



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

Communicated on 18 December 2013

THIRD SECTION

Application no. 73235/12
Identoba and others
against Georgia
lodged on 17 November 2012

STATEMENT OF FACTS

1. A list of the applicants, who are represented before the Court by Ms N. Bolkvadze and Mr L. Asatiani, lawyers practicing in Tbilisi, is set out in the appendix. With the exception of the first applicant, which is a legal entity, the remaining fourteen applicants are all Georgian nationals who reside in Tbilisi.

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

A. Peaceful demonstration of 17 March 2012

3. The Identoba, a Georgian non-governmental organization, whose mission is to promote and protect the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons in Georgia, planned to organise a peaceful march in the center of the capital, from the Tbilisi Concert Hall until the Orbeliani Square, to celebrate International Day against Homophobia and Transphobia.

1. Prior arrangements

4. In advance of the demonstration, on 8 May 2012, the Identoba had given the Tbilisi City Hall and the Old Tbilisi Police Department of the Ministry prior notice of their aim of holding a peaceful demonstration on 17 May 2012, informing the authorities of the planned route of the march and the number of participants, as required by the relevant domestic law. In addition, in the light of a foreseeable protest from those opposed to the LGBT community in Georgia, the Identoba specifically requested that the authorities provide protection from possible violence.

5. On 14 May 2012 the Tbilisi City Hall acknowledged receipt of the Identoba's request and explained, in reply, the responsibilities of demonstrators, as provided for by the relevant law.

6. On 15 May 2012 the Identoba was contacted by an employee of the Old Tbilisi Police Department of Georgian Ministry of Internal Affairs, who clarified the details of the planned demonstration and confirmed that the police would be mobilised to secure the participants.

2. The events of 17 March 2009

7. On 17 May 2012, at 1:00 p.m., members of the LGBT community, the staff members of the Identoba and other LGBT activists, with the total number of approximately thirty people ("the demonstrators"), gathered at a territory adjacent to the Tbilisi Concert Hall. They were holding banners with slogans such as: "I am gay", "I love my gay friend", "love is love", "get colourful", as well as rainbow flags and umbrellas. The police were present, as agreed, near the Tbilisi Concert Hall area.

8. Shortly before the start of the demonstration, members of a religious organisation, the Orthodox Parents' Union, arrived at the Tbilisi Concert Hall area. Journalists were also present, recording interviews with the participants of the demonstration. A member of the Orthodox Parents' Union tried to convince the demonstrators to desist from the planned march.

9. In approximately 150-100 meters from the starting point of the march, members of the Orthodox Parents' Union and members of the Georgian Orthodox Church parish ("the counter-demonstrators") started gathering. They stopped some of the marching demonstrators, and started arguing with them. The counter-demonstrators claimed that nobody had the right to hold a Gay Pride Parade and to promote "perversion", as it was against moral values. In reply, the demonstrators tried to calmly explain that it was not a Gay Pride Parade but a march dedicated to support the combat against homophobia, and continued to walk.

10. The counter-demonstrators then addressed the patrol police standing along the pavement and urged them to stop the march. The police replied that they did not have the right to interrupt the demonstration, and explained that their presence was to prevent the participants of the march from walking on the road and impeding the automobile traffic.

11. When the demonstrators reached the Rustaveli Avenue, they were met there by more counter-demonstrators who were particularly aggressive and verbally offensive. The counter-demonstrators blocked the way for the march, made a human chain and encircled the demonstrators in a way that made it impossible for them to pass. The latter became subject to offensive hate speech, and threats of physical assault from the counter-demonstrators, being labelled as "sick" and "immoral" persons and "perverts". At that moment, the police patrol cars distanced themselves from the scene without any prior notification. The demonstrators, feeling threatened, telephoned the police, alerting them of the danger. While waiting for the arrival of the patrol police, participants could see other law enforcement officers present at the site. However when approached and asked for help, the officers replied that they were not part of the patrol police and it was not their duty to intervene.

12. The aggression towards the protesters continued escalating and in approximately 20-30 minutes, the counter-demonstrators grabbed the banners from the hands of several activists and torn them apart. The counter-demonstrators then began to assault physically, by pushing and punching, the front row of the demonstrators. One of them, the sixth applicant, was knocked down and beaten and kicked. Shortly afterwards, the patrol police cars eventually arrived at the scene. Some of the law-enforcement officers intervened by stopping the beating of the sixth applicant. The police then separated the opposing parties by standing between them. At that moment, the counter-demonstrators were still issuing threats of a particularly vitriolic nature, including that “they should be burnt to death” and “crushed”.

13. One of the organisers of the demonstration, the third applicant, who was standing on the pavement with other demonstrators, asked the police to take more active measures aimed at the protection of the demonstration. The police response was to arrest him. They forced him into the car and drove away. Three other employees of the Identoba – the sixth, seventh and tenth applicants – were also arrested. None of those four arrested persons were given any explanation of the reasons for their arrest, nor was any record drawn up. The sixth, seventh and tenth applicants were kept in the police cars and driven around the city for some 20 minutes before being brought back to the Rustaveli Avenue. The third applicant was taken to the Old Tbilisi Police Department in the Ministry of Internal Affairs, where he was detained for 20-30 minutes before being released. He was given no explanation for his detention.

14. While in police custody, either the third, sixth, seventh and tenth applicants were asked offensive questions regarding their sexual orientation and were referred to by homophobic expressions. Before releasing them, the police officers warned the four applicants not to participate in similar marches again, on pain of arresting them for much longer time.

15. Later on 17 May 2012, the third and sixth applicants sought medical help for their injuries. The third applicant had a bruised left knee, excoriation on the left palm and fingers, haemorrhagic forearm and hematoma on the right eyebrow. The sixth applicant had a closed head trauma, cerebral contusions, bruised left part of the chest. Two days after, on 19 May 2012, the fourteenth applicant also visited a doctor. She was diagnosed with a contusion of the left wrist.

B. Subsequent investigation

16. On 18 May 2012 the head of the Identoba’s board filed complaints with the Ministry of the Interior and the Chief Public Prosecutor’s Office concerning the violent acts committed by the Orthodox Parents’ Union and representatives of the Georgian Orthodox Church parish and the inaction of the police on the day of the demonstration.

17. On 26 June 2012 the Identoba received a letter from the Deputy-Director of the Patrol Police Department of the Ministry of the Interior. The response stated that, as there had been no signs of illegality in the actions of the police during the demonstration, there was no need for launching an investigation. As to the counter-demonstrators’ actions, two of the counter-

demonstrators had indeed been arrested for transgression under 166 of the Code of Administrative Offences – obstruction to creation of political, public or religious union and interference in their activities – and fined 100 Georgian laris (some 45 euros) each.

18. On 3 July and 5 July 2012 the Identoba and fourteen participants of the demonstration of 17 March 2012, the applicants in the present case, appealed again to the Chief Public Prosecutor and the Minister of Interior, reiterating their previous complaints against the counter-demonstrators and the police.

19. By a letter of 17 July 2012 the Deputy Head of the Administration of the Ministry of Internal Affairs replied to the applicants that during the demonstrations of 17 May 2012 both the demonstrators and counter-demonstrators had been given by the police verbal warning to demonstrate in a peaceful. The letter then reiterated the information concerning the imposition of the administrative sanctions on the two counter-demonstrators.

20. In early May 2012, an investigator of the Old Tbilisi Police Department of the Ministry of Internal questioned three of the participants of the demonstration of 17 May 2012. In addition, on 17 May 2012 the eighth and fourteenth applicants were interviewed in relation to the hand trauma of the latter applicant. Furthermore, on 27 October 2012 the sixth applicant was interviewed regarding his beating by the counter-demonstrators.

21. Following her interrogation, the fourteenth applicant was not recognised as a victim. According to the verbal explanation given by the investigator, no criminal case could be opened due to the insignificance of her hand trauma. As to the sixth applicant, the investigator stated during a telephone conversation on 2 November 2012 that it was not yet decided if the criminal case would be launched or not.

COMPLAINTS

22. Citing Articles 3, 8 and 13 of the Convention, all of the applicants complain about the relevant State authorities' failure (a) to protect them from the verbal and physical attacks perpetrated by the counter-demonstrators which resulted in the disruption of their demonstration of 17 March 2012 and (b) to investigate effectively their subsequent allegations of ill-treatment.

23. Reiterating their inability to proceed with their peaceful demonstration of 17 March 2012, which represented a form of expression of their sexual identity and their views in respect of tolerance and equality, all of the applicants complain about a breach of Articles 10 and 11 of the Convention as well.

24. The third applicant (Mr L. Berianidze) complains that keeping him under arrest at the Old Tbilisi Police Department was in breach of Article 5 § 1 of the Convention, whilst the sixth, seventh and tenth applicants (Mr G. Demetrashvili, Ms G. Dzerkorashvili and Ms M. Kalandadze) allege

a breach of the same provision in relation to their coercive placement in the patrol police vehicles on 17 March 2012.

25. Lastly, all of the applicants complain that the above-mentioned alleged breaches of their relevant rights under Articles 3, 5 § 1, 8, 10 and 11 of the Convention resulted from a discriminatory intent present in the relevant State authorities' conduct, in breach of Article 14 of the Convention.

QUESTIONS TO THE PARTIES

1. May the first applicant, the Identoba, claim to be a victim of the alleged violations of Articles 3, 8, 10, 11, 13 and 14 of the Convention, within the meaning of Article 34?

2. Did the applicants suffer ill-treatment and interference with their rights to respect for their private lives, in breach of Articles 3 and 8 of the Convention, during the peaceful demonstration of 17 March 2012?

- In that respect, did all of those fourteen applicants who are natural persons (from the second applicant to the fifteenth) participate in the manifestation of 17 March 2012 and become victims of aggression from the counter-demonstrators?

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

4. Having regard to the relevant circumstances surrounding the demonstration of 17 March 2012, were the third, sixth, seventh and tenth applicants (Mr L. Berianidze, Mr G. Demetrashvili, Ms G. Dzerkorashvili and Ms M. Kalandadze) deprived of their liberty by the police in breach of Article 5 § 1 of the Convention?

5. In view of the disruption of the demonstration of 17 March 2012, has there been a violation of the applicants' rights to freedom of expression and/or freedom of peaceful assembly, contrary to Articles 10 and 11 of the Convention?

6. Did the applicants have effective domestic remedies at their disposal for their complaints under Article 3 of the Convention concerning their alleged ill-treatment, as required by Article 13 of the Convention?

7. Have the respective applicants suffered discrimination on the ground of their actual and/or perceived sexual orientation contrary to Article 14 of the Convention, this provision being read in conjunction with Articles 3, 5 § 1, 8, 10 and 11 of the Convention?

APPENDIX

No.	Firstname/LASTNAME
1.	NGO IDENTOBA
2.	Mr Levan ASATIANI
3.	Mr Levan BERIANIDZE
4.	Ms Tina BILIKHODZE
5.	Mr Beka BUCHASHVILI
6.	Mr Guram DEMETRASHVILI
7.	Ms Gvantsa DZERKORASHVILI
8.	Ms Elina GLAKHASHVILI
9.	Ms Natia GVINIASHVILI
10.	Ms Magda KALANDADZE
11.	Mr Mikheil KHALIBEGASHVILI
12.	Ms Tamta MELASHVILI
13.	Ms Ketu TSAGAREISHVILI
14.	Ms Mariam TSUTSKIRIDZE
15.	Mr Irakli VACHARADZE