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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 case of IDENTOBA AND OTHERS v. Georgia. It comments on the matters referred to in the decision adopted by the Committee of Ministers during the 1507th meeting, 17-19 September 2024. The communication also briefly comments on the Action Report dated 27.06.2024 submitted by the Government of Georgia.

## General Measures

### Discriminatory legislative package on “Protection of Family Values and Minors”

3. The Committee of Ministers during the 1507th meeting, 17-19 September 2024 *“expressed their deepest concern over the initiation of the draft constitutional law and adoption of the legislative package on “Protecting Family Values and Minors” which restrict freedom of expression and assembly related to LGBTI issues, considered that the enactment of such legislation could raise serious questions as to the compliance by Georgia with its obligation to abide by the final judgments of the Court and strongly urged the authorities not to enact the adopted legislative package and not to proceed with any further legislative steps that would be contrary to the Convention, in particular their obligations in this group of cases, and the Court’s case law”*<sup>1</sup>
4. On September 17, the Georgian Parliament adopted the anti-LGBTQ+ legislative package in its third hearing with 84 votes in favor and 0 votes against. The package consists of a core bill, “On Protection of Family Values and Minors,” and 18 related amendments to various Georgian laws.<sup>2</sup> Due to the absence of a constitutional majority, the Georgian Dream was unable to adopt the constitutional law. However, the legislative package

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<sup>1</sup> The decision adopted by the Committee of Ministers during the 1507th meeting, 17-19 September 2024, paragraph 4.

<sup>2</sup> Parliament Endorsing Bill on the Protection of Family Values and Minors in III Reading. Available at: <https://shorturl.at/qw6eP> [last accessed 08.01.2025].

approved on September 17 contains identical content. On December 2nd, the Law officially came into force.<sup>3</sup>

5. After the legislative package was introduced, the Public Defender conducted meetings in the Parliament of Georgia to voice concerns about the draft. The issues highlighted included potential limitations on freedom of expression and assembly, as well as the implications of the proposed labor regulations, and the execution of the Public Defender's mandate and authority.
6. Following this meeting, the legislative draft was amended to include a definition of popularisation<sup>4</sup>, and Article 11 of the law, which posed a potential threat to the implementation of the Public Defender's mandate, was clarified. Additionally, the law's application did not extend to cases where a person's gender, different from their biological sex, was already indicated in the civil act record.
7. However, a definition of the term "popularization" (which is defined as presenting an issue positively or as exemplary) does not meet the foreseeability requirement established by the Constitution of Georgia and the European Convention and still creates a risk of arbitrariness. In addition, several issues that pose potential threats to human rights were not addressed by the Parliament.
8. In November 2024, the Public Defender of Georgia held a meeting with representatives of LGBT+ community organizations to discuss the potential threats of the legislative draft to the rights of LGBT+ community members. During the meeting, non-governmental organizations working on the protection of LGBT+ rights emphasized the ambiguity of the law in terms of realizing the constitutional right to freedom of assembly and expression.
9. Specifically, despite the law providing a definition of "popularization"<sup>5</sup>, it remains unclear what kind of actions might be considered as popularization during the enforcement stage and whether any gatherings of LGBT+ community members, where discussions or debates on the rights of LGBT+ community members, homophobia, and other related issues could take place, could be interpreted as popularization.

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<sup>3</sup> Law of Georgia on the Protection of Family Values and Minors. Available at: <https://shorturl.at/r0hSd> [last accessed 08.01.2025].

<sup>4</sup> Article 3 of the Law of Georgia on the Protection of Family Values and Minors.

<sup>5</sup> Article 6 of the Law of Georgia on the Protection of Family Values and Minors.

10. Particularly problematic in relation to human rights is the imposition of criminal liability for violating the requirements established by the Georgian law "On the Protection of Family Values and Minors," which includes a sanction of up to 2 years of imprisonment.<sup>6</sup>
11. Due to the ambiguity and indeterminacy of the norm, the objective elements of a criminal act could be subsumed within the framework of academic, artistic, scientific activities, book publishing, and other legally permitted activities. It is unacceptable for the criminal liability of a specific person and the possibility of imposing criminal liability for the realization of constitutionally guaranteed rights (assembly, expression, creativity, private life, and personal development) to depend on the discretion and interpretation of the norm's enforcer.
12. Furthermore, the law restricts not only civil activism and creative expression but also intrudes into academic spaces. This undermines the development and teaching of gender studies, human rights research, and other academic disciplines. Namely, the Law calls for prohibition of "production of LGBT propaganda" in educational institutions - in particular, dissemination of information "aimed at the promotion of a person's belonging to a different gender than their own, same-sex relationships or incest".
13. It is important to highlight the impact of the law on the right to life and health. According to Article 6 of the law, it is prohibited to perform surgery or undertake any medical intervention to assign a person to a sex different from their biological sex. This prohibition extends beyond surgical procedures to include any form of medical intervention, creating significant challenges for individuals undergoing gender transition. For individuals already undergoing medical treatment, access to necessary consultations and interventions is critical for their health and survival. However, this regulation poses a high risk of endangering their health and life if medical professionals refuse to provide essential care in compliance with the law. Human rights principles emphasize the importance of respecting and protecting the dignity and autonomy of every individual. The right to health, as enshrined in international human rights instruments, includes access to necessary medical care without discrimination.

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<sup>6</sup> Article 6 of the Law of Georgia on the Protection of Family Values and Minors. Article 176<sup>1</sup> (2) Criminal Code of Georgia - The legislator has declared it a crime to repeatedly commit actions such as disseminating advertisements, including information in (higher) educational programs, or the dissemination or facilitation of information, which is aimed at popularizing a person's assignment to neither biological sex, and/or a sex different from their biological sex, a relationship between representatives of the same biological sex with an expressed sexual orientation, or incest, after being penalized for an administrative offense. Additionally, it is criminalized to perform surgical operations or use other types of medical manipulation on a person to assign them to a sex different from their biological sex. Thus, the law criminalizes the provision and dissemination of information if it is considered as Popularization.

## Exercise of the right to peaceful assembly

14. In June, 2024 Tbilisi Pride announced that Pride Month 2024 would proceed without physical events, citing anticipated government-encouraged violence and hate-filled rhetoric during the pre-election period based on the adoption of Law of Georgia on Transparency of Foreign Influence and intentions of the ruling party to draft so-called anti-LGBT legislation.<sup>7</sup>
15. Regarding freedom of assembly, the PDO wishes to draw attention once again to Article 10 of the law on the “Protection of Family Values and Minors“, which prohibits, among other things, gatherings aimed at promoting same-sex intimate relationships. This provision could potentially lead to the dispersal of events focused on raising awareness about LGBTQI+ rights, as the language used during such events might be interpreted as "presenting an issue positively," thereby falling under the definition of promotion. This approach appears to be inconsistent with the standards set by the European Court of Human Rights (ECHR).<sup>8</sup>
16. The PDO expresses concern that the provision of the law prohibiting gatherings that promote, among other things, same-sex intimate relationships is broadly and vaguely worded and it is not clear in what way the prohibition would serve that aim of protecting family values and minors.

## Combating Hate-Motivated Violence and Discrimination and concerns over Hate Crime Data

17. The government emphasizes in the Action report<sup>9</sup> a zero-tolerance approach to hate-motivated violence and discrimination, with consistent messaging and legal actions. However, public statements, policy declarations, and adoption of discriminatory legislation do not reflect this approach. In addition, the government’s response to hate crimes may be perceived as reactive rather than proactive, with delays in addressing threats and a

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<sup>7</sup> Pride Month in Georgia to Pass Without Physical Events Due to Pre-Election Climate. Available at: <https://shorturl.at/W9MZx> > [last accessed 08.01.2025].

<sup>8</sup> The ECtHR judgment in the CASE OF ALEKSEYEV v. RUSSIA (Applications nos. 4916/07, 25924/08 and 14599/09), paragraph 84. The judgement ECtHR, Bayev and Others v. Russia, para. 83.

<sup>9</sup> Action Report (27/06/2024) - Communication from Georgia concerning the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12), para. 21. Available at: < <https://shorturl.at/Mdd3j> > [last accessed 08.01.2025].

lack of timely measures planned with the involvement of various state agencies to prevent violence.<sup>10</sup> Investigations have faced significant delays, undermining their effectiveness.

18. The PDO welcomes the authorities' efforts to improve statistical data collection and analysis. At the same time, the PDO would like to reiterate the need to carry out an analysis of causes giving rise to hate crimes and factors hindering the detection of hate crimes in addition to producing statistics.<sup>11</sup> The data collection and analysis system has yet to include and assess important data, such as data on the number of reported crimes.

## **Conclusion**

19. Raising awareness about diversity and equality is a vital component in combating discrimination. However, the law's vague wording regarding restrictions on the dissemination of information creates significant room for broad interpretation during enforcement, which poses certain risks. This ambiguity could inadvertently hinder efforts to protect the rights of LGBTQI+ individuals and may impact the effective implementation of anti-discrimination legislation.

20. To conclude, the adoption and enforcement of the legislative package on "Protecting Family Values and Minors" marks a challenge in Georgia's commitment to upholding international human rights standards, particularly regarding the rights of LGBTQI+ individuals.

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<sup>10</sup> PDO Annual Report. p. 145. Available at: < <https://shorturl.at/C9oSC> > [last accessed 08.01.2025].

<sup>11</sup> Communication from Public Defender of Georgia (19/10/2023) in the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12), paragraph 17.