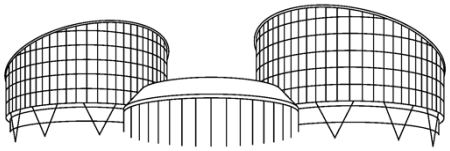

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF IDENTOBA AND OTHERS v. GEORGIA

(Application no. 73235/12)

JUDGMENT

STRASBOURG

12 May 2015

FINAL

12/08/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Identoba and Others v. Georgia,

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

Päivi Hirvelä, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 14 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 73235/12) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Identoba, a non-governmental organisation, and fourteen Georgian nationals on 17 November 2012. The applicants are listed in the attached annex.

2. The applicants were represented by Mr L. Asatiani and Mrs N. Bolkvadze, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

3. The applicants alleged, in particular, that the violence perpetrated against them by private individuals and the lack of police protection during the peaceful demonstration of 17 May 2012 had constituted a breach of their various rights under Articles 3, 10, 11 and 14 of the Convention.

4. On 18 December 2013 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. With the exception of the first applicant, a legal entity registered under Georgian law on 8 November 2010, the remaining fourteen applicants live in Tbilisi. Their dates of birth are indicated in the attached annex.

A. Peaceful demonstration of 17 May 2012

1. Prior arrangements

6. The first applicant, a Georgian non-governmental organisation set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Georgia, planned to organise a peaceful march on 17 May 2012 in the centre of the capital city to mark the International Day Against Homophobia.

7. In advance of the march, on 8 May 2012 the first applicant gave the Tbilisi City Hall and the Ministry of the Interior prior notice of its intention to hold a peaceful demonstration on the above-mentioned date. It informed the authorities of the planned route of the march, which would start from the grounds of the Tbilisi Concert Hall and proceed to Orbeliani Square, and the approximate number of participants. In addition, in the light of a foreseeable protest from those opposed to the LGBT community in Georgia, given the general background of hostility towards the sexual minorities, the applicant organisation specifically requested that the authorities provide sufficient protection from possible violence.

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

9. On 15 May 2012 the applicant organisation was contacted by a senior officer of the Ministry of the Interior, who clarified the details of the planned march and confirmed to the organiser that police forces would be deployed to ensure that the procession took place peacefully.

2. Clashes with counter-demonstrators

10. The second to fourteenth applicants submitted written statements describing the exact circumstances surrounding the incident. At around 1 p.m. on 17 May 2012, members of the LGBT community, staff members of Identoba and other LGBT activists, including the thirteen above-mentioned applicants – approximately thirty people in total ("the LGBT marchers") – gathered in the grounds 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" and "Get colourful", as well as rainbow flags and umbrellas. A police patrol was present, as agreed, near the Tbilisi Concert Hall.

11. Shortly before the beginning of the demonstration, members of two religious groups, the Orthodox Parents' Union and the Saint King Vakhtang Gorgasali's Brotherhood, arrived in the Tbilisi Concert Hall area. Journalists were also present, recording interviews with the LGBT marchers.

12. Approximately 200 metres from the starting point of the march, members of the two above-mentioned religious groups ("the counter-demonstrators") stopped some of the LGBT marchers and started arguing with them. The counter-demonstrators claimed that nobody was entitled to hold a Gay Pride Parade or to promote "perversion", as it was against moral values and Georgian traditions. In reply, the marchers tried calmly to explain that it was not a Gay Pride Parade but a public event dedicated to supporting the fight against homophobia, and continued to walk.

13. When the LGBT marchers reached Rustaveli Avenue, they were met there by a hundred or more counter-demonstrators, who were particularly aggressive and verbally offensive. The counter-demonstrators blocked the marchers' way, made a human chain and encircled the marchers in such a way as to make it impossible for them to pass. The marchers were subjected to threats of physical assault and to insults, accused of being "sick" and "immoral" people and "perverts". Further pejorative name-calling such as "fagots" and "sinners" was also repeated. At that moment, the police patrol cars which had been escorting the marchers from the Tbilisi City Hall suddenly distanced themselves from the scene.

14. The LGBT marchers, feeling threatened, immediately telephoned the police, alerting them to the danger and requesting the immediate dispatch of additional forces. While waiting for the arrival of the requested police support, the marchers noticed a few police officers present at the scene. However, when they approached them and asked for help, the officers replied that they were not part of the police patrol and it was not their duty to intervene.

15. The aggression towards the LGBT marchers continued to escalate and after approximately twenty to thirty minutes, the counter-demonstrators grabbed the banners from the hands of several activists and tore them apart. The counter-demonstrators then resorted to physical attack by pushing and punching the marchers in the front row. As a result of that assault, the sixth applicant (Mr G. Demetrashvili), who was in the front line of the march, was knocked down, beaten and kicked. Shortly afterwards, several police patrol cars arrived at the scene. Some of the law-enforcement officers intervened by stopping the beating of the sixth applicant. The police officers then separated the opposing parties by standing between them. At that time, the aggressive and agitated counter-demonstrators were still making particularly vitriolic threats, including that the marchers "should be burnt to death" and "crushed".

16. The third applicant (Mr L. Berianidze), who was standing on the pavement with other LGBT marchers, asked the police to take more active measures to protect the demonstration. The police responded by forcing him into a patrol car and driving him to the Old Tbilisi Police Department of the Ministry of the Interior, where he was detained for some twenty minutes. He

was given no official explanation for his arrest at that time. However, as subsequently explained by the Government, the police had simply sought to distance him from the scene in order to protect him from the angry counter-demonstrators.

17. Three other employees of Identoba – the sixth, seventh and tenth applicants (Mr G. Demetrashvili, Ms G. Dzerkorashvili and Ms M Kalandadze) – were also arrested by the police when they moved from the pavement to the road. They were forced into police patrol cars and driven around the city for some twenty minutes before being returned to Rustaveli Avenue. As subsequently explained by the Government, the aim of the applicants' short-term retention was twofold: to prevent them from committing an administrative offence – impeding road traffic – and to protect them from the counter-demonstrators' assault.

18. Later on 17 May 2012, the third and sixth applicants (Mr L. Berianidze and Mr G. Demetrashvili) sought medical help for their injuries. The third applicant had a bruised left knee, grazes on his left palm and fingers, a haemorrhagic forearm and a haematoma on the right eyebrow. The sixth applicant had a closed head trauma, cerebral contusions, and bruises on the left side of his chest. Two days later, on 19 May 2012, the fourteenth applicant (Ms M. Tsutskiridze) also visited a doctor. She was diagnosed with a contusion of the left wrist.

19. The clashes between the marchers and counter-demonstrators were recorded by journalists present at the scene and broadcast in the evening of 17 May 2012 by a number of national television channels. The faces of the applicants who had been attacked and the assailing counter-demonstrators were clearly recognisable.

B. Subsequent investigation

20. On 18 May 2012 members of the board of the applicant organisation filed several complaints with the Ministry of the Interior and the Chief Public Prosecutor's Office concerning the violent acts committed during the march of 17 May 2012 by representatives of the two religious groups. The complaints were mostly based on the account of the circumstances as described in the thirteen individual applicants' written statements (see paragraphs 10-19 above).

21. On 19 May 2012 a criminal investigation was launched into the infliction of light bodily harm on the fourteenth applicant (Ms M. Tsutskiridze) by unidentified persons. When questioned as a witness the same day, she stated that unidentified men had grabbed her poster and hit her with the handle of the poster. On 23 May 2012 the eighth applicant (Ms E. Glakhashvili) was also questioned about the fourteenth applicant's injury to her hand. Subsequently, on 21 June 2012 a forensic medical examination was commissioned by the investigation, the results of

which suggested that the bruising and excoriation the fourteenth applicant had sustained on her wrist represented light bodily injuries. The fourteenth applicant was not granted victim status within the framework of that criminal investigation at that time.

22. On 26 June 2012 the first applicant received a letter from the deputy director of the police patrol department of the Ministry of the Interior in response to the board members' complaints of 18 May 2012. The response stated that, as there were no signs of illegality in the actions of the police during the demonstration, there was no need to launch an investigation against them for abuse of power. As to the counter-demonstrators' actions, two of them had indeed been arrested for transgression under Article 166 of the Code of Administrative Offences – minor breach of public order – and fined 100 Georgian laris (some 45 euros (EUR)) each.

23. On 3 and 5 July 2012 the first applicant and thirteen individual applicants in the present case (from the second to the fourteenth) filed additional criminal complaints with the Chief Public Prosecutor and the Minister of the Interior. The applicants specifically requested that criminal investigations be launched on account of two factual situations: firstly, the verbal and physical attacks perpetrated against them by the counter-demonstrators with clear discriminatory intent; and, secondly, the acts and/or omissions of the police officers who had failed to protect them from the assaults. The applicants emphasised that criminal inquiries should be conducted with due regard to Article 53 of the Criminal Code, which provided that the existence of homophobic intent was an aggravating circumstance in the commission of a criminal offence.

24. The criminal complaints of the third, sixth, seventh and tenth applicants focussed on the attacks against them by the counter-demonstrators and the lack of police protection. Those applicants did not request an inquiry into the alleged restriction of their liberty by the police during the incident of 17 May 2012 (Article 147 of the Criminal Code, see paragraph 33 below).

25. By a letter of 17 July 2012, the Ministry of the Interior replied to the first applicant and the relevant thirteen individual applicants that during the incident of 17 May 2012 the police had called upon both the LGBT marchers and the counter-demonstrators to exercise their right to demonstrate in a peaceful manner. The Ministry's letter then reiterated the information concerning the imposition of administrative sanctions on two of the counter-demonstrators (see paragraph 22 above).

26. On 24 October 2012 a criminal investigation was opened into the alleged beating of the sixth applicant (Mr G. Demetrashvili) by unidentified persons on 17 May 2012. On the same day that applicant was interviewed as a witness. He stated that he had been encircled and insulted by five or six counter-demonstrators. The attackers then started kicking and hitting him. The ill-treatment lasted for a few minutes, until a police officer finally

intervened and removed him from the scene. On 6 November 2012 a forensic medical expert issued an opinion confirming that the sixth applicant had sustained a contusion and closed head trauma. He was not granted victim status at that time.

27. In September 2014 the two counter-demonstrators who had previously been fined for administrative misconduct were examined as witnesses in relation to the beating of the sixth applicant. The latter, questioned again in September 2014 about the incident of 17 May 2012, stated that he could no longer remember certain circumstances due to the significant lapse of time. Nevertheless, he confirmed that he would still be able to recognise the faces of those individuals who had assaulted him.

28. According to the latest information available in the case file, the two criminal investigations opened on 19 May and 24 October 2012 into the light bodily injuries sustained by the sixth and fourteenth applicants are still pending, and the two applicants have never been granted victim status.

II. RELEVANT DOMESTIC LAW. INTERNATIONAL DOCUMENTS AND OTHER MATERIALS

A. Criminal Code, as in force at the material time

29. On 27 March 2012 an amendment to Article 53 of the Criminal Code of Georgia was adopted, pursuant to which discrimination on the grounds of sexual orientation and gender identity was recognised as a bias motive and an aggravating circumstance in the commission of a criminal offence. The provision read as follows:

Article 53 § 3(1)

> "The commission of any offence listed in the present Code on the grounds of any type of discrimination, such as, for instance and not exclusively, that linked to race, skin colour, language, sex, sexual orientation and gender identity, age, religion, political and other views, disabilities, citizenship, national, ethnic or social background, origin, economic status or societal position or place of residence shall be an aggravating circumstance."

30. Articles 117, 118 and 120 of the Criminal Code proscribed the offences of intentional infliction of, respectively, severe, less serious and light physical injuries.

31. Article 125 of the Criminal Code provided for punishment for the offence of battery or other physical assault entailing physical pain of a lower intensity, not amounting to the level of injury associated with the offence prosecuted under Article 120 (intentional infliction of light physical injuries).

32. Article 126 of the Criminal Code proscribed the act of regular battery or any other violence entailing the victim's physical or mental

suffering of a level not amounting to that associated with the offences under Articles 117 and 118 (intentional infliction of severe or less serious physical injuries).

33. Article 147 made the intentionally abusive restriction of a person's physical liberty by a State agent – "premeditated false arrest" – a criminally punishable offence.

34. Article 151 of the Criminal Code provides that an act of making threats of death or damage to health or destroying property was criminally punishable. A qualifying condition for the offence was that the victim, the addressee of the threat, must have perceived, from his or her subjective standpoint, the threat as real.

35. Pursuant to Article 161 of the Criminal Code, illicit obstruction, perpetrated with recourse to violence, threat of violence or abuse of official capacity, of the exercise of the right to peaceful demonstration was a criminally punishable offence.

B. Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to member States on measures to combat discrimination on grounds of sexual orientation or gender identity

36. The relevant excerpts from Recommendation CM/Rec (2010)5 adopted by the Committee of Ministers on 31 March 2010 read as follows:

> "1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
>
> 2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance. ...
>
> 13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.
>
> 14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.
>
> 15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to

unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly. ...

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons."

C. Council of Europe Commissioner for Human Rights

37. A study on Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe was conducted under the auspices of the Commissioner for Human Rights of the Council of Europe. A second edition of the study was published in September 2011. Relevant excerpts relating to the situation in Georgia read as follows (footnotes omitted):

"In Georgia 84% of respondents expressed negative attitudes towards homosexuality. ...

In 2010, before a debate in the Parliamentary Assembly of the Council of Europe on a report focusing on LGBT human rights, different religious communities in Georgia collaboratively protested about 'abnormalities, such as homosexuality, bisexuality and other sexual perversions, that are considered not only by Christianity but also by all other traditional religions as the greatest sin, causing degeneration and physical and mental illnesses. ...'

In Georgia, NGO research demonstrates that 87% of LGB persons conceal their sexual orientation to their families. ..."

38. On 12 September 2014 a report was published on the visit to Georgia by the Commissioner of Human Rights from 20 to 25 January 2014. Excerpts containing the Commissioner's observations and recommendations on the situation of the LGBT community read as follows (footnotes omitted):

"68. Due to prevailing negative attitudes, many Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons conceal their sexual orientation or gender identity for fear of harassment and discrimination, including in the workplace and by public institutions. The Public Defender informed the Commissioner that his Office had received over 30 complaints in 2013 about attacks against LGBTI persons. ILGA-Europe, an umbrella organisation of NGOs dealing with the human rights of LGBTI persons, had collected information on seven hate crimes perpetrated against LGBTI persons during 2013, which included various types of attacks, including rape, and threats of violence, including death threats. In its report submitted to the UN Human Rights Committee in September 2013, the local NGO Identoba referred to a murder with evidence of a possible hate motive which occurred in western Georgia in April 2013. The numbers cited are most certainly lower than the actual occurrence of bias-motivated attacks against LGBTI persons, due to the reluctance of victims to report violence to police, inter alia because of fears that their sexual orientation would be disclosed to family members. NGOs have also expressed serious concerns regarding the lack of effective investigation and adequate punishment for perpetrators of attacks. ...

73. [T]he Commissioner encourages increased efforts to enhance tolerance and non-discrimination among the majority population. He strongly emphasises the importance for the authorities, public actors and community leaders to send an unambiguous message in favour of human rights and tolerance, and against violence, hate speech and discrimination. It should be made clear that violence against LGBTI persons is unacceptable and will not be tolerated.

74. The Commissioner welcomes the plans to develop comprehensive anti-discrimination legislation. He strongly encourages the establishment of an equality body with the power to sanction instances of discrimination, including on actors from the private sector. ...

75. Hate crimes should be effectively investigated and qualified as such by law enforcement bodies. The bias motive should be taken into account as an aggravating circumstance, as already provided for by national legislation, and perpetrators should receive punishment commensurate to the gravity of the offence."

D. The International Lesbian and Gay Association (ILGA) on the LGBT community's problems in Georgia

39. In its 2013 (Annual) Review of the situation of the LGBT community in Georgia, the International Lesbian and Gay Association (ILGA) made the following comments about bias-motivated crime in the country:

"In March [2012], an amendment to Article 53 of the Criminal Code was adopted to tackle intolerance on the grounds of sexual orientation and gender identity. Homophobic or transphobic motivation is now considered an aggravating factor in sentencing perpetrators of crimes. This legislative change was adopted as a response to the recommendations from the European Commission against Racism and Intolerance. However, the government did not take measures to ensure effective implementation of these provisions, such as training the relevant police officers or actions to build confidence between law enforcement forces and the LGBT community, in order to allow victims to feel confident enough to report incidents.

ILGA-Europe collected information on seven hate crimes perpetrated during the year. These crimes included various types of attacks, including rape, and various types of physical violence threats, including death threats. Some of the attacks targeted the organisers and participants of the IDAHO demonstration that took place in May. ..."

THE LAW

I. PRELIMINARY OBJECTIONS AS REGARDS THE VICTIM STATUS OF THE FIRST AND FIFTEENTH APPLICANTS

A. As to the first applicant

1. The parties' submissions

40. The first applicant, non-governmental organisation Identoba, complained, together with the fourteen individual applicants, that the attack by the counter-demonstrators during the march of 17 May 2012 and the authorities' failure duly to investigate the incident had amounted to a violation of its rights under Articles 3 and 8. It invoked the "private life" aspect of the latter provision, as well as Articles 10 and 11 of the Convention. It also invoked, as complementary provisions, Article 14 of the Convention in relation to its rights under Articles 3, 8, 10 and 11, in order to denounce the discriminatory nature of the violations, and Article 13 in conjunction with Articles 3 and 8, in order to emphasise the alleged ineffectiveness of the relevant criminal investigation.

41. The Government objected that the first applicant did not have standing under the Convention to claim a violation of its rights on account of facts which had affected some of its individual members. They stated, in particular, that a legal entity could not by its very nature claim, either in its own name or on behalf of its individual members, to have been subjected to ill-treatment or a breach of the right to respect for private life and to freedom of peaceful assembly, within the meaning of Articles 3, 8 and 11 of the Convention.

42. The first applicant disagreed with the Government's position as regards Articles 8, 10 and 11 only, without contesting the objection in relation to its victim status under Article 3 of the Convention. It submitted, in particular, that the dispersal of the march which it had organised, as part of its activities, with the aim of celebrating the International Day Against Homophobia – an assault which had been perpetrated with discriminatory intent – had significantly impeded it in its corporate mission and tasks. In the first applicant's view, its organisational activities should be understood as its "private life" within the meaning of Article 8 of the Convention.

2. The Court's assessment

43. The Court reiterates that the word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation (see *SARL du Parc d'Activités de Blotzheim v. France*, no. 72377/01, § 20, 11 July 2006). Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but

also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (see, *mutatis mutandis*, *Defalque v. Belgium*, no. 37330/02, § 46, 20 April 2006; and *Tourkiki Enosi Xanthis and Others v. Greece*, no. 26698/05, § 38, 27 March 2008).

(a) As regards the first applicant's complaints under Articles 3 and 8 of the Convention taken separately or in conjunction with Articles 13 and 14

44. Having regard to the first applicant's submissions, the Court observes that it is not clear whether the applicant organisation intended to complain on behalf of its individual members who had participated in the march of 17 May 2012 or in its own corporate name.

45. The Court notes, first, that the circumstances that constituted the alleged violations under both Articles 3 and 8 of the Convention are the same and consist of the intentional attacks on the physical and mental integrity of individual persons, coupled with the relevant State authorities' associated failure to protect those people. However, it is inconceivable that physical integrity, susceptible to be enjoyed by human beings, could be attributed to the first applicant, a legal person (compare with *Verein "Kontakt-Information-Therapie" (KIT) and Siegfried HAGEN v. Austria*, no. 11921/86, Commission decision of 12 October 1986, Decisions and Reports (DR) No. 57-A, p. 81). Even assuming that the first applicant intended to complain on behalf of those of its individual members whose physical integrity had been compromised during the incident of 17 May 2012, the Court would still not be able to attribute to it the necessary standing. Indeed, associations cannot be allowed to claim, under Article 34 of the Convention, to be a victim of the acts or omissions which affected the rights and freedoms of its individual members who themselves are adult persons with full legal capacity to act and can thus lodge complaints with the Court in their own name (see, among others, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts); *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, §§ 115-116, ECHR 2013 (extracts); *Fédération chrétienne des témoins de Jéhovah de France v. France* (dec.), no. 53430/99, ECHR 2001-XI; and *Association des Amis de Saint-Raphaël et de Fréjus and Others v. France* (dec.), no. 45053/98, 29 February 2000).

46. It follows that the first applicant cannot validly claim on the facts of the present case to be either a direct or indirect victim, within the meaning of Article 34 of the Convention, of a breach of Articles 3 and 8 of the Convention, taken either separately or in conjunction with Articles 13 and 14. This part of the application is thus incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

(b) As regards the first applicant's complaints under Articles 10, 11 and 14 of the Convention

47. As to the first applicant's complaints under Articles 10 and 11 of the Convention, taken separately or in conjunction with Article 14, the Court observes that legal entities can, in principle, be affected in the exercise of their own right to freedom of expression and to freedom of peaceful assembly (see, for instance, *Ukrainian Media Group v. Ukraine*, no. 72713/01, §§ 38-70, 29 March 2005, and *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, Decisions and Reports 21, p. 138). The Court further observes that, in the particular circumstances of the present case, the factual core of which is based on the attacks on a peaceful assembly, the scope of the protection under Article 10 of the Convention is not autonomous but rather contingent upon that of Article 11 (compare with *Kakabadze and Others v. Georgia*, no. 1484/07, § 83, 2 October 2012).

48. In this connection, the Court specifically reiterates that freedom of peaceful assembly is capable of being exercised not only by individual participants, but also by those organising it, including legal entities (see *Hyde Park and Others v. Moldova (nos. 5 and 6)*, nos. 6991/08 and 15084/08, § 32, 14 September 2010; *Plattform "Ärzte für das Leben"* v. *Austria*, 21 June 1988, Series A no. 139; and *Christians against Racism and Fascism*, cited above). That being so, the Court accepts that the assault on the peaceful march of 17 May 2012, apart from constituting a possible encroachment on the various rights of individual members' of the first applicant under the Convention, also resulted in the disruption of the demonstration as such. That disruption in its turn affected the organiser of the event, the first applicant, in its own corporate interest of having messages relating to the situation of the LGBT community in Georgia expressed by means of the planned public procession.

49. In the light of the foregoing, the Court considers that the first applicant has standing to claim a violation of Article 11 of the Convention in its own name. Furthermore, having regard to the interplay between the latter provision and Article 10, as well as the complementary role of Article 14, the Court considers that the Government's objection with respect to all those provisions must be dismissed.

B. As to the fifteenth applicant

1. The parties' submissions

50. The fifteenth applicant, Mr Irakli Vatcharadze, complained that, together with the thirteen other individual applicants, he had been a victim of the violence that erupted during the march of 17 May 2012 and the

inaction on the part of the police, in breach of his various rights under Articles 3, 8, 10, 11, 13 and 14 of the Convention.

51. The Government objected that the fifteenth applicant had never participated in the march of 17 May 2012 so could not claim to be a victim of the violence perpetrated there. Thus, unlike the other thirteen individual applicants, he did not take the trouble to submit at least some kind of account of the events, which could arguably have shown that he had actually taken part in the march. In further support of their objection, the Government referred to the video material available in the case file. They emphasised that those recordings of the march showed images of the thirteen individual applicants (from the second to the fourteenth) only, with the notable exception of the fifteenth applicant.

52. The fifteenth applicant did not reply to the Government's objection.

2. The Court's assessment

53. The Court observes that, unlike the remaining thirteen individual applicants, the fifteenth applicant neither submitted an individual account of what had happened during the march of 17 May 2012, showing how the attack by the counter-demonstrators had concerned him personally, nor lodged a criminal complaint with the relevant domestic authorities in his own name (see paragraphs 10, 20 and 23 above). Furthermore, he did not refute the Government's objection calling into question his participation in the march.

54. In such circumstances, the Court, upholding the Government's objection, finds that the fifteenth applicant cannot be taken to have participated in the march of 17 May 2012, and his allegation that he had been subjected to discriminatory ill-treatment during that procession is unsubstantiated.

55. Accordingly, the part of the application concerning the fifteenth applicant is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

56. The thirteen individual applicants (from the second to the fourteenth) complained under Articles 3 and 14 of the Convention that the relevant domestic authorities had failed to protect them from the violent attacks perpetrated by the counter-demonstrators during their peaceful march on 17 May 2012 and to investigate effectively the incident by establishing, in particular, the discriminatory motive of the attackers. The invoked 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."

57. The Government submitted that the applicants' complaints of ill-treatment were largely unsubstantiated and exaggerated. Instead of providing sufficient details to illustrate in what manner each of the applicants had been individually ill-treated, they focused on the general events that had taken place during the march of 17 May 2012. Referring to the degree of the injuries that some of the applicants sustained during the altercation with the counter-demonstrators, as well as other circumstances surrounding the incident, the Government submitted that even if a certain amount of physical assault and verbal insults against some of the applicants had taken place, it had not reached the requisite threshold of severity under Article 3 of the Convention. They also added that two separate criminal investigations had been launched with respect to the alleged ill-treatment of the sixth and fourteenth applicants on 19 May and 24 October 2012, and a number of investigative measures had already been carried out.

58. As regards the applicants' complaints of a discriminatory intent behind the violence in breach of Article 14 of the Convention, the Government limited their response to arguing that that complementary provision did not apply, as the applicants' allegations under Article 3 were either unsubstantiated by sufficient evidence and factual references, or ill-founded given the absence of the requisite severity of the alleged treatment.

59. In reply, the thirteen applicants, from the second to the fourteenth, referring to the video images of the incident of 17 May 2012, reiterated that all of them were on record as having participated in the march. As regards the severity of the ill-treatment, the applicants submitted that there existed a combination of sufficient and relevant factors – physical and mental abuse against them with clear discriminatory intent based on sexual orientation or gender identity, a lack of police presence, and so on – which rendered the treatment inflicted on them sufficiently severe to attain the relevant threshold under Article 3 of the Convention. Furthermore, the mere fact that two separate criminal investigations had been launched into the assaults on the sixth and fourteenth applicants could not be considered as a discharge of the respondent State's procedural obligations, as those investigations had been pending since 2012 without any progress.

A. Admissibility

60. It is not disputed by the Government that the thirteen individual applicants (from the second to the fourteenth) took part in the march of 17 May 2012 and were targeted by a counter-demonstration. Indeed, they submitted individual written statements describing the exact circumstances surrounding the incident, their participation in the event was recorded by video cameras, and all of them filed their individual criminal complaints with the relevant domestic authorities (see paragraphs see paragraphs 10, 20 and 23 above above). To this extent, the Court can draw inferences from the materials available in the case file to find the factual background, as it was alleged by the applicants, sufficiently convincing and established beyond reasonable doubt for the purposes of the present case.

61. Whether the ill-treatment perpetrated against the applicants was discriminatory and reached the relevant severity threshold and whether the domestic authorities conducted an effective investigation of the incident, these questions raise complex issues of fact and Convention law calling for examination on the merits.

62. Consequently, this part of the application cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Since it is not nor inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. Scope of the case

63. The Court considers that the authorities' duty to prevent hatred-motivated violence on the part of private individuals, as well as to investigate the existence of a possible link between a discriminatory motive and the act of violence can fall under the procedural aspect of Article 3 of the Convention, but may also be seen to form part of the authorities' positive responsibilities under Article 14 of the Convention to secure the fundamental value enshrined in Article 3 without discrimination. Owing to the interplay of the two provisions, issues such as those in the present case may indeed fall to be examined under one of the two provisions only, with no separate issue arising under the other, or may require simultaneous examination under both Articles. This is a question to be decided in each case in the light of its facts and the nature of the allegations made (see *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 70, ECHR 2005−XIII (extracts); *B.S. v. Spain*, no. 47159/08, §§ 59-63, 24 July 2012; and compare with *Begheluri and Others v. Georgia*, no. 28490/02, §§ 171-79, 7 October 2014).

64. In the particular circumstances of the present case, in view of the applicants' allegations that the violence perpetrated against them had homophobic and transphobic overtones which rendered their ill-treatment sufficiently severe to attain the relevant threshold, and that the authorities failed both to protect them from and then sufficiently investigate that bias-motivated violence, the Court deems 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 (compare with *Abdu v. Bulgaria*, no. 26827/08, § 31, 11 March 2014).

2. General principles

65. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C). Furthermore, Article 3 cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering. Hence, the treatment can be qualified as degrading when it arouses in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Gäfgen v. Germany* [GC], no. 22978/05, § 103, 1 June 2010, and *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013). The Court further reiterates that 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. More specifically, treatment which is grounded upon a predisposed bias on the part of a heterosexual majority against a homosexual minority may, in principle, fall within the scope of Article 3 (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 121, ECHR 1999-VI). Discriminatory remarks and insults must in any event be considered as an aggravating factor when considering a given instance of ill-treatment in the light of Article 3 (see *East African Asians v. the United Kingdom*, nos. 4403/70 et al., Commission's report of 14 December 1973, Decisions and Reports 78, p. 5, § 208, and *Moldovan and Others v. Romania* (no. 2), nos. 41138/98 and 64320/01, § 111, ECHR 2005-VII (extracts)). In assessing evidence in a claim of a violation of Article 3 of the Convention, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004).

66. Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States positive obligations to ensure that individuals within

their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998‑VI). This obligation should include effective protection of, *inter alia*, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known (see, for instance, *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 38, 28 January 2014). Furthermore, Article 3 requires that the authorities conduct an effective official investigation into the alleged ill-treatment, even if such treatment has been inflicted by private individuals (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003‑XII). For the 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 punishment of those responsible. This is not an obligation of result, but one of means. In this connection, the Court has often assessed whether the authorities reacted promptly to the incidents reported at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements and to the length of time taken for the initial investigation (see, for instance, *Stoica v. Romania*, no. 42722/02, § 67, 4 March 2008).

67. When investigating violent incidents, such as ill‑treatment, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives, which the Court concedes is a difficult task. The respondent State's obligation to investigate possible discriminatory motives for a violent act is an obligation to use best endeavours, and is not absolute. The authorities must do whatever is reasonable in the circumstances to collect and secure the 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 induced by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005‑VII; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, §§ 138-42; and *Mudric v. the Republic of Moldova*, no. 74839/10, §§ 60-64, 16 July 2013). 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. A failure to make a distinction in the way situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, for instance, *Begheluri and Others*, cited above, § 173).

3. Application of these principles to the circumstances of the present case

(a) Whether the attack on the applicants reached the minimum threshold of severity under Article 3 taken in conjunction with Article 14 of the Convention

68. Bearing in mind the various reports on the rights of lesbian, gay, bisexual and transgender (LGBT) people in Georgia (see paragraphs 37-39 above), the Court acknowledges that the community finds itself in a precarious position. Negative attitudes against members of the LGBT community have become more or less prevalent in some quarters of Georgian society. It is when assessed against that background that the discriminatory overtones of the incident of 17 May 2012 and the level of vulnerability of the applicants, who publicly positioned themselves with the target group of the sexual prejudice, are particularly apparent.

69. Indeed, during the clashes between the participants of the march conducted to mark the International Day Against Homophobia, including the thirteen individual applicants, and representatives of the two religious groups – Orthodox Parents' Union and Saint King Vakhtang Gorgasali's Brotherhood – the latter were particularly insulting in the language used, spitefully calling the former "fagots", "perverts" and so on. The homophobic connotation of the counter-demonstrators' speech was also evident in the acts of scornful destruction and ripping of LGBT flags and posters. In addition to those acts, the angry counter-demonstrators started threatening the applicants and other demonstrators with serious harm, including uttering death threats, using such terms as "crushing" and "burning to death". Those verbal attacks were then followed by actual physical assaults on some of the applicants.

70. In such circumstances, the Court considers that the question of whether or not some of the applicants sustained physical injuries of certain gravity becomes less relevant. All of the thirteen individual applicants became the target of hate speech and aggressive behaviour, which facts are not in dispute by the Government (see paragraph 60 above). Given that they were surrounded by an angry mob that outnumbered them and was uttering death threats and randomly resorting to physical assaults, demonstrating the reality of the threats, and that a clearly distinguishable homophobic bias played the role of an aggravating factor (*see Smith and Grady*, cited above, § 121; *Abdu*, cited above, § 23; and *Begheluri and Others*, cited above, §§ 107 and 117), the situation was already one of intense fear and anxiety. The aim of that verbal – and sporadically physical – abuse was evidently to frighten the applicants so that they would desist from their public expression of support for the LGBT community (compare with *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, cited above, § 105). The applicants' feelings of emotional distress must have been exacerbated by the

fact that the police protection which had been promised to them in advance of the march was not provided in due time or adequately (see also paragraphs 73, 89 and 99 below).

71. In the light of the foregoing, the Court concludes that the treatment of the applicants must necessarily have aroused in them feelings of fear, anguish and insecurity (compare with *Begheluri and Others*, cited above, §§ 108 and 117), which 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.

(b) Whether the authorities provided due protection to the applicants

72. The Court observes that the municipal and police authorities had been informed well in advance of the LGBT community's intention to hold a march in the centre of Tbilisi on 17 March 2012. The organisers of the march specifically requested the police to provide protection against foreseeable protests by people with homophobic and transphobic views. Furthermore, given the history of public hostility towards the LGBT community in Georgia (see paragraphs 37-39 above), the Court considers that the domestic authorities knew or ought to have known of the risks associated with any public event concerning that vulnerable community, and were consequently under an obligation to provide heightened State protection (compare with, *mutatis mutandis*, *Milanović v. Serbia*, no. 44614/07, §§ 84 and 89, 14 December 2010; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, cited above, § 96; and *Begheluri and Others*, cited above, §§ 113 and 119).

73. However, in contrast to the respondent State's positive obligation to provide the peaceful demonstrators with heightened protection from attacks by private individuals, the Court notes the limited number of police patrol officers initially present at the demonstration distanced themselves without any prior warning from the scene when the verbal attacks started, thus allowing the tension to degenerate into physical violence. By the time the police officers finally decided to step in, the applicants and other participants of the march had already been bullied, insulted or even assaulted (compare with *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, cited above, § 111). Furthermore, instead of focusing on restraining the most aggressive counter-demonstrators with the aim of allowing the peaceful procession to proceed, the belated police intervention shifted onto the arrest and evacuation of some of the applicants, the very victims whom they had been called to protect.

74. In the light of the foregoing, the Court considers that the domestic authorities failed to provide adequate protection to the thirteen individual applicants from the bias-motivated attacks of private individuals during the march of 17 May 2012.

(c) Whether an effective investigation was conducted into the incident

75. The Court observes that the criminal complaints into the ill-treatment of the participants of the march, including the thirteen individual applicants, by counter-demonstrators as well as the purported inaction of the police in the face of the violence, were filed the day after the incident, on 18 May 2012. Subsequently, all of the applicants again requested, on 3 and 5 July 2012, the initiation of an investigation of the two above-mentioned facts (see paragraphs 20 and 23 above). However, the relevant domestic authorities, instead of launching a comprehensive and meaningful inquiry into the circumstances surrounding the incident with respect to all of the applicants, inexplicably narrowed the scope of the investigation and opened two separate and detached cases concerning the physical injuries inflicted on two individual applicants only. Even in those separate criminal cases, no significant progress has been made for more than two years. The investigations are still pending at the early stages and the applicants have not even been granted victim status (see paragraph 28 above, and compare with *Begheluri and Others*, cited above, § 134-36). The only tangible result was the administrative sanctioning of two counter-demonstrators, who were punished for minor breach of public order by a fine of some EUR 45 each (see paragraph 22 above). However, given the level of the unwarranted violence and aggression against the applicants, the Court does not consider that such a light administrative sanction was sufficient to discharge the State of its procedural obligation under Article 3 of the Convention.

76. Bearing in mind the factual circumstances of the acts that constituted the violence perpetrated against the applicants, the Court notes that there are quite a few provisions in the Criminal Code of Georgia which could have constituted a more appropriate ground for launching a criminal investigation into the violence, such as physical assault (Article 125), uttering death threats or threatening to damage health (Article 151) and encroachment on the right to freedom of peaceful assembly (Article 161) (see paragraphs 31, 34 and 35 above). Furthermore, it should have been possible for the investigation to narrow down the pool of possible assailants. First, it was a well-known fact that representatives of two religious organisations – the Orthodox Parents' Union and the Saint King Vakhtang Gorgasali's Brotherhood – had participated in the counter-demonstrations and, secondly, video recordings of the clashes had captured clear images of the most aggressive assailants from those two religious groups (compare with *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, cited above, § 118; and also *Begheluri and Others*, §§ 137-38).

77. More importantly, the domestic criminal legislation directly provided that discrimination on the grounds of sexual orientation and gender identity should be treated as a bias motive and an aggravating circumstance in the commission of an offence (see paragraph 29 above).

The Court therefore considers that it was essential for the relevant domestic authorities to conduct the investigation in that specific context, taking all reasonable steps with the aim of unmasking the role of possible homophobic motives for the events in question. The necessity of conducting a meaningful inquiry into the discrimination behind the attack on the march of 17 May 2012 was indispensable given, on the one hand, the hostility against the LGBT community and, on the other, in the light of the clearly homophobic hate speech uttered by the assailants during the incident. The Court considers that without such a strict approach from the law-enforcement authorities, prejudice-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 to or even connivance with hate crimes (compare, for instance, with *Milanović*, §§ 96 and 97; *Abdu*, §§ 32-35; and *Begheluri and Others* § 141, 142 and 175, all cited above).

78. The Court accordingly considers that the domestic authorities have failed to conduct a proper investigation of the thirteen applicants' allegations of ill-treatment.

(d) Conclusions

79. Taking into account all the evidence, the Court reiterates its findings that the attack on the applicants during the march of 17 May 2012 to mark the International Day Against Homophobia was instigated by those with a hostile attitude towards the LGBT community in Georgia. Furthermore, that violence, which consisted mostly of hate speech and serious threats, but also some sporadic physical abuse in illustration of the reality of the threats, rendered the fear, anxiety and insecurity experienced by all thirteen applicants severe enough to reach the relevant threshold under Article 3 read in conjunction with Article 14 of the Convention.

80. Having regard to the reports of negative attitudes towards sexual minorities in some parts of the society, as well as the fact that the organiser of the march specifically warned the police about the likelihood of abuse, the law-enforcement authorities were under a compelling positive obligation to protect the demonstrators, including the applicants, which they failed to do. Lastly, the authorities fell short of their procedural obligation to investigate what went wrong during the incident of 17 May 2012, with particular emphasis on unmasking the bias motive and identifying those responsible for committing the homophobic violence. In the absence of such a meaningful investigation, it would be difficult for the respondent State to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State's anti-discrimination policy.

81. The Court thus concludes that in the present case there has been a breach of the respondent State's positive obligations under Article 3 taken in conjunction with Article 14 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 10 AND 11 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14

82. The first applicant, Identoba, and thirteen individual applicants (from the second to the fourteenth) complained under Articles 10, 11 and 14 of the Convention that they had not been able to proceed with their peaceful march owing to the bias-motivated assaults on them and the inaction on the part of the police. The invoked provisions read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions ... without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others..."

Article 11

"1. Everyone has the right to freedom of peaceful assembly ... .

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

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

1. The parties' submissions

83. The Government submitted that the applicants had not exhausted the relevant domestic remedies for their complaints concerning their inability to proceed with their peaceful demonstration. Thus, if they considered that the police forces had not provided adequate protection from the counter-

demonstrators, they should have sought civil redress from the Ministry of the Interior pursuant to Article 1005 § 1 of the Civil Code. Since the applicants had not resorted to that civil remedy, their complaints under Articles 10 and 11 taken in conjunction with Article 14 of the Convention were inadmissible pursuant to Article 35 § 1 of the Convention.

84. The applicants disagreed. They submitted that the criminal complaints they had filed on the acts that had constituted an interference with their right to freedom of peaceful assembly already sufficed for the purposes of exhaustion of domestic remedies under Article 35 § 1 of the Convention.

2. The Court's assessment

85. The Court points out that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant only to remedies that relate to the breaches alleged and at the same time are available and sufficient. The application of this rule must make due allowance for the context. Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). The rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40).

86. The Court observes that the individual applicants' complaints under Articles 10 and 11 of the Convention are based on the same facts as those under Article 3, namely the attacks by the counter-demonstrators and the lack of police protection. In this connection, it considers, by reference to its relevant case-law, that where acts that constitute serious offences are directed against a person's physical or mental integrity, only efficient criminal-law mechanisms can ensure adequate protection and serve as a deterrent factor (see, for instance, *M.C. v. Bulgaria*, no. 39272/98, § 50, ECHR 2003−XII; *Sandra Janković v. Croatia*, no. 38478/05, § 36, 5 March 2009; and *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003). This is especially so in the particular circumstances of the present case, where the existence of a bias motive behind the attack on the applicants' physical and mental integrity needed to be elucidated. The criminal law, notably Article 53 of the Code of Criminal Procedure, provides for such a possibility (see paragraph 77 above).

87. As the applicant organisation and the thirteen individual applicants duly resorted to the criminal-law mechanism, the Court considers that they exhausted the relevant domestic remedy available to them, and there was no further necessity for them to seek any other alternative remedial actions. The Government's objection should accordingly be dismissed.

88. The Court finds that this part of the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

89. The Government submitted that there had been no violation of the applicants' rights to freedom of peaceful assembly and to freedom of expression, as the relevant domestic authorities had not impeded their public gathering in any manner. On the contrary, the applicants and other participants of the demonstration were able to assemble freely near the Tbilisi Concert Hall and then proceeded with their march. As the organiser of the event had given a prior warning, the Ministry of the Interior deployed police units to the scene of the event. Police patrol vehicles escorted the LGBT marchers. As to the manner in which the police reacted to the clash between the marchers and counter-demonstrators, the Government admitted that that reaction had been somewhat delayed. However, they claimed that that had been done on purpose and in the marchers' best interests. Thus, the Government asserted that where a serious threat of a violent counter-demonstration exists, the domestic authorities have wide discretion in the choice of means to employ to protect assemblies. They referred to the Court's case-law in *Plattform "Ärzte für das Leben"* (cited above, § 34). Considering the large number of counter-demonstrators and their aggressive attitude towards the demonstrators, immediate preventive measures by the police could have provoked an even greater outburst of violence. Nevertheless, the law-enforcement officers remained at the scene and instantly intervened when the verbal attacks degenerated into actual physical violence by evacuating the attacked applicants from the scene. The police officers also separated the opposing parties by standing between them, verbally warning both sides to behave in an appropriate manner. As regards the applicants' complaints of discriminatory intent under Article 14 of the Convention, the Government limited their response to noting that that provision was complementary and could not be invoked autonomously in the absence of a violation under Articles 10 and 11.

90. In reply, the applicants maintained 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. Whilst the domestic authorities undoubtedly possessed a certain margin of appreciation in choosing appropriate means for ensuring that peaceful demonstrations could take place safely, the circumstances of the present case clearly showed that the actions of the police forces at the scene of the clashes had been wholly

inadequate, and had further negated the applicants' rights under Articles 10, 11 and 14 of the Convention.

2. The Court's assessment

(a) The scope of the applicants' complaints

91. The Court notes that the applicants' complaints under Articles 10 and 11 of the Convention are based on the allegations that the attacks by private individuals on their physical integrity, coupled with the passivity of the police in the face of the violence, disrupted their peaceful march. In such circumstances, Article 11 is to be regarded as a *lex specialis* and it is unnecessary to take the complaint under Article 10 into consideration separately. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered, if need be, in the light of principles developed under Article 10 (see, for instance, *Ezelin v. France*, 26 April 1991, §§ 35 and 37, Series A no. 202).

92. Furthermore, given that the facts of the present case fall within the ambit of Article 11 of the Convention, and the applicants' claim that the breach of their right to freedom of peaceful assembly had discriminatory overtones, the Court considers that Article 14 is similarly applicable in the present case (see *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I), and its examination under the former provision must be conducted in conjunction with the latter.

(b) General principles

93. In the context of Article 11 of the Convention, the Court has often emphasised that pluralism and democracy are built on genuine recognition of, and respect for, diversity. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, 17 February 2004). Referring to the hallmarks of a "democratic society", the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see *Young, James and Webster v. the United Kingdom*, 13 August 1981, Series A no. 44, p. 25, § 63; *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, § 58, ECHR 2006-I, and *Fáber v. Hungary*, no. 40721/08, §§ 37-41, 24 July 2012).

94. The State must act as the ultimate guarantor of the principles of pluralism, tolerance and broadmindedness (see *Informationsverein Lentia*

and Others v. Austria, judgment of 24 November 1993, Series A no. 276, p. 16, § 38). Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 of the Convention. This provision sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be (see *Wilson and the National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002‑V, and *Ouranio Toxo v. Greece*, no. 74989/01, 20 October 2005, § 37). That positive obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation (see *Bączkowski and Others v. Poland*, no. 1543/06, § 64, 3 May 2007).

95. A peaceful demonstration may annoy or give offence to persons opposed to the ideas or claims that it seeks to promote. The participants must, however, be able, with the State's assistance, to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate (see *Plattform "Ärzte für das Leben"*, cited above, § 32).

96. Lastly, the Court reiterates that the prohibition of discrimination under Article 14 of the Convention duly covers questions related to sexual orientation and gender identity (see *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, § 28, ECHR 1999-IX; *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 108, 21 October 2010; and *P.V. v. Spain*, no. 35159/09, § 30, 30 November 2010).

(c) Application of these principles to the circumstances of the present case

97. At the outset, noting that this issue is not even in dispute between the parties, the Court affirms that the disruption of the applicants' participation in the peaceful march of 17 May 2012, organised to mark the International Day Against Homophobia, undoubtedly constituted an interference under Article 11 of the Convention, read in the light of the relevant principles under Article 10. Indeed, the Convention protects public forms of expression, including through holding a peaceful assembly, and the expression of opinions in relation to campaigning for and raising awareness of the fundamental rights of various sexual minorities (see *Alekseyev*, cited above, § 84).

98. The Court further observes that the applicants' complaints that the State failed to protect their freedom to participate in the march of 17 May 2012 from the bias-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 (see paragraphs 68-81 above). Consequently, the Court's findings under the latter provisions are equally pertinent to the examination of the complaints under Articles 11 and 14 of the Convention.

99. In particular, the Court reiterates that despite the fact that the domestic authorities were given prior notice on 8 May 2012 about the intention to organise a peaceful march on 17 May 2012, they did not manage to use that generous period of nine days for careful preparatory work. Indeed, given the attitudes in parts of Georgian society towards the sexual minorities, the authorities knew or should have known of the risk of tensions associated with the applicant organisation's street march to mark the International Day Against Homophobia. They were thus under an obligation to use any means possible, for instance by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance (compare with *Ouranio Toxo*, cited above, § 42) as well as to warn potential law-breakers of the nature of possible sanctions. Furthermore, it was apparent from the outcome of the LGBT procession, that the number of police patrol officers dispatched to the scene of the demonstration was not sufficient, and it would have been only prudent if the domestic authorities, given the likelihood of street clashes, had ensured more police manpower by mobilising, for instance, a squad of anti-riot police (contrast with *Plattform "Ärzte für das Leben"*, §§ 37 and 38; and also *Ouranio Toxo*, cited above, 43).

100. All in all, the Court considers that the domestic authorities failed to ensure that the march of 17 May 2012, which was organised by the first applicant and attended by the thirteen individual applicants (from the second to the fourteenth), could take place peacefully by sufficiently containing homophobic and violent counter-demonstrators. In view of those omissions, the authorities fell short of their positive obligations under Article 11 taken in conjunction with Article 14 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

101. The third, sixth, seventh and tenth applicants (Mr L. Berianidze, Mr G. Demetrashvili, Ms G. Dzerkorashvili and Ms M. Kalandadze) complained that their physical liberty had been unjustifiably restricted by the police on account of being forcefully placed in police patrol vehicles and evacuated from the scene of the disrupted demonstration, in breach of Article 5 § 1 of the Convention.

102. Furthermore, all thirteen individual applicants reiterated their complaints about the assault on them during the march as well as the lack of police protection under Articles 8, taken both separately and in conjunction with Articles 13 and 14 of the Convention. They further reiterated their

complaint of the ineffectiveness of the criminal investigation into their allegations of ill-treatment under Article 13 of the Convention.

103. The Government submitted that the relevant applicants' complaints under Article 5 § 1 and Article 8, the latter provision taken either separately or in conjunction with Articles 13 and 14 of the Convention, were either inadmissible for non-exhaustion of domestic remedies, incompatible *ratione materiae* or manifestly ill-founded. The applicants disagreed.

104. The Court first observes that the third, sixth, seventh and tenth applicants (Mr L. Berianidze, Mr G. Demetrashvili, Ms G. Dzerkorashvili and Ms M. Kalandadze) did not request the initiation of criminal proceedings in respect of their allegedly unlawful deprivation of liberty by the police, which could have been done by referring to Article 147 of the Criminal Code in their criminal complaints. Indeed, those complaints were confined to the distinct allegations of ill-treatment committed by counter-demonstrators and the police's inaction in the face of that violation (see paragraphs 24 and 33 above). Nor did those four applicants attempt, as an alternative remedy, to sue the Ministry of the Interior, under the general rules of tort law contained in the Civil Code, for the wrong done to them by the allegedly abusive police actions, which consisted in forcing them into police patrol cars and evacuating them from the scene (compare with, *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 95 and 96, 27 May 2010; and also, for instance, with *Lazariu v. Romania*, no. 31973/03, § 88, 13 November 2014).

105. It follows that the complaints of the four above-mentioned applicants under Article 5 § 1 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

106. As to the thirteen individual applicants' complaints under Article 8, made either separately or in conjunction with Articles 13 and 14 of the Convention, as well as the specific repetition of their grievance about the ineffectiveness of the criminal investigation under Article 13 (see paragraph 102 above), the Court observes that this part of the application merely reiterates the issues already thoroughly examined under the *lex specialis* – Articles 3 and 11, both read in conjunction with Article 14. Consequently, this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (compare with *Kakabadze and Others*, cited above, § 100).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicants differentiated between various degrees of emotional distress and anxiety that each of them suffered as a result of breaches of their various rights under the Convention during the incident of 17 May 2012. The first applicant, Identoba, and the thirteen individual applicants (from the second to the fourteenth) thus made the following individual claims:

- the first applicant claimed 5,000 euros (EUR);
- the third and sixth applicants each claimed EUR 5,000;
- the seventh and tenth applicants – EUR 3,000 each; and
- each of the remaining nine applicants made a claim of EUR 2,000.

109. The Government submitted that the applicants' claims were manifestly ill-founded and excessive.

110. The Court has no doubt that the thirteen individual applicants suffered distress and frustration on account of the violations of their various rights under Articles 3, 11 and 14, and that the first applicant, as a legal entity, was also prejudiced in its legitimate interests 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 *ne ultra petitum* as well as to various equity considerations, the Court finds it appropriate to make the following awards, in respect of non-pecuniary damage: to the third and sixth applicants EUR 4,000 each; to the seventh and tenth applicants EUR 3,000 each; to each of the remaining nine individual applicants EUR 2,000; and EUR 1,500 to the applicant organisation.

B. Costs and expenses

111. In the absence of a claim for costs and expenses, the Court notes that there is no call to make any award under this head.

C. Default interest

112. 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

1. *Declares* unanimously the complaints under Articles 10, 11 and 14 of the Convention introduced by applicants nos. 1-14 and the complaints under Article 3 of the Convention introduced by applicants nos. 2-14 admissible;

2. Declares unanimously the remainder of the application inadmissible;

3. *Holds*, by six votes to one, that there has been a violation of Article 3 taken in conjunction with Article 14 of the Convention with respect to applicants nos. 2-14;

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

5. *Holds* unanimously, that there has been a violation of Article 11 taken in conjunction with Article 14 of the Convention with respect to applicants nos. 1-14;

6. *Holds* unanimously,
   (a) that the respondent State is to pay the applicants in respect of non-pecuniary damage, within three months of 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) to Mr L. Berianidze and Mr G. Demetrashvili EUR 4,000 (four thousand euros) each;
      (ii) to Ms G. Dzerkorashvili and Ms M. Kalandadze 3,000 (three thousand euros) each;
      (iii) to Mr L. Asatiani, Ms T. Bilikhodze, Mr B. Buchashvili, Ms E. Glakhashvili, Ms N. Gviniashvili, Mr M. Khalibegashvili, Ms T. Melashvili, Ms K. Tsagaresihvili and Ms M. Tsutskiridze EUR 2,000 (two thousand euros) each;
      (iv) to the applicant organisation, NGO Identoba, EUR 1,500 (one thousand five hundred euros);
      (v) 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

P.H.
F.E.P.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

1. The main difficulty of the present case lies in the exact establishment of facts. The Court usually considers that violations of the Convention have to be established "beyond reasonable doubt". It is difficult to achieve this standard in the instant case. There are neither domestic court judgments nor other official documents which would give a more detailed picture of actually happened in Tbilisi on 17 May 2012. The respondent Government did not provide sufficient information about the events. The main source of information is the applicants' submissions. I note in this context that the Court is usually very circumspect in establishing the facts on the basis of applicants' submissions. In the present case, however, the majority has chosen to proceed on the basis of the applicants' allegations. Personally, I would have preferred a more cautious approach in this respect. In particular, given the lack of full clarity as to the facts, it was not possible to establish the applicants' feelings during the demonstration.

I note that the above-mentioned uncertainty about the facts of the case comes across in a certain hesitation on the majority's part in the reasoning of the judgment. On one hand, the majority considers the bias motive of the counter-demonstrators to be clearly established (see paragraphs 68, 70 and 74 of the judgment). On the other hand, it describes elsewhere the bias motive only as "possible" and sees it as a question which required clarification by the domestic authorities in the course of an investigation (see paragraph 77).

2. I note that clashes between demonstrators endorsing opposing views on issues of public concern are quite common in Europe. In such a context, it is the duty of the State authorities to ensure freedom of assembly and speech, as well as the physical security of all persons who take part in legal demonstrations which are held simultaneously.

The applicants took part in a legal demonstration in Tbilisi. It appears from the evidence produced in the proceedings before the Court that Georgia failed to fulfil its obligations stemming from Article 11 of the Convention *vis-à-vis* the applicants.

When considering the State's duties in respect of protecting freedom of assembly, the majority expresses the view that the State authorities were "under an obligation to use any means possible" (see paragraph 99). In my view, however, it would have been more correct to state that the authorities were under an obligation to use *any means which might have been reasonably expected in the circumstances of the case*.

3. The majority notes "some sporadic physical abuse" against the marchers. In my view, in the present case, the alleged violations of the applicants' rights did not reach the threshold of severity which makes Article 3 of the Convention applicable. I therefore voted against finding a

violation of Article 3 taken in conjunction with Article 14 of the Convention. I have explained in more detail my position with regard to the interpretation of Article 3 in the dissenting opinion written with Judge Mahoney which is attached to the judgment in the case of *Abdu v. Bulgaria* (no. 26827/08, 11 March 2014).

4. I note that very recently the same Section of the Court decided the case of *Karaahmed v. Bulgaria* (no. 30587/13), by a unanimous judgment of 24 February 2015. In that case, on the basis of the available evidence, much more serious physical attacks against Muslim worshippers were clearly established, as well as the fact that the attackers had been motivated by religious intolerance. The Court decided, however - in my view correctly - that the Article 3 threshold had not been met in that case and the complaint under Article 14 in conjunction with Article 3 was declared manifestly ill-founded. It examined only the complaint brought under Article 9, and found a violation of this latter provision.

I do not perceive any consistency in the approach adopted by the Court in respect of the applicability of Article 3 in cases concerning alleged assaults on persons exercising freedoms protected by the Convention.

ANNEX

No.	First name/LAST NAME	Birth Date
1.	NGO IDENTOBA (“the first applicant”)	-------
2.	Mr Levan ASATIANI (“the second applicant”)	1/01/1989
3.	Mr Levan BERIANIDZE (“the third applicant”)	5/09/1990
4.	Ms Tina BILIKHODZE (“the fourth applicant”)	15/09/1959
5.	Mr Beka BUCHASHVILI (“the fifth applicant”)	13/05/1990
6.	Mr Guram DEMETRASHVILI (“the sixth applicant”)	3/10/1988
7.	Ms Gvantsa DZERKORASHVILI (“the seventh applicant”)	7/03/1990
8.	Ms Elina GLAKHASHVILI (“the eight applicant”)	4/11/1984
9.	Ms Natia GVINIASHVILI (“the ninth applicant”)	30/05/1986
10.	Ms Magda KALANDADZE (“the tenth applicant”)	6/02/1986
11.	Mr Mikheil KHALIBEGASHVILI (“the eleventh applicant”)	6/12/1991
12.	Ms Tamta MELASHVILI (“the twelfth applicant”)	4/07/1979
13.	Ms Keti TSAGAREISHVILI (“the thirteenth applicant”)	5/05/1979
14.	Ms Mariam TSUTSKIRIDZE (“the fourteenth applicant”)	25/08/1992
15.	Mr Irakli VATCHARADZE (“the fifteenth applicant”)	7/03/1980