SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 30/10/2023

DH-DD(2023)1300

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: 1483rd meeting (December 2023) (DH)

Communication from NGOs (European Human Rights Advocacy Centre (EHRAC), Women's Initiatives Support Group (WISG) and Georgian Young Lawyers' Association (GYLA)) (16/10/2023) 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.

* * * * * * * * * * * *

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.

Réunion : 1483e réunion (décembre 2023) (DH)

Communication d'ONG (European Human Rights Advocacy Centre (EHRAC), Women's Initiatives Support Group (WISG) and Georgian Young Lawyers' Association (GYLA)) (16/10/2023) 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.

DH-DD(2023)1300: Rule 9.2 Communication from an NGO in IDENTOBA AND OTHERS v. Georgia.
Document distributed under the sole responsibility of its author, without prejudice
to the legal or political position of the Committee of Ministers.

DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
F-67075 Strasbourg Cedex
France

DGI
16 OCT. 2023
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

E-mail:
dgl_execution_just_satisfaction@coe.int
dgI-execution@coe.int

Sent by email

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)

16 October 2023

DH-DD(2023)1300: Rule 9.2 Communication from an NGO in IDENTOBA AND OTHERS v. Georgia.
Document distributed under the sole responsibility of its author, without prejudice
to the legal or political position of the Committee of Ministers.

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 1483DH meeting of the Ministers' Deputies (5-7 December 2023). 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. 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] GYLA's submission on 14 April 2022[6] and 19 October 2022 (the CSO Submission)[7].

[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
[7] DH-DD(2022)1179

2. Execution of Individual Measures

2.1 Aghdgomelashvili and Japaridze v. Georgia

5. Since the ECHR judgment, the investigation under Article 333 (Exceeding official powers) of the Georgian Criminal Code has been renewed. However, even after questioning all witnesses, the Prosecutor's Office has not broadened the scope of the investigation, and to date, no individual has been determined to bear criminal responsibility. Regarding the ongoing investigation conducted under Article 333, there had been some updates from the Prosecutor's Office in 2022 and 2023. In August 2023 the Prosecutor's Office invited the victims to provide additional information. WISG facilitated them to participate in investigative activities. Victim participation, a cornerstone of transparent proceedings, has been notably limited. Further, neither the victims nor their representatives have been granted adequate access to pertinent information or documentation. Moreover, there has been a stark absence of timely updates concerning the investigation's progression. This lack of involvement and communication underlines significant deficiencies in the current investigative approach, undermining the principles enshrined in the judgment.
6. The Government states that the main challenge for the investigation is to identify police officers who participated in search proceedings on 15 December 2009.[8] It should be emphasized that investigative authorities have information regarding the police officers who created and signed the search protocol; however, no criminal prosecution has been initiated. It is also noteworthy that, according to Article 71, paragraph of the Criminal Code of Georgia, if the investigation is not reclassified as a particularly serious crime, the criminal responsibility of police officers will be excluded due to the expiration of the statute of limitations.[9] This means that there is only one year left for the investigative authorities to take proper action. Given that only one year remains for the investigative authorities to act decisively, it is imperative to underscore the implications of the current slow pace in the investigation. Should the investigation continue on its present course for another year, it will inevitably lead to guaranteed impunity for the perpetrators. Such an outcome necessitates immediate and urgent intervention from the authorities to prevent a grave miscarriage of justice.
7. According to the Government, *'The process of identifying all the police officers involved has been complicated because some of them have changed jobs or left the country.*'[10] None of the mentioned reasons could hinder criminal proceedings according to Georgian legislation. Investigative authorities have sufficient investigative mechanisms (including international cooperation mechanisms) to conduct proper investigations within and outside the jurisdiction of the country. Despite the ongoing nature of the investigation, the government has not provided comprehensive details regarding the procedural measures taken to identify the involved police officers, even those who have changed jobs or left the country. It's essential to highlight that a mere change in job position poses no legitimate barrier to a criminal investigation, distinguishing this from a mere professional disciplinary matter. To date, no charges have been brought against any individual. Based on the current evidence and the

[8] Annual Report of the MOJ with respect to the execution of the Courts judgments (2022) pg.56 available in Georgia https://info.parliament.ge/file/1/BillPackageContent/38706?
[9] See. Article 71 paragraph 1 subparagraph C[1] of Criminal Code of Georgia
[10] DH-DD(2022)1151, para. 8.

government's approach, we submit that the Court's conclusions remain pertinent to this case: It is evident that authorities continue to exhibit a "long-standing inability – which can also be interpreted as an evident unwillingness – to examine the role played by homophobic and/or transphobic motives in the alleged police abuse" (*Aghdgomelashvili and Japaridze v. Georgia, App. no. 7224/11,* para 40). Should this lapse in investigative rigor and ensuing delays result in the statute of limitations preventing prosecution, it will unequivocally illustrate that the authorities are not only reluctant or incapable of conducting a thorough investigation but also, through their inaction, indirectly endorse such reprehensible behavior by police officers.

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

8. It is crucial to bring to the CM's attention that the investigation in question, which began in the year 2013, has now spanned a decade. Throughout this extensive period, despite the resources and time expended, there remains a significant and concerning lack of accountability. Disturbingly, not a single individual has been found criminally responsible or held to account in connection with the matters under investigation. The passage of time, while expected to shed light and deliver justice, appears to have failed in this regard. The very essence of justice is predicated on timely accountability, and the absence thereof undermines faith in the judicial process. Hence, it is imperative that this extended duration without conclusion or accountability be viewed with utmost seriousness by this Court, ensuring that the principles enshrined in the European Convention on Human Rights are not rendered meaningless.

9. The scope of the current investigation has been broadened to encompass both Article 144^3, pertaining to 'Humiliation or Inhuman Treatment', and Article 332, which deals with the 'Abuse of Official Powers'[11]. For investigations under Article 332, the statute of limitations has unfortunately expired. However, for the aforementioned Article 144^3, the statute of limitations has not yet reached its term. It remains imperative to determine whether the statute of limitations has lapsed for any other potential crimes under consideration.

10. In July 2022, following the ECtHR judgment, Women's Initiatives Supporting Group (WISG) published a statement to invite all the victims of the crimes committed on 17 May 2013 to address the Prosecutor's Office to launch the investigation again. Following WISG's public statement, nine individuals approached us, bringing the total count of persons whose interests WISG represents in the ongoing investigation to 21. On 8 May 2023, their legal representatives formally appealed for the acknowledgment of all those interviewed as victims. However, the prosecutor declined this request, pointing out several reasons: Firstly, not all participants from the IDAHO event have been interviewed. Secondly, pertinent assessments are already calendared, and a series of investigative and procedural steps remain pending. The prosecutor conveyed that upon completion of the aforementioned actions and a

[11] Following the judgment rendered by the ECtHR on 11 July 2022, the matter was subsequently conveyed to the General Prosecutor's Office of Georgia. Pursuant to their examination, the specifications of the case were appropriately modified.

thorough review of the accumulated evidence, a conclusive decision regarding victim recognition will be rendered.

11. It should be emphasized that the Prosecutor's Office misinterprets the norms of the Criminal Procedure Code of Georgia (CPCG), creating artificial barriers for victims to participate and observe the investigation. According to the CPCG, no evidentiary standard is needed to declare a person as a victim. None of these steps noted by the Prosecutor's Office are required to recognise these individuals as victims, and this delay and obfuscation prevents victims from meaningfully participating in the investigation. Granting victim status is a precondition for individuals to exercise their rights in criminal proceedings according to Georgian legislation. Therefore, the investigation is ongoing without the involvement of victims, which is one of the criteria for an effective investigation. No charges have been imposed on anyone. Upon thorough review of the ongoing investigation into the incident, it is evident that the inquiry has not met the requisite standards of thoroughness and diligence. This falls short of the demands of procedural Article 3, which prohibits torture and mandates that effective investigations be carried out in cases of alleged inhumane or degrading treatment. Therefore, we conclude that the current state of the investigation is both ineffective and remains in violation of procedural Article 3.

3. Execution of the General Measures

3.1 Georgia's National policy to combat discrimination and intolerance

12. From the year 2018 onwards, there has been an evident and progressively manifesting evolution in the manner in which the Georgian government has approached and addressed issues closely associated with sexual orientation and gender identity. As the timeline progressed to 2023, it became more transparent that elements of political homophobia were gaining traction and visibility within governmental actions and policies. This observable inclination can, upon closer examination, be directly linked to sustained and concerted attempts at the state level to harness and recalibrate the discourse on LGBTQI rights. All too frequently, these maneuvers resulted in a marginalization of the insights and expertise offered by organizations deeply embedded in the matter at hand.

13. A significant milestone in this trajectory was the ratification by the Parliament of the Human Rights Strategy, which was projected to guide actions and policies from 2022 to 2030. This event took place in 2023[12]. However, the process that led to the formation and finalization of this strategy was, notably, not as inclusive or consultative as one might expect for such a pivotal document. It became evident that there was a conspicuous lack of comprehensive collaboration with broader civil society factions. More importantly, a variety of organizations — WISG being a prominent example — felt their significant contributions and insights, particularly those concerning the LGBTQI community, were either sidelined or entirely omitted from the deliberative process[13].

[12] Available here: https://www.parliament.ge/en/media/news/parlamentma-2022-2030-tslebistvis-sakartvelos-adamianis-uflebata-datsvis-erovnul-strategiaze-imsjela
[13] Available in Georgian: t.ly/mhJh6

14. Fast-forwarding slightly to July 2023, a consortium of civil society organizations took the proactive step of furnishing detailed feedback to Georgia's Human Rights Secretariat[14]. Their intent was clear: to align the proposed human rights action plan more closely with the foundational principles and constitutional values that Georgia professes to uphold. However, given the past pattern of governmental responsiveness, there remains a palpable concern. Without genuine and committed involvement from the government's side, these meticulously curated insights from civil society risk being reduced to mere formalities, lacking substantial impact on the overarching National Strategy for the Protection of Human Rights slated for 2022-2030.

15. On the 22nd of December, 2022, the Parliament gave its official approval to the "Georgian State Concept of Gender Equality"[15]. This concept stands as a testament to the state's overarching vision and commitment to eradicating all forms of gender-centric discrimination, with a goal of cementing gender equality across a range of spheres, including the civil, political, economic, social, and cultural domains. It encompasses both public interactions as well as personal, private relationships. This foundational document elucidates the primary trajectories and tangible measures designed to realise gender equality in a multitude of areas. Regrettably, it is noteworthy to mention that the document, despite its comprehensive nature, overlooks the LGBT community entirely. It fails to address or provide any mention of concerns related to sexual orientation and gender identity. To address the oversight, the government should update the "Georgian State Concept of Gender Equality" to encompass concerns of sexual orientation and gender identity. Facilitating consultations with the LGBT community is vital to genuinely represent their needs. It's also imperative to introduce monitoring structures that track LGBT-inclusive gender equality advancements. Moreover, the government should actively combat homophobia and transphobia through public awareness campaigns, aiming to foster an inclusive and understanding society.

16. Despite repeated requests by the CM for a specialized investigative unit addressing hate crimes, the Georgian authorities have yet to establish one. While the establishment of the Human Rights Protection and Investigation Quality Monitoring Department within the Ministry of Interior Affairs in 2018 marked progress, it does not suffice to combat hate crimes effectively in Georgia. This Department, which chiefly monitors investigative quality and offers non-binding recommendations, lacks the mandate to investigate hate crimes directly. Presently, Georgia has not met its duty to form a specialized unit with the expertise to investigate these offenses.

3.2. Collecting and publishing statistical data on hate crimes

17. While the government solely gathers data on hate crimes, there is no established procedure in Georgia for collecting information on hate-motivated incidents. This is largely due to the continued use of a code from the Soviet era, which governs responses to legal transgressions. It must be emphatically noted that the Code of Administrative Offences ("CAO")[16] does not recognise a discriminatory motive as a

[14] Available in Georgian: https://wisg.org/ka/news/detail/392/
[15] Available in Georgian: https://matsne.gov.ge/ka/document/view/5664358?publication=0
[16] Available here: https://www.matsne.gov.ge/en/document/view/28216?publication=495

factor exacerbating administrative liability. Specifically, within the purview of Article 35 of the Code, which delineates aggravating circumstances for administrative infractions, one cannot discern a provision for a discriminatory motive. Consequently, an illicit deed, possibly targeting groups like the LGBTQ+ community or other minority factions such as religious assemblies, is classified as an administrative infraction if it does not reach the threshold of a criminal activity. Therefore under the prevailing legal framework, ascertaining a discriminatory underpinning remains unfeasible for administrative offences. This omission in the CAO hinders a precise statistical representation regarding prejudiced illicit actions. The present legislative void complicates both the government's and stakeholders' grasp of the overall scenario and poses hurdles in adequately addressing hate-driven crimes. It is pivotal to note that an administrative infringement, even if rooted in discriminatory intentions, is adjudged in an identical manner to one devoid of such a motive. Hence, introducing modifications to the CAO's provisions is of utmost importance, specifically incorporating discriminatory bases as exacerbating circumstances. Furthermore, the ongoing reform endeavours concerning the CAO, which have spanned multiple years, ought to align coherently with International Standards.

3.2 Exercise of the right to freedom of peaceful assembly

18. In the judgment *Women's Initiatives Supporting Group and others v. Georgia (Applications nos. 73204/13 and 74959/13)* the Court analysed the attitudes of the government and highlighted that "taking measures aimed at enabling the IDAHO event to take place had never been a real priority for the domestic authority"[17]. It is clear that the Government continues to fail in its positive obligation to protect LBGTQI persons at events from violence and has continued to fail to effectively investigate these incidents. These failures produce a chilling effect on the right to freedom of peaceful assembly for LGBTQI persons. This conclusion of the Court, sadly, remains accurate – that enabling LGBTQI events *continues* to not be a real priority for domestic authorities

19. LGBTQI organisations in Georgia acknowledged this, and in 2018, they chose not to publicly commemorate IDAHOT (International Day Against Homophobia, Biphobia and Transphobia). Moreover, Tbilisi Pride (which established in 2019) decided against organising the Pride March from 2022 onwards. In a 17 May 2023 statement, WISG assessed the state's response to LGBTQI peaceful assemblies and associated policies. The statement highlighted recent governmental actions which not only eroded progress made in LGBTQ rights but also aligned with ultra-right, anti-gender politics, leveraging LGBTQ and particularly trans issues for political populism[18].

20. The above mentioned is also aggravated by the fact that the state fails to conduct effective official investigation into the violence that occurred on 5-6 July 2021. On this day, anti-LGBT protesters vehemently opposing the LGBT parade obstructed its organization, assaulted several journalists reporting on the events, and targeted NGO offices. These actions forced multiple location shifts from the initial procession route

[17] Para. 83.
[18] Available in Georgian: https://wisg.org/ka/news/detail/382/ [18.09.2023].

at Rustaveli Avenue, ultimately leading to the Pride demonstration's cancellation. Detailed account of facts are available in a Rule 9.2 communication of GYLA made in 2021[19] and Rule 9.2 communication from NGOs (European Human Rights Advocacy Centre, the Georgian Young Lawyers' Association and the Women's Initiatives Supporting Group) made in 2022[20]).

21. Instead, more than two years have passed since the events of 5-6 July 2021, and, until now, not all possible episodes of the crimes have been properly investigated. Most particularly, none of the organizers of the hate groups have been charged, no investigation has been initiated into the alleged violations of the State itself (detailed account of facts are available in Rule 9.2 communications made in previous years) and the already conducted investigative actions and/or domestic courts' decisions have deficiencies. More particularly, the victims of 5 July 2021 events have limited access to the criminal case files concerning the organizers of the violence.[21] Additionally, the domestic courts did not take into account (in most cases) general Article 53[1] of the Criminal Code of Georgia regarding the aggravating factors in regards to the punishments. By excluding this article, the domestic courts brought the punishments down to the minimum.

22. The consequences of the latter deficiencies could be felt this year as well, with the disruption of an event on 8 July 2023. In 2022, the Committee of Ministers *"noted the safe conduct of the closed events in the framework of the Tbilisi Pride Week of 2022, underlined however that the freedom of assembly implies also a possibility to hold public demonstrations and marches without fear of any form of violence and called upon the authorities to reinforce their efforts to enable the LGBTI community to fully enjoy their right to peaceful assemblies".*[22] On 7 July 2023, the "Coalition for Equality" urged law enforcement to ensure the safety of the closed events planned by the NGO "Tbilisi Pride" during "Pride Week".[23] The Ministry of Internal Affairs stated that it would ensure the safe conduct of the event.[24] The observations suggested that the Ministry of Internal Affairs maintained a permissive stance towards the hate groups. Rather than executing its constitutional duty to ensure public safety through preventive measures, the Ministry appeared to permit these groups to compromise others' freedom of assembly and expression, propagate unchecked calls for violence, and engage in related actions.[25] The state authorities had to evacuate the organizers and

[19] 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: http://hudoc.exec.coe.int/eng?i=DH-DD(2021)1100E [18.09.2023].
[20] Rule 9.2 - communication from NGOs (19/10/2022) (European Human Rights Advocacy Centre, the Georgian Young Lawyers' Association and the Women's Initiatives Supporting Group https://hudoc.exec.coe.int/#{%22execidentifier%22:[%22DH-DD(2022)1179E%22]} [18.09.2023].
[21] See, GYLA's statement, 07.11.2022, available in Georgian at: https://www.gyla.ge/ge/post/saia-2021-tslis-5-ivliss-dazaralebuli-media-tsarmomadgenlebis-sakhelit-evropul-sasamartlos-mimartavs#sthash.FWLb0bN0.dpbs [18.09.2023].
[22] Committee of Ministers, H46-13 Identoba and Others group v. Georgia (Application No. 73235/12), CM/Del/Dec(2022)1451/H46-13, 08.12.2022, §5, available: https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2022)1451/H46-13E [18.09.2023].
[23] Available in Georgian: https://wisg.org/ka/news/detail/390/ [18.09.2023].
[24] See the Statement of the Ministry of Internal Affairs of Georgia, 07.07.2023, available at: https://police.ge/en/saqartvelos-shinagan-saqmeta-saministros-gantskhadeba/15867 [18.09.2023]
[25] Available in Georgian: https://www.facebook.com/photo/?fbid=703712875124462&set=a.514332257395859 [18.09.2023].

participants of the 8 July closed event.[26] Accordingly, the state authorities were not able to guarantee the exercise of the freedom of assembly by the LGBTQI community during a closed event in 2023 either. It is also noteworthy that the organizers of the 5 July 2021 violence were also leading the violence orchestrated during the 8 July 2023 as well.[27] Neither the Ministry of Internal Affairs nor the Prosecutor's Office have conducted any effective actions concerning the organizers, despite the fact that there is multiple evidence against them. 8 July 2023 events have also been criticized by national and international stakeholders.[28]

23. The established jurisprudence of the ECtHR emphasises that the passive and non-enforceable stance of authorities significantly perpetuates the occurrence of hate crimes, predominantly against vulnerable sections such as the LGBT community. This contributory negligence is vividly manifest in the escalation of incidents recorded on 8 July 2023, signalling a systemic practice. Simultaneously, the persistent acts of physical violence, tacitly condoned by the Georgian government through ineffectual investigative procedures, constitute a contravention of the Convention, impinging upon the exercise of the right to peaceful assembly within the territorial integrity of Georgia. Such administrative modus operandi not only infringes upon the established precepts of Convention rights but also forebodes a troubling precedent, casting a veil of uncertainty over the resolution of forthcoming cases affiliated with the incidents unfolded on 8 July 2023.

3.3 Homo/bi/transphobic attitudes in society - Zero-tolerance messages

24. The disruption and lack of protection of LGBTQI events sits within a broader context of anti-LGBTQI sentiments by Georgian politicians and the Georgian orthodox church. This rhetoric provides encouragement for anti-LGBTQI groups and individuals. On the 30th of June, 2023, Georgia's Prime Minister, Irakli Gharibashvili, voiced anti-LGBT sentiments during a parliamentary session. He expressed his opposition towards what he referred to as "LGBT propaganda" in educational institutions like kindergartens and schools. He emphasised, "This topic is highly sensitive and has been a subject of ongoing debate in many nations. I made my stance clear just a few days prior, and I wish to reiterate my viewpoint today. I am neither hesitant nor do I find it inappropriate to discuss this matter openly. In fact, I firmly believe that we should initiate this discourse in our nation. It's imperative that we have a candid conversation on this issue and delineate our stance unequivocally. It's essential to specify what we endorse, what we deem as appropriate, and what we find inappropriate. To be utterly forthright, the idea of promoting LGBT narratives in our

[26] See the Statement of Tbilisi Pride, 08.07.2023, available at: https://georgiatoday.ge/tbilisi-pride-participants-were-evacuated-from-the-pride-festival-area/ [18.09.2023]
[27] See the video address of Zurab Makharadze with regards to 8 July 2023 events, available in Georgian at: https://www.youtube.com/watch?v=Xyn2TECoUQ8 [18.09.2023]; See also the statement of Konstantin Morgoshia, available in Georgian at: https://tabula.ge/ge/news/703903-morgoshia-8-ivlisi-5-ivliss-dadgmul-kuboze-bolo [18.09.2023].
[28] See the joint statement of Georgian civil society organizations, 08.07.2023, available at: https://gyla.ge/en/post/shss-sidzulvilis-jgufebis-mimart-kvlav-shemtsynarebel-politikas-atarebs#sthash.MTLUDIfc.dpbs [18.09.2023]; See the statement of Secretary General of the Council of Europe, Marija Pejčinović Burić, available at: https://twitter.com/MarijaPBuric/status/1677678789571084289 [18.09.2023]; See the Statement of the U.S. Ambassador to Georgia, Kelly Degnan, available at: https://civil.ge/archives/552010 [18.09.2023]

kindergartens and schools is something I find entirely inadmissible. I express this with utmost transparency – it's simply not acceptable in my view."[29]

25. Following the Prime Minister's remarks, various societal factions echoed sentiments that were notably more extreme and hinted at a potentially violent limitation of constitutionally guaranteed rights. For instance, Vato Shakarishvili, formerly an active member of the youth segment of the "Georgian Dream" party and who established the "Conservative Movement - Georgia First" in 2022, proclaimed that "LGBT Pride will never transpire in Georgia." Shakarishvili suggests that the community "will remain steadfast and adopt a very definitive stance, employing peaceful methods to thwart what he perceives as reckless endeavours to orchestrate an extensive event reminiscent of Sodom and Gomorrah near Lake Lisi."[30]

26. Additionally, in 2022, members from violent groups submitted a legislative package to the Georgian Parliament. This package suggests amendments to the Georgian "Law on Assemblies and Demonstrations", the Georgian Code of Administrative Offences, and the Criminal Code of Georgia. The proponents are advocating for a legislative change that would ban any assembly or demonstration which has the intent, or during which there could be displays, endorsements, and/or promotion of sexual orientation. The proposal also includes both criminal and administrative penalties for breaches of this proposed rule[31].

27. Many of these violent, anti-gender and ultra-conservative groups are supported by the Georgian Orthodox Church. In 2022 Council of Europe Parliamentary Assembly invited the authorities of Georgia to "set up, as part of the activities to prevent and combat LGBTI-phobic hate speech in the public and political spheres, a body to establish a dialogue with the Orthodox Church to calm the attitude of its representatives towards public events such as Pride marches and make them aware of the need to avoid making stigmatising comments about LGBTI people"[32]. The Georgian government has not undertaken any initiatives in this particular direction. We urgently request the cessation of this hateful rhetoric and the adoption of inclusive language by politicians and the church, including the unconditional condemnation of any acts of violence against LGBTQI persons and groups.

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. Regarding *Aghdgomelashvili and Japaridze v. Georgia:* ***Strongly urge the responsible authorities to carry out an effective, timely, independent***

[29] Available in Georgian: https://www.radiotavisupleba.ge/a/32483984.html
[30] Available in Georgian: https://civil.ge/ka/archives/550956
[31] Available in Georgian: https://parliament.ge/legislation/25063
[32] Available here: https://pace.coe.int/en/files/29711/html

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) Reclassify the crimes commensurate with their seriousness, including expanding the investigation 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;

c) ensuring that all investigative activities be conducted prior to the expiry of any statute of limitations; and

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

II. Regarding *Women's Initiatives Supporting Group and Others v. Georgia:* ***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; A crucial step in this process should be the recognition of victim status for those subjected to these violent events.***

Recommendations Concerning General Measures:

I. ***That the Government observes its positive obligation to protect LBGTQI persons at events from violence and effectively investigate these incidents, including those arising out of the violence on 5-6 July 2021, and 08 July 2023. Should the Government continue to fail to protect and investigate incidents of hate crimes against LGBTQI persons, that this has occurred with sufficient regularity to constitute an administrative practice.***

II. ***That the Government should create specialized investigative unit capable of investigating hate crimes;***

III. ***That the Government should amend the Code of Administrative Offences and include discriminatory motive as an aggravating factor for administrative liability; Additionally, accurate statistical data on incidents with discriminatory motives should be collected and maintained.***

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) 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) ensure the safety of LGBTQI activists promptly, protect them from physical violence, and create conditions for their safe conduct of professional activities;

DH-DD(2023)1300: Rule 9.2 Communication from an NGO in IDENTOBA AND OTHERS v. Georgia.
Document distributed under the sole responsibility of its author, without prejudice
to the legal or political position of the Committee of Ministers.

c) meaningfully protect the right of LGBTQI+ people to organise demonstrations, public events, and their right to speak publicly about matters of interest or concern;

On behalf of the applicants and signatory organisations,



Ketevan Bakhtadze

Strategic Litigation Lawyer,

Women's Initiatives Supporting Group (WISG)