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Meeting: 1369th meeting (March 2020) (DH)

Communication from an NHRI (the Public Defender's (Ombudsman's)) (29/01/2020) in the case of Merabishvili v. Georgia (Application No. 72508/13)

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 : 1369^e réunion (mars 2020) (DH)

Communication d'une INDH (the Public Defender's (Ombudsman's)) (29/01/2020) relative à l'affaire Merabishvili c. Géorgie (requête n° 72508/13) **[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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SERVICE DE L'EXECUTION
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Communication of the Public Defender of Georgia

MERABISHVILI v. Georgia (application no. 72508/13)

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

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 judgment.

The present communication addresses matters arising in relation case of *Merabishvili v. Georgia*.

On January 24, Public Defender of Georgia, has submitted communication regarding individual and general measures of the case of *Merabishvili v. Georgia*. Representatives of the Public Defender of Georgia, has examined criminal case files several times and submission was based on our monitoring results.

Our findings concerned serious violation of investigation process, inter alia, Mr. Merabishvili's involvement in the investigation process. For that reason, it was decided by the Public Defender to meet personally to Mr. Merabishvili and hear his position regarding the investigation process.

On January 23, Public Defender of Georgia – Nino Lomjaria and Deputy Public Defender – Giorgi Burjanadze met with Mr. Merabishvili at Penitentiary Establishment #9 in Tbilisi.

Immediately, after completing the confidential visit, Special Penitentiary Service/Ministry of Justice of Georgia publicly disclosed the information regarding the visit¹, including the time schedule, inmates' names and other details. Moreover, the media was informed about the meeting in a rather short time that creates a reasonable doubt that the Special Penitentiary Service contacted them intentionally.

Disclosure of the identities of persons met by the Public Defender increases the risk of ill-treatment of prisoners or other illegal actions and results in the deterioration of the human rights situation of prisoners. Circulation of this kind of information may force prisoners to refrain from applying to and meeting with the Public Defender in the future. For that reason, Article 19 of the Organic Law on Public Defender of Georgia, reads as follows:

The meetings of the Public Defender of Georgia/a member of the Special Preventive Group with detainees, prisoners or persons whose liberty is otherwise restricted, convicted persons, persons in psychiatric facilities, old people's and children's homes shall be confidential. Any kind of eavesdropping and surveillance shall be prohibited.

Confidentiality of the meeting means privilege not to disclose any information regarding the visit, including the names of prisoners, their data. Of course, this guarantee protects the content of the meeting.

According to the Constitution of Georgia, creating obstacles to the activities of the Public Defender is punishable by law. Pursuant to Article 21 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), personal data shall not be publicized without the clear consent of the interested party.

It is alarming that such a fact has occurred for the first time during the existence of the Georgian Public Defender's institution. Public Defender of Georgia considers this incident as a criminal offence punishable under

¹ Information available online in Georgian: < <http://sps.gov.ge/ka/media/akhali-ambebi/article/23438-n9-penitenciur-datsesebulebashi-sakhalkho-damcvelis-viziti-dasrulda.html> > [Accessed January 29, 2020].

Art 352 of the Criminal Code of Georgia. On January 24, Public Defender of Georgia, applied to the Acting Prosecutor General to launch criminal investigation and to find all responsible for this incident.

Public Defender considers this incident to be related to the individual measures of the case *Merabishvili v. Georgia*. Ministry of Justice was aware to the fact that Public Defender's Office of Georgia was monitoring the execution process of this case. On November 22, 2019, we have submitted communication on this case on general measures.²

Ministry of Justice had information that Public Defender of Georgia was allowed to read case files of the ongoing renewed investigation regarding removal of Mr. Merabishvili from prison cell.³ They were also aware that the execution status of Mr. Merabishvili's case should have been examined in March 2020, during the Committee meeting.

Taking into consideration above, Public Defender of Georgia considers that the disclosure of confidential information regarding the meeting of Public Defender and her representative with Mr. Merabishvili is relevant issue to be examined as a part of individual and general measure of this case.

Revealing confidential information regarding the meeting was purposeful criminal act in violation of Georgian legislation and OPCAT obligations, and it intended to influence the work of Public Defender, that is independent national human rights institution in the country and monitors the case of Mr. Merabishvili. In order to continue, effective operation of the Public Defender's Office of Georgia, it is necessary to conduct detailed investigation of January 24 incident by the Prosecutor General of Georgia and bring all responsible to the justice.

Public Defender of Georgia, will also be hindered in future to provide information regarding the execution of judgments in those cases where prisoners' rights are at stake. If not condemned publicly, it might have chilling effect over national human rights institutions' operation across the Council of Europe region.

The Public Defender hopes that the Committee addresses the above-mentioned serious concerns raised in this submission and in the light of these concerns, calls upon the Government to undertake individual and general measures for the full and proper implementation of the judgment on this case.

Sincerely,

Nino LOMJARIA

Public Defender of Georgia



² Available online: < [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)1195E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)1195E) > [Accessed January 29, 2020].

³ Available online: < [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1105E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)1105E) > [Accessed January 29, 2020].