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Communication of the Public Defender of Georgia

AMIRIDZE v. Georgia (Application no. 15351/09)

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 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 Action Report (29/07/2022) (hereinafter Action Report) of the Government of Georgia and provides information on the implementation of general measures by the Government in the course of the execution of the judgement in the case AMIRIDZE v. Georgia (Application no. 15351/09).

General Measures

3. The Action Report refers to the Strategy and 2019-2020 Action Plan on the Development of the Penitentiary and Crime Prevention Systems (hereinafter - the strategy and action plan). According to the report, the strategy and the action plan "were elaborated with the involvement of all relevant actors".¹ However, they were actually developed without participation of the PDO which acts as the National Preventive Mechanism (hereinafter NPM) and thus constitutes one of the relevant actors in this context. The 2018 report by the NPM assessed the extent to which the Public Defender's recommendations were reflected in the action plan. It stated that some of the activities determined by the action plan were of general nature and did not allow analyzing the compatibility of expected outcomes with the Public Defender's recommendations.² Moreover, some of the recommendations were not taken into account. To name a few examples, the action plan did not address the system of disciplinary procedure, the practice of the use of certain security measures (such as visual and/or electronic surveillance and de-escalation rooms), etc.³ Moreover, the claim in the Action Report that as of today, major part of the strategy and action plan has been implemented⁴ is incorrect as certain significant measures (such as building new penitentiary establishments and closure of the current ones, strengthening rehabilitation of prisoners) envisaged in the action plan have not been carried out yet.

¹ Action Report (29/07/2022) - Communication from Georgia concerning the case of Amiridze v. Georgia (Application No. 15351/09), page 2.

² The Report of the National Preventive Mechanism 2018, the Public Defender of Georgia, 2019, page 18, available at: <https://bit.ly/3bJAsWJ> [last accessed 08.08.2022].

³ The Report of the National Preventive Mechanism 2018, the Public Defender of Georgia, 2019, page 18.

⁴ Action Report (29/07/2022) - Communication from Georgia concerning the case of Amiridze v. Georgia (Application No. 15351/09), page 2.

4. The Action Report also claims that “as of today, an accused/convict in a penitentiary establishment is provided with the right to meet a lawyer without any restrictions or interference”.⁵ We would like to draw the Committees’ attention to some obstacles and interference the accused and convicts still face in realization of their right to communicate with their lawyers.

5. The right of prisoners to communicate with the outside world (including via telephone calls) is restricted during placement in de-escalation rooms.⁶ Thus, they are unable to contact their lawyers.⁷ It is also noteworthy that, based on the experience of the PDO, prisoners have been placed in the de-escalation rooms in most cases, for a maximum period of time and they are kept there continuously for several days and weeks with intervals of minutes only between the statutory maximum periods of time allowed for keeping a prisoner there.⁸

6. Moreover, the right of an accused or a convict to communicate with a lawyer may also be subject to limitation in the form of a disciplinary sanction. In particular, the restriction on making telephone calls was imposed on the accused as a disciplinary penalty in some cases studied by the PDO.⁹ The penitentiary establishment in question argued that this restriction applied to telephone communication between a lawyer and a prisoner as well.¹⁰ However, this position contradicts national legislation

⁵ Action Report (29/07/2022) - Communication from Georgia concerning the case of Amiridze v. Georgia (Application No. 15351/09), page 2.

⁶ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 31, available at: <<https://bit.ly/3L1xCrL>> [last accessed 08.08.2022].

⁷ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 31.

⁸ In 2021, for example, in penitentiary establishment no. 8, in one case, a prisoner was placed in a de-escalation room 16 times in a row, and the prisoner was in the de-escalation room for virtually 48 consecutive days. In penitentiary establishments nos. 2 and 8, there are occasional incidents of prisoners being held for up to 35 days in a de-escalation room, and incidents of being kept in a de-escalation room for more than 15 days are frequent. As regards special risk penitentiary establishments, namely penitentiary establishments nos. 3 and 6, there are occasional cases of prisoners being held in de-escalation rooms for up to 10 days.

⁹ The 2021 Activity Report of the Department of the Criminal Justice of the Public Defender’s Office, 2022, page 102, available at: <<https://bit.ly/3d3aCNK>> [last accessed 08.08.2022].

¹⁰ The 2021 Activity Report of the Department of the Criminal Justice of the Public Defender’s Office, 2022, page 102; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 87.

prohibiting such restrictions on relations between the accused and his/her lawyer that can hinder the realization of the right to defense.¹¹

7. The Action Report also notes that “the employees of the penitentiary establishment can observe the meetings visually, by means of technical remote observation and recording, but without listening”.¹² In this connection, the PDO reiterates the comment from its previous communication: “to this date there is video surveillance in every room where prisoners meet with e.g., PDO representatives [and their lawyers] in every penitentiary institution in the country, except one meeting room at N8 establishment. Representatives of PDO consider this as problematic since there are instances when prisoners refrain from demonstrating their injuries due to the fact that they are watched by the prison administration through video surveillance cameras. Consequently, PDO considers that its representatives should be able to choose in every establishment if they prefer to meet with prisoners in a room without surveillance cameras to allow them to communicate with PDO representatives without any restraints”.¹³

8. Although these issues do not fall within the scope of the execution of the present judgment, the PDO additionally informs the Committee that prisoners face obstacles to communication not only with their lawyers but with the PDO and inspection bodies as well. In 2021 there were likely cases when a prisoner’s phone card was blocked in a way that it could not call the hotline numbers of the inspection bodies and the PDO.¹⁴ An accused in the N3 penitentiary facility, for example, stated that he could not call the hotlines of the State Inspection Service and Legal Aid Service and the work and personal numbers of the representative of the Public Defender.¹⁵ Moreover, the representatives of the Public Defender checked/verified that it was not possible to call the hotline from the prisoner’s card in the N3 facility.¹⁶ Contact with the PDO is alarmingly hindered by the pressure from the administrations of the penitentiary

¹¹ The 2021 Activity Report of the Department of the Criminal Justice of the Public Defender’s Office, 2022, page 102; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 87.

¹² Action Report (29/07/2022) - Communication from Georgia concerning the case of Amiridze v. Georgia (Application No. 15351/09), page 2.

¹³ Communication from an NHRI (Public Defender’s Office of Georgia) (17/02/2021) in the case of Amiridze v. Georgia (Application No. 15351/09), page 9.

¹⁴ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 53, available at: < <https://bit.ly/3SAXZtK> > [last accessed 08.08.2022].

¹⁵ The 2021 Activity Report of the Department of the Criminal Justice of the Public Defender’s Office, 2022, page 107.

¹⁶ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 53

facilities.¹⁷ Restrictions on communication and unexpected searches in cells are used to oppress prisoners who claim that they are often subject to threats and intimidation because of applications and phone calls to the PDO.¹⁸

9. In terms of phone calls, it also remains problematic to have telephone conversations in a confidential environment.¹⁹ Prisoners point out that it is virtually impossible to have a confidential telephone conversation in the facilities, either an employee or another prisoner is listening.²⁰ The infrastructure of the facilities is arranged in such a way that the telephone is either in a duty room or in the booth from which the sound is heard.²¹

10. In 2021, similarly to previous years, there were cases revealed when the realization of the right to complain was hindered due to the criminal sub-culture.²² The PDO would like to reiterate concerns expressed in its previous communication.²³ In particular, the number of complaints received by the PDO from semi-open penitentiary facilities is still low due to the influence and pressure from informal hierarchy of governance by prisoners.²⁴ The fact that prisoners in semi-open facilities refrain from complaining due to the influence of informal leaders is also proved by the number of applications sent to the Public Defender’s Office. The diagram below shows a fairly large difference between the applications received in 2021 and in the indicated period in 2022 from closed (special risk) facilities and facilities which are semi-open:

Applications received by the PDO from penitentiary facilities		
	2021	01.01.2022-31.07.2022

¹⁷ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 32.

¹⁸ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 53

¹⁹ The 2021 Activity Report of the Department of the Criminal Justice of the Public Defender’s Office, 2022, page

²⁰ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 51.

²¹ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 51.

²² The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 53.

²³ Communication from an NHRI (Public Defender’s Office of Georgia) (17/02/2021) in the case of Amiridze v. Georgia (Application No. 15351/09), pages 4-5.

²⁴ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 43.

N15 Facility – Mtskheta Municipality – semi-open and closed facility	21	12
N17 Facility – Rustavi – semi-open and closed facility	27	5
N14 Facility – Tskaltubo – semi-open and closed facility	33	7
N12 Facility – Tbilisi – semi-open and closed facility (special prison for former law enforcement officials)	39	11
N5 Facility – Gardabani Municipality – semi-open and closed facility for women imprisonment	74	27
N10 Facility – Ksani – closed facility	121	102
N3 Facility – Batumi – imprisonment and special risk facility for placement of the accused and convicts	315	259
N2 Facility – Kutaisi – imprisonment and closed type facility	339	143
N6 Facility – Gardabani Municipality – imprisonment and special risk facility	436	179
N8 Facility – Tbilisi – imprisonment and closed type facility	549	134

This diagram is similar to the 2019-2020 statistics provided in the previous communication of the PDO²⁵ in that the applications from closed facilities outnumber those from semi-open facilities both in the diagram and the 2019-2022 statistics. This indicates that the influence of criminal sub-culture continues to hinder submission of applications from semi-open establishments. In this connection, the PDO would like to note that half of those placed in prisons are serving their sentences in semi-open penitentiary establishments. Moreover, the PDO would also like to refer the latest report of the CPT according to which, in semi-open establishments, the power of informal prison hierarchy is indicated by the fact that “there were virtually no formal

²⁵ Communication from an NHRI (Public Defender’s Office of Georgia) (17/02/2021) in the case of Amiridze v. Georgia (Application No. 15351/09), page 5.

complaints recorded, and the very few that were recorded concerned exclusively inmates' criminal cases (and were thus addressed at the criminal justice system – Prosecutor's Office and courts – and not the prisons and their management) or, in rare cases, issues such as the refusal of transfer to a different establishment or the refusal to grant early (conditional) release".²⁶ It can be inferred from the statistics provided by the PDO and the CPT report that this informal prohibition of complaining imposed by the criminal sub-culture applies to almost all types of complaints/applications, hence, it can cover submission of applications to the European Court as well.

11. Submission of written complaints is also hindered by the fact that complaint boxes are still placed under video surveillance making it possible to identify the author of a confidential complaint.²⁷ This issue was also mentioned in the previous communication of the PDO²⁸ and thus remains unsolved. Moreover, the receipt of envelopes for the complaint depends on an employee of a penitentiary facility and asking the employee for an envelope implies that a prisoner is going to write a complaint.²⁹ Even this implication and the fact of writing the complaint can cause trouble to a prisoner who may hesitate to ask for the envelope to submit the complaint.³⁰

12. The Action Report states that "upon request, the defendant/convict shall be provided with the necessary number of required means to file a complaint, including papers, envelopes for confidential grievances, writing instruments and etc."³¹ Contrary to this statement, a part of prisoners in closed and special risk facilities still has no means necessary to file a complaint.³²

13. The Action Report also claims that "upon arriving at the penitentiary establishment, a social worker informs the accused/convict in written regarding his/her rights and responsibilities, including the right to file a complaint and the rule

²⁶ Report to the Georgian Government on the ad hoc visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 24 May 2021, Strasbourg, 16 June 2022, page 10, available at: < <https://rm.coe.int/1680a6eabd> > [last accessed 08.08.2022].

²⁷ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 54.

²⁸ Communication from an NHRI (Public Defender's Office of Georgia) (17/02/2021) in the case of Amiridze v. Georgia (Application No. 15351/09), page 3.

²⁹ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 54.

³⁰ The Report of the National Preventive Mechanism 2021, the Public Defender of Georgia, 2022, page 54.

³¹ Action Report (29/07/2022) - Communication from Georgia concerning the case of Amiridze v. Georgia (Application No. 15351/09), page 2.

³² Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 44.

provided by law to appeal”.³³ However, it was revealed that prisoners in penitentiary establishments lack information on legal protection mechanisms.³⁴

14. Moreover, convicts’ right to send correspondence and its confidentiality were violated in some cases in 2021.³⁵ To name an example, the PDO found a violation of the right to correspondence in a case in which a social worker in N6 penitentiary facility did not register a convict’s complaints/applications which were thus not sent to the addressees.³⁶

Conclusion

15. As described above, there are notable deficiencies in terms of lawyer-client meetings and functioning of complaints mechanism in penitentiary establishments. These two issues are crucial in protecting the rights of prisoners, hence it is of an utmost importance that the authorities take all the necessary measures to guarantee that prisoner’s avenues of complaint are open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate institution or agency. Therefore, the PDO holds the view that the Committee should not close supervision of the present case and reiterates the recommendations enshrined in the previous communication of the PDO.³⁷

³³ Action Report (29/07/2022) - Communication from Georgia concerning the case of Amiridze v. Georgia (Application No. 15351/09), page 2.

³⁴ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 43.

³⁵ The 2021 Activity Report of the Department of the Criminal Justice of the Public Defender’s Office, 2022, page 108.

³⁶ The 2021 Activity Report of the Department of the Criminal Justice of the Public Defender’s Office, 2022, page 108.

³⁷ Communication from an NHRI (Public Defender’s Office of Georgia) (17/02/2021) in the case of Amiridze v. Georgia (Application No. 15351/09), page 10.