



05.07.21

March of Dishonor



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## **March of Dishonor**

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Georgian Democracy Initiative**

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The present report by the Georgian Democracy Initiative (GDI) highlights the problems faced by the LGBTQI+ community in terms of realizing their freedom of assembly and the freedom of expression. In this regard the report discusses the state's fulfillment of its constitutional and international obligations and its policy towards the LGBTQI+ community. More specifically the report addresses the events that unfolded in homophobic context in Tbilisi on July 5<sup>th</sup> and 6<sup>th</sup>, 2021, and the period preceding them. These developments are also assessed in terms of the media freedom and the safety of journalists. In particular, the report provides a legal analysis of the state's response to the large-scale attack on the media representatives on July 5<sup>th</sup>, although it primarily assesses the state's attitude towards the rights of the LGBTQI+ community.

The first part of the report covers events leading up to the Pride Week (announcement of the Pride Week and the related responses), developments of the Pride Week (movie screening on July 1st, festival on July 3rd and the attempts to disrupt it, violence, aggression, and the disruption of the "March for Dignity" by hate groups on July 5<sup>th</sup>) and the developments after the Pride Week (demonstration against the violence on July 6th and an aggressive counter-demonstration, as well as the steps taken by the authorities in response to it).

The second part of the report is devoted to the legal assessment, that analyses fulfilment of constitutional and international obligations by the Georgian government in relation to the events described in part one. Assessment is made in conjunction with the prohibition of degrading treatment, freedom of assembly and freedom of expression viewed together with the right to equality /non-discrimination.

It should be noted that GDI provided legal assistance to "Tbilisi Pride" and was directly involved in the ongoing events and discussions. Accordingly, the information in the report is based on the media reports, as well as the personal experiences of the GDI representatives and the organizers of the Pride.

## PRIMARY FINDINGS OF THE REPORT

- Circumstances of the July 5th attack have clearly reached the minimum threshold of ill-treatment, as these actions have aroused feelings of fear, insecurity, humiliation and suffering in the victims – media representatives, LGBTQI + members and activists. This is further confirmed by recollections of victims themselves. Contrary to paragraphs 1 and 2 of Article 9 the Constitution of Georgia and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), the authorities failed to properly protect members and supporters of LGBTQI+, civil activists and members of the media from the threats, aggression and violence coming from hate groups, even though the government knew or should have known that there was a real risk to their health and lives.
- Most importantly, the government not only failed to properly protect LGBTQI+ members and its supporters, civil activists and members of the media, but it has also encouraged violence against them via homophobic and anti-democratic statements against the “March for Dignity”.
- In violation of Article 21.1 of the Constitution of Georgia and Article 11 of the European Convention, the authorities failed to ensure the holding of the “March for Dignity” i.e. exercise of freedom of assembly by the members of the LGBTQI+ community, supporters and civil activists in a safe environment. It is noteworthy, that on the one hand, the organizers of the march had offered the authorities an alternative route and had provided in advance information about the threats and the organized violence, while on the other hand the hate groups themselves had publicly announced their plans to disrupt the march. In light of these announcements, the organizers of the “March for Dignity” have asked the government for the specific safeguards and preventive measures, which were not implemented.
- The above mentioned rights were violated in conjunction with Article 14 of the European Convention due to the discriminatory, homophobic motive.
- Contrary to Articles 17.1 and 17.2 of the Constitution of Georgia and Article 10 of the European Convention, the authorities did not respond effectively to suppress attacks by the hate groups on the media representatives. Accordingly, it has failed to ensure performance of journalistic activities in a safe environment.
- LGBTQI+ community has repeatedly been a victim of physical or verbal abuse by ultranationalist and hate groups in the past. In light of both the stated homophobic experience and the events surrounding July 5, 2021, it is clear that the government systematically fails to ensure an effective exercise of freedom of assembly and freedom of expression of members and supporters of the LGBTQI+ community. Accordingly, the government has no real will or interest to protect the rights of the LGBTQI+ community, hence neglecting its constitutional and international obligations.

## PART I- FACTUAL CIRCUMSTANCES

### 1. Events leading up to the “Pride Week” and reaction in regards to it

#### 1.1. Steps taken by “Tbilisi Pride” and its communication with government officials

On May 30<sup>th</sup>, 2021, Tbilisi Pride posted a video on its Facebook page informing the public about the planned “Pride Week”, and on June 4<sup>th</sup>, it was announced that a documentary film screening, a music festival and a “March for Dignity” would be held during the Pride Week.<sup>1</sup> In particular, a screening of a British documentary about the First Pride in Tbilisi was scheduled for July 1<sup>st</sup>, an open-air festival with LGBTQI+ community artists and musicians on July 3<sup>rd</sup>, and a “March for Dignity” on July 5<sup>th</sup>.<sup>2</sup> Pride Week aimed to share concerns about the problems of the LGBTQI+ community, raise public awareness, express solidarity. Tbilisi Pride demanded from the state: 1. to pursue a people-oriented policy; 2. to fulfil positive commitments to overcome homophobia, stigma and discrimination and to create an equal environment; 3. to adhere to the principles of justice and to properly investigate hate crimes; 4. to protect the safety and freedom of expression of every citizen, regardless of gender identity and sexual orientation<sup>3</sup>. At the same time, Tbilisi Pride initiated communication with the authorities. In particular, several meetings with the participation of the United Nations Development Fund (UNDP), the diplomatic corps, organizations partnering with Pride (“Shame”, “Women’s Movement”) and the GDI have been held between Pride and Ministry of Interior Affairs. During these meetings Pride provided the Ministry with detailed information about its plans for the Pride Week. A meeting was specifically dedicated to the discussion of each event to be held during the Pride Week. Therefore, the purpose of meetings was to exchange information between the parties, to inform the state as much as possible and, given prevailing homophobic attitudes in Georgia, to receive guarantees in regards to the protection of the safety of the participants during the Pride Week.

#### 1.2 Response of the international community

Representatives of the international community responded to the announcement of the Pride Week. For example, the US Ambassador to Georgia expressed hope that “citizens will be able to enjoy freedom of expression and assembly in a peaceful environment without violence,”<sup>4</sup> and said that the Ministry of the Interior was responsible for protecting every citizen, “even when those views are unpopular or controversial”<sup>5</sup>. In addition, Europarlamentarians have issued a letter calling on the Minister of Internal Affairs to ensure that Tbilisi Pride members’ right to freedom of expression and assembly is realized.<sup>6</sup> They emphasized the past homophobic attacks and called on public authorities, in accordance with the European Convention on Human Rights and the Association Agreement with the European Union, to effectively protect the security of the LGBTQI+ community through police forces<sup>7</sup>. Similarly, a joint statement by the United Nations and diplomatic missions in Georgia states that Georgian authorities must protect the right to peaceful assembly for all without exception and

1 Tbilisi Pride events launch, president ‘backs constitutional rights’ of pride participants <https://agenda.ge/en/news/2021/1798> [Last seen 14.08.2021].

2 Tbilisi Pride Week 2021: <https://tbilisipride.ge/en-US/News/Details/108?fbclid=IwAR0NEejOK8DrxGkuRYG02Ltb94AfuMZHvgul2Nbmhns4e4nBKv6kEFDsIJM> [Last seen 14.08.2021].

3 Tbilisi Pride to hold the March for Dignity: [https://www.radiotavisupleba.ge/a/31290279.html?fbclid=IwAR3VFxcAcx\\_OIXzU48fUWNBFmSaQ99gNexr7hBqcLxQdNpb4Pyf-XDb4gQ](https://www.radiotavisupleba.ge/a/31290279.html?fbclid=IwAR3VFxcAcx_OIXzU48fUWNBFmSaQ99gNexr7hBqcLxQdNpb4Pyf-XDb4gQ) [Last seen 14.08.2021].

4 US Ambassador hopes that Pride will be held peacefully: <https://www.radiotavisupleba.ge/a/31331646.html> [Last seen 14.08.2021].

5 Kelly Degnan: Those who want to disrupt the peaceful exercise of constitutional rights through violence are violating Georgia’s constitution: <https://www.interpressnews.ge/en/article/114386-kelly-degnan-those-who-want-to-disrupt-the-peaceful-exercise-of-constitutional-rights-through-violence-are-violating-georgias-constitution/> [Last seen 14.08.2021].

6 See: [https://twitter.com/LGBTIintergroup/status/1409462849261408259?ref\\_src=twsrc%5Etfw](https://twitter.com/LGBTIintergroup/status/1409462849261408259?ref_src=twsrc%5Etfw) [Last seen 14.08.2021]; MEPs call for Georgian gov’t to protect Tbilisi Pride protesters: <https://agenda.ge/en/news/2021/1773> [Last seen 14.08.2021].

7 Ibid.

ensure that Pride Week is held safely.<sup>8</sup>

### 1.3 Response of the State Representatives

The announcement of Pride Week was also followed by the statements of the representatives of the state bodies.

The Public Defender of Georgia appealed to the competent authorities and officials and stated that based on the experience of previous years government had to take appropriate measures necessary to protect the safety of the participants of the March of Dignity, freedom of expression and assembly<sup>9</sup>. The statement of the President of the country, Salome Zurbishvili, reads that the use of violence, threats, pressure and hatred is unacceptable and that “everyone has to right to express themselves, including the participants of Tbilisi Pride, who have the right to exercise their constitutional freedoms, in accordance with the norms established by the Constitution and the law<sup>10</sup>.”

**Unfortunately, several representatives of the state bodies, have made statements that did not comply with the constitutional guarantees and international standards. Moreover, their statements turned out to have encouraged violence.** For example, Tbilisi Mayor Kakha Kaladze called the Pride Week inappropriate.<sup>11</sup> Additionally, in reference to the Pride Week, Irakli Kobakhidze, the chairman of the ruling Georgian Dream party, said that “given the entire context, these people should be denied the opportunity to hold this event<sup>12</sup>” At the same time, when asked by journalists whether the statements made by Irakli Kobakhidze violate the rights of minorities, the Deputy Speaker of the Parliament of Georgia, David Sergeenko answered that he saw no restriction of rights: “Nobody is hindering them from doing what they are eager to do<sup>13</sup>... They should probably ask the other part of the society and shouldn’t go for confrontation. No one is hindering them from anything, just less enthusiasm would be better<sup>14</sup>.”

### 1.4 Response of the hate groups

Ultrnationalist and pro-Russian actors have traditionally become more active since the announcement of Pride Week<sup>15</sup>. They have spread anti-Pride, homophobic and manipulative information, mainly including misleading messages that the “March for Dignity” was being held at the request of the West and was aimed at fighting against Georgian identity, the Church, and that it would eventually cause the loss of the occupied territories<sup>16</sup>. In order to discredit Tbilisi Pride, for example, a picture of the Pride leader and a fake quote was posted on Facebook, in which he allegedly threatened Pride opponents with “Stalinist repression.”<sup>17</sup> Statements of the homophobic nature were expressed by representatives of pro-Russian and ultrnationalist groups. On

8 Diplomatic Missions Call for Upholding Equal Rights for LGBTQ Georgians: <https://civil.ge/archives/419872> [Last seen 14.08.2021].

9 Public Defender’s Statement on March for Dignity: <https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvelis-gantskhadeba-ghirsebis-marshantan-dakavshirebit> [Last seen 14.08.2021].

10 Statement of President Zourabichvili on Free Speech: [https://president.gov.ge/en/News/Article/sakaryvelos\\_prezidenti\\_\\_chemyvis\\_miughebelia\\_dzaladobis\\_mukaris\\_zetsolisida\\_da\\_sidzulvilis\\_enis\\_gamokenebis\\_kvelanairi\\_forma](https://president.gov.ge/en/News/Article/sakaryvelos_prezidenti__chemyvis_miughebelia_dzaladobis_mukaris_zetsolisida_da_sidzulvilis_enis_gamokenebis_kvelanairi_forma) [Last seen 14.08.2021].

11 Mayor Kaladze on Tbilisi Pride: I don’t Consider it Expedient: <https://georgiatoday.ge/mayor-kaladze-on-tbilisi-pride-i-dont-consider-it-expedient/> [Last seen 14.08.2021].

12 Chairman of ruling Georgian Dream party: holding Tbilisi Pride week is unreasonable: <https://jam-news.net/chairman-of-ruling-georgian-dream-party-holding-tbilisi-pride-week-is-unreasonable/> [Last seen 14.08.2021].

13 Civic organizations condemn homophobic statements made by ruling party members: <https://agenda.ge/en/news/2021/1685> [Last seen 14.08.2021].

14 Ibid.

15 Hate Speech, threats and disinformation prior to the “Pride Week”: <https://isfed.ge/geo/blogi/sidzulvilis-ena-muqara-da-dezinformatsiuli-gzavnilebi-ghirsebis-marshis-tsin?fbclid=IwAR0BzE2Hdwj8wDx3u-bWfjB2Fx4SJMLn10Qc8n3zicr5Q8lvo6RmlwVsk-E> [Last seen 14.08.2021].

16 Ibid

17 Ibid

June 15th, businessman and the founder of the “Unity, Essence, Hope” political party, Levan Vasadze<sup>18</sup>, who is affiliated with pro-Russian circles, including Kremlin ideologue, Alexander Dugin<sup>19</sup>, gave the authorities a 10-day deadline to cancel Pride Week. After these 10 days he threatened to disrupt the “March for Dignity”<sup>20</sup>.

Statements containing hate speech and threats against Pride were especially characteristic of TV company Altinfo, which was founded by Konstantin Morgoshia<sup>21</sup>, a former leader of the Georgian March and a former member of the pro-Russian party “Alliance of Patriots of Georgia”. Altinfo stated that it was sending the government a clear message that it would do everything in its power to take over the Rustaveli Avenue and to bring there the maximum number of people in order to disrupt “March for Dignity”<sup>22</sup>. It is noteworthy that we often see Dugin’s interviews on “Altinfo”, and Dugin periodically publishes information about “Altinfo” on his Facebook page<sup>23</sup>. Homophobic narratives are also supported by Guram Palavandishvili - a member of the pro-Russian and nationalist party “Georgian Idea” and the head of the “Society for the Protection of Children’s Rights”<sup>24</sup>, which advertised the violent rally organized by Altinfo<sup>25</sup> and announced its plans to disrupt the Pride week<sup>26</sup>. At the same time, other groups were planning to mobilize to disrupt the “March for Dignity” and control Rustaveli avenue - “Mamulishvilis”, “Chokhosanta Society”, “Davitiani”, etc.<sup>27</sup>

### 1.5 Response of the Religious Denominations

In addition to the ultranationalist groups, the Patriarchate of Georgia expressed homophobic standpoint on several occasions. For example, in the statement posted on Facebook, the head of the Patriarchate’s public relations department, Andria Jagmaidze, linked Pride Week to an “unheard-of propaganda campaign against the Ninotsminda orphanage,”<sup>28</sup> which was in fact a distortion and manipulation of the events occurring in connection with the orphanage<sup>29</sup>. In addition, in a statement of June 29th, the Patriarchate called Pride’s activities “violence pushed upon by the minorities”<sup>30</sup>, it has further invited people to the counter-demonstration against the “March for Dignity” and referred to the positions expressed by the embassies and Europarlamentarians as the “abuse of power”<sup>31</sup>. As for the statement of the “Children’s Initiative Group of Chokhosani Society of Georgian Patriarchate” published by the Public Relations Service of the Georgian Patriarchate, it called on the children to go to the Rustaveli avenue on July 5<sup>th</sup>.<sup>32</sup>

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18 Right-wing politician, businessman Vasadze urges gov’t to cancel Tbilisi pride events, <https://agenda.ge/en/news/2021/1617> [Last seen 14.08.2021].

19 See footnote N15.

20 Levan Vasadze threatens to disrupt “the March for Dignity”: <https://www.radiotavisupleba.ge/a/31328205.html> [last seen 15.08.2021].

21 See footnote N15.

22 Oponents of “the March for Dignity” are planning to control Rustaveli avenue: <https://www.radiotavisupleba.ge/a/31324390.html> [last seen 15.08.2021].

23 See footnote N15

24 Ibid

25 Ibid

26 Ibid; Guram Palavandishvili is going to place tents on Rustaveli avenue to disrupt the Pride: <https://www.radiotavisupleba.ge/a/31330236.html> [last seen 15.08.2021].

27 Tbilisi Pride is not going to cancel the march despite threats by hate groups: <https://www.radiotavisupleba.ge/a/31324505.html> [Last seen 15.08.2021].

28 Andria Jagmaidzes attempt to manipulate with the events occurring at the Ninotsminda children’s orphanage: <https://bit.ly/2U0frBl> [Last seen 14.08.2021].

29 Ibid

30 The Patriarchate published a statement against “the March for Dignity”: <https://www.radiotavisupleba.ge/a/31332214.html> [last seen 15.08.2021]; Orthodox Church Speaks Out Against Pride Week <https://civil.ge/archives/429890> [Last seen 14.08.2021].

31 Othodox church invites people to hold a peaceful protest on 5th of July: <https://www.radiotavisupleba.ge/a/31339303.html?fbclid=IwAR03DMSPRIP8v9qkxXlg3gYIVDkj9NxfDCX9YL6IDLnfS82fg4Cik3FzMo> [Last seen 14.08.2021].

32 The Patriarchate disseminates a statement in which it calls on children to protest against the Pride in the streets: <https://www.radiotavisupleba.ge/a/31340358.html?fbclid=IwAR0Yx4LirIiEvBaQI9li3Uxo84zeGcc84ZYfUSHYXkt84slQK8UdrRlaCio> [Last seen 14.08.2021].



Apart from the Georgian Patriarchate, homophobic statements have also been made by the representatives of other denominations. In particular, the “Great Synagogue of Tbilisi” in its statement demanded from the government to not allow the Pride to take place.<sup>33</sup> Same demand was made by the “Administration of Muslims of All Georgia”.<sup>34</sup> It is noteworthy that both of these statements contained identical phrases.<sup>35</sup> It should also be noted that the youth initiative group, the “Solidarity Community”, contacted the “Administration of Muslims of All Georgia” and informed that they condemn the content of Administration’s statement inciting violence.<sup>36</sup> According to the information shared by the Community, the Administration of Muslims of All Georgia, at the request of the Community, withdrew the statement and removed it from the official page.<sup>37</sup> Nevertheless, the Administration of Muslims of All Georgia re-posted the statement on the website, explaining that it was temporarily unavailable due to a technical issue.<sup>38</sup> This was assessed by the Solidarity Community as the state restriction on Muslim autonomy and as control imposed on the Administration of Muslims of All Georgia by the state agency on religious affairs<sup>39</sup>.

## 2. Pride Week

### 2.1 Movie Screening

First event of the week, the film screening, was held on July 1st<sup>40</sup>. It was attended by members of the LGBTQI+ community, its supporters and the representatives of the diplomatic corps, including the ambassadors of Britain, Germany and Israel<sup>41</sup>. Police was mobilized in the surrounding area<sup>42</sup>, while violent and homophobic groups were gathered to disrupt the event<sup>43</sup>. They threw eggs, bottles and, presumably stones despite the police standing between them and the entrance of the nightclub, trying to restrain them<sup>44</sup>. According to the published information, one of the employees of the US Embassy was hit with an egg<sup>45</sup>. Homophobic groups also attempted to block the highway, which was not allowed by the police<sup>46</sup>. After the screening, the audience left the site via police cordon and a minibus<sup>47</sup>. On the grounds of hooliganism and the disobedience of lawful

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- 33 Administration of All Muslims of Georgia and Tbilisi Great Synagogue go against Pride as well: [https://www.radiotavisupleba.ge/a/31340439.html?fbclid=IwAR1dHF5wcJJGzuyboUFlgy6QszUH\\_TERpP8jfn\\_g\\_vZSZ1WwDdCNOb7VD0Ow](https://www.radiotavisupleba.ge/a/31340439.html?fbclid=IwAR1dHF5wcJJGzuyboUFlgy6QszUH_TERpP8jfn_g_vZSZ1WwDdCNOb7VD0Ow) <https://tv.ge/en/news/tbilisi-great-synagogue-urges-govt-to-ban-pride-week/> [Last seen 14.08.2021].
- 34 Ibid
- 35 Ibid
- 36 "Solidarity Community" states that Administration of All Muslims of Georgia distanced itself from the statement against "Pride": <https://www.radiotavisupleba.ge/a/31340482.html> [Last seen 14.08.2021].
- 37 Ibid
- 38 Solidarity Community on the Administration of All Muslims of Georgia: we have witnessed governments successful attempts at limiting autonomy of the Administration of All Muslims of Georgia: <https://tabula.ge/ge/news/669597-solidarobis-temi-samuptoze-gavkhdit-momscre-rogor> [Last seen 14.08.2021].
- 39 Ibid
- 40 Tbilisi Pride Week kicks off amidst far-right protests: <https://oc-media.org/tbilisi-pride-week-kicks-off-amidst-far-right-protests/> [Last seen 14.08.2021].
- 41 Ibid
- 42 Ibid
- 43 Ibid
- 44 Violent groups threw eggs at the worker of the US Embassy: <https://www.radiotavisupleba.ge/a/31336372.html>
- 45 Ibid
- 46 Ibid
- 47 Pride organizers positively assess the police performance so far: <https://www.radiotavisupleba.ge/a/31336499.html> [Last seen 14.08.2021].

orders, law enforcement officers arrested 23 persons from the hate groups<sup>48</sup>. **20 of them were released the next day, July 2nd, on the basis of written acknowledgments<sup>49</sup>. Accordingly, these same individuals could have still posed a threat to the participants of the future events of the Pride Week.**

## 2.2 Festival

The second event of the week, the festival, was held on the territory of the Lisi Wonderland on July 3rd<sup>50</sup>. The event was attended by hundreds of people including the representatives of diplomatic corps, e.g. Ambassadors of the European Union, France and the Netherlands<sup>51</sup>. Various music groups performed their compositions at the festival, an exhibition of queer artists was held, educational and thematic workshops were organized, a special site was arranged for the food facilities, bars, and a particular space was designated for the startups of the LGBTQI + community/supporter<sup>52</sup>. Homophobic and violent groups stood at the entrance of the festival and yet again attempted to disrupt the event, but the police put iron barricades around them<sup>53</sup>. Law enforcers guarded the entire perimeter of the festival area, while an interior perimeter was guarded additionally by the private security<sup>54</sup>. Consequently, the event ended without any incidents and attendees were able to go home by the taxi as well as by a minibus provided by the police<sup>55</sup>.

## 2.3 Disruption of the “March for Dignity” - the events of July 5<sup>th</sup>

Events of July 5<sup>th</sup>, the day when the “March for Dignity” was planned to be held on Rustaveli Avenue, developed in a radically different way from the first two events of the week<sup>56</sup>.

As early as July 3<sup>rd</sup>, the Patriarchate appealed to the population to gather to protest near Kashveti Cathedral and to hold a prayer<sup>57</sup>. On the eve of “March for Dignity”, homophobes set up tents near the Rustaveli metro to spend the night while openly stating that they would try to disrupt the “March for Dignity”<sup>58</sup>. Among them was Guram Palavandishvili, who openly said that there would likely be victims.<sup>59</sup>

On the morning of July 5th, the Prime Minister, Irakli Gharibashvili, called the “March for Dignity” inexpedient and said that LGBTQI+ community march should not take place, stressing that the march is unacceptable to the majority of the population<sup>60</sup>. Additionally, the Ministry of Internal Affairs appealed to the organizers not to hold the march: “We once again publicly call on the participants of “Tbilisi Pride” to refrain from the “March for Dignity” being held in public space due to the scale of counter-manifestations planned by the opposing groups

48 Tbilisi Pride forges ahead, 23 counterprotesters detained <https://civil.ge/archives/430265>: [Last seen 14.08.2021].

49 Police has released 20 members of the hate groups: <https://www.radiotavisupleba.ge/a/31337233.html> [Last seen 14.08.2021].

50 Photoreport Pride festival – Tbilisi Pride week goes on: <https://bit.ly/2UOnsGs> [Last seen 14.08.2021].

51 Ibid

52 Ibid

53 Ibid

54 Ibid

55 Ibid

56 Live updates | Tbilisi Pride cancelled as mob violence continues, see: [https://oc-media.org/live-updates-tbilisi-braces-for-first-pride-march/?fbclid=IwAR0bWetXZpWzhXOgy5fWTRtn0UPyyz3QHxv6eoUEh5G\\_ke3vK--ZxNtuhVs](https://oc-media.org/live-updates-tbilisi-braces-for-first-pride-march/?fbclid=IwAR0bWetXZpWzhXOgy5fWTRtn0UPyyz3QHxv6eoUEh5G_ke3vK--ZxNtuhVs) [Last seen 14.08.2021].

57 The Patriarchate on Pride: Lets gather and hold a prayer, let the world see that we are protecting honor: <https://tabula.ge/ge/news/669549-sapatriarko-praidze-shevikribot-aghvavlinot> [last seen 15.05.2021].

58 Opponents of the Pride set up tents: <https://www.radiotavisupleba.ge/a/31340543.html> [Last seen 14.08.2021].

59 See the video: <https://www.facebook.com/TVFormula/videos/2846302262298045/> [Last seen 14.08.2021]; “I would like to say that violence is to be expected” – Guram Palavandishvili about Tbilisi Pride.; <https://primetime.ge/minda-gitkhrat-rom-mosalodnelia-mskhverpli-guram-falavandishvili-tbilisi-praidze/> [Last seen 14.08.2021].

60 PM Says Pride March ‘unreasonable,’ organized by ‘radical opposition’: <https://civil.ge/archives/430522> [Last seen 14.08.2021]; Violence by hate groups grips Tbilisi: <https://eurasianet.org/violence-by-hate-groups-grips-tbilisi> [Last seen 15.08.2021].

on Rustaveli Avenue”<sup>61</sup>.

### ***Raiding tents near Parliament***

On the morning of July 5th, violent groups had already occupied the area around the Parliament and the Rustaveli Avenue. Protesters initially *removed the EU flag in front of the parliament*<sup>62</sup> and ransacked the tents set up by the peaceful demonstrators against the government months ago.<sup>63</sup> The police did virtually nothing to stop them.

### ***Attack on the civil society organizations and persecution of the activists***

Hate groups attacked civil society organizations: they raided the entrance to the building of the civil movement “Shame” and Tbilisi Pride office<sup>64</sup>. It is noteworthy that members of the violent groups followed the organizers of Pride and its supporters, which caused them to change their location multiple times. Hate groups managed to locate their whereabouts in very short periods of time and moved in an organized manner in squads in the central districts of Tbilisi.<sup>65</sup> In particular, members of “Tbilisi Pride” and civil activists were initially in the office of “Shame”, which they managed to leave only minutes before the arrival of the hate groups.<sup>66</sup> Afterwards they have relocated to the UN House where hate groups arrived shortly. From there, they went to the office of the “Human Rights House”, where members of the hate groups were said to have detonated an explosive device, injuring one of the activists<sup>67</sup>.

A video posted on Facebook by the news agency “Publika” clearly shows how one of the organizers, Konstantin Morgoshia, called on those gathered in front of the parliament to form a group of 500–600 people and relocate to the office of “Shame” movement<sup>68</sup>. About 10 minutes after Morgoshia’s call for action, members of the hate groups arrived at the office of “Shame”, where they were swearing and exhibiting aggressive behaviour.<sup>69</sup> Despite this, only a few police officers were present at the scene<sup>70</sup>. The video published by “Publika” clearly shows that 2-3 policemen present near the entrance of the building of the office were not able to or were unwilling to stop the members of the hate groups from breaking the door of the entrance and forcefully entering the building<sup>71</sup>. It is noteworthy that instead of breaking into the office of “Shame”, they mistakenly broke into another apartment, and also threw stones at the balcony of the apartment, endangering health, lives and property of the residents of the building.<sup>72</sup>

Hate group members also brutally assaulted Miranda Baghaturia, a journalist of TV Pirveli, and the cameraman

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61 Statement of the Ministry of Internal Affairs: <https://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/14760> [Last seen 14.08.2021].

62 See Footnote N56.

63 Anti-Gay crowds destroy anti-government tents outside parliament: <https://civil.ge/archives/430521> [Last seen 14.08.2021].

64 Police investigating attack on offices of Tbilisi Pride, Shame movement: <https://agenda.ge/en/news/2021/1849> <https://mtavari.tv/news/49516-dzaladobrivi-jgupebi-kalakshi-5-ivlisis> [Last seen 14.08.2021].

65 Violence by hate groups grips Tbilisi: <https://eurasianet.org/violence-by-hate-groups-grips-tbilisi> [Last seen 14.08.2021]; Tbilisi Pride director claims right-wing groups could not have mobilised without state support <https://agenda.ge/en/news/2021/1858> [Last seen 14.08.2021].

66 Homophobic Groups Break into Tbilisi Pride Office <https://georgiatoday.ge/homophobic-groups-break-into-tbilisi-pride-office/> [Last seen 15.08.2021].

67 Everything apart from the investigation indicated the group organization of July 5th violence: <https://netgazeti.ge/news/552711/> [Last seen 15.08.2021].

68 Chronology of the attack on the office of the “Shame” Movement and Lekso Lashkarava: <https://www.facebook.com/publika.ge/videos/2874940366060197/> [Last seen 15.08.2021].

69 Ibid; Hate groups moved to the office of the Shame movement: <https://www.radiotavisupleba.ge/a/31341422.html> [Last seen 14.08.2021].

70 Ibid

71 See Footnote 68.

72 According to the citizen, hate groups mistakenly broke into his apartment: <https://netgazeti.ge/news/552388/> [Last seen 14.08.2021].

Alexander Lashkarava in the lobby of the above mentioned building<sup>73</sup>. According to Miranda Baghaturia, she was kicked, and Aleksandre Lashkarava was beaten mercilessly for 20 minutes, while policemen present in the lobby were beaten as well<sup>74</sup>. Unfortunately, the cameraman, Alexander Lashkarava, died a few days later, on July 11th<sup>75</sup>. It is clear that several law enforcement officers in the area failed to curb the violence, to cease property damage, and to protect health of the media representatives. Even when the number of police officers on site was increased, the police, instead of arresting members of the hate groups, allowed several of them including the organizer Konstantine Morgoshia to enter the lobby and inspect whether or not anyone was remaining on site<sup>76</sup>.

In addition, violent and homophobic groups raided “Tbilisi Pride” office. They climbed on the balcony of the office, tore down the rainbow flag, and ransacked equipment and inventory in the office.<sup>77</sup> At the same time, a citizen was attacked because she was carrying the “Pride” bag<sup>78</sup>, while on the same day, a Polish tourist, who was wearing earrings, was allegedly wounded due to a homophobic motive.<sup>79</sup>

### **Mass violence against journalists**

The Deacon of the Georgian Orthodox Church, Spiridon Tskipurishvili, directly called on the people gathered in front of the parliament that they were obliged to use violence: “Rather than thinking that you should not be violent, it is in the name of your homeland, God, and holiness that you are obliged to be violent”.<sup>80</sup> It is clear that on July 5th, clerics, ultranationalist, pro-Russian, homophobic and hate group members and their supporters harassed and verbally abused citizens, LGBTQI+ community and civil society activists as well as the members of the media (who were present to cover events on site) for several hours<sup>81</sup>. They deliberately attacked, physically assaulted and verbally abused representatives of the media, damaging and destroying their equipment, and obstructing journalistic activities<sup>82</sup>. At least 53 members of the media were injured as a result<sup>83</sup>.

On July 5th, violence, threats, and aggression by clerics and ultranationalist, pro-Russian, homophobic, and hate groups were broadcasted live. It was clear from the broadcast that the number of police officers mobilized at relevant locations was insufficient, as well as the efforts aimed at limiting the violence. Journalists that fell victim to these attacks have also pointed out the inaction of the police<sup>84</sup>. Eventually, the “March for Dignity” was cancelled due to violence, aggression and insufficient response from the authorities<sup>85</sup>.

73 The cameramen beaten during the violent demonstration on July 5<sup>th</sup> was found dead: <https://netgazeti.ge/news/553547/> [Last seen 15.08.2021].

74 Ibid

75 Ibid

76 See Footnote N68.

77 Hate groups broke into the office of Tbilisi Pride: <https://www.radiotavisupleba.ge/a/31341554.html> [Last seen 15.08.2021]; Anti-LGBT protesters attack journalists in Tbilisi, force organizers to cancel pride event: <https://www.rferl.org/a/tbilisi-georgia-lgbt-pride-march-violent-attack/31342235.html> [Last seen 14.08.2021].

78 According to a citizen, she was assaulted by homophobic groups because of the Pride bag: <https://netgazeti.ge/news/552403/> [Last seen 14.08.2021].

79 Polish tourist stabbed in Tbilisi recovers, says his attacker does not represent entire Georgia <https://agenda.ge/en/news/2021/1925> [Last seen 14.08.2021]; View also: <https://bit.ly/3xRyfnY> [Last seen 15.08.2021].

80 You are obliged to be violent in the name of God, Deacon's call for violence: <https://netgazeti.ge/news/552283/> [Last seen 14.08.2021].

81 See Footnote N56.

82 List of the journalists that were attacked by the violent groups: <https://www.mediachecker.ge/ka/mediagaremo/article/88604-dashavebuli-zhurnalistebis-sia> [Last seen 14.08.2021].

83 Ibid

84 Hunting cameramen and journalists before the eyes of the police – 14 stories: <https://netgazeti.ge/news/552394/> [Last seen 14.08.2021].

85 See Footnote N56.

### 3. Reaction regarding disruption of the “March for Dignity” and the events after the Pride Week.

#### 3.1. Evaluations of the events of July 5th

In regards to the violent events on July 5th, the Deputy Minister of Internal Affairs, Alexander Darakhvelidze, said that the Ministry of Internal Affairs took responsibility only for the safe conduct of the events held on July 1<sup>st</sup> and 3<sup>rd</sup> <sup>86</sup>. In particular, “the Ministry of Internal Affairs took full responsibility for protecting the right of assembly and the rights of participants of the assembly during the two events, the events of 1st and 3rd July, as for the 5th of July event, we have clearly stated that due to the format of the event, which was suggested for the event, the amount of the participants and the scale of the event, it would be difficult to comply with security measures,” - said Alexander Darakhvelidze<sup>87</sup>. According to the Ministry of Internal Affairs, a total of 3,200 police officers were mobilized, while in the moment of a sudden outbreak of violence in front of the parliament, “police forces were immediately mobilized on site, the situation was neutralized and media representatives were taken to a safe location.”<sup>88</sup> Pursuant to this statement, “due to the large number of demonstrators, it was not possible to prevent the mob from breaking into the entrance of the building of “Shame” until additional groups arrived. In parallel with receiving the information, additional police forces were mobilized to neutralize the situation, to protect the office and to ensure the safety of the media representatives on site. Additionally, as soon as the police forces received information about the raid of the Tbilisi Pride, additional forces were sent to the relevant address and the actions of the hate groups were suppressed in time after their arrival”<sup>89</sup>.

The above mentioned explanation of the Ministry of Internal Affairs is not convincing, as live footage clearly showed that only a small number of police officers was mobilized on site on July 5th, which was in turn insufficient to prevent the violence in a timely manner. Moreover, law enforcement officers on site were unable to or unwilling to act effectively.

It is noteworthy that on July 5th, a number of negative assessments were made in regards to the inaction of the government and its incitement of violence, aggression and homophobia. For example, pursuant to the Ombudsmans’ statement, “by shifting responsibility onto the peaceful demonstrators, Georgian Prime Minister Irakli Gharibashvili further exacerbated the already tense situation, after he described the March for Dignity as a cause for civil confrontation and said that “revanchist and radical” political forces were behind the Pride”<sup>90</sup>. According to the US Ambassador, “we were disappointment that training and equipment was not deployed when it became obvious that there were those in the crowd that wanted to resort to violence.”<sup>91</sup> “We would look to Prime Minister play a leading role in calming situation, where violence is being used and condemning the use of violence against Georgian citizens and certainly against journalists, so it was disappointing that we did not see more forceful leadership role on those days” – stated the US ambassador<sup>92</sup>. Also, according to the chairman of the Helsinki Commission, the attack on peaceful demonstrators of Pride by radical right-wing was encouraged by Georgian Dream leaders, and it was shameful that “Georgian Dream leaders try to

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86 MIA states that it took responsibility for the safety during 1st and 3rd of July events only: <https://www.radiotavisupleba.ge/a/31345510.html> [Last seen 14.08.2021].

87 Ibid

88 Information of the MIA of Georgia regarding police activities conducted in parallel with the Tbilisi Pride Week : <https://police.ge/en/shinagan-saqmeta-saministros-informatsia-tbilisi-praidis-kvireulis-paraleturad-politsiis-mier-chatarebuli-ghonisdziebebis-shesakheb/14771> [Last seen 14.08.2021].

89 Ibid

90 Public Defender’s statement on events developing on Rustaveli avenue: <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-rustavelis-gamzirze-mimdinare-movlenebis-shesakheb> [Last seen 14.08.2021].

91 U.S. Ambassador slams Garibashvili for failure of leadership in dealing with violence: <https://civil.ge/archives/431510> [Last seen 14.08.2021].

92 Ibid

divert attention by condemning professional journalists who are merely doing their job.”<sup>93</sup>. Violence against journalists and the lack of appropriate measures by the state were also sharply criticized by non-governmental organizations, according to which, “despite earlier warnings from the civil sector, the authorities did not take relevant measures to ensure the safety of the organizers of the March for Dignity or the media”<sup>94</sup>. Similarly, pursuant to the EU Delegation to Georgia and the accredited missions of EU countries, the Georgian authorities “did not provide sufficient protection as violent acts against activists and journalists were carried out”<sup>95</sup>.

### 3.2. 6<sup>th</sup> of July events

Thousands of people silently rallied to protest the violence of the previous day in front of the parliament on July 6<sup>th</sup><sup>96</sup>. Primary messages of the rally were to denounce the violence and hatred, to support victims of violence and the LGBTQI+ community and to support freedom of expression and freedom in general<sup>97</sup>. Protesters waved the LGBTQI+ rainbow flag<sup>98</sup>. Meanwhile, by Rustaveli Avenue № 9, on the opposite side of the Parliament, in front of the Kashveti Church and across the First Public School in Tbilisi, violent and aggressive groups were gathered. They were separated from the peaceful demonstrators by a police cordon and iron barricade.<sup>99</sup> The sound of explosions were heard from these groups<sup>100</sup>. They were aggressive - they threw stones, eggs, bottles full of stones in the direction of the silent rally and tried to break through the police cordon<sup>101</sup>. Also, according to the media, they were abusing law enforcement officers<sup>102</sup> and were using pepper spray against them<sup>103</sup>. As a result some of the police officers were injured<sup>104</sup>. At around 23:30, demonstrators of the silent rally left the area through secure corridors provided by the police and violent groups marched in front of the parliament, removed, teared and burned the EU flag for the second time<sup>105</sup>. According to the circulated reports, at the rally of July 6<sup>th</sup>, the Ministry of Internal Affairs detained 100 people based on the administrative code, out of whom 68 were released on written acknowledgement and 32 remained in pre-trial detention<sup>106</sup>.

According to the official data published by the Ministry of Internal Affairs on July 30<sup>th</sup>, “during the rallies held on July 5–6<sup>th</sup>, a total of 31 people was arrested due to the threats and attempts to disrupt journalistic activities, harassment, violence and threats of violence, as well as gang violence, namely: 27 persons have been arrested

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93 Senator Cardin: 5<sup>th</sup> of July attacks were encouraged by the government: <https://tabula.ge/ge/news/670249-senatori-kardini-5-ivlisis-tavdaskhmebi-kartuli> [Last seen 14.08.2021].

94 Statement on the Large-Scale Violence against Journalists: <https://www.gdi.ge/en/news/statement-on-the-large-scale-violence-against-journalists.page> [Last seen 14.08.2021].

95 Letter addressed to the Government of Georgia by EU Heads of Mission on the Pride related events of 5 July and their follow-up: [https://eeas.europa.eu/delegations/georgia/101804/node/101804\\_en](https://eeas.europa.eu/delegations/georgia/101804/node/101804_en) [Last seen 14.08.2021].

96 “Tbilisi Pride” Instagram Page: [https://www.instagram.com/p/CQ\\_unN-DTyQ/](https://www.instagram.com/p/CQ_unN-DTyQ/) [Last seen 14.08.2021]. Opposition, Activists, Tbilisi Pride Hold Silent Rally ‘for Freedom’: <https://civil.ge/archives/430964> [Last seen 14.08.2021].

97 Ibid

98 Ibid

99 ‘Cannot Be Excused’: Thousands Rally In Georgia To Denounce Anti-LGBT Violence <https://www.rferl.org/a/georgia-lgbt-rally-pride/31345470.html> [Last seen 14.08.2021].

100 Violent groups are breaking the cordon, sounds of explosions are heard: <https://www.radiotavisupleba.ge/a/31344266.html> [Last seen 15.08.2021].

101 Rustaveli rally is concluded, protesters refuse to leave the site via minibuses: <https://www.radiotavisupleba.ge/a/31344298.html> [Last seen 14.08.2021].

102 Special forces arrived at the Rustaveli avenue, hate groups are attacking law enforcers, see: <https://www.radiotavisupleba.ge/a/31344308.html> [Last seen 15.08.2021].

103 See footnote N100;

104 Opposition, Activists, Tbilisi Pride Hold Silent Rally ‘for Freedom’: <https://civil.ge/archives/430964> [Last seen 14.08.2021].

105 Ibid.

106 MIA: we have detained 100 persons according to the administrative law, among those 32 remain in pre-trial detention: <https://www.radiotavisupleba.ge/a/31344918.html> [Last seen 14.08.2021].

for threatening with violence against journalistic activities, illegal interference, gang violence and threats of violence; three people were arrested for raiding “Tbilisi Pride” office, participating in the persecution with the use of violence and threats of violence, as well as for violating private and public property as a group; one person was detained due to the violent actions towards a civilian<sup>107</sup>. It is noteworthy that so far the police has not arrested any of the organizers.

## Part II – Legal Analysis

### 1. Violation of paragraphs 1 and 2 of Article 9 of the Constitution of Georgia and Article 3 of the European Convention

#### a) The guarantees covered and the standard for assessment

Pursuant to the Article 9.1 of the Constitution of Georgia, “Human dignity shall be inviolable and shall be protected by the State”<sup>108</sup>. According to the Constitutional Court of Georgia, “**Dignity is the basis of each person’s identity and an equal guarantee, to be different from others depending on ones own skills, abilities, tastes, and the individual choice of ones own path of development.** Article 17 of the Constitution of Georgia [Article 9 in the current edition of the Constitution] serves to guarantee such an order by recognizing the fundamental principle of human dignity”<sup>109</sup>. Human dignity is the cornerstone and the pillar of all individual rights and of the constitutions of democratic countries, including that of Georgia<sup>110</sup>. A human being has the primary value and the “the protection of dignity is what the state unconditionally owes to all people”<sup>111</sup>. Accordingly, Article 9.2 of the Constitution of Georgia states that “Torture, inhuman or degrading treatment, and the use of inhuman or degrading punishment shall be prohibited”<sup>112</sup>. This prohibition is absolute, i.e., it is prohibited to interfere in any way with an individual’s right to be protected from torture, inhuman or degrading treatment, and the use of inhuman or degrading punishment<sup>113</sup>. Interference in this right can not be justified by any legitimate aim and common good<sup>114</sup>. According to the Constitutional Court of Georgia, “the Constitution of Georgia from its onset decided the potential conflict ... between the protected good [guaranteed by [the principle of respect for dignity] and any other valuable interest guaranteed by the Constitution, protection of which is permanently owed by the government of the country, to be resolved unconditionally in favor of the human dignity.”<sup>115</sup>. According to the Constitutional Court, “the state is obliged to not only refrain from inhumane and degrading treatment of a person, but to also ensure that this right is protected from the interference by third parties.”<sup>116</sup>.

107 MIA detained two more violent protesters against Tbilisi Pride on July 5th <https://police.ge/en/shinagan-saqmeta-saministrom-5-ivliss-/14835> [Last seen 14.08.2021]; It should be mentioned that GDI requested information from the Prosecutor’s Office and the Ministry of Internal Affairs about the events of July 5th and 6th, as well as the number of people in pre-trial detention, but as of August 10, we have not received a response.

108 Article 9.1 of the Constitution of Georgia

109 Decision of the Constitutional Court of Georgia N1/4/592, October 24th 2015, on the case “Citizen of Georgia Beka Tsikarishvili v. Parliament of Georgia”, II-§11.

110 Decision of the Constitutional Court of Georgia N1/3/1441, July 5th 2021, on the case “Public Defender of Georgia v. Parliament of Georgia”, II-§11.

111 Decision of the Constitutional Court of Georgia N1/4/592, October 24th 2015, on the case “Citizen of Georgia Beka Tsikarishvili v. Parliament of Georgia”, II-§11.

112 Article 9.2 of the Constitution of Georgia.

113 Decision of the Constitutional Court of Georgia N1/3/1441, July 5th 2021, on the case “Public Defender of Georgia v. Parliament of Georgia”, II-§11.

114 Ibid, II-§§ 1-2

115 Ibid, II-§2.

116 Decision of the Constitutional Court of Georgia N2/4/532,533, October 8th 2014, on the case “Georgian citizens – Irakli Kemoklische and Davit Kharadze vs Parliament of Georgia §182.

Accordingly, the Constitution imposes not only a negative obligation on the state to exercise restraint, but also “a number of positive obligations within its jurisdiction, including obligations to take effective measures to both prevent and to respond to incidents of ill-treatment in a timely and effective manner”<sup>117</sup> and “calls for the establishment of a legal framework where it will ensure that relevant threats are prevented, that all acts contrary to the requirements of the absolute prohibition of torture, inhumane or degrading treatment or punishment will be identified and regarded as contrary to the law, as well as the prompt and immediate response to the alleged ill-treatment, effective investigation and adequate punishment of relevant persons will be in place.”<sup>118</sup>

The above-mentioned standard of the Constitutional Court is essentially in line with the approach of the European Court of Human Rights (hereinafter the ECHR). In particular, the Constitutional Court of Georgia has itself referred to Article 3<sup>119</sup> of the European Convention on Human Rights (hereinafter referred to as the European Convention or Convention), which states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”<sup>120</sup>. Similar to the Constitution, the stated provision establishes an absolute prohibition<sup>121</sup>. Accordingly, similar to the Constitution, Articles 1 and 3 of the European Convention “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”<sup>122</sup>. 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 which the authorities knew or ought to have known”<sup>123</sup>.

According to the ECHR, “ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3.”<sup>124</sup>. The assessment of this minimum threshold 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<sup>125</sup>. Pursuant to the ECHR, “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”<sup>126</sup>. The Constitutional Court of Georgia is essentially guided by the same threshold taking into account the same factors to determine the severity of the treatment<sup>127</sup>. According to the Constitutional Court, “A treatment violates human dignity when it arouses fear, great pain, feelings of humiliation or subjugation in the victim, or such an act which physically/psychologically breaks an individual and forces him or her to act against his or her own conscience.”<sup>128</sup>

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117 Decision of the Constitutional Court of Georgia N1/3/1441, July 5th 2021, on the case "Public Defender of Georgia v. Parliament of Georgia", II-§5.

118 Ibid.

119 Decision of the Constitutional Court of Georgia 82/4/532,533 of October 8, 2014 on the case "Citizens of Georgia - Irakli Kemoklidze and Davit Kharadze v. Parliament of Georgia", II-§178

120 Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

121 Decision of the European Court of Human Rights, January 21st 2011 on the CASE OF M.S.S. v. BELGIUM AND GREECE, §218.

122 Decision of the European Court of Human Rights, May 12th 2015 on the CASE OF IDENTOBA AND OTHERS v. GEORGIA, §66.

123 Ibid.

124 Ibid, §65.

125 Ibid.

126 Ibid

127 Decision of the Constitutional Court of Georgia N2/4/532,533, October 8th 2014, on the case "Georgian citizens – Irakli Kemoklisze and Davit Kharadze vs Parliament of Georgia.II-§180.

128 Ibid, II-§181.



## b) Assessment

In accordance with the above mentioned legal standard, on July 5th, 2021, *Georgian government violated its positive obligation, under Article 9.2 of the Constitution of Georgia and Article 3 of the European Convention, to protect individuals within its jurisdiction, in particular members of the LGBTQI+ community, civil activists and the representatives of the media from degrading, humiliating and an inhumane treatment by homophobic and violent groups.* The events described above - persecution of the members of the LGBTQI+ community, civil activists, representatives of the media by the hate and violent groups, the verbal abuse and threatening their health, realization of these threats against the LGBTQI+ community members, civil activists, representatives of the media in the form of organized and large-scale attacks, injuring more than 50 members of the media (including serious physical injuries), damaging their equipment, raid of the “Tbilisi Pride” office and the attempted raid of the offices of civil society activists, detonation of the explosives in the building of one of the NGOs - clearly reach the minimum threshold of ill-treatment **because these actions evoked a sense of fear, suffering, insecurity and humiliation in their victims, which is further evidenced by the stories told by the victims themselves.**<sup>129</sup>

This conclusion is supported by the 2015 judgment of the ECHR in the CASE OF IDENTOBA AND OTHERS V. GEORGIA, which dealt with a context similar to the events of July 5th: the attempt of the applicants to hold a peaceful march on May 17th 2012 to mark the day against Homophobia and disruption of the march by the homophobic counter-protesters<sup>130</sup>. The ECHR ruled that actions of the counter-protesters reached the minimum level of severity<sup>131</sup>. Based on the context of the homophobic sentiments prevailing in Georgia, the ECHR stated that the use of particularly offensive words (“fagots”, “perverts”) directed at the plaintiffs by the counter-protesters outnumbering them, threats to inflict serious and fatal wounds and realization of these threats by resort to violence reached the necessary level of severity<sup>132</sup>.

If one makes a comparison with the actions of the counter-protesters just described above, it becomes evident that on July 5th 2021, hate and homophobic groups were acting in a similar manner and were arguably even more aggressive, violent, and dangerous. **Consequently, their treatment of members of the LGBTQI+ community, civil society activists and the representatives of the media reached the minimum level of severity and was degrading, humiliating and inhumane.** This kind of treatment should have been prevented and suppressed by the Georgian government which failed to do so in violation of its positive obligation.

In particular and as already mentioned, prior to the “March of Honour” that was scheduled for July 5th, the organizers of “Tbilisi Pride” held a number of meetings with the Ministry of Internal Affairs, where they provided information about the Pride Week in general and the march in particular and specifically asked law enforcement agencies to provide security guarantees for the “March for Dignity.” Additionally, it is well known that homophobic attitudes are common in Georgia and there have been a number of violent obstructions to LGBTQI+ support rallies in the recent years<sup>133</sup>, one of them being, for example, disturbance reviewed by the ECHR in the above-mentioned decision. Most importantly, long before July 5th and especially during the few

129 See footnote N81; The day of persecution – July 5<sup>th</sup>: <https://bit.ly/2VXN9W9> [Last seen 16.08.2021]; Georgia: Mass violence against journalists covering Tbilisi Pride <https://ipi.media/georgia-mass-violence-against-journalists-covering-tbilisi-pride/>, Far-Right Groups Massively Attack Journalists <https://civil.ge/archives/430551>, Journalists attacked by anti-LGBT demonstrators in Tbilisi, Georgia <https://cpj.org/2021/07/journalists-attacked-by-anti-lgbt-demonstrators-in-tbilisi-georgia/> [Last seen 15.08.2021].

130 For the factual details see: Decision of the European Court of Human Rights, May 12th 2015, on the CASE OF IDENTOBA AND OTHERS v. GEORGIA, §§ 6-19.

131 Ibid, §71.

132 Ibid, §§ 68-71.

133 9 years of 17th of May in Georgia: <https://tabula.ge/ge/news/646487-17-maisis-9-celi-sakartveloshi> [Last seen 15.08.2021]; 8 years of 17th May chronicles: <https://bit.ly/3epQFyu> [Last seen 15.08.2021]; Queer rights activists mark 17 May in Tbilisi under heavy police presence; Church takes to streets <https://oc-media.org/queers-in-tbilisi-mark-17-may-under-heavy-police-presence-church-takes-to-streets/> [Last seen 15.08.2021]; How the day of fight against homophobia was celebrated in Georgia – chronology of May 17th: <https://bit.ly/3xQDcXt> [Last seen 16.08.2021].

directly preceding days , several pro-Russian, ultranationalist and hate groups **openly and directly declared** and threatened to mobilize the *maximum amount of their members* and supporters on the Rustaveli Avenue, to occupy the avenue and to disrupt “March for Dignity” while clearly stating that **there would likely be victims**<sup>134</sup>. In light of all of these circumstances, the *authorities were aware of the serious risk of violence and aggression to be expected on July 5th due to the homophobic context. Nevertheless authorities have failed to take appropriate measures to either prevent the realization of this risk or to curb the violence and aggression while it was ongoing.*

In particular and as stated in the first chapter of the report, sufficient number of police was not mobilized on the Rustaveli avenue and its nearby areas, especially given the fact that hate groups had announced about their plans to fully mobilize and to occupy the avenue prior to the event. It is true that these announcements were addressed to the LGBTQI+ community, but the state did not have a timely and an effective response even when the hate groups started threatening and attacking journalists directly, while all of this was broadcasted live. Namely, an insufficient amount of the law enforcement officers on site was inactive or acted late and merely as a formality. As mentioned above, only a few police officers were present at the office of “Shame” movement and they did not or were unwilling to stop the members of the hate groups from breaking into the building , harassing media representatives there, damaging private property. Moreover, after a certain period of time police themselves allowed some members of hate group to enter an already raided building to inspect it and this way the police even collaborated with them.

Similarly, there were only a few police officers on the scene during the raid of “Tbilisi Pride’s” office, who could not and/or were unwilling to stop the members of the hate groups<sup>135</sup>. Homophobic groups moved virtually freely and in an organized manner from one location to another in Tbilisi and posed a threat to citizens. The government not only failed to prevent this but also encouraged this situation by the above-mentioned statements against Pride Week, namely by the statements made on July 5th by the Prime Minister Irakli Gharibashvili about the inexpediency of the “March for Dignity”.

Incitement of violence by the authorities on the grounds of hatred is contrary to state’s obligations deriving from the European Convention. In this respect, it is relevant to look at the judgment of the European Court in BEGHELURI AND OTHERS v. GEORGIA, which dealt with various cases of large-scale and religiously motivated violence against the applicants, Jehovah’s Witnesses, with the participation of private parties and public officials, and an ineffective investigation of these cases<sup>136</sup>. Pursuant to the ECHR’s decision, “Tolerance by the authorities towards such acts [illegal actions, namely improper treatment ] cannot but undermine public confidence in the principle of lawfulness and the State’s maintenance of the rule of law”<sup>137</sup>. According to the ECHR, in one of the instances of violence, the police did nothing to halt the disruption of the religious gatherings of Jehovah’s Witnesses and attacks on them, although authorities should have known about the real risk of attacks given the widespread hostility towards Jehovah’s Witnesses in Georgia<sup>138</sup>. Moreover, police not only failed to take preventative measures but allowed the bus carrying Orthodox extremists to travel to the destination, where the religious convention of Jehovah’s Witnesses was to take place and then refused to attempt to stop the extremists<sup>139</sup>. In view of the foregoing, the ECHR concluded the acts complained of

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134 See Chapter 1.

135 Tbilisi Pride office attacked: what’s happening on Rustaveli Avenue?: <https://agenda.ge/en/news/2021/1844> [Last seen 15.08.2021]; Abusers climb into the office of Tbilisi Pride from the balcony: <https://mtavari.tv/news/49437-modzaladeebi-tbilisi-praidis-opisshi-ainvidan> [Last seen 16.08.2021].

136 For the detailed factual circumstances see decision of the European Court of Human Rights, October 7th 2014, on the CASE OF BEGHELURI AND OTHERS v. GEORGIA, §§ 5-72.

137 Ibid, § 99.

138 Ibid, §§ 119-121.

139 Ibid, § 120.

were carried out in the presence of officials of the respondent State, that is, with at least their acquiescence or connivance and by allowing aggressors to roam free<sup>140</sup>. This could be regarded as an encouragement, facilitation and non-prevention by the authorities of the ill-treatment towards the applicants<sup>141</sup>. Moreover, by encouragement of the violence, acquiescence and connivance into unlawful activities of private individuals, the Georgian authorities created a climate of impunity, which ultimately encouraged other attacks against Jehovah's Witnesses throughout the country<sup>142</sup>. The Court therefore found that Georgia violated Article 3 of the Convention<sup>143</sup>. Similarly, **homophobic statements made by the authorities on July 5th 2021 and in the period before that date , gave the green light to the aggression and violence carried out on July 5th . This encouraging effect continues to this day in a sense that none of the organizers of the homophobic and hate groups have been arrested by the government. This poses a serious threat of the recurrence of violence in the future.**

In addition, one can draw a parallel with the decision of the ECHR in the case of *IDENTOBA AND OTHERS v. GEORGIA*, in which the Court found a violation of the positive obligation of the authorities to properly protect the applicants in similar homophobic circumstances<sup>144</sup>. In particular, according to the court, the municipal and law enforcement agencies were aware of the planned march of the LGBTQI + community, which had specifically asked these agencies to provide protection from the expected retaliatory homophobic protests and past homophobic experiences should have been taken into account<sup>145</sup>. Therefore, according to the ECHR, as the authorities were aware of the risks associated with public events of the vulnerable LGBTQI+ community, they were responsible for providing enhanced protection for them<sup>146</sup>. Nevertheless, there was only a limited amount of police officers on site who carelessly moved away from the scene, thus encouraging homophobic violence against the applicants . By the arrival of the additional enforcement officers, the applicants and other participants of the LGBTQI+ community march had already become victims of harassment, humiliation, and assault<sup>147</sup>. Accordingly, the ECHR found that Georgia violated its positive obligations under Article 3 of the European Convention (in conjunction with Article 14)<sup>148</sup>.

Based on the legal assessment provided above, on July 5th 2021, Georgian authorities violated paragraphs 1 and 2 of Article 9 of the Constitution of Georgia and Article 3 of the European Convention.

## 2. Violation of the Article 21.1 of the Constitution of Georgia and Article 11 and Article 14 of the European Convention

### a) The guarantees covered and the standard for assessment

According to Article 21.1 of the Constitution of Georgia, "Everyone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed,

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140 Ibid, § 121.

141 Ibid, § 145.

142 Ibid.

143 Ibid, § 121, 146.

144 Decision of the European Court of Human Rights, May 12<sup>th</sup> 2015, on the CASE OF IDENTOBA AND OTHERS v. GEORGIA, §74.

145 Ibid, §72.

146 Ibid.

147 Ibid, §73.

148 Ibid, §81.

without prior permission.<sup>149</sup> According to the Constitutional Court of Georgia, freedom of assembly is a particular form of expression that consists of the two equal elements: “assembly and manifestation as a form of expression of an opinion (formal side of the freedom of assembly) and a specific idea that an assembly or manifestation aim to express”<sup>150</sup>. This fundamental right allows an individual “to express his/her feelings and views (political, social, artistic, religious etc). Assembly and manifestation can be an integral part of a political activity, serve expression of an opinion and receiving and disseminating information, etc”<sup>151</sup>. Consequently, an interrelationship between freedom of assembly and expression and their fundamental role in the development of a democratic society and its individual members, its role in the freedom of discussion and exchange of opinions, in the participation in public processes and public administration or government accountability is evident.

Nevertheless, freedom of assembly is not an absolute right and may be restricted on the same grounds as the freedom of expression<sup>152</sup>. This does not mean that interference in the freedom of assembly is permissible on the ground that the opinion expressed during a manifestation is unacceptable to a significant portion or the majority of the public. Namely, according to the Constitutional Court, “in a democratic society, people have an obligation to tolerate opinions that they do not share or may even consider morally unjustified”<sup>153</sup> and “in general, the state cannot restrict freedom of information on the grounds that certain information or ideas may be emotionally irritating or encourage unacceptable behavior”<sup>154</sup>, additionally, “the state does not have the authority to divide opinions into the categories such as ‘right’ or ‘wrong’, ‘desirable’ or ‘undesirable’ and others”<sup>155</sup>. Most importantly, freedom of expression “includes not only those opinions or expressions that are acceptable to all, are positively perceived, considered likeable to the taste and opinions of the society in its entirety or even to a large part of it and are not considered controversial, but includes ideas, thoughts or expressions that are unacceptable to the government, to a part of the society or to individuals, are shocking, can infuriate society, individuals, could even possibly offend them, cause public outcry, it also includes criticism and sarcasm”<sup>156</sup>. In terms of the state’s obligations, the Constitutional Court has further provided that “in accordance with the content of the constitutional right to assembly, the state is not only obliged to not interfere in the process of a peaceful assembly, but the Constitution itself creates an obligation for the state to ensure that the process is held peacefully. *In order to protect the life and health of the participants of the assembly, the state is obliged to take all necessary measures, including through the creation of the relevant legislation and its effective implementation.*”<sup>157</sup>

The above-mentioned standard of the Constitutional Court is significantly in line with the approach of the ECHR, namely according to the Article 11.1 of the Convention: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for

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149 Article 21.1 of the Constitution of Georgia

150 Decision of the Constitutional Court of Georgia N2/482,483,487,502, April 18 2011, on the case of Citizens 'Political Union "Movement for United Georgia", Citizens' Political Union "Georgian Conservative Party", Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jishkariani, Public Defender of Georgia v. Parliament of Georgia”, II-§4.

151 Ibid.

152 Ibid, §5.

153 Decision of the Constitutional Court of Georgia N1/3/421,422, November 10 2009, on the case "Citizens of Georgia - Giorgi Kipiani and Avtandil Ungiadze v. Parliament of Georgia", II-§7.

154 Ibid.

155 Decision of the Constitutional Court of Georgia 1/6/561,568, September 30 2016, on the case "Citizen of Georgia Yuri Vazagashvili v. Parliament of Georgia", II-§41.

156 Ibid, §40.

157 Decision of the Constitutional Court of Georgia 241/3/538, June 24 2014, on the case "Political Union "Free Georgia" against the Parliament of Georgia", §8.

the protection of his interests”<sup>158</sup>. In interpreting this provision, the ECHR emphasizes the notions of pluralism, tolerance and openness as the cornerstones of democracy, and clarifies that democracy does not mean always prioritizing the views of the majority<sup>159</sup>. It is the state that has an obligation to protect pluralism and tolerance<sup>160</sup>. Therefore, according to the ECHR “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”<sup>161</sup> and “in a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate”<sup>162</sup>. According to the ECHR, freedom of assembly would be merely an illusory, unexistent guarantee if the state’s obligation were limited to its negative obligation to not intervene in the (exercise of) freedom of assembly<sup>163</sup>. Consequently, if necessary, the state has a positive obligation to carry out necessary measures in the sphere of relations between private parties as well, especially when it comes to the expression of unpopular beliefs and the representatives of minorities<sup>164</sup>.

In this regard, Article 14 of the European Convention should be taken into account: “The enjoyment of the rights and freedoms set forth in this 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”<sup>165</sup>. In its decision against Georgia regarding events of May 17th 2012, the ECHR found that Georgian breached Article 3 as well as Article 11 in conjunction with Article 14 of the Convention.<sup>166</sup> In that decision, Georgia failed to ensure that the applicants, as supporters of the LGBTQI+ community, could conduct a peaceful march commemorating the day against homophobia and failed to protect them from an aggressive counter-demonstration, despite knowing in advance about the dangers stemming from the prevailing homophobic environment<sup>167</sup>. Therefore, according to the Court, the State failed to ensure the enjoyment of the freedom of assembly by the applicants without being discriminated on the grounds of sexual orientation and gender identity. Accordingly, Articles 11 and 14 of the European Convention were violated<sup>168</sup>.

## **b) Assessment**

According to the above-mentioned standard, despite negative attitudes from certain parts of the society, “March for Dignity” organized by “Tbilisi Pride” was protected by the right to freedom of assembly on the basis of Article 21.1 of the Constitution of Georgia and Article 11 of the European Convention. According to the interpretation by the ECHR, the Convention protects the expression of views in regards to raising awareness about and advocacy of the rights of sexual minorities through a peaceful assembly<sup>169</sup>. It is clear that above-

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158 Article 11.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms

159 Decision of the European Court of Human Rights, May 12th 2015, on the CASE OF IDENTOBA AND OTHERS v. GEORGIA, §93.

160 Ibid, §94.

161 Ibid, §95.

162 Ibid.

163 Ibid, §94.

164 Ibid.

165 Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

166 Decision of the European Court of Human Rights, May 12<sup>th</sup> 2015, on the CASE OF IDENTOBA AND OTHERS v. GEORGIA, §§ 92, 100.

167 Ibid, §§ 97-100.

168 Ibid, § 100.

169 Ibid, §97.

mentioned messages of the “March for Dignity” addressed to the state demanded protection of the rights of the LGBTQI+ community (and others) and the fulfillment of the states’ corresponding obligations. The LGBTQI+ community and other participants of the “March for Dignity” were unable to voice these messages or in other words exercise the freedom of assembly - **the “March for Dignity” was not held due to the violation of the state’s positive obligations under the above-mentioned Articles.**

As mentioned earlier, members of the LGBTQI+ community and activists that were to hold “March for Dignity” were chased by violent and hateful groups in the streets of Tbilisi, and the state failed to take appropriate measures to prevent and to stop them. Similarly, in this case, it is possible to draw a parallel with the above described judgment of the ECHR in which, according to the Court, in 2012 Georgian state agencies were warned by the organizers of the LGBTQI+ community march in advance and, given the homophobic attitude of the society, the State knew or should have known about the risks associated with the march<sup>170</sup>. Nevertheless, the State failed to take any preparatory measures during the 9 days prior to the march (May 17th) and already in the course of the LGBTQI+ community march, it became clear that the number of law enforcement officers on the ground was insufficient and it would have been prudent to mobilize more police forces, e.g. anti-riot officers (such as a squad of anti-riot police)<sup>171</sup>. Accordingly, pursuant to the ECHR, Georgia failed to deter homophobic and violent counter-demonstrators, failed to ensure the holding of a peaceful march and as a result violated positive obligations under Article 11 of the European Convention in conjunction with Article 14<sup>172</sup>.

Similarly, on July 5th 2021, as has been repeatedly stated, insufficient police forces were unable to or unwilling to prevent and/or to halt threats, persecution and the raid of offices by aggressive, homophobic groups directed against the organizers of the “March for Dignity”, LGBTQI + community members and its supporters, despite the fact that these threats were voiced by hate groups long before July 5th, while “Tbilisi Pride” had asked for the safety both publicly and at the meetings with the government. Hence, the State could not or did not provide an environment safe from the homophobic groups in which to conduct the “March for Dignity”, i.e. the State could not or did not ensure the exercise of the freedom of assembly for the LGBTQI+ community without discrimination on the grounds of the sexual orientation or gender identity. As a result, the organizers were forced to cancel the march.

Moreover, as mentioned earlier, statements of the government officials encouraged aggression, in contravention of the standard of the European Convention. In particular, the ECHR has stated that given the homophobic context in Georgia, the public authorities “had an obligation to take all possible measures, including making public statements prior to the demonstration, in order to unequivocally support a tolerant, peaceful position and to warn potential offenders of the nature of possible sanctions that should have been expected”<sup>173</sup>. Similarly, in another case of religiously motivated violence against Jehovah’s Witnesses, the ECHR found that Georgia, as a respondent, violated its conventional obligation by turning a blind eye to the violence<sup>174</sup>. This obligation was not fulfilled by the State on July 5th 2021 either, which is why the government received several critical assessments. For example, according to the MEPs “the Georgian authorities and religious representatives failed to speak loud and clear against homophobic rhetoric in the run-up to the Pride March. We deplore the Georgian government’s lack of readiness to guarantee the safety of this gathering devoted to tolerance”<sup>175</sup>.

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170 Ibid, §99.

171 Ibid.

172 Ibid, §100.

173 Ibid, §99.

174 Decision of the European Court of Human Rights, October 7th 2014, on the CASE OF BEGHELURI AND OTHERS v. GEORGIA, § 121, 145-146.

175 Joint statement by: the Chair of the Delegation for relations with the South Caucasus, MEP Marina KALJURAND, the European Parliament’s Standing Rapporteur on Georgia, MEP Sven MIKSER, and - the DEG Lead Member for Georgia, MEP Viola von CRAMON TAUBADEL on the cancellation of the Tbilisi Pride Strasbourg, 6 July 2021, <https://bit.ly/3irpLYu> [Last seen 23.07.2021]; MEPs Call on Gov’t to Protect Tbilisi Pride Activists: <https://civil.ge/archives/429602> [Last seen 15.08.2021]; MEPs denounce violence in Tbilisi: <https://www.radiotavisupleba.ge/a/31345556.html> [Last seen 16.08.2021].

Similarly, according to the letter from the EU Delegation to Georgia and the Heads of Missions of EU Accredited Countries “authorities did not call publicly for the protection of those peacefully marking Pride events, take other necessary actions to prevent or deter hate driven speech or, in the end, provide sufficient protection as violent acts against activists and journalists were carried out”<sup>176</sup>. Additionally, Amnesty International’s Deputy Director for Eastern Europe and Central Asia has stated, „The Georgian authorities are responsible for failing to ensure their safety and their rights to freedom of expression and peaceful assembly. Instead of planning for this turn of events and providing a robust response to violence, the government deployed inadequately small numbers of policemen who were only reacting to violent attacks, rather than providing an organized protection for LGBTI activists. The authorities have the nerve to put the responsibility for these homophobic attacks on Pride organizers, by urging them to cancel the event rather than offering protection”<sup>177</sup>.

Based on the legal assessment provided above, Georgian authorities have violated the freedom of assembly - positive obligations set forth in Article 21.1 of the Constitution of Georgia and Articles 11 and 14 of the European Convention.

### **3. Violation of the paragraphs 1 and 2 of Article 17 of the Constitution of Georgia and Article 10 of the European Convention**

#### **a) The guarantees covered and the standard for assessment**

According to Article 17.1 of the Constitution of Georgia, “Freedom of opinion and the expression of opinion shall be protected”<sup>178</sup>, Article 17.2 further states that “Every person has the right to receive and impart information freely, 179 while Article 17.3 states that “Mass media shall be free”<sup>180</sup>. Freedom of expression is of a fundamental importance and has an essential function, as “unimpeded dissemination of ideas and information ensures diversity of views, facilitates public and informed discussion of issues important to the society, enables involvement of every member of the society in public life”<sup>181</sup>. Accordingly, freedom of expression is the foundation of a democratic society, a condition for its development and the development of its each individual<sup>182</sup>. Article 17 of the Constitution provides for the free dissemination and receipt of information from publicly available sources and the carriers of information<sup>183</sup>. Namely, according to the Constitutional Court of Georgia, “Article 17 of the Constitution of Georgia guarantees not only the right of a person to freely disseminate opinions, information, views, but also the means necessary for the expression of opinions, views, dissemination and reception of information. These include, inter alia, print media, broadcast media, radio and television broadcasting, as well as other means of disseminating information and opinion”<sup>184</sup>. Freedom of the media protects society from the suppressed informational vacuum typical to the dictatorial and repressive regimes, as “means of mass media are one of the central, large-scale and effective platforms necessary for the formation of an opinion, for the free reception and dissemination of the information by public and individuals.

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176 See Footnote N95.

177 Georgia: The authorities’ failure to protect Tbilisi Pride once again encourages violence: <https://www.amnesty.org/en/latest/news/2021/07/georgia-the-authorities-failure-to-protect-tbilisi-pride-once-again-encourages-violence/> [Last seen 15.08.2021].

178 Article 17.1 Constitution of Georgia.

179 Ibid, Article 17.2

180 Ibid Article 17.3

181 Decision of the Constitutional Court of Georgia N2/6/1311, December 17 2019, in the case of “Ltd. “Stereo +”, Luka Severin, Lasha Zilfimiiani and Robert Khakhalev v. Parliament of Georgia and the Minister of Justice of Georgia”, II-§54.

182 Ibid.

183 Ibid, II-§57.

184 Ibid, II-§56.

It is the smooth, autonomous, proper and independent operation of the means of mass media that ensures practical and effective realization of freedom of thought and expression by the society and each individual<sup>185</sup>. According to the Constitutional Court, a state cannot be successful without independent, free media<sup>186</sup>.

Similar to the interpretation of the Constitutional Court, the ECHR recognizes freedom of expression guaranteed by Article 10 of the European Convention as one of the foundations of a democratic society and as a precondition for the development and advancement of a democratic society and of each individual<sup>187</sup>. Pursuant to Article 10.1 of the Convention: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises"<sup>188</sup>. According to the ECHR, this provision "is applicable not only to information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb"<sup>189</sup>. At the same time, according to the ECHR, media has an essential role in a democratic society<sup>190</sup>. In particular, its function is to disseminate ideas and information (on issues of public interest), therefore it serves the role of a so-called public watchdog while receiving this information and ideas is a right of the society<sup>191</sup>. According to the ECHR, effective exercise of freedom of expression "does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals"<sup>192</sup>. In particular, according to the ECHR, in addition to creating an effective system of protection for authors and journalists, states are obliged to create a safe and friendly environment for the discussions, that ensures everyone's (those to whom subject of the discussion is relevant) participation in public debates and the expression of opinions and ideas without fear even when these views contradict the views of state bodies, of a significant part of the society or are shocking or irritating to them<sup>193</sup>.

## b) Assessment

The above-mentioned positive obligation arising from the right to freedom of expression was violated by the Georgian government on July 5th 2021, when the authorities failed to ensure the safety of media representatives from hate and violent groups, that is, failed to ensure performance of journalistic activities by media in a safe and calm environment, i.e. fell short of securing enjoyment of freedom of expression. As noted above, the state did not have a timely and effective response when hate groups began threatening and attacking journalists directly, which was broadcasted live. The video footage, for example, shows the journalist of TV "Formula", Rati Tsverava, being attacked by the members of hate groups. According to him, he was dragged for several meters without police officers coming to his rescue and there was just one officer near the Kashveti church<sup>194</sup>. The

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185 Ibid, II-§58.

186 Decision N1/3/421,422 of the Constitutional Court of Georgia, 10 November 2009, in the case "Citizens of Georgia - Giorgi Kipiani and Avtandil Ungiadze v. Parliament of Georgia", II-§6.

187 Decision of the European Court of Human Rights, June 27th 2017, on the CASE OF SATAKUNNAN MARKKINAPÖRSSI OY AND SATAMEDIA OY v. FINLAND, §124.

188 Article 10.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

189 Decision of the European Court of Human Rights, June 27th 2017, on the CASE OF SATAKUNNAN MARKKINAPÖRSSI OY AND SATAMEDIA OY v. FINLAND, §124.

190 Decision of the European Court of Human Rights, March 29th 2005, on the CASE OF UKRAINIAN MEDIA GROUP v. UKRAINE, §38.

191 Decision of the European Court of Human Rights, June 27th 2017, on the CASE OF SATAKUNNAN MARKKINAPÖRSSI OY AND SATAMEDIA OY v. FINLAND, §§125-126.

192 Decision of the European Court of Human Rights, March 16th 2000, on the CASE OF ÖZGÜR GÜNDEM v. TURKEY, §43.

193 Decision of the European Court of Human Rights, September 14th 2010, on the CASE OF DINK v. TURKEY, §137.

194 They were beating me without mercy... they wanted to kill me – Tsverava remembers the attack: <https://netgazeti.ge/news/552245/> [Last seen 17.08.2021]; "About 100 people were beating me and not a single policemen came" – what the beaten journalist of Formula is saying: <https://formulanews.ge/News/53043> [Last seen 17.08.2021].



government was almost inactive throughout the violence that has caused injury to at least 53 representatives of the media and damaged their equipment and the beaten cameraman of TV Pirveli, Aleksandre Lashkarava, died within several days after the attacks.

As stated above, the Georgian government received severe criticism. As noted by the EU Delegation to Georgia and the representatives of the diplomatic corps, as well as Amnesty International, the government failed to ensure the safety and adequate protection of journalists<sup>195</sup>. Similarly, an international human rights organization “Reporters Without Borders” has released a press release stating that, “Far-right activists physically attacked more than 50 journalists covering the counter-demonstrations against a Pride march in Tbilisi, the Georgian capital, on 5 July, while police failed to intervene. Reporters Without Borders (RSF) condemns the culpable passivity displayed by the authorities and calls for all those responsible for these illegal acts to be punished”<sup>196</sup>. Also, according to the Georgian Charter of Journalistic Ethics, “authorities have not taken appropriate measures to prevent violence, and in some cases statements of high-ranking government officials have further encouraged activities of the violent groups. The Ministry of Internal Affairs failed to protect journalists from physical violence on July 5th and has failed to ensure safe operation of the media”<sup>197</sup>. In this respect, a parallel can be drawn with the decision of the ECHR in the case of “CASE OF ÖZGÜR GÜNDEM v. TURKEY”, in which the respondent country’s authorities did not take adequate measures for the protection of the security of the applicant’s daily newspaper, despite knowing that several acts of violence had been committed against the applicant<sup>198</sup>. Consequently, Turkey breached its positive obligation by failing to ensure plaintiff’s enjoyment of freedom of expression<sup>199</sup>. Also, in the case of DİNK v. TURKEY the ECHR has found the respondent State to have breached its positive obligation under freedom of expression as it failed to protect applicant journalist from the attack by radical nationalist groups<sup>200</sup>.

Based on the legal assessment provided above, on July 5th 2021, Georgian authorities chose not to or failed to ensure adequate protection of the media representatives from violent hate groups and to secure a safe environment for the performance of journalistic activities. Accordingly, the State has violated the freedom of expression - the right guaranteed by Article 17.1, 17.2, 17.3 of the Constitution of Georgia and Article 10 of the European Convention.

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195 See Footnotes 95 & 177.

196 RSF: Attacks on 53 journalists is a major setback for press freedom in Georgia, RSF says <https://rsf.org/en/news/attacks-53-journalists-major-setback-press-freedom-georgia-rsf-says> [Last seen 15.08.2021].

197 The Georgian Charter of Journalistic Ethics: The question of the Government's political responsibility has to be raised <https://www.radiotavisupleba.ge/a/31352900.html> [Last seen 15.08.2021].

198 Decision of the European Court of Human Rights, March 16th 2000, on the CASE OF ÖZGÜR GÜNDEM v. TURKEY, § 44

199 Ibid, §46.

200 The Case of DINK v. TURKEY Review of the decision of the European Court of Human Rights of 14 September 2010: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-808%22%5D> [Last seen 15.08.2021].

On July 5th 2021, the Georgian government failed to provide effective protection for the LGBTQI+ community members, its supporters, activists, and members of the media from the hate groups. As a result, ordinary people, activists and journalists were physically injured, media equipment was damaged and the “March for Dignity” was disrupted. What is even more alarming is that the government not only failed to take effective defensive and preventative measures, but also encouraged violence and aggression with the use of the homophobic, anti-democratic statements against the “March of Dignity”. This encouraging effect continues as the organizers of the hate groups have not yet been arrested. As a result, there is a sense of impunity among those involved in violence, as well as a sense of insecurity and fear in society, especially amongst the LGBTQI+ community, activists and journalists. Therefore, the authorities violated freedom of expression and assembly and the positive obligation regarding the prohibition of degrading treatment.

Unfortunately, the events of July 5th were not the first time when the state failed to take appropriate measures to facilitate exercise by the LGBTQI+ community of freedom of assembly and expression. As already mentioned, the ECHR ruled that Georgia violated Articles 3 and 11 of the European Convention (in conjunction with Article 14) as back in 2012 when the state failed to protect LGBTQI+ activists from counter-demonstrators.<sup>201</sup> An event planned by the LGBTQI+ community on Rustaveli avenue was disrupted on an even larger scale on May 17th 2013, when members of a counter-demonstration organized by the Orthodox clergy broke the police cordon and physically assaulted LGBTQI+ community activists<sup>202</sup>. It is noteworthy that even then, the Patriarchate issued statements of a homophobic nature<sup>203</sup>. It should also be noted that back in 2013 the former Minister of Internal Affairs and the current Prime Minister Irakli Gharibashvili had a similar rhetoric and called the events of May 17th a provocation<sup>204</sup>. Furthermore, in the following year of 2014, activists staged an installation called “Protest of the Invisibles” in the Pushkin Square<sup>205</sup>, but were to unable to go out and demonstrate openly in public spaces due to safety threats<sup>206</sup>. This confirms that there was no expectation that the government would take effective protection. Interestingly, in 2014 the Patriarchate declared May 17th as the day of Family Holiness<sup>207</sup>, which in the following years has been celebrated as a counter-protest against the LGBTQI+ community. In May 2016, LGBTQI+ activists “stated that they would not hold a rally because the state is unable to protect their safety”<sup>208</sup>. In 2017, activists held a one-hour rally in front of the Government Chancellery, attended by pre-registered individuals and the participants were escorted to the scene by the police<sup>209</sup>. This indicates that activists were still unable to fully and freely exercise their freedom of expression and assembly. LGBTQI+ activists did not celebrate the Day against Homophobia and Transphobia on May 17th 2019 either and they were yet again forced to cancel the March for Dignity scheduled for July 8th, as Levan Vasadze and his supporters planned to violently suppress the July 8th rally (and promised to drag LGBTQI participants by the belts).<sup>210</sup> Nevertheless, activists held a rally in front of the MIA building, stating that “the MIA cannot ensure the security of the LGBTQI

201 Decision of the European Court of Human Rights May 12th 2015 on the CASE OF IDENTOBA AND OTHERS v. GEORGIA.

202 8 Years chronicle of 17th of May: <https://bit.ly/3eAj0Y2> [Last seen 15.08.2021].

203 “This is the same as liking the behavior of a drug addict...” – the Patriarch is asking for the cancellation of the permission of the May 17th demonstration: <https://www.kvirispalitra.ge/public/17120-es-igivea-mogtsondes-narkomanis-qmedeba-patriarqi-17-maisis-aqciaze-nebarthis-gauqmebas-ithkhovs.html> [Last seen 16.08.2021].

204 Garibashvili: I know who stood behind the May 17th provocation: <https://tabula.ge/ge/news/553786-gharibashvili-me-vitsi-vin-idga-17-maiss> [Last seen 15.08.2021].

205 How the day of fight against homophobia was celebrated in Georgia – chronology of May 17th: <https://bit.ly/3xQDcXt> [Last seen 16.08.2021].

206 See Footnote N202

207 Ibid.

208 9 Years of 17th of May in Georgia: <https://tabula.ge/ge/news/646487-17-maisis-9-celi-sakartveloshi> [Last seen 15.08.2021].

209 See Footnote 205.

210 See Footnote N208.

community and cannot guarantee security when cooperating with violent the groups”<sup>211</sup>.

The chronology described above and the events of July 5th 2021 confirm the existence of a violent cycle in the country where members and supporters of the LGBTQI+ community are not given the opportunity to fully enjoy their fundamental human rights in breach of the Constitution of Georgia and Georgia’s international obligations. **This closed circle is formed by ultranationalist, radical, pro-Russian hate groups, the clergy and the government itself, the latter having no real interest and will to break the cycle. Consequently, the government is neglecting and violating constitutional and international obligations.**

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211 Ibid.