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Meeting: 1514th meeting (December 2024) (DH)

Communication from the applicant (11/10/2024) in the case of Ltd Beqanasi v. Georgia (Application No. 28407/19).

Appendices in Georgian are available upon request to the Secretariat

Information made available under Rule 9.1 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 : 1514e réunion (décembre 2024) (DH)

Communication du requérant (11/10/2024) relative à l'affaire Ltd Beqanasi c. Géorgie (requête n° 28407/19) ***[anglais uniquement]***

Les Annexes en géorgien sont disponibles sur demande auprès du Secrétariat

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DH-DD(2024)1174: Rule 9.1: Communication from the applicant in the case of Ltd Beqanasi 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.

Rule 9 (1) communication to the Committee of Ministers of the Council of Europe in respect of the execution of the

Ltd Beqanasi v. Georgia (no. 28407/19)

DGI
11 OCT. 2024
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



Georgian Young Lawyers' Association (GYLA)

October 11, 2024

1. The Georgian Young Lawyers' Association (GYLA) presents this communication pursuant to Rule 9(1) of the Rules of the Committee of Ministers to submit information regarding the violation of Article 46 of the Convention and the non-execution of the judgment of the European Court of Human Rights in the case of *Ltd Beqanasi v. Georgia* (no. 28407/19) by the Georgian authorities.

2. On 11 July 2024, the European Court of Human Rights delivered judgment on the case of *Ltd Beqanasi v. Georgia* (no. 28407/19). The case concerns the confiscation by the State of a tractor belonging to the applicant company, which had been classified as "an instrument of crime." The ECtHR declared a violation of Article 1 of Protocol No. 1 to the Convention. According to the Court, the respondent State must return the confiscated tractor to the applicant company in the same condition as at the time of confiscation. However, the Court also stated that if the State fails to provide restitution, Georgia shall pay the applicant company adequate compensation.

- ***Facts that have occurred since the delivery of the judgment***

3. On 26 July 2024, representatives of the applicants received a letter from the Ministry of Justice of Georgia (MOJ) stating that they would pay the applicant company 36,000 Georgian Laris ("GEL") as compensation, considering that the tractor was sold at an electronic auction and is currently owned by a third party (Annex 1). The MOJ noted that the amount of the compensation had been in accordance with the Act №00052039 of the Expert Inspection of the Mechanical Vehicle of the Ministry of Internal Affairs of Georgia (hereinafter the "Act") (Annex 3). The letter had been accompanied with the Order №69/ა of the Deputy Minister of Justice on the Execution of this particular judgment, particularly, declaring to pay the Applicant Company the compensation in the amount of 36 000 GEL until 11 October 2024 (Annex 2). According to the General Administrative Code of Georgia, Order №69/ა constitutes an individual administrative act.

4. On 25 August 2024, the Georgian Young Lawyers' Association addressed the Ministry of Justice with a request to provide the organization with the above-mentioned Act of the Ministry of Internal Affairs (Annex 4). In addition, taking into consideration that the Court, in the first place, ruled for the restitution of the tractor, GYLA asked the Ministry of Justice the following questions:

   "Please let us know if the Ministry has taken any steps to buy back and restore the tractor seized by the state in violation of the Convention?

   Let us know if your agency has taken any steps to ensure the accurateness and adequacy of the Act №00052039 of the Expert Inspection of the Mechanical Vehicle of the Ministry of Internal Affairs of Georgia?

5. In their response, the Ministry of Justice explained that in 2019, due to the execution of the decision of the domestic courts, the cost of tractor had been assessed by the Ministry of Internal Affairs, more particularly, through the Act №00052039, and, subsequently, to have been 36 000 GEL and, *"the tractor had been sold in accordance with the law, with a 25% discount, and was given to the winning individual in the electronic auction"* (Annex 5). The letter was accompanied by the Act (Annex 3), **which did not provide any information on how, by what method, or by whom the price of the tractor was calculated before the auction**. The act itself **explicitly notes that the author neither checked nor knew whether the tractor was in working condition**.

6. On 26 August 2024, the applicant company submitted a complaint to the First Instance Court, requesting the annulment of Order №69/ა of the Deputy Minister of Justice (Annex 6). The applicants' representatives clearly stated to the MOJ that the primary interest of the company was to have the tractor, which had been confiscated by the State, returned, as the company is still interested in continuing its business. The applicant company submitted that the State did not faithfully fulfill its international obligations, as it failed to even explore the possibility of repurchasing and restoring the tractor, and without further assessment, considered the amount of 36,000 GEL as adequate compensation based on the act of the Ministry of Internal Affairs, which lacks any methodology for calculating the disputed price of the tractor. The applicant notes that the tractor was in working condition, and the 36,000 GEL (12,000 EUR) is an unreasonable price for a tractor that in 2011 was valued at approximately 147,261 GEL (49,087 EUR). The applicant acknowledges the logic of the Court developed under paragraph 20 of the judgment and further notes that the price indicated in the 2011 purchase contract may not be considered in calculating pecuniary damages. **However, it is entirely unreasonable that by 2019, the price of a tractor, which required no repairs and had no operational challenges, would have dropped approximately fivefold**.

7. The applicant notes that the same model tractor (CATERPILLAR M312), with the same year of wear as when it was confiscated by the State, is priced at **approximately 121,500 GEL (approximately 40,500 EUR) on the Georgian market**.

8. The execution of this judgment not in compliance with the standards of the Committee of Ministers and undermines the true notion of the Judgment. Taking into account that the Court primarily requested from the Georgian Authorities to return the confiscated tractor, and after failing to do so, then opt for the adequate compensation. However, the Government of Georgia ignored interests of the Applicant and directly decided to pay the unreasonable compensation to the Applicant Company. **They have not even assessed the possibility and have not shown any interest in finding out the current owner's willingness to sell the tractor back to the State**.

9. In addition to this, the Government having had the obligation to pay the *"adequate compensation"*, however, the **Government had not taken any steps to adequately assess the amount of the compensation**. The Government's claim that the value of the tractor is determined by the Expert Inspection of Mechanical Vehicles by the Ministry of Internal Affairs of Georgia should not be taken into consideration, as this **Act does not meet any standard of expertise and cannot be referred to as "Expert Inspection" in any jurisdiction**.

10. The execution of ECtHR judgments is the State's international obligation, arising from the European Convention on Human Rights, and is under the supervision of the Committee of Ministers. Therefore, the applicants should not be required to pursue additional domestic litigation to be in a position of *restitutio in integrum*. However, the applicant company submitted an administrative complaint to the domestic court to terminate the effects of the Order of the Deputy Minister of Justice and to exclude the Georgian Government's further speculation before this honorable Committee that, at the domestic level, the applicant had the possibility to question the legality of the order and did not use that possibility. Therefore, any misinterpretation by the Government to justify bad faith and non-fulfillment of the honorable Court's judgment based on ongoing domestic proceedings should not be taken into consideration.

11. Taking into account the concerning attitude of the State and its continued violation of international obligations, which undermines the spirit of the Convention and poses grave dangers to the effectiveness of the conventional system, the applicant would like to kindly ask the Committee of Ministers to assess the actions of the Georgian authorities and take the necessary steps for the proper execution of the mentioned judgment.

List of Annexes:

1. Letter of the Ministry of Justice of Georgia to the Georgian Young Lawyers' Association, №8410, 24.07.2024
2. Order of the Deputy Minister of Justice, №69ა, 23.07.2024
3. Act №00052039 of the Expert Inspection of the Mechanical Vehicle of the Ministry of Internal Affairs of Georgia, 07.05.2019
4. Letter of the Georgian Young Lawyers' Association to the Ministry of Justice of Georgia, 25.08.2024
5. Letter of the Ministry of Justice of Georgia to the Georgian Young Lawyers' Association, №10480, 11.09.2024
6. The Complaint of the Applicant Company, 26.08.2024

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