hungarian language knowledge. Legal measures have been taken to settle the matter.<sup>15</sup>

In areas inhabited compactly by Roms, however, the picture was somewhat less encouraging, as the population of these regions often did not request the right to use their mother tongue in interactions with the local authorities.

The effect of the above-mentioned legislative changes is to give *de facto* status of local administrative language to languages other than Romanian, without altering the status of the Romanian language as the only official language of the country. This was a skilful move in a country where (Romanian) national sentiment would not allow Romanian to lose its unique status but where there was a clear need to change the law in order to give full rights to members of minorities in conformity with the FCNM. It also brought members of minorities into local state structures as speakers of minority languages who also knew Romanian were required for purpose of translation and for the preparation of documentation.

From such an inauspicious starting point, Romania has made great strides towards integrating her national minorities into the public life of the country. In the words of Sergiu Constantin, it is as yet too early to describe Romania a “success story”, but “nevertheless it can be considered an example of good practice in a highly sensitive matter, in a country and in a geographical region where [the] minority issue represented always a hot potato.” He attributes the progress made to “pragmatic political reasons and not because local politicians were eager to regulate the matter.”<sup>16</sup> These pragmatic factors clearly included the need of the major parties to do business with the DAHR in order to form a government, as well as the lure of future EU membership. The main lesson we can draw from this is that despite highly inflammatory nationalist discourse, and despite the existence of a geographically-concentrated minority of the same nationality as a neighbouring kin-state and the consequent fear of secession, concessions can be made to grant some kind of administrative privilege to minority languages without jeopardising the status of the majority language as the only official language. This lesson could be a useful one for Javakheti, where the Armenian minority is

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<sup>15</sup> Second Report Submitted by Romania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (received on 6 June 2005) at [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_Second\\_cycle/2nd\\_SR\\_Romania.asp#TopOfPage](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_Second_cycle/2nd_SR_Romania.asp#TopOfPage).

<sup>16</sup> Sergiu Constantin, “Linguistic Policy and National Minorities in Romania” (Autumn 2004) at <http://www6.gencat.net/lengcat/noves/hm04tardor/docs/constantin.pdf>.

similarly linked to a neighbouring kin-state and where the fear of secession often dominates the attitude of the majority towards that minority.

The administrative-territorial structure of Georgia corresponds somewhat to that of Romania. The Georgian *mkhare* or provinces, of which there are nine (excluding the autonomous republics of Abkhazia and Adjara), are not units of local self-government and are somewhat similar in size to Romania's eight "development regions", which were established in 1998 to improve the co-ordination of regional development. The largest territorial units in which local self-government is exercised in Georgia (outside the breakaway territories of Abkhazia and South Ossetia) are the sixty rural *rayons* (districts) and the five cities that are not subordinated to districts (Tbilisi, Rustavi, Kutaisi, Poti and Batumi). These correspond to Romania's forty-one counties and one municipality (Bucharest), which also represent the highest level at which self-government is exercised. Finally at the community level there are the *temi* (communities) in Georgia (which normally consist of several villages) and the towns and communes in Romania, both of which represent the lowest tier of local self-government.<sup>17</sup>

If the Romanian model were applied to Georgia, it would be applied only to the district and community level. Of the sixty rural districts which the Georgian state still controls (excluding Abkhazia and South Ossetia), ten are home to a minority that makes up 20% or more of the population of that district. Thus, according to the Romanian model, special measures allowing the use of minority languages would be introduced in Akhalkalaki, Ninotsminda, Akhaltsikhe and Tsalka districts (where the population of ethnic Armenians exceeds 20%) and in Marneuli, Bolnisi, Dmanisi, Gardabani, Sagarejo and Lagodekhi districts (where more than 20% of the population is Azeri). Such measures could also be introduced at the community level in sixteen other districts<sup>18</sup>, which contain communities (*temi*) where at least 20% belong to a national minority, providing the populations of the relevant communities request it. In none the cities that do not belong to districts (Tbilisi, Kutaisi, Poti, Batumi and Rustavi) do 20% of the population belong to a given minority, so the model would not be relevant there.

The main advantage of this model is that it could bring about a significant improvement in the rights of members of national minorities to use their own languages without altering the existing

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<sup>17</sup> Although at the time of writing, there were plans to abolish the *temi* (community) level of self-government in Georgia.

<sup>18</sup> Kobuleti, Telavi, Akhmeta, Dedoplistskaro, Signaghi, Mtskheta, Akhgori, Dusheti, Kazbegi, Aspindza, Borjomi, Tetrtskaro, Gori, Kaspi, Kareli and Khashuri districts.

status of the Georgian language, which is a highly sensitive issue for the Georgian government. In the same way as Romania left unaltered Article 13 of the Constitution, which makes Romanian the only official language, Article 8 of the Georgian Constitution could also be left unchanged. The model also has other very significant advantages. First of all, at the level of the *temi* (community) it would merely legitimise the existing informal practice observed in regions such as Javakheti, where Armenian is anyway used between the community councils and citizens, and would require little in terms of extra resources. Secondly, it would require that speakers of minority languages be employed in local government for purposes of translation and documentation. In this way, it would promote greater opportunities for members of national minorities, encourage bilingualism and therefore promote integration. Finally, it would answer the fears of some members of national minorities that learning Georgian would be a first step towards linguistic assimilation. By showing that minority languages are valued and recognized by the state, the Romanian model may help reassure members of minorities that learning another language need not mean forgetting one's own.

Of course, Romania did not arrive at this model overnight; the process involved much debate and – at times – conflict. Moreover, a crucial factor that led the Romanian government and the Romanian population to compromise was the lure of greater integration into European structures. In Georgia too, the international community, especially the European Union, will need to provide real incentives if language legislation is to be reformed in conformity with European norms.

## **2. Croatia**

Like Georgia, Croatia has been through a highly troubled period as regards the relationship between the majority and minorities. During the wars of 1991-95, first Croats and later Serbs were driven from their homes in successive waves of ethnic cleansing in Krajina and western Slavonia in particular. Hard-line nationalist discourse reached its apogee in the years following the victory of Franjo Tudjman's Croatian Democratic Union (*Hrvatska Demokratska Zajednica* or HDZ) in April 1990 and the subsequent years that saw the republic of Yugoslavia disintegrate and Croatia and neighbouring Bosnia-Herzegovina slide into a bloody civil war that was fuelled by virulent nationalist discourse and nationalist ideology.

As President of Croatia, Tudjman identified his new country with the wartime *Ustaša* 'Independent State of Croatia', a quisling state of Nazi Germany. In his book, *The Horrors of War or Wastelands of Historical Reality* (*Bespuća Povijesne Zbiljnosti*, 1989), Tudjman sought to downplay the

number of victims of Nazi and *Ustaša* aggression in Yugoslavia during World War II. The nationalist ideology propagated by Tudjman and his colleagues from the HDZ sought to draw a distinction between Croats of Croat ethnicity and Croats of Serbian ethnicity and attempted to create a Croatian state that was based on a nation of ethnic Croats. During the war in Bosnia-Herzegovina, the HDZ controlled the Bosnian Croat areas of the country and paramilitaries linked with the party were responsible for the ethnic cleansing of Bosniaks (Muslims) from mixed Bosniak-Croat villages.

Nationalist fervour subsided after the end of the war in 1995, although only gradually. Only after Tudjman's death in late 1999 and the subsequent defeat of the HDZ in Croatian parliamentary elections was any kind of reappraisal of the 'Croatian national project made.' Anxious to begin accession talks with the EU, Croatia had ratified the FCNM and the European Charter for Regional or Minority languages in late 1997, but had done little to implement these treaties. However, by 2001 the Council of Europe's Advisory Committee on the FCNM noted in their 'Opinion on Croatia' that while "the implementation of the Framework Convention is complicated by the legacy of the 1991-1995 conflict", "recently there have been marked improvements in the statements and attitudes of the Government *vis-à-vis* the protection of national minorities."<sup>19</sup> Despite the change in the ideological climate, however, powerful elements of Croatian nationalism remained; following the arrest of the alleged war criminal Ante Gotovina in December 2005, there were large protests Zadar, Split and Zagreb.

Language is a highly important aspect of nationalist discourse in Croatia; following Croatia's independence, changes were made to the language to "re-Croatize" it and make it less like Serbian. Classified during the communist period as a form of Serbo-Croat written in the Latin alphabet (in contrast to the Cyrillic alphabet used by most Serbs), the language of Croatia became Croatian – an allegedly distinctive language in its own right – and changes in phonetics, semantics and even everyday vocabulary were introduced to underline its distinctiveness from Serbian.

As to the political development of the country, like Georgia and Romania, Croatia did not experience a smooth transition to democracy after the end of communist rule. Tudjman's style of governance was strongly authoritarian; the electoral process was marred by strong media bias in

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<sup>19</sup> Council of Europe Advisory Committee on the Framework Convention on National Minorities, 'Opinion on Croatia' (adopted on 6 April 2001), at [http://www.coe.int/t/e/human\\_rights/minorities/2.\\_framework\\_convention\\_%28monitoring%29/2.\\_monitoring\\_mechanism/4.\\_Opinions\\_of\\_the\\_Advisory\\_Committee/1.\\_Country\\_specific\\_opinions/1.\\_First\\_cycle/1st\\_OP\\_Croatia.asp#TopOfPage](http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_%28monitoring%29/2._monitoring_mechanism/4._Opinions_of_the_Advisory_Committee/1._Country_specific_opinions/1._First_cycle/1st_OP_Croatia.asp#TopOfPage).

favour of the incumbents, corruption had become rampant and those with close ties to the regime benefitted from a fraudulent privatization process.<sup>20</sup> Human rights abuses were also noted, including wartime atrocities against non-Croat citizens. After the defeat of the HDZ in the 2000 elections and the arrival of a new social-democrat led government under Prime Minister Ivica Racan, media bias in favour of the government decreased, the human rights situation improved and a re-invigorated campaign against corruption was launched. In late 2005, these efforts bore fruit as the European Union agreed to begin accession talks with Croatia, despite the HDZ's return to power in the parliamentary elections of 2003.

Legislation in Croatia has, since independence, been relatively liberal as regards the official use of minority languages and scripts, but has been marred by an unwillingness to implement it. The original (1990) Constitution of Croatia establishes that “[t]he Croatian language and the Latin script shall be in official use in the Republic of Croatia” (Article 12.1), but that at the same time “[i]n individual local units, another language and the Cyrillic or some other script may be introduced into official use along with the Croatian language and the Latin script under conditions specified by law” (Article 12.2). In December 1991 the Croatian Parliament passed the Constitutional Law on Human Rights and Freedoms and on Rights of Ethnic and National Communities or Minorities in the Republic of Croatia, which states that “[m]embers of all ethnic and national communities or minorities in the Republic of Croatia may freely use their language and script, publicly and in private. In municipalities where members of ethnic and national communities or minorities form a majority of the population, the language and script of such a community shall be in official use along with the Croatian language and Roman Latin script” (Article 7) and “[u]nits of local self-government may decide that two or more languages and scripts are used officially, taking account of the number of members and the interests of ethnic and national communities or minorities” (Article 8). The Constitution and the Constitutional Law had thus laid down the principles for the use of minority languages within local administrative bodies, but no concrete mechanisms were put into place in order to enforce these constitutional principles until after the HDZ had been replaced as the party of government in 2000. The problem was not the constitutional base but a lack of political will to implement it.

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<sup>20</sup> See, for example, Freedom House, *Nations in Transit: Country Report, Croatia (2003)* at <http://www.freedomhouse.org/template.cfm?page=47&nit=194&year=2003> and Freedom House, *Nations in Transit: Country Report, Croatia (1999-2000)* at <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN008362.pdf>.



In this regard, the two key laws passed in Croatia that heralded concrete moves towards the implementation of these principles were the Law on the Use of Language and Scripts of National Minorities (2000) and the Constitutional Law on the Rights of National Minorities (2002). The first of these two laws allows for equality in the use of the language and script of ethnic minorities in public administration, including courts of the first instance, providing *either* the members of a particular national minority constitute the majority of inhabitants of a town or municipality *or* a municipality or town has so decided in its Statute. Although it was widely commended for its flexible approach, this law was criticized for a lack of clarity as to whether a “majority” meant a simple majority or an absolute majority.<sup>21</sup> The Constitutional Law on the Rights of National Minorities addresses this lack of clarity; thus, Article 12.1 states that “[t]he equal official use of the language and script used by members of a national minority shall be exercised in the area of a local self-government unit, when members of a particular national minority comprise at least one third of the population of such a unit.” At the same time, Article 12.2 also allows for the equal official use of the minority language and script in local administrative units when less than a third of the population belongs to a given national minority in cases in which its use is anticipated in international agreements. This applies above all to the Italian minority, whose right to use the Italian language in official documents was guaranteed by the Treaty of Osimo, signed in 1975 between Italy and Yugoslavia. Finally, Article 12.2 envisages the equal use of minority languages and scripts in cases in which it “is stipulated by the statute of a local self-government unit or by the statute of a regional self-government unit”.

Additional laws that are of relevance to the use of minority languages in official organisations include the Law on Criminal Procedure, which regulates the use of language in criminal courts. Article 7.1 of this law states that the “Croatian language and Latin script shall be used in criminal proceedings unless a second language or scripts are officially introduced in particular court areas.” This presumably relates to the provisions laid down by the Law on the Use of Language and Scripts of National Minorities, which allows for the use of minority languages in certain courts (see above). Article 7.4 of the Law on Criminal Procedure states that court documentation must be written in the Croatian language using the Latin script, except in cases where a “second language or script were officially introduced in certain court area of responsibility”, when the relevant second language could be used. Also of relevance is the Law on Civil Procedure, which establishes the same

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<sup>21</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities: “Opinion on Croatia Adopted on 6 April 2001” at [http://www.coe.int/t/e/human\\_rights/minorities/2.\\_framework\\_convention\\_%28monitoring%29/2.\\_monitoring\\_mechanism/4.\\_Opinions\\_of\\_the\\_Advisory\\_Committee/1.\\_Country\\_specific\\_opinions/1.\\_First\\_cycle/1st\\_OP\\_Croatia.asp#TopOfPage](http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_%28monitoring%29/2._monitoring_mechanism/4._Opinions_of_the_Advisory_Committee/1._Country_specific_opinions/1._First_cycle/1st_OP_Croatia.asp#TopOfPage).

principle as that laid down in the Law on Criminal Procedure by stating that “civil proceedings shall be conducted in the Croatian language and with the use of the Latin alphabet, unless for a particular court, the use of another language or script is provided by law” (Article 6).

As to the implementation of these provisions, according to a Committee of Experts from the Council of Europe sent to Croatia in 2004 to monitor the implementation of the European Charter for Regional and Minority Languages, use had been made of the Czech, Serbian, Hungarian and Croatian languages within some municipalities, although the panel of experts could not find instances in which Ukrainian, Ruthenian or Slovak were used, because no municipality had applied to use these languages. They also found that no use was made of minority languages at the county/regional level, with the sole exception of the county of Istria. They also found that the legislation allowing for the use of minority languages in the courts was not fully implemented, although once again Istria proved an exception. It would therefore seem that, despite some significant steps, the implementation of the legislation remained problematic in Croatia.<sup>22</sup>

For the purposes of this study, it is useful to examine briefly the use of the Italian language in Istria. To focus on the largest national minority in Croatia – the Serbs (who, according to the 2001 census make up 4.5% of the population) – is not particularly useful for the purposes of this study because Croatian and Serbian are mutually comprehensible and can even be considered to be basically the same language (see above). There are therefore no parallels with the Georgian case. Istria, however, is interesting because most of the county was occupied by Italy in the inter-war years, and many in Croatia still fear Italian territorial aspirations. This fear has been compounded by the statements of some leaders of the post-Fascist “Alleanza Nazionale” that Istria is rightfully Italian.<sup>23</sup> Thus, Istria shares with Transylvania and Javakheti a national minority that is also a majority in a neighbouring state that has traditionally been regarded with suspicion.

The county of Istria (Istarska) is situated on the Adriatic coast and, according to the 2001 population census, the Italian minority makes up 6.9% of the population of the county, while 10.7% are unable or unwilling to define their ethnic identity (including 4.3% who declare a regional rather than an ethnic affiliation). Croatian-Italian bilingualism is quite common within the county.<sup>24</sup> As a

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<sup>22</sup> Council of Europe, “Application of the Charter in Croatia”, ECRML (2005) 3 (Strasbourg, 7 September 2005) at [http://www.coe.int/t/e/legal\\_affairs/local\\_and\\_regional\\_democracy/regional\\_or\\_minority\\_languages/2\\_Monitoring/2.3\\_Committee\\_of\\_Experts%27\\_Reports/Croatia\\_2nd\\_report.pdf](http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/regional_or_minority_languages/2_Monitoring/2.3_Committee_of_Experts%27_Reports/Croatia_2nd_report.pdf).

<sup>23</sup> Although the leader of the party, Gianfranco Fini, Italy’s deputy prime minister, denies that his party still harbours territorial aspirations on Istria.

<sup>24</sup> For the results of the Census, see <http://www.dzs.hr/Eng/Census/census2001.htm>.

result of the Treaty of Osimo, certain language rights have been enjoyed by the Italian community in the former Yugoslavia for a considerable period of time. A majority of Croatia's Italian population (72.7%) live in the county of Istria.

The status of the Italian language in the county of Istria is well-defended. In 2001, taking advantage of the provision laid down by the Constitutional Law on Human Rights and Freedoms and on Rights of Ethnic and National Communities or Minorities that "units of local self-government may decide that two or more languages and scripts are used officially" (see above), the County Assembly of Istria recognized Italian as a second official language. In 2003, after the passage of the Constitutional Law on the Rights of National Minorities, which specifically endowed regional self-government units (i.e. counties) with the right to grant official status to minority languages and scripts within such units, the Istrian Regional Assembly passed a Statute stating that "the Croatian and the Italian language are in equal official use in the work of the Regional committees in the self-governing domain" (Article 6). Other Articles in the Statute establish that Italian would be given equal status with Croatian within all official bodies, in all official documentation and within the sphere of education. Article 28 of the Statute actively promotes bilingualism within administrative bodies, stating as it does that "the Region employs a certain number of staff proficient in both the Croatian and the Italian language".<sup>25</sup> These far-reaching measures are gradually being implemented; the above-mentioned Committee of Experts from the Council of Europe cited Istria as a positive example, citing the use of the Italian language in the courts, the availability of official forms in Italian and the legislative framework, which "allows the county administration to process requests from bilingual municipalities."<sup>26</sup>

Turning now to the possibility of applying the Croatian model to Georgia, we must first compare the administrative-territorial structure of the two countries. In Croatia there are two tiers of local-self-government: that of the municipalities at the first level and that of the counties at the second level. The municipalities are classified either as rural municipalities (*općine*) or as towns (*gradovi*). In all there are twenty counties and, as of 1998, there were 542 municipalities.<sup>27</sup> As they are the highest level of local self-government in Croatia, counties correspond most closely to Georgia's *rayons*, while the municipalities can be compared with the Georgian *temi*.

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<sup>25</sup> For an English-language version of the Statute, see <http://www.istra-istria.hr/index.php?id=587>.

<sup>26</sup> Council of Europe, "Application of the Charter in Croatia".

<sup>27</sup> Stjepan Ivanisevic, Ivan Kopric, Jasna Omejec and Jure Simovic, "Local Government in Croatia" at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN017042.pdf>.

Applying the principle enshrined in Article 12.1 of the Constitutional Law on the Rights of National Minorities to Georgia, a provision allowing equal official use of the language would be introduced in eight districts of Georgia where the largest national minority makes up at least a third of the population. These would be Akhalkalaki, Ninotsminda, Akhaltsikhe and Tsalka districts (where the population of ethnic Armenians exceeds one third) and Marneuli, Bolnisi, Dmanisi and Gardabani districts (where more than a third of the population is Azeri). In addition, according to the 2002 population census, there are communities (*temi*) in fifteen other districts where a national minority makes up at least a third of the population.<sup>28</sup>

In Croatia, Article 12 has, as yet, been fully implemented at county level only in Istria. While the slow pace in implementing language legislation has been criticised by the Council of Europe Committee of Experts (see above), it is a reflection of the generally flexible approach Croatia has adopted (at least after 2000) regarding the official use of minority languages. Article 8 of the Constitutional Law on Human Rights and Freedoms and on Rights of Ethnic and National Communities or Minorities and Article 12.2 of the Constitutional Law on the Rights of National Minorities places the onus on local self-governments to decide for themselves on the extent to which they wish to give official status to minority languages at the local level. As in the case of Romania, giving official status to these languages does not entail abolishing the official status of Croatian that is enshrined in Article 12.1 of the Constitution. If the legislation is fully implemented at the county level, as it is in Istria, it can be used to actively promote bilingualism rather than isolationism at the local level. These features of the Croatian model could also be useful within the Georgian context.

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<sup>28</sup> Telavi, Akhmeta, Dedoplistskaro, Lagodekhi, Sagarejo, Mtskheta, Akhagori, Kazbegi, Aspindza, Borjomi, Tetrtskaro, Gori, Kaspi, Kareli and Khashuri districts.

## IV. Conclusion

Existing language legislation in Georgia within the spheres of administration, justice, law and order and education runs the risk of either not being implemented fully, leading to the continuation and further entrenchment of informal norms of language use in state bodies, schools and universities, or of bringing about *de facto* discrimination against members of national minorities and causing Georgia to fail to honour the commitments it agreed to abide by when it ratified the FCNM. It may be possible to mitigate some of the most unwelcome consequences of this state of affairs by simply tinkering with the legislation; for example, by providing a longer time frame for the introduction of the Georgian language in all branches of state administration or even by allowing the continued use of Russian as a language of communication between state bodies and local authorities. This approach is based on pragmatic considerations, and its long-term aim is monolingualism within the official (state) sphere in Georgia. Such an approach *may* (if applied with care) not be incompatible with Georgia's commitments under the FCNM, but would clearly not be compatible with the European Charter for Regional or Minority Languages, which Georgia pledged to ratify when it entered the Council of Europe in 1999.

The other option is to devise legislation in order to promote and protect the languages of Georgia's national minorities while still remaining true to the goal of civic integration. Here, the ultimate goal is a society in which all citizens know the state language, but in which bilingualism is encouraged both in private and in public in those regions in which a minority language is spoken. It is the opinion of this author that this alternative approach will be more effective not merely in reducing instances of discrimination against linguistic minorities, but also in providing real incentives to national minorities so that they can integrate in public life.

It is not the aim of this paper to recommend the Georgian government to adopt any one model from abroad. The Romanian and Croatian models were discussed in order to show how countries where the issue of minority rights in general and the status of minority languages in particular have, in the past, been a source of tension have adopted legislation that places the use of minority languages on a legal footing. The language legislation in place in Romania and Croatia and the implementation of this legislation are far from perfect. However, they show a way in which long-term commitments can be made to promote and protect minority languages and encourage bilingualism, without jeopardizing the long-term goal of integration and without threatening the status of the language of the majority.

It is hoped that this working paper can serve as a basis for discussion amongst members of the government, parliamentarians, minority stakeholders and representatives of civil society on the future direction of language policy in Georgia. If this paper comes to represent a first step in a constructive debate it will have achieved its purpose.