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Meeting: 1419th meeting (December 2021) (DH)

Communication from an NHRI (Public Defender's Office Georgia) (18/10/2021) in the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12).

Information made available under Rule 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 : 1419e réunion (décembre 2021) (DH)

Communication d'une INDH (Public Defender's Office Georgia) (18/10/2021) relative à l'affaire IDENTOBA ET AUTRES c. Géorgie (requête n° 73235/12) ***[anglais uniquement].***

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

საქართველოს
სახალხო დამცველი
PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

N 12/9879
15/10/2021

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Committee of Ministers DGI-Directorate

General of Human Rights and Rule of Law

Department for the Execution of Judgments of the European Court of Human Rights

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Rule 9 (2) submission to the Committee of Ministers of the Council of Europe in respect of the general measures required to adopt in the course of the execution of the Identoba group cases.

Identoba and Others v. Georgia, no. 73235/12

97 Members of the Gldani Congregation of Jehovah's witnesses And 4 Others v. Georgia, no. 71156/01

Aghdgomelashvili and Japaridze v. Georgia, no. 7224/11

Dear Madam/Sir,

The Public Defender of Georgia would like to submit communication pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgment.

The present communication addresses complications to implement the Court's judgment in Identoba group cases. Namely, the Public Defender of Georgia comments on whether general measures carried out by the State were sufficient to improve the realization of the rights of religious and sexual minorities, and hereby refers to the Action report (08/10/2021) of the Government of Georgia.

Please, find enclosed communication of the Public Defender of Georgia to this cover letter.

Annex - Communication of the Public Defender of Georgia in Identoba group cases made under Rule 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, 10 pages.

Yours Faithfully

Nino LOMJARIA

Public Defender of Georgia

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Communication from the Public Defender of Georgia concerning *Identoba* group cases

Identoba and Others v. Georgia, no. 73235/12
97 Members of the Gldani Congregation of Jehovah's witnesses
And 4 Others v. Georgia, no. 71156/01
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Made under Rule 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

October 2021

Contents

Introduction

1. The Public Defender of Georgia has an honor to submit the updated communication to the Committee of Ministers on the execution of judgments in *Identoba* group cases.
2. This submission mainly refers to the issues raised in *CM/Del/Dec(2020)1383/H46-5* and Action Report (08/10/2021) of the government and provides information on implementation of general measures required to combat discrimination and intolerance in the country.
3. Communication is made pursuant to Rule 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.

Updated Assessment of the Implementation of General Measures

4. Despite the creation of legislative safeguards and the efforts of various stakeholders, the realization of the right to equality is not substantially improving in the country. Such critical situation is mainly caused by unawareness and unacceptability of the needs and interests of vulnerable groups by a significant part of society and the lack of a unified vision of the state. In particular, to this date state agencies have not developed a policy on the principle of equality in relation to issues that fall under their competences. Because of this, instead of a systemic fight against discriminatory practices, efforts continue to be mostly aimed at eliminating individual violations, which is often fragmented and ineffective.
5. Regrettably, issues relating to equality are not on the agenda of high officials either. Decision-makers still do not make statements in support of equality, including at critical times in terms of the equality of specific groups. In contrast, officials often incite discrimination against vulnerable groups.
6. It is noteworthy that the Public Defender welcomes the order of the Prosecutor General of Georgia, according to which from September 2020, specialized prosecutors will conduct procedural guidance on crimes committed on the grounds of intolerance. However, this positive change cannot be considered as fulfilment of task of the Committee of Ministers, which envisages the creation of a special unit to investigate hate crimes in the system of Ministry of Internal Affairs (MIA). It should be also pointed out that in 2018, the Public Defender made a proposal to the Ministry of Internal Affairs and the Prosecutor General's Office, urging law enforcement agencies to set up a specialized unit to investigate hate crimes.
7. It should be further noted that Georgia has received recommendations on this issue in a number of international formats, both during the 2nd[1] and 3rd[2] cycles of the UN

[1] 2nd Cycle of the UN Universal Periodic Review, Recommendation 118.10: Establish a special police unit to investigate hate crimes, work closely with the LGBT community and organizations, and build trust-based relations (Sweden).
[2] 3rd Cycle of the UN Universal Periodic Review, Recommendation 148.73 Ensure the prevention, investigation and prosecution of hate crimes based on sexual orientation, gender identity and expression by establishing a hate crime investigation unit in the law enforcement system (Ireland);

Universal Periodic Review, as well as from the European Commission against Racism and Intolerance (ECRI).[3]

8. As for the Human Rights Protection and Quality Investigation Monitoring Department of the Ministry of Internal Affairs, whose task is to strengthen the fight against all forms of discrimination and to identify the motive of discriminatory intolerance in the ongoing investigation process, is not equipped with an investigative function.
9. Furthermore, the state has not complied with the decision of the Committee of Ministers where CM called on the authorities to take effective measures to strengthen cooperation between the State Agency for Religious Affairs and the Council of Religions. The Agency has not taken appropriate steps to cooperate with the Council of Religions to this date. Moreover, non-governmental organizations working on religious issues, are considering the problematic mandate of the agency and demand its abolition.[4] Of particular concern are the high risks posed by the state to control religious organizations and interfere in their internal affairs by using the agency's mandate.
10. It is noteworthy that the Public Defender positively assesses the steps taken to produce statistics and publish a unified report on the crimes committed on the grounds of intolerance. However, at the same time, it should be noted that there is a need to analyze the risk factors causing hate crime and also the circumstances that prevent its detection.

Investigation of hate crimes

11. The statistics and assessments presented in this section are based on appeals to the Public Defender's Office (PDO) in connection with alleged hate crimes in 2019-2020 and analysis of cases studied on our own initiative.[5]
12. As in previous years, despite some progress, number of significant challenges remain in terms of effective investigation of alleged hate crimes. The highest number of applications has been received by the Public Defender's Office with regard to alleged hatred against members of the LGBT + community (25 cases, including 5 cases of verbal abuse by police officers).[6]
13. As for the investigation process, there are cases when during the investigation of the alleged hate crime against members of the LGBT + community, according to the investigative body, despite the attempt, no discriminatory motive was identified, or due to lack of signs of a crime, the investigation was not launched and it is unclear which investigative actions were carried out to reveal such motive.
14. It should be also noted that the drawn-out practice of investigating cases raises a sense of injustice and insecurity among victims, which significantly reduces trust in the law enforcement agencies. In most cases, investigative activities are conducted to

[3] ECRI Conclusions on the implementation of the recommendations in respect of Georgia subject to interim follow-up adopted on 5 December, 2018. p.5. Available at: < https://bit.ly/2AT5BV4 >
[4] For example, Human Rights Education and Monitoring Center (EMC), Georgian Young Lawyers Association (GYLA), Alternative Report on the Implementation of the Covenant on Civil and Political Rights, Tbilisi, 2020, 37; Institute for Tolerance and Diversity (TDI), Forum 18, The Universal Periodic Review (UPR) submission, 2020.
[5] Special report of the Public Defender of Georgia - Positive obligations on law enforcement officials to protect the equality of vulnerable groups. 2021. P.11. Available at: < https://bit.ly/3BiiHFC >
[6] *Ibid.*

unmask alleged bias motives and investigations continue, however, the rates of granting victim status to certain individuals and charging perpetrators are drastically low.

15. Allegations of alleged hate crimes have been steadily high among Jehovah's Witnesses (16 cases), including cases involving facts in the early months of 2018 for which the accused has not been identified, so no prosecution has been launched.[7]
16. The PDO considers that there is an improved trend in the investigation of alleged hate crimes in 2020, especially of crimes against Jehovah's Witnesses, as oppose to the previous years. Namely, investigation is ongoing under an article of the Criminal Code, which includes hate crimes, although it loses a legal effect because of protructed process.
17. In addition, there are cases when after termination of an investigation, a case is classified under administrative law as an administrative offence. In such cases it is an important problem that the current administrative legislation does not see discriminatory motives as one of the aggravating circumstances for administrative liability. This greatly complicates the production of statistics on alleged hate cases and increases the likelihood that hate-motivated illegal acts will go unnoticed.
18. With regards to the existing problems in terms of fighting against hate crime, Public Defender would like to draw Committee's attention to the recent high profile case of a journalist- Vakho Sanaia's assualt. In February 25 in Tbilisi, three men attacked Vakho Sanaia, an anchor at the local TV broadcaster Formula. Sanaia sustained bruises on his head, arms, and one of his legs, and was diagnosed with a concussion. The journalist reported that the perpetrators attacked him because they recognized him as the host of a news and talk show that had recently criticized the government's handling of the COVID-19 pandemic.
19. In Sanaia's case, the court found that accused had committed various violent crimes and also confirmed the fact that crimes were committed on the ground of intolerance – based on professional activity of the victim.
20. Article 53[1] of the Criminal Code of Georgia (CC) stipulates that, commission of crime on the basis of race, skin colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other views, disability, citizenship, national, ethnic or social affiliation, origin, property or birth status, place of residence or other signs of discrimination with the reason of intolerance shall be an aggravating factor for liability for all respective crimes. It is provided in the same article that when imposing a fixed term imprisonment for a crime committed with an aggravating factor, the term of a sentence to be served shall exceed, at least by one year, the minimum term of sentence provided for the committed crime under the respective article or part of an article of this Code.
21. The Court found the accused guilty in committing persecution of V. Sanaia under Article 156 of the Criminal Code of Georgia and imposed a minimum sentence of 6 months imprisonment envisaged by the same Article. Even though it was not mandatory to apply Article 53[1] of the Criminal Code directly in this case, Public Defender believes that the sentence imposed is not proportionate, thus creating another negative

[7] *Ibid.* p.12

precedent in terms of fighting against hate crimes and further encouraging violence against journalists.

Freedom of assembly and the physical integrity of LGBT+ community

22. Realizing the freedom of expression of LGBT + people is one of the most acute problems in the country. For many years, the LGBT + community and their supporters have not been given the opportunity to gather in a free environment, which is directly related to the strongly homophobic background in the society. With this in mind, the Public Defender believes that it is important for the state to do its utmost to reduce such attitudes in the society.
23. Although in 2020, due to the epidemiological situation, the LGBT community was deprived of the opportunity to hold public gatherings, the threat posed by certain groups to LGBT + people and their supporters and the demonstration of aggression was still noticeable.
24. During 2020, violations by the radical groups against the Tbilisi Pride office were systematic. According to the information provided by Tbilisi Pride to the Public Defender's Office, illegal actions were revealed, including: homophobic shouting at the employees of the organization, which was accompanied by swearing and other obscene and threatening expressions of violence; including removing the LGBT + theme flag from the office balcony. The organization also pointed to police inaction and ineffective response, leaving employees with no sense of security.
25. The Public Defender believes that the tendency of radical groups to obstruct the freedom of expression of LGBT + people has been growing in recent years. Similar groups have separate supporters, in some cases, such associations exist in an organized manner and are, to some extent, characterized by consistent actions. It is noteworthy that individuals with ultra-right ideology, through their actions and statements, promote homophobic attitudes, encourage discrimination, and at the same time carry out actions that are often manifested in violation of the law. For their part, the government is not taking the necessary preventive measures, nor is it responding effectively to specific cases, which poses an even greater threat to the equality of LGBT + people.
26. Unfortunately, the measures taken by the Georgian authorities to protect the freedom of expression and assembly of LGBT + people are unsatisfactory and do not confirm the existence of a systematic vision of the protection of rights and the analysis of the potential consequences of the facts.
27. The Government of Georgia is not complying with the decision of the Committee of Ministers, by which the CM called on the government to take all necessary measures to ensure the freedom of assembly and physical security of LGBT + people. What is meant by the necessary measures is explained by the European Court itself in its judgement in the case *Identoba and Others against Georgia*, stating that before the peaceful march organized by LGBT + people on May 17, 2012, "the authorities had an obligation to use all possible means. "For example, through public statements before the demonstration, without any ambiguity, they advocated for a tolerant, conciliatory position, as well as to warn potential offenders of possible sanctions." A prudent step

by the authorities is to mobilize a large number of law enforcement personnel, including a special police detachment.[8]

28. A clear confirmation of the above conclusions and findings are the events of July 5th, 2021. Evenmore, the events of July 5th demonstrates that the Government of Georgia not only failed to prevent and respond properly to violence by private individuals against LGBT+ community, their activists, journalists and its nationals in broad, inflicting serious injuries and subjecting their health and lives under real threat, but rather on the contrary, the discriminatory speech of state high officials led to those violent acts.
29. On May 30th, 2021, organization Tbilisi Pride made public announcement about "Pride Week" including "March for Dignity" which would be held on July 5th. Pride Week aimed to share concerns about the problems of the LGBT+ community, raise public awareness, express solidarity. Tbilisi Pride provided the Ministry of Internal Affairs with detailed information about its plans for the Pride Week and asked the government for the specific safeguards and preventive measures, taking into consideration violent attacks against them in previous years.
30. The announcement of Pride Week was also followed by the statements of the representatives of the state bodies. For example, Tbilisi Mayor called the Pride Week inappropriate. The chairman of the ruling Georgian Dream party, said that the organizers of the Pride should take on more responsibility and not plan the event.[9]
31. The events of July 5th were preceded by public calls for violence by specific individuals and the mobilization of certain groups in society. Hate groups openly called upon their supporters to disrupt the march for dignity scheduled for July 5th. It should be underlined that the Patriarchate of Georgia invited people to hold a peaceful counter-demonstration on the same day.
32. On the morning of July 5th, the Prime Minister, Irakli Gharibashvili, called the "March for Dignity" inexpedient and said that LGBT+ community march should not take place, stressing that the march is unacceptable to the majority of the population.[10] Several days later, he noted ,,..when 95% of our population is demonstratively opposed to holding a propaganda march or parade we all should abide by it. This is the opinion of the vast majority of our population and we, as the government elected by the people, are forced to account for it. We will always take it into account. It will not be the case when the minority decides the fate of the majority..."[11]
33. Based on abovementioned, the government knew or should have known that there was a real risk of violence coming from hate groups against members and supporters of LGBT+ community, nevertheless the Ministry of Internal Affairs did not take effective measures to prevent violence. In addition, authorities did not respond effectively to suppress attacks by the hate groups on LGBT+ community and the media representatives.
34. Eventually, the "March for Dignity" was cancelled due to violence and aggression unfolded since the morning of 5th July. Organizers of an LGBT Pride march were

[8] Judgment of the European Court of Human Rights of 12 May 2015 in the case, "Identity and Others v. Georgia", para. 99.
[9] Mayor Kaladze on Tbilisi Pride: I don't Consider it Expedient. Available at: < https://bit.ly/3uSFc1k >Chairman of ruling Georgian Dream party: holding Tbilisi Pride week is unreasonable. Available at : < https://bit.ly/3AqSXWe
[10] Prime Minister Says Pride March 'unreasonable,' organized by 'radical opposition'. Available at: < https://bit.ly/3lmE6rR >
[11] Statement made by Prime Minister, available in Georgian at: < https://bit.ly/3D7P1vk >

forced to cancel the event after their headquarters were violently attacked by ultranationalists.The march's organizers were forced to change location at least four times out of concern for their safety, and each time they were pursued by the mob. Members of the LGBT community and activists feared for their life as they found themselves surrounded by a violent group.

35. Video footage published by the news agency "Publika" shows that on July 5th , at about midday, the founder of internet platform - Alt-Info, Konstantine Morgoshia, informed the participants of counterdemostration gathered in front of the parliament that members of the Tbilisi Pride were also present in the office of organization "Shame movement". He named the address of the organization and called on 500-600 people to move to the office. In about 9-10 minutes from this call Morgoshia and the other protesters appeared already near the Office.[12] The video clearly shows that 2-3 policemen present near the entrance of the building of the office were not able to stop the members of the hate groups from breaking the door of the entrance and forcefully entering the building.
36. It should be noted that at about 12:08 pm, TV Pirveli was broadcasting live from the entrance of Shame Movement office. The footage shows members of the violent group climbing the stairs and attacking filming crew. Hate group members brutally assaulted a journalist of TV Pirveli, and the cameraman Alexander Lashkarava who received serious physical injuries from beatings. Lashkavara sustained a concussion and broken bones in his face, and underwent surgery as a result of the attack. He left a hospital on July 8th and was found dead at home on July 11th.
37. The violent and homophobic groups raided "Tbilisi Pride" office as well. They climbed on the balcony of the office, tore down the rainbow flag, and ransacked equipment and inventory in the office
38. The Public Defender raised the responsibility of politicians and law enforcement agencies for the death of the cameraman in her statement: "These violent groups have been openly threatening to commit violence, including at numerous public gatherings, for years, especially recently. They have been openly calling their supporters to commit violence against different people. Consequently, the State had all the preconditions and full information that these violent groups were well organized. Nevertheless, no preventive measures have been taken. Public Defender noted that the actions taken by the law-enforcement after the death of the cameraman represented disrespect towards the deceased and his family members.[13]
39. It should be underlined that representatives of media (who were present to cover events on site) fell under the large-scale attack coming from hate groups on July 5th. They deliberately attacked, physically assaulted and verbally abused representatives of the media, damaging and destroying their equipment, and obstructing journalistic activities. At least 42 members of the media were injured as a result. It was clear from the broadcasting that the number of police officers mobilized at relevant locations was insufficient, as well as the efforts aimed to protect the life and health of dozens of journalists. Journalists that fell victim to these attacks have also pointed out the inaction of the police.[14]

[12] The video footage published by the news agency "Publika" is available at: < https://bit.ly/3uOfyeh >
[13] Public Defender Responds to Death of TV Pirveli Cameraman. Available at: < https://bit.ly/3ljGqzO >
[14] Available in Georgian at: < https://bit.ly/2YrRuSj >

40. The Public Defender considers that the publicly available evidence reaches the standard of probable cause for launching criminal proceedings against two persons for organizing group violence on July 5th as well as for publicly calling for violence and applied to the Prosecutor's Office with a request to initiate criminal proceedings against Zurab Makharadze and Spiridon Tskipurishvili.[15]
41. It is substantiated in the Public Defender's proposal that Zurab Makharadze personally led the group violence on July 5th, including allocation of various groups to raid the offices of the Shame Movement and Tbilisi Pride.
42. Regarding Spiridon Tskipurishvili, it was established that on July 5th, the Deacon of the Georgian Orthodox Church, Spiridon Tskipurishvili, called on the people gathered in front of the parliament that they were obliged to use violence in the name of homeland[16], the action envisaged as a crime under Article 239[1] of the Criminal Code of Georgia – call for violence that creates an obvious, direct and substantial threat of violence.
43. However, to our knowledge Prosecutor's Office has not initiated the criminal proceedings against Zurab Makharadze and Spiridon Tskipurishvili to this date.
44. According to the information provided by the Ministry of Internal Affairs, they are conducting an investigation on the facts of illegal interference, persecution, public incitement to violence against journalists, as well as organization of group violence and participation in such activities on July 5, 2021.
45. As stated by the Prosecutor General's Office of Georgia, 53 persons were recognised as victims of the group violence on July 5th, 2021, among them 42 journalists and cameramen, 7 citizens,3 human rights defenders and 1 non-governmental organization- Tbilisi Pride, criminal proceedings were launched against 27 persons.
46. However, to date, no one has been prosecuted by the Ministry of Internal Affairs and the Prosecutor General's Office of Georgia for organizing violent, hate-motivated crimes in Tbilisi on July 5th.
47. The Public Defender continues to gather information about the ongoing investigation into the July 5th violence and will additionally inform the Committee in due course.

Recommendations of the Public Defender of Georgia

48. Based on the reviewed issues, we present the recommendations of the Public Defender of Georgia to the Georgian authorities regarding the *Identoba Group of cases* which we believe are crucial to fully implement the decisions made by the European Court of Human Rights in the above cases:
    - Amend the Code of Administrative Offenses and define the discriminatory motive of the offense as a qualifying circumstance;
    - Intensify public campaigns to raise awareness on discrimination issues;
    - Take effective preventive and proactive measures to protect the freedom of expression of LGBT + people;

[15] Pursuant to Article 21 (c) of the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender is entitled to request the initiation of an investigation and/or criminal prosecution if the examination of the case shows elements of crime.
[16] Deacon's call for violence. Available in Georgia at: < https://bit.ly/3Dm4GaG >

- Make sure that public officials refrain from making discriminatory statements and that instead they make unambiguous and clear statements in the future in order to protect the freedom of expression of LGBT + people.
- Ensure that the organizers of July 5th large-scale attacks are held accountable in order to prevent similar incidents in the future and to send the signal to the violent groups that their activities undermining the equality in the country will not be tolerated.