

Identoba and others v. Georgia
To be presented at the EIN briefing to the Committee of Ministers
28th May 2018

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 as 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).

While it is recognised that the Government of Georgia has begun implementing a number of important measures addressing issues raised by the *Identoba* judgment under enhanced supervision, this briefing presents evidence demonstrating that further measures are needed, and that those which are under way will require much more time to take full effect.

Measures implemented to combat discrimination and intolerance are incomplete and show little sign so far of bringing about the wider changes in Georgian society. Homophobic attitudes remain prevalent. LGBT persons in Georgia are victims of systemic abuse, harassment, intolerance, and discrimination in all aspects of life.¹ According to the recent study conducted in 2018, among the LGBT respondents, 96.9% (N=248) at least once have been subjected to hate crime since 2015.² It is noteworthy due to lack of trust to the law-enforcement among victims of violence, only 15.8% reported to the police.³

Despite the fact that Georgia has adopted anti-discrimination legislation in 2014 and government's human rights strategy for 2014-2020 years and Action Plans (for 2014-2015, 2016-2017, 2018-2020 years) implementation is lacking due to shortcomings in the law - the recommendations of the Public Defender's Office (who is set as an enforcement mechanism under the law) is not legally binding, private entities are not obliged to provide information in the case examination process. Till today Georgian Parliament has not adopted relevant changes in the law⁴, so the effective institutional and procedural guarantees of the equality mechanisms are still lacking.⁵

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. In 2013 on IDAHOT day very serious mob-violence against LGBT persons took place at the peaceful assembly, over 30

¹ 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>

² Aghdgomelashvili E. "From Prejudice to Equality", 2018

³ Ibid

⁴ 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>

⁵ DH-DD (2016) 1303 - para 29

persons have been injured as a result of violent attack from more than 20 000 violent counter demonstrators, who were mobilized by the orthodox clergy.

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, who were acquitted by the Tbilisi City Court in 2015 on account of “insufficient evidence”, despite the perpetrators reportedly being identifiable on video and photo footage of the event.⁶ In October 2015 the Prosecution Service appealed the acquittal to the Court of Appeals,⁷ which was unable to over-turn the decision of the Tbilisi City Court.

After 2013 LGBT community in Georgia was unable to hold a public demonstration on IDAHOT. Even after 5 years, negative attitudes against LGBT individuals has not been reduced, in fact it has been intensified by political homophobia expressed by politicians and parliamentarians from opposition as well as from the ruling party.

As a result, freedom of expression and freedom of assembly remains a serious challenge for LGBT community. According to a recent survey “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).⁸

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”.⁹ While the protection provided by the authorities is to be welcomed, the event was subject to significant restrictions including the place, timing and duration of the assembly.¹⁰ The security measures needed to protect the event show how limited is the enjoyment by the LGBT community. 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.¹¹

In 2018, due to mass mobilization of the orthodox clergy and various far right groups, LGBT organization have decided not to mark the IDAHOT day and to cancel enounced manifestation. Despite the fact that Ministry of Internal Affairs has expressed its readiness to ensure protection of LGBT activists from violent counter demonstrators, organization were concerned that it would empower societal clash and would intensify aggression and violence against LGBT people in the future.

It is regrettable, that measures against hate crimes are only technically implemented without important progress in societal level. On 2016 Prosecutor’s Office has introduced guideline on investigation of hate crimes, POG and MiA had introduced training programs for law enforcement

⁶ See DH-DD(2016)1303, paras. 12 and 24.

⁷ 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>

⁸ 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

⁹ DH-DD (2018) 425 – para. 41.

¹⁰ 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>

¹¹ 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/>

and prosecutors, they also have just started to collect data on hate crimes, which should be welcomed, however holistic and preventive approach to fight against homo/transphobic hate crimes is lacking, identification of the hate motives still a challenge; trainings envisaged by this two institution is not focused on sensitization of individual police officers, bearing in mind the fact that apart of societal homophobia, institutional and more importantly, police homophobia, remains unchallenged.

Moreover, authorities are reluctant to investigate acts of alleged misconduct and violence by police officers against LGBT people.¹² This is illustrated in the case of human rights violation of the executive director of the Equality Movement and his friend who were subjected to violent attack by third parties motivated by homophobia¹³ on 25 August 2017. Despite the violence against them police officers nearby did not react to their request for help, on the contrary, they arbitrarily detained them and used violence and homophobic language towards them¹⁴¹⁵. Till today the police officers responsible for the alleged abuse have not been identified.

It should be concluded that, while on the one hand government has taken positive steps to introduce legislative and policy changes towards elimination of discrimination of LGBT people, on the other hand, by ignoring the problem of institutional homophobia it also encourages discriminatory practices and strengthening of the marginalization of the LGBT community. Accordingly, institutional reforms envisaged under the execution of *Identoba case*, remain ineffective as it is not encouraged and empowered by state's efforts against negative attitudes in the society towards LGBT people.

Recommendations:

- We urge Georgian Authority to take effective and wider measures to fight against root causes of homo/transphobia and to elaborate coherent and result oriented intergovernmental strategy against hate crimes;
- To ensure that LGBT people can fully, effectively and freely enjoy their rights to freedom of assembly and manifestation;
- To intensify work on training for sensitization of law enforcement to combat homophobic attitudes from the police and secondary victimization of LGBT victims;
- 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;
- Work with PDO to develop the awareness raising activities designed to combat intolerance, discrimination and hate speech against LGBT persons, including targeting the general public, public officials, parliamentarians and the education system.

¹² 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>

¹³ Amnesty International Report 2017/18, The State of the World Human Rights, page 173

¹⁴ OC Media, Queer rights activists 'abused by police' in Georgia, see: <http://oc-media.org/queer-rights-activists-abused-by-police-in-georgia/>

¹⁵ 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>