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Meeting: 1273 meeting (6-8 December 2016) (DH)

Communication from NGOs (Identoba, the Women’s Initiatives Support Group (WISG), Amnesty International and ILGA-Europe) (16/11/2016) and reply from the authorities (24/11/2016) in the case of Identoba and Others against 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 : 1273 réunion (6-8 décembre 2016) (DH)

Communication d’ONG (Identoba, the Women’s Initiatives Support Group (WISG), Amnesty International et ILGA-Europe) (16/11/2016) et réponse des autorités (24/11/2016) dans l’affaire Identoba et autres contre 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.
Rule 9(2) submission to the Committee of Ministers of the Council of Europe

concerning implementation of Identoba & Others v. Georgia

This submission is communicated by Identoba, the Women’s Initiatives Support Group (WISG), Amnesty International, and ILGA-Europe as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers for consideration at the meeting CM-DH 1273 (6 – 8 December 2016).1

I SUMMARY

1. On 17 May 2012 Identoba, a Georgian non-governmental organisation advocating for LGBTI rights, organised a peaceful demonstration of around 30 participants on Tbilisi’s Rustaveli Avenue2 to mark the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT).3 This was the first public march in support of LGBTI equality in Georgia. A larger group of approximately one hundred counter-demonstrators from Orthodox religious groups insulted, threatened and assaulted the participants. At least three participants were injured, and four participants were detained by the police. In finding a violation of Article 3 in conjunction with Article 14, the European Court of Human Rights (the Court) ruled that the Georgian authorities had failed to protect the demonstrators from homophobic violence and to conduct effective investigations into those responsible for the violence. It also found a violation of Article 11 in conjunction with Article 14 regarding the authorities’ failure to ensure that the march took place peacefully.

2. In 2013 Identoba made a second attempt to hold a peaceful demonstration on IDAHOT. It was met with even more aggravated violence than in 2012, as a crowd of 20,000 counter-demonstrators attacked the peaceful participants, preventing them from proceeding with the event. The authorities again failed to protect the demonstrators and to conduct effective investigations. Elements within the law enforcement agencies again appeared to collude with the counter-demonstrators. The 2013 IDAHOT event is the subject of two cases pending at the Court (Identoba and others v. Georgia (Application no. 74959/13) and Women’s Initiatives Supporting Group v. Georgia (Application no 73204/13)).

3. Since 2013 the LGBTI community in Georgia has only once been able to mark IDAHOT with one street event. Even then, the implicit threat of violence by those opposed meant it was held without publicity and not in the location preferred by the organisers.4 This defeated the

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1 Identoba is a Georgian civil rights organisation dedicated to advocating for the rights of LGBTI people. WISG is a feminist organization working on women’s rights, its main target groups being lesbians, bisexual women and transgender persons. Amnesty International is a global human rights movement that campaigns for a world where human rights are enjoyed by all. ILGA-Europe is the European Region of the International, Lesbian, Gay, Bisexual, Trans and Intersex Association, an umbrella organisation for the global LGBTI movement.
2 Rustaveli Avenue has great symbolic importance as the site of important political rallies, including the Independence Day parade.
3 The International Day against Homophobia, Transphobia and Biphobia is observed on May 17. Its purpose is to draw the attention of policymakers, opinion leaders, social movements, the public and the media to the violence and discrimination experienced by LGBTI people internationally.
very purpose of Article 11 of the Convention, as well as that of IDAHOT, which aims to raise public awareness of LGBTI rights violations.

4. The LGBTI community in Georgia continues to face widespread discrimination, with disturbing examples of hate crime and hate speech. Homophobic and transphobic attitudes expressed by some politicians and members of the Georgian Orthodox Church (the Orthodox Church), which often amount to incitement to violence and discrimination, are a particular concern.

5. The Georgian authorities have taken a number of measures to address this situation, as outlined in the Action Plan submitted by the Government on the Identoba case (Action Plan). These are to be welcomed. However, these measures are far from being the comprehensive and coherent programme that is needed. Measures which aim to address the pressing human rights issues faced by LGBTI people in Georgia must encompass awareness raising programmes in the wider community, address the use of homophobic/transphobic language by public figures, strengthen the enforcement mechanisms of existing anti-discrimination legislation, and incorporate the ad hoc measures already implemented or proposed for the criminal justice system into a fully developed plan for that sector.  

II DEVELOPMENTS SINCE 2012

II a Enjoyment of the right to freedom of peaceful assembly

The 2013 IDAHOT event

6. In 2013 Identoba, this time with WISG – a Georgian feminist NGO working for the rights of lesbians, bisexual women and transgender persons – again attempted to hold a peaceful demonstration on Rustaveli Avenue to mark IDAHOT. A few days before, the local media reported that a number of opposing NGOs and clergymen were planning a counter-demonstration at the same time and place and that their purpose was to prevent the IDAHOT demonstration from taking place. The Ministry of the Interior advised that at least 10,000 people were likely to take part in the counter-demonstration and proposed that the event be moved a few hundred metres to Pushkin Square to avoid a direct confrontation. This proposal was accepted.

7. On 17 May, when the IDAHOT participants gathered at Pushkin Square, they found themselves – a few dozen people – separated by police cordons from a crowd of 20,000 people chanting homophobic insults and threats to their health and life. After a short time a group of clergymen crossed the police cordons to meet with senior officials from the Ministry of the Interior, including the Deputy Minister. Video/audio recordings of the discussions provided evidence of the priests urging the police to prevent the IDAHOT event from taking place on pain of an attack by the counter-demonstrators. Some priests could be heard repeating that “people might get killed”, and one stated that if the police attempted to protect the LGBTI demonstrators, they would start civil disobedience and ask the

5 See para. 39 below for details of the measures already implemented or proposed.
6 Except where otherwise indicated the account in paras. 6 – 13 is derived from the Statements of Facts for Identoba and others v. Georgia (Application no. 74959/13) and Women’s Initiatives Supporting Group v. Georgia (Application no 73204/13), communicated to the Georgian authorities on 15 April 2015 and 24 August 2015 respectively.
Georgian army to join their side. Shortly after the discussions, and despite the serious
danger, the police removed part of their cordon and dismantled some metal fences, the
latter apparently on the instructions of the Deputy Head of the State Security Agency.  

8. The following events were also documented on video: some police officers, instead of
maintaining their cordons to block the counter-demonstrators, opened corridors for them to pass through. Soon thousands of people, led by clergymen, were heading towards the LGBTI demonstrators at Pushkin Square. Some were armed with wooden sticks and iron batons, or had grabbed stones. The LGBTI demonstrators managed to escape by running to buses. Some of the police officers were heard making homophobic jokes and insults. The mob surrounded the buses, rocking them, and throwing stones, sticks and footstools at the windscreens, before they could get away.

9. While this was happening, in a separate incident nearby, a dozen members of WISG had been encircled by a group of counter-demonstrators. Police managed to get them into another minibus. It was surrounded by a mob shouting death threats and breaking the windows in an attempt to pull the demonstrators out. Eventually, after a few minutes of turmoil, the driver of the minibus managed to get through the besieging mob. 

10. In all, some 28 people were injured including 3 policemen.  

11. In the following days gangs roamed Tbilisi, insulting or attacking people perceived to be members of the LGBTI community. Identoba documented 12 cases of physical aggression and 17 of hate speech against such individuals. None would file criminal complaints with the law enforcement agencies for lack of trust towards the system and fear of publicity and further attacks.

12. Following these events Identoba and WISG requested the Ministry of the Interior to identify and criminally prosecute the individuals responsible for the violence. Four counter-demonstrators were sanctioned for a minor breach of public order and fined the equivalent of €45. In addition, five other counter-demonstrators were charged with the criminal offence of obstructing the right to freedom of assembly. Charges against one have been dismissed, while those against the remainder are still pending before the courts. 

13. Identoba also requested the initiation of a criminal investigation against those officials of the Ministry of the Interior who had been responsible for letting the counter-demonstrators

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7 The Court’s Statement of Facts in Identoba and others v. Georgia (Application no 74959/13), para 15 notes: “Shortly after the above-mentioned negotiations between the clergymen and Deputy Minister Z.shvili, the police disassembled some other cordons and removed metal fences. Those facts are confirmed by a video footage, filmed by a journalist, which further shows how police patrol officers were discussing between themselves that there had been an order from the Deputy Head of the State Security Agency to remove metal barriers separating the scene reserved for the IDAHO event – Pushkin Square – from Rustaveli Avenue where the counter-demonstrators were gathered. At the material time, the State Security Agency was a structural unit of the Ministry of the Interior under direct supervision of the Deputy Minister present at the scene.”

8 See video of this event here: https://www.youtube.com/watch?v=O2diHxhWMaE

9 Report by Nils Mužnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 20 to 25 January 2014 - para 69.

10 Under Article 161 of the Criminal Code (illicit obstruction, perpetrated with recourse to violence, threat of violence or abuse of official capacity, of the exercise of the right to peaceful demonstration).

11 For further details, see para 24 below.
pass through the police cordons and for otherwise conniving with their illegal actions. In December 2013 the Chief Public Prosecutor’s Office replied in writing that there were no signs of illegality in the actions of the police during the demonstration.

14. The response of the authorities following the violence was mixed. According to a recent report on Georgia by the European Commission against Racism and Intolerance (the ECRI Report on Georgia), “the government announced its condemnation of such violent acts. However, the statements did not call for more tolerance and respect for LGBTI persons. The Chairman of the Georgian Dream Parliamentary majority, Davit Saganelidze, even blamed the LGBTI organisations themselves for the violence, portraying them as provocateurs.” His hostility reflects the wider violence and homophobia and transphobia in Georgia. ECRI noted that “In 2013, a survey was conducted in Tbilisi on the violence that had occurred during the International Day against Homophobia in May. 50% of survey respondents said that violence was acceptable towards people who “endanger national values, such as LGBTI persons”. Nearly 60% of respondents felt that members of Orthodox clergy who participated in acts of violence against LGBTI people should not face trial. About 50% said that the rights of sexual minorities should never be respected.”

**Attempts to hold demonstrations since 2013**

15. In 2014 no IDAHOT event was held in Tbilisi. This was due to the traumatising effects of the 2013 events and concern that the safety of participants could not be ensured. However, the Orthodox Church, in a move seen as confrontational by the LGBTI community, designated May 17 as the Day of Family Integrity and Respect for Parents. Some members of the church held a street rally.

16. In 2015 Identoba again made an application to hold a demonstration on Rustaveli Avenue. However, members of the Orthodox Church had applied to hold a demonstration in the same place and at the same time. At a meeting at the Ministry of the Interior they were advised that the Orthodox Church members might withdraw their request to hold a demonstration on Rustaveli Avenue if Identoba agreed to move their demonstration elsewhere, and that, if they did so, and did not publicise the event in advance, it would be protected by the police. Identoba agreed to move their demonstration to the Round Garden outside the UN headquarters in Tbilisi, even though this place has no historic significance and is hardly ever used for political demonstrations. The event took place with police protection and without any incidents.

17. WISG also held a small unpublicised flash mob at the place where their demonstrators had been attacked in 2013. They chose not to inform the police, unsure whether they could be trusted to keep the event secret. A third NGO, LGBT Georgia, also held a small unpublicised demonstration outside the Ministry of the Interior on the day before IDAHOT.

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13 ibid. para 104.
18. In 2016 it proved impossible to hold an IDAHOT demonstration. Two factors contributed to this: heightened anti-LGBTI sentiments encouraged by a recourse to homophobic discourse by politicians and continued hostility of the Orthodox Church.\textsuperscript{15}

19. In 2014 the then Prime Minister had proposed a constitutional amendment restricting marriage to opposite-sex couples, despite the fact that same-sex marriage was already prohibited by the Civil Code and that it was not the subject of advocacy by LGBTI organisations.\textsuperscript{16} In March 2016 the ruling Georgian Dream party again put forward an amendment to this effect with the explicit support of Prime Minister Giorgi Kvirikashvili.\textsuperscript{17} In the view of LGBTI activists it was no coincidence that this took place in a general election year. In the following months the issue remained very much in the public eye, with debates on television, official public meetings on the amendments organised by the parliamentary committee in various cities and regions, and two proposals for a referendum. Several politicians adopted openly homophobic rhetoric. A number of attacks on members of the LGBTI community raised concerns that homophobic violence was increasing. Indeed, such was the overt hostility that advocates for LGBTI rights considered it too dangerous to take part in official public meetings on the amendment.\textsuperscript{18}

20. In a further bid to prevent Rustaveli Avenue from being used for an LGBTI demonstration, members of the Orthodox Church decided to hold a demonstration there on 17 May. The World Congress of Families, a key actor in the global campaign to deny LGBTI people family rights, had also decided to hold its annual conference in Tbilisi at this time and to support the demonstration.

21. Given these circumstances, and particularly the homophobic atmosphere in the run-up to the general election, LGBTI NGOs decided that holding an IDAHOT demonstration would be counter-productive. However, a group of independent activists wished to do so and met with the Ministry of the Interior. In view of the demonstration already planned by members of the Orthodox Church on Rustaveli Avenue, the Ministry of the Interior offered them an alternative location. The activists refused this, but also decided not to attempt a demonstration on Rustaveli Avenue, on the basis that the police would not be able to protect them.

\textbf{II b Protection from bias motivated violence}

22. ECRI reported that “The number of homophobic and transphobic attacks in Georgia has grown in recent years. Incidents range from attacks against individuals in public places, or even in their homes, to violence in the context of LGBT events, and threats against NGOs. Victims often refrain from reporting cases due to a very homo-/transphobic climate in

\textsuperscript{15} See paras. 19-20 below.
\textsuperscript{16} The Council of Europe Rapporteurs for the Parliamentary Assembly Monitoring Committee cited this proposal as an example of intolerant discourse by politicians aimed at limiting the rights of minorities in Georgia. See Doc. 13588 05 September 2014 - The functioning of democratic institutions in Georgia - Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) - Co-rapporteurs: Mr Michael Aastrup JENSEN, Denmark, Alliance of Liberals and Democrats for Europe, and Mr Boriss ĶILEVIČS, Latvia, Socialist Group - para 114.
\textsuperscript{17} “GD coalition agrees on constitutional block against gay marriage” - Democracy & Freedom Watch – 8 March 2016 - http://dfwatch.net/gd-coalition-agrees-on-constitutional-block-against-gay-marriage-40733 [Accessed 26 October 2016].
\textsuperscript{18} Legal Situation of LGBTI Persons in Georgia – Human Rights Education and Monitoring Centre – 2016 – pp. 68 – 69.
Georgian society, and lack of support, or even discriminatory attitudes, from the police."\(^{19}\)

After examining the situation in some detail, it concluded that “The response of the authorities to incidents of hate crime is inadequate. Hate motives are too often not taken into consideration and mob attacks on religious minorities or LGBT persons are not triggering the necessary actions by law enforcement bodies to punish perpetrators and prevent future incidents.”\(^{20}\)

23. In its *Identoba v. Georgia* judgment, the Court pointed out that the authorities had failed to launch a comprehensive inquiry into the circumstances surrounding the incident with respect to all of the applicants, inexplicably narrowing the scope of the investigation to the physical injuries inflicted on two applicants only, and that even in these two cases no significant progress had been made for more than two years.\(^{21}\) That remains the position after a further 18 months. Despite the Court’s judgment there has not been any meaningful and effective investigation into the events of 17 May 2012. As the Court stated in *Identoba v. Georgia*: “In the absence of a ... meaningful investigation, it would be difficult for the respondent State to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State’s anti-discrimination policy”.\(^{22}\)

24. The response of the Georgian criminal justice system to the mob violence on 17 May 2013 further illustrates these concerns. In September 2014 the Parliamentary Assembly Monitoring Committee rapporteurs for Georgia commented: “However, we regret that, until now, very few people have been formally charged for their role in the violence on 17 May, despite the existence of ample video recordings of the events on that day. This raises questions about the authorities’ commitment to prosecuting the instigators and perpetrators of the violence that occurred.”\(^{23}\) As already noted four individuals were eventually fined for the minor administrative offence of hooliganism, while only five others (two of whom were clergymen) were charged with the criminal offence of obstructing the right to freedom of assembly.\(^{24}\) Charges against one of the clergymen were dropped in 2013.\(^{25}\) In October 2015 the remaining four were acquitted by the Tbilisi City Court. The charges against all five individuals failed for “insufficient evidence”, despite the perpetrators reportedly being identifiable on video and photo footage of the event.\(^{26}\) Thus, despite the lapse of three years, no one has yet been adequately held to account for the outbreak of homophobic and transphobic violence on the streets of Tbilisi on 17 May 2013. It should be noted, however, that the Prosecution Service of Georgia has appealed the October 2015 acquittal to the Court of Appeals.

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\(^{19}\) The ECRI Report on Georgia – Adopted 8 December 2015 - para 53.


\(^{21}\) *Identoba and others v. Georgia* (Application no. 74959/13) – para 75.

\(^{22}\) *Identoba and others v. Georgia* (Application no 73235/12) – para 80

\(^{23}\) Doc. 13588 05 September 2014 - The functioning of democratic institutions in Georgia - Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) - Co-rapporteurs: Mr Michael Aastrup Jensen, Denmark, and Mr Boriss Cilevičs, Latvia – para 115.

\(^{24}\) Under Article 161 of the Criminal Code (illicit obstruction, perpetrated with recourse to violence, threat of violence or abuse of official capacity, of the exercise of the right to peaceful demonstration).


\(^{26}\) Amnesty International Annual Report 2015/2016 – Georgia.
25. A further concern in respect of the 2013 IDAHOT event is that, as noted in paragraph 13 above, credible evidence that some officials were complicit in allowing the counter-demonstrators to cross the police cordons was dismissed without any indication of an effective and independent investigation by the authorities.

26. In his 2014 Report on the Situation of Human Rights and Freedoms in Georgia the Public Defender (the National Human Rights Institution of Georgia) recommended in respect of LGBT persons that “Timely, effective and accountable investigation of hate crimes and other incidents motivated by hate shall be implemented”. The Parliament of Georgia accepted his report and tasked the Parliamentary Committee on Human Rights and Civil Integration with monitoring the implementation of his recommendations. However, when it came to the Committee holding meetings for this purpose with the relevant ministries and state agencies in February 2016 his recommendations addressing the rights of LGBT persons were omitted and the relevant ministries not held accountable.

III  THE ADEQUACY OF THE ACTION PLAN ON IDENTOBA v. GEORGIA

27. The Action Plan submitted by the Government of Georgia documents measures taken in recent years by the Georgian authorities to address the failings highlighted in the Identoba v. Georgia case. While these are to be welcomed as steps in the right direction, they are inadequate.

III a  Tackling homophobic and transphobic discrimination in general

28. The Action Plan notes the Court’s concern at the extent of negative attitudes towards members of the LGBTI community in Georgian society and cites the introduction of the Law on the Elimination of All Forms of Discrimination in 2014 as an important step to address this problem. The law includes sexual orientation and gender identity as prohibited grounds for discrimination and vests authority to monitor implementation with the Public Defender’s Office.

29. The Public Defender has raised serious concerns about the law’s effectiveness: “the gaps in the law causes real impediments for the Public Defender in effectively carrying out its mandate on the elimination of discrimination and protection of equality; it also hinders the victims of discrimination to effectively restore their violated rights.” The Public Defender has put forward a legislative proposal to eradicate the gaps, but no progress has been made in Parliament.

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29 10 December Report on the situation of the protection of human rights and freedoms in Georgia – 2015 – The Public Defender of Georgia – p. 3. The proposals by the Public Defender include: where a claimant wishes to apply to the Public Defender, suspending the running of the period of limitation applicable to any subsequent court action; extending the period of limitation for discrimination claims from three months to a year; removing a requirement that the Public Defender shall suspend proceedings if administrative proceedings in respect of the same alleged discrimination are ongoing; making it obligatory, rather than voluntary, for private persons to transfer materials, documents and other information and explanations related to a case to the Public Defender; making it obligatory for non-state legal entities and natural persons to respond to recommendations or proposals of the Public Defender; granting the Public Defender and any interested person with special knowledge and competence the right to make Amicus Curiae interventions in discrimination.
ECRI shared these concerns, commenting that “in spite of some legislative improvements for the protection of LGBT persons against discrimination, their enforcement mechanisms remain inadequate”. ECRI made a number of recommendations, including ensuring that private persons and organizations be under an obligation to provide necessary evidence to the Public Defender and granting the Public Defender the right to initiate court cases based on general interest without referring to a specific victim.

A further weakness in implementation of this law is that, according to the Supreme Court, there are no statistics on discrimination cases in the Georgian courts by ground of discrimination.

It is important to note that the anti-discrimination law on its own is far from sufficient to tackle the hostility to LGBTI people endemic in much of Georgian society. Full enjoyment of the right to freedom of peaceful assembly and prevention of homophobic and transphobic hate crimes will not be possible unless wider awareness-raising measures are taken. But, as the Public Defender has pointed out recently, no such measures are being taken: “The events developed in Georgia showed us that no effective measures have been taken for raising public awareness or establishing the culture of tolerance in the country.”

This echoed a comment by ECRI: “The Georgian authorities have no specific strategy to combat discrimination and intolerance against LGBT persons. Although the National Human Rights Strategy and the 2014-2016 National Action Plan include sexual orientation or gender identity, no effective measures have been implemented so far.” ECRI recommended taking steps to combat intolerance and discrimination against LGBT persons “in close cooperation with the LGBT community and Public Defender, who should receive support to establish a dedicated LGBT unit. Suitable elements for awareness raising in schools should also be developed.”

However, there also needs to be a change of behaviour by persons occupying prominent positions in public life. ECRI noted that “Hate speech against LGBT persons ranges from insults in daily life to hateful comments made by politicians, journalists or members of the Orthodox clergy.” It cited a monitoring project which identified 41 such incidents in a three month time period in 2014, including by a number of politicians.

It is not just outright hate speech that is a matter of concern. Leading politicians must also stop exploiting homophobia and transphobia for political purposes (see paragraphs 18 - 19 above) and the authorities must make public statements, in the words of the Court in the

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Ibid. para 22.

Legal Situation of LGBTI Persons in Georgia – Human Rights Education and Monitoring Center - para 1.2.2.


The ECRI Report on Georgia – Adopted 8 December 2015 - para 105.

Ibid. para 108.

Ibid. paras 35 & 36.
36. ECRI recommended a number of measures to combat hate speech, including enacting anti-hate speech legislation.\textsuperscript{39} In any event the authorities should disseminate widely amongst Members of Parliament and others holding public office the Committee of Ministers Recommendation on “hate speech”, which emphasises that such prominent persons “have a special responsibility to refrain from statements … which may reasonably be understood as hate speech…”\textsuperscript{40}

\textbf{III b \quad Securing the right to freedom of peaceful assembly}

37. The Action Plan presents a number of measures intended to secure the right to freedom of peaceful assembly. These include a national policy for the protection of freedom of assembly and association and an Order introducing mechanisms for policing demonstrations, together with details of related training programmes conducted in 2014 and 2015.

38. However, the events described in Section IIa (paras 6-14) above demonstrate that a lack of effective safeguards against violence means that LGBTI NGOs have not been able to exercise this right freely. It is clear that the general measures envisaged in the Action Plan are inadequate. An independent review is needed to determine why the authorities have been unable to offer the necessary safeguards and to develop more effective measures. These should include not only additional procedures and training, but contingency plans to mobilise riot police on a sufficient scale to ensure that the right to freedom of peaceful assembly is secured.

\textbf{III c \quad Providing protection from bias-motivated violence}

39. The Action Plan refers to a number of measures to ensure that the criminal justice system deals adequately with those responsible for bias motivated violence:
\begin{itemize}
  \item In 2012, Article 53 (General Principles of Sentencing) of the Criminal Code of Georgia was amended to introduce racial, religious, national, ethnic, homophobic or transphobic intolerance as aggravating circumstances in the commission of any criminal offence.
  \item The National Action Plan (2014 – 2016) includes use of hate crime classifications during prosecution and sentencing, the conduct of timely and meaningful investigations, training of law enforcement officials and prosecutors in investigation of hate crimes, including collection of information and differentiation of hate crimes from other offences, and the formulation of special statistics on hate crimes.\textsuperscript{41}
\end{itemize}

40. First indications on the effectiveness of these measures are not positive:
\begin{itemize}
  \item In four years there has not been a single instance in which Article 53 on aggravating circumstances has been applied to a case involving sexual orientation or gender identity.
\end{itemize}

\textsuperscript{38} Identoba and others v. Georgia (Application no. 74959/13) – para 99.
\textsuperscript{39} The ECRI Report on Georgia – Adopted 8 December 2015 - see List of Recommendations – items 4 -9.
\textsuperscript{40} Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “Hate Speech” - Appendix – Principle 1. See also Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity - Appendix, paras 6 – 8.
ECRI noted that homophobic and transphobic motive was not listed among the course components of a module on hate crime investigation included in different Police Academy training courses.

The planned measure to collect statistics on hate crimes through inclusion of a suspected bias motive in the criminal offences computer system appears not to have been implemented.

The Action Plan makes no reference to training for the judiciary on homophobic and transphobic hate crimes nor on the general application of international and national human rights law to LGBTI people. The LGBTI community lacks confidence in the judiciary, with a number of cases giving rise to concerns, not least relating to the violence committed on 17 May 2013.

There is no plan to raise awareness among the general public of the existence of criminal law provisions enabling hate crimes to be punished nor any steps taken to encourage victims to lodge complaints.

Overall, the measures proposed appear to be ad hoc, there being no evidence of a coherent, detailed plan.

ECRI concluded that the responses of the Georgian authorities to homophobic and transphobic hate incidents “cannot be considered adequate”, while the Public Defender finds that “timely and effective investigation of [homophobic] hate crimes, remain[s] a challenge.”

ECRI made a number of recommendations for improving the response to hate crimes:

- Close monitoring of whether the police investigate potential racist and homophobic transphobic motive; and that racist and homophobic and transphobic motive are considered from the outset of judicial proceedings;
- The scaling up of the training activities for judiciary and law enforcement officials on investigating incidents of hate crime, and the inclusion of homo/transphobic hate crime in the training;
- The setting up of a specialised unit within the police to deal specifically with racist and homophobic and transphobic hate crime;
- Informing the general public of the existence of criminal law provisions enabling racially motivated acts, acts of religious intolerance and homophobic and transphobic acts to be punished; and to encourage victims to lodge complaints concerning such acts;
- Initiating awareness raising programmes in schools and universities to combat racist and homophobic and transphobic hatred.

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41. ECRI Report on Georgia – Adopted 8 December 2015 - para 64.
42. Ibid. page 9.
43. To these should be added the need for the police to take measures to build the trust of the LGBTI community through engagement with the community and through the appointment of police officers specifically charged with community relations.

IV RECOMMENDATIONS

44. We respectfully propose to the Committee of Ministers that it requests the Georgian authorities to develop and implement comprehensive and coherent plans for work as follows:

**Tackling homophobic and transphobic discrimination:**
- Work with the Public Defender and the LGBTI community to develop a programme of awareness raising activities designed to combat intolerance and discrimination against LGBTI persons, including targeting the general public, public officials, and the education system;
- Disseminate among Members of Parliament, public authorities, public institutions and officials at all levels the key principles set out in the Committee of Ministers Recommendation on “hate speech”, making particular reference to homophobic and transphobic speech.
- Implement the proposals made by the Public Defender and ECRI to strengthen the enforcement mechanisms of the Law on the Elimination of All Forms of Discrimination;

**Securing the right to freedom of assembly:**
- Conduct an independent review of the handling by the authorities of the requests by members of the LGBTI community in 2015 and 2016 to conduct demonstrations on IDAHOT, with a view to establishing why the authorities were unable to offer the necessary safeguards for these demonstrations to take place, and identifying and implementing the actions needed to ensure that these demonstrations can take place in future.

**Providing protection from bias-motivated violence:**
- Prepare a comprehensive plan to tackle homophobic and transphobic hate crimes, and ensure thorough investigation of those that do take place, including any suspected motive on the grounds of sexual orientation and gender identity. Such a plan must include ECRI’s recommendations on this question, together with specific measures to build the trust and engagement of the LGBTI community.

45. Lastly, we respectfully propose to the Committee of Ministers that it request the Georgian authorities to conduct full and effective investigations into the attacks on the 2012 and 2013 IDAHOT demonstrations and hold any perpetrators accountable. Investigations should cover reports that police officers helped violent counter-demonstrators.

16 November 2016
Ministry of Justice of Georgia

Ms Corinne AMAT
Head of Division
Department for the Execution of Judgments
of the European Court of Human Rights

Tbilisi, 24 November 2016

Subject: Case Identoba and Others v. Georgia (Application no. 73235/12) – Judgment of 12/08/2015, final on 12/08/2015

Dear Madam,

With reference to your letter dated 17 November 2016 (reference: DGI/CA/FD/MLO), the Government of Georgia would like to present their brief comments on the communication received from Identoba, the Women’s Initiatives Support Group (WISG), Amnesty International and ILGA-Europe in respect of the individual and general measures in the above case.

Initially, the Government underline that the action plan regarding the aforesaid case was submitted by the Government on 26 April 2016, since then the updated action plan was presented on 15 November 2016 which provides further information regarding the measures adopted by the Government for effective execution of the judgment. Notably, the authors’ communication relies on the previous version of action plan and omits some of the crucial information furnished in an updated plan, among others, the information on investigation, amendment to Article 53 of the Criminal Code of Georgia and its implementation, the statistics provided by the Supreme Court/Prosecutor’s Office of Georgia, the activities foreseen to combat discrimination based on sexual orientation and gender identity under the new Human Rights Action Plan (2016-2017), etc.¹

In particular, in response to the authors’ allegations regarding the ineffectiveness of the investigation into the events of IDAHOT 2012, the Government emphasize that as noted in an updated action plan of 15 November 2016, with a view of carrying out a thorough, prompt, independent and effective investigation into the incidents taking place during the demonstration of 2012, the investigation was renewed on the basis of the judgment of the European Court and legal qualification of the case has changed under Article 239, paragraph 2, subparagraph “a” of Criminal Code (“hooliganism committed by a group with the preliminary agreement”). The investigative authorities have already interrogated several witnesses and carried out some other important investigative measures. New investigation has been implemented in compliance with the principles enshrined in the Convention and further developed by the Court in its case-law, as well as with the requirements set out in the recommendations of the Committee of Ministers. The updated information regarding the outcome of the investigation will be communicated to the Committee approximately in a month.

As to the investigation of the events of IDAHOT 2013, as authors note in their communication this event is subject of two cases pending at the European Court Identoba and others v. Georgia (Application no. 74959/13) and Women’s Initiatives Supporting Group v. Georgia (Application no. 73204/13). Subsequently, the Government has submitted thorough information regarding effectiveness of the investigation surrounding the aforesaid demonstration in their observations to the Court. Since the aforesaid

¹ Action Plan of the Government of Georgia of 15 November 2016 concerning the case of Identoba and Others against Georgia (Application No. 73235/12), available at: https://search.eue.int/cm/Pages/result_details.aspx?ObjectID=0900001680666dc33
event of 2013 is not a subject matter of the present case, the Government will not dwell on the issue for the purpose of execution of the present case.

In respect of other comments of the communication, it should be noted that despite welcoming the adoption of the Law on the Elimination of All Forms of Discrimination, the authors draw attention to the concerns raised by the Public Defender regarding the effectiveness of the law. In that regard, it should be noted that according to the 2016 Special Report of the Public Defender on Combating and Preventing Discrimination and the Situation of Equality, on 11 February 2015, the Public Defender approached the Parliament of Georgia with a legislative proposal regarding the procedural changes to the Organic Law on Public Defender of Georgia, the Law of Georgia on the Elimination of all Forms of Discrimination, the Civil Procedure Code of Georgia, the Labor Code of Georgia and the Law on Civil Service.

The legislative amendments proposed by the Public Defender involve imposing the obligation on private persons and toughening the obligation of public entities to provide information to the Public Defender, suspension of proceedings by Public Defender in case of administrative proceedings, establishment of enforcement mechanism against private persons, extending the term for filing a claim concerning discrimination with a court, extending the term for filing a claim concerning labor disputes with a court, providing definitions of indicated notions in the law.

Subsequent to the revision, the parliamentary committees on the protection of human rights and civil integration and on legal issues supported the legislative proposal, it will be considered at a plenary session of the newly elected parliament.²

As to the raising public awareness and establishing the culture of tolerance in the country, it should be underscored that the Government of Georgia provided the detailed information in their Comments on the ECRI report on Georgia (fifth monitoring cycle) 2016. In addition, the Government underline that Anti-discrimination law obliges the Public Defender to ensure the awareness raising of the public on the matters of equality. According to the aforementioned special report of the Public Defender, to this end, during the reporting period, the representatives of the Equality Department have conducted the trainings for the schoolchildren, teachers, prosecutors and the parents of the children with disabilities during 2015-2016.³

Furthermore, from 1 July 2016 to 30 September 2016 in 33 villages of Georgia within the project “Strengthening Civil Society” free trainings were conducted by the Training Center of Justice of the Ministry of Justice of Georgia. One of the main aims of the project was to raise legal awareness among people living in villages. Trainings covered the issues of, among others, discrimination and justice and Human Rights. In total 5,410 people (from 18 to 65 years old) has undergone the mentioned free training courses.⁴

In addition to the information on trainings presented in their action plan, the Government stress that several trainings were held between 2015-2016 for judges and other court officials in respect of the prohibition of discrimination. In particular, on July 2-3, 2015, with support of UN Office of the High Commissioner for Human Rights (OHCHR) the High School of Justice organized the training for judges on International Standards of Human Rights Protection covering, among others, the issues of Prohibition of Discrimination. In total 15 Judges undertook the training. Moreover, on 15-16 December 2015 the training “Georgian and European law standards on prohibition of discrimination” was conducted for judges and other court officials. Furthermore, on 16-17 and 18-19 May 2016, with the support of the Council of Europe (COE), training on “Prohibition of Discrimination – Domestic Law and International Standards” was conducted for judges and other court officials at the High School of Justice. Such course has been completed by 21 participants.⁵

The communication received from Identioba, the Women’s Initiatives Support Group (WISG), Amnesty International and ILGA-Europe to a great extent relies on the ECRI report on Georgia (fifth monitoring cycle). While the Government’s viewpoints along with the report are published on 1 March

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³ Ibid. p. 38
⁴ Available at: http://www.tj.gov.ge/news/289/
⁵ Information available at the official web-site of the High School of Justice: http://www.hsoj.ge/eng/home/
2016 on ECRI’s official website, it has to be emphasized that ECRI’s monitoring takes place in 5-year cycles and the recommendations should be responded before the next monitoring cycle in 2020. As noted above a number of activities to combat discrimination based on sexual orientation and gender identity are already foreseen under the new Human Rights Action Plan (2016-2017).

Ultimately, it should be underscored that the progress mentioned in the updated action plan – amendment to Article 53 of the Criminal Code of Georgia, adoption of 2014-2020 National Human Rights Strategy/Human Rights Action Plans and the Law on the Elimination of All Forms of Discrimination – has been positively assessed by the Human Rights Committee - “Concluding observations on the fourth periodic report of Georgia” dated 19 August 2014⁹, in ECRI report on Georgia (fifth monitoring cycle) adopted on 8 December 2015⁷ and by the ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, Second Opinion on Georgia adopted on 17 June 2015.⁸

The Government of Georgia reiterate that it will adopt further individual and general measures in order to fully comply with their obligations under Article 46 (1) of the European Convention in the present case.

Sincerely,

Beka Dramashvili
Government Agent of Georgia to the European Court of Human Rights

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