

სამართალწარმოების ანგარიში  
Litigation Report

**ინტერსექსიური დისკრიმინაცია  
და ლგბტი ადამიანები  
INTERSECTIONAL DISCRIMINATION  
AND LGBTI PEOPLE**



# INTERSECTIONAL DISCRIMINATION AND LGBTI PEOPLE – LITIGATION REPORT

WISG  
2018

# Intersectional Discrimination and LGBTI People – Litigation Report

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## INTRODUCTION

There are plenty of systemic problems in Georgia due to which LGBTI persons in particular face barriers to fully exercise their rights and freedom. Out of these problems we can call attention to many shortcomings connected to homophobic and transphobic hate crimes and the investigation of such incidents, to degrading treatment of victims of such crimes and/or inadequate reaction to a crime by the police, to legal gender recognition, etc. Moreover, when discussing particular facts of discrimination against this group, inadequate attention is paid to the problems of systemic discrimination. The analysis of documents defining policy in human rights shows that the state does not have a consistent policy for ensuring legal equality of LGBTI persons.

The existence of systemic problems is on one hand supported by societal stigma and stereotypes towards LGBTI persons; on the other hand, the state neglects specific needs of the members of the group (for example, legal gender recognition and trans-specific medical procedures are not accessible for transgender persons, etc.). All of this makes LGBTI group members particularly unprotected and makes them vulnerable to violence and discrimination.

## ABOUT THE REPORT

This report presents the analysis of legal and social cases carried out by the „Women’s Initiative Supporting Group“ (WISG) from January 2017 to January 2018. Together with the cases of 2017, the report contains the decisions on the cases included in the 2016 Litigation Report „Unidentified Violence“<sup>1</sup> by WISG, since part of the cases in the mentioned report continued and came to a result in 2017. The document also includes those cases, which were ignored but are documented by the lawyers of the organization.

The report aims to highlight those main problems, which emerge in the process of investigating homophobic and transphobic crimes or discrimination based on sex, sexual orientation and gender identity.

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1. K. Bakhtadze. „Unidentified Violence – Litigation Report.“ WISG. Tbilisi. 2017. Available at: <http://women.ge/publications/133/>

## INTERSECTIONAL DISCRIMINATION OF LGBTI PERSONS

Like other unprotected groups, the members of the LGBTI group may become victims of intersectional discrimination. For example, a lesbian woman with a disability may become a victim of discrimination based on both, the disability and the sexual orientation; a sex-worker transgender woman may become a victim of a hate crime due to her gender identity and expression, as well as due to her work. Intersectional discrimination of LGBTI persons is a result of many interconnected affecting factors. Out of these factors „forced coming out“<sup>2</sup> must be mentioned. As the cases included in the given report prove, it has a particularly strong negative influence on exercising rights and freedom by the members of the group and is one of the basic factors for homophobic and transphobic violence and discrimination.<sup>3</sup>

The discrimination of a person based on more than one ground is described by different terms: multiple discrimination, cumulative discrimination, combined discrimination, intersectional discrimination, etc. The most widespread forms of discrimination based on more than one ground are:

- 1) Multiple discrimination – a person may become a victim of discrimination based on a disability in one case and in the other, based on sexual orientation. For example, a bisexual woman with a disability may experience workplace discrimination due to disability and because of sexual orientation be a victim of harassment when receiving medical service;
- 2) Combined discrimination – in one case a person may become a victim of discriminatory treatment based on two characteristics, sexual orientation as well as religious confession. For example, a Muslim gay man may simultaneously become a victim of discrimination in a contractual relationship due to religious confession and sexual orientation;
- 3) Intersectional discrimination – discrimination of a person may not be directly connected to their sexual orientation or gender identity, but their situation may be qualitatively different from that of other people. For example, regulation problems of legal gender

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2. The term describes a case when information about a lesbian, gay, bisexual and transgender person's sexual orientation and gender identity is disclosed without the permission of this person.

3. „Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law.“ The European Council. 2016. Available at: <http://bit.ly/2tscMMg>



recognition directly affect the quality of life of transgender persons, as due to this problem they are in an unenviable condition compared to other people: they become the victims of „forced coming out“ when presenting identification documents. In a homophobic and transphobic society this creates additional barriers for their employment and/or receiving various services in particular and in relation with exercising their rights and freedom in general.

The legislation of Georgia on the prohibition of discrimination<sup>4</sup> prohibits multiple discrimination that implies discrimination based on two or more characteristics.<sup>5</sup> The characteristics defined in this law are quite broad and include „race, skin color, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions.“ At the same time, legal grounds are not listed exhaustively, which means that the law prohibits discrimination based on any ground and on any characteristic.

Accordingly, a number of other factors should be considered for ensuring that LGBTI persons can exercise their rights. Belonging to this group may have an influence on a person’s wellbeing, including that during the evaluation of their legal situation it is important to consider a number of other circumstances. For example, in particular cases poverty directly influences the use of antidiscriminatory mechanism by a victim of discrimination. Accordingly, when we discuss the barriers of accessing justice for a lesbian woman, it is important to evaluate her economic condition and find out if together with a „forced coming out,“ the person is refraining from appealing to the court due to inability to pay the state due or the lack of having enough resources to pay for the legal service.

According to the recommendation of CEDAW Committee, „The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than

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4. Among them Article 14 of the Constitution of Georgia and other laws.

5. The Law of Georgia „On the Elimination of All Forms of Discrimination,“ Article 2 (4).

men.”<sup>6</sup> When discussing particular cases of discrimination, if a person belongs to an unprotected group, the general legal condition of this person must also be considered.

Often LGBTI community members, who suffer from homophobic and transphobic hate crimes are ready to reconcile with the perpetrator in exchange of a miserably small financial compensation.<sup>7</sup> In such cases, law-enforcing bodies show more loyalty towards the perpetrator. This unambiguously proves the influence that the victim's socio-economic condition makes on the reaction to the crime.

The economic wellbeing of a person should not be directly connected with their sexual orientation or gender identity and expression. However, such a connection exists when LGBTI community members have to live in a homophobic and transphobic community. The everyday life of the members of the group is harder due to the stigma towards sexual orientation and gender identity, which is very strong in Georgia. The stereotypes existing in society directly affect employment, education, receiving medical services by the members of the group and accordingly, negatively influence the quality of their lives.

The examples of cases provided in this report clearly show that different factors influence violence, discrimination against LGBTI persons and their exclusion from public spaces.

From 2017 WISG implemented individual-oriented support service, that is the collaboration of a few specialists for fulfilling the needs of a beneficiary. It is important that the organization does not concentrate solely on the needs of a victim. WISG openly declares that in most cases, besides socio-cultural factors, the socio-economic condition of a person predicts discriminatory action and crime. Accordingly, it is needed and mandatory that action is taken soon, which can avoid the victims the experience of such crimes and support their socialization and fulfillment of their basic needs equal to others.

Based on the cases carried out by social workers during 2017, we can conclude that the majority of LGBTI community members, who address WISG for the support of receiving services from a particular specialist, have problems in relation with employment or accommodation. Psy-

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6. General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/2010/47/GC.2. 2010. §18

7. See cases № 03-2017 and № 05-2017

cho-emotional instability and problems related with socialization directly connect with minority stress. These circumstances influence the quality of life of the members of the group and affect exercising rights and freedom by them. The report includes only the cases of special importance.

„The majority of lesbian, bisexual and transgender women, who receive the services of WISG, experience alienation from family members. This is conditioned by refraining from coming out. The members of the group understand the negative results of coming out and in a way decide on self-isolation from family members, try to avoid contact with parents or siblings and search for a space for individual fulfillment outside of their families. This approach makes the abyss with the family members even deeper, negatively influences a person’s socialization and generally makes the self-realization of a person harder in different spaces, including education and workplace.“<sup>8</sup> In particular cases, psycho-emotional conditions of lesbian and bisexual women improved significantly with the involvement of a social worker and a psychologist, as the problems related with socialization and motivation were solved.

According to the outlined tendency, the social worker faces difficulties particularly in the process of transgender women’s employment. Despite many attempts, the specialist was very rarely successful with the employment process of the representatives of this group. „The majority of people receiving the service have hard socio-economic conditions and do not have higher education. The absolute majority of transgender women do not have contact with family members and do not have a strong support network, even if it was only with friends, accordingly, socialization and employment is hard and they have to do commercial sex-work.“<sup>9</sup>

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8. Interview with WISG psychologist Liana Barabadze. January 30, 2018.

9. Interview with WISG social worker Teona Todradze. January 30, 2018.

### **SOCIAL CASE #01-2017**

#### **SUPPORTING A TRANSGENDER MAN AT RISK OF SUICIDE**

Transgender man V. M. is a beneficiary at high risk of suicide. A psychologist, a psychiatrist and a social worker of WISG have worked with him during the entire year. V. M.'s condition became particularly hard after his divorce and because of his suicide attempt he needed hospitalized psychiatric help.

V. M. lives and works in Georgia, however, he is not a citizen of Georgia. His family members do not live in Georgia and he does not have friends. The social worker managed to extend his support network, and encouraged a trip to family members. Currently, V. M. is in stable condition; he is receiving services by a psychologist and a psychiatrist and is in continual contact with the social worker.

### **SOCIAL CASE #02-2017**

#### **SUPPORTING A TRANSGENDER WOMAN WITH REFUGEE STATUS**

Transgender woman R. P. has been living in Georgia for the past two years and has refugee status. She is not employed and her accommodation and daily expenses are provided by WISG's partner organization SOS Children's Villages, where she was a beneficiary until reaching legal age. She is receiving the service for supporting a semi-independent life.

With the help of the psychologist of WISG, R. P. changed apartment and improved living conditions. Also, she has received the service of WISG's sexologist and currently the support continues in order to help her with employment.

### **SOCIAL CASE #03-2017**

#### **SUPPORTING A COMMERCIAL SEX-WORKER TRANSGENDER WOMAN**

Z. B. is a sex-worker and transgender woman. For a few years she has had no contact with her family members living in a region of Georgia. A few months ago her family members canceled her place of registration and accordingly, her identification card was annulled.

A social worker started to work with Z. B. in different directions, helped her with renewing the identification card, ensured psychologist's service. Currently the social worker is working in the direction of improving the beneficiary's knowledge of a foreign language in order to support her further employment.

### **SOCIAL CASE #04-2017**

#### **SUPPORTING A TRANSITIONING TRANSGENDER WOMAN**

Transgender woman G. K. is on the stage of transitioning and is taking medicines without doctor's prescription. A sexologist, a psychologist and a psychiatrist of WISG are working with her to reduce the risks of self-medication.

The social worker ensures the support of G. K. in employment and also works with her family members.

### **SOCIAL CASE #05-2017**

#### **SUPPORTING A TRANSGENDER MAN LIVING IN POVERTY**

Transgender man N. N. lives in extreme poverty. Family members do not have contact with him, he does not have accommodation, is alcohol dependent and needs full medical-rehabilitation. Despite many attempts, the social worker did not manage to convince him to take medical treatment for overcoming his substance dependence. For now, the social worker has found a daycare center, where N. N. can have access to food, shower, clothing, first aid, and also use TV, computer and library. Working with N. N. continues for receiving the socially vulnerable status, permanent accommodation and employment.

### **SOCIAL CASE #06-2017**

#### **SUPPORTING INDEPENDENT LIVING OF A TRANSGENDER WOMAN**

D. approached WISG due to hard economic conditions. She was in need of urgent financial help.

A conversation with a social worker showed that D. wishes to be able to live independently, requires consultation with the topics related to her gender identity, including transitioning and expected results.

WISG's psychologist and sexologist started to work with D., which significantly improved her condition. With the help of the social worker she got employed and has her own income. Working with D. continues according to her needs.

# VIOLENCE AGAINST LGBTI PERSONS

## HOMOPHOBIC AND TRANSPHOBIC HATE CRIME

Homophobic and transphobic hate crimes still remain problematical in 2017. Contacting the police by the members of the community, as well as appropriate reaction and identification of homophobic/transphobic motives in specific criminal cases have been a problem. The state's incoherence in fighting against such crimes is also problematical. The Ministry of Internal Affairs has not properly examined the nature of crimes based on intolerance towards sexual orientation and gender identity. Accordingly, it does not yet have a unified mechanism for preventing such crimes.

Many of similar cases included in the Litigation Report of 2016 by the „Women's Initiative Supporting Group“ (WISG) were left uninvestigated. In many cases, homo/bi/transphobic motives were not identified in examining the motive. According to the report of the Chief Prosecutor of Georgia, in 2017 the motive of hate was studied in 86 criminal cases. Namely, the ground of sexual orientation was examined in 12 criminal cases and the ground of gender identity in 37 criminal cases. In 2017, criminal pursuit for hate crimes started against 44. Among them 4 persons were arraigned on the ground of sexual orientation, 4 persons on the ground of gender identity. The same report mentioned that compared to 2016, in 2017 the number of persons for criminal prosecution on homo/transphobic crimes has doubled.<sup>10</sup>

Despite the fact that a progress can be observed in the law enforcement body with regards of homo/bi/transphobic hate crime, the Public Defender believes that the state shows insufficient efforts for investigating such cases: „There are also cases, where during investigation of alleged hate crimes committed against representatives of LGBTI community. However, according to the information submitted by investigative authorities, despite attempts, no discriminatory motives are identified or investigation was not instituted due to non-existence of elements of crime.“<sup>11</sup>

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10. „The Report of the Chief Prosecutor of Georgia.“ 2018. Available at: <http://pog.gov.ge/res/docs/6tebervalimtavarioprokurorisangarishi.pdf>

11. The Public Defender of Georgia. „Fight against Discrimination, Its Prevention and Situation of Equality.“ 2017. Tbilisi. Available at: <http://ombudsman.ge/uploads/other/4/4825.pdf>

During 2017 the work of WISG included cases where proper investigation of a hate motive was not possible and/or stopped due to different circumstances of investigation.

For example, in one of the cases the victim mentions systematic victimization and violence from an unknown person to them: „A man unknown to me physically and verbally abused me several times at different places in Kutaisi. In four cases I called the police, but he ran away and was not caught. Cameras at those places could not capture it well and investigation did not commence. During the last incident I did not report to the police as I am sure it is pointless.“<sup>12</sup>

During the reporting period homophobic and transphobic attacks on transgender women were particularly frequent. The incidents against female sex-worker took place in the surroundings of the so-called „Pleshka“ (a gathering place of sex-workers), as well as near a house.

In certain cases, the attitude of victims of homophobic and transphobic crimes towards investigation were conditioned by a compensation that they were taking from the accused party. In such cases the victims were more loyal towards the accused and changed their attitudes towards punishing the offender.

## CRIMINAL CASE # 01-2017

### GROUP ATTACK ON TRANSGENDER WOMEN

On February 7, 2017 transgender women were at one of the entertainment establishments on Kostava Street in Tbilisi, where four persons unknown to them, three men and one woman attacked them. After the attack the women had different bodily injuries, one of them had a broken arm.

A criminal case was commenced on this and all of the four attackers were identified, however, the court trial of the case continued only against two of them on the basis of crimes considered by Articles 126 (Violence) and 118 (Intentional less grave bodily injury) of the Criminal Code of Georgia. The Prosecutor's Office properly investigated the motive of the crime and indicated aggravating circumstances of the crime considered by the first part of Article 531 of the Criminal Code, implying the commission of crime on the basis of intolerance of gender identity.

At the court hearing on December 15, 2017 the defendant's lawyer also expressed homophobic attitude towards the plaintiff, which was observed in the following: M. M. mentioned that the attackers called them „faggots“ while beating them. The

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12. See case №08-2017

defendant's lawyer asked if the plaintiff was a „faggot“ and if she was, then the insult did not take place. The plaintiff responded that she is a transgender woman. The case is still at trial at the Court of First Instance.

### **CRIMINAL CASE # 02-2017**

#### **ATTACK ON A COMMERCIAL SEX-WORKER TRANSGENDER WOMAN**

On February 2, 2017 transgender woman M. M. was attacked by two persons unknown to her in the surrounding of the so-called „Pleshka“ in Tbilisi. Attackers physically and verbally abused the woman and left.

The woman called the police and a criminal case commenced on this. However, later the investigation stopped, as M. M. was not able to provide the exact description of the attackers to the police.

### **CRIMINAL CASE #03-2017**

#### **ATTACK BY A SO-CALLED „CLIENT“ ON COMMERCIAL SEX-WORKER TRANSGENDER WOMEN**

On February 10, 2017 two sex-worker transgender women were the victims of physical violence by a so-called „client.“ A criminal case commenced on the crime based on Article 120 (Intentional less grave bodily injury) of the Criminal Code of Georgia. Later the investigation stopped as the accused paid a certain amount of money as compensation to the victims and they did not wish to participate in the investigation process.

### **CRIMINAL CASE #04-2017**

#### **ATTACK ON A TRANSGENDER WOMAN NEAR HER HOUSE**

On March 26, 2017 transgender woman T. Ts. became a victim of a transphobic incident near her house. Two young neighbors physically and verbally insulted her. The woman reported it to the police, however, a criminal case did not commence as the police could not identify the signs of a crime in this incident.



### **CRIMINAL CASE #05-2017**

#### **BEATING OF A TRANSGENDER WOMAN**

In May 2017, V. T. was visiting a friend in Telavi. In the evening of May 18 the host was attacked by strangers who insulted them physically and verbally. V. T. witnessed the incident and got a head blunt injury from one of the attackers. As a result, the victim had a concussion and required emergency medical service.

A criminal case commenced on this based on Article 120 (Intentional less grave bodily injury) of the Criminal Code of Georgia. The attacker paid a certain amount of money as compensation to the victim and this influenced her position significantly. Later the accused received diversion.

### **CRIMINAL CASE #06-2017**

#### **ATTACK ON A COMMERCIAL SEX-WORKER TRANSGENDER WOMAN**

Z. B. is a sex-worker transgender woman and on the night of August 23 she was at the so-called „Pleshka“. Suddenly she was attacked by a male stranger. The beneficiary called the police and contacted the Office of the Public Defender. After the incident Z. B. had a leg injury and a concussion. According to Z. B. the attack was motivated by homophobic and transphobic hate.

The Georgian Young Lawyers' Association continues working on the case.<sup>13</sup>

### **CRIMINAL CASE #07-2017**

#### **HOMOPHOBIC ATTACK ON A COMMERCIAL SEX-WORKER TRANSGENDER WOMAN**

V. T. is a sex-worker transgender woman. On August 10, 2017 on the territory of the so-called „Pleshka“, two persons attacked her and physically and verbally abused her. They were using hate speech and derogatory nicknames for LGBTI persons. V. T. tried to escape the place and ran away. After approximately two hours she came back to „Pleshka“ and soon approximately 5 men, including the two attackers, approached her. V. T. ran away after seeing them and when she was about 10 meters away from the attackers, one of them shot a firearm a few times. The woman could not see if it was towards her. In order to avoid the attackers V. T. entered the nearest hotel lobby. With the help of the hotel staff V. T. called the police. Attackers absconded until the police arrived.

The police checked the footage of surveillance cameras of the adjacent street, but the faces of attackers were obscure, none of them were identified and arrested.

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13. Information about the organization can be seen at: <https://gyla.ge/ge>

### **ADMINISTRATIVE OFFENCE CASE #08-2017**

#### **UNINVESTIGATED HOMOPHOBIC ATTACKS ON A GAY MAN**

On November 13, 2017 near one of the public schools in Kutaisi, B. was attacked by a person unknown to him. The attacker physically and verbally abused him and threatened with the repetition of violence. B. says that the same person, whose name and surname he does not know and therefore he can only identify him by face, already attacked him four times at different places in Kutaisi.

In all four cases B. called the police, but the attacker ran away and was not arrested. Surveillance cameras in these areas could not record him; accordingly, his identity is unknown. The investigation of all the cases has stopped. B. has not contacted the police on the case of November 13. WISG was able to only document the case.

### **ADMINISTRATIVE OFFENCE CASE #09-2017**

#### **A HOMOPHOBIC INCIDENT IN THE TBILISI METRO THAT WAS NOT REACTED UPON**

On November 17, 2017 while taking a metro, transgender woman N. K. was attacked by five young men unknown to her, who abused her physically and verbally. N. K. describes it as: „I felt the intense staring from young men, I did not pay attention to it. Afterwards they started offensive, mocking and humiliating talk. I asked why they were acting like this, it was followed by personal insults, aggressive actions from their side, swearing, and threat of violence. They were using homophobic and transphobic hate speech. They were asking me if I was a boy or a girl, how I was walking, etc.“ Verbal abuse was followed by physical violence. One of the passengers helped N. K. and the attackers left the place.

Due to the fear of „forced coming out“ and repeat victimization, N. K. did not contact the police about the case. WISG was able to only document the case.

## BLACKMAILING AND THREAT AGAINST LGBTI PERSONS

Blackmailing and threatening with „forced coming out“ is a widespread form of violence against LGBTI persons. These forms of blackmailing and threat are strengthened by existing stigma towards sexual orientation and gender identity, as well as stereotypes about the members of the group. Both cases represent criminal crimes, but in almost every case victims refrain from contacting the police. Accordingly, such crimes remain uninvestigated and without proper reaction.

„... representatives of the LGBTI group avoid coming out publicly owing to physical or psychological threats. Besides, fear of coming out significantly impedes LGBTI people from protecting their own rights.“<sup>14</sup>

Often people have to live under the fear of „forced coming out,“ which itself is one of the hardest forms of psychological violence. Such violence is frequently coming from family members, putting victims in hard psycho-emotional conditions.

WISG was dealing with a case where the threat of „forced coming out“ pushed a transgender woman towards a crime.<sup>15</sup> This case illustrates how oppressive such blackmailing and threat are for the members of the group and what harm it can bring.

### CASE #10-2017

#### COMMISSION OF A CRIME FOR PROTECTION FROM „FORCED COMING OUT“

The beneficiary was threatened by a man known to her with „forced coming out,“ meaning to reveal her gender identity to her parents. On May 26, 2017 this person visited the house of T. S. with the purpose of meeting her parents. She managed to stop him at the house entrance, asked him not to do this and explained possible consequences, but the man was stubbornly asking to enter the house. In order to stop him, she took a stick and hit him.

A criminal case commenced on the incident. On the court hearing of November 10, 2017 the woman was deemed committing a crime on the basis of Article 126 (Violence) of the Criminal Code of Georgia with a 1500 Lari fine.

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14. E. Aghdgomelashvili, *From Prejudice to Equality*, 2016, p: 175, available at: [https://ge.boell.org/sites/default/files/wisg\\_study\\_on\\_homophobic\\_attitudes\\_final.pdf](https://ge.boell.org/sites/default/files/wisg_study_on_homophobic_attitudes_final.pdf)

15. See case №10-2017

**CASE #11-2017****A „FORCED COMING OUT“ THREAT AGAINST A GAY MAN WISHING TO DIVORCE**

On June 2, 2017 G. A. approached WISG for legal help. According to him, his wife refused to divorce him and threatened with „forced coming out,“ meaning revealing information about his sexual orientation.

WISG’s lawyer explained to the wife legal consequences of her actions and provided her with information about the process of judicial divorce. As the wife understood the absurdity of her action, she agreed with G. A. and they got divorced in July 2017.

**TRANSPHOBIC FEMICIDE**

Transphobic femicide is „the killing of a transgender or transsexual woman in which the perpetrator (or perpetrators) kills her because of hate or rejection of her transsexual condition or gender identity.“<sup>16</sup> During the previous three years, two cases of murder of transgender women were recorded in Georgia, where the characters of transphobic femicide could be observed: the case of Sabi Beriani,<sup>17</sup> where the identification of the transphobic hate motive was not possible and the case of Z. Sh., the details of which are provided in WISG’s 2016 report.<sup>18</sup>

Identification of the discriminatory motive in criminal cases is of fundamental significance for protecting the dignity of the victim, as well as for preventing such crimes. The European Court of Human Rights pays special attention to the identification of discriminatory motives in the incidents of violence. In such cases, states have additional responsibility to use all efforts in identifying any kind of discriminatory motive and finding out if hate and prejudice had any role in the incident.<sup>19</sup>

Article 3 of the European Convention of Human Rights protects from degrading treatment, as well as in particular cases investigation of such treatment and punishment of the perpetrator, including identification of the motive of homophobic and

16. Camilo Bernal Sarmiento, Miguel Lorente Acosta, Françoise Roth, Margarita Zambrano. Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide). 2015. OHCHR. UN Women. p. 16. Available at: <http://bit.ly/2CcjUn3>

17. See the detailed information about the case at: <http://women.ge/news/newsfeed/124/>

18. See the information about the case in: K. Bakhtadze. „Unidentified Violence – Litigation Report.“ WISG. Tbilisi. 2017. p. 121. Available at: <http://women.ge/publications/133/>

19. Šečić v. Croatia, no. 40116/02, § 66, 31 May 2007

transphobic intolerance. The effectiveness of investigation is evaluated according to the police's identification of power integrity in a given situation<sup>20</sup> and if a state has used every measure to collect and protect the evidence, which show the commitment of violence on the basis of racial and religious intolerance, or gender discrimination.<sup>21</sup>

The trial of the case of Z. Sh. took place at the Court of First Instance on February 3, 2017. As the Prosecutor's office was not able to identify the transphobic motive in the case, it did not request aggravating the offender's responsibility according to the criminal law.<sup>22</sup>

As the legal successor, the mother of Z. Sh., M. B. represented her position at the Court of First Instance and asked for investigating the transphobic motive of the crime. According to M. B., she had a strong psycho-emotional connection with her child. For her the only rest and consolation is an adequate punishment of the person who killed her daughter. The legal successor of the victim was asking the court to examine circumstances connected to the place of the crime, to the condition of the defendant and the victim in a correction facility and to the way of committing the crime for investigating hate motives. According to her, the examination of these topics would make the identification of hate motives easier. Tbilisi City Court did not discuss the position of the victim. The court sentenced G. M. for murder and imprisonment for 10 years.

The defendant appealed the verdict to Tbilisi Court of Appeals. The legal successor of the victim M. B. presented her position to the Court of Appeals as well, which says: „The Court of First Instance did not respond to any of my arguments, which point to a hate motive, which is the aggravating circumstance of sentence. The verdict of Tbilisi City Court is not appealed by the party of accusation and the criminal procedure legislation of Georgia does not give such a permission to a victim and/or their legal successor. According to Article 298, part 2 of the Criminal Procedure Code of Georgia, the Court of Appeals does not have a right to make a stricter punishment. We ask the Court of Appeals to discuss the aggravating motive of the punishment, to fully investigate the facts pointing to hate crime and to establish intolerance regarding the victim's gender identity

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20. Boacă and Others v. Romania, no. 40355/11, § 84, 12 January 2016

21. Identoba and Others v. Georgia, no. 73235/12, § 67, 12 May 2015

22. According to Article 531 of the Criminal Code of Georgia, „Commission of crime on the basis of race, skin colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other views, disability, citizenship, national, ethnic or social affiliation, origin, property or birth status, place of residence or other signs of discrimination with the reason of intolerance shall be an aggravating factor for liability for all respective crimes.

as the motive of the crime, without rendering the judgment.“ The trial of the case started anew at Tbilisi Court of Appeals on February 16, 2018 due to a change of one of the judges.

The participation of a victim or their legal successor is particularly important for the inviolability of a victim’s right to dignity. Regarding the case *Armani Da Silva v. the United Kingdom*, the European Court of Human Rights decided that according to Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, one of the criteria of effective investigation is the involvement of the victim’s legal successor, including their family members, for protecting their legal interest in the process of investigating criminal cases.<sup>23</sup> Also, in the case against Georgia, the court mentioned that: „For an investigation to be effective... the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.“<sup>24</sup>

The case of Z. Sh. illustrates the systemic problems that are connected to the identification of discriminatory motives, as well as to the involvement of the legal successor in the hearing of criminal cases in court.

## PROTECTION AND SUPPORT SERVICES OF HATE CRIME VICTIMS

Homophobic and transphobic hate crimes bring much more harm to the victims than the crime against other persons. The victim may get bigger psychological damage and get intensified feelings of vulnerability, as they cannot change the characteristics that victimized them. Hate crime has significantly worse psychological influence on a victim, such as depressive feelings and disturbances.<sup>25</sup>

A transgender woman who was a victim of a hate crime explains the influence of the incident as: „After the incident I was totally shocked, I thought I had died. I was at home for three days and tried to deal with stress. After the incident I am very scared to go to „Pleshka,“ but due to the hard economic condition, I have to and this is double the stress for me.“<sup>26</sup>

In case where the arrest of the perpetrator is not possible, the situ-

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23. *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 231-240, ECHR 2016

24. *Tsintsabadze v. Georgia*, no. 35403/06, § 76, 15 February 2011

25. Hate crime laws - a practical guide. OSCE/ODIHR 2009. p: 20. Available at: <https://www.osce.org/odihr/36426?download=true>

26. See V. T.’s case №07-2017

ation of victims is particularly hard. A gay man explains his situation as: „I am constantly afraid that they will see me somewhere and attack me again.“<sup>27</sup>

Hate incidents have no less influence on a victim. Especially in cases when such incidents are a part of a person's daily life. As a result of the incident, one of the transgender women explains: „I was afraid and tense after the incident. It was not the first case for me and accordingly, just one incident is not the reason of my social fears and alienation.“<sup>28</sup>

The law of Georgia does not ensure adequate protection of the victim from repeat victimization during the process of criminal court justice.<sup>29</sup> Due to stigma and stereotypes existing in society, the risk of repeat victimization is especially high for the victims of homophobic and transphobic hate crimes. This factor itself is one of the hindering circumstances for the victims to contact the police.

Nowadays, the victims of hate crime can access only the Office of Protecting Witness and Victim within the Prosecutor's Office system, which has only 16 coordinators throughout Georgia. One of the responsibilities of the coordinator is to offer the victim services available at different state agencies and civil society organizations.

The existence of coordinators within the Prosecutor's Office system is very important, but the existence of this office only creates the illusion for supporting hate crime victims in the process of criminal law justice. A victim without the status of a victim cannot use the service of the coordinator. The Prosecutor has the right to grant the status.<sup>30</sup> A similar office does not exist within the system of the Ministry of Internal Affairs, while victims need the support mostly when contacting the police.

Besides the above-mentioned, it is important that the state does not limit itself to the reaction to such a crime, but that it provides special services for the victim. Services of protection and support of victims must include supporting the victims after investigation, as in every individual case the victim may have special needs and services must be based on individual evaluation.

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27. See B.'s case №08-2017

28. See case №09-2017

29. G. Khatiashvili. „Rights of Victims in Criminal Proceedings.“ The Georgian Young Lawyers' Association. Tbilisi. 2016. p: 21.

30. The Criminal Procedure Law of Georgia, Article 33 (6, O).

The minimal standards of victim's rights, protection and support are collected in EU Directive (2012/29/EU),<sup>31</sup> which obliges the states to ensure timely and individual evaluation of the victim's personal characteristics. Evaluation must consider: a) Personal characteristics of the victim; b) The type or nature of the crime c) The circumstances of the crime.<sup>32</sup> According to the same directive, the victim must have access to support services, which should be at least: a) Provision of information about the participation in the judicial process; b) The service of relevant specialist; c) Psycho-emotional support services; d) Consultation on financial and practical issues; e) Provision of preventive services for protecting from repeat victimization.<sup>33</sup>

„Women's Initiative Supporting Group“ (WISG) uses a victim-oriented approach for protecting and supporting the victims of hate crime. This is expressed in evaluating their primary needs and if needed, ensuring the involvement of respective specialists. For the victims of such crimes the organization provides:

- a) The service of a lawyer for protecting the victim's interests in criminal cases;
- b) The service of a social worker for eliminating negative consequences of the crime, including psycho-emotional support and consultation in practical issues;
- c) The service of a psychologist, ensuring reduction/elimination of the damaging effects of the crime.

Based on the social worker's evaluation, it is possible that a respective specialist, for example psychiatrist, sexologist, etc. gets involved in the support process of the victim in every case. If needed, the social worker uses the mechanism of referral (for example, ensuring shelter or finding any other resources for the beneficiary, not available at the organization).

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31. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

32. Ibid., Article 22.

33. Ibid., Article 8.



## UNLAWFUL ARREST OF TRANSGENDER WOMEN

Unlawful arrests of transgender women still took place in 2017. The victims of such treatment were mostly sex-worker transgender women. Arrests took place mostly around the so-called „Pleshka“ (gathering point of sex-workers); however, many cases took place also in other places.

The women contacting the police for the homo/transphobic crime and/or incident against them preceded the majority of the cases. Like previous years, the police used Article 166 (Disorderly conduct) and Article 173 (Non-compliance with a lawful order or demand of a law-enforcement officer) of the Administrative Offences Code of Georgia to arrest women.

„An administrative arrest represents an intensive intervention in the freedom guaranteed under the Constitution of Georgia and it may be used only if there is an appropriate ground provided for by law.“<sup>34</sup> Besides the fact that the police must be able to establish the necessity of the administrative arrest, it is important that they provide the evidence of the detained person’s offence to the court.

The legislation of Georgia considers the intentional illegal detention or arrest as a criminal offence.<sup>35</sup> The administrative offence cases that were processed by WISG in 2017 highlighted the signs of this crime against the detained, however, in every case the victims refused to refer to the Prosecutor’s Office for commencing investigation. According to them, they do so as they fear that in the future police „may treat them worse.“

In many cases, the European Court of Human Rights mentioned that: „Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment.“<sup>36</sup> The detained transgender women mentioned that in some cases the police used discriminatory expressions against them.<sup>37</sup>

Besides, the negative experience transgender women have with the police directly affects the level of their appealing and often influences the decisions of other members of the community whether to contact the police or not about violence against them. Accordingly, special attention

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34. N. Kurdovanidze. „Protests Considered to be an Offence.“ Georgian Young Lawyers’ Association. Tbilisi. 2017. Available at: <http://bit.ly/2sNmeNj>

35. The Criminal Code of Georgia, Article 147

36. Bekos and Koutropoulos v. Greece, no. 15250/02, § 45, ECHR 2005-XIII (extracts)

37. See case №22-2017

must be paid to reducing homophobic and transphobic prejudices among the police, so that stereotypical approaches do not push them towards groundless arrest with discriminatory motives against the members of the group.

#### **CASE #12-2017**

##### **UNLAWFUL ARREST OF COMMERCIAL SEX-WORKER TRANSGENDER WOMEN BY THE POLICE**

During the night hours of July 5, 2017 a transgender woman was with her friends around „Pleshka.“ Suddenly, the construction workers on the opposite street came there and verbally insulted the women. The transgender women contacted the police. The police arrested the attackers according to the administrative law and also G. U. according to Article 166 (Disorderly conduct) of the Administrative Offences Code of Georgia.

During the court hearing on July 6, 2017 the administrative offence case of G. U. and of two of the attackers was withdrawn, and one of them was fined 100 (hundred) Lari.

#### **CASE #13-2017**

##### **UNLAWFUL ARREST BY THE POLICE OF TRANSGENDER WOMEN VICTIMIZED AFTER A HOMOPHOBIC CRIME**

On May 2, 2017, neighbors attacked and started throwing stones at the house where a few transgender women live together. The women called the police and requested their reaction to the incident, but the police did not react and arrested the victims with the accusation of disorderly conduct according to Article 166 of the Administrative Offences Code of Georgia.

The court trial of the administrative offence case took place on May 4, 2017. With the presented evidence, the police could not prove the offence and the court withdrew the administrative case.

#### **CASE #14-2017**

Unlawful arrest of a transgender woman on the basis of a transphobic motive  
On August 2, 2017 Z. B. was arrested by the police on the basis of Article 166 (Disorderly conduct) and Article 173 (Non-compliance with a lawful order or demand of a law-enforcement officer) of the Administrative Offences Code of Georgia. The beneficiary did not consider herself guilty and explained that the arrest was due to homophobic and transphobic prejudices of the police.

On September 26, 2017 the court withdrew the administrative case of the beneficiary due to the non-existence of evidence.

## DOMESTIC VIOLENCE AGAINST LGBTI PERSONS

Family members almost never accept the sexual orientation or gender identity of LGBTI persons. Often the „suspicion“ that a family member is a community member is enough for violence. Due to the stigma existing in the society, the members of the group refrain from disclosing their sexual orientation or gender identity to their family members. Accordingly, they fear „forced coming out“ when contacting the police and that their family members will know about their orientation or gender identity. The fear is strongly grounded, as in case of „forced coming out“ there is a danger of stronger violence by family members.

Another problem is the use of protection mechanism from violence against women and domestic violence for same-sex couples. This is conditioned by the state not recognizing same-sex relationships, as well as by the lack of knowledge about these mechanisms among LGBTI community.

The World Bank research<sup>38</sup> of 2017 discovered main tendencies of gender-based violence against LGBTI persons. With regards of domestic violence against the members of the group it is important to mention the following purposes of discrimination identified by the research: a) the importance of maintaining traditional families and the growth of ‘traditional values;’ and b) understanding nonnormative sexual orientation and gender identity as abnormal.

With regards to domestic violence, contacting the police in similar cases remains the biggest problem for the group. Also in 2017, WISG proceedings included many domestic violence cases, where the members of the group refused contacting the police and chose to concur with the perpetrator and endure violence. Like 2016,<sup>39</sup> one of the women among the victims of domestic violence managed to contact the police in 2017, which is a rare case. Unlike many other women, in this particular case T. J. was not financially depending on her family and this influenced her decision significantly.

Domestic violence is particularly problematical in case of same-sex couples. The law protecting violence against women and domestic vi-

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38. Ashwill, Maximilian; Lacroix, Rebecca. 2017. Gender Based Violence in Georgia : Links among Conflict, Economic Opportunities and Services. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/29108>

39. K. Bakhtadze. „Unidentified Violence – Litigation Report.“ WISG. Tbilisi. 2017. p: 127. Available at: <http://women.ge/publications/133/>

olence does not consider an intimate partner as a family member and does not provide specific legal regulation of violence by them. At the same time, violence by an intimate partner is one of the most widespread forms of domestic violence and implies physical, sexual, psychological, economic violence, forcing and controlling partner's behavior, which has a systematic character and results in placing a partner in a degrading condition. Like heterosexual couples, such violence takes place among homosexual couples as well. Despite this, the statistical data about similar violence in case of same sex partners is very little.<sup>40</sup> Such data is not processed at all on the national level. Accordingly, evaluation of the scale of the problem is impossible.

The threat of „forced coming out“ by partners towards LGBTI community members is very frequent and blackmailing by revealing information about victim's sexual life takes place. All of this creates additional barriers for LGBTI persons to use protection mechanisms in equality with others. Accordingly, violence by an intimate partner among same-sex couples remains without any reaction from law enforcement bodies.

In 2017 WISG encountered the case,<sup>41</sup> where the police issued a restriction order for violence by an intimate partner against a gay man. It is the only case in the practice of WISG proving that in case of contacting the police together with community lawyers, gay and bisexual men can also use protection mechanisms.

In one of the cases<sup>42</sup> processed by WISG, a lesbian woman who was a victim of domestic violence was offered a shelter, protecting her from violence, and the use of other services designed for the victims, however, she refused since at WISG she is receiving the services of a psychologist, a social worker and a lawyer. Her decision was influenced by the fear of repeat victimization by the specialists who are not acquainted with LGBTI organizations and do not work with the group. The nonexistence of academic knowledge about sexual orientation and gender identity is a huge barrier for professionals of every sphere and influences the quality of their service. It is possible that a specialist does not have a stereotypical attitude towards the members of the community, but they will still not manage to provide thorough services.

The use of services protecting from domestic violence has not been

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40. The Health of Lesbian, Gay, Bisexual, and Transgender People. National Academy of Sciences. 2011. Page 233

41. See case №18-2017

42. See case №16-2017

offered to a gay man who was the victim of violence by an intimate partner.<sup>43</sup> In this particular case, the victim did not require a shelter or ensuring other services and did not contact respective authority. However, this practice shows that using protection mechanisms from domestic violence is not accessible for gay and bisexual men.

In 2017, the Parliament of Georgia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). A number of legislative changes with regards of protecting women from violence took place together with ratifying the Convention, but without providing specific needs of different unprotected groups in the law, the use of the mechanisms becomes difficult for the representatives of unprotected groups of the society. At the same time, the Convention predominantly requires „measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.“<sup>44</sup> Accordingly, it is important that together with heterosexual couples, the mechanisms of protection from violence against women and domestic violence protect homosexual couples as well and consider specific needs of individual unprotected groups.

### **CASE #15-2017**

#### **THREAT OF DAMAGING HEALTH TO A GAY COUPLE**

On July 14, 2017 M. B. contacted WISG explaining that his partner and he were threatened to be harmed and killed by his partner's father. The perpetrator had learned about the couple and was threatening them on homophobic basis. The beneficiary and his partner refused to contact the police and stopped contact with the organization.

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43. See case №18-2017

44. Convention on preventing and combating violence against women and domestic violence, Article 4(3).

**CASE #16-2017****HOMOPHOBIC VIOLENCE BY PARENTS AGAINST A LESBIAN WOMAN**

For the past two years, T. J. was experiencing violence by both parents, as they did not accept her sexual orientation. The violence on their child had different forms: psychological pressure, physical violence and an attempt to persuade her to undergo „sexual orientation treatment“ took place. When the violence by the parents became unbearable, the victim left the house on January 19, 2018 and moved in with her partner.

The parents continued the threat of violence and since the victim was scared of it coming true, on January 19 she contacted the police. The case was directed to another department and on January 24, 2018 a restraining order was issued against both parents: the form of violence: psychological; the restraining order considers the following: a) removing the perpetrator from the house where the victim resides; e) prohibiting the perpetrator to go near the victim, her workplace and the places of her being.

**CASE #17-2017****PSYCHOLOGICAL AND SEXUAL VIOLENCE AGAINST A BISEXUAL MAN**

For almost entire year, Giorgi (the name is fictitious) was experiencing stalking, threat of violence, the threat of „forced coming out“ and sexual oppression by his intimate partner. He was trying to end the relationship with his partner, but was scared that he would reveal information about their relationship and was refraining from it due to this reason. Giorgi says that during the relationship he started to take sedative medications, started to experience disturbance and other psycho-emotional problems. After many attempts, Giorgi and his partner agreed that they would end the relationship. On July 20, 2017 Giorgi was planning to go to another city and when he was near Tbilisi Railway Station, his former partner, who had bought a ticket in the same direction in prior, approached him. He showed the ticket to Giorgi and promised that if after his return he would not continue their relationship with him, he would go to his parents and tell them about the relationship.

In order to avoid the expected danger and the consequences of „forced coming out,“ Giorgi decided to lie to his former partner and promised that after returning he would continue the relationship with him. After returning to Tbilisi, Giorgi stopped the relationship with him anyway, but stalking, blackmailing and threatening continued by his former partner.

Giorgi is refraining from contacting the police, as he is afraid of „forced coming out“ and repeat victimization. WISG was able to only document the case.

## CASE #18-2017

### PSYCHOLOGICAL VIOLENCE BY AN INTIMATE PARTNER

L. G. is a gay man and became the victim of violence by his intimate partner. According to the victim, he experienced sexual and psychological violence by his partner, which was expressed in the following: for some years, the partner of L. was threatening him with „forced coming out“ and through this way tried to meet and have sexual relation with him. According to the victim, the perpetrator explained his behavior through his love and was sad that he could not achieve his aim otherwise. L. M. approached us for help in October, 2017 in order to find out about existing mechanisms of protection from violence, however, he refrained from contacting the police due to fearing improper reaction and/or degrading treatment by the police. Later, when the violence became unbearable, on November 7, 2017 he contacted the police with the help of WISG. The police reacted in the following way: they called in the perpetrator and warned him to stop contacting his former partner. Despite the warning, the perpetrator continued harassing the partner, expressed in the threat of „forced coming out.“ The victim contacted the police again and on February 3, 2018 a restraining order was issued against the perpetrator: the form of violence: psychological; the restraining order considers the following: e) prohibiting the perpetrator to go near the victim, their workplace and the places of their being.

## UNLAWFULLY PROCESSING THE PERSONAL DATA OF LGBTI PERSONS

The right to inviolability of the private life of LGBTI persons is often violated and it is expressed through different forms. It includes „forced coming out,“ which means spreading information about a person’s sexual orientation or gender identity, or revealing it to a third party without the permission of this person. Due to the strong stigma existing among the society, in such cases the member of the LGBTI community may become a victim of violence and discrimination. Despite the frequency of such facts and their negative influence, the members of the group refrain from contacting law-enforcing authorities.

The safety of personal data is an indivisible part of the right to inviolability of the private life and is protected by the Constitution of Georgia.<sup>45</sup> Personal data consists of data of different categories and the level of their protection also varies. Information about a person’s sexual life is considered specific personal data, the processing or passing of which to a third party is only possible with the written consent of this person, or in the case, that this person has made it public.<sup>46</sup> The information about a person’s sexual life includes information about their sexual orientation and is covered by the law. Unlawful treatment of this information is a criminal offence.<sup>47</sup>

The practice of WISG consists of a lot of documented cases of „forced coming out,“ but the majority of the victims refuse referring to legal actions in order not to make their condition harder. For people living in the regions and especially in the villages of Georgia contacting the police is even more complicated, as there are higher chances of revealing information and this may push violence further.

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45. The Constitution of Georgia, Article 20

46. The Law of Georgia on „Personal Data Protection,“ Article 6 (2, d)

47. The Criminal Code of Georgia, Article 157



### **CASE #19-2017**

#### **DISTRIBUTION OF THE PERSONAL DATA OF A GAY MAN WITHOUT PERMISSION**

On January 20, 2017 T. D. was contacted by his acquaintance and informed that in one of the phone applications his picture had been used, and age, sexual orientation, address, workplace and other personal data had been provided. The application said that N. K. „offered every type of sexual service.“

The victim wrote to the administration of the application and asked for the removal of his account. The administration of the application deleted the account. T. D. contacted the police about the fact on January 27, 2017, but the police did not react to it.

### **CASE #20-2017**

#### **DISTRIBUTION OF A GAY MAN'S PHOTOS WITHOUT PERMISSION**

On September 17, 2017 B. G., who lives in the region with his partner, contacted WISG that they have not revealed information about their sexual orientation to his and his partners' relatives, and to people living with them. B. G. explained that his friend unlawfully gave his personal photos of intimate character to their common acquaintance, who did not know about his sexual orientation until then and after learning it by seeing the photos, insulted him on the basis of homophobic motives. The beneficiary was refraining from contacting the police due to the fear of „forced coming out“ and repeat victimization and approached the Public Defender of Georgia on September 21, 2017. The Public Defender sent the case to the respective territorial police in the region, however, did not reveal the sexual orientation of B. G. On October 5, 2017 B. G. was interviewed at the local police department, but he did not reveal his sexual orientation and gender identity to the police.

The investigation of the criminal case did not commence, as the police did not see the signs of the crime.

# DISCRIMINATION

## SEX-BASED DISCRIMINATION

### Discrimination in Labor Relations

Sex-based workplace discrimination is one of the biggest challenges for women living in Georgia. The majority of cases processed by the Public Defender of Georgia are about discrimination in labor and pre-contractual relations.<sup>48</sup>

The discussion of L. L.'s case<sup>49</sup> processed by WISG continued in the Court of Appeals in 2017. L. L. requested the cancelation of the decision of Tbilisi City Court and by the new decision the annulment of the decision regarding the refusal of the academic position of assistant professor on August 19, 2014 session #6 by the faculty committee of job competition at the faculty of Fine Arts at LEPL Apolon Kutateladze Tbilisi State Academy of Art. The litigant believed that Tbilisi City Court had discussed the case of discrimination by totally neglecting the existing law on the prohibition of discrimination in Georgia and she requested checking the relevance of the act with the Law of Georgia „on the Elimination of All Forms of Discrimination.“

Tbilisi Court of Appeals retained the decision of the Court of First Instance; the Supreme Court of Georgia considered the appeal of L. L. as inadmissible.<sup>50</sup>

The Public Defender of Georgia examined the case of L. L. and on July 3, 2017 sent a recommendation to the Rector of LEPL Apolon Kutateladze Tbilisi State Academy of Art requesting the annulment of the competition decision in relation with L. L. at the Academy and further, as a result to fully examine the case and make a new decision regarding her candidacy.<sup>51</sup> The recommendation of the Public Defender was not fulfilled.

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48. The Public Defender of Georgia. „Fight against Discrimination, Its Prevention and Situation of Equality.“ Tbilisi. 2017. Available at: <http://ombudsman.ge/uploads/other/4/4825.pdf>

49. See the details of the case in: K. Bakhtadze. „Unidentified Violence – Litigation Report.“ WISG. Tbilisi. 2017. p. 137. Available at: <http://women.ge/publications/133/>

50. The decision of the Supreme Court of Georgia as of June 22, 2017 on the case ლლ-205-203(ჯ-17)

51. See the recommendation of the Public Defender of Georgia to the Rector of LEPL Apolon Kutateladze Tbilisi State Academy of Art regarding the lawfulness of the competition: Available at: <http://bit.ly/2CmBG2z>

L. L. believes that the universal right to work, to free choice of employment and freedom of thought and conscience, protected by the Constitution of Georgia were infringed. The employees of a specific administrative body persecute her, because she has different views on learning and teaching. These views are in relevance with the law and the standard, but differ from those of the committee members who were deciding her appointment on the position.

According to Article 10 of the European Convention of Human Rights and Fundamental Freedoms, „Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.“ According to the Case-law of the European Court of Human Rights, „Those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society.“<sup>52</sup>

In the decision on the case Kjeldsen, Busk Madsen and Pedersen v. Denmark, the European Court of Human Rights explained that „[The first additional protocol to the European Convention on Human Rights] The second sentence guarantees the possibility of pluralism in the provision of education...“<sup>53</sup> In this case, applicants, were protesting mandatory sexual education in schools as Christian parents. The court examined the national legislation, evaluated educational material and did not acknowledge the breaching of article 2, as it considered that in this case the best interest of a child was fundamental and determinative, and not the worldview and religious views of parents. In case of L. L. the central point should have been the opinion of the students who want her to teach, and students should have the possibility to choose teachers themselves.

## **Indirect Discrimination of the Female Victims of Sexual Violence**

The medical procedures of terminating pregnancy after sexual violence are only accessible formally for the female victims of the violence. According to the Georgian legislation, for female victims of this crime, artificial termination of pregnancy - abortion - is not prohibited. Despite this, women often cannot afford the medical procedure due to hard socio-economic conditions. In such cases, the women have to ask their family members or acquaintances for financial support, which may cause repeat victim-

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52. Müller and Others v. Switzerland, 24 May 1988, §33, Series A no. 133

53. Kjeldsen, Busk Madsen and Pedersen v. Denmark, 7 December 1976, §50, Series A no. 23

ization.

In April 2016 WISG approached the Public Defender for establishing indirect discrimination of female victims of sexual violence.<sup>54</sup> The Ombudsman examined the organization's application and on October 2, 2017 approached the Ministry of Labor, Health and Social Affairs of Georgia<sup>55</sup> with a general proposal. The general proposal concerns the elimination of discrimination encouraging practice against the female victims of sexual violence.

In this the Public Defender places emphasis on the stigma against artificial termination of pregnancy resulting from rape: „In the societies, where the victimization and stigmatization of rape victims is particularly rooted, pregnancy resulting from rape creates a precondition for the victim to be possibly under pressure of the society around them and be victimized all the time. Besides, often more than the societal pressure, the victim of rape suffers from the feeling of guilt, respects themselves less and self stigmatizes.“<sup>56</sup>

In the general proposal the Ombudsman asked the Ministry of Labor, Health and Social Affairs of Georgia the following:

- 1) In case of pregnancy resulting from rape, to discuss financial aid for the victim in the framework of the state healthcare system;
- 2) In case of introducing financing mechanisms for women pregnant after rape, to make the decision on financing based on the victim's social and economic condition;
- 3) In the decision-making of financing a woman pregnant after rape the precondition should not be the court's decision on the criminal case and starting investigation of rape case should be enough for commencing the decision-making process.

As a response, the Ministry of Labor, Health and Social Affairs of Georgia provided information regarding the services that are available for human trafficking, violence against women and/or domestic violence and sexual violence victims and their dependents. These services do not include financing medical procedures for terminating pregnancy for female

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54. See the details of the case in: K. Bakhtadze. „Unidentified Violence – Litigation Report.“ WISG. Tbilisi. 2017. p: 138. Available at: <http://women.ge/publications/133/>

55. See the Public Defender's Proposal on Guaranteeing Essential Equality of Victims of Sexual Violence. Available at: <http://bit.ly/2Co2kl9>

56. *ibid.*, p: 5-6.

victim of rape. The letter<sup>57</sup> does not mention anything about the implementation of this service of the Ministry. Accordingly, the general proposal of the Public Defender has not been fulfilled yet.

## DISCRIMINATION BASED ON SEXUAL ORIENTATION

Discrimination of LGBTI persons based on sexual orientation is particularly frequent in labor relations and the sphere of service. WISG has documented many cases where employed LGBTI persons experience workplace discrimination and harassment, but refuse to appeal to the court due to fearing „forced coming out.“ The research conducted at different times by the organization show that LGB persons often face discrimination in the sphere of service.

The practice of the Public Defender also includes many cases of discrimination based on sexual orientation. According to the report of 2016-2017, 11% of the cases proceeded by the Ombudsman concern discrimination based on sexual orientation and gender identity.<sup>58</sup>

In one of the decisions,<sup>59</sup> regarding the case of discrimination based on sexual orientation the Ombudsman mentioned that: „LGBTI community is one of the most vulnerable groups in Georgia. They face problems in a number of spheres of public life, including personal, professional, social or cultural aspects of life. The aggressive attitudes existing in the society, which feeds on established stereotypes, limits the possibilities for LGBTI people to be full members of the society and not become the victims of verbal or physical abuse.“

On February 1, 2018 in one of the cases<sup>60</sup> processed by WISG the Public Defender of Georgia filed the Amicus Curiae brief.<sup>61</sup> The Ombudsman highlights the transfer of legal burden to the defendant: „In the case, it is important that the court pays attention to the circumstances presented by the plaintiff, according to which their right to use the services of karaoke bars were limited. The limitation was based on their sexual ori-

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57. The letter №01/65268 of the Ministry of Labor, Health and Social Affairs of Georgia on October 18, 2017.

58. The Public Defender of Georgia. „Fight against Discrimination, Its Prevention and Situation of Equality.“ Tbilisi. 2017. p: 8. Available at: <http://ombudsman.ge/uploads/other/4/4825.pdf>

59. See „Public Defender of Georgia Establishes Discrimination Based on Sex.“ p: 7. Available at: <http://www.ombudsman.ge/uploads/other/4/4194.pdf>

60. See case №21-2017

61. See „Public Defender Files Amicus Curiae Brief Concerning Alleged Discrimination on Grounds of Sexual Orientation.“ Available at: <http://www.ombudsman.ge/uploads/other/5/5067.pdf>

entation. If the factual evidence circumstances presented by the plaintiff are sufficient for the court and it has the supposition of a discriminatory treatment, according to Article 363<sup>3</sup> of the Civil Procedure Code of Georgia, the burden of proof will be transferred to the defendant that the different treatment for receiving the service has a legitimate aim, which will establish objective and rational claim.<sup>62</sup>

Also, the Ombudsman asks the court to consider the fact that „the LGBTI+ community is one of the most unprotected groups in Georgia, the member of which face discrimination in almost every sphere of public life.“

### CIVIL CASE #21-2017

#### PROHIBITING A LESBIAN WOMAN TO USE THE SERVICES OF KARAOKE BARS BASED ON A HOMOPHOBIC MOTIVE

A. L. often used to visit three karaoke bars in Tbilisi (names are not provided) that have the same administration. During one of the visits on January 31, 2017 the woman learnt that she was on the so-called „black list“ and was not allowed in the bar. On March 15, 2017 she visited another bar and the security informed her that they would not let her in the establishment anymore, as she was on the so-called „black list.“ Also, this person informed A. L. that she was prohibited from using the services of the third establishment. A. L. believes that being on the so-called „black list“ is based on her sexual orientation. She tried to contact the administration a few times in order to find out the reason of being on the so-called „black list,“ however, none of the attempts had a result. For establishing discrimination and indemnification for moral harm, the woman appealed to Tbilisi City Court. According to the counter-claim presented by the defendant at the court, A. L. faced disciplinary consequences due to violating internal regulations and was prohibited from entering the private territory for one year.

The trial of the case continues at Tbilisi City Court.

## DISCRIMINATION BASED ON GENDER IDENTITY

WISG has documented many cases of discrimination against transgender and gender nonconforming persons while receiving service. However, providing service is not the only sphere where transgender persons face discriminatory treatment. Unenviable and improper treatment based on gender identity and expression is frequent at state jobs, workplaces and educational or medical establishments. In the majority of the cases,

62. Ibid. p: 6

transgender or gender non-conforming persons, who are the victims of discriminatory treatment, refrain from appealing to court or to the Public Defender due to the fear of repeat victimization, or „forced coming out.“ However, in particular cases the Ombudsman’s anti-discriminatory mechanisms are still utilized.

On November 3, 2016 V. T. contacted the Public Defender of Georgia for establishing discrimination based on gender identity and expression against the taxi company „Maxim.“<sup>63</sup>

On May 31, 2017, the Public Defender of Georgia contacted taxi driver G. G. and taxi company „Maxim“ (LLC „Technocom“) with a recommendation of investigating direct discrimination based on gender.<sup>64</sup> The Public Defender mentions in the recommendation that „according to Article 4 of the Law of Georgia „on the Elimination of All Forms of Discrimination,“ any organization, including private companies, have a responsibility to have their activities, legal acts and inner regulations in compliance with anti-discriminatory legislation. Accordingly, LLC „Technocom“ must ensure that public services offered by them (including those through intermediaries) can be equally used by every person, as the attempt of LLC „Technocom“ to avoid responsibility in future may encourage discrimination.“<sup>65</sup>

The Public Defender recommended:

- 1) G. G. to protect the principle of equality when offering taxi service and provide service to passengers despite their identity, sexual orientation or other characteristics;
- 2) LLC „Technocom“ to ensure the accessibility of publicly offered services to be in accordance with protecting the principle of equality;
- 3) LLC „Technocom“ to create inner regulation, which will include company’s anti-discriminatory policy when providing services for customers;
- 4) LLC „Technocom“ to add a parameter on the webpage of taxi

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63. See the details of the case in: K. Bakhtadze. „Unidentified Violence – Litigation Report.“ WISG. Tbilisi. 2017. p: 142. Available at: <http://women.ge/publications/133/>

64. See „Public Defender’s Recommendation on Establishing Gender-Based Direct Discrimination.“ Available at: <http://www.ombudsman.ge/uploads/other/4/4497.pdf>

65. Ibid. p: 6-7

„Maxim“ - [www.taximaxim.ge](http://www.taximaxim.ge) - that will provide drivers with information about the company's anti-discriminatory policy during the registration, acceptance of which will be a precondition of registration.

Until now LLC „Technocom“ has not informed the Public Defender of Georgia about the results of discussing the recommendation. It is important that when making the decision, the Public Defender considered research implemented by WISG at different times about the legal conditions of LGBTI persons<sup>66</sup> and pointed out that the LGBTI community is one of the most unprotected groups in Georgia nowadays.<sup>67</sup>

### Transphobic Attitudes of the Police

Often homophobic and transphobic prejudices of the police towards transgender women and particularly sex-worker transgender women are the basis of their illegal detention.<sup>68</sup> One transgender woman, who fell victim of such treatment by the police, utilized the Ombudsman's anti-discriminatory mechanism and requested the establishment of discrimination by a particular policeman.<sup>69</sup>

In the case *Stoica v. Romania*, the European Court of Human Rights concluded the infringement of Article 3 (Prohibition of torture) in connection with Article 14 (Prohibition of discrimination). In establishing the claim the court used the fact that the term used by the police was stereotypical and exactly for this reason they were not neutral regarding race during the investigation.<sup>70</sup> Accordingly, in examination of discrimination cases, attention must always be paid to not only the use of hate speech against a victim, but also the use of stereotypical terms.

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66. E. Aghdgomelashvili, *From Prejudice to Equality*, 2016, p. 105, available at: [https://ge.boell.org/sites/default/files/wisg\\_study\\_on\\_homophobic\\_attitudes\\_final.pdf](https://ge.boell.org/sites/default/files/wisg_study_on_homophobic_attitudes_final.pdf) and N. Gvianishvili, „Situation of Transgender People in Georgia,” 2015, p: 18, available at [http://women.ge/data/docs/publications/WISG\\_Transgender\\_survey\\_2015.pdf](http://women.ge/data/docs/publications/WISG_Transgender_survey_2015.pdf)

67. See „Public Defender's Recommendation on Establishing Gender-Based Direct Discrimination.” p: 7. Available at: <http://www.ombudsman.ge/uploads/other/4/4497.pdf>

68. See above. „Unlawful Arrest of Transgender Women.”

69. See case № 22-2017

70. *Stoica v. Romania*, no. 42722/02, § 128, 4 March 2008



## CASE #22-2017

### TRANSPHOBIC ATTITUDE OF THE POLICE

On February 27, 2017 a transgender woman Z. B. contacted the Public Defender of Georgia with the request of investigating discrimination based on gender identity and expression by the patrol police.

The defendant believes that she was unlawfully arrested by the patrolling inspector, as he was acting with homophobic and transphobic prejudices. The inspector who personally detained Z. B. and issued the report of administrative offence, during the court hearing of the case expressed personal attitudes towards transgender women generally, including Z. B. On December 6, 2017 during the court hearing at Tbilisi City Court the inspector said: „The presented material shows her behavior, evidential disrespect towards us, as well as the society and this is not the first, and trust me, the last... [the detained] mentioned during the personal conversation that it is good for her when we detain, harass her... and so on... it is an established opinion that [transgender women] express evident disrespect towards me, as well as towards you, they do not acknowledge state institutions at all.“

The Public Defender still has not made a decision on this case.

## LEGAL GENDER RECOGNITION

The topic of legal gender recognition is still unregulated in Georgia. Transgender persons are not able to change entry about gender in identification documents, which causes many obstacles in their daily life and puts them under the constant threat of „forced coming out.“

In 2017, the courts of Georgia stopped discussing the cases regarding legal gender recognition of transgender persons.<sup>71</sup> Two transgender men were not able to change the entry about gender in identification documents, as the Ministry of Justice of Georgia was requesting them to undergo sexual reassignment procedures that are expensive, invasive and have a risk of inconvertible sterilization. Also, it is important that the Ministry of Labor, Health and Social Affairs of Georgia does not have clinical guidelines or protocols for implementing these medical procedures.

A. D.<sup>72</sup> and A. Kh.<sup>73</sup> appealed to the European Court of Human Rights in 2017 with the help of WISG and the European Human Rights Advocacy Center (EHRAC).<sup>74</sup> The applicants believe that by refusing their legal gender recognition, the State of Georgia has infringed Article 3 (Prohibition of torture) and Article 8 (Right to respect for private and family life) of the Convention, together with Article 14 (Prohibition of discrimination).

According to the applicants, their social roles are in relevance with that of a man and the entry „female“ about their gender in identification documents causes „forced coming out.“ This situation creates a lot of obstacles for them in society, as the stigma towards transgender persons is very strong. A. D. and A. Kh. define that the fear of „forced coming out“ puts them under constant stress and extremely negatively affects the quality of their lives. They believe that by refusing legal gender recognition, the state infringes their right to inviolability of the private life, as it cannot ensure the existence of an effective mechanism of legal gender recognition. According to the applicants, they are subjects of discrimination due to all the above.

In 2017, the European Court of Human Rights made yet another decision regarding the case connected to legal gender rec-

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71. See the details of the case in: K. Bakhtadze. „Unidentified Violence – Litigation Report.“ WISG. Tbilisi. 2017. Available at: <http://women.ge/publications/133/>

72. The application was sent to the European Court of Human Rights on 1 August, 2017.

73. The application was sent to the European Court of Human Rights on 10 November, 2017.

74. See information about the organization at: <http://ehrac.org.uk>

ognition.<sup>75</sup> In the case the court yet again established infringement of the right to inviolability of the private life due to refusing legal gender recognition, however, in the part about requesting medical procedures, it only underlined inconvertible sterilization. The court has also made a similar decision in the case against Turkey.<sup>76</sup> The court has not yet discussed the impossibility of legal gender recognition for transgender persons as a practice supporting discrimination and has not established infringement of the right to prohibiting discrimination that is protected by the Convention. According to the report by Professor Stephen Whittle on the cases: „the lack of identity documents that conform with one’s gender identity or expression can lead to discrimination“.<sup>77</sup>

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75. A.P., Garçon and Nicot v. France, nos. 79885/12 and 2 others, ECHR 2017 (extracts)

76. Y.Y. v. Turkey, no. 14793/08, ECHR 2015 (extracts)

77. Report of Professor Stephen Whittle. 30 July, 2017. §45

## ACCESSIBILITY TO HEALTH CARE SERVICES FOR TRANSGENDER PERSONS

Transgender persons living in Georgia still do not have access to trans-specific medical procedures, including hormone therapy, sex reassignment surgery and others. The Ministry of Labor, Health and Social Affairs of Georgia has not appropriately acknowledged clinical guidelines and protocol for caring for transgender persons. In 2017 WISG translated and provided to the Ministry the „Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People“ created by „The World Professional Association for Transgender Health“ (WPATH).<sup>78</sup> The Ministry has still not responded what actions they will take for the preparation of clinical guidelines or protocol in accordance with these standards.

According to the research conducted by WISG in 2015, „Of special importance for transgender persons participating in WISG’s study are medical services needed for transition, such as hormonal therapy and various types of surgical interventions (especially mastectomy or breast enlargement).“<sup>79</sup> Despite the need, the Ministry of Labor, Health and Social Affairs of Georgia does not have clinical guidelines or protocol for conducting trans-specific medical procedures. The health care system of the country totally neglects specific needs of transgender persons.

The case proceeded by WISG in 2017 clearly showed that the services accessible at individual medical facilities remain inaccessible for transgender persons. On one hand, the problem of accessibility is conditioned by the price of procedures that the members of the community cannot often afford; on the other hand, the members of the group do not have equal possibilities with other citizens to use financial support of medical procedures available through the state health care programs.

This is conditioned by the fact that even those clinic in Georgia, which have certain specific medical services for transgender persons, refuse

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78. The World Professional Association for Transgender Health. „Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.“ Available at: <http://women.ge/publications/152/>

79. E. Aghdgomelashvili, N. Gvianishvili, T. Todua, Ts. Ratiani. „Needs of Transgender Persons in Healthcare,“ WISG, Tbilisi, 2015, p: 102 Available at: <http://women.ge/publications/52/>

to register special standards in the special database of the Ministry.<sup>80</sup> The standard represents „any pricing document approved by a supplier, which may evidentially depend on the respective protocol of medical treatment and which presents the consisting components of the service and their price calculations; suppliers say that the registration of medical procedure standards needed for transgender persons is non-profitable firstly due to the small demand of such services and they also think that the decision-making committee will refuse financing this service through the „Referral Service.“

This case represents yet another vivid example of refusing specific medical needs of transgender persons. Transgender persons are a particularly small group of society. Taking care of fulfilling their specific needs is the state’s obligation and it cannot solely depend on the will of the directors of individual clinics.

#### **CASE #23-2017**

##### **IMPOSSIBILITY OF FINANCING TRANS-SPECIFIC MEDICAL PROCEDURES**

On April 18, 2017 R. P. contacted the Social Service Agency in order to receive medical support in the framework of the „Referral Service“. The representative of the Agency explained to them that presented tax invoice and invoice are not in compliance with the standards for considering their application. The applicant must present an invoice from a medical facility that has provided price calculations of medical procedures in prior in the special electronic database of the Ministry.

WISG contacted the medical facility and asked for the price calculations of the procedures, but the clinic refused. The financial manager of the clinic explained that there is a small demand for such procedures and ensuring price calculations of trans-specific procedures is a disproportionate expense for the clinic.

Accordingly, the application of R. P. about financing medical procedures remained unconsidered.

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80. This standard is defined by the ordinance №177 of the Government of Georgia as of 14 May, 2012, „On Adopting the Regulations of Providing Medical and Insurance Services in the Framework of the State Health Insurance Program.“ Available at: <https://matsne.gov.ge/ka/document/view/1654534>

## MEDIA COVERAGE OF LGBTI ISSUES

The use of homophobic/transphobic hate speech in media and unethical coverage of issues connected to LGBTI persons still took place in 2017. WISG applied to the Georgian Charter of Journalistic Ethics<sup>81</sup> four times against different media organizations and/or journalists. Stories, the content of which became disputable in accordance with the standards of journalistic ethics, contained the danger of encouraging discrimination against LGBTI persons and/or represented unethical intervention in the personal life of transgender persons.

According to Principle 7 of the Georgian Charter of Journalistic Ethics, „journalists must understand the dangers of encouraging discrimination on the part of the media; therefore, he/she must exert every effort to avoid discrimination of any person on the basis of race, sex, sexual orientation, language, religion, political and other opinion, national or social origin, or any other grounds.“ Based on the application of WISG, the board deemed ignoring homophobic statements by a journalist as an infringement of the Principle 7 of the Charter.<sup>82</sup> One of the cases shows the representation of transgender women as exotic persons by a journalist.<sup>83</sup> This practice encourages strengthening the stigma that exists in society. In a number of decisions, the board mentioned that stigmatization and encouragement of stigma is a form of discrimination in terms of the aims of journalistic ethics.<sup>84</sup>

According to Principle 10 of the Georgian Charter of Journalistic Ethics „Journalists must pay respect to privacy, and not intrude into the private lives of people unless there is special public interest.“ This principle includes inevitability of obtaining respondent’s informed consent when working on their personal data. It is of particular importance that every journalist understands the significance of protecting this principle in the preparation of material, as the Law of Georgia on „Personal Data Protection“ does not cover processing data by media for the purpose of informing the public.<sup>85</sup> Accordingly, journalists must understand the dangers connected to processing personal data without obtaining informed

81. „The Georgian Charter of Journalistic Ethics - an independent union of journalists aimed at raising the social responsibility of media through protection of professional and ethical standards, and development of self-regulation mechanisms.“ See: <http://qartia.ge/ka/qartia>

82. See case № 24-2017

83. See case № 25-2017

84. For example, see the decision of the Board on the case „PHR v. Gia Jajanidze and Maia Stepnadze.“ Available at: <http://bit.ly/2CvJ8sd>

85. See the Law of Georgia on „Personal Data Protection,“ Article 3, Point 4.

consent and must use every effort not to intrude unethically in a person's private life.

To the decision on one of the cases in 2015 the Georgian Charter of Journalistic Ethics included recommendation guidelines,<sup>86</sup> which should be considered when preparing material about transgender persons. The Charter deemed the abolition of this recommendation causing the infringement of Principle 10.<sup>87</sup> The aim of preparing the recommendations was to protect transgender persons from exoticization and avoid strengthening stigma against them that exists in society. These recommendation guidelines include the definition of the word „transgender,“ ethical coverage standards connected to gender identity and name of transgender persons, circumstances to be considered during the coverage of topics related to the members of the group, including those connected to providing context and difficulties of coverage.

Distributing personal data of transgender women without their permission or using improper and unethical terms towards them is a particularly frequent problem in making journalistic products about transgender persons.<sup>88</sup> Two of the cases processed by WISG clearly show that the journalists do not know the standards of the Charter and do not use it when preparing material. In one of the cases, mediation was possible between WISG and the journalist of TV „Imedi,“ as the journalist mentioned that „she was unaware of the Board's recommendation regarding coverage of themes connected to transgender persons.“<sup>89</sup>

Strengthening stigma against LGBTI persons is encouraged by spreading group-related stereotypes through media, as well as using discriminatory terms existing in society. Accordingly, it is important that on one hand, a journalists does not spread such stereotypes themselves and on the other hand, that they react to discriminatory expressions of a respondent. Media has a special role in exoticizing transgender persons and strengthening stigma connected to this group. Accordingly, it is important that journalists understand the challenges that the group is facing and that they know the specific needs of the group.

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86. See the decision of the Charter's board on the case Women's Initiative Supporting Group v. journalists: „Levan Sutidze, Ketii Kvachantiradze, Beka Mchedlishvili, Tea Sichinava and Nanuka Kajaia“ 26.04.2015. Available at: <http://bit.ly/2C9IQLK>

87. According to Principle 10, „Journalists must pay respect to privacy, and not intrude into the private lives of people unless there is special public interest.“

88. See case №28-2017

89. See case №25-2017

### **CASE #24-2017**

#### **INFRINGEMENT OF PRINCIPLE 7 OF THE CHARTER BY IGNORING A HOMOPHOBIC EXPRESSION**

In October 2017 WISG applied to the Board of the Georgian Charter of Journalistic Ethics. The organization believed that on October 2, 2017 Principle 7 of the Charter was infringed at program „Prioriteti“ of TV „Iberia.“ Responding journalist was the host of the show, Maka Razmadze.

The applicant mentioned that during the show, respondent Davit Akhrakhadze said the following phrase: „Faggots also give interviews.“ The host of the show did not have a proper reaction to the phrase.

The case was discussed on December 22, 2017 and the board deemed infringement of Principle 7 of the Charter by the journalist.<sup>90</sup>

### **CASE #25-2017**

#### **STRENGTHENING STIGMA TOWARDS TRANSGENDER WOMEN**

In November 2016 WISG and EMC<sup>91</sup> applied to the Georgian Charter of Journalistic Ethics. The applicants believed that Principles 1 and 7 of the Charter were infringed on October 23, 2016 during the reportage „A Part of Transgenders Oppose Human Rights Protectors of Minorities“ shown at the program „Imedis Dro“ of TV „Imedi.“ The reportage concerned alleged facts of opposition between organizations working on sexual minority rights and also the problems that the representatives of sexual minority groups face in the society. The board defined the author of the story, Sopo Mtvlishvili as a respondent. Transgender women were talking during this arguable reportage. The material shows close ups of those distinguishing features [high heels, clothing, sharp makeup] that are inappropriate to the biological sex of transgender women, according to the viewpoints existing in the society. This type of coverage caused the representation of transgender women as exotic persons and strengthening of stigma towards them. The case was discussed on 27 February 2017 and the board deemed infringement of Principle 7 of the Charter by the journalist.<sup>92</sup>

90. See the details of the case at: <http://bit.ly/2EOk1WW>

91. Human Rights Education and Monitoring Center (EMC). See the details about the organization at: <https://emc.org.ge>

92. See the details of the case at: <http://bit.ly/2HvWpVw>



## CASE #26-2017

### MEDIATION HAPPENED BETWEEN WISG AND JOURNALIST OF „IMEDI“

On 12 April, 2017 WISG applied to the Georgian Charter of Journalistic Ethics. The organization believed that Principles 7 and 10 of the Charter were infringed during the reportage „Another Attack on Transgender“ shown at the program „Kronika“ of TV „Imedi.“ Responding journalists: host Nana Lezhava and the author of the reportage Ketii Partskhaladze.

The ground of infringement was indicated to be the use of the word „transgender“ as a noun, while according to the recommendation of the Board of the Charter the word „transgender“ is an adjective and when used, it should certainly be followed by the chosen word describing sex, for example „a transgender woman“ or „a transgender man.“

The Board of the Charter considered that mediation between the parties was possible and offered this mechanism to the applicant. WISG agreed to the mediation mechanism and mentioned that the aim of the organization is to raise awareness about the recommendation among journalists and considering that the reportage in general is positive towards the transgender community, the essential aim is not to deem infringement of any principle of the Charter.

On May 31, 2017 mediation happened between WISG and the journalists of „Imedi.“<sup>93</sup>

## CASE 27-2017

### DISTRIBUTING PERSONAL DATA OF A TRANSGENDER WOMAN WITHOUT PERMISSION

In October 2016 WISG applied to the Georgian Charter of Journalistic Ethics. The applicants believed that Principles 1 and 10 of the Charter were infringed by the article „Who is the transgender who was brutally harmed? – One of them hit with a stone, the other one cut her throat“ published on the webpage kvira.ge on 17 October, 2016. The article was about the fact of violence against a transgender woman. The article did not mention the author and accordingly, the editor of the webpage kvira.ge, Nana Khositashvili was defined as a respondent.

Two grounds of the infringement were indicated: 1) the victim did not provide informed consent to the journalist about publishing her personal data, name and last name, age [according to the identification document] and a photograph; 2) the recommendation of the Charter regarding the coverage of topics related to transgender persons was infringed, namely the article uses the word „transgender“ as a noun and it also reveals the registered name and the last name of the transgender woman. According to the recommendation of the Board, based on the principles of ethical journalism a chosen name by a transgender person must be acknowledged as their real name by journalists, despite the fact whether if this name was changed or not in their documents. The case was discussed on January 28, 2017 and the board deemed infringement of Principle 10 of the Charter by the journalist.<sup>94</sup>

93. See the details of the case at: <http://bit.ly/2C72FTX>

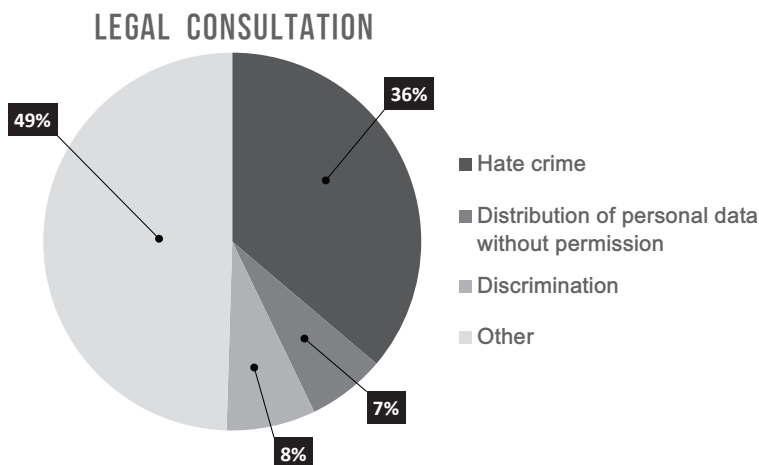
94. See the details of the case at: <http://bit.ly/2BGvENk>

## STATISTICS OF DOCUMENTED CASES, LEGAL CONSULTATIONS AND COURT REPRESENTATION IN 2017

„Women’s Initiative Supportive Group“ (WISG) is a feminist organization working on women’s issues. The organization’s special target group includes lesbian and bisexual women, transgender and intersex persons, women representing ethnic and religious minorities, living in rural areas, with disabilities and those representing other vulnerable and marginalized groups.

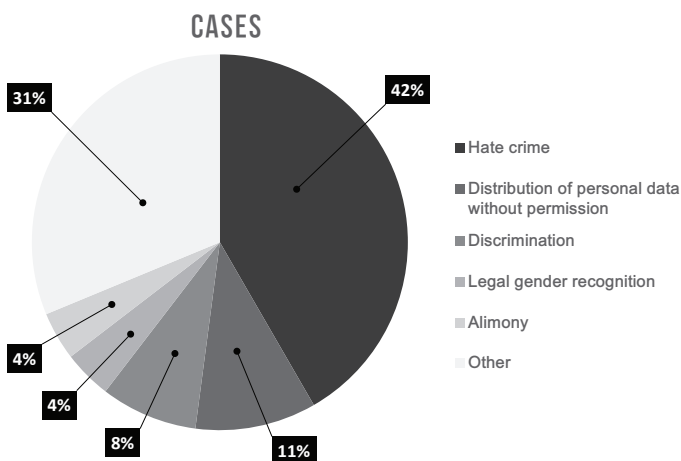
Women from different unprotected groups have been approaching WISG during 2017, including lesbian/bisexual women and transgender persons, female victims of sexual violence, female sex-worker and others.

During 2017 the lawyers of WISG provided legal consultancy on 105 cases, including 80 cases through phone, 5 cases online and 20 cases by meeting. Legal consultancy was provided on the cases of homophobic and transphobic hate crimes including threat/blackmailing (5), violence (6), beating/bodily injury (7), domestic violence (7), harassment by the police (7), damaging property/stealing (6). Also, the cases regarding the distribution of personal data without permission (7), discrimination based on sex, sexual orientation or gender identity, including workplace discrimination (8) and other cases.



The lawyers of WISG were working on 48 cases during 2017. Work

on 18 of these case is still ongoing. The majority of the cases concern homophobic and transphobic hate crime, including murder (1), beating/ bodily injury (8), harassment and illegal arrest by the police (6), threat and blackmailing (5) and others. Also, the cases regarding the distribution of personal data without permission (5), legal gender recognition (2), discrimination (4), alimony (2) and others.



Due to the strong homophobic atmosphere in the country, the majority of victims of the crimes and incidents based on the motive of intolerance of sexual orientation and gender identity refrain from contacting the police, and also in particular cases to LGBTI and human rights protection organizations. In such conditions WISG's anonymous online reporting form<sup>95</sup> is particularly important. It allows documenting those homophobic and transphobic hate crimes, which remain unreacted to. The number of documented cases decreased in 2017. Only 5 cases were documented throughout the year. It is important that the statistics of contact for initial legal consultancy at WISG has increased.

Besides the mentioned online documenting form, the organization has forms designed in advance for interviewing the victims and witnesses of hate crimes. Exactly these forms support documenting the cases, where victims refrain from contacting the police. Up to 40 hate crimes and incidents have been documented with these forms in 2017.

95. The form can be accessed at: <https://docs.google.com/forms/d/e/1FAIpQLSf4jCwnOs61tpT0iS10G4zaEqkxEGH7qBx2J9N5v4BIWxozA/viewform>

## SUMMARY

Based on the documented cases and provided services available at WISG, to an extent this report provides a picture of the legal situation of LGBTI persons in Georgia. Also, it clearly demonstrates those problems, which the members of the community face when they try to utilize the mechanisms of protection from violence and discrimination in equality with other citizens. Despite the high degree of homophobia and transphobia existing in the country, in particular cases LGBTI community members try to find strength and utilize respective legal mechanisms for eliminating discriminatory treatments against them. Also, despite the difficulties in relation with reacting to the crimes and incidents based on the motive of homophobic and transphobic intolerance, in particular cases the reaction of the police brings positive results.

It is important that the victim-oriented system implemented at WISG allows the beneficiaries access to the service by a group of different specialists.<sup>96</sup> This kind of support system has a positive influence on the quality of life of a victim and is essentially important for eliminating the results of the experience of violence.

Even though there are many successful cases in the practice of WISG, it is a resource of just one organization and it is not enough for LGBTI group members living across the country. It is important that the state takes responsibility and implements the services of protection and support for the victims of hate crimes.

Besides, reaction to individual cases of discrimination or hate crime and incidents is not enough for preventing such treatment. It is important that the state distinctly thinks about the specific needs of the community and creates consistent policies for reducing stigma and eliminating stereotypes that existing in the society against sexual orientation and gender identity.

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96. The team consists of a social worker, a psychologist, a lawyer, a sexologist, a psychiatrist and other supporting specialists.

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