



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



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Application No. 29999/04
Mamasakhlisi v. Georgia and Russia

**Third party intervention by the Commissioner for Human Rights
under Article 36 para 2
of the European Convention on Human Rights**

Replies to questions put to the Commissioner for Human Rights

1. *In what circumstances did the Abkhazian authorities hand the first applicant over to you in February 2007? On what grounds was he released and who took this initiative?*

1. In February 2007, I looked into the question of the impact which the as yet unresolved conflicts that emerged in the early nineteen nineties, had had on the human rights situation in Georgia. I was not only interested in gathering information. I also wished, as the Council of Europe's Commissioner for Human Rights always does in similar cases, to ensure, if only in an ad hoc manner and with regard to a limited number of issues, that the human rights of populations in this part of Europe were being adequately protected, in accordance with the requirements of the Council of Europe's various human rights instruments. The approach was a pragmatic one and included efforts to establish dialogue with a number of political and administrative leaders, who were actually in a position to improve the situation. It was not based on any presupposition with regard to the legitimacy or recognition of my interlocutors, as this does not fall within my remit. The visit had, of course, been organised and conducted in a fully transparent manner with the assistance of the Georgian authorities.
2. In this context, I met several representatives of the *de facto* authorities of the Republic of Abkhazia, and in particular Mr. Serguei Bagapsh, who is the *de facto* President of this separatist region. The meeting took place on 13 February 2007. Our conversation concerned various aspects of the human rights situation in the Republic, and relations with the Georgian central government.
3. I also raised the question of the situation of Mr. Levan Mamasakhlisi, whom I had met earlier in Dranda prison. In view of his difficult situation, I asked Mr. Bagapsh to intervene personally and exercise his right of pardon in respect of this prisoner on humanitarian grounds. I also pointed out that such a gesture would be important with a view to showing the Abkhazian authorities' goodwill towards Georgia and in view of the Georgian people's considerable concern at this particular prisoner's personal situation. I even suggested that such a measure, based on humanitarian considerations and respect for human rights, although important in itself, might also lead to some form of reciprocity, which would help build the confidence required for a peaceful solution to the conflict.
4. At the end of the discussion, the *de facto* President agreed to have Mr. Levan Mamasakhlisi released. It was agreed that the prisoner would be handed over to me the next day when my delegation left Abkhazia. As it happened, on 14 February 2007 I was due to visit the Gali region, which lies on the borderline separating the two parties to the conflict. After visiting the town of Gali, I was to return to the town of Zugdidi on the other side of the Inguri river, which separates the Georgian and Abkhazian Parties. I therefore proposed that Mr. Levan Mamasakhlisi be handed over to me at the crossing point on the dividing line, at the entrance to the bridge over the Inguri. My proposal was

accepted in principle and it was agreed that the details would be settled between the representatives of the Abkhazian authorities and my delegation. I thanked my interlocutor for his constructive attitude.

5. The evening of the same day, a member of my delegation returned to Dranda prison, where he met Mr. Levan Mamasakhlisi in the presence of the numerous authorities of the prison, including its director, to inform the prisoner of the decision taken by the most senior Abkhazian authorities. My colleague also asked Mr. Mamasakhlisi a number of questions with a view to making the best possible preparations for his release and, particularly, whether he was undergoing medical treatment making it necessary to take special precautions with regard to his transfer. He also asked Mr. Mamasakhlisi where he wished to go once released. The prisoner replied that he was not undergoing any medical treatment which might prevent his immediate transfer. He also said he wished to go to his grandmother in Tbilisi.
6. The following day (14 February 2007), my delegation continued its programme of visits. At approximately 1 p.m. (Sukhumi time), we arrived at the Inguri crossing point. At that precise point in time, Mr. Mamasakhlisi had not yet arrived. The members of my delegation, accompanied by representatives of the UNOMIG forces, decided to wait for him at the crossing point. The Abkhazian representatives had told them that the prisoner was on his way from Dranda prison in Sukhumi to Gali.
7. Given the length of time it had to wait, the delegation decided, at one point, to return to the UNOMIG camp in Gali (about 10 minutes by road from the crossing point), where it continued to wait. During this time, there were telephone calls between my delegation and the Abkhazian authorities and in particular the representatives of the President and the Ministry of Foreign Affairs. The latter said that it was taking longer than expected to hand over Mr. Mamasakhlisi because it was necessary to complete a number of formalities relating to the pardon procedure.
8. At approximately 5.30 p.m., I was informed that Mr. Mamasakhlisi had been taken to the Gali police station and could now be handed over to us. I asked that he be brought immediately to the entrance to the UNOMIG camp. He was handed over 15 minutes later. He was brought to us in a police car with tinted windows. I approached him, made sure that he was feeling alright and asked the police car to follow our UNOMIG cars to the crossing point on the Inguri bridge.
9. After we had reached the crossing point, Mr. Mamasakhlisi was transferred to my car. The representatives of the Abkhazian police asked me to sign a certificate confirming that the prisoner had been handed over to me following the President's decision to pardon him. Once that had been done, our cars left the crossing point, crossed the Inguri bridge and arrived at the town Zugdidi at approximately 7 p.m. (Tbilisi time). On the other side of the bridge, my delegation was met by representatives of the Georgian authorities and by the Special Representative of the Secretary General of the Council of Europe in Georgia, Mr. Igor Gaon.

10. Given that it was already late, it was impossible to continue as far as Tbilisi as the plane which had been sent to pick us up could only fly during the day and had had to return to Kutaisi when it began to get dark. We therefore had to spend the night in Zugdidi. As there were no hotels in that small town, the delegation took rooms in two houses belonging to local residents. I insisted that Mr. Mamasakhlisi stay in the same house as me.
 11. The following morning (15 February), we set off for Tbilisi again. After approximately an hour's flight in a plane sent by the Georgian authorities, we landed in Tbilisi. Immediately after landing, we made our way to the hotel for displaced persons where Mr. Mamasakhlisi's grandmother was staying. Once we got there he was able to join his grandmother and a large number of his relatives and friends who were waiting for him after having been informed of his release through the media. I bade him a rapid return to normal life and left with my delegation to continue my programme of visits.
 12. In the light of the above, I can confirm that I personally took the initiative of asking that Mr. Mamasakhlisi be released as I had been alarmed at his fragile state of health, of which I had been informed by a number of my interlocutors and as I had seen for myself. The possibility of releasing him had perhaps already been discussed in Sukhumi. The decision to release him was, however, taken by Mr. Serguei Bagapsh, at the end of our meeting.
2. *Did you have the opportunity to visit the first applicant in prison prior to his release? If so, you are requested to describe the conditions of his detention to the Court.*
13. As indicated above, I met Mr. Mamasakhlisi when I visited Dranda prison during an ordinary visit of the type regularly made by the Commissioner during his assessment visits to Council of Europe member states.
 14. The conditions in Dranda prison were clearly difficult, as in most prisons in Georgia. From that point of view, the prison in Sukhumi, in the separatist region, was very similar to an average Georgian prison. It was generally run-down, the cells were dilapidated and damp as there was no suitable heating system. The cells were also overcrowded.
 15. I did not visit the cell in which Mr. Mamasakhlisi was being held. I asked to see him when we were in the prison courtyard and he was brought there at my request. However, when I asked him about how he was being treated, he said that he had not been treated any differently from the other prisoners. I deduced from this that he shared the same difficulties as all the other prisoners in Dranda prison, which was in a very bad state and required urgent repairs, as I told the Abkhazian authorities. From what he told me, he was being held in a cell together with other prisoners and was not given any special treatment. His relations with the other prisoners appeared to be normal. Given his physical disability, they helped him every day with a number of routine tasks.

3. *What was the first applicants' state of health when the Abkhazian authorities handed him over to you?*

16. As I am not a doctor, I can obviously not give an opinion on Mr. Mamasakhlisi's health when he was released. I can only give you my general impression, which is the impression that any non-specialist, trying to assess the state of health of a person he or she has never met before, would have.
17. Mr. Mamasakhlisi is severely disabled following as the result of an explosion. According to the information in my possession, he was in weak health owing to a number of illnesses he had had following this accident and during his detention. When I met him in prison, I was struck by his state of exhaustion and obvious weakness. This young man of 25 seemed much older. He told me he was not feeling very well and that he was distressed by his experiences.
18. When Mr. Mamasakhlisi was handed over to me, he was in a difficult emotional state as he had not slept at all during the night following the news of his forthcoming release. He said that he had also been distressed by his transfer, which had been nerve-racking as up to the last minute he feared provocation by the police officers in charge of him. This state of fear was followed by a state of agitation following his unexpected release. He said he had hardly been able to sleep the first night after his release.
19. In conclusion, I had the impression that Mr. Mamasakhlisi required medical treatment to help him return to his normal state of health as soon as possible. During our conversation after his release, he told me that he first wanted to improve his very weak state of health before resuming his law studies and to return to a normal life and forget the tragic five years he had just spent.