



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 15 April 2015

FOURTH SECTION

Application no. 74959/13
IDENTOBA and others
against Georgia
lodged on 16 November 2013

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix. They are all Georgian nationals, live in Tbilisi and are represented before the Court by Ms T. Abazadze, Ms N. Bolkvadze and Mr L. Asatiani, lawyers practising in Tbilisi.

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. The first applicant is a Georgian non-governmental organisation (NGO) set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Georgia. The remaining individual applicants are either staff members of the applicant organisation or otherwise members and supporters of the LGBT community.

A. Peaceful demonstration of 17 May 2013

1. Prior arrangements

4. On 24 April and 1 May 2013 the applicant organisation informed the Ministry of the Interior of its intention of holding, with NGO Women Initiative Support Group (WISG), a peaceful public assembly on 17 May 2013 in the centre of the capital city to mark the International Day Against Homophobia. The planned event would represent a silent twenty minute long flash mob (“the IDAHO event”). The organiser indicated that the event would take place at Rustaveli Avenue, on the grounds of the building formerly housing Georgian Parliament, and that some fifty people would take part in it. In view of the violence committed by radical homophobic groups during the similar event of the preceding year, on 17 May 2012, the applicant organisation requested the Ministry to invest more time and energy in order to work out a truly efficient plan of protection of the procession from possible aggression.

5. On 9 May 2013 the applicant organisation informed the Ministry of the Interior of serious threats disseminated on internet by various identifiable individuals. Those threats, targeting lives and health of staff members of the applicant organisation, were aimed at dissuading the organisers from staging the IDAHO event.

6. On 13 May 2013 reports were disseminated through various media sources that a number of ultra-conservative non-governmental organisations and clergymen were planning to hold a counter-demonstration on 17 May 2013 in order to demand prohibition of “popularisation and promotion of sexual minorities”. The main organisers of the counter-demonstration were Mr G.G., a member of NGO Former Prisoners for Human Rights, Mr E.M., the President of NGO National Front, and a prominent clergyman of the Georgian Orthodox Church, Father J.

7. On the same day, Mr G.G. gave a formal notice to Tbilisi City Hall about the intention to hold “a prayer rally” at Rustaveli Avenue, on the grounds of the building formerly housing Georgian Parliament. The notice contained information that priests and parish from various churches in Tbilisi were to participate in the rally.

8. In parallel, a number of interviews with clergymen were published in various national newspapers, in which the priests, in particular Father J., were openly stated that the aim of the counter-demonstration was to prevent the IDAHO event from taking place. In addition, a number of identifiable participants of the forthcoming counter-demonstration were disseminating insults and threats in the address of the Identoba’s staff members on social media.

9. On 13 and 15 May 2013 senior officials from the Ministry of the Interior held meetings with the organisers of the IDAHO event, including representatives from the applicant organisation. During those meeting, in reply to the organisers’ concerns that there existed a high risk of demonstrators’ being attacked by a large number of aggressive counter-demonstrators, the Ministry officials made formal assurances that no effort would be spared in order to guarantee the safety of the demonstrators. The authority informed the organisers that at least 10,000 people were planning to take part in the counter-demonstration according to the latest information. The Ministry proposed Identoba and WISG to move the IDAHO event from the grounds of the former Parliament building a few hundred meters away, to Pushkin Square, in order to avoid direct confrontation with the opposing party at Rustaveli Avenue. The authority assured that police manpower would be mobilised on the scene in sufficient numbers in order to have solid police cordons created between the two opposing parties. The applicant organisation approved the Ministry’s proposal.

2. Assault on the IDAHO event at Pushkin Square

10. Clergymen, their parish and other counter-demonstrators started assembling outside the former Parliament building already in the evening of 16 May 2013, staying overnight at Rustaveli Avenue. By early afternoon of 17 May 2013, some 20,000 counter-demonstrators were already gathered.

11. On 17 May 2013, at around 12:00 p.m., participants of the IDAHO event started gathering at Pushkin Square. Watching the enormous and

aggressive crowd of counter-demonstrators only a few hundred meters away, from whom they were separated by a thin cordon of police patrol officers, who were neither armed nor equipped with any other anti-riot gear, and by removable metal fences, the arriving LGBT demonstrators started having serious doubts about their security. The counter-demonstrators started chanting homophobic insults and threats to health and life. No any anti-riot police squads were seen around.

12. Applicants nos. 3, 5, 6, 7, 9, 13, 15, 16, 17, 19 and 21, who were the first to arrive to Pushkin Square at 12:00 p.m., decided to wait until 12:45 p.m., in order for all other remaining participants to join them before starting the flash mob.

13. At that time, the remaining individual applicants, nos. 2, 4, 8, 10, 11, 12, 14, 18 and 20, were outside of Pushkin Square, either on the other side of police cordons, amongst the counter-demonstrators, or elsewhere.

14. At some point between 12:30 and 12:40 p.m., a group of clergymen went through the police cordons to meet with senior officials from the Ministry of the Interior, including the Deputy Minister, Mr G. Z.-shvili. As disclosed by a video footage of the negotiations between the officials and the priests, recorded by journalists, the latter urged, on behalf of the counter-demonstrators, the police not to let the IDAHO event from taking place, on pain of the counter-demonstrators' attacking. It was audible how some of the priests were repeating that "people might get killed", and a priest, identified by the applicants as Father E., told Deputy Minister Z.-shvili that in case the police attempt to protect the LGBT demonstrators, the clergymen would start civil disobedience and ask the Georgian army to join their side.

15. Shortly after the above-mentioned negotiations between the clergymen and Deputy Minister Z.-shvili, the police disassembled some other cordons and removed metal fences. Those facts are confirmed by a video footage, filmed by a journalist, which further shows how police patrol officers were discussing between themselves that there had been an order from the Deputy Head of the State Security Agency to remove metal barriers separating the scene reserved for the IDAHO event – Pushkin Square – from Rustaveli Avenue where the counter-demonstrators were gathered. At the material time, the State Security Agency was a structural unit of the Ministry of the Interior under direct supervision of the Deputy Minister present at the scene.

16. The video footages available in the case file further show how police patrol officers who were supposed to block the counter-demonstrators by standing in cordons, purposefully opened corridors for counter-demonstrators to pass through, regulating the passage with such expressions as "pass one by one". Eventually, thousands of counter-demonstrators, led by clergymen, get through the police cordons and headed towards applicants nos. 3, 5, 6, 7, 9, 13, 15, 16, 17, 19 and 21 and other LGBT demonstrators gathered at Pushkin Square.

17. The closer the counter-demonstrators were getting to the scene of the IDAHO event, the more aggressive their behaviour was becoming; their initially marching pace turned into a run; they were uttering insults and curses and ominously shaking in their hands wooden sticks and iron batons, and some of the counter-demonstrators grabbed heavy stones on their way.

Applicants nos. 3, 5, 6, 7, 9, 13, 15, 16, 17, 19 and 21, who were present at Pushkin Square, managed to escape the approaching angry mob by running away and getting into two buses which had apparently been provided for their evacuation purpose by the police in advance. None of the applicants knew anything about that evacuation plan, and their effort of reaching the buses was chaotic despite some guidance offered by the police. Some of the applicants heard how certain police officers were themselves making homophobic jokes and insults during that turmoil. Thus, one police officer told the applicants, the moment they were getting into the bus, that “one should suffocate you all with gas in this bus”. The comment caused greater panic among the already frightened applicants. A video footage available in the case file further captures images of several clergymen running through Pushkin Square in the direction of the bus preferring heinous insults, with one of them shaking a footstool in a menacing gesture, and threatening to kill the participants of the IDAHO event.

18. The frenzied counter-demonstrators surrounded and blocked the buses with the above-mentioned eleven applicants and other LGBT demonstrators on board, rocking the vehicles, throwing stones, wooden sticks and footstools at windscreens. Even after the buses made their way through the crowd, some of the counter-demonstrators got into their private cars and chased the applicants throughout the city. For much of the journey, the buses were not accompanied by the police, and the applicants were not aware where the drivers were taking them. Furthermore, the images of the terrified applicants’ faces were filmed by journalists also present inside of the buses, and broadcast a few hours later by a number of national television channels.

19. As to applicants nos. 2, 4, 8, 10, 11, 12, 14 and 18, who had remained on the counter-demonstrators’ side of the police cordon before the eruption of the attack (see paragraph 13 above), they managed to mingle with the counter-demonstrators and escaped the venue by their own means. As it could be inferred from the case materials, they had not apparently been identified by the counter-demonstrators as participants of the IDAHO event, and no description of any type of alleged ill-treatment preferred against them was reported.

3. The Vachnadze Street incident

20. As regards applicant no. 20, she was neither amongst those applicants who had been gathered at Pushkin Square prior to the beginning of the counter-demonstrators’ massive assault nor amongst the second group of the applicants who had been able to escape the counter-demonstrators’ aggression by mingling with them (see paragraphs 12 and 19 above).

21. At around 12:30 p.m. on 17 May 2013, applicant no. 20 together with dozen members of the second organiser of the IDAHO event, WISG, had been encircled by a group of counter-demonstrators in Vachnadze Street, a street leading to Pushkin Square. The counter-demonstrators had identified them as LGBT people and were proffering homophobic insults and threats. The unarmed and unequipped police manpower present at the scene was insignificant in comparison to the angry mob.

22. The police officers eventually managed to remove the twentieth applicant together with other activists from the attackers by sneaking them

into a house situated on the street, and remaining at the guard of the doors of the house until the arrival of a special minibus. However, once the trapped activists got into the vehicle, the counter-demonstrators, yelling “stone them all!” and “kill them all!”, surrounded it, and broke almost all the windows and front windscreen of the minibus with iron batons and stones in an attempt to pull the sheltered people out. Eventually, after a few minutes of turmoil, the driver of the minibus managed to get through the besieging mob (the described episode will hereinafter be referred to as “the Vachnadze street incident”).

4. The supermarket incident

23. As to the seventh applicant, after having escaped the counter-demonstrators’ massive attack at Pushkin Square (see paragraphs 16-18 above), hoping that he would not be identified as an LGBT activist, he decided to return to the centre of the city in the late afternoon of 17 May 2013 in an attempt to find out the whereabouts of some of his missing friends and colleagues. However, apparently due to the fact that the images of him participating in the IDAHO event at Pushkin Square had already been broadcast by journalists of various television channels (see paragraph 18 above), a group of counter-demonstrators, dozen persons or so, who were still present at Rustaveli Avenue, in the vicinity of Pushkin Square, recognised him.

24. The counter-demonstrators encircled the seventh applicant in the middle of Rustaveli Avenue and started punching and kicking him. He fell down on the ground. The police did not arrive at his rescue, despite the fact that the beating was taking place in the central street of the capital city. After several minutes of the ill-treatment, the seventh applicant managed to get onto his feet, ran away from the attackers, finding a shelter in a supermarket situated in Rustaveli Street. He managed to hide himself in the basement of the store. The attackers saw him entering the grocery store, followed him inside but failed to find him there. They then blocked all the exits of the store, hoping to capture him eventually.

25. After some time and apparently a telephone call made by the supermarket’s staff, approximately ten police officers arrived. Having found the applicant in the basement, they told him that, given the high number of aggressive counter-demonstrators besieging the store, they could not create a safe corridor for him to leave the building; the frenzied crowd could kill both him and the police officers. They suggested to the applicant to have his full-grown facial beard shaved and dressed into a policeman, so that he could escape in disguise. The applicant agreed.

26. The policemen started shaving the applicant, but the process lasted unexpectedly long, for more than an hour. During the shaving, which was filmed by the officers on a video camera of a mobile phone, the officers were making homophobic remarks and putting such questions to the applicant as “whether or not he was gay”, “whether he had ever had sex with a woman”, “whether he had any lesbian friends at Identoba” and “whether the policemen could have sex with his lesbian friends at Identoba”. Eventually, after his beard was shaved off and he had dressed into a police patrol officer, the seventh applicant was finally able to leave the supermarket, unidentified by the besieging counter-demonstrators

(hereinafter, the described episode will be referred to as “the supermarket incident”).

B. Subsequent investigation

27. On the same day, 17 May 2013, the Ministry of the Interior launched of its own motion a general probe into the acts of violence committed during the clash between the two demonstrations.

28. On 25 July 2013 the applicant organisation and eighteen individual applicants, with the exception of the fourth and eighth ones, requested the Ministry of the Interior to identify and criminally prosecute individuals responsible for the violence committed against them during the IDAHO event. The applicants, enclosing a copy of the above-mentioned video footages (see paragraphs 10-18 and 22 above), also requested the initiation of a criminal investigation against those officials of the Ministry of the Interior who had been responsible for letting the counter-demonstrators to pass through the police cordons and otherwise conniving with the latter’s illegal actions. No response followed from the Ministry.

29. On 20 September 2013 the above-mentioned nineteen applicants reiterated their previous request of 25 July 2013, along with petitioning for granting them victim status in the criminal proceedings. No response followed from the Ministry.

30. On unspecified dates the seventh and twentieth applicants were interviewed by the Ministry of the Interior in relation to, respectively, the supermarket and Vachnadze Street incidents. On 6 November 2013 these two applicants enquired with the Ministry whether any progress had been made in the investigation and whether they had been granted victim status. The seventh applicant further specified the name of one of the alleged assailants participating in the relevant incident.

31. On the same day, 6 November 2013, the applicant organisation and all of the individual applicants, including the fourth and eighth ones, enquired with the Chief Public Prosecutor’s Office about any tangible progress in the investigation and whether victim status had been granted to them.

32. By a letter of 27 December 2013, the Chief Public Prosecutor’s Office informed the applicants that there were no signs of illegality in the actions of the police during the demonstration, who, on the contrary, duly discharged their duties by preventing grave consequences which could have otherwise occurred given the disproportionately high number of the counter-demonstrators. In addition, the prosecution authority updated the applicants on the developments of the general probe launched by the Ministry of the Interior on 17 May 2013.

33. Thus, according to the prosecution authority’s notification and other materials available in the case file, following the initiation of the probe by the Ministry, four counter-demonstrators were sanctioned for transgression under Article 166 of the Code of Administrative Offences – minor breach of public order – and fined 100 Georgian laris (some 45 euros (EUR)) each. Furthermore, criminal proceedings under Article 161 of the Criminal Code – illicit obstruction, perpetrated with recourse to violence, threat of violence or abuse of official capacity, of the exercise of the right to peaceful

demonstration – were pending, by December 2013, before a trial court against four other counter-demonstrators, including a clergyman.

C. Proliferation of hate crimes after 17 May 2013

34. According to the applicant organisation, who was recording such incidents as part of its corporate activities, twelve and seventeen documented cases of, respectively, physical aggression and hate speech was committed in the aftermath of 17 May 2013 against people unrelated to the IDAHO event solely on the ground of the latter's actual or perceived sexual orientation and gender identity. The victims of that aggression decided not to file criminal complaints with the law-enforcement agencies for lack of trust towards the system and fear of publicity and further retribution.

COMPLAINTS

35. Twelve individual applicants (nos. 3, 5, 6, 7, 9, 13, 15, 16, 17, 19, 20 and 21) complained under Article 3 of the Convention, taken separately and in conjunction with Article 14, that the relevant domestic authorities had failed to protect them from the violent attacks perpetrated by the counter-demonstrators on 17 May 2013 and to investigate effectively the incident by establishing, in particular, the discriminatory motive of the attackers.

36. All twenty-one applicants complained under Articles 10 and 11 of the Convention, taken separately and in conjunction with Article 14, that they had not been able to proceed with their peaceful march owing to the bias-motivated assaults on them and the inaction on the part of the police.

QUESTIONS TO THE PARTIES

1. Did the relevant twelve individual applicants (nos. 3, 5, 6, 7, 9, 13, 15, 16, 17, 19, 20 and 21) suffer ill-treatment, in breach of Article 3 of the Convention, during the IDAHO event of 17 May 2013? In particular, did the police fail to protect them from the counter-demonstrators aggression? Given the Deputy Minister of the Interior's negotiations with the clergymen as well as subsequent opening up of police cordons for counter-demonstrators, can the police authority be said to have connived with the counter-demonstrators' hostility towards the IDAHO event?

2. Have the competent domestic authorities conducted an adequate investigation into the applicants' allegations of ill-treatment and the lack of police protection, as required by the procedural obligation under Article 3 of the Convention?

3. In view of the disruption of the IDAHO event of 17 May 2013, has there been a violation of all applicants' right to freedom of expression and/or freedom of peaceful assembly, contrary to Articles 10 and 11 of the Convention?

4. Have the relevant applicants suffered discrimination on the ground of sexual orientation and gender identity contrary to Article 14 of the Convention, this provision being read in conjunction with both Article 3 and Articles 10 and 11 of the Convention?

APPENDIX

No.	Name	Date of registration / birth
1.	NGO IDENTOBA	8/11/2010
2.	Mr BARNABISHVILI Egnate	09/08/1989
3.	Mr BELOUSOVI Anton	30/08/1989
4.	Ms BILIKHODZE Tina	15/09/1959
5.	Mr BITSADZE Koba	30/10/1992
6.	Ms BOLKVADZE Eka	28/04/1990
7.	Mr BUCHASHVILI Beka	13/05/1990
8.	Ms DZERKORASHVILI Gvantsa	03/07/1990
9.	Ms GABUNIA Shorena	17/03/1977
10.	Ms GLAKHASHVILI Elina	11/04/1984
11.	Ms JGHARKAVA Pikria	06/09/1989
12.	Ms KAISHAURI Marina	17/01/1981
13.	Ms KATAMADZE Ana	19/07/1991
14.	Ms KHARATISHVILI Natia	23/07/1985
15.	Ms KHUTSISHVILI Ket	01/12/1992
16.	Ms KVANTALIANI Natia	22/10/1989
17.	Mr MACHITIDZE Temur	22/12/1993
18.	Ms REKHVIASHVILI Ana	06/11/1988
19.	Ms TABAGARI Lalo	08/09/1992
20.	Mr TSAGAREISHVILI Ket	05/05/1979
21.	Mr VATCHARADZE Irakli	03/07/1980