

TAVISUPALI SAKARTVELO N5

IN BRIEF

**The Trial is Over
March 6, 1995**

From the early morning the building of the Supreme Court was encircled by police and detachment of special designation. People who came to attend the trial, relatives of the defendants and journalists were not allowed even to stay in the vicinities of the building. Waiting for political prisoners added to the strained atmosphere. The Court Board recently made a decision to humor the defendants who during the whole process of hearing were removed from the hall, and were not present either during the Court investigation or interrogation of the witnesses, or Prosecutors and lawyers speeches not to mention the last plea, and allow them to be present at pronouncing their sentence. And now they were brought to the Court to hear their sentences.

Irakli Dokvadze, Peter and Gedevan Gelbakhiani, Tamaz Tsiklauri refused from participation in the session. People greeted the cars with the prisoners with applause. The third car for some unknown reasons stopped right in the street and about 20 men of armed escort came out of it... The whole procedure very much resembled force demonstration.

After multiply checking of the documents and humiliating search process the members of the defendants' families and journalists were allowed into the hall where there already were sitting members of Parliament, representatives of the foreign countries and international organizations. The session began. Immediately after the Court Board had entered the Hall the priest of St. George's Church of Gldani region, Father Vasili said the prayer and reminded those who represented the Law that for all Orthodox Christians it was the first day of the Lent and appealed to them to act in accordance with the supreme Law - Commandments of the Lord. Do not pronounce death sentence on this day to be right before the Lord!"

The judge Mirza Dolidze began reading the sentence.

The sentence mainly repeated the indictment and Prosecutor's speech, where occasionally were included the materials of the Court investigation. Even those were incomplete and distorted, Monotonous manner of reading made listening to the charges even more unbearable. The process of pronouncing of sentence was occasionally revived with some comical moments. Thus, for example, when the judge announced that the members of the "Band" presented Mr. Tsiklauri 5 boxes of pressed trinitrotoluene delivered from Grozny by helicopter, even the escort could not help smiling. Then the judge mentioned the attempt of attack on Mr. V. Razmadze, the defendant Zurab Gogichaishvili could not contain himself and said: "You have not interrogated a single witness in relation to this case, and yet you are sentencing me to 15 years of imprisonment... On what grounds I wonder?". In answer he as usually heard: "Do not violate the order. Mirza Dolidze in this case demonstrated particular care of observance of Law: when some of the people tired by standing made an attempt to sit down he used to announce: "In accordance with the Law you have to stand during the pronouncing the sentence. At least those who are standing in the first rows should not sit down. Please observe the order". At hearing these words the defendants began to laugh: "As if everything which was happening here was not performed with complete ignoring of the Law!". Zurab Gogichaishvili ostentatiously refused to stand up and declared:

"It is the superiority of the Law, not the Court of the Junta that I do respect". The judge got angry: "I will remove you from the Hall". This cheered up the defendants: "Are not we scared out of our wits?!" Then Dolidze ordered to remove the defendant Gogichaishvili from the Hall, and at that moment the defendants showed that they knew the Law better than the judge and escort: they immediately reminded the judge that such an action is allowed only basing on respective decision of the Court Board. During one of such arguments the nerves of the judge gave out and he rushed out from the Hall having forgotten to announce the break. The escort activated again and wanted to chase out the people from the Hall probably to allow the judge to remove the disobedient defendants from the Hall without any difficulties. However no one moved, people were saying: "The judge did not announce the break, we will not leave the Hall, the Court Board should make a decision." At this moment the defendant Gogichaishvili told the journalists about the violation of the Law during the Court investigation and demanded interrogation of the witnesses as well as announcement of his testimony made in the course of the preliminary investigation on October 14, 1992 and the Statement of 13 political prisoners made on April 13, 1992.

The defendant Zaza Tsiklauri also demanded from the Court to announce his testimony given on August 14, 1992. "I was removed from the Hall, I have been present neither at the stages of the Court investigation, nor during the Prosecutor's speech. Neither did I have the lawyer who would express my interests. That is why I was deprived of possibility to arise this question. I am ready to provide more details about this testimony." Comments: In the night from August 13 to August 14 took place well known violence over Zaza Tsiklauri when he was poured over with boiling water. The above testimony was given on the second day. It is seemingly removed from the materials of the Case and the Court did not show any interest in it. To the opinion of the observers and lawyers, it was done because the investigation of the above testimony could have invited a new version of the explosion made in Chikovani street and questioned the guilt of the defendants sentenced to death, which in its turn would necessitate a new investigation of the Case. The same can be said about the above mentioned testimony of Z. Gogichaishvili: as it was stated by the defendant, in his testimony of October 14, he said that it was him who had arranged the attack on Losiani. This means that here we are dealing with the another version of arrangement of this terrorist act which is not investigated. These testimonies deviate from the fixed scenario since they were given without the presence of the lawyer and under obvious pressure of physical violence. The journalists got interested and asked the Prosecutor K. Koberidze of what testimony was the defendant Z. Tsiklauri talking. The Prosecutor stated that he had not had the slightest idea what this testimony was about and where it was.

"The defendants showed their protest by not standing up. Viktor Domukhovski turned his back to the Court Board. After usual verbal battle the judge again rushed out of the hall. After this episode the escort announced that the judge asked to declare the break and offered everybody to leave the Hall (?!). It was exactly at that moment that Mirza Dolidze went out from the Council Room and calmly as if nothing had happened continued reading the sentence. Someone joked: "When violating the Law at least act at mutual

agreement".

In the text of the Sentence is violated the sequence of presentation of proofs of the defendants' guilt. According to the lawyers explanation, the testimonies given during the trial as a rule are given priority compared to those given in the course of the preliminary investigation. However the Sentence of Mr. Dolidze is completely based on the testimonies given during the preliminary detainment.

The facts of physical pressure over the prisoners during the investigation process are completely ignored. For example, as it comes out of the Sentence the incidence between G. Gelbakhiani and Chogovadze happened because of some personal disagreement and beating of Gelbakhiani had nothing to do with forced testimonies. The fact of Z. Tsiklauri's feeling bad should not be considered by the Court since it was not proved by the facts. The testimonies made by the defendants during the trial which concerned the facts of their torturing also could not be considered by the Court since "neither the lawyers nor the defendants have ever put motion about the investigation of the facts of torturing". The Court Board seems to forget that the lawyer Mosevian did put such motion and the Court did not satisfy it under the advise of the Prosecutor Koberidze. As for the defendants themselves, their testimonies about their being subjected to physical violence given in the process of trial should have been enough for the Court to get interested in these facts and investigate them.

The sentence emphasizes that the right for the defense of all defendants was not violated; all testimonies were given by the defendants in the presence of their lawyers and within the limits envisaged by the Law (!) To refute it suffice it to provide several examples: the defendant Tamaz Tsiklauri for 17 months, that is during the whole period of trial, did not have any lawyer, though he was charged with the blame which envisages death sentence; the defendant G. Makhliladze's lawyer I. Babunashvili did not attend the trial since August 26, 1994. Makhliladze in vain attempted to take another lawyer instead of Babunashvili - the Court Board did not permit it; the defendant V. Domukhovski's lawyers Nizharadze and Dzhgumadze were expelled from the Board of Barristers. As for Domukhovski, he was not allowed to take a new lawyer. Actually only three defendants had the lawyers chosen according to their own will, the rest of defendants either did not have the lawyers at all during the whole 17 month period of the trial or they refused from the lawyers appointed by the Court. During their final speech the lawyers O. Konstantinidi (P. Gelbakhiani's appointed lawyer) and G. Kapanadze (Z. Tsiklauri's appointed lawyer) made a special statement that they did not have the right to pronounce defense speech since they were not aware of the defendant's position and opinion. The statements of the lawyer Mosevian and others clearly showed that in the process of investigation a number of interrogations were carried out without the presence of the lawyers.

Those who were present at the trial were astounded by the cynicism of the judge when he stated that Irakli Dokvadze's mother should be punished for giving the false testimonies, but since she was a close relative of the defendant she would not be charged with Criminal Code accusation.

In the sentence is given detailed description of the Kwareli episode and the testimonies of the "Kwareli band" members, that is of the defendants L. Donadze, G. Gachechilashvili, G. Khaduri, E. Kobaidze, D. Talashvili and others given in the course of investigation and at the trial are considered as the proofs of the guilt of the defendants. It is noteworthy that at all stages of the trial the lawyers and defendants were demanding to be allowed to see the Court Acts of "Kwareli Case", the usual answer of the judge Dolidze being: "This is absolutely

different Case and it has nothing to do with Case under investigation".

The above sentence is brought into correspondence with the "Kwareli Case" sentence. Thus, the facts denied by the sentence made for "Kwareli case" were excluded from Dolidze's sentence also: the Court did not consider proved existence of the detachment of special destination "Spinoza" in Kwareli, attack on "Mkhedrioni" camp by the Kwareli detachment and other insignificant episodes. This seemed to be necessitated by the fact that in case of irrelevancy between these two sentences the Supreme Court had to annul one of these two Cases.

To show his unbiased attitude M. Dolidze excluded from the charges of G. Makhliladze the fact of attack on Union Lavra, from the charges of P. Gelbakhiani, G. Makhliladze and G. Mcchedlishvili - the fact of purchasing from Zhgenti and keeping of arms and explosives; from charges of Z. Tsiklauri - the fact of keeping bullets in the flat of his parents; from the charges of T. Kapanadze, Z. Gogichaishvili and T. Tsiklauri - the attempt to attack Razmadze and attempt to explode Tbilisi-Sachkhere highway, and from the charges of P. Gelbakhiani, V. Domukhovski, I. Dokvadze, M. Apsisa - the attempt to explode Telavi oil base having cynically left the charge of preparation of these terrorist and diversion actions, which envisages the same punishment.

Absolutely incomprehensible is the principle by which the judge was choosing extenuating circumstances: for some defendants little children served as such circumstances while for others not.

And finally, when the sentence was pronounced we all became the witnesses of manifestation of unparalleled cynicism: Dolidze began reading the sentence according to which the defendants and lawyers encouraged by them were continuously abusing the order during the whole course of the trial, did not give the Court Board the possibility for normal working, used all means and methods to drag out the trial. The defendants without any sound grounds demanded to change the lawyers, which resulted in expelling of some lawyers from the Board of Barristers, warnings etc. Though started with remarkable vigor and enthusiasm Mirza Dolidze's reading of the sentence was not finished because of anxiety of those who were present in the Court Hall. The judge quickly closed the trial. As we have learned from the lawyers participating in the trial, this sentence will be sent to the Presidium of the Board of Barristers for adequate reaction and to the colonies where will be sent the defendants of the present trial, which means that judge Dolidze in advance warns the administrative bodies of the institutions where the defendants are supposed to serve their term that they should be prepared to receive particularly dangerous prisoners...

Nino Chechelashvili

The Prosecutor did not Have the Right to demand the Death Sentence

On March 2, 1995 in the building of Parliament of Georgia Parliamentary Commissions met with the lawyers participating in the "Gamsakhurdia and His Supporters' Case". This meeting was attended by the representatives of Georgian and Foreign mass media. The representatives of Georgian and Participants of the meeting dwelled on the juridical violations made in the ongoing hearing of the case and on the Prosecutor's demand to pronounce death sentence for two political prisoners. As it became known, three days earlier Participants of the Supreme Court of the Republic of Georgia was sent a Demand not to pronounce death sentence which was signed by 116 members of the PARLIAMENT. As it was stated by one of the members of Par-

liament the next stage will be demand to return the case to investigation for the new and unbiased investigation. To our mind the speech of the defendant Petre Gelbakhiani's lawyer Mr. Gregor Konstantinidi was of significant interest and hence, below we are publishing this speech.

On January 2, 1992 the Statement and Appeal to the Population of Georgia made by the Military Council of the Republic of Georgia was published saying that the power in Georgia was taken by the Military Council of the Republic. The Military Council temporally stopped the action of the Constitution and dismissed the Parliament. It was stated that all managerial structures of the Republic are subordinate to the Military Council.

1. State Borders and National-State Structure of the Present day Georgia (present day status of Abkhazia and Ajaria) considering present day reality to recognize the superiority of International Acts and Constitution of 1921 without any changes.

2. "Elections of the Parliament of the Republic of Georgia shall be carried out not later than the fall of 1992 in accordance with the principles stated in the Constitution of February 21, 1921.

3. "The Military Council and Temporary Government of Georgia will resign at the very first session of the newly elected Parliament". This document is signed by Mr. Kitovani and Mr. Ioseliani, the date of its signing being February 21, 1992.

On the same day was published the Statement of the Military Council of the Republic of Georgia dated by February 24, 1992. The acting Legislation of the Republic of Georgia is brought into correspondence with the principles of the Constitution of Georgia. "By this Statement the Legislation of Georgia was generally brought into correspondence with the Constitution of 1921 including the Criminal Law. That part of the Legislation which contradicted the Constitution was suspended.

**By the Constitution of 1921
death penalty is forbidden.**

Thus by June 13, 1992 such type of punishment as "death sentence" was not in effect.

On June 17, 1992 the "Sakartvelo Respublika" newspaper published the Statement of the State Council of the Republic of Georgia: "On the Action of Legislation of the Republic of Georgia in Relation to the Restoration of the Constitution of the Republic of Georgia" which said: "Since according to the declaration of the Military Council of February 21, 1992 the Constitution of the Republic of Georgia 1921 was restored with due regard to the present day reality, and by the Statement of the Military Council of the Republic of Georgia of February 24, 1992 the respective bodies were engaged with development of suggestions to bring the acting Legislation into correspondence with the Constitution of the Republic of Georgia, on the whole territory of Georgia including the system and kinds of punishment envisaged by the Criminal Code of the Republic of Georgia until they are suspended or amended in accordance with the order envisaged by the Law".

First, the Statement cannot change the Article of Constitution, and second, the Statement was published on June 17, 1992 and thus cannot be assigned 1992 and thus cannot be retroactive since aggravates the state of the defendant. And finally, even this Statement does not cancel bringing of the Constitution of 1921 into effect.