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Meeting: 1451st meeting (December 2022) (DH)

Communication from NGOs (19/10/2022) (European Human Rights Advocacy Centre, the Georgian Young Lawyers' Association and the Women's Initiatives Supporting Group) in the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12).

Information made available 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.

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Réunion : 1451e réunion (décembre 2022) (DH)

Communication d'ONG (19/10/2022) (European Human Rights Advocacy Centre, the Georgian Young Lawyers' Association and the Women's Initiatives Supporting Group) dans l'affaire IDENTOBA ET AUTRES c. Géorgie (requête n° 73235/12) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI
19 OCT. 2022
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Rule 9 (1) submission to the Committee of Ministers of the Council of Europe concerning the implementation of *Aghdgomelashvili and Japaridze v. Georgia* *(App. no. 7224/11)* **and Women's Initiatives Supporting Group and Others v. Georgia,** *(App. nos. 73204/13 and 74959/13)*
Rule 9 (2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of *Identoba and Others v. Georgia group of cases* *(App. No 73235/12)*

By

The European Human Rights Advocacy Centre (EHRAC), the Women's Initiatives Support Group (WISG) and the Georgian Young Lawyers' Association (GYLA)

19 October 2022

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1. Introduction

1. This Submission is communicated by the European Human Rights Advocacy Centre (EHRAC), the Women's Initiatives Support Group (WISG) and the Georgian Young Lawyers' Association (GYLA) as the non-governmental organisations under Rule 9 (2) of the Rules of the Committee of Ministers (CM) for the supervision of the execution of judgments of Identoba and Others group of cases for consideration at the 1451st CM DH meeting on 6-8 December 2022. In addition, this communication also includes a Rule 9 (1) submission in respect of two cases in the Identoba and Others v. Georgia group, namely, *Aghdgomelashvili and Japaridze v. Georgia* and *Women's Initiatives Supporting Group and Others v. Georgia.*

2. The case of *Aghdgomelashvili and Japaridze v. Georgia* (Application no. 7224/11, judgment of 8 October 2020) concerned a police raid on the office of the Inclusive Foundation (an LGBTQI organisation) in Tbilisi in December 2009. During this raid, police officers subjected the applicants to homophobic and transphobic insults, threats, and humiliating strip searches. In its judgment, the Court found both a substantive and a procedural violation of Article 3 (the right not to be subjected to torture and inhuman or degrading treatment or punishment) in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR). The case is subject to the enhanced procedure as part of the *Identoba* group of cases.

3. The case of *Women's Initiatives Supporting Group and Others v. Georgia* (Application nos. 73204/13 and 74959/13, judgement of 16 December 2021) concerned an attack by a mob on LGBTQI demonstrators on 17 May 2013 – the International Day Against Homophobia – in central Tbilisi. In its judgment, the Court found a violation of Article 3 (prohibition of inhuman or degrading treatment) in conjunction with Article 14 (prohibition of discrimination) of the ECHR both on account of the authorities' failure to protect the peaceful demonstrators from homophobic and transphobic aggression and of the ensuing inadequate investigation.

4. It is noted that the Government of Georgia has made no updated action plan or report on this group at the time this submission is made.

5. This Submission complements previous Rule 9.2 submissions of 16 November 2016 (the 2016 CSO submission)[1], 10 May 2018 (the 2018 CSO submission)[2], 2 August 2019 (the 2019 CSO submission),[3] 10 August 2020 (the 2020 CSO Submission),[4] 22 October 2021 (the CSO Submission)[5] and GYLA's submission on 14 April 2022.[6]

[1] DH-DD (2016) 1303
[2] DH-DD(2018)489
[3] DH-DD(2019)938
[4] DH-DD(2020)776
[5] DH-DD(2021)1152
[6] DH-DD(2022)460

2. Execution of the Individual Measures

2.1 Aghdgomelashvili and Japaridze v. Georgia

6. As noted in the submission of 22 October 2021, the applicants received the payment of the damages awarded by the Court (€2,000 each) on 18 March 2021.

7. Regarding the ongoing investigation conducted under Article 333 (Exceeding official powers) of the Criminal Code of Georgia, there has been no reply from the authorities since September 2021. On 11 January 2022, the legal representative of the witnesses, who were granted victim status (the applicants were questioned and received the status different times, the last one received the status on 11 January 2022) since the judgement became final in January 2021, submitted that the investigation's remit should be expanded to include Article 151 (Threats), Article 156 (Persecution) and Article 144[1] (Torture). All the witnesses were questioned during the investigation, however, no decision has been made by the Prosecutor's Office on expanding the investigation's remit so far.

2.2 Women's Initiatives Supporting Group and others v. Georgia

8. On behalf of the applicants, it is confirmed that they received the payment of the damages awarded by the Court by May 2022.

9. The ongoing investigation[7] is still being conducted under Article 161 (Encroachment upon the right to assembly or demonstration) para. 1 of the Criminal Code of Georgia: unlawful interference with exercising the right to hold or participate in an assembly or demonstration using violence, the threat of violence or official position. All four defendants, Tital Davrishiani, Beka Salukvadze, Giorgi Basiashvili and priest Irakli Basilia were acquitted by the Court on 23 October 2015[8].

10. On 20 July 2022, following the ECtHR judgment, Women's Initiatives Supporting Group (WISG) published a statement[9] to invite all the victims of the crimes committed on 17 May 2013 addressed to the Prosecutor's Office to launch the investigation again. WISG provided legal consultations to 11 victims, and they are preparing their appeals to the Prosecutor's Office to be submitted in October 2022.

3. Execution of the General Measures

In this section, this submission focuses on the systemic issues that expose state policies and public attitudes as systemic causes of hate crimes and incidents. It aims to emphasize the absence of preventive policy and its impact on the LGBTQI community in Georgia. We highlight the use of the right to assembly and demonstration to show the contribution of state homophobia to this process and to expose the vacuum created by the attitude of high-ranking officials and state bodies.

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[7] Letter of the Prosecutor's Office of 14.11.2013 N13/02-7614.

[8] "All defendants acquitted in 2013 anti-gay rights attack case", Democracy and Freedom Watch. t.ly/qX68. [seen on 03.10.2022].

[9] The statement is available here: t.ly/nsmy. [seen on 03.10.2022].

3.1 Georgia's National policy to combat discrimination and intolerance

11. In August 2022, the Human Rights Secretariat of the Government of Georgia, as the responsible agency for National Action Plans, drafted a National Human Rights Strategy 2022-2030 and did not involve LGBTQI organisations in the drafting process. Since the Civil Society Organizations, including LGBTQI community organisations, submitted **concerns regarding sexual orientation and gender identity issues and needs of LGBTQI people, which are not mentioned in the Strategy**, the Secretariat extended the time and received comments from the CSOs. However, LGBTQI community organisations are still trying to become a part of this process to integrate the SOGISEC issues into Strategy. They submitted a statement before the Secretariat and annexed evidence-based comments related to the sexual orientation and gender identity issues. Monitoring and assessment of the Government Action Plan for Human Rights (2018-2020), including chapter 15, added in 2020, has not been conducted yet.

12. Georgia has taken a significant step forward to harmonise national legislation regarding discrimination and hate crimes to international standards, nevertheless the Code of Administrative Offences still needs improvement (see para. 13 below). Implementing the law is, however, challenging for law enforcement bodies. The number of prosecuted individuals is increasing annually,[10] but the annual reports of the Prosecutor's Office of Georgia still fail to reflect the reality, as there are many barriers to reporting homo/bi/transphobic incidents and crimes. According to the WISG's survey, during 2020-2022, "*7 out of 10 respondents have been a victim of hate crime (N=155, 73.5%) at least once. Among them, every third has been a victim of physical and sexual violence or harassment (N=147, 30.3%); 68.7% (N=145) have been a victim of psychological violence*"[11]. The most widespread barrier to "*reporting the crime to anybody is the incident not considered serious*" (49.5%). Reluctance to report, "*I did not want anyone to know about it*", is the second most common barrier: 17.7% - 8% decided not to report it because of shame or embarrassment"[12]. Thus, the victims avoid reporting hate incidents because of the mistrust in law enforcement authorities.

13. Further, it should be underlined, that Article 35 of the Code of Administrative Offences ("CAO") provides for an exhaustive list of aggravating factors, which does not include discriminatory motive. Therefore an illegal action that is committed, for instance, against the LGBTQ+ community and/or other minorities, such as religious groups, that does not satisfy the threshold of a criminal act, would be qualified as an administrative offense, however, the establishment of a discriminatory motive would not be possible within the law.[13] The lack of such a motive in the CAO makes it impossible to evaluate the exact statistics concerning discriminatory illegal actions. The absence of a legal basis for finding a discriminatory motive prevents an accurate assessment of this phenomenon and creates an obstacle to appropriate responses to hate crimes. Thus, the amendment of the legislation of the CAO is

[10] "Report on Hate Crime Data", ODIHR. t.ly/9TOG. [seen on 03.10.2022].
[11] Aghdgomelashvili E., "Impact of COVID-19 Pandemic on LGBT(Q)I Community in Georgia", WISG, page: 100. Available at: t.ly/LWTx. [seen on 03.10.2022].
[12] Ibid, page: 115.
[13] Statement of the Ministry of Internal Affairs, 02.09.2020, available: https://police.ge/ge/shinagansaqmetasaministros-gantskhadeba/13923 , [03.10.2022]

crucial, to add discriminatory grounds as an aggravating factor of responsibility. Additionally, the reformation of the CAO, which has been going on for years, should be done according with the International Standards.

14. Another significant challenge is the lack of state-funded services for victims of hate crimes, which negatively affects access to law enforcement by victims of such crimes[14]. According to WISG's survey, "almost three out of five respondents (58.3%, N=123) say that he/she needed help from a psychologist to cope with the consequences of the violence"[15]. "In terms of service demand, second and third positions were occupied by the services of a social worker and a lawyer. Nearly a third of the victims say that they needed help from a lawyer and a social worker (respectively, 30.8% and 29.4%)"[16].

15. Notwithstanding the multiple requests[17] by the CM to create a specialized investigative unit for conducting effective investigations of hate crimes, to date, the Georgian authorities still have not yet established such a unit. Despite the fact that the Human Rights Protection and Investigation Quality Monitoring Department ('Department') has been established within the Ministry of Interior Affairs in 2018 and its mandate being enhanced, which should count as a positive step towards improving the human rights conditions, the latter still cannot be considered as a sufficient measure to effectively fight hate crimes in Georgia. **The decision of the European Commission against Racism and Intolerance (ECRI)[18] and the numerous repetitions of this requirement by the Committee of Ministers to the government, still request the Government to establish a specialised investigative unit for hate crimes within the police.**[19] The Department lacks the authority to carry out the investigation of the crimes mentioned in the statute.[20]

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[14] The Right to Non-discrimination in Practice for Various Groups in Georgia, Coalition for Equality, 2021, page 51. Available at: t.ly/cPP- [seen on 03.10.2022].
[15] Aghdgomelashvili E., "Impact of COVID-19 Pandemic on LGBT(Q)I Community in Georgia", WISG, page: 108. Available at: t.ly/LWTx. [seen on 03.10.2022].
[16] Ibid.
[17] CM/Notes/1355/H46-8, 25.09.2019, 7, available: https://hudoc.exec.coe.int/eng#{"EXECIdentifier":["CM/Del/Dec(2019)1355/H46-8E"]}, [03.10.2022]. Also see, CM/Notes/1383/H46-5, 01.20.2020, 7, available: https://hudoc.exec.coe.int/eng#{"EXECIdentifier":["CM/Del/Dec(2020)1383/H46-5E"]}, [03.10.2022]. Also see, CM/Notes/1419/H46-14, 02.12.2021, 6, available: https://hudoc.exec.coe.int/eng#{"EXECIdentifier":["CM/Del/Dec(2021)1419/H46-14E"]}, [03.10.2022].
[18] ECRI, CRI(2019)4 Conclusions on the implementation of the recommendations in respect of Georgia subject to interim follow-up, 05/03/2019, available: https://rm.coe.int/ecri-conclusions-on-the-implementationof-therecommendations-in-respe/1680934a7e, [03.10.2022].
[19] CM/Del/Dec(2021)1419/H46-14, available: https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1419/H46-14E, [18.10.2022].
[20] See Article 4 of the Statute of the Human Rights Protection and Investigation Quality Monitoring Department of the Ministry of Internal Affairs of Georgia: The competences of the Department are to ensure timely response and effectiveness of ongoing investigation in respect with (a) domestic crime, violence against women, crime committed on the ground of discriminatory intolerance morive, trafficking, crime committed by/towards minors; (b) Articles 108 (Murder), 109 (Murder under aggravating circumstances), 115 (Incitement to suicide), 116 (Negligent manslaughter), 117 (Intentional infliction of grave injury) 118 (Intentional less grave bodily injury), 120 (Intentional less grave bodily injury), 126 (Violence), of the Criminal Code of Georgia), 150 (Coercion), 1501 (Forced marriage), 151 (Threat), 1511 (Stalking) of the Criminal Code of Georgia; (c) In addition to the provisions of subsections "a" and "b", on the instructions of the minister and/or the curator deputy minister (if any), as well as taking into account the existing criminogenic situation and/or the priorities of the criminal law policy, on the facts of the crime provided for by other articles of the Criminal Code of Georgia.

The department ensures the effectiveness of the ongoing investigation; and it limits itself only to the provision of recommendations to the Minister aimed to remove deficiencies of the investigations, including related to hate crimes, as its true purpose is to monitor the investigation process and not to conduct it.[21] The statute itself says, that the Department "ensures the monitoring of the quality of administrative proceedings related to the investigation of the facts of the crime and administrative offenses provided for in subparagraphs "a", "b" and "c" of Article 4 of the Regulation, preparation of draft recommendations to eliminate deficiencies and submission to the Minister, as well as monitoring of the implementation of recommendations."[22] Furthermore, considering the fact that the recommendations regarding the elimination of deficiencies in the investigation process are not obligatory, it raises doubts as to the efficacy of their implementation. Therefore, the Georgian Government has not, as of today, satisfied its obligation to create a specialized investigative unit, that would have capacity of investigating hate crimes, and which would consist of staff with special expertise.

3.2 Exercise of the right to freedom of peaceful assembly

16. The LGBTQI community organisations have avoided holding the peaceful manifestation and demonstration on 17 May (International Day Against Homophobia, Biphobia and Transphobia) since 2018[23]. In 2022 Tbilisi Pride decided not to hold a March for Dignity *"to prevent polarisation in the society, especially to avoid tense situations in this crucial process of EU integration; we refused to exercise our constitutional rights — freedom of assembly and manifestation"*[24]. The enjoyment of the right to freedom of assembly remains a significant challenge for the LGBTQI community in Georgia.

17. The above mentioned is also aggravated by the fact that the state fails to conduct effective official investigation into the violence occurred on 5-6th of July, 2021 (detailed account of facts are available in Rule 9.2 communication of GYLA made in 2021[25]) having also failed in the previous instances, which is why the judgements under Identoba and Others group are being supervised by the CM. This fact is concerning, since the CM, in its 2021 decision:

> "noted the information on the ongoing investigation into the events related to the July 2021 March of Dignity; underlining the importance of meaningful investigations and adequate sanctioning for the fight against impunity, as well as for building public confidence in the State's anti-discriminatory policy, called upon the authorities to ensure that all the offences related to

[21] The Statute of the Human Rights Protection and Investigation Quality Monitoring Department of the Ministry of Internal Affairs of Georgia, 04.02.2019.
[22] Ibid, Article 5 (a).
[23] Ibid, page: 52
[24] "Statement about upcoming Tbilisi Pride Week", 26.06.2022. Tbilisi Pride. Available at: t.ly/6_Hl. [seen on 03.10.2022].
[25] See Rule 9.2 - Communication from an NGO (Georgian Young Lawyers' Association) (11/10/2021) in the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12), 11.10.2022, pg. 7-16, available at: https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1100E, [06.10.2022].

the above events, as well as to the previous marches, are effectively and speedily investigated through comprehensive and meaningful enquiry, capable of duly appropriate unmasking any bias motive and leading to the prompt identification and punishment of those responsible; requested the authorities to keep the Committee updated on the outcomes of these investigations."[26]

18. Instead, more than one year has passed since the events of July 5-6, 2021, however, until now, not all possible episodes of the crime have been properly investigated. For example, GYLA is involved in the cases of 19 victims of the July incidents. Of these, 17 persons are representatives of various media organizations, and 2 persons were physically assaulted by violent groups due to the fact that they were associated with the LGBT+ group due to accompanying persons and the various accessories they were wearing. For one year, GYLA actively communicated with the investigative agencies, however, in today's situation, it becomes clear that, despite the punishment of specific violent persons, The Prosecutor's Office of Tbilisi does not have the political will to punish the organizers of the violence, while also the General Prosecutor's Office of Georgia leaves the issue of the state's responsibility without responding.[27]

19. **The state's reluctance to punish organizers and/or initiate investigation in respect with the state's inactivity or inadequate response to the violence is aggravated by the news aired on "TV Pirveli" on June 12, 2022 which is alarming as it describes the alleged involvement of the State Security Service (SSS) employees in the planning and execution of the violent events of July 5.**[28] Until now, it is not known whether an investigation has been opened into the possible criminal actions of state security employees based on the news story aired on "TV First" on June 12.[29] GYLA has received no response from the Special Investigative Service in this respect to its statement sent on 05.07.2021.[30]

[26] CM/Del/Dec(2021)1419/H46-14, 2 December 2021, 1419th meeting, 30 November – 2 December 2021 (DH), H46-14 Identoba and Others group v. Georgia (Application No. 73235/12), available at: https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1419/H46-14E, [06.10.2022].

[27] see GYLA's statement, The events that took place on July 5-6, 2021 have not yet been properly investigated, 05.07.2022, available at: https://gyla.ge/ge/post/2021-tslis-5-6-ivliss-ganvitarebuli-movlenebi-am-dromde-satanadod-ar-aris-gamodziebuli#sthash.88IF4ROm.dpbs, [06.10.2022].

[28] TV Pirveli, Nodar Meladze's Saturday, 12.04.2022, news available at: https://www.facebook.com/tvpirveli/videos/397769512293086, [06.10.2022].

[29] Statement of Civil Society Organizations on the possible involvement of State Security Service in the events of July 5-6, 03.06.2022, available at: https://socialjustice.org.ge/en/products/samokalako-organizatsiebis-gantskhadeba-5-6-ivlisis-movlenebshi-sus-is-shesadzlo-chartulobaze, [06.10.2022]; see GYLA's statement, The events that took place on July 5-6, 2021 have not yet been properly investigated, 05.07.2022, available at: https://gyla.ge/ge/post/2021-tslis-5-6-ivliss-ganvitarebuli-movlenebi-am-dromde-satanadod-ar-aris-gamodziebuli#sthash.88IF4ROm.dpbs, [06.10.2022].

[30] see GYLA's statement, The events that took place on July 5-6, 2021 have not yet been properly investigated, 05.07.2022, available at: https://gyla.ge/ge/post/2021-tslis-5-6-ivliss-ganvitarebuli-movlenebi-am-dromde-satanadod-ar-aris-gamodziebuli#sthash.88IF4ROm.dpbs, [06.10.2022].

3.3 Homo/bi/transphobic attitudes in society

20. Homo/bi/transphobic attitudes in the Georgian society significantly impact the lives of LGBT(Q)I people, especially in the prevalence of homophobic and transphobic violence. In 2022 WISG published a Study of Public Knowledge, Awareness and Attitudes Towards LGBT(Q)I Community and Legal Equality[31]. "A comparison of the results of the studies conducted in 2016 and 2021 shows that the perceived symbolic threats to the LGBT(Q)I group are still relevant to the majority of the society, the attitude towards LGBT(Q)I activists and human rights defenders remains sharply negative, while the manifestation of intimacy publicly remains taboo regardless orientation or gender"[32].

21. The statements of the head of the ruling political party "Georgian Dream"[33] and the prime minister of Georgia regarding the Tbilisi Pride indicate the issue's geopolitical context. According to WISG's study, "more than a half of the respondents (53%) are for legally restricting the right of assembly and expression for LGTBT(Q)I people; the share of such respondents, in comparison to 2016, is 25% less and the share of those respondents, who find such restrictions unacceptable, has grown twice (in 2016 it was only 14.6%, in 2021 – 27.1%)"[34].

22. Despite the challenges, "a comparison of the study results conducted in 2016 and 2021 shows that the homo/bi/transphobia indexes tend to decrease"[35].

4. Recommendations

To adequately address both individual and general measures under the cases of *Identoba Group,* EHRAC, WISG, and GYLA, submit the following recommendations:

Recommendations Concerning Individual Measures:

I. ***The responsible authorities should be required to carry out an effective, timely, independent investigation into the actions of the police at the Inclusive Foundation office on 15 December 2009, including an effective investigation into the discriminatory intent displayed by the police.*** Furthermore:

a) the remit of the investigation should be expanded to include Article 151 (Threats), Article 156 (Persecution) and Article 144[1] (Torture);

b) the police officers involved in the raid and their superior(s) should be identified and questioned;

[31] Aghdgomelashvili E., Public Knowledge, Awareness and Attitudes Towards LGBT(Q)I Community and Legal Equality, WISG, 2022. Available at: t.ly/LlZD. [seen on 03.10.2022].
[32] Ibid, page: 23.
[33] "Ruling Party Head: Tbilisi Pride Events Should Be Canceled", 18.06.2022. Available at: t.ly/4dDh. [seen on 03.10.2022].
[34] Aghdgomelashvili E., Public Knowledge, Awareness and Attitudes Towards LGBT(Q)I Community and Legal Equality, WISG, 2022. Page: 111. Available at: t.ly/LlZD. [seen on 03.10.2022].
[35] Ibid, page:

c) the victims should be informed regarding any significant steps taken by the Prosecutor's Office or Ministry of Internal Affairs.

II. ***The responsible authorities should carry out an effective, timely, independent investigation into the violent events of 17 May 2013 and punish all perpetrators, including all organisers and perpetrators;***

Recommendations Concerning General Measures:

I. ***An effective investigation should also be conducted in respect to the violent developments on 5-6 July, 2021, especially focused on the criminal liability of the violence organizers and the state's positive and negative responsibilities.***

II. ***The Government should create specialized investigative unit within the Ministry of Internal Affairs that would be capable of investigating hate crimes;***

III. ***The Government should amend the Code of Administrative Offences and define discriminatory motive, as the aggravating factor of the liability;***

IV. ***Together with civil society actors, the State should establish the measures necessary to enable the safe and peaceful gatherings of LGBTQI activists and take preventive measures to deter violence, hatred and discriminatory attitudes and behaviour. In particular:***

a) to conduct public awareness campaigns to increase general understanding of hate crimes and the hate speech laws which are designed to uphold LGBTQI rights in Georgian society;
b) to ensure the safety of LGBTQI activists promptly, protect them from physical violence, and create conditions for their safe conduct of professional activities;
c) to meaningfully protect the right of LGBTQI+ people to organise demonstrations, public events, and their right to speak publicly about matters of interest or concern;

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