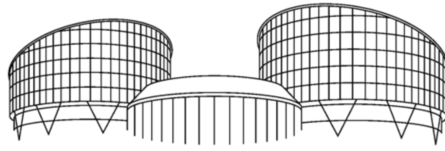

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF WOMEN'S INITIATIVES SUPPORTING GROUP AND OTHERS v. GEORGIA

(Applications nos. 73204/13 and 74959/13)

JUDGMENT

Art 3 and Art 11 (+ Art 14) • Positive obligations • Degrading treatment • Effective investigation • Freedom of peaceful assembly • Discrimination • State's failure to take operational preventive measures to protect applicants from homophobic and/or transphobic violence, conduct an effective investigation and ensure LGBT rally proceeded peacefully • Indications of official acquiescence, connivance and active participation in individual acts motivated by prejudice

STRASBOURG

16 December 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Women's Initiatives Supporting Group and Others v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Ganna Yudkivska,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

applications nos. 73204/13 and 74959/13 against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the thirty-five Georgian nationals ("the individual applicants") and two legal entities ("the applicant associations") listed in the appendix, on 15 and 16 November 2013 respectively;

the decision to give notice to the Georgian Government ("the Government") of the complaints under Articles 3, 10, 11 and 14 of the Convention and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 23 November 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present two cases concern the respondent State's alleged failure to protect the applicants' public rally from homophobic and/or transphobic acts of violence by counter-demonstrators and to conduct an effective investigation into the incident. The applicants relied on Articles 3, 10, 11 and 14 of the Convention.

THE FACTS

2. The names of the applicants and their dates of birth/registration as legal entities are set out in the appendix. The thirty-five individual applicants are all Georgian nationals, and the two applicant associations are registered under Georgian law.

3. The applicant associations (applicants nos. 1 and 17) are Georgian non-governmental organisations (NGOs) set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Georgia.

The individual applicants are either staff members of the applicant associations or members and supporters of the LGBT community.

4. The sixteen applicants in application no. 73204/13 were represented by three Georgian lawyers (Ms T. Abazadze, Ms N. Jomarjidze and Ms Ts. Ratiani) and three British lawyers (Mr Ph. Leach, Ms J. Evans and Ms J. Gavron).

5. The twenty-one applicants in application no. 74959/13 were represented by four Georgian lawyers (Mr L. Asatiani, Ms N. Bolkvadze, Ms T. Abazadze and Ms N. Jomarjidze).

6. The Government were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

I. PEACEFUL DEMONSTRATION OF 17 MAY 2013

A. Prior arrangements

8. On 24 April and 1May 2013 the two applicant associations informed the Ministry of the Interior of their intention to hold a peaceful public rally on 17 May 2013 in the centre of Tbilisi to mark the International Day Against Homophobia. The planned event would take the form of a silent twenty-minute flash mob ("the IDAHO event"). The organisers indicated that the event would take place on Rustaveli Avenue, on the grounds of the former Parliament building, and that some fifty people would be taking part. In view of the violence committed by radical groups during a similar event held the previous year (see *Identoba and Others v. Georgia*, no. 73235/12, §§ 10-19, 12 May 2015), the applicant associations asked the Ministry to invest more time and energy in the upcoming event in devising an efficient plan to protect the public rally from possible violence.

9. On 9 May 2013 the applicant associations informed the Ministry of the Interior of serious threats posted on the Internet by various identifiable individuals. The threats, targeting the lives and health of staff members of the two applicant associations, were aimed at dissuading the organisers from staging the IDAHO event.

10. On 13 May 2013 reports were published by various media sources that a number of ultra-conservative NGOs and clergymen were planning to hold a counter-demonstration on 17 May 2013 in order to demand a ban on the "popularisation and promotion of sexual minorities". The counter-demonstration was mainly being organised by three identifiable individuals – G.G., a member of the NGO Former Prisoners for Human Rights, E.M., the President of the Georgian National Front, and Father J., a prominent clergyman of the Georgian Orthodox Church.

11. On the same day G.G. gave official notice to Tbilisi City Hall of the organising committee's intention to hold "a prayer rally" on Rustaveli Avenue, on the grounds of the former Parliament building (the same location previously chosen by the applicant associations for holding the IDAHO event, see paragraph 8). The notice stated that priests and parishes from various churches in Tbilisi would be participating in the prayer rally.

12. In addition, a number of interviews with priests were published in various national newspapers in which several clergymen, including Father J., openly and repeatedly stated that the aim of the "prayer rally" was to prevent the IDAHO event from taking place. In addition, a number of other clearly identifiable individual participants in the forthcoming counter-demonstration intensified the hate speech campaign on social media directed at the two applicant associations' staff members. Various national newspapers and social media reported at the time that "thousands of people" were expected to join the "prayer rally".

13. On 13 and 15 May 2013 senior officials from the Ministry of the Interior held meetings with the two applicant associations organising the IDAHO event. During the meetings, in reply to the organisers' concerns that there was a high risk of demonstrators being attacked by participants in the counter-demonstration, that is to say "the prayer rally", the Ministry officials made formal assurances that no efforts would be spared to guarantee the safety of all the participants in the IDAHO event. It was specified that Old Tbilisi police unit no. 7 would be in charge of the associated security arrangements. The Ministry further stated that, according to the latest intelligence information, more than 10,000 people were planning to take part in the counter-demonstration. That being so, the Ministry proposed that the applicant associations move the IDAHO event from the grounds of the former Parliament building a few hundred metres away, to Pushkin Square, in order to avoid a direct confrontation with the counter-demonstrators. It promised to deploy sufficient manpower to the scene to create strong police cordons between the two opposing groups. The two applicant associations accepted the Ministry's proposal.

14. On the day of the IDAHO event, the Ministry of the Interior deployed some 2,000 police officers, who were tasked with creating cordons separating Pushkin Square, where the applicants were to gather, from all the streets leading to the adjacent Rustaveli Avenue, where the "prayer rally" was to be held (see paragraph 16 below).

B. Pushkin Square incident

15. Clergymen, their parishes and other participants in the "prayer rally" already started gathering outside the former Parliament building on the evening of 16 May 2013. By the early afternoon of 17 May 2013, some 35,000 to 40,000 counter-demonstrators were already there.

16. On 17 May 2013, at around 12 noon, participants in the IDAHO event started gathering at Pushkin Square. Seeing an enormous and aggressive crowd of counter-demonstrators only a few hundred metres away, from whom they were only separated by removable metal fences and a thin cordon of unarmed and unequipped police patrol officers, the arriving LGBT demonstrators started having serious doubts about their safety. The counter-demonstrators were chanting homophobic insults and physical threats. No riot squads could be seen.

17. Applicants nos. 15, 19, 21-23, 25, 29, 31-33, 35 and 37 (hereinafter "the group of twelve individual applicants"), who were the first to arrive at Pushkin Square at 12 noon, decided to wait until 12.45 p.m. in order for all the other participants to join them before starting the flash mob. The remaining twenty-three individual applicants were, at the time, outside Pushkin Square, either on the other side of the police cordons, amongst the counter-demonstrators, or elsewhere.

18. 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, G.Z. They were all standing in Pushkin Square, near the above-mentioned group of twelve individual applicants. As can be seen on video footage of the ensuing negotiations between the officials and priests recorded by independent journalists, the latter urged, on behalf of the participants in the "prayer rally", the police not to let the IDAHO event take place, as it would cause a clash with the counter-demonstrators. Some of the priests can be heard repeating that "people might get killed", and a priest, identified by the applicants as Father E., can be heard telling Deputy Minister G.Z. that if the police attempted to protect the participants in the IDAHO event, the clergymen would start civil disobedience and ask the Georgian army to join their side.

19. Another piece of video footage filmed by independent journalists shows the clergymen returning from the meeting with the Ministry of the Interior's senior officials (see paragraph 18 above) to the counter-demonstrators' side of the police cordon. The recording continues with images of the same clergymen leading the crowd to break through the cordon with no resistance from the police. It appears from the images filmed that the participants in the IDAHO event were still in Pushkin Square when the clergymen and counter-demonstrators started passing through the police cordons.

20. Another video-recording, filmed by journalists, shows a number of police officers disassembling cordons and removing metal fences installed to protect the LGBT demonstrators from the counter-demonstrators (see paragraph 16 above). A journalist can be heard asking the police officers "why are you letting them go through?". This footage also contains scenes of police patrol officers discussing an order from the deputy head of the State Security Agency – a structural unit of the Ministry of the Interior under G.Z.'s

direct supervision at the material time – to remove metal fences separating the location reserved for the IDAHO event – Pushkin Square – from Rustaveli Avenue, where the counter-demonstrators were gathered. The video footage further shows certain other police patrol officers, who were supposed to block the counter-demonstrators by standing in cordons, opening up gaps for the counter-demonstrators, saying things such as “go!” and “pass one by one!” as they passed through.

21. Another video-recording shows a journalist standing in an area adjacent to Pushkin Square and police patrol officers saying “have [the counter-demonstrators] run over the cordon or it has been opened [by the police]?” to which one of the officers replies “it has been opened.”

22. Additional video footage of the events shows that eventually hundreds of counter-demonstrators, led by clergymen, get through the police cordons and head towards the group of twelve individual applicants and a number of other participants in the IDAHO event gathered at Pushkin Square. The closer the counter-demonstrators get to the scene of the IDAHO event, the more aggressive their behaviour becomes. Thus, their initial marching pace turns into a run; they yell insults and curses and shake wooden sticks and iron batons in their hands; some of the counter-demonstrators grab heavy stones on their way.

23. Faced with the approaching mob, the group of twelve individual applicants at Pushkin Square retreated by boarding two buses that had apparently been provided by the police in advance for dispersal purposes. None of the applicants knew anything about that dispersal plan, and their efforts to reach the buses were chaotic despite some guidance being offered by the police. Some of the applicants heard some of the police officers, who were supposed to be coordinating their removal from the scene, themselves making homophobic jokes and insults during the commotion.

24. Another piece of video footage of the events, again filmed by independent journalists, further captures images of several clergymen running through Pushkin Square in the direction of the two above-mentioned buses and proffering insults, with one of them shaking a footstool in a menacing manner and threatening to kill the participants in the IDAHO event. This footage further shows how frenzied counter-demonstrators surrounded and blocked the buses containing the above-mentioned group of twelve applicants and other LGBT demonstrators, rocking the vehicles and throwing stones, wooden sticks and footstools at the windscreens. Even after the buses had made their way through the crowd, some of the counter-demonstrators got into their cars and chased the applicants across the city. According to the relevant individual applicants who were on the buses, 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. Images of the terrified applicants' faces were filmed by journalists on the buses and broadcast a few hours later on a number of national television channels.

C. Vachnadze Street incident

25. At around 12.30 p.m. on 17 May 2013 applicants nos. 2-14, 16 and 36 (hereinafter "the group of fifteen individual applicants"), who were trying to reach the site of the IDAHO event at Pushkin Square via the narrow Vachnadze Street, were suddenly encircled by a large number of participants in the "prayer rally". The counter-demonstrators, having identified the applicants as members of the LGBT community, started proffering homophobic insults and threats. The number of unarmed and unequipped police officers at the scene was insignificant in comparison to the mob and, according to the applicants, they were initially reluctant to help.

26. It was only after active intervention by a staff member of the local United Nations office in Tbilisi that the police patrol officers near Vachnadze Street were eventually deployed and managed to remove the group of fifteen individual applicants from the mob by sneaking them into a house situated on the street, and guarding its doors until a police minibus arrived. However, once the trapped activists boarded the minibus, the counter-demonstrators, yelling "stone them all!" and "kill them all!", surrounded it, breaking almost all the windows and the front windscreen with iron batons and stones in an attempt to pull the passengers out. After a few minutes of commotion, the driver of the minibus managed to get through the mob.

27. As later documented in medical records, all fifteen individual applicants suffered severe stress on account of the assault on them on Vachnadze Street, whilst applicant no. 12 also had concussion from a stone thrown by the mob which had hit her in the head. Several of the police officers who took part in the dispersal of the relevant individual applicants also received physical injuries as a result of the counter-demonstrators' aggressive actions.

D. Rustaveli Avenue incident

28. In the late afternoon of 17 May 2013 applicant no. 23, one of the twelve individual applicants who had been assaulted at Pushkin Square and removed from the scene by the police, returned to the city centre in an attempt to find out the whereabouts of some of his missing friends and colleagues. He hoped that he would not be identified as an LGBT activist. However, apparently due to the fact that images of him fleeing Pushkin Square on a bus had already been broadcast by journalists on various television channels (see paragraph 24 above), a group of counter-demonstrators, a dozen or so people still on Rustaveli Avenue, near Pushkin Square, recognised him on the street.

29. The counter-demonstrators encircled applicant no. 23 in the middle of Rustaveli Avenue and started punching and kicking him. Eventually, he managed to run away from the attackers, finding shelter in a supermarket on the same street. The attackers followed him inside but failed to find him. They

then decided to block all the exits of the store, hoping to eventually capture him. After some time and apparently a telephone call made by the supermarket staff, approximately ten police officers arrived. After finding the applicant in the basement, they told him that, given that aggressive people were besieging the store, they could not ensure his safety. Instead, they suggested to him that he shave off his beard and dress in a police uniform so that he could escape in disguise. He agreed.

30. The officers started shaving the applicant's beard, but it took more than an hour. During the process, which was filmed by them on a mobile telephone, the officers made homophobic remarks and asked the applicant questions such as "whether or not he was gay" and "whether he had ever had sex with a woman". Eventually, after his beard had been shaved off and he had dressed as a police patrol officer, applicant no. 23 was finally able to leave the supermarket.

E. As regards the remaining applicants

31. Applicants nos. 18, 20, 24, 26-28, 30 and 34 (hereinafter "the group of eight individual applicants", who had remained on the counter-demonstrators' side of the police cordon before the commotion erupted (see paragraph 17 above), managed to mingle with the counter-demonstrators and flee the scene on their own.

32. It appears from the case material that the group of eight individual applicants were not identified by the counter-demonstrators as participants in the IDAHO event, and that no description of any type of alleged ill-treatment against them was reported.

II. SUBSEQUENT INVESTIGATION

33. On 17 May 2013 the Ministry of the Interior launched of its own motion a general inquiry into the acts of violence committed during the clash between the participants in the IDAHO event and those in the "prayer rally". Old Tbilisi Police unit no. 7 was placed in charge of the inquiry, which was conducted under Article 161 § 1 of the Criminal Code – interference with the exercise of the right to freedom of assembly using violence.

34. On 9 July 2013 the above-mentioned general inquiry was split into two separate criminal investigations, one of which culminated on 23 October 2015 with the Tbilisi City Court's acquittal of the accused (see paragraph 42 below).

35. On 25 July and 20 September 2013 the two applicant associations and thirty-three of the individual applicants (not applicants nos. 20 and 24), asked the Ministry of the Interior to identify and prosecute the individuals responsible for the violence committed against them during the IDAHO event. The complainants, enclosing a copy of the above-mentioned pieces of

video footage concerning the incidents at Pushkin Square (see paragraphs 18-24 above), also requested the opening of a separate criminal investigation against the officials of the Ministry of the Interior who had been responsible for letting the counter-demonstrators pass through the police cordons and otherwise conniving in the latter's illegal actions. No response was given by the Ministry.

36. On unspecified dates in October 2013 applicants nos. 23 and 36 were interviewed by investigators from Old Tbilisi police unit no. 7 in relation to the incidents on Rustaveli Avenue and Vachnadze Street respectively. On 6 November 2013 the two applicants enquired with the Ministry whether any progress had been made in the investigation and whether they had been granted victim status.

37. On 6 November 2013 applicant no. 23 filed another criminal complaint with Old Tbilisi police unit no. 7 in which he specified the name of one of the alleged assailants of the attack on him on Rustaveli Avenue (see paragraphs 28-30 above), providing the investigators with photographs and other contact details. In addition, the applicant asked to identify the police officers whom he had accused of degrading treatment, providing all the details – the insults to which he was allegedly subjected – of the beard-shaving incident. However, it appears from subsequent developments in the criminal proceedings in question that the police never followed up on the details provided by the applicant.

38. On the same date both applicant associations and all the individual applicants enquired with the Chief Public Prosecutor's Office about the progress of the investigation and whether they had been granted victim status. The prosecution authority responded on 27 December 2013 that there were no signs of illegality in the actions of the police who, on the contrary, had duly discharged their duties during the demonstration by preventing grave consequences which could otherwise have occurred given the disproportionately high number of counter-demonstrators. In addition, the prosecution authority updated the applicants on the developments of the general inquiry launched by the Ministry of the Interior on 17 May 2013.

39. Thus, according to the prosecution authority's response of 27 December 2013, and other material available in the case file, following the opening of the general inquiry by the Ministry, four counter-demonstrators were sanctioned for disorderly conduct under Article 166 of the Code of Administrative Offences – a minor breach of public order – and fined 100 Georgian laris (some 45 euros (EUR)) each. Furthermore, it appeared to the applicants from the same official response that criminal proceedings under Article 161 of the Criminal Code – unlawful interference with the exercise of the right to freedom of assembly using violence, threat of violence or abusing official capacity – were pending, by December 2013, before a trial court against four other counter-demonstrators, including a clergyman.

40. In April 2014 all the applicants, with the exception of applicants nos. 23 and 36 (see paragraph 36 above), were questioned as witnesses by investigators of Old Tbilisi police unit no. 7 in relation to the incident of 17 May 2013 for the first time.

41. In October 2015 investigators of Old Tbilisi police unit no. 7 questioned, as witnesses, nine of its officers who had been personally involved in the security arrangements during the IDAHO event on 17 May 2013.

42. On 23 October 2015 the Tbilisi City Court acquitted the four accused against whom charges had been pending under Article 161 of the Criminal Code (see paragraph 34 above). The City Court stated that the investigation had failed to secure any evidence that would reliably prove the link between the violent dispersal of the IDAHO event and the actions of the accused that day. The City Court identified a number of further shortcomings in the investigation, such as the investigators' failure to properly examine the relevant pieces of video footage of the dispersal (see paragraphs 18-24 above) – which, in the court's opinion, were crucial pieces of evidence as they could have allowed for the proper identification of at least some of the perpetrators of the violent attacks – as well as the failure to commission a forensic examination of the buses that had been damaged by the mob during the dispersal process.

43. According to the material available in the case file before the Court, the second set of criminal proceedings conducted in relation to the violent clashes during the IDAHO event (see paragraph 34 above) is still pending. None of the applicants, except applicant no. 23, were granted victim status, and it is unknown whether there have been any other developments in those proceedings.

III. PROLIFERATION OF HATE CRIMES AFTER 17 MAY 2013

44. According to applicant no. 17, one of the two applicant associations, which recorded such incidents as part of its activities, there were twelve and seventeen documented cases of physical aggression and hate speech, respectively, in the immediate aftermath of 17 May 2013 against people unrelated to the IDAHO event solely on the grounds of actual or perceived sexual orientation and gender identity. The relevant victims decided not to file criminal complaints with the law-enforcement authorities for lack of trust in the system and for fear of publicity and reprisal.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

45. The relevant domestic law and international material concerning the situation of the LGBT community in Georgia is comprehensively

summarised in paragraphs 29-39 of the Court’s judgment in the case of *Identoba and Others* (cited above).

THE LAW

I. JOINDER OF THE APPLICATIONS

46. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 14 OF THE CONVENTION

47. Twenty-seven of the individual applicants (nos. 2-16, 19, 21-23, 25, 29, 31-33 and 35-37 – see paragraphs 17, 23 and 25 above) complained under Article 3 of the Convention, taken separately and in conjunction with Article 14, that the violent attacks perpetrated by the counter-demonstrators on 17 May 2013 were imputable to the respondent State which, moreover, had failed to investigate effectively the incident by establishing, in particular, the discriminatory motive of the attackers. The relevant provisions read as follows:

Article 3

> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 14

> “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

48. The Government did not submit any objection to the admissibility of the relevant individual applicants’ complaints under Articles 3 and 14 of the Convention.

49. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicants

50. The relevant twenty-seven individual applicants (see paragraph 47 above) contended that the respondent State had violated their rights under Articles 3 and 14 of the Convention because, firstly, the police had failed to protect them from the mob; secondly, there had been clear indications of the authorities' connivance in the counter-demonstrators' hostility towards the IDAHO event; and, thirdly, no effective investigation into the incident had been conducted. With respect to the first aspect, they submitted that, in the light of the previous year's IDAHO event (for further details, see *Identoba and Others*, no. 73235/12, §§ 10-19, 12 May 2015) as well as certain other factual circumstances, it had been easily foreseeable to the relevant domestic authorities that the participants in the 2013 IDAHO event would also be in need of heightened protection from violent attacks by private individuals. Nevertheless, the State had failed to give due regard to the extreme homophobia prevailing in the country, conduct sufficient preparatory work beforehand and use adequate means on the day of the event to prevent the aggressive mob from breaking the law.

51. As regards the alleged connivance of the authorities with the counter-demonstrators, the relevant individual applicants referred to the video-recordings available in the case file that clearly captured images of the negotiations between the clergymen, who were co-organisers of the counter-demonstration, and the senior officials of the Ministry of the Interior, chronologically followed by scenes showing counter-demonstrators passing through the police cordon not only without opposition but with the help of the police. The applicants also referred to the Rustaveli Avenue incident, which was an illustration of the fact that the police officers who had been deployed for the purposes of protecting the participants in the IDAHO event from homophobic and transphobic hatred had, in reality, shared the same discriminatory attitudes. The police had connived in the violence motivated by homophobic bias.

52. Lastly, as regards the alleged inadequacy of the investigation, the relevant twenty-seven individual applicants submitted that the investigation had been neither expeditious nor independent and that the relevant authorities had not taken all reasonable steps to secure evidence. They emphasised in that regard that even the domestic court had acknowledged in its decision the inadequacy of one of the criminal investigations conducted into the violence committed during the IDAHO event (see paragraph 42 above). The relevant applicants also pointed out that discrimination on the grounds of sexual orientation and gender identity had never been treated by the investigative authorities as a bias motivation and an aggravating circumstance, contrary to

the relevant requirement set forth in the Criminal Code of Georgia (*Identoba and Others*, § 77, cited above).

(b) The Government

53. The Government observed that the police had used their best endeavours to protect the participants in the IDAHO event, including the twenty-seven individual applicants (see paragraph 47 above) from counter-demonstrators. In particular, the Government justified the presence of an ill-equipped and outnumbered police force by the fact that the turnout of counter-demonstrators had not initially been expected to be so high. They also submitted that the police had chosen to remain relatively passive in the face of the aggressiveness coming from the counter-demonstrators and not to use any special anti-riot measures, such as water cannons, rubber bullets or tear gas, for fear of causing even more violence, which could have led to a high number of casualties. Given the particular circumstances, the police had decided that the best course of action would be to disperse the participants in the IDAHO event. The Government claimed that the dispersal plan had been discussed with some of the organisers prior to 17 May 2013, and that the buses that had carried the escaping participants had been accompanied at all times by the police. They also submitted that it was owing to the effective measures taken by the police that none of the relevant individual applicants had received any physical injuries during the clashes.

54. The Government further submitted that the relevant individual applicants had not shown any proof of connivance by the police in the hate-motivated violence or homophobic/transphobic discrimination. They objected to the applicants' insinuation that the negotiations between the senior officials of the Ministry of the Interior and the clergymen could be interpreted as a sign of the authorities' connivance in the counter-demonstrators' subsequent violent actions. On the contrary, during the meetings in question the representatives of the Ministry had attempted to de-escalate the situation. The Government further dismissed the various video-recordings available in the case file on the grounds that the majority of them had been taken after the participants in the IDAHO event had already fled on the buses from Pushkin Square, and that the recordings merely showed the police officers allowing the organisers of the counter-demonstration to leave the scene of their demonstration after the clashes had already occurred. In general, the Government asked the Court not to consider the video-recordings the main evidence for establishing the facts, given that there was a risk of misinterpretation. As to the complaints of degrading treatment by the police made by applicant no. 23, the Government submitted that they were clearly unsubstantiated given that the applicant had failed to raise them with any of the competent domestic authorities.

55. The Government argued that the investigation into the violence committed during the IDAHO event by the counter-demonstrators had been

effective as it had resulted in the identification of four accused. In the course of the investigation, the authorities had conducted a number of investigative measures, such as questioning dozens of witnesses and conducting various crime-detection examinations. Furthermore, four other individuals had been sanctioned with administrative fines (see paragraph 39 above). All in all, the Government submitted that there was no reason to find a violation of Article 3 of the Convention, either alone or in conjunction with Article 14, given that the relevant domestic authorities had spared no efforts to comply with their positive obligations by protecting the relevant individual applicants from the hate-motivated violence and elucidating all the circumstances of the incident in the course of a meaningful investigation.

2. *The Court's assessment*

(a) Scope of scrutiny

56. At the outset, the Court notes that the crux of the relevant applicants' complaints is to hold the respondent State liable under both the substantive and procedural limbs of Article 3, as well as under Article 14 of the Convention, for the hate-motivated ill-treatment inflicted at the hands of private individuals. With respect to the substantive aspect of Article 3, having regard to the particular circumstances of the present cases, notably the Pushkin Square and the Vachnadze Street incidents (see paragraphs 15-27 above), the Court considers that it is mainly the State's substantive positive obligations that ought to be examined (see, as a recent authority, *I.E. v. the Republic of Moldova*, no. 45422/13, § 40, 26 May 2020, with further references therein). However, in so far as the Rustaveli Avenue incident is at stake, which concerned applicant no. 23 (see paragraphs 28-30), the Court notes the State's substantive negative obligations must be addressed as well.

57. As regards the interplay of the two provisions cited by the relevant applicants, having regard to the facts of the present cases, the Court considers that the most appropriate way to proceed would be to subject the applicants' complaints to a simultaneous dual examination under Article 3 taken in conjunction with Article 14 of the Convention (see *Aghdgomelashvili and Japaridze v. Georgia*, no. 7224/11, §§ 35-36, 8 October 2020, with further references cited therein).

58. Lastly, having regard, amongst other things, to the parties' legal arguments, the Court finds that in its examination of the merits of the complaints under Article 3 (both the substantive and procedural obligations) and Article 14, the following questions of law have to be addressed in the order stated. First, the severity threshold of the alleged ill-treatment has to be assessed. In the event that this threshold has been met, the Court will then, as a second step, examine the State's compliance with its procedural obligations and, lastly, will inquire into the discharge by the State of its substantive obligations.

(b) Findings

(i) The severity threshold

(α) General principles

59. In general, ill-treatment that attains a minimum level of severity to fall within the scope of Article 3 usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, either in the eyes of others or in those of the victim, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3 (see, in the context of violence by private individuals, *Identoba and Others*, cited above, § 65, and, more generally, *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86 and 87, ECHR 2015). Furthermore, discriminatory treatment as such can in principle amount to degrading treatment within the meaning of Article 3, where it attains a level of severity such as to constitute an affront to human dignity. Discriminatory remarks and insults must in any event be considered an aggravating factor when considering a given instance of ill-treatment in the light of Article 3. This is particularly true for violent hate crime. In this connection, it should be remembered that not only acts based solely on a victim's characteristics can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitude towards the group the victim belongs to (see, as a recent authority, *Sabalić v. Croatia*, no. 50231/13, §§ 65 and 66, 14 January 2021, with further authorities cited therein).

(β) Application of these principles to the circumstances

60. The Court observes that the relevant twenty-seven individual applicants became the target of vicious hate speech and aggressive behaviour during the clashes with the counter-demonstrators, facts which were not disputed by the Government. Given that the applicants were surrounded and outnumbered by a mob uttering death threats and randomly resorting to physical assaults, demonstrating the reality of the threats, and that clearly distinguishable homophobic bias played the role of an aggravating factor, the situation was one of intense fear and anxiety (contrast *R.B. v. Hungary*, no. 64602/12, § 51, 12 April 2016). In the circumstances when the mob attacked the buses carrying the relevant applicants and managed to hit one on the head (see paragraphs 24, 26 and 27 above), it is clear that the relevant applicants perceived the threat of physical violence very seriously. It is to be recalled in this connection a threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may fall foul of that provision (see, for instance, *Abu Zubaydah v. Lithuania*, no. 46454/11, § 631, 31 May

2018). The Court further observers that the aim of that verbal and physical attack was evidently to frighten the relevant applicants so that they would desist from their public expression of support for the LGBT community. The applicants' emotional distress must have been further exacerbated by the fact that the police protection which had been promised to them in advance of the IDAHO event was not provided in due time or adequately (see paragraph 13 above and paragraphs 70-78 below and compare *Aghdgomelashvili and Japaridze*, cited above, § 47; *Burlya and Others v. Ukraine*, no. 3289/10, § 134, 6 November 2018; and *Identoba and Others*, cited above, § 68). In such circumstances, and in reply to the Government's argument (see paragraph 53 *in fine* above), the Court considers that the question whether or not the applicants sustained physical injuries of a certain gravity becomes not decisive.

61. All in all, the Court finds that the situation in which the relevant twenty-seven individual applicants found themselves during the clashes with the counter-demonstrators were not compatible with respect for their human dignity and reached the threshold of severity within the meaning of Article 3 taken in conjunction with Article 14 of the Convention.

(ii) Procedural obligations

(α) General principles

62. Article 3 of the Convention requires that the authorities conduct an effective official investigation into the alleged ill-treatment, even where such treatment has been inflicted by private individuals (see *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 38, 28 January 2014). For an investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and – if appropriate – punishment of those responsible. This is not an obligation as to the results to be achieved, but the means to be employed. The authorities must take the steps reasonably available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see *Bouyid*, cited above, §§ 116 and 119-23, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 323, ECHR 2014 (extracts)). A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007).

63. When investigating violent incidents, such as ill-treatment, State authorities have a duty to take all reasonable steps to unmask possible discriminatory motives. The respondent State's obligation to investigate possible discriminatory motives for a violent act is an obligation to use best endeavours and is therefore not absolute. The authorities must do whatever is reasonable in the circumstances to collect and secure evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence fuelled by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination. Accordingly, where there is a suspicion that discriminatory attitudes led to a violent act, it is particularly important that the official investigation be pursued with vigour and impartiality, having regard to the need to continuously reassert society's condemnation of such acts and maintain the confidence of minority groups in the ability of the authorities to protect them from the discriminatory violence. Compliance with the State's positive obligations requires that the domestic legal system demonstrate its capacity to enforce the criminal law against the perpetrators of such violent acts (see *Sabalić*, cited above, § 95). Without a strict approach on the part of the law-enforcement authorities, hate-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence or even connivance in hate crimes (see *Identoba and Others*, cited above, § 77, with further references).

(β) Application of these principles to the circumstances

64. The Court observes that the investigation into the violence perpetrated against the participants in the IDAHO event was conducted by the same unit of the Ministry of the Interior that had been responsible, with other units of the Ministry, for ensuring safety at the protest rally. Given that the relevant individual applicants' criminal complaints at domestic level included complaints of insufficient police protection and even connivance of some the law-enforcement officers in the counter-demonstrators' hostility (see paragraphs 13, 33, 36-37 and 40-41 above), the Court finds that there are sufficient grounds for calling into question the independence and impartiality of that investigation (compare *Kukhalashvili and Others v. Georgia*, nos. 8938/07 and 41891/07, § 132, 2 April 2020).

65. Even if the relevant domestic authorities opened two separate and detached sets of criminal proceedings concerning the violence committed in the immediate aftermath of the incident of 17 May 2013, no tangible results have been achieved in either of these cases. Thus, one criminal case resulted in the acquittal of four people initially charged with offences committed against the participants in the IDAHO event, and the relevant domestic court itself acknowledged that the investigative authority had conducted a manifestly deficient investigation (see paragraph 42 above and compare

Mindadze and Nemsitsveridze v. Georgia, no. 21571/05, § 108, 1 June 2017). As regards the second criminal case, according to the information available to the Court, no significant progress has been made for more than six years, with the investigation still pending at the early stages. Furthermore, with the exception of applicant no. 23, none of the other applicants have even been granted victim status (see paragraph 43 above, and compare *Begheluri and Others v. Georgia*, no. 28490/02, §§ 134-36, 7 October 2014). As regards the latter applicant, the Court additionally observes that the domestic authorities never followed up on the important evidence provided by him in relation to the Rustaveli Avenue incident – the name of one of the alleged assailants from the mob, a detailed description of the degrading treatment perpetrated against him by police officers inside of the supermarket (the beard-shaving episode) as well as photographs and contact details of the police officers implicated in that treatment (see paragraph 37 above). Such a prohibitive delay is in itself incompatible with the State's obligation under Article 3 of the Convention to carry out an effective investigation, especially since the task of identifying the perpetrators of the applicants' alleged ill-treatment was far from arduous. The Court considers that it should have been easily possible for the investigation to narrow down the pool of possible assailants because, firstly, the identity of the organisers of the "prayer rally" was known to the authorities and, secondly, the video-recordings of the clashes contained images of the most aggressive assailants (compare *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, cited above, § 118; see also *Begheluri and Others*, cited above, §§ 137-38). The only other tangible result of the authority's attempt was the administrative sanctioning of four counter-demonstrators, who were punished for a minor breach of public order and fined EUR 45 each (see paragraph 39 above). However, given the level of unwarranted violence and aggression against the applicants, the Court does not consider such a light administrative sanction sufficient to discharge the State from its procedural obligation under Article 3 of the Convention (compare *Identoba and Others*, cited above, § 75).

66. More importantly, the Court considers that the protraction of the investigation exposed the domestic authorities' long-standing inability – which can also be read as unwillingness – to examine the homophobic and/or transphobic motives behind the violence and degrading treatment committed against the relevant twenty-seven individual applicants. The domestic criminal legislation expressly provided that discrimination on the grounds of sexual orientation and gender identity should be treated as a bias motivation and an aggravating circumstance in the commission of an offence (see *Identoba and Others*, cited above, §§ 29 and 77). There was a pressing need to conduct a meaningful inquiry into the possibility that discrimination had been the motivating factor, given the well-documented hostility against the LGBT community in the country at the material time (see *Aghdgomelashvili and Japaridze*, cited above, § 47).

67. The Court thus finds that the domestic authorities have failed to conduct a proper investigation into the hate-motivated ill-treatment against the relevant twenty-seven individual applicants. There has accordingly been a violation of Article 3 under its procedural limb read together with Article 14 of the Convention.

(iii) Substantive obligations

(α) General principles

68. The Court reiterates that, as with Article 2 of the Convention, Article 3 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of ill-treatment. This positive obligation is to be interpreted in such a way as not to impose an impossible or disproportionate burden on the authorities, bearing in mind the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every risk of ill-treatment can entail for the authorities a Convention requirement to take measures to prevent that risk from materialising. However, the required measures should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge. Therefore, for a positive obligation to arise it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 181-83, 2 February 2021).

69. The Court further reiterates that acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may also engage that State's responsibility under the Convention (see, for instance, *Cyprus v. Turkey* [GC], no. 25781/94, § 81, ECHR 2001-IV; *Begheluri and Others*, cited above, § 145; and *Chernega and Others v. Ukraine*, no. 74768/10, §§ 125-31, 18 June 2019). In assessing evidence in relation to a claim of a violation of Article 3 of the Convention, the Court adopts the standard of proof "beyond reasonable doubt". In the proceedings before it, the Court imposes no procedural barriers on the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of

persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof is on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government (see *Bouyid*, cited above, § 83, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

(β) Application of these principles to the circumstances

70. Having regard to the circumstances surrounding the Pushkin Square and the Vachnadze Street incidents and the parties' arguments, the Court considers that when examining the question of whether or not the respondent State has discharged its substantive obligations, it needs to examine the case taking into account the following: (a) the obligation to take operational preventive measures, which is considered to be one of the two substantive positive obligations inherent in Article 3 (see, as a recent authority, *X and Others v. Bulgaria*, cited above §§ 176-78, with further references), and (b) the degree of official acquiescence or connivance in the acts of private individuals.

71. As regards the question of whether the authorities knew or ought to have known about the risks associated with the IDAHO event (see the general principles cited in paragraph 68 above), the Court observes, firstly, that the organisers of the "prayer rally" had made it clear well before the IDAHO event that the aim of their counter-demonstration was not only to publicly express their protest against the cause of the LGBT community, but rather to prevent the IDAHO event from taking place altogether (see paragraph 12 above). Therefore, it cannot be said that the authorities did not know the real objective of the counter-demonstrators who had decided to hold their event on the same date and in the same part of the city. Secondly, as regards the Government's argument that the high turnout of counter-demonstrators was unexpected, the Court finds this hardly convincing, given that during the preparatory meetings of 13 and 15 April 2013 between the Ministry of the Interior and applicants nos. 1 and 17 the authority's representatives already knew that more than 10,000 counter-demonstrators were expected to attend. Furthermore, various media outlets publicly reported that "thousands of people" were expected to join the counter-demonstration. Moreover, serious threats targeting the lives of the participants in the IDAHO event were circulating on social media (see paragraph 12 above), yet the authorities did not attach sufficient importance to them. Indeed, the authorities were under an obligation to use any means possible, for instance by making public

statements in advance of the IDAHO event to advocate, without any ambiguity, a tolerant, conciliatory stance as well as to warn potential law-breakers of the nature of the possible sanctions (compare *Identoba and Others*, cited above, § 99, and *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 42, ECHR 2005-X (extracts)).

72. The Court also considers that, on the basis of the mismanagement of the previous year's IDAHO event (see *Identoba and Others*, cited above), it was open to the relevant domestic authorities to foresee more easily all the relevant risks associated with the task of policing mass gatherings related to the socially sensitive cause of the LGBT community. In addition, it cannot escape the Court's attention that the counter-demonstrators already started gathering on Rustaveli Avenue on the evening of 16 May 2013, and by the early afternoon of 17 May had already surpassed 20,000. Therefore, the Court considers that, even assuming that the authorities did not expect such a high number of counter-demonstrators, they still had time to implement changes at the eleventh hour by rearranging their security plans as necessary, for instance by deploying squads of riot police in sufficient numbers (see *Identoba and Others*, cited above, § 99, and contrast *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, §§ 37 and 38, Series A no. 139).

73. The Court thus finds that all the risks associated with the IDAHO event were fully known in advance to the domestic authorities (see, in this connection, *Primov and Others v. Russia*, no. 17391/06, § 150, 12 June 2014), and that they were consequently under an obligation to provide heightened State protection (see *Aghdgomelashvili and Japaridze*, cited above, § 47). Despite this exacting obligation and the full knowledge of the risks, the authorities' response to the gravity of the situation was merely to deploy unarmed and unprotected police patrol officers who were supposed to contain the tens of thousands of aggressive people by forming thin human cordons. However, the Court considers that whenever, as in the present cases, large-scale disorder and violence is foreseeable, it is important for the domestic authorities to evaluate the resources necessary for neutralising the threat of violent clashes by, amongst other things, equipping law-enforcement officers deployed to the scene with appropriate riot gear in order to be able to discharge their police functions (see, *mutatis mutandis*, *Fáber v. Hungary*, no. 40721/08, § 40, 24 July 2012, with further references; *Güleç v. Turkey*, no. 21593/93, § 71, 27 July 1998; and *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, § 108, 26 July 2005).

74. The Court notes that the Government seem to refer to the existence of the prior dispersal plan as tangible proof of their use of best endeavours to protect the participants in the IDAHO event (see paragraph 53 above). However, leaving aside the fact that that dispersal plan resulted in highly chaotic and disorganised actions when put into practice, the Court considers that the dispersal of the LGBT demonstrators without giving them an opportunity to hold their public rally cannot be counted, in the particular

circumstances of the case, as fulfilment by the State of their positive substantive obligation to provide adequate protection against hate-motivated attacks (compare, *mutatis mutandis*, *Identoba and Others*, cited above, § 73).

75. As regards the question of the connivance and/or acquiescence of some police officers in the acts of the counter-demonstrators, the Court observes that the images available in the case file (see paragraphs 18-24 above) show the counter-demonstrators passing through the police cordons at the moment when the participants in the IDAHO event were still in Pushkin Square. There are also images filmed by independent journalists which suggest that not only did the police not resist the breaking of the cordons in some instances, a number of police officers even encouraged the counter-demonstrators to do so. Furthermore, the Court finds it particularly striking how certain senior officials of the Ministry of the Interior remained passive in the face of the threats to public order and even constitutional order unabashedly proffered by the organisers of the counter-demonstration. Thus, on the basis of the available video evidence, as well as the individual accounts of each of the twenty-seven applicants, the Court finds it established beyond reasonable doubt that the police in some places opened up the cordon for the counter-demonstrators and in others remained passive when the counter-demonstrators started to break the cordon.

76. Furthermore, the Court, referring to its finding above about the failure to conduct an effective criminal investigation into the violence committed against the participants in the IDAHO event, and in particular the failure to investigate the prejudice-based motives underlying the private individuals' acts, points out that this procedural failure contributes to official acquiescence or connivance in hate crimes (see, as a recent authority, *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 155, 14 January 2020, and also the references cited *in fine* of paragraph 63 above). Indeed, the Court cannot exclude the possibility that the unprecedented scale of violence committed against the participants in the IDAHO event on 17 May 2013 was conditioned, at least in part, by the domestic authorities' failure to secure a timely and objective criminal investigation and punishment of the perpetrators of comparatively less violent attacks on the LGBT community during the previous year's IDAHO event on 17 May 2012 (see *Identoba and Others*, cited above, §§ 75-78). The passivity of the authorities in the face of the violent acts committed on 17 May 2013 is regarded as having contributed to the subsequent proliferation, which is well-documented, of hate crimes against the LGBT community (see paragraph 44 above).

77. As to the Rustaveli Avenue incident involving applicant no. 23 (see paragraphs 28-29), the Court notes that the Government contested the latter applicant's version of the events relating to the beard-shaving episode (see paragraph 54 *in fine*). However, having regard to the fact that applicant no. 23 has remained clear and consistent in his description of the episode both before the domestic authorities and the Court, it, drawing inferences from the

available material and the parties' conduct, and in particular the domestic authorities' failure to investigate the incident (see paragraphs 37 and 65 above), finds that the facts as submitted by the relevant applicant are sufficiently convincing and have been established beyond reasonable doubt (see, for instance, *Aghdgomelashvili and Japaridze*, cited above, § 45). That being so, the Court further finds that the police officers humiliated applicant no. 23 by resorting to offensive remarks during the beard-shaving process, which was moreover filmed on a mobile telephone, clearly expressing prejudice against the latter on the basis of his association with the LGBT community. In these circumstances, the Court considers that the inappropriate conduct of the police officers went against the State's substantive negative obligations.

78. In the light of the foregoing, having regard to the respondent authorities' failure to effectively take operational preventive measures aimed at protecting the IDAHO event from the violent counter-demonstration, the indications of official acquiescence, connivance and even active participation in individual acts motivated by prejudice, the Court concludes that there has been a violation of Article 3 under its substantive limb read together with Article 14 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 11 AND 14 OF THE CONVENTION

79. Both applicant associations (applicants nos. 1 and 17) and all the individual applicants complained under both Articles 10 and 11 of the Convention, taken alone and in conjunction with Article 14, that they had been unable to proceed with their plans to hold a peaceful public rally owing to the hate-motivated assaults on them and the inaction of the police.

80. The Government reiterated their arguments concerning the claim that the police had used their best endeavours to prevent the participants in the IDAHO event from the aggression of the counter-demonstrators and guarantee their rights to freedom of peaceful assembly. The applicants disagreed, maintaining that the police's actions had been insufficient to prevent the marchers from aggression, which had been motivated by homophobic and transphobic hatred, and that as a result, the peaceful demonstration had been disrupted.

81. At the outset, the Court notes that in the circumstances of the present cases it is Article 11 which should be regarded as a *lex specialis*, and that it is unnecessary to take the complaint under Article 10 into consideration separately. However, the former provision must be considered, if need be, in the light of principles developed under the latter (see *Identoba and Others*, cited above, § 91). Furthermore, given the applicants' claim that the breach of their right to freedom of peaceful assembly had discriminatory overtones,

the Court must examine the complaint under Article 11 in conjunction with Article 14 (ibid., § 92).

82. The Court also observes that the applicants' complaints that the State failed to protect their freedom to participate in the protest rally of 17 May 2013 and protect them from hate-motivated violence stem from exactly the same factual circumstances as those it has already examined under Article 3 of the Convention taken in conjunction with Article 14. Consequently, the complaints under Articles 11 and 14 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, and they must therefore be declared admissible.

83. Furthermore, having regard to the relevant general principles governing the application of Articles 11 and 14 of the Convention in situations similar to that examined in the present case (for a comprehensive summary of the relevant principles, see *Identoba and Others*, cited above, §§ 93-96) as well as to its thorough factual and legal findings above under Articles 3 and 14, which are equally pertinent to the complaints relating to freedom of assembly, the Court considers that the police failed in their positive duty to ensure that the IDAHO event of 17 May 2013 could take place peacefully (see *Plattform "Ärzte für das Leben"*, cited above, §§ 32 and 34). Whilst the domestic authorities were obviously free in the choice of means which would have enabled the event to take place without disturbance, the Court finds it regrettable that no proper evaluation of the resources necessary for neutralising the serious threat posed to the LGBT demonstrators was conducted by the authorities during the planning phase. Despite being fully aware of the reality and magnitude of the risk, the police, instead of considering more effective measures which could have allowed the applicants to proceed with their peaceful event, limited their role to designing the dispersal plan as the only alternative (compare, *mutatis mutandis, Barankevich v. Russia*, no. 10519/03, § 33, 26 July 2007). Such an attitude suggests that taking measures aimed at enabling the IDAHO event to take place had never been a real priority for the domestic authority.

84. In the light of the foregoing, the Court finds that there has been a violation of the respondent State's positive obligations under Article 11 taken in conjunction with Article 14 of the Convention (see *Identoba and Others*, cited above, §§ 98-100).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

86. The first applicant did not submit a claim under this head. The remaining applicants, each claiming to have suffered varying degrees of emotional distress and anxiety as a result of breaches of their various rights under the Convention during the incident of 17 May 2013, made the following claims:

- applicant no. 12 claimed 10,000 euros (EUR);
- applicants nos. 2-11 and 13-16 each claimed EUR 7,000;
- applicants nos. 23 and 36 claimed EUR 6,000 each;
- applicants nos. 19, 21-22, 25, 29, 31-33, 35 and 37 – EUR 5,000 each;
- applicant no. 17 claimed EUR 3,500; and
- each of the remaining individual applicants (nos. 18, 20, 24, 26-28, 30 and 34) made a claim of EUR 2,500.

87. The Government submitted that the claims were manifestly ill-founded and excessive.

88. The Court has no doubt that the individual applicants suffered distress and frustration on account of the violations of their various rights under Articles 3, 11 and 14, and that the legitimate interests applicant no. 17 were also prejudiced as a result of a breach of its rights under Articles 11 and 14 of the Convention. The resulting non-pecuniary damage would not be adequately compensated for by the mere finding of those breaches. Having regard to the relevant circumstances of the case, the principle of *non ultra petita* as well as to various equitable considerations, the Court finds it appropriate to award the relevant applicants, in respect of non-pecuniary damage, the amounts claimed in full.

B. Costs and expenses

89. Applicants nos. 1-16 (the sixteen applicants in application no. 73204/13) claimed 1,725 pounds sterling (GBP – approximately EUR 2,000) in respect of the costs of their representation before the Court by two of their British lawyers (see paragraph 4 above). The amount was based on the number of hours which the lawyers had spent on the case (eleven hours and thirty minutes) and the lawyer's hourly rate (GBP 150). No copies of the relevant legal service contracts, invoices, vouchers or any other supporting financial documents were submitted. The relevant sixteen applicants additionally claimed GBP 64.83 (approximately EUR 75) for postal expenses, translation expenses and other types of administrative expenses incurred by the same two British lawyers.

90. The remaining applicants did not submit any additional claims for costs and expenses.

91. The Government submitted that the claims submitted by applicants nos. 1-16 were unsubstantiated and excessive.

92. The Court notes that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the applicant did not submit documents showing that she had paid or was under a legal obligation to pay the fees charged by her British representative or the expenses incurred by her. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred (ibid., § 372; *Aghdgomelashvili and Japaridze*, cited above, § 61; and *Vazagashvili and Shanava v. Georgia*, no. 50375/07, §§ 105-08).

93. It follows that the claims must be rejected.

C. Default interest

94. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 3 under its substantive and procedural limbs both taken in conjunction with 14 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 10 of the Convention;

5. *Holds* that there has been a violation of Article 11 taken in conjunction with Article14 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 10,000 (ten thousand euros) to applicant no. 12;
   (ii) EUR 7,000 (seven thousand euros) to applicants nos. 2-11 and 13-16 each;
   (iii) EUR 6,000 (six thousand euros) to applicants nos. 23 and 36 each;

(iv) EUR 5,000 (five thousand euros) to applicants nos. 19, 21-22, 25, 29, 31-33, 35 and 37 each;
(v) EUR 3,500 (three thousand five hundred euros) to applicant no. 17;
(vi) EUR 2,500 (two thousand five hundred euros) to applicants nos. 18, 20, 24, 26-28, 30 and 34 each;
(vii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Síofra O'Leary
Deputy Registrar	President

APPENDIX

List of applicants:

Application no. 73204/13				
No.	**Name**	**Birth/registration date**	**Place of residence**	**Represented by**
1.	NGO Women's Initiatives Supporting Group	registered in 2000	Tbilisi, GEORGIA	Ms T. Abazadze Ms N. Jomarjidze Ms Ts. Ratiani Ms J. Evans Ms J. Gavron Mr Ph. Leach
2.	Ms INARIDZE Irma	1966	Village Nichbisi, GEORGIA	
3.	Ms GAGOSHASHVILI Mariam	1984	Tbilisi, GEORGIA	
4.	Ms JAPARIDZE Tinatin	1979	Tbilisi, GEORGIA	
5.	Ms UGREKHELIDZE Aleksandra	1987	Tbilisi, GEORGIA	
6.	Mr BOLKVADZE Konstantine	1989	Tbilisi, GEORGIA	
7.	Ms KHARCHILAVA Nino	1984	Tbilisi, GEORGIA	
8.	Ms MESKHI Ekaterine	1973	Berlin, GERMANY	
9.	Ms PRUIDZE Sophio	1983	Tbilisi, GEORGIA	
10.	Ms GOBRONIDZE Tamara	1990	Tbilisi, GEORGIA	
11.	Ms PANTSULAIA Nana	1958	Tbilisi, GEORGIA	
12.	Ms MERKVILADZE Salome	1995	Tbilisi, GEORGIA	
13.	Ms LOPOIANI Tatiana	1984	Tbilisi, GEORGIA	
14.	Ms TSERETELI Eka	1969	Tbilisi, GEORGIA	
15.	Ms GVIANISHVILI Natia	1986	Tbilisi, GEORGIA	
16.	Ms TABATADZE Sophio	1977	Berlin, GERMANY	

Application no. 74959/13				
No.	**Name**	**Birth/registration date**	**Place of residence**	**Represented by**
17.	NGO Identoba	Registered in 2010	Tbilisi, GEORGIA	Mr L. Asatiani Ms N. Bolkvadze Ms T. Abazadze Ms N. Jomarjidze
18.	Mr BARNABISHVILI Egnate	1989	Tbilisi, GEORGIA	
19.	Mr BELOUSOVI Anton	1989	Tbilisi, GEORGIA	
20.	Ms BILIKHODZE Tina	1959	Tbilisi, GEORGIA	
21.	Mr BITSADZE Koba	1992	Kutaisi, GEORGIA	
22.	Ms BOLKVADZE Eka	1990	Tbilisi, GEORGIA	
23.	Mr BUCHASHVILI Beka	1990	Tbilisi, GEORGIA	
24.	Ms DZERKORASHVILI Gvantsa	1990	Tbilisi, GEORGIA	
25.	Ms GABUNIA Shorena	1977	Tbilisi, GEORGIA	
26.	Ms GLAKHASHVILI Elina	1984	Gori, GEORGIA	
27.	Ms JGHARKAVA Pikria	1989	Tbilisi, GEORGIA	
28.	Ms KAISHAURI Marina	1981	Tbilisi, GEORGIA	
29.	Ms KATAMADZE Ana	1991	Tbilisi, GEORGIA	
30.	Ms KHARATISHVILI Natia	1985	Tbilisi, GEORGIA	
31.	Ms KHUTSISHVILI Keti	1992	Tbilisi, GEORGIA	
32.	Ms KVANTALIANI Natia	1989	Tbilisi, GEORGIA	
33.	Mr MACHITIDZE Temur	1993	Kutaisi, GEORGIA	
34.	Ms REKHVIASHVILI Ana	1988	Tbilisi, GEORGIA	
35.	Ms TABAGARI Lalo	1992	Tchiatura, GEORGIA	
36.	Mr TSAGAREISHVILI Keti	1979	Tbilisi, GEORGIA	
37.	Mr VATCHARADZE Irakli	1980	Tbilisi, GEORGIA	