

OPINION No. 2/2004 (GEORGIA)

Communication addressed to the Government on 20 January 2004.

Concerning: Giorgi Mshvenieradze.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group regrets that the Government failed to provide it with the information concerning the allegations of the source.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. The Working Group regrets that the Government did not provide it with the requested information, despite repeated invitations to do so. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.
5. The source contends that Mr. Mshvenieradze was arrested because of his efforts to document election fraud at polling station 23 in the Kobuleti district, where he was monitoring the proceedings on behalf of the Georgian Young Lawyers Association, in connection with the broader monitoring effort launched by Fair Elections.
6. He sought to alert monitors from the Organization for Security and Cooperation in Europe to the fraud. He also attempted to stop an individual (who, it later emerged, was a policeman in plain clothes) from bringing into the polling station blank ballots apparently intended for stuffing the ballot box. An argument ensued with regard to the incident, which ended with several persons inside the polling station beating Mr. Mshvenieradze. Only he was injured.
7. Mr. Mshvenieradze was subsequently sentenced to three months of imprisonment on charges of hooliganism (article 239.3 of the Georgian Criminal Code), infringing on the expression of the will of the electorate (art. 162), and committing a crime against a government official (art. 353). He was being kept, at the time the communication was submitted, in detention in Batumi prison No. 3.
8. According to the source, these charges are groundless and are aimed at punishing Mr. Mshvenieradze for his role in exposing election fraud. It is particularly outrageous that the authorities have chosen to interpret Mr. Mshvenieradze's attempts to prevent stuffing the ballot box as infringing on the expression of the will of the electorate.
9. The facts alleged, which are not contested by the Government, show that the criminal proceedings conducted against Mr. Mshvenieradze were motivated by an attempt by the authorities to intimidate and punish him for participating in the monitoring activity so as to ensure the free expression of the will of the electorate.

10. According to the foregoing, the Working Group renders the following opinion:

The detention of Mr. Mshvenieradze is arbitrary, being in contravention of articles 9 and 25 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Giorgi Mshvenieradze in order to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights, and to prevent the occurrence of similar limitations of citizens' civic rights.

Adopted on 25 May 2004