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Meeting: 1514th meeting (December 2024) (DH)

Communication from an NHRI (Public Defender of Georgia) (18/10/2024) concerning the Tkhelidze group of cases v. Georgia (Application No. 33056/17).

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 : 1514^e réunion (décembre 2024) (DH)

Communication d'une INDH (Public Defender of Georgia) (18/10/2024) relative au groupe d'affaires Tkhelidze c. Géorgie (requête n° 33056/17) **[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.



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18 October 2024



№ 2024/5536

Committee of Ministers DGI-Directorate

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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 execution of the Tkhelidze group of cases

Dear Madam/Sir,

The Public Defender of Georgia would like to submit a communication 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.

The present communication evaluates implementation of general measures by the Government in the course of execution of the judgements of the Tkhelidze group of cases. It provides information requested in the latest decision of the Committee of Ministers.

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

Annex - Communication of the Public Defender of Georgia on the Tkhelidze group of 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,

The Public Defender of Georgia

SIGNED/SEALED
ELECTRONICALLY

Levan Ioseliani



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Communication of the Public Defender of Georgia on the Tkhelidze group of 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

Introduction

1. The Public Defender's (Ombudsman's) Office of Georgia (hereinafter the PDO) presents this submission pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
2. This submission comments on the Action Plan (06/10/2023) and Action Plan (03/10/2024) (hereinafter the 2023 Action Plan and the 2024 Action plan, respectively) of the Government of Georgia, addresses the latest decision of the Committee of Ministers and evaluates implementation of general measures by the Government in the course of the execution of the judgements of the Tkhelidze group of cases.

National Legislation and Regulations

3. According to the 2023 Action Plan, "a thematic research was launched to identify the measures and individual issues implemented to ensure the harmonisation of the criminal law legislation of Georgia with the Council of Europe (hereinafter - "the CoE") Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter - "the Istanbul Convention")".¹ In this connection, the PDO would like to inform the Committee

¹ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 23.

of Ministers about a working group established in 2023 and composed of representatives of the PDO, international and local organizations, the Parliament and governmental bodies. The working group prepared amendments to articles 137-139 of the Criminal Code of Georgia, but the authorities have not taken steps to adopt them.² Thus, the criminal legislation remains incompatible with the Istanbul Convention. In particular, definitions of sexual violence crimes are still not based on the absence of free and voluntary consent.³ Violence, threat of violence and abuse of helpless condition of a victim are necessary for crime classification. Furthermore, the crime of coercion under article 139 of the Criminal Code is categorized as a less serious crime instead of an act equal to rape, is punishable by fine and leaves the possibility to impose a conditional sentence.⁴ In addition, the legislation fails to separately criminalize coercion of a person to carry out a sexual act with a third person without consent.⁵ The legislation still does not include, among aggravating circumstances, commission of sexual violence against former or current partner who does not or did not share the same residence with the perpetrator.⁶ Moreover, the current legislative framework still does not envisage the possibility to remotely question victims or temporarily take defendants away from courtrooms in cases of sexual crimes and gender-based violence.⁷ Unfortunately, the questioning of a victim in the accused's presence is still common practice.⁸

4. The 2023 Action Plan mentions the “national referral procedures for the identification, protection, support and rehabilitation of the victims of violence against women and/or domestic violence”.⁹ This document was finally adopted in 2024, but the adoption was delayed by years. Moreover, the document itself is of general nature and fails to specify concrete responsibilities of and measures to be taken by relevant governmental bodies and steps needed to improve coordination.¹⁰

² The Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 156, available at: <https://ombudsman.ge/res/docs/2024052911382931838.pdf> [last accessed 13.08.2024].

³ The Special Report of the Public Defender of Georgia on Administration of Justice in Sexual Violence Crimes against Women in Georgia (2021-2022).

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ The Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 156.

⁸ The Special Report of the Public Defender of Georgia on Administration of Justice in Sexual Violence Crimes against Women in Georgia (2021-2022).

⁹ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 27.

¹⁰ The Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 157.

5. It is also noteworthy that specific guidelines for social workers working on incidents of violence against women and domestic violence have still not been approved, despite the PDO's recommendation.¹¹

6. Finally, the PDO would like to refer to its previous rule 9 communication and reiterate its concerns regarding the rules for determining the amount and awarding the compensation for victims of violence against women and/or domestic violence.¹²

Prevention

7. Prevention of femicide and gender-based violence remains an acute challenge. This is unfortunately demonstrated by the fact that there were still cases in 2023 where femicide or attempted femicide could not be prevented, despite the state being aware of possible violence.¹³

8. The Action Plan describes updates to the risk assessment tool and the electronic surveillance and refers to the increase in the number of application of the latter.¹⁴ In this regard, the Committee of Ministers called upon the authorities to continue strengthening the effectiveness of the aforementioned mechanisms in practice, including by capacity building of police officers.¹⁵ Despite the trainings for the police mentioned in the Action Plan,¹⁶ there is a need to enhance efforts in this direction because risk assessment was unjustifiably not carried out in some cases of domestic violence and violence against women in 2023.¹⁷ In particular, the Georgian legislation does not determine any kind of legal basis for filling out the risk assessment document. Nevertheless, the cases studied by the PDO reveal that a legal basis is required for filling out the risk assessment document in practice and the decision on whether to fill out the risk assessment document and to issue a restraining order is made after interviewing the women who are victims of violence.¹⁸

¹¹ Ibid.

¹² Communication of the Public Defender of Georgia on the Tkhelidze Group of 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, paragraph 9, available at: <https://ombudsman.ge/res/docs/2023110316591135158.pdf> [last accessed 13.08.2024].

¹³ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 27.

¹⁴ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 55-64.

¹⁵ The Decision adopted by the Committee of Ministers at 1483rd meeting, 5-7 December 2023, paragraph 3.

¹⁶ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 62.

¹⁷ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 158.

¹⁸ Ibid.

9. In addition to law enforcement, the judiciary has also failed to ensure prevention of femicide. According to the Committee of Ministers, “greater efforts are necessary to align judicial practice with the Convention requirements, among others by appropriate imposition of more dissuasive sentences”.¹⁹ The monitoring of femicide cases conducted by the PDO disclosed that the national courts in some cases assess risks inadequately, thereby hindering crime prevention. In one of the examined cases, for example, a judge applied bail instead of detention and this enabled the accused to kill the victim.²⁰ The PDO also studied judgments in which judges imposed conditional sentence and, consequently, women who were victims of violence were left unprotected against repetition of the crime.²¹ Another issue is connected to application of article 53¹ of the Criminal Code of Georgia. According to this provision, if the crime classification/definition/actus reus does not include a gender motive and the court itself determines existence of this motive, then deprivation of liberty imposed must be 1 year longer than the minimum sentence. The PDO examined cases in which judges did not assess the existence of a gender based motive and did not apply article 53¹ when imposing a punishment, although such a motive was visible.²² Thus, aggravation of punishment due to gender based motive in accordance with article 53¹ in some cases is problematic in court practice, namely in cases when this motive is not determined as an aggravating circumstance under a provision criminalizing the act in question but case materials indicate the existence of this motive. Considering improper risk assessment and inadequate sentencing, it is necessary to conduct knowledge and capacity building of judges. It should be mentioned that such an activity was not included in the draft version of the Action Plan for Prevention of Violence Against Women and Domestic Violence when the PDO examined the draft document. Hopefully, the retraining of judges will be incorporated in the Action Plan in accordance with the PDO’s recommendation.

10. In terms of prevention of femicide and gender-based violence, the PDO would like to underline the importance of offenders’ behavior change for combatting crime repetition. Unfortunately, no effective steps have been taken to increase the involvement of offenders in violent behavior correction programmes for years.²³ No violent behavior correction programme has been developed for offenders issued with a protective order.²⁴

¹⁹ The Decision adopted by the Committee of Ministers at 1483rd meeting, 5-7 December 2023, paragraph 5.

²⁰ The Special Report of the Public Defender of Georgia on Special Report on Analysis of Femicide and Attempted Femicide Cases of 2022.

²¹ Ibid.

²² Ibid.

²³ The Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 158.

²⁴ Ibid.

Identification of Gender Based Motive

11. The PDO's latest monitoring of femicide cases disclosed an increased rate of identification of gender based motive in cases of femicide and attempted femicide. However, identifying a gender based crime still constituted a challenge in some instances during both the investigation and court proceedings.²⁵ In particular, gender based motive for crime commission was indicated in 20 out of 30 examined decrees bringing charges.²⁶ However, there were also criminal cases in which the investigative authorities narrowly interpreted a gender based motive or did not assess the case from a gender perspective at all.²⁷ In some instances, the POG failed to identify a gender based motive despite existence/availability of sufficient information.²⁸ Crime classification was problematic, for example, in a case where the accused's jealousy/proprietary attitude was clearly visible.²⁹

12. Identification of a gender-based motive is also challenging for the judiciary. According to the Committee of Ministers, "greater efforts are necessary to align judicial practice with the Convention requirements, among others by ensuring proper examination of a gender-based motive".³⁰ The PDO's latest monitoring of femicide cases reveals that judges do not have a uniform understanding of the gender-based motive.³¹ The first instance courts struggle to interpret this motive broadly.³² Although the examined judgments cite the ECtHR practice, the citations are often only formal and the ECtHR standards are not reflected in the analysis of factual circumstances of cases.³³

13. The PDO separately examined how justice was administered in cases of sexual violence against women in 2021-2022. It is noteworthy that such cases constitute gender-based crimes.³⁴ The PDO's examination shows that identification of gender based motive in such cases is still somewhat challenging. Out of the examined cases, only some judgments can be

²⁵ The Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 27.

²⁶ The Special Report of the Public Defender of Georgia on Special Report on Analysis of Femicide and Attempted Femicide Cases of 2022.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ The Decision adopted by the Committee of Ministers at 1483rd meeting, 5-7 December 2023, paragraph 5.

³¹ The Special Report of the Public Defender of Georgia on Special Report on Analysis of Femicide and Attempted Femicide Cases of 2022.

³² Ibid.

³³ Ibid.

³⁴ GREVIO's (Baseline) Evaluation Report Georgia, paragraph 2, 2022, available at.: <https://tinyurl.com/5hvx2kwr> [last accessed 13.08.2024].

singled out in which the courts state that sexual violence is a gender-based crime mostly committed against women and girls.³⁵

Victim Support Services and Communication with Victims

14. The Action Plan describes the purpose and functioning of the Witness and Victim Coordinator Service within the Prosecutor's Office of Georgia (hereinafter the POG).³⁶ The Action Plan states that "involvement of the coordinators in criminal cases of domestic violence and violence against women is a priority".³⁷ However, the PDO considers that the level of their involvement is insufficient. According to the statistics provided by the POG to the PDO, prosecution was launched against 5286 persons in cases of domestic violence and crimes committed with the signs of domestic violence and 4542 adult women were victims whereas victim and witness coordinators were involved only in 1704 cases.³⁸ In light of the number of beneficiaries, the number of employed coordinators that is mentioned in the Action Plan seems insufficient. Thus, the involvement of the coordinators needs to be strengthened. This position was also expressed by the Committee of Ministers that encouraged the authorities to allocate the required resources and enhance the capacities of the victim and witness coordination services.³⁹

15. The Committee of Ministers also called upon the authorities "to further scale up the awareness raising initiatives and strengthen mechanisms of interaction with victims".⁴⁰ In this connection, the PDO monitored crisis centers and state shelters for victims of domestic violence and trafficking in 2023 and held talks/interviews with victims. As a result, it was revealed that a significant part of victims of domestic violence and violence against women had no information about protection and support services before arriving in shelters.⁴¹ The lack of information was especially problematic in case of non-adult victims of Azerbaijani ethnicity.⁴² Moreover, most of the interviewed beneficiaries were not aware of the hot line

³⁵ The Special Report of the Public Defender of Georgia on Administration of Justice in Sexual Violence Crimes against Women in Georgia (2021-2022).

³⁶ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraphs 70-72.

³⁷ Ibid, paragraph 73.

³⁸ №13/4255 letter dated 24.01.2024 from the Prosecutor's Office of Georgia.

³⁹ The Decision adopted by the Committee of Ministers at 1483rd meeting, 5-7 December 2023, paragraph 4.

⁴⁰ The Decision adopted by the Committee of Ministers at 1483rd meeting, 5-7 December 2023, paragraph 4.

⁴¹ The Monitoring Report of the Public Defender of Georgia on Service Facilities for Victims of Violence and Trafficking, page 7, available at: <https://ombudsman.ge/res/docs/2024072316230683824.pdf> [last accessed 13.08.2024].

⁴² Ibid: 3 out of 4 interviewees of Azerbaijani ethnicity stated that they did not have information about protection and support services.

(116 006) for matters concerning domestic violence/violence against women.⁴³ Thus, awareness raising activities, especially in regions populated with ethnic minorities, must be continued and beneficiaries of shelter services must be informed in the language that they understand.

16. The aforementioned monitoring of state shelters for victims of domestic violence and trafficking and crisis centers also revealed other challenges, including the lack of activities for social rehabilitation and the need to carry out repairs in shelters, the non-existence of a uniform list of basic hygienic and private-use items for shelters, insufficient human and material resources in crisis centers, etc.⁴⁴

Public Awareness Raising

17. The Action Plan describes various activities conducted within the “No to Femicide” campaign.⁴⁵ Unfortunately, women actively involved in public/political life, in particular women MPs were again targets of sexist and discriminatory statements made by public figures/MPs.⁴⁶ The Code of Ethics of the Member of Parliament of Georgia prohibits offensive, obscene, sexist, discriminatory speech, statement, action, or other use of hate speech by MPs.⁴⁷ However, the Code does not provide for effective mechanisms against the use of hate speech.⁴⁸ Unfortunately, the co-chairmen of the Ethics Council of the Parliament of Georgia have not been elected yet.⁴⁹ Therefore, the issues pertaining to discriminatory speech cannot be discussed in the format of the Council. The PDO condemns expressions that undermine the importance of participation of women in public life and enhance gender stereotypes about women’s role in society.

18. In terms of public awareness, the PDO’s monitoring of state shelters for victims of domestic violence and trafficking and crisis centers revealed the issue of stereotypical societal attitudes towards domestic violence. In particular, most of the victims found themselves in shelters because of lack of support in their surroundings/community.⁵⁰ To name an example, one of the

⁴³ Ibid.

⁴⁴ Ibid, pages 6-7.

⁴⁵ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkheidze v. Georgia (Application No. 33056/17), paragraphs 46-49.

⁴⁶ For example, please view the following statement: <https://www.youtube.com/watch?v=zyb7RiCYptM> [last accessed 13.08.2024]; Public Defender’s Statement on Obscene and Insulting Remarks Expressed towards Female MPs, available at: <https://tinyurl.com/yckyphsa> [last accessed 13.08.2024].

⁴⁷ Article 3 Code of the Ethics of the Member of Parliament of Georgia.

⁴⁸ The Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2023, page 147.

⁴⁹ Ibid.

⁵⁰ The Monitoring Report of the Public Defender of Georgia on Service Facilities for Victims of Violence and Trafficking, page 8.

beneficiaries stated that “everyone cast her out” after she spoke about domestic violence.⁵¹ The need to enhance public awareness is also visible from the public attitudes survey mentioned in the Action Plan itself. According to the Action Plan, “the survey showed that only 23.5% of people, who had witnessed domestic violence, called the police”.⁵² In this connection, lack of trust in the law enforcement and stereotypical views towards violence against women and domestic violence were also disclosed during the PDO’s meetings held with women living in villages near the occupation line in 2023.⁵³ Interviewed women from some villages stated that domestic violence is quite frequent but the locals try to solve such conflicts themselves and do not apply to the law enforcement authorities.⁵⁴

Statistics

19. The Action Plan mentions the “memorandum of cooperation on collection of data on crimes committed on grounds of intolerance with discrimination basis and publishing a joint report”.⁵⁵ As previously highlighted by the PDO,⁵⁶ the statistical methodology does not incorporate the analysis of possible causes of hate-motivated crimes. It should be noted that the gathered data has limited analytical capabilities. Given the report’s broad coverage of hate-motivated crimes (age, race, sex, disability, religion, sexual orientation, and gender identity, among others), it does not allow for the data breakdown and statistical decomposition of crimes committed on the basis of a specific marker, such as the perpetrator’s/age, victim’s the perpetrator’s/relationship, victim’s or the gravity or nature of the crime. Simply put, the report does not connect disparate variables in a way that would allow for analysis of the causes, prevalence, or nature of crimes.⁵⁷

⁵¹ Ibid.

⁵² Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkheldze v. Georgia (Application No. 33056/17), paragraph 94.

⁵³ Report of the Public Defender of Georgia on Meetings held with Women living in the Occupied Territories and Villages located along the Occupation Line, page 16, available at: <https://ombudsman.ge/res/docs/2024072316273797124.pdf> [last accessed 13.08.2024].

⁵⁴ Ibid.

⁵⁵ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkheldze v. Georgia (Application No. 33056/17), paragraph 79.

⁵⁶ The Public Defender of Georgia, Special Report on the Positive Obligations of Law Enforcement Officials to Protect the Equality of Vulnerable Groups, 2021, pages 3-4, available at: <https://bit.ly/3yn95Kl> [last accessed 06.10.2024]; Communication of the Public Defender of Georgia on the Identoba Group of 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, paragraph 17, available at: <https://www.ombudsman.ge/res/docs/2023101917561475605.pdf> [last accessed 07.10.2024].

⁵⁷ Report of the Public Defender of Georgia on the rights of LGBT+ people in Georgia, page 21, available at: <https://ombudsman.ge/res/docs/2022051115380032325.pdf>

20. In terms of analysis, the Action Plan reads that “Analysis of Unified Statistical Data on Crimes committed on the Grounds of Discrimination in 2021-2022” was being drafted with the CoE assistance.⁵⁸ The “Unified Hate Crime Data Analysis - Reporting Period: 2021 and 2022” has already been prepared within the CoE project and is publicly available.⁵⁹ However, this document does not provide a comprehensive, fully-fledged analysis as it simply contains numerical changes in percentages of collected data during the reporting period.

Accountability of law enforcement officials

21. The Committee of Ministers has requested “statistical data and examples of the decisions by the authorities, on the application of the mechanisms for ensuring accountability of law-enforcement officials for their failure to respond properly to complaints of gender-based violence”.⁶⁰ The PDO requested the POG to provide statistical information for the period from 1 January 2022 to 31 December 2023.⁶¹ In particular, the PDO asked for the following information about cases in which alleged victims were women aged 18 and over:

- The number of cases into which investigation was launched for neglect of official duty committed by a law enforcer during an investigation into domestic violence/domestic crimes; Additionally, the number of law enforces charged with commission of a crime under article 342 of the Criminal Code of Georgia (neglect of official duty);
- The number of cases into which investigation was launched for neglect of official duty committed by a law enforcer during an investigation into violence against women; Additionally, the number of law enforcers charged with commission of a crime under article 342 of the Criminal Code of Georgia (neglect of official duty).

The POG’s reply informed the PDO about 2 cases.⁶² According to the POG, an investigation was launched in 2022 into a neglect of duty (paragraph 1 of article 342 of the Criminal Code of Georgia) allegedly committed by the MIA employees in a case of domestic violence. Another investigation was launched in 2023 into a neglect of duty (paragraph 1 of article 342 of the Criminal Code of Georgia) allegedly committed by the MIA employees in a case of violence

⁵⁸ Action Plan (06/10/2023) Communication from Georgia concerning the case of Tkhelidze v. Georgia (Application No. 33056/17), paragraph 84.

⁵⁹ The “Unified Hate Crime Data Analysis Reporting Period: 2021 and 2022”, available at: <https://tinyurl.com/2j6wsr5x> [last accessed 13.08.2024].

⁶⁰ The Decision adopted by the Committee of Ministers at 1483rd meeting, 5-7 December 2023, paragraph 6.

⁶¹ The PDO’s № 2024/3462 letter dated 2 August 2024.

⁶² The POG’s №13/52177 letter dated 9 August 2024.

against a woman. No one has been charged or recognized as a victim in these 2 cases yet and investigations are ongoing.

22. During the period from 2023 to the present in 2024, the PDO has examined approximately 28 applications, revealing inadequate response from the state (Ministry of Internal Affairs/Prosecutor's Office) towards the applicants, which may indicate indifference and inaction/insufficient actions in potential gender-motivated cases. For example, in one case restraining order was issued only after the PDO became involved, and in some cases, investigation started or/and charges were even brought against a perpetrator for alleged domestic violence/violence against women.