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Date: 31/03/2017

DH-DD(2017)385

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1288th meeting (June 2017) (DH)

Communication from the authorities (28/03/2017) in reply to the applicant's communication (03/03/2016) (DH-DD(2016)318) concerning the case of DZEBNIAURI v. Georgia (Application No. 67813/11)

Information made available under Rule 8.2a 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 : 1288^e réunion (juin 2017) (DH)

Communication des autorités (28/03/2017) en réponse à une communication du requérant (03/03/2016) (DH-DD(2016)318) dans l'affaire DZEBNIAURI c. Géorgie (Requête n° 67813/11) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



№ 01/23/06-6492
28.03.17

Ms Genevieve MAYER
Head of the Department for the Execution of
Judgments of the European Court of Human Rights

Tbilisi, 28 March 2017

DGI

28 MARS 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Subject: Dzebniauri v. Georgia (Application no. 67813/11)

Dear Madam,

In response to the communication of 23 January 2017 concerning the execution of the case - *Dzebniauri v. Georgia (no. 67813/11)* which included the copy of the letter from the applicant's representatives raising particular issues in respect of the measures of execution, the Government of Georgia wish to draw your attention to the following important circumstances.

As you are already aware, by a letter of 29 May 2014 the Government informed the European Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application in question. The Government of Georgia requested the Court to strike out the application in accordance with Article 37 of the European Convention. According to the text of the declaration, among others, the Government acknowledged certain deficiencies identified in the course of the medical treatment dispensed to the applicant's son in the private medical establishment known under the name of 'Lechkombinati'. The Government also acknowledged a breach of the State's positive obligations under Article 2 of the Convention. In the light of the foregoing, the Government undertook to pay 7,000 (seven thousand) Euros to cover any pecuniary or non-pecuniary damages and costs and expenses.

Furthermore by a letter of 13 June 2014, the applicant - Mrs Dzebniauri, welcoming the Government's acknowledgment of a breach of the State's relevant obligations under Article 2 of the Convention, specified that she would be ready to accept the Government's declaration on condition of removal of the clause of the payment of the amount of seven thousand euros since according to her no money could compensate for the suffering resulting from the death of her son. Therefore, she vehemently refused as a matter of principle, any monetary offers from the Government and stated that "*the clear acknowledgement of a violation of Article 2 by the Government already constituted an adequate and sufficient redress for the purposes of her application*".

Following the principle of *ne ultra petitem*, the Court, noting the applicant's explicit position on the matter, considered that the Government's undertaking to pay the sum should indeed be discarded. Thus, no monetary payment whatsoever should have been made to the applicant within the context of the settlement of the present application.

In addition having due regard to the applicant's express agreement with all the other terms made in the Government's unilateral declaration, notably the Government's unequivocal acknowledgement of a breach of the respondent State's positive obligations under Article 2 of the Convention, the Court stated that the case can be treated as an implied friendly settlement between the parties.

Therefore, discarding the Government's undertaking to pay the monetary compensation, the Court took due note of the other terms of the friendly settlement reached between the parties. The European Court was satisfied that the settlement was based on respect for human rights as defined in the Convention and its Protocols and found no reasons to justify a continued examination of the application. For these reasons, the Court, unanimously, decided to strike the application out of its list of cases pursuant to Article 39 of the Convention.

Consequently, the Government of Georgia wish to emphasize that considering the abovementioned relevant circumstances of the case as well as the contextual meaning of the text of the unilateral declaration of 29 May 2014 the Government have never undertaken the investigation of the case at issue. Furthermore considering that the redress proposed by the Government in the form of 7,000 (seven thousand) Euros was discarded by the Court therefore no monetary payment was made to the applicant within the context of the settlement of the present application.

Moreover, the Government wish to draw the attention of the Committee to the fact that prior to the proposal by a letter of 29 May 2014 in respect of the unilateral declaration with a view to resolving the issue raised by the application, the Government proposed to the applicant the friendly settlement declarations for several times with a view to resolving the issue (submissions of the Government dated 2 December 2013 and 14 March 2014).

The Government stress that neither in the initial friendly settlement proposals nor in the final unilateral declaration had the Government undertaken to investigate the case in question. Hence, the clear acknowledgment of violation of Article 2 by the Government provided a sufficient basis for the Court to find that respect for human rights did not require the continued examination of the present application bearing in mind that the text of the declaration did not encompass any kind of particular undertakings.

Subsequently, the Government wish to underline that according to the well-established practice and the relevant rules of the execution, the Government have the commitment of submission of the respective action plan/report in respect of a decision rendered by the European Court in the cases stricken out of its list of cases pursuant to Article 39 of the Convention, provided that there is particular obligation undertaken by them within the framework of the said decision. In particular, according to the Guide for the drafting of action plans and reports for the execution of judgments of the European Court of Human Rights, an action plan or report is only required for: "[...] friendly settlements containing specific undertakings (other than payment of a sum of money)."¹ Thus, in case there is no such specific undertaking there is no obligation of submission of the action plan/report except the "Just Satisfaction Payment Form" which in the case at issue was not required, taking into account that the applicant refused any monetary offers from the Government (please see the final resolutions in the cases of Mariam Batiashvili and Irina Batiashvili-Gelashvili v. Georgia, no.75737/11 as well as the case of Davit Mirtskhulava v. Georgia, no. 18372/04. The aforesaid cases were closed at the 1245th meeting by the final resolution of the Committee of Ministers on 20 January 2016)².

As a final point, the Government wish to underline that provided that Mrs Dzebniauri was not satisfied with the contextual meaning of the unilateral declaration (considering that there was no indication of the obligation in respect of the initiation of the investigation) advanced by the

¹ Available at, p.3:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680592206>

² Available at: <http://hudoc.exec.coe.int/eng?i=001-160379>

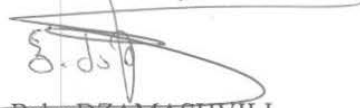
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Government she should not have accepted the modalities of the declaration proposed by the Government of Georgia at the material time.

In the light of the foregoing, the Government reiterate that the Government bears no particular obligation in the present case and therefore, there is no need to submit any kind of action plan/report. Consequently, the Government wish to express their reasonable expectation that the Committee will close the examination of the present case by virtue of adopting a final resolution at the upcoming Human Rights meetings.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Beka DZAMASHVILI', is written over a horizontal line. The signature is stylized with a large loop at the end.

Beka DZAMASHVILI
Government Agent of Georgia
to the European Court of Human Rights