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

FIFTH SECTION

DECISION

Application no. 17354/19
Nino BOLKVADZE and Others
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 10 November 2022 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 17354/19) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 March 2019 by the applicants listed in the appended table ("the applicants") who were represented by the first applicant, Ms N. Bolkvadze, a lawyer practising in Tbilisi;

the decision to give notice of the application to the Georgian Government ("the Government"), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged violation of the applicants' right to freedom of expression on the grounds of their sexual orientation and gender identity on account of their being prevented from displaying rainbow-coloured items during a football match (Articles 10 and 14 of the Convention).

2. On 15 October 2017 G.K., at the time the captain of the Dutch football club Vitesse Arnhem and vice-captain of the Georgian national football team, wore a rainbow-coloured captain's armband in support of a campaign run by

the Dutch Football Union to promote diversity. This sparked intense reactions in Georgia. Some fans demanded that he be removed from the national football team. Ultra-conservative groups staged a demonstration in front of the Georgian Football Federation and burnt a rainbow-coloured flag to denounce what they called LGBT propaganda. Six of those protesters were arrested. The President of Georgia, the Mayor of Tbilisi and the Georgian Football Association made public statements denouncing violence and applauding G.K. for supporting the LGBT community.

3. On 22 August 2018 the Union of European Football Associations (UEFA) awarded G.K. an Equal Game award for promoting diversity, inclusion and equality in European football.

4. On 9 September 2018 the Ministry of Internal Affairs of Georgia (MIA) circulated an official statement regarding a match between Georgia and Latvia scheduled for that day. G.K. was to play in the match. The statement warned of some fans' intention to stage a protest against him and called on citizens to respect public order during the match.

5. On the same day Georgian March, an ultra-conservative nationalist group, issued the following ultimatum: they would refrain from their protest and would peacefully support the national football team provided that no items of "LGBT propaganda" were visible during the match.

6. Police were stationed in and around the stadium and prevented several participants in the anti-LGBT protest from entering.

7. The applicants attended the match. They wore rainbow-coloured armbands and held various posters, stickers and banners. When they held up the rainbow-coloured flag, police officers intervened and removed the flag. The applicants were requested not to display symbols associated with the LGBT community.

8. On 11 September 2018 the applicants complained to the General Inspectorate of the MIA ("the Inspectorate"), sending a copy of their complaint to the Public Defender of Georgia. They complained of having been unable to express their support for G.K. and the LGBT community in the face of threats from extremist groups. Referring to the Constitution of Georgia, the Freedom of Speech and Expression Act, Article 10 of the Convention and Article 333 of the Criminal Code (the offence of abuse of official powers), the applicants requested that a criminal investigation be opened in respect of the police's actions which, according to them, had constituted a breach of their rights and discrimination based on sexual orientation and gender identity.

9. On 20 December 2018 the Inspectorate stated that the Chief Prosecutor's Office had looked into the matter and had decided not to open a criminal investigation. As for the Inspectorate, it had not found any grounds for the imposition of disciplinary sanctions on the officers involved in the incident. In particular, according to the findings of the Inspectorate, the football match of 9 September 2018 was preceded by the award made in respect of G.K.'s role in promoting diversity and his statement, shortly before

the match, that he unreservedly supported inclusion and diversity. This caused a negative reaction in one part of society, which announced a protest at the stadium to object to the use of symbols associated with the LGBT community. Considering that such individuals would not have been easily identifiable and that G.K.'s supporters and LGBT activists would also be present, and taking into account the specificity of sports events and the high concentration of the crowds which would be at the stadium, the MIA decided that there existed a real threat of disorder breaking out which could lead to a massive breach of public order and processes which would have been hard to control. Notwithstanding the fact that a certain number of police officers were at the stadium at that particular moment, active demonstration of the LGBT symbols could have provoked disorder which could not have been controlled even by the use of legitimate power on the part of the authorities.

10. On 7 March 2019 the applicants lodged a criminal complaint with the Chief Prosecutor's Office ("CPO").

11. On 25 April 2019 the CPO stated that no criminal investigation had been opened in respect of the applicants' complaint. The CPO explained that it had not established the existence of elements of a crime.

12. Relying on Articles 10 and 14 of the Convention the applicants complained about a violation of their right to freedom of expression on the grounds of their sexual orientation and gender identity on account of their being prevented from displaying rainbow-coloured items during a football match on 9 September 2018.

THE COURT'S ASSESSMENT

13. The Government submitted that the applicants had failed to avail themselves of an effective civil-law remedy. While the applicants had lodged a criminal complaint at domestic level, that was not an effective remedy in respect of their complaints under Article 10 and Article 14 of the Convention, which had required the undertaking of a careful balancing exercise in respect of the various interests at stake.

14. The applicants agreed that the civil-law remedy was effective. However, they argued that the criminal-law remedy had also been effective, considering that the Criminal Code contained provisions criminalising discrimination and breaches of the right to freedom of speech.

15. The relevant general principles have been summarised in *Akdivar and Others v. Turkey* (16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV), *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, § 71-74, 25 March 2014), and *O'Keeffe v. Ireland* ([GC], no. 35810/09, § 109, ECHR 2014 (extracts)).

16. Considering that the applicants lodged a criminal complaint in respect of their grievances, the Court has to determine whether or not the criminal-law remedy and the civil remedy had "essentially the same objective", that is to say, whether or not the civil remedy referred to by the

Government would have added any essential elements that were unavailable through the use of the criminal-law remedy (see, for instance, *Jasinskis v. Latvia*, no. 45744/08, §§ 50-53, 21 December 2010, and *Köhler v. Germany* (dec.), no. 3443/18, § 69, 7 September 2021).

17. At the outset, the Court reiterates that no provision of the Convention guarantees an applicant a right to secure the prosecution and conviction of a third party or a right to "private revenge" (see, for instance, *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 191, ECHR 2008 (extracts)). While it is undisputed that the Criminal Code contained provisions making it a criminal offence for a public official to violate the principle of equality and the right to freedom of expression, the thrust of the applicants' complaints at the domestic level and before the Court concerned the scope of their right to freedom of expression, within the context of the prohibition of discrimination, and the related question of whether the interference therewith had been justified (contrast and compare *Annenkov and Others v. Russia*, no. 31475/10, § 106, 25 July 2017). No suggestion has been made in relation to the incident of 9 September 2018 that the police officers' actions had been intentionally directed against the applicants' physical or mental integrity (compare *Identoba and Others v. Georgia*, no. 73235/12, § 86, 12 May 2015). In the absence of a complaint involving any criminal element in the behaviour of the police officers who had been upholding public order at the stadium, and taking into account the different substantive conditions of liability in civil and criminal law (see, for instance, *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, § 87, 19 July 2018), the criminal-law remedy relied on by the applicants could not have been capable of offering reasonable prospects of success in that it could not have addressed their essential grievances.

18. By contrast, the effectiveness of a civil-law remedy against the actions of the police officers and/or the policy of the MIA has not been contested. The Court reiterates that in cases requiring the balancing of conflicting interests under the Convention, it is particularly important that the domestic courts are first given the opportunity to strike the "complex and delicate" balance between the competing interests at stake. Those courts are in principle better placed than this Court to make such an assessment and, as a consequence, their conclusions will be central to its own consideration of the issue (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 57, 12 September 2011; see also *Courtney v. Ireland* (dec.), no. 69558/10, 18 December 2012; *Charron and Merle-Montet v. France* (dec.), no. 22612/15, § 30, 16 January 2018; and *P. v. Ukraine* (dec.), no. 40296/16, § 46, 11 June 2019).

19. Even assuming that the applicants could have had legitimate doubts as to which remedy would have been more appropriate in their case, the prosecuting authorities' decision – made within approximately three months of the events complained of – not to open a criminal investigation into the matter for lack of elements of a criminal offence (see paragraph 9 above)

should have made it clear to the applicants that it had been the civil-law remedy which would have been more appropriate and which was fully capable of addressing their complaint and granting relief. It had been open to them to bring civil proceedings against the MIA; they failed to do so.

20. In view of the above and having regard to the circumstances of the case as a whole, the Court does not find that there were any special reasons for exempting the applicants from the requirement to exhaust domestic civil-law remedies in accordance with the applicable rules and procedure of domestic law. Had the applicants complied with this requirement, it would have given the domestic courts that opportunity which the rule of exhaustion of domestic remedies is designed to afford States, namely to determine the issue of compatibility of the impugned national measures, or any failure to act, with the Convention and, should the applicants nonetheless have pursued their complaint before this Court, it would have had the benefit of the views of the national courts (see *Vučković and Others*, cited above, § 90, with further references).

21. The Government have thus demonstrated that the scope of review under the civil-law remedy was wider than that offered by the criminal law and that a complaint by the applicants lodged through that procedure would have added essential elements that were unavailable through the use of the criminal-law remedy in the present case (see, for instance, *Popović v. Serbia* (dec.) [Committee], no. 38572/17, § 10, 22 February 2022). At the same time, the applicants have failed to provide a reasonable explanation for choosing not to pursue that remedy.

22. Accordingly, the Court considers that the applicants failed to exhaust the domestic remedies available to them, as required by Article 35 § 1 of the Convention, and concludes that the application must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 December 2022.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President

Appendix

List of applicants:

No	Applicant's Name	Year of birth	Nationality
1.	Nino BOLKVADZE	1977	Georgian
2.	Giorgi TABAGARI	1985	Georgian
3.	Tsabunia VARTAGAVA	1991	Georgian
4.	Levan BERIANIDZE	1990	Georgian
5.	Mariami KVARATSKHELIA	1993	Georgian
6.	Tamazi SOZASHVILI	1995	Georgian
7.	Nikolo GHVINIASHVILI	1973	Georgian
8.	Vakhtang KERDZAIA	1995	Georgian
9.	Giorgi TSOTSKOLAURI	1983	Georgian