

**Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning  
implementation of *Identoba & Others v. Georgia***

**By**

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**Introduction**

1. The case of *Identoba and others v. Georgia* (Application no. 73235/12) (the *Identoba* case) concerns the failure of the Georgian authorities to provide adequate protection against inhuman and degrading treatment inflicted by private individuals on LGBT activists who were attacked during a peaceful demonstration in May 2012 (substantive violations of Article 3 in conjunction with Article 14), as well to conduct any effective investigation into these events (procedural violations of Article 3 in conjunction with Article 14). In addition, the Court held that the authorities had breached their obligation to ensure that the march could take place peacefully by failing sufficiently to contain homophobic and violent counter-demonstrators (violation of Article 11 taken in conjunction with Article 14).
2. This submission is communicated by the Human Rights Education and Monitoring Center (EMC), the Women’s Initiatives Support Group (WISG), Identoba and ILGA-Europe<sup>1</sup> as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments for consideration at the meeting CM-DH 1318th (June 2018). It responds to the Action Report of the Government of Georgia submitted on 16 April 2018<sup>2</sup> (the Government Action Report). It addresses matters arising in relation to general measures only.
3. A group of civil society organisations communicated a Rule 9.2 submission on 16 November 2016 (the 2016 CSO submission).<sup>3</sup>

**Findings**

4. The Government Action Report calls for the closure of supervision of the cases of the *Identoba* Group. While this call is made specifically in the context of the individual measures, it would appear to be intended to apply also to the general measures.<sup>4</sup>
5. While it is recognised that the Government of Georgia has begun implementing a number of important measures addressing issues raised by the *Identoba* judgment, this submission presents evidence demonstrating that further measures are needed, and that those which

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<sup>1</sup> EMC is a human rights organization working on equality policy, social rights and monitoring of the institutional reforms of the state, ILGA Europe is the European Region of the International, Lesbian, Gay, Bisexual, Trans and Intersex Association, an umbrella organisation for the global LGBTI movement. WISG is a feminist organization working on LBT women. Identoba is a LGBT community organization.

<sup>2</sup> DH-DD (2018) 425.

<sup>3</sup> DH-DD (2016) 1303.

<sup>4</sup> DH-DD (2018) 425 – paras 57 and 58.

are under way will require much more time to take full effect. Accordingly, closure of the *Identoba* case would certainly not be appropriate at this time. Key points are as follows:

- Homophobic and transphobic attitudes remain widespread in society (paras 6, 8) and present in governmental institutions relevant to implementation of the *Identoba* judgment (paras 16, 17, 30, 31, 40);
- Measures implemented under the national policy to combat discrimination and intolerance are incomplete and show little sign so far of bringing about the wider changes in society necessary if the danger of homophobic and transphobic hate crime is to be reduced to acceptable levels (paras 6 to 11).
- Work on improving the investigation and prosecution of hate crime and discrimination cases has only begun recently. The failure of the criminal justice system to bring to justice the perpetrators of the violence against the demonstrations marking the International Day Against Homophobia and Transphobia (IDAHOT) in 2012 and 2013 (paras 12 to 17 ) is a reminder of the scale of the problem. Much more time and evidence is needed to demonstrate the effectiveness of the measures, as are improved systems for collecting hate crime statistics across the criminal justice system (paras 18 to 23 ).
- The lack of effective investigations into hate crimes or incidents committed by law enforcement officials remains a serious concern (paras 25 to 31).
- Relevant training programmes for law-enforcement officers, prosecutors and members of the judiciary have commenced, but information presented in this submission shows that concerns relevant to the *Identoba* case need to be addressed in more depth, that the programme for training of judges is inadequate, and that, in view of entrenched negative attitudes, training encouraging attitudes of tolerance and non-discrimination will remain necessary for a long time to come (paras 32 to 35).
- Exercise of the right to freedom of assembly by LGBT persons remains limited and highly contested in Georgian society (paras 36 to 40). The 2017 IDAHOT demonstration took place, but under the most constrained and tightly protected of circumstances.

**a. National policy to combat discrimination and intolerance**

6. The measures referred to in the Government Action Report are to be welcomed, but still fall far short of what is needed. In his most recent annual report, that for the year 2016, the Public Defender summarised the position regarding discrimination against LGBT people as follows:

*“Despite the fact that during the last decade a number of legal amendments have been adopted in the country, the practical implementation of the relevant laws is insufficient and ineffective. Homophobic attitudes remain prevalent...The above factors are reflected in the diminished legal status of the LGBTI community. LGBTI persons in Georgia are victims of systemic abuse, harassment, persecution, intolerance, and discrimination in all aspects of life. Violence and discrimination against them often occurs within the family, in public spaces, and in various institutions and is manifested in physical and psychological abuse, marginalization, bullying, and social exclusion. Unfortunately, LGBTI persons are preventing [sic] from developing an agenda for promoting their rights and legal status.”<sup>5</sup>*

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<sup>5</sup> Report of the Public Defender’s Office of Georgia on Human Rights situation, 2016, page 399, see: <http://www.ombudsman.ge/uploads/other/4/4882.pdf>

### The Law of Georgia on the Elimination of All Forms of Discrimination

7. The shortcomings in this legislation noted in the 2016 CSO submission have not been remedied. In particular, a legislative proposal initiated by the Public Defender in 2015<sup>6</sup> has not been adopted by the Georgian Parliament, so that the effective institutional and procedural guarantees of the equality mechanisms proposed by the Public Defender are still lacking.<sup>7</sup>
8. In 2016 - 2017 the Public Defender was notified of 201 cases of possible discrimination. Only 11% of these cases concerned SOGI discrimination.<sup>8</sup> The Public Defender's special report explained the unwillingness of LGBT persons to take action against discrimination in the following terms:  
  
*"Representatives of LGBT community often refrain from publicising alleged discriminatory incidents that take place against them. Unfortunately, negative attitudes towards representatives of LGBT community are still firmly rooted in the society that prevents them from exercising a number of their rights and incites intolerance and violence against this community."*<sup>9</sup>
9. It is reasonable to conclude from the low level of complaints that information on measures for tackling discrimination is not disseminated adequately and that weaknesses in the Public Defender's powers mean that his Office is not seen by victims as an effective mechanism for fighting discrimination.
10. The Government Action Report notes that in 2017 the city and appeal courts "dealt with" 12 civil and administrative cases of discrimination, none of which, it appears, were on the grounds of sexual orientation or gender identity.<sup>10</sup>

### The National Human Rights Strategy and the accompanying action plans (2014 – 15, 2016 – 2017, 2018 – 20)

11. As noted in the 2016 CSO submission, no effective measures to combat sexual orientation or gender identity (SOGI) discrimination were implemented under the 2014 – 2015 action plan.<sup>11</sup> The 2016 – 2017 action plan contained only five main tasks addressing directly SOGI discrimination, copied from the previous action plan. None of them were fully implemented.<sup>12</sup> A recent report by three civil society organisations on the 2016 – 2017 action plan expressed concern that the criteria proposed for quantifying the effectiveness of

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<sup>6</sup> Report of the Public Defender's Office of Georgia on Human Rights situation, 2017, page 124, see: <http://ombudsman.ge/uploads/other/5/5139.pdf>

<sup>7</sup> DH-DD (2016) 1303 – para 29

<sup>8</sup> The report of the Public Defender's Office of Georgia, Special Report On The Fight Against Discrimination, Its Prevention, And The Situation Of Equality, September, 2017, page 7, see: <http://www.ombudsman.ge/uploads/other/4/4826.pdf>

<sup>9</sup> ibid, pg. 21

<sup>10</sup> DH-DD (2018) 425, para 47.

<sup>11</sup> DH-DD (2016) 1303 – paras 31 - 32.

<sup>12</sup> The Human Rights Action Plan of the Government of Georgia for 2016-2017, section 13.2, focuses on 5 main tasks: to introduce the legislative guarantees ensuring prohibition of discrimination – no implementation; preparation of the anti-discrimination policy and ensuring its effective implementation – no implementation; effective implementation of legislative norms concerning hate crimes – partially implemented; effective investigation of the domestic violence cases against LGBT persons – no implementation; ensuring the availability of shelters for victims of domestic violence – partially implemented.

the planned measures were not such as to allow for direct assessment of their impact on the situation of LGBT persons.<sup>13</sup> The “gender identity and equality” chapter of the action plan for 2018-2020 is still under preparation<sup>14</sup>, so that at present it cannot be assessed.

**b. Investigation of hate crime and discrimination cases**

Failures of the criminal justice system in relation to the demonstrations to mark the IDAHOT in 2012 and 2013

12. The Government Action Report’s section on Individual Measures records the lamentable failure of the authorities to bring to justice the alleged perpetrators of violence in the *Identoba* case. However, it makes no mention of the even more disturbing failure of the Georgian criminal justice system concerning the violence at the IDAHOT demonstration the following year.
13. The 2016 CSO submission sets out in detail the mob violence and multiple failures by the law enforcement authorities that led to the break-up of the 2013 IDAHOT demonstration, with injuries to numerous persons.<sup>15</sup> It noted that, notwithstanding the scale of the violence at the 2013 IDAHOT demonstration, in the end just four individuals were charged with the criminal offence of obstructing the right to freedom of assembly. It further noted that in 2015 they were acquitted by the Tbilisi City Court on account of “insufficient evidence”, despite the perpetrators reportedly being identifiable on video and photo footage of the event.<sup>16</sup>
14. In October 2015 the Prosecution Service appealed the acquittal to the Court of Appeals.<sup>17</sup> It is a matter of serious concern that in September 2017 the Court of Appeals was unable to over-turn the decision of the Tbilisi City Court.
15. In 2014 the Council of Europe Parliamentary Assembly’s Monitoring Committee rapporteurs had expressed concern at the lack of action by the authorities against the perpetrators, noting “the existence of ample video recordings of the events on that day” and questioning “the authorities’ commitment to prosecuting the instigators and perpetrators of the violence that occurred.”<sup>18</sup>
16. Concerns over the lack of commitment by the authorities have continued. The proceedings before the Court of Appeals were much delayed by the behaviour of the Prosecution Service. Monitoring of the proceedings by EMC and WISG showed that the Prosecutor’s Office was not able to attend most of the hearings, resulting in delays to the proceedings of almost one and a half years.

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<sup>13</sup> GYLA, EMC, WISG, Assessment of the Government Human Rights Action Plan, 2018, Page 93

<sup>14</sup> The Government Decree N182, April 17, 2018 on the approval of the Government’s Human Rights Action Plan for 2018-2020 years, chapter 15. See only in Georgian: <https://matsne.gov.ge/ka/document/view/4153833>

<sup>15</sup> DH-DD (2016) 1303 – paras. 6 - 14

<sup>16</sup> See DH-DD(2016)1303, paras. 12 and 24.

<sup>17</sup> EMC submitted an amicus curiae brief - Available only in Georgian, see: <https://emc.org.ge/ka/products/sasamartlo-megobris-mosazreba-amicus-curiae-17-maisis-sakmestan-dakavshirebit>

<sup>18</sup> 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.

17. A further event has added to these concerns: In December 2015 the Tbilisi City Court ruled that the MIA was obliged to pay just satisfaction to representatives of WISG due to its failure to protect their members from violence during the 2013 IDAHOT demonstration.<sup>19</sup> In a move which implied a refusal to acknowledge its share of responsibility for these events and further undermined the confidence of the LGBT community in the MIA, it appealed the city court's decision successively (but unsuccessfully) to the Appeal and Supreme Courts of Georgia.<sup>20</sup>

The Government Action Report's commentary on measures being taken to improve investigation of hate crime and discrimination cases

18. The Government Action Report draws attention to the high priority given to the fight against hate crime by the Prosecutor's Office, and to progress in a number of areas, including a special questionnaire for prosecutors on hate crimes and the prosecution for the first time of hate crimes based on gender identity.

19. However, the actual numbers of persons charged with homo/transphobic hate crimes in 2017 remains low. It increased from 4 persons charged in 2016 with sexual orientation related offences<sup>21</sup> to 8 in 2017<sup>22</sup> (of which 4 were sexual orientation related and 4 gender identity related). The number of 8 persons charged in 2017 compares with a total of 49 cases "examined". This major difference could be an indication that procedures and/or practices for identifying motivation and collecting evidence are not adequate.<sup>23</sup>

20. The Government Action Report gives examples of five recent cases which it argues demonstrate the effectiveness of hate crime investigations by the law enforcement authorities.<sup>24</sup> However, two of the cases do not support the claim.

- In the first case listed, that of the murder of a transgender person by L.K., the Prosecutor's Office failed to identify the transphobic motive, despite the wanton brutality of the act, and the fact – recognised in the case documentation – that L.K. had, on the same day, used derogatory language against another transgender woman, and indeed, had bitten her. As a consequence, the Supreme Court was not able to use the "aggravated circumstances" provisions of Article 53<sup>1</sup> when determining the sentence.<sup>25</sup>
- In the third case listed, the Prosecutor's Office also failed to identify the transphobic motive because the victim and offender were known to each other. Thus, again, Article 53<sup>1</sup> could not be invoked.<sup>26 27</sup>

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<sup>19</sup> Case No3/202-14 of 11 December 2015

<sup>20</sup> These Courts upheld the judgment of the Tbilisi City Court – see Appeal Court's order of 23th of February 2017, Supreme Court order of 14<sup>th</sup> of September 2017

<sup>21</sup> Official Response letter from the Prosecutor Office of Georgia N13/63344, 03.10.2016

<sup>22</sup> This is presumably the basis for the statement in para 42 of the Government Action Report that "it should be underscored that the number of the persons who were held criminally liable for homo/transphobic crimes in 2016, has doubled in 2017."

<sup>23</sup> The Government Action Report – Paras 43 – 44. There is uncertainty around the data – in para 44, Government Action Report speaks of a further nine persons charged "in terms of other motive", of which it then goes on to "presumably" ascribe 6 to gender identity and one to sexual orientation.

<sup>24</sup> The Government Action Report – para 45

<sup>25</sup> See: [http://pog.gov.ge/eng/news?info\\_id=1102](http://pog.gov.ge/eng/news?info_id=1102) also see: <http://admin.interpressnews.ge/en/justice/83933-prosecutors-office-releases-statement-on-the-verdict-delivered-over-the-fact-of-violence-against-bianka-shigurova-and-murder-of-sabi-beriani.html?ar=A>

<sup>26</sup> See: <http://oc-media.org/murderer-of-transgender-woman-sentenced-to-13-years-in-jail/> Also see only in Georgian: <https://emc.org.ge/ka/products/pirveli-instantsiis-sasamartlos-gadatsqvetileba-transgenderi-kalis-zizi-shegiladzis-mkvlelobis-sakmeze>

21. The recording of information on hate crimes by the Prosecutor's Office is much to be welcomed, even if it only commenced in 2016. The Ministry of the Interior (MIA) has not followed this example. In December 2014 it issued a decree directing law enforcement officials to indicate – where appropriate – the possible existence of a bias motive based on one of the discrimination grounds in the legislation in the relevant field of the case management system. Regrettably, the instruction was not put into practice, on the basis that “article 53<sup>1</sup> belongs to the general part of the Criminal Code, and sets the prerequisites for imposing criminal sanctions, thus, this circumstance is taken into account by court when the sanction is imposed and therefore it would be not advisable to include it in the electronic case management system”.<sup>28</sup> Following its formation in January 2018 the Human Rights Department of the MIA began manual collection of the data, however the lack of a unified data collection system and methodology hinders the effective monitoring of hate crime cases.
22. It is also noteworthy that there is a lack of information on sentencing, since the national courts of Georgia do not have a coherent and comprehensive approach to collecting the data, nor to the publication of statistics. Indeed, the Tbilisi city court provides no information on sentencing for hate crimes based on SOGI.<sup>29</sup> This is part of a wider problem: according to the Public Defender, access to court decisions/judgments remains a challenge for the general public and CSOs, because of inadequate systems and insufficient human resources<sup>30</sup>.
23. Despite the positive steps taken towards the prosecution of hate crimes, and the collection of data by the Prosecutor's Office, the number of cases documented by CSOs suggest strongly that more action is needed. For example, EMC was involved in criminal proceedings on 8 cases<sup>31</sup> related to hate crimes against LGBT persons during 2016-2017. WISG documented 30 such cases during 2016. During 2017 WISG worked on 48 cases involving violations of the human rights of LGBT persons, the majority of which were hate crime cases.<sup>32</sup>
24. The establishment of the Human Rights Department in the MIA in January 2018 is very much to be welcomed.<sup>33</sup> However, it has a very much wider remit than the unit proposed by ECRI in its 5<sup>th</sup> monitoring cycle<sup>34</sup>, monitoring not only all forms of hate crime, but also domestic violence, violence against women, human trafficking, and crimes committed by/against minors.<sup>35</sup> It is a centralised, coordinating body, giving rise to concerns that it may not, of itself, be sufficient to address problems at the local level, nor, for example, detailed issues arising in the investigatory process.

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<sup>27</sup> Intersectional Discrimination and LGBTI people – litigation Report, WISG, 2018 page 12-13

<sup>28</sup> Response letter from Georgian Ministry of Internal Affairs N1189435, 03.06.2015

<sup>29</sup> Received letter from the Tbilisi City Court, No1-01121/10442, 25.04.2018

<sup>30</sup> Report of the Public Defender's Office of Georgia on Human Rights situation, 2017, page 174-175, see: <http://ombudsman.ge/uploads/other/5/5139.pdf>

<sup>31</sup> EMC is working only on strategic cases.

<sup>32</sup> Intersectional Discrimination and LGBTI people – Litigation Report, WISG, 2018, page 33

<sup>33</sup> DH-DD(2018)425 para 46.

<sup>34</sup> ECRI REPORT ON GEORGIA (fifth monitoring cycle) Adopted on 8 December 2015 Published on 1 March 2016, Para. 68

<sup>35</sup> Order of the Minister of MiA N1 of January 12, 2018, see: <https://matsne.gov.ge/ka/document/view/3999709>

**c. Lack of effective investigation of hate crimes or incidents committed by law enforcement officials and secondary victimization**

25. It is a matter of concern that the authorities appear to have been reluctant to investigate cases against police officers. In his report for 2016, the Public Defender commented that:

*“In a number of cases studied by the Office of the Public Defender, representatives of the LGBTI community referenced acts of alleged misconduct by police officers. In many cases that included humiliating treatment, homophobic attitudes, verbal and physical abuse, and indifference. In the applications indicating abuse of power by representatives of the police, the Public Defender’s Office has appealed to the Prosecutor’s Office to respond appropriately.”<sup>36</sup>*

26. The Public Defender considered it necessary to repeat his concerns in his 2017 report:

*“In the cases studies by [the Public Defender’s Office] LGBT+ groups report violence and homo/transphobic attitudes [by police officers] and ineffective measures taken against crimes committed against them. In many cases applicants are reluctant to continue proceedings based on fear and a lack of the trust in law enforcement officials and the General Inspectorate [of the MIA], as they don’t believe that those institutions will investigate cases objectively. In order to avoid impunity it is important to use legislative measures to punish those perpetrators.”<sup>37</sup>*

27. A case which illustrates these concerns involves the executive director of the Equality Movement, Levan Berianidze, and a queer activist, Tornike Kusiani. On 25 August 2017, they were subjected to violent attack by third parties motivated by homophobia and transphobia.<sup>38</sup> The victims allege that their subsequent treatment by law enforcement officers included the following:

- In spite of witnessing the criminal incident, officers nearby did not react to their request for help and even prevented them from calling other police officers.
- They arbitrarily detained them and used obvious homophobic language towards them.<sup>39</sup>
- They did not explain their procedural rights, nor the reason of their detention, and did not permit them to use the phone.
- They committed violence against them during their transfer to police headquarters.
- During physical inspection in the police headquarters, the officers demanded that the detainees strip and verbally abused them.

28. They also allege that the behaviour of the doctor who inspected them during detention fell below acceptable standards, in that he did not properly evaluate the injuries inflicted on L. Berianidze, nor did he document them.<sup>40</sup>

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<sup>36</sup> Report of the Public Defender’s Office of Georgia on Human Rights situation, 2016, Page 401, see: <http://ombudsman.ge/uploads/other/4/4882.pdf>

<sup>37</sup> Report of the Public Defender’s Office of Georgia on Human Rights situation, 2017, Page 148, see: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

<sup>38</sup> Amnesty International Report 2017/18, The State of the World Human Rights, page 173

<sup>39</sup> OC Media, Queer rights activists ‘abused by police’ in Georgia, see: <http://oc-media.org/queer-rights-activists-abused-by-police-in-georgia/>

29. The police officers responsible for the alleged abuse have not been identified. Moreover, their victims have not been granted victim status, making it difficult for EMC (as a legal representative of the victims) to monitor the investigation process, if indeed any is taking place.
30. The apparent failure of the authorities to take seriously this allegation of abuse by police officers illustrates wider concerns over the reluctance of the authorities to investigate and punish abusive behaviour by police officers, particularly where LGBT people are involved. Such human rights violations are rarely subjected to investigation by the General Inspectorate of the MIA.
31. The Public Defender reported that *“In 2017 there were 21 reports to the GI of the MIA about possible misconduct and crimes committed by law enforcement officers against LGBT people. However, in 9 cases no violation was found, 8 cases were transferred to another institution, 1 case was transferred to the Prosecutor’s Office, and in 2 cases the investigation is still ongoing”*.<sup>41</sup>

**d. Training**

32. It is to be welcomed that the authorities are now conducting training on hate crimes for law enforcement officers, prosecutors and judges. However, recent experience by EMC shows that this training is but a beginning. In particular, during 2017 EMC organized 2-day training sessions on SOGI-related hate crimes separately for staff of the Prosecutor’s Office, the MIA and the Police Academy of the MIA. Regarding the prosecutors, EMC’s training revealed that even though they are better equipped with the knowledge to identify a hate motive, they still lack sensitivity to and understanding of the nature of hate crimes against LGBT persons. Regarding the instructors at the police academy of the MIA, the situation was much worse: they had no basic information about hate crimes, they were reluctant to learn about SOGI issues and the rights of LGBT persons, while insensitive and somewhat discriminatory attitudes were evident even during the training. Representative of the MIA (including patrol officers and analytic staff) had poor knowledge of the issues, but were open to new information.
33. The Government Action Report indicates that the MIA’s Academy envisages establishing a discrimination module<sup>42</sup>. According to the Academy’s plans, this should have been developed in 2017, with training starting in 2018<sup>43</sup>. However, the module has not yet been developed, indicating delays in the programme. Moreover, the Academy’s action plan gives no indication as to exactly what issues will be covered nor who will be involved in the preparation process.<sup>44</sup>

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<sup>40</sup> Non-Governmental Organizations Respond to the Beating of Members of "Equality Movement" by the Police, 26 August 2017, see: <https://emc.org.ge/en/products/arasamtavrobo-organizatsiebi-politsiis-mier-tanastorobis-modzraobis-aktivistebis-tsemis-fakts-ekhmaurebian>

<sup>41</sup> Report of the Public Defender’s Office of Georgia on Human Rights situation, 2017, Page 149, see: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

<sup>42</sup> DH-DD(2018)425, para. 50

<sup>43</sup> See: <http://policeacademy.gov.ge/en/useful-information/strategies-concepts-and-action-plans>

<sup>44</sup> *ibid*

34. The Government Action Report indicates that the issue of discrimination is also covered by the training programme for Patrol-Inspectors and District Inspectors.<sup>45</sup> In fact the training programme for District Inspectors addresses only a broad understanding of discrimination. Furthermore, hate crime and motive identification issues are covered only by a two-hour session<sup>46</sup>. Additionally, the domestic violence chapter does not cover the identification of motive in domestic violence cases.<sup>47</sup> The training programme for patrol-inspectors is even weaker: it does not cover hate crimes separately (covering only “honour crimes” and gender based violence)<sup>48</sup>, while discrimination-related issues are covered only in general terms under a four-hour session on “Gender Equality in Georgia”.<sup>49</sup>
35. So far as the judiciary are concerned, according to a report of The High School of Justice<sup>50</sup>, in 2017 a curriculum for training on “effective adjudication of hate crime cases” was put in place. However, during 2017 judges attended only one training on hate-motivated crimes and one training on the issue of elimination of all forms of discrimination. A “training of trainers” hate crimes course was also held, but only 4 participants attended.<sup>51</sup> This cannot be seen as sufficient as a recent report shows that awareness and sensitivity of judges on discrimination-related topics is poor.<sup>52</sup>

**e. Exercise of the right to freedom of assembly**

The 2017 IDAHOT demonstration

36. The Government Action Report comments only briefly on the freedom of assembly aspects of the *Identoba* case, noting that LGBT activists were able to mark the 2017 IDAHOT thanks to “unprecedented safety measures undertaken by the government”.<sup>53</sup> While the protection provided by the authorities is to be welcomed, the event was subject to significant restrictions:
- The wish of the organizers to hold the event outside the Parliament building on Rustaveli Avenue was refused on the grounds that it was a dangerous and geographically difficult place to protect. An alternative location in front of a nearby government administrative building was eventually agreed.
  - All entrances to the assembly area were closed by a mass of police officers, and only individuals identified as participants were allowed to enter.<sup>54</sup>
  - The event was subject to major restrictions, including the timing and duration of the assembly - it was held at 10.00 in the morning, for just one hour, at one location.<sup>55</sup>

<sup>45</sup> DH-DD(2018)425, para. 50

<sup>46</sup> Special Educational Training Programme for District Inspectors, 2018, Section 10/3, see: <http://policeacademy.gov.ge/uploads/docs/profedu/programs/basic/2274251.pdf>

<sup>47</sup> Ibid, Section 9

<sup>48</sup> Special Educational Training Programme for Patrol Inspectors, 2017, Section 3/2, see: <http://policeacademy.gov.ge/uploads/docs/profedu/programs/basic/506.pdf>

<sup>49</sup> Ibid, section 3

<sup>50</sup> Statistical Data of the Trainings Implemented by the High School of Justice throughout 2017, see: [http://www.hsoj.ge/uploads/2017\\_tslis\\_statistika.pdf](http://www.hsoj.ge/uploads/2017_tslis_statistika.pdf)

<sup>51</sup> ibid

<sup>52</sup> Annual report of the Coalition for Equality, 2017, page 9-10, see: [https://emc.org.ge/uploads/products/pdf/The\\_Right\\_to\\_Non-discrimination\\_in\\_Practice\\_for\\_Various\\_Groups\\_in\\_Georgia.pdf](https://emc.org.ge/uploads/products/pdf/The_Right_to_Non-discrimination_in_Practice_for_Various_Groups_in_Georgia.pdf)

<sup>53</sup> DH-DD (2018) 425 – para. 41.

<sup>54</sup> OC.media, Queer rights activists mark 17 May in Tbilisi under heavy police presence; Church takes to streets, see: <http://oc-media.org/queers-in-tbilisi-mark-17-may-under-heavy-police-presence-church-takes-to-streets/>

37. It was a matter of concern that representatives of the MIA tried to control the content of the event, possible messaging and even the usage of the LGBT flag.<sup>56</sup>
38. The security measures needed to protect the event show how limited is the enjoyment by the LGBT community of the right to freedom of assembly and how dangerous is the environment in which they live. Assemblies such as this can hardly be assessed as evidence that LGBT people in Georgia enjoy full and free access to the right to freedom of assembly.<sup>57</sup>
39. A recent survey shows that there is still widespread opposition to the exercise of this right by LGBT persons. According to a study by WISG the statement “LGBTI rallies should be banned by law” was fully (66.4%) or partly (14.1%) supported by 80.5% of respondents who answered the question (N=1938). 4.3% remained neutral. Only 15.1% of respondents did not agree with this statement.<sup>58</sup>

Attempt to hold public screening of the movie “Pride” on 19<sup>th</sup> May 2017

40. Appendix 1 describes the circumstances surrounding an attempt to hold a screening of the movie “Pride” in a café in a Tbilisi park. It provides further evidence of the way in which the right to freedom of assembly of members of the LGBT community is in practice curtailed by the danger of violent opposition. It also illustrates concerns over the willingness of the MIA and police officers to secure this right in routine circumstances.

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<sup>55</sup> Report of the Public Defender’s Office on Human Rights Situation in Georgia, 2017, page 148, see: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

<sup>56</sup> Narrative reporting of the three meetings prepared by EMC

<sup>57</sup> It is noteworthy that the chair of the Human Rights Committee of the Parliament has refused to support and celebrate the IDAHOT day in 2018, contrary to their action plan prepared in 2017 explicitly stating that they would support it. See: <http://oc-media.org/ngos-call-on-human-rights-committee-head-to-resign-after-queer-activists-protest/>

<sup>58</sup> Aghdgomelashvili E. “From Prejudice to Equality: the study of societal attitudes, knowledge and information regarding the LGBT community and their rights.” WISG, 2016, page 251, see: [https://ge.boell.org/sites/default/files/wisg\\_study\\_on\\_homophobic\\_attitudes\\_final.pdf](https://ge.boell.org/sites/default/files/wisg_study_on_homophobic_attitudes_final.pdf)

### Attempt to hold public screening of the movie, “Pride”, on 19<sup>th</sup> May 2017

On 19<sup>th</sup> May 2017 the “Independent Feminist Group” together with “Ahuahu Foundation for Contemporary Culture” and the social enterprise “Mziani” planned to hold an open screening of the movie “Pride” in Tbilisi, at the “New Mziuri” Café in Mziuri park. Before the screening far-right groups gathered at the entrance of the park and tried to mobilize protesters to hinder the screening and to disrupt the gathering on the grounds that the screening was associated with IDAHOT day and represented “propaganda of homosexuality.”<sup>59</sup>

The organisers had notified the MIA of their plans in advance. In consequence, police officers were present. They closed the entrances to the park, while trying to persuade the organisers to postpone the screening on the grounds that they could not protect participants from counter-protestors.<sup>60 61</sup> The organizers refused to stop the screening. After several minutes police officers asked the audience to leave, claiming they had received an anonymous phone call that an explosive device was installed in the Mziuri Café.<sup>62</sup> The organizers were obliged to stop the screening and to leave together with the audience.

After this event EMC filed a public information request to the MIA and Prosecutor’s Office for information about the anonymous call and any investigation into the incident.<sup>63</sup> The reply from the MIA<sup>64</sup> indicated that the initial investigation was conducted on the basis of article 236 of the criminal code of Georgia (illegal purchase, storage, carrying, manufacturing, shipping, forwarding or selling of explosive material or explosive device), but that no explosive devices had been found, and that the case was being treated under Article 331 of the Criminal Code of Georgia (false notification of terrorism).

EMC submitted a letter<sup>65</sup> asking that the organisers be granted victims’ status, as they had suffered material and moral damages as a result of the events. However the prosecutor’s office of the Vake-Saburtalo district refused the request on the grounds of “lack of sufficient circumstances”.<sup>66</sup>

EMC next followed up with a request for information on the progress of the case, but the District Prosecutor replied that the “identified number could not be found in the information base of MIA, as it is not registered in anyone’s name.”<sup>67</sup>

The above raises reasonable concerns that the phone call warning of an explosive device was invented by the police officers as a means of terminating the gathering so as to avoid the positive obligation to protect participants from possible violent protesters.

<sup>59</sup> DFWATCH, Gay pride film screening cancelled in Tbilisi after bomb threat, See: <http://dfwatch.net/gay-pride-film-tbilisi-bomb-threat-48553>

<sup>60</sup> Testimony by EMC, who, as legal representatives of the organisers, were present.

<sup>61</sup> Testimony documented by EMC from the representative of “Independent Feminist Group” – M.K., 7.10. 2017

<sup>62</sup> Testimony documented by EMC from the representative of social enterprise “Mziani” – A.G., 7.10. 2017

<sup>63</sup> Information Request No 007160517010.

<sup>64</sup> Received letter No 5 17 01897773, August 8, 2017

<sup>65</sup> Letter №01/404/2017, October 12, 2017

<sup>66</sup> Received letter No: 13/03-70186, November 01, 2017

<sup>67</sup> Received letter No 13/03-72714, November 9, 2017