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Meeting: 1355th meeting (September 2019) (DH)

Communication from a NIHR (Public Defender of Georgia) (19/08/2019) in the cases of Tsartsidze and Others, Begheluri and Others, Members of the Gldani Congregation of Jehovah's Witnesses and Others and Identoba and Others (Identoba and Others group) v. Georgia (Applications No. 18766/04, 28490/02, 71156/01, 73235/12).

Information made available under Rule 9.3 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 : 1355^e réunion (septembre 2019) (DH)

Communication d'une INDH (Public Defender of Georgia) (19/08/2019) dans les affaires Tsartsidze et autres, Begheluri et autres, Members of the Gldani Congregation of Jehovah's Witnesses et autres et Identoba et autres (groupe Identoba et autres) c. Géorgie (requêtes n° 18766/04, 28490/02, 71156/01, 73235/12) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.3 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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DGI

19 AOUT 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

N 12-1/9235

19/08/2019

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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By post and mail

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

Begheluri and Others v. Georgia, no. 28490/02

Tsartsidze and Others v. Georgia, no. 18766/04

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 consolidated Action report (10/07/2019) of the Government of Georgia.

Please, find enclosed communication of the Public Defender of Georgia to this cover letter. We would like to inform you that on 19 August 2019 the present communication was also submitted electronically on the following e-mail: DGI-execution@coe.int.

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
Begheluri and Others v. Georgia, no. 28490/02
Tsartsidze and Others v. Georgia, no. 18766/04

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

19 August 2019

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Introduction

The Public Defender of Georgia has the honor to submit the updated communication to the Committee of Ministers on the execution of judgments in *Identoba* group cases.

This submission mainly refers to the consolidated Action report (10/07/2019) of the Government of Georgia and provides information on implementation of general measures required to combat discrimination and intolerance in the country.

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.

Systematic character of homophobia, transphobia and xenophobia in Georgia

Public defender of Georgia welcomes positive legislative amendments adopted in recent years to combat discrimination and intolerance, however, the problem of homophobia, transphobia and xenophobia remains systematic and there are hardly any measures on the part of the state to overcome them.¹

Disregarding the needs of vulnerable groups and aggression towards them is still significantly characteristic for the part of Georgian society. As the Public Defender observes, most of the facts of discrimination are stipulated by prejudices and stigmas.

It aggravates the situation that often public officials, themselves, promote to spreading intolerance within wider public. Unfortunately, the Public Defender is in a position to continually make public statements condemning discriminatory declarations of public officials. For example, in 2017, due to the frequency of discriminatory statements, the Public Defender addressed to the Parliament of Georgia with a recommendation to elaborate regulations in order to prevent members of parliament from those statements.²

Unfortunately, due to several attempts of Public Defender and civil society, changing of societal attitudes towards vulnerable groups remains a long-term perspective achievement, as the State is barely involved in disseminating information and ensuring values regarding equality and non-discrimination.

Homophobic and transphobic attitudes

According to the UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity country report, following his visit in Georgia September-October 2018, Homophobia/Transphobia is a systemic problem in Georgia that needs adequate answer from Georgian Government.³

Despite the fact Georgian legislation provides formal equality of LGBT+ persons its practical enforcement is not adequately guaranteed. The incidents of discrimination of LGBT+ persons in labor, health, social and economic relations are quite frequent. No awareness raising measures are carried out, which would support destruction of current stereotypical approaches. The observation of the Public Defender of Georgia shows that the steps taken by the state to improve LGBT+ rights situation are not sufficient, namely, no systemic approach to combat violence against LGBT+ persons exists in the country and none of the action plans on gender equality aims to sufficiently improve the rights of LGBT+ persons in the country.

To further illustrate the problem, it should be noted that the LGBT + community has been trying to celebrate May 17 - International Day against Homophobia and Transphobia since 2011, but the

¹ Annual report of the Public Defender of Georgia, 2018.

² On 22 February 2019 the Parliament of Georgia adopted the Code of Ethics

³ Available Online < <https://bit.ly/2ZfE3jE> >

community has failed so far to exercise freedom of expression without substantial violations, including situations, where their physical security was at stake.

On 17 May 2018 and 2019, the International Day Against Homophobia and Transphobia, NGOs working on LGBT+ persons' rights, activists and members of the LGBT+ community, due to the processions of anti-gender movements and possible altercation, still were not allowed to freely choose the place and format for the demonstration. This adversely affects protection of LGBT+ persons' rights. Despite the fact that before the demonstration, activists and representatives of the Ministry of Internal Affairs conducted negotiations to ensure their security, the Ministry of Internal Affairs still could not manage to give the guarantees to the activists that their freedom of expression and freedom of assembly and security would be ensured during the peaceful demonstrations/gatherings.

According to the ILGA Europe's annual review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Georgia (covering the period of January to December 2018), the freedom of assembly and expression remains problematic for LGBT+ people in Georgia. As a result of rampant homo/transphobia in the country, access to education, healthcare and employment remains a challenge. The report underlines the problem of legal gender recognition in the country and gaps in social security and social protection of the LGBT+ victims of violence.

The problem of realization of freedom of expression and assembly is vividly illustrated in the process of organization of Tbilisi Pride by the members of LGBT+ community. The Pride was planned to be conducted on 18-23 June and to be comprised of several events, including March of Honor down to Tbilisi streets. Prior to the event, far-right groups expressly articulated aggression towards the event, the organizers and their supporters. Along with it, Georgian Orthodox Church called upon the authorities not to allow Tbilisi Pride.⁴ In response to this, on 14th of June of 2019 the organizers and supporters of Tbilisi Pride gathered before Government Administration building demanding protecting their fundamental rights. In the meanwhile, the counter-demonstration by far right groups was held. Due to the aggressiveness of counter-demonstrators, members and supporters of LGBT+ community had to be besieged by police for several hours. Several violations have been observed on the part of counter-demonstrators, such as, attacks towards journalists and intervention within their professional activities; the threat of violence and physical assault towards participants of the demonstration; the attempt of attack and threat of violence towards Deputy Public Defender.⁵

It is a dangerous precedent that the next day, one of the leaders of the ultranationalist group, Levan Vasadze, openly stated about the creation of "self-organized groups", "public detachments" and "crooks" against "Tbilisi Pride" and its supporters.⁶

Moreover, it was very clear manifestation of the aggression towards LGBT + community, when captain of the Georgian national football team, Mr. Guram Kashia was harshly criticized and condemned for wearing the LGBT flag-handcuffs at a match in solidarity with LGBT persons. Following these events, in September 2018 the first football match was held in which Guram Kashia participated. To support the player and the LGBT + community, some attendees came to the match with accessories associated with the LGBT + community. Police seized paraphernalia from one of the tribunes who wore such

⁴ Available Online < <https://www.radiotavisupleba.ge/a/29999214.html> >

⁵ Available Online < <https://bit.ly/2KMjwxm> >

⁶ Available Online < <https://bit.ly/30792z0> >

accessories, including flags, as they believed community supporters could be victims of physical assault.

Xenophobic attitudes

Furthermore, xenophobia also can be seen as a systemic problem, as far as organized xenophobic groups have been operating in Georgia for years and a number of politicians are constantly stirring up hatred towards different religious and ethnic groups by media and social networks, as well as by public demonstrations. Particular targets in this regard are Iranian Arab, Indian, Turkish, Afro-American people, Muslims and Jehovah's Witnesses, who have repeatedly been subjected to physical assault and discrimination.⁷

It was an unfortunate event, the members of far-right groups seized the entrance of Public Service Hall and prevented ethnically Asians and Africans to enter it. The aggression was the result of the moratorium imposed on the constitutional provision prohibiting selling agricultural land plots to foreign citizens.⁸

Shortcomings of the National policy and legislature to combat discrimination based on gender identity and sexual orientation

The Public Defender of Georgia routinely monitors the implementation of the national action plans aiming to improve gender equality situation in Georgia. Unfortunately, the human rights national action plan for 2018-2020 does not contain the chapter on Equality, that is a step backwards after the action plan 2016-2017 that at least nominally, contained the activities from State parties towards more egalitarian society.

Besides, as the Public Defender has observed, cases of alleged discrimination against a concrete state body and their repetitive character illustrate that individual state authorities fail to realize their role in the process of achieving equality. Unfortunately, while undertaking legislative activities or elaborating policies in different spheres, the principle of equality remains beyond the consideration of state bodies.

In this regard, as a positive example can be named the establishment of the Department of Human Rights (*acting* Department of Human Rights Protection and Quality Monitoring) within the ministry of Internal Affairs of Georgia in January 2018. The Department is mandated to monitor investigation of, *inter alia*, crimes allegedly committed on discriminatory grounds. However, the respective recommendation of European Commission against Racism and Intolerance (ECRI) and the Public Defender of Georgia was to set a specialized unit in charge of prosecuting hate motivated crimes.

Last but not least, recognition of principle of equality is neither echoed in public statements of public officials and does not become part of political debates on the part of state representatives.

⁷ Available Online < <https://bit.ly/2TwM0iN> >

⁸ Available Online < <https://bit.ly/2GqBbdw> >

Insufficient Institutional guarantees for freedom of religion

For years the following problems have not been solved: returning historical property, violations and unequal environment in educational field, obstacles related to religious communities' constructions, and effective and timely investigation of crimes committed on account of religious intolerance.

Furthermore, hatred and intolerant rhetoric against persons with different religious or non-religious convictions are expressed in the political context, media and social networks. For religious minorities, it is mostly impossible to use public space and media.

Problematically, the Human Rights Action Plan assigns the issues related to the freedom of religion to the State Agency for Religious Issues, which has been the subject of criticism from religious associations and non-governmental organizations since the State Agency does not fulfil its commitments.

It should be further underscored that the work of the State Agency is evaluated by a number of religious associations as unsatisfactory or negative. In addition, local NGOs working on religious issues such as TDI⁹ and EMC¹⁰, and Public Defender's Center for Tolerance, have repeatedly criticized this body. They believe that the State Agency is not committed to the protection of freedom of religion in the country; on the contrary, it seeks to fulfill the function of controlling religious organizations.

It is also noteworthy, that the State Agency has never expressed its position on violations of freedom of religion. As for the inter-religious forum within the State Agency, positive aspects of its work are unknown.

In addition, in its report on Georgia (fifth monitoring cycle), European Commission against Racism and Intolerance (ECRI) recommended that the Georgian authorities scale up their support for the Council of Religions, which operates under the auspices of the Public Defender's Tolerance Centre. The authorities should in particular task the newly created State Agency for Religious Issues to cooperate with the Council of Religions and utilize the Council's expertise and recommendations in order to tackle the problem of religious intolerance. Despite this recommendation, during its functioning, the State Agency never initiated a meeting with either the Council of Religions or the Center for Tolerance which coordinates the Council of Religions and works on religious freedom issues. ECRI therefore considered that this recommendation has not been implemented.¹¹

⁹ Available Online < <https://bit.ly/2z1UKnE> >

¹⁰ Available Online < <https://bit.ly/2LOP9bO> >

¹¹ Available Online < <https://bit.ly/2KR3v9x> > p.5

Complications of Investigating alleged hate crimes

In its report on Georgia (fifth monitoring cycle) published on 1 March 2016, ECRI recommended Georgian authorities to set up a specialised unit within the police to deal specifically with racist and homo-/transphobic hate crime. Ministry of Internal Affairs established a Human Rights Department in January 2018. Department monitors investigation of all the crimes in which discriminatory sign is identified. Such a department is not a substitute for a specialised investigative unit within the police, as recommended by ECRI. The new department was created to review hate crime investigations, not to carry them out. It therefore does not constitute a dedicated reinforcement of hate crime investigation capacity at law enforcement level. In its report ECRI considers that this recommendation has been partially implemented.¹²

According to information provided by the Prosecutor's Office in August 2018, cases of investigations into alleged discriminatory motivated crimes have improved both in terms of correct qualification and in identifying hate crimes, although the motive is still problematic in many cases. Concerning the overwhelming majority of the allegations made by the Equality Department of the PDO, the prosecutor's office notes that investigations are under way to uncover the motive for the hate, but it remains unclear, specifically what type of investigative measures have been undertaken for the purposes of identifying hate motive or why the discriminatory motive was not revealed.

Another problematic issue is that the cases examined by the Public Defender show that lack of sensitivity on the part of the law-enforcement officials and absence of special procedures for interviewing victims of violence in police stations remain troublesome.¹³

Furthermore, there are frequent cases where victims allege offensive and ridiculing attitude from police officers.¹⁴ The insensitive attitude of law-enforcement officials and lack of adequate infrastructure in police stations make it impossible to offer friendly services to victims of violence and, therefore, victims refuse to re-apply to police in a number of cases. This adversely affects their legal status.

The Public Defender has examined numerous cases regarding crimes allegedly motivated by sexual orientation or gender identity. Those cases primary concern incidents of physical attacks on members of LGBT+ community. The analysis shows that LGBT+ persons often chose not to report to police or if they do, they later stop cooperation with the police. This is caused by insensitive attitude of law-enforcement authorities towards LGBT+ persons. It is noteworthy that the infrastructure is not accommodated to the needs of LGBT+ persons. It is problematic for representatives of the LGBT+ community to give information to law-enforcement authorities in an open area.

Despite the fact that the number of religious hate crimes has declined over the past two years, there has been no effective response to religious hate crimes for many years. For years, no one has been charged, except one. Cases are either delayed or unreasonably terminated. However, an effective and

¹² *Ibid.* p.5

¹³ Victims often indicate that they have to explain one and the same issue over and over again and accordingly have to stay for a long time in a police station. Also, due to infrastructure, confidentiality is not guaranteed in police buildings.

¹⁴ The Public Defender, with the applicant's consent, notifies the Inspectorate General of the Ministry of Internal Affairs; however, in most cases no disciplinary offence is established. Unfortunately, in some cases applicants themselves do not cooperate with the Inspectorate General as they do not expect a tangible outcome and it is difficult to obtain evidence in some cases.

timely response to these crimes remains a significant challenge. On the one hand, because xenophobic sentiments are prominent and hate-motivated groups feel safe, on the other hand, because the issue of responding to religiously motivated hate crime is unresolved, the problem can be deemed as systematic.¹⁵

The Public Defender's practice shows that ethnic and racial intolerance remains to be an acute problem in the country. In this regard, the murder of Vitali Safarov motivated by xenophobia was a particularly alarming incident. According to the circumstances depicted in the case-file, the victim sustained lethal injuries in a bar. One of the reasons leading to the altercation and subsequent murder was that Safarov was not speaking in Georgian to customers in the bar.

Taking into consideration the discrepancies in the Investigation process of alleged hate crimes the Public defender recommends the State to implement the following measures:

- Elaborate actions for the purposes of prevention hate motivated crimes, including unjustified interference in freedom of expression and assembly of LGBT+ community members; those actions should include but not be limited to occasionally and before specific dates (e. g. 17th of May) making public statements in defense of LGBT+ persons and undertaking wide-scale awareness raising campaigns to disseminate values concerning equality in wider public.
- Identify indicators of hate crimes and in cases of presence of those indicators, collect all relevant evidences at the initial stage for revealing hatred motive;
- Properly substantiate hate motive before the courts;
- While substantiating hate motive before the courts, address to the first paragraph of Article 53¹ of the Criminal Code of Georgia for the purposes of determining proper sentence;
- In the course of the investigation of alleged hate crime, the motive of hatred should be clearly identified or the incident should have the qualification with an article that includes such motive (persecution, violation of equality, etc.);
- If the material damage is below 150 GEL¹⁶, the investigation should be directed to other relevant articles, for example, Article 156 (persecution) or Article 142 (violation of equality);
- The Code of Administrative Offenses should incorporate discriminatory motive, because if the case qualifies as an administrative offense, it becomes impossible to identify the discriminatory motive.

¹⁵ Annual report of the Public Defender of Georgia, 2018

¹⁶ 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.

Conclusion

All the afore-mentioned evidently demonstrates that there are systematic problems of discrimination and intolerance in the country that hinder achieving equality in many directions.

The Public Defender believes that shortcomings in terms of protecting the rights of LGBT+ persons, ethnic and religious minorities need to be addressed by the State with more comprehensive approach. Georgian authorities should take further measures to combat intolerant attitudes which result in hate crimes and other discriminatory activities.