

Submission by the Council of Europe Commissioner for Human Rights

under Rule 9.4 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

in the case of

Identoba and Others v Georgia

(application no 73235/12, judgment of 12 May 2015)

97 members of the Gldani Congregation of the Jehovah's witnesses and 4 others v Georgia

(application no 71156/01, judgment of 3 May 2007)

Aghdgomelashvili and Japaridze v Georgia

(application no 7224/11, judgment of 8 October 2020)

Mikeladze and Others v Georgia

(application no 54217/16, judgment of 16 November 2021)

Women's Initiatives Supporting Group and Others v Georgia

(application no 73204/13, judgment of 16 December 2021)

Introduction

1. This submission by the Council of Europe Commissioner for Human Rights (hereinafter: “the Commissioner”) is addressed to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.4 of the Rules of the Committee of Ministers,¹ in the context of the supervision of the execution of the judgments of the European Court of Human Rights (hereinafter: “the Court”) in the *Identoba and Others v Georgia* group of cases. This group of cases concerns:
 - Degrading treatment of the applicants on account of abusive and humiliating police conduct, motivated by homophobic and/or transphobic hatred (in 2009: *Aghdgomelashvili and Japaridze* case; in 2013: *Women’s Initiatives Supporting Group and Others* case– substantive and procedural violations of Article 3 in conjunction with Article 14 – in the latter case also a violation of Article 11 in conjunction with Article 14);
 - the failure of the authorities to provide adequate protection against, and in some instances official acquiescence and connivance in, inhuman and degrading treatment inflicted by private individuals on Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) activists (in 2012: *Identoba and Others* case; in 2013: *Women’s Initiatives Supporting Group and Others* case) and Jehovah’s Witnesses (in 1999-2001: *Gldani Congregation* case), who were violently attacked during marches/meetings (substantive violations of Article 3, taken separately and in conjunction with Article 14);
 - and the absence of effective investigations into these facts and the allegations of ill-treatment of Muslim minority representatives at the hands of police (in 2014: *Mikeladze and Others* case), including as regards discriminatory motives in that connection (procedural violations of Article 3, taken separately and in conjunction with Article 14).
2. It also concerns the authorities’ failure to take the necessary measures to ensure the exercise of their rights to freedom of religion by Jehovah’s Witnesses and to freedom of assembly by LGBTI activists (violations of Articles 9 and 11, taken separately and in conjunction with Article 14).
3. According to her mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the European Convention on Human Rights; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.²
4. The present submission aims to assist the Committee of Ministers in its examination of the execution of the above five cases. It is based on the work of the Commissioner and her predecessor on issues related to non-discrimination and integration of LGBTI people and religious minorities in Georgia.
5. Section I of this submission contains an overview of the Commissioner’s work on the issues raised in this group of judgments. Section II provides the Commissioner’s observations regarding the exercise of the right to peaceful assembly by LGBTI activists and their supporters. Section III contains further observations on the importance of ensuring effective investigations into hate crimes and hate speech, and of a zero tolerance policy to any form of violence and discrimination. Section IV covers additional observations on the importance of a comprehensive and multi-dimensional national policy to promote the human rights of LGBTI people and those belonging to other minority groups which the Commissioner considers relevant to discussions about the execution of these judgments. These sections are followed by the Commissioner’s conclusions.

¹ [Rules of the Committee of Ministers](#) for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 and amended on 18 January 2017).

² [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

I. Overview of the Commissioner's work

6. The Commissioner's predecessor, Nils Muižnieks, addressed issues pertaining to non-discrimination of LGBTI people and religious and ethnic minorities in his [2014 report](#), strongly emphasising the importance for the authorities, public actors and community leaders to send an unambiguous message in favour of human rights and tolerance, and against violence, hate speech and discrimination. He encouraged the authorities to make it clear that violence against LGBTI people was unacceptable and would not be tolerated. He also highlighted the importance of promoting interaction and understanding between different ethnic and religious communities and expressed concern regarding negative attitudes and instances of open hostility towards Muslims and other communities, while urging the authorities to show firmer political will to better integrate ethnic and religious minorities into Georgian society.³
7. In his [2016 Observations](#), he urged the Georgian authorities to improve their responses to hate crimes and hate speech, including when they are committed on the basis of a bias related to sexual orientation and gender identity; to ease tensions between majority and minority religious groups, particularly concerning issues related to religious properties and places of worship; and to fully ensure the respect of the principle of religious neutrality in education. He recalled that the marginalisation and alienation of minority groups was a direct threat to social cohesion and encouraged the authorities to engage in a genuine dialogue with all religious denominations and to tackle issues identified following a human rights based approach.⁴
8. Since the beginning of her mandate in April 2018, Commissioner Mijatović has repeatedly addressed similar recommendations to the Georgian authorities. In her [statement](#) published in 2019, she deplored the escalating tensions around the Tbilisi Pride March and called on the authorities to take decisive action to ensure the safety of participants. In 2021, she [condemned](#) violent attacks against media professionals and LGBTI activists in Tbilisi by opponents of the planned Pride march and stressed that the authorities should uphold the right to freedom of expression and assembly, ensure the safety of demonstrators and journalists, and punish the perpetrators of violence.
9. In a [Human Rights Comment](#) on political manipulation of homophobia and transphobia, published in August 2021, the Commissioner observed that one of the causes of a notable rise in violence against and intolerance of LGBTI people in Europe was the fact that politicians were exploiting societal prejudices and scapegoating LGBTI people for political gain. She also formulated recommendations to the authorities of all Council of Europe member states to tackle denigrating comments and hate speech against LGBTI people by politicians, and to bring about broader societal changes for inclusion, including through outreach campaigns, strong legislation and the work of independent and effective national human rights structures.
10. In her [2022 report](#) on her visit to Georgia, the Commissioner observed that to ensure that LGBTI people and persons belonging to religious minorities live free from violence and discrimination, the authorities should address the inadequate implementation of legal standards and the persistent deficiencies in combating impunity for hate crimes and incitement to violence, and remove the discriminatory barriers to the enjoyment of their rights. She deplored that LGBTI people remained affected by instances of hate crime and pervasive discrimination in Georgia, as well as the repeated occurrence of LGBTI people having been denied their right to peaceful assembly.⁵
11. In the context of her mission to Georgia from 30 June to 3 July 2023, the Commissioner had an opportunity to discuss the follow-up given to her recommendations – formulated in the above-mentioned report - during her meetings with the President of Georgia, Salome Zourabichvili, the Prime Minister, Irakli Garibashvili, and the Chairman of the Parliament, Shalva Papuashvili, as well as in her meetings with the Public Defender, Levan Ioseliani, and human rights defenders. She also delivered a keynote address at the opening event of Tbilisi Pride Week 2023, which was

³[Report](#) by Nils Muižnieks, Commissioner for Human Rights, on his visit to Georgia, 12 May 2014.

⁴[Observations](#) on the human rights situation in Georgia: An update on justice reforms, tolerance and non-discrimination, 12 January 2016.

⁵[Report](#) by Dunja Mijatović, Commissioner for Human Rights, following her visit to Georgia from 21 to 24 February 2022, 15 July 2022.

held in a private setting. In her speech, the Commissioner reiterated the importance of zero tolerance towards violence and discrimination.

II. The Commissioner's observations regarding the exercise of the right to peaceful assembly

12. The Commissioner observes that since the events of 2012, which gave rise to the Court judgment in the case of *Identoba and Others v Georgia*, and up until the present, LGBTI activists and their supporters have been repeatedly denied their right to peaceful assembly. The Commissioner refers the Committee of Ministers to her [2022 report](#) for detailed information about violent attacks which took place in July 2021 and the decision taken by the organisers to cancel a planned March for Dignity in 2022.⁶
13. The events which unfolded in Tbilisi on 8 July 2023 – and which are more extensively referred to below -- further illustrate, in the Commissioner's view, the limited progress achieved in addressing the underlying issues identified by the Court in the present judgments.
14. During her mission to Georgia in 2023, which coincided with the beginning of the Tbilisi Pride Week 2023, Commissioner Mijatović raised with the authorities the security-related concerns which were communicated to her by the organisers of Tbilisi Pride Week 2023. Those included the repeated threats, made by representatives of the far-right groups implicated in the violent acts in previous years, to once again use violence to disrupt their gatherings. These threats were made, notwithstanding the fact that in 2023 all of the Tbilisi Pride Week events were envisaged to be held in a private setting or by invitation only and were not open to the general public.
15. A concluding, open-air private event was scheduled to be held in the outskirts of Tbilisi on 8 July. It was disrupted before it could begin, when the police failed to prevent and effectively deal with the assaults on the venue carried out by members and supporters of far-right groups. The law enforcement authorities ordered the event's organisers and participants to evacuate. The assailants were subsequently able to enter the area, where they vandalised the installations, and burned and tore down the flags and banners. There were no reports about people being injured this time. While the police were continuously present on the spot, they failed to act to stop the assailants. Moreover, the Commissioner received allegations of the law enforcement authorities siding with the attackers, with some observers pointing out that the police action on the ground was remarkably different from the otherwise forceful crowd-control methods applied in the context of policing of demonstrations and assemblies in recent years.
16. In the Commissioner's view, the following were contributing factors which led to yet another disrupted attempt by LGBTI activists and their supporters to exercise their right to freedom of assembly: 1) a failure to bring to account the organisers of the violent attacks which took place in 2021; 2) a lack of effective measures to address hate speech and calls for violence by far-right groups, and their supporters; 3) calls by [political](#) and [religious](#) leaders in the weeks leading up to Tbilisi Pride events to counter the so called "LGBTI propaganda". In this connection, the Commissioner points out that the Parliamentary Assembly of the Council of Europe has condemned as highly prejudicial such narratives that mischaracterise the fight for equal rights by LGBTI people as LGBTI ideology or propaganda.⁷

III. The Commissioner's observations on the importance of ensuring effective investigations into hate crimes and hate speech and of a zero-tolerance policy towards any form of violence and discrimination

17. As was already stated by the Commissioner in her [2022 report](#), violence against LGBTI people, their supporters, and the defenders of their rights has been a long-standing issue of concern in Georgia, which is compounded by a failure to hold perpetrators to account, in particular the organisers of acts of violence. This persisting impunity has contributed to the unprecedented rise of well-organised and well-funded ultra-conservative and far-right groups with anti-LGBTI, anti-

⁶ See in particular paragraphs 15 and 26 of the [report](#).

⁷ Parliamentary Assembly of the Council of Europe, [Resolution 2417 on combating rising hate against LGBTI people in Europe](#), 2021.

gender and anti-minorities agendas. Their organisers and members instigate and participate in violent acts and increasingly claim the public space where they spread their hateful messages.⁸ It is the Commissioner's view that to date this has neither been fully acknowledged nor effectively addressed by the authorities and that the latter have continued to underestimate the detrimental effect of the activities of such groups on the enjoyment of human rights by LGBTI people and religious and other minority groups, as well as on social cohesion and tolerance in society.

18. The Commissioner considers that the full and effective execution of the judgements under consideration cannot be achieved without a genuine acknowledgement of the issues at hand by the Georgian authorities. Comprehensive and far-reaching measures aimed at curbing the activities of the organised groups which instigate hatred and call for violence are required, and an enabling environment for the implementation of a human rights based inclusion policies in relation to LGBTI people and other affected communities should be fostered. Political parties and parliamentarians should rigorously apply relevant codes of ethics, and ensure that an effective regulatory framework is put in place to address hate speech.
19. It is equally important for the authorities to systematically condemn incitement to hatred and violence by politicians and other prominent personalities, to foster counter-speech and to lead by example. In this regard, the Commissioner welcomes the fact that the President of Georgia took a stance in support of the human rights of LGBTI people on several occasions. The Commissioner also recognises the pivotal role played by the institution of the Public Defender (Ombudsman) of Georgia in highlighting the existing gaps in the protection of the human rights of LGBTI people and religious and other minority groups, and in urging the authorities to fulfil their human rights obligations.

IV. Additional observations on the importance of a comprehensive and multi-dimensional national policy to promote the human rights of LGBTI people and of those belonging to religious and other minority groups

20. The National Strategy for the Protection of Human Rights for 2022-2030, which was approved by the Government in March 2023, does not expressly mention LGBTI people or include concrete measures to address their needs from a human rights perspective. In the context of her July 2023 mission to Georgia, the Commissioner encouraged the Georgian authorities to ensure that such measures are included in the National Human Rights Action Plan.
21. The Commissioner and her predecessor have repeatedly recommended adopting a human rights centred, comprehensive state policy towards LGBTI people and religious and other minority groups. In addition to measures to combat manifestations of intolerance and prejudice, it should address public perception of LGBTI people and religious and other minority groups through outreach campaigns and education in schools to bring about a more profound shift in societal attitudes.

V. Conclusions

22. The Commissioner's work on Georgia and her exchanges with various interlocutors there leave her with the impression that while the overall societal attitudes towards LGBTI people and religious and other minorities have been gradually improving, the response given by the authorities to the repeated occurrence of discrimination and manifestations of intolerance towards LGBTI people and other affected groups has up until now failed to address the broad spectrum of underlying reasons behind such manifestations. The Commissioner therefore considers that for a full and effective execution of the present judgments the implementation by the Georgian authorities of the following recommendations stipulated in her [2022 report](#) is essential:
 - Commit to a zero-tolerance policy and practice towards all forms of discrimination and incitement to discrimination and violence, online and offline;
 - Combat persisting impunity for serious human rights violations committed against LGBTI people and members of religious and other minority groups, including through imposition of criminal and other sanctions and restrictions on the activities of individuals and organisations, including

⁸ See paragraphs 12-13 and 23 of the [report](#).

political movements and media outlets, which advocate for and are involved directly or indirectly in acts of violence, or incitement to hatred against LGBTI people or other affected groups;

- Identify and effectively address any existing patterns of institutional culture within law enforcement agencies or within the criminal justice system which may directly or indirectly contribute to promoting impunity for hate crimes against LGBTI people and religious or any other minorities;
- Introduce a comprehensive set of measures to ensure effective enjoyment of the right to freedom of peaceful assembly of LGBTI people and other affected groups, by enabling them to hold their public and private events and rallies in safety and security and protecting them from violence and threats of violence;
- Prevent and combat hate speech, online and offline, including by addressing the most serious instances of incitement to hatred and violence which may warrant a criminal liability, and creating an enabling environment for monitoring, self-regulation, and fostering counter-speech;
- Develop and implement a comprehensive and multi-dimensional state policy on protecting the human rights of LGBTI people and other affected communities and combating intolerance and prejudices against them, including through targeted awareness raising activities.