

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

Identoba and Others v. Georgia (application no. 73235/12)

97 Members of the Gldani Congregation of Jehovah's witnesses and 4
Others

v. Georgia (application no. 71156/01)

Aghdgomelashvili and Japaridze v. Georgia (application no. 7224/11)

Women's Initiatives Supporting Group and Others v. Georgia
(applications nos. 73204/13 and 74959/13)

Mikeladze and Others v. Georgia (application no. 54217/16)

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 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 comments on the matters referred to in the decision adopted by the Committee of Ministers during the 1419th meeting in December 2021 (CM/Del/Dec(2021)1419/H46-14) (hereinafter decision). The communication also provides some relevant information requested in the decision.

General Measures

3. In the decision, the Deputies "urged the authorities to demonstrate a firm political will to combat hate crime and safeguard freedom of assembly by conveying a clear zero-tolerance message at the highest level towards any form of discrimination, hate

speech and violence, in particular against the LGBTI community”.¹ Contrary to this recommendation, the Prime Minister of Georgia Irakli Gharibashvili made a very concerning statement regarding the March of Dignity and the events of 5 July on 22 June 2022.² He called the March of Dignity an anti-national provocation organized by “the director of the LGBT organization”, the Shame movement, the United National Movement and Mikheil Saakashvili in order to cause destabilization, disorder, massive clashes and use of police force in the country.³ Thus, instead of conveying a clear message in support of the freedom of assembly of LGBTQI+ community and the community itself, the Prime Minister blamed not the real perpetrators and organizers of the 5 July violence but the victims thereof. It is also concerning that he made this statement on 22 June 2022, i.e., only a week before the 2022 Pride Week, in disregard of the potential of such words to encourage or legitimize homophobia and aggression which, based on past experience, usually spike right before and during the pride events. It is also alarming that the aforesaid statement is a continuation of the similar homophobic comments by the Prime Minister. In the morning of 5 July, 2021, he stated that the March of Dignity was unacceptable to majority of the population and should not be held.⁴ A few days later, he called the March a propaganda opposed by 95% of the population whom everyone had to obey.⁵ The PDO considered these statements to be encouragement and legitimization of the hatred and aggression towards the LGBTQI+ community.⁶ It should be mentioned that during the Tbilisi Pride Week in 2022 the Ministry of Internal Affairs ensured security and protection of freedom of expression of members of LGBT+ community and other participants in light of the fact that Pride events were closed, without public access.

4. The decision called upon the authorities to ensure that all the offences related to the July 2021 March of Dignity “are effectively and speedily investigated through comprehensive and meaningful enquiry, capable of duly appropriate unmasking any bias motive and leading to the prompt identification and punishment of those responsible”.⁷ In this connection, the PDO has been closely following the investigation into and court proceedings regarding the 5 July violence. In particular, the PDO has studied the judgments delivered by the Tbilisi City Court in the N1/4559-21, N1/4458-21 and N1/4457-21 cases on 4 April 2022. Moreover, the PDO has also partially reviewed the materials of the N1/4559-21 case pending before the Tbilisi Appellate Court due to the large volume of the materials. As a result, the PDO has identified various shortcomings in the investigations stage as well as in the judgments.

¹ Decision adopted by the Committee of Ministers on 2 December 2021 at 1419th meeting (30 November – 2 December 2021), CM/Del/Dec(2021)1419/H46-14, §3.

² The statement is available at: < <https://bit.ly/3AvWDYR> > < <https://bit.ly/3ASN5aP> > [last accessed 17.10.2022].

³ The statement is available at: < <https://bit.ly/3AvWDYR> > < <https://bit.ly/3ASN5aP> > [last accessed 17.10.2022].

⁴ The statement is available at: < <https://bit.ly/3Kwg4Fv> > [last accessed 17.10.2022].

⁵ The statement is available at: < <https://civil.ge/ka/archives/431681> > [last accessed 17.10.2022].

⁶ Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022, page 29, available at: < <https://bit.ly/3wdT2Ot> > [last accessed 17.10.2022].

⁷ Decision adopted by the Committee of Ministers on 2 December 2021 at 1419th meeting (30 November – 2 December 2021), CM/Del/Dec(2021)1419/H46-14, §5.

5. The PDO considers that the investigation into the 5 July events fails to meet the standards of effectiveness in terms of timeliness and thoroughness. The authorities did not conduct expert examinations and did not collect material evidence in a timely manner. In particular, forensic medical examinations were ordered within the investigation after about a month had already passed from the relevant facts. Medical documentations were fully collected with delays. In some cases, expert opinion was not available even during the period of the court hearing on merits.⁸ For example, the investigative authorities ordered a forensic psychiatric examination of one of the charged individuals in order to determine his (mental) capacity on 12 October 2021. However, the expert opinion had not been available by the time of delivery of the judgement (4 April 2022). The PDO requested information from the Levan Samkharauli National Forensics Bureau regarding delays in issuing expert opinions on several occasions.⁹ However, the PDO has not received an answer yet. Because of the delay in collecting important evidence, the court changed charge against 3 individuals into a more lenient provision of the Criminal Code of Georgia. Thus, the delay resulted in the inability to prove commission of the crime with which the individuals were originally charged.

6. The PDO has also identified shortcomings in qualification of the criminal acts in question. In particular, the court acquitted 14 individuals of participation in group violence in two of the cases because the court found the evidence submitted by the Prosecutor's Office insufficient to prove that the accused were part of a group organized in a structural and firm manner.¹⁰ One of the reasons of such a decision may lie in the fact that the prosecution refused to bring charges for organizing and managing group violence. Thus, the charge for participating in group violence could have been more convincing if the prosecution had been launched for organizing and managing group violence by individuals against "Tbilisi Pride" and LGBT+ community and/or a judgment of conviction had been delivered. It is noteworthy that the PDO referred to the General Prosecutor to launch prosecution for organizing group violence as the standard for bringing charges against at least 2 individuals was met by publicly available evidence according to the PDO's assessment.¹¹ The Prosecutor's Office rejected the PDO's proposal.¹² Thus, as of today, no one has been prosecuted for organizing the 5 July violence and this is a major flaw of the investigation.

⁸ I.T. was recognized as victim on 8 July 2021 and medical examination of I.T was ordered on 8 August 2021. Written communication regarding provision of additional medical documents between the Levan Samkharauli National Forensics Bureau and the investigative authorities, collection of additional medical documents and provision thereof to the Bureau took place between 31 August 2021 and 6 October 2021. The prosecution had not received the expert opinion by the time of delivery of the judgment. Medical examination was ordered on 8-10 August 2021 in several other cases as well.

⁹ N15-2/8025 and N15-2/9206 letters of the PDO dated 5 August 2022 and 13 September 2022.

¹⁰ The judgement of conviction delivered by the Collegium of Criminal Law Cases of the Tbilisi City Court on 4 April 2022 in the case N1/4559-21; The judgement of conviction delivered by the Collegium of Criminal Law Cases of the Tbilisi City Court on 4 April 2022 in the case N1/4458-21.

¹¹ Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022, pages 29-30; Public Defender Demands Criminal Prosecution of Two Persons for Organizing Group Violence and Calling for Violence on July 5, available at: < <https://bit.ly/3wjwsUt> > [last accessed 16.05.2022].

¹² Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022, page 30.

7. Although 14 individuals were acquitted of participation in group violence in the aforesaid cases due to insufficiency of the evidence, identical/analogous evidence was used by the court to convict 6 individuals of participating in group violence in another judgement.¹³ Thus, the court adopted inconsistent approach of assessing identical/analogous evidence in different cases.

8. According to one of the judgements, specific individuals deliberately broke a cameraman's video camera, tripod and a journalist's mobile phone in the entrance of the building of the office of the "Shame Movement" (local civic movement) on 5 July 2021. The Prosecutor's Office did not consider this fact as raising responsibility for destroying an object belonging to someone else. However, the government has a positive obligation to investigate (potential) violation of the right to property under the European Convention.¹⁴ Moreover, if it is proven that damaging or destroying an object is a perpetrator's direct intention and not merely a collateral result of group violence, this act must also be qualified as damage or destruction of property (article 187 of the Georgian Criminal Code). As no charges were pressed under this article by the investigation, the court was unable to assess the facts of destruction/damage of property.

9. Information obtained by the investigative authorities proved that some of the convicts had been prosecuted and found guilty before in the past. However, the court sentenced all of the convicts (except for one) to the same punishment for the same criminal act whereas the Georgian criminal law obliges a judge to consider, inter alia, the perpetrator's personality and past life when deciding on the punishment.¹⁵ Thus, in this case, the court violated the principle of individualization of punishment.

10. Apart from investigation into the 5 July violence, the decision also refers to the calls of the Committee of Ministers to establish a specialised investigative unit for hate crimes within the police, taking into consideration also the recommendations of the European Commission against Racism and Intolerance and called upon the authorities to take concrete steps in this direction.¹⁶ Despite repeated recommendations by the Committee of Ministers and other representatives of international community,¹⁷ a specialized investigative unit for hate crimes within the Ministry of Foreign Affairs has not been established yet. While the Georgian government has referred to the extension of mandate of the Human Rights Protection and Quality Monitoring Department of the Ministry of Internal Affairs,¹⁸ this measure is insufficient to comply with the aforesaid calls. In particular, the Human Rights Protection and Quality

¹³ The judgement of conviction delivered by the Collegium of Criminal Law Cases of the Tbilisi City Court on 4 April 2022 in the case N1/4457-21.

¹⁴ Judgement delivered by the European Court of Human Rights on 14 October 2008 in the case of Blumberga v. Latvia (Application no. 70930/01), §67.

¹⁵ Article 259, paragraph 4 of the Criminal Procedure Code of Georgia; Article 53, paragraph 3 of the Criminal Code of Georgia.

¹⁶ Decision adopted by the Committee of Ministers on 2 December 2021 at 1419th meeting (30 November – 2 December 2021), CM/Del/Dec(2021)1419/H46-14, §6.

¹⁷ Second Cycle of the UN Universal Periodic Review, recommendation 118.10; Third Cycle of the UN Universal Periodic Review, recommendation 148.73.

¹⁸ Communication from the authorities (16/11/2021) concerning the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12).

Monitoring Department is not authorized to conduct investigations and thus cannot be equated with a specialized investigative unit.¹⁹

11. In the decision, the Deputies called upon the government to continue working on improving investigations of religiously-motivated hate crimes, “including by taking all reasonable steps for unmasking bias motive, ensuring effective victim participation and promptness of investigations”.²⁰ In this connection, issue of conducting effective investigations into these types of alleged crimes remains a challenge according to the PDO’s assessment.²¹ In particular, the timely investigation of crimes committed, as well as the granting of victim status remain problematic.²² These shortcomings are visible in the religiously-motivated human rights abuses that took place against Muslim communities in Samtatskaro, Nigvziani, Tsintskaro, Kobuleti, and the village of Mokhe in Adigeni in the past years.²³ The criminal investigation into incidents in the Tsintskaro and Nigvziani cases was terminated in 2020 due to the lack of criminal signs.²⁴ As for the other cases, according to the information provided by the Prosecutor's Office in March 2022, the only update was in the criminal case under investigation by the Samtskhe-Javakheti District Prosecutor's Office - in connection with the incidents in the village of Mokhe.²⁵ In particular, one person was recognized as a victim and two people were charged with an act of intolerance on the grounds of religion under Article 333 (3, “b”) of the Criminal Code of Georgia.²⁶ The investigation into the other two cases of Kobuleti and Samtatskaro is ongoing, although no specific person was identified as a victim or accused in 2021, similarly to the previous years.²⁷ Thus, the fact that there has been no significant progress in the investigations in these cases for several years signals the lack of effectiveness of investigations into religiously-motivated hate crimes. Moreover, the repetition of similar religiously-motivated confrontations against Muslim communities, the most recent one being the conflict in the village Buknari in January 2021,²⁸ indicates that the policy of the government in

¹⁹ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 5, available at: < <https://bit.ly/3L1xCrL> > [last accessed 17.10.2022].

²⁰ Decision adopted by the Committee of Ministers on 2 December 2021 at 1419th meeting (30 November – 2 December 2021), CM/Del/Dec(2021)1419/H46-14, §6.

²¹ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 132, available at: < <https://bit.ly/3PgjoX2> > [last accessed 17.10.2022].

²² Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 132.

²³ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 131.

²⁴ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 131.

²⁵ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 131.

²⁶ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 131.

²⁷ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 131.

²⁸ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, pages 130 - 131

relation to such cases is less focused on their systemic prevention and is mainly limited to one-time approaches to solving individual incidents.²⁹

12. The decision also contains a recommendation for the Georgian government to “improve the data collection system so that it encompasses additional statistical components, such as, for example, the number of reports or incidents of hate crimes, and is accompanied by the appropriate analytical part explaining the dynamics and trends”.³⁰ In this connection, the PDO welcomes the publication of the 2021 statistics of hate crimes based on the memorandum signed by the Prosecutor’s Office, the Supreme Court, the Ministry of Internal Affairs and National Statistics Office of Georgia. However, mere collection and publication of statistics is not enough as it is also necessary to analyze risk-factors causing hate crimes and circumstances preventing their detection.³¹ However, according to the assessment by the PDO, the government does not analyze public attitudes towards the LGBTQI+ community and does not study the root causes of discrimination.³²

13. In the decision, the Deputies encouraged the Georgian authorities to pursue the work on the National Human Rights Strategy and Action Plan in close co-operation with the Public Defender and civil society.³³ The latest communication by the Georgian government stipulates that the government was “elaborating the Human Rights Strategy for the next 10 years as well as Action Plan with the participation of all stakeholders (among others, the PDO, civil society, etc.)”.³⁴ However, the PDO would like to underline lack of consultations with the PDO since August 2020 until recently. In particular, on 23 August 2022, the PDO received a letter from the Human Rights Secretariat of the Government Administration containing a draft document of the second National Human Rights Strategy (2022-2030) and informing that work on the Strategy was ongoing within the Government Administration and that the PDO had time until 31 August 2022 to send feedback on the draft document. Until this occasion, there had been no communication regarding the Strategy between the PDO and the Human Rights Secretariat. The PDO negatively assesses the tight deadline given for presenting its feedback as the one-week deadline was not enough to assess the Strategy document fully and comprehensively and to prepare an in-depth evaluation. The PDO identified significant shortcomings in the draft document. In particular, the objectives and main indicators in the third priority of the draft Strategy regarding equality and minorities did not include the LGBT+ as a separate group. Similarly, the part of the draft Strategy on gender equality, women’s rights and fight against domestic violence did not mention the (needs of) the LGBT+ group. Thus, the draft Strategy

²⁹ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 131.

³⁰ Decision adopted by the Committee of Ministers on 2 December 2021 at 1419th meeting (30 November – 2 December 2021), CM/Del/Dec(2021)1419/H46-14, §7.

³¹ Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 7.

³² Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination of Discrimination against Women, 2022, page 7.

³³ Decision adopted by the Committee of Ministers on 2 December 2021 at 1419th meeting (30 November – 2 December 2021), CM/Del/Dec(2021)1419/H46-14, §8.

³⁴ Communication from the authorities (16/11/2021) concerning the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12).

failed to consider and address certain issues pertaining to the LGBT+ community and discrimination based on SOGI. The PDO sent its feedback containing recommendations, critical comments and main findings regarding the draft Strategy to the Parliament of Georgia We hope that the Parliament and the Government will take our feedback into account.