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**Rule 9 (1) and Rule 9 (2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of A. D and others v. Georgia (App. nos. 57864/17, 79087/17 and 55353/19)**

**By**

**The European Human Rights Advocacy Centre (EHRAC), the Women's Initiatives Support Group (WISG), the Georgian Young Lawyers' Association (GYLA), ILGA-Europe and Transgender Europe (TGEU)**

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## SUMMARY OF THE SUBMISSION

1. This submission by the signatory organisations provides an update on the individual measures concerning first applicant A.D., as well as the most recent developments regarding general measures in this group of cases. We express our concern on Georgia's failure to take concrete, timely actions to implement the Court's judgment in the case of *A. D and others v. Georgia* (Application nos. 57864/17, 79087/17 and 55353/19), which found violations of the applicants' right to privacy due to a lack of efficient and accessible procedures for legal gender recognition in Georgia.
2. Despite the Court's ruling setting out deficiencies in the domestic legislative framework concerning legal gender recognition, Georgia has made no tangible progress in executing individual (except for payment of just satisfaction to the applicants) and general measures in this case. Quite the opposite, regressive legislative amendments have been introduced by the Georgian Parliament aimed to further restrict transgender people's rights in Georgia.
3. We provide specific recommendations to the Committee of Ministers to urge the Georgian authorities to take timely, concrete steps, with a clear timeframe, to comply with the Court's judgment and to refrain from the legal and political anti-LGBTI narratives in the country.

### I. Introduction

4. This Submission is communicated by the European Human Rights Advocacy Centre (EHRAC), the Women's Initiatives Support Group (WISG), the Georgian Young Lawyers' Association (GYLA), ILGA-Europe ("the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association") and Transgender Europe (TGEU) under Rules 9(1) and 9 (2) of the Rules of the Committee of Ministers (CM) for the supervision of the execution of judgments in the case of *A. D and others v. Georgia* (Application nos. 57864/17, 79087/17 and 55353/19), scheduled for examination at the 1507th DH meeting of the Ministers' Deputies on 17-19 September 2024. EHRAC, WISG and GYLA acted as legal representatives of the applicants in the proceedings before the Court.

5. This case addressed a violation of the applicants' right to privacy due to Georgia's failure to provide efficient and accessible procedures for legal gender recognition. Three transgender men sought to change their gender markers from female to male in official records, but their requests were denied by the LEPL Public Service Development Agency because they had not undergone medical sex reassignment procedures, as required by the Civil Status Act 2011. The applicants' subsequent appeals were unsuccessful, leading to Court's ruling that Georgia had violated their right to respect for private life by not offering a quick, transparent, and accessible process for legal gender recognition.
6. The Court affirmed that legal recognition of transgender individuals' gender identity falls under the right to respect for private life in Article 8. The Court found Georgian law lacked clarity on legal gender recognition procedures, particularly regarding medical requirements. This ambiguity in domestic law interpretation and imprecise legislation undermined the accessibility of legal gender recognition and granted excessive discretion to authorities, potentially leading to arbitrary decisions. The Court unanimously ruled that the inability of three transgender men to obtain legal recognition of their gender identity without undergoing physical gender-affirming medical procedures and Georgia's failure to provide efficient, transparent, and accessible processes for legal gender recognition violated Article 8 of the Convention.
7. This Submission complements previous Rule 9.1 submission of 10 April 2023 (the 2023 CSO submission)<sup>1</sup> and the Rule 9 (2) submission of 16 October 2023<sup>2</sup>, and provides an update since the last submission of 16 October 2023.

## **II. Execution of individual measures**

8. Further to the update on individual measures regarding all applicants in the earlier submissions, we provide additional information on the first applicant, A.D.
9. Following the Court's judgment, the first applicant A.D. approached the LEPL Public Service Development Agency on 6 July 2023 requesting legal gender recognition, specifically to amend the sex designation in their birth registration record from "female" to "male". The application was accompanied by a medical certificate diagnosing F64.0 Transsexualism. The Agency extended the review period several times and ultimately rejected A.D.'s request with decision N001223106346 dated 26 September 2023, on the grounds that no documentation evidencing biological "sex change" was presented.

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<sup>1</sup> Communication from the applicant (11/04/2023) in the case of A.D. and Others v. Georgia (Application No. 57864/17).

<sup>2</sup> Communication from NGOs (European Human Rights Advocacy Centre (EHRAC), Women's Initiatives Supporting Group (WISG) and Georgian Young Lawyers' Association (GYLA)) (16/10/2023) in the case of A.D. And Others v. Georgia (Application No. [57864/17](#))

10. A.D. appealed this decision with an administrative complaint to the same Agency on 3 October 2023. An oral hearing was held on 26 October 2023, where A.D. set out his complaints, including concerning problems he faces in his daily life due to the lack of legal gender recognition. Nevertheless, the Agency again rejected A.D.'s request with a decision, citing the same reason - the absence of medical documentation confirming sex reassignment (See Annex 1).
11. The first applicant's situation demonstrates that the practice addressed by the Court in its judgment continues, stemming from the absence of appropriate legal framework in Georgia. The Agency's decisions are based solely on the requirement for evidence of biological "sex change" and do not consider gender identity issues. See also examples of other similar cases in paragraph 13 below.

### **III. Execution of general measures regarding domestic mechanism for legal gender recognition**

#### ***Comments to the Government's action plan***

12. The Georgian Government's first Action Plan of 30 August 2023<sup>3</sup> indicates ongoing efforts to examine legislation and best practices regarding legal gender recognition, as well as the analysis of relevant ECtHR case law. While their willingness to engage with the Department for the Execution of Judgments is appreciated, there is an urgent need for more concrete action. Despite the *A.D. and Others* judgment, no legislative amendments or any other steps towards implementation of this judgment have been made, leaving trans persons facing arbitrary decisions and ad-hoc requirements for genital surgery when attempting to amend their gender markers, in violation of Article 8 of the Convention. Given the lack of substantive measures proposed by the Government to implement the decision, it is recommended that the Committee of Ministers provide precise guidance to the authorities on the necessary steps for implementation. The Government's previous Action Plan indicated efforts to examine legislation and best practices regarding legal gender recognition, as well as analysis of relevant ECtHR case law, however, as of today, no amendments to the Georgian legislation have been proposed. Quite the opposite, in April 2024, the Parliament of Georgia undertook legislative initiatives to adopt discriminatory laws prohibiting legal gender recognition (see paragraphs 14-16 below).

#### ***Other current examples of unsuccessful attempts to achieve gender recognition***

13. As noted in the submission of 16 October 2023, WISG is representing four trans individuals who are seeking to amend their gender marker before the LEPL Public Service Development. All of them have successfully managed to alter their name in official records. Alongside this change, they have provided the Agency with comprehensive

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<sup>3</sup> DH-DD(2023)1042

medical documentation. These documents attest to their diagnosis of "transsexualism" and detail the series of medical treatments they have undertaken. Such treatments encompass hormone therapy and a variety of surgical procedures. However, none of these individuals have had genital plastic surgery, which is commonly referred to as gender-affirming surgery. This demonstrates that the situation for persons in the same position as the applicants in *A.D. and Others* remains unchanged. Below we provide additional information to the one in the submission of 16 October 2023:

- On 6 July 2023, G.G. approached the LEPL Public Service Development Agency requesting legal gender recognition, specifically to amend the sex designation in their birth registration record from "female" to "male". The application was accompanied by medical certificates diagnosing F64.0 Transsexualism and documenting bilateral breast hypertrophy surgery. The Agency rejected G.G.'s request with decision N001223106331 dated 20 July 2023, on the grounds that no documentation evidencing the applicant's "anatomically male sex" could be presented. G.G. appealed this decision with an administrative complaint on 16 August 2023 (complaint number N145907). An oral hearing was held on 8 September. Nevertheless, the Agency again rejected G.G.'s request with decision N01/220412/G dated 15 September 2023, citing the same reason - the absence of documentation confirming biological-anatomical "sex change";
- On 11 July 2023, A.K. approached the LEPL Public Service Development Agency requesting legal gender recognition, specifically to amend the sex designation in their birth registration record from "male" to "female". The application was accompanied by a medical certificate diagnosing F64.0 Transsexualism. The Agency rejected A.K.'s request with decision N001223109213 dated 31 July 2023, on the grounds that no documentation evidencing biological (anatomical) "sex change" could be presented. A.K. appealed this decision with an administrative complaint on 31 August 2023 (complaint number N153945). An oral hearing was held on 22 September. Nevertheless, the Agency again rejected A.K.'s request with decision N01/231769/G dated 29 September 2023, citing the same reason - the absence of documentation confirming biological-anatomical "sex change".
- On 11 July 2023, N.G. approached the LEPL Public Service Development Agency requesting legal gender recognition, specifically to amend the sex designation in their birth registration record from "male" to "female". The application was accompanied by a medical certificate diagnosing F64.0 Transsexualism. The Agency rejected N.G.'s request with decision N001223109020 dated 20 September 2023, on the grounds that no documentation evidencing biological "sex change" could be presented. N.G. appealed this decision with an administrative complaint on 29 September 2023 (complaint number N171916). An oral hearing was held on 26 October. Nevertheless, the Agency again rejected N.G.'s request with a decision N01/257864/G dated 1 November 2023, citing the same reason - the absence of documentation confirming biological-anatomical "sex change".

- On 11 July 2023, D.D. approached the LEPL Public Service Development Agency with an application N001623108983 requesting legal gender recognition, specifically to amend the sex designation in their birth registration record from "female" to "male". The application was accompanied by a medical certificate diagnosing F64.0 Transsexualism. The Agency rejected D.D.'s request with decision N001223108983 dated 16 August 2023, on the grounds that no documentation evidencing biological (anatomical) "sex change" could be presented. D.D. appealed this decision with an administrative complaint on 13 September 2023. An oral hearing was held on 5 October. Nevertheless, the Agency again rejected D.D.'s request with decision N01/240712/G dated 11 October 2023, citing the same reason - the absence of documentation confirming biological-anatomical "sex change".

### ***Growing anti-gender and anti-trans rhetoric in Georgia***

14. The Government has yet to demonstrate a genuine commitment to addressing the human rights challenges faced by trans individuals in Georgia. Throughout 2023, an intensification of anti-gender rhetoric was observed, driven by governmental figures and influential religious entities. For example, a number of government representatives attended conservative conferences promoting "traditional values" and opposing LGBTQ+ rights, while members of the Parliament proposed removing "gender" references from key domestic legislation. Rather than legal advancements, recent developments in the Parliament of Georgia indicate a regression, with proposed constitutional amendments and draft laws aimed at prohibiting legal gender recognition and criminalizing trans-specific medical procedures (see paragraphs 17-19 below). While legal advancements may be on the horizon, they risk being undermined by the pervasive and aggressive anti-trans discourse prevalent in the country.
15. In stark contrast to the perspectives of political and religious factions, civil society organizations uniformly emphasize the need to address legal gender recognition. On 31 July 2023, various non-governmental organizations communicated their viewpoints to the Georgian Government about crucial matters proposed for inclusion in the Human Rights Action Plan. Foremost, among these concerns was the establishment of a swift, transparent, and accessible system for legal gender recognition. Notably, as of July 2024, a year after this communication, there has been no public response from the government regarding these recommendations. This lack of engagement appears inconsistent with the Georgian Government's Action Plan of 30 August 2023, which indicated willingness to examine legislation and best practices regarding legal gender recognition. The silence on this matter raises concerns about the government's commitment to implementing the Court's judgment and addressing the rights of transgender persons<sup>4</sup>. We believe that civil society groups with relevant expertise, such as WISG and GYLA, experience working with

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<sup>4</sup> Available in Georgian: <https://wisg.org/ka/news/detail/392>

and understanding the needs of the Georgian trans community, as well as international experts, should be involved in such review process. This inclusion is crucial, considering the Government's expressed willingness to explore cooperation avenues (para 5) and its consultation with the DEJ (para 4).

16. Further to the Government's silence on any tangible progress in this case, on 16 April 2024, 85 out of the 150 total members of the Georgian Parliament initiated constitutional amendments and a constitutional law "On the Protection of Family Values and Minors"<sup>5</sup>. On 4 June 2024, the Parliament initiated a new draft law with the same title<sup>6</sup>. The Parliament subsequently approved these proposals in the first reading with 78 votes<sup>7</sup>. These legislative initiatives, if adopted, would severely impede the implementation of the *A.D. and Others v. Georgia* judgment. Specifically, the draft law effectively prohibits legal gender recognition by forbidding the indication of a gender different from one's biological sex in any state-issued document. It also abolishes the legal basis for amending civil act records due to "sex change" (see paragraphs 17-18 below). This would not only prevent the establishment of the quick, transparent, and accessible procedure for legal gender recognition required by the Court's judgment, but would also eliminate the existing, albeit limited, practice of allowing gender marker changes after gender-affirming surgery. Thus, these proposed laws directly contradict the Court's ruling and would further violate the rights of transgender individuals in Georgia.
17. The draft law "On the Protection of Family Values and Minors" effectively prohibits legal gender recognition, as it forbids the indication of a gender different from one's biological sex in any state-issued document<sup>8</sup> and abolishes Article 78, paragraph "z" of the Georgian Law "On Civil Acts", which considers "sex change" as a basis for amending civil act records<sup>9</sup>. Consequently, this nullifies the established practice of the LEPL "Public Service Development Agency", according to which a trans person who undergoes gender reassignment surgery and presents a confirming certificate from a medical institution to the Public Service Development Agency can easily change the gender marker in their birth registration record without any additional examination<sup>10</sup>.
18. The draft law "On Protection of Family Values and Minors" in Georgia declares inadmissible any medical procedure<sup>11</sup> that some trans individuals undergo during the transition<sup>12</sup> process. The proposed ban does not extend to self-treatment, which trans

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<sup>5</sup> <https://parliament.ge/legislation/28353>

<sup>6</sup> <https://info.parliament.ge/#law-drafting/28703>

<sup>7</sup> Available at: [t.ly/VLpeo](https://t.ly/VLpeo)

<sup>8</sup> Article 6 of the draft law "On the Protection of Family Values and Minors".

<sup>9</sup> Article 1, paragraph 3 of the draft law "On Amendments to the Law of Georgia on Civil Acts".

<sup>10</sup> Bakhtadze K. Legal Gender Recognition in Georgia, WISG, Tbilisi, 2022, 15.

<sup>11</sup> Article 5 of the draft law "On Protection of Family Values and Minors" of Georgia.

<sup>12</sup> Transition is a process that many, but not all, transgender people go through to live authentically, in accordance with their gender identity. The transition process may include changing one's gender expression (such as name, clothing, hairstyle). Transition may also include biomedical and surgical interventions that serve to adapt an individual's anatomy to their gender identity (Bakhtadze K., Trans-specific Healthcare Services, WISG, Tbilisi, 2022).

people often resort to due to various barriers to accessing services, including financial barriers<sup>13</sup>. The proposed prohibition contradicts the Constitution of Georgia<sup>14</sup> and the practice of the European Court of Human Rights<sup>15</sup>. Furthermore, such a ban on medical services represents a case of discrimination based on gender identity in healthcare and contradicts the law "On the Elimination of All Forms of Discrimination".

19. Particularly alarming is the criminalisation of trans-specific medical procedures, which implies criminal liability for both the doctor and the medical institution, as well as for the trans person, in case of any medical intervention during the transition process, including gender confirmation surgery<sup>16</sup>. According to a 2019 ILGA-World report, direct or indirect criminalisation against the trans community exists in only 13 countries worldwide<sup>17</sup>.

#### **IV. Recommendations**

To adequately implement both individual and general measures under the case of *A.D. and others v. Georgia*, WISG, EHRAC, GYLA, ILGA-Europe and TGEU respectfully call on the Committee of Ministers to:

##### **Recommendations concerning Individual Measures:**

- I. Urge the Government to ensure that the LEPL Public Service Development Agency complies with the provisions of Article 78(g) of the Civil Status Act of 20 December 2011 in that gender confirmation surgery is not a prerequisite for legal gender recognition, and to amend the gender marker of the first Applicant A. D. accordingly.**

##### **Recommendations concerning General Measures:**

- I. Schedule the case for the next examination at the Committee's earliest convenience;**
- II. Express serious concern about the failure to execute the judgment promptly, fully and effectively;**
- III. Urge the Georgian Parliament to immediately withdraw the constitutional draft law on the Protection of Family Values and Minors and the draft law on the Protection of Family Values and Minors, effectively forbidding legal gender recognition, and cease all further actions towards adoption of such regressive anti-LGBTI laws;**

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<sup>13</sup> Bakhtadze K., *Trans-specific Healthcare Services*, WISG, Tbilisi, 2022, 16-17.

<sup>14</sup> Bakhtadze K., *Trans-specific Healthcare Services*, WISG, Tbilisi, 2022, 19-20.

<sup>15</sup> *L. v. Lithuania*, no. 27527/03, ECHR 2007-IV.

<sup>16</sup> Article 1, Paragraph 2 of the draft law "On Amendments to the Criminal Code of Georgia".

<sup>17</sup> These countries are: Brunei, the Gambia, Indonesia, Jordan, Kuwait, Lebanon, Malawi, Malaysia, Nigeria, Oman, South Sudan, Tonga, and the United Arab Emirates. *TRANS LEGAL MAPPING REPORT*, ILGA-World, 2019, 10.



- IV. Urge the Georgian Government to present an action plan that is realistically detailing the swift adoption of a legal gender recognition law aligned with Council of Europe standards, of being quick, transparent, accessible, and based on self-determination. This plan should also include a roadmap specifying how they intend to address and overcome the highlighted human rights challenges, along with a set deadline for its realization:**
- **Developing and adopting a comprehensive legal framework for legal gender recognition based on self-determination;**
  - **Eliminating requirements for medical procedures or diagnoses as prerequisites for legal gender recognition;**
  - **Ensuring the process is quick, transparent, and accessible;**
  - **Training relevant administrative staff on the new procedures;**
  - **Implementing public awareness campaigns to combat discrimination against transgender individuals.**
- V. Urge the Georgian Government to ensure that the new legal gender recognition procedure is based on self-determination devoid of any medical pre-requisites such as medical checks, age limits, gender-affirming surgery, hormonal treatment or binary gender restrictions, and eliminate notary-related barriers;**
- VI. Request the Georgian Government to ensure that LGBTI community organizations and CSOs with relevant expertise and experience with the Georgian trans community are included in every phase related to the development or effective implementation of any law or administrative procedure.**

On behalf of the signatory organisations,

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