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Meeting: 1419th meeting (December 2021) (DH)

Communication from NGOs (European Human Rights Advocacy Centre and the Women's Initiatives Support Group) (25/10/2021) in the case of Aghdgomelashvili and Japaridze v. Georgia (Application No. 7224/11) (Identoba group, 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 : 1419^e réunion (décembre 2021) (DH)

Communication d'ONG (European Human Rights Advocacy Centre et the Women's Initiatives Support Group) (25/10/2021) relative à l'affaire Aghdgomelashvili et Japaridze c. Géorgie (requête n° 7224/11) (groupe Identoba, 73235/12) **[anglais uniquement]**.

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



DGI

25 OCT. 2021

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**Rule 9(2) submission to the Committee of Ministers of the Council of Europe
concerning the implementation of *Aghdgomelashvili and Japaridze v. Georgia*
(Application no. 7224/11)**

**By
The European Human Rights Advocacy Centre and the Women's Initiatives
Support Group**

22 October 2021

Introduction

1. The case of *Aghdgomelashvili and Japaridze v. Georgia* (Application no. 7224/11, judgment of 8 October 2020), concerns a police raid on the office of the Inclusive Foundation (an LGBT organization) in Tbilisi in December 2009. During this raid, police officers subjected the applicants to homophobic and transphobic insults, threats, and humiliating strip searches. In its judgment, the Court found both a substantive and a procedural violation of Article 3 (the right not to be subjected to torture and inhuman or degrading treatment or punishment) in conjunction with Article 14 ECHR (prohibition of discrimination). The case is subject to the enhanced procedure, as part of the *Identoba* group of cases.
2. This Submission is communicated by the European Human Rights Advocacy Centre (EHRAC) and the Women's Initiatives Support Group (WISG) as non-governmental organisations, under Rule 9(2) of the Rules of the Committee of Ministers (CM) for the supervision of the execution of judgments for consideration at the 1419th meeting on 30 November – 2 December 2021. It responds to the Action Report of the Government of Georgia submitted on 8 October 2021 (re the *Identoba* group of cases).
3. This Submission refers to previous Rule 9.2 submissions of 16 November 2016 (the 2016 CSO submission)¹, 10 May 2018 (the 2018 CSO submission)², 2 August 2019 (the 2019 CSO submission)³ and 10 August 2020 (the 2020 CSO Submission).⁴

Aghdgomelashvili and Japaridze case – individual measures

4. It is confirmed on behalf of the applicants that they received the payment of the damages awarded by the Court (€2,000 each) on 18 March 2021.
5. As regards the ongoing investigation, since the judgment became final on 8 January 2021, it is understood that the Prosecutor's Office began to question as witnesses a number of the people who were present in the Inclusive Foundation office at the time of the police search. All of them were only very recently granted victim status.

¹ DH-DD (2016) 1303

² DH-DD(2018)489

³ DH-DD(2019)938

⁴ DH-DD(2020)776

6. The investigation is being conducted under Article 333 of the Criminal Code of Georgia (abuse of official powers). On 3 September 2021, the legal representative of the victims submitted that the investigation's remit should be expanded to:
 - a) **Article 151. Threats** (December 2009 version): Victims were afraid that police officers would fulfil their threats and their health or property would be damaged;
 - b) **Article 156. Persecution**, para. 2, subparagraph: committed with the abuse of official power;
 - c) **Article 144¹. Torture**, para. 2, subparagraphs a, b, d, e and f of (December 2009 version): Torture, i.e. exposing a person or a third person to such conditions or treating him/her in a manner that causes severe physical pain or psychological or moral anguish, and which aims to obtain information, evidence or confession, threaten or coerce, or punish the person for the act he/she or a third person has committed or has allegedly committed by a) by an official or a person holding equivalent position; b) by abusing the official position; d) against two or more persons; f) by violating the equality of persons, or due to their race, colour, language, sex, religion, belief, political or other views, national, ethnic, social belonging, origin, place of residence, material status or title;
7. There has been no reply to the letter of 3 September 2021, and the applicants have not to date been provided with any further information about the remit or conduct of the investigation. It is understood that one of the witnesses is still waiting to be questioned in the investigation process and to be granted victim status.

Aghdgomelashvili and Japaridze and Identoba and Others – general measures

Georgia's National policy to combat discrimination and intolerance

8. As noted in the 2020 Civil Society Organization (CSO) Submission, in 2020 the Human Rights Secretariat, as the responsible agency for National Action Plans, drafted a separate chapter on sexual orientation and gender identity (SOGI) (chapter 15).⁵ It includes three goals and aims to combat hate-motivated crimes, raise awareness on sexual orientation and gender identity and improve SOGI-specific social and healthcare services. However, the ministries which are responsible for these activities have not yet carried out any form of public awareness campaign. In June 2020 the Ministry of Health was recommended to establish a working group to develop national clinical practice recommendations (guidelines) for trans-specific care and a state

⁵ Ordinance of the Government of Georgia №116, 17/02/2020, Available in Georgian at: <https://matsne.gov.ge/en/document/view/4800846?publication=0>

standard (protocol) for clinical management, which will outline both medical and ethical aspects of trans-specific health care, as well as mental and social support elements preceding and succeeding the medical procedures.⁶ However, the working group has not yet been established. Accordingly, we submit that the requisite measures are not being implemented in a timely manner.⁷

9. We would acknowledge that the government of Georgia has made significant steps to fight against homo/transphobic hate crimes.⁸ However, prevention measures are not sufficiently integrated into state action against homophobic and transphobic violence.

A number of challenges facing the LGBTQ community have not yet been taken up by the responsible state authorities, including reporting cases of specific discrimination incidents, the lack of protection and support services for victims of hate crimes, deficiencies in reporting family violence and intimate partner violence, the absence of regulation concerning civic partnership and legal gender recognition, the neglect of a number of issues related to healthcare of transgender people, and the absence of sexual orientation and gender identity-related topics in the education system. These issues were not referred to at all in the Government Action Plan for Human Rights (2018-2020). In 2020, Chapter 15 of the plan was approved, but in our submission it does not address the main challenges faced by the community.⁹

Exercise of the right to freedom of peaceful assembly

10. The enjoyment of the right to freedom of assembly and to demonstrate remains a significant challenge for LGBTQI groups, even though the Georgian legislation, on its face, guarantees freedom of assembly and manifestation for all persons without discrimination. Any form of presentation in public spaces by LGBTQI groups is "perceived as a provocation against the country and population",¹⁰ resulting in the exclusion of member of the LGBTQI community from public areas. This reality is reflected in the events surrounding the 2021 Tbilisi Pride, which are further discussed below.

2021 Tbilisi Pride protests and violent counter-demonstration organised by a vigilante group

⁶ <https://wisg.org/en/news/detail/287/The-Public-Defender-Issues-a-General-Proposal-on-Trans--Persons%E2%80%99-Health>

⁷ The progress report of the NAP has not been available yet. The previous reports are available here: <http://myrights.gov.ge/en/My%20Rights/reports/Progress%20Reports/>

⁸ See the report by the Prosecutor's Office, available at: <https://pog.gov.ge/en/news/adamianis-uflebaTa-dacvis-sammarTvelom-siZulviliT-motivirebul-danashaulebze-angarishi-moamzada>

⁹ See the statement of the Coalition for Equality. Available at: <http://equalitycoalition.ge/article/52>

¹⁰ See the statement of Prime Minister of Georgia Irakli Gharibashvili, available at: http://gov.ge/index.php?lang_id=ENG&sec_id=557&info_id=79791

11. The 2021 Tbilisi Pride protests were sparked by the March for Dignity, an event planned within the framework of Pride Week by Tbilisi Pride.¹¹ The event received widespread public attention and became the subject of public debate.¹² The violent counter-demonstrators organised by a vigilante group planned a counter-demonstration to block Rustaveli Avenue, where the pride parade was supposed to be held. The protestors against the Tbilisi Pride March gathered downtown for the counter-rally.¹³
12. At least 53 journalists were assaulted, both verbally and physically, on 5 July 2021 during homophobic violence. As a result, seven Georgian civil society Organizations called on the Ministry of Internal Affairs: a) to immediately take preventive measures to ensure the safety and peace of mind of members and activists of the LGBT community; b) to ensure the safety and protection of all the citizens from any form of violence regardless of the forms of self-expression of these citizens; c) to prevent violent incidents promptly and detain those involved; d) to effectively investigate incidents of violence that took place and punish those responsible in strict accordance with the law.¹⁴
13. To date, the Ministry of Interior of Georgia has arrested 19 people, 16 for violence against journalists and interfering in their professional activities.¹⁵
14. On 12 July 2021, the Prime Minister of Georgia, Irakli Gharibashvili, published this statement:

"Let me repeat that we assessed these risks well in advance in our country and said that this is impermissible. We told the LGBT community and Ambassadors of our partner countries before the event that the so-called parade on Rustaveli Avenue contained provocative signs and nature, thus making it unjustified to be held downtown. Violence, offences and crime happening in a state may not be generalised. Of course, it may happen in any country, but it does not mean that it should ultimately lead to chaos and disorder".¹⁶
15. Four Georgian LGBTQI community organizations responded to the statement of the Prime Minister and underlined:

¹¹ <https://tbilisipride.ge/en-US>

¹² Georgian Patriarchate condemns int'l support for 'LGBTQ+ propaganda activities' at Tbilisi Pride. See here: <https://agenda.ge/en/news/2021/1835>

¹³ <https://agenda.ge/en/news/2021/1839>

¹⁴ The statement is available at: <https://wisg.org/en/news/detail/336/The-civil-sector-calls-on-the-state-authorities-to-immediately-curb-the-violence-by-homophobic-groups-and-initiate-an-appropriate-investigation>

¹⁵ TV Pirveli Cameraman, Assaulted During Anti-LGBT Violence, Found Dead. See here: <https://civil.ge/archives/431492>

¹⁶ See the statement of Prime-minister of Georgia Irakli Gharibashvili, available at: http://gov.ge/index.php?lang_id=ENG&sec_id=557&info_id=79791

"Through this position, the Georgian government deliberately maintains the previous government's homophobic policies, makes a false interpretation of the needs and concerns of the queer community, and instils hatred to suppress societal disputes. We, community-based organisations, categorically oppose such an interpretation of our activities. We have for years been combatting attempts at manipulating the queer community and once again declare that today, based on this mere speculation, all political forces, as well as the Patriarchate of Georgia, are attempting to consolidate their power, uphold the social polarisation agenda, and take away our agency in this social process".¹⁷

16. WISG also made this statement:

"Instead of adequately responding to mass violence by organised groups, shifting the burden of responsibility to peaceful protesters, journalists, or activists affiliated with political opponents as 'groups provoking violence', clearly demonstrates that in using this issue as a political instrument, not only the questions relevant specifically to the queer community but even people's health and life are put in the lowest place on the State's priority list".¹⁸

Recommendations

17. In order to adequately address both individual and general measures under the *Identoba* and *Aghdgomelashvili and Japaridze* cases, WISG and EHRAC submit the following recommendations:

- I. That the responsible authorities be required to carry out an effective, timely, independent investigation into the actions of the police at the Inclusive Foundation office on 15 December 2009, including an effective investigation into the discriminatory intent displayed by the police. Furthermore:
 - a. the remit of the investigation should be expanded to include Article 151 (Threats), Article 156 (Persecution) and Article 144¹ (Torture);
 - b. the police officers involved in the raid, and their superior(s), should be identified and questioned;
 - c. the victims should be informed regarding any significant steps taken by the Prosecutor's Office or Ministry of Internal Affairs.
- II. Together with civil society actors, the State should establish the measures necessary to enable the safe and peaceful gatherings of

¹⁷ Available at: <https://wisg.org/en/news/detail/337/LGBTQI-Organisations%E2%80%99-Response-to-the-Prime-Minister%E2%80%99s-Statement>

¹⁸ The statement is available at: <https://wisg.org/en/news/detail/338/Beyond-pride-and-shame--positions-from-an-invisible-queer-perspective>

LGBTQI activists and take preventive measures to deter violence, hatred and discriminatory attitudes and behaviour. In particular:

- a. to conduct public awareness campaigns to increase public understanding of the hate crimes, and hate speech laws which are designed to uphold LGBTQI rights in Georgian society;
- b. to ensure the safety of LGBTQI activists in a timely manner, to protect them from physical violence, and to create conditions for their safe conduct of professional activities;
- c. to protect the right of LGBTQI+ people to organise demonstrations, public events, and their right to speak publicly about matters of interest or concern;
- d. to investigate what happened at Tbilisi Pride on 5 July 2021 swiftly and effectively, and punish all perpetrators of unlawful and discriminatory behaviour, including the leaders and organisers of such unlawful behaviour.