

Georgia

Urgent appeal

860. On 31 December 2009, the Special Rapporteur sent an urgent appeal to the government regarding the situation of the **Inclusive Foundation**, its staff and the members of its Women's Club. Inclusive Foundation is a Lesbian, Gay, Bisexual and Transgender organisation.

861. According to the information received, on 15 December 2009, five armed men allegedly raided and searched the premises of the Inclusive Foundation. The raid allegedly occurred during a meeting of the "Women's Club" where members of the LGBT community and the leaders of the Foundation were present. It is alleged that the armed men did not present a search warrant and refused to identify themselves, but some of them were wearing jackets with a police inscription when they entered the offices. The participants at the meeting were not allowed to leave and they were told that "only their chief was of interest to them".

862. The bags of the participants were allegedly searched and their cellular phones seized. It is also alleged that they were subjected to humiliating remarks and called "perverts", "sick persons" and "satanists". Two women were allegedly forcibly taken to the bathroom, undressed and searched. Furthermore, the armed men allegedly threatened to kill Ms. Eka Agdgomelashvili, one of the leaders of the organization, and Ms. Tinatin Japaridze if they continued to ask them for a search warrant and for their identification documents. They also threatened to take photos of the women and disseminate them to reveal their sexual orientation.

863. Mr. Paata Sabelashvili, the Head of the Foundation, was allegedly arrested and detained in Tbilisi. After his arrest, and without the presence of a lawyer, Mr. Sabelashvili reportedly confessed being in possession of marijuana. It is alleged that his confession was forcibly made. Mr. Sabelashvili has been released on bail on 26 December 2009. It is also alleged that since the raid of the Foundation's premises, its staff members have been under constant surveillance by cars full of men in plainclothes.

864. Concern was expressed that the raid of the Foundation, the acts of harassment and intimidation against its staff and members and the arrest of Mr. Sabelashvili may have been directly related to their legitimate work in defence of human rights.

Response from the Government

865. In a letter dated 8 February 2010, the Government responded to the communication sent on 31 December 2009. The Ministry of Internal Affairs confirmed that on 15 December 2009, the office of the Inclusive Foundation was searched, illegal drugs were found and as a result Mr. Sabelashvili was arrested for illegal transportation and possession of drugs. Mr. Sabelashvili and his lawyers have only challenged the amount of drugs found and not the possession, transportation, and consumption.

As to specific facts alleged in the summary:

866. "The armed men" mentioned in the summary were Criminal Police Local District Officers who on legitimate grounds and in accordance with Georgian Legislation, in particular based on the Search Order of the investigator, entered the office of Inclusive Foundation. A Search Order is similar to a search warrant. It is applied in specific cases when a search needs to be carried out urgently. An investigator/prosecutor can order that a search be carried out urgently, a Search Order is issued; the order must be examined by the court within 48 hours issuance. In the present case the court verified and approved the Search Order as required by legislation.

867. The search was undertaken by the local unit of the criminal police, who wear easily identifiable coats with Criminal Police signs. Only an officer of a rank such as Detective does not have to wear a uniform, all other officers were in uniform.

868. They also presented their Police Identification Cards to all those present in the given location and showed the Search Order to the Head of the Inclusive Foundation, Mr. Paata Sabelashvili, who approved of it with his signature.

869. The Government would like to stress that the so called "raid" was in fact a legitimate police operation aimed at checking operative information received regarding illegal drugs in the given location and to detain suspects if any. Illegal drugs were indeed found as a result of the search conducted by police officers in the presence of Mr. Sabelashvili and two witnesses selected by him.

870. The Government confirms that police actions were directed at Mr Sabelashvili as he was figurant of the operative information and not the organisation as such.

871. Concerning "searching and seizing the cell phones of the participants" – Police Officers did order individuals present in the given location, not to leave the office and to put their cell phones on the table. This is a common police practice throughout the world, aimed at securing the operative police action, the same applies to the temporary seizure of cell phones and does not represent any violation of Georgian criminal procedure legislation or any international act.

872. As to "women forcibly taken to the bathroom, undressed and searched" please be informed that this statement is not only exaggerated but highly misleading. These persons (not two as indicated, but all) were only checked visually which differs procedurally from the search of a person and is a very simple process. Police did not have the right to undertake a search without a warrant and they did not. Visual Check however is allowed by legislation. Fully in line with legislation, the women were checked by the uniformed female police officers. During the check they were asked to take off coats/jackets and shoes only, and to empty their pockets by themselves.

873. Allegations with respect to threats made toward Ms. Eka Agdgomelashvili or any other are not true. However, some of the members of the "Women's Club" were indeed quite aggressive toward the police, cursing, insulting and threatening to the extent that police officers tried not to enter into the conversation at all. Their lack of awareness about the criminal procedures and legislation is understandable, as they are not lawyers. They continuously confuse terms, failing to accept police legitimate orders and explanations, for instance regarding the difference between the Search Warrant and

Search Order. Or Search and Visual Check they were attempting to escalate the situation. Mr. Sabelashvili himself asked them twice to calm down.

874. With regard to the search of the office, all those present, apart from Mr. Sabelashvili and two witnesses he has chosen to observe the search were asked to wait in a separate room. This again does not represent a violation of any procedure or law, and was aimed at securing the area of search and proper working environment for police officers on duty.

875. Regarding arresting Mr. Sabelashvili, according to Georgian Legislation, illicit purchase, possession, as well as consumption of narcotics is a criminal offence. Mr. Sabelashvili was arrested in accordance with all procedural norms. When police entered the office, showed ID and a Search Order to Mr. Sabelashvili, he denied possession of illegal drugs and the search was undertaken in his presence and in the presence of two witnesses selected by him. As a result of the search conducted by the Police, illegal drugs were found, which were seized in an appropriate manner and the relevant protocol has been signed by Mr. Sabelashvili and the two observers of the search. Mr Sabelashvili in front of the witnesses admitted that the substance found was marijuana and belonged to him. The substance was indeed identified as marijuana by the forensic examination later.

876. Afterwards in his first testimony as a suspect, Mr. Sabelashvili, in presence of his legal attorney, admitted not only to possession, but that he purchased the drugs abroad and transported them to Georgia (separate crime under a different article of the Criminal Code). Later at the initial court hearing, the defendant used his right to be silent, while his attorney petitioned for alternative expertise with regard to the quantity of illegal drugs. The defendant and his attorney admitted before the judge to purchasing and transporting the drugs as part of the plea agreement with the prosecutor's office. Mr. Sabelashvili was fined and sentenced to a conditional sentence. Accordingly Mr. Sabelashvili was released from custody on 26 December. Thus the allegation that Mr. Sabelashvili's "confession was forcible made" is simply not true.

877. As to the quotation that "since the raid of the Foundation's premises, its staff members have been under constant surveillance by cars full of men in plainclothes", it is baseless, police had and have no interest in this criminal case. As noted above, only Mr. Sabelashvili was figurant of the operative information and the criminal offense against him was never linked to his professional activity. After the witnesses of the search had given testimonies to the police at the police station, following the search, police have not attempted directly or indirectly to make contact with them.

878. Neither members nor the staff of the Inclusive Foundation had ever lodged any complaints regarding the given matter. Moreover the persons involved in the case – in particular: witnesses of the search, legal attorney, and Mr. Sabelashvili himself had the possibility to register their complaints and objection to the process or the form of the search and police behaviour in general, but thus far they have not lodged any complaints.

879. However on 8 January 2010, the Ministry received a letter from the Public Defender and attached written explanations of Mr. Paata Sabelashvili (to be noted in his

explanation he again admits possession, purchase as well as transportation of marijuana) and three individuals present in the location during the police operative actions.

880. Prior the receipt of the Public Defenders letter, there have been no inquiries carried out since the actions conducted (search and arrest) by the Police, nor has the behaviour of the Police Officers been challenged. However, with this letter, the competent authority, specifically, General Inspection had legal grounds to initiate an inquiry.

881. In his letter based on the explanations provided by the 4 individuals, the Public Defender made 4 assumptions and requested an inquiry and reaction.

These assumptions were:

882. Mr. Sabelashvili claimed he was not presented with a Search Order. This was not confirmed by the inquiry of the General Inspection.

883. Some members of the Women's Club claimed they were checked without sanction. This was not confirmed by the inquiry of the General Inspection.

884. Mr. Sabelashvili claimed substances found at the office were not properly seized. This was not confirmed by the inquiry of the General Inspection.

885. Mr. Sabelashvili alleged to have been subjected to a cynical and at times insulting attitude, based on the inquiry, including an interrogation by officers. General Inspection applied administrative sanctions and Severe Reprimand against the officer who escorted Mr. Sabelashvili from the Court to the prison in accordance with the Police Code of Ethics as his actions were qualified as non-ethical and inappropriate for a police officer. Severe Reprimand was also applied against two officers present for not preventing their fellow officer from making statements that could have been considered insulting by the detainee.

886. The investigation was initiated on the grounds of operative information, which contained elements of the offence prescribed by the Georgian Criminal Legislation. This particular case involved illicit purchase, transportation, possession, as well as consumption of narcotics, all of which are criminal offences punishable under Georgian legislation. After the search had been conducted, and marijuana was found, Mr Sabelashvili admitted that he had purchased the aforementioned drugs abroad and transported them to Georgia. Mr. Sabelashvili was arrested as a suspect for committing the offences prescribed by the Criminal Code of Georgia (Art 260 part I and Article 261 part I).

887. To conclude, it also must be noted, that the Georgian law enforcement authorities are fully aware that the Rule of Law is more about the process, rather than having a suspect arrested. Bearing in mind that the suspect represented a minority group, but most importantly to avoid questioning the reputation of the Inclusive Foundation because of its Head's specific criminal charge, the Ministry of Internal Affairs did not make this case public, including through its daily TV police news programme. This decision was made acknowledging the important role that this organisation, as well as

other organisations plays, in building a democratic, tolerant society. On the other hand we must also highlight that holding a position, particular status, or membership of a religion, ethnic, sexual or other minority does not safeguard a person against criminal responsibility.

Observations

888. The Special Rapporteur wishes to thank the Government for the detailed response provided to her communication sent on 31 December 2009. The Special Rapporteur encourages the Government to take the necessary measures to ensure the existence of an environment which is conducive to the work of all human rights defenders.