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Date: 27/04/2018

DH-DD(2018)444

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: 1318th meeting (June 2018) (DH)

Communication from a NGO (Public Defender of Georgia) (18/04/2018) in the case of Identoba and others v. Georgia (Application No. 73235/12), Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia (Application No. 71156/01), Begheluri and others v. Georgia (Application No. 28490/02) and response from the Georgian authorities (26/04/2018).

Information made available under Rules 9.2 and 9.6 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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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1318^e réunion (juin 2018) (DH)

Communication d'une ONG (Public Defender of Georgia) (18/04/2018) dans l'affaire Identoba et autres c. Géorgie (Requête n° 73235/12), Membres de la Congrégation de Gldani des Témoins de Jehovah et autres c. Géorgie (Requête n° 71156/01), Begheluri et autres c. Géorgie (Requête n°. 28490/02 et réponse des autorités géorgienne (26/04/2018) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



საქართველოს სენატორი დანმცველი
PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA

DGI

19 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

5682-13-2-201804181837



N 13/5682

18/04/2018

Ms Genevieve Meyer

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

Dear Madam,

I have the honor to submit the communication on the execution of judgments in the *Identoba group of cases (Identoba and others v. Georgia (application no. 73235/12); Begheluri and others v. Georgia (application no. 28490/02); Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia (applications no. 28490/02, 71156/01)*. The communication, which is enclosed to this letter, is made pursuant to rule 9(2) of the Rules of Committee of Ministers for the Supervision of the Execution of Judgment and Friendly Settlements.

Sincerely,

Nino Lomjaria

Public Defender of Georgia



In the Committee of Ministers
Department of the Execution of Judgments of the
European Court of Human Rights

Additional Communication from the Public Defender of Georgia

Begheluri and others v. Georgia (Application No. 28490/02)

Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia

(Applications No. 28490/02, 71156/01)

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

DH-DD(2018)444 : Rules 9.2 and 9.6 Communication from a NGO and reply from Georgia.
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.

18 April 2018

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I. Introduction

The Public Defender of Georgia has the honour to submit the updated communication to the Committee of Ministers on the execution of judgments in the cases of *Begheluri and others v. Georgia* and *Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia* which essentially concern multiple violation of the European Convention on Human Rights on account of the large-scale religiously motivated violence to which the members of religious minorities had been subjected in Georgia and the relevant authorities' total failure to prevent, stop or redress the violations.

This 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.

II. Discrepancies in Investigating alleged Religiously Motivated Crimes

The discrepancies in the process of investigation of religiously motivated crimes still continue to occur. The state policy in relation to the religiously motivated crimes is not adequate. Delay in investigations clearly shows that the state protracts the investigation of religious crimes. Discontinuation of investigations and sometimes even the failure to institute investigation under the pretext of nonexistence of the elements of a crime in various criminal cases undoubtedly show that the state does not adequately respond to such crimes.

The effectiveness of investigations into alleged hate crimes remains one of the issues in the most recent report of the Public Defender of Georgia.¹ The largest proportion of complaints examined by the Public Defender concerning those types of crimes refer to facts committed against Jehovah's witnesses. This includes facts of verbal and physical violence and damages to their property.

According to the Chief Prosecutor's Office, in 2017 an increase number of cases has been examined, where hate was established as a motive of crime.² However, the cases studied before the Public Defender reveal that the motive of hate often remains beyond the attention of investigative authorities that interrupts the process of prevention of hate crimes.

¹Annual Parliamentary Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia, 2017 <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

²Measures for the implementation of recommendations issued to the prosecution of Georgia under the Ordinance of the Parliament of Georgia N1181- IIS, dated 30 June 2017, on the report of Public Defender "The Situation in Human Rights and Freedoms in Georgia - 2016."

In the process of investigation of alleged hate motivated crimes, the following core problems have been identified: proper qualification of alleged criminal acts; identifying hate motive at the investigation stage; intolerance revealed on the part of law enforcement officials.

A. Improper qualification

The Criminal Code of Georgia includes the crimes encompassing hate motive in itself, such as, for example, *Violation of Human Equality* (Article 142) and *Persecution* (Article 156), however, application of those provisions in practice is limited.

As mentioned, a large share of cases include crimes committed against Jehovah's witnesses, including intense verbal and physical abuse against them. With respect to some of those matters the investigation has not been instituted or has been unjustifiably terminated later.

Apart from this, Article 187 (1) of the Criminal Code envisages a crime - *Damage or Destruction of Property* which has resulted in substantial damage. *Substantial damage* means the damage reaching up 150 Georgian Lari (around 50 Euro). The Public Defender has been addressed with the cases, where the damage is repeatedly caused to the Jehovah's Witnesses' property - such as, premises of worship, religious literature and desks used for dissemination literature, but the damage, in each individual matter is assumed not to constitute 150 GEL. In such cases, this becomes the reason for terminating or even not instituting criminal investigation. In those circumstances, the investigative authorities fail to consider the qualification of individual incidents or overall situation based on the provisions encompassing hate motive in itself. The ignorance of those provisions leaves certain violent acts beyond justice.

There are several instances where, after the termination of investigation, a fact of abuse is qualified as an administrative offence; however, in cases of finding a person guilty of wrongdoing, the existing legislation does not allow for specifying the motive of discrimination.³

B. The Problem of Identifying Hate motive at the Investigation stage

According to the practice of the Public Defender, there are instances, where the investigation on alleged religiously motivated crime is opened and is qualified as an "ordinary" crime, such as, for example, *Violence* under Article 126 (1) of the Criminal Code. Unlike the provisions mentioned above, this article does not encompass the hate motive in itself. However, the Criminal Code considers discriminatory motive as an aggravating circumstance in determining the sentence with regard to all the crimes under the Code. As per Article 53¹.1, *Commission of a crime on the*

³ The current Georgian administrative legislation does not qualify a discriminatory motive as an aggravating circumstance for administrative liability.

grounds of race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code.

As revealed in cases studied before the Public Defender, the prosecution authorities failed to demonstrate, as to what type of measures have been adopted for the purposes of identifying alleged hate motive. As per the responses of the prosecution authorities, in certain cases, relevant investigative measures have been undertaken, however, the hate motive has not been revealed. Even in those matters, it remains obscure, as to what methods have been applied to identify alleged discriminatory motive. Due to such approach, the prosecution authorities, while submitting the criminal case file to the court, fail to make reference to Article 53^{1.1} in order to require the possible maximum length of the sentence.

C. Intolerance on the part of Law Enforcement officials

As the Public Defender has been informed, there have been instance of expressing intolerance on the part of the representatives of law enforcement authorities. Some matters have been observed, where after arriving at the incident scene, police officers attempted to persuade the victims to disregard reporting about hate motive and proceed with the examination of a case on the ground of a motive other than discriminatory. In one of the cases, the police officer refused to reflect in the protocol that the interruption of a rite exercised by Jehovah's Witnesses had been caused due to an attack of a civilian. In other cases, it has been reported that the law enforcement officials expressed intolerant and cynical attitude towards Jehovah's witnesses. The Ministry of Internal Affairs has not adequately responded to these complaints.

III. Conclusions

The Public Defender believes that shortcomings in terms of protection of national religious minorities and effective investigation of religious motivated crimes still remain in Georgian legal system and practice. Hence, the Public Defender of Georgia calls the Georgian authorities to take further measures for the protection of religious groups and kindly requests the Committee of Ministers to continue the examination of the above-mentioned group of cases.



საქართველოს იუსტიციის სამინისტრო
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№2943

26 / April / 2018

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

Identoba group of cases (*Identoba and others v. Georgia* - Judgment of 12/05/2015, final on 12/08/2015 (App. no. 73235/12); *Begheluri and others v. Georgia* - Judgment of 07/10/2014, final on 07/01/2015 (App. no. 28490/02); *Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia* Judgment of 03/05/2007, final on 03/08/2007 (App. no. 71156/01))

Dear Madam,

In response to the communication of the Public Defender of Georgia (Ref. DGI/GM/dd) concerning the execution of judgments of the *Identoba* group of cases, the Government of Georgia would like to provide the following information.

As the Committee is well aware, on 13 April 2018 the Government presented an updated Action Report including the individual and general measures undertaken in the course of the execution of the *Identoba* group of cases. The latter comprises the information, *inter alia*, regarding the issues discussed in the mentioned communication of the Public Defender. Therefore, the Government kindly refer to the abovementioned Action Report for the respective responses of the Government regarding the issues presented in the communication.

Sincerely,

Head of Department of the State Representation to the
International Courts

Beka DZAMASHVILI