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Meeting: 1331st meeting (December 2018) (DH)

Reply from the authorities (30/11/2018) following a communication from "Public Defender of Georgia" in the case of Merabishvili v. Georgia (Application No. 72508/13).

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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Réunion : 1331^e réunion (décembre 2018) (DH)

Réponse des autorités (30/11/2018) suite à une communication de "Public Defender of Georgia" dans l'affaire Merabishvili c. Géorgie (requête n° 72508/13).

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.



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Communication of the Office of 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

November 22, 2018

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1) Introduction

The Public Defender's Office of Georgia presents this submission pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgment. This submission is communicated for the supervision of the execution of judgments for consideration at the 1331st CM-DH meeting (December 2018).

The Public Defender's Office of Georgia is an independent National Human Rights Institution mandated by Constitution and Organic Law to oversee the observance of human rights and fundamental freedoms in Georgia. Since 2009, the Public Defender fulfils the mandate of the National Preventive Mechanism (NPM), envisaged by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The present communication addresses one of the matters arising in relation to the general measures in *Merabishvili v. Georgia*. We are aware that in the case the applicant submitted communication, which mentions several extracts from the Annual Report of the Public Defender of Georgia for 2017.¹ Thus, we decided to provide more detailed information on our recommendations as well as parliamentary ordinance that was adopted based on them. In addition, in the present communication we will provide observation on storing the video surveillance recordings in penitentiary institutions.

2) Public Defender's Recommendation on Ivane Merabishvili Case in the Annual Report and Parliamentary Ordinance

The Annual Report² of the Public Defender of Georgia of 2017 reads as follows:³

In the case of Ivane Merabishvili, the European Court of Human Rights found a serious violation of the right to liberty and security of person for the purposes other than those prescribed by the European Convention on Human Rights. For the restoration of this right, Georgia has yet to carry out effective measures. The violation of Article 18 taken in conjunction with a serious interference with the right to liberty of person is a rare occasion in the European Court's practice. In such cases, the respondent states mostly respond with the domestic measures involving the applicant's release.

The Public Defender of Georgia deems that for the enforcement of the European Court's judgment regarding Ivane Merabishvili, the Georgian authorities, under the supervision of the Committee of Ministers of the Council of Europe, should take all necessary individual and general measures for comprehensive and timely execution of the judgments as required by article 46 of the European Convention.

¹ Communication from the applicant (04/05/2018) in the case of Merabishvili v. Georgia (Application No. 72508/13), DH-DD(2018)469, 14/05/2018

² Official English version of the Annual Report is available online: < <https://goo.gl/MTKp1Q> > last seen [16.11.19].

³ Page 63.

Based on this report, the Parliament of Georgia adopted Ordinance N3148- RS⁴ ‘On the Public Defender's Report on the State of Human Rights and Freedoms in Georgia in 2017’.⁵ It mentions twice the case of Ivane Merabishvili. **Firstly**, the Government of Georgia is obliged to implement the individual and general measures for the execution of the judgment of the European Court of Human Rights. **Secondly**, the Parliament of Georgia orders the Prosecutor’s Office of Georgia to implement all individual and general measures for the execution of the judgment of the European Court of Human Rights.

3) General Position of the Public Defender of Georgia on the Usage of Video Surveillance in the Penitentiary Institutions

The Public Defender of Georgia has a firm position that the legislation and practice should not allow routine surveillance and control through visual and/or electronic means. It is important that the aforementioned restriction be only used with the due account for individual assessment of security risks posed by an inmate and the principle of proportionality. Otherwise, such measures will amount to unlawful and arbitrary interferences in the private life of an individual.⁶

The Public Defender of Georgia has numerous observed in his reports that the security system may not be based only on static security⁷ and it should take into account effective implementation of dynamic security concept. However, using video surveillance by ensuring that they are used in a regulated way and are put in a correct location (covering all spaces, with the exception of toilets and cells) can ensure the overall monitoring of what takes place on the premises (such as walkways or communal areas) to secure coherent and full evidence for a prisoner and at the same time serve as a safeguard against false and unsubstantiated accusations against prison administration.

4) The Importance of Keeping the Video Surveillance Recordings for a Reasonable Time

According to Order no. 35 of the Minister of Corrections of Georgia the current minimum term of storage of video surveillance recordings is 120 hours (five days). In the Parliamentary Reports of 2016 and 2017, the Public Defender of Georgia recommended to the Minister of Corrections of Georgia to determine the reasonable term of storage of video surveillance recordings (**for no less than 10 days**).

4.1) The challenges faced by the Public Defender’s Office as a complaint handling mechanism

The Public Defender represents a non-judicial mechanism for reviewing complaints. Therefore, addressing grievances from the victims of alleged torture or other forms of ill treatment is one of the most important

⁴ According to the Rules of the Procedure of the Parliament of Georgia, after hearing the Public Defender's Annual report, the Parliament adopts Public Defender’s Recommendations as an obligations towards executive branch, afterwards making its own supervision over the authorities on its implementation.

⁵ Available in Georgian: < <https://matsne.gov.ge/ka/document/view/4283658?publication=0> > last seen [16.11.19].

⁶ Article 8 - right to respect for private and family life, enshrined in the European Convention on Human Rights (ECHR).

⁷ Use of prison security infrastructure and equipment (such as video surveillance) and the use of force to manage and respond to prison incidents.

elements of its mandate. The Public Defender's office as a national human rights and Ombuds institution, has a supportive role in order to ensure the accountability of the corresponding authorities and in supporting the victims of torture or other forms of ill treatment to seek justice. In particular, the mandate includes the identification of the cases of torture and ill treatment, submitting proposals to the corresponding authorities for starting the investigation and carrying out a supervision of the case.

We examined the actual practice of receiving complaints for the period of 2014-2018. In total 29 cases were studied, this include instances where the complaint was received by the Public Defender's Office and respective recommendation was issued requesting instigation of criminal proceedings. In 9 cases out of this 29, the time range from the occurrence of the alleged ill treatment to receiving the complaints at Public Defender's Office varied from 5 to 25 days.

For instance, in one of the cases, prisoner A.M claimed that he had been physically abused in 04.04.2014. However, it was not until the visit of the representatives of the Public Defender's office in 29.04.2014 (after 25 days) that the representatives of the Public Defender became aware of that fact. The prisoner disclosed the information and gave a consent to send a proposal to the investigative authorities. In another case, prisoner J.D claimed that he had been physically abused in 08.04.2014. However, it was not until the visit of the representatives of the Public Defender's office in 14.04.2014 (after 6 days) that the representatives of the Public Defender became aware of the fact. The prisoner disclosed the information and gave a consent to send a proposal to the investigative authorities. The analysis of the abovementioned 9 cases clearly shows that in such cases minimum requirement of storage of video recordings for 5 days would not suffice and therefore there is an apparent need for increasing this minimum requirement so as to enable the investigative authorities to secure video evidence and thus to undertake a proper investigation.

In the Public Defender's opinion, when considering the issue of setting the reasonable minimum requirement for storing video recordings, the following two issues should be taken into account. **Firstly**, it is well acknowledged fact that prisoners and especially the victims of torture⁸ are vulnerable groups who due to their psychological trauma are often in the condition of fear and hopelessness, which makes it difficult for them to lodge a complaint to the competent investigative authorities. **Secondly**, even when they decide to complain, they may not be able to do it rapidly.

Although, according to the current procedures, there are different ways for a prisoner to approach the Public Defender's office of Georgia or other competent organs, as the findings of the National Preventive Mechanism of Georgia show, there may be many impediments to that. During the execution of disciplinary sanction (ban on the telephone call) the prisoner is not allowed to contact a public defender. Furthermore, in some prisons (closed-type establishments) telephones are installed in such way that it is impossible to make a phone call in a confidential environment. It is also noteworthy that prisoners cannot call the Office of the Public Defender or other organs of inspection at night.⁹

⁸ Istanbul protocol, Psychological consequences of torture, page 46, available online:
< <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> > [16.11.19].

⁹ Report of the National Preventive Mechanism of the Public Defenders' Office of Georgia 2016, 2017.

Similarly, while prisoners are allowed to have a written correspondence with the Public Defender's Office, there have been cases identified, when there were problems in terms of the confidentiality.¹⁰ Moreover, in cases when prisoners are transferred to de-escalation rooms, they are not given access to telephone calls and correspondence. In fact, taking into account the hurdles the prisoner might encounter there can be situations when the prisoner will not be able to contact the Public Defender or any other relevant authority in timely manner, resulting in the loss of crucial video evidence before the launch of official inquiry.

4.2) Advocating for change

In 2014 The Public Defender of Georgia has recommended to the Minister of Corrections of Georgia to determine the reasonable term of storage of video surveillance recordings without mentioning the minimum time for the storage. The reason behind was to give the possibility to Minister of Corrections of Georgia to determine a reasonable time within the existing capabilities. In 2015 the Minister of Correction of Georgia has approved the regulation setting 24 hours as the minimum term of storing video recordings. The Public Defender was not satisfied with the determined minimum time. However, the response of Minister of Corrections of Georgia was that due to its technical capabilities, it was impossible to store the recording for a longer period. In order to put a minimum standard and set a benchmark for measuring the implementation of the recommendation during the one year period, 2015 the Public Defender decided to determine the reasonable term of storage of video surveillance recordings for no less than 10 days. No progress was made in terms of the implementation of this recommendation until 2017.

On 20 March 2017, Order no. 35 of the Minister of Corrections of Georgia, dated 19 May 2015, was amended to the effect of providing for 120 hours (five days) as the minimum term of storing video recordings. This change was welcomed by the Public Defender as an obvious step forward. However, as the recommendation had not been implemented, the Public Defender reiterated its position on determining the storage of video surveillance recordings for no less than 10 days in the Parliamentary report of 2017¹¹. The full implementation of this recommendation was initially expected by the end of 2018. However, in its Ordinance N3148- RS 'On the Public Defender's Report on the State of Human Rights and Freedoms in Georgia in 2017' issued on 19 July 2018 by the Parliament of Georgia, the Parliament has only partly shared the recommendation by stating that the special penitentiary service of the Ministry of Justice should determine the reasonable term of storage of video surveillance recordings **for no less than 7 days**.

Importantly, in the communication from Georgia concerning the case of Merabishvili v. Georgia (Application No. 72508/13) the Ministry of Justice has underlined that it has undertaken a study of practical and logistical modalities with a view of **prolonging the 120 hours' time-limit even further**. Evidently, this statement shows the importance of increase of the time-limit and the need for taking consistent steps to ensure such increase. The Public Defender will turn to this issue again in 2019 assessing the progress made and recommending further steps.

We are of the opinion that in ideal scenario it would be reasonable to link the minimum storage period of video recordings to the statutory time-limit of lodging internal complaints under the

¹⁰According to the assessment made by the Special Preventive Group, it was problematic to send an appeal with due respect for confidentiality in closed type institutions. Report of the National Preventive mechanism, 2016, 22.

¹¹ Presented to the Parliament of Georgia in March 2018.

Imprisonment Code¹², which is one month.¹³ The similar approach is shared by other countries. For example, the UK experience suggests that retaining the footage of the surveillance is closely linked to the period in which a complaint can be made according to its complaint handling regulations.¹⁴

5) Conclusion

Stressing the importance of video recordings as evidence and underlining the barriers the prisoners may face in complaining to competent authorities, the Public Defender of Georgia is of the view that linking the minimum period of storage of video recordings to the statutory time limit to lodge formal complaints (one month in case of Georgia) can be seen as reasonable. However, since it would create unreasonable burden on the relevant authorities to request storage of video recordings for one month immediately and we are asking the government to gradual increase.

¹² Imprisonment Code of Georgia establishes an internal complaint mechanism which gives a possibility for a prisoner to file a complaint on actions or omissions of the prison staff violating his/her rights. Prisoner can fill a complaint within 1 month after the identification of the relevant grounds.

¹³ In Serbia, the National Preventive Mechanism has issued a recommendation in which it requested the videos to be kept for minimum 30 days. National Preventive Mechanism 2016 Report, p 66, available online: < <https://goo.gl/BrVVRd> > [16.11.19].

¹⁴ All non-evidential surveillance camera footage must be retained for a minimum of 120 days. This retention period is important because there may be occasions that a detainee, staff member or visitor makes a complaint about an incident and retaining the footage for this length of time (the period in which a complaint can be made as set out in DSO 03/2015 'handling of complaints'). Available online: < <https://goo.gl/9yKwLW> > [16.11.19].



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30 / November / 2018

Department for the Execution of Judgements
of the European Court of Human Rights

Case Merabishvili v. Georgia (Application No. 72508/13) – Judgment of 28 November 2017 – Grand Chamber

Dear Sir/Madam,

We hereby acknowledge the receipt of your letter (Ref: DGI/COV/VK/bk) dated 28 November 2018 with accompanying documents submitted from the office of Public Defender of Georgia concerning the case *Merabishvili v. Georgia*.

As the Committee is well-aware, the above-mentioned case is debated at the 1331st meeting (December 2018)(DH), therefore, the Government will hold an opportunity to submit their comments, among others, in light of the communication of the Public Defender of Georgia at the debate.

Furthermore, on 26 October 2018 the Government presented an updated action plan concerning the individual and general measures undertaken in the course of the execution of case *Merabishvili*. In regards to the issue of keeping the video surveillance recordings in penitentiary institutions for a reasonable time, the Government declared that as a result of merging, in July 2018, of the Ministry of Justice and Ministry of Corrections, the Ministry of Justice of Georgia has undertaken a study of practical and logistical modalities with a view of prolonging the 120 hours' time-limit even further. Hence, the recommendation of the Public Defender is welcomed and the Committee will be updated accordingly regarding further steps taken in that regard.

Sincerely,

Head of the Department of the State Representation to
the International Courts

SIGNED/SEALED
ELECTRONICALLY

Beka DZAMASHVILI