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HUMAN RIGHTS COMMITTEE
Sixty-second session
23 March to 9 April 1998

VIEWS

Communications Nº 623/1995, 624/1995, 626/1995, 627/1995

Submitted by:	Victor P. Domukovsky, Zaza Tsiklauri, Petre Gelbakhiani and Irakli Dokvadze
Alleged victim:	The authors
State party:	Georgia
Date of communication:	22 and 23 December 1994 and 9 July 1995 (initial submissions)
Date of adoption of Views:	6 April 1998

On 6 April 1998, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communications No. 623/1995, 624/1995, 626/1995 and 627/1995. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX*

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- Sixty-second session -

concerning

Communications Nº 623/1995, 624/1995, 626/1995, 627/1995

Submitted by:	Victor P. Domukovsky, Zaza Tsiklauri, Petre Gelbakhiani and Irakli Dokvadze
Victim:	The authors
State party:	Georgia
Date of communication:	22 and 23 December 1994 and 9 July 1995(initial submissions)
Date of decision on admissibility:	5 July 1996

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 6 April 1998

Having concluded its consideration of communications No.623/1995, 624/1995, 626/1995, 627/1995 submitted to the Human Rights Committee on behalf of Messrs. Victor P. Domukovsky, Zaza Tsiklauri, Petre Gelbakhiani and Irakli Dokvadze, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

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*The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Ms. Christine Chanet, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr.Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communications are Victor P. Domukovsky, Zaza Tsiklauri, Petre Gelbakhiani and Irakli Dokvadze, three Georgian and one Russian national currently imprisoned in Georgia, the last two under sentence of death. They claim to be victims of violations of articles 7, 9, 10, 12, 14, 15, 19, 21 and 25 of the International Covenant on Civil and Political Rights by Georgia.

1.2 On 5 July 1996, the Committee decided to join the consideration of the communications.

The facts as submitted by the authors:

2.1 The author of the first communication (No. 623/1995), Mr. Domukhovsky, is a Russian national. On 5 October 1993, Mr. Domukovsky and 18 others were brought to trial before the Supreme Court of Georgia on charges of participating in terrorist acts with the aim of weakening the Government's power and of killing the Head of State, Mr. Shevardnadze. On 6 March 1995 Mr. Domukovsky was found guilty and sentenced to 14 years' imprisonment.

2.2 He states that, on 3 February 1993, the Government of Azerbaijan, where he had sought refuge, refused Georgia's request to extradite him and a co-defendant, Mr. P. Gelbakhiani. Thereupon, in April 1993, he was kidnapped from Azerbaijan and illegally arrested. In this context, he states that the President of Georgia has publicly praised the special services which performed the kidnapping as having carried out a splendid operation. The author states that he was beaten upon arrest and kept in detention from 6 April 1993 to 27 May 1993, after which he was transferred to solitary confinement at the KGB, until August 1993. He further claims that his arrest was illegal, because he was a deputy member of the Supreme Soviet of Georgia and as such protected by immunity.

2.3 On 13 August and 11 December 1994 he was severely beaten in his cell, as a result of which he sustained a concussion. He further claims, without giving any details, that he was forced to testify against himself.

2.4 The author states that, on 13 October 1993, his request to be given a copy of the indictment in his native Russian language was refused by the Court, contrary to the applicable legal rules. He further states that he was not given copies of all the material related to the charges against him. Furthermore, he alleges that the judge on several occasions prevented him from meeting with his legal representatives. In this context, he states that he had to apply to the judge for permission to see his lawyer. He claims that the failure to give him unhindered access to counsel violates article 14, paragraph 3 (b).

2.5 He complains that he was not allowed to say anything in Court, that he was removed from the courtroom without reason[1] and that he was judged in his absence and without defence counsel. In this context, he states that three lawyers were removed by the judge from the trial, and that his fourth lawyer was not

[1] From the enclosures, it appears that the author turned his back to the court out of protest against the irregular nature of the proceedings.

admitted by the judge to the trial. In these circumstances, the author states, he could not call any witnesses nor cross-examine witnesses against him.

2.6 He claims that the Courts in Georgia are not independent, but act in accordance with the orders of President Shevardnadze.

2.7 He claims that in violation of article 19 of the Covenant, he is being victimised for having different political views and for trying to express his views, and for defending the Georgian Constitution which was violated on 22 December 1991 by a change of political power. He denies being guilty of any violent acts.

2.8 As regards the exhaustion of domestic remedies, Mr. Domukovsky states that he appealed to the Chairman of the Supreme Court, to the judge who was in charge of his trial, to the Chairman of the State Commission on Human Rights, to the Minister of Internal Affairs and to the Chairman of the KGB, all to no avail. The judge allegedly told him that, since his trial was not a normal one, the law could not be followed. It is stated that no appeal from the judgment of the Supreme Court is possible.

3.1 The author of the second communication (No. 624/1995), Mr. Tsiklauri is a Georgian national born in 1961 and a physicist by profession. He was arrested on 7 August 1992, while visiting his brother who was a deputy of the Supreme Council and Prefect of the Kazbegi Region before the military coup of 1991-1992. He claims that he was arrested without a warrant. A year later he was shown a warrant, charging him with preparing a coup in July 1992, possession of fire arms and explosives, high treason and obstructing investigation. He denies these charges, which he claims fall under the State amnesty of 4 August 1992. He explains that the charges originate in the struggle of the supporters of President Gamsakhurdia against the regime which took power in December 1991 - January 1992, and did not become lawful before the 1992 October elections.

3.2 Mr. Tsiklauri claims that he was put under continuous psychological and physical pressure in order to find out his contacts with the former President, Zviad Gamsakhurdia. As a result of the treatment, he sustained severe injuries, a head concussion, loss of speech and motion, broken legs, broken ribs, open bleeding wounds, and burns caused by boiling water. He claims that as a result of the tortures, he signed an admission of guilt. He substantiates his allegations by enclosing several statements of witnesses testifying to the results of the tortures.

3.3 He claims that the trial against him and his co-accused was totally unfair and violated almost all articles of the Georgian Criminal Code. More precisely, he states that he was not given a copy of the indictment, nor of the other documents relating to the charges against him. He further states that he was refused a lawyer of his choice to represent him at the hearing, that he was not allowed to call witnesses for his defence, that he was banned from attending the trial, and that as a result he could not cross examine witnesses against him and not present a defence. On 6 March 1995 he was convicted and sentenced to 5 years' imprisonment.

4.1 The author of communication No. 626/1995 Mr. Gelbakhiani is a professor of medicine. A Georgian national, he was born in Tiblisi in 1962.

4.2 Mr. Gelbakhiani states that on 6 January 1992, the President of Georgia, elected by 87% of the population, was overthrown by a military coup, in violation of article 25 of the Covenant. Since then, the opposition has been severely repressed. Mr. Gelbakhiani claims that he was persecuted for his political views, in particular during meetings and rallies, in violation of article 19 of the Covenant, and that a meeting of doctors, of which he was the chairman, was dispersed on 7 May 1992, in violation of article 21. In these conditions, he chose to leave the country. In this context, he also invokes article 12 (2) of the Covenant.

4.3 He states that he had permission from the President of Azerbaijan and from the Minister of Internal Affairs to live in Baku, capital of Azerbaijan. On 6 April 1993, 30 well-armed men kidnapped him and Mr. Domukhovsky, and took them to Tbilisi, where they were physically and morally tortured, in order to extort evidence from them. He states that he spent 2 months in the detention ward, where prisoners can only be kept for 3 days.

4.4 While the case was before the Supreme Court, Mr. Shevardnadze, allegedly expressed himself in newspapers and on TV, ignoring the presumption of innocence, calling the defendants "killers" and "demanding death sentence", in violation of article 14 (2) of the Covenant.

4.5 The author also claims that there have been gross violations of the judicial code, in that only certain people were allowed to attend the trial. These people figured on a special list signed by the judge. This is said to constitute a violation of article 14 (1) of the Covenant.

4.6 Mr. Gelbakhiani claims that he was denied a fair trial. Several of his co-defendants did not have lawyers and were not authorised to study the case in their native language, thus hindering their defence. The author states that he did not have the possibility of studying the trial documents beforehand. Moreover, the judge assigned a lawyer for his defence, whom he had already refused.

4.7 The trial before the Supreme Court was stopped several times without objective reasons and lasted from 5 October 1993 until 6 March 1995.

4.8 At one stage he was banned from the courtroom and was subsequently tried in his absence. The main witnesses were not questioned in court and he was only confronted with very few witnesses. He claims that during the whole interrogation, moral and physical pressure were brought to bear on him in order to make him plead guilty and "confess".

4.9 On 6 March 1995, he was sentenced to death. He claims that his death sentence is in violation of article 15 of the Covenant, since the constitution in force at the time of the incident of which he was convicted prohibited the imposition of capital punishment.

5.1 The author of communication No. 627/1995, Mr. Dokvadze, is a Georgian citizen born in Tiblisi in 1961.

5.2 Mr. Dokvadze states that he was arrested on 3 September 1992 and that he was severely tortured, in violation of article 7 of the Covenant. During the investigation a confession was extorted from him, under the threat that his two

small daughters would be killed. The author states that he withdrew this confession at the trial.

5.3 Like some of his co-defendants, Mr. Dokvadze was removed from the courtroom and was subsequently absent from the proceedings. He claims that, like his co-defendants, he was denied a fair trial by an impartial and competent tribunal.

5.4 On 6 March 1995 he was sentenced to death.

The complaint

6. The authors contend that both their arrest and their detention were arbitrary and contrary to various provisions of article 9 of the Covenant. They complain of having been subjected to torture and ill-treatment, in violation of articles 7 and 10 of the Covenant. They further claim that the State party violated articles 19, 21 and 25 in their respect, because they were prevented from political activity and persecuted for their political ideas. As for the criminal proceedings against them, they contend that the trial was not impartial and that the presumption of innocence and the guarantees of a fair proceeding were violated. As to the two sentences of death, they allegedly entail a violation of the principle nulla poena sine lege in contravention of article 15 of the Covenant, and consequently also of article 6 of the Covenant.

The State party's information and authors' comments

7.1 The communications of Messrs Domukovsky and Tsiklauri were transmitted to the State party under rule 9l of the rules of procedure on 2 March 1995, requesting the State party to submit observations on the admissibility of the communications. At the same time the Committee requested the State party under rule 86 to stay the execution of any death sentence until the Committee had had an opportunity to examine the cases. The communications of Messrs Gelbekhiani and Dokvadze were transmitted under rules 86 and 91 of the rules of procedure on 10 March 1995.

7.2 Although the State party had been requested to submit its observations on admissibility, it only submitted, on 10 March 1996, information to the effect that on 6 March 1996 seventeen defendants in the criminal case No. 7493010 had received various sentences, including two who had been sentenced to death, Petre Gelbakhiani and Irakli Dokvadze. A list of convicted persons and sentences was included. With regard to death sentences in general, the State party indicated that these may be appealed to the Supreme Court, and that the execution of death sentences is deferred until the matter of pardon is examined by the Pardon Commission.

7.3 By letter of 23 March 1995 Mr. Tsiklauri informed the Committee that he was sentenced to 5 years of imprisonment in a colony of intensive regime and that his property had been confiscated. He alleged that he was tortured, that he is innocent, that the presumption of innocence was violated repeatedly during the trial, that he was not present at the trial, except on the last day to listen to the verdict, that he was denied the right to have a lawyer of his own choice, that he was unable to testify on his own behalf, that he was denied the right to interrogate witnesses. Mr. Tsiklauri's submission together with accompanying documents in substantiation of his allegations were forwarded to

the State party on ll May 1995, but no observations from the State party were received in spite of a reminder sent on 30 October 1995.

7.4 By letters of 17 March 1995 Dr. Petre Gelbakhiani and Irakli Dokvadze reiterated their innocence and sought the Committee's intercession. The submissions were transmitted to the State party on 16 May 1995. No reply was received from the State party.

The Committee's decision on admissibility

8.1 At its 57th session, the Committee examined the admissibility of the communication. It ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

8.2 The Committee noted with concern the absence of cooperation from the State party, in spite of the reminders that were addressed to it. On the basis of the information before it, the Committee found that it was not precluded from considering the communication under article 5, paragraph 2 (b) of the Optional Protocol.

8.3. On the basis of the submissions before it, the Committee observed that the authors had sufficiently substantiated, for purposes of admissibility, their allegations of violations of the Covenant by the State party, in particular, of articles 7, 9, 10, 14, 15, 19, 21 and 25, which should be examined on the merits.

9. On 5 July 1996, the Human Rights Committee therefore decided that the communication was admissible. It requested the State party, under rule 86 of the rules of procedure, not to carry out the death sentence against Messrs. Dokvadze and Gelbakhiani while their communication was under consideration by the Committee.

State party's submission concerning the merits of the communication and the authors' comments

10.1 By submission of 21 February 1997, the State party provides observations concerning the merits of the communication.

The case of Mr. Viktor P. Domukovsky

10.2 With regard to Mr. Domukovsky, the State party explains that he was sentenced to fourteen years' imprisonment, for banditry, preparation of terrorist acts and diversionary acts for the purpose of weakening the Republic of Georgia.

10.3 The State party submits that Mr. Domukovsky and Mr. Gelbakhiani were legally detained in Azerbaijan by virtue of an agreement between the relevant Georgian and Azerbaijan ministries, which provides for the tracing and detention of suspects who go into hiding in either State. They were detained, on 6 April 1993, on the basis of an arrest warrant, issued by the Government prosecutor on 30 September 1992.

10.4 The State party denies that Mr. Domukovsky enjoyed parliamentary immunity at the time of his arrest. It explains that a newly elected Parliament was in office at the time he was detained, and as a member of the former Supreme Soviet he no longer enjoyed immunity.

10.5 The State party submits that Mr. Domukovsky's claims of physical violence and mental duress during the preliminary investigation were not substantiated in judicial examination. The Court came to its conclusion because neither the accused nor his counsel - in whose presence he was interrogated - made any mention of such violence. Moreover, the case files assembled by the investigation team also contained records in which Mr. Domukovsky denied responsibility for a number of incidents. The Court concluded that this would not have occurred if the investigation had been conducted unfairly.

10.6 Concerning the incident of 13 August 1995, the State party submits that, upon a statement from Mr. Domukovsky to the court on 15 August, the medical service at the remand block was instructed to examine him. He was examined on 17 August. According to the record of the examination[2], his body bore no more marks of injury and his health was found to be satisfactory. It was not substantiated that he had been beaten.

10.7 With regard to the failure of the Court to provide Mr. Domukovsky with an indictment in Russian, the State party explains that the court established that Mr. Domukovsky had a perfect command of Georgian. In this context, it is submitted that he gave evidence in Georgian during the preliminary investigations and did not ask for an interpreter. According to the State party, Mr. Domukovsky read over the depositions in Georgian and signed them as accurate, drew up his own statements in Georgian and stated in the records that Georgian was his native language. In the light of the above, the Court considered his demand for an indictment in Russian to be a delaying tactic.

10.8 The State party submits that after the preliminary investigation, Mr. Domukovsky and his counsel went over all the material assembled. In none of their applications they asked to be granted access to additional material nor claimed that they had not been provided with all the material. Before the beginning of the trial, Mr. Domukovsky requested an opportunity to go over the files once more. This request was granted by the court. It is submitted that Mr. Domukovsky studied the files from 13 October 1993 to 6 January 1994.

10.9 The State party submits that Mr. Domukovsky and his co-accused had an unrestricted right to defence throughout the preliminary investigation and the judicial enquiry. They were afforded the opportunity to select their own counsel. For this purpose, the court summoned members of the defendants' families and gave them an opportunity to meet with the defendants repeatedly in order to decide on the lawyers which they wanted to call in.

10.10 The State party submits that one of the objectives of the defendants was to delay the consideration of the case and to disrupt the procedures of the court. It explains that, after Domukovsky's counsel had withdrawn from the

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[2]As paraphrased by the State party. No copy of the record has been provided.

case, he and his family were allowed the time prescribed by law to find a new lawyer. Since they had not appointed anyone once the time expired, the Court appointed a lawyer, who was given a month and a half to acquaint himself with the case. During this period proceedings were suspended. When the trial resumed, Domukovsky rejected this lawyer, according to the State party without valid grounds, and threatened him. The counsel then withdrew, after which the court decided that he had abused his right to defence and the case was concluded without counsel for Domukovsky in attendance.

10.11 The State party explains that Mr. Domukovsky and other of the accused regularly disrupted the proceedings during the judicial hearings, showing disrespect to the court, ignoring the instructions from the chairman and preventing the court to go about its normal work. The State party submits that they turned their backs to the court, resisted the military guards, fled from the courtroom to the cells and whistled. On one occasion, Mr. Domukovsky leapt over the bar into the courtroom and grabbed a guard's automatic weapon. The State party concludes that this was sufficient reason for the Court to continue the examination of the case in the absence of the defendants as permitted under article 262 of the Georgian Code of Criminal Procedure. The State party points out that the court allowed the defendants back in after a period of time, but they continued disrupting the procedures, following which they were again removed.

10.12 The State party rejects the suggestion by Mr. Domukovsky that the courts in Georgia are not independent and states that they are subordinate to the law alone. It further rejects his claim that he was convicted for his political opinions and emphasizes that he was convicted for having committed criminal offences.

10.13 The State party explains that serious criminal cases, in which the death penalty can be imposed, are under Georgian legislation judged by the Supreme Court. The sentences pronounced by the Supreme Court are not subject to appeal by cassation, but the law provides for a judicial review. Upon review, the conviction and sentence of Mr. Domukovsky and his codefendants was found to be lawful and legitimate.

11.1 In his comments on the State party's submission, counsel for Mr. Domukovsky states that he requested the Ministry of Internal Affairs in Azerbaijan whether they had any trace of an authorisation for the arrest and detention of Mr. Domukovsky and Mr. Gelbakhiani. He joins the reply from the Ministry, dated 7 July 1995, in which the chief of the department of criminal prosecution states that he does not know about the case. Counsel argues that if it were true that Mr. Domukovsky and Mr. Gelbakhiani were arrested on the basis of a bilateral agreement between Azerbaijan and Georgia, it would be logical that the Azerbaijan ministry would have records of such an undertaking. In the absence of such record, counsel argues that Mr. Domukovsky and Mr. Gelbakhiani were arrested in violation of article 9 of the Covenant.

11.2 Counsel maintains that Mr. Domukovsky's arrest was in violation of his parliamentary immunity. He denies that the elections of 11 October 1992 were free and democratic. He further states that, even if the elections were accepted as lawful, the arrest warrant against Mr. Domukovsky was issued before the elections took place, on 30 September 1992, and that in those circumstances it was unlawful to issue the warrant without the agreement of the Supreme

Soviet to lift his immunity. Counsel argues that Mr. Domukovsky's arrest was thus in violation of article 25 of the Covenant.

11.3 With regard to the beatings and psychological pressure to which Mr. Domukovsky and other accused were subjected, counsel argues that it was not possible to make any written statements, because it would not have been allowed, because these statements would have to be addressed to officials involved in the beatings, and because the accused were worried about their families and tried to protect them by keeping silent. Counsel maintains that Mr. Domukovsky was kept in preventive detention from 7 April to 28 May 1993, whereas such detention is only lawful for three days. He was kept in complete isolation and could not see his lawyer. Only after he began a hunger strike on 25 May, was he transferred to a detention block, on 28 May 1993, in a KGB prison. He was put under constant psychological and physical pressure and they threatened to detain his family. He finally consented to plead guilty in the Kvareli case, if they would prove to him that his family was alive and well. Counsel further submits that it is an old trick to make the accused deny certain charges to make the records of interrogation more believable.

11.4 With regard to the incident of 13 August 1995, counsel submits that many of those present in court on 15 August had seen that Mr. Domukovsky had been beaten. According to counsel, a journalist made a video, but a day later he said that he didn't have it. Counsel further states that the judge was initially unwilling to order a medical examination and that it was thanks to Mr. Domukovsky's wife, who at that time acted as his legal counsel, that a medical examination was finally held on 15 August 1995. According to counsel, the examination showed haematomas on the elbow and right shoulder and apparently he should have been prescribed bed rest for ten days because of a concussion. According to counsel, however, the latter was not mentioned in the medical report.

11.5 Counsel points out that the State party did not address the second incident of 11 December 1994. Counsel refers to an incident (date of which unclear) when the judge spoke to the doctors before and after they examined Mr. Domukovsky, and when they took a cardiogram, apparently with the left electrode not well attached. According to counsel they found rests of the symptoms of the disease of Babinski. Counsel reiterates that the accused had no way of protesting but that they tried nevertheless.

11.6 Counsel states that he is in possession of certificates which attest that Mr. Domukovsky finished his studies at the university of Tbilisi in Russian, and that he conducted research at the Science Academy of Georgia, also in Russian. He points out that in the records of the interrogation of 12 April 1993, it is stated that it was explained to him that he had the right to testify in his mother tongue and to have the services of an interpreter. He was then made to sign a statement in which he said that he spoke the Georgian language well, and that he needed an interpreter. According to counsel, the interrogators were so happy that he had filled out that he spoke the language well, that they overlooked that he had failed to put down the word 'not' with regard to the need for an interpreter. In this context, counsel also points out that Mr. Domukovsky always tried to sign in both Georgian and Russian, by way of protest. Counsel states that his lawyer at the preliminary investigations was Georgian of origin and thus had no problem reading the file.

11.7 With regard to the access to the files, counsel explains that in the beginning it was not clear to Domukovsky that he would be judged with 18 others, and moreover, the trial in the Kvareli case was not yet over. Counsel explains that Domukovsky was also charged in the Kvareli case, and that in that case all accused had disavowed their statements made during the preliminary hearings. According to counsel, the accused' statements made in public session of the court, were not made available to Domukovsky nor to his lawyer. Counsel confirms that Mr. Domukovsky had knowledge of the files as from 13 October, but states that he went on hunger strike between 18 and 25 November in order to get access to the main case.

11.8 Concerning the access to his legal representatives, counsel states that this right was severely limited, while he was held first in preventive detention and then in the KGB prison, and that during that period his counsel could not visit him without the procurator being present.

11.9 Counsel denies that Mr. Domukovsky has disrupted the trial proceedings, but states that he participated in passive protest by turning his back to the judge. Counsel submits that there was no other way to show his disagreement with the trial, since no statement had been accepted by the judge. Counsel explains that when Mr. Domukovsky jumped over the barrier, he had been provoked by the vulgar words of the judge. Besides, he was not removed at that time. Counsel states that the judge did not let the accused return to the court room out of his free will, but that he was forced to do so by a hunger strike of 64 days, from 13 January to 17 March 1994. Counsel states that Mr. Domukovsky still suffers from health consequences of the hunger strike.

11.10 On 13 September 1994, Mr. Domukovsky was once more excluded from the trial, when he questioned the removal of his lawyer. In this context, counsel explains that the judge was influenced by the political situation in the country, and that he delayed the trial in the beginning for political reasons. According to counsel, it could never be in the interests of the accused to delay the trial.

11.11 It is stated that, for reasons independent of him, Mr. Domukovsky found himself without lawyer on 6 June 1994. He was given ten days to find himself a new lawyer, but after eight days already the judge assigned a lawyer to him. When he asked whether Domukovsky approved, he said that he could not say since he didn't know him. Counsel denies the affirmation of the State party that Domukovsky agreed to the appointment of this lawyer. It is stated that the lawyer visited Domukovsky only twice, and that on both occasions he was drunk. On 15 August, Mr. Domukovsky then informed the judge that he could not approve of him as his lawyer if he would not visit him more often to get acquainted with the case. The lawyer not having visited him, Mr. Domukovsky then withdrew his approval. Counsel states that Mr. Domkukovsky's wife was unlawfully removed as his legal representative by the judge on 12 September 1994, because she demanded a medical examination. On 13 September 1994, Mr. Domukovsky was excluded from attending the hearing. On 19 September, Domukovsky appointed a new counsel, who had followed the trial from the beginning as representative of one of the other accused. However, the judge refused to accept his appointment and on 24 September 1994 decided that Domukovsky would stay without a defense lawyer.

11.12 Counsel maintains that president Shevarnadze has influenced the courts in a newspaper interview on 29 November, in which he said that the accused had committed acts of terrorism. Moreover, it is stated that the judge had ordered to make lists of everyone who attended the trial. The political character of the trial is also borne out, according to counsel, by the judgement in the case, where it is said that the representatives of the old power and enemies of the present power organised armed troops to commit crimes against the State. Counsel maintains that there was not enough evidence to convict Domukovsky for banditry.

11.13 Concerning the judicial review, counsel seems to suggest that Mr. Domukovsky still has not received a reply on his request for review by the Supreme Court.

The case of Mr. Zaza S. Tsiklauri

12.1 The State party explains that Mr. Tsiklauri was convicted of illegally carrying fire arms and storing explosives. He was sentenced to five years' imprisonment.

12.2 The State party submits that a warrant for Tsiklauri's arrest was issued on 1 August 1993, and he was arrested on 7 August 1993. According to the State party, he was not covered by the declaration of amnesty of the State Council, since that only applied to those involved in the assault on and occupation of the Georgian Radio and Television building in Tbilisi on 24 June 1992.

12.3 The State party submits that the court did not accept Tsiklauri's claim that he had been subjected to physical and mental duress during the preliminary investigation, since neither Tsiklauri nor his lawyer had mentioned this during the investigations. The interrogations were conducted in the presence of a lawyer and Tsiklauri wrote his confessions in his own hand and signed the records of the interrogations as adequate. Furthermore, the State party submits that during his detention Tsiklauri was visited by representatives of international organizations, to whom he did not affirm that he had been put under any kind of pressure. Moreover, the Prosecutor instituted criminal proceedings in connection with Tsiklauri's injuries and a full inquiry was held, but the case had to be dropped for lack of evidence. According to the State party, it was established that he had leaped from a vehicle that had transported him.

12.4 The State party submits that Mr. Tsiklauri was given a copy of the indictment in accordance with the law. Once the preliminary investigation was over, Tsiklauri and the other accused, together with their lawyers went over the files. The State party notes that the applications submitted did not mention the need to consult additional material. Before the trial, Tsiklauri requested to consult the case files, and the court agreed and made files and records such as were available at the time accessible from 13 October 1993 to 6 January 1994. Trial proceedings were suspended for this period.

12.5 The State party maintains that Tsiklauri enjoyed an unrestricted right to defence throughout the preliminary investigation and the judicial enquiry. He was afforded the opportunity to select his own counsel. Mr. Tsiklauri chose to be defended by T. Nizharadze, from 21 September 1992 onwards. On 6 January

1994, he requested that his wife, N. Natsvlishvili, be admitted as additional defence counsel and be allowed to consult the case files. The court, considering this a deliberate attempt to delay the trial, denied the application and the trial continued with Nizharadze as defence counsel.

12.6 With regard to Tsiklauri's claim that the trial was held in his absence, the State party refers to its explanations in the case of Mr. Domukovsky (see para. 10.11)

13.1 In his comments on the State party's submission, Mr. Tsiklauri states that on 7 August 1992, he was taken from his mother's flat to the KGB for 'conversation'. His family was not informed of his whereabouts. On 17 August 1992, the head of the KGB, Mr. Batiashvili, appeared on national television and announced his resignation, because of the maltreatment of Tsiklauri.

13.2 Mr. Tsiklauri maintains that he saw his arrest warrant only a year after his arrest when the preliminary investigation was coming to an end and he was handed the materials of his case. He claims that the information in the warrant, which was dated 1 August 1992, such as date of birth, address and marital status, did not coincide with the real state of affairs. He further states that the warrant was for actively participating in preparation of the military coup of 24 June 1992, and for keeping weapons and explosive materials. He states that, according to the material in the case file, the official charges against him date from 20 August 1992, and do not correspond to those mentioned in the warrant.

13.3 He maintains that the crimes he was charged with, of which he denies any knowledge, were covered by the amnesty of 3 August 1992, which read, according to him:" ...#10. Proceeding from the supreme interests of unity and concord, persons who have taken part in the actions against the authorities of the Georgian republic since January 6 of the current year shall be freed from criminal charges as long as they have not committed serious crimes against peaceful population... #12. The participants of the adventurist coup attempt on 24 July 1992 shall be exempted from criminal charges committed by them against the country and people." Mr. Tsiklauri thus confirms that the charges against him were covered by the amnesty.

13.4 Mr. Tsiklauri denies that his injuries were caused by falling out of a car. He states that the investigation into the cause of the injuries was done by the same people who were investigating the criminal charges against him. He denies that he ever tried to escape by jumping off a car, and states that it is a lie that he burned a third of his body by dropping hot tea he was drinking. He further states that this could easily have been established if there would have been a court hearing into his case.

13.5 Mr. Tsiklauri further states that, with exception of the confessions as a result of torture, all testimonies given during the presence of his lawyer deny guilt of the charges. He states that the court never bothered to check whether the testimonies in the preliminary investigation were indeed given by him. He further explains that, because he was not allowed to be present during the court hearings, he was unable to give testimony, interrogate witnesses and present the proofs of his innocence.

13.6 He further challenges the State party's remark that he has never told representatives of international organizations that he was subjected to torture. He states that he made statements in court, and also to Human Rights Watch/Helsinki and British Helsinki Human Rights Group. He further refers to a report on torture in Georgia and Batiashvili's statement on national television of 17 August 1992, plus a newspaper article of 27 August 1992 and an interview with the British Human Rights Helsinki Group. Mr. Tsiklauri also refers to his statement to the medical expert on 18 August 1992, which is apparently reflected in the case file, that he was severely beaten by unknown people on 7 August 1992. He further refers to a letter from the KGB to the Prosecutor's Office, in which the KGB states that the statement made by Batiashvili on August 17 was based on a meeting that same day with Tsiklauri in the preliminary detention cell when Tsiklauri claimed that he had been beaten and then tortured by unknown people with boiling water. He also refers to testimonies given during the court hearings by Gedevan Gelbakhiani, Gela Mechedilishvili and Gia Khakhviashvili, all attesting to the fact that he was tortured.

13.7 Mr. Tsiklauri states that after the appearance of the KGB boss on television, a Special Commission was formed to investigate. He states that his state of health was serious, that he had multiple bone fractures, and that he had partially lost speech. He adds that he was not transferred to the prison hospital until he had signed false testimonies. Afterwards, during one of the regular interrogations in presence of his lawyer, he denied the statements that he had given under torture.

13.8 Mr. Tsiklauri maintains that he did not have access to all the materials in the case.

13.9 Mr. Tsiklauri states that he was left without a defence at the beginning of his detention, and that only in October 1992, he managed to hire a lawyer. On 22 March 1994, he requested the court to allow his wife, Nino Natvlishvili, to become his legal representative at the hearing. This was rejected by the court, because she would need additional time to get acquainted with the materials of the case which would delay the trial. When Tsiklauri said that no additional time was needed, the Court still refused to accede to his demand. On 4 April 1994, the lawyer Nizharadze, who was told by the court to continue the defence of Mr. Tsiklauri, put a motion asking to be released from his duty to defend Tsiklauri, since the agreement between him and the defendant had been annulled. The Court refused, according to the author in violation of the law, and the lawyer told the court that he could not defend him against his will. Then the judge wrote to the Bar Society, informing them that he had refused the order of the court to take up the defence of Tsiklauri. He was subsequently expelled from the Bar, with the consequence that he can no longer practice as a lawyer. On 8 July 1994, the court appointed a new lawyer, Mr. G. Kapanadze, whom was given until 29 July to study the files. Although not refusing the assignment, the lawyer publicly spoke about the lack of trust of Tsiklauri in him, and that by consequence, he was in fact left without defense. He made it clear that he was not refusing out of fear to be dismissed. On 9 February 1995, the lawyer stated in court that the accused did not want him as his lawyer, that he had no contact with him, and that he had a right to choose his counsel himself and to refuse an advocate even at this stage of the proceedings. He

stated that the decision of the court to refuse him the lawyer of his own choice violated his rights.

13.10 In this connection, Mr. Tsiklauri states that it was the Court itself that was delaying the trial, whereas the defendants were demanding a timely trial. According to him, the judge did not consider any of the defendants' lawful demands, created stressful situations and violated the law openly. The judge is alleged to have said that the law was written for normal court hearings, not for abnormal ones. It is alleged that the courts in Georgia are not independent but subordinate to the government. In this context, reference is made to statements by the president of the Supreme Court in Georgia.

13.11 Mr. Tsiklauri states that he never violated any court order during the trial and that there was no reason to send him away. He states that the judge did not want him present because he did not want to satisfy his lawful demands. He states that the incident when they all turned their backs to the judge happened when the judge had decided to send one of the defendants out of the court room, since he had requested special assistance because he was suffering from impaired hearing caused by torture. All the defendants were then removed by the judge. After three months they were again allowed to follow the hearing in court, but the judge continued to deny lawful requests from the defendants. Mr. Tsiklauri states that he was then removed from court for a 'cynical smile'. He was not allowed back in, and therefore had no opportunity to defend himself.

The case of Mr. Petre G. Gelbakhiani

14.1 The State party submits that Mr. Gelbakhiani was convicted of banditry, preparation of terrorist acts, preparation of diversionary acts for the purpose of weakening the Republic of Georgia, and of the wilful murder of several individuals and of attempted murder in aggravating circumstances. He was sentenced to death. On 25 July 1997, his sentence was commuted to 20 years' imprisonment.

14.2 The State party rejects Mr. Gelbakhiani's claim that he was convicted for his political opinions and emphasizes that he was convicted for having committed criminal offences.

14.3 The State party reiterates that Mr. Gelbakhiani and Mr. Domukovsky were arrested in Azerbaijan by virtue of an agreement between Georgia and Azerbaijan. A warrant for the arrest of Mr. Gelbakhiani was issued by the Government Prosecutor on 30 September 1992. He was arrested on 6 April 1993.

14.4 That Mr. Gelbakhiani was subjected to mental and physical duress during the preliminary investigation was not substantiated according to the State party.

14.5 As the review procedure, it was established that no breaches of procedure had occurred during the preliminary investigation or judicial inquiry.

14.6 The State party explains that the trial took place in public and that entry to the court room and attendance was restricted only when there was not enough room for all who wished to be present.

14.7 The State party maintains that Mr. Gelbakhiani was given a copy of the charges against him, in full compliance with the law. Once the preliminary investigation was over, he and the other accused, together with their lawyers went over the files. The State party notes that the applications submitted did not mention the need to consult additional material. Before the trial, Gelbakhiani requested to consult the case files, and the court agreed and made files and records such as were available at the time accessible from 13 October 1993 to 6 January 1994. Trial proceedings were suspended for this period.

14.8 The State party maintains that Mr. Gelbakhiani enjoyed an unrestricted right to defence throughout the preliminary investigation and the judicial enquiry. He was afforded the opportunity to select his own counsel. For this purpose, the court gave him an opportunity to meet with members of his family in order to decide on the lawyers which he wanted to call in. Mr. Gelbakhiani chose to be defended by I. Konstantinidi, from 24 September 1993 onwards. This lawyer had also defended him during the preliminary investigations. On 16 February 1994, Konstantinidi applied to the court to be released from the case, but the court refused, considering that the application was an attempt to delay proceedings.

14.9 In this context, the State party points out that the trial lasted a year and five months, but that only during six months, the court was considering the case. The rest of the time, consideration was delayed because of the unwarranted applications from the defendants.

14.10 With regard to Gelbakhiani's claim that the trial was held in his absence, the State party refers to its explanations in the case of Mr. Domukovsky (see para. 10.11)

14.11 Concerning the legitimacy of the death sentence, the State party explains that the Declaration of the Supreme Soviet of the Republic of Georgia of 21 February 1992 recognized the supremacy of the Constitution of Democratic Georgia of 21 February 1921 and laid down the procedure for its application with due regard for present-day conditions. In accordance with the first paragraph of the Order adopted by the State Council on 24 February 1992, the legislation existing at that time was to apply in the Republic of Georgia until current legislation had been brought into line with the principles of the Georgian constitution. Moreover, on 11 June 1992, the State Council passed an order, explaining that the existing legislation, including the system of punishments laid down in the criminal Code - which provides for the death penalty - was in effect in the territory of the Republic of Georgia. The State party argues therefore that Gelbakhiani's claim that the death sentence passed on him violated the constitution in force at the time is unfounded.

15.1 In his comments, Mr. Gelbakhiani explains that he left Georgia because of his political opinions, and that he received permission to live in Azerbaijan. On 6 April 1993, thirty armed persons surrounded his house and kidnapped him and Mr. Domukovsky. He states that no arrest warrant was produced and that he was moved to Georgia illegally.

15.2 He maintains that he was beaten upon his arrest and that he still has scars on his face. During interrogation, he was put under psychological pressure, and the interrogators threatened the members of his family. He states

that he was kept in the detention ward for two months, whereas according to the law the maximum time in such detention is three days.

15.3 He states that the principles of due process were violated during his trial, and that ordinary citizens were not allowed to attend the trial. He further states that the presumption of innocence was violated, since the president of the Republic called the accused killers and demanded the death penalty.

15.4 He further reiterates that he was denied access to the documents in the so-called Kvareli case, which initially was to be tried together with his case, but had been separated from it.

15.5 On 28 January 1994, Mr. Gelbakhiani decided to abolish the agreement with his lawyer, because of the disturbed working relations with the court. The agreement was abolished on 28 January 1994. However, the Court did not accede to the request, and on 16 February 1994, appointed the same lawyer again. When the lawyer protested, the Bar Association confirmed the court's decision, on 21 February 1994. Mr. Gelbakhiani argues that, since he was defended by a lawyer whom he had dismissed before, he had been denied free choice of counsel and was in fact left without a lawyer.

15.6 According to Mr. Gelbakhiani, on 25 February 1992 the 1921 Constitution was restored, according to which the death penalty was abolished. This remained the legal situation until 17 June 1992. Since the incident of which he was convicted took place on 14 June 1992, the death penalty cannot legally be applied to his case.

The case of Mr. Irakli Dokvadze

16.1 The State party explains that Mr. Dokvadze was convicted of banditry, preparation of terrorist acts, preparation of diversionary acts for the purpose of weakening the Republic of Georgia, and of the wilful murder of several individuals and of attempted murder in aggravating circumstances. He was sentenced to death. On 25 July 1997, his sentence was commuted to 20 years' imprisonment.

16.2 The State party submits that Mr. Dokvadze's claim that he had given evidence under physical and mental duress was not substantiated during the judicial examination of the case. The State party explains that throughout the preliminary investigation, Mr. Dokvadze made no mention of torture or psychological pressure being inflicted on him although he repeatedly had meetings alone with his lawyer and thus had the opportunity to appeal to the authorities or to the international human rights organizations whose representatives he also met. The State party submits that on 8 September 1992, he was interviewed on television and acknowledged his crimes. Further, during the preliminary investigation he was interrogated in the presence of a lawyer and he wrote out his confessions himself, read the reports of the interrogations, added comments and signed the testimony given as accurate. On this basis, the court found that the claim that violence had been used against him, was not borne out by the facts.

16.3 With regard to the claim that the trial was held in his absence, the State party refers to its explanations in the case of Mr. Domukovsky (see para. 10.11).

17. No comments have been received from Mr. Dokvadze, despite a reminder sent on 20 November 1997.

Issues and proceedings before the Committee

18.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

18.2 With regard to the claim made by Mr. Domukovsky and Mr. Gelbakhiani that they were illegally arrested when residing in Azerbaijan, the Committee notes that the State party has submitted that they were arrested following an agreement with the Azerbaijan authorities on cooperation in criminal matters. The State party has provided no specific information about the agreement, nor has it explained how the agreement was applied to the instant case. Counsel for Mr. Domukovsky, however, has produced a letter from the Azerbaijan Ministry of Internal Affairs to the effect that it was not aware of any request for their arrest. In the absence of a more specific explanation from the State party of the legal basis of their arrest in Azerbaijan, the Committee considers that due weight should be given to the authors' detailed allegations and finds that their arrest was unlawful in violation of article 9, paragraph 1, of the Covenant.

18.3 In the circumstances, the Committee need not address the question whether Mr. Domukovsky's arrest was also illegal because of his claimed parliamentary immunity or that it violated article 25 of the Covenant.

18.4 Mr. Tsiklauri has claimed that he was arrested illegally in August 1992 without a warrant and that he was not shown a warrant for his arrest until after he had been in detention for a year. The State party has denied this allegation, stating that he was arrested in August 1993, but it does not address the claim in detail or provide any records. In the absence of information provided by the State party as to when the arrest warrant was presented to Mr. Tsiklauri and when he was first formally charged, and in the absence of an answer to the author’s claim that he had been in custody for one year before the warrant was issued, the Committee considers that due weight must be given to the author's allegation. Consequently, the Committee finds that article 9, paragraph 2, has been violated in Mr. Tsiklauri's case.

18.5 With respect to Mr. Tsiklauri's claim that the charges against him were covered by the amnesty decree of 3 August 1992, the Committee considers that the information before it does not enable it to make any conclusions in this respect and finds that the author’s claim has not been substantiated.

18.6 Each of the authors have claimed that they have been subjected to torture and ill-treatment, including severe beatings and physical and moral pressure, which in the case of Domukovsky, caused concussion, in the case of Tsiklauri, caused concussion, broken bones, wounding and burning, in the case of Gelbekhiani caused scarring, and in the case of Dokvadze, involved both torture

and threats to his family. The State party has denied that torture has taken place, and stated that the judicial examination found that the claims were unsubstantiated. It has however, not indicated how the court has investigated the allegations, nor has it provided copies of the medical reports in this respect. In particular, with regard to the claim made by Mr. Tsiklauri, the State party has failed to address the allegation, simply referring to an investigation which allegedly showed that he had jumped from a moving vehicle and that he had spilled hot tea over himself. No copy of the investigation report has been handed to the Committee, and Mr. Tsiklauri has contested the outcome of the investigation, which according to him was conducted by police officers without a court hearing ever having been held. In the circumstances, the Committee considers that the facts before it show that the authors were subjected to torture and to cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

18.7 The Committee has taken note of Mr. Domukovsky's claim that he did not receive a copy of the indictment in Russian and that he was denied the services of an interpreter, whereas he is Russian of nationality, not Georgian. The State party has submitted that the court found that the author's knowledge of the Georgian language was excellent. Moreover, the author is said to have given his statements in Georgian. The author's counsel has submitted that he did his studies and research in Russian, but has not shown that he did not have sufficient knowledge of Georgian. In the circumstances, the Committee finds that the information before it does not show that Mr. Domukovsky's right under article 14, paragraph 3(f), to have the free assistance of an interpreter if he cannot speak or understand the language used in court, has been violated.

18.8 With regard to the question whether the authors had access to all the materials in the trial against them, the Committee notes that the information before it is inconclusive. The Committee finds that the authors' claim has not been substantiated.

18.9 The Committee notes that it is uncontested that the authors were forced to be absent during long periods of the trial, and that Mr. Domukovsky was unrepresented for part of the trial, whereas both Mr. Tsiklauri and Mr. Gelbakhiani were represented by lawyers whose services they had refused, and were not allowed to conduct their own defence or to be represented by lawyers of their choice. The Committee affirms that at a trial in which the death penalty can be imposed, which was the situation for each author, the right to a defence is inalienable and should be adhered to at every instance and without exception. This entails the right to be tried in one's presence, to be defended by counsel of one's own choosing, and not to be forced to accept ex-officio counsel[3]. In the instant case, the State party has not shown that it took all reasonable measures to ensure the authors' continued presence at the trial, despite their alleged disruptive behaviour. Nor did the State party ensure that each of the authors was at all times defended by a lawyer of his own choosing. Accordingly, the Committee concludes that the facts in the instant case disclose a violation of article 14, paragraph 3(d), in respect of each author.

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[3]See Committee's Views in inter alia communications Nos. 52/1979, Sadías de Lopez v. Uruguay, adopted on 29 July 1981, 74/1980, Estrella v. Uruguay, adopted on 29 March 1983. See also 232/1987, Pinto v. Trinidad & Tobago, Views adopted on 20 July 1990.

18.10 Mr. Gelbakhiani has claimed that the death penalty against him and Mr. Dokvadze was unlawful, because the constitution in force at the time when the crimes were committed did not allow the death penalty. The State party has argued that by decree of the State Council this part of the constitution was not applicable and that the death penalty remained in force. The Committee expresses its concern that basic rights, laid down in the Constitution, would have been abrogated by decree of the State Council. However, in view of the lack of precise information before it and in view of the commutation of the death sentence against the authors, the Committee need not consider whether the imposition of the death penalty in the instant case was indeed unlawful for the reasons forwarded by the authors. The Committee recalls, however, that the imposition of a death sentence upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant.

18.11 The Committee notes from the information before it that the authors could not appeal their conviction and sentence, but that the law provides only for a judicial review, which apparently takes place without a hearing and is on matters of law only. The Committee is of the opinion that this kind of review falls short of the requirements of article 14, paragraph 5, of the Covenant, for a full evaluation of the evidence and the conduct of the trial and, consequently, that there was a violation of this provision in respect of each author.

18.12 The Committee finds that the authors' claims that they were denied a public trial, that the presumption of innocence was violated in their case, that the courts were not impartial and that they were prosecuted in violation of their right to freedom of opinion and expression and that their freedom of association was violated, have not been substantiated.

19. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 7, 10, paragraph 1, and 14, paragraphs 3 (d) and 5, of the International Covenant on Civil and Political Rights, in respect of each author, and also a violation of article 9, paragraph 1, in respect of Mr. Domukovsky and Mr. Gelbekhiani, and of article 9, paragraph 2, in respect of Mr. Tsiklauri.

20. The Committee is of the view that the authors are entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy, including their release. The State party is under an obligation to ensure that similar violations do not occur in the future.

21. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from

the State party, within ninety days, information about the measures taken to give effect to the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committeee’s annual report to the General Assembly.]