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Meeting: 1383rd meeting (29 September - 1 October 2020) (DH)

Communication from an NHRI (Public Defender (Ombudsman) of Georgia) (05/08/2020) concerning the IDENTOBA AND OTHERS group of cases 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 : 1383^e réunion (29 septembre – 1^{er} octobre 2020) (DH)

Communication d'une INDH (Public Defender (Ombudsman) of Georgia) (05/08/2020) concernant le groupe d'affaires 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.



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03/08/2020

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

DGI

04 AOUT 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

F-67075 Strasbourg Cedex France

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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 (25/06/2020) 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 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; 9 pages.

Yours Faithfully





Committee of Ministers DGI-Directorate
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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

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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 consolidated Action report (25/06/2020) of the Government of Georgia and provides information on implementation of individual and 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.

Individual measures

4. As regards individual measures, in its decision of September 2019 the Committee noted that certain issues previously raised by the Committee still need to be clarified, namely regarding the possibilities which exist in the domestic system for victims to challenge the classification of crimes. PDO would like to inform the Committee on this matter.
5. In its Action Report (25/06/2020) Government points out that the victims of the above cases have never voiced concerns regarding the classification of crimes before the prosecution authorities. And that according to the Criminal Procedure Code of Georgia, a victim, among others, has a right to get information regarding classification of the case and to lodge a motion regarding it before prosecution authorities.
6. PDO would like to note that the Criminal Procedure Code of Georgia defines in detail the rights and obligations of a victim during the criminal proceedings. According to the Code, the victim has quite limited opportunities to influence the course of the investigation by appealing individual decisions in court, although in some cases he is endowed with this right.
7. According to the Criminal Procedure Code, if a prosecutor does not satisfy the application to grant a victim's status, a victim and his/her legal successor has the right to appeal, only once, the refusal with a superior prosecutor. The answer of a superior prosecutor is subject to court control. A person has the right to appeal the decision of a superior prosecutor with the district (city) court according to the place of investigation.¹
8. A victim may appeal a decree of a prosecutor on termination of a criminal prosecution with a superior prosecutor only once. The decision of a superior prosecutor shall be final and it may not be appealed before the court, except in the case of the extremely grievous crimes, crimes that fall under the authority of State Inspector's Service and domestic crimes.²
9. In addition, a victim may appeal a decree of a prosecutor refusing to initiate a criminal prosecution with a superior prosecutor only once. The decision of a superior prosecutor shall be final and it may not be appealed before the court, except in the case of the extremely grievous crime, or crimes that fall under the authority of State Inspector's Service.³
10. A victim has the right to appeal before the court with regards to the action / inaction of the prosecutor only in the above cases.

¹ Criminal Procedure Code of Georgia, Article – 56,(5)(6).

² Criminal Procedure Code of Georgia, Article – 106, (1¹).

³ Criminal Procedure Code of Georgia, Article – 168 (2).

11. Therefore, unfortunately, the victims are not yet equipped with the power to challenge classification of the crime before court or prosecution authorities.
12. As related to the possible legal avenues which could be, or could have been, pursued by the applicants to obtain compensation for the failure of the authorities, PDO notes that domestic legislation envisages possibility to address the domestic courts with a civil claim in order to obtain compensation, however the limitation period on claims for damages is three years from the moment when the victim becomes aware of the damage or of the person liable for damages.⁴

Updated Assessment of the Implementation of General Measures

13. Public defender notes with regret that despite legislative guarantees that have been created and efforts undertaken by various stakeholders, no material improvement is observed in the exercise of the right to equality in Georgia.
14. Recently, the situation has been further aggravated by ultra-right groups who have stepped-up their activity. Progress towards the achievement of equality is impeded by the absence of a common state vision. Concrete public institutions do not have a policy on the equality principle with regard to issues that fall within their competence. Therefore, instead of conducting a systemic fight against discriminatory practices, efforts are often undertaken to eliminate individual violations of the right. Equality-related issues are not on the agenda of high officials either. Decision makers continue to refrain from making statements in support of equality, including at times when it is of a critical importance to defend the right to equality of certain groups.
15. Public Defender of Georgia notes that the measures taken by the law enforcement agencies do not confirm the existence of any systemic vision to ensure the equality of minorities. This is evidenced by the fact that the National Action Plan for Human Rights 2018-2020 does not contain the relevant chapter on equality.

Investigation of hate crimes

16. In 2018 the Public Defender addressed the General Prosecutor of Georgia and the Minister of Interior with a general proposal to create a structural unit in the existing investigative system responsible for investigating hate crimes, which will be staffed with the aim of preventing crimes committed against vulnerable groups and conducting timely and effective investigations. At the same time, the Public Defender stressed that in order to clearly highlight the existing problems, it is necessary to develop a proper system of making records and producing statistics, which will also analyze the risk factors for hate crimes and the circumstances that prevent its detection.
17. It should be noted that in the framework of the UN Universal Periodic Review 2015,⁵ Georgia received a recommendation to establish a special structural unit to investigate hate crimes. The European Commission against Racism and Intolerance (ECRI) in its 2016 report on Georgia also addressed this issue,⁶ In addition, in its

⁴ Civil Code of Georgia, Article 1008

⁵ Recommendation - 118.10: Establish a specialized police unit for investigating hate crimes, closely collaborating with the LGBT community and organizations in order to create a trusting relationship (Sweden);

⁶ ECRI Report on Georgia 2016. Available at: < <https://bit.ly/3j2VSwR> >

decision of September 2019 the Committee of Ministers also encouraged the authorities, in this context, to establish a specialized investigative unit within the police in order to carry out effective investigations into hate crimes. However, this recommendation has not been fulfilled to this date.

18. It is noteworthy, that the Human Rights Protection and Quality Monitoring Department of the Ministry of Internal Affairs, which monitors the investigation of crimes committed on discriminatory grounds is not equipped with an investigative function. Accordingly, this recommendation cannot be considered implemented by referring to the existence of this department.
19. In 2018-2019, the highest number of appeals at the Public Defender's Office was for cases of alleged hatred against LGBT + members (total of 25 cases, including 5 cases of verbal abuse by police officers).
20. As for the investigation process, there are cases when during the investigation of the alleged hate crime against the LGBT + community, according to the investigative body, despite the attempts, no discriminatory motive was revealed or, due to the lack of signs of crime, the investigation was not launched. It remains obscure for PDO what actions were taken to identify such a motive.
21. Part of the alleged hate crimes against LGBT + people are related to physical and verbal abuse, beatings and death threats. As well as cases of attacks on the office of the LGBT + rights organization. The applicants also point out that in a number of cases, verbal abuse continues even after police arrives on the scene, to which law enforcement officials do not respond. In a number of cases, despite the expiration of a reasonable period of time, persons were not granted a status of a victim, which restricted their access to the criminal case materials. Cases studied by the PDO also reveal facts of violence against minor members of the LGBT + community who were verbally abused and threatened with death; Physical and verbal abuse directed towards LGBT + family members was also reported.
22. The number of applications filed with the Public Defender by Jehovah's Witnesses concerning alleged hate crimes have been steadily high. Applications included cases involving incidents from the beginning of 2018, on which the accused has not been identified and the applicants' complaints were related to the delay of the investigation.
23. Most of the alleged crimes against Jehovah's Witnesses, in which the investigators did not find discriminatory motive, involved both violence and other acts. According to similar cases examined by the Public Defender's Office, victims of physical violence, as a rule, are Jehovah's Witnesses preaching on the street or going door to door. Jehovah's Witnesses also say that there were cases when fire was set to their stands and their religious literature was destroyed.
24. The Public Defender welcomes the fact that, unlike previous years, when examining alleged hate crimes, especially against Jehovah's Witnesses, investigations are launched under the Article of the Criminal Code, which pertains to hate motive, although this practice loses legal effectiveness due to delayed examination of cases. Victims of alleged crime have a sense of injustice and insecurity, which significantly undermines trust in the law enforcement agencies. In most of the cases, the information analysed by PDO shows that investigative actions are conducted to identify alleged hate motive and the investigation continues, but the rate of granting a victim status and identification of an alleged perpetrator is significantly low.
25. In addition, sometimes cases are classified as administrative offences after termination of investigation, but even if a person is identified as an offender, the relevant decision

does not indicate that the victim suffered harm on the discriminatory ground, since the currently applied administrative legislation does not identify the discriminatory motive as an aggravating circumstance of administrative responsibility. This greatly complicates the maintenance of statistics on alleged hate motivated offences and increases the likelihood that illegal hate acts will be left beyond attention.

Freedom of assembly and the physical integrity of LGBT+ community

26. The Public defender welcomes the implementation of training programs aimed at increasing the qualification of the investigative authorities and of the staff of the national courts in the field of discrimination. However, it should be noted with regret that despite the efforts made by the state concerning the training and awareness raising, the recent developments indicate a lack of implementation of the knowledge, gained during these trainings, in practice.
27. While the decisions on the Identoba Group of cases explicitly require the authorities to ensure freedom of expression and assembly for members of the LGBT + community, the legal status of LGBT + individuals has not improved from year to year in terms of exercising these rights. When private individuals violate these rights, in most cases, the state remains inactive and fails to fulfill its positive obligations.
28. Year of 2019 saw a number of instances when ultra-right groups interfered in the exercise of the right to assembly and expression by LGBT+ community representatives and their supporters. On such occasions, difference in state's response to violent groups, who under the guise of exercising the right to assembly tried to grossly and violently infringe the rights of others, was obvious.
29. Indicative in this regard were the events that unfolded during a peaceful rally organized by LGBT+ community and their supporters outside the government administration building on 14 June 2019.⁷ Public Defender made a public statement regarding those events.⁸ In particular, participants in a counter rally held by homophobic groups threatened with violence and physically abused participants of rally organized by Tbilisi Pride, assaulted journalists and interfered in their professional activity,⁹ tried to assault Deputy Public Defender and threatened him with violence.¹⁰ Law enforcement officers arrested 28 persons on administrative charges¹¹ and initiated criminal investigation into four facts¹² but no one has been recognized as a victim or an accused person in those criminal cases and the investigation has not brought about any particular result so far.
30. In addition, violent incidents also took place during attempts to hamper the screening of a film "And We Danced" in Tbilisi and Batumi. Persons rallying outside the movie theater Amirani in Tbilisi on 8 November 2019, tried to violently break through police cordon and enter the building. They also assaulted citizens,¹³ used pyrotechnic

⁷ Information is available at: < <https://bit.ly/39nfRSd> >; < <https://bit.ly/2ZAehIb> >

⁸ Public defender's statement is available at: < <https://bit.ly/37idZbr> >

⁹ Full information about facts of interference in journalists' activity is available at: < <https://bit.ly/351DY5u> > see also: <https://bit.ly/356wqOX> > <https://bit.ly/2ZD9h5I>>

¹⁰ Information is available at: < <https://bit.ly/2u2X4LN> >

¹¹ Information is available at: < <https://bit.ly/2SpPIA6> >

¹² Fact of alleged violence against Nata Peradze, unlawful interference in a professional activity of Netgazeti journalist, unlawful interference in a professional activity of TV Pirveli journalist and threatening of Deputy Public Defender outside the building of government administration.

¹³ Video footage featuring assaults on a co-founder of the Republican Party, Davit Berdzenishvili, and a civic activist, Ana Subeliani, is available at: < <https://bit.ly/2QCZSbN> >, <https://bit.ly/35nmjFQ> > see fragment of video from 2:14:50 to 2:16:00 >

devices, bottles and other objects outside the movie theater Amirani and outside the movie theater Apollo in Batumi.¹⁴

31. Although the violent groups announced about their plan to thwart the screening of the film days earlier, the government did not undertake necessary preventive measures and failed to have adequate response on violent acts from individuals. Nor did they ensure a safe distance between homophobic groups and people who arrived there to watch the film.
32. In Public Defender's assessment, the main problem lied in the government's viewing of ultra-right groups as persons with different opinion exercising the right to assembly and applying that legal framework to threats emanating from them against LGBT+ representatives and their supporters. This approach runs counter to national and international standards of the right to assembly because the conduct of counter rally by homophobic groups for such aim is the abuse of the right while violence committed by them is not protected by the freedom of assembly.
33. Thus, the timely assessment of possible risks of spontaneous or planned gatherings of separate groups and undertaking of all relevant measures (including through mobilizing relevant police resources) by the Ministry of Internal Affairs to prevent violent and criminal actions remained a problem throughout the year. Public Defender has repeatedly emphasized that it is of an utmost importance to conduct a timely and effective investigation into all the above-mentioned incidents and punish all offenders in order to prevent voluntary restriction of others' rights by violent groups and emergence of a climate of impunity.

Recommendations of the Public Defender of Georgia

34. On June 3, 2020, the Office of Public Defender of Georgia submitted an alternative report¹⁵ on the situation of enforcement of the judgements of the European Court of Human Rights to the Parliament of Georgia. The alternative report assessed the implementation of general measures imposed on Georgia by the European Court of Human Rights and among other issues addressed the existing challenges with regards to combating discrimination in the country.
35. In the report, the Public Defender's Office reiterated recommendations for the Government and submitted them to the Parliament of Georgia in order to promote full implementation of the relevant judgements of the European Court of Human Rights :

¹⁴ Information is available at: < <https://bit.ly/2rX9i7w> >

¹⁵ Public Defender's Alternative Report on Enforcement of ECHR Judgments. Available in Georgian at: < <https://bit.ly/30bAAon> >

36. Recommendations of the Public Defender of Georgia to the Georgian authorities regarding the Identoba Group of cases:
37. Amend the Code of Administrative Offenses and define the discriminatory motive of the offense as a qualifying circumstance;
38. Ensure the spontaneous or pre-scheduled meetings and counter-meetings are held peacefully, assess the expected risks in a timely and appropriate manner to prevent acts of violence;
39. Intensify public campaigns to raise awareness on discrimination issues;
40. Ensure that public officials refrain from making discriminatory statements.

Conclusion

41. Public Defender concludes that despite some steps forward, the state is unable to ensure the protection of the rights of vulnerable groups and the effective fulfillment of its positive obligations. Insufficient preventive measures are taken, and in many cases, the vision and policy of the relevant agencies in terms of protection of the rights of vulnerable groups are unclear.
42. The Public Defender once again emphasizes the need for a unified approach to state criminal policy in the existing investigative system and the creation of a special structural unit working on hate crimes. At the same time, it is crucial to introduce a sound system of making records and statistics production, which will also analyze the risk factors for hate crimes and the circumstances that prevent its detection.
43. Unfortunately, it should be noted that the legal status of LGBT + people and the existing challenges become the subject of discussion in the political arena only in certain periods of the year (for example, in the period before May 17). The needs of LGBT + individuals are not a priority for politicians.
44. At the same time, the relevant state agencies bring ultra-right groups and members of the LGBT + community, who want a peaceful assembly, on a single legal footing. As a rule, actions taken in the public interest - for security reasons - take place at the expense of restricting the rights of LGBT + members. In some cases, there is no timely and effective response to the violations of the leaders or members of various homophobic groups, which aggravates the syndrome of impunity and legitimizes the violent acts committed by these individuals.
45. The Public Defender's practice shows that on many occasions discrimination is caused by stereotypes and wrong perceptions that exist in the public about vulnerable groups. However, the state initiatives to raise awareness or communicate with and work with specific groups are very limited. Public Defender reiterates that in order to prevent discriminatory acts, it is important not only to respond effectively to specific incidents, but also to work systematically to improve the legal status of vulnerable groups.