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ლგბტქი ადამიანთა მიმართ  
სამართალწარმოების ანგარიში

# DISCRIMINATION AND VIOLENCE AGAINST LGBTQI PERSONS

Litigation Report



„ქალთა ინიციატივების მხარდამჭერი ჯგუფი“ WISG

2019

# **DISCRIMINATION AND VIOLENCE AGAINST LGBTQI PERSONS**

## **Litigation Report**

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## INTRODUCTION

According to study conducted by the European Council in 2018, „people are most aware of the fact that LGBTQI people are victims of hate crime and hate speech. At the same time, attitudes towards LGBTQI people are worse than towards any other group“.<sup>1</sup>

On April 17, 2018 Human Rights Action Plan (for years 2018-2020)<sup>2</sup> was approved. It is as a key state policy action for human rights protection. However, the above-mentioned plan does not include measures for protecting LGBTQI persons from discrimination and violence. In the plan, there are no scheduled objectives for reducing stigma related to sexual orientation and gender identity in society and stereotypes towards LGBTQI people. The plan is completely void of LGBTQI people's needs.

In the process of working on the plan, there was a pledge from the Georgian Government that by the end of 2018 the plan would entail actions aimed at improving the state of LGBTQI people's rights,<sup>3</sup> although this pledge has not been fulfilled so far. UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity Victor Madrigal-Borloz also pointed about the mentioned issue in his report.<sup>4</sup>

With today's situation, the State does not have a uniform strategy for fighting against homo/bi/trans phobia, which is severely reflected on everyday lives of LGBTQI people and prevents them from utilizing their rights and freedom.

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- 1 Council of Europe, "Hate Crime, Hate Speech, and Discrimination in Georgia: Attitudes and Awareness", page: 8. 2018. Available at: <https://rm.coe.int/hate-crime-hate-speech-and-discrimination-in-attitudes-and-awareness-e/16808ef62a>
  - 2 Resolution of the Government of Georgia "About Approving Government Action Plan for Protection of Human Rights", 17/04/2018. Available at: <https://matsne.gov.ge/ka/document/view/4153833?publication=0>
  - 3 Official letter of the Administration of the Government of Georgia of 28 September 2018, # GOV 7 18 00031666
  - 4 Human Rights Council. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. §18. 2019. A/HRC/41/45/Add.1 Available at: <https://undocs.org/en/A/HRC/41/45/ADD.1?fbclid=IwAR1uGxwJ6IMh0KqfYO9D1vUNMQv4SWO0LSiwgZch7UQCeSdyIM71tmToyZo>

## ABOUT THE REPORT

The following document represents a report of cases produced by Women's Initiatives Supporting Group in 2018. Based on examples of produced and documented cases, it analyzes problematic issues related to reporting by victims and violence based on sexual orientation, gender identity and expression. The report also contains information related to legal results of the cases litigated in 2017.

The report aims to represent facts of infringement of LGBTQI people's rights and practices on those cases by the respective authorities or from the judiciary.

During the accounting period, the so called 'outing' cases and unlawful processing of personal data of trans persons were particularly relevant. In several cases, trans people appealed to corresponding authorities and appropriate legal outcomes were achieved.

## HOMO/BI/TRANSPHOBIC HATE CRIMES

On the one hand, fight against homo/bi/transphobic hate crimes includes identification and lodging of the specific facts, while on the other hand, it implies carrying out measures to raise awareness in the society about this type of crime and its prevention. At the present time, institutional mechanisms for responding to hate crimes are being strengthened, for instance the establishment of Human Rights Department within system of the Ministry of Internal Affairs,<sup>5</sup> Although the state does not implement any inter-sectional strategies for the prevention of such kind of hate crimes.

Existence of unified statistical data on hate crimes still remains problematic. According to information provided by the Ministry of Internal Affairs,<sup>6</sup> in 2018 (before September 20th) 156 messages were recorded by the LEPL 112 „from individuals who identified themselves as a member of the LGBTQI community or/and where the initiator noted, that the message referred to the LGBTQI community member“. According to information provided by the Ministry, with the accusation of hate crime „The Ministry of Internal affairs arrested 53 individuals. Specifically, with the accusation of committing crime based on sexual orientation and gender identity - 10 individuals were arrested“. <sup>7</sup> According to the 2018 Report of the Chief Prosecutor of Georgia<sup>8</sup> „In 2018 the hate motive was being investigated within 210 Criminal cases, in particular sexual orientation was investigated in 28 cases, while gender identity in 29 cases... Criminal prosecution commenced against 151 individuals, 15 were accused based on sexual orientation, whereas 12 individuals – based on gender identity“.

In 2018 WISG lawyers provided legal consultations to the LGBTQI community members on 38 cases, which contained links to felony, of which 13 were domestic violence cases, 9 – threats about violence, 4

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5 More details about the Department is available here [only in Georgian]: <https://police.ge/ge/ministry/structure-and-offices/adamianis-uflebata-datsvis-departamenti?sub=11451>

6 Official letter of the Ministry of Internal Affairs of 1 October 2018, # MIA 7 18 02390379.

7 See details on the official web-page of the Ministry of Internal Affairs [only in Georgian]: <https://police.ge/ge/shinagan-saqmeta-saministrom-2018-tsels-sidzulvilis-motivit-chadenili-dan-ashaulis-braldebit-53-piri-daakava/11660>

8 Report of the Chief Prosecutor of Georgia. 2018. Available [in Georgian] at: <http://www.parliament.ge/ge/kanonmdbloba/announcements-all/announcements-main/saqartvelos-prokuraturis-2018-wels-gaweuli-saqmianobis-angarishi.page>



– physical violence, 4 – intimate partner violence, 3 – threats of “outing”. Even though the victims refer to the organization for legal consultation, later they avoid to report to legal authorities, due to fear of “outing”, re-victimization or for fear of revealing information about their sexual orientation or gender identity to a third party.

In addition to the above-mentioned cases, in 2018 10 cases were documented by the hate crime documenting form, available on the organization’s webpage<sup>9</sup>, while WISG lawyers documented 4 cases. In not a single case did the victim appeal to law-enforcing bodies, therefore the incidents were left without appropriate response.

In his report about Georgia the UN independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity Victor Madrigal-Borloz highlighted: „The victims state they are not willing to inform the police about incidents – which is the first ring of justice. The reasons named are: existing stigma towards the community and the fear of involuntary revelation of their sexual orientation or gender identity. Lack of trust towards law-enforcement agencies and display of phobic behavior and attitude from the side of the police. The reasons also include a feeling of shame, caused by internalized phobia. Lack of achieving judicial results, low awareness of anti-discrimination legislation and its execution mechanisms, as well as having poor access to judiciary leads to reluctance to report the crime“.<sup>10</sup>

On August 15, 2018 the Ombudsman of Georgia, aiming to effectively fight hate-motivated crime, addressed the law enforcement bodies with a general proposal about employee training and about producing unified statistics about hate-motivated crime. In the general proposal, the Ombudsman noted “we encounter cases, when during investigation of crime committed against the LGBTQI community with probable hatred, given the information from the investigating authority, despite attempts, the discriminative motive was not revealed or, due to lack of crime signs the investigation did not start, although which investigative actions were taken in order to identify this motive remain vague.“.<sup>11</sup>

<sup>9</sup> Available at: [www.women.ge](http://www.women.ge)

<sup>10</sup> Human Rights Council. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. §40. 2019. A/HRC/41/45/Add.1. available at: <https://undocs.org/en/A/HRC/41/45/ADD.1?fbclid=IwAR1uGxuJ6IMh0KqfyO9D1vUN-MQv4SWO0LSiwgZcH7UQCeSdyIM71tmToyZo>

<sup>11</sup> Public Defender of Georgia. General Proposal “on the Fight Against Discrimination and its Prevention” of 25 August 2018. Available at <http://www.ombudsman.ge/geo/zogadi-tsinadadebebi/saxalxo-damcvelma-diskriminaciuli-motivit-chadenili-danashaulebis-gamodziebis-xarvezebtan-dakavshirebit-sagamodziebo-organoebis-mimarta>

The analysis of cases existing litigated by WISG revealed that investigation of homo/bi/transphobic incidents are usually qualified under the Article 126 of the Criminal Code of Georgia which implies 'beating or other type of violence, which caused physical pain to victim'. As a result of this type of incidents the victims consider the crime to be committed against them based on the intolerance of their sexual orientation or gender identity. In various cases, homo/transphobic hate motives were identified from the side of law-enforcing bodies themselves. However, on one hand the identification of bias motive and on the other hand reporting by the victims, as a result in regard this type of crime, remains underreported.

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**CASE #1**

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**HOMOPHOBIC HATE CRIME AGAINST A GAY MAN**

During night hours of September 6, 2018, nearby one of bars in Tbilisi, where LGBTQI persons usually gather, a gay man B.K. and his friend were attacked by 4 strangers. The victims explain that while exiting the bar and taking a taxi, the strangers approached them, assaulted them homophobically and hit them with hands in the head area. The victims managed to run away and left the place of accident by a taxi. The Ministry of Internal Affairs of Georgia started investigation under the Article 126 of the Criminal Code, which implies "beating or other type of violence, causing physical pain to the victim". (CCL, Article 126 (1). According to the lawyer working on this case, so far neither has the claim of B.K and his friend been accepted, nor have the attackers been detained. The victims note that crime committed against them was caused by the attackers' homophobic prejudices, thus they consider themselves victims of hate-motivated crime.

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**CASE #2**

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**HATE CRIME AGAINST TRANS SEX-WORKER WOMEN**

During night hours of November 12, 2018, in Tbilisi, near the territory of 'pleshka' (gathering point of sex-workers) trans women V.T. and M.B. were attacked by four strangers. According to the victims, the attackers exited the car, assaulted the women homophobically and started beating them up, hitting them in hands and legs, acting as a group.

The victims remark, that the crime committed against them was led by the attackers' homo/transphobic attitudes, in that the attackers were using homo/transphobic hate

speech. Therefore, V.T and M.B consider themselves victims of hate-motivated crime.

Criminal case was launched under the Article 126, which implies “beating or other type of violence, causing physical pain to the victim”. (CCL, Article 1126 (1). All four of the attackers are held in custody as a form of preventive detention. The hearing of the case is conducted in Tbilisi City Court and according to the lawyer, the Court will indicate transphobic hate motive in the case.

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### CASE #3

#### TRANSPHOBIC HATE CRIME

On August 5, 2019, in Tbilisi, near the territory of Pleshka (gathering point for sex-workers), during night hours, a trans woman E.J. was attacked by two strangers.

According to the victim, the attackers drove a van-type automobile and when noticing E.J. they pulled over, came out of the car and started walking towards her. The woman attempted to avoid them, however one of the attackers assaulted her physically – hit her twice in the head. E.J managed to escape, and the attackers did not chase her and left the place of incident with their van.

T.J. appealed to the police and the investigation started under the Article 126, which implies “beating or other type of violence, causing physical pain to the victim”. (CCL, Article 126 (1). The victim failed to describe the attackers’ appearance in detail, as well as the van they drove. From the place of incident, the police took out records from the CCTV, although due to lack of description, they were unable to identify the attackers. The investigation is in progress until this day.

The victim believes the crime against her was caused by homo/transphobic attitude of the attackers and therefore considers herself a victim of hate-motivated crime.

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### CASE #4

#### HATE CRIME AGAINST A TRANS WOMAN

On August 24, in Tbilisi, near the territory of Ortachala autostation, during night hours, a trans woman M.S. was attacked by three strangers.

According to the victim, one of the attackers was distinguished by particular aggression and assaulted M.S. verbally. The victim tried to avoid the conflict and left the place of the incident. However, the attacker hit her in the face area, as a result of which the victim lost consciousness for several minutes. After becoming conscious,

the woman screamed she would call the police, which was followed by repeated violence and M.S.'s face started bleeding.

The police, arrived at the place of the incident, arrested all three of the attackers for committing offense prescribed by Code of Offence Article 166. Later on, investigation started against one attacker for committing offence inferred by Article 126 of the Criminal Code, which implies 'beating or other type of violence, causing physical pain to the victim' (CCL, Article 126 (1)).

Under the decision of the Medical Expertise of the Court, the qualification of the crime changed and prosecution of the attacker continued under the Article 120, which infers "intentional lenient harm of health" (CCL, Article 120 (1)).

As A. M.'s lawyer explains, the accused paid the victim an uncertain amount of money, due to which his punishment was mitigated. With the verdict of Tbilisi City Court, the accused were found guilty according to the Article 120 (1) for committing crime aggravated by discriminatory motive. The Court indicated Article 53<sup>1</sup> (1) of the Criminal Code of Georgia, according to which 'committing crime ... based on intolerance of sexual orientation, gender, gender identity – is aggravating factor for all respective crimes considered in this Code'. Nevertheless, the Court only incurred them amercement with the amount of GEL 2000 (two thousand).

## CASE #5

### TRANSPHOBIC HATE CRIME

On July 1<sup>st</sup>, 2018, during night hours, in Kutaisi, in one of the squares, trans women G.S. and V.T. were attacked by four strangers. The victims state that the attackers were using homo/transphobic hate speech, which was followed by a physical attack on the women.

The Ministry of Internal Affairs of Georgia started investigation as offence provided by Criminal Code Article 126, which infers 'beating or other type of crime, causing physical pain to victim' (CCI, Article 126 (1)). The victims managed to recognize only one of the attackers, that turned out to be underage.

In accordance with requirements of 'Juvenile Justice Code' of the Legislation of Georgia, the Prosecution Office abated Criminal prosecution of the accused and applied release from criminal responsibility – Abstinence.

**CASE #6****HATE CRIME AGAINST A TRANS WOMAN.**

On February 2, 2018, Z.B. was in Tbilisi accompanied by friends, near the territory of Alexander Aladashvili Clinic.

According to the victim, he was waiting for the Emergency Brigade, meant to transfer him to another clinic to receive medical service. In the meantime, two strangers passed in the yard, G.A-dze and Q.G-Ani, who assaulted him verbally, then approached him and violated him physically – hitting him in the head area with hands and legs.

The Ministry of Internal Affairs of Georgia started investigation under the Article 126 of Criminal code, which infers 'beating or other type of crime, causing physical pain to victim' (CCI, Article 126 (1)).

With the verdict of Tbilisi City Court 2018 July 9, 2018 both attackers were found guilty for committing crime in the Article 126 of Criminal Code and were sentenced 6 months of custody. The court alleged the aggravating factor of sentence – crime based on gender identity (CCL 53<sup>1</sup> (1)).

**CASE #7****DOMESTIC VIOLENCE AGAINST TRANSGENDER MAN**

T.G. is a transgender man, who became a victim in his own family on February 23, 2016 from his mother's side. He explains that being in Tbilisi, his mother saw his pictures on a social network Facebook and wrote him texts of homophobic content, calling him a lesbian etc. T.G. as usual denied his sexual orientation and this led to a quarrel with his mother.

After two days, his mother wrote to him again, that she had to talk to him and asked him to arrive to Kutaisi. T.G. did not even think that this meeting was in any way connected to his sexual orientation. As soon as he arrived, mother stated displaying aggression towards her son, in that she did not like his hairstyle and assaulted him verbally, pointing out that his appearance did not correspond to a female appearance, threw out his clothes and only left dresses she had bought herself and which T.S. had never worn. This was again followed by a quarrel and the mother assaulted T.G. physically, telling him "If you truly are a lesbian, I will cut your throat and if I fail to do so, the family will not let you live anyway".

T.G. explains, that financially he depended on his mother and as she was unwilling to give him travel money, he found himself captured in her house. T.G. notes, that mother prohibited him contact with everybody, disconnected the Internet and in that he did not own a mobile phone, found himself in utter isolation. According to T.G. all

along during this period the mother daily assaulted him verbally, calling him abnormal and forced him to wear clothes he did not want to wear, especially when they had guests coming over. She said, if he did not obey, she would not give him money and he would have to live on the streets.

T.G. explains he did not attempt to escape, in that he had nowhere to go. He says, that he had histoma surgery performed on him lately and he found it hard even to move independently. In this sense, he would be unable to make a living on the streets.

T.G. notes, that the neighbors also witnessed the violence taking place. According to him, he fell into depression on the nervous background and even today he finds it difficult to deal with the results: 'Until this day I suffer from depression, anxiety and irritation, I find it hard to sleep and I also have irrational fears'.

WISG managed to document the incident on June 11, 2018. The beneficiary was still a victim of violence from his mother's side, expressed in harassment, verbal and physical assault, forcing etc. In spite of this, he kept from appealing to the police, in that financially he depended on his mother.

In September 2019, T.G. left Georgia with the help of his friend and appealed to a country in EU for shelter.

## CASE #8

### HOMOPHOBIC INCIDENT IN A PUBLIC SPACE

T.G. is a lesbian woman, who on March 12, 2018, during night hours in Tbilisi together with a partner was near the territory of chassis. Her friend and she moved as pedestrians. According to the woman, two strangers pulled their heads out of a taxi jammed in traffic and started loudly swearing at them and insulting them homophobically. T.B tried not to pay attention, but their behavior soon became intolerable and tried to respond, which further annoyed them and threatened them with violence. Due to this, the women had to turn to the road in order to distance themselves from the attacker.

T.G. appealed to WISG for consultation, however kept from referring to the police and the incident was documented. While conversing with a lawyer, the woman explains: 'At first I got very angry and I had a feeling of shame in that numerous people witnessed the incident, including people sitting in other cars. Later on I got more irritated and had a sense of powerlessness, as I was unable to protect myself and to counter-act what happened'.

## DISCRIMINATION

Discrimination based on sexual orientation, gender identity and expression is particularly negatively reflected on everyday lives of the LGBTQI persons. WISG practice demonstrates, that LGBTQI persons most frequently come across discriminatory treatment at work place, when receiving different types of service, including entertainment services, as well as by landlords, etc.

In 2018, WISG lawyers consulted 16 discrimination cases, 9 of which represented probable discrimination based on gender identity and expression, 1 – discrimination based on sexual orientation, 2 – discrimination based on other factors, 3- discrimination at work place, while 1 – sexual harassment. Besides this, 4 cases were documented, which contained signs of gender identity and expression-based discrimination or where they refrained from appealing to the Ombudsman.

It is often the case, where victims of the discrimination refrain from appealing to the Court, in order to avoid the so-called 'outing' and fear of re-victimization. As far as it concerns the Ombudsman, this authority is especially trusted within the community, however here the problem is the execution mechanism of Ombudsman's recommendation or general proposal. In order to fight discrimination based on sexual orientation, gender identity and expression it is essential for the State to have a strategy of reducing the existing stigma in the society and the widely-spread stereotypes towards LGBTQI persons.

During the accounting period, WISG lawyers worked on 5 cases of discrimination, which referred to the total of 9 applicants, however only a few of them made it to the report.<sup>12</sup>

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12 See below cases #9, #12, #14 and Luiza Laperadze against Tbilisi State Academy of Arts.

## CASE #9

## DISCRIMINATION BASED ON GENDER IDENTITY BY THE LANDLORD

On February 8, 2018, a transgender woman N.M agreed verbally about utilizing L.M.'s real estate (Located on the address: City of Batumi...). According to the agreement, N.M was given real estate property owned by L.M, where she was supposed to live with her partner and two transgender women friends, in turn was obliged to pay GEL 550 (five hundred and fifty) to the owner of the property monthly. As soon as L.M was informed that N.M is a transgender woman, and on February 16, 2018 her son and she assaulted her and demanded her to leave the property immediately. N.M assumes, L. M's request is motivated by transphobic hate and intolerance of her gender identity and expression.

On February 16, 2018, N.M called the police, for fear of the conflict with the landlord and her son turning into a physical one and causing threat to her and her friends' health. On February 21, 2018 Z.M. threatened to kill N. M's transgender woman friend. On the fact of threat, Criminal case started on February 23, 2018 in Department 2 of Adjara Autonomic Republic of Ministry of Internal Affairs of Georgia, located in Batumi city, on Gorgiladze Street. With police effort and support, mediation took place with the owner of the above-mentioned property and her son. As a result of mediation, N.M and her friends were given opportunity to remain in L.M.s property before finding a new accommodation. On March 7, 2018 the women managed to find new accommodation and left the above-mentioned property.

N.M deemed the landlord's behavior was caused by intolerance of her gender identity and appealed to the Ombudsman demanding identification of discrimination.

To solicit information, the Public Defender referred to Police Department of Adjara Autonomous Republic of the Ministry of Internal Affairs of Georgia. According to the letter of May 14, 2019, Batumi City Division Department 2<sup>nd</sup> carried out investigation of Criminal Case on fact of threats against N. M's friend transgender woman A.M. In the letter it was noted that, the police applied a number of measures, interrogated witnesses, however at the indicated point of time no discriminative motives had been revealed, criminal prosecution was not being implemented and no one was found victim or guilty, though the investigation was still in progress.

Under the decision of September 28 2018, the Ombudsman stopped to study the offence, according to Legislation of Georgia "On Eliminating of All Types of Discrimination", Article 9, Subsection 'B' of Section 9, and indicated in the Judgement, that she requested information twice from respondent L.M., though failed to receive a written response. During a verbal conversation with the landlord, L.M stated the following: she does not know N.M and she made the contract with a different person with a period of one month. Respectively, due to lack of evidence, discrimination was not revealed in the case.



## RIGHT TO RESPECT FOR PRIVATE LIFE OF LGBTQI PERSONS

According to the cases litigated by WISG during the accounting period, facts of abuse of private life of LGBTQI persons caused by “outing” and damage caused by such facts have become visible.

A person’s sexual orientation and gender identity is one of the compound elements of private life. The European Court of Human Rights noted in multiple cases, that ‘gender self-identification, name, sexual orientation and sex life are under the personal field umbrella, which is protected under the Article 8 (of the Convention)’.<sup>13</sup> Moreover, Georgia’s Constitutional Court indicated in various Judgements, that ‘a person’s right to free development contains right components of a wide spectrum: right of person’s self-determination, which, in and of itself, entails right of finding out own origin, right of personal self-identification – physically, as well as psychologically, a sense of self, right of realization; defining own gender and sexual orientation, including the right to change sex etc; Also a right to self-determination, the right of self-expression and so on’.<sup>14</sup>

In a homo/bi/transphobic society, a part of LGBTQI people tries not to reveal information about their sexual information and gender identity. Due to stigma deeply rooted in society and existing stereotypes with regards to LGBTQI persons, the community members fear that in case of ‘coming out’ they face the possibility of falling victim to discriminatory treatment and homo/bi/transphobic violence. Threatening to reveal information about sexual orientation and gender identity, as well as blackmailing are widely spread forms of violence against LGBTQI persons.

In certain cases, it is possible for the state institution to unlawfully process information about a person’s sexual orientation or gender identity, or for a third party to distribute information without permission. If such cases are followed by threat or blackmailing, it is possible to appeal to justice authorities, which would cause responsibility

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13 §61. CASE OF PRETTY v. THE UNITED KINGDOM, (Application no. 2346/02), 29 April 2002 , 29/07/2002 <http://hudoc.echr.coe.int/eng?i=001-60448>

14 Judgement of the Constitutional Court of Georgia, §6. # 1/1/625,640. 14 April 2016.. <https://matsne.gov.ge/ka/document/view/3263731?publication=0>

under the Criminal Code as the threatening and blackmailing are criminalized.<sup>15</sup>

In 2018, WISG lawyers provided consultation on 3 cases, which referred to the so-called “outing”, and 1 case to unlawful processing of personal data. However, as a result of this kind of incident, the victims refrained from appealing to appropriate authorities. Only two cases were launched by the Personal Data Protection Inspector, while one of the trans women lodged civil action lawsuit against the legal entity, who unlawfully exploited her personal data.<sup>16</sup>

## UNLAWFUL PROCESSING OF PERSONAL DATA

In cases, where information about sexual orientation and gender identity is processed or revealed unlawfully, there is an opportunity for the personal data subject to appeal to Personal Data Protection Inspector.<sup>17</sup> According to the Law of Georgia on “Personal Data Protection”, special category data is considered only data which is related to the individual’s sex life.<sup>18</sup> Processing of such data is prohibited by law, though it is considered acceptable in case of written consent and in other special cases.<sup>19</sup> If the inspector thinks the data was processed by breach of law, they will take measures incurred by the law.<sup>20</sup>

Over the accounting period, WISG lawyers produced a case with personal data protection inspector against the employee of the Ministry of Internal Affairs.<sup>21</sup> This case represents an obvious example of unlawful processing of personal data with non-work intention and in sense of breach of confidence. Such incidents have negative impact directly on victims of delinquency as well as generally on the appeal of the LGBTQI community members to judicial organs. It is precisely the

15 Criminal Code of Georgia, article 151. Available at: <https://matsne.gov.ge/en/document/view/16426?publication=208>

16 See the cases #10 and #11..

17 Details about the State Inspector’s Office, before the Personal Data Protection Inspector, is available at: <https://personaldata.ge/ka/about-us>

18 Law of Georgia on Personal Data Protection, article 2 (b), available at: <https://matsne.gov.ge/ka/document/view/1561437?publication=20>

19 Ibid, article 6..

20 See details in the Law of Georgia On the State Inspector Service, article 16. Available at: <https://matsne.gov.ge/ka/document/view/4276790?publication=4>

21 See the case #10.

mentioned facts that create and solidify institutional barriers, which will prevent homo/bi/transphobic crime victims from reporting to respective authorities.

## CASE #10

### UNLAWFUL PROCESSING OF TRANS WOMAN'S PERSONAL DATA BY THE POLICE

WISG was providing legal assistance to transgender woman A.F, whose personal data was unlawfully processed by the employee of the Ministry of Internal Affairs. On June 27, 2018 A. F.'s personal data existing in the information bank of the Ministry of Internal Affairs – was unlawfully examined by non-work purpose by inspector-investigator E.G. of Abkhazia Autonomic Republic Inspector Headquarters of the same Ministry.

According to the trans woman, materials of the criminal case, where her personal data was mentioned, was revealed without her permission to her mother. The latter knew nothing about her gender identity before the incident. The victim explains, that this fact had negative effect on their relationship and generated danger of provoking violence. With regards to this episode she refused the inspector to contact her mother. Therefore, the inspector failed to obtain additional evidence.

Under the decision of Personal Data Protection Inspector E.G. was found offender, however due to expiry of limitation period, administrative responsibility was not imposed on him.

Moreover, as a result of work examination by MIA General Inspection, E.G-s action was deemed disciplinary offense and based on the Minister's Order of August 29, 2018, he was dismissed from occupied position.

In addition to the above-mentioned, the personal data protection inspector did not transfer the Judgement to the claimant. In his letter dated December 10, 2018 the inspector defined "in that the hearing of the claim was taking place within confidence case production the apparatus lacks opportunity to provide the copy of the decision and detailed information about circumstances identified during the hearing of the claim".

## RIGHT TO BE PROTECTED FROM "OUTING"

In case of illegal processing of personal data concerning sexual orientation and gender identity, - in addition to the Personal Data Protection Inspector's mechanism - it is also possible for the victim to appeal to the Court and demand damage compensation, as a result of such incident. In cases of "outing" there is an opportunity of protection under Civil order. In compliance with Part 2, Article 18 of the Criminal Code of Georgia, "an individual has a right through Court, order identified by law to protect own dignity, respect, confidence of private life, personal inviolability or to protect work reputation from disgrace".<sup>22</sup> For instance, in case, when a person keeps information about sexual orientation and gender identity secret and obtaining this information and its distribution happens by the action of the accused, they are able to lodge civil action lawsuit through Civil order and demand damage compensation.<sup>23</sup>

In the accounting period WISG produced a case of one of the trans women<sup>24</sup> with personal data protection inspector, as well as in the Court. It is important, that as a result of such incidents, the victims utilize existing legal mechanisms and do not leave the incident without response.

### CASE #11

#### DISTRIBUTION OF TRANS WOMAN'S PERSONAL DATA WITHOUT PERMISSION

Z.B is a transgender woman, who on February 4, 2018 most likely as a result of hate-motivated crime was in need of medical help. In order to receive medical help, she was transferred to Alexandre Aladashvili Clinic LTD by the emergency brigade.

Later on, near the territory of the clinic, another transphobic hate-motivated incident took place, the clinic responded by posting on their official social network Facebook page, which contains personal data of Z.B. victim of incident, in particular her name and last name, by which she is known by relatives and friends and name and last

22 Civil Code of Georgia, article 18 (2). Available at: <https://matsne.gov.ge/ka/document/view/31702?publication=103>

23 *ibid*, article 18 (6).

24 See the case #11

name indicate in her identification card.

In the post, special personal data of the victim are also highlighted, specifically: detailed information about her health condition. The patient has neither given agreement about reveal of information to the clinic administration, nor has she spoken publicly about her health condition in a way that both her name and last name and health condition would be identifiable.

According to Z.B., individuals who attacked her on the clinic territory had not been apprehended by the time the clinic spread the post on social network. The woman thinks, that with this step the clinic created danger to her life and health.

In reference to what happened, on February 9, 2018 WISG appealed to personal data protection inspector, by the inspector's decision of February 12, 2018 G-1/069/2018 in Z.B-s statement, with the aim of legal administration on the examination of indicated circumstances, non-scheduled examination will be carried out in Alexander Aladashvili Clinic.

Under the decision dated March 29 2019, LTD "Alexander Aladashvili Clinic" was found offender and was imposed administrative penalty with the amount of GEL 1000 (one thousand). With the inspector's decision, the clinic was also obliged to delete the post on social network containing Z.B.s personal data. On May 30, 2018 Z.B. appealed to the Court with the demand of satisfaction of damage compensation from the clinic for breaching her personal right to confidence.

On May 30, 2018 Z.B. lodged a civil action lawsuit against "Alexander Aladashvili Clinic LTD" and demanded compensation for breaching personal confidence. During the preparatory session held on December 5, 2018 the claimant appealed to the Court with solicitation of case hearing on closed session, however the Judge did not satisfy the solicitation. As the transgender woman feared an open session case hearing, on December 13, 2018 she agreed to a deal with "Alexander Aladashvili Clinic LTD".

## DOMESTIC VIOLENCE

After the ratification of the Convention of Council of Europe “On Elimination and Prevention of Violence Against Women and Victims of Domestic Violence” (Istanbul Convention), a number of legislative amendments were implemented and response mechanisms on domestic violence from legal authorities have been refined. Nevertheless, collection of data on domestic violence cases and creation of individual-oriented mechanism still remain a challenge.

In 2018 WISG lawyers provided consultation on 13 domestic violence cases, of which only one has been reported to legal authorities. Besides various institutional barriers, that are related to fear of revealing sexual orientation or re-victimization, an immense barrier is financial dependence of the victim on the violator.

In one of the domestic violence cases administered through the accounting period,<sup>25</sup> victim’s financial dependence on violent parents was an enormous barrier in terms of appealing to judicial authorities. In this specific case, the victim nonetheless appealed to the police for reaction. However, he entirely lost the financial support that he needed for funding his studies. However in the second case,<sup>26</sup> the victim could not dare to report the crime.

The above-described cases are obvious examples that it is essential in terms of reducing financial dependence on the violator to create active mechanism to strengthen the victim in a way, that their condition does not worsen after reporting the case.

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<sup>25</sup> See the Case #12

<sup>26</sup> See the Case #7

## SUPPORT OF RIGHT TO EDUCATION FOR VICTIMS OF VIOLENCE

It is frequent that female victims of domestic violence committed by their parents avoid to report the facts to law-enforcing authorities, as their parents provide them with tuition fee funding.

The case, that female victims of violence from parents' side refrain from appealing to law-enforcing authorities, in that parents provide them with tuition fee funding.

According to the Article 8 of Law of Georgia on 'Elimination of Violence against Women and/or victims of domestic violence, protection and support', Ministry of Internally Displaced Persons from the Occupied territories of Georgia, Ministry of labour, health and social protection within its competence provides social service for implementing measures against violence against women or/and domestic violence. According to the Part 1 of the Article 7 of the same law violence against women or/and domestic violence prevention measures are carried out within their competence by the Ministry of Internally Displaced Persons from the Occupied territories of Georgia, Ministry of labour, health and social defence, Ministry of Education, Science, Culture and Sports of Georgia, law-enforcement bodies and judiciary bodies.

It is not regulated by law what type of support is given by the Ministry of Education, Science, Culture and Sports Ministry to women victimized as a result of domestic violence. Measures taken by the mentioned Ministry are underwritten by 2018-2020 Action Plan "On Fighting Violence against women and Protection and Support of Victims of Domestic Violence" approved by Resolution 175 of April 11 2018<sup>27</sup>. These measures do not directly include support of violated female students and girls for receiving education, and do not entail funding girls' tuition fees. However, with the Resolution of the Government of Georgia<sup>28</sup> there is an approved student social program<sup>29</sup> in the Ministry system, which infers funding

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27 Ordinance of the Government of Georgia "On Approving Action Plan 2018-2020 of Measures for Fighting Violence Against Women and Domestic Violence and Protecting Victims". 11/04/2018. Available at: <https://matsne.gov.ge/ka/document/view/4144947?publication=0>

28 Resolution of the Government of Georgia "On Defining the Amount and Conditions of Scholarship for Students within Social Program Studying on Accredited Higher Education Programs Based on their United National Examinations Results "11/08/2017. Available at: <http://www.mes.gov.ge/uploads/395.pdf>

29 Order of the Ministry of Education and Science of Georgia „On Approving Application Forms for Receiving Scholarship for Students within Social Programs in Higher Education Institutions and Approving Document Record, Who Study on Accredited Higher Education Programs Based on their United National Examinations results“. 23/08/2017. Available at: <http://www.mes.gov.ge/uploads/745.pdf>

tuition fees for various groups of bachelor as well as master's degree. Women, whose socio-economic condition worsens only because they reported about the violence, are obliged to prove their social poverty to benefit from the mentioned program.

In the accounting period, in the decision of one of the cases produced by WISG<sup>30</sup> Ombudsman noted, that she “realizes the claimant's determination in reference to the fact that students who are victims of domestic violence generally financially depended on offenders, which causes their abstinence from revealing information about violence committed against them. In order to eliminate this issue, it is crucial for the state to direct its efforts to developing programs and services for students who are victims of domestic violence and it is important for them to be able to get funding despite the status of socially vulnerable. As the Ministry of Education, Science, Culture and Sports defines, it annually implements a social program for students to fund tuition fee with new Ordinance of the Government of Georgia”. The Ombudsman addressed the Ministry “in the future to consider the needs of students who are victims of domestic violence and provide them with tuition fee funding”.

## CASE #12

### SUPPORT OF RIGHT TO EDUCATION OF VICTIMS OF VIOLENCE

A lesbian woman T.J. is a victim of domestic violence and lived in a shelter arranged by one of the non-governmental organizations. Because of crime committed against her, criminal case hearing was held in Tbilisi city court against her father. T. J. is a student and studies Physical Medicine and Rehabilitation at Tbilisi State Medical University. Her tuition fee was provided by her family, but after reporting domestic violence, they stopped providing her with financial support. Corresponding to her severe socio-economic condition, she is unable to continue her studies and is in need of partial or full funding of her tuition.

The claimant was informed that the Ministry of Education, Science, Culture and Sports has a funding mechanism within students' social program, with the aim of evaluating socio-economic condition of socially unprotected families, applied to social service agency on July 5, 2018. It was known to her, that according to Order N745 of the Ministry of Education and Science, she was able to obtain funding in case of

30 See the Case #12



presenting statement from uniform base of socially unprotected families.

The social agent filled in the applicant's socio-economic condition evaluation cessation record with the motive that she lived in a shelter for victims of domestic violence.

The claimant thinks that she was discriminated against due to living in a shelter and appealed to the Ombudsman of Georgia aiming to identify the fact of discrimination.

The Ombudsperson noted in the decision dated March 26, 2019 that 'In terms of possible discrimination, the Public Defender does not see refusal from social service in evaluating the reporter's socio-economic condition. Discussion about automatic essentiality of living in shelter is beyond the frame of the case in hearing'.

## PROTECTION OF PERSONAL DATA OF VICTIMS OF DOMESTIC VIOLENCE

For rapid response to the fact of domestic violence of "suppression of violence against women or/and protection and support of victims of domestic violence"<sup>31</sup> infers issue of restraining order, which is a temporary measure. Although issue of restraining order does not exclude the risk of repeated violence. Therefore, it is important, that in process of issue of the order, the law-enforcing authority strictly protects confidence and each step is taken only in agreement with the victim and by informing the victim.

Before July 2018, the restraining order form contained information about actual address of the victim.<sup>32</sup> Hence, after transferring the copy of the order to the violater, the information about factual residence of the victim automatically became known to them, which created hazards in terms of repeated violence. In one of the cases litigated by WISG production<sup>33</sup> the victim asked the police not to reveal information about her actual residence to her parents, as there was a risk of danger for her and her partner. However, the police officer still filled in the address field and as soon as the form was given, the information was automatically revealed.

Due to breach of confidence by the police-officer, the claimant appealed to personal data protection inspector. Inspector did not identify the breach, though realized the claimant's viewpoint and in her decision noted: "taking into account the fact that the victim might be anxious and

31 Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article 10 (1). Available at <https://matsne.gov.ge/ka/document/view/26422?publication=14>

32 Order of the Minister of Internal Affairs of Georgia "About Approving Restraining Order and Restraining Order Protocol and about Defining Competent Entities for Drafting". 2/07/2014. Available at <https://matsne.gov.ge/ka/document/view/2383571?publication=2>

33 See the case #14.

unable to properly perceive the necessity of data-processing, objectives and expected results, it is important to have a mechanism which maximally provides clarity of information provided to the victim, free expression of the will of data Subject and creation of evidence for giving proper informed consent. The mentioned, on the one hand, will support protection of legal interests of the Subject, while on the other hand will ensure the implementation of legally imposed duties for the Ministry.

Following Order N81<sup>34</sup> of July 13, 2018 by the Ministry of Internal Affairs the Restraining Order forms were renewed, and they no longer contain information about actual address of the victim.

### CASE #13

#### BREACH OF CONFIDENCE WHILE REACTING TO THE FACT OF DOMESTIC VIOLENCE.

T.J is a lesbian woman, who fell victim to homophobic violence by her family members and left her place of residence. On January 19, 2018 she appealed to police and when informing about the fact, pointed out not to transfer information about her actual residence to her parents, as she feared the risk of repeated violence. T.J. also indicated about this in the interview form.

Later on, on January 22, 2018, the case was sent to another department of the police for further response, while on January 24 restraining order was issued to parents on fact of psychological violence. The police employee indicated T.J-s actual place of residence and copy of the order was given to T. J.'s parents. Thus, regardless of T. J.'s demand, the Ministry revealed information about T. J.'s place of residence to her parents.

According to the Inspector's decision of April 16, 2018, unlawful transfer of the personal data was not identified, in that the victim herself had signed the restraining order. Although personal data protection inspector appealed to the Ministry with the recommendation of "taking such organizational and technical measures, that will ensure - by judicial authority representatives – aiming to protect the security of the victim under the law "On Elimination of violence against women or/and protection and support of victims of domestic violence", implementation of measures defined by the Law of Georgia, evaluation of volume of data to be revealed to violators, proper informing of the victim, objectives and expected results of revealing of data, the opportunity of taking into account the interest of the Subject of the data"

34 Order of the Minister of Internal Affairs of Georgia "About Approving Restraining Order and Restraining Order Protocol and about Defining Competent Entities for Drafting". 13/07/2018. Available at: <https://matsne.gov.ge/ka/document/view/4262664?publication=0>

## TRANS ACCESS TO HEALTHCARE

In 2018, the World Health Organization published a new version of International Classification of Diseases (ICD 11), according to which trans identity is taken out from psychic and behavioral disorder chapter.<sup>35</sup> Despite this, if trans or genderly non conformic person is willing, it may possibly be crucial to provide psychological, hormonal or surgical medical support. For some trans persons, with no medical intervention happens fitting of desired gender role independently, also, making independent decisions related to transition or gender identity. While another trans or genderly non-conformic person might need a more intense medical support. Although in any case the implementation of medical procedures should only take place according to the will of the person.

## TRANS-SPECIFIC MEDICAL PROCEDURES FOR REALIZATION OF RIGHTS OF HEALTH CARE FOR TRANS AND GENDER NONCONFORMING PERSONS.<sup>36</sup>

Health care services for Trans and gender nonconforming persons include primary healthcare, gynecological and urological care, versions of reproduction, voice and communication therapy. Psychic health service (i.e. diagnostics, consultation, psychotherapy), also hormonal and surgical treatment. The aim of mentioned services should be the accomplishment of stable, private gender well-being and service should be provided based on a few fundamental principles, including:

- Necessity of medical services (any procedure of rehabilitation or/and different types of medical intervention have to be implemented according only to patient's needs);

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35 Transgender Europe (TGEU). "World Health Organisation moves to end classifying trans identities as mental illness". 18/06/2018. Available at: <https://tgeu.org/world-health-organisation-moves-to-end-classifying-trans-identities-as-mental-illness/>

36 The following chapter is prepared according to the Standards of Care (SOC) for the Health of Transsexual, Transgender, and Gender Nonconforming People" of The World Professional Association for Transgender Health (WPATH). Available at: <https://www.wpath.org/about/ethics-and-standards>

- It is crucial that the receiver of the service fulfils informed consent on any procedure;
- Access (which implies access first of all to quality medical procedure and on the other hand to financial affordability).

Medical procedures can be divided into several parts: 1. Completely non-reflux interventions (for example, hormones for puberty suppression as soon as puberty signs appear); 2. Partially non-reflux interventions (for example, hormonal therapy); 3. Irreversible Interventions (for example genital surgery). For different types of intervention in accordance with international or United Nations member countries' national standards, imminence of certain age and support of parent or other legal representative is recommended.

As a result, support and medical service for trans and gender nonconforming persons might be psycho-social as well as just psychological and in case of need – medical. However, in all cases, support and well being of these community members is accomplished only through a national mechanism created according to international standards, which might be guidelines and protocols administered by legislation.

The Ministry of labour, health and social protection has no clinical guideline and protocol for trans-specific (including, supporting procedures for a trans person while transitioning) medical procedures.<sup>37</sup> Therefore, it is impossible to implement proper control of medical service provided to patient in compliance with the rules stated by Georgian legislation. It means the supervision, which is implemented by the LEPL medical activity state regulation agency<sup>38</sup> inlet in the Ministry of Internally Displaced People from the Occupied Territories of Georgia and the Ministry of labor, health and social protection.

According to research conducted by WISG in 2015, “Even though trans-specific medical services are accessible in Georgia (not implying financial affordability), even today there is no clinical guideline, that would schedule diagnostic and treatment measures related to transition.”<sup>39</sup>

37 Official letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of 4 October 2018. # 01/6828-ბ.

38 Detailed information about the Agency is available here: <http://rama.moh.gov.ge/>: <http://rama.moh.gov.ge/>

39 Needs of Transgender Persons in Healthcare“. WISG. 2015. page: 28. Available at: <https://women.ge/en/publications/52/>

### Conflict between existing administrative regulations and the legislative frame of protection of patient rights

The only document that partially regulates trans-specific medical procedures is the recommendation about sex change issues of February 20, 2008 by National Council of Bioethics.<sup>40</sup> According to the document “duration of medical surveillance and issue of medical examination selection is regulated by professional standards and they should be defined by specialists of respective field”. However, it is unknown, which standards and regulations the field specialists utilize and which specialists are deemed competent to work on these issues, which specialty doctors are involved in the process, whether they are only sexologists, psychiatrists and endocrinologists, or other field specialists such as psychologists, social workers etc. also participate in the process. The above mentioned recommendation of the Council does not answer these questions.

In the same recommendation about medical guidelines it is noted that “the Legislation of Georgia today does not specifically regulate the issue of sex change. Just as during any other medical service, also in this case the doctor should lead by general legislation of healthcare (Law of Georgia on Health Care”,<sup>41</sup> Law of Georgia “on Patient Rights””,<sup>42</sup> Law of Georgia on ‘Medical Practice’<sup>43</sup>), which implies receiving informed agreement, and protection of confidence and other ethical and professional standards;. In this part of the Council's recommendation particularly attention-worthy is the imminence of receiving informed agreement before the procedure.

The legal definition of informed consent is given in Subsection “B” of Article 4 of Law “About Patient's Rights” of the Georgian Law, according to which “B) *Informed Consent – of patient, and in case of infancy – agreement of patient's legal representative on receiving any type of medical service after they have been provided with information: b. a) About the essence and necessity of medical service. B.b) about expected results of medical service. B.c) About the expected risk for patient's health and life, related to medical service. B.d) About other, alternative options,*

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40 Recommendation of National Council of Bioethics of Georgia „On the Issues of Sex Change by an Individual“ of 20 February 2008.

41 Law of Georgia on Health Care, available at: <https://matsne.gov.ge/ka/document/view/29980?publication=42>

42 Law of Georgia on Patient Rights, available at: <https://matsne.gov.ge/ka/document/view/16978?publication=11>

43 Law of Georgia on Medical Practice, available at: <https://matsne.gov.ge/ka/document/view/15334?publication=20>

*about accompanied risks and about their possible efficiency; b.e) about expected results of refusing the medical service; b.f) About financial and social issues related to information inferred by Subsections “b.a”-“b.e” of this Article”.*<sup>44</sup> It is directly prescribed in the legal definition of informed consent, that the doctor/medical institution has to provide the patient with precise information about listed circumstances. Hence the stated, it is impossible to diligently say whether the information given to patient by the doctor will be considered sufficient, especially in conditions, when there is document regulating the national standard.

According to the above-mentioned recommendation of Bioethics Council “With the aim of solving ethical and legal issues, the Council deems expedient the opportunity to establish Medical Ethics Committee”.<sup>45</sup> It is indeed laudable, that medical institution discusses ethical and legal issues, however, in this case it is impossible to fully achieve the patient’s goal of referring to doctor – receiving quality medical service. In any case, controlling the aptness of quality of medical procedures of sex change and conducted procedures with the Law, is being further complicated in absence of a national standard. At least, LEPL State Regulating Agency of Medical Activity, which is the sole controlling authority in evaluating medical service standard, will be unable to examine quality of conducted procedures corresponding to state standards.<sup>46</sup>

## LEGAL BASES OF ACCESS TO QUALIFY HEALTHCARE SERVICES OF TRANS AND GENDER NONCONFORMING PERSONS

According to the Part 1 of the Article 28 of Georgian legislation “Citizen’s right to accessible and quality health care service is provided by the Law”.<sup>47</sup> The Constitutional Court of Georgia noted in one of the Judgments, that “in health care field, when selecting policy of providing person’s

44 Law of Georgia on Patient Rights, article 4. Available at: <https://matsne.gov.ge/ka/document/view/16978?publication=11>

45 Recommendation of National Council of Bioethics of Georgia „On the Issues of Sex Change by an Individual“ of 20 February 2008, issue III.

46 Order of the Ministry of Labor, Health and Social Protection of Georgia „On creating State Regulating Agency of Medical Activity of Public law Legal Entity – and About Approving its Doctrine“. 20/12/2011. Available at: <http://rama.moh.gov.ge/res/docs/201609121533204836debuleba..pdf>

47 Constitution of Georgia, article 28, available at <https://matsne.gov.ge/document/view/30346?publication=35>

needs the State might have a wide spectre of actions. Although, if the State considers expedient the necessity of such provision it is obliged to implement mentioned action on equal origins, by well grounding the reasonableness of every possible exception". (Resolution #1/11/629,652 of October 25, 2017 of Constitutional Court, Case Georgian Citizens – Roini Gavashelishvili and Valeriane Migineishvili against the Georgian Government II §23).

Law of Georgia "on Health Care"<sup>48</sup> forms state policy principles in health care field, amongst which the most important is "General and Equal Access of Population within commitments inferred by state medical programs".<sup>49</sup>

Issues of Lesbian, gay, bisexual persons including trans-specific healthcare are referred by "Principles of Use of Human Rights International standards and Norms with regards to sexual orientation and gender identity" (Yogyakarta Principles)<sup>50</sup> Principle 17, right to achieve the highest possible level of health, according to which *every person has a right to achieve the highest possible level of health without discriminating against their sexual orientation or gender identity. The fundamental aspect of this right is sexual and reproductive health. According to this principle the states are obliged to:*

- a. Take legal, administrative and other types of all essential measures in order to provide the right of achieving highest possible health level without discrimination against sexual orientation or gender identity.*
- d. Administrate and implement programs to overcome social factors of predisposed negative attitudes and discrimination based on sexual orientation and gender identity, hence factors negatively affecting health and other social factors.*
- f. Provision of diversity of sexual orientation and gender identity in administered programs about education, prophylactics, care and treatment in sexual and reproductive field and access to these programs to every person without discrimination."*

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48 Law of Georgia on Health Care, available at : <https://matsne.gov.ge/ka/document/view/29980?publication=42>

49 Ibid, article 4

50 Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity. Available at: [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

According to Part 7 of Recommendation CM/Rec(2010)5 “About Eradication of sexual orientation and gender identity-based discrimination”<sup>51</sup>:

*§33. Member states must take respective legal and other measures, so that use of highest quality accessible health system happens without discrimination based on sexual orientation and gender identity; specifically, member states must take into account special needs of lesbian, gay, bisexual and transgender persons while creating national health plans, including suicide prevention measures, health surveys, medical curriculum, study courses and materials. Member states must also consider special needs of lesbian, gay, bisexual and transgender persons while monitoring and evaluating health care services.*

*§34. All appropriate measures must be taken, according to world healthcare organization standards, in order to avoid classifying homosexuality as a disease.*

*§35. Member states must take corresponding measures, to ensure efficient access to sex change service for transgender persons, that will be free of unreasonable requirements. Service access/affordability must include psychological, endocrinological and surgical service existing in transgender health care. No sex change procedures should be conducted without person's agreement.*

*§36. Member states must take respective legal and other measures to make sure the decisions about reducing expenses for sex change procedures by healthcare insurance are legal, objective and proportional.*

Right of trans and gender nonconforming persons to qualified health care is guaranteed by international, as well as national legal mechanisms. Despite this, the absence of acts regulating national standards of trans-specific medical procedures remains a problem. The mentioned issue was emphasized by UN independent expert in published report, according to which “Specific needs of trans persons’ healthcare and access to services, as well as, access to gender reassignment services, including in psychological, endocrinological and surgical field, are unregulated”.<sup>52</sup>

He expressed concern in reference to mainstream practice of

51 Council of Europe. Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. 2010. Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805cf40a)

52 Human Rights Council. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. §78. 2019. A/HRC/41/45/Add.1 available at: <https://undocs.org/en/A/HRC/41/45/ADD.1?fbclid=IwAR1uGxuJ6lMh0KqfYO9D1vUNMQv4SWO0LSiwgZcH7UQCcSdyIM71tmToyZo>



conducting surgical operation of gender re-assignment, according to which “based on psychologists’ and sexologists’ evaluation, the surger decides weather the patient is a “true transsexual“, depending whether the patient is willing to receive full or partial procedure of gender reassignment. The independent expert is extremely alarmed given that such insulting requirements form the base of discretion of medical professionals, who apparently lack education with regards to issues of sexual orientation and gender identity. Moreover, the expert notes that surgical operation, where recommendation is given to “true transsexuals“ causes a totally unnecessary injury, sterilization, massive pain and suffering”<sup>53</sup>. Victor Madrigal Borloz addressed the State of Georgia, to “adopt clinical guidelines on trans-specific medical procedures in line with international standards”<sup>54</sup>

In the accounting period, while studying cases about 5 trans persons existing in WISG production<sup>55</sup> a number of circumstances came into focus, that might contain discrimination based on gender identity.

#### CASE #14

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### FIVE TRANS PERSONS AGAINST THE REFERALL SERVICE COMMITTEE

In 2018, WISG worked on the cases of 5 trans applicants, who appealed to committee created for making decisions about providing medical services to patients, “within referral service“ according to Resolution N 331 of Georgian Government dated November 3, 2010, demanding funding for essential diagnostic medical procedures, in that funding of mentioned procedures was not included within general healthcare state programs. Every claimant is temporarily unemployed and considering their socio-economic condition, they lack opportunity to cover medical procedure expenses themselves. According to the committee’s decision, they were refused funding without any argumentation.

Claimants believe that they are victims of discriminative treatment and appealed to the Ombudsman with the demand to study the cases.

With Resolution N 331 of November 3 2019 of the Government of Georgia on “aiming to create committee for making decisions about providing medical assistance within referral service and defining the rule of its practice“ any person has competence to

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53 Ibid, §66

54 Ibid, §119

55 See the Case #14

appeal to interdepartmental committee regardless of what type of state insurance it is subject to, or whether they use such insurance or not. Committee regards each application considering individual circumstances and makes decision based on criteria of expedience, however there is a practice, by which it is possible to identify what type of case funding happens most often. The committee funds medical service of such vulnerable groups as socially unprotected families, victims of natural disaster, catastrophies and emergency situations, individuals with innate malformed heart. Satisfaction of such individuals depends to what extent their expenses are covered by insurance or through other state programs, funding method incurs within certain frames the obligation of co-payment from the side of beneficiaries.

Any individual has the right to refer to the Committee, regardless whether they use basic insurance package or are fully or partially limited to use a similar package. Apart from this, as it turns out by Section 3 of Article 4 of this Resolution and the position of the defendant, the Committee - while giving funding to the fund-seeker - guides by expedience standards, considering unity of existing circumstances of each specific case. On the inherent hearing session of the Case the defendant's side confirmed, that there are no pre-identified concrete criteria, which will give opportunity to seeker of funding to define chances of satisfaction of own application. There are only statistics of decisions made by the Committee, which possibly represent only a general picture about these criteria.

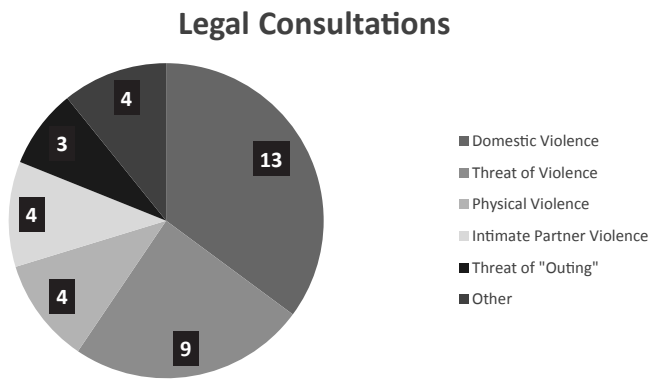
The claimants believe, that the referall service committee was obliged to consider their individual peculiarity and their socio-economic condition while hearing their case. Furthermore, it had to consider needs of trans persons and the state of their rights in the country. The applicants believe, that the committee should have answered the question: Whether or not they had opportunity to gain funding otherwise for mentioned medical procedures. Also, the committee should have grounding for their refusal by legally enacted ordinance.

The case is pending before the ombudsperson's.

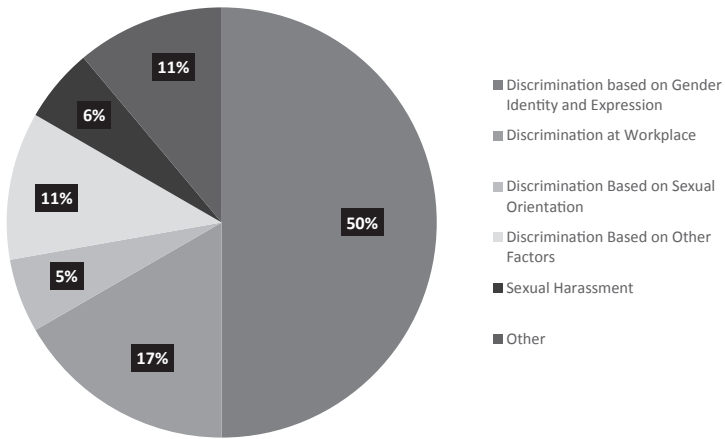
# STATISTICAL DATA OF 2018

## Legal Consultation

In 2018, the WISG lawyers provided legal consultation on the total of 68 cases, of which 38 cases were linked to certain offences, of which 13 cases were of domestic violence, 9 - threats of violence, 4 – physical violence, 4 – intimate partner violence, 3 – threats of ‘outing’, 1- rape, 1 – sexual pressure, 1 – following, 1 – economic/financial violence.

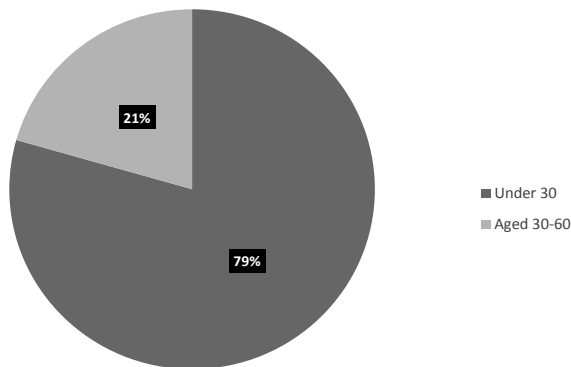


In 27 cases, service receivers of WISG received consultation about civil and administrative cases. 9 cases represented probable discrimination based on gender identity, 1 – discrimination based on sexual orientation, 2 – discrimination based on other grounds, 3 – discrimination at workplace, 1 – sexual harassment, 1 – alimony, 1 – unlawful processing of personal data.

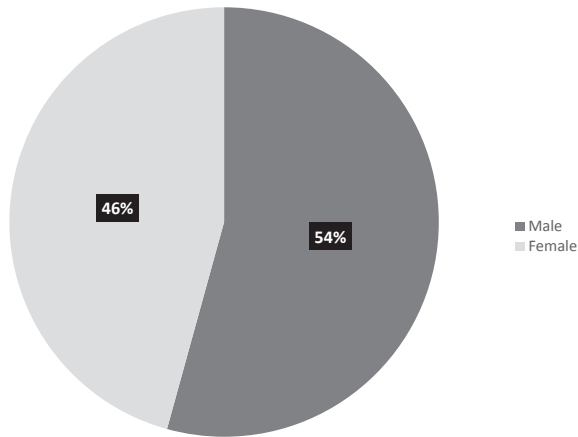


In 2018, the number of the community members who register as asylum-seekers became more visible. 7 community members were given the document referring to the situation of LGBTQI rights in Georgia by the WISG lawyers. According to them, they need this document when they are trying to register as an asylum-seekers and in that WISG has many years of experience of evidence-based advocacy, it is able to prepare analysis and share the existing state.

The circle of consultation receivers according to age, looks like following: 54 consultations were given to citizens under 30 years of age, while 14 were given to citizens aged between 30 and 60.

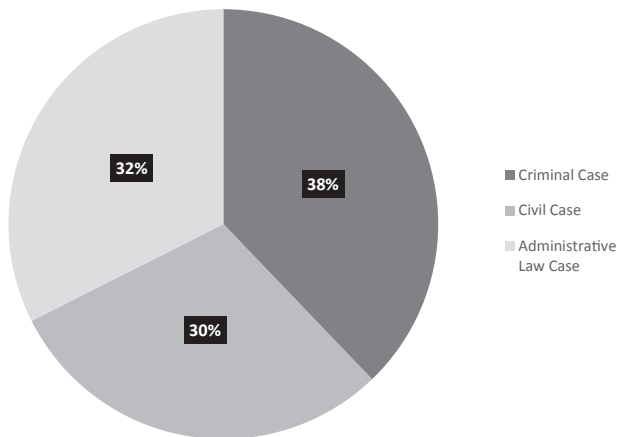


The illustration of consultation receivers according to gender is as follows: 32 consultations provided to citizens of male persons, while 38 – to female ones. Obviously, this number includes trans and gender non-conforming persons.



**Legal Assistance**

WISG lawyers worked on 37 cases in 2018, in particular: 14 Criminal Cases, 12 Administrative Cases and 11 Civil Cases.



## ABOUT SOME CASES COVERED BY THE REPORT OF 2017

The following chapter contains information about process of two especially important cases entered in Legal Proceedings Report 2017.

### LEGAL GENDER RECOGNITION

On September 6, 2018 the European Court of Human Rights made communication with regards to case of two trans men sent in 2017 and made them joint.<sup>56</sup>

WISG arranged applicant's meeting with UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity Vitor Madrigal Borloz,<sup>57</sup> who happened to be in Georgia during September-October 2018. In his published report about Georgia, the Independent Expert fundamentally analyzed obstacles tackled by trans persons while absence of legal gender recognition mechanisms. The expert underlined the fact that existing requirements for sex change records (including sex reassignment surgical operation) do not correspond with Human Rights Protection standards and represent degrading and discriminative treatment towards them.<sup>58</sup> Victor Madrigal- Borloz recommend the Government of Georgia "Ensure that the process of legal recognition of gender identity is based on selfdetermination by the applicant, is a simple administrative process, is exempt from abusive requirements, recognizes non-binary identities and is accessible to minors".<sup>59</sup>

The European Court posed specific questions to the Georgian Government with regards to violation of Article 3 Prohibition of torture and

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56 Applications nos. 57864/17 and 79087/17, A.D. against Georgia and A.K. against Georgia, lodged on 1 August 2017 and 10 November 2017 respectively, available at: <http://hudoc.echr.coe.int/eng?i=001-186564>

57 See detailed information here: <https://women.ge/ka/news/newsfeed/247/>

58 Human Rights Council. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. §67. 2019. A/HRC/41/45/Add.1 available at: <https://undocs.org/en/A/HRC/41/45/ADD.1?fbclid=IwAR1uGxuJ6IMh0KqfYO9D1vUN-MQv4SWO0LSiwgZcH7UQCeSdyIM71tmToyZo>

59 *ibid*, § 90

degrading treatment, Article 8 (Right to Respect for private life) and Article 14 (prohibition of Discrimination) of European Convention. The applicants responded to the position of the Georgian Government on March 7, 2019. For now, applicants are waiting for the Court decision.<sup>60</sup>

## **LUIZA LAPERADZE AGAINST LEPL APOLON KUTATELADZE TBILISI STATE ACADEMY OF ARTS<sup>61</sup>**

Luiza Laperadze once again took part in an open competition announced in July 2018 by LEPL Tbilisi Apolon Kutateladze State Academy of Arts for candidates of the academic position of Assistant Professor. She submitted an application form for the direction of painting on academic position of Assistant Professor.

In compliance with Session Protocol N3 of August 12, 2018 of vacant Academic Positions Contest Field Committee of Tbilisi Apolon Kutateladze State Academy of Arts Fine Arts Faculty, applications of Luiza Laperadze and two other candidates met the qualification requirements. However, the Committee discussed with regards to only two other applicants. Session Protocol lacks information about circumstances causing refusal of Luiza Laperadze's application for occupying this position.

On October 1<sup>st</sup> 2018, Luiza Laperadze lodged a lawsuit against LEPL Apolon Kutateladze Tbilisi State Academy of Arts and demanded invalidation of Session Protocol N3 of August 12, 2018 of Tbilisi Apolon Kutateladze State Academy of Arts Fine Arts Faculty vacant Academic Positions Contest Field Committee and that the defendant be entitled to issue of new administrative act. In addition to this, to identify fact of discrimination based on different viewpoint, including different political leaning, and the defendant to be entitled moral damage compensation.

The hearing of the case is still in progress in Tbilisi City Court.

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60 See the details of the case in the litigation report of 2017. "Intersectional Discrimination and LGBTI persons". Page: 52.WISG. available at: <https://women.ge/en/publications/184/>

61 See the details of the case in the litigation report of 2017. "Intersectional Discrimination and LGBTI persons". Page: 43.WISG. available at: <https://women.ge/en/publications/184/>

## SUMMARY

Based on examples of cases litigated by WISG in 2018 in the presented report it is clear that for equality of the LGBTQI persons a number of systemic reforms have to be implemented.

It is essential, that instead of neglecting the needs of the LGBTQI needs, the State integrates issues of sexual orientation and gender identity into Human Rights Policy and imposes consecutive evidence-based policy against stigma existing in the society.

In order to improve the state of trans persons, existing legal mechanism of gender recognition should immediately be changed and replaced by a model based on self-identification. Moreover, it is essential to schedule measure aimed at ensuring right of healthcare for trans persons and to implement the administration of national standards with direct participation of competent authorities.

Besides the above mentioned, the community faces severe problems that first of all need proper research and deliberate intersectional work from respective authorities.



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Available at: <https://matsne.gov.ge/ka/document/view/4276790?publication=4>

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Available at <https://matsne.gov.ge/ka/document/view/29980?publication=42>

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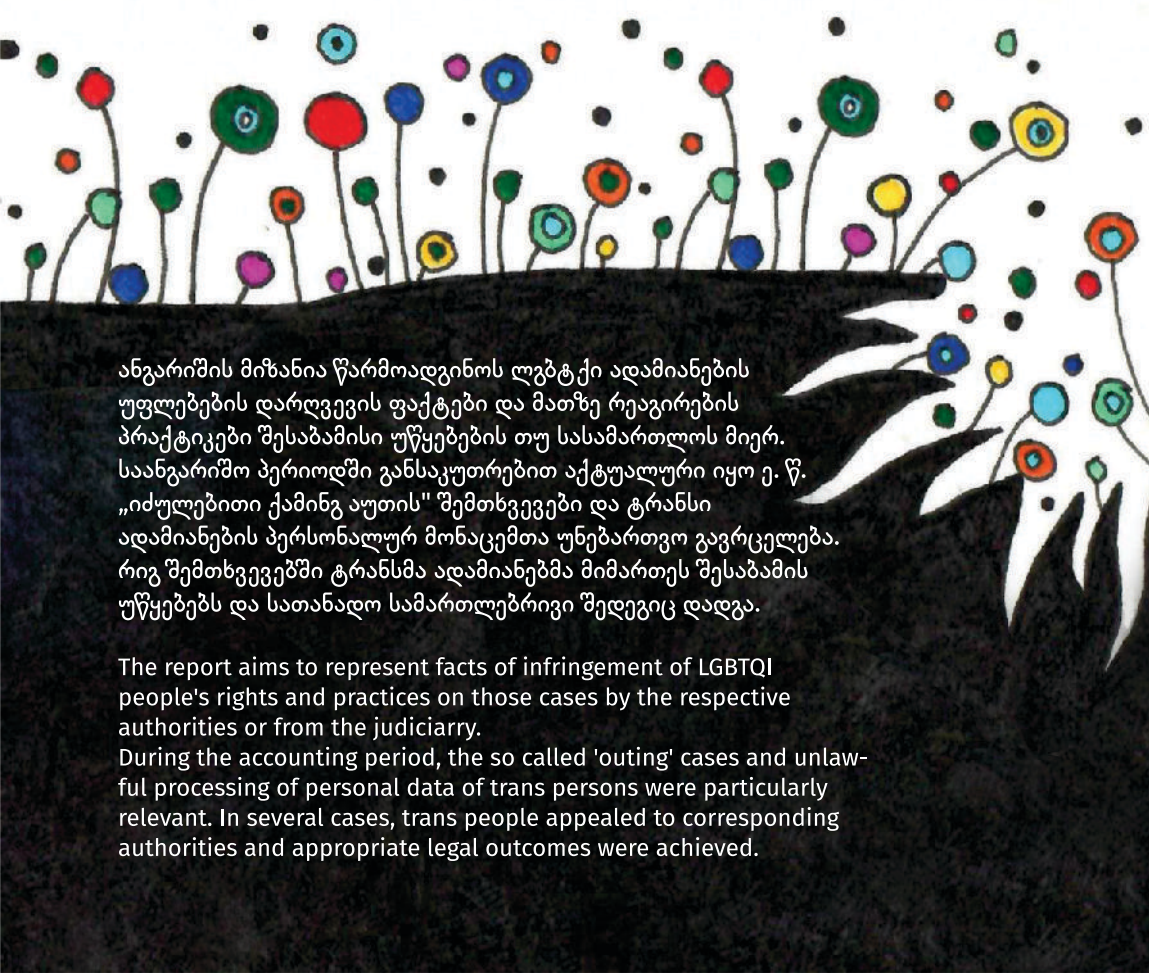
Available at: <http://hudoc.echr.coe.int/eng?i=001-60448>

„ქალთა ინიციატივების მხარდამჭერი ჯგუფი“ (WISG) წარმოადგენს ქალთა საკითხებზე მომუშავე ფემინისტურ ორგანიზაციას, რომლის სამიზნე ჯგუფია ლესბოსელი და ბისექსუალი ქალები, ტრანსგენდერი ადამიანები, ეთნიკურ და რელიგიურ უმცირესობებს მიკუთვნებული, სოფლად მაცხოვრებელი, შეზღუდული შესაძლებლობების მქონე და სხვა მარგინალიზებული ჯგუფის წარმომადგენელი ქალები.

ჰომოფობიის საკითხებზე მუშაობა ორგანიზაციამ 2002 წელს დაიწყო. 2010 წლიდან ადვოკაცია WISG-ის ერთ-ერთი ძირითადი მიმართულებაა. ინფორმაცია ორგანიზაციის მიერ ჩატარებული კვლევების, ჩრდილოვანი ანგარიშების, საჯარო პოლიტიკის დოკუმენტებისა თუ სხვა აქტივობების შესახებ შეგიძლიათ, იხილოთ ორგანიზაციის ვებ-გვერდზე: [www.women.ge](http://www.women.ge).

The Women's Initiatives Supporting Group - WISG is a feminist organization whose main target group includes lesbian and bisexual women, intersex and transgender persons, women representing ethnic and religious minorities, living in rural areas, with disabilities and representing other vulnerable and marginalized groups.

The organization started to address the issue of homophobia in 2002. Since 2010, advocacy became one of the main directions of WISG's work. Further information regarding studies, shadow reports, policy documents prepared by the organization, as well as other activities, can be found on organization's official website: [www.women.ge](http://www.women.ge).



ანგარიშის მიზანია წარმოადგინოს ლგბტკი ადამიანების უფლებების დარღვევის ფაქტები და მათზე რეაგირების პრაქტიკები შესაბამისი უწყებების თუ სასამართლოს მიერ. საანგარიშო პერიოდში განსაკუთრებით აქტუალური იყო ე. წ. „იძულებითი ქამინგ აუთის“ შემთხვევები და ტრანსი ადამიანების პერსონალურ მონაცემთა უნებართვო გავრცელება. რიგ შემთხვევებში ტრანსმა ადამიანებმა მიმართეს შესაბამის უწყებებს და სათანადო სამართლებრივი შედეგიც დადგა.

The report aims to represent facts of infringement of LGBTQI people's rights and practices on those cases by the respective authorities or from the judiciary.

During the accounting period, the so called 'outing' cases and unlawful processing of personal data of trans persons were particularly relevant. In several cases, trans people appealed to corresponding authorities and appropriate legal outcomes were achieved.