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International Federation for Human Rights



HUMAN RIGHTS CENTRE

**Preliminary findings
of an investigative mission
on the alleged existence of
political prisoners in Georgia**

July 2009

Introduction

In November 2008, at the FIDH regional seminar in Tbilisi on the administration of justice, several representatives of Georgian human rights NGOs compellingly drew FIDH attention to the issue of *new* political prisoners in Georgia (mainly those arrested in 2007-2008). The FIDH thus decided to send a mission to Georgia in order to conduct research on the matter. The Mission's delegates were:

Gregoire Thery, FIDH liaison officer to the European Union.

Kirill Koroteev, legal consultant to the Memorial Human Rights Centre.

Eldar Zeynalov, head of the Human Rights Centre of Azerbaijan.

The Mission was in Tbilisi on 19-25 February 2009, where it conducted meetings and interviews. Despite its formal request to the authorities, the Mission was not able to meet with the alleged political prisoners, though it did meet with lawyers and the families of the alleged political prisoners, plus representatives of the authorities, intergovernmental organisations, Georgian human rights NGOs, political parties and civil society.¹ The Mission also attended a meeting of the Georgian civil society commission dealing with the issue of alleged political prisoners.

This issue is highly politicised, with pronounced tensions on both the internal and external scenes:

1. In November 2007, the brutal and disproportionate repression of opposition demonstrations worried the international community (including strong supporters of Saakashvili's government). Opposition TV company Imedi was attacked and closed by the authorities.
2. During the May 2008 parliamentary elections, a great many violations to free and fair election standards were documented, despite a final assessment from the OSCE stating that the elections were democratic overall.
3. The August 2008 war with Russia increased internal tensions regarding allegedly pro-Russian political parties and opponents.
4. In November 2008, opposition rallies in Tbilisi again gathered thousands of demonstrators calling upon Georgia's president, Saakashvili, to resign.

Despite strong allegations regarding the existence of political prisoners from Georgian NGOs, human rights defenders, political parties and Georgia's public defender, neither intergovernmental organisations nor international NGOs formally acknowledged their existence in Georgia. The Council of Europe officially recognized such prisoners' existence in Azerbaijan and Armenia.

¹ See the list of interviews in the Appendix.

However, several intergovernmental organisations and international NGOs have documented and denounced the Georgian government's political repression against the opposition.

The FIDH investigation report concludes that political prisoners exist in Georgia. Though the report does not give a comprehensive list of political prisoners, it does aim to illustrate its assessment through eight pilot cases. These cases mainly demonstrate how some political opponents, funders of the political opposition and influential individuals linked to the opposition are arrested and detained after being sentenced in totally- or partially-fabricated judicial cases. The most frequently used charges involve illegal storage of weapons or drugs, extortion, and attempting to overthrow the government.

IV. Description of the eight pilot cases examined by the Mission

1. The Case of Nora Kvitsiani

Nora Kvitsiani, a Georgian-Svan, was born on 1 December 1948 in Gulripshi and lived in the village of Chkhalta in the Kodori Valley. An economist by training and head of the department of social security, in the absence of centralized governmental authority she voluntarily fulfilled the functions of *gamgebeli* (head of local government). In this capacity, she tried to resolve the social and economic problems facing the local Svan (Georgian) population and dealt with the central authorities. She is currently being held in prison settlement no. 1 in the city of Rustavi, and suffers from health problems (intracranial pressure).

The Monadire squadron

Some of the charges against Nora Kvitsiani were associated with the activities of a militia group called the Monadire (Hunter) squadron, which was created in 1992 during the war between Abkhazia and Georgia by her brother, Emzar Kvitsiani. On 25 July 1998, the squadron placed itself under the authority of Georgia's Defence Ministry as a battalion, and its members were given arms and wages, with which they were able to support their families at a time of widespread unemployment. The squadron claimed to protect the local population.

In 1999, the esteem in which Emzar Kvitsiani was held led to his appointment as Shevardnadze's representative in Kodori. During the civil strife of 2003, he remained loyal to Shevardnadze, and, as a result, was removed from the post of presidential representative in December 2004 and dismissed as battalion commander in April 2005. That same month, defence minister Okruashvili disbanded the squadron, calling it "a pointless sub-unit" that could easily be replaced with a regular unit.²

On 22 July 2006, Kvitsiani called for the dismissal of those heading the security ministries, which, he alleged, were engaged in repression. He threatened official Tbilisi with acts of civil disobedience and, if necessary, armed resistance.³ In response, on 23 July the speaker of parliament, Nino Burdjanadze, told journalists that Kvitsiani had met in Kodori with the head of the Russian peacekeeping forces and the defence minister of Abkhazia (something all three deny), and that Kvitsiani "was somebody's stooge, or, in the worst case, directly following the orders of Russian security services." If this were true, police operations might be needed in the valley "in the coming days." The Interior Ministry said that a criminal case had already been opened, although they did not indicate which articles of the criminal code had supposedly been violated. Kvitsiani stated that

² www.memo.ru/hr/hotpoints/caucas1/msg/2005/04/m44964.htm

³ <http://lenta.ru/news/2006/07/27/operation/>

he would not let anyone into the valley bearing arms, and was determined to put up armed resistance if there was an attempt to disarm local residents.⁴

On 24 July, he offered to try to resolve the conflict by negotiating with Georgia's prime minister, the minister of economic development, the deputy chair of the Committee on Judicial Questions, and a representative of parliament's majority party. He also demanded that parliament refuse to confirm Vano Merabishvili as head of the Interior Ministry.⁵ The president immediately reacted by calling him a "bandit" who should have been "dealt with a long time ago", someone the president would "show who is boss." The only thing the president would be willing to negotiate was "what cell and under what conditions [Kvitsiani] would be moving into [investigative] holding facility no. 5."⁶ After the president's remarks, officials also denied any possibility of negotiating with Kvitsiani.⁷

On 25 July, approximately 800 members of the regular Georgian army and the police entered the valley. Local elders had gathered that day with Kvitsiani to discuss his conflict with the authorities.⁸ The negotiations were not fruitful, and, in the evening, shots rang out on both sides. That same day, Alexander Lomaia, Secretary of the National Security Council, had announced that the Georgian Interior Ministry was conducting a special operation in the Kodori Valley and threatened that "anyone putting up armed resistance to the authorities would be destroyed."⁹

During this crisis, Irakli Batiashvili, a Georgian opposition politician and former state security minister, spoke with Kvitsiani by telephone several times. He advised Kvitsiani to appeal to the soldiers who had been sent into the valley not to "shoot [their] brothers." Though Batiashvili did not conceal his contacts with Kvitsiani from the press, it turned out that his telephone was being bugged by the secret police. The authorities saw this conversation as "intellectual support" for the rebellion.¹⁰ On 29 July 2006, Batiashvili was arrested, and in May 2007 he was sentenced to seven years in prison, despite the fact that it was determined during the trial that the telephone call recording had been doctored.¹¹ Members of the opposition repeatedly demanded his release and in November 2007 staged demonstrations in his support. In response to the opposition's demands, on 11 January 2008 acting president Burdjanadze signed an order pardoning Batiashvili.¹²

On 26 July 2006, Georgia's prosecutor general initiated a criminal case, charging Kvitsiani with treason against the Motherland, establishing an illegal paramilitary group, and acquiring and using

⁴ <http://lenta.ru/news/2006/07/23/kodori/>

⁵ <http://lenta.ru/news/2006/07/24/talks/>

⁶ <http://lenta.ru/news/2006/07/24/mother/>

⁷ <http://lenta.ru/news/2006/07/25/mother1/>

⁸ <http://lenta.ru/news/2006/07/25/troops1/>

⁹ <http://lenta.ru/news/2006/07/25/specoperation/>

¹⁰ Interview with Irakli Batiashvili. See also: <http://misc.cmmpru/text.aspx?fileName=47876370BB01F.HTML>

¹¹ <http://lenta.ru/news/2007/05/23/jail/>

¹² <http://lenta.ru/news/2008/01/11/free/>

firearms. The Tbilisi municipal court issued a warrant for his arrest. It was also pledged that everyone complicit in the events in Kodori would be brought to trial as well.¹³

Despite the government troops numerical advantage, Kvitsiani and a group of his followers managed to hide. Georgia's Interior Ministry announced a reward of 100,000 Lari (approximately USD 55,000)¹⁴ for information leading to his arrest. His nephew, Bacho Argvliani, was also being sought for arrest. Furthermore, a special hotline was established for anyone with information about Kvitsiani¹⁵, who occasionally released videos confirming that he was in Kodori and prepared to fight.¹⁶ He stated that "There is no greater enemy of Georgia than Saakashvili and his government," and called upon the population to unite and expel him from Georgia.¹⁷

No figures were released on the total number of those killed and wounded during the special operation, although, according to figures provided by Russian peacekeeping forces, many of those wounded and killed were transported out of Kodori. Furthermore, opposition members of the Georgian parliament announced that, "Losses among Georgian security forces in Kodori totalled at least 50 men." Information was also released regarding civilian victims from the Kodori region¹⁸, in particular about a woman killed in the village of Chkhalta when the homes of the rebellion's leader and his relatives were fired upon.¹⁹

Although an end to operations was announced on 27 July 2006, the authorities later stated that they were hunting for 70 rebels in the forests of Kodori.²⁰ When operations concluded, divisions of the Interior Ministry remained in the valley "to maintain law and order."

That same day (27 July), Saakashvili announced that the Abkhazian government and parliament in exile, which had been in Tbilisi since 1993, were being moved to Kodori. "This decision has great political significance," since "the legitimate government of Abkhazia [&] will bring this territory under Georgian jurisdiction."²¹ In September 2006, by order of President Saakashvili, this territory was renamed "Upper Abkhazia."²² It is entirely possible that the operation to disarm the Monadire squadron was linked to a pre-existing plan to take this step and to the possibility of resistance from the local population, which might have good reason to fear that it would lead to escalated tensions.

Saakashvili ordered the government to conduct large-scale construction projects in Kodori so that not only the local population but those living in neighbouring Abkhazia as well would see the effect.

¹³ <http://lenta.ru/news/2006/07/26/traitor/>

¹⁴ <http://lenta.ru/news/2006/07/25/mother1/>

¹⁵ <http://lenta.ru/news/2006/07/27/kvitsiani/>

¹⁶ www.regnum.ru/news/706913.html

¹⁷ <http://subscribe.ru/archive/tv.news.1tv.odnako/200703/22055443.html>

¹⁸ <http://lenta.ru/news/2006/07/27/kvitsiani/>

¹⁹ <http://lenta.ru/news/2006/07/27/operation1/>

²⁰ <http://lenta.ru/news/2006/07/28/search/>

²¹ <http://lenta.ru/news/2006/07/27/saakashvili/>

²² <http://lenta.ru/news/2006/09/27/kodori/>

However, Kvitsiani pointed out that the conflict in the valley could have been avoided if the central authorities had paid attention to the region earlier. As parliament member Gocha Pipia stated, local residents were annoyed that "for several years, nobody in Tbilisi gave much thought to this region, which is a difficult place in terms of climatic conditions." According to Pipia, people were even forced to shoot at the Kavkasioni high-voltage power lines, which pass through the valley, to force authorities to send a helicopter to transport patients from Kodori.²³

Reprisals against relatives

Reprisals conducted against Kvitsiani's relatives and friends make the political motivation behind the operation even more clearly evident.

In early August 2006, members of the financial police closed down a supermarket and restaurant in the city of Poti that were primarily owned by Kvitsiani, they said, and confiscated the financial records of Vardis Urbani Ltd., the company that was the official owner.²⁴ In late January 2007, the municipal court of Zugdidi decided to confiscate all of Kvitsiani's property, which included a gas station on a road into Tbilisi and two apartments in the names of Kvitsiani's relatives. The latter were immediately evicted and not allowed to even appeal the decision in court.²⁵

The most severe punishment was meted out to Kvitsiani's sister, Nora Kvitsiani. During the operation against the Monadire squadron she did not leave her village, and she gave a telephone interview in which she criticized the government's actions. In the early hours of 29 July 2006, she was arrested, without any warrant being presented,²⁶ on charges of being involved with her brother's illegal paramilitary group. The main basis for the charge involved a telephone call to a security officer that claimed she had been seen armed and moving about the valley.

The defence argued that the case protocol had been falsified, since, between the time of the alleged phone call and the arrival of the police, it would have been impossible for her to cover the distance between the Kodori Gorge and Tbilisi, where the arrest warrant was issued: it takes about 16 hours in good weather conditions to cover this distance (in rainy weather, like that during late July 2006, the roads deteriorate), but the arrest was conducted on 29 July at 00.35 am while the arrest warrant was issued at 5.30 am the same day. The defence claims that the legality of the arrest is therefore doubtful from a procedural perspective.

During the search of Kvitsiani's home, weapons were found that she said belonged to the men in her family, her brother and son. Nevertheless, she was charged with illegal possession of arms and commanding an illegal paramilitary group. However, during neither the course of the investigation

²³ <http://lenta.ru/news/2006/08/15/build/>

²⁴ <http://lenta.ru/news/2006/08/03/supermarket/>

²⁵ <http://lenta.ru/news/2007/02/01/seize/>

²⁶ Interview with Paata Buchukuri

nor her trial did the authorities attempt to determine who belonged to this group besides Nora Kvitsiani.²⁷

Another charge against Kvitsiani came later, on 19 August 2006, involving the "appropriation of state property" valued at 75,000 Lari (approximately USD 41,000) in 2005. In this allegation, she was said to have stolen humanitarian aid. However, in that same month, residents of the village of Chkhaltá gathered to present a statement in court asserting that they had all received the humanitarian assistance in question, and they were even prepared to stage a mass hunger strike in protest.²⁸ This statement was not taken into consideration by the court, nor was the fact that, before these events, the Chamber of Audits had verified the distribution of humanitarian aid and had not found any violations.²⁹

Similarly, numerous petitions by her lawyer, Pata Buchukuri, were denied.³⁰ The defence therefore demanded that the judge be disqualified, another request that was denied.

Of the three prosecution witnesses, two (Chkhetiani and Tsulukidze) withdrew their initial testimony, after which, according to reports, they were themselves subjected to criminal prosecution.³¹ The third (Arkania) simply refused to testify. The lawyer's motion to call to the stand the investigator who had compelled the witnesses to give false testimony was not granted. Furthermore, the court based its case on the initial testimony.

As a result of this trial, Nora Kvitsiani was found guilty of appropriating property (CC Article 182-3), heading an illegal paramilitary group (CC Article 223-1) and the purchase and possession of firearms (CC Article 236-2). She was sentenced to 6.5 years in prison.

The mission's conclusions

The mission considered the following facts:

- The arrest and detention of Nora Kvitsiani stemmed from broader reprisals against Emzar Kvitsiani's relatives.
- Her lawyer asserts that no arrest warrant was presented during her arrest, which did not respect judicial procedural protocols.
- During the trial of Nora Kvitsiani:
 - No reliable evidence was brought to demonstrate that the weapons belonged to her specifically.
 - No basic information on the alleged paramilitary group that Kvitsiani supposedly led could be provided by the investigation.

²⁷ Interview with Maya Orgovliani

²⁸ <http://lenta.ru/news/2006/08/20/kvitsiani/>

²⁹ Public Committee for Human Rights, 23.01.2009

³⁰ Human Rights Centre (HRDIC), *Political Prisoners in Georgia* (2009)

³¹ Public Committee for Human Rights, 23.01.2009

- The beneficiaries of the humanitarian aid she is accused of stealing presented a statement declaring that they had indeed received the said aid.
- The Chamber of Audits had found no violations in the distribution of humanitarian aid.
- Two of the three prosecution witnesses withdrew their initial testimony against Kvitsiani.

The FIDH fact-finding mission thus concluded that the arrest and detention of Nora Kvitsiani is undoubtedly linked to the hopeless efforts to arrest her brother, Emzar Kvitsiani, and that several trial elements made it impossible to ensure that she benefited from a fair trial. In this context, the FIDH concludes that the arrest of Nora Kvitsiani was politically motivated, at least in part, and that she is a political prisoner.

2. The case of Joni Jikia

Joni Jikia was born on 25 May 1973 in Zugdidi. An economist by training, he is a member of the Zugdidi municipal assembly (the *Sakrebulo*), to which he was elected via a majority voting system. A member of the opposition Conservative party, he is currently being held in prison settlement no. 2 in the city of Rustavi. He suffers from kidney disease and contracted hepatitis C while incarcerated.

The political situation in Zugdidi

Zugdidi is the administrative centre of Samegrelo province (Mingrelia), which borders the front line with Abkhazia. The region is home to the Mingrelians, a Georgian ethnic group. Many prominent Georgian politicians and social figures have come from this region, including Zviad Gamsakhurdia, whose followers are still influential here, which is why an attempt to return president Gamsakhurdia to power in the fall of 1993 was centred there. The current president, Saakashvili, also considers himself a Mingrelian and pays the region particular attention.³² In 2007, he even built a presidential residence in Zugdidi, where a bomb (later successfully disarmed) was supposedly found on 26 October 2008.³³

Under both Shevardnadze and Saakashvili, the opposition was harshly suppressed in Zugdidi: members were shot at in 1993, and were not included in the amnesty granted after the work of the National Reconciliation Commission. Jikia's arrest on 2 October 2007 came at a time when a united opposition was becoming active.

A few days before Jikia's arrest, on 27 September, the authorities arrested former defence minister Irakli Okruashvili, who had gone over to the opposition. This consolidated the latter, which also included the Conservative party. On 28 September, a protest was held in Tbilisi against the arrest of Okruashvili. The opposition was planning protests across the country as of 6 October as part of the

³² See, e.g., www.pankisi.info/media/?page=ru&id=8885

³³ See, e.g., www.govoritmoskva.ru/russia/081026200734.html

so-called "Georgia without the President" campaign, and on 2 November, a demonstration involving people from throughout the country was planned for Tbilisi. Jikia was handling the preparations for this demonstration.

Further developments testify to the tense political situation in Zugdidi. On 28 October 2007, when Jikia had already been arrested, members of the opposition were attacked by plainclothes police after a demonstration in Zugdidi.³⁴ Among those beaten was a leader of Georgia's united opposition, Georgi Khaindrava, who characterized the authorities' actions as "terrorism."³⁵

A similar picture emerged during the period leading up to early parliamentary elections on 21 May 2008. For example, on election day in the village of Rukhi (on the border with Abkhazia), Koba Davitashvili – a united-opposition candidate running under the majority voting system who was investigating a rumour that Abkhazian refugees were voting at the Rukhi polling station without showing identification – was beaten by unknown assailants, and a television camera belonging to Rustavi-2 reporters accompanying the candidate was also damaged. In Zugdidi, the head of the united opposition's campaign headquarters, Zviad Pipia, was held up by three people armed with pistols; they took his mobile phone, which had been used to photograph "evidence of total election falsification." On the morning of the same day, a united-opposition campaigner, Geronti Katsia, was shot dead with a hunting rifle in the Tsalenjikh district (Samegrelo); the opposition has tied this murder to the elections.³⁶

Similarly, a planted weapon was used in the arrest of a local Conservative party head, Demur Antia, on 5 September 2008 in Zugdidi (see Case 6).

The circumstances of Jikia's arrest

Joni Jikia was detained on 2 October 2007 while travelling through Zugdidi by taxi. The police "found" narcotics in his possession and took the key to his apartment. There were no witnesses, although Jikia reportedly asked for them, given that the law entitled him to the presence of two, but only the police were present during the search.³⁷

His apartment was later searched, and in one room an illegal pistol was found; grenades were also discovered in the building's basement. As is typical, when the police found the weapon they failed to search the rest of the apartment.

On the basis of the evidence found, Jikia was charged with possession of a weapon (CC Article 236-1) and of narcotics (CC Article 260-2). He was sentenced to seven years in prison by the

³⁴ <http://www.inforos.ru/?id=19707>

³⁵ <http://news-ru.com/detali/all/522/80993.html>

³⁶ <http://www.kavkaz-uzel.ru/newstext/news/id/1217193.html>

³⁷ Public Committee for Human Rights, information note, 23.02.2009

Zugdidi district court, and the Kutaisi appeals court rejected an appeal concerning the charge of illegal weapons possession.

Meanwhile, it turned out that, not long before the search, the opposition member's neighbour had noticed a police officer entering Jikia's apartment.³⁸ This fact was presented as witness testimony during the trial, after which the charge of illegal weapons possession was dropped by the appeals court. The investigation was unable to determine the identity of the person who placed the pistol in Jikia's apartment.

The defence directed the court's attention to the police-report page where the officer on duty recorded the tip asserting that Jikia had narcotics in his possession. The fact that the date had been changed from 2 September to 2 October 2007 was obvious. Falsification is also evident in this key document's registration number, which is from early September. However, the court refused to accept a copy of this page as evidence and stated that it had been denied access to the original. These irregularities raise serious doubts as to the veracity of the drug-related charge.

From a procedural perspective there was thus no basis for the arrest, since the evidence was fabricated. Although this was partially recognized by the court, Jikia remained under arrest, and those guilty of falsifying the documents went unpunished.

The argument for considering Jikia a political prisoner

Jikia's arrest prevented him from organising opposition political actions in Zugdidi and Tbilisi, and constituted a limitation to his freedoms of assembly and speech. Even if it remains unclear where and by whom the order was given, the arrest seems to be politically motivated, and the sentence is the result of wrongful procedures from the very start.

3. The case of Revaz Kldiashvili

Revaz Kldiashvili was born in 1967. A career military officer, before his dismissal he had risen to the rank of colonel and had been chief of the military police for one year. He was promoted to the latter position by then defence minister Irakli Okruashvili, and was awarded a Defence Ministry medal at the end of his service. In early March 2007, new defence minister Davit Kezerashvili called him up to inform him of his imminent dismissal, which took effect on 13 March 2007. He remained at home for some time after his dismissal, but later supported former defence minister Okruashvili and joined the Movement for United Georgia in September 2007. After Okruashvili was arrested in late September 2007, Kldiashvili took part in a political rally on 7 November 2007. Wearing a

³⁸ Ibid.

military uniform and holding a Georgian flag, he was filmed during the rally by a security service agent.³⁹

Kldiashvili was arrested as he left his home on 13 November 2007 due to a suspicion that he was carrying weapons. He did in fact keep weapons at home, something he considered legal for a retired military officer; however, recognizing that the possession of weapons, albeit legal, could create problems for him, he hid them in the house. During the search of his house, investigating officers found a military police officer's ID card in his name, which he was supposed to have handed in to the Defence Ministry after his dismissal but failed to do. No weapons were found hidden in the house.

Kldiashvili's wife and lawyer asserted that he had been beaten during the arrest, and he felt something (which turned out to be a pistol) being put in his trousers. He lost consciousness afterwards. It was also alleged that Kldiashvili was hanged via handcuffs while in detention (an incident that was not investigated) and that he suffered from hypertension but received no medical aid. According to Kldiashvili's wife and lawyer, while in detention he was questioned on the relationship between Irakli Okruashvili and the opposition leader and businessman Badri Patarkatsishvili,

Kldiashvili's wife and lawyer alleged that two lawyers representing Kldiashvili, Marina Chitadze and Tamar Tedliashvili, suffered threats and harassment. In his defence, Kldiashvili claimed that, as a retired military officer, he could legally carry the weapons found on him, and that he simply forgot to hand over his military police ID card to the Defence Ministry after his dismissal. During his trial, Kldiashvili recognised one of the prosecution witnesses as an undercover police agent; he asked that a closed session be held in order to determine the details of this witness's collaboration with police, but the motion was dismissed. On 25 December 2007, the trial court found Kldiashvili guilty of illegal possession of firearms (Article 236 of the criminal code) and of using forged official documents (Article 362 of the criminal code), and sentenced him to four years in prison. A further 18 months was added to his sentence on appeal, the appeals court having considered that, as a career military officer, Kldiashvili should have been aware of his actions' illegality. On 17 November 2008, Georgia's supreme court rejected his appeal.

It is understood that Kldiashvili has not lodged an application before the European Court of Human Rights.

The mission's conclusions

Kldiashvili's case appears to be a mixed one. It cannot be said that the criminal charges against him were groundless; indeed, it is not within the mission's brief to contest whether or not Kldiashvili had the right to carry the weapons found on him, and the allegation that the police planted weapons

³⁹ Interview with Tsitsino Sinauridze and Tornike Orbeladze.

on him needs better evidentiary support, to say the least. It is also a matter for the Georgian courts to decide whether Kldiashvili's failure to return his military police ID card to the Defence Ministry constitutes a crime or not, but even if Kldiashvili's actions were criminal, it remains questionable whether the mere *failure to hand back* an official document to the ministry qualifies as forgery, and no attempt at falsifying the document has been established.

However, it is clear that Kldiashvili, a former high-ranking military officer and an ally of former defence minister Okruashvili, was first spotted by police at the 7 November 2007 political rally, soon after he became an Okruashvili supporter.⁴⁰

Even though Kldiashvili's trial has yet to be established as unfair, his sentencing does call for comment. Kldiashvili was sentenced to the maximum prison terms provided for in both the criminal code articles under which he was charged. The final sentence of five-and-a-half years in prison derived from five years' maximum for illegal weapons possession and six months' maximum for forging official documents. Even if we admit that sentencing remains at the discretion of trial and appeals judges, it is striking to see someone with no criminal record – a first-time offender and a retired officer whose outstanding service record had been officially recognized, no less – sentenced to the maximum possible penalty. The guidelines on sentencing adopted by Georgia's supreme court⁴¹ allow for the conclusion that, in a case where someone of Kldiashvili's situation is found guilty of both crimes, the sentence would be of three to four years. Even though the said guidelines are not formally binding on the courts, the sentence imposed on Kldiashvili is manifestly excessive.

The above elements lead the mission to conclude that Kldiashvili is a political prisoner.

4. The case of Shalva Ramishvili

Shalva Ramishvili was born in 1971. He and Davit Kokhreidze were co-founders of and shareholders in a private media company that owned the television channel TV 202, broadcasting from Tbilisi. As an anchorman on the popular talk show *Debatebi (Debates)*, Ramishvili often addressed politically sensitive issues. The television channel broadcast cartoons featuring former president Edvard Shevardnadze and supported Saakashvili before and after his rise to power, but became critical of his policies after the first year.

Under a service agreement dated 25 April 2005, the media company undertook to air several documentary films made by Studio Reporter, a private film production company. In May 2005, the company began working on a documentary concerning the business activities of a certain Mr Bekauri, a parliamentary member of the president's political party, which held a parliamentary

⁴⁰ Interview with Tsitsino Sinauridze and Tornike Orbeladze.

⁴¹ Available in Georgian on the supreme court's website: www.supremecourt.ge. An English was made available to the mission courtesy of Georgia's Human Rights Centre (HRIDC).

majority at the time. The documentary's objective was to expose Bekauri's allegedly illegal commercial activities. According to the government, no one within the media company knew about the making of this potentially compromising film except for Ramishvili and Kokhreidze.

After Bekauri had tried in vain to persuade the production company's journalists to drop the project, he contacted Ramishvili. From May to August 2005, the parliamentary member placed numerous telephone calls, asking Ramishvili to block the film. Eventually, they agreed to meet and discuss the issue.

During their first meeting, which took place on the morning of 26 August 2005, an agreement was reached whereby Ramishvili would prevent the film from airing on his channel in exchange for USD 100,000. After this meeting, Bekauri promptly complained to the interior minister that Ramishvili was blackmailing him and reported to the authorities that, if the potentially compromising film was aired, it could have disastrous consequences not only for him personally but for the ruling party's image as well.

That same day, the Interior Ministry initiated criminal proceedings on suspicion of extortion for the purpose of gaining vast profits. Later that day, Bekauri and Ramishvili met again and agreed that the latter would accept the sum in two instalments, of USD 30,000 and 70,000.

On the morning of 27 August 2005, Bekauri informed the prosecution service that he would hand over the first instalment to Ramishvili at about noon. The USD 100 notes to be used were consequently processed with invisible chemicals and marked with a special pencil, and their serial numbers were recorded by the investigating authorities. The prosecutor-general's office issued a ruling, dated 27 August 2005 at 11.00 a.m., that authorised the secret videotaping of the meeting without a court order due to urgent necessity. Bekauri carried the hidden camera.

The meeting during which Bekauri handed over the money to Ramishvili took place on 27 August 2005 at noon, in a mutual friend's apartment, with Kokhreidze also in attendance. Bekauri secretly videotaped the conversation and the money's handover. When Ramishvili and Kokhreidze left the meeting and got into Kokhreidze's car, they were arrested and searched. The USD 30,000 payment and the car in which the money was found were seized. On the same day, the Tbilisi city court legalized the secret videotaping.

On 28 August 2005, the investigation deemed Bekauri a victim, and the two broadcasters were charged with conspiracy to commit extortion. They pleaded not guilty and refused to testify.

At the trial court hearings, Ramishvili and Kokhreidze were kept in a barred dock, and the courtroom was defended by security guards armed with machine guns and wearing hood-like black masks.

Ramishvili and Kokhreidze challenged the trial judge's bias and questioned her impartiality, but this challenge was dismissed as unsubstantiated by the same judge in the Tbilisi city court on the same day. An appeal against this decision existed only in connection with an appeal against the final verdict.

On 29 March 2006, the Tbilisi city court convicted the two broadcasters of conspiracy to commit extortion and sentenced Ramishvili to four years in prison and Kokhreidze to three. On 30 June 2006, Tbilisi's appellate court upheld the verdict. Ramishvili and Kokhreidze unsuccessfully challenged the appellate court's decision of 30 June 2006 before the country's supreme court.

Kokhreidze was released from prison thanks to a presidential pardon on 26 May 2007.

According to a judgment rendered on 29 January 2009 regarding application no. 1704/06, the European Court of Human Rights found that there had been a violation of Article 3 of the European Convention on Human Rights (prohibiting torture and inhuman and degrading treatment) on account of the detention conditions suffered by Ramishvili and Kokhreidze at Tbilisi's prison no.5 (which was later demolished) and of the treatment both endured during hearings before the trial court, which involved the handcuffing and confinement in a guarded metal cage of well-known and apparently quite harmless persons, in the court's own words (para. 101 of the judgment). The European Court of Human Rights further found that Article 5 of the Convention (the right to liberty and security) had been violated with regard to both men on account of the absence of a valid court order authorising their detention between 27 November 2005 and 13 January 2006, their inability to gain early access to the video recording of 27 August 2005, and the manner in which the judicial review of detention orders was conducted. However, in its earlier admissibility decision of 27 June 2007, the court dismissed allegations relating to Article 10 of the Convention (freedom of expression) after finding that any restrictions resulting from Ramishvili's and Kokhreidze's criminal prosecution on their journalism activities had not been properly corroborated with relevant, specific evidence.

More recently, Ramishvili was refused conditional release because [his] punishment had not yielded the required results. Both Ramishvili's defence and the Georgian authorities seem to recognize, from their opposite points of view, the fact that the grounds for conditional release are rather imprecisely set out in the relevant legislation and may be applied arbitrarily. Ramishvili's prison term is set to end in August 2009.

The mission's conclusions

FIDH considers Shalva Ramishvili's case a mixed one. Indeed, the FIDH has no means of ascertaining and demonstrating that Mr Ramishvili did not in fact commit extortion. Furthermore, despite allegations and indications from Ramishvili's lawyer, no pure evidence has been brought to the FIDH's attention that would lead it to conclude that Ramishvili's trial was unfair. In addition, the European Court of Human Rights dismissed the allegation that the criminal prosecution against Mr

Ramishvili was specifically aimed at restricting his freedom of expression, as this was not corroborated with relevant, specific evidence.

However, the following points have been taken into consideration:

- Ramishvili's crime was provoked by the criminal acts of Bekauri, a member of parliament who belongs to the president's political party and benefited from parliamentary immunity, and this provocation has been backed up by the authorities.
- The release of Mr Ramishvili's documentary undoubtedly constituted a threat to the president's political party.
- The FIDH has strong reasons to believe that the criminal case against Ramishvili and Kokhreidze was used, at least partly, to dismantle their TV channel.
- The European Court of Human Rights denounced Ramishvili's and Kokhreidze's detention conditions and the treatment of both during hearings before the trial court.
- The European Court of Human Rights also denounced the absence of a valid court order authorising their detention between 27 November 2005 and 13 January 2006, their inability to gain early access to the video recording of 27 August 2005 and the manner in which the judicial review of detention orders was conducted.

The FIDH's fact-finding mission thus concludes that the highly political nature of this case, which directly threatened and involved the president's political party, combined with the European Court of Human Rights' recognition of the violation of Articles 3 and 5 of the European Convention on Human Rights, is sufficient to assert that the criminal case against Mr Ramishvili was a mixed one and that there are enough elements to support *prima facie* identification of Shalva Ramishvili as a political prisoner.

5. The case of Maya Topuria

Born in 1966, Maya Topuria is a relative of Igor Giorgadze and a member of the Samartlianoba (Justice) party, which was founded by the latter.

Born in 1950, Giorgadze was a career KGB officer and an honorary KGB agent of the USSR.⁴² After the Soviet Union's break-up, he served in Georgia's security services, achieving the rank of lieutenant colonel. He sided with Edvard Shevardnadze during Georgia's civil war and became minister for state security in 1993. In 1995, he was accused of plotting an assassination attempt against Shevardnadze and was dismissed.⁴³ He fled Georgia, and has been living in Russia since 1998,⁴⁴ where he is said to have support from the Russian authorities.⁴⁵ In 2003, he founded the

⁴² <http://lenta.ru/lib/14160024/>

⁴³ <http://www.newsru.com/background/24may2006/giorgadze.html>

⁴⁴ <http://lenta.ru/lib/14160024/>

⁴⁵ <http://www.echo.msk.ru/programs/code/43760/>

Samartlianoba party and the Anti-Soros movement, both of which were financed by Russian businessmen of Georgian origin.⁴⁶ In an interview with the official Russian newspaper *Rossiyskaya Gazeta*, he declared his intention of running for the Georgian presidency.⁴⁷ On 24 May 2008, he organised a press conference in Moscow to announce that he would overthrow Saakashvili with a nettle revolution.⁴⁸ The following day, a number of Georgian opposition parties (the New Right, the Conservative party, the Republican party and the Freedom Movement) dissociated themselves from Giorgadze's statements.⁴⁹

On 3 September 2006, criminal proceedings were instituted against Maya Topuria and 12 other people on the basis of two witness statements. In particular, these witnesses claimed to have heard from third parties that, during a meeting of political forces connected with Giorgadze, the conspirators had plotted a *coup d'état*. The written witness statements were similarly worded.

On 6 September 2006, the so-called conspirators, including Topuria and some 30 others, were arrested during a nationwide police operation that comprised 63 searches in 40 Georgian communities. Topuria and 12 others were charged on the following day, and via an order dated 8 September 2006, the Tbilisi city court authorized the detention of all 13 pending trial.⁵⁰

One of those arrested, Maya Nikolaishvili, entered into a plea-bargain agreement and became a prosecution witness in exchange for release on bail and a suspended sentence.

The prosecution initially accused those arrested of meeting on 24 May 2006 to plot the government's overthrow. However, when it became known that one of the so-called conspirators was in Germany on that date, the prosecution changed the date of the alleged meeting to 4 May 2006. The prosecution argued that the so-called conspirators agreed at the meeting to each gather together 100 people in order to create an armed militia and to seize Nino Burdjanadze, the parliamentary speaker at the time, and Saakashvili. Of 10 prosecution witnesses, six were anonymous (the defence was allowed to challenge their submissions, but was prevented from knowing their identities) and three were hearsay witnesses.

The defence argued that the conspirators hadn't even known each other before the arrests, and consequently could not have met in May 2006.⁵¹ They submitted a linguistic report from Roger W. Shuy of Georgetown University, USA, who argued that it was highly improbable, if not impossible,

⁴⁶ Interview with Gela Nikolaishvili. Given the treatment of ethnic Georgians in Russia after the 2006 arrests of Russian diplomats in Georgia, the voluntary character of the businessmen's contributions is open to doubt.

⁴⁷ <http://www.rg.ru/2003/12/05/giorgadze.html>

⁴⁸ <http://www.kommersant.ru/doc.aspx?DocsID=676226>

⁴⁹ <http://www.newsru.com/world/25may2006/giorgadze.html>

⁵⁰ Those arrested were not Giorgadze's best-known supporters. Irina Sarishvili, who was much better known to the general public, was not arrested and was allegedly told that, even if she had wanted to, she would never have been arrested. It was alleged that the arrests were made in order to put pressure on Samartlianoba's leaders. (From an interview with Emil Adelkhanov)

⁵¹ From an interview with Iya Topuria and Maya Elashvili

for 10 people from different backgrounds to speak of events that took place two to three months previously in language that was strikingly similar and used the same long sentences.⁵²

The trial was closed to the public. On 24 August 2007, the trial court found the accused guilty of crimes proscribed by Articles 315[1][2] (attempting a *coup d'état*) and 236[1] (illegal acquisition and storage of weapons) of Georgia's criminal code and sentenced Topuria to nine years in prison and her co-accused to prison terms ranging from four to eight years. Even though the appeal hearings were open, due to their limited scope they did not allow for a re-examination of the evidence against the accused and thus failed to remedy the original trial's shortcomings. The appeals court confirmed the sentencing on 29 April 2008, but reduced Topuria's sentence to eight years, six months and several other sentences by six months. The supreme court dismissed the appeal on points of law on 30 January 2009.

On 18 January 2009, the European Court of Human Rights conveyed to the Georgian government information on applications from Maya Topuria, Zaza Davitaia and Vakhtang Talakhadze alleging violations of Article 5 of the European Convention (the right to liberty and security) with regard to their arrest and detention. An application concerning the unfairness of proceedings (under Article 6 of the European Convention) is also pending before the European Court of Human Rights.

The mission's conclusions

The mission recognizes the right of the Georgian State to combat violent attempts at overthrowing the government and to try those suspected of criminal activities aimed at a *coup d'état*. Over the last two to three years, the Georgian authorities may have had reason to believe that their Russian counterparts were seeking to change Georgia's constitutional order.⁵³ The mission has no information that would lead to dismissal of accusations against Maya Topuria and the others involving their links to the Russian authorities and security services and their activities in Georgia against the Georgian government.

However, all these considerations do not amount to enough evidence to put them on trial. The fact that the trial was completely closed to the public, regardless of whether evidence presented before

⁵² Linguistic report by Roger W. Shuy of Georgetown University: *"The 11 witness reports provided to me for linguistic analysis show a remarkable similarity in the sequence of the information reported, in the words and expressions used when the witnesses reported what they claim to have seen or heard, and in the syntax (sentence structure) used. In the hundreds of witness reports that I have analysed over the past 30 years, I have never seen such remarkable linguistic similarity represented in different witnesses. In many cases, the similarities here reached the level of being identical. It is well established that normal individuals do not talk in exactly the same ways, or even in ways similar to each other, even when reporting the same events. The similarities found in these 11 witness reports cast strong doubt on the credibility of these witnesses and strongly suggest a lack of independent reporting with regard to what the witnesses saw, heard or were told by others about what happened."*

⁵³ The telephone conversation between Russian foreign minister Lavrov and US secretary of state Condoleezza Rice during the "August war" of 2008, the contents of which were disclosed by the US representative at a UN Security Council meeting in August 2008, is but one piece of evidence.

the trial court contained official secrets, and that the evidence itself raises more doubts than it quells, allows for no other conclusion than that the criminal case was groundless. The linguistic report made available to the trial court and the mission only supports this conclusion.

In the mission's view, Maya Topuria is a political prisoner, and there is *prima facie* case that the co-accused in this case are political prisoners as well.

6. The case of Demur Antia

Demur Antia, 59, is an engineer and economist, and the chairperson of the Conservative party's regional branch in Zugdidi. On 5 September 2008, the police searched his house and arrested him.

Political background (August-September 2008)

During the Russian invasion, all local officials left Zugdidi (at the border with Abkhazia). City hall and the regional police building were empty, and government representatives were absent. When the Russians left Zugdidi, the government returned. The opposition started speaking against the government's activities and was very critical of it. In September 2008, the opposition felt that there was popular resentment against Saakashvili and wanted to capitalise on this.

Antia's lawyer asserts that three other people belonging or linked to the opposition were also arrested in the same period. He cannot give the names of these people, but believes that some were election committee observers. He asserts that there were also cases of intimidation where people were brought in to the police and then released. The FIDH mission could not verify this information, but underlines the fact that similar practices have been confirmed and documented by the OSCE in its electoral observation mission report on the May 2008 parliamentary elections.⁵⁴

Demur Antia's specific politic activities

Antia is the chairperson for the regional branch of the Conservative party in Zugdidi. When the officials left the city, he approached the UN office and denounced the attitude of local authorities. As the local representative of the Conservative party, he was at the heart of opposition criticism of the government.

Antia had already been very active in the opposition during the events of November 2007. He was also involved in local demonstrations conducted by the opposition in October 2008. At that time, several opposition demonstrators had been severely beaten by unidentified men who were believed

⁵⁴ OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 21 May 2008.

to be security officials.⁵⁵ Antia was severely beaten by the police during the events of November 200 in Tbilisi and could not move for a week. In September 2008, he was involved in preliminary preparations and gatherings for the opposition s November 2008 rallies.

Judicial case - Formal case and proceedings

Demur Antia was accused of carrying weapons and refused to plead guilty. First of all, he was sentenced to one year in prison by Zugdidi s court on 12 January 2009. This case was appealed. His lawyer explained that the judge did not substantiate the reasons for keeping Antia in pre-trial detention.

Links between political motivation and the formal case made by the authorities

According to Antia s lawyer, an investigator on the case told Antia during the investigation, If the government fled the place, that is not your business. You should not have gone and complained about it to the UN. The FIDH fact-finding mission had no means of confirming this allegation on the basis of evidence, but underlines the fact that the OSCE electoral observation mission covering the May 2008 parliamentary elections reported similar cases where local authorities clearly linked arrests with opposition activities and/or negotiated releases if detainees agreed to cooperate with the UNM party.

Weaknesses of the investigation and trial Investigation

On 5 September 2008 at 4 am, some 20 to 30 people came to Demur Antia's house, gathered together on the ground floor those living there and searched the house. Only then did they call neighbours and find a weapon (automatic gun) on the second floor. Witnesses were called in an hour after the search began.

Antia's lawyer contends that the weapon found in the house was planted during the first police search, in the absence of any witnesses. When the police searched the house, they found a weapon with no identification number, but during the investigation and trial the weapon tested and attached to the case had an identification number.

Six people were living in the house, and no evidence was ever offered as proof that the weapon specifically belonged to Antia.

⁵⁵ Human Rights Watch report: Crossing the line: Georgia's violent dispersal of protestors and raid on Imedi Television, December 2007, p. 13

Current situation

Demur Antia is imprisoned in Zugdidi. Since the verdict, his family is authorised to visit him once per month. No visits were allowed during his pre-trial detention.

The mission's conclusions

The FIDH mission cannot confirm Demur Antia's allegation that the authorities themselves made a link between his arrest and his criticism of the local authorities. If confirmed, this allegation would be sufficient in itself to demonstrate the political motivation behind his arrest.

However, the following facts have been taken into consideration:

- Antia had already been a victim of repression against political opposition (he was beaten after participating in the November 2007 protests).
- At the time of his arrest in September 2008, he was deeply involved in preparations for the November 2008 opposition demonstrations, and held an exposed local political position as chairman of the Conservative party's regional branch.
- The investigation and trial display serious weaknesses (a preliminary search without witnesses, no identification number on the initial weapon and no evidence that the weapon belonged specifically to Antia).

The FIDH fact-finding mission thus concludes that it is highly probable that Demur Antia is the victim of a completely fabricated case aimed at repressing his opposition activities and criticism of the government.

7. The case of Omar Kutsnashvili

Omar Kutsnashvili was born on 28 January 1942. On 7 April 2000, he co-founded Geoengineering Ltd. On 3 November 2006, contract no. ICB/CW/05 was concluded between Geoengineering Ltd. and Fund-Millennium Challenge Georgia (MCG). The value of works envisaged in the contract was an estimated USD 1,444,917. The prosecutor accused Geoengineering of having artificially increased the percentage data of the works on several occasions. Geoengineering is accused of misappropriating USD 115,348.

According to the bill of indictment for criminal case no. 092080102, Omar Kutsnashvili is accused of embezzlement, the illegal appropriation of movable objects of others on a large scale, via prior consent of a group and using his official position (sub-points a and d of Part 2 and sub-point b of Part 3 of Article 182 of Georgia's criminal code). He is also accused of having manufactured and applied false payment cards and tax documents.

In February 2009, the court recognised that he was not guilty of embezzlement. In this context, it is hard to understand the motive for falsifying documents.

Political background

On 22 December 2007, Kutsnashvili received a phone call from the National Movement party, during a period when several businessmen were summoned to the NM party. He was asked to join the party and provide it with financial support. He refused the invitation, contending that he did not want to get involved with politics. On 24 December, he was again called upon.

His son Zakarias Kutsnashvili alleged that the financial police threatened to arrest his father if Zakarias participates in the elections.⁵⁶ The prosecutor general, who was a close friend of Zakarias (they studied together at university), warned him that his father was going to be arrested. On 27 March, Zakarias met with this person, who conveyed two key messages from the NM party:

- Zakarias should not take part in the parliamentary elections.
- He should also stop criticizing the government.

According to Omar Kutsnashvili's son and lawyer, Khatuna Gogorishvili, chairwoman of the parliamentary committee on procedural issues and rules, sent him a query through Zurab Adeishvili: Do you intend to take part in the elections? Zakarias answered that he was not going to get back into politics.

In March 2008, a case was filed against Omar Kutsnashvili. After the filing, Kutsnashvili was not arrested, but the police took his documents and computers. His belongings remained with the financial police until Zakarias met with Zurab Adeishvili, who was head of Georgia's presidential administration in March 2008. Zakarias tried to get in touch with him, and was finally received on 21 April, the cut-off date for registration for elections. Zakarias believes that he was received only after the authorities were sure that he would not become a candidate in the parliamentary elections. Zakarias says that telephone calls will confirm that he met with Adeishvili, and, after speaking to the latter, Kutsnashvili's belongings were returned to him.

Zakarias explained to Adeishvili that, if the authorities had problems with him, they should deal with him directly and not involve his father or his family. Adeishvili replied that he was going to sort out the problem, but the case was not closed.

After the elections, Zakarias made public his opinion concerning electoral fraud. On 4 July, the manager of *Kavkasia*, a TV programme, invited Zakarias on the show, where he stated that, though

⁵⁶ In his testimony before the Georgian parliament in December 2008, Georgia's Public Defender, Sozar Subari, claimed he possessed evidence that Zurab Adeishvili, together with Davit Kezerashvili (Minister of Defence), had a secret meeting at the Interior Ministry offices on 4 November 2007 during which they decided to allow the police to use force against political opponents.

the government won the elections, it would be very hard to maintain stability in the country. He reminded viewers that stability must be based on freedom and justice, and these qualities are absent in Georgia.

On 4 July, the final decision to arrest Omar Kutsnashvili was taken.

On 7 July, the financial police were ordered to make the case.

On 7 July, Kutsnashvili realised that he was under surveillance.

On 10 July, he was arrested.

Links between political motivation and the formal case made by the authorities

According to Zakarias Kutsnashvili, the financial police told him after his father's arrest that the authorities were upset about his continued criticism of the government. He was also told by the chief of the financial police that they would release his father on bail for money and a confession of guilt. Kutsnashvili's family started bargaining, and the sum requested steadily decreased, and at the end of February 2009 the court declared him innocent of embezzlement.

Formal case and proceedings

Omar Kutsnashvili's lawyer feels that the prosecutor failed to collect any evidence in favour of the accused. He explains that the court tried to pretend it was aiming for a fair trial. The prosecutor asserted that judicial equality was maintained and that all defence motions were accepted. Kutsnashvili's lawyer disagrees with this assessment, explaining that some defence requests were accepted but the most important were not. The defence wanted to focus on the lack of criminal elements, given that both parties to the private contract were happy with its execution. The defence did not understand how the State could sue Kutsnashvili for embezzlement if the contracting party was satisfied.

The FIDH fact-finding mission had access to the following documents:

- Certificate of completion:⁵⁷ *In this document, the Georgian Oil and Gas Corporation project manager certifies that the works are completed, with the agreed testing/commissioning programme under the above-mentioned contract achieved in full, in accordance with all required technical specifications and performance parameters, as provided for in Exhibit 4: Contract Specifications.*
- Defect liability certificate:⁵⁸ *Geoengineering has fully and successfully completed all works required under the above-mentioned contract.*

⁵⁷ Certificate of completion, Ref GICP-GEOP-PIP-L-0019, 29/08/07, "issued pursuant to contract no. MCG-ICB-CW-05, by and between Millennium Challenge Georgia Fund (employer) and Geoengineering LLC (contractor), dated 3 November 2006; (contract) issued by the Georgian Oil and Gas Corporation (project manager).

⁵⁸ Georgian Oil and Gas Corporation, Defect Liability Certificate, 11/11/08, issued by GOGC NSGPR, project manager.

- Letter from the Millennium Challenge Corporation:⁵⁹ This letter explains how and why there was an increase of work from the initial volumes provided for in the tender documents: *When the contract was awarded in November 2006, it had been determined by the Millennium Challenge Georgia Fund, Millennium Challenge Corporation and Georgian Oil and Gas Corporation that the design provided in the tender documents for Gldanula Crossing had certain technical deficiencies, due largely to the expedited process employed in preparing and releasing the tender documents and the urgent nature of the repairs. As the winning bidder, Geoengineering was asked to develop an improved, alternative design at their own expense, which was subsequently approved by the Oil and Gas Corporation. All subsequent works were carried out according to the alternative designs and were accepted by the contracting supervisors.*

Millennium Challenge Corporation believes that Geoengineering fulfilled the terms of the contract in good faith according to standards above and beyond those required by Georgian practices.

- Letter from the American Chamber of Commerce in Georgia (AmCham) to the acting prosecutor general:⁶⁰ In this letter, the executive director of AmCham reiterates that a contract was signed between Millennium Challenge Georgia and Geoengineering, and that Millennium Challenge Georgia is fully satisfied with Geoengineering's fulfilment of the contract. She also notes that *this was a lump-sum contract that was not linked to volumes or bills of quantity.* In addition, she draws the attention of the prosecutor general's office to the fact that *the contract that the financial police are using as the basis for an investigation is of a different, outdated and void design, and is not legally binding.*

The Georgia public defender's conclusions regarding Omar Kutsnashvili's criminal case⁶¹

On 16 September 2008, Mr Kutsnashvili's son brought his father's case before Georgia's public defender. On the basis of Articles 13-14 of the Organic Law of Georgia, on the role of the public defender, the latter reviewed Kutsnashvili's application (no. 2469-08).

The FIDH fact-finding mission had access to the Georgia public defender's 25-page conclusion regarding Kutsnashvili's criminal case. The public defender concludes that *the investigation of Omar Kutsnashvili was conducted one-sidedly, with partiality and bias, in pursuit of accusatory evidence in support of the allegations alone.* The public defender's conclusion states that *the investigation was not directed at gathering justification proof regarding the accused; in this way, it roughly infringed upon the requirements of Article 18 of the code, which calls for thorough, objective and full investigation of the case's circumstances.*

⁵⁹ Sent on 27/08/08 by Colin Hugh Buckley, resident country director of Millennium Challenge Corporation.

⁶⁰ Letter from Amy Denman, executive director of the American Chamber of Commerce in Georgia, to Giorgi Latsabidze, acting prosecutor general, 02/09/08.

⁶¹ The Georgian public defender's conclusions re: Omar Kutsnashvili's criminal case, no. #389/03-4/2469-08 of 02/02/09.

During the trial, the prosecution claimed that Kutsnashvili had embezzled government funds, but the defence argued that this was impossible, since the government was not party to the contract.

The defence requested testimony from MCC personnel and questioned two MCC agents (American citizens with diplomatic status), who provided written statements declaring that MCC was satisfied with Kutsnashvili's firm's work and that there was nothing with which to reproach Kutsnashvili.

The defence invoked Article 5 of the ECHR several times, requesting Kutsnashvili's release, but his detention continued pending his trial. The defence then filed a case with the ECHR regarding his preliminary detention, since Kutsnashvili is 67 years old and should benefit from priority examination of his case.

The mission's conclusions

The FIDH fact-finding mission does not have sufficient evidence to confirm that several top Georgian officials offered to release Omar Kutsnashvili in exchange for guarantees that he and his son would stop supporting the opposition and criticizing the government.

However, the following evidence was taken into consideration:

- Both Omar Kutsnashvili and his son were particularly active in and supportive of the opposition at the time of Kutsnashvili's arrest:
- Kutsnashvili refused to contribute financially to the National Movement party's election campaign, and publicly expressed his support for the opposition by demonstrating.
- Omar's son, Zakarias Kutsnashvili, conducted research into and published methods of falsifying elections, warned the public that such methods could be used again in future, and strongly criticized the government on TV just three days before his father's arrest.
- All parties to the contract expressed their full satisfaction with Geoengineering's work, as did and the supervising bodies, making the accusation of Kutsnashvili's misappropriation of funds in fulfilling the terms of the contract doubtful.
- Georgia's public defender and the American Chamber of Commerce in Georgia brought forth concrete evidence of the investigation's weakness.
- In February 2009, the trial court concluded that Kutsnashvili was not guilty of embezzlement, but only guilty of forgery.

The Court's recognition of Kutsnashvili's innocence on the main charge of embezzlement, added to the elements here above, allows the FIDH mission to conclude that Kutsnashvili is a political prisoner and his detention is politically motivated (at the time of writing, he was still being detained).

8. The case of Merab Ratishvili

Merab Ratishvili was arrested on 26 October 2007, accused of the illegal possession and use of drugs in huge amounts. Pursuant to the judgement of 15 July 2008, Tbilisi city court sentenced Ratishvili to nine years under Article 260(3)(a), which governs the purchase, acquisition and possession of drugs. During a police search, 0.026 g of narcotics containing methadone was found in his car, while 8.4380 g of narcotics containing methadone was found in his house.

Ratishvili had been residing in Moscow (where his children live) when, in 2003, he returned to Georgia at the request of former prime minister Zurab Zhvania. Ratishvili had close relationships with the government and members of the opposition. On 26 September 2007, he created the Tbilisi discussion club, became more active in the opposition, and lent financial support to its activities.

Ratishvili is convinced that his arrest was the direct result of his renewed political activities and support for the opposition.⁶² His was among the first names mentioned by the opposition as political prisoners, together with Shalva Ramishvili, Nora Kvitsiani, Joni Jikia, Marlen Nadiradze, Ilia Tsutsumia, Revaz Kldiashvili, Archil Benidze and Demur Antia.

He asserts that drugs were planted on him and that he was asked to acknowledge that he was a Russian spy. If confirmed, this fact would indicate that drugs were not the main issue. According to Ratishvili's lawyer, a member of parliament named Kukava received confirmation of this fact in a discussion with Georgian officials. Furthermore, passports and other documents were planted in his house. Some information in these documents turned out to be quite incoherent; one passport, for example, showed that Ratishvili had visited Côte d'Ivoire – a place he's never been. No investigation was carried out on these false documents.

Violations during his arrest and trial

Ratishvili was officially arrested for drug possession, but the police search involved computers, documents, printers and T-shirts with political party logos.⁶³

Some of his documents were even sent to the counterespionage service, which responded that they contained no dangerous information.

⁶² FIDH interview with Eika Jikashvili and Ariel Choshishvili, 21 February 2009.

⁶³ “Merab then urged them to allow him to be present during the search, but he was taken away. I was alone with 10 men. They entered every room, and all the lights were on. I asked them to let me ask someone to be present at the search in my place, but they refused. One of them entertained me with a speech. They were not searching very carefully, because they knew what to look for. I had ironed the suit where they found 9 grams of “Metadon” only half an hour beforehand. I don't know who put it there, but it clearly should not have been there. They dug up some stuff from the cellar, including T-shirts with the “By Ourselves” slogan on them; Paata Davitaia sent those T-shirts to my husband and me, but the police considered the shirts some kind of evidence against Merab” – from an interview with Merab's wife, Eika Jikashvili, at <http://www.humanrights.ge/index.php?a=article&id=2799&lang=en>.

His lawyer explains that, during the arrest, the police searched his car and apartment. Ratishvili requested the presence of two outside witnesses during the search (as provided for in the law), but the police refused, arguing that the witnesses might destroy evidence. Given that 10 policemen were searching the house, it is hardly possible for the two witnesses to have had a chance to destroy the evidence in the presence of police.

Ratishvili alleges that, when he was in jail, members of the ruling party asked him to make false statements against leaders of the political opposition⁶⁴, an allegation that cannot be confirmed by the FIDH mission.

Links with his political activities, as alleged by the authorities

Merab Ratishvili was arrested just before opposition meetings on 2 and 7 November 2007 that ended with the resignation of president Saakashvili. On the eve of these meetings, which were considered a danger to political stability, a number of opposition activists were harassed. A former defence minister and opposition leader, Okruashvili, was arrested at the same time and forced to leave the country.

An ex-member of parliament named Kukava held discussions with several officials, saying that Ratishvili was not arrested because of drugs but for counterespionage. These officials told him that, once they proved Ratishvili was involved in counterespionage, they would lift the drug-related accusations.

While he was under arrest, several officials met with Ratishvili in jail and offered him a chance to denounce their political opponents in exchange for his release; they also requested more information regarding articles Ratishvili wrote about the events of November 2007. He proposed official discussions on the matter with the general prosecutor's office, but received no answer regarding the matter, and has still said nothing regarding his visitors' identities.

The mission's conclusions

The FIDH fact-finding mission does not have evidence confirming that Georgian authorities, unofficially and on several occasions, made themselves a link between his arrest and his political activities. In this regard, the FIDH mission points out that Kukava's testimony is crucial to confirming this allegation.

However, the following information has been taken into consideration:

- Merab Ratishvili was particularly active politically in the days before his arrest.
- His arrest occurred a few days before massive (and heavily repressed) opposition demonstrations.
- He alleges that police planted drugs on him and in his car and house.

⁶⁴ From an FIDH interview with Eika Jikashvili and Ariel Choshishvili, 21 February 2009.

- Georgia's public defender supports this version of the facts, pointing out that several opposition activists were arrested in October and November 2007 and convicted of illegal drug possession.
- Several weaknesses were noted in the police investigation process:
- No witnesses were allowed to observe the search, as is provided for in the law.
- The police seized materials linked to Ratishvili's political activities, including computers, political flyers and T-shirts.
- Merab Ratishvili alleges that Georgian officials asked him to acknowledge that he was a Russian spy, then asked him to make false statements against opposition leaders.
- During the same period, an opposition leader and former defence minister had to leave the country after being arrested, and was granted asylum in France.

The FIDH fact-finding mission is convinced that Merab Ratishvili is the victim of a purely fabricated, politically motivated case.

Conclusions

In November 2008, the FIDH's attention was drawn to the issue of new political prisoners in Georgia. The FIDH member organisation in Georgia, the Human Rights Centre (HRIDC) and various partner organisations, including Human Rights Priority, GYLA, the Association of Former Political Prisoners and Article 42, helped bring several cases to the fore. At the time, these allegations were supported only by local human rights NGOs and political parties plus the office of Georgia's public defender.

After sending a fact-finding mission in Georgia in February 2009 and interviewing 19 family members and the lawyers of alleged political prisoners, 18 representatives of Georgian human rights NGOs, two representatives of international organisations and three representatives from Georgian authorities, ***the FIDH fact-finding mission concluded that all eight of the pilot cases it examined in depth supported the assertion that there were political prisoners in Georgia.***

The FIDH conclusion does not aim to pretend that all eight are fully innocent, but rather asserts that their detention results, in part or in whole, from political motivations. Some or all of the following trends can be seen in each case examined:

- Detainees and/or their relatives are particularly involved in government opposition (*all cases*).
- The period of pre-trial detention and launch of the trial is linked to detainees' specific political activities (*all cases*).
- Detainees assert that the authorities themselves unofficially linked their arrests to their political activities by negotiating their release in exchange for political guarantees (*most cases; similar practices were reported in the OSCE EOM report covering the May 2008 elections*).
- The formal charges seem incoherent and are strongly discredited by reliable testimony from relatives, professional interlocutors and detainees' past activities (*cases that are allegedly total fabrications*).
- Similar unlikely formal charges are brought against many people involved in the same opposition activities (*cases that are allegedly total fabrications*).
- There are serious doubts regarding the fairness of trials (*in Georgia in general, and specifically in several cases*).

Recommendations

Taking into consideration that:

Georgian opposition parties and the main Georgian human rights NGOs consider there to be political prisoners in Georgia, and have established several lists of alleged political prisoners;

Georgia's public defender has publicly supported the allegation before Georgia's parliament and has questioned the government in the case of several detainees the defender considers political prisoners ;

The FIDH fact-finding mission has concluded, through the examination of eight pilot cases, that there are indeed persons who should be considered political prisoners according to the Council of Europe's definition;

Until today, no international NGO or intergovernmental organisation has formally recognised the current existence of this phenomenon in Georgia;

Several international NGOs and intergovernmental organisations have, however, documented and denounced various forms of repression involving Georgia's political opposition in the past few years;

Georgia's government did not allow the FIDH fact-finding mission to meet with several alleged political prisoners despite the FIDH's formal request; and

Georgia's government should have the opportunity to present evidence refuting these allegations; ⁶⁵

⁶⁵ The Council of Europe's independent group of experts working on the case of alleged political prisoners in Armenia and Azerbaijan clearly stated that *"it is, in the first place, the responsibility of those alleging that a specific person is a political prisoner to present a prima facie case."* These experts feel that *"this material must then be brought before the State concerned, which will, in turn, have the opportunity to present evidence refuting the allegations,"* and conclude as follows: *"Unless the State in question succeeds in establishing that the person concerned is detained in full conformity with ECHR requirements as interpreted by the European Court of Human Rights, (...) the person concerned must be regarded as a political prisoner."*

The FIDH calls upon:

The Council of Europe to:

Mandate a group of independent experts to examine cases of alleged political prisoners in Georgia and to render opinions on the said cases as to whether the persons in question may be defined as political prisoners on the basis of the criteria adopted in previous Council of Europe documents.

Ensure that this group has the capacity and mandate to meet with a number of alleged political prisoners, their lawyers, their relatives, State officials, and representatives of intergovernmental organisations and human rights NGOs.

The EU and OSCE to:

Support the establishment of the CoE group of independent experts in charge of examining the cases of alleged political prisoners in Georgia.

Carry out judicial observation for all cases of alleged political prisoners and in all politically sensitive trials.

Pay special attention to information provided by Georgia's human rights NGOs, lawyers and detainees' families regarding the cases of alleged political prisoners.

Share all relevant information and expertise regarding alleged political prisoners in Georgia with Council of Europe experts.

Georgia's government to:

Support the establishment of the CoE group of independent experts in charge of examining the cases of alleged political prisoners in Georgia.

Provide the FIDH with evidence refuting its fact-finding mission conclusions and/or engage the FIDH in constructive dialogue on the issue of political prisoners in Georgia.

Allow the FIDH to meet with alleged political prisoners at their place of detention.