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Meeting: 1383rd meeting (29 September - 1 October 2020) (DH)

Communication from an NGO (Georgian Young Lawyer's Association) (04/08/2020) concerning the IDENTOBA AND OTHERS group of cases v. Georgia (Application No. 73235/12) (appendices in Georgian are available at the Secretariat upon request).

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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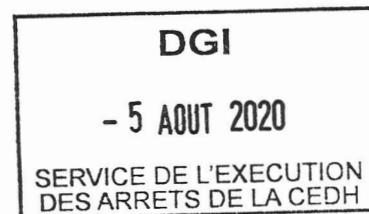
Réunion : 1383^e réunion (29 septembre – 1^{er} octobre 2020) (DH)

Communication d'une ONG (Georgian Young Lawyer's Association) (04/08/2020) concernant le groupe d'affaires IDENTOBA ET AUTRES c. Géorgie (Requête n° 73235/12) (des annexes en géorgien sont disponibles auprès du Secrétariat sur demande) **[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.

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Georgian Young Lawyers' Association

To: Department for the Execution of Judgements of
The European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex, France

By Post

From: Nino Jomarjidze
Tamar Oniani
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Dear Sir/Madam,

The Georgian Young Lawyers' Association (GYLA) wishes to present Rule 9 (2) submission to the Committee of Ministers of the Council of Europe in respect of the implementation of the following cases: *Identoba and Others v. Georgia* (N^o 73235/12), *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia* (N^o 71156/01), *Begheluri and Others v. Georgia* (28490/02), *Tsartsidze and Others v. Georgia* (N^o 18766/04). Since the execution of these judgements is still subject to the supervision, the present submission aims to provide to the Committee of Ministers the information regarding the general measures taken to date by the Georgian Government to fulfil its obligation for implementations of the judgements.

Please, find the enclosed Rule 9 (2) Submission of the GYLA. Should you require additional information about the provided submission, please, do not hesitate to contact us.

Yours faithfully,

Nino Jomarjidze

Tamar Oniani

Annex 1: Rule 9.2 Communication of the GYLA to the Committee of Ministers of the Council of Europe in respect of the implementation of the Identoba and Others Group cases.

Rule 9 (2) submission to the Committee of Ministers of the Council of Europe in respect of the
implementation of the following cases:

Identoba and Others v. Georgia (N° 73235/12)

97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia (N°
71156/01)

Begheluri and Others v. Georgia (28490/02)

Tsartsidze and Others v. Georgia (N° 18766/04)

Georgian Young Lawyers' Association (GYLA)

Tbilisi

22 July 2020

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INTRODUCTION

1. The Georgian Young Lawyers' Association (hereinafter "GYLA") would like to present this communication pursuant to Rule 9.2 of the Rules of Committee of Ministers to draw attention to the inadequacies in the execution of the European Court of Human Rights' (hereinafter "the Court") judgments delivered in the *Identoba and Others group of cases*. This submission is communicated for the supervision of the execution of judgements for consideration at the 1383rd CM-DH meeting (29 September - 1 October 2020).
2. The present communication addresses the matters arising in relation to the general measures undertaken by the Georgian Government in the *Identoba and Others group of cases* and brings to the attention of the Committee of Ministers the key concerns and challenges related to the human rights condition of LGBT+ and Jehovah's witnesses. Finally, in this submission, GYLA provides recommendations and a number of steps that we consider are required to ensure the full and effective execution of these judgments.

I. SUMMARY OF IDENTOBA AND OTHERS GROUP OF CASES

3. Since 2007, the Committee of Ministers has been supervising the execution process of the judgements adopted by the Court against Georgia on *Identoba and Others group of cases*. This group unites the following 4 cases: *Identoba and Others v. Georgia* (N° 73235/12, 12/05/2015), *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia* (N° 71156/01, 03/05/2007), *Begheluri and Others v. Georgia* (28490/02, 07/10/2014), *Tsartsidze and Others v. Georgia* (N° 18766/04, 17/01/2017).

1.1 *Identoba and Others v. Georgia* (N° 73235/12)

4. The case¹ concerns the State's failure to provide due protection to peaceful demonstrators from homophobic violence by counterdemonstrators on 17 May 2012, the International Day against Homophobia, Transphobia and Biphobia and to conduct effective investigation in this respect.
5. With its judgment of 12 May 2015, the Court found the violation of Articles 3 and 11 in conjunction with Article 14 of the Convention. The Court underlined that the organizers had specifically submitted prior notice to the police regarding the holding of the demonstration and likelihood of abuse, as well. Accordingly, taking into account the negative attitudes towards sexual minorities in Georgia, the police knew or should have known of the risks coming from the counterdemonstrators, and the state was obliged to protect the demonstrators in compliance with its positive obligation which it failed to do. The state has also fell short of their procedural obligation to conduct effective investigation, capable of unmasking the discriminatory motive and identifying those responsible for committing homophobic violence.

¹ *Identoba and Others v. Georgia*, N° 73235/12, 12/05/2015.

1.2 97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others (N° 71156/01), Begheluri and Others (28490/02), Tsartsidze and Others v. Georgia (N° 18766/04)

6. The cases concern² religiously-motivated attacks committed by the various groups, including the extremist Orthodox believers, and in some cases, by the state representatives, that took place repeatedly during 1999-2001 and the state's failure to conduct effective investigation in this respect.
7. The Court found violation of Article 9 in conjunction with Article 14 of the Convention, and in the cases of *Begheluri* and *Gldani Congregation*, additionally declared violation of Article 3 (in its substantive and procedural limbs). The Court established that the conduct of the state's agents, who either participated directly in the attacks against Jehovah's Witnesses or showed acquiescence and complicity in the unlawful activities of private individuals, led to a failure to take the necessary measures to ensure that Jehovah's Witnesses were able to exercise their right to freedom of religion. Furthermore, the authorities encouraged the violent actions against Jehovah's Witnesses and created a climate of impunity throughout the country. The Court also noted that the state fell short of conducting effective investigation, capable of establishing discriminatory motive, despite the very fact, that the perpetrators' (including both, private individuals and state agents) discriminatory motive was obvious taking into account the context of country-wide religious violence and prejudice against Jehovah's Witnesses at the material time.
8. Additionally, in *Tsartsidze and Others* and *Begheluri and Others* cases, the Court noted that the domestic proceedings were superficial and one-sided, that was culminated in rejection of the applicants' version of events and acceptance of the police's version of events as true by default.

1.3 Decision of the Committee of Ministers of September 2019

9. The Committee of Ministers last examined the *Identoba and Others* group of cases in September 2019.³ According to the latest decision, the Committee of Ministers underlined that the problems in identifying hate motives still remained and in most cases, when the alleged crime concerned LGBT+ community or Jehovah's Witnesses, the discriminatory motive was not established. Additionally, the Committee encouraged the State to establish a specialized investigative unit within the Ministry of Internal Affairs (hereinafter "MIA") in order to carry out effective investigations into hate crimes. The Committee regretfully noted that LGBT+ community was still deprived to exercise their right to assembly. Taking into account the mentioned and other concerns, the Committee of Ministers urged the authorities to take additional effective steps. The CM decided to resume consideration of these cases at the latest at their DH meeting in 29 September - 1 October 2020.

² *97 Members of the Gldani Congregation of the Jehova's Witnesses and 4 Others v. Georgia*, no. 71156/01, 03/05/2007; *Begheluri and Others v. Georgia*, no. 28490/02, 07/10/2014; *Tsartsidze and Others v. Georgia*, no. 18766/04, 17/01/2017.

³ 1355th meeting, 23-25 September 2019 (DH), H46-8 *Identoba and Others* group v. Georgia (Application No. 73235/12), CM/Del/Dec(2019)1355/H46-8, available: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1355/H46-8E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1355/H46-8E), [01.06.2020].

II. INFORMATION ON GENERAL MEASURES UNDERTAKEN BY THE GEORGIAN GOVERNMENT

10. On 25 June 2020, the Ministry of Justice of Georgia submitted an action report to the Committee of Ministers on the execution of the *Identoba and Others group* cases.⁴ In the action report referring to various case-law of national courts, the State underlined within the individual measures that the applicants had an ample opportunity to apply to national courts and to obtain compensation for the alleged failure of the authorities, notably law enforcement, to protect them from physical violence during their marches/public meetings as well as regarding expiration of the period of limitation. The Ministry has also presented the statistical data regarding the effectiveness of hate crimes investigation and persecution. Additionally, it was noted, that working on improving the methodology of collecting statistical data has started in 2019, which continued in 2020.⁵ The state has also noted before the Committee of Ministers that the state officials express solidarity publicly with LGBT+ people. The state also referred before the Committee of Ministers to the newly established Human Rights Department as a mechanism authorized *to investigate* offences motivated by discrimination and intolerance.⁶ As one of the general measures, the state has also presented information regarding the awareness raising activities and trainings conducted for increasing qualification of the employees of the domestic courts and the investigative bodies with regard to discrimination issues and hate crimes.
11. The information on the undertaken measures were also included by the Georgian Government in its previous action report/action plans, including in the action report of 10 July 2019.⁷ The report on the execution of the *Identoba and Others group* cases were also submitted to the Parliament of Georgia on 31 March 2020,⁸ which supervises the implementation process of the judgments of the international mechanisms since 2017 subsequent to the respective legislative amendments of 2016.

III. THE MAIN CONCERNS WITH REGARD TO THE UNDERTAKEN GENERAL MEASURES

12. Despite the fact, that during the last years, Georgia has enhanced the legal mechanisms to improve the protection of minority rights at some extent, as of today, the situation is still harsh. The result of which is that the LGBT+ community and Jehovah's Witnesses remain one of the most vulnerable

⁴ Communication from Georgia concerning the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12), 1383th meeting (29 September – 1 October 2020) (DH), Action report (25/06/2020), available: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)572E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)572E), [16.07.2020].

⁵ Ibid, 45.

⁶ Communication from Georgia concerning the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12), 1355th meeting (September 2019) (DH), Action report (10/07/2019), § 55.

⁷ Communication from Georgia concerning the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12), 1355th meeting (September 2019) (DH), Action report (10/07/2019), §§ 24-86; available: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)795E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)795E), [02.06.2020].

⁸ 2019 Report concerning the execution process of the judgements/decisions of the European Court of Human Rights (current cases), Ministry of Justice of Georgia, 2020, 44-9, available: <https://info.parliament.ge/#law-drafting/20249>, [02.06.2020].

groups in the society.⁹ Intense discriminatory attitudes and stigma spread over the country further aggravates their condition.¹⁰

13. Physical violence and/or interference with religious activities, including, but not limited to destruction of religious literature, is quite frequent.¹¹ According to 2019 data, aggression against Jehovah's Witnesses is still evident in public and the community members are harassed while conducting religious services in the streets. Furthermore, the facts of damaging the Kingdom Halls of Jehovah's Witnesses were revealed during 2019.¹²
14. The situation is also harsh with regard to LGBT+ community, who suffer from oppression and discrimination and became the victims of violence on the daily basis. The state agents' ineffective measures, inactivity in most cases, the discriminatory statements expressed by the public officials¹³ as well, or the lack of solidarity,¹⁴ strengthens the well-rooted homo and transphobia, and additionally, contributes to encouragement of violence or discrimination. The latter is also supported by the Rainbow Index data, according to which, Georgia is positioned by 25.6% on the scale of fighting against hate crimes and hate speech.¹⁵
15. Therefore, the number of challenges still remain with regard to LGBT+ community and Jehovah's Witnesses, including, the problems concerning the effectiveness of investigation of crimes against these groups and the problems in establishing discriminatory motive within the investigation. LGBT+ community still has problems with enjoying their right to freedom of expression and assembly. Additionally, awareness raising campaigns directed to decreasing existing negative attitudes and demolishing stigma, lack. Apart this, unified statistic methodology still does not exist.
16. The named problems will be examined below in detail and in addition, the relevant recommendations will be provided, that the state shall undertake at the institutional and social

⁹ Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality (2019), 04.03.2020, 5, 17, available: <http://ombudsman.ge/res/docs/2020031712325453928.pdf>, [02.06.2020].

¹⁰ Public Defender's Statement on 6th Anniversary of Adoption of Anti-Discrimination Law, 02.05.2020, available: <http://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-antidiskriminatsiulikanonmdeblobis-mighebidan-6-tseltan-dakavshirebit>, [02.06.2020].

¹¹ Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality (2019), 04.03.2020, 28.

¹² The Human Rights Education and Monitoring Center (EMC), Analysis of crimes committed against Jehovah's Witnesses in 2019, available at: <https://emc.org.ge/ka/products/2019-tsels-iehovas-motsmeta-mimart-chadenili-danashaulebis-analizi> [17.07.2020], US State Department, Georgia, 2019, International Religious Freedom Report, available at: <https://www.state.gov/wp-content/uploads/2020/06/GEORGIA-2019-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> [17.07.2020].

¹³ Human Rights Watch, World Report 2019, Georgia, available: <https://www.hrw.org/world-report/2019/country-chapters/georgia>, [02.06.2020].

¹⁴ Coalition for Equality, statement "We Call on the MIA to Respond Adequately to Threats form Violent Grounds," 17.05.2019, available: <https://gyla.ge/en/post/movutsodebt-shss-s-dzaladobrivi-jgufebis-muqaraze-adekvaturi-reagirebisen#sthash.xjXHBEOE.dpbs>, [02.06.2020].

¹⁵ Rainbow Index, The Country Ranking of Hate Crimes & Hate Speech, 0% (gross violations of human rights, discrimination) and 100% (respect of human rights, full equality), available: <https://rainbow-europe.org/country-ranking#>, [02.06.2020]; see also, Coalition for Equality, statement "Human Rights Organizations Call on 14 and 16 June events," 17.06.2019, available: <https://bit.ly/2LObUvm>, [02.06.2020].

levels for full and effective execution of *Identoba and Others Group Cases* and for improvement of the human rights condition of LGBT+ community and Jehovah's Witnesses.

3.1 Problems related to Freedom of Expression and Assembly

17. The situation still remains critical with regard to the freedom of expression and assembly of LGBT+ community. Despite the heinous experience of 17 May 2013, the authorities still fail to protect LGBT+ community's right to freedom of assembly, and manifestly ignores LGBT+ community and their rights.¹⁶
18. The events concerning the Dignity March organized by "Tbilisi Pride" in 2019 are noteworthy. In particular, after meeting with the organizers of "Tbilisi Pride," the MIA rejected to ensure safety of demonstrators in case of conducting the Dignity March,¹⁷ and stated that "... *it is impossible to conduct an event on the planned places and format, taking into account the security risks of those involved in the process ...*"¹⁸ and instead suggested to community members disproportionate alternative,¹⁹ namely, holding march in a closed place.²⁰ This step factually equals to rejection of fulfilment of the state's positive obligation.
19. Furthermore, the fact that the part of LGBT+ community fully neglects to celebrate 17 May manifestly in an open space is the result of the state's in compliance with positive obligations, high level of homo/bi/transphobia and inconsistent policy in this respect.²¹ Hence, the situation regarding the right to freedom of expression and assembly has not been improved, but rather worsened. Taking this into consideration, it cannot be concluded that the state has eradicated the problem reflected in *Identoba and Others' Group*. Furthermore, it should be noted that although the Committee of Ministers urged the authorities to take all measures necessary in order to fully safeguard freedom of assembly and the physical integrity of participants, the Georgian Government has failed to provide in their action report any information they have undertaken with regard to the freedom of expression and assembly of LGBT+ community.

¹⁶ Coalition for Equality, statement "Human Rights Organizations Call on 14 and 16 June events," 17.06.2019, available: <https://bit.ly/2LObUvm>, [02.06.2020].

¹⁷ Statement of MIA, available: <https://police.ge/ge/shinagan-saqmeta-saministrosgantskhadeba/12775>, [02.06.2020].

¹⁸ GYLA'S Statement on the International Day Against Homophobia, Transphobia and Biphobia, 17.05.2020, available: <https://gyla.ge/en/post/saia-s-ganckhadaba-homofobiis-transfobiis-da-bifobiis-tsinaagmdeg-brdzolis-saertashoriso-dghestan-dakavshirebit#sthash.xp2VmIgh.dpbs>, [02.06.2020].

¹⁹ Coalition for Equality, The Right to Non-Discrimination in Practice for Various Groups in Georgia – Report of 2019, 47, available: <http://www.equality.ge/5845>, [02.06.2020].

²⁰ Netgazeti, Tbilisi Pride: MIA suggested holding march in the club or stadium, 31.05.2019, available: <https://netgazeti.ge/news/368709/>, [02.06.2020].

²¹ Coalition for Equality, statement "Coalition for Equality addresses to the Government of Georgia and Ministry of Internal Affairs, 01.06.2019, available: <https://bit.ly/3cM0a8p>, [02.06.2020].

3.2 Absence of a Specialized Investigative Unit within the Ministry of Internal Affairs of Georgia for carrying out effective investigations into hate crimes

20. Despite the certain steps undertaken by the Georgian Government, the investigation and prevention of hate crimes still remain serious challenge. The said problem can be significantly eradicated by creation of a specialized investigative unit within the MIA, which will have capacity to investigate hate crimes. Despite establishment of the Human Rights Department within the MIA can be assessed as the positive step, it cannot be regarded as the sufficient mechanism for replacing the specialized investigative unit, as the function of the said department is monitoring the investigation, not directly conducting the investigation. ECRI noted that such a department is not a substitute for a specialized investigative unit within the police, and therefore does not constitute a dedicated reinforcement of hate crime investigation capacity at law enforcement level.²² Likewise ECRI, the Committee of Ministers has indicated to the need of creation of the specialized investigative unit in Georgia.²³ Although the Human Rights Department assures the effectiveness of the investigation through monitoring of the investigation process, however, it cannot be regarded as a sufficient mechanism and as the fulfilment of the Committee of Ministers' recommendation as it lacks authority to conduct the investigation itself. Hence, as of today, Georgia has not executed its obligation in this respect. The latter, alongside with other issues, significantly hinders effective investigations concerning the crimes against LGTB+ community and Jehovah's Witnesses.
21. Therefore, it is crucial to create the specialized investigative unit within the MIA, capable of investigating hate crimes, which will be staffed by persons with special expertise. Such unit will be one of the guarantees to effectively fight against hate crimes.

3.3 Problems related to establishing a possible discriminatory motive within the investigation and to conducting effective investigation

22. The problem of effective investigation of hate speech and hate crimes, as well as punishment of perpetrators still remain challenging.²⁴ In particular, the problem in this respect can be identified with regard to establishment of discriminatory motive on the one hand and conducting investigation in a timely manner on the other hand. According to the report of the Public Defender of Georgia, the problems with regard to the establishment of discriminatory motive while investigating crimes against LGTB+ community and Jehovah's Witnesses, including the information with regard to investigative measures conducted for identifying the motive and thoroughness of these actions, still remain.²⁵ The religious organizations underlined that when it comes to the alleged commission of crimes which in itself included the discriminatory motive, such

²² ECRI, CRI(2019)4 Conclusions on the implementation of the recommendations in respect of Georgia subject to interim follow up, 05.03.2019, 5, available: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e>, [02.06.2020].

²³ CM/Notes/1355/H46-8, 25.09.2019, 7, available: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1355/H46-8E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1355/H46-8E), [02.06.2020].

²⁴ GYLA'S Statement on the International Day Against Homophobia, Transphobia and Biphobia, 17.05.2020.

²⁵ Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality (2019), 04.03.2020, 27, 29.

as persecution on religious grounds or unlawful interference with the performance of religious rites, the establishment of discriminatory motive was not problematic. However, if the incidents concerned the crimes such as beating of community members or damaging their religious property, then identifying the discriminatory motive under Article 53¹ and reflecting in the relevant documents were complicated and the prosecuting authorities failed to classify crimes targeting Jehovah's Witnesses as religiously motivated.²⁶ As mentioned by the religious organizations, this fact further prevented the national courts from establishing the discriminatory motive in the cases.²⁷ Furthermore, another problem refers to the delayed investigation, which arouses a sense of injustice and insecurity among the victims of alleged crime that significantly undermines trust towards the law enforcement agencies.²⁸

23. Apart from establishing the discriminatory motive, granting status to the victims of alleged crimes are still problematic. In particular in 13 incidents out of 20, the community members or religious organizations were not granted with victim status depriving them with the possibility to examine the case materials and effectively involve in the investigation process. Moreover, the refusal of the prosecuting authorities are mainly unsubstantiated failing to provide relevant arguments of refusal.²⁹ In addition, in several cases, despite having sufficient evidences for bringing charges against concrete individuals, the prosecuting authorities failed to do so.³⁰

3.4 Problems related to absence of discriminatory motive clause in the Code of Administrative Offences of Georgia

24. The Code of Administrative Offences (hereinafter "the CAO) does not envisage the possibility of establishing discriminatory motive, as the aggravating factor for administrative liability. Hence, in cases, when the incident does not attain the criminal threshold, but presents the administrative offence, the relevant authorities does not assess or establish the discriminatory ground. This leads to leave the offences committed on discriminatory ground without due attention. Additionally, in absence of administrative motive in the CAO, it is impossible to provide accurate statistics on such crimes.³¹
25. The Public Defender of Georgia in her special report underlines that sometimes, after termination of criminal investigation, the cases are classified as the administrative offences, but even if a person is identified as an offender, the relevant decision does not indicate that the victim suffered harm

²⁶ US State Department, Georgia, 2019, International Religious Freedom Report

²⁷ The Human Rights Education and Monitoring Center (EMC), Analysis of crimes committed against Jehovah's Witnesses in 2019.

²⁸ Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality (2019), 04.03.2020, 29.

²⁹ The Human Rights Education and Monitoring Center (EMC), Analysis of crimes committed against Jehovah's Witnesses in 2019.

³⁰ US State Department, Georgia, 2019, International Religious Freedom Report.

³¹ Rule 9.3 - Communication from a NIHR (Public Defender of Georgia) (19/08/2019) in the cases of *Tsartsidze and Others, Begheluri and Others, Members of the Gldani Congregation of Jehovah's Witnesses and Others and Identoba and Others (Identoba and Others group) v. Georgia* (Applications No. 18766/04, 28490/02, 71156/01, 73235/12), 05.09.2019, available: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)939E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)939E), [02.06.2020].

on the discriminatory ground.³² The mentioned fact further confirms the deficiency of the CAO. Hence, it is crucial to initiate relevant legislative changes in the CAO that will define discriminatory ground, as the aggravating circumstance of liability.

3.5 Problems related to statute of limitations and effectiveness of domestic civil and criminal remedies

26. As the execution process of *Identoba and Others Group cases* has revealed, the statute of limitations emerged to be another important challenge. Particularly, in accordance with the information provided by the Government of Georgia regarding the individual measures, the statute of limitations subscribed by the Criminal Code of Georgia for the actions committed by the perpetrators are expired in all four cases. Hence, the investigative body lacks the capacity to initiate persecution against the certain individuals.³³ Taking into account the principle of non-retroactivity, it is obvious that statute of limitations cannot be restored, however, the problem identified in these cases revealed the necessity from the State to provide certain measures for preventing the same scenario in future which in itself includes the performance of timely investigation.
27. In the action report of 2020 submitted before the CM, the Georgian Government notes within the individual measures that in case of termination of investigation and/or a criminal prosecution, the victims can challenge a decree of the prosecutor on the basis of Article 106 of the Criminal Procedure Code of Georgia. It should be noted in this respect that not the victims of all categories of crimes are granted with such possibility. In particular, under the 2014 amendments, the victim has been afforded to appeal the prosecutor's decree on the termination of the investigation/criminal prosecution. According to the amendments, in cases of especially grave crimes, victims are entitled to appeal this decree to the superior prosecutor and afterwards, to the domestic court of first instance. While the legislation provides the victims in case of especially grave crimes with a two-tier system for appealing, the victims in cases of less grave and grave crimes³⁴ are deprived of such a possibility. In particular, under the CPC in cases of less grave and grave crimes the victim has the right to appeal against the prosecutor's decree on the termination of investigation and/or a criminal prosecution only to the superior prosecutor and the decision of the superior prosecutor is not subject to judicial control.
28. The victim's right to appeal against the decree of the prosecutor to the superior prosecutor is not an effective mechanism for protection of the victim's rights. The GYLA's report on "Rights of Victims in Criminal Proceedings"³⁵ establishes that according to the regular practice the prosecutor's decree, including on the termination of the investigation/criminal prosecution is pre-arranged with a superior prosecutor; therefore, in case of appeal, the superior prosecutor almost

³² Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality (2019), 04.03.2020, 27, 29.

³³ 2019 Report concerning the execution process of the judgements/decisions of the European Court of Human Rights (current cases), Ministry of Justice of Georgia, 2020, 42, 44.

³⁴ According to Article 12 (2) the CCG, a crime is considered as a less grave crime, if the maximum penalty does not exceed five years of imprisonment. Under Article 12(3) of the same code, the crime is considered as a grave crime, if the maximum penalty exceeds five years however does not exceed 10 years of imprisonment.

³⁵ Report of GYLA on "Rights of Victims in Criminal Proceedings", 2016, available: https://gyla.ge/files/news/2008/dazaralebulis%20uflebebi_eng.pdf, [20.07.2020].

invariably leaves the original decree unchanged. Consequently, an appeal submitted by the victim is usually ineffective. In addition, the report reveals that the decision of the superior prosecutor does not meet the minimum standards of substantiation. The superior prosecutor simply indicates that he/she agrees with the decree adopted by the subordinate prosecutor - no additional reasoning is set out.

29. The Constitutional Court of Georgia highlighted in its judgment of 30 September 2016 the importance of the victim's right to appeal to the court and the provision of adequate guarantees for the protection of the victim's interests. The Court underlined in its judgment that the victim is one of the main reasons for instigating criminal procedures and the victim has the greatest interest in securing justice. The Court further noted that to protect the victim's rights, it is of utmost importance to carry out judicial review of the decree of the superior prosecutor, as this is the most powerful and effective way to force the prosecutor to be impartial while exercising discretionary powers. Thus, the Constitutional Court underlined that the victim should have the opportunity to appeal, including to the domestic court, in relation to decree on the termination of the investigation/criminal prosecution, regardless of the categories of crimes in question.³⁶
30. As it derives from the action report of the Georgian Government, in *Identoba* case the investigation was pending under Article 161(1) (encroachment upon the right to assembly or demonstration) which belongs to less grave crimes. Therefore, in case of termination of the investigation, the victims of *Identoba* cases, will not be afforded with right to appeal this decree before the first instance court. Therefore, the above-mentioned clearly reveals the need of further amendments in the Criminal Procedure Code of Georgia which will ensure the rights of victims to appeal against the prosecutor's decree on the termination of the investigation/criminal prosecution before the domestic court of first instance, regardless of the category of the crimes.
31. The Ministry of Justice, in its action report of July 2019 and June 2020 submitted before the Committee of Ministers, noted that the legislation in force at the material time envisages civil form of redress for the victims.³⁷ In particular, the Ministry noted that the applicants had an ample opportunity to apply to national courts on the grounds of the relevant legislative norms and to obtain compensation for the alleged failure of the authorities, notably law enforcement, to protect them from physical violence during their marches/public meetings as well as regarding expiration of the period of limitation. The Ministry additionally referred to the relevant articles of the Civil Code of Georgia, including the Articles 992, 413 and 1005 (1), as the legal grounds for requesting redress.
32. The effectiveness of the civil mechanism suggested by the Ministry of Justice also raises doubts for the following reasons: it is noteworthy, that the statute of limitation for both civil claims proposed by the Ministry of Justice, is expired. Namely, Civil Code itself envisages certain statute of limitations, according to which, the limitation period on a claim for damages resulting from a tort is three years from the moment at which the victim became aware of harm or [the identity of] the person liable for compensation of the harm. As for the present cases, this moment was the expiry

³⁶ The Judgment of the Constitutional Court of Georgia, dated 30 September 2016, available: <https://goo.gl/a39ZTq>, [20.07.2020].

³⁷ Communication from Georgia concerning the case of IDENTOBA AND OTHERS v. Georgia (Application No. 73235/12), 1355th meeting (September 2019) (DH), Action report (10/07/2019), §§ 16-21.

date of the statute of limitations for the criminal cases, which caused them harm, and also revealed the identity of responsible person or when police officers failed to protect them from physical violence during their marches/public meetings. Therefore, the 3 years of limitation period should have counted from the moment when the statute of limitations have expired on the criminal cases or when the law enforcement officers failed to undertake relevant steps for their protection. As of today, 3 years of limitation has already expired on all cases. Therefore, the civil mechanism proposed by the Georgian Government cannot be regarded as an alternative and effective remedy for all the victims of this group due to the expiration of the statute of limitation.

33. Apart this, the effectiveness of the civil mechanism suggested by the Ministry of Justice also raises doubts. With regard to claim related to failure of the law enforcement officers to protect them from physical violence during their marches/public meetings, it should be emphasized that, while delivering the judgment, the European Court noted that the domestic authorities failed to provide adequate protection to the thirteen individual applicants from the bias-motivated attacks of private individuals during the march of 17 May 2012. The Court also decided to make the awards to the applicants for sustained moral damages. Considering the outcome of the European Court and already granted compensation, the applicants' claim before the national authorities with the same demand would lack substantiation and perspective as it is not possible to request compensation twice for the same violation.
34. As for the claim regarding the harm caused as a result of expiration of limitation, it should be underlined that the Ministry has not presented a single judgement adopted by the domestic courts, which concerns granting compensation to the victims for the harm caused due to the elapse of the statute of limitation on the criminal case as a result of actions of the representatives of the investigative body. The judgments of the national courts presented by the Ministry of Justice and the factual circumstances included in these judgements substantively differ from the case of seeking redress caused due to the elapse of limitation as a result of actions of the investigative body. Hence, the presented examples lack the ability to show the effectiveness of the civil remedy. In this respect, it should be further noted that even if the 3 years of limitation is not elapsed, the substantiality of the claim also remains problematic. In particular, in case of applying to the national remedies, the civil courts will have to discuss and assess the effectiveness of the certain investigative measures and investigation itself, which exceeds the judicial competence of the civil/administrative panel.
35. Consequently, the civil mechanism, suggested by the Ministry of Justice to the victims of *Identoba and Others* group cases on requesting compensation for the alleged failure of the authorities, notably law enforcement, to protect them from physical violence during their marches/public meetings as well as regarding expiration of the period of limitation does not constitute the effective remedy for restoring victims' violated rights.

3.6 Absence of unified statistic data

36. The data presented by the Ministry of Justice before the Committee of Ministers raises questions on which the answers are not presented in the relevant action report.
37. For instance, the Ministry notes that in 2016-19 the criminal prosecution has been initiated against 422 persons and that in 2019, prosecution was commenced against 183 persons. In the report

presented before the Parliament of Georgia the Ministry further noted that the criminal judgement has been adopted against 103 persons. It remains ambiguous, what kind of result has been found in respect of remaining 319 cases examined in 2016-19. Neither the action report submitted before the Committee of Ministers includes this information. Furthermore, the statistical data presented by the Ministry before the Parliament of Georgia and the Committee of Ministers fails to include information on how many cases (out of these 103 cases) have included the discriminatory motive on the basis of sexual orientation and gender identity or religious ground.

38. Apart this, the Ministry notes that 97 cases (out of 103 cases) resulted in the judgement of conviction and 6 cases - in the judgement of acquittal. Additionally, Ministry states that in respect of judgements of conviction adopted in 2019, Article 53¹ (aggravating circumstances of penalty) has been invoked in 33%.³⁸ But, mentioned data does not include the information on the following issues: 1) specifically how many cases invoked Article 53¹; 2) why Article 53¹ has not been invoked in remaining 67% of cases, in particular, whether the prosecutor's office has not established the discriminatory motive in the decree on charges or whether the court has not introduced the discriminatory motive despite the fact that the discriminatory motive has been established by the prosecutor's office in the decree on charges. Consequently, to properly assess the existing situation regarding the establishment of discriminatory motive, the Ministry should present more comprehensive statistical data.
39. The information requested by GYLA from different state institutions further revealed a number of challenges related to providing statistical data. In particular, according to the information provided by the MIA, the structural units of the Ministry, as well as the police divisions and departments did not collect the relevant statistic with regard to number of applications lodged before the investigative authorities with regard to hate crimes due to the technical mistakes and/or due to the absence of a detailed content (incomplete information) while registering applications in the electronic case management system of the Ministry.³⁹ Therefore, the State authorities fail to possess relevant information with regard to number of applications lodged before the investigative bodies with regard to hate crimes allegedly committed against them.
40. Moreover, as confirmed by various reports, the Jehovah's witnesses presents one of the most vulnerable groups in Georgia as they face discrimination most likely after LGBT+ persons. Therefore, in order to effectively fight against the crimes allegedly committed against the Jehovah's witnesses, it is of utmost importance inter alia to collect the separate statistics with regard to the crimes allegedly committed on the ground of religious intolerance directly against the Jehovah's witnesses. However, as the MIA informed GYLA, they fail to collect such statistics.⁴⁰
41. In addition, as it derived from the response of the Supreme Court of Georgia, they fail to collect and analyze the statistical data of those judgments, when the Prosecutor's Office have failed to establish the discriminatory motive in the resolution on charges, but the national courts referred to existence of alleged discriminatory ground in the substantive part of the judgements of the

³⁸ 2019 Report concerning the execution process of the judgements/decisions of the European Court of Human Rights (current cases), Ministry of Justice of Georgia, 2020, 45.

³⁹ Annex 1, letter of MIA of 06.07.2020.

⁴⁰ Ibid.

cases.⁴¹ The collection of such data could have led to analyzing and monitoring efficiency of the activities of the prosecuting authorities and the national courts as well as to identifying the relevant problems in their work related to.

42. The above-noted issues once again confirm the necessity of establishing the unified methodology of collecting statistical data on hate crime. According to the Ministry, working on that methodology has been started in 2019 and still continues. But, timely establishment and implementation of unified methodology is crucial, the absence of which hinders the state's preventative policy and effective struggle against hate crimes.

3.7 Necessity of social awareness campaigns

43. As mentioned above, the negative attitudes towards the sexual and religious minorities and high level of homo/bi/transphobia in the State raises serious concerns. The religious minorities are still perceived to pose a threat to the values of the country and Georgian Orthodox Church. In 2018 the Council of Europe reported that, Jehovah's Witnesses faced discrimination the most likely after LGBT+ persons.⁴² These attitudes were one of the major factors that triggered the incidents the victims of *Identoba and Others Group* complained of.
44. The statistic of using hate speech against LGBT+ community and Jehovah's Witnesses also remains high, likewise the hate crimes.⁴³ Also, instead of state officials making clear supportive statements with regard to LGBT+ and religious groups, the representatives of parliamentary and executive authority engage themselves in hate speech.⁴⁴ According to the report of the US State Department, religiously intolerant statements of 55 incidents made by various groups, including media representatives, political parties, clergy and public organizations were documented in 2019.⁴⁵
45. The social attitudes of the society are often rooted by lack of knowledge regarding the minority problems and their rights. The information provided by the Ministry shows that during the last period only limited number of events has been organized with pupils, teachers and students. Other activities conducted by the Government only engaged prosecutors and investigators. Consequently, this attests the shortage of social awareness raising campaigns organized by the Georgian state authorities itself. Although the activities undertaken for increasing awareness of the investigative authorities are of crucial importance, only such activities are not sufficient. Thus, planning and organizing the number of campaigns among the general public dedicated to changing the social attitudes towards LGBT+ community and religious minorities, are crucial and shall increase. Such

⁴¹ Annex 2, letter of Supreme Court of 26.06.2020.

⁴² US State Department, Georgia, 2019, International Religious Freedom Report.

⁴³ Hate Speech, Hate Crime, and Discrimination in Georgia: Attitudes and Awareness, Council of Europe, 2018, 45-48; available: <https://rm.coe.int/hate-crime-hate-speech-and-discrimination-in-attitudes-and-awareness-e/16808ef62a>, [04.06.2020].

⁴⁴ Ibid.

⁴⁵ US State Department, Georgia, 2019, International Religious Freedom Report.

kind of social awareness raising campaigns have significant role in fostering tolerance within the society.⁴⁶

46. Additionally, the police officers' discriminatory attitudes towards the victims of hate crimes remain one of the challenges.⁴⁷ Such attitudes causes insecurity among the victims and lack of trust towards the system. The expressed phobic behavior and attitudes of the police officers poses a significant barrier to apply the law enforcement body in case of a crime. Consequently, such approach may decrease the applications to the law enforcement bodies.⁴⁸ In this respect, it is crucial to plan activities that will be dedicated to decrease barriers and enhance trust between the representatives of minorities and law enforcement officers.

IV. SUGGESTED RECOMMENDATIONS TO ENSURE FULL AND EFFECTIVE EXECUTION OF THE GENERAL MEASURES

47. In order that the *Identoba and Others Group* cases are effectively and adequately implemented, GYLA considers that the following steps need to be taken:

- The Government should ensure that LGBT+ community enjoyed their right to freedom of expression and assembly;
- The Government should create specialized investigative unit within the Ministry of Internal Affairs that would be capable of investigating the hate crimes;
- Taking into account the principle of non-retroactivity, it is obvious, that statute of limitations cannot be restored but the problem identified in the *Identoba and Others* group cases reveals necessity from the State to undertake certain measures in order to prevent the same incidents in future;
- The Government should introduce legislative amendments to ensure the rights of victims to appeal against the prosecutor's decree on termination of the investigation/criminal prosecution before the domestic court of first instance, regardless of the category of the crimes;
- The Government should amend the Code of Administrative Offences and define the discriminatory motive, as the aggravating factor of the liability;
- The Government should timely establish and implement unified methodology of collecting statistical data on hate crime;
- The Government should undertake social awareness campaigns concerning the prohibition of discrimination and hate crimes;

⁴⁶ Hate Speech, Hate Crime, and Discrimination in Georgia: Attitudes and Awareness, Council of Europe, 2018, 8.

⁴⁷ Coalition for Equality, the Right to Non-Discrimination in Practice for Various Groups in Georgia – Report of 2019, 11.

⁴⁸ *Ibid*, 46.

- The Government should undertake relevant activities and measures aiming to enhance the trust between the law enforcement agencies and the LGBT+ community and religious minorities.

ANNEXES

1. Annex 1: letter of MIA of 06.07.2020.
2. Annex 2: letter of Supreme Court of 26.06.2020.