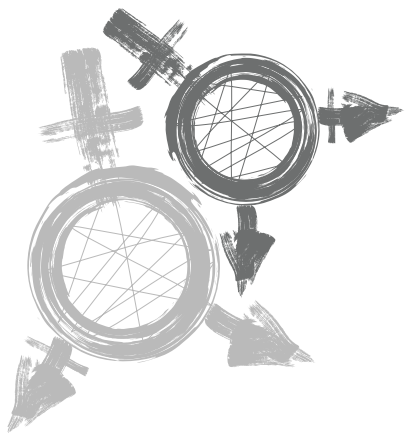


LEGAL GENDER RECOGNITION IN GEORGIA

Policy Paper



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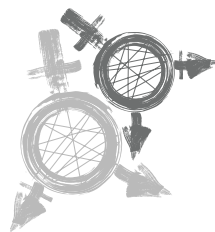
Legal Gender Recognition in Georgia
Policy Paper
Ketevan Bakhtadze

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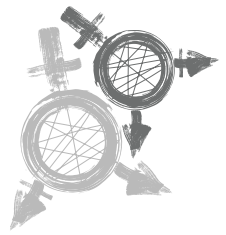




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ACRONYMS

CEDAW Convention on the Elimination of all Forms of Discrimination Against Women

LGBTI Lesbian, Gay, Bisexual, Transgender and Intersex

OHCHR Office of the United Nations High Commissioner for Human Rights

SOGIE Sexual Orientation, Gender Identity, and Gender Expression

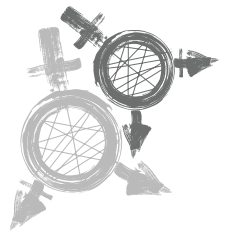
TGEU Transgender Europe

ILGA-Europe

UNCESR United Nations Committee on Economic, Social and Cultural Rights

WISG Women's Initiatives Supporting Group

LEPL Legal Entities under Public Law



TERMINOLOGY

Gender expression – the presentation of an individual, including physical appearance, clothing choice and accessories, and behaviors that express aspects of gender identity or role. Gender expression may or may not conform to a person's gender identity.

Gender identity – a person's deeply felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., gender-queer, gender nonconforming, gender neutral) that may or may not correspond to a person's sex assigned at birth or to a person's primary or secondary sex characteristics. Because gender identity is internal, a person's gender identity is not necessarily visible to others. "Affirmed gender identity" refers to a person's gender identity after coming out as TGNC or undergoing a social and/or medical transition process.

Self-determination – is a method to access legal gender recognition based on a statutory or notary statement by the trans person, with no additional requirements.

Intersex – a person born with a reproductive or sexual anatomy that doesn't seem to align with the typical definitions of female or male. Intersexuality goes beyond male or female biological characteristics and cannot be reduced to chromosomal, hormonal or genital aspects. Intersexuality may not be visible at birth and can be developed later.

Gender nonconforming – an umbrella term used to describe a person whose gender expression or gender identity doesn't align with gender norms attributed to biological sex assigned at birth.

Cisgender – an adjective used to describe a person whose gender identity and gender expression align with sex assigned at birth; a person who is not transgender or gender nonconforming.

Sex – combination of biological characteristics (anatomical, physiological, biochemical, genetic), distinguishes female and male organisms.

Sex (assigned at birth) – sex is typically assigned at birth (or before during ultrasound) based on the appearance of external genitalia. When the external genitalia are ambiguous, other indicators (e.g., internal genitalia, chromosomal

and hormonal sex) are considered to assign a sex, with the aim of assigning a sex that is most likely to be congruent with the child's gender identity (MacLaughlin & Donahoe, 2004). For most people, gender identity is congruent with sex assigned at birth (see cisgender); for TGNC individuals, gender identity differs in varying degrees from sex assigned at birth.

Sexual orientation – a person's consistent physical, romantic, emotional and/or sexual attraction to another person. It includes homosexual, bisexual and heterosexual orientations.

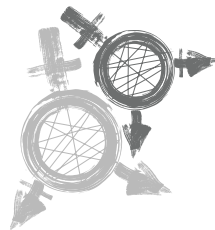
Trans or transgender – an umbrella term used to describe persons whose gender identity, expression and behavior do not conform to typical characteristics of their biological sex. The term describes transsexuals, transvestites, transgenders, cross dressers, and gender nonconforming persons. Transgender persons may have heterosexual, lesbian, gay or bisexual sexual orientations.

Trans woman or transgender woman – a person whose sex assigned at birth was male, but who identifies as a woman, also described as MTFs.

Trans man or transgender man – a person whose sex assigned at birth was female, but who identifies as a man, also described as FTMs.

Transition – The process many, but not all, transgender people undergo to live authentically in their gender identity. This process may involve altering their gender expression (such as name, clothing and hairstyle). Transitioning may also involve biomedical and surgical interventions that align the individual's anatomy with their gender identity.

Gender-affirming surgery (sex reassignment surgery or gender reassignment surgery) – a surgery to change primary and/or secondary sex characteristics to better align a person's physical appearance with their gender identity. Gender-affirming surgery can be an important part of medically necessary treatment to alleviate gender dysphoria and may include mastectomy, hysterectomy, metoidioplasty, phalloplasty, breast augmentation, orchiectomy, vaginoplasty, facial feminization surgery, and/or other surgical procedures.



INTRODUCTION

Purpose and methodology

This document was created for transgender persons, LGBT community-based and other civil society organizations to be used in the process of advocacy for legal gender recognition of trans persons.

The purpose of the document is to evaluate the work of decision-making institutions on legal gender recognition, including the Parliament of Georgia, the Government, and the Ministry of Justice, and to develop recommendations.

In the process of developing this document, we reviewed laws and administrative regulations of Georgia and other countries, important international and EU standards, studies involving trans people and human rights policy documents.

This document is focused on legal gender recognition of binary trans persons – transgender women and transgender men. It does not include the perspectives of intersex, non-binary or gender non-conforming persons. Specifics of these groups are subject to further study.

Lack of data and legal definitions

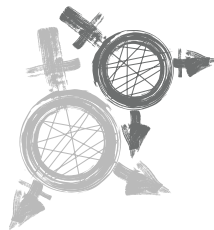
In Georgian legislation, gender is defined as “a social aspect of relation between sexes, which is expressed in all spheres of public life, and implies opinions formed about different sexes through socialization”¹. No such legal definitions exist for sex, gender identity, expression, and sexual orientation. However, they are mentioned as the protected grounds of discrimination in the Constitution,² the Law on Elimination of All Forms of Discrimination,³ and in multiple other legislative acts.

1 Article 3 (1)(a), Law of Georgia on Gender Equality.

2 Article 11 (1), Constitution of Georgia.

3 Article 1, Law of Georgia on the Elimination of All Forms of Discrimination.

The lack of legislative definitions leads to significant barriers in terms of benefiting from legal gender recognition. In addition to the non-existence of legislation on legal gender recognition and administrative procedures, the absence of a definition of sex makes the definition of sex reassignment even more challenging. It frequently puts on the agenda legislative discussions that lack a scientific basis. For example, according to a statement of March 31, 2021, by the Public Service Development Agency under the Ministry of Justice, “sex-reassignment surgery has nothing to do with legal gender recognition of a transgender person”. Considering the content of this statement, it is clear that the agency has no proper knowledge of what legal gender recognition means and, even more importantly, has no understanding of who a transgender person is.



IDENTITY DOCUMENTS IN GEORGIA

The right to a name and its registration

The right to a name is a right of a person to have a name that includes a name and a surname.⁴ In Georgia vast majority of names of natural persons simultaneously describe one of the genders. However, there are several gender-neutral names that can be applied to both a woman and a man. On the other hand, surnames are gender-neutral and do not contain indications of a person's gender.

The Constitutional Court of Georgia considers the right to a name to be “a component of private life” that is an integral part of the right to personal identity and family relations.⁵ In turn, the right to personal identity is tied to active participation in public life.

The right to a name implies its registration by a respective state agency,⁶ which is directly related to one of the civil acts. Registration of a name is directly linked to the birth act since giving a name to a natural person, based on an application by an authorized person,⁷ takes place upon birth. As formulated in the law, there is a possibility to randomly assign a name to a natural person, and in such cases sex of the baby is taken into account.⁸ Authorized representatives, including parents, consider the sex of the baby upon determination of the name.

4 Civil Code of Georgia, Article 17 (1).

5 Judgement №2/4/570, II-5 of The Constitutional Court of Georgia on the case of “Citizen of Georgia Nugzar Jakeli V. the Parliament of Georgia”, August 4, 2016.

6 Law of Georgia on Civil Status Acts, Article 4 (1).

7 Order №18 by Minister of Justice “On Approval of the Procedures for Civil Registration”, January 31, 2012, Article 20.

8 Law of Georgia on Civil Status Acts, Article 4 (2).

Electronic ID card and passport of a citizen of Georgia

According to the Minister's order, every Georgian citizen is obliged to obtain an ID card after attaining the age of 14.⁹ Electronic ID card is the only identity document with its form and technical features that are determined by the Minister's order.¹⁰ Name, surname, sex, personal number, and a photo are among the essential requisites of the card. Only name, sex, and photo depict a person's gender from the listed requisites.¹¹ Unlike many other countries, surname and personal number are gender-neutral in Georgia.

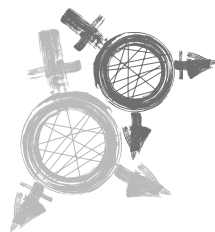
The law does not require a Georgian citizen to obtain a passport; however, the passport is a prerequisite to travelling abroad and includes the above-mentioned personal data.¹²

9 Order №98, Minister of Justice "On Approval of the Procedure for Registration and Deregistration of Georgian Citizens and Aliens Residing in Georgia and Issuance of Identity (Residence) Cards, Passports, Travel Passports, and Travel Documents", Article 26, paragraph 1(1), July 27, 2011.

10 Order №91, Minister of Justice "On Approval of Forms and Specifications of an Electronic Identification Card of a Citizen of Georgia and an Electronic Residence Card (Temporary and Permanent) of an Alien Residing in Georgia", July 14, 2011.

11 Ibid, Article 7 (1).

12 Order №98, Minister of Justice "On Approval of the Procedure for Registration and Deregistration of Georgian Citizens and Aliens Residing in Georgia and Issuance of Identity (Residence) Cards, Passports, Travel Passports, and Travel Documents", Chapter IV, July 27, 2011.



LEGAL GENDER RECOGNITION IN GEORGIA

Absence of legislation and established practice

In Georgia procedure of legal gender recognition of trans persons is not regulated by the law. There only exists jurisprudence of the Public Service Development Agency under the Ministry of Justice, which is based on the Law of Georgia on Civil Status Acts.

Legal gender recognition consists of two components, which include making changes to records of name and sex. The Public Service Development Agency has established different jurisprudence for each component, and therefore different legislative basis and administrative procedures are prescribed for these changes.

Changes to the record of name and sex imply making a change in the civil status act of birth. As a result, the ID documents of a person, including ID card and passport, will change automatically. After submitting the changed ID card, a trans person has the right to apply to every institution to change their sex record in the documents issued by these institutions.

Change of name

Name is one of the means of personal identification, which emphasizes gender and, therefore, change of name is one of the components of legal gender recognition.

A basis for change of name is regulated by the Law of Georgia on Civil Status Acts, Article 78,¹³ and administrative procedure for its enforcement is also established.¹⁴ Trans persons from the age of 18, similar to other Georgian

¹³ Law of Georgia on Civil Status Acts, Article 78 (e).

¹⁴ Order №18, Ministry of Justice "On Approval of the Procedures for Civil Registration", Chapter VII, January 31, 2012.

citizens, may, without any obstacles, apply to the Public Service Development Agency for a change of name, submit required documentation and change their name without submitting any health certificate. Every Georgian citizen of full legal age may change their name only once.¹⁵

Change a record of sex

The Law of Georgia on Civil Status Acts, Article 78, provides conditions that are the basis for changes to civil status act. “Sex change, provided a person desires to change his/her first name and/or surname because of sex change” is one of the conditions.¹⁶

According to established practice, a trans person, who undergoes sex-reassignment surgery and submits a respective health certificate to the Public Service Development Agency, easily changes the record of sex in their birth certificate, without any additional assessment. The law limits the right to legal gender recognition for trans persons who do not wish to undergo sex-reassignment surgery, are not eligible for the surgery due to health conditions, or do not possess the financial means needed for this expensive medical procedure.

Legal gender recognition for a trans woman

On March 25, 2021, by decision of the Tbilisi civil registry department of the Public Service Development Agency under the Ministry of Justice, an appeal of a trans woman was accepted, and her gender marker was changed from “male” to “female”.

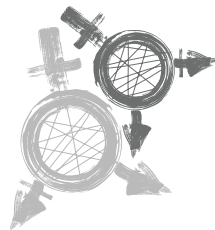
The declarant appealed to the Public Service Development Agency on the 25th of December, 2020, and submitted a health certificate issued by a medical institution that proved her undergoing sex reassignment surgery. The declarant has already been granted a reissued birth certificate with a revised record.

It is the first case when the state legally recognized the gender of a trans woman/man.

In addition to this case, WISG had documented another case when a trans woman underwent sex-reassignment surgery and was able to change her gender marker in her civil status act of birth.

15 Law of Georgia on Civil Status Acts, Article 64 (1).

16 Article 78 (fⁱ), Law of Georgia on Civil Status Acts.



THE PROBLEM OF LEGAL GENDER RECOGNITION AND EFFORTS TO ESTABLISHING SUCH A MECHANISM

The Gender Equality Council

The Gender Equality Council is a permanent body of the Parliament, activities of which are of crucial importance for the promotion and enhancement of the process of gender equality in the country. The Council conducts studies and thematic research on gender equality issues and provides the Parliament of Georgia with relevant recommendations.

In 2017-2018, the Council conducted research on which “Action plan of the following years and the State concept on gender equality that determines direction of the State policy for both legislative and executive governments” was based.¹⁷

The research explored the challenges transgender persons face, including the absence of the procedure for legal gender recognition and the recommendation issued by the Council to “Amend the Law on Civil Status Acts to provide for an accessible and simple procedure for changing the name, surname and gender of transgender persons.”¹⁸

Despite the recommendation, the problem of legal gender recognition has not been reflected in any of the Council’s Action Plans and is somewhat disregarded.

The Human Rights Action Plan

The Human Rights Action Plan is a document elaborated by the Government of

17 Mann, L., Janashia, N., & Tomashvili, T. (2018, 5). Gender Equality in Georgia: Barriers and Recommendations, (volume I), Tbilisi.

18 Mann, L., Janashia, N., & Tomashvili, T. (2018, 5). Gender Equality in Georgia: Barriers and Recommendations, (p. 103), (volume I), Tbilisi.

Georgia to define activities in the human rights sphere. The document is updated every two years and defines the main areas of action for public law bodies and legal entities included in the system. In the process of elaboration of the Action Plan, Interagency Human Rights Council¹⁹ holds consultation meetings with ministries and civil society organizations and defines goals and objectives according to the given recommendations.

WISG was actively engaged in the consultation meetings on elaborating action plans for the 2016-2017²⁰ and 2018-2020²¹ years and put the issue of legal gender recognition on the agenda. However, despite all the efforts, the latter has never been reflected in any of the plans. The Council disregarded the issue of legal gender recognition again in 2020 when chapter XV – “Gender identity and equality”, was approved within the 2018-2020 Action Plan.²²

WISG’s work with the Ministry of Justice

Woman’s Initiatives Supporting Group (WISG) started working on the subject of legal gender recognition after implementation of new electronic identity cards in Georgia, which, unlike its predecessor, contained sex marker.

WISG had held numerous consultation meetings with community members, thoroughly explored²³ the problem, and prepared the public policy document.²⁴ The document emphasized the need to distinguish legal gender recognition from trans-specific medical procedures.²⁵

WISG uses strategic litigation. The organization advocates for creating mechanisms of legal gender recognition for those trans persons who, for various reasons, do not wish/are unable to undergo sex reassignment surgery. On the other hand, WISG also held high-level meetings with the Georgian Ministry of Justice, involving local and international experts.

19 Article 2¹, Decree №551 of December 13, 2016, of the Government of Georgia “On Establishing an Interagency Human Rights Council and Approving its Statute.

20 Decree №338 of July 21, 2016, of the Government of Georgia on approval of Action Plan on the Protection of Human Rights for 2016-2017.

21 Decree №182 of April 17, 2016, of the Government of Georgia on approval of Action Plan on the Protection of Human Rights for 2018-2020.

22 Decree of February 17, 2020, of the Government of Georgia on amendment to the ordinance of April 17, 2016, of the Government of Georgia on approval of Action Plan on the Protection of Human Rights for 2018-2020

23 Gvianishvili, N., Situation of Transgender People in Georgia. Tbilisi, 2015.

24 Aghdghomelashvili, E., Gvianishvili, N., Todua, T., & Ratiani Ts. Needs of Transgender persons in Healthcare, Tbilisi, 2015.

25 Ibid, p. 57.

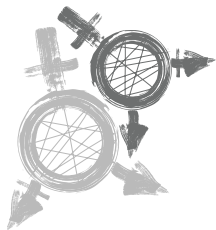
The Public Defender's recommendations

Since 2014, in annual reports On Situation of Human Rights and Freedoms in Georgia, the Public Defender urges the Georgian Ministry of Justice to “introduce a fast, transparent and accessible procedure for reflecting their gender identity in all key documents issued by the state and non-governmental institutions to transgender people”.²⁶

In addition to the parliamentary reports, in 2016, the Public Defender requested to engage as the friend of the court (*Amicus Curiae*) in a legal gender recognition case of a transgender man and presented a brief to the Tbilisi Court of Appeals. The Public Defender introduced the international and EU court practices on legal gender recognition to the Court and urged them to make an informed decision²⁷.

26 Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, 2014, 700. <t.ly/soLX> [18.01.2022].

27 The Public Defender's *Amicus Curiae* brief to the court №08/5189, May 24, 2016.



CHALLENGES TRANS PERSONS FACE

The lack of legal gender recognition creates multiple obstacles in the daily lives of trans persons. Legal sex records that do not match and directly contradict a person's gender contribute to so-called "compulsory coming out". In a society with deeply rooted homophobia and transphobia, fear of coming out becomes a barrier.²⁸ This problem prevents trans persons from equal integration in public life, that is intertwined with exercising both civil and political as well as social and economic rights.

According to the research conducted by the Social Justice Center, 50% of respondents indicate that legal gender recognition should be based on a person's self-identification, for it to be more effective, oriented at the protection of dignity, and tailored to human needs.²⁹

Restricted access to benefit from prevention mechanisms of violence against women

Lack of legal gender recognition restricts the right of trans women to receive administrative guarantees of the elimination of violence against women and protection and assistance of the victims of domestic violence. According to the Law of Georgia On Violence Against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence, a victim is "a woman, ... whose constitutional rights and freedoms have been violated by way of negligence and/or physical, psychological, economic and sexual violence or coercion".³⁰

Trans women cannot request a restraining order as in their identity documents sex marker indicates that they are male. In 2018, the court rejected a

28 Aghdghomelashvili, E., *From Prejudice To Equality: study of societal attitudes, knowledge and information regarding the LGBT community and their right*, 2016, Tbilisi, p. 129, available at: t.ly/DBGn.

29 Jalagania, L., *Social Exclusion of LGBTQ Group in Georgia*, p. 172, , available at: t.ly/Qkmo.

30 Article 4 (e¹) Law of Georgia On Violence Against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence.

trans woman's request for a restraining order,³¹ considering her to be an unauthorized person to file for the order.

Investigative actions, conditions for detention and imprisonment

When carrying out investigative actions provided for by the Criminal Procedure Code that involves the removal of clothing, a person's private life and dignity are protected by law. According to Article 121, paragraph 4 "If a personal search involves the removal of the person's clothing, the search shall be conducted by a person of the same sex. Only persons of the same sex may participate in this kind of search." According to the Article 111 of the same Code, "If an investigative action involves the removal of a person's clothing, the expert and the party shall be of the same gender as the person to be examined".

The same rule applies to searching an accused person upon admission to a detention facility, and an employee of the same sex does the search of an accused person.³² Similarly, the bodily search of an accused/convicted person is conducted by a person of the same sex as the accused/convicted person.³³

Female convicts, including underaged women, are placed in a special facility for women created according to the Imprisonment Code.³⁴ However, despite the focus on gender in the Code, accused and convicted trans women do not serve their sentences in a special facility for women. According to the established practice, to place an accused person in a detention facility, a person's identification document is required,³⁵ and the decision is made based on the sex marker.

In the context of segregation according to sex, trans persons who do not have access to legal gender recognition and whose record of sex does not match their gender identity, remain vulnerable and cannot benefit from these legislative guarantees. Trans women are forced to serve sentence with men, while trans men end up in a special facility for women.

The compulsory military service

According to Law of Georgia On Military Duty and Military Service, "the perfor-

31 "The perpetrator of the attack on Miranda Paghava was sentenced to six months of imprisonment,, 22.06.2018. <t.ly/2FdN> [18.01.2022].

32 Article 75 (4), Imprisonment Code of Georgia.

33 Ibid, Article 52 (2).

34 Ibid, Article 12³ (2).

35 Ibid, Article 33 (1).

mance of military duty is the obligation of every citizen fit for this purpose³⁶. According to the law, women with no military occupational specialty shall not be subject to military registration.³⁷ Trans women, whose sex marker does not match their gender identity, cannot enjoy this right, and are obliged to perform military service.

Release or deferment from compulsory military service are regulated by Article 6 (6), Article 27 (2), and Article 29 and 30 of the Law of Georgia On Military Duty and Military Service. The listed articles mainly focus on a person's health or disability status. According to the information provided by the Ministry of Regional Development and Infrastructure of Georgia, no transgender women have appealed to the conscription commission with a request to release from military service on the bases of "transsexualism".³⁸

However, trans women who are recipients of WISG's medical and social services report that they had been released from the compulsory military service based on submitted health certificates indicating a diagnosis of "transsexualism".

Marriage

According to the Constitution and the Civil Code of Georgia,³⁹ marriage is a "union of a woman and a man".⁴⁰ For marriage authorization, the civil status registration authority must register the marriage.⁴¹ In order to register a marriage, the persons wishing to marry are obliged to submit identity documents.⁴²

Therefore, heterosexual trans persons wishing to marry are restricted in their right to marry.

Employment

According to the Labour Code of Georgia, "an employee shall be a natural person performing certain work for an employer under a labour agreement".⁴³ Upon concluding an employment agreement, trans persons must submit identity documents to the employer, creating the risk of "compulsory coming out", especially

36 Article 1 (1), Law of Georgia On Military Duty and Military Service.

37 Ibid, Article 11 (1)(b).

38 Letter №01/319 of February 2, 2016, Ministry of Regional Development and Infrastructure of Georgia.

39 Article 1106, Civil Code of Georgia.

40 Article 30 (1), Constitution of Georgia.

41 Chapter V, Law of Georgia on Civil Status Acts.

42 Article 39(1)(a), Order №18, Ministry of Justice on Approval of the Procedures for Civil Registration, January 31, 2012.

43 Article 3 (3), Organic Law of Georgia – Labour Code of Georgia.

in those cases, when a trans person's name and photo is changed, but the record of sex remains unmodified.

Coming out⁴⁴, in turn, may become a basis for discrimination or homo/bi/transphobic incidents in the workplace⁴⁵.

Protection against discrimination

According to the Law of Georgia On the Elimination of All Forms of Discrimination, discrimination based on gender identity and expression is prohibited.⁴⁶ Despite the prohibition, in case of being subjected to a discriminatory action, trans persons rarely appeal to a court or submit a complaint to the Public Defender.

According to research conducted by WISG, “among the victims of discrimination, on average, one in every five respondents (19.1%, N=22) demonstrates readiness to continue fighting for restoring their rights”.⁴⁷

Protection against hate crimes and incidents

Commission of a crime based on gender identity shall be an aggravating factor for liability for all respective crimes.⁴⁸ Hence, there is a possibility to detect and respond to a transphobic crime. However, we face a challenge when transphobic incidents happen within the scope of administrative offences due to gender identity and expression intolerance. The Administrative Offences Code of Georgia does not deem hate motivation to be a circumstance aggravating liability for an administrative offence. Hence, transphobic incidents remain unregistered.

The research conducted by WISG revealed that “the main reasons for NOT reaching out to the police were the following: “the incident was not serious” 41.1% (N=44), “their actions are ineffective” 20.6% (N=22) and “I didn’t want anyone to know” 12.1% (N=13). It is noteworthy that compared to previous years, the share of responses regarding the fear of coming out and homophobic treatment has significantly decreased.⁴⁹

44 Tabidze, N., Gvishiani, L. Employment and Labor Rights of LGBTQI Community (In the Context of Covid-19 Pandemic), Tbilisi, 2021. 47, available at: <t.ly/gTD6> [18.01.2022]

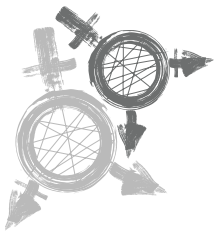
45 Bakhtadze, K., Discrimination and Violence Towards LGBTQI Persons. Tbilisi, 2019, 20. Available at: <t.ly/XSTQ> [18.01.2022]

46 Article 1, Law of Georgia on the Elimination of All Forms of Discrimination.

47 Impact of Anti-Pandemic Restrictions and Anti-Crisis Measures on LGBT(QI) Community, WISG, 2021.

48 Article 53¹ (1), Criminal Code of Georgia.

49 Impact of Anti-Pandemic Restrictions and Anti-Crisis Measures on LGBT(QI) Community, WISG, 2021.



THE RIGHT TO LEGAL GENDER RECOGNITION

The right protected by the constitution

Per Article 12 of the Constitution of Georgia, everyone has the right to the free development of their personality. According to the Constitutional Court of Georgia, “free development of personality, first of all, implies the right of a person to self-determination and autonomy. It is the personality that determines the essence of a person and indicates his/her individual and distinguishing characteristics”.⁵⁰ Gender identity is a crucial component of the free development of a personality, for it is a fundamental guarantee that ensures exercising an individual’s other rights, that protects the freedom to lead one’s own life at one’s discretion. The Constitutional Court of Georgia explains that “for the autonomy of the person, her/his free and full development, it is specifically important the freedom to define one’s own relationships with the outside world, as well as to define physical and social identity”.⁵¹

A trans person has the right to free development, that implies his/her right “to freedom to self-identification, the right to define one’s own identity, lifestyle and ways of life, individual development and ways and forms of relationships with others, means to satisfy moral, social, intellectual or other needs; farther, it comprises a person’s intimate life, the right to determine one’s own gender and sexual orientation, and the freedom to choose one’s sexual behavior”.⁵² By this

50 Judgement N2/1/536, II-54, of The Constitutional Court of Georgia on the case of “Citizens of Georgia – Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchašvili and Gocha Gabodze V. Ministry of Health, Labour and Social Affairs of Georgia”, February 4, 2014.

51 Judgement №2/4/532,533, II-3, of the Constitutional Court of Georgia on the case of “Citizens of Georgia – Irakli Qemoklidze and Davit Kharadze V. the Parliament of Georgia”, October 8, 2014.

52 II, 56 / Judgement N2/1/536, II-56, of The Constitutional Court of Georgia on the case of “Citizens of Georgia – Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchašvili and Gocha Gabodze V. Ministry of Health, Labour and Social Affairs of Georgia”, February 4, 2014.

definition, the constitutionally guaranteed right to free development of personality implies a person's right, through self-identification, to determine one's sex and gender in identity documents, as well to undergo desired trans-specific medical procedures or independent of these procedures, in accordance with her/his gender identity, to request an amendment to the record of sex in the civil act of birth.

According to Article 15 of the Constitution of Georgia, a person's personal and family life shall be inviolable. This right may be restricted only in accordance with law for ensuring national security or public safety or for protecting the rights of others insofar as is necessary for a democratic society. Gender identity and amendment to identity documents based on the latter are protected by the right to inviolability of private life. This right may only be interfered in accordance with law. Therefore, with the right to inviolability of private life, trans persons' right to freely define their sex in identity documents is protected and they should be able to participate in public life with their real gender identity markers in their documents. Thus, the refusal of the agency regarding the amendment to the record of sex violates the rights to the free development of personality and inviolability of the private life of the plaintiff.

International instruments

On November 6-9, 2006, as a result of a meeting held in Yogyakarta, a city in Indonesia, a group of experts developed a set of human rights international principles and norms relating to sexual orientation and gender identity, known as Yogyakarta principles.⁵³ According to the third principle, everyone has the right to recognition everywhere as a person before the law.⁵⁴ To ensure the realization of this right, all states "take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity".⁵⁵ The third principle explains in detail all the actions a state should take, encompassing all the necessary legislative, administrative and other measures, to ensure that procedures exist whereby all State-issued identity papers, which indicate a person's gender/sex, including birth certificates, passports, electoral records and other documents, reflect the person's profound self-defined gender identity.⁵⁶

Legal gender recognition is tied to the rights to recognition before the law,

53 The document in Georgian available at: <<https://women.ge/data/docs/publications/WISG-Yogyakarta-principles-GE.pdf>> [18.01.2022].

54 Ibid, 12.

55 Ibid, 13.

56 Ibid.

self-determination, autonomy and privacy,⁵⁷ guaranteed by the Universal Declaration of Human Rights⁵⁸ and international agreements, including by the International Covenant on Civil and Political Rights (ICCPR),⁵⁹ Convention/Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW),⁶⁰ and Convention on the Rights of Persons with Disabilities (CRPD)⁶¹. Mainly, the right to gender recognition is closely tied to the rights to personal autonomy, which includes self-determination, privacy, health, and bodily integrity.⁶²

Multiple UN committees have discussed the issue of legal gender recognition, including „the Human Rights Committee (HRCtee) encouraged State parties to fully recognize the legal identity of transgender persons and to put in place LGR procedures that are clear, consistent and compatible with the International Covenant on Civil and Political Rights (ICCPR). It persistently asked State parties to make sure that LGR is not conditioned upon restrictive or stringent requirements, such as medical treatment, surgery, sterilisation or divorce”⁶³.

At different times the CEDAW Committee criticized “the lack of any LGR procedures, and such procedures that are lengthy or burdensome, particularly when psychiatric assessment, expert reports, medical treatment, infertility, surgery or sterilisation are required”⁶⁴.

Therefore, when considering legal gender recognition in the context of human rights, it becomes apparent, that creating this mechanism for trans people is guaranteed by the core international human rights instruments and the states are obliged to perform the obligation.

57 UNDP & APTN (2017). Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia, 27, available at: <t.ly/2SKn> [18.01.2022].

58 Article 6, available at: <<https://www.supremecourt.ge/files/upload-file/pdf/aqtebi3.pdf>> [18.01.2022].

59 Article 16, available at: <<https://matsne.gov.ge/document/view/1398335?publication=0>> [18.01.2022].

60 Article 15, available at: <t.ly/qyVZ> [18.01.2022].

61 Article 12, available at: <<https://matsne.gov.ge/ka/document/view/2334289?publication=0>> [18.01.2022].

62 Lau, Holning, Gender Recognition as a Human Right (November 28, 2018). in: The Cambridge Handbook on New Human Rights: Recognition, Novelty, Rhetoric (edited by Andreas von Arnould, Kerstin von der Decken & Mart Susi), Forthcoming., UNC Legal Studies Research Paper, 2, available at SSRN: <<https://ssrn.com/abstract=3056110>> [18.01.2022].

63 WRITTEN COMMENTS submitted jointly by Transgender Europe and ILGA Europe, IN THE EUROPEAN COURT OF HUMAN RIGHTS X. against Romania and Y. against Romania (Applications no. 2145/16 and 20607/16), 2018, para. 4. Available at: <https://ilga-europe.org/sites/default/files/TPI%20X%20and%20Y%20v%20Romania_FINAL.pdf> [18.01.2022].

64 Ibid, para. 5.

EU standards

Taking appropriate measures to guarantee the legal gender recognition for trans persons is required by the recommendation CM/Rec(2010)5 of the Committee of Ministers On Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity.⁶⁵ The recommendation not only focuses on the necessity to create appropriate measures for legal gender recognition, but also provides a detailed account of the exact procedures. The Committee of Ministers considers the legal gender recognition as the means to the enjoyment of the right to private and family life and urges the states to “take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life”. In particular, the member states should make possible “the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.”⁶⁶

The formulation of the existing record in the recommendation creates a possibility to refine taken measures and make them in accord with the right to respect for privacy. For this purpose, the committee urges the states that “prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements”.⁶⁷

In 2015, the Parliamentary Assembly of the Council of Europe adopted a resolution on “Discrimination Against Transgender People in Europe” 2048 (2015),⁶⁸ according to which the member states are obliged to “develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents; make these procedures available for all people who seek to use them, irrespective of age, medical status, financial situation or police record”.⁶⁹ The resolution requires that the states “abolish sterilization and other compulsory medical treatment, as well as a mental health diagnosis, as a necessary legal requirement to recognize a person’s

65 Available at: <https://women.ge/data/docs/publications/CM_reccomendation_SOGI.pdf> [18.01.2022].

66 Ibid, para. 21.

67 Ibid, para. 20.

68 Available at: <<http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=21736>> [18.01.2022].

69 Ibid, para. 6.2.1.

gender identity in laws regulating the procedure for changing a name and registered gender”.⁷⁰

Judicial practice of The European Court of Human Rights

Since 2002, the European Court of Human Rights actively considers filed complaints by trans persons regarding legal recognition of their gender.⁷¹ By the judicial practice issues related to legal gender recognition fall mainly within the scope of the right to respect for private and family life protected by the Article 8 of the Convention.⁷² The Court found the violation of Article 8 in the case of *B. v. France*⁷³, in which a French citizen trans woman, who had undergone sex-reassignment surgery, argued that the provisions of Article 8 of the Convention was violated with respect to her. However, she did not indicate that legal gender recognition includes the right to protection of private life.

In the case of *Christine Goodwin v. United Kingdom*,⁷⁴ the European Court found the violation of Article 8 and Article 12 with respect to a trans woman, who had undergone sex-reassignment surgery and due to the absence of corresponding measures in UK, she could not attain the legal recognition of her gender. For the first time, the Court acknowledged that the State Parties are obliged to have procedures in place to recognize gender identity.⁷⁵

With the development of judicial practice of ECtHR, the Court discussed what measures should be taken and, in the case of *Hämäläinen v. Finland*,⁷⁶ pointed to imposing a positive obligation on the State to provide an effective and accessible procedure allowing the applicant to have her new gender legally recognized.⁷⁷

Another case to be mentioned is *A.P., Garçon and Nicot v. France*, pro-

⁷⁰ Ibid, para. 6.2.2.

⁷¹ WRITTEN COMMENTS submitted jointly by Transgender Europe Trans Network Balkan ILGA Europe, 2, Available at: <https://tgeu.org/wp-content/uploads/2017/10/2017-07-27_X-v-Macedonia_TPI_FINAL.pdf> [18.01.2022].

⁷² Available at: <<https://matsne.gov.ge/ka/document/view/1208370?publication=0>> [18.01.2022].

⁷³ ECHR, *B. v. France*, 25 March 1992, Series A no. 232-C, Available at: <t.ly/05eh> [18.01.2022].

⁷⁴ *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI, available at: <<https://hudoc.echr.coe.int/eng?i=001-60596>> [18.01.2022].

⁷⁵ Ibid, VI.

⁷⁶ *Hämäläinen v. Finland* [GC], no. 37359/09, ECHR 2014, available at: <<https://hudoc.echr.coe.int/fre?i=001-145768>> [18.01.2022].

⁷⁷ Ibid, para. 64.

ceeded by the European court.⁷⁸ Three trans persons, citizens of France, argued the violation of Article 8 with respect to them, since the state had required them to undergo medical procedures that could result in infertility. The court noted that “the refusal of the second and third applicants’ requests for a change in civil status, on the grounds that they had not provided proof of the irreversible nature of the change in their appearance – that is to say, demonstrated that they had undergone sterilization surgery or medical treatment entailing a very high probability of sterility – amounts to a failure by the respondent State to fulfil its positive obligation to secure their right to respect for their private lives. There has therefore been a violation of Article 8 of the Convention on this account in respect of these applicants”.⁷⁹

X v. the Former Yugoslav Republic of Macedonia⁸⁰ is yet another case in which the European Court found the violation of Article 8 on account of the lack of a regulatory framework ensuring the right to respect for the applicant’s private life.⁸¹

In 2017, two trans men⁸² appealed to the European court for the violation of Article 3 (Prohibition of torture) and Article 8 (Right to respect for private and family life) with and without article 14 (Prohibition of discrimination). Due to identical circumstances, the European Court decided to examine both cases together and addressed the State with questions in 2018.⁸³ Alongside with these plaintiffs, the European Court is investigating another case of a trans man – Nikolo Ghviniashvili.⁸⁴

Recommendations of UN independent expert

In 2018, the UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, visited Georgia to assess the human rights situation of LGBT(Q) living in Georgia. In 2019, the expert published a report and reviewed problematic issues trans people face, including access to legal gender recognition: “The current

78 A.P., Garçon and Nicot v. France, nos. 79885/12 and 2 others, 6 April 2017, available at: <<https://hudoc.echr.coe.int/eng?i=001-172913>> [18.01.2022].

79 Ibid, para. 135.

80 X v. the former Yugoslav Republic of Macedonia, no. 29683/16, 17 January 2019, available at: <<https://hudoc.echr.coe.int/fre?i=001-189096>> [18.01.2022].

81 Ibid, para 71.

82 See, Bakhtadze, K. Unidentified Violence – Litigation Report. WISG. Tbilisi, 2017, available at: <<http://women.ge/publications/133/>> [18.01.2022].

83 Available at: <<https://hudoc.echr.coe.int/fre?i=001-186564>> [18.01.2022].

84 See, <t.ly/1YeY> [18.01.2022].

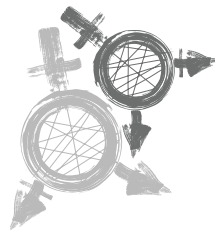
obstacles to legal gender recognition and the rigid interpretation of gender by the judiciary may lead to situations where a trans woman is sent to a men's facility, and vice versa, with all the risks associated with such a practice. This is another illustration of the urgent need to eliminate abusive requirements as prerequisites for changing gender markers in identity documents, as highlighted below⁸⁵. The UN expert highlighted the difficulties caused by the lack of a mechanism and its impact on the lives of trans people: „That was compounded by the difficulties they faced in obtaining legal gender recognition, which meant that most trans women had identity documents that did not correspond to their true self. Many, therefore, worked in the informal economy, including as sex workers, and were subject to poor working conditions and remuneration.“⁸⁶

Considering the above-mentioned, the expert addressed the State with a recommendation to “ensure that the process of legal recognition of gender identity is based on self-determination by the applicant, is a simple administrative process, is exempt from abusive requirements, recognizes non-binary identities and is accessible to minors.”⁸⁷

85 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, p2019, A/HRC/41/45/Add.1, para. 49. Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/139/35/PDF/G1913935.pdf?OpenElement>> [18.01.2022].

86 Ibid, para 73.

87 Ibid, para 90.



A QUICK, TRANSPARENT, AND ACCESSIBLE PROCEDURE

A quick procedure implies that the time span between applying for and being granted legal gender recognition should be as short as feasible.⁸⁸ The procedure is considered transparent when a clear procedure on how to change the name and recorded sex is prescribed by the legal provision. This includes clarification on how the law should be implemented and which bodies are responsible, e.g., to which institution an application needs to be addressed.⁸⁹ Procedure accessibility is more focused on practical aspects and implies the elimination of the barriers related to the person's medical, age or another status (e.g. disability). It also focuses on economic and financial aspects of accessibility that should not pose barriers to trans persons in attaining legal gender recognition.⁹⁰

In European Union countries, two types of legal gender recognition procedures exist: judicial and administrative.⁹¹ Despite both procedures associated with challenges, the judicial procedure is much more complex and costly compared to the administrative procedure.⁹²

Transgender Europe conducts yearly assessments of the procedures for legal gender recognition across EU and Central Asian countries and publishes respective data. According to the report published by the organization, judicial and administrative procedures for legal gender recognition exist in 39 of 54 countries assessed.⁹³

88 Richard Köhler, Julia Ehrh, Legal Gender Recognition in Europe: toolkit, 2016, TGEU, 14, available at: <<https://tgeu.org/wp-content/uploads/2017/02/Toolkit16LR.pdf>> [18.01.2022].

89 Ibid.

90 Ibid, 15.

91 European Commission, Directorate-General for Justice and Consumers, Legal gender recognition in the EU: the journeys of trans people towards full equality, Publications Office, 2020, 111, <<https://data.europa.eu/doi/10.2838/085419>> [18.01.2022].

92 Ibid.

93 trans rights map, fast facts, 2021, available at: <<https://tgeu.org/wp-content/uploads/2021/05/tgeu-trans-rights-map-2021-fast-facts-en.pdf>> [18.01.2022].

Having reviewed international and regional standards, we concluded that legal gender recognition based on self-determination is the best model to operate on, accessible in only eight countries across Europe and Central Asia.⁹⁴ However, Norway, Malta and Belgium are considered to have best practices for LGR.⁹⁵

When assessing legal gender recognition procedures, a list of circumstances that provides the means for characterizing the procedures as quick, transparent and accessible, must be considered. Necessary legal requirements for changing a name and registered gender are subject to evaluation. Such requirements include mental health diagnosis, undergoing medical procedures (including hormonal therapy), sex-reassignment surgery (vaginoplasty or phalloplasty), or sterilization and divorce. Whether legal gender recognition is accessible for minors and if age restrictions exist in any of the countries should be as well considered. Another organization – ILGA-Europe, uses the same criteria to assess legal gender recognition procedures in member states of the Council of Europe.⁹⁶

In indexes produced by these organizations, Georgia meets only one of the above-mentioned criteria: the possibility of changing the name for trans persons.⁹⁷

Belgium's legal gender recognition practice, considered one of the best, came into force in 2018.⁹⁸ The procedure is prescribed in the Belgian Civil Code. It gives an opportunity to any Belgian citizen or any foreigner registered in the population (a refugee or an asylum seeker) whose record of sex does not correspond to their gender identity to appeal to the respective administrative body on the subject.⁹⁹ The applicant is not required to submit a health certificate, including a certificate providing information on any medical treatment. The only requirement that has not been subject to a change was the standstill period – the time between submitting an application and the

94 Ibid.

95 Only adults? good practices in legal gender recognition for youth a report on the current state of laws and ngo advocacy in eight countries in europe, with a focus on rights of young people, 2019, 16, available at: <https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf> [18.01.2022].

96 Available at: <<https://www.ilga-europe.org/rainboweurope/2021>> [18.01.2022].

97 Trans Rights Index Europe & Central Asia 2021, available at: <<https://tgeu.org/wp-content/uploads/2021/05/tgeu-trans-rights-map-2021-index-en.pdf>> [18.01.2022].

98 Available at: <[t.ly/svLr](https://www.belgium.be)> [18.01.2022].

99 Ibid, Article 62 (1).

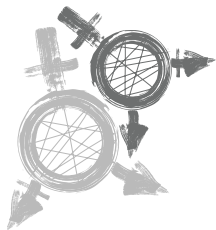
decision, which implies a waiting period of 3 to 6 months.¹⁰⁰

The fact that both adult and minor transgender persons are able to enjoy the above-mentioned procedure is deemed an explicitly positive precedent.¹⁰¹ Furthermore, the procedure is considered to be one of the best, for it does not require of trans persons to get divorced before applying for the change.¹⁰²

100 Only adults? good practices in legal gender recognition for youth a report on the current state of laws and ngo advocacy in eight countries in Europe, with a focus on rights of young people, 2019, 28, available at: <https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf> [18.01.2022].

101 ILGA – Europe assessment report available at: <<https://www.ilga-europe.org/resources/news/latest-news/new-legal-gender-recognition-belgium>> [18.01.2022].

102 Only adults? good practices in legal gender recognition for youth a report on the current state of laws and ngo advocacy in eight countries in Europe, with a focus on rights of young people, 2019, 29, available at: <https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf> [18.01.2022].



RECOMMENDATIONS

To the Parliament

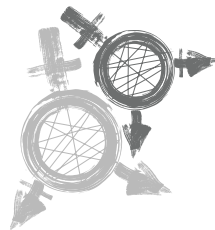
- To elaborate and develop a legislative LGR mechanism based on self-determination with the active involvement of trans persons and community-based organizations

To the Government

- To provide support and supervision for the enforcement of the legislative and administrative procedures based on self-determination by setting up inter-sectoral collaboration

To the Ministry of Justice

- To elaborate and establish a quick, transparent and accessible administrative procedures for legal gender recognition based on self-determination



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Legal acts

- The Constitution of Georgia
- Law of Georgia on Gender Equality
- Law of Georgia on Elimination of All Forms of Discrimination
- Civil Code of Georgia
- Law of Georgia on Civil Status Acts
- Law of Georgia On Violence Against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence
- Imprisonment Code of Georgia
- Law of Georgia On Military Duty and Military Service
- Law of Georgia – Labour Code of Georgia
- Criminal Code of Georgia
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- Decree №338 of July 21, 2016, of the Government of Georgia on approval of Action Plan on the Protection of Human Rights for 2016-2017
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- Order №91, Minister of Justice “On Approval of Forms and Specifications of an Electronic Identification Card of a Citizen of Georgia and an Electronic Residence Card (Temporary and Permanent) of an Alien Residing in Georgia”, July 14, 2011

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Women's Initiative Supporting (WISG) is a feminist organization that aims to help building a society based on the principles of social justice, through women's empowerment and political participation.

Women's Initiatives Support Group works with the communities of lesbian and bisexual women, transgender and intersex people and women representing other marginalized groups.

WISG works in the following directions: **Advocacy** for the integration of women's and LGBTQI+ issues in politics; **Community empowerment** for social and political participation; **Creating publicly accessible critical knowledge** about gender and sexuality through research and art projects; **Developing culture/practice of intersectional queer feminist organizing**.

Women's Initiative Support Group is the author of the key studies and policy analysis on sexual orientation and gender identity in Georgia. Our research studies, shadow reports, policy documents, and information regarding other activities are available on the organization's official website: www.wisg.org