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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

VIEWS

Communication No. 975/2001

Submitted by:	Shota Ratiani (not represented by counsel)
Alleged victim:	The author
State party:	Georgia
Date of initial communication:	22 July 1998 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 May 2001. (not issued in document form)
Date of adoption of Views:	21 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Arrest and mistreatment of supporter of State party's former President; unfair trial on charges of involvement in plot to kill presidential successor.

Substantive issues: Unfair trial - no right of appeal - failure to exhaust domestic remedies - lack of substantiation in relation to certain allegations.

Articles of the Covenant: 7, 9(1) and (4), 10(1), 14(1), (2), (3)(c), (d) and (e), and 14(5)

Articles of the Protocol: 2, 5(2)(a) and (b)

On 21 July 2005 the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 975/2001. The text of the Views is appended to the present document.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-fourth session

concerning

Communication No. 975/2001[*]

Submitted by:	Shota Ratiani (not represented by counsel)
Alleged victim:	The author
State party:	Georgia[1]
Date of initial communication:	22 July 1998 (initial submission)

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

Meeting on 21 July 2005,

Having concluded its consideration of communication No. 975/2001, submitted to the Human Rights Committee by Shota Ratiani, under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

[*] The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

[1] The Optional Protocol entered into force in relation to Georgia on 3 August 1994.

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

1. The author of the communication is Shota Ratiani, born 1955, a Georgian citizen. He claims to be a victim of violations by Georgia of article 1, paragraph 1, article 2, paragraph 1, article 7, article 8, paragraph 2, article 9, paragraphs 1 and 4, article 10, paragraph 1, article 14, paragraphs 1, 2, 3(c), 3(d), 3(e), and 5, article 19, paragraphs 1 and 2, article 21, article 25, paragraphs (a) and (b), and article 26 of the Covenant. He is unrepresented.

Factual background

2.1 The author was a supporter of the former President of Georgia, Zviad Gamsakhurdia. He served in Mr Gamsakhurdia's National Guards, and took part in the armed conflict in Georgia in 1993, supporting Mr Gamsakhurdia and his government.

2.2 On 30 August 1995, following an apparent assassination attempt on President Shevardnadze the previous day, the author was arrested together with ten others. There was no warrant for his arrest. He was charged with attempting to overthrow the government (high treason), attempted terrorism, and participating in an organization acting against the State. On the day of his arrest, representatives of the Security Service made statements on television and in the press to the effect that the author and the others arrested were 'terrorists' and supporters of former President Gamsakhurdia.

2.3 According to the author, members of the Security Service were subsequently arrested in connection with the assassination attempt, but the authorities suspected the author and those others arrested of being accomplices in the assassination plot by diverting attention away from those responsible.

2.4 The author contends that charges against him were fabricated, and that accusations against him were very general. For example, he was accused of being an 'active member' of a subversive group, because he used to meet once a week with a group of people, one of whom was later charged with terrorist offences.

2.5 The author claims that, whilst being interrogated on the day of his arrest, he was beaten, threatened and insulted, and was not provided with a lawyer. He claims he was not given prompt access to relevant case file documents, and that the trial did not begin until a year and half after his arrest. He states that, during his trial, only abstract and indirect evidence was produced against him, some of which was extracted from other detainees through threats and beatings. No details are provided in this regard. He claims that the Court refused to consider his allegations about 'violations' committed by the Security Service, or his allegations about the lawfulness of his arrest and trial, and that his demand to interrogate witnesses who could prove his innocence was rejected. On 21 April 1997, he was found guilty and sentenced to seven years imprisonment. He claims that he was denied the right to appeal from this decision.

2.6 The author alleges that he was tried and convicted because of his political views, as a supporter of the former President.

2.7 On 9 February 1998, the author wrote to the People's Defender of Georgia in relation to his allegations of unlawful arrest and unfair trial. On 15 May 1999, the Public Defender sent a letter to the Presidium of the Supreme Court, requesting it to review the author's case. It

transpires that the Supreme Court subsequently reviewed the author's case and revised the sentence.

The complaint

3.1 The author alleges that he was beaten and mistreated by the Security Service, in contravention of articles 7 and 10; that his detention was arbitrary and unlawful, in contravention of article 9; and that the Supreme Court did not consider his allegations about the unlawfulness of his arrest (article 9, paragraph 4). He alleges numerous violations of article 14: that he was not afforded prompt access to relevant Court material for the purposes of preparing his defence (article 14, paragraph 3(b)); that he was not provided with a lawyer at particular times (article 14, paragraph 3(d)); that he was prevented from examining witnesses (article 14, paragraph 3(e)), that the presumption of innocence was not observed in his case (article 14, paragraph 2); and that his conviction was not subject to appeal (article 14, paragraph 5).

3.2 The author contends that his detention and trial were politically motivated, in contravention of his rights under article 19, paragraphs 1 and 2. He also alleges, without further substantiating these claims, violations by the State party of articles 1, 8, 21, 25 and 26.

The State party's observations and the author's comments

4.1 By note dated 24 May 2001, the State party submits that the author was sentenced to seven years imprisonment by the Collegium of the Supreme Court of Georgia for high treason, attempted terrorism and involvement in an anti-State organization. It states that, by decision dated 14 May 1999, the Presidium of the Supreme Court subsequently reduced the author's sentence to three years, eight months and fourteen days, and the author was released on the same day from the courtroom.

4.2 The State party contends that the author had the right to apply to the court for 'rehabilitation', but that no such application was made.

5.1 In his comments on the State party's submissions dated 28 July 2001, the author provides further information about the apparent assassination attempt of the Georgian President in 1995. He quotes former officials, cited in newspaper articles, who claimed that the assassination attempt was orchestrated by the security forces and the President himself in order to incriminate supporters of former President Gamsakhurdia.

5.2 In February 1998, following his conviction by the Supreme Court, which was not subject to appeal, the author wrote to the newly appointed office of the Public Defender for assistance, seeking to have his conviction reviewed. The letter was forwarded to the Presidium of the Supreme Court, which on 16 June 1998 rejected his request. On 25 January 1999 the Public Defender forwarded another letter to the Presidium of the Supreme Court on the author's behalf. The author states that, under Georgian law, the Presidium of the Supreme Court was required to comment on the Public Defender's statements within 2 months. When no response was received by May, the author went on a hunger strike, requesting an answer. The author states that on 14 May 1999, the Supreme Court reviewed his conviction in closed session, and decided to reduce his sentence to reflect the precise amount of time he had already spent in prison. The author adds that he was not, as the State party contended,

released from the Courtroom, as he was not present in Court, but was released the following day.

Further submissions by the parties

6.1 In observations on the author's comments dated 27 August 2001, the State party forwards information from the Office of the Prosecutor General regarding the author's case. It states that the author was convicted by the Collegium of the Supreme Court on 21 April 1997. Under the law applicable at the time, it was not possible to file an appeal from such a decision. However, the Presidium of the Supreme Court considered the author's 'supervisory complaint' (the complaint forwarded by the Public Defender) and commuted the sentence which had been imposed. However, his *conviction* stands.

6.2 The State party notes that, following the decision of the Supreme Court on 14 May 1999, the author was released from prison after the necessary formalities were completed. It contends that the extracts from newspapers referred to in the author's comments cannot be viewed as a substantiation of his claims about his innocence.

6.3 Finally, the State party explains that, if the author could identify new circumstances which cast doubt on the correctness of his conviction, he could apply to the Supreme Court of a retrial. If acquitted, he would have the right to 'rehabilitation' under Georgian law.

7. In further comments dated 19 October 2001, the author states that the newspaper articles referred to in his earlier comments are relevant to the question of his innocence. The author provides further details of the Public Defender's 'recommendation' to the Supreme Court that his sentence be overturned, quoting 4 extracts which address apparent flaws in the evidence on which he was convicted, and other evidence which pointed to his innocence.

8. In further observations dated 27 December 2001, the State party encloses a memorandum from the President of the Supreme Court, which lists the offences of which the author was convicted, the original sentence imposed and its subsequent commutation. It states that, under Georgian criminal procedure legislation, a decision of the Presidium of the Supreme Court of Georgia may only be revised on the basis of new circumstances, and that an application for review must be made to the Prosecutor General. The Supreme Court will review the case if the Prosecutor General declares that new circumstances exist, and recommends a review.

9. In further comments dated 12 February 2002, the author reiterates his earlier claims. On 2 September 2004, the author presented a further submission, in which he reiterates that, under Georgian legislation prevailing at the time, his conviction by the Supreme Court on 21 April 1997 did not entail any right of appeal. He also attaches a copy of the letter sent by the Office of the Public Defender to the Presidium of the Supreme Court in January 1999, seeking a review of his conviction, and encloses a copy of the decision of the Presidium of the Supreme Court dated 14 May 1999, by which his sentence was reduced.

Issues and proceedings before the Committee

10.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

10.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

10.3 With regard to the author's claims under article 1, the Committee recalls its previous jurisprudence, and notes that such claims are not justiciable under the Optional Protocol. With regard to the claims under articles 2, 8, 9, 10, 14, paragraph 3(d), 19, 21, 25 and 26 of the Covenant, the Committee considers that the author has not provided sufficient substantiation in support of his allegations, and accordingly declares them inadmissible under article 2 of the Optional Protocol.

10.4 In relation to the author's claims under articles 7 and 10, namely that he was beaten, threatened and insulted, and in relation to his claim that he was not provided with access to a lawyer, contrary to article 14, paragraph 3(d), the Committee notes that the author's claims in this regard are general in nature, and considers that the author has not provided sufficiently detailed information in order to substantiate them. Accordingly, the Committee declares these claims inadmissible under article 2 of the Optional Protocol.

10.5 In respect of the author's claims under article 14, paragraph 1, that he was wrongly convicted, the Committee considers that the subject matter of the allegations relates in substance to the evaluation of facts and evidence in the course of proceedings before the Supreme Court of Georgia. The Committee recalls its jurisprudence and reiterates that it is generally not for itself, but for the courts of States parties to review or to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the examination of the facts and evidence was manifestly arbitrary or amounted to a denial of justice.[2] The Committee concludes that the conduct of judicial proceedings in the author's case did not suffer from such deficiencies. Accordingly, the author's claims under article 14, paragraphs 1 and 2, are inadmissible under article 2 of the Optional Protocol.

10.6 As to the author's allegations that his right to the presumption of innocence was violated by public statements made by representatives of the security service, the Committee recalls its General Comment No.13 on article 14, which states that it is the duty of all public authorities to refrain from prejudging the outcome of a trial.[3] However, the author's claims in this regard are general, and the Committee considers that the author has failed to provide sufficiently detailed information in order to substantiate them. Accordingly, the Committee declares these claims inadmissible under article 2 of the Optional Protocol.

10.7 Regarding the claim under article 14, paragraph 3(c), the Committee notes that the State party has not provided information on the length of time between the author's detention and his trial, however it recalls its jurisprudence and considers that a period of a year and half does not, of itself, constitute undue delay.[4] The question of what constitutes 'undue delay'

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[2] See, for example Communication No 546/1993, *Errol Simms v. Jamaica*, Views adopted on 3 April 1995, paragraph 6.2.

[3] See also: Communication No 770/1997, *Gridin v Russian Federation*, Views adopted 20 July 2000, paragraph 8.3.

[4] For example, in *Kelly v Jamaica* (Communication 253/1987, Views adopted 8 April 1991), a period of 18 months delay between arrest and the commencement of trial was considered

depends on the circumstances of each case, such as the complexity of the alleged offences and their investigation. In the absence of further information, the Committee considers that this allegation is not sufficiently substantiated and accordingly declares it inadmissible under article 2 of the Optional Protocol.

10.8 In relation to the author's allegation that, not having had the opportunity to call certain witnesses, he was deprived of his rights under article 14, paragraph 3(e), the Committee notes that no details have been provided about the identity of the witnesses in question, or the circumstances in which the author requested, and the Court denied, the presence of these witnesses in Court. Although the State party's submissions do not address this issue, the Committee considers that this allegation is not sufficiently substantiated, and accordingly also declares it inadmissible under article 2 of the Optional Protocol.

10.9 The Committee sees no impediment to the admissibility of the author's claim under article 14, paragraph 5, and proceeds to the examination of the merits.

Consideration of the merits

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

11.2 As to the claim that the author was unable to appeal his conviction by the Supreme Court, the Committee recalls its jurisprudence that article 14, paragraph 5, requires there to be an available appellate procedure which should entail a full review of the conviction and sentence, together with a due consideration of the case at first instance.[5] In the present case, three review procedures have been referred to by the author, and the Committee must consider whether any of them satisfies the requirements of article 14, paragraph 5. Firstly, the author stated that he complained about his conviction to the Office of the Public Defender, who, it appears, reviewed the author's case, and prepared a recommendation to the Presidium of the Supreme Court. It transpires that, as a result of this process, the Presidium of the Supreme Court reviewed the author's case and ultimately revised his sentence, whereupon he was released from imprisonment. The State party notes that, under Georgian law then in force (2001), it was not possible to file an appeal against a decision of the Collegium of the Supreme Court, which convicted the author, but that, based on the author's 'supervisory complaint', the Presidium of the Supreme Court reviewed the author's case and commuted his sentence. The Committee notes that the State party itself does not refer to this process as being equivalent to a right of appeal; rather, it is referred to merely as a 'supervisory complaint'. The Committee recalls its previous jurisprudence that a request for a 'supervisory' review which amounts to a discretionary review, and which offers only the possibility of an extraordinary remedy, does not constitute a *right* to have one's conviction and sentence reviewed by a higher tribunal according to law. From the material before the Committee, it appears that the supervisory complaint process in this instance is of such a nature. Accordingly, based on the information before it, the Committee considers that this

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not to amount to undue delay, as it had not been established that the investigations could have been concluded earlier.

[5] See for example Communication No 842/1998, *Romanov v Ukraine*, Views adopted 30 October 2003.

process does not amount to a right of appeal for the purpose of article 14, paragraph 5, of the Covenant.[6]

11.3 Secondly, the State party submits that the author could apply to the Supreme Court for a review of his case, through the Prosecutor General, if he could identify new circumstances which called into question the correctness of the original decision. However, the Committee does not consider that such a process meets the requirements of article 14, paragraph 5; the right of appeal entails a full review by a higher tribunal of the *existing* conviction and sentence at first instance. The possibility of applying to a Court to review a conviction on the basis of new evidence is by definition something other than a review of an existing conviction, as an existing conviction is based on evidence which existed at the time it was handed down. Similarly, the Committee considers that the possibility of applying for rehabilitation cannot in principle be considered an *appeal* of an earlier conviction, for the purposes of article 14, paragraph 5. Accordingly, the Committee considers that the review mechanisms invoked in this case do not meet the requirements of article 14, paragraph 5, and that the State party violated the author's right to have his conviction and sentence reviewed by a higher tribunal according to law.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 14, paragraph 5, of the Covenant.

13. Pursuant to article 2, paragraph 3(a), of the Covenant, the author is entitled to an appropriate remedy. The State party is under an obligation to grant the author appropriate compensation, and to take effective measures to ensure that similar violations do not reoccur in the future.

14. By becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, that the State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in cases where a violation has been established. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's views. The State party is also requested to publish the Committee's views.

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

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[6] See Communication No 836/1998, *Gelazauskas v Lithuania*, Views adopted 17 March 2003. Note also that the European Court of Human Rights has determined that a 'supervisory' appeal of this nature does not constitute an 'effective remedy' for its admissibility requirements, due to its discretionary nature; see *Tumilovich v Russia*, no. 47033/99, 22 June 1999 (dec); and *Pitkevich v Russia,* no. 47936/99, 8 February 2001 (dec).