



**International covenant
on civil and
political rights**

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Addendum

Georgia

[21 November 1995]

REPUBLIC OF GEORGIA

Initial Report of the Republic of Georgia on measures
giving effect to the International Covenant on Civil
and Political Rights

INTRODUCTION

(a) This report is the initial document prepared in accordance with article 40.1 of the International Covenant on Civil and Political Rights and reflects the existing situation with respect to human rights in the Republic of Georgia. The report covers the period from January 1994 to August 1995.

(b) The report has been prepared by the Committee for Human Rights and Ethnic Relations on the basis of material provided by the ministries and departments concerned, the Federation of Free Trade Unions and non-governmental organizations active in the field of human rights.

(c) Some of the articles have been passed over without comment. The necessary explanations are given in this introduction.

(d) The report does not include any comments on article 5 as none of the situations envisaged in that article arose during 1994. However, the corresponding constitutional guarantees are provided by article 39 of the new Constitution.

(e) No information is given with respect to article 11 since there is no principle in Georgian law according to which a person may be imprisoned merely on the ground of inability to fulfil a contractual obligation. No complaints or appeals concerning infringements of this provision of the Covenant have been made to the authorities.

(f) There was considered to be no need to comment on article 16 since the Georgian legal system does not recognize any restrictions on the right of everyone to recognition everywhere as a person before the law.

(g) It should be noted that the text of the Covenant has not been widely publicized in Georgia and the Covenant itself has not been integrated into the legislative process. The Committee for Human Rights and Ethnic Relations is taking steps to have the Covenant translated into the official language of the Republic and the text circulated.

The United Nations Human Rights Centre in Geneva has drawn up a programme of consultative and technical assistance for Georgia in the field of human rights. Under this programme, in particular, all the basic human rights documents will be translated into the official language of the Republic in order to make them more accessible to the Georgian public.

Principal ethnic and demographic characteristics
of the country and its people

On 1 January 1995 the total population of Georgia was 5,407,400.

According to the census data, in 1989 there were:

- (1) 3,787,000 Georgians, (2) 437,000 Armenians, (3) 341,000 Russians,
- (4) 308,000 Azerbaijanis, (5) 164,000 Ossetians, (6) 100,000 Greeks,
- (7) 96,000 Abkhazians, (8) 52,000 Ukrainians, (9) 33,000 Kurds,

(10) 24,000 Jews, (11) 9,000 Belorussians, (12) 6,000 Assyrians,
(13) 4,000 Tatars, (14) 45,000 others.

In 1994, per capita national income was 2,572,695 coupons.

In the same year, the average monthly wage of workers in the national economy was 2.5 million coupons.

The growth of inflation resulted in a steady decline in the standard of living. In December 1994, the purchasing power of the population was only one-ninth of what it was in December of the previous year.

Tighter control over the issue of credit by the National Bank of Georgia resulted in a significant strengthening of the national currency. In August 1994, the exchange rate stood at 2,200,000 coupons to the United States dollar, whereas by 1 January 1995 it had reached 1,300,000 to the dollar.

Official unemployment was 3.5 per cent (70,000 officially registered as unemployed). There is, however, quite a high level of hidden unemployment. According to State Labour Exchange data, the total number of unemployed is 468,000 (22 per cent of the labour force).

The breakdown of the population by educational level (according to the 1989 census) is as follows:

- primary:	347,673
- secondary:	1,473,980
- secondary special:	759,735
- higher:	613,498

Monthly income (per capita) is 340,440 coupons (1993).

Natural population growth (per thousand) is:

- birth rate -	12.6
- death rate -	10.1 (for 1993)
- infant mortality (per 1,000 live births) -	18.3 (1993).

The average life expectancy for men is 69 years and for women 78 years (1989 census). The birth rate has fallen. At the same time, in Georgia one woman of child-bearing age out of every four has never been married. This is chiefly attributable to social and economic factors associated with the sharp decline in living standards.

Most of the population are Orthodox Christians. The Georgian Orthodox Church is autocephalous and headed by the Catholicos-Patriarch of All Georgia Ilya II. There are numerous Muslims, together with members of other religions and religious groups.

The organs of government

The supreme legislative body is Parliament, which was elected on 11 October 1992. The previous parliament (Supreme Soviet) was dissolved as a result of the armed intervention provoked by the anti-democratic behaviour of the regime of President Z. Gamsakhurdia (December 1991 to January 1992).

The Georgian Parliament is a unicameral body consisting of 225 deputies.

The highest official is the Head of State, the popularly elected Chairman of Parliament.

This concentration of the highest offices in the two most important branches of government in a single person is a temporary phenomenon of the transition period.

The supreme executive body is the Cabinet of Ministers, the administration of the regions being in the hands of the "gameoba" (local authorities). A shortcoming of this system is the fact that the provincial "gamebeli" (administrators) are centrally appointed officials rather than elected representatives. This too is a temporary measure determined by the special requirements of the transition period.

In 1994, the post of Regional Representative of the Head of State was introduced. The Regional Representative is empowered to coordinate and oversee the affairs of the provinces. This post was created to test out the machinery of government on the way to federalizing the structure of the Georgian State.

At present, the Georgian judicial system consists of the following bodies:

- municipal, district and national courts;
- the supreme courts of the autonomous republics;
- the Supreme Court of Georgia.

At all levels, other than district, there are bodies to hear appeals.

The new Constitution provides for the creation of a body fundamentally new to the Georgian judicial system - a Constitutional Court (art. 83).

At the legislative level, a Permanent Commission for the Protection of Human Rights and National Minority Affairs operates in the national Parliament. At the executive level, a Committee (Ministry) for the Protection of Human Rights and Ethnic Relations operates under the Cabinet of Ministers.

People who claim that their rights have been violated may apply directly to the law enforcement agencies and the organs of justice, including the courts. Within its competence, the Committee for Human Rights and Ethnic Relations may also consider complaints from citizens.

The Parliament of the Republic of Georgia has recognized the primacy of the fundamental rules of international law over the domestic legislation. The country has already acceded to or ratified 14 international instruments on human rights, thereby binding itself to bring its domestic legislation into conformity with the requirements of international law.

The international human rights agreements to which the Republic of Georgia is party are listed below.

Convention on the Prevention and Punishment of the Crime of Genocide (entered into force for the Republic of Georgia on 11 October 1993; in what follows the dates of entry into force for the Republic of Georgia are indicated in parentheses after the name of the convention); International Covenant on Civil and Political Rights (3 August 1994); Optional Protocol to the International Covenant on Civil and Political Rights (3 August 1994); International Covenant on Economic, Social and Cultural Rights (3 August 1994); Convention on the Rights of the Child (2 July 1994); Convention on the Elimination of All Forms of Discrimination Against Women (26 November 1994); Convention Against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment (26 November 1994); Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field (14 March 1994); Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (14 March 1994); Convention Relative to the Treatment of Prisoners of War (14 March 1994); Convention Relative to the Protection of Civilian Persons in Time of War (14 March 1994); First Protocol Additional to the Geneva Convention on the Protection of Victims of International Armed Conflicts (14 March 1994); Second Protocol Additional to the Geneva Convention on the Protection of Victims of International Armed Conflicts (14 March 1994); Convention Against Discrimination in Education (4 February 1993).

Legislative and other human rights instruments

The Edict of the Chairman of Parliament/Head of State No. 335 of 4 October 1994 "On certain measures to ensure the protection of human rights in Georgia" notes, in particular, that in Georgia it has not yet been possible to set up and operate a complete system for the protection of human rights. The Edict provides for certain additional measures to safeguard human rights in the Republic. All government departments are requested, in cooperation with the Committee for Human Rights and Ethnic Relations, to develop proposals and measures to ensure the practical implementation of the requirements of the United Nations instruments and the international covenants and optional protocols thereto. The Edict makes the Committee responsible for coordinating the activities of State, public and other organizations relating to the protection of political, civil, economic, social and cultural rights in accordance with the provisions of the international covenants and conventions. The Committee is authorized to make written representations to the appropriate officials with a request that they examine the facts of human rights violations. The results of the examination must be communicated to the Chairman of the Committee.

The Committee may, within its sphere of competence, obtain on demand any necessary information from the State and governmental agencies, organizations and other services concerned.

During the period under review, Parliament passed the following laws with a bearing on human rights:

- State Power Act (06.11.92)
- Law Amending and Supplementing the Criminal Procedure Code of the Republic of Georgia (21.03.93 and 17.02.94)
- Laws Amending the Labour Code of the Republic of Georgia (02.03.93 and 13.04.94)
- Laws Supplementing the Criminal Code of the Republic of Georgia (17.03.93 Nos. 179-1s and 180-1s; 08.07.93)
- Citizenship of the Republic of Georgia Act (25.03.93)
- Law Amending the Universal Military Service Act (04.05.93)
- Law Amending and Supplementing the Administrative Offence Code of the Republic of Georgia (13.05.93, 08.07.93)
- Legal Status of Aliens Act (03.06.93)
- Property Rights Act (15.07.93)
- Immigration Act (20.07.93)

- Emigration Act (27.07.93)
- Alien Temporary Entry, Stay and Departure Act (27.07.93)
- Police Act (27.07.93)
- Law on the Procedure for Considering Applications, Complaints and Appeals to State Agencies, Enterprises, Establishments and Organizations (Irrespective of their Organizational or Legal Form) (24.12.93)
- Citizens' Associations Act (14.06.94)
- Psychiatric Care Act (01.05.95).

Article 1 (Right of Self-Determination)

The State system of the Republic of Georgia was established (Declaration of the Supreme Soviet of 9 April 1994) precisely on the basis of the principle of self-determination, just as the Soviet Union was beginning to break up. It is therefore only natural that it should respect that right.

Georgia is building a civil society based on the nations and ethnic groups which live within its borders. Its respect for the above-mentioned principle is further confirmed by the existence upon its territory of autonomous entities and by its policy on national minorities which offers them broad cultural autonomy and combines the principles of universality of citizenship and ethnic distinctiveness and originality.

During the dissolution of the Soviet Union the separatist tendencies in two of the autonomous regions of the Republic of Georgia - Abkhazia and South Ossetia - gathered strength, a process that was further encouraged by the objective difficulties associated with the transition from the framework of law and order inherited from the previous regime to the new legislative system. The course of events in the above-mentioned autonomous regions took a tragic turn leading to the unleashing of what became in point of fact an armed conflict involving the use of heavy weapons. The forces of the Government of Georgia ceased engaging in open armed conflict in South Ossetia in 1992 and in Abkhazia in 1994.

In April 1994, Georgian and Abkhaz representatives, with the participation of Russia and under the aegis of the United Nations, signed an agreement on the return of displaced persons to their homes. Peace-keeping forces, nominally representing the CIS but actually consisting of Russian troops, were stationed along the River Ingura, which separates the conflict zone from the rest of Georgia.

In November, in the course of negotiations aimed at settling the conflict the leadership of the Abkhaz administration unilaterally proclaimed their independence of Georgia, thereby throwing down a challenge to the internationally recognized principle of preservation of the territorial integrity and inviolability of the borders of the State.

The leaders of Georgia have repeatedly declared that as part of Georgia, Abkhazia had and will have a State system and extensive rights.

The conflict on the territory of the former South Ossetia is being settled with the broad participation of the OSCE. The representatives of that international organization have developed a package of proposals for the political and administrative organization of the former autonomous region. In accordance with a Edict of the Head of State a coordinating group has been set up to assist in establishing the public law status of the regions of Georgia.

One of the central concerns of this group is the determination of the status of Abkhazia and South Ossetia.

The leadership of Georgia is strictly observing the United Nations principle of self-determination of peoples subject to the preservation of territorial integrity, the inviolability of existing borders and the preservation of national sovereignty.

Georgia is home to 94 different nationalities. An infrastructure has been created to help minorities achieve ethnic self-realization in terms of their language and culture. The State is setting up and supporting newspapers and other publications for minorities in Russian, Armenian, Azerbaijani, Greek and other languages. There are more than 500 ethnic schools in operation and the capital of the Republic has two Russian theatres (including a youth theatre) and one Armenian theatre. Parliament is currently considering a national minorities bill drawn up by the Committee for Human Rights and Ethnic Relations.

Situation in Abkhazia

From the moment when, in 1993, as a result of the actions of the separatist forces and their accomplices the central government temporarily lost jurisdiction over the territory of the autonomous republic, the excesses inflicted by the separatists on the peaceful Georgian and non-Georgian population continued throughout the period under review. The mass murders, ethnic cleansing, deportations, home-burning and hostage-taking never ceased. Following the signing of the quadripartite agreement (Moscow, 4 April 1994) the brutal treatment of the peaceful population of Abkhazia not only continued but became even more unbridled.

According to the information available, in 1994 more than 800 people were killed in the Gali region of Abkhazia alone.

There is a close link between the situation in Abkhazia and the refugee question. At the Budapest meeting of the leaders of the 52 countries parties to the OCSE it was officially recognized that the separatists had carried out and were still carrying out ethnic cleansing in the region. According to the data compiled by the Republican Committee on Refugees and Population, altogether 225,000 refugees have been forced to leave Abkhazia.

The problem of the return of the refugees to their homes is being actively discussed within the framework of the peaceful settlement of the conflict under the aegis of the United Nations. In one of the latest reports by the United Nations General Secretariat "On the situation in Abkhazia (Georgia)", dated 14 October 1994, the context of the negotiations concerning the return of refugees is analysed in detail. The Georgian side finds that the negotiations are proceeding extremely slowly and in the security zone monitored by the peace-keeping forces of the Russian Federation there is no solid guarantee of the safety of the returnees.

The Republic of Georgia is experiencing serious difficulties in connection with the upholding of the rights of the forcibly displaced. In 1992, on the basis of the 1951 Convention on the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the State Council of the Republic adopted a decree/first document defining the status of the forcibly displaced and refugees. On 30 December 1992, the Head of State issued Edict No. 41 to improve the social protection and legal position of refugees from certain regions of Georgia identified as zones of conflict.

In order to put a stop to ethnic cleansing and mass murder in the areas controlled by the separatists and ensure the return of the refugees to Abkhazia and the former South Ossetia, everything possible must be done to intensify the negotiating process with the participation of the United Nations, OCSE and other international organizations, and to set up special aid funds for refugees of the type proposed in the above-mentioned Secretariat report.

A separate statement on the situation in Abkhazia is appended to this Report.

Article 2 (Right to a remedy)

In accordance with the legislation in force, the right to a remedy is regulated by the Criminal and Criminal Procedure Codes of the Republic.

The State Council of the Republic of Georgia restored the 1921 Constitution, with the necessary modernization. However, legislative practice and the application of the law are beset by certain conflicts and contradictions. Currently, during the transition period, until an orderly system of domestic legislation can be established, certain laws and regulations dating from both Soviet times and the period of President Gamsakhurdia's regime remain in force. At the same time, various laws passed by the present Parliament have also entered into effect. In some cases the old law may not adequately protect the interests of the public while the new one may not yet have been passed.

As a rule, the court which considers a case is that in whose jurisdiction the violation (offence) was committed. A higher court may take up any criminal matter subject to the jurisdiction of a lower court, on the basis of a reasoned decision, in which case it acts as the court of first instance.

The Georgian judicial system is based on the principle of two instances which means that the judgements, sentences, decisions and orders of a court which have not entered into legal effect can be appealed against only once and only directly to the higher court. Judgements, sentences and decisions of the Supreme Court are not subject to appeal or challenge. In civil and criminal proceedings a distinction is made between courts of first instance, courts of appeal and review courts, the function of the latter being to hear appeals against judgements, sentences, decisions and orders which have already entered into legal effect.

The figure of the State Procurator used to be all-powerful. He directed all the criminal investigations carried out by the Ministry of Internal Affairs and was empowered to oversee the activities of the organs of justice. The Procurator's Office was responsible for supervising the activities of the Supreme Court. This system laid justice open to political and other influences, especially in the provinces.

Under the new Constitution (art. 91), the Georgian Procurator's Office is an agency of the judicial branch which institutes criminal proceedings, oversees investigations and the execution of sentences and presses charges on behalf of the State. The powers of the Procurator's Office and its organization and procedures are determined by the Organization Act.

The foundations of the infrastructure for the protection of human rights are only just being laid. Thus, on 22 April 1992, at the initiative of the Head of State acting within the framework of the executive power, the Committee for Human Rights and Ethnic Relations was established. Its function was to serve as a source of information on human rights and minorities for the Government and to study and observe the situation with respect to legislation and judicial and administrative decisions in the field of human rights. The Committee also considers complaints and applications by citizens concerning the violation of human rights and makes recommendations with respect to their restoration, advises on all questions relating to human rights, helps to educate the public and promotes the dissemination of knowledge of human rights and the means of protecting them.

In 1994, more than 1,000 applications were made to the Committee and 694 petitions and complaints from 470 persons were accepted by its Chairman. Most of the applications were connected with infringements of the right to inviolability of the home (292) or the rights of refugees and prisoners (131), with social questions (89), with the unsatisfactory functioning of administrative and local government services (63), etc.

However, it has not yet been possible to realize the Committee's full potential. This is because it lacks statutory powers, as well as occupying an ambiguous position as part of the structure of the executive branch. In this connection, the main parties have reached agreement on introducing into the new Constitution an article providing for the creation of a totally new office - that of Ombudsman. It is proposed that this office, which will uphold international legal standards, should be one of the main engines of judicial and legal reform aimed at strengthening the role of the protection of fundamental human rights and freedoms.

As a rule, the Office of the Regional Representative of the Head of State also includes an official specially responsible for questions relating to human rights.

In accordance with the Covenant, preference must be given to judicial remedies and procedures. In 1994, the Supreme Court alone considered 1,734 cases, 1,142 of them civil. Five hundred and twenty cases were examined under the appeals procedure and 613 under the review procedure. Because of the imperfections of the judicial system situations arise in which citizens are unable to exercise their right to have their case examined without an

unwarranted delay. Judicial remedies are not being sufficiently actively pursued. This is largely because the public is ill-informed about the law and no longer holds the judicial system in the same respect. Moreover, it is difficult to convince the judiciary of the supremacy of human rights in the practical interpretation and application of the law.

The political leaders of the country are making a special effort to improve the work of the investigation agencies and investigative practices in general. An edict of the Head of State concerning urgent measures to suppress torture and other cruel, inhuman and degrading forms of treatment in places of detention and correction is being prepared. Nevertheless, violations - cases remitted for further inquiry into blunders made during the preliminary investigation, unjustified extensions of the period of detention in custody, unreasonable choice of preventive measures - are still not uncommon. Experience with the consideration of complaints shows that the procurators are often overzealous and seek to have people taken into custody even for acts for which imprisonment is not mandatory.

The authorities are doing everything possible to bring to light and eradicate such practices.

According to information provided by the Office of the Procurator General, out of 145 statements of claim in civil matters involving infringements of the Labour Legislation Code, 100 were the subject of favourable decisions. A total of 1,870 letters and requests relating to various violations of human rights were dealt with under the general review procedure and satisfaction was given in 488 of these cases. Altogether 984 protests and 2,079 representations were made to the various organizations. Of these 206 protests and 91 representations were associated with infringements of the Labour Legislation Code and 26 and 34 respectively with housing rights, while 19 and 134 respectively were dealt with under the procedure for considering and responding to citizens' petitions.

Article 3 (Equal rights for men and women)

Women's interests, particularly where the regulation of female labour is concerned, are protected by the domestic legislation and especially by articles 156-157 of the still operative Labour Legislation Code of the Georgian SSR which cover:

- work for which female labour may not be used;
- restrictions on night work, overtime and business travel for women;
- the transfer to lighter work of pregnant women, nursing mothers and women with children up to 18 months old;
- paid maternity leave;
- guarantees concerning the acceptance and dismissal of pregnant women, nursing mothers, etc.

The following data relate to the social and economic situation of women in the Republic of Georgia:

- employment rate - 47.7 per cent (data for 1992);
- members of parliament - 4 per cent;
- in government - 1.8 per cent.

Women make up 52 per cent of the total population of the Republic.

Levels of education (in per cent)

	<u>Men</u>	<u>Women</u>
Primary	16.2	10
Secondary special, technical	60	68
Higher	15.6	16.8
With no education	8.2	5.2

Employment in various sectors of the economy (in per cent)

	<u>Men</u>	<u>Women</u>
Industry	19.8	22.3
Agriculture	25.1	25.1
Education, culture	17.4	3.5
Trade	6.3	4.5
Health care, physical training	11.2	2.9
Construction	2.6	12.0
Transport	2.0	9.9
Other	15.0	17.8

Clearly, women are under-represented in the legislature and in government.

In Georgia, women have a higher level of education than men. Incidentally, they account for 39 per cent of Georgia's technical intelligentsia. Despite this, women in general are not highly qualified since after marriage two-thirds of them give up trying to improve their qualifications. Most women do not have jobs appropriate to the education they have received. Following the introduction of a free market, some managers, on various pretexts, are occasionally refusing to employ women.

According to sociologists, working women have little free time: most of it is taken up with household duties. Men spend two to three times less time on household chores than women. Consequently, women have much less personal free time than men. It should be noted that abortion remains the principal family planning technique.

Women are currently much less active in the public sphere, which is largely attributable, on the one hand, to the sharp deterioration of the

economic situation and, on the other, to the irrational negative stereotype of the "zviadistka" (female supporter of the former President Zviad Gamsakhurdia) which has taken root in the minds of the public.

Georgia has no purely feminist movement that confines itself to feminist problems. The "Tetri Mandili" movement is internationally known, but its range of activities is by no means restricted to purely feminist issues. It should be noted that in the course of their activities women members of parliament rarely attempt to raise questions concerning the protection of the rights of representatives of the "weaker" sex.

There is no evidence of serious infringements of the rights of women in the Republic. However, it may be assumed that they exist in the non-State sector of the economy which is still inadequately regulated. The number of sexual infringements is not very great (62 in 1994, 59 cleared up).

The Republic of Georgia has already acceded to the corresponding international convention (see list in the section on "Organs of Government").

The present domestic legislation, like all preceding constitutions, guarantees the equal right of men and women to the enjoyment of all civil and political rights.

Article 4 (Public emergencies)

Provisions regulating the public emergency and martial law regimes are contained in article 46 of the new Constitution.

According to article 1 of the Public Emergency Act, passed on 11 December 1990 (amended and supplemented on 14 September 1993), the proclamation of a public emergency is a temporary measure introduced in accordance with the law to ensure the safety of citizens in the event of natural calamities, large-scale disasters and catastrophes, epidemics, epizootics and mass disorder.

Public emergencies on the national territory are proclaimed by Parliament or the Head of State. The application of the provisions of the Act may not be used to justify discrimination on the basis of nationality, race, language, religion, sex, colour or social origin (art. 4). The proclamation of a public emergency must indicate the reasons why it is being introduced, its duration and its territorial limits. The Head of State may extend the duration of a public emergency he has proclaimed or terminate it ahead of time, with the consent of Parliament (art. 3). The Ministry of Internal Affairs will immediately inform the Secretary-General of the United Nations of the introduction and termination of a state of public emergency.

The amendments introduced on 14 September 1993 make general provision for controlling the activities of the mass media, whereas previously the Act included provisions concerning the prohibition of the use of photocopiers, audio and video technology, radio and television transmission equipment, etc. The criminal liability of strike leaders and people who impede the activities of State agencies and organizations during a public emergency was also abolished.

Article 6 (Right to life)

Right to life provisions are contained in articles 104 to 109 of the Criminal Code of the Republic of Georgia which lay down severe penalties for infringements of that right.

Death penalty

In 1991, Georgia became the first republic of the former USSR to take steps to abolish the death penalty. On 20 March, Parliament abolished the death penalty for four types of non-violent economic crime (arts. 88, 89, 96*, and 186 of the Criminal Code). On 2 August 1991, the death penalty was abolished for two more offences: evasion of active military service (art. 82) and the hijacking of aircraft (art. 242-2).

The War Council introduced a moratorium on the death penalty following the publication, on 21 February 1992, of the Declaration reinstating the 1921 Constitution, article 19 of which provides for its abolition. On 3 August 1993, the State Council headed by E. Shevardnadze, which replaced the War Council, abolished the death penalty for 14 types of military offence, namely: insubordination (art. 256), assaulting a superior (art. 260), desertion (art. 265), absence without leave in time of war (art. 266), intentionally destroying or damaging military property (art. 269), breach of guard duty regulations (art. 273), breach of the regulations on the performance of battlefield duties (art. 275), abuse of power, exceeding authority and neglect of duties (art. 278), surrendering or abandoning to the enemy the means of waging war (art. 279), abandoning a sinking warship (art. 280), leaving the field of battle without authorization or refusing to operate a weapon (art. 281), voluntary surrender (art. 282), looting (art. 284), and using violence on the population in an area of military operations (art. 285). However, the increase in crime, the intensification of armed conflict, the intervention of mercenaries, and ethnic cleansing and genocide directed against the civilian population in Abkhazia halted the process of bringing the law into conformity with the 1921 Constitution as far as punishment is concerned. Thus, articles have been introduced into the Criminal Code to provide for the death sentence for two types of offence: participation as a mercenary in an armed conflict (art. 65-1, introduced on 17 March 1993) and genocide (art. 66-1, introduced 8 July 1993).

It should particularly be stressed that before a death sentence can be carried out the case must be considered by the Pardons Board which reports to the Head of State. This applies even if no petition for pardon has been received from the person convicted.

The decision whether to pardon a person sentenced to death is the prerogative of the Head of State.

The Committee for Human Rights and Ethnic Relations has drawn up a proposal for the Cabinet of Ministers concerning the abolition of the death penalty provided for in articles 78-1, 209-1 and 258.

In 1994, the pardons group in the Office of the Head of State received 1,445 petitions for pardon, including 34 from persons sentenced to death. Of the latter 22 were considered by the Head of State; of the remainder 6 are awaiting his decision and 6 are still in process of being examined.

Of the 22 petitions for pardon from persons sentenced to death considered by the Head of State 14 were favourably received, the death sentence being commuted to 20 years imprisonment.

Under the laws of the Republic of Georgia, persons under the age of 18 may not be sentenced to death (art. 24 of the Criminal Code). The same applies to women who were pregnant at the time the offence was committed or sentence passed (art. 24 of the Criminal Code).

The question of abolishing the death penalty is again being widely debated both in Parliament and among the public. However, the seriousness of the crime situation is making it impossible to arrive at a positive solution of the question at this stage.

Thus, in 1994 there were 578 murders in the Republic, 367 of which were cleared up. The corresponding figures for 1993 were 878 and 407. There were 2,027 robberies, of which only 756 were cleared up (the corresponding figures for 1993 were 3,485 and 735).

Acts of terrorism, whose victims include prominent politicians and high officials, have become widespread. In the last two years, G. Chanturia, the leader of one of the country's main parties, the National Democratic Party, G. Gulua, Deputy Minister of Internal Affairs, M. Kurdadze, the public procurator for the capital of the Republic and others have fallen victim to the terrorists. None of these crimes has been solved, which is a source of anxiety both for the government and for the public at large.

The presence of the death penalty in the Georgian legislation cannot, of course, be attributed solely to the crime wave. A serious effort will have to be made to prepare public opinion and change people's mentality.

Health care

One of the most important conditions for ensuring the right to life is full access to health care. Within the context of the transition to a market economy, the medical institutions are gradually switching over to self-financing ("paid health care"). Given that the country is in the grip of a severe economic crisis, this is bringing into question the principle of free access to health care and hence the right to life.

List of Articles of the Criminal Code of the Republic of Georgia Providing for or Abolishing the Death Penalty

Providing for the death penalty

Art. 65 - Treason

Abolishing the death penalty

Art. 82 - Evasion of military service

Providing for the death penalty

Art. 65-1 - Genocide

Art. 66-1 - Participation as a mercenary in an armed conflict

Art. 67 - Espionage

Art. 68 - Act of terrorism against a representative of a foreign government

Art. 69 - Sabotage

Art. 78 - Brigandage

Art. 78-1 - Disorganizing the work of corrective labour institutions

Art. 104 - Murder with aggravating circumstances

Art. 177 - Rape

Art. 209-1 - Attempt on the life of a police officer

Art. 258 - Resisting a superior or forcing him to breach regulations

Abolishing the death penalty

Art. 88 - Counterfeiting and forgery

Art. 89 - Violation of foreign exchange regulations

Art. 96-1 - Large-scale misappropriation of government or public property

Art. 189 - Taking bribes

Art. 242-2 - Hijacking aircraft

Article 7 (Torture, cruel, inhuman or degrading treatment or punishment)

Georgia acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 November 1994.

The adherence of the Republic to the generally recognized standards of international law finds expression in article 17 of the new Constitution which forbids the use of torture or other cruel, inhuman or degrading treatment or punishment.

Article 116 - "Beating and torture" - of the Criminal Code provides for various forms of punishment - from corrective labour to imprisonment - for "beating or other forms of violence causing physical suffering for the victim" and also for "systematic beating in the nature of torture".

It must be recognized that individual cases of the use of physical violence by the personnel of law enforcement agencies do arise. This chiefly occurs at the time of detention or arrest and sometimes during questioning for the purpose of obtaining a confession or information.

Despite the practical difficulties associated with the implementation of the provisions of the above-mentioned Convention, the Committee for Human Rights and Ethnic Relations is working to protect the right of prisoners and detainees not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. Members of the Committee regularly visit prisons and take appropriate action in response to complaints from prisoners and detainees. In each case the complaint is properly investigated and if it is found to be valid the guilty are punished.

An example of such a gross violation of the law was the affair of the Khidasheli family, several members of which (and two of their friends) were detained on suspicion of murdering L. Chovelidze (mother of T. Chovelidze) who died on 9 April 1989. In order to obtain a confession, officers of the metropolitan police used physical force extending to torture. After receiving a number of complaints, the Committee examined this case and decided it should be referred to the public procurator's office with a recommendation that it carry out a further objective investigation and call to account the police officers who had used illegal methods on the persons concerned. As a result, the preventive measure was changed for two members of the Khidasheli family and one of their friends, and criminal proceedings were brought against the police officers guilty of the abuse.

It is especially important to note the widespread interest aroused in Georgia and abroad by the court proceedings in case No. 7493810 (so-called "Domukhovskii-Gelbakhian" affair). On the basis of statements made by the defendants (19 altogether), the international non-governmental organization Human Rights Watch/Helsinki made accusations of numerous violations of proper legal procedure, including the beating of prisoners. In fact, two incidents of this kind took place. Thus, on the basis of the complaint by the defendant G. Gelbakhian that he was assaulted in his cell, criminal proceedings were brought against another prisoner who committed the offence. The prisoner Chogovadze was convicted, and the prison officer responsible for the maintenance of order was dismissed from the prison service.

Concern is also being aroused among the public and the rights protection organizations by the violation of the rights of persons held in detention centres for investigation and psychiatric examination, which has been going on for a year now. Contrary to the provisions of article 12 of the Psychiatric Care Act passed on 1 May 1995, the medical examination of people under investigation to determine their mental state is still being carried out in a specialized medical institution of the Ministry of Internal Affairs. Of course, this sort of examination should not be carried out by a departmental medical institution.

Prison conditions remain bad (for further details see the section of the Report concerning the rights of prisoners).

In general, it should be pointed out that, without exception, the use of torture and other cruel, inhuman or degrading treatment or punishment runs counter to the political course and line of action of the Government of Georgia, a country in the process of constructing a democratic society. A

corresponding Edict of the Head of State is being prepared (cf. the comments on art. 2).

Article 8 (Prohibition of forced labour)

The provisions of this article of the Covenant, which prohibit slavery and forced labour, are not applicable to Georgia where in the period under review no cases of slavery or forced labour were recorded. The regulations relating to convict labour are contained in articles 25 and 28 of the present Criminal Code, as amended and supplemented (for details see comments on art. 10 below).

In the Ministry of Defence system human rights are protected by the servicemen's welfare department of the personnel administration. In the military units of the Ministry of Defence the infringements relate mainly to the economic aspects of human rights (inadequate rations, shortage of uniforms, lack of opportunities for rest and recovery, etc.), which is one of the main causes of desertion among men serving for fixed periods. In the period of conscription there were cases of men of call-up age being detained and sent by force to military commissariats, the MIA and district police departments.

The rights of servicemen are also occasionally violated by the law enforcement agencies. There are cases of illegal checking of documents and unauthorized room searches. The crime wave is also affecting servicemen. In February 1995 alone two attacks on officers were recorded: Lieutenant Colonel M. Dzhandzhanidze and Major G. Karmazanashvili were assaulted and the latter was also robbed.

Alternative service

In accordance with article 12 of the General Military Service Act, citizens who object to active military service on conscientious or religious grounds may be called up for alternative military service under the Alternative Military Service Act of 14 June 1991.

Article 9 (Right to liberty and security of person)

The rights laid down in this article are fully reflected in article 18 of the new Constitution. According to this article (paras. 1 and 2), personal liberty is inviolable and no one may be deprived of his liberty or have it restricted other than by judgement of a court. Anyone arrested or detained is immediately informed of his rights and the reasons for his arrest or detention; from the time of arrest a person may request and receive legal assistance (para. 5).

According to the Police Act of the Republic of Georgia (27 July 1993), the police must respect and protect the rights and freedoms of the individual irrespective of civil or social status, property, racial or national origin, sex, age, education, language, creed or political or other opinion.

In particular, the police must afford persons detained or arrested the opportunity to exercise their right to judicial remedy in accordance with the law.

Before the Constitution was adopted, the rights of arrested and detained persons were determined by the Criminal (CC) and Criminal Procedure (CPC) Codes which contain many provisions dating from the Soviet period. According to article 10 of the CPC, "no one may be placed under arrest otherwise than on the basis of a court order or with the approval of the procurator. The procurator must immediately free anyone unlawfully deprived of his liberty or detained beyond the period prescribed by law or sentence". Articles 194 - "Unlawful arrest or detention" - and 195 - "Obtaining evidence under coercion" - of the CC provide for penalties in the form of various periods of imprisonment (from 1 to 10 years) for persons who commit such offences. The choice of preventive measure is governed by a special section of the CPC (arts. 80-94). In particular, according to these articles, a preventive measure is imposed by the court in a reasoned decision which indicates the offence of which the person is suspected or accused and the grounds for selecting that particular preventive measure. As a rule, persons detained in custody may be held in places of detention for not more than three days; detention in custody while the case is investigated may not last for more than two months, except in specially stipulated circumstances.

In 1994, the law enforcement agencies of the Republic of Georgia detained 3,510 persons. The procurator authorized the arrest of 3,282 of these detainees, and 237 were released because of changed circumstances or for other reasons.

The present Georgian legislation does not lay down procedures for compensating people for unlawful arrest, although there is such a provision in the Constitution (art. 18.7). However, such persons may seek redress from the courts. The question of a compensation mechanism will be settled in the context of the ongoing reform of the system of legal proceedings.

The provisions concerning pre-trial detention were also unsatisfactory as they allowed the investigating agencies and the courts to have people held in custody indefinitely. The law also provided for clearly excessive limits on the time for which people could be held in pre-trial detention (up to 18 months). The new Constitution tightly regulates these aspects also. According to article 18.3, a detainee must appear in court within 48 hours. Within the next 24 hours the court must decide to have him arrested or to place "some other restriction on his liberty" or release him. According to paragraph 6 of the same article, the period of detention of a person suspected of an offence may not exceed 72 hours, and a person against whom charges have been preferred may not be held in pre-trial detention for more than 9 months.

Article 10 (Rights of persons deprived of their liberty)

At present, there are 15 different prison colonies, prisons and detention centres operating in Georgia.

In actual fact, the situation in the Georgian penitentiary system falls far short of meeting generally recognized international standards, although the main requirements of article 10 of the Covenant are satisfied. Detention procedures are regulated by article 25 of the Criminal Code.

On 1 January 1995, the Georgian penitentiaries had 7,803 inmates. The most important general shortcomings of the system are as follows:

- the material and technical infrastructure is in critical condition. The correctional institutions are generally based on establishments not previously intended for these purposes (industrial buildings, barracks, etc.). After many years of constant use they are practically worn out;
- the extremely poor medical care. The fact that last year 120 people died in places of detention speaks for itself. Tuberculosis and various forms of cardiovascular disease are prevalent. For example, in the Ksans corrective labour colony No. 39, intended for a special contingent affected by tuberculosis, 150 detainees are unable to obtain active treatment. Providing such treatment for this number of tubercular detainees would cost \$20,000. Neither the colony nor the Ministry of Internal Affairs has such resources at its disposal.

A catastrophic situation has arisen in clinic 123/10 (republican hospital) where the sanitary conditions, equipment and even elementary living conditions do not bear scrutiny. A similar situation prevails in the women's and children's correctional establishments.

In October 1994, the Head of State E. Shevardnadze issued an edict empowering the Committee for Human Rights and Ethnic Relations to inspect the conditions in which prisoners and detainees were being held and to request the authorities to deal with any violations discovered.

One of the many problems of the penitentiary system is the fact that the staff are too few and ill-provided for.

At the initiative of the Committee for Human Rights and Ethnic Relations, a draft Resolution of the Cabinet of Ministers "On measures making material-technical, social and financial provision for the penal institutions of the Ministry of Internal Affairs of the Republic of Georgia" has been prepared.

The situation is especially serious in the pre-trial detention centres, where the work of the administration is governed by obsolete regulations on pre-trial detention which are already more than a quarter of a century old. These centres are overcrowded (in Tbilisi, Kutaisi, Zugdid and Batumi). Instead of the regulation area of 2.5 m², there is, on average, less than 1 m² per detainee. Inmates do not have their own individual bunks but often have to sleep in two or three shifts, without bedding. These conditions encourage the spread of parasitic and infectious diseases.

On 1 June 1995, Parliament passed a decree on amnesty which affects approximately every tenth prisoner. This measure, together with others, will result in some improvement in the conditions in places of detention.

Article 12 (Right to liberty of movement and free choice of residence)

The exercise of this right by citizens of Georgia and persons lawfully present on its territory is protected by the Constitution (art. 22).

According to the Emigration Act (20 July 1993), a citizen of the Republic of Georgia has the right to emigrate from Georgia or travel to his permanent residence in another State. No restrictions may be placed on this right except in the cases specified by law.

The aim of the Act is, in accordance with universally recognized principles, to protect the right of a citizen of Georgia to leave his own country and return to it.

If an international agreement provides for rights different from those established in the Georgian legislation, the provisions of international law are applied.

The Act regulates the question of the emigration of under-age children.

A citizen of Georgia who has emigrated has the right to enter the Republic at any time, without having to obtain any further authorization.

At the same time, the old permit system based on the registration of citizens according to residence, the so-called "propiska", remains in force, which is contrary to the Universal Declaration of Human Rights and article 12.1 of the Covenant.

A considerable number of citizens have made use of the right to emigrate. There are complaints about the registration and obtaining of documents having to be paid for in foreign currency at high rates of exchange. In actual fact, the option of leaving the country is not available to the overwhelming majority of those who have expressed a desire to go. The bureaucratic attitudes of the visa and registration department of the Ministry of Internal Affairs are common knowledge.

An obstacle to the totally free exercise of the right to liberty of movement within the Republic, which is generally respected, are the zones of ethno-political conflict which embrace entire regions (Abkhazia, former South Ossetia). Fares are expensive. For example, for this reason the peripheral regions (Djavakheti, Ajara, etc.) are virtually cut off from the centre.

Article 13 (Aliens)

The provisions governing the procedure for applying this article of the Covenant in accordance with international standards are contained in article 47 of the new Constitution and also in article 8 of the Citizenship Act.

According to the Legal Status of Aliens Act of 3 June 1993, aliens are guaranteed the rights and freedoms provided by the legislation of the Republic of Georgia. Their legal status is determined by the Constitution, the Act and other enactments of the Republic, as well as by international conventions and universally recognized international norms relating to the protection of human rights (art. 2).

Aliens in Georgia enjoy rights and freedoms and bear responsibilities on an equal footing with Georgian citizens, unless the law provides otherwise.

Aliens in Georgia are equal before the law, irrespective of origin, social and material status, race, nationality, sex, education, language, religion, political or other views, occupation, etc.

The Republic of Georgia protects the life, security of person, and rights and freedoms of aliens on its territory (art. 3).

The Republic of Georgia offers asylum to aliens persecuted in their own country for defending peace and human rights and for progressive socio-political, scientific and other creative activity.

Under the Act, asylum is not granted to aliens whose views and activities are contrary to the aims and principles of the United Nations or the State interests of Georgia.

Aliens in the Republic of Georgia are granted the following basic rights: the right to work, the right to rest, the right to health care, the right to social security, property and personal non-property rights, the right to education, the right to enjoy cultural values, the right to join political and social organizations, the right to have a religion or belief, the right to matrimonial and family relations.

Aliens are guaranteed protection of the person and non-interference with their privacy and family in accordance with article 17. The Act also provides for the right of liberty of movement and choice of residence and regulates the right to vote and the question of military service.

The Act establishes the principles governing the liability of aliens for crimes and administrative and other offences under Georgian law, except in so far as international agreements provide otherwise.

According to article 27 of the new Constitution, the State has the right to impose restrictions on the political activities of aliens and persons who are stateless.

During the period under review there was no recorded case of aliens being expelled from the Republic of Georgia.

Article 14 (Court proceedings)

The implementation of these provisions of the Covenant is ensured by articles 18.3 and 85 of the Georgian Constitution.

The guarantees listed in article 14.3 of the Covenant are provided by the Criminal Procedure Code of the Republic, in particular by articles 135 ("Assistance of an interpreter") and 145 ("Charging"). According to article 145, a suspect must be charged within 48 hours. The procedure for examining the accused is governed by articles 69 and 63 of the CPC. Article 69 states: "The accused has the right to testify with respect to the charge against him. He also has the right to give testimony characterizing other defendants and victims." According to article 63, the testimony of a defendant who denies or admits guilt is irrelevant to the proceedings. The testimony must be based on evidence, i.e. the possibility of self-incrimination is excluded. The participation procedure is determined by articles 48 and 17 "The right of the accused to legal assistance" and "Participation of defence counsel in criminal proceedings". Under article 18.5 of the Constitution and the CPC, defence counsel may join in the proceedings from the time of detention. The provisions of article 14.5 of the Covenant are covered by section IV of the CPC of the Republic "Proceedings in the court of appeal". The situation with respect to juveniles is governed by articles 5 ("Circumstances ruling out proceedings in a criminal case"), 8 ("Discontinuance of a criminal case upon transfer to the Commission on Juvenile Affairs"), etc. Altogether, the CPC contains 17 such articles relating to proceedings involving juveniles in which the main stress is laid on rehabilitation as, for example, in article 8 ("Discontinuance of a criminal case upon transfer to the Commission on Juvenile Affairs"), etc.

According to article 85.1, the court hearing must be open and the judgement of the court must be made public. A closed hearing is permitted only in such cases as are specified by law. Similar provisions are to be found in the Criminal Procedure Code of the Republic from the Soviet period, still in effect as amended and supplemented (art. 16 CPC).

Presumption of innocence

According to article 40.1-2 of the new Constitution, a person is presumed innocent until his guilt has been proved under the procedure established by law and the guilty verdict of the court has entered into force.

The principle of presumption of innocence, which is one of the cornerstones of the judicial system and, as a rule, is respected by the country's judicial bodies, is often infringed by the non-government mass media which at times pronounce "guilty verdicts" in advance and call people "criminals" without any grounds for doing so. Even though the comments are clearly libellous, the victims very rarely bring actions for defamation of character.

At present, the legal system is being reformed on the basis of the country's new Constitution. The aim of the reforms is to bring the legal system as a whole into conformity with international standards and to

eliminate such defects as, for example, the general accusatory bias of the CPC, the dominance of the procurator's office, etc. For further details see the corresponding sections of this Report.

Article 15 (Retroactive effect of the law)

According to article 7 of the Criminal Code of the Georgian SSR (still in force as amended and supplemented), the criminal nature and punishability of an act are determined by the law in effect at the time the act was performed. A law which makes an act no longer punishable or lightens the penalty has retroactive effect, i.e. it extends to an act performed before its promulgation. A law which makes an act punishable or the penalty heavier does not have retroactive effect.

In the Republic of Georgia the above-mentioned article of the Criminal Code is strictly respected in practice and no cases of its infringement or the incomplete application of its provisions have been recorded.

This provision of the Covenant is also reflected in the new Constitution. According to article 42, no one is liable for an act which at the time it was performed was not considered to be against the law. A law which does not reduce or abolish liability has no retroactive effect (art. 42.5).

Article 17 (Inviolability of the home, privacy and family)

These rights are guaranteed by article 20 of the new Constitution. In particular, everyone's privacy, place of work, personal papers, correspondence, telephone communications and other communications are recognized as inviolable. Restrictions may be imposed on these rights by order of the court or without a court order in the cases established by law.

These rights are further guaranteed by articles 141 ("Infringement of the inviolability of the home") and 143 ("Infringement of the confidentiality of correspondence, telephone conversations and telegraph messages") of the Criminal Code and article 10 ("Inviolability of the home, protection of privacy and confidentiality of correspondence") of the Criminal Procedure Code.

The ways in which these rights may be infringed are described in articles 165-177 of the CPC which regulate search and seizure procedures. These call for the approval of the procurator or his deputy, a reasoned decision by the investigator, the presence of witnesses, non-disclosure of the private circumstances of the subjects of the search, observance of the rule that body searches may be carried out only by someone of the same sex as the person searched, the preparation of a report, etc.

At the same time, complaints by citizens concerning the inviolability of the home are being made and coming before various bodies. For example, in 1994 the Committee for Human Rights and Ethnic Relations received about 300 communications concerning cases of partial or total infringement of the

right to inviolability of the home. A sensation was caused by the declaration by the leader of the National Democratic Party, G. Chanturia, to the effect that his office telephone was being tapped by the State security services. Unfortunately, these claims were not checked out by the Committee for Human Rights and Ethnic Relations and the appropriate authorities. According to the data obtained by the Caucasian Institute for Peace, Development and Democracy in a survey of freedom of speech, 20 per cent of the journalists questioned did not rule out the possibility that the editorial telephones were being tapped and mail inspected.

According to the latest amendments and supplements to the CC and CPC approved by Parliament (April 1995), which concern the monitoring of telephone conversations relating to criminal proceedings already instituted, subject to the approval of the procurator the law enforcement agencies are allowed to use technical devices and listen in on telephone conversations.

The Committee for Human Rights and Ethnic Relations argues that actions of this kind should be permitted only with the consent of a judicial body.

Article 18 (Freedom of thought, conscience and religion)

This right is guaranteed by article 19 of the new Constitution.

It should be noted that in Georgia there is a traditional respect for freedom of religion. This is confirmed by a social survey carried out by the Committee for Human Rights and Ethnic Affairs jointly with the Caucasian Institute for Peace, Democracy and Development, according to which the factor "impossibility of giving expression to religious feelings" is one of the least significant reasons for the emigration of minorities from Georgia. The respondents gave a rating of almost four on a five-point scale to the prevailing attitude to non-Orthodox religious communities.

Article 148, which dated from the Soviet period and provided penalties for infringing the regulations concerning the separation of church from state and school from church, has been withdrawn from the Criminal Code of the Republic of Georgia.

Article 19 (Right to freedom of expression)

The rights mentioned in this article of the Covenant are guaranteed by articles 19 and 24 of the new Constitution.

The exercise of these rights is also ensured by the Law of the Republic of Georgia "On freedom of the press and mass media". In accordance with this Law, in Georgia the press and other media are free. This freedom is guaranteed by the Constitution.

Citizens of the Republic of Georgia have the right to express, impart and defend their opinions through any media and also to receive information on questions of public life.

Censorship of the press and other media is not permitted (art. 1). Abuse of the media is also prohibited.

According to the Law, the press and other media are forbidden:

- (a) to disclose State secrets;
- (b) to publish calls for the overthrow and replacement of the existing regime and social order;
- (c) to advocate war, cruelty or racial, national or religious intolerance;
- (d) to disseminate information conducive to the perpetration of a criminal offence;
- (e) to propagate pornography or immorality (art. 4).

The activities of the media may be terminated or suspended. Media activities can be terminated completely only by court order.

If the State or its agencies infringe this Law, criminal proceedings may be brought against them.

An important contribution to the consolidation of these guarantees is being made by the Edict of the Head of State "On certain measures to provide for the protection of human rights in Georgia". Paragraph 7 of this Edict is devoted to measures to promote the implementation of the above-mentioned Law.

Practical obstacles to the exercise of the rights mentioned in this article of the Covenant include the energy crisis, the paper shortage and lack of funds, while at the subjective level there is the poor quality of certain published and broadcast material whose authors make up for their lack of qualifications by striving for sensation, etc. To some extent, the youthfulness of the journalists (generally of student age) who make up the editorial staff may account for this.

As regards encroachments on the freedom of the press by the State, in the period under review there were none, as evidenced by the survey of press freedom carried out by the Caucasian Institute for Peace, Democracy and Development at the beginning of 1994. The survey covered 33 newspapers and radio and television news services. In the opinion of the journalists questioned (82 per cent), the authorities are not interfering with the work of the editors, and if an attempt is made to influence them it only takes the form of "unobtrusive" advice and recommendations.

There have been cases of physical abuse of journalists by police officers. For example, the Reuters correspondent was beaten on 14 June 1994, as was another journalist in October 1994 during the visit to Georgia of the Secretary-General of the United Nations. There have also been cases of attacks on editorial offices, in particular those of the newspaper "7 dge",

and the headquarters of local television companies (raid on the offices of Iberviziya) by persons unknown. The investigation of these incidents has not led to any arrests.

Despite all this, the freedom of the press may be regarded as one of the most important achievements of the young Georgian democracy.

Article 20 (Prohibition of propaganda for war and advocacy of national, racial or religious hatred)

The implementation of the provisions of this article in the Republic of Georgia is ensured by articles 72 and 75 of the Criminal Code of the Republic which provide for various periods of imprisonment for offenders. Provisions concerning the prohibition of propaganda for war and advocacy of violence and cruelty are also to be found in the Citizens' Associations Act (art. 3) and in the Press and Other Mass Media Act (art. 4).

It should be noted that during the period of acute ethno-political conflict the leaders of the Abkhaz and South Ossetian separatist movements have actively made an enemy figure out of the Georgians. The above-mentioned articles of the Criminal Code have remained purely a matter of form since the authorities have made no use of them to prevent the instigation of inter-ethnic discord or to isolate the instigators.

During the regime of President Gamsakhurdia there were open calls for reprisals against disloyal ethnic minorities.

Article 21 (Right of peaceful assembly)

This right is guaranteed by article 25 of the new Constitution in complete conformity with international standards. Restrictions on the exercise of this right are imposed only on those serving in the armed forces, the police and the security services.

The existing laws and regulations governing the exercise of this right are quite liberal. In practice, the Government allows citizens to assemble peacefully and demonstrate anywhere, even in front of the building housing Parliament and the Cabinet of Ministers. In the Georgian capital special places are set aside for organizing meetings and a procedure for authorizing the holding of such meetings is in effect. If a meeting is held in an unauthorized place, the police will take the necessary measures. In some cases there have been violations of the rights of individual citizens and journalists on the part of the police officers applying these measures. Most of the demonstrations have been organized by the dissatisfied depositors of a series of bankrupt trust companies and banks and by followers of ex-President Zviad Gamsakhurdia. All excesses have been investigated.

Article 22 (Right to freedom of association with others)

The exercise of this right is guaranteed by article 26 of the new Constitution.

The right in question is the subject of articles 217 and 218 of the Labour Legislation Code of the Georgian SSR and of the Citizens' Associations Act of the Republic of Georgia which entered into force on 14 June 1994. Thus, according to articles 3 and 4 of the Act, which define the principles, purposes and activities of public associations, including trade unions, the only requirements to be met by citizens forming an association are that they should do so of their own free will and in accordance with the existing law. Under article 16 of the Act the following are grounds for refusing registration: if the articles of association are contrary to the Constitution, the legislation in force or articles 3 or 4 of the Act. The activities of an association may be terminated on the above-mentioned grounds by a decision of the court based on a statement made by the procurator's office or registry (art. 17). It is not allowed to found associations whose purpose is to overthrow the constitutional order by force, destroy the territorial integrity of the country, sow religious or ethnic discord, advocate war, violence or cruelty or perform other criminal acts (art. 3).

Georgia's trade unions operate on the branch territorial principle. On 12 December 1992, in accordance with a resolution of the constituent congress, the branch unions and the trade union councils of the Ajar and Abkhaz Autonomous Republics established by agreement the Trade Union Association, a voluntary association of equals based on confederative principles and completely independent of government, economic, political and other bodies. On 1 January 1994, 29 branch trade union organizations, the regional bodies of the autonomous republics, the republican trade union health resort boards and the national physical culture and sports society "Shevardeni" joined the Association, which represents a total of 20,778 organizations.

The relations between the Government and the Association are uneven. The Association is making numerous claims concerning property. According to its leaders, the Government is appropriating and using the property of the trade unions in violation of the existing legislation and without their consent. As an example they cite the resolutions of the Cabinet of Ministers of 18 June 1991 (No. 497) and 30 April 1993 (No. 482) in accordance with which the Gruzkurortstroi trust was placed under the authority of the Ministry of Architecture and Construction. On 30 August 1994, by order of the Head of State, the trust's building was transferred to the security service. The resolution of 11 March 1992 (No. 128) placed the trade union palace of culture at the disposal of the Central Directorate of the National Guard, and so on.

The trade unions are experiencing certain difficulties as a result of the lack of a legal basis. In fact, not a single law has been passed that would help to strengthen the trade union movement. At the same time, during the regime of ex-President Gamsakhurdia article 142 of the Criminal Code of the Republic of Georgia, which provides for penalties in the form of imprisonment and corrective labour for obstructing the activities of trade unions, was withdrawn.

The leadership of the Association insists that its law-making initiatives are not receiving proper support. Trade union proposals relating to topical social security problems are being ignored. For example, between

1 September 1993 and 1 July 1994 35 different documents proposing measures to improve social security, etc. were sent to the Government but none of them received a proper response.

At the moment, the trade union movement in Georgia is in deep crisis. This is partly attributable to the public's stereotypical conception of the trade unions as purely formal organizations.

The trade unions have undertaken several large-scale initiatives in defence of the interests of the workers. In particular, they have made use of their constitutional right to organize strikes.

Article 23 (Family and marriage)

Article 26 of the new Constitution contains provisions relating to the family and marriage.

The Marriage and Family Code forms the legal basis for the matrimonial relations of citizens of the Republic.

In particular, article 5 of the Code stipulates that the family is under the protection of the State; it also guarantees the protection and encouragement of motherhood.

The inviolability of privacy and the family is also guaranteed by the relevant articles of the Criminal and Criminal Procedure Codes of the Republic (for further details see the comments on art. 17 of the Covenant).

Thus, the State has protected the rights and interests of the child as a member of the family (for further details see the comments on art. 24 of the Covenant).

In connection with the severe economic crisis which is affecting Georgia, most of the legislative guarantees in the area of the family and marriage exist only on paper. According to official figures, 83 per cent of the population are living below the poverty level. Under these conditions, many privileges granted to families have been abolished. Data illustrating the consequences of all this are presented in the section of the Report on the "Principal ethnic and demographic characteristics of the country and its people", as well as in the comments on article 3 of the Covenant.

In accordance with the Marriage and Family Code, founding a family requires the mutual consent of the partners who must be of marriageable age. In the Republic of Georgia this is 16 for the wife and 17 for the husband (art. 15). Polygamy and marriage between relatives in the direct line, between adopter and adopted and between the incompetent are prohibited (art. 18).

Matrimonial and family relations can be legally regulated only by the State. A religious ceremony has no legal significance (art. 6). However, the State will do nothing to impede the celebration of marriage in a religious

ceremony which, moreover, has recently become very popular in the Republic, perhaps because of the increasing importance of the religious factor in Georgian society.

The effect of marriage on the citizenship of the spouses, changes in the names and nationality of family members, including children, and the equality of men and women in all aspects of family life are all matters regulated by the legislation of the Republic in accordance with international standards. At the same time, surviving features of the traditional way of life are preserved. Women have much less free time since in most case it is they who do the housework and take care of the children.

In the event of the dissolution of the marriage, the court must decide which child stays with which parent and also who shall be responsible for paying child maintenance (art. 34). Child maintenance must be paid until the child comes of age (art. 72).

Article 24 (Rights of the child)

The Republic of Georgia has acceded to the International Convention on the Rights of the Child. The rights of minors relating to employment are protected by articles 167-174 of the Labour Legislation Code of the Georgian SSR. Questions relating to the right of the child to citizenship are regulated by the corresponding articles of the Citizenship Act of the Republic of Georgia.

The birth of children is registered in the Registry Office at the child's place of birth or the place of residence of the parents or one of the parents. Births must be registered not later than one month after the birth of the child and the official record will indicate the last and first names and patronymic of the child and particulars relating to its parents (arts. 168, 170 and 171 of the Marriage and Family Code). If at the time of birth both parents are Georgian citizens, the child is considered to be a citizen of Georgia irrespective of the place of birth. If the parents are citizens of different countries and at the time the child is born one of them is a Georgian citizen, then the child will be considered a citizen of Georgia if: (a) it was born on Georgian territory, (b) it was born outside the country but one of the parents has a permanent residence on Georgian territory, (c) at the time of birth (irrespective of the place of birth) one of the parents was a Georgian citizen and the other stateless or unknown (arts. 11 and 12 of the Citizenship Act).

The deterioration of the social and economic situation in the Republic has given rise to the phenomenon of child begging. The lack of electrical power has led to the interruption of the educational process in schools and kindergartens in the colder periods of the year. The increase in juvenile crime and drug addiction in the young is causing the Government special concern.

The Committee for Human Rights and Ethnic Relations has studied the conditions in which juveniles are held in the institutions of the penitentiary system. The results of the investigation have been reported to the Cabinet of Ministers of the Republic. There can be no justifying the conditions in which juveniles are held in Tbilisi detention centre No. 1. The cells are overcrowded, in violation of every sanitary standard. On average, there are two to three detainees for every place. There is not enough bedding, meals are irregular and the food is monotonous and low-calorie. Conditions are particularly bad for the inmates in the cold season because of the lack of heating, room insulation, etc. Accordingly, they often suffer from colds and infectious diseases. In the Avchal educational-labour colony there are 70 juvenile detainees. In practice, there is no medical care because of the lack of the necessary medicines and equipment. The diet is unsatisfactory. The colony building is dilapidated and in urgent need of repair. At the time of its visit the Committee found nine juvenile offenders ill in the prison hospital with diagnoses such as pneumonia, influenza, etc. In 1993, two juveniles died as a result of falling ill in detention centres. The special contingent does not have suitable uniforms.

There is alarm at the spread of criminal behaviour and the cult of violence among juveniles. The irregularity of the educational process in the schools, the prevailing socio-economic crisis and the influx of an inferior pop culture have led to a crisis of socialization.

The situation is most serious in the children's homes where orphan children are kept in wretched conditions.

The abolition of all forms of monthly allowances for children from September 1994 was ill-received by the public. Up to then there had been four types of allowance: for childbirth, for children up to 18 months, for children from the age of 18 months to the age of 6, and for children up to 16 years old. Now the allowance has been restored at the same level for children of all ages and amounts to 480,000 coupons per month.

Article 25 (Right to take part in the conduct of public affairs)

During the period under review, Parliament has been debating the Civil Service Bill. The bill, which has now passed its second reading, is intended to regulate conditions in the civil service.

The procedure under which citizens exercise their electoral rights is laid down in article 28 of the new Constitution and in the Elections to Parliament Act passed on 1 September 1995 in anticipation of the parliamentary elections on 5 November 1995. Thus, all citizens of the Republic who have reached the age of 18 by election day have the right to take part in the elections. Any citizen of the Republic who has reached the age of 18 has the right to be elected. Any citizen of the Republic who has reached the age of 25 and who has been residing in the Republic continuously for at least 10 years has the right to be elected, irrespective of his race, colour,

language, sex, religion, political or other views, national, ethnic or social affiliation, origin, property, class, etc.

One hundred and fifty members of Parliament are elected under the proportional system from single party lists and 85 under the majority system in single-mandate electoral districts.

Elections are by universal, free, equal and direct suffrage and are held by secret ballot. Persons serving prison sentences and persons deemed to be incompetent by a court are not allowed to vote.

Parliament is elected for a term of four years.

The presidential election procedure is laid down in article 70 of the new Constitution.

Where very important issues are concerned, the law provides for the holding of a referendum or plebiscite.

Article 26 (Prohibition of all forms of discrimination)

Article 14 of the new Constitution of Georgia directly reflects the requirements of this article of the Covenant. It states: "All persons from birth are free and equal before the law irrespective of race, colour, language, sex, religion, political or other views, national, ethnic or social affiliation, origin, property, class or domicile".

The more general provisions of this article of the draft Constitution are given concrete form in the Citizenship Act (art. 4).

Article 75 of the Criminal Code of the Republic of Georgia - "Violation of national or racial equality" - was introduced by the Law of the Supreme Soviet of the Republic of 2 August 1991. In particular, it specially stipulates that "directly or indirectly restricting the rights of citizens on grounds of race or nationality or securing them direct or indirect advantages" is a criminal offence punishable by deprivation of liberty.

The Georgian legislation does not ban all forms of discrimination directly or use the term "discrimination" itself. However, this follows directly from the corresponding provisions of the legislative instruments which are already in effect or are to enter into force. With regard to the degree of non-discrimination in the enjoyment of the rights recognized in the Covenant, reference should be made to the corresponding sections of this Report.

It should be noted, however, that on the everyday level individual cases of infringements relating to nationality and language continue to occur, which can be attributed to the cultural backwardness of a certain, albeit very small, part of the population. Cases of this kind make a very painful impression and receive a fitting response from the authorities who generally see that justice is done.

One way of eradicating lingering prejudices of this kind is the mechanism of citizenship of the Republic which is controlled by an essentially anti-discriminatory law.

Article 27 (Protection of the rights of national minorities)

In Georgia the rights of minorities are protected by article 38 of the new Constitution.

The Citizenship Act of the Republic of Georgia (art. 4) stipulates that "citizens of the Republic of Georgia are equal before the law irrespective of their origin, social status, property, race or nationality ..." etc.

Parliament is in the process of examining the National Minorities Bill drawn up jointly by the Committee for Human Rights and Ethnic Relations and the Centre for the Study of Ethnic Relations of the Georgian Academy of Sciences with the participation of representatives of the national minorities.

The Bill reflects the main elements of the conception of ethnic policy formulated by the Committee with the assistance of specialists in ethnic relations. It starts out from the position that the distinctive characteristics of national minorities are a valuable common asset and that their languages and culture are a natural condition of their individual and collective existence. At the same time, great significance is attached to upholding the unity and originality of national minorities and the general principles of citizenship.

It should be noted that in Georgia the conditions are propitious for implementing the principles of this Bill. For example, there are about 500 secondary schools in the Republic in which instruction is given in the Russian, Azerbaijani, Armenian and Ossetian languages. In a number of schools instruction can be given in Greek, Hebrew, Kurdish and other languages on an optional basis. In the State Pedagogical University specialists are trained to work in Russian, Armenian and Azerbaijani schools. Newspapers are published in the Armenian, Azerbaijani and Russian languages. In the capital there are two Russian State theatres and an Armenian theatre. There are also numerous amateur companies and national theatres (Greek, Kurdish, Azerbaijani, Ossetian, etc.).

Despite the very serious economic situation and the overstretched budget, all the minority cultural autonomy infrastructure (schools, cultural institutions, press, theatres) is being maintained and even expanded. For example, the Ministry of Education is considering the question of teaching the Chechen language in the Akhmet region where there are Chechen communities.

The crime situation is causing certain problems in relation to the observance of the rights of minorities. Representatives of national minorities are also, of course, among the victims of the criminal elements. For example, the Government has made a special study of the complaints and appeals of the representatives of the Azerbaijani minority concerning the attacks, robberies and extortion to which they have been subjected.

However, in their letters and complaints the victims themselves acknowledge the fact that all honest citizens of the Republic, whatever their nationality, suffer equally at the hands of criminals and unscrupulous officials.

The Government is paying close attention to the situation in the Kvarel region where Avar communities live. A considerable proportion of the Avar population of the region would like to return to Dagestan, their historical homeland, because the opportunities for land ownership there are better than in the Kvarel region where land is scarce. The Avar population is frightened of the unstable economic situation in the Republic. It also complains about the social and economic disorder in the villages in which it lives. The clashes with the local authorities during the Gamsakhurdia regime are fresh in its memory. With the assistance of the Government, certain appointments are being made and measures taken to improve the economic and social situation of the Avars.

In order to make the Georgian policy on behalf of minorities more effective, the Committee for Human Rights and Ethnic Relations has signed bilateral cooperation agreements with the corresponding organizations of the Russian Federation and Azerbaijan. An agreement with Armenia is being prepared.

The Head of State has set up a Consultative Council which includes prominent representatives of the national minorities.

The repatriation of the Meskhети deported in 1944 is receiving close attention. A repatriation service dealing directly with the problem of organizing the Meskhети has been established under the Cabinet of Ministers and a corresponding Declaration has been adopted.

An important contribution to the protection of minority rights was made by the Order of the Head of State No. 249 of 30 December 1994 concerning additional measures to introduce land reform in the border zone. Various minorities live in the zone and prior to this Order a number of important features of land reform did not extend to these regions. The restrictions on the allocation of new personal plots and on individual construction have now been removed.

In 1994, along with members of the indigenous population, tens of thousands of people belonging to the national minorities left Georgia. Unfortunately, owing to the shortcomings of the migration service and the lack of systematic information, the Government does not have any accurate statistics. However, the mass survey conducted by the Committee for Human Rights and Ethnic Relations, together with the Caucasian Institute for Peace, Democracy and Development, provides evidence of the emigration intentions of Russians, Armenians and Azerbaijanis and representatives of other national minorities.

According to 35 per cent of the Russian, 32 per cent of the Azerbaijani and 28 per cent of the Armenian, etc. respondents some family members have

already left to take up permanent residence abroad. For the Georgian respondents the corresponding figure is 10 per cent, which in absolute terms is very high.

At the same time, this burst of emigration is not attributable to discrimination, as follows from the results of the survey. Such reasons for departure as "negative attitude to minorities on the part of the authorities and population", "impossibility of satisfying linguistic and cultural needs", etc., which presuppose an element of discrimination, were not considered to be the most significant and could not compete with factors such as "fall in the standard of living", "lack of confidence in the future" and "crime".

The representatives of national minorities who replied considered the attitude of most of the population to be better than average (from 3.4 to 3.7 on a five-point scale).

The fact that such cultural and religious minorities as the Molokane and Dukhobors are on the point of disappearing from Georgia is causing the Government special concern. There has recently been a considerable exodus of the most able-bodied and well-off members of these communities to the Russian Federation. Surveys carried out by the Committee for Human Rights and Ethnic Relations among Molokane and Dukhobor communities in the villages of Ul'yanovka (Signakh raion), Krasnogorka (Sagaredzhoi raion) and Gorelovka, Spassovka and Orlovka (Ninotsmind raion) have shown that members of the community are leaving because of the deterioration of the economic situation in the Republic, and not because of any cultural or religious discrimination.

At the Committee's recommendation, Parliament is considering the questions of legislative consolidation of community ownership of the land and community self-government, which should lead to stabilization of the situation in these communities.

The situation of the Dukhobors will be improved by the issuing of Order No. 42 of the Head of State, dated 28 March 1995, "On improving the social conditions of the Dukhobor community", in which a number of ministries are given instructions concerning the adoption of emergency measures.

CONCLUSION

As is clear from the Report, the Republic of Georgia has the legislative basis necessary to implement the requirements of the Covenant and this legislation incorporates the most universal provisions of international law, including anti-discrimination provisions and provisions concerning the presumption of innocence, the non-retroactive effect of the law, etc. However, the situation with respect to the observance of the civil and political rights recognized in the Covenant is causing concern.

The main reasons for this concern are as follows:

(a) the economic crisis, which has led to a fall in the standard of living of broad segments of the population. Today, more than 80 per cent of

the population is living below the officially recognized poverty level. The social guarantees of the most vulnerable groups (children, the old, women, minorities) are best passed over in silence. The intelligentsia and the civil service can also justifiably be included in this category. Moreover, there are several hundred thousand refugees in the country;

(b) political instability associated with the existence of zones of ethno-political conflict embracing entire regions of the country and events akin to civil war; the loss of government jurisdiction over the conflict zones (Abkhazia, South Ossetia). The energy crisis and the paralysis of the communications system have weakened the State administration system, especially in the peripheral regions;

(c) the legal system has broken down into a motley collection of laws from the Soviet and post-Soviet periods. To this should be added an unprecedented increase in crime;

(d) the devotion to international standards of human rights is still rhetorical and is not confirmed by the actual practice of those who make and apply the law; the machinery for protecting human rights is inadequate at both governmental and non-governmental levels;

(e) the country lacks a system for informing people about human rights in general and the provisions of the Covenant in particular. Even those who work for the rights protection agencies have no clear idea of the universality of the provisions concerning human rights and basic freedoms or their duty to apply them.

The economic and political situation in the country is now tending to stabilize. This is creating favourable conditions for law reform. A new Constitution, in which the chapter on fundamental human rights and freedoms occupies a central position, has been adopted.

In order to put the provisions of the Covenant into practice and provide more effective protection for human rights and basic freedoms in Georgia, it will be necessary to carry out the following tasks:

- draw up and implement a republican programme to safeguard human rights and freedoms and the rights of citizens of the Republic in accordance with the provisions of the new Constitution;
- develop machinery for monitoring and assessing both the laws and regulations adopted and the actions of the authorities, to ensure that they are in keeping with the spirit and the letter of the Constitution and the Covenant;
- accelerate the process of judicial reform;
- take measures to reinforce and develop the State system and assist the non-governmental organizations dealing with problems of human rights;

- establish and perfect a non-departmental public system for monitoring the observance of human rights in the special services, the penitentiaries, the armed forces and other closed agencies of the State;
- review the existing legislation and other enactments for consistency with the provisions of the Constitution and the Covenant;
- make generally available the statistics on public morality and the degree of observance of human rights (data on crime, unemployment, the penitentiary system, the state of the family, the health of the population, etc.);
- establish a human rights education system which makes use of world experience and the possibilities offered by the specialized international organizations.

Chairman,
Committee for Human Rights and Ethnic Relations
of the Republic of Georgia

A. Kavsadze

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