

Committee of Ministers DGI-Directorate

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Law

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Communication of the Public Defender of Georgia

N.TS. AND OTHERS v. Georgia (Application No. 71776/12)

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 of Georgia has an honor to submit the communication to the Committee of Ministers on the execution of judgment in the N.TS. AND OTHERS v. Georgia (Application No. 71776/12), 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.
2. This submission mainly refers to the action report (28/07/2020) of the Government of Georgia and provides information on shortcomings of the implementation of general measures by the Government of Georgia in the course of the execution of the present judgement. The aim of the submission is to comment on the respondent state's assertion in an action report that execution has been carried out so that the case can be closed.

Representation of minors in national court proceedings

3. Government of Georgia states in its report (28/07/2020) that newly adopted Code on the Rights of the Child reinforces the state system that ensures the welfare and protection of every child. Public Defender's Office (hereinafter PDO) confirms that the adoption of the Code on the Rights of the Child by the Parliament in September 2019 is a commendable step. However, full and efficient implementation of children's rights still faces number of unsolved problems in the country.
4. Government of Georgia asserts in its report (28/07/2020) that amendments in the Code of Civil Procedure (entered into force on 01/09/2020) foresee the possibility of involving a minor in the hearing of the case, taking into account the best interests of the child. In opposite to this assertion PDO maintains that several flaws still remain in this direction.
5. In particular, certain provisions of the Civil Procedure Code of Georgia (hereafter - CPC) contradict the provisions envisaged in the Code on the Rights of the Child. As noted in the Communication of the applicant (10/09/2019),¹ Code on the Rights of Child imposes no age limit² and entitles the child to be heard and express his/her views and opinions before the court despite his/her age while the CPC still imposes some limitation on the ground of age. According to Article 81 (3) of the CPC in case of a minor between seven and eighteen years of age the Court is obliged to involve the child in the proceedings, though in case of a minor under seven years of age it is up to the court to decide to involve him/her or not.
6. According to the government's action report (28/07/2020), throughout the national court proceedings the LEPL Social Service Agency³ is involved with the status of a "third party", which is regulated by the civil legislation of Georgia.⁴ PDO notes that the

¹ Communication from the applicant (10/09/2019) in the case of N.TS. AND OTHERS v. Georgia. Available at: <https://bit.ly/3o2NLCW> [accessed 13.10.2020].

² Article 78. (2) The right of the child to have his/her opinion heard may not be prejudiced by reference to age or other circumstances. The child shall be given the opportunity to express his/her opinion in the desired form.

³ In February 2020 as a result of the reorganization carried out at the Ministry, the functions and responsibilities of the Social Service Agency in the field of guardianship/custodianship, child and domestic violence, were transferred to the State Fund for Protection and Assistance of Victims of Human Trafficking and LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking was established.

⁴ Civil Procedure Code of Georgia - Chapter IX. Available at: < <https://bit.ly/31oA47K> >[accessed 13.10.2020].

CPC of Georgia envisages two categories of third parties: third party with independent claim and third party without independent claim. It is not clear which procedural status do social workers enjoy during the procedural representation of minors. Neither Code on the Rights of the Child nor the Civil Code of Procedure regulate the roles and functions of the social worker as a procedural representative during the court proceedings.

7. In addition, “conflict of interest” might arise when the social worker on behalf of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking (hereinafter the Agency) represents the interests of the child as his/her procedural representative before the Court at one hand and the social worker supports the report he/she issued based on the child's individual assessment on the other hand. Thus, in a case involving a child, the same body represents both the child's procedural representative before the court obliged to take child's best interest into consideration as well as child's individual assessor drawing report on the child's psycho-emotional condition, on living conditions etc. that might appear as counter evidence in the court, opposite to the interests of child's procedural representative.
8. PDO considers it crucial that the status of the social worker as an individual assessor is determined and separated from the procedural representative. The representative of the Agency may lack the skills typical to the procedural representative, which may hinder the adequate and meaningful representation in line with the international standards.
9. Representative of the Social Workers' Union⁵ (hereinafter Union) noted during the interview with the representative of PDO, that there are cases when social workers are send to the court hearings without any preparation or information regarding the case. According to the statement of the said representative of the Union, social workers have never been trained on the rules of questioning of a child and have no specific knowledge on how to prepare a child for the court process.
10. It is noteworthy that the Public Defender's Office prepared a Special Report to identify the challenges in the administration of juvenile justice.⁶ In this report Public Defender of Georgia made recommendation to the Ministry of Justice of Georgia to develop an effective qualification (specialization in juvenile justice) and quality control mechanism for social workers (those acting as procedural representatives).
11. As stated in the government's action report § 17, with the purpose of the effective implementation of the Code, the Human Rights and Civil Integration Committee has adopted the Action Plan for 2019-2024 of the Code on the Rights of the Child which, among others, includes the following measures: the compliance of the Georgian legislation with the Code on Rights of the Child; introduction of child-friendly justice; carrying out a raising awareness campaign, etc. It is also noteworthy that the Code itself came into force in September 1st, 2020.
12. Hence, due to the passing of short period of time since the adoption of the Code on the Rights of the Child and its action plan Public Defender believes that it would be too early to judge about its efficiency, and thus premature to close the case. The adoption

⁵ The Union of Social Workers was founded on April 8, 2019 by 61 social workers, following the large-scale strike of social workers across the country. Social Workers Go on Strike, Demand Better Working Conditions Available at : <https://bit.ly/349KpGz>

⁶ The Special Report of the Public Defender of Georgia, Protection of Procedural Rights of Juvenile Defendants, Witnesses and Victims in Criminal Justice, prepared in co-operation with the Rehabilitation Initiative for Vulnerable Groups. Available at: <<https://bit.ly/2FYB22W>> [accessed 13.10.2020].

of the Code and its Action Plan cannot be deemed as sufficient ground to state that Georgia has complied with its obligations under Article 46 §1 of the Convention in the present case.

The effectiveness and quality of the social work

13. Deficiencies in the system of social protection of children namely lack of sufficient number of social workers and psychologists negatively affect the level of protection from poverty and abuse, including sexual abuse of children, particularly of minors in the state care.⁷
14. The quality of services provided by the Agency is directly related to the professionalism and qualifications of the social workers, the working conditions of the employees, which in turn implies adequate remuneration, decent working conditions, a reasonable and fair balance between work and available human resources.
15. The insufficient number of social workers employed by the Agency and the amount of work assigned to them are significantly skewed and in most cases fail to meet the prerequisites for proper social work. To this date, most of the social workers employed by the Agency do not have adequate working conditions, which is manifested in: heavy workload, being overworked by work schedule, low pay, and compulsory unpaid overtime work, inadequate working infrastructure and weakness of relevant policies for professional growth.
16. At the same time, the existing problems of social workers make an unattractive place for employment, which is reflected in the constant outflow of social workers from the system and the difficulty of employing and retaining qualified social workers in the agency.
17. On June 13, 2018, the Parliament of Georgia adopted the Law on Social Work, which is a positive development and is welcomed by PDO; however, there are issues of concern with regards to certain provisions that will negatively affect the quality of social work in the future.
18. E.g. according to the law,⁸ "in the light of the complexity of the work of a social worker, a limited number of active cases is determined. The number of cases shall not exceed 50. The number of cases provided additionally shall not exceed one third of the limited number", which ultimately means 65 ongoing cases for one social worker. Moreover, the law does not specify what is meant by these 50 "cases" and whether social workers will have to carry out additional technical activities.
19. Complete data on the workload of social workers was officially available through the state audit report of March 22, 2018,⁹ which was related to the effectiveness of mechanisms for protection and prevention of domestic violence in the country, and discussed the insufficient number of social workers as the most important problem in this field.

⁷ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2019. Available at: <https://bit.ly/31IXRFv> [accessed 13.10.2020].

⁸ Law of Georgia on Social work, Article 47

⁹ The State Audit Office report - Performance Audit of Mechanisms for protection and prevention of domestic violence. Available at: <https://bit.ly/3dC6r81> [accessed 13.10.2020].

20. The report reads “the rights and responsibilities of social workers are disproportionate to their number. The workload of social workers is about 6 times more than the recommended number of work per month.”¹⁰
21. According to the same report, only 7 social workers serve 100 thousand inhabitants in Georgia, while in other countries, such as e.g. Slovenia, 772 social workers are provided per 100 thousand inhabitants.¹¹
22. In contradiction of the existing challenging situation with regards to the workload and lack of staff, about 40 social workers of the Social Service Agency (including senior social workers) were dismissed from January 2020, amid reorganization. Contrary to the above mentioned, one of the main demands of the social workers' strike, in 2019, was to add staff to the system, as each social worker works on an average of 100-150 cases per month, which significantly exceeds a reasonable number of cases.¹²
23. The Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs, as well as lawmakers, the non-governmental sector and international organizations as well as Public Defender of Georgia have repeatedly expressed concern over the lack of staff for years. According to the action plan of the Law on Social Work, the Ministry had to provide for the addition of 50 social workers by 2019. However, as it was stated above the number of the social workers today are decreased in comparison to 2019. There are locations, for example, Batumi,¹³ where five social workers work today, when this number was 14 in 2019 and even 14 social workers could not handle the workload.
24. In February 2020 as a result of the reorganization carried out at the Ministry, the functions and responsibilities of the Social Service Agency in the field of guardianship/custodianship, child and domestic violence, were transferred to the State Fund for Protection and Assistance of Victims of Human Trafficking and LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking was established. The new Agency has issued a statement stating that it plans to increase the number of social workers in the staff, further confirming that there is a need for social workers in the new agency as well.
25. As noted above, there is a big challenge in terms of human resources, especially in the regions. According to the National Statistics Office of Georgia (Geostat)'s and the Social Service Agency's joint 01.01.2020 data, 1 social worker serves 19 to 82 thousand inhabitants. To this date there is no social worker in Tkibuli, town in west-central Georgia with the population around 10 000. Providing social workers with transportation is also highly problematic.
26. Certification of social workers is another important issue; According to the Action plan on Social Work adopted by the Parliament in 2018, the certification process shall be completed not later than 3 months before 1 January 2021.¹⁴ However, to this date, only 70 social workers are in this process and they have not received their certificates yet.

¹⁰ The social worker has an average of 120 cases per month; according to the data of the NGO-Association of Social Workers (GASW), the recommended number of cases is 20 cases per month.

¹¹ The State Audit Office report - Performance Audit of Mechanisms for protection and prevention of domestic violence p. 48. Available at: <https://bit.ly/3dC6r81> [accessed 13.10.2020].

¹² Statement of the Human Rights Education and Monitoring Center (EMC), available only in Georgian at: <https://bit.ly/33YsOkx> [accessed 13.10.2020].

¹³ Population of Batumi is 169,100 as of 1 January 2020.

¹⁴ Law of Georgia on Social Work – Article 64

27. To further illustrate the systemic nature of the shortcomings in terms of effectiveness and quality of the social work in different human rights fields in Georgia, below is the non-exhaustive list of PDO's findings presented in its 2019 Parliamentary report:

- Concrete measures have not been implemented yet in the area of social work concerning the fight against violence towards women and domestic violence. As the cases studied by the PDO have shown, obligations assigned to the social service in the area of violence against women and domestic violence have virtually not been fulfilled. Response from social workers is largely of one-time, formal nature; their activity is not aimed at combatting domestic violence and analyzing incidents. Scrutinized cases revealed a need to retrain social workers and develop social service guidelines in order to achieve success in the prevention and management of incidents of domestic violence;
- In terms of the situation of resocialization and rehabilitation in penitentiary establishments, it is imperative to increase the number of social workers and psychologists in penitentiary establishments in 2020, so that these human resources for rehabilitation activities are used to the maximum extent. The majority of social workers employed in penitentiary establishments do not have the qualification required by the Law of Georgia on Social Work.¹⁵
- There are high risks of institutional violence in Religious boarding schools of Georgia and in certain cases social worker is only formally involved and cannot ensure protection of interests and needs of each beneficiary;
- In cases of minor's dropping out from schools, school and social worker do not cooperate properly;
- It is noteworthy that in 2015-2019 no training or special study course related to adoption was provided for social workers. The social workers were also not provided with guiding principles and recommended instructions on the basis of which they could prepare a child before adoption and provide them with information appropriate for their age and development;
- Situation with regards to human resources in psychiatric care has not changed during recent years. It is necessary that the State take effective and complex measures to increase the number of professionals in the field, including psychiatrists, psychotherapists, psychiatric nurses and social workers;
- To study the situation of rights of elderly people representatives of the Public Defender's Office visited the residential facilities operating in Georgia. Monitoring revealed that beneficiaries of specialized facilities have no access to the service of social worker.

¹⁵ According to monitoring conducted in 2019, there were averagely 563-1073 prisoners per psychologist; and averagely 153-271 prisoners per social worker.

Conclusion

28. The Public Defender of Georgia believes that along with the above mentioned shortcomings, general measures implemented on domestic level - recently adopted legislative changes and action plans, cannot be evaluated at this stage in order to fully assess how they will contribute to further prevention of violations similar to those established by the Court.
29. Thus, PDO concludes that Georgian government has not complied with its obligations under Article 46 §1 of the Convention. Therefore, Committee should not close supervision of the present case.