



Violence is Legitimized by the Constitution of Georgia

We all remember very well the stir and hullabaloo which accompanied the campaign of adoption of the new Constitution of Georgia. We were assured that the Constitution which was developed with direct participation of the foreign experts, completely qualified with international standards and exactly complied with all those international documents and normative acts which have been signed by Georgia.

It is from this standpoint that we would like to focus on the most important moment in the Constitution of Georgia.

Article 17(2) of the Constitution proclaims: "Torture of a person is forbidden, as well as treatment or punishment which is inhuman, cruel, or degrading to a person's honour and dignity." ... And in continuation of this idea Article 18(4) also states that: "Physical and mental coercion of a person detained or otherwise restricted in his freedom is not allowed."

Now let look through Article 46(1) of the same Constitution saying:

"In cases of emergency or war actions the President of Georgia has the right to restrict the rights and freedoms listed in Articles 18, 20, 21, 22, 24, 25, 30, 33 ad 41. The President of Georgia is obliged to present this decision to the Parliament for confirmation."

As it is known on October 1994 Georgia joined the UN Convention "Against Tortures and Other Cruel, Inhuman or Degrading Treatment or Punishment". At the same time Georgia recognizes the priority of the norms of International Justice and is liable to bring its own legislation into line with International Justice. Article 2 of the above Convention read:

"No exceptional circumstances whether war situation or its danger, internal political unrest or any other emergency conditions can serve to justify the tortures"

It follows from all above said that:

a) the Constitution of Georgia legalizes the violence;

b) the Constitution of Georgia is directly confronting the UN Convention Against Torture.

In all civilized countries such Constitutional lapsus would have become the object of public discussion if not the cause for scandal. In Georgia everybody keep silence.

As we have mentioned in the beginning skilled foreign experts also participated in development of the Constitution of Georgia. Hence the probability that we are dealing with mechanical error is almost negligible.

In either event we would be greatly interested to receive the explanations of the competent experts concerning this issue.

The Verdict is Pronounced though Nobody Believes in its Justice

Mrs. Anna Chavchavadze and Mrs. Lia Beruashvili as human rights defenders and journalists for some years are following up the ongoing political Court Hearings. Today they will summarize the trends and results of the latest political Court hearings for the readers of the "Tavisupali Sakartvelo" newspaper.

Anna Chavchavadze - Nine month Court Marathon is over. The verdict is pronounced. For the part of the society the Court decision was as unexpected as the demand of the Prosecutor to sentence three of four political prisoners to death. And now, it appears as if the Court Board refused to obey the dictate of the Prosecution's Office and pronounced more or

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less just verdict.
Lia Beruashvili - I think this verdict does not contain even formally the any signs of justice. First of all due to the fact that its text nearly word by word repeats the Indictment: the course of Court hearing is absolutely ignored, as if not a single witness was interrogated during these nine months, and those who had been interrogated completely supported the position of the Prosecution. This does not corresponds to the truth and the public had the opportunity to find he confirmation in materials published in press. Even in the testimonies of the witnesses invited by the Prosecution the version of prosecution was either rejected or questioned.

Anna Chavchavadze - In some cases the witnesses stated that their testimonies were forced from them and they had signed the texts of their testimonies without reading them: some stated that they were detained for being "Zviadists" and were forced to sign the testimonies; others claimed that the formulations in their testimonies were changed etc.

Lia Beruashvili - For these very reasons the possibility of pronouncing more or less just verdict is totally out of question: Has the prosecutor managed to prove Mr. Kobalia's crime?! Or what has Jambul Bokuchava done to deserve 15 year imprisonment?! Or what crime have Mr. Zviad Dzidziguri and Nugzar Molodinashvili committed to justify 13 and 7 years of imprisonment?!

Anna Chavchavadze - Another injustice on the part of the Court was to recognize Mr. Kobalia guilty in shooting down the journalist Bolkvadze and others. What was all that stir about shooting down the journalist for when no convincing proofs confirming the guilt of Mr. Kobalia have ever been presented at the Court Hearing? However the Court completely ignored this fact, while against those witnesses which testified that Kobalia did not commit this crime the charges of giving false testimonies were brought. Thus, the regime starts a new campaign of intimidation of the witnesses to be safe at the future Court hearings.

The same can be said concerning the verdict of Zviad Dzidziguri: neither in the course of the preliminary investigation nor at the Court Hearing not a single witness confirmed that entering of the troops into Samtredia and Khoni, ruining of buildings, robbery and murders occurred under the direct leadership of Mr. Dzidziguri. Even in the Indictment these episodes are of general, declarative nature and sound rather as a monologue of the Prosecutor's Office. The same is true for the charges brought against Mr. Jambul Bokuchava - they also are very general. And despite of this fact the Court has never bothered to notify the proofs basing on which the verdict was pronounced.

This is in general characteristic of all those political trials which have been conducted since recently against the supporters of the lawful authorities. Let us recall the estimation provided by Mr. Mirza Dolidze, a judge who was chairing the Court hearing of Chikovani Street Case: "The Court has chosen the proofs which were confirming the guilt of the defendants". This involuntary formulation seems to be universal and exactly reflects the Court practice existing in Georgia.

At the same time in the course of this Court hearing it became evident that in present day Georgia it is absolutely impossible even to imitate a just Court Hearing. Suffice it to mention that the judge Aladashvili initially attempted, whatever formally it was, to create the image of an objective judge: he was demonstratively polite with the political prisoners, allowed the public defenders, gave maximal freedom to the journalists, alienated himself from any attempt to thrust the estimation of the case on him etc.

These rules of the game were readily adopted by the political prisoners and directed the Court Hearing basing on their position. This led to the logical result: as soon as it became evident that the defendants would win the trial if the judge continued to stick to these rules of game, the regime showed its claws...

Lia Beruashvili - ... and Aladashvili obediently started to remove the "stubborn" journalists from the Court Hall, limit the rights of the defense and subsequently removed even the public defenders from the Court Hearing. He did not stop from taking the dictaphones from them (once, during the break, he even threw away the dictaphone). He began to exert unmasked pressure to the witnesses, prompt the testimonies, stir up the victims against the defendants, provoke the audience. Finally he refused to interrogate the witnesses presented by the defense, though earlier he more than once had offered to summon the witnesses included into the list to the Court to be interrogated. In addition to this a very serious charge was brought against Mr. Aladashvili himself (and it was not turned down even today) according to which Mr. Aladashvili being in criminal liaison with the Prosecutor's Office exerted a pressure on one of the witnesses in his own house.

This Case like other cases from "Zviad Gamsakhurdia and his Supporters Cases" was completely lost by the ruling regime which once more demonstrated that it cannot effectively use the unjust system which it itself created in the country. The verdict without any doubts completely considers the will of the authorities, but it cannot convince anyone either foes or friends home or abroad in its being just.

On November 11-22, 1996, 17th Session of Committee Against Torture was held in UN Geneva Office. At the Session of November 21 was discussed the initial report of the government of Georgia. The Session was chaired by Mr. Alexis Dipanda-Muelle. The rapporteurs were Mr. Thomas Burns from Canada and Mr. Giorghis M. Piki from Cyprus. Georgian delegation was represented by the Chairman of Human Rights and Inter-National Relations Committee Mr. A. Kavsadze (head of the delegation), his wife G. Kavsadze and V. Korkelia.

At the Session apart from the official report of Georgia was read the document provided by the International Human Rights and Non-Governmental Organizations which more or less objectively reflected the facts of tortures and ill-treatment in Georgia.

The Committee worked out the decisions and recommendations which considering the standards of official UN documents are rather strict and categorical.

The fragments of the documents is provided below.

COMMITTEE AGAINST TORTURE

Seventeenth session
Geneva, 11-22 November 1996

Conclusions and Recommendations of the Committee Against Torture

1. The Committee considered the initial report of Georgia (CAT/C/28/Add.1) at its 278th

and 279th meetings, held on 21 November 1996 (CAT/C/SR.278 and 279) and has adopted the following conclusions and recommendations:

Factors and difficulties impeding the application of the provisions of the Convention

- 9. The Committee acknowledges the following:
 - a) The political and economic conditions of the country have proved impediments to reforms.
 - b) The lack of will of the bureaucracy to embrace the constitutional and legal reforms robustly.
 - c) The independence of the judiciary is not as obvious as it should be.
 - d) The clear disjunction between the legal rules of protection and their implementation.
 - e) The international human rights instruments, including the Convention Against Torture, are not available in the Georgian language.

Subjects of concern

10. The Committee is concerned about the following:

- a) The volume of complaints of torture, particularly related to the extraction of confessions.
- b) The failure to promptly investigate claims of torture and to prosecute alleged offenders.
- c) The current failure to make proper provision for compensation, restitution and rehabilitation of victims of torture.
- d) The conditions in places of detention, including prisons, are grossly inadequate.
- e) The number of deaths in prison is alarming.
- f) Internal exile may amount to a breach of article 16 of the Convention.
- g) The unwillingness of many law enforcement officers to respect, in the exercise of their duties, the rights of persons under investigation and prisoners.
- h) The existing procedures for the investigation of complaints of torture and ill-treatment are not demonstrably impartial.
- i) The absence of proper guidelines for the taking of statements from persons under arrest and firm criteria for their evidential evaluation.

Recommendations

11. The Committee recommends to the State party the following:

- a) that a core document, dealing with general information on the State party such as, the land, the people, etc. be prepared and forwarded to the Committee;
- b) that the Presidential Decree on Urgent Measures for the Halting of Torture and Other Cruel, Inhuman or Degrading Treatment be implemented as soon as possible;
- c) that the definition of torture contained in article 1 of the Convention be specifically incorporated into the Georgian Code of Criminal Law;
- d) that the period of incommunicado detention be rescinded;
- e) that rigorous educational programmes for the police, prison officers, doctors, prosecutors and judges be implemented to ensure that each class understands its constitutional role and its obligations under the Convention;
- f) that resources be made available to improve prison conditions as a matter of urgency, including the provision of appropriate medical facilities;
- g) that a monitoring body with comprehensively defined authority be established to keep under constant review the conditions under which investigations are conducted and persons are held in custody;
- h) that the powers of the Committee for Human Rights and Relations Between the Peoples or such other body, as appropriate, be strengthened to ensure the prompt examination of complaints of torture and other cruel, inhuman or degrading treatment of detainees and prisoners and the unfailing prosecution of those responsible for such acts;
- i) that the prison service be removed from the control of the Ministry of Internal Affairs and transferred to the Ministry of Justice or an independent Ministry of Corrections;
- j) that information be provided to the Committee regarding all the individual cases referred to during the dialogue and such other cases referred to it by non-governmental organizations.