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# Human Rights Implementation in Georgia

*X and Y v Georgia*

*Identoba and Others v Georgia*

## Joint EHRAC / HRLIP Round Table<sup>1</sup>

**Tuesday, 11 July 2017**

**Free University Tbilisi**

### 1. Introduction

Patriarchal attitudes on violence and gender as well as homo-/bi- and transphobic views are still deeply entrenched within Georgian society, manifesting themselves in femicides and other cases of violence against women (VAW) and domestic violence, as well as in violations of the rights of LGBTI persons<sup>2</sup>, especially in the form of violent attacks on public demonstrations.

State authorities have underscored their commitment to tackling these issues, not least in response to rulings of supranational adjudicatory bodies finding Georgia had breached its international human rights obligations.

This Round Table will explore the factors and dynamics shaping Georgia's implementation of two such rulings: the 2015 decision in *X and Y v Georgia* of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), and the European Court of Human Rights' (ECtHR) 2015 judgment in *Identoba and Others v Georgia*. It will bring together stakeholders from the Government, Parliament, the judiciary, law enforcement bodies, civil society, the LGBTI community and academia to discuss the measures taken, envisaged or required to give effect to these rulings, in order to (i) combat VAW and domestic violence, and (ii) secure the right to freedom of assembly of LGBTI persons and their supporters, in a safe environment free from threat and violence.

<sup>1</sup> The [European Human Rights Advocacy Centre](#) ('EHRAC'), based within the School of Law at Middlesex University London (UK), assists non-governmental [partner organisations](#) ('NGOs') and lawyers in Russia, the South Caucasus and Ukraine in taking cases to the European Court of Human Rights ('ECtHR'), with a view to enhancing the capacity of civil society actors in the human rights field to engage in effective strategic litigation. The ECtHR has handed down judgments in [some 140 cases](#) litigated by EHRAC. The Centre further advocates for the effective implementation of the standards of the European Convention on Human Rights ('ECHR') in the laws, policies and practices of the countries where EHRAC operates.

The [Human Rights Law Implementation Project](#) ('HRLIP') is a collaborative project between four leading academic human rights centres (Bristol, Essex, Middlesex and Pretoria) and the Open Society Justice Initiative. Its aim is to examine the factors which impact on human rights law implementation by nine states across Europe (Belgium, Czech Republic and Georgia), Africa (Burkina Faso, Cameroon and Zambia) and the Americas (Canada, Colombia and Guatemala), looking at (i) selected decisions from individual complaints to UN treaty bodies; and (ii) selected judgements and decisions of the bodies in the three regional human rights systems.

<sup>2</sup> LGBTI will be used throughout this note as an inclusive term representing Lesbian, Gay, Bisexual and Trans(gender) and Intersex. It also includes other groups relating to sexual orientation, atypical birth sex or gender identity including Asexual, Non-binary, 'Queer' and more.

## 2. Implementing *X and Y v Georgia*

### 2.1. The decision

[\*X and Y v. Georgia\*](#) (Communication No. 24/2009, 13 July 2015) relates to prolonged physical and sexual violence suffered by a mother (X) and her daughter (Y) at the hands of their former husband and father, and the authorities' failure to follow up on the mother's reports of abuse. The CEDAW Committee found, in particular, that Georgia had failed to enact criminal law provisions to effectively protect women and girls from physical and sexual abuse within the family, provide equal protection under the law to victims, and protect them from domestic violence, in violation of Articles 1, 2(b)-(f) and 5(a) of the CEDAW Convention.<sup>3</sup> The CEDAW Committee made a number of recommendations to Georgia.

### 2.2. Measures adopted since the decision was handed down in 2015

#### a) Providing adequate financial compensation to X and Y

The applicants, *X and Y*, filed their compensation claim against the Ministry of Finance of Georgia on 12 August 2016. During a preparatory hearing, the Ministry of Finance requested that the Ministry of Justice be joined as a third party, to which the latter objected. Following a decision by the Tbilisi appeal court granting the request of the Ministry of Justice not to be involved as a third party, the case has been referred back to the first instance court, which has yet to rule on the compensation claim.

#### b) Providing prompt and adequate support, incl. shelter and psychological care, to victims

The State Fund for the Protection and Assistance of Victims/Survivors of Human Trafficking ('State Fund') has prepared draft *National Referral Procedures* to identify incidents of domestic violence and provide protection, support and rehabilitation to the victims. The Ministry of Labour, Health and Social Affairs has developed *Guiding Principles on detection, treatment and referral principles of physical, psychological and sexual violence against women*. Both guidelines are currently awaiting being adopted. There has also been an increase in the number of shelters and crisis centres for victims.

#### c) Intensifying awareness-raising / introducing a zero-tolerance policy re. domestic violence

Most of the State institutions have conducted awareness-raising activities on domestic violence, and there has been an increased use of restriction and protective orders, together with an increased number of investigations being opened into domestic violence.

#### d) Ratifying the Istanbul Convention<sup>4</sup>

Georgia signed the Istanbul Convention in June 2014 and ratified it on 19 May 2017, becoming the 23<sup>rd</sup> State Party. The ratification was preceded by the enactment of a package of legislative amendments expanding the scope of the legislative framework on domestic violence to also cover VAW in general; simplify the procedures for issuing and expanding the group of beneficiaries of restraining orders; and criminalise forced sterilisation, forced abortion, female genital mutilation and stalking, and modify the definition of rape to cover all acts of sexual penetration.

#### e) Providing mandatory trainings on the Prevention of Domestic Violence Act, on the CEDAW Convention (and Optional Protocol), and the Committee's general recommendations

According to the authorities, a number of training programmes have been conducted by the Ministry of Internal Affairs, the Chief Prosecutor's Office and the High School of Justice within police, prosecutors and judges on domestic violence. Domestic violence issues have been integrated into

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<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted on 8 December 1979, entry into force on 3 September 1981, 1249UNTS13, available at: [goo.gl/13w995](http://goo.gl/13w995).

<sup>4</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, adopted on 11 May 2011, entry into force on 1 August 2014, CETS No. 210, available at: [goo.gl/8nAEdF](http://goo.gl/8nAEdF).

programmes preparing candidates for judges and for the training of judges and other employees of the courts.

### **2.3. Remaining challenges and issues for discussion**

Aside from shedding light on the current state of play in terms of both individual and general measures, the Round Table will provide an opportunity to discuss outstanding implementation challenges. In so doing, it is hoped that panellists as well as participants would debate which indicators and benchmarks might be used to assess the impact of the CEDAW Committee's decision in Georgia and the overall effectiveness of reforms, not least with a view to identifying ways to make further progress in achieving tangible results.

As regards individual measures, for instance, any appraisal of the adequacy of Georgia's response to the ruling will arguably have to take account of how long the compensation claim brought by X and Y will take to be resolved; whether all the circumstances and gravity of the case are fully considered and taken into account; and the whether the compensation awarded is commensurate and appropriate.

Participants are further invited to reflect on possible ways to counteract the view, seemingly still prevalent within both the authorities and the general public, that domestic violence is a private matter between the abuser and the victim, to be taken seriously only if it results in serious physical injury. Specific points for debate as regards general measures aimed at tackling the root causes of VAW and domestic violence, and ensuring non-repetition of the violations found in *X and Y* may include, but are not limited to, the following:

- The compatibility of the new legislation with the requirements under the Istanbul Convention;
- The frequency and precise content of trainings for judges, prosecutors and police, in particular whether training modules include gender stereotypes, the Optional Protocol of CEDAW and the Committee's general recommendations, and the impact of these trainings is evaluated;
- The adequacy of preventive and protective measures taken by law enforcement authorities and the courts; and
- The general approach of the police and prosecutors to investigating reports of VAW and domestic violence and to unveiling discriminatory motives, including courts' approach to granting bail as well as to classifying these offences and to sentencing.

## **3. Implementing *Identoba and Others v Georgia***

### **3.1. The judgment**

In [\*Identoba and Others v. Georgia\*](#) (No. 73235/12, judgment of 15 May 2015), the ECtHR held that the authorities had failed to protect participants of a peaceful rally, held in Tbilisi on 17 May 2012 to mark International Day against Homophobia and Transphobia (IDAHOT), from homophobic violence at the hands of counter-demonstrators who were members of religious groups, and had failed to conduct an effective investigation. Besides finding violations of Articles 3 (prohibition of inhuman or degrading treatment) and 14 ECHR (prohibition of discrimination), the Court held that the authorities had breached their obligation to ensure that the march could take place peacefully by sufficiently containing counter-protesters, in violation of Article 11 (right to freedom of assembly) together with Article 14.

### **3.2. Measures adopted since the judgment was handed down in 2015**

#### **a) Individual measures**

The compensation ordered by the Court was paid, and a new investigation was opened in July 2016. A series of investigative activities have been taken; the case remains pending.

#### **b) Safeguarding LGBTI persons' right to assemble and protecting them from violence**

The Government's [Action Plan](#) (submitted to the Committee of Ministers in April 2016) foresees developing legislation in accordance with international standards with regard to freedom of assembly, and preventing violations through better preparation of the relevant organs in dealing with mass protests. In December 2015, the MIA adopted instructions "Regulating the conduct of police officers during assemblies and manifestations", introducing specific mechanisms for policing demonstrations and crowd control such as drawing up security action plans; carrying out negotiations with the participants to prevent violence; regulating counter-demonstrations and recourse to special measures. The subsequent IDAHOT events in 2015 and 2017 can be assessed more positively; they were marked without (major) incident and the LGBTI community was able to gather.

#### **c) Ensuring effective investigations into homo-, bi- and transphobic violence**

In 2012, Article 53 of the Criminal Code of Georgia had already been amended to expressly provide that homophobic or transphobic intolerance should be treated as an aggravating circumstance in the commission of any criminal offence. An instruction on "Implementing special measures for the aim of prevention of discrimination and providing effective responses to the offences committed on such grounds" subsequently issued by the Ministry of Internal Affairs in December 2014 directs the relevant authorities of the Ministry to conduct prompt and effective investigations into hate crimes; to keep electronically disaggregated statistics of such crimes; to form a specialised group on investigations into hate crimes and to take into account the standards and requirements established by the Anti-Discrimination Law, which entered into force in 2014. The Round Table will discuss the implementation of this instruction.

#### **d) Other measures aimed at countering discrimination against LGBTI persons**

The Government further refers to the 2014 Anti-Discrimination Law, under which any person considering themselves to be a victim of discrimination may bring a court action and claim moral and/or material damages, and which vests the Public Defender's Office with the authority to monitor its implementation. A special Department for Equality was created for this purpose, and the budget of the Public Defender's Office's was increased significantly.

### **3.3. Remaining challenges and issues for discussion**

As in Session 1, the overarching question for discussion regarding *Identoba and Others* pertains to when full and effective implementation of the ECtHR's judgment should be regarded as having occurred. In this connection, there will be opportunity to share reflections on:

- The actual impact of some of the measures mentioned in the Government's Action Plan, such as Georgia's National Human Rights Strategy (2014-2020) and the Human Rights Action Plan, on ensuring LGTBI persons' effective enjoyment of their Convention rights, especially those under Articles 3, 11 and 14 ECHR;
- The authorisation and policing of pride events, which continue to raise concern;<sup>5</sup>
- The extent to which LGBTI rights feature in trainings for law enforcement officials and prosecutors regarding the investigation of hate crimes; whether LGTBI rights organisations are involved in the design and delivering of these trainings; and whether and how the latter's impact is monitored;

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<sup>5</sup> The 2013 IDAHOT rally was met with even more violence than the demonstration the year before. Dozens of people sustained injuries when being attacked by thousands of counter-demonstrators. In 2014, no IDAHOT event was organised in Tbilisi out of fear that the authorities would not be able to protect the participants. Similarly, 17 May 2016 was not marked with any event, notably because the authorities felt unable to police both the celebrations of the 'Family Sanctity Day' (instituted by the Orthodox Church in 2014) and an IDAHOT demonstration. Criticism has also emerged about restrictions imposed in 2015 and 2017 as to the location and publicity of the IDAHOT events, which were seen to have impeded the full enjoyment of the right to freedom of assembly.

- The enforcement mechanisms provided for in the 2014 Anti-Discrimination Law;
- The investigation, prosecution and punishment of violence against LGBTI persons, and notably the application of Article 53 of the Criminal Code in judicial proceedings; and
- Possible ways to strengthen the confidence of the LGBTI community in the State's anti-discrimination policy and counter anti-LGBTI sentiments.

## 4. Conclusions

The Round Table is intended to provide an open forum to discuss the current status of, challenges to and possible ways forward in the implementation of the CEDAW Committee's *X and Y* decision and the ECtHR's judgment in *Identoba and Others*. It seeks to assess, in this connection, the various actor relationships (both domestically and in interaction with the CEDAW Committee and the Council of Europe's Committee of Ministers), interests, attitudes and other factors which have shaped the implementation process. In doing so, the Round Table will also provide an opportunity to explore government responses to adverse judgments and decision of supranational human rights bodies more broadly, with a view to identifying potential for making the structures and processes of implementation more effective.