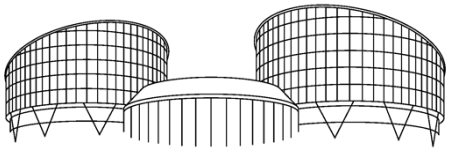

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF AGHDGOMELASHVILI AND JAPARIDZE v. GEORGIA

(Application no. 7224/11)

JUDGMENT

Art 14 (+3) • Discrimination • Degrading treatment • Abusive police conduct during search of premises of an LGBT NGO motivated by homophobic and/or transphobic hatred • Wilful humiliation and debasement with the use of hate speech and insults • Threats to use physical force and to divulge the applicants' sexual orientation to the public • Unrecorded and unjustified strip-searches • Lack of effective investigation

STRASBOURG

8 October 2020

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

In the case of Aghdgomelashvili and Japaridze v. Georgia,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Lado Chanturia,
Anja Seibert-Fohr,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Georgian nationals, Ms Ekaterine Aghdgomelashvili ("the first applicant") and Ms Tinatin Japaridze ("the second applicant"), on 25 January 2011;

the decision to give notice to the Georgian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 15 September 2020,

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

INTRODUCTION

1. The application concerns the applicants' allegedly discriminatory ill-treatment by the police (on the grounds of their actual and/or perceived sexual orientation and gender identity) and the purported absence of an effective domestic investigation capable of, amongst other things, unmasking the role which homophobic and/or transphobic motives played in the ill-treatment. The applicants rely on Articles 3, 8 and 14 of the Convention and Article 1 of Protocol No. 12.

THE FACTS

2. The first and second applicants were born in 1969 and 1979 respectively and live in Tbilisi. They were successively represented by a group of three Georgian lawyers and one British lawyer (Mr L. Tchintcharauli, Ms A. Tvaradze, Ms S. Japaridze and Ms J. Sawyer), and then by a group of four British lawyers (Mr Ph. Leach, Ms J. Evans, Mr J. Gavron and Ms K. Levine).

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

4. The first applicant is a co-founder of a lesbian, gay, bisexual and transgender (LGBT) non-governmental organisation (NGO) in Georgia – the Inclusive Foundation (IF). Its goal is to promote the integration of the LGBT community in Georgia through advocacy and by overcoming homophobia and increasing the civil activity of the group. At the time of the events described below (see paragraphs 6-17 below), the first applicant was working at the IF as a part-time programme manager, and was acting head of the organisation in the absence of its director, whilst the second applicant was working there as a programme officer in charge of office administration.

5. The facts of the case, as submitted by the applicants and not disputed by the Government, may be summarised as follows.

I. CIRCUMSTANCES SURROUNDING THE INCIDENT OF 15 DECEMBER 2009

A. General description of the incident, summarised on the basis of the witnesses' written statements

6. On 15 December 2009 approximately eight to ten women gathered in the IF office in Tbilisi to make preparations for an upcoming art exhibition. They were working in the office kitchen. P.S., the director of the IF, was also present.

7. At approximately 6-7 p.m. someone rang the doorbell. As soon as the door was opened, up to seventeen men and women, all dressed in civilian clothing, rushed into the office. Presenting themselves as police officers, the intruders asked for P.S. and isolated him in a separate room for questioning. All the women in the kitchen were ordered to go to the meeting room. Only A.M., a male-to-female transsexual person, was left in the kitchen, as the police seemed to be confused as to her gender. The police officers announced that they were there to conduct a search of the IF office. They did not show a search warrant or any other judicial order, despite the repeated requests which were voiced by the women present in the office.

8. It was apparent at the beginning of the search that the police did not know about the specific nature of the NGO. The police officers became progressively aware of it in the course of the search, observing various posters on the office walls which were depicting homosexual couples. They started asking about the IF's activities and, having realised that they had entered the premises of an LGBT organisation, suddenly became aggressive and started displaying homophobic behaviour. The police officers started referring to the women in the meeting room as "not Georgians", "sick people" and "perverts who should receive medical treatment". Referring to P.S., the police officers wondered what the women present in the IF office had in common with that "faggot".

9. Some of the police officers threatened to reveal the sexual orientation of the women gathered in the office to the public, and to their parents and relatives. They also threatened to hurt their family members. The officers said that they wished those in the office were men, because in that case they would use physical force on them. One of the police officers ripped a poster which depicted two men embracing off the wall in the meeting room and tore it to pieces, adding that he would burn the place down if he had matches. Assuming that A.M. was male (see paragraph 7 above), male police officers tried to make friends with her and enquired sarcastically whether the women in the meeting room were interested in men at all.

10. During the search, cannabis was found inside the office desk of P.S., the director of the NGO. He was then arrested and immediately transferred to a police station for further questioning. Subsequently, he was charged with a drug offence, to which he confessed, and under the terms of a plea bargain he was released on the condition that he pay a fine.

11. At about 10.30 p.m., again without providing any explanation or informing the women present in the IF office of their rights, the police officers announced that some of them had to be strip-searched. A.M. and two other women were the only people not to be searched. The strip-searches were conducted in the office toilet by the female police officers. Most of the women were searched in groups of two to three, and some of them were asked to take off their underwear. They stood barefoot on the cold floor, while the police officers who were carrying out the searches made denigrating remarks such as "dykes". All the women concerned felt that in reality the strip-searches were carried out to humiliate them, as the police officers carrying out the searches paid little attention to the clothes that they asked the women to remove.

12. Before releasing the women, including the applicants, at about 11.30 p.m. the police wrote down their names and dates of birth, but did not ask them to sign anything. There has never been any suggestion that the applicants or the other women present in the office on that day were involved in the drug offence of which P.S. was subsequently convicted (see paragraph 10 above).

B. The first applicant's account of her individual situation during the incident of 15 December 2009

13. The first applicant arrived at the office of the IF at about 8 p.m. on 15 December 2009. As soon as she opened the office door, she was pushed into the meeting room by a man in plain black clothes. After she had realised that the police were conducting a search of the office, she asked to be shown a search warrant. A senior police officer in charge of the search, who was later identified as D.K., replied that they were carrying out an investigative act based on intelligence, and that the police were not obliged

to produce a search warrant. D.K. then demanded that the first applicant hand him her mobile telephone. She refused, insisting that she had the right to make a call. D.K. then grabbed her hand and twisted her arm, and eventually was able to confiscate her mobile telephone.

14. The first applicant heard the police using expressions such as "perverts", "sick people" and "dyke". When she saw the ripped poster, she asked who had done that. D.K. responded that it had been him and he had done it because he wanted to.

15. The first applicant was then subjected to a strip-search by two female police officers in the office toilet, on her own. At no point was she informed about the reasons for that. The first applicant felt that the strip-search was carried out to humiliate her, because although she was ordered to undress down to her underwear, the police officers did not search the clothes which she took off. While in the toilet, the police officers kept making various insults towards the women (see paragraphs 8 and 11 above). The comments of the police officers and the whole situation made the first applicant feel humiliated. She spent about five minutes in the toilet. No record of the strip-search was drawn up, and she was not asked to sign any other document.

C. The second applicant's account of her personal situation during the police raid of 15 December 2009

16. The second applicant arrived at the IF office at about 9 p.m. She already knew from a friend that the police were in there. When she entered the office she saw that everything was a mess: the furniture had been moved, the piano dismantled and some other objects were scattered on the floor. There were a lot of unfamiliar people in civilian clothes walking around, talking on their mobile telephones or just sitting around. One of the police officers forced the second applicant into the meeting room against her will, where she noticed that some of the women were terrified and crying. Once there, the second applicant found out that the police officers had found some drugs in the office.

17. The second applicant was then strip-searched, together with her sister, by two female police officers in the toilet. Like the first applicant (see paragraph 15 above), she too felt that the strip-search was carried out to humiliate her and her sister, because although they were ordered to undress, the police officers did not properly check the clothes which they took off. The second applicant spent about five minutes in the toilet. No record of the strip-search was drawn up, and she was not asked to sign any other document.

II. INVESTIGATION INTO THE ALLEGED POLICE ABUSE ON 15 DECEMBER 2009

18. On 9 January 2010 the applicants filed a complaint with the Chief Public Prosecutor's Office ("the CPPO"), the Tbilisi city public prosecutor's office ("the Tbilisi Prosecutor") and the head of the General Inspectorate of the Ministry of Internal Affairs ("the General Inspectorate of the MIA"), listing the abuses of power committed by the police officers during the search of the IF office and requesting that the authorities look into the matter and respond accordingly.

19. On 12 and 22 January 2010 respectively the applicants' letter of 9 January 2010 was forwarded to the Tbilisi Prosecutor by the CPPO and the General Inspectorate of the MIA for further inquiry.

20. On 8 February 2010 the applicants enquired with the General Inspectorate of the MIA and the CPPO about the complaint which they had submitted on 9 January 2010. They explicitly requested that the investigating authorities take into consideration the influence that the women's perceived sexual orientation and gender identity had had on the police behaviour.

21. On 19 April 2010 the applicants asked the Tbilisi Prosecutor to grant them victim status; they also asked to be questioned.

22. On 25 June 2010 the applicants enquired with the Tbilisi Prosecutor as to why there had been no reply to their previous complaints. The applicants once again drew the prosecutor's attention to the violations of both the domestic law and the Convention which had occurred during the search. They asked whether an investigation had been initiated on the basis of their complaint of 9 January 2010, and demanded that an inquiry be launched immediately if not. They also requested that they be granted victim status and questioned together with the other women who had been present in the IF office during the police raid of 15 December 2009. Detailed written statements of both the applicants and the eyewitnesses, describing in detail the police abuse, were attached to the letter.

23. On 16 March 2011 the applicants wrote to the Tbilisi Prosecutor again. They referred to all the previous communications with the law-enforcement authorities, noting that there had been no replies to any of them. The applicants once again reminded the prosecutor of the positive obligation under both the domestic legislation and the Convention to carry out an effective investigation capable of leading to the prosecution and punishment of those responsible for treatment contrary to Articles 3, 8 and 14 of the Convention.

24. On 14 April 2011 the applicants received a letter from the Tbilisi Prosecutor informing them that an investigation into the case was ongoing under Article 333 of the Criminal Code of Georgia (abuse of official powers). As the letter did not give the date when the investigation had

commenced, or provide any information on the particular investigative measures which had been implemented, the applicants made an additional enquiry with the Tbilisi Prosecutor on 27 May 2011.

25. On 28 June 2011 the applicants received a further letter from the Tbilisi Prosecutor, reiterating that a pre-trial investigation into the case was ongoing under Article 333 of the Criminal Code of Georgia. The letter stated "a range of early investigative measures have already been implemented in relation to this criminal case. Other pertinent investigative measures are planned and will be implemented, for the purpose of a thorough investigation". No other information was provided.

26. According to the case file, the investigation into the possible abuse of power by the police officers has still not been concluded. The available case material does not indicate whether any other investigative measures have been carried out, apart from the measures mentioned above.

RELEVANT LEGAL FRAMEWORK AND INTERNATIONAL MATERIAL

27. The relevant domestic law and international material concerning the situation of the LGBT community in Georgia was comprehensively summarised in paragraphs 30-39 of the Court's judgment in the case of *Identoba and Others v. Georgia* (no. 73235/12, 12 May 2015).

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

28. The Government submitted a unilateral declaration, requesting that the Court strike the application out of its list of cases in accordance with Article 37 § 1 of the Convention. The applicants commented that the terms of the declaration did not offer sufficient redress.

29. In the light of the criteria established in its jurisprudence, the Court considers that the unilateral declaration submitted by the Government does not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). Hence, the Court rejects the Government's request to strike out the application, and will accordingly pursue its examination of the merits of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003‑VI).

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

30. The applicants complained under Article 3, cited both alone and in conjunction with Article 14 of the Convention: that the police officers had subjected them to ill-treatment during the search of the IF office on 15 December 2009; that no effective investigation into the police abuse had been conducted; and that those violations of the respondent State's negative and positive obligations had been conditioned by the relevant domestic authorities' discriminatory attitudes towards the applicants' actual and/or perceived sexual orientation and/or their LGBT-related activities. The cited provisions read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 14

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

A. Admissibility

31. The Government have not submitted any objection as regards the admissibility of the application.

32. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

33. Without challenging the facts surrounding the search conducted by the police in the IF office on 15 December 2009 as submitted by the applicants (see paragraphs 6-17 above), and without suggesting an alternative account of the events in question, the Government limited their defence to arguing that the conduct of the police officers had not reached the requisite threshold of severity under Article 3 of the Convention.

34. The applicants replied that there existed a combination of sufficient and relevant factors – physical and mental abuse against them with clear discriminatory intent based on sexual orientation and/or gender identity – which rendered the treatment inflicted on them sufficiently severe to attain the relevant threshold under Article 3 of the Convention. They

further maintained their complaint that the respondent State had failed to comply with procedural obligations, emphasising that the investigation into the police abuse had been ongoing since 2011 (see paragraph 24 above) and had not made any progress.

2. The Court's assessment

(a) Scope of the case

35. The Court considers that the State's international responsibility for violence committed by its agents which is motivated by hatred, and its duty to investigate the existence of a possible link between a discriminatory motive and an act of violence, may respectively fall under the substantive and procedural aspects of Article 3 of the Convention, but may also be seen to form part of the State's obligations under Article 14 of the Convention to secure the fundamental values enshrined in Article 3 without discrimination (see, for instance, *Bekos and Koutropoulos v. Greece*, no. 15250/02, §§ 45-55 and 63-75, ECHR 2005-XIII (extracts), and *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, §§ 139-151 and 156-157, 27 January 2015). Owing to the interplay of the two provisions, issues such as those in the present case may indeed fall to be examined under only one of the two provisions, with no separate issue arising under the other, or may require simultaneous examination under both Articles. This is a question to be decided in each case in the light of its facts and the nature of the allegations made (see *Identoba and Others*, *v. Georgia*, no. 73235/12, § 63, 12 May 2015 and *B.S. v. Spain*, no. 47159/08, §§ 59‑63, 24 July 2012).

36. In the particular circumstances of the present case, in view of the allegations that the police abuse had homophobic overtones which were moreover overlooked by the authorities in the course of the ensuing investigation, the Court finds that the most appropriate way to proceed would be to subject the applicants' complaints to a simultaneous dual examination under Article 3 taken in conjunction with Article 14 of the Convention (see *Identoba and Others*, cited above, § 64, and *M.C. and A.C. v. Romania*, no. 12060/12, § 106, 12 April 2016). Furthermore, the Court considers it appropriate to start its examination of the merits of the application by first addressing the complaint about the inadequacy of the investigation and then turning to the question of whether the State can be held responsible for the purported ill-treatment.

(b) Alleged inadequacy of the investigation

(i) General principles

37. Having regard to the general duty on the State under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", the provisions of Article 3 require

by implication that there should be some form of effective official investigation where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands, inter alia, of the police or other similar authorities. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and – if appropriate – punishment of those responsible. This is not an obligation as to the results to be achieved, but the means to be employed. The authorities must take the steps reasonably available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context. In cases under Article 3 of the Convention, where the effectiveness of an official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements, and the length of time taken for the preliminary investigation (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 116 and 119‑123, ECHR 2015; *Mocanu and Others, Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 323, ECHR 2014 (extracts); and *Identoba and Others*, cited above, § 66). A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Tolerance by the authorities towards such acts cannot but undermine public confidence in the principle of lawfulness and the State's maintenance of the rule of law (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007).

38. When investigating violent incidents, such as ill-treatment, State authorities have a duty to take all reasonable steps to unmask possible discriminatory motives, which the Court concedes is a difficult task. The respondent State's obligation to investigate possible discriminatory motives for a violent act is an obligation to use best endeavours, and is not absolute. The authorities must do whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII; *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, cited above,

§§ 139-42; and *Mudric v. the Republic of Moldova*, no. 74839/10, §§ 60-64, 16 July 2013).

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

39. The Court observes that on 9 January 2010 the applicants lodged a criminal complaint concerning the police abuse and, a month later, explicitly asked the authorities to take into consideration the allegedly discriminatory aspects of the police behaviour (see paragraphs 18 and 20 above). However, the Government have not shown that a single investigative act was ever undertaken. In any event, to date, the investigation into the police abuse has not produced any conclusive findings. Such a prohibitive delay is in itself incompatible with the State's obligation under Article 3 of the Convention to carry out an effective investigation, especially since the task of identifying the perpetrators of the applicants' alleged ill-treatment was far from arduous (compare, for instance, *M.C. and A.C.*, cited above, §§ 121-2, and *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, cited above, §§ 118-124). Nor have the applicants been involved in the criminal investigation in any meaningful way, as they have not even been declared victims, despite their numerous requests to that end (see paragraphs 21 and 22 above, and compare, for instance, *Identoba and Others*, cited above, § 75, and *Begheluri v. Georgia*, no. 28490/02, § 140, 7 October 2014).

40. More importantly, the Court considers that the protraction of the investigation exposed the domestic authorities' long-standing inability – which can also be read as unwillingness – to examine the role played by homophobic and/or transphobic motives in the alleged police abuse. There was a pressing need to conduct a meaningful inquiry into the possibility that discrimination had been the motivating factor behind the police officers' conduct, given the well-documented hostility against the LGBT community in the country at the material time (see paragraph 46 below), and in the light of the applicants' complaints about the police officers' hate speech during the incident (compare with *Identoba and Others*, cited above, § 77, and *M.C. and A.C.*, cited above, § 124).

41. The Court thus finds that the domestic investigation into the applicants' allegations of ill-treatment with discriminatory intent by the police has been ineffective, since the Government has not demonstrated that a single investigative measure has ever been undertaken in practice. There has accordingly been a violation of Article 3 under its procedural limb read together with Article 14 of the Convention.

(c) Alleged ill-treatment

(i) General principles

42. The Court reiterates that Article 3 cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering. Hence, treatment can be qualified as "degrading" – and thus fall within the scope of the prohibition set out in Article 3 of the Convention – if it causes in its victim feelings of fear, anguish and inferiority, if it humiliates or debases an individual in the victim's own eyes and/or in other people's eyes, whether or not that was the aim, if it breaks the person's physical or moral resistance or drives him or her to act against his or her will or conscience, or if it shows a lack of respect for, or diminishes, human dignity (see *M.C. and A.C.*, cited above, § 108, with further references therein). Furthermore, where an individual is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity. The words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for because the severity threshold has not been attained. Since interference with human dignity strikes at the very essence of the Convention, any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention (see, for instance, *Bouyid*, cited above, §§ 100 and 101, and also *Zherdev v. Ukraine*, no. 34015/07, § 86, 27 April 2017).

43. In assessing evidence in relation to a claim of a violation of Article 3 of the Convention, the Court adopts the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems which use that standard. Its role is not to rule on criminal guilt or civil liability, but on Contracting States' responsibility under the Convention. In the proceedings before it, the Court imposes no procedural barriers on the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof is on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of

events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see *Bouyid*, cited above, § 83; *Nachova and Others*, cited above, § 147, ECHR 2005 VII; and *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004).

44. Finally, the Court emphasises that treating violence and brutality with discriminatory intent, irrespective of whether they are perpetrated by State agents or private individuals, on an equal footing with cases that have no such overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, for instance, *Begheluri*, cited above, §§ 173 and 179).

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

45. The Court observes at the outset that the applicants' version of the events that had unfolded during the search of the IF office by the police on 15 December 2009 was not only left uncontested, but can also be said to have been tacitly accepted by the Government, given that they objected to only the legal characterisation under Article 3 of the Convention of the facts submitted by the two applicants. That being so, and having further regard to the fact that the applicants' version of the events was also confirmed by the clear, concordant and similarly unrebutted statements made by the other eyewitnesses to the events in questions (see paragraph 6-12 above), the Court, drawing inferences from the available material and the parties' conduct, and in particular the domestic authorities' failure to investigate the incident (see paragraphs 39-41 above), finds that the facts as submitted by the applicants are sufficiently convincing and have been established beyond reasonable doubt (see, for instance, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 164-167, ECHR 2012).

46. It therefore remains to be determined whether the respondent State should be held responsible under Article 3, read in conjunction with Article 14 of the Convention, for the police abuse committed during the incident of 15 December 2009. In such an assessment, two interrelated questions are to be answered: (i) whether or not the impugned acts of the police officers reached the requisite threshold of severity to fall within the ambit of treatment proscribed by Article 3 taken in conjunction with Article 14 of the Convention; and (ii) whether or not homophobic and/or transphobic hatred was a causal factor in the impugned conduct of the police officers (see, for instance, *Identoba and Others*, cited above, § 71; *M.C. and A.C.*, cited above, § 119; *Ciorcan and Others*, cited above, § 160; and *Bekos and Koutropoulos*, cited above, § 64).

47. The Court has no hesitation in answering both questions in the affirmative, in the light of the police officers' conduct during the search of

the IF's office on 15 December 2009. The police officers wilfully humiliated and debased the applicants, as well as their colleagues, by resorting to hate speech, by uttering insults such as "sick people", "perverts" and "dykes" for everybody present in the office to hear. In addition to those personal insults against the applicants, the behaviour of certain police officers also contained elements of threat. The officers grossly mistreated the people gathered in the IF office, including the two applicants, – who all belonged to the LGBT community which found itself in a precarious situation in the country at the material time (see *Identoba and Others*, cited above, § 68) – by promising to divulge their actual and/or perceived sexual orientation to the public and by saying that they were on the brink of resorting to physical violence against them. The threat to use physical force was followed by one of the police officers saying that he wished he could burn the place down, as well as by the forcible seizure of the first applicant's mobile telephone by another officer (see paragraphs 9 and 13 above).

48. The Court is particularly concerned by the fact that the applicants and some of their colleagues were subjected to strip-searches in the toilet of the IF office (see paragraphs 11, 15 and 17 above). No record or any other document on those intrusive investigative techniques was ever drawn up; the police did not give the applicants any reasons for those strip-searches, and the respondent Government have not referred to any reasons in their submissions. Taking those factors into account, the Court shares the applicants' view that those searches did not have any investigative value whatsoever, and that their sole purpose was to make the applicants and the other women feel embarrassed and humiliated and thus punish them for their association with the LGBT community; the homophobic comments made by the female police officers in the course of the strip-searches can be taken as additional proof of the above-mentioned abusive purpose of the acts (see paragraphs 11 and 15 above).

49. In the light of the foregoing, the Court concludes that the wholly inappropriate conduct of the police officers during the search of the IF office on 15 December 2009 was motivated by homophobic and/or transphobic hatred and must necessarily have aroused in the applicants feelings of fear, anguish and insecurity which were not compatible with respect for their human dignity. Such conduct reached the threshold of severity within the meaning of Article 3 taken in conjunction with Article 14 of the Convention.

50. The foregoing considerations are sufficient to enable the Court to conclude there has been a violation of Article 3 under its substantive limb read together with Article 14 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Citing Article 8 of the Convention and Article 1 of Protocol No. 12 to the Convention, the applicants reiterated their grievances about their ill-treatment with discriminatory intent and the absence of an effective investigation thereof (see paragraph 30 above).

52. The Court notes that this part of the application relates to the matters already examined under Articles 3 and 14 of the Convention. Therefore it must be declared admissible. However, in the light of its previous findings on the merits of the matters at stake (see paragraphs 39-41 and 45-50 above), the Court considers that there is no need for a separate examination of the remainder of the application (see *M.C. and A.C.*, cited above, § 126).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

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

A. Damage

54. The applicants claimed 2,000 euros (EUR) each in respect of non-pecuniary damage. They further requested that the Court indicate to the respondent State that there was a need to conduct an effective investigation into the police abuse committed on 15 December 2009.

55. The Government submitted that the claim was excessive.

56. Having regard to considerations of fairness, the Court awards each of the applicants, as requested, EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

57. As regards the applicants' request that the additional measure be indicated to the respondent State, the Court reiterates that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress the effects in such a way as to restore as far as possible the situation existing before the breach (see, for instance, *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004‑I). Accordingly, in the light of the above-mentioned principles, the Court considers that, in the case at hand, it would be for the respondent State to choose, subject to supervision by the Committee of Ministers, the

exact means to be used in its domestic legal order to discharge its obligations under the Convention, including those in relation to the conduct of an effective criminal investigation (see, *mutatis mutandis*, *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 682 and 683, 31 May 2018).

B. Costs and expenses

58. The applicants claimed 1,750 pounds sterling (GBP – approximately EUR 2,070) in respect of the costs of their representation before the Court by one of their British lawyers (see paragraph 2 above). The amount was based on the number of hours which the lawyer had spent on the case (eleven hours and forty minutes) and the lawyer's hourly rate (GBP 150). No copies of the relevant legal service contracts, invoices, vouchers or any other supporting financial documents were submitted.

59. The applicants additionally claimed GBP 388.30 (approximately EUR 460) for postal expenses, translation expenses and other types of administrative expenses incurred by the same British lawyer. In that regard, they submitted a copy of the relevant invoices issued in the name of the lawyer.

60. The Government submitted that the claims were unsubstantiated and excessive.

61. The Court notes that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them. Accordingly, the fees of a representative who has acted free of charge are not actually incurred. The opposite is the case with respect to the fees of a representative who, without waiving them, has simply taken no steps to pursue their payment or has deferred it. The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the applicants did not submit documents showing that they had paid or were under a legal obligation to pay the fees charged by their British representative or the expenses incurred by him. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred (ibid., §§ 361-62, 364-65 and 372-73, and *Vazagashvili and Shanava v. Georgia*, no. 50375/07, §§ 105-108, 18 July 2019; and *G.S. v. Georgia*, no. 2361/13, § 110, 21 July 2015).

62. It follows that the claim must be rejected.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of the list;

2. *Declares* the application admissible;

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

4. *Holds* that there has been a violation of Article 3 under its substantive limb taken in conjunction with Article 14 of the Convention;

5. *Holds* that there is no need to examine the complaints under Article 8 of the Convention and Article 1 of Protocol No. 12 to the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President