

Amnesty International Public Statement

European Court's ruling in *Identoba and Others v. Georgia*: An Important Legal Precedent

Amnesty International welcomes the European Court of Human Rights' (ECtHR) judgment in the case of *Identoba and Others v. Georgia* (no. 73235/12) handed down on 12 May 2015. The Court held that the police's failure to protect those participating in the International Day Against Homophobia and Transphobia (IDAHOT) march in Tbilisi, Georgia in 2012 violated the European Convention on Human Rights. The Court ruled on the violation of the applicants' rights under Article 3 (prohibition of inhuman or degrading treatment) and Article 11 (freedom of assembly) of the Convention, both taken in conjunction with Article 14 (prohibition of discrimination).

This ECtHR judgment sets an important legal precedent, as the Court, for the first time, has recognised that hate speech and aggressive behaviour against individuals, peacefully assembling in public, amount to a violation of the prohibition of inhuman or degrading treatment. Crucially, the Court held that the question as to whether or not some of the applicants sustained physical injuries of a certain gravity became less relevant, as all of them became a target of hate speech and aggressive behaviour and found that the homophobic and transphobic nature of the assault against the applicants rendered their ill-treatment sufficiently severe to be considered inhuman and degrading treatment in line with thresholds set out by the Convention. The Court also found that the authorities had failed both to protect the applicants from, and sufficiently investigate and prosecute this bias-motivated violence.

The Court placed great emphasis on the discriminatory motive behind the attacks against the demonstrators. Echoing Amnesty International's own recommendations on tackling hate crimes, the judgement stated that:

"Treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights".

In the judgment, the Court also affirmed that the disruption of the applicants' participation in the peaceful march in 2012 "undoubtedly constituted interference [with their right to peaceful assembly] under Article 11 of the Convention, read in the light of the relevant principles under Article 10 [on freedom of expression]". According to the Court, the Georgian authorities knew or should have known of the risk of tensions associated with the IDAHOT street march. They were thus under the obligation to use any means possible to protect the IDAHOT assembly, including using sufficient police force to contain counter-demonstrators, and warning potential law-breakers in advance of the nature of possible sanctions.

The judgment, delivered just days before the celebration of this year's IDAHOT, constitutes recognition of the plight of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Georgia. In 2012 and 2013 the IDAHOT street events in Tbilisi were thwarted by violent attacks by counter-demonstrators, and in 2014, Georgian LGBTI activists abandoned plans to organise a public action due to the lack of security guarantees by police.

This year, the LGBTI community in Georgia managed to peacefully assemble for IDAHOT on 17 May. However, the authorities refused to guarantee the safety of the event unless it was carried out in secrecy in a pre-determined location without prior public announcement, leaving the organisers no option but to follow their instructions. While this is a step forward, it still curtails the right to freedom of assembly, and the Georgian authorities must do much more to guarantee public peaceful assembly by the LGBTI community without fear of violence and abuse.

Background information:

On 17 May 2012, a peaceful demonstration organised in Tbilisi by the Georgian LGBTI rights NGO Identoba to mark the IDAHOT was violently disrupted by counter-demonstrators outnumbering the IDAHOT participants. The organisers had given prior notice of their intention to hold a peaceful

demonstration, and had requested that the authorities provide sufficient protection against possible violence, given the history of hostility towards LGBTI people in the country.

Despite this, the police remained relatively passive when the participants were insulted, threatened and ultimately assaulted by counter-demonstrators – members of two radical orthodox Christian groups. The demonstration was disrupted, while the physical attacks left several of the applicants with serious injuries. Following the events, Identoba and 13 of the individual applicants filed complaints with the authorities, requesting the launch of criminal investigations into the attacks against them which had been perpetrated with discriminatory intent, and into the acts and omissions of the police officers who had failed to protect them from those assaults.

Since the 2012 march, only two investigations into the injuries sustained by two of the applicants have been opened, the outcomes of which are still pending.

Discrimination on the basis of sexual orientation and gender identity remains a significant problem in Georgia. The Georgian state has failed to effectively investigate and punish the perpetrators of the violence during the 2012 and 2013 IDAHOT events, reinforcing a dangerous trend of impunity for the acts of violence against minorities.

Georgia has anti-discrimination legislation. However it is often not fully implemented in practice, and the Georgian government has failed (and continues to do so) to show a strong political will to counter widespread homophobia and transphobia in the country.