

Committee of Ministers DGI-Directorate
General of Human Rights and Rule of Law
Department for the Execution of Judgments
of the European Court of Human Rights
F-67075 Strasbourg Cedex France
E-mail: DGI-execution@coe.int

**Communication of the Public Defender of Georgia
concerning Identoba group cases**

**Made 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**

Introduction

1. The Public Defender's (Ombudsman's) Office of Georgia (hereinafter the PDO) presents this submission pursuant to Rule 9.2 of the Rules of Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
2. The present communication evaluates the state of implementation of the Identoba group cases. It comments on the matters referred to in the decision adopted by the Committee of Ministers during 1483rd meeting on 5-7 December 2023. The communication also comments on some matters mentioned in the Action Report dated 13.10.2023 and the Action Report dated 27.06.2024 (published on 03.07.24) and submitted by the Government of Georgia. However, the text of this communication only refers to and references the former Action Report (hereinafter the Action Report) as the latter one was not published during the process of drafting this communication.

General Measures

Intolerance towards minorities

3. The Action Report claims that the authorities "make every effort on a regular basis to demonstrate a firm political will to combat hate crimes, including official statements that are

made regularly by the high-ranking public officials, condemning violence against the LGBTI community”.¹ In spite of this assertion, the CM again “exhorted the authorities to demonstrate a firm commitment towards the fight against hate-motivated violence and impunity by conveying an unambiguous zero-tolerance message at the highest level towards any form of discrimination and hate crime”². PDO would like to underline, that regrettably, the efforts of certain state agencies in combating hate-crime and intolerance are undermined by the ongoing discussions³ and legislative initiatives within the Parliament of Georgia. In particular, the parliamentary majority introduced a draft constitutional law titled "Protection of Family Values and Minors,"⁴ followed with a set of other ordinary draft laws. This included a draft ordinary law with a similar name aimed at protecting family values and minors” followed with a package of draft laws including the a draft of ordinary law with the similar name to constitutional law on the “Protection of Family Values and Minors”.⁵ The legislative package includes amendments to about 20 laws.⁶ The Venice Commission has prepared an opinion regarding the constitutional draft law, wherein the commission emphasizes that in light of the well-established ECtHR case-law and previous Venice Commission opinions, the Commission considers that the compliance of constitutional provisions at stake with European and international standards cannot be established for the reasons set in the draft and the mere proposal of adopting this text risks to (further) fuel a hostile and stigmatizing atmosphere against LGBTI people in Georgia.⁷ Following the introduction of the legislative package, the Public Defender of Georgia held meetings in the Parliament of Georgia to express concerns about the draft package. Among the issues raised were the potential restrictions on freedom of expression and assembly, as well as the implications of the proposed labor regulations. It was emphasized that these measures had the potential to not only negatively impact the implementation of human rights standards but also affect the smooth exercise of the PDO's mandate and authority.

4. During these discussions, the representatives of the Parliament of Georgia expressed a willingness to engage in further dialogue on the shared concerns. It was agreed that the next steps would involve ongoing discussions with PDO to address other problematic aspects of the legislative package in the months to come.

Exercise of the right to peaceful assembly

¹ The Action Report dated 13.10.2023 and submitted by the Government of Georgia, paragraph 25.

² The decision adopted by the Committee of Ministers during 1483rd meeting on 5-7 December 2023, paragraph 3.

³ The statements are available at: <https://netgazeti.ge/life/711809/> <https://tinyurl.com/2y628wsa> <https://tinyurl.com/yc2wxkey> [last accessed 19.06.2024].

⁴ The constitutional draft law is available at <https://tinyurl.com/bdes4fn9> and <https://parliament.ge/legislation/28352> [last accessed 19.06.2024].

⁵ The package of draft laws is available at: <https://tinyurl.com/4kwj5syn> [last accessed 19.06.2024].

⁶ The package of draft laws is available at: <https://tinyurl.com/4kwj5syn> [last accessed 19.06.2024].

⁷ The Venice Commission Opinion on Draft Constitutional Law on Protecting Family Values and Minors, paragraph 104.

5. The Action Report reads that the Pride Week festival could not take place on July 8 2023 because the location of the event and a particularly large number of counter-demonstrators.⁸ In terms of freedom of assembly, the PDO would like to underline that the enjoyment of freedom of assembly and freedom of expression by LGBT+ persons and their supporters is substantially complicated. This is related to the violent actions of the far-right groups, both in public space and within closed events, on the territory of the private property, against the realization of the above rights, which was evident during the events surrounding the Tbilisi Pride festival on July 8, 2023. The Public Defender states that the events of July 8 clearly prove that the protection of the LGBT+ community, and the prevention of violence and discrimination on this scale, cannot be managed solely by police forces and is often insufficient. In order to address this challenge, it is necessary to take timely measures planned in various directions, with the involvement of various agencies and the public.⁹

6. Additionally, as previously mentioned, the draft legislation that is currently being discussed in the Parliament of Georgia includes restrictions on freedom of expression and assembly for minorities. Considering communication with the Georgian Parliament, PDO anticipates that these initiatives will be amended.

Investigation into the events of previous marches

7. The Action Report describes steps taken to investigate the events of previous LGBT+ marches.¹⁰ Despite these steps, the CM still called on the authorities to duly bring to justice organisers and instigators of hate violence without further delay.¹¹ In this connection, the Action Report reads as follows: “if a body of facts or information, together with the totality of circumstances of a criminal cases in question, establish (what would satisfy an objective person to conclude) that a person has allegedly committed a crime, the prosecution will bring charges against specific individuals for organisation of group violence” in the context of the events of July 5 2021.¹² In this regard, the PDO would like to reiterate that in 2021 it referred to the General Prosecutor to launch prosecution for organizing group violence.¹³ According to the PDO’s assessment, the standard for bringing charges against at least 2 individuals was met by

⁸ The Action Report dated 13.10.2023 and submitted by the Government of Georgia, para 4.

⁹ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2023, page 145, available at [[2024052911382931838.pdf \(ombudsman.ge\)](https://tinyurl.com/mw33up94)] [last accessed 09. 07.2024].

¹⁰ The Action Report dated 13.10.2023 and submitted by the Government of Georgia, paragraphs 34-38.

¹¹ The decision adopted by the Committee of Ministers during 1483rd meeting on 5-7 December 2023, paragraph 3.

¹² The Action Report dated 13.10.2023 and submitted by the Government of Georgia, paragraph 37.

¹³ Public Defender Demands Criminal Prosecution of Two Persons for Organizing Group Violence and Calling for Violence on July 5, available at: <https://tinyurl.com/mw33up94> [last accessed 19.06.2024].

publicly available evidence.¹⁴ However, the Prosecutor's Office rejected the PDO's proposal.¹⁵ Unfortunately, the authorities have not charged anyone for organizing group violence yet.¹⁶ It is noteworthy that at least one of the alleged organizers was also involved in the events of the large-scale disruption of the Pride Festival by counter-demonstrators on July 8 2023. Other shortcomings in the administration of justice in connection with the 5 July events are outlined in the PDO's previous rule 9 communications and reports.¹⁷

8. Administration of justice has also been flawed in the case of the large-scale disruption of the Pride Festival by counter-demonstrators on July 8 2023. None of the counter-demonstrators were arrested under the criminal procedure on the scene despite being caught in the act of crime commission.¹⁸ The Ministry of Internal Affairs (hereinafter the MIA) carried out administrative arrests of only 2 individuals. The MIA did not launch administrative proceedings against other individuals in the following days despite the fact that other perpetrators were clearly visible in the video recordings.¹⁹ Investigation was launched into 2 criminal cases. One of them is being investigated in connection with physical violence against a police officer under paragraph 1 of article 353 of the Criminal Code.²⁰ Another investigation was being conducted under subparagraph "a" of paragraph 2 of article 177 and paragraph 1 of article 187 of the Criminal Code but then continued under these provisions and paragraph 1 of article 156 (persecution).²¹ The PDO finds the addition of the latter provision to be correct. However, it is concerning that criminal prosecution has not been launched after at least 7 months following the 8 July events and victim status has yet to be granted to the Pride Festival participants and those owners whose possessions were damaged or stolen by counter-demonstrators on the festival territory.²² The failure to grant victim status and bring charges is also evident in other cases studied by the PDO.²³

Administration of justice in hate crime cases

¹⁴ Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022, pages 29-30, available at: <https://www.ombudsman.ge/res/docs/2022022413261538101.pdf> [last accessed 19.06.2024].

¹⁵ Ibid, page 30.

¹⁶ The 2023 Activity Report of the Criminal Justice Department of the Public Defender's Office, page 176, available at.: <https://tinyurl.com/3pea6yzj> [last accessed 19.06.2024].

¹⁷ The 2022 Activity Report of the Criminal Justice Department of the Public Defender's Office, pages 81-88.

¹⁸ The 2023 Activity Report of the Criminal Justice Department of the Public Defender's Office, page 175.

¹⁹ Ibid.

²⁰ Ibid, page 174.

²¹ Ibid, pages 174-175.

²² Ibid, page 175.

²³ The Public Defender's 9th Special Report on Equality, pages 23-25, available at: <https://ombudsman.ge/res/docs/2024042216453494204.pdf> [last accessed 19.06.2024].

9. The Action Report describes steps taken to improve the investigation of hate crimes.²⁴ Unfortunately, similar to the previous years, the cases studied by PDO Office still showed challenges in the direction of investigation and criminal prosecution of crimes allegedly committed on the motive of intolerance. Based on PDO observation the reason for this is, on the one hand, improper fulfillment of the positive obligations by law enforcement officers in terms of protecting the equality of vulnerable groups, and, on the other hand, by the ineffective response to criminal acts committed by extreme right-wing radical violent groups and their leaders. In the applications received by the Public Defender, the applicants again pointed to the lack of trust in law enforcement officers, as well as in some cases their practice of using terminology inciting discrimination and expressing homophobic attitudes or sentiments. Considering that identifying the motive of intolerance and correctly classifying it during crime investigations are essential not only for ensuring justice in specific criminal cases but also for preventing similar crimes in the future, overcoming distrust towards law enforcement agencies, and accurately processing statistical data, the Public Defender believes that law enforcement authorities should intensify efforts in this direction²⁵ and in spite of the trainings described in the Action Report,²⁶ it is necessary to further improve measures to strengthen tolerance and awareness of the law enforcement representatives.

Policy Documents

12. The CM's last decision "noted with regret that the adopted National Strategy for the Protection of Human Rights for 2022-2030 does not address adequately the needs of the LGBTI community".²⁷ Moreover, the CM "called upon the authorities to speed up the work of the implementing Action Plan and to effectively involve all the relevant stakeholders in the process to ensure that this document sets out comprehensive, inclusive and far-reaching measures to properly address the needs of the LGBTI people and religious minorities".²⁸ Unfortunately, the 2024-2026 Action Plan approved by the government also fails to take into account LGBT+ persons and their specific needs.²⁹

²⁴ The Action Report dated 13.10.2023 and submitted by the Government of Georgia, para 7.

²⁵ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2023, page 149, available at [[2024052911382931838.pdf \(ombudsman.ge\)](https://ombudsman.ge/res/docs/2024052911382931838.pdf)] [last accessed 09. 07.2024].

²⁶ The Action Report dated 13.10.2023 and submitted by the Government of Georgia, paragraphs 62-77.

²⁷ The decision adopted by the Committee of Ministers during 1483rd meeting on 5-7 December 2023, paragraph 7.

²⁸ Ibid.

²⁹ The Public Defender's 9th Special Report on Equality, page 13, available at: <https://ombudsman.ge/res/docs/2024042216453494204.pdf> [last accessed 19.06.2024].