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Meeting: 1208 meeting (23-25 September 2014) (DH)

Item reference: Communication from a NGO (Human Rights Centre) (01/09/2014) in the case of Khaindrava and Dzamashvili (Gharibashvili group) against Georgia (Application No. 18183/05)

Information made available under Rules 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1208 réunion (23-25 septembre 2014) (DH)

Référence du point : Communication d'une ONG (Human Rights Centre) (01/09/2014) dans l'affaire Khaindrava et Dzamashvili (groupe Gharibashvili) contre Géorgie (Requête n° 18183/05) (*anglais uniquement*)

Informations mises à disposition en vertu des Règles 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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Human Rights Center

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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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Committee of Ministers
Council of Europe Secretariat
Department for the Execution of Judgments
Of the European Court of Human Rights
F-67075 Strasbourg Cedex

Communication From Human Rights Centre

Execution of judgment from 08.09.2010 in the case of Khaindrava and Dzamashvili v. Georgia, application no. 18183/05.

I. Introduction

The Human Rights Center, formerly known as Human Rights Information and Documentation Center (HRIDC) was founded on 10 December 1996, in Tbilisi, Georgia. The **Human Rights Center** is dedicated to the protection and promotion of human rights, rule of law and peace in Georgia. Human Rights Centre undertakes legal actions in the public interests, including the representation of parties and preparation of legal submissions to national and international courts. Human Rights Centre conducts strategic litigation before the European Court of Human Rights (ECtHR).

Lawyers of the Human Rights Centre represent legal rights and interests of applicants before the ECtHR. Among others, they have represented applicants in the cases on alleged violation of article 3 (prohibition of torture), article 2 (right to life) and article 6 (right to a fair trial) of the Convention and other norms. Human Rights Center has 30 cases before ECtHR and the vast majority of them concern violation of article 3 and article 2 of the Convention - failure of Georgian Government to meet its positive obligation to carry out the effective investigations in the cases concerning torture or assault on the applicants' life (violation of article 3 and 2 in their procedural aspect).

Our legal interest is to promote the execution of judgment in the case of Khaindrava and Zamashvili v. Georgia (application no. 18183/05, judgment delivered on 08.09.2010).

With respect to the rule 9, paragraph 2 of the Rules of the Committee of Ministers, Human Rights Center sets forth the hereby communication the aim of which is to provide information on the implementation process of the ECtHR judgments in Georgia.

The communication presents the state of implementation in the cases of Khaindrava and Zamashvili v. Georgia. It demonstrates that some of the ECtHR judgments related to the positive obligations of the state to carry out an effective investigation in the cases related to violation of right to life are not properly executed by Georgian authorities. The case has been transferred to the enhanced supervision procedure, an action plan or an action report remains awaited.

II. The Group of cases concerning the failure of Georgian authorities to meet their positive obligation to conduct effective investigations into allegations on ill treatment and assault on the life

There is a group of cases which deal with the failure of Georgian authorities to conduct their positive obligation and investigate allegations on ill treatment and assault on life:

- (1) *Gharibashvili v. Georgia* (Application No. 11830/03; 29.10.2008) concerns the lack of effective investigation into the allegations of ill treatment in police custody (procedural violation of article 3); (2) *Khaindrava and Dzamashvili* deals with lack of an effective investigation into an attempt on the applicant's life (procedural violation of article 2); (3) *Tsintsabidze v. Georgia* (Application No. 35403/06; 18.03.2011) concerns the lack of an effective investigation into the death of the applicant's son in suspicious circumstances in prison. The ECtHR found that the investigation conducted was not independent, objective or effective (the procedural violation of article 2); (4) *Enukidze and Girgvliani v. Georgia* (Application No. 25091/07; 26.07.2011) deals with the failure by the Georgian authorities to conduct the effective investigation into the death of the applicants' son (procedural violation of article 2).

The judgments of the Court on these cases have not been executed yet by the Georgian Government. The lack of proper investigation of ill treatment and deaths in detention became a systemic problem in Georgia.

According to the official web-site of the Ministry of Justice of Georgia, 25 ECtHR judgments have not been executed yet. The majority of judgments are about procedural violation of article 2 and article 3 of the Convention dating back to 2007 and 2008, 2009 and 2010.¹

III. Implementation process of the ECHR judgment in *Khaindrava and Zamashvili v. Georgia* case

According to the practice of the Human Rights Centre, one of the most significant problems concerning the ECtHR jurisprudence is lack of enforcement of judgments dealing with procedural violation of article 2 and article 3 of the Convention. The case of *Khaindrava and Zamashvili* together with other similar cases is a vivid example of this problem.

The *Khaindrava and Zamashvili* against Georgia case concerned the failure by Georgia to carry out an effective investigation in a case concerning the assault on the first applicant's life, which lead to the violation of article 2 in its procedural limb. Under article 41 (just satisfaction), the Court held that Georgia had to pay the applicant 12,000 euros in respect of non-pecuniary damage. Relying on Article 2, the applicant alleged that the authorities had ignored his repeated requests for an investigation into the assault on his life.

On 18 July 2014, the Human Rights Centre applied to the Ministry of Justice of Georgia and requested an official information about the implementation process of the judgment. According to the information received from the Ministry of Justice, the applicant was paid the indicated compensation timely. The investigation in the applicant's case was re-opened on the 30-th of April 2013, though the investigation is still in process. Since April 30, 2013 the investigation only managed to interrogate witnesses, to search the scene of the crime and conduct the investigation experiment.

As for the general measures the Judgment have been translated and published.²

¹ See: <http://www.justice.gov.ge/Ministry/Department/145>

² Official letter of the Ministry of Justice of Georgia (20.07.2014) #6668

IV. Practice of investigation authorities

Law-enforcement bodies play a particular role in the protection of human rights. Violation of human rights by law-enforcement bodies still remains the major problem in Georgia. Office of the Public Defender of Georgia noted the negligence of investigative bodies related to launch of investigation in the cases where law-enforcement representatives are alleged to have committed the crime.³

According to the Report of Thomas Hammarberg (2013), Georgia has not yet established an independent and effective police complaint system.⁴ Reports about ineffective and protracted investigations when it comes to crimes where police officers or other law-enforcement officers may have been involved have been frequent over the past years.

Approximately 10, 000 complaints from individuals were filed with the Prosecutor's Office after the October 2012 elections. Other complaints were handed in to the Parliament and others again to the Public Defender. Some citizens addressed all the above mentioned institutions. The majority of them concerned alleged abuses of power and ill treatment, violation of right to life by the law-enforcement officials and prison staff. The majority of complaints have not been discussed by the Prosecutor's Office and many of the persons lodging complaints have not been granted the status of the victim.

According to the practice of the Human Rights Center and the Ombudsman's Report (2013), the investigation on the cases either does not start or it is protracted. Currently, the Prosecutor's Office conducts questioning of witnesses. However, the complainants are not informed about the investigation process and the state of their complaints.

According to the Parliamentary Report (2013) of the Ombudsman, the adequate reaction of the law-enforcement officials and the launch of an investigation on the alleged human rights violations still remains the problem.

The Criminal Procedure Code of Georgia obliges the investigation organs to launch an investigation as soon as it receives the information about the crime. The Code does not envisage the exceptions for the investigation organs to refuse to start the investigation. For the past two years cases were observed in which investigation organs did not start investigations on the facts of alleged crimes.

Another problem is the independence and fairness of the investigation organs while conducting the investigations on the violations allegedly committed by the law-enforcement officials. When it comes to the violations committed by the law-enforcement officials, e.g. prison staff, the investigation should not be conducted by the same organs. There are many cases where the investigation department of the Ministry of Corrections or the Ministry of Interior investigate the alleged crimes committed by the prison staff or police officials, their direct subordinates.

One of the problem is the refusal of the Prosecutor's Office to grant the interested person the status of victim, prescribed by the Criminal Code of Georgia. The prosecutor's Office has not elaborated the consistent and unified practice in this regard. In cases containing similar facts

³ Parliamentary Report of Public Defender of Georgia 2013

⁴ See: http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf

and circumstances, in one case the prosecution grants the person the status of victim, in another case it is groundlessly refused. It's a problem of the authorities practice.

V. Measures to be adopted by the Georgian Government

Taking into account the above mentioned problems, the Human Rights Center would like to propose some recommendations:

- Effective oversight and public monitoring system on the prosecutors' work should be elaborated;
- The independent investigatory agency should be created whose functions could be investigation of alleged misconduct by prosecutors and other law-enforcement officials;
- Effective measures should be taken to boost up the professionalism of prosecutors and other law-enforcement officials; specialized trainings in human rights, ethics and ECtHR standards should be promoted;
- An independent investigatory agency should be introduced to investigate all ill-treatments or torture-related complaints;
- Effective legislation should be established that would protect the right to life;
- Effective and due investigation should be conducted on the facts related to violation of right to life by state officials as well as by concrete individuals;
- Effective legal measures should be taken to adopt the clear system of departmental subordination that would clearly envisage the competence of Prosecutor's Office to investigate the alleged crimes committed by the officials of Ministry of Interior, Ministry of Corrections and Ministry of Justice;
- Consistent and unified interpretation system of the Criminal Code of Georgia should be conducted by the Prosecutor's Office while deciding the issue of granting the victim status;
- The amendments should be taken to the Criminal Procedural Code of Georgia that would envisage the maximum period of time for conducting the investigation.

VI. Conclusion

Human Rights Centre would like to underline that the Case of Khaindrava and Dzamashvili v. Georgia is within the scope of a vast legal and practical problem in Georgia dealing with the ineffectiveness of the investigation organs. Numerous cases concerning the protraction or refusal to launch an investigation is still the problem in Georgia.

In the view of the Human Rights Centre, the case of Khaindrava and Dzamashvili together with other pending cases constitutes an example of non-execution of ECtHR judgments.

By the example of Khaindrava and Dzamashvili v. Georgia, the Human Rights Centre requests the Committee of Ministers to address the Georgian Government, notifying the importance and obligation to execute the judgments of ECtHR concerning lack of proper investigation of crimes committed in detention facilities.

Yours Faithfully

Chairman of the Board of Human Rights Centre

George Nannashvili

