

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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DH-DD(2017)945

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1294th meeting (September 2017) (DH)

Communication from a NGO (18/08/2017) and reply from the authorities (04/09/2017) in the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12)

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 : 1294^e réunion (septembre 2017) (DH)

Communication d'une ONG (18/08/2017) et réponse des autorités (04/09/2017) dans l'affaire IDENTOBA ET AUTRES c. Géorgie (Requête n° 73235/12) **[anglais uniquement]**

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.



საქართველოს სახალხო დამცველი
Public Defender of Georgia

DGI
18 AOÛT 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

18 08 2017
№ 586/01

Ms Genevieve Mayer
Head of Department of Execution of Judgments
of the European Court of Human Rights

Dear Madam,

I have the honour to submit the communication on the execution of judgments in the *Identoba group of cases (Identoba and others v. Georgia (application no. 73235/12); Begheluri and others v. Georgia (application no. 28490/02); Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia (application no. 71156/01)*. The communication, which is enclosed to this letter, is made pursuant to Rule 9(2) of the Rules of Committee of Ministers for the Supervision of the Execution of Judgments and Friendly Settlements.

Sincerely,

Ucha NANUASHVILI

DH-DD(2017)945: Rules 9.2 & 9.6 Communication from a NGO & authorities in *Identoba v. Georgia*.
Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers. / Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

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In the Committee of Ministers
Department of the Execution of Judgments of the
European Court of Human Rights



Communication from the Public Defender of Georgia

Begheluri and others v. Georgia

Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia

(Applications No. 28490/02, 71156/01)

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

18 August 2017

Table of Contents

I.	Introduction	3
II.	Shortcomings in the Investigation of Religiously motivated Violence in Georgia	3
	A. <i>The Problems Related to Investigating the Crimes Allegedly Committed Against Muslims</i>	4
	B. <i>The Problems Related to Investigating the Crimes Allegedly Committed Against Jehovah's Witnesses</i>	5
	C. <i>The Problems related to Investigating Alleged Crimes Committed Against Other Religious Groups</i>	7
	D. <i>Responding to Alleged Violations Committed by Representatives of State Authorities</i>	8
III.	Shortcomings in Legislation.....	8
	A. <i>Shortcomings of Criminal Legislation</i>	8
	i. <i>Hate Motive in Substantive Criminal Law</i>	9
	ii. <i>Hate Motives are not Definitive for Considering an Act to be a Crime</i>	9
	B. <i>Shortcomings in the Legislation of Administrative Violations</i>	9
IV.	Practical Shortcomings.....	9
	A. <i>The Problem of Qualification</i>	10
	B. <i>Problem of Identifying Hate Motive at the Investigation Stage</i>	10
	C. <i>Illegal Practice of Taking a Written Undertaking</i>	10
	D. <i>The Lack of Adequate Training</i>	10
	E. <i>The Lack of Sensitivity with Regard to Religious Hate Crimes</i>	11
	F. <i>Impunity</i>	11
	G. <i>The Lack of Accurate Statistics</i>	11

I. Introduction

The Public Defender of Georgia has the honour to submit the present communication to the Committee of Ministers on the execution of judgments in the cases of *Begheluri and others v. Georgia* and *Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia* which essentially concern multiple violation of the European Convention on Human Rights on account of the large-scale religiously motivated violence to which the members of religious minorities had been subjected in Georgia and the relevant authorities' total failure to prevent, stop or redress the violations. More specifically, the present communication concentrates on structural/systemic problems existing in Georgian legislation and practice *vis-à-vis* the investigation of religiously motivated violence in Georgia.

The Public defender of Georgia takes note that individual cases of religiously motivated crimes illustrated below relate to the period between 2012-2015 since the incidents of 2016 and 2017 are relatively recent and the investigative authorities are expected to act diligently and conduct effective investigation as required under the convention.

This 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.

II. Shortcomings in the Investigation of Religiously motivated Violence in Georgia

The population of Georgia, according to the universal census of 2014,¹ is 3,713,804. The majority of the population, according to enquiries, are Orthodox Christians.² Others affiliate themselves with various³ religious faiths or identify themselves as not following any religious faith.

Investigation of religiously motivated crimes and problems related to other aspects of freedom of religion and belief has been underlined by the Public Defender of Georgia in his annual reports throughout the years.⁴ It is noteworthy that shortcomings related to hate motivated violence and investigations are also reflected in recommendations issued in 2017 by the Council of Religions of the Public defender of Georgia.⁵ According to the above-mentioned document, the failure of state authorities to react to religiously motivated crimes is one of the core problems in respect to freedom of religion in Georgia.⁶ The Council issued respective recommendation in respect to the Parliament of Georgia, Prosecution authorities, Ministry of Internal Affairs and the domestic courts for the eradication of various structural problems in this field.⁷

There are many systemic problems in Georgia in terms of freedom of religion, such as the unequal tax regime; the problems related to issuing construction permits to religious minorities for building places of worship; the

¹ <http://census.ge/ge/results/census>.

² 3 097 573 individuals.

³ Muslims - 398 677, Armenian Apostolic Church - 109 041, Catholics - 19 195, Jehovah's Witnesses - 12 395, and others.

⁴ The 2015 Annual Parliamentary Report by the Public Defender of Georgia, pp. 393-395, the report is available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>. The 2016 Annual Parliamentary Report by the Public Defender of Georgia (abridged version), pp. 54-57, the report is available at: <http://www.ombudsman.ge/uploads/other/4/4442.pdf>.

⁵ Council of Religion of the Public Defender of Georgia, established on 21 June 2005, comprises 32 religious associations and is one of the main forums for religious associations in Georgia.

⁶ Information is available at: <http://www.ombudsman.ge/uploads/other/4/4412.pdf> p .6.

⁷ *Ibid*, pp. 6-7.

failure to solve the restitution of the property nationalised in the Soviet period; the failure to ensure religious neutrality in schools; the ineffective investigation of religiously motivated crimes, etc.

There are numerous applications lodged by representatives of religious minorities with the Office of the Public Defender of Georgia. These applications contain allegations of violent incidents such as physical and verbal assaults, obstructions to conduct religious rites, damages caused to places of worship, etc., committed at various times on account of victims' religious affiliations.

However, the state policy in relation to the religiously motivated crimes is not adequate. Delay in investigations clearly shows that the state protracts the investigation of religious crimes. Since as early as 2012, no one has been held accountable for the incident involving the violation of the rights of Muslims and investigation is pending to this day. At the same time, discontinuation of investigations and sometimes even the failure to institute investigation under the pretext of nonexistence of the elements of a crime in various criminal cases undoubtedly show that the state does not adequately respond to such crimes.

A. The Problems Related to Investigating the Crimes Allegedly Committed Against Muslims

Investigation of alleged religious hate crimes committed against Muslims is ineffective. The incidents of violence and threats against Muslims and preventing them from peaceful enjoyment of their property have become numerous and occurred in various regions of Georgia.⁸ These were not isolated but mass incidents involving large numbers of local populations, continuing for several days or even weeks.

These incidents mostly occurred in places populated with mixed groups of Muslims and Orthodox Christians. Some of these incidents occurred after a minaret of a mosque was cut off; when a local Muslim community requested permission for the restoration of an old mosque or requested a plot of land for a cemetery; attempted to open mosques, boarding schools, or tried to run them. Observing religious rites and holding traditional Friday congregational prayers by Muslims irritated the local Orthodox Christians, prompting them to resort to physical violence, threats and destruction of religious items.

Regrettably, in several cases, the state authorities themselves restricted Muslims' right to freedom of religion. In one case, a representative of *Gamgebeli* in a village⁹ called upon Muslims to stop their prayers. On another occasion, the protest demonstration held by the local Muslim community requesting the old mosque located in the village was disrupted by the law-enforcement authorities, allegedly resorting to excessive force.¹⁰ In the third case, the state illegally dismantled the minaret erected on the adjacent territory of a mosque.¹¹ The law-enforcement authorities blocked the road leading to the minaret and arrested the Muslims who objected to the dismantling of the minaret. Later, this minaret was returned and the Muslim community could have it erected again. In another case, the state allegedly directly interfered in the activity of a religious organisation by removing a religious minister from his position.¹²

⁸ In 2012, the Village of Nigvziani of Lanchkhuti Municipality and the Village of Tsintskaro of Tetrtskaro Municipality; in 2013, the village of Samtatskaro of Dedoplistskaro Municipality; in 2014, the villages of Tschela and Mokhe of Adigheni Municipality, Kobuleti Municipality.

⁹ The said incident was reported in the village of Samtatskaro of Dedoplistskaro Municipality.

¹⁰ In the village of Mokhe of Adigheni Municipality.

¹¹ In the village of Tchela of Adigheni Municipality.

¹² Sheikh of Muslims, V.A.

According to investigative authorities, investigation instituted with regard to the events (involving several counts of criminal activities) that took place in the above six settlements in 2012–2014 are still pending. Despite the written requests and statutory obligation, the investigative authorities failed to impart information regarding the conducted investigative actions and their dates. In one case,¹³ investigation was instituted against Muslims instead of investigating the alleged violation of their rights. However, the investigation was later discontinued due to the nonexistence of elements of a crime. **To date, not a single person has been punished or even charged for alleged crimes against Muslims.**

B. The Problems Related to Investigating the Crimes Allegedly Committed Against Jehovah's Witnesses

In 2013–2015, there were a high number of applications lodged with the Office of the Public Defender of Georgia by Jehovah's Witnesses concerning violations committed against them. High number of applications was lodged with the Office in 2016 as well.

The Jehovah's Witnesses allege about 42 incidents in their applications that were filed with the Office of the Public Defender in the course of 2013.¹⁴ Out of these incidents, investigation is still pending in two incidents;¹⁵ investigation in 13 incidents is discontinued due to the nonexistence of the elements of a crime; investigation has not started in 7 incidents; the Office of the Public Defender of Georgia was notified regarding one incident that there had been no such incident; in 12 incidents, despite requests, no information was imparted; regarding one incident, an administrative penalty (fine) was imposed on one person for the commission of an administrative violation; in 5 incidents, after giving a written undertaking, a person involved was released and no further legal actions were taken; and in one incident, the Office of the Public Defender of Georgia was notified that the agency concerned had not been notified. It should also be pointed out that investigative authorities have not instituted investigation, despite the fact that it was their statutory obligation, even after they received information from the Office of the Public Defender of Georgia.¹⁶

In the applications lodged with the Office of the Public Defender of Georgia in 2014, Jehovah's Witnesses allege that 41 incidents motivated by religious hatred were committed against them.¹⁷ Out of this number,¹⁸

¹³ The village of Tsintskaro of Tetrtskaro Municipality. See the 2012 Parliamentary Report by the Public Defender of Georgia, pp. 295-296, the report is available at: <http://www.ombudsman.ge/uploads/other/1/1350.pdf>.

¹⁴ The said 42 incidents comprised 56 facts: according to Jehovah's Witnesses, in 16 cases, the Kingdom Halls for religious meetings of Jehovah's Witnesses were damaged; in one case, a Kingdom Hall was burgled; 18 cases involved verbal abuse; in 8 cases, verbal abuse was accompanied with physical assault; in 2 cases, threats were made; in 2 cases, religious literature was destroyed; in one case, private property was damaged; in one case, a stand of religious literature was damaged; in 4 cases, stands were damaged; and in 3 cases, physical assault took place.

¹⁵ On the account of the crimes envisaged by Article 156 (persecution) of the Criminal Code of Georgia; Article 177.2a)-b) (theft) of the Criminal Code of Georgia; Article 188.1 (unintentional damage or destruction of an item) of the Criminal Code of Georgia.

¹⁶ Article 100 of the Criminal Procedure Code of Georgia.

¹⁷ The said 31 incidents comprised 74 facts: in most of the cases (30), Jehovah's Witnesses reported verbal abuses, which in 18 cases were accompanied with physical assault; in 8 cases, mobile stands, and in 8 cases religious literature were damaged; and in 6 cases, threats were made. In 2014, according to Jehovah's Witnesses, Kingdom Halls designated for religious meetings were damaged 3 times; and in one case, a residential house – private property of a Jehovah's Witness – was damaged.

¹⁸ Letter no. 254069 of the Ministry of Internal Affairs of Georgia, dated 2 February 2016; and Letter no. 13/46145 of the Office of the Chief Prosecutor of Georgia, dated 19 July 2016.

investigation is still pending in 9 incidents;¹⁹ criminal proceedings were instituted against 3 individuals in 3 incidents;²⁰ an administrative penalty was imposed on 4 individuals for administrative violations;²¹ no investigation was instituted and no measures were taken with regard to 13 incidents; investigation was discontinued with regard to 7 incidents (5 criminal cases²²) due to the nonexistence of the elements of a crime; investigation was discontinued in one case due to the expiry of statutory limitation; the Office of the Public Defender has not received any information concerning the measures taken with regard to 2 incidents; and concerning 2 incidents, the Office of the Public Defender was notified that the authorities had not been informed about such incidents and the information submitted by the Office of the Public Defender did not serve as the ground for instituting investigation either on this occasion.

Jehovah's Witnesses applied to the Public Defender of Georgia in 2015 regarding 28 incidents.²³ Out of this number,²⁴ investigation is still pending regarding 13 incidents²⁵ (9 criminal cases). Regarding one incident, an administrative penalty was imposed on one person for the commission of an administrative violation.²⁶ It is noteworthy that no investigation has been launched in 2 incidents and investigations regarding 2 incidents (2 criminal cases) were discontinued due to the nonexistence of the elements of a crime. Regarding 3 incidents, a person was released after giving a written undertaking and no further legal actions have been taken afterwards; the offender could not be identified with regard to one incident and, accordingly, nobody was held responsible; regarding one incident, the Office of the Public Defender of Georgia was notified that after police officers appeared at the scene, the act was averted and therefore no further actions were taken against the offender; and regarding one incident, according to the findings of the competent authorities, a police officer did not abuse his/her power. The competent authorities,²⁷ notified the Office of the Public Defender of Georgia with regard to 4 incidents that they had not been informed about them and, similar to other occasions, the investigative bodies did not launch investigation based on the information submitted by the Office of the Public Defender.

¹⁹ In 4 cases, investigation is pending under Article 125 (battery) of the Criminal Code of Georgia; investigation is pending in one case under Article 155 (illegal obstruction of the exercise of religious rites) of the Criminal Code of Georgia; and in 4 cases, investigation is pending under Article 156 (persecution) of the Criminal Code of Georgia.

²⁰ For the crimes penalised under Article 156 (persecution) of the Criminal Code of Georgia and Article 125 (battery) of the Criminal Code of Georgia; out of the mentioned 3 incidents, in two cases Jehovah's Witnesses have been charged.

²¹ In 3 cases, Article 166 (minor hooliganism) of the Code of Administrative Violations of Georgia has been applied; and in one case, Article 173 (resisting legal request of a police officer) of the Code of Administrative Violations has been applied.

²² 3 incidents have been merged in 1 criminal case.

²³ The said 28 incidents comprise 58 facts. Similar to the previous year, most often (18 cases), Jehovah's Witnesses report verbal abuse, which in 7 cases was accompanied by physical assault; damage was inflicted to mobile stands in 4 cases and to religious literature in 4 cases; and threats were made in 11 cases. In 2015, according to Jehovah's Witnesses, Kingdom Halls for religious meetings were damaged 9 times. In 3 cases, various items were stolen from the Kingdom Halls. It should be pointed out that applicants also alleged that police officers issued threats and hurled verbal abuse.

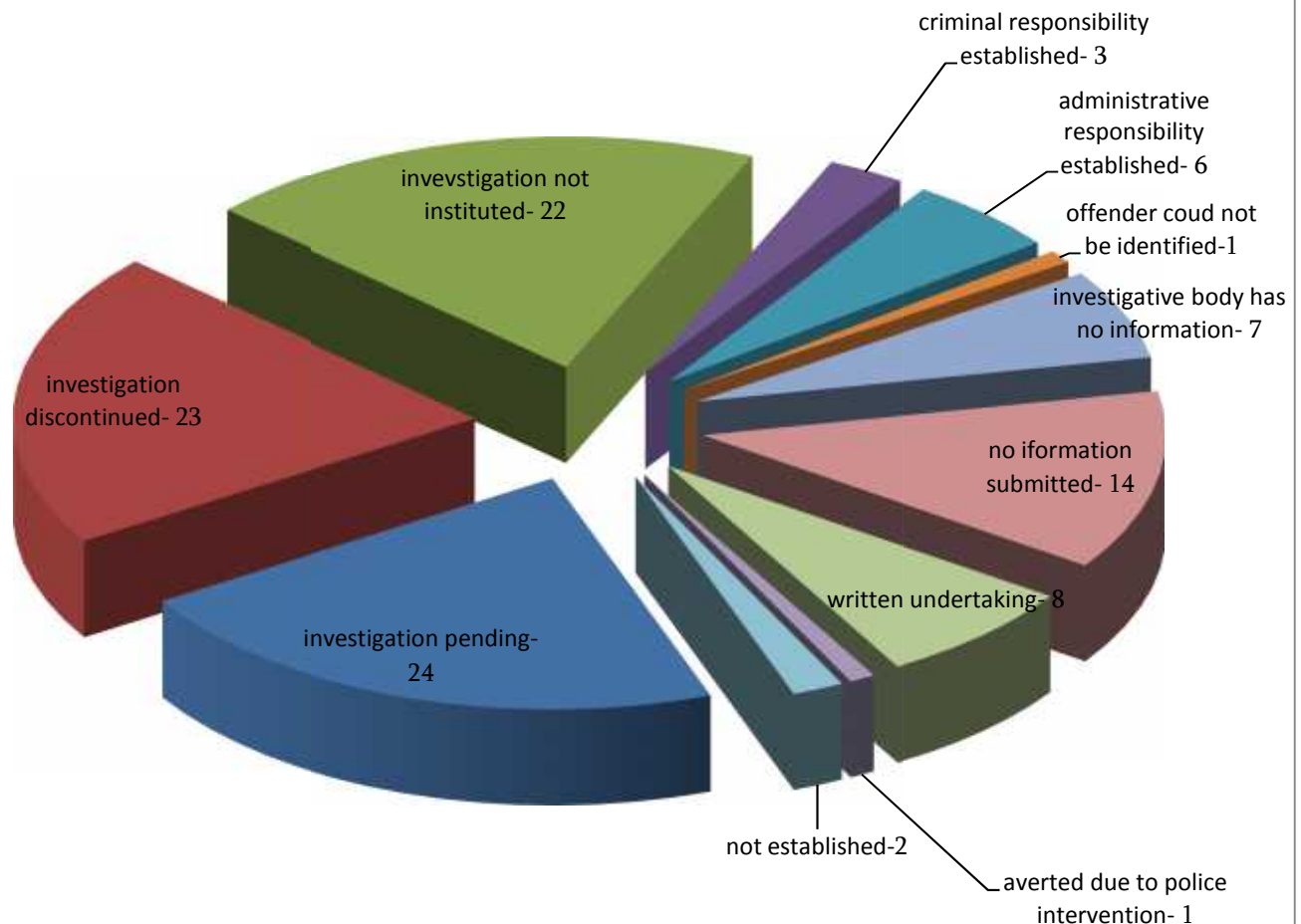
²⁴ Letter no. 1723023 from the Ministry of Internal Affairs of Georgia, dated 12 July 2016.

²⁵ Investigation is pending in one case under Article 125 (battery) of the Criminal Code of Georgia. Investigation is pending in one case under Article 155 (obstruction of exercise of religious rites) of the Criminal Code; and investigation is pending in one case (3 incidents have been merged in 1 criminal case) under Article 156 (persecution) of the Criminal Code of Georgia; investigation is pending in one case (3 incidents have been merged in one criminal case) under Article 187 (damage of property) of the Criminal Code of Georgia; and investigation is pending in 3 cases under Article 177 (theft) of the Criminal Code.

²⁶ Under Article 166 (minor hooliganism) of the Code of Administrative Violations of Georgia.

²⁷ The Ministry of Internal Affairs of Georgia.

2013-2015 indicator to the follow-up on 111 incidents



Investigation in 24 alleged criminal incidents committed against Jehovah's Witnesses in 2013–2015 is still pending. As regards the high indicator of discontinuation of investigation, the shortcomings in this regard are discussed in detail below.

C. The Problems related to Investigating Alleged Crimes Committed Against Other Religious Groups

Other religious groups apply to the Public Defender of Georgia regarding the problems related to the investigation of alleged crimes against them. Investigation is still pending in a case²⁸ that took place in 2013.²⁹

²⁸ The title to the Armenian Apostolic Temple and its adjacent territory, which was a state property, was given to a private individual.

²⁹ Article 362.1 (making, selling or using a counterfeit document, seal, stamp or letterhead) of the Criminal Code of Georgia.

In 2014, there was another incident³⁰ and investigation is similarly pending to date.³¹ Investigation³² has not been instituted in another incident³³ that took place in 2015.

D. Responding to Alleged Violations Committed by Representatives of State Authorities

Some of the incidents are noteworthy as representatives of the state authorities themselves violated law, which was manifested in verbal and physical assault of minorities, delay in appearing at the scene, intervention in the activity of a religious organisation and other acts.

Out of the incidents processed by the Office of the Public Defender of Georgia in 2013, there was a violation by a representative of state authorities in one occasion.³⁴ As a result, a disciplinary measure - a reprimand - was imposed. In 2014, there were 8³⁵ such incidents and despite the Office of the Public Defender requesting information, the Office has not been notified of the outcomes of these incidents. None of these cases witnessed a legal result.³⁶ As regards 2015, there were alleged violations on the part of representatives of state authorities in 6³⁷ incidents and, similar to the previous year, without a legal result.³⁸

III. Shortcomings in Legislation

The Georgian legal system divides the acts posing danger to the public into crimes and administrative violations. The crimes are the acts posing greater danger to the public. The domestic legislation does not have the misdemeanour system. Therefore, the present chapter deals with the relevant problems taking into account the aforementioned specific nature of the Georgian legal system.

A. Shortcomings of Criminal Legislation

³⁰ Hope Festival was supposed to be held with the participation of 150 Christian confessions. Several days before the festival, fire erupted at the venue and organisers could not hold the meeting.

³¹ Article 187 of the Criminal Code of Georgia (intentional destruction of other person's property).

³² Insignificant damage is the ground for not instituting investigation.

³³ The church building of the New Testament Faith was damaged.

³⁴ A *Gamgebeli* representative called upon the population of the village of Samtatskaro to stop praying.

³⁵ As the result of the study of the case-files, the Public Defender of Georgia concluded that in one occasion representatives of state authorities illegally dismantled a minaret. According to the applications lodged with the Office of the Public Defender of Georgia, a police officer himself was verbally abusing a representative of a minority in two cases; in one case, the state security officers allegedly pressured a Muslim religious leader and removed him from the position; in one occasion, a patrol police officer appeared late at the scene after being notified of a crime; police officers verbally abused a minority in two cases and in one case a violation was committed in the presence of police and the latter did not take any measures to avert it.

³⁶ Investigation in two cases is still pending. Despite the fact that the Office of the Public Defender of Georgia requested information about the measures taken with regard to 5 incidents, the Office was not notified of any results. Accordingly, it is unknown whether investigation or disciplinary proceedings were instituted against a particular public official and if there was any outcome. According to the information submitted by the Ministry of Internal Affairs of Georgia, in one occasion, it was not established that a police officer committed a disciplinary offence.

³⁷ According to the applications lodged with the Office of the Public Defender of Georgia, a police officer verbally abused a representative of a minority in one occasion; in one case, after being notified of a crime, a patrol police officer was late to appear at the scene; in 3 occasions, a violation was committed in the presence of police and the latter failed to take any actions to avert it; and in one case, a police officer called upon an offender and a representative of a minority community to reconcile and explained it by not having protection mechanisms at the disposal of police.

³⁸ Despite the fact that the Office of the Public Defender of Georgia requested information about legal actions taken with regard to 5 incidents, no information has been submitted. Accordingly, it is unknown whether investigation or disciplinary proceedings were instituted against a particular public official and if there was any outcome. In one occasion, it was established that a police officer did not commit a disciplinary offence.

i. *Hate Motive in Substantive Criminal Law*

The fact itself is significant that the Criminal Code of Georgia, since its amendment in spring of 2012 incorporates a hate motive. The amendment was worded in the form of a small clause³⁹ made to Article 53 of the Code, which concerns general principles of sentencing. Hate motive is not mentioned at all in the Crime Section of the Criminal Code. Hate motive is only referred to in the context of being an aggravating circumstance. Representatives of investigative authorities often rely on this situation and argue that this is the Article to be invoked by a court as sentence is determined by a court. However, a court will be unable to factor hate motive in sentencing unless this motive is identified during investigation. It is imperative to ensure that hate motive is incorporated in the Crime Section of the Code as well and the provision containing it is referred to in express terms in each relevant case both by investigative authorities and a court. This way, the problem of nonexistent accurate statistics will be likewise solved.

ii. *Hate Motives are not Definitive for Considering an Act to be a Crime*

Discontinuation of investigation in the cases of violations of religious minorities' rights is mostly related to those incidents where crime against property was committed; religious literature was destroyed; places of worship were damaged, etc. On such occasions, investigation is instituted under the Article of the Criminal Code that criminalises damaging or destruction of an item⁴⁰ and discontinued due to the fact that the inflicted damage had not exceeded GEL 150.⁴¹ The *conditio sine qua non* of that Article is a significant damage which is set above GEL 150. It should be noted that motive is neglected in such cases. Regrettably, violations in such cases remain without any legal responsibility, since they are outside the scope of the application of the Code of Administrative Violations as well. According to the 2015 Report by the Public Defender of Georgia,⁴² 'assessment of the same act under another Article of the Criminal Code'⁴³ practically averts the possibility of discontinuation of a crime and makes it possible to bring about particular results against offenders. This clearly shows the need for change in the practice of investigative authorities or making a relevant amendment to the Criminal Code, namely, whenever there is a hate motive, the amount of damage inflicted should not be a decisive factor for qualification of an act as a crime.'

B. *Shortcomings in the Legislation of Administrative Violations*

The Code of Administrative Violations of Georgia, regrettably, does not envisage the motive of religious hatred either independently or as an aggravating circumstance. The Code also fails to sanction various violations committed under religious bias. Therefore, during qualification of violations and imposition of sanctions, the motive for committing an act is not taken into account. Accordingly, in none of those administrative violations that have been motivated by religious hatred, the motive underlining the commission of the act concerned has never been identified.

IV. *Practical Shortcomings*

³⁹ Article 53.3¹: 'Commission of a crime due to intolerance towards race, skin colour, language, sex, sexual orientation, gender identity, age, religion, political and other opinions, disability, citizenship, national, ethnic or social affiliation, origin, property or social status, residence or other discriminatory ground shall be an aggravating circumstance during sentencing for any crime envisaged by this Code'.

⁴⁰ Article 187 of the Criminal Code of Georgia.

⁴¹ Approximately, 60 USD.

⁴² The 2015 Annual Parliamentary Report by the Public Defender of Georgia, p. 395, the report is available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>.

⁴³ E.g., Article 156 (persecution) of the Criminal Code of Georgia.

A. The Problem of Qualification

Under the Criminal Code of Georgia, the motive of hatred is an aggravating circumstance.⁴⁴ At the same time, *corpus delicti* of individual crimes envisaged by the Code incorporates on its own the motive of hatred.⁴⁵ The cases studied by the Public Defender of Georgia clearly show that there is a problem with regard to adequate qualification of religious hate crimes. The problem is that hate motive is not identified at the investigation stage and therefore an act is not qualified under the Article of the Criminal Code that criminalises a certain act as a religiously motivated crime.⁴⁶ This is problematic as hate crimes are punishable by stricter punishments compared to other crimes; and where a crime is not accurately qualified under a corresponding article of the Code, an offender is not punished by the punishment envisaged for the crime committed by him/her or in some cases may go unpunished altogether. E.g., if damaging Jehovah's Witnesses' Kingdom Hall is qualified under Article 187 (damaging or destruction of an item) of the Criminal Code, investigation will altogether be discontinued if the damage is less than GEL 150. Qualification of the same act under Article 156 (persecution) of the Criminal Code will exclude discontinuation of investigation since the significance of damage inflicted is not decisive in the context of this crime.

B. Problem of Identifying Hate Motive at the Investigation Stage

In the majority of the cases that are processed by the Office of the Public Defender of Georgia, investigative authorities failed to identify the motive of religious hatred. Representatives of the Public Defender of Georgia studied resolutions about discontinuation of investigation and established that the motive of religious hatred had been pointed out in none of the cases. The Public Defender of Georgia observes that the very reason why the motive of religious hatred is neglected during investigations contributes to wrong qualification of acts or covering up the actual nature of a crime. A court will be unable to factor the motive of hatred as an aggravating circumstance in sentencing unless this motive has been identified at the investigation stage.

C. Illegal Practice of Taking a Written Undertaking

Neither criminal nor administrative legislation in force in Georgia is familiar with the concept of taking an undertaking. However, law-enforcement authorities still use this measure in practice.⁴⁷ A written undertaking is considered by law-enforcement authorities to be a means for preventing reoffending. Considering the fact that taking a written undertaking has no legal basis and has no legal force, its use is not justified. In reality, this practice is tantamount to the refusal to use statutory measures and results in enhancing the feeling of impunity by failing to respond adequately to illegality that took place. It should be pointed out that following the requests of the Public Defender of Georgia, the competent authorities failed to invoke the relevant legal ground for the practice concerned.⁴⁸

D. The Lack of Adequate Training

⁴⁴ Article 53.3¹ of the Criminal Code of Georgia.

⁴⁵ E.g. Article 155 (illegal obstruction of the exercise of religious rites) of the Criminal Code of Georgia, Article 156 (persecution), Article 142 (encroachment of equality).

⁴⁶ E.g. if a Jehovah's Witness is physically assaulted when serving at a stand, investigation is instituted under Article 125 (battery) of the Criminal Code of Georgia instead of Article 156 (persecution) of the Criminal Code.

⁴⁷ Police limited its response to giving a warning to/taking a written undertaking from an offender in 5 incidents in 2013 and 3 incidents in 2015.

⁴⁸ Letter no. 320192 of the Ministry of Internal Affairs of Georgia, dated 9 February 2016.

The prompt and effective investigation of religious hate crimes is precluded by the lack of adequately trained human resources. There is no special unit in investigative bodies,⁴⁹ specialising in investigating religiously motivated crimes. While prosecutors and investigators are periodically trained, this concerns only a small portion of the staff and is not sufficient for addressing the problem. In autumn of 2016, a great majority of investigators who took part in the training sessions organised by the Public Defender of Georgia⁵⁰ stated that, during their many years of tenure, they had never dealt with religious hate crimes. Participants were from various towns of Georgia. Only the investigators working in the capital mentioned that they had some sort of encounter with religious hate crimes at some point of their career. Such perception of the issue is related precisely to the lack of adequate information and knowledge of the subject matter. By the end of the training session, the majority of the participants recalled cases from their practice, where a crime could have been motivated by religious bias about which they had not thought before.

E. The Lack of Sensitivity with Regard to Religious Hate Crimes

The cases being processed by the Office of the Public Defender of Georgia clearly show that the investigators lack sensitivity towards religiously motivated crimes. This attitude is displayed in many aspects. In the majority of the cases being processed by the Office of the Public Defender of Georgia, investigators do not take into account hate motive at all; in some cases they talk unethically, rudely and without any empathy to the representatives of a religious minority who were victims of violations. There are cases where a representative of a religious minority was assaulted in front of law-enforcement officers and the latter did not take any adequate measures.

F. Impunity

The ineffective and protracted investigation of religious hate crimes contributes to the feeling that such actions will go unpunished. With further establishment of this practice and lapse of time, it becomes increasingly difficult for the state to ensure adequate and equal enforcement of law. As more persons are getting involved in criminal activities, it is even more difficult for the state authorities to respond adequately to these actions. Based on various pretexts, in most of the cases, investigations are discontinued without a tangible legal outcome. Apart from other circumstances, taking a written undertaking, incorrect qualification of cases that result in discontinuation of investigation, and finally the legislative shortcomings also contribute to impunity.

G. The Lack of Accurate Statistics

It is problematic to obtain official, reliable and accurate statistics on hate crimes. Upon the request to impart information on religious hate crimes, the Office of the Chief Prosecutor of Georgia responded that the information was not processed under this head.⁵¹ It is similarly problematic to obtain the information related to hate crimes in general both from the Ministry of Internal Affairs of Georgia, the Prosecutor's Office and courts.

⁴⁹ The Office of the Chief Prosecutor of Georgia and the Ministry of Internal Affairs of Georgia.

⁵⁰ <http://www.ombudsman.ge/en/news/training-of-human-rights-academy-of-public-defender-for-detective-investigators-of-ministry-of-internal-affairs.page>.

⁵¹ Letter no. 13/64764 of the Office of Chief Prosecutor of Georgia.



საქართველოს იუსტიციის სამინისტრო
MINISTRY OF JUSTICE OF GEORGIA



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№5209

04 / September / 2017

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

Subject: Group of cases Identoba and Others v. Georgia (Application no. 73235/12) – Judgment of 12/05/2015, final on 12/08/2015

Dear Sir/Madam,

With reference to your letter dated 21 August 2017 (reference: DGI/OD/MLO/VD), the Government of Georgia would like to present the letter with brief comments on the communication received from the Public Defender of Georgia in respect of the execution of judgments in the above-mentioned group of cases in accordance with the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

At the outset, it should be noted that the Public Defender's observations and recommendations in respect of the discrimination cases are valued by the Government of Georgia.

Furthermore, the Government wish to assure the Public Defender as well as the Committee of Ministers that they will take due note of the aforementioned recommendations. In addition, the Government will render respective detailed observations with regard to the said remarks of the Public Defender in the context of the forthcoming action plan relating to the execution of the judgments of the Identoba group.

I remain at your entire disposal for any requests or questions that you might have.

Sincerely,

Head of the Department of State Representation to the
International Courts

Beka DZAMASHVILI