

## GEORGIA 1995: Case No. 7493810

*On January 29th, 1995, 17 men were found guilty of a variety of serious crimes by the Supreme Court in Tbilisi, Georgia. The case was put back for sentencing to March 6th, 1995. In his summing up, prosecution counsel asked for a variety of severe punishments to be imposed on the convicted prisoners, including the death sentence for two of the defendants, Petre Gelbakhiani and Irakli Dokvadze. The following 1995 report was the first detailed account published in the United Kingdom about this trial, which has become a byword for human rights violations and the abuse of due process. Central to its contents are the findings made by two British doctors during a visit to Georgia undertaken on behalf of this organization.*

### POLITICAL BACKGROUND

The background to the case is Georgia's violent history since the coup of December 1991. In the first free elections to the USSR Supreme Soviet and the Supreme Soviets of the republics, the umbrella-bloc led by former dissident Zviad Gamsakhurdia won 54% of the vote. In May 1991, Gamsakhurdia won presidential elections with 86.5% of the vote in a three-sided race. His government proclaimed the restoration of Georgia's independence (snuffed out by the Red Army's invasion in 1921).

However, for a variety of reasons, Gamsakhurdia's government was beset by problems. In attempting to deal with separatist movements, first in the province of South Ossetia and then in the western autonomous republic of Abkhazia, he was accused of brutal nationalism. After the August 1991 coup in Moscow, internal opposition intensified and figures previously loyal to Gamsakhurdia, including the leader of the National Guard, Tengiz Kitovani, went into open opposition. In December 1991, serious violence broke out in the capital, Tbilisi, as a coup against Gamsakhurdia took hold. Within several days the main boulevard in the city, Rustaveli Avenue, had been destroyed, and Gamsakhurdia with other members of his government fled first to Armenia and then to Grozny, the capital of Chechnya, where he led a form of government-in-exile for the next 18 months.

After the successful anti-Gamsakhurdia coup, an interim government, the Military Council, was formed in Georgia. Initially it was led by a triumvirate of Jaba Ioseliani, Tengiz Sigua and Tengiz Kitovani, but it was soon chaired by Eduard Shevardnadze, the former Georgian Communist Party leader (1972- 85) and Soviet Foreign Minister (1985-90 & November-December 1991) who returned to Tbilisi in March 1992. It was in the following months – from Gamsakhurdia's downfall to elections called in October 1992 – that most of the incidents that formed the bases of the charges in Case No. 7493810 took place. These incidents are presented by the Georgian authorities as part of a concerted campaign of violence conducted by supporters of the ousted President.

The elections of 1992 confirmed the only candidate for the chairmanship of Parliament – i.e. titular head of state – Shevardnadze, with 95.6% of the vote. Second in command, in effect, his deputy was and is Jaba Ioseliani, a former convicted criminal but now a powerful figure both in government and business circles. His para-military 'army' known as the Mkhedrioni (the Horsemen) has committed numerous acts of violence and maintained its distance from the restraint of the law.

Shevardnadze's return to Georgia and assumption of power was greeted with an outburst of relief by Western politicians. Whereas Gamsakhurdia was unknown to them, Shevardnadze was admired for his pro-Western policies in the Cold War. It was hoped that he would halt the anarchy in Georgia. Also, it is probably true to say that many ordinary Georgians, aware of Shevardnadze's high-profile contacts in the West, hoped that his election would usher in a period of economic prosperity or at least of substantial economic aid from the West. Unfortunately, even before the election took place in the summer of 1992, Shevardnadze sent

troops to Sukhumi to suppress the Abkhaz Parliament and Georgia became embroiled in a war with the separatists in Abkhazia worse than anything that had taken place before. This serious warfare made the task of economic recovery more difficult than ever.

The effects of the war have been disastrous both in financial and human terms – over 200,000 Georgian refugees are waiting to return to Abkhazia. As the war raged in the autumn of 1993, while Shevardnadze himself was directing the last ditch defence of Sukhumi, Gamsakhurdia returned to Zugdidi in western Georgia from Grozny, no doubt hoping to recoup support in the prevailing anarchy. From video film of his return it is obvious that, at least in that part of Georgia, he still commanded a substantial amount of support. But his armed supporters, led by Loti Kobalia (now under arrest in Tbilisi), were defeated by the pro-Shevardnadze Georgian army, helped by Russian forces since Shevardnadze was willing to join the CIS (something refused by Gamsakhurdia). The attempted come-back fizzled out. Gamsakhurdia himself allegedly committed suicide sometime between Christmas and New Year, 1994. Others allege he was poisoned and shot but at the present it is impossible to verify these rumours. After several emotional pleas from his wife, his body was returned to Grozny, where he was buried.

The political violence and wars that have marked Georgia's first four years of independence are, alas, not unique in the former Soviet Union. Republics like Armenia, Azerbaijan and Tajikistan, and now Chechnya, have all undergone similar experiences. It is unsurprising that abuse of human rights should have occurred on a massive scale. However, one factor singles Georgia out from the others and that is Eduard Shevardnadze. Because people in the West, particularly the political class, tend to sanctify the Georgian head of state because of his role in the ending of the Cold War, they ignore the catalogue of human rights abuses rife in his country. Once again, the personalization of politics gets in the way of an appreciation of Georgian realities.

Those facts are that Georgia is a poor, corrupt, war - ravaged country. Its once prosperous agricultural sector is ailing and the tourist trade that even brought in a substantial number of Western visitors is in disarray. Aid from abroad is stolen and mafias control what is left of the economy. Quite apart from the political violence, mafia killings, as in Russia, have become common-place. The tentacles of this criminality even reach to Moscow where the ex-deputy defence minister was recently killed. Shevardnadze's power-broker Tengiz Kitovani is now under arrest and in jail. On inquiring about his condition in prison, one BHHRG member was told that the former defence minister still seemed to have the upper hand, having physically attacked his interrogator.

Tbilisi, the capital of Georgia, is without electricity for much of the day. This is due partly to the theft of copper and other equipment from the power stations. Gas for central heating is completely absent. The effect, according to the two BHHRG representatives, is a city not unlike Sarajevo, where trees are cut down for fuel and people burn wood in makeshift and unsafe homemade stoves. The evidence of these is everywhere in the city in the form of pipes protruding from apartment windows. On the last day of their visit, their hosts were burning pieces of furniture for warmth.

## **BACKGROUND TO THE CASE**

The facts, of this case (as much as are known of them) and the human rights abuses committed during its investigation, as well as the procedural shortcomings in the trial, have been well rehearsed. For the sake of this report they will be set out briefly.

The main defendants were all supporters of former President Gamsakhurdia. It is alleged that after his defeat they, in various ways, plotted to overthrow the interim junta by various acts of terrorism and sabotage. The most shocking incident, and the one that has given rise to a demand for the death penalty for its perpetrators, is the Chikovani Street bombing . On June 15th, 1992, explosives placed in a car parked in the street of that name detonated and killed 5 people (including a small child). Many others were wounded. The bomb was allegedly meant

to kill Ioseliani who had passed by earlier. Gedevan and Petre Gelbakhiani, father and son, Irakli Dokvadze and Zaza Tsiklauri were charged as perpetrators and participants in this incident.

The other main charges relate to an incident in the summer of 1992 when supporters of Gamsakhurdia rallied at the TV station after an appeal was broadcast on TV for people to assemble there. Many were arrested including those charged here as the ringleaders. This incident was regarded by many as a provocation. In Case No. 7792809, several people were accused of preparing to overthrow the government, having amassed guns and ammunition in the Kvareli Forest. Although included in the original indictment, this case was severed (supposedly to finesse the indictment) and tried last year. 19 people were sentenced to between 10 and 13 years imprisonment.

Of the other cases, only the theft of perfume from the AGROGAT factory stands out as being of a non-political nature. Although the allegations are that the perfume would be sold to provide money to buy arms, it is thought by some that this case was added to the indictment to deflect criticism from the overwhelmingly political nature of the other charges.

From the defendants' arrests in the summer of 1992 through to early 1993, it has taken over two years for these incidents to be investigated and tried. However, it emerged early on in the investigation that some of the accused had been brutally tortured (evidence points to the fact that all the suspects were physically maltreated at some stage of their period in custody). The most shocking example of this brutality was the case of Zaza Tsiklauri. In the summer of 1992, soon after his arrest, the Minister of Intelligence, Irakli Batiashvili, even went on television to reveal the mistreatment of this prisoner.

At a press conference following his election as President in October 1992, Eduard Shevardnadze confirmed the allegations of maltreatment of the accused in reply to a question from a member of the BHHRG.<sup>1</sup>

On the basis of information provided by Amnesty International, BHHRG members including a lawyer and a doctor managed to interview Tsiklauri in his cell in Tbilisi's main prison in October 1992. Their comments on his condition were included in a report produced at the time.

List of alleged abuses committed against defendants mostly on arrest and in preliminary detention:

Victor Domukhovski: On arrest beaten with fists and automatic weapons. Nose, teeth broken. Bruises all over body.

Petre Gelbakhiani: Bruises and facial injuries which are still present.

Irakle Dokvadze: His children were threatened when he was arrested and produced at a later stage to force him to confess. While in police custody hit with rubber clubs. Beaten on soles of feet. Nose broken. Held in solitary confinement.

Gedevan Gelbakhiani: Beaten after arrest and lost two front teeth nearly blinded in one eye and hearing practically gone in right ear. Psychological torture by noise from water, ventilation system.

Mamuka Aptsiauri: Beaten unconscious. Broken nose.

Zurab Gogichashvili: Torture and beatings causing hearing difficulties and lung complaint.

Givi Kalmakhelidze: Beatings and maltreatment during 20 days in central police station.

Temo Kapanadze: Beaten unconscious. Torture still continues.

Omari Kochlamazashvili: Beatings.

Tamaz Tsiklauri: Missing fingernails of right hand. Broken teeth. Covered in bruises.

Zurab Bardzimashvili: An invalid tortured during arrest and interrogation.

Gela Mchedlishvili: Torture and beating before and after trial.

Several interesting facts emerge from these incidents. Firstly, the authorities use violent criminals to torture and terrorise other prisoners. A convicted murderer Dato Chogovadze was allowed to carry the keys to the cells of these prisoners, and he was named by several of them as the most violent of their tormentors. It is said that Chogovadze has been convicted and sentenced for these crimes, but many people in Tbilisi who know about the case are dubious about this. The use of criminals to harass and physically attack other, particularly political, prisoners is an old Soviet practice described in some detail by Solzhenitsyn in *The Gulag Archipelago*.

Secondly, from the time of Batiashvili's admission of violence and beatings, representatives of all the authorities involved in this case have not denied that such things have occurred, including Shevardnadze. While this might be viewed as an encouraging phenomenon – a development towards openness and the abolition of such abuses in the future – it can also be viewed in a different light: Georgian officials are willing to admit abuses of human rights, make appeals to international goodwill towards Georgia, confident that nothing will be done to make them meet their obligations.

<sup>1</sup> Mr. Shevardnadze confirmed that torture had taken place in this case at a press conference held at the Metechi Palace Hotel, Tbilisi after the elections of October 1992. In answer to a question put to him on 16th January 1995 at Chatham House, London, he agreed that misconduct was widespread in the Georgian criminal justice system. On both occasions the question was put by a member of the BHHRG.

## **CASE NO. 7493810**

7 different cases have been joined in one indictment No.7493810.

Case No. 7492801 was brought in January 1992 against Zviad Gamsakhurdia for abuse of power, plundering state property

No. 265. A car filled with explosives detonated and caused the death of five people, injuring many others, and caused substantial damage to property in Chikovani Street, Tbilisi, on June 15, 1992. It is alleged that the perpetrators of the crime intended to kill vice-head of the State Council Jaba Ioseliani.

No.792815. An armed attack on the TV and radio stations in Tbilisi on June 24, 1992.

No. 7792809. Treason. Armed formation entered the Kvareli region of Georgia from Azerbaijan with the aim of eliminating the Mkhedrioni formations. This case has been tried (there were 19 defendants) and sentences passed

Other cases in 7493810: Attempt to interfere with the election of 11.10.92 by distributing propaganda against Shevardnadze

Theft of 26 boxes of French perfume "Salvador Dali" from the warehouse of the factory AGREGAT.

Attempted murder of Acting Procurator V. Razmadze.

### **THE 19 DEFENDANTS**

Mamuka Aptsiauri, Zurab Bardzimashvili, Bessarion Bochoridze, Ramazi Charigogdishvili, Mamuka Danielia, Viktor Domukhovski, Irakli Dokvadze, Gedevan Gelbakhiani, Petre Gelbakhiani, Zurab Gogichashvili, Givi Kalmakhelidze, Teimuraz Kapanadze, Sergo Khakhviashvili, Omari Kochamazashvili, Ivane Lashkarashvili, Gocha Makhviladze, Gela Mchedlishvili, Tamaz Tsiklauri, Zaza Tsiklauri.

The prosecution has asked for the death penalty for Petre Gelbakhiani and Irakli Dokvadze for their part in the Chikovani Street bombing. Sentences of between 3 and 15 years have been demanded for the other 15 defendants. Charges against Omari Kochlamazashvili and Zurab Bardzimashvili were removed from the indictment last year.

### **CONDUCT OF THE TRIAL**

A large number of procedural irregularities have been recorded by observers in Georgia and abroad since the trial began on October 5th, 1993. This non-observance of the rules of due process is an abuse of Georgian, let alone Western, standards. Of course, such irregularities are a continuation of the blatant abuse of all international standards relating to the arrest, incarceration and interrogation of prisoners.

The indictment itself is an abuse of the process. By joining such large and disparate charges into one indictment, the court immediately sets itself problems of an evidential and procedural nature. Other than a political nexus it is hard to see the connection, say, between the Chikovani Street bombing and allegations of electoral fraud. However, it is probably true to say that the authorities do not want this process to be seen as a political trial which could presage outside interference from bodies like Amnesty International.

Georgia is in the process of rewriting its criminal code. For the moment the law as prescribed when the republic was a member of the Soviet Union is still in operation. Although there were some small differences between the codes of the different republics, their basic civil and criminal law was that of the USSR. For all its shortcomings in practice, that law as set down in the Georgian Criminal Procedural Code contains clear procedural rules for criminal trial and investigation.

As the defendants in this case have accused the authorities of obtaining confessions under duress, conducting proceedings in their absence and the absence of their lawyers, as well as refusing them defence counsel of their choice, it is instructive to look at the relevant Georgian (USSR) statutes. In international law such aberrations are, of course, violations of due process.

(1) "The investigator is forbidden to use threats or force to obtain a confession and even if a confession is given, it has no evidential value ... Soviet criminal procedure places no value on confession and requires that the crime be proven by independent evidence." Art.14 of the Fundamentals of Criminal Procedure of the USSR and the Union Republic States.

(2) "The accused must have defence counsel." Art.21. He also has the right to give testimony, make statements and speak in court (Art.11).

(3) "Trials of persons in absentia may occur only at their request or if the person is abroad or evades appearances in court." His presence in court is mandatory (Art.39).

It is also worth pointing out that on regaining its independence Georgia reinstated its 1921 Menshevik Constitution. Until a new constitution is approved, this document, which abolished capital punishment, surely prevails as law. However, for many officials, including Mr. Shevardnadze, it will be difficult to abandon faith in the ultimate deterrent. To quote: "I have already said that it is stupid to abolish capital punishment. It must be brought back into force".

### **VISIT TO GEORGIA, FEBRUARY 1995**

BHHRG sent Dr. Oliver Rooke and Dr. Celia Palmer to Georgia from February 11th-15th, 1995. While there they interviewed a number of people, including defendants and their families, MPs, officials of the prosecution, defence lawyers, officials at the ICRC and American Embassy. Attempts to see the defendants (apart from those in the prison hospital interviewed here) were unsuccessful, although towards the end of their visit they were told by Alexandre Kavsadze, Chairman of the Parliamentary Committee on Human Rights and Ethnic Relations, that this could have been arranged. The doctors viewed this statement with some scepticism.

Despite this failure, the interviews with those involved with the trial and prosecution of this case compound the alarm expressed about the conduct of the proceedings contained in previous human rights reports.

The following is a transcript of those interviews. Where appropriate, Dr. Rooke and Dr. Palmer have added their own observations.

Interview with MP Nodar Natadze: Anti-Gamsakhurdia activist – he stood against him in 1991 presidential elections. Interview conducted on 12.2.95 at his home in Tbilisi.

Natadze says that he has seen violations of due process in the trial with his own eyes. For example, where the judge had been questioning a witness in the absence of the accused and his advocate. When he spoke to the Chairman of the Supreme Court, his deputy and the General Procurator, Mr. Babilashvili, about these violations they replied that the defendants were deliberately prolonging the trial by playing tricks. The advocates also complained of the absence of expert evidence about the explosives allegedly used in the case.

He had been told by the deputy head of the Intelligence Services and the previous Minister of the Interior, "I did not break [his] arms and legs but if it goes on he will be taken from prison and killed by the MAP (sic)." When questioned about the arrests in the forest case [No.7792809], he said that Gogsadze who is now dead was the only man captured at the time. He was beaten up by a man who is now an MP.

Natadze said that several MPs had written a letter complaining about the conduct of the trial to the General Procurator. The authors of this letter include the following: Gaioz Rogava, Zurab Zhvania (Georgian Green Party and Secretary General of the Georgian Citizens Union), Petre Mamradze (head of the Press Service) and Tamar Chkeidze (MP).

Meeting with Mindia Ugrekhelidze, Chairman of the Supreme Court, in his office on 13.2.95. When allegations of torture and violations of due process were put to him he replied that this could not be excluded and may have happened. He said that no pressure could be brought to bear upon the judges at the moment but more could be done at the appeal stage. He would not give his permission for the two doctors to visit the prisoners – that would have to be done through the Minister of Internal Affairs. Attempts to contact the latter proved unsuccessful (as he said he was busy).

While their attempts to visit the defendants held in custody were unsuccessful, the two doctors managed to visit the prison hospital. Both doctors thought that in the circumstances the conditions in the hospital were good.

Unofficial Visit to Prison Hospital, Tbilisi. The chief medical officer allowed Drs. Rooke and Palmer to visit the prison hospital and talk to two of the prisoners with no witnesses present.

The hospital holds 260 people and has 250 beds with a staff of 30 doctors and 30 nurses. The main day to day problems in the hospital are lack of drugs and surgical instruments. The commonest medical problem is trauma (they have a specialist traumatologist), and the commonest form of surgery performed, orthopaedic. Non-uniformed staff who seemed to take their orders directly from the doctors took the BHHRG visitors to the prisoners. The doctor said he did not know why Zaza Tsiklauri was in such a bad condition in 1992. He said that he had no evidence of Tsiklauri being tortured because the police kept him until the wounds healed. He refused to answer when asked whether he had seen evidence of the torture of other prisoners. He said that torture did not take place in the prison but in the police station "and other places".

Interview with Zaza Tsiklauri in his cell, alone but with interpreter. Tsiklauri agreed to be interviewed in his cell. He was arrested on 7.8.92. In his own words he described his arrest, "My wife and mother were told that I had disappeared and no one knew where I was. They only knew that I was alive 10 days later from Batiashvilli. I was taken to the KGB building and immediately tortured. Several means of torture were used. One method was burning with boiling water. About 90% of prisoners are tortured in the same way: a prisoner's hands are tied behind his back and a wooden stake is then put through his arms; he is then suspended between two tables, head down and beaten on the feet with a wooden stake; although you are being beaten on the feet it feels as though you are being beaten on the head. When one man had finished beating the prisoner another one took over.

"When I seemed to have collapsed they threw water over me and the torture resumed. The pain is intolerable and, of course, they know that prisoners feign unconsciousness in the hope of bringing it to an end. From the start they tried not to harm my face but I had a broken leg, arms, and rib. I was tortured in prison by other prisoners" (he named Chogovadze). He did not choose his own lawyer, someone was chosen for him. Members of the police and the security service took part in the torture. Does he remember the torture now? "When I think about it I feel as though it is something I have read about in a book. But at the time I was pleading with God to make them kill me". He said that he had been in court a couple of times but was not allowed to deliver a prepared speech.

Examination by Dr. Rooke: There were burn scars on the right side of his neck, approx. 10cm by 4cm. The proximal end of his right radius was distorted, consistent with having been previously broken and set badly. There were numerous small burn scars on his arms, especially the right arm. Small but deep scar on the anterior aspect of right tibia. In general he was slightly cachectic and was taking appropriate medication for tuberculosis. He said he received a constant supply because his family provided him with the drugs when the hospital ran out.

When asked why he had told Dr. Richard Latcham in 1992 that he had not been tortured he said that he didn't trust the Group visiting him, thinking that as the elections were taking place they would be supporters of the regime. He said that when the BHHRG visited him he was suffering from burns and his clothes were hurting him but he was not examined (in fact, Dr. Latcham asked to examine him but he refused, although he did let him examine his leg).

He said that torture still continued in the prison but not in the hospital block. He said there was one prisoner whose head had been scalped and his skull fractured. Others have been killed. He named the prisoner Revaz Brodzeli and Vakhtang Gogzadze (also defendants in their trial). The principle location of torture is the central police headquarters, police department, and part of the prison. There are many prisoners who inform on or torture other prisoners. They receive benefits in return from the authorities: food, women, and more comfort in the prison. At the beginning, his relatives were not allowed to visit; they can now with the judge's permission. He often worries about his safety if he is ever released.

Interview with Nemo Chanturia. Chanturia was convicted with others in a related case of kidnapping Deputy Prime Minister Kavsadze in 1992.

"After I was arrested I was beaten and then spent a week in a police station in West Georgia. I was beaten without interruption with a whip and they pushed me with a machine gun. I vomited blood and passed bloody stools. During that week I often collapsed but I was given no food. I was then taken to Tbilisi Police Department where I was beaten with a wooden stick. After being hit on the back I collapsed. In prison I went on hunger strike because one of the men arrested with me was wounded and went mad. I was settled in the special building called 'Shevardnadze' [a prisoners' expression], and they beat me there and experimented on us. They tried out different tortures both physical and psychological.

"I could not choose my own lawyer. They gave me an official lawyer but he was very passive – he was absent when I was sentenced. I was sentenced to 15 years imprisonment, including 12 years in a penal colony".

Examined by Dr. Rooke: He complained of a continuous dull ache originating in his lumbar spine and radiating around both sides of his body. His range of movement was normal. There were three hyperpigmented patches around the area of his spine, I could not say what was likely to have caused them. He was being treated appropriately for diabetes and tuberculosis. Again, he said his family helped him obtain the drugs.

Interview with Irakli Batiashvilli (14.2.95): This interview took place in the presence of Mrs Tsiklauri. Batiashvilli had obviously been upset by what he had seen.

"We arrested Tsiklauri, first because we suspected he had taken explosives to his village. It was some time before anyone else was arrested. He did not admit guilt or give evidence against anyone else." Batiashvilli was told by a colleague that one of the other prisoners had "visited" Tsiklauri in prison, and as a result of a minor "confrontation" Tsiklauri was scarred by burning water. After this he heard that Tsiklauri had made some kind of a written confession in a note that had also been directed to the head of State, Eduard Shevardnadze. In this note he allegedly admitted that he alone had obtained the material and caused the explosion in Chikovani Street.

Later he was called by friends who told him that Tsiklauri was in a bad condition and that "something had happened to him". He immediately went to the prison and saw that the prisoner had been tortured unimaginably. Had he arrived any later he would not have been alive. "What I saw was not human. He could not speak. He was just a body with broken bones, covered in burns. He had been tortured in various ways – I think the last method had been dousing with boiling water".

Q. "Can you remember where he was burnt?"

A. "I think on the right shoulder. He had also been hung up by the hands and beaten so that his bones broke. This was done to make him talk. I wanted him to tell me who had tortured him but he wouldn't as he was afraid for his family. I went on TV and said what I thought had happened – that he had been tortured by security service officers. This case should have been investigated by the Commission for Human Rights but no investigation took place. Violations of human rights happen all the time but not usually as badly as this. After this incident relations with prisoners became more humane – at least in my department. I threatened to resign but Shevardnadze persuaded me to stay on the understanding that there would be an investigation into this case. Nothing happened and I resigned after Shevardnadze joined the CIS.

"The police, procuracy and security services here need to be reorganized as they are staffed by people who are 'criminal by nature'. The old ways of the Soviet Union are still alive – its culture taught people to behave like this. A policeman who gives someone a good beating is a



good policeman. But the violations of human rights that exist now due to the anarchical situation did not exist before."

Interview at the Procuracy. Those present: Dzamlet Babilashvili (General Procurator), Anzor Baluashvili (Deputy Procurator) Kakha Koberidze (Trial Prosecutor) and Temur Kvirkvelia (Press Secretary). Dr. Rooke described the atmosphere at this meeting as "intimidating". It was held behind two sets of sound-proofed doors. The officials present looked both nervous and angry.

Babilashvili stated that the trial had been prolonged by the prisoners' behaviour, their "illegal action". Their lawyers had also used delaying tactics. Such cases did not usually proceed in this way. The prisoners had turned their backs on the court when the judge spoke, as well as indulging in other provocations. When they disagreed with the procurator they should have said so, but they just turned their backs and smoked cigarettes. [Baluashvili] did not deny that witnesses had been cross-examined in the courtroom in the absence of the defendants' lawyers. This was because of the insulting behaviour of the defendants which did not change even after representations had been made to the court. Some of the prisoners, including Zaza Tsiklauri, had refused to have state lawyers represent them. This was done to prolong the trial.

Babilashvili: "The defendants confessed in the presence of their lawyers. They agreed to sign statements in the absence of their lawyers. They failed to make any protest during the course of the trial. If they were uneasy about protesting to the authorities they could have approached a NGO."

Kvirkvelia: "One of the prisoners confessed on a TV programme after he had been arrested. These people protest about the legal proceedings but deny that five innocent people were killed. It has been explained to them that if they disagree with the verdict of the court they can appeal to a higher tribunal".

Koberidze: "All confessions were made (incl. Tsiklauri's) in the presence of lawyers, but there was important independent evidence against them. During interrogations one of the suspects in the Chikovani Street bombing gave details of the preparation of the attack and gave the names of people involved whom we did not know of beforehand."

Baluashvili: "I agree [with Batiashvili] that Tsiklauri had serious wounds on his body. These were inflicted during his arrest. The officers of the Intelligence Services stated that he was hurt falling out of a car. When I first interviewed him I told him not to be afraid and that his security would be guaranteed, but he insisted that his injuries had been sustained while falling from a car." [See his statement to BHHRG in Oct.92]

"The lawyers for all the defendants who had them were present. The state provided lawyers for those who didn't have them. The judge recommended a particular lawyer to Tsiklauri but he turned him down. Domukhovski pretended that he did not have a lawyer whereas he had one from the previous trial. He was only doing this in order to prolong the proceedings."

He agreed that all the defendants had later withdrawn their written confessions. He refused to let them see the prisoners saying "no one can see them at this point".

Interview with Alexandre Kavsadze, Chairman of the State Committee on Human Rights and Ethnic Relations (Mrs Kavsadze was also present as were two interpreters from the Commission's department and the doctors' interpreter. Dr. Rooke said that Mrs. Kavsadze's presence was disconcerting, but she left the meeting halfway through.)

Kavsadze: "In law as in medicine it is possible to make mistakes, but there is no possibility to intervene in the process until sentences are pronounced on March 6th. The Commission aims to help the court in its activities and at the same time to assure there are no violations of the law.

"Another MP, Victor Rzkhiladze, and I questioned Tsiklauri about torture. On each occasion he denied it and said that he had received his injuries escaping from a car and he had scalded his own back by throwing hot tea on it. I concluded that he was too afraid to tell the truth. I also heard that Gedevan Gelbekhiani had been tortured. I asked the prosecution service to investigate the case and the prisoner Chogovadze received a year's prison sentence for his part in the violence.

"All the prisoners complained about torture, beatings, but only when they were arrested.

"I do not think that the procedural irregularities negate the trial; it should continue." He seemed to think that improperly obtained confession evidence should not invalidate a trial. Of this case, he alleged, "The main abuse is that the prisoners were interested in prolonging the trial." He added that in Georgia "the whole system has been destroyed," and that his committee would do its best to stop the violence and torture in Georgia. Their aim was to ensure that the defendants could appeal any sentence. His committee was against the death penalty.

Interview with Tengiz Dikhaminjia, MP: "I was a member of the Commission set up to investigate human rights abuses during the Abkhaz conflict – of which there were many. I appealed to the General Procurator and to Shevardnadze personally to look into these violations, but he said they were not interested. Only one person had been jailed. Now my right to visit prisoners has been removed. We have tried in the present case to ensure that the absent defendants were able to return to the court but failed. "These and other sorts of violations are everywhere, you can see it for yourself". The professional rights of the lawyers involved have been abused. They appealed to the Supreme Court without success and later to four parliamentary commissions without success. I have been present in court on many occasions when neither lawyers nor defendants have been present. When MPs were present the conduct of the proceedings improved. Some of the initial confessions have been used in evidence. It is not only my view that the prisoners were tortured".

Interview with Giorgi Khoshtaria lawyer for Gedevan Gelbakhiani:

Gelbakhiani chose him to be his lawyer. "I attended the proceedings initially but was banned at a later stage. The judge did not have a right to ban me and should have consulted my organization. I first saw Gedevan Gelbakhiani on 12th February 1993, five days after hearing that he had been tortured in prison. I visited him first as a human rights activist and later he chose me as his lawyer. I was helped by an official at the US Embassy.

"His face on the right side was black. It was the second beating - the first time he was beaten by the Deputy Chief of Police, which caused a loss of hearing in his right ear. The procuracy said that the injuries were the result of his age. They said that the other incident had arisen during a personal quarrel between prisoners. He had been beaten by Chogovadze who should not have been in that part of the prison at all. He had the keys to all the cells. The head of the prison said that because of a shortage of warders they made use of prisoners like Chogovadze. When asked how many warders he had he said 500 but at that time they all had flu. All the prisoners pointed the finger at Chogovadze but the judge refused to allow him to testify as requested by the defendants. Chogovadze apparently dictated their confessions word by word."

"The indictment reflects the political nature of the trial – the case against Gamsakhurdia – but the procuracy tried to obscure this fact, saying that the proceedings were of a criminal nature. The prolongation of the trial was also for political motives. A fear that if Shevardnadze were to be overthrown they would be implicated."

Interview with Jessica Lecroy (Head of the Political and Economic Section, US Embassy, Tbilisi); Donald Lu also present:

It would be fair to say that some members of staff in the US Embassy have shown concern for the case and offered practical assistance to human rights groups where appropriate. American sensibilities may have been affected by the reports from Senator De Concini (now retired House representative on the Congressional Helsinki Committee in Washington). The concerns of De Concini's committee about human rights in Georgia caused Ioseliani himself to make abusive and critical remarks about the senator and his role.

She said, "There is strong public feeling against the perpetrators of these crimes. If these prisoners were released they would be lynched. Georgian officials took great offence at the Helsinki Watch reports because of alleged misquotations of Shevardnadze, which gave them an opportunity to rubbish the report. There is a feeling here that the West only criticizes and does not offer concrete help. The Georgian authorities have, in fact, asked for teachers of human rights to educate the police. I would like to see a solution that saved the face of the government and allowed for a retrial.

"I have attended the trial and I felt that the defendants behaviour was such that they would have been thrown out of any court. There is significant evidence against them and I personally feel that they are guilty. Their relatives have complained to me about the trial procedure but never spontaneously claimed that the defendants are innocent."

It is worth pointing out that no human rights group has ever commented on the probable guilt or innocence of these defendants. Their complaints have always been about the treatment of the prisoners and the conduct of the trial – matters that go to the heart of the legitimacy of criminal proceedings in all jurisdictions.

Drs. Rooke and Palmer never asked for or expressed an interest in any interviewee's opinion about the question of guilt or innocence. It was perhaps undiplomatic of Miss Lecroy to do so.

## CONCLUSION

It is noteworthy that every Georgian interviewed admits that human rights abuses of a serious kind took place in the investigation of this trial, even representatives of the authorities involved. This in itself should negate the legality of the proceedings.

However, while there are disagreements between the members of the procuracy in particular about what happened and how, the defendants, their families and representatives have been remarkably consistent in their descriptions of what has taken place over the past 2½ years.

Discontent with the lawless situation in the country is obviously gaining hold in parliament previously viewed as something of a rubber stamp organization. Boris Kakubava called Georgia a police-state earlier this year.

It is probably correct to say that the defendants have been in contempt of the court on numerous occasions, however proceedings for this offence have never been instituted against them. No doubt, they would see their unhelpful behaviour as the only way of bringing blatant procedural abuses to light.

In the legal vacuum that now prevails in Georgia, there is no separate court of appeal. The defendants will have a right to appeal against the sentences imposed by the court – but, in effect, they will be appealing to the same tribunal, albeit reconstituted. Should that court uphold the sentences passed, the only remaining avenue open to the defendants is an appeal for clemency from President Eduard Shevardnadze. If he were to exercise this prerogative, it is to be hoped there would be no unseemly praise from the West for any show of mercy after so many abuses and irregularities.

**(6824 words)**