

IN THE EUROPEAN COURT OF HUMAN RIGHTS

V.D. v. Russia  
(Application no. 57893/19)

WRITTEN COMMENTS

Submitted jointly by  
The AIRE Centre  
ILGA-Europe (The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association)  
The ICJ (The International Commission of Jurists)  
UKLGIG (UK Lesbian & Gay Immigration Group)

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## Summary of submissions

1. The Interveners submit the following:
  - I. Under European and international law, standards and jurisprudence, bisexuality is an aspect of one's sexual orientation. The right to protection against harm or discrimination does not differ depending on which aspect of sexual orientation is examined. The specificity of bisexual experience requires that invisibility and underreporting of abuses against this group in particular, in addition to the harms suffered by LGBTI persons in general, be actively taken into account when assessing objective conditions and the risk of exposure to serious harm or discrimination.
  - II. Discrimination on the basis of sexual orientation may constitute a breach of Article 3 in conjunction with Article 14 if its impact passes the necessary threshold of severity. The obligation not to extradite a person to a country where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 therefore entails that States must not extradite an LGBTI person to a country where, in detention, they face a real risk of being subjected to discrimination on the basis of sexual orientation in violation of Article 3 taken in conjunction with Article 14. Further, LGBTI people constitute a "vulnerable group" who are more at risk of suffering treatment in violation of Article 3; including discrimination and other forms of direct ill-treatment, such as physical violence and subjection to inhuman conditions in a prison or detention setting, and whose "vulnerability" as a result of their sexual orientation or gender identity must be taken into account when assessing whether the harm they risk would pass the Article 3 severity threshold. The impact of discrimination and other forms of direct treatment must be considered cumulatively.
  - III. It is not permissible under Article 3, taken alone or in conjunction with Articles 8 and 14, to extradite a bisexual person to a country in which, while they are detained, they will face discriminatory and/or physically violent treatment in breach of Article 3 and not be able to obtain practical and effective protection against such a breach of Article 3. To ensure practical and effective protection of these rights, there can be no expectation that bisexuals abandon or conceal part of their identity to avoid harm or discrimination. <sup>1</sup> Practical and effective protection means that there must be domestic laws in place prohibiting discrimination on the basis of sexual orientation, and effective systems in place to ensure that complaints of discriminatory treatment (whether committed by the authorities or by fellow inmates) are investigated and sanctioned. Prison authorities in the receiving country must also take practical and effective preventive measures to protect LGBTI individuals from discrimination, where they are aware that they face a risk of treatment in breach of Article 3.
  - IV. The widespread discriminatory practices against lesbian, gay, bisexual and trans people in Belarus, and the absence of specific legal protections against discrimination on the basis of sexual orientation, provide important contextual information in analysing the present case.

### I. Introduction: Bisexuality as an aspect of one's sexual orientation in the context of assessment of risk of serious harm

2. The Interveners draw on the jurisprudence of this Court, the writings of the Council of Europe<sup>2</sup>, the international protection guidelines issued by the UNHCR<sup>3</sup>, global dialogues<sup>4</sup>, and their expertise to define bisexuality as sexual orientation that entails physical, romantic and/or emotional attraction to more than one gender. This Court has repeatedly asserted that there is no ambiguity about member States' recognition of the rights of individuals to openly identify themselves as gay, lesbian or any other sexual minority<sup>5</sup>. There is no doubt that sexual orientation, including bisexuality, is central to one's experience of self: it is "a fundamental facet of an individual's identity"<sup>6</sup>.

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<sup>1</sup> *I.K. v. Switzerland*, no. 21417/17, §24; *B and C v Switzerland*, nos.889/19 and 43987/16, §57

<sup>2</sup> [Human Rights and Gender Identity, Issue Paper](#) published by the Commissioner for Human Rights, 29 July 2009: [Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe](#), Background Document, conducted under the auspices of the Commissioner for Human Rights of the Council of Europe October 2011

<sup>3</sup> The UNHCR [Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 23 October 2012, HCR/GIP/12/01, (hereafter: the UNHCR SOGI Guidelines).

<sup>4</sup> OHCHR [Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law](#), 2019, HR/PUB/12/06/Rev.1, p.6, Yogyakarta Principles and YPs +10

<sup>5</sup> See *Zhdanov and Others v. Russia*, no. 12200/08, §154; *Beizaras and Levickas v. Lithuania*, no. 41288/15, §119 and *Alekseyev v. Russia*, no. 4916/07, §84

<sup>6</sup> *I.K. v. Switzerland*, no. 21417/17, §24; *B and C v Switzerland*, nos.889/19 and 43987/16, §57, see also: [Resolution 1728 \(2010\), Discrimination on the basis of sexual orientation and gender identity](#) where the Parliamentary Assembly recalls that: "sexual orientation, which includes heterosexuality, bisexuality and homosexuality, is a profound part of the identity of each and every human being."

3. In terms of the right to protection against discrimination and serious harm there is no difference between different aspects of sexual orientation<sup>7</sup>. This Court has acknowledged that abuse, discrimination or policies aimed at same-sex couples will impact bisexuals as well as gay and lesbian people<sup>8</sup>. Nevertheless, the experience of bisexuals is different.<sup>9</sup> As well as the harms suffered by gay and lesbian people, bisexuals also suffer bi-specific harms and heightened risks<sup>10</sup>, such as higher stigma, poverty, exclusion and negative mental health outcomes when compared to heterosexual or gay and lesbian populations<sup>11</sup>. They suffer from double exclusion as their sexual orientation is disputed and dismissed by prejudiced heterosexual, as well as some lesbian and gay groups<sup>12</sup>.
  4. Moreover, any discrimination or abuses suffered by bisexuals will frequently be underreported. Under-reporting of abuses in LGBTI populations is a global phenomenon, and it is within that context that there is a shortage of information about bisexuals specifically<sup>13</sup>. As UKLGIG has noted, “in many countries where homophobia and biphobia are deeply embedded, it is likely that there will be little or no evidence of the State refusing to provide protection, because few people, if any, would consider seeking such protection in the first place. In fact, the greater the risk of persecution on the grounds of sexual orientation, the more difficult it may prove to obtain such evidence”<sup>14</sup>. The negation of the existence of bisexuality and the lack of mechanisms by which to report or collect evidence on attacks or abuse against LGBTI people can lead to acts of violence and discrimination against bisexuals being condoned and perpetrated with impunity<sup>15</sup>.
  5. **The intervenors therefore submit that under European and international law, standards and jurisprudence, bisexuality is an aspect of one’s sexual orientation. The right to protection against serious harm or discrimination applies to everyone, irrespective of their sexual orientation, whether heterosexual, homosexual or bisexual. The specificity of bisexual experience requires that invisibility and underreporting of abuses against this group in particular, in addition to the harms suffered by LGBTI persons in general, be actively taken into account when assessing objective conditions and the risks of serious harm or discrimination faced by bisexual individuals.**
- II. **The obligation to consider the particular risks that individuals subject to extradition proceedings may face when detained following their extradition, including the risk of violence and discrimination on account of their sexual orientation.**

<sup>7</sup> In cases dealing with discrimination on the basis of sexual orientation, the Court consistently refers to the rights of lesbian, gay, bisexual and trans people using the acronym ‘LGBT’ and does not distinguish between the different facets of sexual orientation when determining the level of protection to be afforded, see for example: *Identoba and Others v. Georgia*, no. 73235/12 and *Aghdgomelashvili and Japaridze v. Georgia*, no. 7224/11; this approach was also taken as a given in UN Human Rights Committee Communication No. 1833/2008 X v Sweden Views adopted on 1 November 2011

<sup>8</sup> For example *Beizaras and Levickas v. Lithuania* assessed whether a same sex couple suffered discrimination on the basis of state inaction in the face of hate crimes and incitement to violence at the sight of their public display of affection in the context of attitudes to LGBT people in general; in *Oliari and others v Italy* the Court noted the need for legislation to recognise same sex relationships so as to take account of the needs of “homosexuals (or bisexuals)”; Recommendation CM/Rec(2010)5 recommended the adoption of legislative and other measures to combat discrimination on grounds of sexual orientation or gender identity, which expressly included bisexuality.

<sup>9</sup> In the UK context it is documented that specific bi-phobic prejudices, such as disregarding bi people’s understanding of their own orientation, or assuming that all bi people are promiscuous, lead to significantly higher rates of depression and anxiety, as well as higher levels of reported discrimination and shame for bi people, see: <https://www.stonewall.org.uk/about-us/news/new-research-bi-people-less-likely-be-out>

<sup>10</sup> [Bisexual, Free and Equal Fact Sheet](#), United Nations for LGBT Equality

<sup>11</sup> [Declaration of 21 September 2018 by Inter-American Commission on Human Rights and United Nations human rights experts](#) (Victor Madrigal-Borloz, Independent Expert on [sexual orientation and gender identity](#), Nils Melzer, Special Rapporteur on [torture](#) and other cruel, inhuman or degrading treatment or punishment, Dainius Pūras, Special Rapporteur on the [right to health](#), Dubravka Šimonović, Special Rapporteur on [violence against women](#), its causes and consequences, and the Working Group on the issue of [discrimination against women in law and in practice](#)); [Bi People less likely to be out](#), Stonewall, 23 September 2020; LGBT in Britain: [Bi Report](#), Stonewall, 2020

<sup>12</sup> See *ibid* and also Helena See & Ruth Hunt (2011) Bisexuality and Identity: The Double-Edged Sword: Stonewall Research into Bisexual Experience, *Journal of Bisexuality*, 11:2-3, 290-299, DOI: [10.1080/15299716.2011.571995](https://doi.org/10.1080/15299716.2011.571995)

<sup>13</sup> UNHCR SOGI Guidelines, §66, p17 “*Stigma attached to issues surrounding sexual orientation and/or gender identity also contributes to incidents going unreported. Information can be especially scarce for certain groups, in particular bisexual, lesbian, transgender and intersex people*”, UN SOGI Expert has also stressed that, “*a major challenge in data collection is underreporting, which stems from a multitude of reasons. In countries where same-sex sexual conduct is criminalized, where laws and policies are used to discriminate against LGBTI and gender non-conforming persons, or where stigma and prejudice are rampant, the probability that victims will dare to report abuses is very low, owing to fear of prosecution, stigma, reprisals or victimization, unwillingness to be “outed”, or lack of trust*.” UNHRC 2018 Report on protection against violence and discrimination based on SOGI, UN Doc. A/HCR/38/43, § 64.

<sup>14</sup> UK Lesbian & Gay Immigration Group (UKLGIG), ‘Applying HJ (Iran) and HT (Cameroon) to asylum claims based on sexual orientation’, 2018, § 17.

<sup>15</sup> See fn 11 above

*The general obligation to establish whether there is a real risk of a breach of Article 3 ECHR upon extradition when considering whether to extradite a person*

6. Article 3 ECHR imposes an obligation on States not to extradite a person to a country where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country.<sup>16</sup> This includes circumstances in which the person faces extradition to a country in which the conditions of detention are inadequate for the specific “vulnerabilities” of the individual concerned.<sup>17</sup> Cases that raise the issue of prison conditions are abundant in ECtHR jurisprudence and the ECtHR has developed a robust framework to examine conditions and treatment of detainees and prisoners. Importantly, the protection of Article 3 is an absolute guarantee, from which States cannot derogate.<sup>18</sup> In the context of a possible breach of Article 3, member States are under an obligation to review a wide range of information prior to deciding whether to extradite or expel an individual to another country and must take action to obtain objective, reliable information in addition to materials made available by the domestic authorities<sup>19</sup>. The procedural obligation on domestic courts to investigate possible violations of Convention articles applies even where another international convention applies or where diplomatic assurances are supplied.<sup>20</sup>
7. Owing to the absolute character of the right guaranteed, Article 3 of the Convention applies not only to dangers emanating from State authorities but also where the danger emanates from persons or groups of persons who are not public officials.<sup>21</sup> In the context of expulsion, the Court has found that member States must sufficiently assess the availability of State protection against ill-treatment emanating from non-State actors as well as assessing the risks of ill-treatment for an individual at the hands of the receiving State.<sup>22</sup> The interveners submit that this reasoning applies equally in the context of extradition, where member States must not extradite a person to a country where: i) there is a real risk of the individual suffering treatment contrary to Article 3 perpetrated by the prison authorities or resulting from the conditions of detention; or ii) in a detention setting, the individual would not be afforded protection from treatment contrary to Article 3 perpetrated by fellow detainees.

*The obligation to take account of the particular “vulnerabilities” of a person when considering if their extradition to a certain country poses a real risk of them being detained in conditions in breach of Article 3 ECHR*

8. The Court has acknowledged that the threshold for an Article 3 violation is relative;<sup>23</sup> depending on all the circumstances of the case, including the personal circumstances of the victim, such as sex, age and state of health, and whether the victim was in a “vulnerable situation”.<sup>24</sup> The severity of ill-treatment also depends on the nature and context of the treatment or punishment, such as an atmosphere of heightened tension and emotions,<sup>25</sup> the manner and method of its execution,<sup>26</sup> its purpose and the underlying intention or motivation.<sup>27</sup> Each factor is capable of carrying significant weight.<sup>28</sup> Ill-treatment is not limited to physical acts; but can cover the infliction of psychological suffering through inter alia “feelings of fear, anguish and inferiority capable of humiliating and debasing them”.<sup>29</sup> The interveners therefore submit that a general context of discrimination against LGBTI people, as well as the bi-specific harms and heightened risks faced by bisexual people<sup>30</sup> are relevant to an assessment of whether the threshold of serious harm is met under Article 3.

<sup>16</sup> *Soering v. United Kingdom*, no. 14038/88

<sup>17</sup> See *Aswat v. the United Kingdom*, no. 17299/12, concerning the extradition of a mentally-ill individual

<sup>18</sup> *Labita v. Italy*, no. 26772/95, §119. In *Chahal v. United Kingdom*, no. 22414/93, §79-80 the ECtHR reinforced the principle that Article 3 protection is absolute when it ruled that an individual’s alleged criminal behaviour is not relevant to Article 3 considerations: “The activities of the individual in question, however undesirable or dangerous, cannot be a material consideration.”

<sup>19</sup> *Salah Sheekh v. the Netherlands*, no. 1948/04, §136

<sup>20</sup> *Neulinger and Shuruk*, no.41615/07. As to assessment of assurances see *Saadi v Italy* 37201/06 §147-148

<sup>21</sup> *J.K. and Others v. Sweden* [GC], no. 59166/12, § 98

<sup>22</sup> *B and C v Switzerland*, no. 889/19, §69

<sup>23</sup> *Ireland v. United Kingdom*, no. 5310/71, Series A no. 25.

<sup>24</sup> *Khlaifia and Others v. Italy*, no. 16483/12, §160, with further references.

<sup>25</sup> *Soering v. United Kingdom*, no. 14038/88, § 100.

<sup>26</sup> *Soering v. United Kingdom*, no. 14038/88, § 100.

<sup>27</sup> *Nicolae VirgiliuTănase v. Romania* [GC], no. 41720/13, § 117, *Abdu v. Bulgaria*, no. 26827/08, § 36. “Degrading” treatment is considered that which causes humiliation rooted in fear, anguish, and inferiority; it is often asked whether the intention of the individual inflicting the treatment was to humiliate or debase an individual, which is an important element of Article 3 violations, but is not dispositive. Instead, the focus is on the level of mental suffering and diminishment of human dignity, *Kalashnikov v. Russia* no. 47095/99 §95

<sup>28</sup> *Nicolae VirgiliuTănase v. Romania* [GC], no. 41720/13, § 121. It may well sufficient for a finding of an Article 3 violation that the victim is humiliated in his or her own eyes, even if not in the eyes of others. *Nicolae VirgiliuTănase v. Romania* [GC], no. 41720/13, §§ 116-118.

<sup>29</sup> *Identoba and Others v. Georgia*, no. 73235/12, § 65, further citing *Gäfgen v. Germany* [GC], no. 22978/05, § 103, and *Eremia v. the Republic of Moldova*, no 3564/11, § 54. See also *Zontul v. Greece*, no 12294/07, § 88 and 89.

<sup>30</sup> See the discussion in paragraphs 4-6 of this intervention.

*Sexual orientation, including bisexuality, gives rise to a particular “vulnerability” that increases the risk that a person will be detained in conditions in breach of Article 3 ECHR in conjunction with Article 14 ECHR*

#### Jurisprudence of the ECtHR

9. Gender identity and sexual orientation are basic components of self-determination<sup>31</sup>. Given that sexual orientation constitutes “a most intimate part of an individual’s private life”<sup>32</sup>, the Court considers that only particularly serious reasons may justify differences in treatment based on sexual orientation<sup>33</sup>.
10. In the context of discrimination based on one’s real or imputed sexual orientation or gender identity or expression, acts that in isolation would not have reached the minimum level of severity for an Article 3 violation may qualify as torture and ill-treatment. In *M.C. and A.C. v. Romania*<sup>34</sup> and *Identoba and Others v. Georgia*<sup>35</sup> the Court held that there had been a violation of Article 3 taken in conjunction with Article 14 where the States failed to protect demonstrators from the LGBTI community from homophobic violence, and failed to launch an effective investigation. The Court reiterated that discriminatory treatment as such can in principle amount to degrading treatment within the meaning of Article 3 where it attains a level of severity such as to constitute an affront to human dignity.<sup>36</sup>
11. The Court has identified that persecution relating to sexual orientation and gender identity by State actors may also take the form of individual acts of “rogue” officers or may emanate from non-State actors. In identifying whether a risk of such treatment exists, it may be relevant to take account of whether there is a culture of “widespread homophobia and discrimination against LGBTI persons”, including amongst those in public office.<sup>37</sup> In *Aghdomelashvili and Japaridze v Georgia* a police raid on the office of an LGBT organisation in Georgia constituted a breach of Article 3 in conjunction with Article 14, where the applicants (who worked at the LGBT organisation) were subjected to insults and humiliating strip-searches and it was found that the sole purpose of the raid had been to embarrass and punish the applicants for their sexual orientation. The Court has also recognised that LGBT people constitute a “vulnerable group”, and that there may be a threat to their safety, when detained alongside other detainees who are prejudiced against them.<sup>38</sup>
12. **The interveners submit that discrimination on the basis of sexual orientation may constitute a breach of Article 3 in conjunction with Article 14. The obligation not to extradite a person to a country where substantial grounds have been shown for believing that, if extradited, the person would face a real risk of being subjected to treatment contrary to Article 3 means that States must not extradite an LGBTI person to a country where, in detention, they would face a real risk of being subjected to discrimination on the basis of sexual orientation in violation of Article 3 ECHR taken in conjunction with Article 14.**

#### International and Regional Instruments

13. The approach of the Court described above is reflected in a several international standards and instruments<sup>39</sup>. Sexual orientation and gender identity are considered so fundamental to human dignity that a person should not be compelled to forsake them<sup>40</sup>. The Committee of Ministers of the Council of Europe has emphasized that sexual orientation and gender identity are factors which, in combination with one or more others, such as race or sex, will increase the risk of human rights

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<sup>31</sup> *Y.Y. v Turkey*, no. 14793/08, §102

<sup>32</sup> *Lustig-Prean and Beckett v. United Kingdom*, nos. 31417/96 and 32377/96, §83

<sup>33</sup> *Lustig-Prean and Beckett v. United Kingdom*, nos. 31417/96 and 32377/96, §§82-83 ; see also: [Resolution 1728 \(2010\), Discrimination on the basis of sexual orientation and gender identity](#)

<sup>34</sup> *M.C. and A.C. v. Romania*, no.12060/12

<sup>35</sup> *Identoba and others v. Georgia*, no.73235/12

<sup>36</sup> *Identoba and others v. Georgia*, no.73235/12, § 65, citing *East African Asians v. the United Kingdom*, nos. 4403/70 et al., Commission’s report of 14 December 1973, § 208, *Smith and Grady v. UK*, nos. 33985/9633986/96, § 121 and *Moldovan and Others v. Romania* (no. 2), nos. 41138/98 and 64320/01, § 111.

<sup>37</sup> *B and C v Switzerland*, no. 889/19, §59-61 where the Court took account of reports indicating widespread homophobia and discrimination against LGBTI persons following years of hatred stirred up by the former President Jammeh

<sup>38</sup> *O.M. v Hungary*, no. 9912/15, §53

<sup>39</sup> The Yogyakarta Principles + 10; Recommendation CM/Rec(2010)5: Resolution 1728 (2010), Discrimination on the basis of sexual orientation and gender identity; UNHCR SOGI Guidelines; the joint thematic dialogue on sexual orientation, gender identity and intersex related issues between the Inter-American Commission on Human Rights, the African Commission on Human and Peoples’ Rights and United Nations human rights mechanisms; [Handbook on European non-discrimination law](#), 2018 Edition:

<sup>40</sup> UNHCR SOGI Guidelines;

abuses faced by the persons concerned.<sup>41</sup> That enhanced risk is particularly pronounced in States in which persons are criminalised, stigmatised, persecuted or harassed for their actual or perceived gender identity or expression, sexual orientation or non-adherence to dominant social norms regarding gender and sexuality.<sup>42</sup>

14. The Special Rapporteur on torture has noted that “discrimination on grounds of sexual orientation or gender identity may contribute to the dehumanization of the victim, which usually creates the conditions for torture and other ill-treatment to take place.”<sup>43</sup> UN independent human rights institutions, bodies and experts consider that violence against LGBTI persons may constitute torture or other cruel, inhuman or degrading treatment or punishment taking into consideration the pain and suffering caused and the implicit discriminatory purpose and intent.<sup>44</sup>
15. In 2010, the Special Rapporteur on torture noted that, in detention facilities, there was usually a strict hierarchy. Those at the bottom of the hierarchy, such as gays, lesbians, bisexuals and transgender persons, were likely to suffer double or triple discrimination.<sup>45</sup> The UNODC Handbook on Prisoners categorises LGBTI prisoners as ‘prisoners with special needs’ because they are at risk of intense discrimination, abuse, sexual assault and other forms of violence in the prison setting.<sup>46</sup> The extreme “vulnerability” of LGBTI persons in the criminal justice system requires the formulation of policies to address the particular needs of this group and the development and implementation of strategies to ensure that they are not victimized in prison.
16. **The interveners submit that the international and regional instruments cited corroborate the conclusions above based on the jurisprudence of the ECtHR, as well as highlighting that LGBTI people constitute a “vulnerable group” who face the prospect of a heightened risk of suffering treatment in violation of Article 3 in a prison or detention setting.**

### III. The nature and scope of the obligations under Article 3 ECHR, in conjunction with Articles 8 and 14 of the Convention

#### ECtHR jurisprudence

17. The Court’s case-law under Articles 3 and 8 of the ECHR has emphasised Contracting States’ positive obligation to: (i) introduce a system of domestic legislation that protects LGBTI people from discrimination and that does not introduce discriminatory differences in treatment;<sup>47</sup> (ii) protect individuals against violence and discriminatory treatment based on their actual or perceived sexual orientation and/or gender identity; and (iii) investigate and prosecute allegations of such violence and discrimination. Under Article 3, States must not extradite an individual to a country where there is a real risk that such practical and effective protection would not be in place.
18. The Court’s jurisprudence has made clear that Article 3, read in conjunction with Articles 1 and 13, includes a positive obligation to take effective measures to deter offences and grave acts against personal integrity<sup>48</sup> which “can only be achieved by the existence of effective criminal law provisions backed up by law enforcement machinery.”<sup>49</sup>
19. The duty on Member States to effectively investigate is necessary to ensure the protection afforded to the rights guaranteed under the Convention be practical and effective,<sup>50</sup> and equally applicable to treatment perpetrated by a State agents or by

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<sup>41</sup>Explanatory memorandum to Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010.

<sup>42</sup>A/73/207, as cited above, § 70; see also Report of the United Nations High Commissioner for Human Rights, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity”, 17 November 2011, A/HRC/19/41.

<sup>43</sup>UN General Assembly, Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment (A/56/156), 3 July 2001, § 19. See also A/HRC/19/41, as cited above, § 34.

<sup>44</sup>Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/38/43), 11 May 2018, §§ 26 and 28; According to the UN Special Rapporteur A/HRC/31/57, as cited above, §§ 6 and 8.: “Full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied. [...] The purpose and intent elements of the definition of torture are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality.”

<sup>45</sup>Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/13/39/Add.5, para. 231

<sup>46</sup>[Handbook on Prisoners With Special Needs](#), United Nations Office on Drugs and Crime, New York, 2009

<sup>47</sup>*Pajic v Croatia*, no. 68453/13 on regulation of residence permits for family reunification; *E.B. v France*, no. 3546/02 on adoption, *Vallianatos and Others v Greece*, nos. 29381/09 and 32684/09 on civil unions

<sup>48</sup>*Beganović v. Croatia*, no. 46423/06, § 71. See also *A v. UK*, 23 September 1998, §22; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §96; *Šečić*, § 53.

<sup>49</sup>*O’Keeffe*, §148. See also *X and Y v the Netherlands*, no. 8978/80, §27; *Beganović*, no. 46423/06, §71; *M.C. v Bulgaria*, no. 39272/98, §149.

<sup>50</sup>See case law discussed below. See also, Committee of Ministers, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110<sup>th</sup> meeting of the Ministers’ Deputies, Article VIII (“CM Guidelines, Art VIII”).

private individuals.<sup>51</sup> In order for an investigation to be “effective” it must be thorough, independent, impartial and subject to public scrutiny, and the competent authorities must act with diligence and promptness.<sup>52</sup> The investigation must be capable of leading to the identification and punishment of those responsible for the alleged events and of establishing the truth.<sup>53</sup> The authorities must also take all reasonable steps to establish whether any hatred or prejudice connected to a protected characteristic may have played a role in the attack.<sup>54</sup> In *Identoba and Others v. Georgia* a failure to investigate the discriminatory nature of the attacks was found to contravene Article 3 in combination with Article 14 ECHR, in light of the “clearly homophobic hate speech uttered by the assailants during the incident”<sup>55</sup>. In *Aghdomelashvili and Japaridze v Georgia* there was also a procedural violation of Article 3 in conjunction with Article 14 as the protraction in the investigation had exposed the authorities’ inability, or unwillingness, to examine the role played by homophobic and/or transphobic motives in the alleged police abuse, against a background of Georgia’s well-documented hostility towards the LGBT community.

20. The obligation to protect against ill-treatment and torture might also require the State to take practical measures or “affirmative steps”<sup>56</sup> to prevent violence taking place. In *Identoba and Others v. Georgia*, the Court held that the failure of the police to protect demonstrators was in violation of Article 3 ECHR (in conjunction with Article 14) as various reports observed that prejudice against LGBT persons was deeply entrenched in the Georgian community, and the State should have known of these tensions at the time of the march, but failed to provide adequate protection.<sup>57</sup> The Court emphasized that the State had a heightened burden of protection of the individuals because of its prior knowledge of public hostility towards the LGBT community.<sup>58</sup>
21. In the context of detention, State authorities are required to take measures to protect prisoners from discriminatory treatment committed by other prisoners, as well as by the authorities, where they know or ought to know that a prisoner is suffering or at risk of being subjected to ill-treatment in breach of Article 3. In some cases this may require the State to implement “enhanced protections” for those considered “vulnerable”.<sup>59</sup> The interveners submit that this “vulnerability”, which the Court has interpreted to include poor physical health, applies to someone rendered “vulnerable” by their sexual orientation due to be being placed in an environment where there is known or foreseeable hostility to LGBTI people (such as prison).<sup>60</sup>
22. In this context, the interveners underscore that denial of a part of one’s sexual orientation in order to avoid serious harm would amount to erasure of the essence of that identity, and would thus be antithetical to affording practical and effective protection under the Convention.<sup>61</sup> Sexual orientation is not simply a matter of privacy and the Convention protects the right to express it publicly.<sup>62</sup> The fact that bisexuality may be perceived by decision-makers as permitting a change of gender of partner can lead to dangerous assumptions about absence of risk. However, this Court, in *B and C v Switzerland* and *I.K. v. Switzerland*, held that, because sexual orientation constitutes a fundamental aspect of an individual’s identity and awareness, those claiming international protection based on their sexual orientation cannot be required to hide it. To ensure practical and effective protection against discriminatory treatment in breach of Article 3, there can therefore be no expectation that bisexuals abandon or conceal any part of their identity to avoid discrimination. For a bisexual to conceal a part of their sexual orientation to avoid harm means destruction / erasure of identity because they become heterosexual. In *B and C v Switzerland* the Court also recognised that even if an individual conceals their sexuality, there remains a risk that their sexuality will be discovered and come to the attention of the authorities against their will.<sup>63</sup>

<sup>51</sup> *Bureš v The Czech Republic*, no. 37679/08, § 122; *Denis Vasilyev v Russia*, no. 32704/04, § 100.

<sup>52</sup> *Beganović*, as cited above, §75; *Çelik and İmret v Turkey*, no. 44093/98, § 55.

<sup>53</sup> *El-Masri*, §182.

<sup>54</sup> *M.C. and A.C. v. Romania*, no. 12060/12, §92 and §113

<sup>55</sup> *Identoba and Others v. Georgia*, no. 73235/12, §77

<sup>56</sup> *Premininy v Russia*, no. 44973/04

<sup>57</sup> *Identoba and Others v. Georgia*, no. 73235/12, § 65.

<sup>58</sup> *Identoba and Others v. Georgia*, no. 73235/12, § 72.

<sup>59</sup> *Florea v Romania*, no. 37186/03

<sup>60</sup> *Stasi v France*, no. 25001/07 where there was no violation of Article 3 because the prison authorities were found to have taken all necessary measures to protect an inmate who was “vulnerable” due to is sexuality.

<sup>61</sup> In their Joint Separate Opinion appended to the judgment of the Grand Chamber of this Court in the case of, *F.G. v. Sweden* [GC], no. 43611/11, § 6 Judges Ziemele, De Gaetano, Pinto de Albuquerque and Wojtyczek observed, “[a]s the United Kingdom Supreme Court ruled in a case where the claim for asylum was based on homosexuality, using a convincing historical allusion, to hold otherwise would countenance the return of Anne Frank to Nazi-occupied Netherlands, had she managed to escape from there, on the basis that she could have hidden in the attic and therefore could have successfully avoided the possibility of Nazi detention. The Supreme Court held that such a position would be ‘absurd and unreal’.”

<sup>62</sup> *Baczkowski and others v. Poland*, no. 1543/06, 48 EHRR, §§ 68,100 and 101; and *Alekseyev v. Russia*, no. 4916/07, ECHR, 21 October 2010, §§ 86-88 and 109-11

<sup>63</sup> *B and C v Switzerland*, nos.889/19 and 43987/16, §57

23. Under Article 8 ECHR, States are obliged to maintain and apply an adequate legal framework affording protection against acts of violence by private individuals<sup>64</sup> and may be obliged to conduct an effective criminal investigation into hateful and discriminatory behaviour against LGBTI people. These positive obligations on States to secure effective enjoyment of Convention rights are particularly important for persons who are “vulnerable” to victimisation because they hold unpopular views or belong to minorities, including members of sexual minorities.<sup>65</sup>
24. **The interveners therefore submit that it is not permissible under Article 3, taken in conjunction with Articles 8 and 14, to extradite a bisexual person to a country in which, while they are detained, they would face, or would not obtain practical and effective protection against, discriminatory and/or physically violent treatment in breach of Article 3. To ensure practical and effective protection of these rights, there can be no expectation that bisexuals abandon or conceal part of their identity to avoid harm or discrimination. Practical and effective protection requires the existence of domestic laws prohibiting discrimination on the basis of sexual orientation, and effective systems in place to ensure that complaints of discriminatory treatment, whether committed by the authorities or by fellow inmates, be investigated and sanctioned. Prison authorities in the receiving country must also take practical preventive measures to protect LGBTI individuals from discrimination, when they are aware that an individual faces a risk of treatment in breach of Article 3.**

International and Regional Instruments and Jurisprudence

25. The case-law of this Court, as summarized above, finds support in the jurisprudence of the UN Human Rights Committee,<sup>66</sup> the UN Committee against Torture,<sup>67</sup> the Inter-American Commission on Human Rights<sup>68</sup> and the African Commission on Human and People’s Rights.<sup>69</sup> In summary, under international and regional human rights standards, States must take the following positive steps to ensure practical and effective protection against discriminatory treatment:
- Make special efforts to investigate any homophobic or transphobic connotations in an act of violence and take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents.<sup>70</sup> As discriminatory motives “are tricky to prove”, the “quality of investigations is all the more important”.<sup>71</sup>
  - States must ensure that when determining sanctions, a biased motive related to sexual orientation or gender identity be taken into account as an aggravating circumstance.<sup>72</sup>
  - Establish judicial procedures responsive to the needs of victims.<sup>73</sup> This may include where appropriate, medical and psychological support.<sup>74</sup>
  - Ensure law enforcement officials receive, process and investigate complaints in a non-discriminatory manner.<sup>75</sup>
  - The collection, analysis and publication of data is critical to ensure effective compliance with the positive obligations inherent in Articles 3, 8 and 13. That data should include, at a minimum, statistics setting out the number and nature of incidents reported by the public to authorities, and details of charges and conviction rates.<sup>76</sup>
26. The UNHCR notes that sexual orientation - even where it may be perceived as fluid (as some bisexuals will see their sexual orientation) or evolving – is a characteristic which is in any event still to be considered as fundamental to identity and rightly within the particular social group ground in the context of Refugee Convention<sup>77</sup>. An expectation to conceal or abandon part of one’s sexual orientation to avoid harm is therefore incompatible with respect for human dignity since it negates each

<sup>64</sup> *Alković v. Montenegro*, cited above, § 65; *Isaković Vidović v. Serbia*, no. 41694/07, 1 July 2014, § 59.

<sup>65</sup> *Beizaras and Levickas v. Lithuania*:

<sup>66</sup> See, e.g., Human Rights Committee General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) (“General Comment 31”), §§8, 15, 18. See also, e.g., Human Rights Committee Concluding Observations (“HRC CO”), CCPR/C/POL/CO/6 (15 November 2010), §§5, 8; HRC CO, CCPR/C/RUS/CO/6 (29 October 2009) §27.

<sup>67</sup> See, e.g., HRC CO, CAT/MNG/CO/1 (20 January 2011) §25; HRC CO, CAT/C/KWT/CO/2 (28 June 2011) §25; HRC CO, CAT/C/BGR/CO/4-5 (14 December 2011) §28; HRC CO, CAT/C/NOR/CO/6-7 (13 December 2012) §21; HRC CO, CAT/C/RUS/CO/5 (11 December 2012) §15.

<sup>68</sup> See, e.g., Inter-American Commission on Human Rights, Case 11.137, Juan Carlos Abella, Argentina (18 November 1997) (OEA/Ser.LN/11.98), §392.

<sup>69</sup> See, e.g., African Commission decision 245/02, Zimbabwe Human Rights NGO Forum v Zimbabwe (15 May 2006).

<sup>70</sup> Recommendation CM/Rec(2010)5, Section I.A.3.

<sup>71</sup> Recommendation CM/Rec(2010)5, Section I.A.1 and Explanatory Memorandum to Recommendation CM/Rec(2010)5, p. 23.

<sup>72</sup> Recommendation CM/Rec(2010)5, Section I.A.2.

<sup>73</sup> African Commission on Human and Peoples’ Rights, Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.

<sup>74</sup> Yogyakarta Principles of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007), Principle 3.

<sup>75</sup> IACHR, Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas, as cited above, §§ 464-465.

<sup>76</sup> See, e.g., HRC CO, CAT/C/MDA/CO/2 (29 March 2010) §27; HRC CO, CAT/C/RUS/CO/5 (11 December 2012) §15.

<sup>77</sup> UNHCR SOGI Guidelines §47, p12



person's capacity for, and freedom to develop, an emotional and sexual attraction for other individuals, regardless of gender, and to choose to engage in consensual sexual conduct with them.<sup>78</sup> Furthermore, as the UNHCR SOGI ("Sexual Orientation and Gender Identity) Guidelines note: "[b]eing compelled to conceal one's sexual orientation and/or gender identity may also result in significant psychological and other harms. Discriminatory and disapproving attitudes, norms and values may have a serious effect on the mental and physical health of LGBTI individuals and could in particular cases lead to an intolerable predicament amounting to persecution. Feelings of self-denial, anguish, shame, isolation and even self-hatred which may accrue in response to an inability to be open about one's sexuality or gender identity are factors to consider, including over the long-term."<sup>79</sup>

27. In addition, while it is not generally the role of this Court to decide whether States have acted in accordance with EU law "unless and in so far as they may have infringed rights and freedoms protected by the Convention", this Court must ensure compliance with Article 53 of the Convention by ensuring that its approach guarantees at least the protection required under the applicable EU law. The interveners therefore draw on the jurisprudence of the CJEU in *X, Y and Z*, where the CJEU made it clear that when making a risk assessment the authorities must not take into account the possibility of concealment; that it is never tolerable for homosexuals to conceal their identity; and that national authorities may not take account of the possibility that LGBTI applicants may avoid persecution by acting discreetly.<sup>80</sup>
28. **The interveners therefore submit that the conclusions drawn in paragraph 24 above are corroborated by relevant international and regional instruments and jurisprudence.**

#### IV. Contextual information concerning widespread discriminatory laws and practices against LGBT people in Belarus

29. In the intervenors submission, the situation faced by LGBT people in Belarus is, of itself, enough to entail a breach of Article 3, irrespective of the issue of discrimination, In addition Belarus lacks effective channels through which to complain about discrimination on the basis of sexual orientation. State authorities have demonstrated an unwillingness to prevent and investigate hate crimes against members of the LGBTI community, as part of a general culture of prejudice against sexual minorities. The interveners also draw this Court's attention to a number of recent conclusions by UN Treaty Bodies and NGO reports that have dealt with the real risk of torture and persecution faced by LGBTI individuals on account of their sexual orientation and gender identity in Belarus..

##### Lack of practical and effective legal protection: bias-motivated violence

30. There is no specific legislation in place to protect LGBTI people from bias-motivated crimes or incitement to discrimination, hostility, or violence based on SOGI.<sup>81</sup> The UN Special Rapporteur on the situation of Human Rights in Belarus has expressed concern that Belarus does not provide for comprehensive protection against discrimination on all the grounds prohibited under the ICCPR, and that LGBTI persons remain "vulnerable" to discrimination.<sup>82</sup> In practice, law enforcement authorities are reluctant to investigate and prosecute attacks against LGBTI people.<sup>83</sup> The Committee against Torture has expressed concerns over reports indicating that LGBTI persons are subjected to "violence, such as physical attacks and other ill-treatment, on the basis of their sexual orientation or gender identity by law enforcement officials and private individuals". Furthermore, it confirmed that law enforcement authorities "fail to act with due diligence in investigating and punishing these

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<sup>78</sup> The 2010 Update report of the EU Agency for Fundamental Rights on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity observes that, "sexual orientation is a personal characteristic protected under the ECHR, not a shameful condition to be hidden. Any failure to appreciate the specific burden of forced invisibility and of the duty to hide a most fundamental aspect of one's personality such as sexual orientation or gender identity, is a severe misconception of the real situation of LGBT people", p. 56.

<sup>79</sup> The [UNHCR SOGI Guidelines](#), § 33, footnotes in the original omitted. In this context, studies have shown that pervasive discrimination has led, in particular, to mental health problems, feelings of self-denial, anguish, depression, psychosocial and psychological distress, shame, isolation and self-hatred (*Guidelines for Psychological Practice With Lesbian, Gay, and Bisexual Clients*, American Psychological Association). Expert opinion has attested to the severe mental suffering caused by concealing one's sexual orientation: See, e.g., Dr. Meyer's expert opinion provided to this Court in the case *Bayev v. Russia*, (no's 67667/09 44092/12 and 56717/12, 20 June 2017) on the harmful psychological health effects of concealing one's same-sex sexual orientation. See also, "Minority Stress and Physical Health Among Sexual Minorities", David J. Lick, Laura E. Durso and Kerri L. Johnson Lick et al in *Perspectives on Psychological Science* 2013 8: 521 DOI: 10.1177/1745691613497965, at p. 531 and 533, respectively; and Apu Chakraborty et al in *Mental health of the non-heterosexual population of England*, *British Journal of Psychiatry* (2011) 198, 143-134, corroborating international findings that "non-heterosexual individuals are at higher risk of mental disorder, suicidal ideation, substance misuse and self-harm than heterosexual people", p. 147

<sup>80</sup> The CJEU in *X, Y and Z v Minister voor Immigratie en Asiel* ECLI:EU:C:2013:720, held that, "requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it", *X, Y and Z*, § 70.

<sup>81</sup> [Less equal, LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan](#), Amnesty International, 2017, p.24.

<sup>82</sup> [UN Special Rapporteur on the situation of Human Rights in Belarus](#), 2020, p.4, §20

<sup>83</sup> [Freedom in the World, Belarus](#), Freedom House, 2020.

cases and in applying legal provisions for crimes motivated by hate”.<sup>84</sup> In 2018, the Belarussian Initiative Group “Identity and Law” reported more than 100 cases of hate crimes, including “discrimination, spontaneous and planned attacks, beatings, robberies, insults, humiliations, threats, domestic violence” against LGBTI people in the country between 2012 and 2018.<sup>85</sup> Victims are discouraged from reporting cases to the authorities, as a result of repeated experiences of insulting treatment by the police. Amnesty International has found that State authorities are unwilling to protect LGBTI human rights defenders and activities and that people were reluctant to report attacks due to the fear of further victimisation at the hands of the state authorities including the police<sup>86</sup>. Most aggressors thus remain unpunished, which triggers the multiplication of such crimes “due to a sense of impunity and permissiveness”.<sup>87</sup>

#### Lack of practical and effective protection - conditions of detention

31. The lack of practical and effective protection against discrimination is also evident in the context of the Belarussian prison system. Prison authorities are reported to regularly abuse prisoners, censoring or failing to forward complaints to higher authorities, whilst prison administrators ignore requests for investigation into alleged abuses.<sup>88</sup> The Committee against Torture was deeply concerned at the “continuing reports of the deplorable conditions of places of deprivation of liberty” and at the “the alleged acts of torture and ill-treatment committed by law enforcement officers and prison personnel”. NGOs also notably reported that no independent body in Belarus was authorized to conduct any independent and periodic visit to places of detention without prior notification to public authorities.<sup>89</sup> There were also reported cases of torture, beatings, and threats of sexual violence during interrogations.<sup>90</sup> In addition, “responsible officials do not take sufficient measures to prevent and investigate deaths in places of imprisonment”.<sup>91</sup> FIDH’s international fact-finding mission on Conditions of Detention in the Republic of Belarus found there was a shortage of legal remedies which could protect individuals from inhumane treatment in custody.<sup>92</sup> The Special Rapporteur also reported that law enforcement authorities are inactive or refuse to investigate these types of complaints.
32. The lack of legal protections and investigation will have an even more severe impact on LGBTI detainees, due to the general culture of discrimination against LGBTI people in Belarus<sup>93</sup>. Although the authorities in Belarus fail to keep any statistics on crimes motivated by homophobic or transphobic bias, LGBTI activists report hearing news daily from fellow activists and LGBTI community members that they are being detained and tortured in prison.<sup>94</sup> Reports also indicate that LGBTI persons “are subject to abuse and stigmatization by public officials and fellow inmates”<sup>95</sup>. In particular, gay prisoners are subjected to “violent clashes and humiliating and degrading treatment” by inmates, which aggravates their conditions of detention.<sup>96</sup>

#### General culture of discriminatory practices against LGBT people in Belarus

<sup>84</sup> Committee against Torture, Concluding observations on the 5th periodic report of Belarus, Geneva, June 2018. CAT/C/BLR/CO/5, §42.

<sup>85</sup> On 24 August 2019, filmmaker Nikolai Kuprich and two friends were beaten up in a homophobic attack in Minsk: Ilga-EUROPE annual review 2020, page 30. In the criminal trial following the attack on the architect Mikhail Pischevsky, a gay man, the judge ruled that the crime had no homophobic motive despite the fact the attack took place outside a gay nightclub and the attacker call him a “pidor” (the Belarussian word for “faggot”) [Fact-finding Mission to Belarus, Human Rights First](#), 18 August 2016; Note - there was a second trial following his death where the bias against his sexual orientation was deemed material.

<sup>86</sup> [Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan](#), Amnesty International, 22 December 2017/2 December 2017

<sup>87</sup> « Identity and Law » (Belarus), Eurasian Coalition on Male Health (ECOM), Answer to the list of issues prior to submission of the fifth periodic report of Belarus under the Convention of Civil and Political Rights, Geneva, 2018, p.4-5. [Hereinafter Identity and Law, Ecom, Submission to the HRC on Russian, 2018.]

<sup>88</sup> Country Reports on Human Rights Practices for 2019 United States Department of State • Bureau of Democracy, Human Rights and Labor

<sup>89</sup> NGOs report on compliance by the Republic of Belarus with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 63rd session of the UN Committee against Torture. ["Human Rights Defenders Against Torture" in cooperation with "Legal Initiative", "Belarussian Documentation Center", the Belarussian Helsinki Committee, the Office for the Rights of Persons with Disabilities, The Human Rights Center "Viasna"](#), with the support of Freedom House, Minsk 2018. [Hereinafter NGOs report, Belarus, 63rd Session of the UN CAT, Minsk 2018], p.14.

<sup>90</sup> NGOs report, Belarus, 63rd Session of the UN CAT, Minsk 2018, p.17.

<sup>91</sup> Ibid, p.18.

<sup>92</sup> International fact-finding mission - [Conditions of Detention in the Republic of Belarus](#) (FIDH, HDIM, Vesna) June 2008 - N°500/2

<sup>93</sup> This information should be assessed in light of the context of LGBT people being at the bottom of prison hierarchies generally (see §I.a)i)(1)(a)(i)15 above) and the general problem of underreporting of discrimination against LGBTI people (see §I.a)i)(1)(a)(i)4 above)

<sup>94</sup> [In Belarus, fighting for democracy—and LGBTQ rights](#), Politico, 18 August 2020

<sup>95</sup> [Amnesty International, Human rights in Eastern Europe and Central Asia, Review of 2019](#) p.13

<sup>96</sup> Committee against Torture, Concluding observations on the 5th periodic report of Belarus, Geneva, June 2018. CAT/C/BLR/CO/5, §29.

33. Discrimination on the basis of sexual orientation is an entrenched problem in Belarus.<sup>97</sup> Amnesty International has found that LGBT people “face harassment including stigmatizing and discriminatory rhetoric from state officials”.<sup>98</sup> And that “[f]reedom of expression, assembly and association are heavily restricted”, which has “a very negative impact on the capacity of LGBTI and other human rights activists to organize and to speak out on rights abuses”.<sup>99</sup> The Belarussian Initiative Group “Identity and Law” similarly reported serious concerns regarding “arbitrary detentions of LGBT-events visitors” and “indications of profiling on the basis of sexual orientation”.<sup>100</sup> In 2018, the Human Rights Committee also raised concerns about the prevalence of sexual orientation discrimination and the lack of adequate protection against it.<sup>101</sup> Conversely, Belarusian representatives at the UN have rejected calls for the country to recognize and protect the rights of LGBTI people, stating that the country will uphold “traditional” and “family” values in the face of “homocentrism”.<sup>102</sup>
34. The Orthodox and the Catholic churches, which are opposed to the “homosexual lifestyle”, exert huge influence on the society.<sup>103</sup> LGBTI related issues are negatively covered in the state-controlled media, which is read and watched by most Belarusian and Russian media, the latter also having a very large coverage in Belarus.<sup>104</sup> In July 2019, the UN Special Rapporteur on the situation of human rights in Belarus expressed concerns around restrictions on media freedom that remain alarming in the country<sup>105</sup> as well as concerns that whilst exercising public functions and utilising public resources, officials, including the President of Belarus, have engaged in acts that could be qualified as incitement to discrimination based on sexual orientation and gender identity.<sup>106</sup> Groups organising against “gender ideology”, reproductive rights, sex education, and LGBT rights, including marriage equality, became stronger and more united in the recent years.<sup>107</sup> Despite the decriminalisation of homosexuality in Belarus in 1994, the anti-gay sentiment remains strong among the Belarusian society.<sup>108</sup>
- 35. The interveners submit that such widespread discriminatory practices against LGBTI people in Belarus, and the absence of specific legal protections against discrimination on the basis of sexual orientation, provide important contextual information in analysing the present case.**

<sup>97</sup> According to ILGA-Europe’s Rainbow Map 2020, which ranks countries on the basis of laws and policies that have a direct impact on the LGBTI people’s human rights, Belarus had a score of 13% in achieving protection of LGBTI people and ranked 44 out of 49 countries: ILGA-Europe, [Rainbow Europe](#), Belarus, 2020.. In April 2020, following the launch of a petition for the adoption of an “anti-propaganda” law which gained over 52,000 signatures and homophobic statements by high political officials, Civil Rights Defenders reported that Belarus was on the same path as Russia regarding LGBTI Rights: Civil Rights Defenders, “[LGBTI+ Rights in Belarus: Rights Groups Worry their Country is on the Same Path as Russia](#)”, *Belarus, News*, April 2020.

<sup>98</sup> Amnesty International, Human rights in Eastern Europe and Central Asia, Review of 2019.. P. 13.

<sup>99</sup> Amnesty International, [Less equal, LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan](#), 2017, p.25.

<sup>100</sup> Identity and Law, Ecom, Submission to the HRC on Russia, 2018, p.8.

<sup>101</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, Geneva, November 2018, CCPR/C/BLR/CO/5, § 19: expressing concerns about: “discrimination based on sexual orientation and gender identity, including harassment, homophobic discourse, hate speech and violence against ... bisexual ... individuals, and the lack of adequate protection against such discrimination, in law and in practice.”

<sup>102</sup> Amnesty International, [Less equal, LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan](#), 2017, p.27.

<sup>103</sup> Amnesty International, [Less equal, LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan](#), 2017, p.24.

<sup>104</sup> Amnesty International, [Less equal, LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan](#), 2017, p.26.

<sup>105</sup> Ilga-EUROPE annual review 2020, page 30.

<sup>106</sup> In January 2020, the Prosecutor General announced that no charges would be pressed against Minister of Interior, Ihar Shunevich, who referred to gay people as “dryavyvye” (“those with a hole”) on TV in December 2018. Additionally, an article published in July 2019, concerning sexual violence against children, included a statement by a state official of the Ministry of Interior, Dmitry Tsayun, saying that LGBT equals pedophilia. In May 2020, the [Ministry of Interior issued a statement on its website](#) - that argued that artificial promotion of the theme of same sex relationships was destructive, violating moral norms and leading to an increase in sexual offences against children:

<sup>107</sup> Ilga-EUROPE annual review 2020, page 30.

<sup>108</sup> Civil Rights Defenders, “[LGBTI+ Rights in Belarus: Rights Groups Worry their Country is on the Same Path as Russia](#)”, *Belarus, News*, April 2020.. Research by the Pew Research Center found that 75% of people aged 18-35, and 87% of people aged over 35 felt that “homosexuality should not be accepted by society: Pew Research Center, “Religious Belief and National Belonging in Central and Eastern Europe National and Religious Identities Converge in a Region Once Dominated by Atheist Regimes,” p. 106. Figures from a [case study on family systems carried out by the Institute of Sociology of the National Academy of Sciences](#) were published in June 2016: only 2.2% of surveyed fully agreed with the statement that they wouldn’t mind if someone in their family wanted to enter a marriage with someone of the same sex whereas 82% strongly disagreed with the statement.