



# CM/REC (2010)5

იმპლემენტაციის მონიტორინგი  
MONITORING OF IMPLEMENTATION

II

საქართველო 2018 Georgia

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**The Council of Europe Recommendation to Member  
States on Measures to Combat Discrimination on  
Grounds of Sexual Orientation or Gender Identity**

**CM/Rec(2010)5**

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**Monitoring of progress towards implementation in Georgia**

**WISG  
2018**

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## EXECUTIVE SUMMARY

Georgian legislation is not expressly discriminatory or particularly oppressive towards LGBTI people. After the first cycle of reporting implementation of CM/REC(2010)5 in 2013, a set of changes took place in Georgia in relation to LGBT rights. Namely, in 2013, the Labor code was amended to make discrimination on basis of sexual orientation (and other grounds) illegal not only during the employment, but also in pre-employment/recruitment relations.<sup>1</sup> In 2014, the Constitutional Court ruled that the part of the decree issued by the Minister of Labor Health and Social Affairs prohibiting gay men to donate blood was, in fact, unconstitutional.<sup>2</sup> In 2014, a Law on Elimination of all Forms of Discrimination was adopted, explicitly prohibiting discrimination on the grounds of sexual orientation and gender identity (among other bases).<sup>3</sup> The National HR Strategy (to be reviewed in 7 years) and Action Plans for 2014-15 and 2016-17, chapters on gender equality and women's empowerment also included issues regarding sexual orientation and gender identity.<sup>4</sup> In order to elaborate and implement a united state policy in the field of human rights, in 2016 was created the Interagency Human Rights Council at the office of Prime minister. In 2017, the government amended 30 normative acts under the ratification process of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). As the coordinating body of the Istanbul Convention, the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence has been established in 2017. In 2018 MIA launched the Human rights Department within its system, which would monitor investigation to strengthen response to violence against women (including sexual violence), crimes committed on the grounds of discrimination, hate crimes, trafficking and crimes committed by and/or towards minors.<sup>5</sup>

However, there are some issues without any progress reflected, - for instance, legal gender recognition still remains unregulated. Policy documents designed to achieve gender equality often disregard the issues of LGBTI right. Changes conducted by the state in the frame of ratification of Istanbul Convention that does not reflect equally to the LGBTI group. Measures taken by the government to eradicate violence against women and domestic violence as well as to assist victims, the supportive system is set on a heteronormative base, focusing mainly on intimate partner violence between heterosexual couples.

Hence, in some regard state's policy may be evaluated as the step backwards: In 2018 Constitutional amendment entered into force, - by defining marriage as the union of woman and man that dramatically impedes implementation of the rights to private and family life of LGBTI persons.

The HR action plan for 2016-2017 sets extremely few goals, objectives and actions to improve the human rights situation of LGBTI persons.<sup>6</sup> Given that the LGBTI community is a particularly marginalized in the society, the few issues that the NHRAP refers cannot effectively tackle the systemic problems facing them.<sup>7</sup> Herewith, regarding HR action plan 2018-2020, according to the Inter-agency Commission issues related to LGBTI people should had been underwritten in the special chapter. However, for now due to approved AP none of its parts cover issues of SOGIE neither encloses related chapter.

Despite the fact that CM Recommendation has been adopted since 2010, monitoring process revealed that the public authorities have a little knowledge about it. Moreover, it has not been translated or disseminated into Georgian by the state. Furthermore, government still has not developed an action plan or a timeline for the implementation of the Recommendation. Responses provided by various state authorities cover too little evidences, in many cases are not exact and provide information in much general manner. Hence, it is impossible to deem that the government has been guided by the principles and measures underwritten in the Appendix to the Recommendation in its actions.

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<sup>1</sup> Amendment to Labor Code of Georgia, June 12, 2013.

<sup>2</sup> Asatiani et.al v. The Minister of Labour, Health and Social Protection, decision #2/1/536 of the Constitutional Court.

<sup>3</sup> Law of Georgia on Elimination of all Forms of Discrimination, article 1.

<sup>4</sup> Human Rights Action Plan for 2014-15, Chapter 14 available online at: <https://bit.ly/2J89M1v>; Human Rights Action Plan for 2016-17, Chapter 13.2. available online at: <http://goo.gl/GB7hUn> [accessed: 22.05.2018];

<sup>5</sup> Order of Minister of Georgia, available online at: <https://bit.ly/2s7PEmE> [accessed 21.05.2018]

<sup>6</sup> Report on the Implementation of the Georgian Government's Human Rights Action Plan for 2016-2017, WISG.

<sup>7</sup> Ibid.

Despite the progress achieved on legislative level, discrimination, physical and psychological violence on the bases of sexual orientation and gender identity still remain critically widespread that impedes LGBT persons to exercise their fundamental rights and freedoms. Indeed, there are still gaps on legislative level, which put LGBT and especially trans and intersex persons in an unequal position compared to others. The situation is aggravated by the high level of homo/bi/trans attitudes in society.

Key problems existing in the legislation and practice in regard rights of LGBTI persons in Georgia can be summarized as follows:

- a) The law does not reflect the specific needs of LGBTI people;
- b) The law is vague and provides room for arbitrary interpretation and abuse of power which can lead to LGBTI discrimination and undue restriction of their rights;
- c) The law does not at all regulate/address certain issues of particular relevance for LGBTI people;
- d) Certain legislative provisions may be seen as reinforcing particularly negative stereotypes against LGBTI people;
- e) Liberal legal provisions are not backed up by effective implementation and monitoring mechanisms to ensure that they make an actual difference for LGBTI people in practice.

In particular:

Frequency and brutality of hate crimes and incidents against LGBT people remain challengeable in Georgia. Cases documented by NGOs exceeds multiple times to the official statistics.<sup>8</sup>The gap between NGOs' statistics as well as discrimination studies' results and official statistics affirm that the majority of such incidents remain undocumented and unreported. In some cases, the motivation is not invoked by the law-enforcement bodies, however, in plenty of cases victims are unwilling to report such incidents in order to avoid secondary victimization. Discrimination study conducted by WISG in 2018 reveals that the reasons for not reporting, among others, included: ineffectiveness of police, fear of forcible "coming out" and homophobic treatment by police officers, etc.<sup>9</sup> Beside above mentioned the government does not address the specific forms of violence against LGBTI individuals, such as bias motivated crime from family members (e.g. forced marriage, coercive therapy etc)<sup>10</sup> and IPV among LGBTI couples. Inefficient responses to crimes and violence against LGBTI community from the government, creates nihilistic attitude of LGBTI people towards justice system and encourages the violence against the community.<sup>11</sup>

Despite number of recommendations from international or local human rights organizations, the country does not have special unit which would work specifically on homo/bi/transphobic hate motivated crimes. The new established HR Department at the MIA has mostly monitoring function and in reality cannot replace the hate crime unit. Needs assessment of hate crime victims is not studied and readdressed.

Hate speech and political homophobia remain a challenge in Georgia. Myths and stereotypes impacting the sharply negative societal attitudes towards issues related to equal rights have demonstrated that these issues are largely being considered through the lens of morals and traditions, rather than in the context of equal rights. Representatives of anti-gender far-right groups<sup>12</sup> are using social media actively to spread hate propaganda against LGBT persons. A significant role in the above is played by politicians, whose assessments and comments on cases of discrimination and violence are frequently saturated with moralistic rhetoric; instead of embracing the issue within a legal framework and examining it in the human rights context, they continue to appeal to the dominant cultural, traditional and religious values.<sup>13</sup>

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<sup>8</sup> According to the official statistics in 2017 the motive of hate was studied in 86 criminal cases. The ground of sexual orientation was examined in 12 criminal cases and the ground of gender identity in 37 criminal cases. On the other hand, cases documented only by WISG on the ground on SOGIE in 2017 hit 105, including threat/blackmailing (5), violence (6), beating/bodily injury (7), domestic violence (7), harassment by the police (7), damaging property/theft (6).

<sup>9</sup> Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

<sup>10</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People – Litigation Report, WISG, 2018.

<sup>11</sup> Aghdgomelashvili E., From Prejudice to Equality: Attitudes, Knowledge and Information Regarding the LGBTI Community and Their Rights, WISG, Tbilisi, 2016.

<sup>12</sup> Neo-Nazi groups the Nationalist Socialist Movement – National Unity of Georgia, available online at: <https://bit.ly/2L4ukGy> [accessed 25.07.2018]

<sup>13</sup> Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

Another crucial issue related to LGBTI community is their enjoyment to the freedom of expression. The public articulation of any issues related to the equal rights of the LGBTI group is automatically perceived as “gay propaganda.”<sup>14</sup>As will be discussed below, LGBTI persons in Georgia are not free to examine their right to assembly and state still fails to guarantee risk free exercise of their freedom of information, expression and assembly.

Rights of same-sex couples has been endangered as the new amendments of the Constitution excludes possibility of same-sex marriage by defining marriage as the union of woman and man;<sup>15</sup> in addition, Georgian legislation does not recognize any form of civil partnership. According to the opinion of the Venice Commission the new Constitutional provision should in no case be interpreted as prohibiting same-sex partnerships.<sup>16</sup> Despite this recommendation, mentioned provision will enter into force in fall 2018 and exclude LGBTI persons to properly exercise their right to private and family life.

It has to be underlined that vital issues such as legal recognition of gender remain problematic in Georgia. Trans persons are not given the option to change their gender marker in civil documents or public records in accordance with their gender identity. Therefore, the risk of discrimination, ill treatment or violence against them increases when they use documents that are not in line with their gender identity.

Study conducted by WISG in 2014 and 2018 revealed that the discrimination in employment is the most problematic sphere for LGBTI persons and especially trans persons are vulnerable at the labor market.<sup>17</sup> Obstacles regarding legal recognition of the gender reflect to employment, as well. As IDs do not correspond to their gender identity it seeks them to unofficial employment and often have no chance rather than to agree to poor working conditions and remuneration.

Bullying in general and especially towards LGBT youth at school remains a problem in Georgia. It should be mentioned that no special programmes (awareness, psychological counseling, etc) are run at schools or in higher education institution to meet the needs of LGBT pupils/students. There has not been conducted detailed analysis of school text-books, which would make it possible to determine, whether they are free from homophobic stereotypes, include adequate information about SOGI. Despite the fact that homosexuality is omitted from the ICD-10 a part of medical guide-books describe it as behavioral disorder<sup>18</sup>.

The sphere of healthcare still remains as one of the most problematic in regard inclusivity of LGBTI needs. Study conducted by WISG in 2015 has shown that healthcare workers have a quite vague knowledge about sexual orientation/gender identity, as well as, about the needs of LGBT persons in health care.<sup>19</sup> Such approach has an influence on the access of LGBT people to high standards of health care.

It has to be underlined that intersex children living in Georgia are not protected from gender ‘normalizing’ surgeries. State collects data of intersex children by their diagnoses.<sup>20</sup> Georgian healthcare legislation does not prohibit genital-normalising treatment, involving both surgery and hormone therapy. However, such medical

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<sup>14</sup> Over half (54.9%) of the respondents surveyed within the frames of the quantitative study recognise that “the LGBT group is one of the most discriminated against in the country”. However, 85.6% of said respondents believe that “the rights of LGBT persons should be protected, but it is unnecessary for them to impose their lifestyle on others”.

<sup>15</sup>The Constitution of Georgia, article 30, available online at: <https://bit.ly/1zE5jnQ> [accessed 25.07.2011]

<sup>16</sup> European Commission for Democracy through Law —The Venice Commission of the Council of Europe, available online at: <https://bit.ly/2LSiKOy> [accessed 07.07.2018]

<sup>17</sup> According to the study, due to discriminatory experience and frequency, most of the respondents have been discriminated and ill-treated while receiving services (46.0%), followed by the sphere of employment on the bases of SOGIE (33.6%). In particular, 23.4% (N=60) have been denied to hire because of belonging to LGBTI group; 10.2% (N=26) have been fired and 16% (N=41) unequally treated because of the same reason. Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

<sup>18</sup> In the responsive letter from MoLHSA ( N.01/27507, dated by 15.05.2012) it was underlined, that Ministry was planning to make adequate changes in the post- graduate educative programmes, however, these changes are not carried out till today.

<sup>19</sup> Survey has shown that the majority of randomly chosen healthcare workers (save one respondent) cannot make difference between sexual orientation and gender identity. Aghdgomelashvili E., Study of the Needs of LGB People in Health Care. In - depth interviews. Technical report. WISG, Tbilisi, 2014.

<sup>20</sup> According to the response letter from MoLHSA, in 2017, 2 children were born with Hermaphroditism (2018 ICD-10-CM Diagnosis Code Q56.0). Ne 01/23213. 24/04/2018.

interventions are often medically unnecessary, not always consistent with the person's gender identity, poses severe risks for sexual and reproductive health and is often performed without free and fully informed consent.<sup>21</sup>

Herewith, gender reassignment procedures are not regulated by state. Ministry of Labor, Health and Social Affairs (MoLHSA)<sup>22</sup> does not have any clinical guidelines of the mentioned procedures<sup>23</sup> and the whole process is up to the discretion of the medical personal. In addition, sex reassignment procedures for transgenders, despite their high social importance, are not included in any legal act. Given the poverty and unemployment level in Georgia, many cannot financially afford costs required for the sex reassignment procedures.<sup>24</sup>

The situation of LGBT persons in the penitentiary remains difficult: according to the Report of the National Preventive Mechanism 2017 "there are certain challenges in the penitentiary establishments, among others, the stigma attached to those associated with LGBT+ community, subjecting them to psychological violence, isolation and marginalisation in prison life."<sup>25</sup>

As mentioned above, in 2014 Georgian law on Elimination of All Forms of Discrimination was adopted. The body on the enforcement of the law has been allocated Public Defender's Office [PDO] and the special department has been established within it. However, the effectiveness of its enforcement mechanism is still challengeable.

Despite the prohibition of discrimination on the bases of SOGIE, none of the Georgian legislative acts enclose definition of sex, sexual orientation, gender identity and expression. In some cases the lack of clear definitions impedes examination of the cases before the courts.

Public opinion surveys show negative attitudes towards the LGBTI group; Unfortunately, such opinions are considerably dominant in Georgia. Living in a hostile environment is not only reflected at instances of discrimination and violence, that the members of the community face, but it also prevents LGBTI persons to defence their rights and freedoms as the equal members of the society. In some cases, lack of knowledge about sexual orientation/gender identity significantly reflects the certain myths among society and creates fertile ground for the manipulation of public opinion, which is taken advantage of by homophobic groups. The majority of common myths and stereotypes are associated with traditional societal ideologies and stereotypical perceptions of gender roles, binary models of gender and orientation, etc. Perceptions on traditional gender roles have a particular impact not only on attitudes towards gender non-conforming men/women, but also towards gay persons. Analysis shows that the majority of people, even those who indicate human rights and freedom of speech among the top five, oppose the notion of equal rights for LGBTI persons. In Georgia, human rights are still seen as a privilege of certain groups. Such negligence of the fundamental principles of human rights constitutes a serious challenge in the process of development of a democratic society.<sup>26</sup> Nevertheless, the state does not take measures to combat the existing negative social attitudes.

To sum up the activities taken place since 2013 it may be concluded that the State has no holistic vision how to address discrimination and violence against LGBTI persons in Georgia. Government is mostly focused on an institutional reforms without educational and awareness raising activities; hence, social inclusion of LGBT persons and protection of their fundamental rights remains critical. Thus, eliminating discrimination against LGBTI persons constitutes a complex issue and overcoming it calls for the combined efforts and coordination work of various state actors in close partnership with professional groups, the media and the civil society. Only such cooperation and implementation of scrutinized action plans may guarantee the effectiveness of the policy to eliminate discrimination and violence against LGBTI persons.

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<sup>21</sup> UPR, Joint Stakeholders' mid-term report, 30 May, WISG, 2018.

<sup>22</sup> Currently under the name of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

<sup>23</sup> Response letter from MoLHSA, №01/65969, dated by 30.08.2016.

<sup>24</sup> Aghdgomelashvili E., Gvianishvili N., Todua T., Ratiiani T., Health Care Needs of Trans persons in Georgia, Policy Paper, Tbilisi, 2015, WISG.

<sup>25</sup> Available online at: <https://bit.ly/2U6DnAs> [15.07.2018]

<sup>26</sup> Aghdgomelashvili E., From Prejudice to Equality: Attitudes, Knowledge and Information Regarding the LGBTI Community and Their Rights, WISG, Tbilisi, 2016.

## RECOMMENDATIONS TO GOVERNMENT FOR PRIORITY ACTIONS

### Make Legislative Amendments, in particular:

- To enclose legislative definition of the following terms: sex, sexual orientation, gender identity and expression in order to improve the process of collecting and analysing detailed statistic on SOGIE in hate crime and discrimination, avoid further misuse and ensure efficient hearings of the cases before the courts.
- To revise Criminal Code of Georgia and the law on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence in a way that it included definition of Intimate Partner in order to advance accessibility of LGBTI persons to the mechanisms preventing domestic violence;
- To ensure quick, transparent and accessible procedures for the gender legal recognition based on self-determination that shall be free from abusive requirements (such as sterilisation, GID/medical diagnosis, or surgical/medical intervention);
- To ensure that relevant legal measures existed in order to recognize and protect same-sex partnership in order to eradicate unequal condition and protection of LGBTI couples;
- To ensure relevant legislative amendments to enforce recommendations of the Public Defender's in accordance with the law on Elimination of All Forms of Discrimination;

### Take measures for effective implementation of existing laws and regulations, including:

- To ensure efficient implementation of the strategies on combating hate crimes and maintain effective control on its investigation;
- To ensure that the special unit/group was launched in the system of Police that shall orient on the investigation of hate crimes and shall closely collaborate with LGBT organizations and community in order to establish trust-based relationship;
- To prevent homophobic/transphobic treatment towards LGBTI persons, all appropriate measures shall be taken for the efficient implementation of the codes of conduct of police and other state officials. If necessary administrative and criminal sanctions shall be enclosed for those who violate the codes of conduct or relevant legal provisions;
- To ensure that the state studied and adequately readdressed the special needs of the hate crime victims;
- To ensure that the measures taken to protect victims of DV and VAWG was secured without discrimination on any ground, inter alia, SOGIE and covered same-sex couples, as well as enclosed specific needs of LGBTI persons;
- To ensure that medical intervention on intersex minors is prohibited when the intervention has no medical necessity and can be avoided or postponed until the person can provide informed consent.
- To ensure effective access of trans persons to trans specific healthcare services based on the international standards; gender reassignment procedures shall be developed and regulated in a way that the relevant expenses was covered by the state;

### Design and Implement Training, Educational and Awareness Raising Activities, including:

- To ensure that CM Recommendation was included in the basic human rights courses for all civil servants in Georgia. The Recommendation shall be further included in the trainings/workshops for the law enforcement officials, prosecutors and judges together with the issues of human rights, non-discrimination, hate crime, etc;
- To ensure implementation of informative and awareness rising campaigns to prevent homo/bi/transphobic hate crime, eradicate existing prejudice and stereotypes toward LGBTI groups and promote their inclusion in the society;
- To ensure inclusive educational system in order to overcome bullying at schools e.g., enclose topics of sexual orientation and gender identity at the curriculum, maintain in-service training programmes for the educational staff, provide physiological counseling for LGBT pupils, etc.;
- To ensure revision of the medical/school textbooks in order to eradicate stigmatizing and discriminatory definitions and terminology in order to promote tolerance and broad-mindedness among the students/pupils;



- To ensure inclusion of basic information on sexual orientation/gender identity in the qualification/requalification or certification programmes, as well as in the curricula for the personnel of healthcare sector. Develop LGBTI-sensitive codes of conduct and guidelines for the clinics;

**Take measures in relation of specific LGBTI groups, including:**

- To ensure that social and health needs of LGBTI persons are studied and reflect at the action plans and healthcare strategies;
- To ensure adoption of the international clinical guidelines focused on the needs of trans, transsexual, and gender non-conforming persons in order to secure their access to qualified healthcare;
- To study and provide special needs of intersex children and develop standards in line with international values due regard the relevant medical procedures; the cases of unconsented “sex-normalization” shall be avoided;
- To ensure availability and effectiveness of appropriate services concerning the needs of LGBTI victims of domestic violence at the state shelters; that *inter alia* shall include access to the professional services of psychologists, lawyers and social workers.
- To ensure that the personnel of the state shelters for the victims of domestic violence underwent special trainings in regard the needs and specific of LGBTI victims;
- To ensure that the cases of unlawful interference to peaceful demonstrations were publicly condemned in order to avoid sense of impunity and further discrimination of LGBTI persons;

**Take other measures as appropriate, including:**

- To ensure that other aspects of the recommendation were adequately reflected in the gender equality policies, implementation strategies and national action plans.

## INTRODUCTION

### Background

In 2010 the Council of Europe Committee of Ministers has adopted the Recommendation CM/Rec(2010)5 to its member states “on measures to combat discrimination on grounds of sexual orientation or gender identity.”

Emphasizing the universality of human rights and the importance of non-discrimination, the Recommendation CM/Rec(2010)5 called upon the member states of Council of Europe to take positive steps to protect the rights of the LGBTI community.<sup>27</sup> The recommendation calls on member states to ensure the application of prescribed measures and principles, which secure human rights protection due regard LGBTI persons, not only in domestic legislative terms, but also in their policies and practice. In a broad perspective, Recommendation deals with the following issues:

- Underlines the key principle, that human rights are as universal as it applies to every person, regardless of their sexual orientation or gender identity;
- Acknowledges the fact of the historical continual discrimination that LGBT persons had suffered on the ground of their sexual orientation or gender identity;
- Emphasizes that specific measures should be adopted and effectively enforced by the member states in order that LGBT persons could enjoy their fundamental rights and freedoms.

The Recommendation was unanimously adopted by all the member states of the Council of Europe, including Georgia. Despite the fact that the document is not legally binding, all member states are obligated to secure the realization of this Recommendation because of its bonds to existing legally binding human rights instruments.

The Recommendation consists of three chapters: first, a preamble, setting out the background to its adoption and the key principles guiding it; second, the operative section of the Recommendation, briefly listed general measures to be taken by the member states; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations toward a wide range of thing, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a part on the role on domestic human rights institutions.

The Recommendation is supported by an Explanatory Memorandum, which indicates the international human rights instruments and legal precedents on which the Recommendation and its Appendix are depended on.

CDDH has launched the review process of the implementation of the CM/Rec(2010)5. Following the decision of the CDDH, In 2018 the the SOGI Unit, in coordination with the Network of European Governmental LGBTI Focal Point and in consultation with civil society, has drafted a questionnaire on existing measures and examples of good practices related to the implementation of the Recommendation. This process follows a first review cycle carried out in 2012-2013 by the CDDH.

### The purpose of the report

The purpose of this report is to evaluate the steps made by the Georgian government while implementing the Recommendation during the time period from 2013 to 2018 and to emphasize the areas in which further cooperation is necessary.<sup>28</sup> Hence this report will provide a documentation of achieved progress while accomplishing the Recommendation in the nearest future.

The main audiences of the report are political authorities and civil servants on the domestic level, who are responsible for the fulfillment of the document and the Committee of Ministers of the Council of Europe, on the other hand, conducting a review of the progress of its implementation.

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<sup>27</sup> Council of Europe: Committee of Ministers, 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, 31 March 2010.

<sup>28</sup> In 2012 WISG published the report on monitoring of implementation of the Recommendation CM/Rec (2010)5, available online at: <https://bit.ly/2J658RT> [accessed 21.05.2018]

## Methodology

Following report analyses progress based on a checklist of detailed measures required by the Recommendation. Hence the list is copied from the body of the Recommendation and its Appendix, supplemented by additional details prescribed by the Explanatory Memorandum.

For evaluating the progress the report references to the following sources:

- Desk research and data collecting:
  - Requesting and analyzing Freedom of Information Requests (FOI) from the relevant state agencies according to the structured questionnaire issued by the Council of Europe.
  - Analyzing existing research studies, human rights reports that are prepared in the relevant thematic directions and preparing specific recommendations based on these reports/research studies;
  - materials collected and documented by WISG;
- Data records/researches held by WISG on discrimination against LGBTI people from 2013 to 2018:
  - Separate cases of hate speech, hate crime/incidents and discrimination documented by WISG;
  - Results of community needs assessments, focus-group reports, discrimination studies conducted by WISG during the last years;
  - Results of the study of public attitudes towards LGBTI persons and their rights in Georgia
  - Draft laws, recommendations elaborated by WISG while working on monitoring and assessment of gender equality and WAV HR action plans 2014-15, 2015-2017;
  - Studies/researches/policy papers, litigation reports prepared by WISG;
- Data records/researches held by other organisations (GYLA, EMC, Equality Movement);
  - Discrimination/hate crime cases documented by Human Rights NGOs (2013-18);
  - Other studies conducted between 2013-2018 concerning public attitudes/hate speech;
- Report of the Coalition for Equality;
- Annual reports of PDO (includes LGBTI chapter) 2013-2018.

## Appendix to Recommendation CM/Rec(2010)5

### I. Right to life, security and protection from violence

#### a. "Hate Crimes" and other hate-motivated incidents

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate motivated incidents on the grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyze data on the prevalence and nature of discrimination in this field.

Since 2012 crimes committed due to intolerance on the grounds of sexual orientation or gender identity are determined as aggravating.<sup>29</sup> Although that was a positive step forward, there had been recorded no statistics regarding hate crimes until 2016 that impeded documentation of these crimes and study of the nature of such motivation. The recommendations developed by the initiative of Gender Equality Council of the Parliament of Georgia in 2018 suggests that Criminal Code of Georgia should be amended in a way that the aggravating circumstances for the crime of torture include additional discriminatory motives, including sexual orientation and gender identity.<sup>30</sup>

Under the report published by the Ministry of Internal Affairs [MIA], in 2018, 53 persons were accused in hate motivated crimes.<sup>31</sup> In particular, the ground of sexual orientation and gender identity was revealed in 10 cases; all of them were crimes of violence, which dramatically exceeds the data of 2017.<sup>32</sup> Herewith, only 4 cases invoked hate crime on the ground of sexual orientation in 2016.<sup>33</sup> In that exact report of 2018, the Ministry noted that the policy toward combating hate crime is extremely strict; hence the body is a guarantee for elimination all forms of discrimination. Moreover, under the report, the guideline has been adopted for the investigators, which covers the instructions for interrogating hate crime victims. Furthermore, specialization of the investigators has already begun, that will improve the quality of their work on its own.<sup>34</sup>

In 2016-2017 intolerance towards homo/bi/transphobic ground was documented in 73 criminal cases, including sexual orientation (16 cases) and gender identity (57 cases). Criminal proceedings had started against 12 persons and the mentioned grounds were highlighted as the aggravating circumstance. Thus, 11 gay men and 19 trans women were granted with the status of victim.<sup>35</sup>

Research conducted by WISG in 2018 reveals that 96.9% of respondents (N=256) have been victim of hate crimes during their lifetime. The psychological/emotional violence has been experienced by 71.4% of respondents. 40.3% have received hate messages/letters/emails; 19.35% have become the victim of blackmail or forceful "coming out." High percentage of the respondents had experienced sexual harassment because of SOGIE.<sup>36</sup> Despite such destructing number, only 15.8% of hate crime victims have reported to the police.<sup>37</sup>

Noteworthy recommendation toward Georgia upon the UPR and ECRI regarding combating hate crime, advocates Georgia to establish a specialized police unit for investigating hate crimes closely collaborating with the LGBTI community in order to create a trusting relationship.<sup>38</sup> In fact, in 2018 MIA launched the Human rights Department within its system, which would monitor investigation to strengthen response to violence against women (including sexual violence), crimes committed on the grounds of discrimination, hate crimes, trafficking and crimes committed by and/or towards minors.<sup>39</sup> The core functions of the Department are to monitor the process of investigation and

<sup>29</sup> The Criminal Code of Georgia, article 53 (3<sup>1</sup>), available online at: <https://bit.ly/2fT6Qlk> [accessed: 22.05.2018]

<sup>30</sup> Gender Equality in Georgia: Barriers and Recommendations, Gender Equality Council of the Parliament of Georgia, Volume 1.

<sup>31</sup> The report is available online at: <https://bit.ly/2sI8Viz> [accessed: 22.05.2018]

<sup>32</sup> *ibid.*

<sup>33</sup> Interim Report on Human Rights Action Plan (2016-2017), WISG.

<sup>34</sup> *ibid.*

<sup>35</sup> Forth periodic report of Georgia on the implementation of CEDAW recommendation, working document.

<sup>36</sup> Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

<sup>37</sup> *ibid.*

<sup>38</sup> UPR available online at: <https://bit.ly/2kUr6JT>; ECRI, available online at: <https://bit.ly/2LF2tzo> [accessed 06.06.2018]

<sup>39</sup> Order of Minister of Georgia, available online at: <https://bit.ly/2s7PFmE> [accessed 21.05.2018]

administrative proceedings regarding the above-mentioned crimes, identify the gaps, prepare and enforce measures to enhance law enforcement's role in eliminating them.

Establishment of the new department has to be welcomed, however, it has much limited remit than the unit proposed under UPR, - Human Rights Department was set to monitor not only all forms of hate crime, but also domestic violence, violence against women, human trafficking, and crimes committed by/against minors.<sup>40</sup> Moreover, it's centralized, coordinating body, giving rise to concerns that it may not be sufficient due regard problems at the local level, nor, for example, detailed issues arising in the investigatory process. It lacks a preventive approach which includes intergovernmental work to effectively prevent hate motivated violence in general.

In addition, criminalization of hate crimes, even the declared policy of the state, is not sufficient if the qualification of the investigators and prosecutors will remain the same; as the courts only examine the evidences brought before them, the crucial role is upon police officers not to lose any chance to clarify the background motive. Therefore, further trainings and guides has to be planned in order to improve the clarification skills of the hate crime motivation. Herewith, save fighting with the hate crime, prevention of LGBTI hate motive is essential; for that, cooperation with other relevant institutions and NGOs is recommended. Human rights NGOs have more experience dealing with the cases regarding LGBTI persons, they see much realistic scenario and feel the necessity of their empowerment, even in reporting the incidents to the police, which still remains an obstacle for the victims.

It is important that the state does not limit itself to the reaction to such a crime, but that it provides special services for the victim. Services of protection and support of victims must include supporting after investigation, as in every individual case the victim may have special needs and services must be based on individual evaluation (for example, insuring involvement of specialists such as psychiatrist, sexologist; ensuring shelter, etc.) Georgian legislation does not ensure adequate protection of the victim from secondary victimization during the criminal justice.<sup>41</sup> Nowadays, the victims of hate crime can access only the Office of Protecting Witness and Victim within the Prosecutor's Office system, which has only 16 coordinators throughout Georgia. One of the responsibilities of the coordinator is to offer the victim services available at different state agencies and civil society organizations. Without recognition as the victim the service of the coordinator cannot be used. Only Prosecutor has the right to grant the status, however in most cases victims of hate crime need the support (psycho-emotional, medical support, housing, etc.) when addressing to the police.<sup>42</sup> As it was mentioned in PDO's annual report of 2017: "the law enforcement agency lacks an effective strategy of regulating hate-motivated violence, limits itself to responding to separate incidents alone and fails to deal with systemic nature of the problem."<sup>43</sup>

Often homophobic and transphobic prejudices of the police towards LGBTI persons and particularly sex-worker transgender women are the basis of their illegal detention and ill treatment. On the other hand, such attitude of the police leads to the mentioned problem of not reporting hate crimes and incidents by the LGBTI community.

According to the PDO's last report, "The Office of Public Defender studied a number of complaints in which LGBT+ persons speak about alleged violence, homophobic, humiliating attitudes and inadequate response from police officers. Unfortunately, in a number of cases the complainants themselves refuse to continue proceedings and do not cooperate with General Inspection of the Interior Ministry and the Prosecutor's Office because they doubt that the cases will be investigated in a timely and fair manner. Moreover, it is difficult to obtain evidence in a number of cases. To avoid the encouragement of homophobic attitudes and violence of police officers, it is important to apply measures envisaged in the law to each of those cases which contain sufficient evidence of the offence."<sup>44</sup>

### **Case #01-2017. Ill-treatment of the members of Equality Movement by a law-enforcement official:**

<sup>40</sup> Available online at: <https://bit.ly/2Kxuvck> [24.05.2018]

<sup>41</sup> G. Khatiasvili, "Rights of Victims in Criminal Proceedings," The Georgian Young Lawyers' Association, Tbilisi, 2016.

<sup>42</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People – Litigation Report, WISG, 2018.

<sup>43</sup> Annual report of the PDO, on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017.

<sup>44</sup> Available online at: <https://bit.ly/2LUbVjP> [14.06.2018]

Under the information provided by the MIA, in August 25, 2017 near the night club in Batumi an argument between undefined persons was spotted, involving verbal and physical insult. L.B. and T.K. did not comply with the order given by the police officers; respectively, they were detained.

On the other hand, information provided by detains, describes different scenario, - that they were beaten in the boulevard of Batumi by unknown persons. After the arrival of the police and transferring them to the police station, they were beaten and verbally assaulted by the officers. L.B. and T.K. noted that the representatives of the MIA witnessed the fact of physical abuse and did nothing to stop or prevent it. As L.B. and T.K. were the members of the Equality Movement (legal entity working on LGBTI rights) they appealed on homophobic motivation of the police officers. Both of them claim that during the transfer to the police station the officers verbally insulted them on homophobic grounds and told them that 'they [LGBTIs] should not exist at all'. According to their lawyer, L.B. and T.K. had scratches and traces of violence on the bodies.<sup>45</sup>

Investigation had started under the Article 126 of the Criminal Code of Georgia, which prohibits violence. Even though PDO responded to the incident, issued a public statement and observed that in the past few years, there were numerous incidents of violence and homophobia when representatives of LGBTI community pointed out police inactivity and their derogatory attitude,<sup>46</sup> homophobic motivation has not been invoked in the case.

#### **Case #02-2014. Murder of the Trans woman, S.B. 23 years old:**

On 11 November 2014, trans woman was brutally killed in her apartment, in Tbilisi. Murder was caused by the multiple injuries with knife, followed by setting her flat on fire. Police had arrested suspect the next day. The defendant gave testimony that S.B. owed him money and was refusing to return it, so that he visited her. According to the defendant, during the several conflicts S.B. had attacked him, he was defending himself, and did not intend to murder her. As for the fire, he claimed it was presumably caused by a lit cigarette he had dropped on the floor. Yet, facts speak opposite. Fire service officers (questioned at the trial) stated that they had found two sources of fire in S.B.'s flat. Relevant examination also concludes that the arson was intentional. Moreover, the defendant admitted that he had purchased the weapon prior visiting the place of murder. Neither during investigation nor during witness examinations, crime motivation had not been clearly identified.<sup>47</sup>

On 13 November 2014, WISG has addressed MIA and the Prosecutor's Office with an open letter,<sup>48</sup> urging them to pay special attention to examination and analysis of all details of investigation, which may be referring to a hate crime.

The case was brought to the Supreme Court of Georgia, which abolished the decisions of the both instances (founding him not guilty) and found him guilty in intended murder and the damage/destruction of one's property, without invoking motivation of hate.

#### **Case #03-2016. Murder of trans woman Z.Sh.:**

On October 14, 2016, trans woman Z.Sh. was attacked by a man on the territory of an abandoned building, in Tbilisi. The injuries to her face and neck were caused by assaulting with the brick and kitchen knife. Z.Sh. died after being in coma for 40 days, on November 22, 2016.

The killer was arrested several days after the incident. He testified that he knew Z.Sh. previously and he went to speak with her that day. During their meeting they had argument. He got angry, took a brick and hit her in the face; several injuries were inflicted by the kitchen knife. With the intention of murder he hit the brick in her face over again that knocked her unconscious.<sup>49</sup>

<sup>45</sup> Available online at: <https://bit.ly/2kqSOOQ> [24.05.2018]

<sup>46</sup> Special Report on the Fights against Discrimination, its Prevention and the Situation of Equality, 2017, available online at: <https://bit.ly/2xdz8GK> [accessed 23.05.2018]

<sup>47</sup> Available online at: <https://bit.ly/2xjmVjB> [accessed 23.05.2018]

<sup>48</sup> Available online at: <https://bit.ly/2lPpfvY> [accessed 23.05.2018]

<sup>49</sup> Available online at: <https://bit.ly/2sf2m2e> [accessed 25.05.2018]

Tbilisi City Court sentenced a man convicted of murder of trans woman Z.SH for 13 years in jail, ten years for premeditated murder and three years for robbery. The trial did not examine transphobic hate as a possible motivation and aggravating circumstance of the case.<sup>50</sup>

**Case #04- 2017 (documented by EMC) Crime committed by minor due to intolerance of gender identity:**

On April 20, 2017, an under aged individual threw stones to a transgender woman and abused her verbally in Tbilisi. Victim addressed to law-enforcement authorities. Investigation was launched and abusers were identified. They were charged and the transgender woman was granted the status of the victim. On July 26, 2017, Criminal Cases Chamber of the Tbilisi City Court passed the sentence, where the under-aged individual was declared guilty and was sentenced to 6 months house imprisonment. At the decree, it was explained that the accused individual due to intolerance towards the gender identity, threw the stones to her, incurring her physical pain. The case was led by lawyers of Equality Movement.

**Case #05-2016. Attack on Vegan Café Kiwi:**

On May 29, 2016, a vegan café Kiwi was invaded by representatives of an extremist group, about 10 people. They attacked Kiwi's customers and personnel. According to witness accounts: "They started turmoil, fight, throwing [things]. They broke my friend's head. They were able to escape before police arrived. The police did not take the incident seriously, they thought it was funny;" "A fight broke out; they had knives; someone broke the chef's eyebrow, he was bleeding; a waitress was dragged by her hair; they set torches ablaze; neighbors were protesting the noise. When police arrived and after seeing that most of Kiwi personnel and customers had piercings, dreads and Mohawks, they assumed that we had started the conflict."<sup>51</sup>

According to the information published on Kiwi's website, the attack was allegedly motivated by homophobia: "These aggressive people were members of neo-Nazi groups Bergman and Georgian Force (who also visited us about a month ago, late at night, and found that Kiwi was closed. They talked to an employee of neighboring shop and asked if she had seen any of "those". They probably meant LGBTIQ representatives."<sup>52</sup>

After the incident received a largely negative response from public (through social networks) and was broadly covered by the media, the police announced that they traditionally launched investigation for battery. Yet again, investigative authorities failed to invoke Article 53 of the Criminal Code of Georgia, even though it was apparent that the incident was motivated by hate.<sup>53</sup>

**Case #06-2016. Attack on the beneficiary of WISG on the bases of his appearance:**

On April 23, 2016, around 15:00 J.B. was attacked by two unknown men at the bus stop, in Tbilisi. They insulted and bit him. J.B. believes that he was attacked because he was wearing the earrings and insulters assumed that he was a homosexual. They were arrested by police and investigation has started on the ground of battery, without underlining the motivation of homophobic hate crime.

**Case #07-2017. Positive example of evoking gender identity as the hate crime motivation:**

In February 2017, a group of four trans women was attacked in a night club in Tbilisi. The women were attacked by an unidentified person, who inflicted several injuries on women. In particular, one of the women had a broken hand, and another suffered from an injured nose.<sup>54</sup> Equality Movement is representing interests of one of the victims - G.K before the court. On May 3, 2017 Tbilisi Regional Prosecutor's Office declared G.K. as a victim in this

<sup>50</sup> Available online at: <https://bit.ly/2sf2m2e> [accessed 25.05.2018]

<sup>51</sup> Available online at: <https://bit.ly/2iPFNs7> [accessed 25.05.2018]

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Available online at: <https://bit.ly/2MAia8f>[accessed 25.05.2018]

case and stated Gender Identity as the basis for the abovementioned crime. Three persons were charged on this case.

#### b. "Hate speech"

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalizing such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBTI people.

Hate speech against LGBTI persons continuingly remains a problem in Georgia. Open homophobic statements made by the public figures, even by the Members of Parliament, are dramatically reflected to the societal attitudes towards LGBTI persons and their rights.

Studies on hate speech show that homosexuality is highly politicised in Georgia. Attitudes towards LGBTI community are the subject of political speculations and exploited to fragment the political spectrum into "pro-Western" and "pro-Russian" factions. Certain groups intentionally refer to the Soviet myth of the "Western origins of homosexuality" to fuel anti-Western sentiment. On the other hand, negative attitudes towards LGBTI community are used to label political opponents as "pro-Russian". Viewing the subject through such a politicised lens has a negative effect on the condition of the LGBTI community and further impedes the achievement of equal rights.

On the other hand, media researches show that the coverage of LGBTI issues is often inadequate and straightens existing stereotypes against LGBTI persons. According to different surveys, LGBTI hate speech is a dynamic process and is especially used during the pre-election period.<sup>55</sup> During the 2016 election period invoking homophobic and transphobic hate speech became dramatically frequent. Under the report prepared by Media Development Fund (MDF) among 454 homophobic expressions was covered by the media 459 times.<sup>56</sup> Hence, as mainstream media and television are effective ways to raise public awareness they need to acknowledge their role due regard spreading values of equality and prohibition of discrimination on the ground of sexual orientation and gender identity. Moreover, in 2017 WISG applied to the Georgian Charter of Journalistic Ethics several times against different media organisations/journalists, appealing the danger of encouraging discrimination against LGBTI persons and spreading unhealthy intervention in their personal life.<sup>57</sup> It has to be noted that hate speech against LGBTI people takes the most offensive form on the internet, which is clearly devastating in straightening stigma in relation to this group.

Apart from politicians, representatives of anti-gender far-right groups<sup>58</sup> are using social media actively to spread hate propaganda against LGBTI persons. From August 2017, the LGBT activists K.B. and B.G. were subjected to violent hate speech and death threats through social media based on their sexual orientation and their work as human rights defenders from different far-right groups. The investigation is still ongoing, however possible offenders have not been identified yet<sup>59</sup> which means that cyber bullying, hate speech and online threats against LGBTI people are not taken seriously by the law enforcements.<sup>60</sup>

On its report about Georgia, European Commission against Racism and Intolerance (ECRI) recommends establishing effective monitoring system on racist, homo/transphobic speeches; that should be built on the expert knowledge of the PDO and relevant NGOs.<sup>61</sup> The report documents the results of monitoring political speech carried out from February to May 2014, displaying that members of every major political party address hate speech.<sup>62</sup> Respectively, ECRI recommends amending the Regalement of Parliament, - adding the clause, which shall prohibit racist and

<sup>55</sup> Aghdgomelashvili E., From Prejudice to Equality: Attitudes, Knowledge and Information Regarding the LGBTI Community and Their Rights, WISG, Tbilisi, 2016.

<sup>56</sup> Kintsurashvili T., Hate Speech, MDF, Tbilisi, 2016.

<sup>57</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People, Litigation Report, WISG, 2018, p.28.

<sup>58</sup> Neo-Nazi groups the Nationalist Socialist Movement — National Unity of Georgia, available online at: <https://bit.ly/2L4ukGy>

<sup>59</sup> The comments posted were not anonymous.

<sup>60</sup> EMC responds to the threats of violence against LGBTIQ activists Koba Bitsadze and Beka Gabadadze, available online at: <https://bit.ly/2KvfmFZ> [accessed 25.05.2018]

<sup>61</sup> ECRI, Report on Georgia, 2015, Dec. 8, §24.

<sup>62</sup> *ibid.* §25



homo/transphobic abuse and shall sanction its violation. Furthermore, ECRI recommends all political parties to put an end against racist and homo/transphobic discourse.<sup>63</sup> The recommendation has not been implemented yet; thus, the weak monitoring system together with stereotyped attitude against LGBTI persons remains alarming.

#### **Case #08-2018. Homophobic remarks by MP and members of the ruling party “Georgian Dream”:**

Nukri Kantaria: “It has never been Romeo and Romeo or Julieta and Julieta; it could not be tolerated because it’s not natural, it’s opposite of ordinal, sometimes it is imitating trend, sometimes – disease, but never natural”(May 27, 2016).<sup>64</sup>

Zviad Dzidziguri: “Children have right to be risen by female mother and male father; we have to protect their rights.”<sup>65</sup>

MP Koba Lursmanashvili (Georgian Dream) at the plenary session of the Parliament: [speaking about liberation of narcotic policy] “The rights of the minorities may be protected; However, I, as a member of society, demand public interests to be protected. This interest is frequently violated by drug users, drug sellers and by faggots (May 18, 2018).<sup>66</sup>

Georgian Dream MP Zakaria Kutsnashvili speaking on Maestro TV regarding defining marriage specifically as a union between a man and a woman in the Constitution of Georgia. “By defining in the constitution [that marriage is a union between a man and a woman], we are sending a message to Abkhazia and the Tskhinvali region... and the Russians are playing big time with this subject... that Georgia is now a Europe-associated state, Georgia received the right to free trade with Europe, Georgia received access to free movement to Europe, and that here, Georgia will also become a country of faggots. And we are sending a serious message everywhere that Georgia will never become a country of faggots. The political groups lobbying them [the LGBT community] either directly or indirectly will be brought into the light by society and will get the percentages they’ve been dreaming about”(28 April, 2017).<sup>67</sup>

#### **Case #09-2016. Homophobic pre-election poster in the streets of Tbilisi:**

On October 2nd, 2016, a few days before the elections, photos of pre-election posters featuring the deputy candidate of Saburtalo district were shared on social media. Deputy candidate Sandro Bregadze was photographed with a group of children and on the corner of the photo was written: “No to same sex marriage, we have collected millions of signatures to stop this sin! We will not allow the Parliament of Georgia to adopt laws that are anti-Georgian, going against our traditions. Vote for us! Mark 18 on the day of elections, together for traditional Georgia!” On the right side of the poster the flag of LGBTI movement was crossed.

In October 4, 2016 WISG invoked Election Administration of Georgia with the request to file the report as an administrative offense. WISG believed that pre-election poster violated the law, specifically article 45 of the Election Code of Georgia [Election Programme cannot be containing messages that are proclaiming violence, war, revolution, military strike, attack on Georgian government, national or religious battle, conflict on any kind of bases.] As mentioned above poster contained a discriminative message and its purpose was to spread and boost hate amongst Georgian society toward LGBTI persons.<sup>68</sup>

#### **Case #10-2018. Homophobic post of MP in social media:**

Otar Lortkipanidze, the MP of Georgian Dream, has released a statement of homophobia on his Facebook page. The MP points out that, homosexuals have no right to have a relationship with the Georgian Orthodox Church.

<sup>63</sup> *ibid.* §46.

<sup>64</sup> Imedi Broadcaster, Zonika News on 20:00, May 17, 2016.

<sup>65</sup> Georgian Public Broadcaster, Moambe News on 20:00, May 5, 2016.

<sup>66</sup> Available online at: <https://bit.ly/2IN3x88> [accessed 25.05.2018]

<sup>67</sup> Available online at: <https://bit.ly/2z2ksuy> [accessed 25.05.2018]

<sup>68</sup> Unidentified Violence, Litigation Report, WISG, 2017.

Explained that, his statement violates no one's rights and he could post anything he wants: "The religion sees homosexual and different orientation as the highest sin and it's unacceptable for me, respectively." The head of the Equality Department of the PDO reported that this statement encouraged discrimination against homosexuals; the case was included in PDO's annual report, as well.<sup>69</sup>

#### **Case #11-2018. Homophobic pre-electoral campaign by Neu-Nazi movement "Georgian March":**

Sandro Bregadze, the member of the Neu-Nazi movement "Georgian March" is willing to take a part at the Presidential elections in Georgia. His pre-electoral campaign include homophobic and discriminatory messages, *inter alia* prohibition of homosexuality and "propaganda of depravity."<sup>70</sup> It has to be noted that "Georgian March" as extremely xenophobic, homophobic and aggressive group, set the flag of LGBTI on fire while swearing the community. That kind of gesture was a response to Guram Kashia's act of solidarity to LGBTI people, demonstrated by wearing a handcuff of the LGBTI flag at the football match.<sup>71</sup>

#### **Case #12-2016. Straightening stigma towards trans women:**

On October 23, 2016 Georgian broadcaster "TV Imedi" launched a video reportage (within the popular TV Show "Imedis Dro") – "Number of Transgenders Stand against the Defenders of Sexual Minorities". The reportage concerned alleged facts about the argument between organisations working on the rights of sexual minorities and also spreading unchecked information regarding the community. In the video trans woman were talking, - the material showed close up shots of their bodies [high heels, closing, sharp makeup], which represented them as an exotic persons and straightened the stigma toward them once again.

WISG and EMC believe that the reportage violated article 1st of Georgian Charter of Journalistic Ethics (Journalist should respect the truth and right of the society to have an access to facts without damaging them) and the principle 7th (Journalist should understand how huge is the influence of media on society and should try his/her best to avoid promoting any kind of discrimination based on race, sex, sexual orientation, language, religion, political views, ethnic or social origins).

The case was discussed on 27 February 2017 and the board announced infringement of principle 7 of the Charter.<sup>72</sup>

#### **Case #13-2017. Homophobic Expression during the TV show:**

In October 2017 WISG applied to the Board of the Georgian Charter of Journalistic Ethics. The applicant noted that during the show "Priority" on TV Iberia, the respondent quoted "faggots also give interviews." However, the host of the show (Maka Razmadze) did not give a proper feedback to this phrase.

The case was discussed on December 22, 2017 and the infringement of principle 7 of the Charter was ruled.<sup>73</sup>

#### **Case #14-2017. Joint complaint of non-governmental organisation against broadcasting company encouraging homophobia:**

In November 2, 2017, members of the coalition "No to Phobia" launched a complaint against Georgian broadcasting network Maestro TV due regard the comments of the TV host Magda Anikashvili encouraging homophobia. The members of the platform noted that while interviewing vice-president of the Georgian Football Association the host tried to broadcast the act of captain's solidarity among LGBTI community (by wearing LGBTI flag-handcuff) in a negative manner; By this, Maestro TV violated Articles 31 and 32 of the Code of Conduct for Broadcasters, which define the principles and rules of diversity, equality and tolerance.

<sup>69</sup> Available online at: <https://bit.ly/2LsMvWt> [accessed 25.05.2018]

<sup>70</sup> Available online at: <https://bit.ly/2krFY2b> [accessed 25.05.2018]

<sup>71</sup> Available online at: <https://bit.ly/2lrLBb3> [accessed 25.05.2018]

<sup>72</sup> The details of the case available online at: <http://bit.ly/2HvWpVw> [accessed 25.05.2018]

<sup>73</sup> The details of the case available online at: <http://bit.ly/2Eok1WW> [accessed 25.05.2018]

In claimants' opinion, it is a serious problem, when a media representative describes the act of civil solidarity expressed by Georgian football player towards the most vulnerable groups of the society as "imposing his own opinions" among his fans. Moreover, it represents a part of propagandistic narrative, according to which open support for the community by LGBTI people and activists is described as propaganda and threat.<sup>74</sup>

## II. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBTI organisations can gain official registration, are able to operate freely, are involved in a partnership basis when framing and implementing public policies which affect LGBTI persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBTI human rights organisations are protected effectively from hostility and aggression.

States shall respect the effective right to freedom of association of LGBTI persons by ensuring, in particular, that non-governmental organisations representing LGBTI persons or working on SOGIE issues shall set up and operate without being subjected to discriminatory measures by the public authorities. Administrative procedures which render the registration of these NGOs disproportionately lengthy or difficult should be prevented.<sup>75</sup>

Georgian legislature does not explicitly discriminate against LGBTI organisations, due regard their registration and functioning, thus far. The Constitution of Georgia encloses exhaustive grounds for rejecting registration of organisation; none of these grounds are related to LGBTI organisations purely because of its focus and promotion on LGBTI rights. However, the Civil Code of Georgia notes that an organisation can be disqualified in case its aims are opposed to "recognised moral."<sup>76</sup> As the latter remains undefined it may carry some risks to be interpreted against LGBTI purposes, even though the Constitution retains supremacy over the Civil Code. Nevertheless, its formulation should be revised to become more perceived.

One the one hand, no precedent is documented when a LGBTI organisation was denied registration due its aims and purposes or based on any ill-founded motivation; on the other,- the necessity of coordination with LGBTI organisations still remains unsolved in discussing planned legislative amendments or address the needs of their beneficiaries through policy actions.

### **Case #15-2016. NGO working on LGBTI's rights was refused to rent an office because of the sphere of its activity:**

Under the application filed before PDO, legal entity "Equality 17" was established in September 2016 to support and defend the rights of LGBTI persons. For its purposes organization planned to rent the Office. Applicant noted that as landlords acknowledged the purpose of the organisation they denied ranting their estate.

One of the landlords seeking to rant his apartment was contacted by the representatives of the organisation. Landlord was aware that the organisation was working on defending human rights and did not have any problem regarding it. However, when details were revealed concerning the link to LGBTI community and that the apartment would host the groups of minorities, landlord changed his mind and denied to rent it. It has to be noted that check calls were made revealing that landlord had no rejection in renting estate to Human Rights NGO working on ECtHR cases.

Therefore, applicant appealed that the direct discrimination took place against "Equality 17," their right to have access without discrimination on publicly offered estate was violated, that impeded fulfillment of their activities. Moreover, at the beginning the name of the same legal entity was "LGBTI Georgia," however the name was changed as they were denied to rent office for its operation.

PDO had ruled that the organisation was refused to sign the contract on the grounds of the area of their activity. The main ground of refusal was stereotyped and negative attitude toward LGBTI people, in particular sexual

<sup>74</sup> Lawsuit available online at: <https://bit.ly/2LvF5lr> [accessed 25.05.2018]

<sup>75</sup> Council of Europe, Discrimination on grounds of sexual orientation and gender identity in Europe, 2<sup>nd</sup> edition, 2011, p.13.

<sup>76</sup> The civil code of Georgia, article 32 (3,a).

orientation of beneficiaries and defence of LGBTI community, as a whole. Therefore, direct discrimination on the grounds of sexual orientation and the sphere of activity was ruled.<sup>77</sup>

#### **Case #16-2016. Threatening Facebook post upon the office of LGBTI community:**

On May 21, 2016 the following threatening Facebook post was shared upon the internet: “Where is the main office of LGBTI persons in Tbilisi? Hey people, let’s go there and paint it in different colors..Let’s set the date and take this thing seriously.” User was sharing this post with 8 other persons and in comments were posted: “Let’s buy some brooms;” “Let’s get some oil and teach them what are the purposes of the human body parts,” etc. WISG reported the post to police, as well approached the PDO. Police made a decision on the case that there were no elements of crime and investigation was canceled.<sup>78</sup>

### **III. Freedom of expression and peaceful assembly**

Section III of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBTI people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBTI people.

High contracting parties shall respect the effective right to freedom of expression by safeguarding the possibility to receive and impart information on SOGIE issues in any form of expression such as the press, publications, oral and written statements, art and other media. Any discriminatory provision criminalizing the dissemination and diffusion of factual information concerning SOGIE should be abolished. Unlawful interferences in the enjoyment of the right to freedom of expression by LGBTI persons should be subject to criminal proceedings.

The freedom of expression is guaranteed by the supreme law of Georgia. In practice the government neither encourages nor prohibits reception of transmission of information and ideas related to sexual orientation and gender identity. There are several Georgian language web-sources regarding LGBTI issues, such as lesbi.ge, minority.ge, intersex.ge, open Facebook pages and groups etc., where LGBTI organisations and activists publish and spread various materials concerning the issue without obstacles. In the same time, several LGBTI activists were subjected to a hate campaign instigated by ultranationalist groups, with violent threats being spread through social media posts and newspaper articles. Five members of the LGBTI community, including activists who worked with LGBTI NGOs, were physically attacked in Batumi city, but received no support from law enforcement officials.

Even though government does not directly violate the negative obligation, it remains silent when it comes to promotion of LGBTI rights and tries to cover these grounds together with other protected clauses, without explicitly mentioning them. Herewith, exercising the right of freedom of expression and peaceful assembly is strongly linked to the State’s positive obligation to guarantee relevant precondition for LGBTI people’s assembly. In practice, LGBTI community and its defenders does not enjoy risk free environment in Georgia. Every attempt of their gathering to protect minority rights faces (the risk of) third-party violence.

A 2017 Miss Transgender competition which was scheduled to be held on March 31st in Tbilisi was cancelled because of threats of violence being voiced on Facebook to disrupt the competition.<sup>79</sup>

#### **Timeline of celebrating International Day against Homophobia and Transphobia (IDAHOT) in Georgia (2012-2018)**

On May 17, 2012, for the first time in Georgia LGBTI community and its supporters tried to organize a public demonstration for the IDAHOT, where police failed to protect peaceful demonstrators from violence coming from the third party.

<sup>77</sup> The details of the case available online at: <https://bit.ly/2GR8Cma> [accessed 26.05.2018]

<sup>78</sup> Unidentified Violence, Litigation Report, WISG, 2017.

<sup>79</sup> Available online at: <https://bit.ly/2MBFeUa>

On May 17, 2013 the state has failed to undertake the positive obligation concerning the exercise of the right to assembly and manifestation upon LGBTI assembly. Counter-rally participants broke through the police cordon and surrounded buses full of IDAHOT activists. They broke the windows of the bus and attempted to get inside; as a result one activist got head injury, three received brain concussions, others – various physical injuries. Counter-rally activists threw stones and conducted physical and verbal attack against demonstrators. At the same day, counter-demonstrators attacked a number of persons who were perceived as LGBTI group, e.g. two young women and two young men were brutally attacked in front of a market in Tbilisi. According to official information, 28 persons were injured in total during the peaceful IDAHOT demonstration on May 17, 2013.<sup>80</sup>

In 2014, the Georgian Orthodox Church established holiday, - Family Purity Day taking place on May 17. Hence, along with other activities, mass march was announced in the city's central streets. Due to an absence of safety guarantees, human rights organisations have refused to organize any large-scale public rally against homophobia on the day.

Upon the initiative of LGBTI organisations in 2015 the IDAHOT was celebrated in three different locations of Tbilisi. However, May 17, 2015, deserves a positive evaluation as IDAHOT was marked at three different locations in Tbilisi. Herewith, it should be noted that, the gatherings were held in a strictly confidential manner, which may not be considered as a precedent of the full enjoyment of the right to freedom of assembly and expression.<sup>81</sup>

On May 17, 2016 LGBTI activists and civic society organisations could not celebrate IDAHOT in public space. One group of the LGBTI activists tried to organize a protest in front of the MIA and requested permit safety guarantees from the City Hall. Activists informed City Hall that a demonstration would take place near another central area in the capital, but the MIA asserted that security guarantees could not be obtained.<sup>82</sup> In order to share public messages against homophobia and transphobia one group of independent activists decided to make stencils in different parts of the city, including the wall of the residence of Georgian Orthodox Church. Police arrested them instantly. Activists believe that the arrest “was aggressive and violated the law. They were not wearing police uniforms and neither explained the purpose of the arrest.”<sup>83</sup>

Despite the prior consultation meetings with the MIA and the representatives of Administration of Government, peaceful assembly celebrating IDAHOT event in 2017 was limited in time and space; Moreover, because of the safety reasons and the risks coming from counter-demonstrators, LGBTI activists were not able to make free choice about the place and the format of their event.

On May 17, 2018 LGBTI community announced that the public event celebrating IDAHOT could not take place; the reason of cancelling was the risks and threat coming from the third party forces and the lack of protection, when the counter-rally took place at the same time in Tbilisi by neo-Nazi and ultra traditionalist groups celebrating Family Purity Day.<sup>84</sup> However, LGBTI community managed to perform small-group-partisan performances in five different locations, including at Ministries of Justice; Education and Science; Labor, Health and Social Affairs.<sup>85</sup>

#### **Case #17-2016. Arrest of the LGBTI activist on May 17, 2016:**

G.D. is an LGBTI activist, involved in an advocacy for LGBTI persons in Georgia. He is one of the main victims at the case already proceeded by the European Court of Human Rights *Identoba and others v. Georgia*.<sup>86</sup> On 17th of May 2016, G.D. was stopped by the police and arrested on the ground of resistance to the officer. On the next day, administrative court seized the case because the lack of sufficient evidence. G.D. believes that his arrest was

<sup>80</sup> Aghdgomelashvili E., *From Prejudice to Equality, Study of Social Attitudes, Knowledge and Information Regarding LGBTI Community and their Rights in Georgia*, Tbilisi, 2016, p. 168.

<sup>81</sup> Jalaghania L., *Legal Situation of LGBTI Persons in Georgia*, EMC, Tbilisi, 2016.

<sup>82</sup> Group of LGBTI activists: ‘Government could not give us safety guarantees to organize a peaceful demonstration’, *Liberali*, 15.05.2016. Available online at: <http://bit.ly/2hQbiny> [accessed 23.05.2018]

<sup>83</sup> EMC has approached ECHR on the case of 17th of May 2016, available online at: <https://bit.ly/2kq1u7e> [accessed 23.05.2018]

<sup>84</sup> Available online at: <https://bit.ly/2xoiWTh> [accessed 23.05.2018]

<sup>85</sup> Available online at: <https://bit.ly/2Jaik4o> [accessed 25.05.2018]

<sup>86</sup> European Court of Human Rights, *IDENTOBA AND OTHERS v. GEORGIA*, Application no. 73235/12, May 15, 2015.

directly linked to the May 17- IDAHOT and police arrested him to assure that he would not organize/take part in any kind of protest to support the LGBTI community.<sup>87</sup>

#### **Case #18-2018. The remark of the chairman of the Human Rights committee about IDAHOT:**

Save the fact that annual celebration of IDAHOT is written down at the HR action plan 2017-2020, the chairman of the Human Rights Committee (of the Parliament) noted that in 2018 they are not willing to celebrate the day. On the question of its reasoning, she answered: “we are not celebrating.. do not make provocative questions, you already got an answer, no celebration. It’s up to us celebrate it or not.. as committee decides..”<sup>88</sup>

#### **IV. Right to respect for private and family life (excluding trans)**

These paragraphs of Section IV of the Appendix address criminalization of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Georgian legislation does not recognise same-sex marriage or any other form of civil partnership; hence LGBTI couples do not enjoy any rights provided for married heterosexual couples. Despite eradication of inequality, new amendment of the Constitution, entering into force in fall 2018, defines marriage as the union of only man and woman,<sup>89</sup> that excludes the future possibility of the same sex marriage, which clearly is the huge step backwards. However, Venice Commission recommended Georgian government that the provision may not be interpreted in a way that excludes same-sex partnership.

As an outcome of discriminatory Constitutional provision and the lack of legal recognition of any form of same-sex partnership, some additional corresponding rights are reflected, including right to inheritance provided and guaranteeing property rights for married heterosexual couples and right to freely designate “next of kin” as the legislation gives an exhaustive and limited list of who can be regarded as such. In regard both rights homosexual couples are excluded from the legislative protection mechanisms.

In 2017, the Parliament of Georgia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),<sup>90</sup> which was followed by a number of legislative changes with regard protecting women from violence. However, without reflecting specific needs of discriminated groups the usage of the protective mechanism becomes unreachable by those groups of our society. Meanwhile, the Convention outlines that the measures protecting the rights of victims shall be secured without discrimination on any ground, *inter alia*, SOGIE.<sup>91</sup> Thus, it is important that together with heterosexual couples, the mechanism of protection directs same-sex couples, as well as considers specific needs of particular marginalized groups.

However, transgender women, as well as lesbian, bisexual and intersex women, very rarely utilize mechanisms for violence against women, gender based violence and domestic violence. Even in cases when the transgender women decide to address police or the courts, they are faced to those legal barriers. In a case, when the transgender woman asked for the restraining order against the perpetrator, the court did not accept the application, stating that: the case includes ID of the appellant, M.O., and according to that document M.O. is a man; Hence, according to the opinion of the court M.O is not the subject of the protection under the article 3 of the Georgian law on “Violence Against Women, and/or domestic violence prevention, protection of the victims of violence;” thus cannot ask for the restraining order.”<sup>92</sup>

<sup>87</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People, Litigation Report, WISG, 2018, p. 144.

<sup>88</sup> Available online at: <https://bit.ly/2iM7FBs> [accessed 27.05.2018]

<sup>89</sup> The Constitution of Georgia, article 30, available online at: <https://bit.ly/1zESjInO> [accessed 27.05.2018]

<sup>90</sup> In September 2017 was created new institutional mechanism Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence. The commission, along with other rights and responsibilities, will serve as the local coordinating body as defined in the so-called Istanbul Convention. In addition, it will develop relevant local action plans (Gender equality, VAW and DV, Resolution 1325 Action plans) ensuring coordination and monitoring of their implementation. The body is focused on assisting Georgia's executive, legislative, and judicial authorities in advancing gender mainstreaming into public administration.

<sup>91</sup> Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 4(3).

<sup>92</sup> Case №3/605-18. Feb 5, 2018.

The law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence does not consider an intimate partner as family member, respectively doesn't regulate violence committed by him/her. Intimate Partner Violence (IPV) is one of the most widespread forms of violence that implies physical, sexual, psychological or economic violence, systematic force and control over partner's behavior.<sup>93</sup> IPV is especially caustic in case of same-sex couples. According to WISG's study, 83.6% of respondents have experienced some form of violence at least once in the past three years by the intimate partner. In addition, psychological violence is the most common one (74.6%) and the frequency of sexual abuse and harassment is far high (62.1%). During the past three years, 4.7% of survey participants have at least once been raped by the intimate partner; 12.9% have been victim of attempted rape. The most common form of sexual abuse/harassment is "touching/hugging/kissing against the will of the victim" – 40.6% of respondents have such experience.<sup>94</sup>

Herewith, the threat of "forced coming out" by partners toward LGBTQI community is very frequent, including cases of blackmail by revealing information about victim's sex life. Thus, mentioned obstacles create additional barriers for LGBTQI persons to use protection mechanisms and defend themselves. Respectively, violence by intimate partner among same-sex couples remains without any feedback from law enforcement bodies. Noteworthy, under the study conducted by WISG, only 4.2% of victims have applied to the police (31.8% - noted that there was no need, 64% - doesn't wish to apply). Most respondents who do not report to the police claim about the "lightness" of the case (61.9%); hence due regard such attitude, victim try to minimize the seriousness of the incident. Others state the fair of forcible "coming out" with police officers; some of them also claim about the insufficiency of law enforcement bodies and the fair of their homophobic reactions. Therefore, it reveals that they chose the strategy to protect themselves, avoiding assistance from the police.<sup>95</sup>

It has to be mentioned that in 2017, WISG documented the case, where the police issued a restrictive order for violence by an intimate partner against a gay man (*discussed below*). This is the only case proving that LGBTI people can also use protection mechanism.<sup>96</sup>

The government does not address the human rights violations of LGBT individuals in the domestic sittings. Despite the fact that domestic violence (DV) from family members based on SOGI is most widespread it remains invisible crime against LGBT community: the government does not recognize the need to address this issue as a hate crime. Hate motive has not been documented in any DV cases against LGBT individual. The government does not address the specific forms of violence against LGBT individuals (minors are at a major risk), such as different forms of coercive therapies,<sup>97</sup> psychological pressure and violence, attempts of forced marriages of lesbian individuals, which takes place within families against LGBT individuals. It is also worth to note that in most cases LGBT victims of DV do not report to the police because of the fear of outing and secondary victimization, which is why they choose to leave their homes or are obliged to continue living in the cycle of violence.<sup>98</sup> A 2018 study showed that among the LGBT respondents, 84.4% (N=216) have experienced some form of abuse by family members.<sup>99</sup> In terms of frequency of the forms of violence, over one third of the group are victims of permanent psychological violence by family members, while 37.5% have been subjected to physical abuse at least once since 2015. Due to DV, 78.8% of the respondents noted that they needed an assistance of psychologists (20.7% applied to the service); 17.4% were in need of medical assistance (5.8% applied); 40.3% needed legal assistance (5.2% applied); 39.5% - social assistance (6.7% applied) 21.8% were in need of shelter (only 2.4% applied).<sup>100</sup>

Thus, it is important to work towards the implementation of the legislation and to use measures to protect LGBT victims against DV and IPV and to ensure that victim support services are relevant, sensitive and responds to the specific needs of the victim. According to the PDO report: "In 2017, on a number of occasions, representatives of LGBTI community benefitted from the institution providing services to victims of domestic violence; however, given

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<sup>93</sup> Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

<sup>94</sup> *ibid.*

<sup>95</sup> *ibid.*

<sup>96</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People, Litigation Report, WISG, 2018, p. 18.

<sup>97</sup> *ibid.*, p.19.

<sup>98</sup> *ibid.*, p.17.

<sup>99</sup> Aghdgomelashvili E., "From Prejudice to Equality (part II): LGBTI persons in Georgia," WISG, 2018.

<sup>100</sup> *ibid.*

that they still encounter a number of barriers in receiving the service, the institution must ensure the availability of adequately qualified and sensitive personnel.”<sup>101</sup>

It has to be noted that in 2017 and 2018 WISG with the support of UNJP revised training modules on VAWG/DV for the employees of the State Fund for the Protection and Assistance of Human Trafficking, patrol and district police, Georgian Bar Association Lawyers, Prosecutors, Criminal Police Investigators, Sitting Judges, employees of the National Probation Agency and conducted two-day ToT training as well as revised related legislation for the integration of LGBTI issues and drafted relevant legislative amendments. However, WISG is unaware about the status of the reflection its recommendations.

One more indivisible part of the right to respect private life is the protection of personal data, respectively protected by the Constitution. Personal data consists of different data categories and the level of their protection varies. Information about person’s sexual life is considered as specific personal data, processing or passing of which to a third party is only possible within the written consent of this person, or in the case when she/he made it public.<sup>102</sup> The information about a person’s sexual life includes information about their SOGIE and is covered by the law. Misuse of such information is deemed as a criminal offence.<sup>103</sup> In contrast, WISG documented cases of “forced coming out,” however, the majority of victims refuse referring to legal actions. For the persons living in the regions referring to police is even harder, as they see higher risks of spreading their personal information, which would be the basis of pushing further violence against them.

It is also problematic, how the issue of forced coming out should be regulated in case of utilizing the mechanism of foster care of a minor. The law allows “the foster parent to review the report prepared by the social worker regarding the needs of the foster child as well as receive any information kept/administered by the Agency.”<sup>104</sup> Furthermore, if we consider the existing homo/bi/transphobic attitudes in the society, it is highly probable that foster parent might refuse to accept the child in the foster care.

#### **Case #19-2017. Psychological violence by the intimate partner:**

L.G., a gay man, became the victim of violence by his intimate partner. According to victim, he experienced continual sexual and psychological violence: for years his partner threatened him by “forced coming out” and upon the threat tried to date and have sexual relation with him. Victim noted that the perpetrator explained his behavior as his love to him.

In October 2017, L.G. addressed WISG for help, however refrained to report police fearing improper reaction or degrading treatment. Later on in November, as the violence became unbearable, he reported police with the help of WISG. Despite the fact that Police warned the aggressor to stop contacting his former partner, the harassment continued. Victim contacted police once again and in February 2018 a restrictive order was issued against the perpetrator. The form of aggression was documented as psychological and the perpetrator was prohibited being near the victim, his workplace or any place with him.<sup>105</sup>

#### **Case #20-2017. Spreading the personal data of a gay man without his consent:**

In January, 2017 T.D was informed that his picture, information about his age, sexual orientation, address, workplace and other data has been used through some mobile applications. Moreover, it was noted that any type of sexual service would be provided. The victim informed administration of the application asking to remove his account. Account has been deleted; however police did not react on the case.<sup>106</sup>

<sup>101</sup> Available online at: <https://bit.ly/2LUbVIP> [17.07.2018]

<sup>102</sup> The Law of Georgia on Personal Data Protection, article 6 (2.D).

<sup>103</sup> The Criminal Code of Georgia, article 157.

<sup>104</sup> 2010 February 26 Order No.51n of the Minister of Labor, Health and Social Protection on the Establishment of Forms and Procedures of Foster Care, Chapter III. Article 9.2.

<sup>105</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People, Litigation Report, WISG, 2018, p. 18.

<sup>106</sup> ibid. p. 20.



#### IV.a. Right to respect for private and family life (trans specific)

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that trans persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that trans persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

The issue of gender legal recognition remains unregulated in Georgia. In fact, trans people are not even free to change their gender marker in IDs., which causes many obstacles in their everyday life and puts them under the constant threat of "forced coming out." Existing practice links together gender legal recognition and medical procedures, which is the harsh violation of international human rights. Legal recognition of the gender, which is linked to the mandatory sterilization, hormonal treatment and preliminary surgical procedures, roughly violates principle of equality. Mandatory sterilization, condemned by the experts of UN Special procedure, violates the provisions of Social Charter regarding protecting healthcare.<sup>107</sup>

State neither prohibits nor regulates gender reassignment procedures. According to response letter of the MoLHSA, any medical intervention is carried out only based on medical evidence, in line with a patient's health interests, by recognized professional and ethical standards, based on international evidence. Further, the response N01/35621 dated 29 April 2014 noted that any medical institution is authorized to draw up and issue a certificate on changing a sex, including medical institutions that carry out medical services/intervention related to sex change/reassignment procedures.<sup>108</sup>

Moreover, the services at the individual medical facilities remain inaccessible for trans persons. On the one hand, the problem of accessibility is conditioned by the price of procedures that the members of the community cannot often afford; on the other hand, the members of the group do not have equal possibilities like other citizens to use financial support on the medical procedures available through the state health care programmes.

Thus, existing practice increases the risk of unemployment and poverty for transgender persons, supports the marginalization of the group and makes the community vulnerable to transphobic hate crimes. Stigma, unemployment and poverty in turn, make the procedures necessary for the legal gender recognition (according to the established practice) even less accessible. Therefore, we have a vicious circle, which is extremely difficult to overcome.

In regard, Parliamentary Assembly of the Council of Europe in its resolution 2048 (2015) concerns upon existence financial obstacles faced by gender reassignment procedure and encourages States that the procedure was financially obtainable for trans people. Moreover, due regard the resolution, States have to ensure that the procedures were reimbursed within the public health insurance scheme, while the limits of reimbursement should be lawful, objective and proportionate.

In 2014, WISG developed a shadow report on the rights of LBT women for submission with the CEDAW Committee.<sup>109</sup> Among other issues, the report covered the practice of legal gender recognition for transgender persons and problems, which this group faces through existing procedures of LGR. CEDAW Committee examined this issue and called on the state to take relevant measures for eliminating discriminatory practice. In particular, the Committee is concerned about the physical violence and harassment faced by lesbian, bisexual and transsexual women and restrictions to obtain IDs for trans persons, calls upon the State party to take measures to address violence and harassment of lesbian, bisexual and transsexual women and abolish restrictions for transgender persons to obtain IDs.<sup>110</sup>

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<sup>107</sup> Social Charter, article 11.

<sup>108</sup> Joint Stakeholders' submission of 20 March 2015 Discrimination on basis of sexual orientation and gender identity in Georgia, UPR, 2015.

<sup>109</sup> Natsvlshvili A., Aghdgomelashvili E., Rights of LBT Women in Georgia. Shadow Report for CEDAW, Submitted for the 58th Session, WISG, 2014.

<sup>110</sup> CEDAW/C/GEO/CO/4-5, Concluding observations on the combined fourth and fifth periodic reports of Georgia, adopted by the Committee at its fifty-eighth session (30 June – 18 July 2014).

Recommendations toward Georgia within UPR underline the necessity to improve access to health services for trans persons.<sup>111</sup> Stating that gender affirming procedures for trans people are not regulated by Georgian healthcare legislation and the MoLHSA does not have any clinical guidelines for such procedures.<sup>112</sup> Trans people living in Georgia are able to get some gender affirming services by some medical institutions but the costs have to be borne by the patient.<sup>113</sup>

Herewith, it has to be noted that here is the number of major challenges that Georgian HR action plan (2016-2017) has missed to cover, including legal recognition of gender, regulation of trans-specific healthcare procedures, etc.<sup>114</sup> However, the Gender Equality Council of the Parliament of Georgia recommends the MoLHSA to incorporate the need and specificities of lesbian, bi-sexual and trans woman as a target/vulnerable group into the State Strategy in Healthcare. It should provide basic information and training to healthcare providers about the need and sensitivity in working with LGBTI persons. Moreover, the ministry should develop clinical guidelines due regard gender reassignment/transmission procedure in line with international standards.<sup>115</sup>

It has to be noted that in 2017 WISG translated and provided the Ministry with the “Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People” created by “The World Professional Association for Transgender Health” (WPATH).<sup>116</sup> The Ministry has not responded yet about the actions they are going to take in regard the preparation of clinical guidelines or protocols in accordance with those standards.

WISG, in collaboration with the partner organisation, European Human Rights Advocacy Centre (EHRAC) drafted two applications of trans men for the ECtHR. Cases concern refusal of legal gender recognition, which, according to the applicants, violated Article 3, 8 and 14 of the European Convention.<sup>117</sup> Applicant D.’s case was sent to the court on August 1, 2017 and the applicant Kh.’s case - on November 10, 2017. Applicants believe that by refusing their legal gender recognition, Georgia has infringed Article 3 (Prohibition of torture) and Article 8 (Right to respect for private and family life) of the Convention, together with Article 14 (Prohibition of discrimination). According to applicants, their social roles are in relevance with that of a man and the entry “female” about their gender in IDs causes “forced coming out.” This situation creates a lot of obstacles for them in society, as the stigma towards trans persons is very strong. D. and Kh. define that the fear of “forced coming out” puts them under constant stress and negatively affects the quality of their lives. They believe that by refusing LGR, state infringes their right to private life, as the effective mechanism of LGR has not been ensured. According to the applicants, they are subjects of discrimination due to all mentioned above.<sup>118</sup>

#### **Case #21-2017. Lack of medical support for specific health care services:**

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

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

<sup>111</sup> Universal Periodic Review, UN, Available online at: <https://bit.ly/2kU6r6T> [accessed 06.06.2018]

<sup>112</sup> Response letter from MoLHSA. №01/65969, dated by 30.08.2016.

<sup>113</sup> Natsvlishvili A., Aghdgomelashvili E., Rights of LBT Women in Georgia, Shadow report for CEDAW, Submitted for the 58<sup>th</sup> Session, WISG, 2014. Available online at: <https://bit.ly/2jneU34> [accessed 09.06.2018]

<sup>114</sup> Report on the Implementation of the Georgian Government’s Human Rights Action Plan for 2016-2017, WISG.

<sup>115</sup> Gender Equality in Georgia: Barriers and Recommendations, Gender Equality Council of the Parliament of Georgia, Volume 2.

<sup>116</sup> The World Professional Association for Transgender Health. “Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.” Available online at: <https://bit.ly/2sl5jZz> [accessed 09.06.2018]

<sup>117</sup> Available online at: <https://bit.ly/2hrlnR8> [accessed 09.06.2018]

<sup>118</sup> Available online at: <https://bit.ly/2HwcXvJ> [accessed 09.06.2018]

The refusal has been appealed before the MoLHSA of Georgia. Moreover, R.F. also applied to PDO in order to document discrimination on the ground of gender identity.<sup>119</sup>

#### **Case #22-2017. Funding of trans specific medical procedures:**

WISG stopped proceedings regarding the case of trans woman R.F. concerning the funding of trans specific medical procedures. At the preliminary stages of the proceedings, it was revealed that trans people do not have an access to the “medical assistance within the referral service” by the MoLHSA. This is due to the fact that, even those clinics in Georgia which provide trans specific services refuse to register specific standards in the specific registry of the ministry. The standard is a document that has been approved by the provider and could be based on a confirmed protocol of treatment reflecting the components of the treatment and price of the service; Providers explain that registering trans specific healthcare standards in the registry is useless, since, according to them, the decision-making commission will refuse to fund such services under the “referral programmes.”<sup>120</sup>

#### **Case #23-2016. Inadequate coverage of the trans issues from the Media:**

On 17th of October 2016, “Informational-Analytical Portal Kvira” (kvira.ge) published an article with a title ‘Who is the transgender who was brutally attacked?’ The article was about the trans woman and contained following personal information: her name and surname, age (according to ID card) and photo. Moreover, the article referred to the victim as “transgender,” “transgender Zizi” or with the given name under ID card. Furthermore, journalist was describing unchecked events, trying to confuse readers.

WISG believed that kvira.ge violated article 1st of Georgian Charter of Journalistic Ethics, according to which journalist should respect the right of the society to have an access on precise information) and principle number 10 (journalist should respect the right of a private life of a person and should not intervene it). As well the article was ignoring the recommendation issued by the charter on a case “WISG against journalists Levan Sutidze, Ketii Kvachantiradze, Beka Mchedlishvili, Tea Sitchinava and Nanuka Kajaia on a topic of covering news about transgender community.”<sup>121</sup>

On January 28, 2017 the decision was issued by the Georgian Charter of the Journalistic Ethics, stating that journalist violated article 10 of the Charter, namely that “journalists should respect the private life of a person and not interfere into private life unless there is a particular public interest.”<sup>122</sup>

During the examination of the case WISG approached to the Charter with the GLAADs recommendations covering the rules of broadcast in regard violence against trans persons. On this ground the general recommendation was issued by the Charter of the Journalistic Ethics.<sup>123</sup>

#### **Case #24-2017. Spreading the personal information of trans woman upon social network:**

Z.M. is a trans woman who is in a relationship with a heterosexual male. The family members of her partner did not know about their relationship. Z.M. found out that through ought social networks, someone created a fake account, posted pictures of Z.M. and her partner, communicated with the family members of her partner informing them about their relationship.

Z.M. believed that her life and health was endangered because of the family members of her partner, hence, upon the help provided by WISG police was noted about the fact. Despite investigation has started, it is still unknown who created the fake account of Z.M.<sup>124</sup>

<sup>119</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People, Litigation Report, WISG, 2018, p. 42.

<sup>120</sup> ECRI CBC Monitoring pro forma on LGBTI issues, Georgia, WISG.

<sup>121</sup> Details of case available online at: <https://bit.ly/28GvENk> [27.05.2018]

<sup>122</sup> Ibid.

<sup>123</sup> The Recommendation available online at: <https://bit.ly/2vdsGvg> [27.05.2018]

<sup>124</sup> Unidentified Violence, Litigation Report, WISG, 2017, p.69.

## V. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of SOGIE in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and trans persons. It also requires Member States to protect the privacy of transgender individuals in employment.

Under the labor Code of Georgia discrimination based on SOGIE is prohibited. Moreover, in 2014 the law of Georgia on the Elimination of All Forms of Discrimination has been adopted, which prohibits discrimination on these grounds itself and relates to public and private sector. The body established under the law within the PDO, examines cases regarding discrimination on the workplace. It is important to note that discrimination does not relate only within the employment, but also on the stage of selecting candidates and hiring them. PDO has examined discriminatory provisions in the text of vacancy based on the ground of gender; however, SOGIE as such, has not been the subject of the examination on that level.

Although at legislative level discrimination in employment is prohibited on various grounds including SOGIE, labor disputes on these grounds are not pending. WISG has requested information from the courts about the labor discrimination cases. Responses demonstrate that courts either have not considered labor disputes on this ground or do not administrate such statistics.<sup>125</sup> In addition, none of the Georgian legislative acts contains positive obligation that would bound employer to ensure safe and healthy working environment, respectively does not provide specific mechanism of such responsibility.

Study conducted by WISG in 2018 revealed that the discrimination in employment is the most problematic sphere for LGBTI persons and especially trans persons are vulnerable at the labor market.<sup>126</sup>

Obstacles regarding legal recognition of the gender remain the gap in line with their gender expression. As identification documents do not correspond to their gender identity it seeks them to unofficial employment and often have no chance rather than to agree to poor working conditions and remuneration.<sup>127</sup> In addition, number of trans persons, dealing with continual unjust treatment, is no longer trying to find the job as to avoid discrimination. The discussions also revealed that during the job interviews trans persons are trying to look gender-conformal;<sup>128</sup> however, the absence of the proper identification documents seems to be the major disadvantage. Interviews also show that LGBTI persons, who are/had been employed, often feel the differentiated attitude arriving from their co-workers expressed upon comments, remarks and various questions. There are cases of interference in their personal life, as well.<sup>129</sup>

Herewith, an absence of a restrictive obligation on safe and secure workplace ends up with creation of hostile working environment that often forces LGBTI persons to leave their jobs. These legislative and institutional problems need substantial acknowledgment by the state. Thus, it is crucial to create domestic institutional mechanism responding discrimination in labor relations that would help LGBTI persons to protect themselves from unjust, unequal and degrading treatment.

### Case #25-2014. Lesbian woman had to leave work:

On September 29, 2014 the victim, 20 years old lesbian woman, had to voluntarily leave work located in one of the central districts of Tbilisi. Before leaving, staff members have discriminated due to her sexual orientation (verbal offence, mocking, isolation, etc.), starting as employees had learned that she was a lesbian. Victim did not want to report at relevant authorities. Despite numerous assurances of confidentiality, the victim feared that even in case

<sup>125</sup> Discrimination and Hate Crime against LGBTI persons, WISG, Tbilisi, 2015, p. 136.

<sup>126</sup> According to the study, due to discriminatory experience and frequency, most of the respondents have been discriminated and ill-treated while receiving services (46.0%), followed by the sphere of employment on the bases of SOGIE (33.6%). In particular, 23.4% (N=60) have been denied to hire because of belonging to LGBTI group; 10.2% (N=26) have been fired and 16% (N=41) unequally treated because of the same reason. Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

<sup>127</sup> Aghdgomelashvili E., From Prejudice to Equality, Study of Social Attitudes, Knowledge and Information Regarding LGBTI Community and their Rights in Georgia, WISG, Tbilisi, 2016, p. 173.

<sup>128</sup> Jalaghania L., Legal Situation of LGBTI Persons in Georgia, EMC, Tbilisi, 2016

<sup>129</sup> *ibid.*

of reporting at the PDO, the former employee would definitely learn about her; therefore, she wanted to avoid further problems.<sup>130</sup>

**Case #26-2014. Trans man experiences problems in being employed due to inconsistency between sex referred at the ID card and gender self-expression:**

The respondent, 35 years old transgender male, was a member of the choir and had sung for it before the transition. In summer, 2014 he has been refused to participate in the touring performance. He was told that his presence on the stage, among other choir members, would be unusual and unacceptable for the audience, and therefore it would be better if he did not take a part. Moreover, due to inconsistency between gender identity and sex referred to in identification documents, two and a half years ago he was denied a job at the bar where he had already passed an interview. The victim did not report about either incident.<sup>131</sup>

**Case #27-2015. Transman has been fired from the army:**

26 years old trans man faced the risk of being fired from his army job because of his gender identity after he went through a double mastectomy: "They were trying to kick me out of the army, but they could not.. Because the psychiatrist said, he is healthy and will make us all lose our white coats if we try so.. They tried from the medical angle, hoping to reject me as the psychiatrist would write a note stating I was not fully healthy.."<sup>132</sup> Nowadays he is unemployed because of his ID document. He says that he tries to get a job where he won't have to be officially registered. Hence, he does not have a stable income.<sup>133</sup>

## VI. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of SOGIE, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBTI pupils and students, and measures to meet the special needs of transgender students.

Under the Georgian legislation discrimination is prohibited in the field of education and equal access is guaranteed by law in primary/secondary/higher education.<sup>134</sup> However, the practice does not correspond with the theory and captures far different picture, especially towards the issues regarding SOGIE in youth.

Additionally, no detailed analyses on the school textbooks has been concluded, which would determine rather the textbooks are free from homophobic stereotypes or not, whether they include relevant information about SOGIE, etc. In his report to CEDAW committee in 2014, State indicates that school textbooks are free from stereotypes and are gender-sensitive.<sup>135</sup> However, researches show different scenario: the majority of textbooks deepens stereotypes toward different protected minority groups. Many of them even do not present diversity of the society, which impedes equality within students and interferes setting up intercultural and tolerant attitude between them.<sup>136</sup> The study of public attitudes conducted by WISG in 2016 reaffirm that: "the level of formal education is not explicitly linked with homo/bi/transphobic attitudes (if we do not take into account the student group, whose

<sup>130</sup> Discrimination and Hate Crime against LGBTI persons, WISG, Tbilisi, 2015, p. 40.

<sup>131</sup> *ibid.*

<sup>132</sup> Situation of Transgender People in Georgia, WISG, Tbilisi, 2015, p.72.

<sup>133</sup> *ibid.*

<sup>134</sup> The Law of Georgia on General Education.

<sup>135</sup> „The school education material is age and gender sensitive, in no way promoting the negative gender stereotypes in school textbooks at the primary school level. The Ministry of Education and Science is involved in the major school textbook reform currently, ensuring the education based on the principle of gender equality.“ Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined fourth and fifth periodic reports of States parties Georgia, CEDAW/C/GEO/4-S. Para.57

<sup>136</sup> Tabidze S., Giorgadze N., Study of Intercultural Education Aspects at the Primary Level in Georgian Schools, CCIR, Tbilisi, 2013.

members ranked low on all scales), suggesting that, for the purposes of this study, formal education does not contribute to increasing tolerance towards LGBTI persons.<sup>137</sup>

Herewith, it has to be mentioned that none of special awareness rising programmes or any psychological consultations exist in order to meet special needs of LGBTI pupils or students. Studies conducted by CCIR in 2013<sup>138</sup> and 2014<sup>139</sup> show that 81.5% of the interviewed teachers and 78.6% of students agree (in various degrees) with the following statement: "Everybody is free and equal despite their sexual orientation," 74.9% of teachers and 72.9% of students fully or partly agree with opinion that "People of different sexual orientations pose a danger to the country and the public;" 47% of teachers and 40% of students maintains that different sexual orientation must be penalized by criminal law.

PDO in his annual report 2017 highlighted that: "The cases studied by the Public Defender of Georgia in 2017 have shown the prevalence of homophobic and transphobic attitudes in public schools and universities, which results in creating a hostile environment and ostracizing such persons from the mentioned space."<sup>140</sup>

According to the research conducted by WISG in 2018, since 2015, 16.4% (N=42) of participants have become victims of discrimination in the sphere of education. Herewith, as it reveals the system of education is more discriminatory upon man, especially ill-treated are man who describe their gender expression as gender non-confirming. The study shows that the level of education directly corresponds to the discriminatory practice in the field of education. Herewith, school educational system is more aggressive in terms of unequal treatment than higher educational system. Hence, the higher is the level of formal education of the respondent, the discriminatory treatment toward them decreases.<sup>141</sup>

#### **Case #28-2017. University professors used a textbook of homophobic content and expressed homophobic opinions at the lecture:**

On December 7, 2017, the PDO addressed Iv.Javakhsivili Tbilisi State University with a general proposal to develop regulations to prohibit discriminatory expressions and opinions by teachers during the lectures. According to the civil platform No Phobia, one of the university professors used a textbook of homophobic content and expressed homophobic opinions at the lecture. Since the equality of the LGBTI community remains one of the major challenges in terms of fight against discrimination in Georgia and since the professor's audience is students, the PDO considers that interference with freedom of expression is justified if the professor's statements encourage discrimination.<sup>142</sup>

### **VII. Health (excluding trans)**

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of SOGIE. Measures include taking account of the specific needs of LGBTI people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their SOGIE.

Sexual orientation as the basis for prohibiting discrimination is found also in the Law of Georgia on Health Care.<sup>143</sup> The Law of Georgia "on the Rights of Patient"<sup>144</sup> also prohibits discrimination of patients on any grounds: "Discrimination against a patient on the basis of race, color, language, sex, genetic heritage, religious convictions,

<sup>137</sup> Aghdgomelashvili E., From Prejudice to Equality: Attitudes, Knowledge and Information Regarding the LGBTI Community and Their Rights, WISG, Tbilisi, 2016.

<sup>138</sup> Tabatadze S., Gorgadze N., CCIR, Intercultural Education Research in Primary Classes of Georgia, Tbilisi, 2013.

<sup>139</sup> Tabatadze S., Gorgadze N., CCIR, Intercultural Education Research in Primary Classes of Georgia, Tbilisi, 2014.

<sup>140</sup> Available online at: <https://bit.ly/2LubVIP> [accessed 25.07.2018]

<sup>141</sup> Aghdgomelashvili E., From Prejudice to Equality: LGBT persons in Georgia (part II): LGBTI persons in Georgia, WISG, 2018.

<sup>142</sup> Available online at: <https://bit.ly/2z6ANlq> [accessed 25.07.2018]

<sup>143</sup> The Law of Georgia on Health Care , article 6, Paragraph 1.

<sup>144</sup> The Law of Georgia on the Rights of Patient, article 6.

political and other views, national, ethnic and social belonging, origin, economic and official status, place of residence, disease, sexual orientation or negative personal attitude shall be prohibited.” Importantly, the above is a fundamental principle and its breach in some circumstances may lead to criminal liability.<sup>145</sup> Study conducted by WISG in 2015 has shown that healthcare workers have a quite vague knowledge about sexual orientation/gender identity, as well as, about the needs of LGBT persons in health care.<sup>146</sup> Another studies reaffirm that medical personal has low awareness on SOGIE issues and has lack of sensibility toward the patients of the minority group.<sup>147</sup> Such approach has an influence on the access of LGBT people to high standards of health care.<sup>148</sup>

The analysis of cases studied by PDO in 2017 makes it clear that “the access to sexual and reproductive health services and information may be restricted for LGBT+ persons because of their non-conforming sexual behavior, expression and identity. According to the complaints studied by PDO, community members often face homophobic attitudes from medical personnel and these attitudes adversely affect the access of LGBT+ persons to medical services.”<sup>149</sup> Yet, studies and in-depth interviews with LGBTI group members demonstrate that although such cases are rare, group members still face discrimination and improper treatment by the medical personnel.<sup>150</sup>

As mentioned above, a number of Georgian medical text-books still enclose homosexuality as a behavioral disorder.<sup>151</sup> The need of LGBT group in Health Care system is not studied, thus it is not reflected in working and strategic plan of health sector.<sup>152</sup> There are no suicide prevention programmes in Georgia. Patients do not have the right to freely designate “next of kin” as the legislation gives an exhaustive list of who can be regarded as such.

Another issue concerning healthcare is that there are no regulations which are in line with international standards due regard medical procedures for “sex normalization” in intersex children. Intersex persons face multiple challenges which are related both to legal regulations and the medical sphere. It is imperative that legal and medical personnel shall be better informed about the fundamental rights and needs of intersex persons, especially intersex children, and states shall try to avoid cases of “sex normalization” in intersex persons, without person’s consent.<sup>153</sup> No study has been conducted in Georgia which would examine the medical needs of intersex children and would assess against the international standards of “sex normalization” surgeries conducted on them in infancy or at later stages.<sup>154</sup>

At the end the positive step has to be mentioned; in 2014 the Constitutional Court of Georgia abolished the ban that prevented homosexuals from donating blood. The court noted that the prohibition violated the right of free development of his/her personality in line with prohibition of discrimination.<sup>155</sup> The Court ruled that the disputed law prohibiting a person who was not engaged in the risky sexual behavior and had only emotional and psychological attraction to the representative of the same sex, as well as for the MSM person after the window period had expired and the viral disease was not found to donate blood as violating the clause of prohibiting discrimination.<sup>156</sup>

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<sup>145</sup> Criminal Code of Georgia, article 142.

<sup>146</sup> Survey has shown that the majority of randomly chosen healthcare workers (save one respondent) cannot make difference between sexual orientation and gender identity. Aghdgomelashvili E. Study of the Needs of LGB People in Health Care. In - depth interviews. Technical report. WISG, Tbilisi, 2014

<sup>147</sup> The study of the practice, knowledge and attitudes of medical staff showed that 13.8% of the respondents think that bisexuals are persons with “double biological sex” (e.g. due to genetic, hormonal, or anatomic characteristics). Herewith, according to 39.3% of respondents, homosexuality is a disease, which can be cured. More than half of respondents either agree with this statement or do not have a fixed position: 27.7% believe that homosexuality can be cured; 33.0% do not know whether this is possible. Serebriakova L., Study of Knowledge, Practice and Attitudes of Medical Staff towards LGBTI patients, 2015.

<sup>148</sup> Available online at: <https://bit.ly/2Kl7lNV> [accessed 15.07.2018]

<sup>149</sup> Available online at: <https://bit.ly/2UubvIP> [accessed 15.07.2018]

<sup>150</sup> Discrimination and Hate Crime against LGBTI persons, WISG, Tbilisi, 2015, p. 145.

<sup>151</sup> Aghdgomelashvili E., From Prejudice to Equality, Study of Social Attitudes, Knowledge and Information Regarding LGBTI Community and their Rights in Georgia, Tbilisi, 2016, p. 171.

<sup>152</sup> E.g. The 2011-2015 national strategy of Health Care in Georgia, where different vulnerable groups are emphasized, doesn’t consider needs of LGBT group, especially needs of Transgender persons concerning social issues and transspecific health.

<sup>153</sup> FRA, The fundamental rights situation of intersex people, 04/2015.

<sup>154</sup> Report on the Implementation of the Georgian Government’s Human Rights Action Plan for 2016-2017, WISG.

<sup>155</sup> The Constitutional Court of Georgia, case no. 2/1/536, Feb. 4, 2014.

<sup>156</sup> *ibid.*

## VIII. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of SOGIE through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBTI people, including young people excluded by their families.

The Georgian legislation guarantees to everyone the right to liberty of movement and freedom to choose his/her residence throughout the territory of Georgia. However, a lot of LGBTI persons, in particular young persons, are rejected by their own families and may find themselves homeless; moreover, no state programmes exist to offer them temporary accommodation and neither specific shelters are provided for LGBTI persons.

Recommendations developed by the initiative of Gender Equality Council of the Parliament of Georgia states that Georgian policy should foresee an expansion of the number of shelters and crisis centers for victims of gender-based violence, as well as their accessibility to vulnerable groups such as, *inter alia*, LBT women. Standardized protocols should establish risk and needs assessments, in order to secure the necessary protection and robust multi-sectoral services, including access to legal aid.<sup>157</sup> It has to be noted that in 2017 and 2018 WISG with the support of UNJP conducted special trainings and revised guideline for the staff members of the state shelters on service provision for the victims/survivors of sexual violence and victims of VAWG/DV in order to mainstream LGBTI persons' special needs. However, WISG does not have information about the reflection of its recommendation in training programmes and guidelines. Herewith, there are cases documented when LGBTI communities were denied the possibility to rent a real estate because of their SOGIE. Such cases have been examined by the PDO, despite revealed discriminatory practice its recommendation does not have binding force and problem remains open.

Therefore, it is crucial that adequate and effective legal or other appropriate remedies were available to those claiming to be victims of discrimination based on SOGIE, with respect to their rights to access housing, especially when "coming out" is often followed by exhausting from houses by their parents.

### **Case #29-2016. After her "coming out" lesbian woman was expelled from house:**

"I was hiding this fact [sexual orientation/gender identity] from my family because I knew a negative reaction that would follow from both of my parents as far as they are too conservatives. The situation evolved in a way that they found out about my partner. My friends and I spent half an year to get my family to face the fact that it is so and they had to accept me; you are not going to kill me, right?..finally I came out; my mother locked me at home in order to 'change,' 'cure' and 'set me right', otherwise I would be died for her.. She started to harass and beat me in front of her friends; Moreover, she demanded to see doctor and cure me; in short she had massive hysterical outbreaks; during one of them my sister opened the door and said that they could no longer stand me and demanded me to leave. I tried firstly, with my friends and secondly, with WISG to return home for my personal belongings but no one opened the door. Then we called police as I did not even have my ID and finally they opened the door to the police officer. They barely gave my ID to the officer; stated that everything else belonged to them."<sup>158</sup>

### **Case #30-2018. Discrimination based on gender identity and expression:**

In January 2018 trans woman N.M., with her friends, rented an apartment in Batumi. As soon as landlord acknowledged her gender identity she demanded her to leave. According to N.M. she was insulted verbally and addressed homo/transphobic hate speech. N.M. reported to police and PDO for documenting the discrimination on the ground of gender identity and expression; however, she changed apartment because of the fair being endangered in case of staying.

<sup>157</sup> Gender Equality in Georgia: Barriers and Recommendations, Gender Equality Council of the Parliament of Georgia, Volume 1.

<sup>158</sup> Aghdgomelashvili E., From Prejudice to Equality: Attitudes, Knowledge and Information Regarding the LGBTI Community and Their Rights, WISG, Tbilisi, 2016, p.262.



## IX. Sports

Section IX of the Appendix requires member states to combat SOGIE discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBTI organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of trans persons from sports activity.

In 2016 Georgia joined to sign the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events, which aims to regulate the important issues of sports such as ensuring safety, security and service standards at football matches and other events. Nevertheless, the experience of recent years has shown that homophobic attitudes often arise in this field, as well.

### **Case #31-2017. Homophobic reaction on the solidarity act of the member of the Georgian national football team Guram Kashia:**

In October 2017, the member of the Georgian national football team and the captain of football club “Vitesse arhmen” Guram Kashia performed Eredivisie match wearing LGBTI flag-handcuff demonstrating his support to LGBTI persons.

The organisations of the campaign at the premier league of Netherlands declared that sport corresponds to everyone, regardless their cultural belonging, color, race, sexual orientation or religion, - everyone has right to participate or be a supporter. Moreover, Kashia’s activism was positively responded by the Georgian human rights defenders; they noted that it is important to represent diversity of football fans, especially in Georgia, where the homophobic attitude remains strong.<sup>159</sup>

President Giorgi Margvelashvili has affirmed his support of Kashia.<sup>160</sup> Newly elected mayor of Tbilisi Kakha Kaladze had responded the newspaper: “I don’t know who made what statements. However, the fact that an anti-discrimination bill was adopted in Georgia has to be welcomed. Freedom of expression is essential. We live in the democratic state and every citizen has the right to express their opinions despite their nationality, religion or sexual orientation.”<sup>161</sup> Guram Kashia was also supported by the Georgian Football association (GFA). This support was followed by the protest of “Georgian March” at the GFA. They deemed withdrawal of Kashia from the team and apology of GFA for supporting LGBTI people. Protesters shouted homophobic expressions and burnt the rainbow flag near the GFA. Eight people were arrested on charges of resisting police and minor hooliganism.<sup>162</sup>

On 6 November, a second protest took place against “LGBT propaganda” in football. The Orthodox Parents’ Union marched against the “anti-Christianity” propaganda. The Chair of the Orthodox Parents’ Union, Avtandil Undiadze, stated: “We demand that sports was free from LGBT propaganda, or politics. The footballers should play football.. enjoy Georgian nation, not LGBT community.”<sup>163</sup>

## X. Right to seek asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on SOGIE as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of SOGIE. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff

<sup>159</sup> Available online at: <https://bit.ly/2xhOqdx> [27.05.2018]

<sup>160</sup> “The campaign that was brought against Guram Kashia is unacceptable. Every single person has the freedom of expression, we should respect people’s rights and freedoms. I condemn expression of violence in any form. I salute the unified support from the sports community towards Guram Kashia. Hatred and violence is unfamiliar for our society. The Vice-captain of the Georgian national football team and defender for Dutch football club ‘Vitesse,’ Guram Kashia, has my support!”

<sup>161</sup> Netgazeti, available online at: <https://bit.ly/2LR5ppH> [27.05.2018]

<sup>162</sup> Available online at: <https://bit.ly/2IVLe8Y> [accessed 27.05.2018]

<sup>163</sup> Available online at: <https://bit.ly/2vVg5ei> [accessed 27.05.2018]

responsible for processing asylum requests are provided with training in the specific problems encountered by LGBTI asylum seekers.

Georgian Constitution guarantees the rights of foreigners and stateless persons in Georgia to be equal to the rights of Georgian citizens, with exceptions envisaged by the law. Moreover, the legislation protects people from being expelled from the country where one's life and health would be endangered, *inter alia*, on the ground of SOGIE. Deportation of asylum seekers is strongly prohibited. During the recent years, NGOs working on LGBT rights have provided several asylum seekers with their services.

**Case #32-2017. Tbilisi court annulled the refusal on granting refugee status to a gay man (Equality Movement, TDI):**

In December, Tbilisi Civil Court satisfied the claim of Egyptian citizen Wagdy Elkoraei on receiving asylum in Georgia. Court annulled the decision of Ministry of Displaced Persons from Occupied Territories, Accommodation, and Refugees of Georgia, which denied Wagdy the refugee status, and instructed the ministry to make a new resolution. Wagdy Elkoraei applied for the refugee status in January 2017 and the State has denied the request. Wagdy Elkoraei's interests were represented by Equality Movement and Tolerance and Diversity Institute.<sup>164</sup>

## **XI. National human rights structures**

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of SOGIE, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

Due regard national human rights structures two institutions within the PDO has to be discussed: the Department of Gender Equality and the Department of Equality.

In 2013 the Department of Gender Equality was established in order to monitor the protection of human rights and freedoms in terms of gender equality, to promote the gender equality issues in the activities of the PDO and to raise public awareness with the view of strengthening the gender equality in Georgia. The goals of the Department *inter alia* include examination and response to violation of rights on the basis of gender identity and sexual orientation.<sup>165</sup> Under annual report of 2016 it reads that the steps taken to improve the situation of LGBTI community are only formal and do not reflect the needs of individuals who are victims of systemic violence, oppression, persecution and intolerance on a daily basis. Moreover, it mentions that the government does not have a vision how to ensure equal participation of LGBTI individuals in public spaces and their protection from homophobic-based violence. The department highlights the problem regarding the legal recognition of gender of trans persons and also underlines the necessity of awareness rising due regard LGBTI persons' rights in Georgian society.<sup>166</sup>

Additionally, in 2014 Georgian law on Elimination of All Forms of Discrimination was adopted, that *inter alia* encloses SOGIE as protected grounds. The body on the enforcement of the law has been allocated PDO and the special department (of equality) has been established. The department may be deemed as quasi-judicial body, with the authorization to examine cases of discrimination and make relevant recommendation or general proposals. Despite the fact that the body faces some problems (the legal force of its decisions is not binding for private sector, they even do not have legal obligation to cooperate with the office, etc.) its existence is far helpful in regard national human rights institutions.

According to the record prepared by PDO in 2017, the Department had examined 201 new discrimination cases during the time period of 2016-2017, developing 11 recommendations, 11 general proposals and 4 Amicus Curie

<sup>164</sup> Available online at: <https://bit.ly/2tL6KHH> [accessed 27.05.2018]

<sup>165</sup> Information about the Department: <https://bit.ly/2JuOjvY> [accessed 06.06.2018]

<sup>166</sup> Women's rights and gender equality, PDO, 2016.

briefs; Most of the cases concerned alleged discrimination on protected grounds *inter alia*, of SOGIE (11%);<sup>167</sup>On the other hand the number of the cases examined during the period of 2015-2016 amounted 113, issuing 12 recommendations, 2 general proposals and 6 Amicus Curie briefs; Respectively, the percentage revealing SOGIE hit 8%.<sup>168</sup>

Under the PDO's report LGBTI community is one of the most vulnerable groups, the members of which face discrimination in almost every sphere of life.<sup>169</sup> The cases examined by the PDO, included taxi driver's refusal to provide service to a trans woman,<sup>170</sup> an incident where the same sex couple was thrown out of a night club,<sup>171</sup> and discontinuation of a rental agreement due to discrimination by perception.<sup>172</sup> In these cases discrimination on the ground of SOGIE was ruled. In the reporting period, PDO also responded, on numerous occasions, when advertisements encouraged discrimination, *inter alia*, on account of gender identity. One such case was a video clip circulated by LTD CCLoan mocking a transgender individual, who in order to earn money, has to resort to prostitution.<sup>173</sup>

In favor of the system has to be mentioned that, in the cases of alleged discrimination regarding SOGIE, the PDO reaches decisions taking into consideration not only evidence and established circumstances existing in case-files, but also general perceptions, stereotypes and biases towards LGBTI community in the society, which, as a rule, causes discrimination. PDO acknowledges that LGBTI persons are the ones of the most marginalized groups, who face discrimination in every step of their daily life. Therefore, its readiness to protect LGBTI people's rights is nothing more than the positive light within the national human rights institutions.

## XII. Discrimination on multiple grounds

Like other unprotected groups, the members of the LGBTI group may become victims of intersectional discrimination. The Law of Georgia on "Elimination of All Forms of Discrimination" prohibits discrimination on multiple grounds that imply discrimination based in two or more characteristics;<sup>174</sup> Protected grounds are broadly interpreted and include: race, skin color, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, disability, health, sexual orientation, gender identity and expression, political or other opinion. Moreover, the listing of the grounds is not exhaustive; hence discrimination is prohibited on any ground and on any characteristic.

It has to be noted that in Georgia LBT women are often victims of double discrimination - based on their sex, as well as sexual orientation/gender identity. Root causes of this discrimination and violence against LBT women lie in deeply rooted gender stereotypes and conservative moors of the society, gaps and shortcomings in the legislation and indifferent state policy towards women in general and LBT women in particular.

According to the recommendation of CEDAW Committee, "The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men."<sup>175</sup> When discussing particular cases of discrimination, if a person belongs to an unprotected group, the general legal condition of this person should also be considered.

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<sup>167</sup> Available online at: <https://bit.ly/2HprwU> [accessed 06.06.201]

<sup>168</sup> Available online at: <https://bit.ly/2gaP4vi> [accessed 06.06.2018]

<sup>169</sup> Special Report on the Fights against Discrimination, its Prevention and the Situation of Equality, 2017, available online at: <https://bit.ly/2xdz8GK> [accessed 23.05.2018]

<sup>170</sup> The details of the case available online at: <https://bit.ly/2sCyXip> [accessed 06.06.2018]

<sup>171</sup> The details of the case available online at: <https://bit.ly/2kU1n46> [accessed 06.06.2018]

<sup>172</sup> The details of the case available online at: <https://bit.ly/2HvxobP> [accessed 06.06.2018]

<sup>173</sup> The details of the case available online at: <https://bit.ly/2HTVRYg> [accessed 06.06.2018]

<sup>174</sup> The Law of Georgia on "Elimination of All Forms of Discrimination", article 2(4).

<sup>175</sup> General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/2010/47/ GC.2. 2010. 518

However, steps taken by the Georgian State to combat violence against women and domestic violence as well as to assist victims, the supportive system is set on a heteronormative base, focusing mainly on intimate partner violence between heterosexual couples. Despite the fact that domestic violence from family members based on SOGI is most widespread and is an invisible crime against LGBT community, the government does not recognize the need to address this issue, neither pays proper attention to it in its National Action Plans.<sup>176</sup>

In 2017 WISG implemented individual-oriented support system, which is the collaboration of multiple protected grounds for the fulfillment of LGBTI person's needs. Therefore, it shall be declared that, save the socio-cultural factors, the economic condition of a person predicts double discriminatory action and crime against them. Hence, the rapid action has to be taken, which should avoid victims to experience such crimes and support their socialization and fulfillment of their basic needs.<sup>177</sup>

**Social case #33-2018. Supporting trans woman with refugee status:**

Trans woman R.P., having refugee status, has been living in Georgia since 2016. She is not employed and her accommodation and daily expenses are provided by WISG's partner organisation SOS Children's village, where she was beneficiary until reaching legal age. For now she is receiving the service for supporting a semi-independent life. Due regard the help of the psychologist of WISG, she changed apartment and improved living conditions. Also, she has received the service of WISG's sexologist and currently the support is ongoing in order to help her with continual employment problems.<sup>178</sup>

**Social case #34-2018. Supporting a commercial sex-worker trans woman:**

Z.B. is a sex worker and transgender women. For few years she did not have any contact with her family members living in the region of Georgia. A few months ago in 2018, her family members canceled her place of registration and respectively, her identification card was annulled. A social worker started cooperation with her in two dimensions, helping her with renewal of ID card and ensuring psychologist's service. Moreover, for the support of her further employment, classes of foreign language have been provided.<sup>179</sup>

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<sup>176</sup> UPR, Joint Stakeholders' mid-term report, 30 May, WISG, 2018

<sup>177</sup> Bakhtadze K., Intersectional Discrimination and LGBTI People, Litigation Report, WISG, 2018, p. 6.

<sup>178</sup> *ibid.*

<sup>179</sup> *ibid.*

## **Appendix #1. Recommendation CM/Rec(2010)5**

### ***I. Right to life, security and protection from violence***

#### ***A. "Hate crimes" and other hate-motivated incidents***

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law-enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law-enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and trans persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of trans persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

#### ***B. "Hate speech"***

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and trans persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.
7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.
8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and trans persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

#### ***II. Freedom of association***

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.
10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.
11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and trans persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with

the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and trans persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

### *III. Freedom of expression and peaceful assembly*

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law-enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and trans persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and trans persons.

### *IV. Right to respect for private and family life*

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. 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.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making 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.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of trans persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without

discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

#### *V. Employment*

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

#### *VI. Education*

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

#### *VII. Health*

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and trans persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that trans persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

### *VIII. Housing*

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and trans persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

### *IX. Sports*

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and trans persons in sport and in condemning manifestations of intolerance towards them.

### *X. Right to seek asylum*

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

### *XI. National human rights structures*

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

### *XII. Discrimination on multiple grounds*

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.



## Appendix #2. The Compliance Documentation Report

### Recommendation

- 1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**

*1.1. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

*1.2. Are systems for the collection and analysis of relevant data operational, and in use to monitor direct and indirect discrimination on the grounds of a) sexual orientation b) gender identity?*

*1.3. Are processes in place to ensure that the discrimination thus identified is redressed?*

Despite several reminders MoJ has not provided answer in regard these questions.

As already mentioned adoption of the law on Elimination of All Forms of Discrimination is the step forward for ensuring equality in all institutions, *inter alia* on the grounds of SOGIE. The body on monitoring direct or indirect discrimination prescribed by the law is PDO. The Department of Equality examines individual cases and documents them. Unlike public institutions, recommendations issued against the perpetrators are fully deprived of any legal means to ensure its enforcement; hence its implementation is entirely depended on the goodwill of the individual.<sup>180</sup>

- 2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and trans persons and to promote tolerance towards them;**

*2.1. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

Georgia had adopted some legislative changes, based on which discrimination on the ground of SOGIE in different spheres of private and public life is prohibited. Nowadays, laws prohibiting discrimination are empowered by the Constitution and legislation.

The law on the Elimination of all Forms of Discrimination, adopted on May 7 of 2014, explicitly underlines SOGIE as its protected grounds. The law prohibits discrimination in all spheres, including employment, healthcare, education and access to services. However, it has to be noted that the mechanism of its implementation doesn't have a binding force upon private sector. The request for amending its gaps has been launched by the PDO at the Parliament of Georgia.

According to the Criminal Code of Georgia, crime committed on racial, national, ethnic or linguistic grounds is considered as an aggravating circumstance. In March 2012 sexual orientation and gender identity was added to the list of protected grounds. The Labor Code of Georgia explicitly prohibits discrimination based on sex, as well as sexual orientation (gender identity is not mentioned in the list of grounds of prohibition).<sup>181</sup> Sexual orientation as the base of prohibiting discrimination is also mentioned in the Law of Georgia on Health Care. Moreover, the Law of Georgia on "Patients' Rights" also prohibits discrimination of patients on any ground.<sup>182</sup>

In spite of noticeable progress, gaps still remain in the legislative level, which significantly hinders exercise of the rights of LGBTI people, e.g. the issue of legal recognition of gender, which is vitally important for trans people and directly reflects the mentioned fields.

*2.2. Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behavior within the general public and correcting prejudices and stereotypes, been implemented?*

<sup>180</sup> Details available online at: <https://bit.ly/2lOeKUS> [accessed 28.06.2018]

<sup>181</sup> Amendment to the Criminal Code of Georgia, Article 2 (3).

<sup>182</sup> Georgian Law on Patients' Rights, article 6.

As already mentioned the problem is a lack of comprehensive politics; even on the example of HR Action Plan the issues of SOGIE are fragmental, spitted in the Plan of the Gender Equality Council<sup>183</sup> that doesn't provide proper long-term and awareness raising blanket governmental programme aiming to combat discrimination.

**3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;**

*3.1. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*

*3.2. Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*

*3.3. Are the remedies effective, proportionate and dissuasive?*

*3.4. Do the remedies include, where appropriate, adequate reparation for victims?*

Despite several reminders MoJ has not provided answer in regard these questions.

However, in 2014 Georgian law on Elimination of All Forms of Discrimination was adopted, that *inter alia* encloses SOGIE as its protected grounds. The body on the enforcement of the law has been allocated PDO and the special department (of Equality) has been established. The department may be deemed as quasi-judicial body, with the authorization to examine cases of discrimination and make relevant recommendation or general proposals. Despite such positive changes, in fact the body faces crucial problems as the legal force of its decisions is not binding for private sector, they even do not have legal obligation to cooperate with the office, etc. Hence, it could not be counted as the fully effective remedy, especially in the cases of discrimination against private sector. Therefore, no properly effective remedy, which includes mechanism of adequate reparation, does exist rather than general Courts.

**4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;**

Despite several reminders MoJ has not provided answer in regard this issue.

**5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible**

*5.1. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

State authorities did not provide any answer; however, according to the existing information government has not taken any measures in order to translate or disseminate the recommendation.

*5.2 Have the Recommendation and its appendix been translated?*

Despite several reminders MoJ has not provided answer in regard this question; however, the Recommendation and its appendix have not been translated and disseminated by the state. The translation was provided by WISG that is accessible on its web-page.<sup>184</sup>

*5.3. Have they been disseminated?*

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*

<sup>183</sup> Available online at: <https://bit.ly/2tQBdTX> [28.06.2018]

<sup>184</sup> Available online at: <https://bit.ly/2v5TtUp> [26.06.2018]

- *to the media?*
- *to relevant non-governmental organisations*

N/A

## I. Right to life, security and protection from violence

### a. "Hate crimes" and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

*1.1. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

- 1.2. *Are systems for the collection and analysis of relevant data operational, and in use to monitor direct and indirect discrimination on the grounds of a) sexual orientation b) gender identity?*

*1.3. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

According to the information provided by the Academy of the MIA,<sup>185</sup> it is regularly ongoing process to raise awareness of the police officers in regard human rights education. Trainings, covering hate crimes, prohibition of discrimination and aspects of gender equality, have been conducted for district-inspectors, officers of the Criminal Police, detective-investigators, patrol-inspectors, infantry officers of the patrolling police for security of tourists, employees of the wards for temperate detention, employees of the Special Task's Department and border guards of the Border Police of Georgia. The letter notes that special educational programmes cover teaching appropriate measures and mechanisms to combat discrimination toward LGBTI persons that include effective, prompt and impartial investigation of the crimes, cases or incidents based on SOGIE. Moreover, additional response letter<sup>186</sup> from the Ministry states that since 2017 new module on "prohibition of discrimination and gender equality" has been added to the programme of preparing patrol-inspectors, which was completed by 367 students since then.

It has to be noted that WISG is unaware regarding the contents of the programme and respectively the effectiveness of its outcome cannot be evaluated.

*1.4. Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

In practice, no separate law-enforcement unit exists to receive and investigate hate crimes and hate motivated incidents specifically; however, in 2018 MIA established the Human rights Department within its system, which would monitor investigation of hate motivated crimes. The purpose of the department is to combat hate crimes, *inter alia*, on the ground of SOGIE and to monitor proper investigation of hate motivated crimes. Moreover, General Inspection of the MIA investigates and takes appropriate measures on the breaches of the Ethic Code conducted by the law-enforcement authorities. Herewith, under the decree of the MoJ (#34, dated by 07.07.2013) offences committed by the police officers shall be investigated by investigative subdivision of the prosecutor's office and in case of detecting signs of crime it shall be punished by the law. The response also notes that within the framework of the unified information policy the hotline of the General Inspection (MIA) is available (126) that increases efficiency of the control by the civil society.<sup>187</sup>

The General Inspection of the MIA received 21 reports/complaints from LGBT+ community in 2017: no disciplinary misdemeanor was established in nine of these cases; eight cases were transferred to other entities of the Ministry;

<sup>185</sup> Response letter from the Ministry on Internal Affairs, N MIA 0 18 01137770; dated by: 15.05.2018.

<sup>186</sup> Response letter from the Ministry on Internal Affairs, N MIA 4 18 01385698; dated by: 12.06.2018

<sup>187</sup> *ibid.*

only one case was transferred to the Prosecutor's Office to start investigation; internal inquiry is underway into two cases.<sup>188</sup>

On the other hand, the percentage of reporting hate crimes to the police or law-enforcement authorities in general, hits low. Research conducted by WISG in 2018 reveals that 96.9% of respondents (N=256) have been victim of hate crimes during his/her lifetime; 88,3% - ever since 2015. The most common form of violence was psychological/emotional (verbal abuse, swearing, curse, humiliating comments, making fun) that have been experienced by 71.4% of respondents. 40.3% have received hate messages/letters/emails; 19.35% have become the victim of blackmail or forceful "coming out." High percentage of the respondents had experienced sexual harassment because of SOGIE.<sup>189</sup> Despite such destructing number, only 15.8% of hate crime victims have reported to police. Among the reasons for not reporting was mentioned: Ineffectiveness of police – 44.4%; Fear of forcible "coming out" in front of police officers- 19.1%; Fear of homophobic treatment by police officers – 18.7%, etc.<sup>190</sup>

**2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.**

*2.1. Do legislative measures to combat "hate crimes" and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

Article 142 of the Criminal Code of Georgia criminalises violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity and expression, political or other views or of any other signs that have substantially breached human rights.

*2.2. Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

Under the article 53<sup>1</sup> of the Criminal Code of Georgia crime committed on the grounds of race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided by the code.

Herewith, according to the responding letter from the Prosecutor's Office of Georgia,<sup>191</sup> the Human Rights Division has developed recommendations on the practical implementation of the mentioned clause. Under this recommendation, prosecutors shall underline the hate motive at the discretionary part of the offence, as well as at the trial, on its opening and conclusive remarks. The recommendation also corresponds to issues such as qualification of hate crime, conduct of investigation, obtaining evidences and collecting relevant statistics.

According to the statistics published by the MIA 53 persons were accused in hate motivated crimes in 2018.<sup>192</sup> In addition, in 10 cases SOGIE stood as aggravating circumstance. On the other hand, above mentioned cases (#01-2017; 02-2014; 03-2016; 05-2016; 06-2016) show different scenario that even in the clearest, textbook-example situations of the hate crime, law-enforcement officials fail to invoke SOGIE as the ground of the crime. Failure in underlining motive also impedes courts to obtain proper decision that on the other hand, encourages syndrome of impunity of hate crimes.

**3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.**

*3.1. Has a simple and comprehensible definition of "hate crimes", which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?*

<sup>188</sup> Annual report of the PDO, on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017.

<sup>189</sup> Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

<sup>190</sup> Ibid.

<sup>191</sup> Response letter from the Prosecutor's Office of Georgia N13/368443, Dated by: 16.05.2018.

<sup>192</sup> The report is available online at: <https://bit.ly/2sIRVtZ> [accessed: 22.05.2018]

No information is provided by the MIA or the MoJ regarding this question, however, Georgian legislation does not provide the definition of hate crime.

*3.2. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

According to the letter provided by the MIA,<sup>193</sup> a guideline for the investigators has been adopted, which underwrites the rules of interrogating/questioning the victims, defendants and witnesses of the hate crime. In this regard specialization of the investigators has also been launched. However, WISG is not aware regarding the type of the manual, the ways of its guidance and the legal forms of the given instruction. Moreover, WISG is unaware whether the judges had undergone any similar trainings in recent years. The MoJ did not provide any information in his regard.

*3.3. Do training programmes and codes of conduct for the police and judiciary ensure that LGBTI persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

The Code of Ethics of the Police stresses respect for human rights and requests acting in compliance with the law based on the principles of equality and justice. The Code of Ethics focuses on a police officer's responsibility to be guided by the principle of impartiality when discharging their duties without any discrimination. Herewith, an updated version of the Code includes sexual orientation among the grounds of prohibition of discrimination: "a police officer shall respect personal dignity of all individuals, and treat them fairly and impartially, irrespective of an individual's race or national belonging, language, sex, age, religious convictions, political or other views, property status or title, social belonging, origin, education, place of residence or other type of personal status and/or sexual orientation."<sup>194</sup> Breach of the Code of Ethics results in disciplinary liability pursuant to the procedure established by the order of MIA.

However, due to the strong homophobic atmosphere in the country, the majority of victims refrain to contact police. As NGOs studies and documented cases illustrate, when responding to homo/transphobic crimes, sometimes police officers display improper and/or homophobic treatment. Even above mentioned statistics on reporting makes it clear, - huge number of LGBTI persons indicates fear and shame of homo/transphobic attitude of police officers. Thus, LGBTI community doesn't feel safe with police to report any incident due regard their sexual orientation/ gender identity.

*3.4. Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

Taking into consideration homophobic environment of the county and low degree of trust towards police officers, it would be optimal to set up units tasked specifically with investigating crimes and incidents of hate. There is no such special unit for now. According to the response letter provided by the MIA,<sup>195</sup> in order to maintain balance, at least one policeman from each police department has to participate in the trainings on discrimination.

Herewith, as mentioned above, in 2018 MIA launched Human Rights Department within its system, which monitors investigation to strengthen response to violence against women (including sexual violence), crimes committed on the grounds of discrimination, hate crimes, trafficking and crimes committed by and/or towards minors. The functions of the Department include monitoring of investigation and administrative proceedings on abovementioned crimes, identifying the gaps, preparing and enforcing measures to enhance law enforcement's role to eliminating them.<sup>196</sup> WISG welcomes conduction of the monitoring by the Department, however it is obvious

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<sup>193</sup> Response letter from the Ministry on Internal Affairs, N MIA 4 18 01385698, dated by:12.06.2018

<sup>194</sup> 31 December 2013 Order №999 of the Minister of Interior of Georgia, Tbilisi, on the Approval of the Code of Ethics of the Georgian Police and Instructions for Behavior of Certain Employees of the Ministry of Interior of Georgia, Annex 1, Code of Ethics of the Georgian Police.

<sup>195</sup> Response letter from the Ministry of Internal Affairs N MIA 4 18 01385698, dated by: 12.06.2018.

<sup>196</sup> *ibid*.

that investigation of criminal cases involve huge number of experts, hence several trained investigators clearly is not enough for the efficient outcome.

*3.5. Are there special police liaison officers tasked with maintaining contact with local LGBTI communities in order to foster a relationship of trust?*

According to the information provided by the MIA, the Ministry is focused on the society and its needs; hence it closely cooperates with any group and takes active steps in regard their awareness and involvement at the ongoing processes.<sup>197</sup>

However, the letter does not specify what steps has been taken by the Ministry in regard the members of the LGBTI group.

*3.6. Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

112 is a Legal Entity of the MIA of Georgia, which ensures operative response on the emergency situations. While receiving emergency calls upon the demand of the caller its identity shall remain anonymous. However, a system of anonymous complaints or on-line complaints doesn't exist within the Ministry.<sup>198</sup>

Taking into account homophobic atmosphere, where LGBTI victims refrain contacting not only police, but sometimes also, - LGBTI organisations, WISG has launched anonymous online reporting form. It allows documenting those homophobic and transphobic hate crimes, which remain unreached to. Beside that form, WISG also introduced other forms launched in advance to interview victims and witnesses of hate crime. These are the mechanisms that support documenting cases, where victims refrain from contacting the police. It has to be mentioned that up to 40 hate crimes/incidents have been documented in that way during 2017.

- 4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and trans persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of trans persons.**

*4.1. Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

According to the response letter from the Ministry of Corrections and Probation [currently within the Ministry of Justice] , under the law on "Special Penitentiary Service" servants of the penitentiary institution shall undergo appropriate educational courses which includes teaching of human rights and fundamental freedoms. Respectively, all of the basic training programmes ensure to teach them, as well as to coach regarding the guarantees of human rights' protection in line with national and international standards. Those teachings do highlight the necessity of anti-discriminatory treatment toward defendants and convicts, as they shall have equal access to the rights guaranteed by the law regardless of their race, color, language, sex, religion or belief, national, ethnic or social belonging, sexual orientation, gender identity or other grounds.<sup>199</sup>

The monitoring results demonstrated that the persons involved in the prison maintenance work, responsible for cleaning do not constitute self-identified GBT persons. However, they are identified with GBT persons by the other prisoners and due to the influence of the criminal sub-culture are discriminated on this ground. Persons responsible for cleaning are referred to with the offensive terminology by the other inmates. Unfortunately, it should also be noted that some personnel of the administration also refer to those prisoners with the offensive language. As observed by the Special Prevention Group, the above is also caused by the influence of the criminal sub-culture existing in the penitentiary institutions.

On the one hand, WISG is not in a position to evaluate the results of the trainings. However, it shall be clearly declared that the prison staff is double obliged to meet the following anti-discriminative standards; despite above

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<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Response letter from the Ministry of Corrections and Probation N MOC 318 00438736, Dated by: 16.05.2018.

mentioned obligation, the Code of Ethics of the Staff members of the Penitentiary Institutions bound its staff that they must treat the inmates with respect, without discriminating on any grounds.<sup>200</sup>

*4.2. Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

Under the Code of Imprisonment, in case of a reasonable belief, by decision of the director of the penitentiary institution, based on security and other lawful interests of accused/convicted or other persons, to prevent suicide, self-injury, violence against accused/convicted or other persons, damage to property, and to avert other crimes and offences, surveillance and control through visual and/or electronic means may be conducted. Moreover, to avoid self-injury, or damage to other persons and property, to prevent crimes and other offences in the penitentiary institution, to prevent the non-compliance by an accused/convicted person of a lawful demand of an employee of the Special Penitentiary Service, to repel attacks, to suppress collective disobedience and/or mass unrest, on the basis of a justified decision the special security measures may be applied, to accused/convicted persons, such as separation from other accused/convicted persons or temporary transfer to another penitentiary institution.<sup>201</sup>

In order to establish proper penitentiary institution, that prevent discrimination and shall be based on the principle of equality, it is crucial to identify and satisfy special needs of marginalized groups. In this regard, Georgian penitentiary institutions face huge challenges, including stigma, physical violence, forceful isolation and exclusion from the prison daily life toward LGBTI (or persons who are associated with the group) prisoners.

Despite above mentioned regulations, existing practice is alarming, especially due regard LGBT persons as one of the vulnerable group. As it was mentioned in the special report of PDO on HR situation in close type institutions: "The monitoring results demonstrated that the persons involved in the prison maintenance work, responsible for cleaning do not constitute self-identified GBT persons. However, they are identified with GBT persons by the other prisoners and due to the influence of the criminal sub-culture are discriminated on this ground. Persons responsible for cleaning are referred with the offensive terminology by the other inmates. Unfortunately, it should also be noted that some personnel of the administration also refer to those prisoners with the offensive language."<sup>202</sup> Herewith, under its annual report PDO in 2017 highlighted the problem and underlined that violence between prisoners, criminal subculture and informal governance still remains problematic. In order to create environment free from violence, he noted, on the one hand, it is crucial to establish proper mechanism to expose, document and report cases of violence and on the other hand, to eradicate high risk practices.<sup>203</sup>

*4.3. Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*

This issue is regulated by the Order No. 131 of the Minister of Corrections and Probation of Georgia on "Approval of the rules on recording damages caused by possible torture and other cruel, inhuman or degrading treatment to accused/defenders;" according to that while medical examination of the patients (convicted/defendant) if the medical personnel notes any kind of physical injury, emotional changes and/or other circumstance that would invoke suspicion of an impartial individual of possible torture and other cruel, inhuman or degrading treatment, including sexual abuse, medical staff shall document and photograph the injury in line with the Istanbul Protocol. Those materials shall be sent to the relevant investigative unit.<sup>204</sup>

The effectiveness of implementation those provisions is difficult to assess, especially due regard reports of several human rights organisations and PDO about serious human rights violations in penitentiary institutions which is unfortunately, continual practice.

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<sup>200</sup> Ethic Code of Staff member of Penitentiary Institutions, Order of the minister N. 151, 16.04.2009.

<sup>201</sup> Response letter from the Ministry of Corrections and Probation N MOC 318 00438736, Dated by: 16.05.2018.

<sup>202</sup> State of human rights in closed type institutions (report of the national prevention mechanism), available online at: <https://bit.ly/2KvLawz>

<sup>203</sup> Annual report of the PDO, on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017.

<sup>204</sup> Response letter from the Ministry of Corrections and Probation N MOC 318 00438736, Dated by: 16.05.2018.



4.4. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?

The Ministry of Corrections and Probation has not specifically answered this question and noted that due regard Georgian legislation and safety norms, defendants and convicts persons are placed at the relevant penitentiary institutions and at the relevant cells. Protection of human rights and freedoms are guaranteed.<sup>205</sup>

5. **Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.**

5.1. *Is there research into the nature and causes of hostile and negative attitudes to LGBTI people, with a view to developing effective policies to combat these phenomena?*

Based on information provided by the various state institutions, we can conclude that none of them have yet conducted a research on revealing the nature and causes of hostile and negative attitudes against LGBTI people, which clearly is the essential to combat discrimination towards them.

5.2. *Are there regular surveys into levels of social acceptance of / hostility towards LGBTI people?*

According to the information provided by the PDO of Georgia, no state institution have so far carried out research into the nature and causes of hostile and negative attitudes to LGBTI people, with a view to develop effective policies to combat these phenomena.<sup>206</sup>

5.3. *Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

Upon the information provided by the PDO, the Prosecutor’s Office of Georgia is working on invoking hate motive in the criminal offences. Respectively, underlining hate motive is essential part of drafting crime statistics. According to the letter provided by the Chief Prosecutor’s Office of Georgia, in 2017 hate motive was invoked in 86 criminal offences; out of which the ground of alleged sexual orientation was documented in 12 and gender identity in – 37 cases. Herewith, PDO notes that the law-enforcement bodies does not have an effective regulatory strategy toward hate-motivated violence, its operation is limited by response to particular incidents; thus, is not able to cope with the systemic character of the problem.<sup>207</sup> Moreover, under the report published by the MIA, 53 persons were accused in hate motivated crimes in 2018.<sup>208</sup> In particular, the ground of SOGIE was invoked in 10 offences.

#### B. “Hate speech”

6. **Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and trans persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.**

6.1. *Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

According to the Commission of National Communications, hate speech, in the scope of broadcasting, is regulated by the Code of Conduct of Broadcasting, approved by the Commission’s order No.22 dated by March 12, 2009. Moreover, under the Law on Broadcasting,<sup>209</sup> dealing with the cases of discrimination and issues underwritten by the Code of Conduct of Broadcasting, is the competence of self-regulatory mechanism of the broadcaster.<sup>210</sup>

<sup>205</sup> Response letter from the from the Ministry of Corrections and probation N MOC 0 18 00548876, dated by: 18.06.2018.

<sup>206</sup> Response letter from the PDO, N 12/6833, dated by: 15.05.2018.

<sup>207</sup> Annual report of the PDO, on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017.

<sup>208</sup> The report is available online at: <https://bit.ly/2slBVlZ> [accessed: 22.05.2018]

<sup>209</sup> The Law of Georgia on Broadcasting, articles 56, 59<sup>1</sup>.

<sup>210</sup> Response letter N04/1633-18, dated by: 14.05.2018.

There are no penal measures, but content-related restrictions are regulating the work of broadcast media and internet-providers include prohibition of homophobic hate speech. In particular: "It is prohibited to broadcast programmes that aim to degrade or discriminate a person or a group on the basis of ethnic background, religion, opinion, age, gender, sexual orientation or disability, or any other feature or status or to specifically emphasize such a feature or a status, except when doing so is necessary due to the content of the programme and when this aims to illustrate already existing animosity [towards the person or a group]".<sup>211</sup>

Furthermore, the Law of Georgia on Advertising defines non-ethical advertising as "advertising that violates the universally recognised humane and ethical norms by insulting nationality, race, occupation, social belonging, age, sex, and language, religious, political and philosophical faith." However, it needs to be noted that this particular law does not cover political advertising.<sup>212</sup>

The Election code of Georgia, regulating the preparation as well as the execution of referenda, plebiscites, and elections at all levels in Georgia, imposes certain restrictions on the use of hate speech and on stirring up animosity among different social groups. Article 45, para 3 specifies that: "The election programme shall not contain propaganda of war and violence, [...] of calling to foster citizen hatred and enmity, religious and ethnic confrontation."<sup>213</sup>

Code of Ethics of the Members of the Georgian Parliament drafted in 2004 bans the use of degrading phrases or offensive language by parliamentarians.<sup>214</sup> The document stipulates that members of the parliament are obliged to treat individuals with respect and tolerance irrespective of their difference. It is important to note that the list of grounds does not explicitly include sexual orientation, gender identity and expression.<sup>215</sup> In order to address the shortcomings of the existing document, the draft Code has been initiated and registered by the members of the Permanent Parliamentary Council on Open and Transparent Governance. The draft code obliges the MPs to refrain from infringing honor and dignity of the individuals and making sexist, discriminatory statements and hate speech.<sup>216</sup>

The charter on journalistic ethics of Georgia, created in 2009, originally adopted by 138 journalists establishes a self-regulation mechanism of the media. The charter currently has 320 signatories and contains 11 principles in accordance with international journalistic standards, two of which are particularly relevant to LGBTI persons. Principle 7 in particular states that the "journalist shall be aware of the threat to encourage discrimination in media; so she should take all measures to avoid any kind of discrimination on racial, sex, sexual orientation, language, religious, political or other grounds; as well as based on ethnic or social grounds;" Principle 10 provides further protections for private and personal life, stating that the "journalist shall respect private life of a person and shall not interfere in the personal life of a person if it is not public necessity." Adherence of those journalists to their commitments undertaken by the statutes and its provisions is monitored by a supervisory body, a council consisting of 9 members.<sup>217</sup> Originally, council only discussed complaints against signatory journalists, however, since December 2013 the council discusses the matters/issues that concern journalists who have not signed the charter, and any citizen can appeal to the charter, regardless if they have been directly affected by the content or not.

It has to be noted that until 2015 hate speech was not criminalised in Georgia. However, in 2015 Criminal Code was amended in a way that new provision enclosed some regulations that partly limit the usage of the hate speech in public spaces. The regulation reads as follows: "Public incitement to acts of violence orally, in writing or using other means of expression in order to cause a discord between certain groups based on their racial, religious, national, provincial, ethnic, social, political, linguistic and/or characteristics, provided that this poses clear, direct and substantial risk of acts of violence, - shall be punished..."<sup>218</sup> Obviously, the aim of the provision is prevention of discord rather than protection of marginalized groups from the violence. Moreover, protected grounds of SOGIE

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<sup>211</sup> The Law of Georgia on Broadcasting, article 56.

<sup>212</sup> The Law of Georgia on Advertising, article 3(5)

<sup>213</sup> Election code of Georgia, article 45. Para.3

<sup>214</sup> Code of Ethics of the Members of the Georgian Parliament, article 4.

<sup>215</sup> Code of Ethics, article 11.

<sup>216</sup> Available online at: <https://bit.ly/2MkCPgB> [accesses 24.06.2018]

<sup>217</sup> The charter on journalistic ethics of Georgia, articles 7 and 10.

<sup>218</sup> The Criminal Code of Georgia, Article 239f.

are not incorporated that rises suspicion about the aim of the amendment. Namely, the risk of its usage against sexual minorities may occur.

*6.2. Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*

- a culture of respect, tolerance and diversity, and
- to avoid negative and stereotyped representations of LGBTI people?

No answer has been provided by the Legal Issues Committee of the Parliament of Georgia on this question.

*6.3. Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?*

As mentioned above, Georgian Criminal Code imposes limitation on hate speech; however, it doesn't cover ground of sexual orientation and gender identity.

*6.4. Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

The relevant answer has not been provided by the authorities. However, Internet providers are obliged to create mechanisms which enable the latter to invalidate or disconnect a user who disseminates/forwards undesirable electronic messages, unacceptable products, PC viruses, fraudulent and/or other hazardous programmes.<sup>219</sup> The product is unacceptable if it disseminates hatred or particularly grave forms of violence.<sup>220</sup>

Internet-domain providers shall regularly check the content of the websites registered by them in order to avoid placing unacceptable product on the Internet. If this happens the provider shall promptly exercise the measures to:

- a) Issue a warning to the owner of the domain and set a deadline for removal of the unacceptable product;
- b) If the warning is not taking into account, block the website.<sup>221</sup>

Thus, it is more or less possible to react on homophobic hate speech spread through conventional media; however, in practice addressing Internet-based hate speech remains a serious challenge. This is particularly problematic considering that the hate speech in the Internet toward LGBTI people is the most categorical and offensive, often containing direct incitement to discrimination and physical violence (*cases #10-2018; #16-2016*).

*6.5. If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

In general, incidents of hate speech are not publicly condemned by its authors; however, some cases (*case #10-2017*) have been condemned by PDO. It needs to be noted that President Giorgi Margvelashvili has affirmed his support to Kashia (*case #31-2017*). Margvelashvili stated: “The campaign that was brought against Guram Kashia is unacceptable. Every single person has the freedom of expression, we should respect people's rights and freedoms. I condemn expression of violence in any form. I salute the unified support from the sports community towards Guram Kashia. Hatred and violence is unfamiliar for our society. The Vice-captain of the Georgian national football team and defender for Dutch football club ‘Vitesse,’ Guram Kashia, has my support!”<sup>222</sup>

**7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.**

*7.1. Have guidelines been issued or other measures been taken to raise awareness of public authorities/institutions of their responsibility to refrain from such statements?*

PDO, through the Department of Equality runs training courses for the public authority, directed to ensure equality and eliminate discrimination.<sup>223</sup>

<sup>219</sup> The regulations on service provision and customers' rights protection in the sphere of electronic communications, article (4).

<sup>220</sup> *ibid.*, article 3.

<sup>221</sup> *ibid.*, article 10<sup>3</sup>

<sup>222</sup> Netgazeti, available online at: <https://bit.ly/2LR5ppH> [27.05.2018]

<sup>223</sup> Response letter from the PDO, N 12/6833, dated by: 15.05.2018.

Moreover, it has to be noted that upon the initiative of the Legal Committee of the Parliament the Code of Ethics of the Members of Parliament has been drafted in 2017.<sup>224</sup> According to the draft the deputy shall respect fundamental rights and freedoms and recognise equal rights and opportunities for man and woman. Moreover, the Code obligates deputies not to address hate speech toward minorities based on any ground and also envisages relevant disciplinary sanctions upon the violations. Thus, adoption of the Code would be essentially important in regard precluding hate speech and eliminating discrimination.

*7.2. Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

According to the information provided by the PDO, so called “political homophobia” (hate speech by political authorities) remains problematic that negatively reflects on the rights of LGBTI persons and straightens stigma toward them.<sup>225</sup> Together with hate speech and discriminative announcements, statements made by public authorities refraining from protection of LGBTI, remains unsolved. Such type of statements encourages homophobic attitude in the society and gives hand to an abuse of LGBTI rights.

Considering the level of homophobia in Georgia, the situations when leading politicians cannot or choose not to realize the hazards, that are linked to the systematic violence against LGBTI persons and prefer to ignore such cases of violence, is extremely dangerous; by that their actions legitimize discrimination, in particular statement of Prime Minister Irakli Garibashvili may be recalled about the efficient work of the police on May 17, 2013 and about the fact that no one was harmed during the above mentioned events<sup>226</sup> or statement of Guguli Maghradze on PACE session, claiming that May 17, 2013 crack-down was a minor-scale attack.<sup>227</sup>

Moreover, cases of homophobic hate speech gets its highest point during the pre-election period as the influence on mass minds becomes more populist. During the 2016 election period invoking homophobic and transphobic hate speech became dramatically frequent. Under the report prepared by Media Development Fund (MDF) among 454 homophobic expressions was covered by media 459 times.<sup>228</sup> The cases of homo/transphobic attitude derived from the public authorities (*cases #08-201; 10-2018*) mainly spread intolerance upon the marginalized group and showed that the LGBTI community is less favorable for the decision-making authorities. Thus, it is crucial that every expression of hate was condemned in order to shape public’s opinion; it has to be noted that, until recently it was only NGOs who reacted on the homophobic statements of the politicians, however, as mentioned above, during the last period PDO also condemns such cases.

**8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and trans persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.**

*8.1. Has guidance been issued to public officials and state representatives in this respect?*

WISG is unaware of any guidance been issued in any state institution.

*8.2. If so, is there evidence of public officials and other state representatives promoting tolerance for LGBTI people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?*

On 29-30 June 2017, representatives of the PDO conducted training on “equality and eliminating discrimination” within the EU project “Elimination of all Forms of Discrimination.” The target group of the training was the members of the local self-governance of the regions of Georgia; in total, 37 public officials took part at the course that examined theoretical aspects, as well as practical exercises. Moreover, on 25-25 May 2017 within the same project, teachers of public schools were offered the opportunity to participate at the same training; hence, 40 teachers took part.

<sup>224</sup> Available online at: <https://bit.ly/2MkCPgB> [25.06.2018]

<sup>225</sup> Annual report of the PDO, on the Situation of Protection of Human Rights and Freedoms in Georgia, 2016.

<sup>226</sup> Available online at: <https://bit.ly/2tnqvVg> [accessed 18.06.2018]

<sup>227</sup> Available online at: <https://bit.ly/2MUbt1Y> [accessed 18.06.2018]

<sup>228</sup> Kintsurashvili T., Hate Speech, MDF, Tbilisi, 2016.

The outcome of the trainings, namely examples of public officials and other state representatives promoting tolerance for LGBTI people in their dialogue with civil society, are extremely rare. Analysis of political discourse in Georgia demonstrates that LGBTI issue is highly politicized and often used to mobilize electorate, undermine public support for a political opponent, or similar purposes. Save Public Defender's notes, that often underlines and promotes equality, statements by other officials that genuinely promote equality and mainly support LGBTI group are more likely impossible to invoke.

## II. Freedom of association

9. **Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.**

*9.1. Are organisations whose publicly stated purpose is to work for the well-being of LGBTI people, whether for their human rights, or in other ways, prevented from gaining official registration?*

Under the Constitution of Georgia everyone has the right to form and to join public associations, including trade unions.<sup>229</sup> According to legislative changes of 2009 the process of registration of the non-commercial organisations, their regional branches, NGOs registered abroad and of the International NGOs was simplified. Registration period was reduced to 1 working day and the list of documents necessary for registration was reduced. There are no different regulations for local and foreign NGOs. Separate registration of regional offices of NGOs is not necessary either.<sup>230</sup>

Furthermore, formation of associations is impermissible if such association aims to overthrow or forcibly change the constitutional order of Georgia, infringe upon the independence and territorial integrity of the country or encourage war or violence, provoke national, local, religious or social animosity.<sup>231</sup> Thus, explicitly, there is no legislative obstacle for registering organisations working for LGBTI rights.

On the other hand, the Civil Code of Georgia notes that an organisation shall be disqualified in case its aims are opposed, *inter alia*, to "recognised morals."<sup>232</sup> However, as the latter is not defined it may be deemed as unperceived and may carry some further risks to be interpreted against the purposes of LGBTI rights' promotion. The risk may be increased in correspondence with high homophobic attitude of society, which has to be eliminated in its roots until establishing discriminatory practice.

It has to be noted that WISG is unaware of any refusal on official registration to organisation based on its aims to protect LGBTI rights.

*9.2. If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*

See 9.1.

*9.3. Are there examples of measures taken to:*

- *ensure that LGBTI organisations can operate freely,*
- *defend their interests when necessary,*
- *facilitate and encourage their work?*

There are no specific measures in place to ensure free and safe work of LGBTI organisations in particular.

*9.4. Are LGBTI organisations involved on a partnership basis when framing and implementing public policies which affect LGBTI persons?*

<sup>229</sup> The Constitution of Georgia, Article 26(3)

<sup>230</sup> Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

<sup>231</sup> The Constitution of Georgia, Article 26(3)

<sup>232</sup> The Civil Code, article 32 (3, a).

Despite the willingness and readiness of nongovernmental sector to participate in public policies reflecting LGBTI persons, in general they are not involved. WISG has prepared a number of policy papers and relevant recommendation, which unfortunately have not been taken into account by public authorities.

**10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.**

*10.1. Is public funding earmarked for NGOs accessible to LGBTI organisations without discrimination?*

There is no restriction in applying for funding. As for different state programmes, some NGOs do receive finances from the government (mostly NGOs oriented on social care). Up-to-date no LGBTI organisation has applied for state funding, however there exists no reason to believe that LGBTI organisations would be denied such funding due to the profile of the organisation.

*10.2. Has such funding been made available to LGBTI organisations?*

No.

**11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and trans persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.**

*11.1. Does the state provide effective protection from hostility and aggression for LGBTI human rights organisations?*

According to the annual report, PDO studied several cases of violations against the women and LGBTI+ right defenders because of their activity. In contrast of previous years, it was revealed that the main type of intimidation was cyber-bullying and cyber threat, posing a serious threat to activists living in Georgia (case #16-2016). With anti-gender movements having stepped up their activity in the country and opposing the gender equality policy openly and often through showcasing force, it is crucial that law enforcement agencies properly assess the risks of threats against women and LGBTI+ rights defenders and effectively investigated such facts.<sup>233</sup>

However, problems are still remained in preventing violence against LGBTI rights defenders by law enforcement agencies. Documented cases of recent years (case#05-2016; 01-2017) still reveal improper attitude of the officers, even performing the role of the aggressor itself, making fun or other unacceptable reactions on the cases conducted against the LGBTI minority.

*11.2. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

None of such examples has been documented. Public condemn of the Public Defender's may be deemed as the only measure taken related to ill-treatment of the members of LGBTI organisations (case #01-2017). Obviously, this cannot be counted as the proper measure and respectively, we could yet underline a failure of state authorities to act, or that their action lacks effectiveness in protection from hostility and aggression against human rights organisations and defenders.

*11.3. Are LGBTI human rights organisations able to work with*

- national human rights institutions and ombudsmen,
- the media,
- other human rights organisations?

According to the letter provided by the PDO, LGBTI human rights organisations are able to work and coordinate with the Ombudsman at the national level. In addition, departments within the PDO, namely department of Equality and Gender Equality, closely cooperate with the organisations working on LGBTI rights, as well as with the members of the community. In this regard WISG has an experience cooperating with the PDO, including applying litigation cases of SOGIE grounded discrimination.

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<sup>233</sup> Annual report of the PDO, on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017.

Moreover, in order to raise awareness of journalists several trainings have been conducted by the human rights organisations;<sup>234</sup> such courses are directed to eliminate discrimination in media, to insure that the international standards of broadcasting, prohibition of discrimination and legal aspects toward marginalized groups, including SOGIE, were properly met.

Herewith, human rights organisations are free to cooperate with each other; for that purpose “Coalition for Equality” was formed in 2014 that is a non-formal alliance with the support of the Open Society Georgia Foundation. The Coalition brought together 8 human rights NGOs: Open Society Georgia Foundation, Human Rights Education and Monitoring Center, Article 42 of the Constitution, Union “Sapari,” Georgian Young Lawyers’ Association, Partnership for Human Rights, Women’s Initiatives Supporting Group (WISG), and “Identoba.” The aim of the Coalition is to strengthen the mandate of anti-discrimination mechanisms and promote effective struggle against discrimination.

*11.4. Are they able to take part in training sessions, international conferences and other human rights activities?*

Local LGBTI organisations are members of national and international networks. Respectively, they regularly participate in conferences, trainings and session both at national as well as international levels.

**12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and trans persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.**

*12.1. Are LGBTI organisations consulted on the adoption and implementation of measures affecting the rights of LGBTI persons?*

At present the cooperation is more of a one-sided process. It is mostly LGBTI organisations who send their proposals and suggestions to state institutions; in particular, it includes proposals, policy papers or recommendations prepared by NGOs in order to evaluate challenges faced by trans people for changing their documents, co-sponsorship of gender reassignment procedures, combating homophobic hate speech, etc.<sup>235</sup> Unfortunately, most of the proposals does not get any feedback from the state.

*12.2. Have there been such consultations regarding the implementation of this Recommendation?*

Under the response letter from the MIA, police officers have been trained, however, detailed information has not been provided.

### **III. Freedom of expression and peaceful assembly**

**13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.**

*13.1. Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*

- *activities that support the human rights of LGBTI persons*
- *publication of material*
- *media coverage*
- *organisation of/participation in conferences*
- *dissemination/access to information on safe sexual practices?*

*13.2. Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

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<sup>234</sup> Available online at: <https://bit.ly/2NFfIR1> [accessed: 18.06.2018]

<sup>235</sup> For example: Policy paper, Legal Situation of LGBTI People in Georgia, WISG, 2015.

In regard freedom of expression and peaceful assembly, LGBTI community always faces high risks and obstacles. The clearest example of such infringement is IDAHOT event in 2017. Despite the prior consultations with the MIA and the representatives of Administration of Government, peaceful assembly celebrating May 17, was limited in time and space; respectively, LGBTI community was not able to choose freely the place and the format of their event.

Similarly, as discussed above, IDAHAT was not adequately celebrated either in 2015, 2016 or 2018. The full enjoyment of freedom of assembly and expression of LGBTI community has been always opposed to the risks and threat coming from the third party forces.

Taking into consideration all mentioned cases we may conclude that even if the authorities does not explicitly restrict the freedom of expression of LGBTI persons, their indirect actions, unwillingness or inability to protect LGBTI assemblies, are causing the same results and disproportionately limit fundamental rights.

*13.3. Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

In general, the government neither encourages nor prohibits reception of transmission of information and ideas related to SOGIE. However, remaining silent about the range of problems related to the sexual minorities would not have positive outcome toward protection of LGBTI rights. However, it has to be noted that unlike most authorities, PDO makes encouraging statements in respect of issues of SOGIE.

- 14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.**

*14.1. Have the authorities ensured freedom of peaceful assembly for LGBTI people?*

During the last years, WISG as well as other equality movements have conducted a number of thematic events, as well as IDAHOT small-group marches. City Hall was also informed in advance about the IDAHOT events on May 17, 2012, 2015, 2017; the permission to carry out these activities was not denied and was responded on time.

Thus, the formal measure to ensure freedom of peaceful assembly for LGBTI people is taken by the state; however, effectiveness and appropriate examination of that is doubtful that will be discussed in 15.1.

- 15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and trans persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.**

*15.1. If there has been hostility to LGBTI freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

As already mentioned, WISG witnessed horrific events on 17 May 2013, when dozens of peaceful demonstrators, who had gathered to celebrate this day, were ravaged by the Georgian Orthodox Church and the members of the counter-demonstration, organized by questionable political forces. Considering the power ratio, lives of peaceful demonstrators was at risk. A number of the counter-demonstrators were reaching tens of thousands. Counter-demonstrators broke through the police cordon and surrounded buses full of IDAHOT activists. They broke windows of the bus and attempted to get inside, insulting LGBTI activists physically and verbally. Notably, that day marked itself in the history of civil society and since 2013 the fair of aggression is co-attribute of IDAHOT events.

On November 17, 2013 WISG and 15 others have filed an application at the ECtHR. The application concerns a failure of the state to fulfill its positive obligation on case of 17 May 2013. In particular, applicants believe the state has violated the following rights guaranteed by the European Convention on Human Rights: prohibition of torture (Art. 3 of the European Convention), right to respect for private and family life (Article 8), freedom of expression (Article 10), freedom of assembly and association (Art. 10), right to an effective remedy (Art. 13), prohibition of discrimination (Art. 14), prohibition of abuse of rights (Art. 17).

However, ever since, on the 17<sup>th</sup> of March, LGBTI community and its defenders are trying to practice their constitutional rights to peaceful assemblies and demonstrations. Sometimes they're managed, in some cases, they cannot and sometimes it is done partially.



In 2018 WISG had several meetings with the MIA regarding IDAHOT 2018 and the Ministry declared their readiness to guarantee activists' safety. However, LGBTI activists have not failed to notice recent political events and social tension following Tbilisi nightclub raids. The demonstration was escalated as the city's main avenue was occupied not only by the peaceful demonstrators but also by an uncontrolled unlawful neo-nazi group. The government had to put unprecedented efforts into holding back several hundred destructive citizens, who were even tearing the trees apart. Fortunately, demonstration ended peacefully and the expected confrontation was avoided.

Thus, during the last years LGBTI activists had to compromise their rights of assembly in order to maintain their safety that clearly speaks about the inability of the state to provide proper protection from the threats faced by the LGBT community.

*15.2. In particular, have the police protected participants in peaceful LGBTI demonstrations effectively?*

See answer 15.1.

Moreover, as mentioned above in 17 May 2017, police provided protection in peaceful IDAHOT demonstration; however, taken into account treats coming from third party the demonstration was limited in time and place. Moreover, after the event, the activists were relocated by the transport provided by the state.

*15.3. Have the police acted with integrity and respect towards LGBTI people and their supporters when policing LGBTI freedom of assembly events?*

See answer 15.1 above.

**16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.**

*16.1. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*

Authorities have not specifically restricted freedom of assembly to LGBTI events yet today. However, insufficient protection impacted community to limit their rights themselves.

*16.2. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

None of the permits issued by the City Hall authorizing events entailed any specific preconditions regarding time or place for organizing these events. However, in 2016 LGBTI activists were suggested to perform in a different place rather than they wished, as MIA noted they could not give guarantees on safety at the latter place.<sup>236</sup>

*16.3. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

N/A

**17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and trans persons.**

*17.1. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*

*a. Has there been encouragement to public authorities to condemn such interferences?*

*b. Have public authorities actually condemned such interferences?*

*17.2. Where there has been public hostility towards the exercise of freedom of assembly by LGBTI people, have the authorities upheld this right publicly?*

*17.3. Or, on the contrary, have the authorities endorsed or supported hostility towards LGBTI freedom of assembly events?*

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<sup>236</sup> Group of LGBTI activists: 'Government could not give us safety guarantees to organize a peaceful demonstration,' Liberali, 15.05.2016, available online at: <http://bit.ly/2hQbinY> [accessed 23.05.2018]

17.1-17.2. Regarding the incidents of May 17, 2013, Prime Minister of Georgia, as well as Ministers of Justice and Foreign Affairs, made open statements about freedom of assembly and association, emphasizing that it is the government's primary responsibility to ensure the access to this right for every group.<sup>237</sup>

Moreover, PDO made the statement regarding the same event highlighting that LGBTI organisations and its defenders were not allowed to exercise their freedom of assembly granted by the Constitution, as well as the facts of physical violence based on hate were documented. PDO also regretted that the cases of violence did not get proper legal feedback and no one was punished for that hate motivated crimes for a long time. Hence, PDO called upon stakeholders to strengthen cooperation with society in order to eliminate and prevent existing homophobic manifestation and to carry out timely, effective and accountable investigation on the hate motivated crimes.<sup>238</sup>

In relation to May 17, 2016 Ombudsman condemned practice that celebration of IDAHOT was unable to perform in the open air. He corresponded to LGBTI organisations that they cannot associate freely because the lack of safety guarantees and considered alarming that homophobic attitude of society endangered realization of the rights guaranteed by the Constitution. Therefore, PDO requested public authorities to promote condemnation and elimination of hate crimes, as well as unconditional implementation of LGBTI rights and freedoms guaranteed by the Convention were properly exercised.<sup>239</sup>

#### IV. Right to respect for private and family life

- 18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.**

*18.1. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

No. Consensual homosexual sexual conduct was decriminalised in Georgia in 2000. Moreover, the age of consent – 16 years old - is the same for both – homo or heterosexual people.

*18.2. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding (a) sexual orientation or (b) gender identity?*

*18.3. If so, what steps are the authorities taking to remedy this situation?*

The criminal law does not contain any provisions that could be used in a discriminatory manner.

- 19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.**

*19.1. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

The law on Personal Data Protection that was adopted in 2011 and since that been amended several times proclaims as its main principles that the data shall be processed a) lawfully and fairly; b) only for specific, clearly defined and legitimate purposes. Further processing of the data is inadmissible for the aims incompatible with the original purpose; c) data shall be processed only as much as necessary to achieve the appropriate legal aims. The data should be adequate and proportionate to the aim of its processing; d) data shall be clear and exact; in case of necessity they shall be updated. Data that are not collected and processed in line with legitimate grounds shall be blocked, deleted or destroyed; e) Data shall only be stored for a period that is necessary to achieve the purpose of

<sup>237</sup> Available online at: <https://bit.ly/2JTJpNk> [accessed 19.06.2018]

<sup>238</sup> Available online at: <https://bit.ly/2M7LyCl> [accessed 19.06.2018]

<sup>239</sup> Available online at: <https://bit.ly/2li6o6G> [accessed 19.06.2018]

its processing. After achieving this purpose they shall be blocked, removed or destroyed or be stored in a way that excludes identification of person, unless otherwise provided by the law.<sup>240</sup>

Moreover processing data of special category, that includes information about sexual life, is prohibited unless prescribed by the law. The grounds of its proceeding are as follows: a) the subject of data gave the written consent on the processing of special category; b) the processing of data related to criminal and health status is essential for the determination of labor relations, including the decision on employment; c) data processing is necessary for protecting the vital important interests of the data subject of the third person and the data subject has no physical or legal capacity to give the consent; d) Data processing is exercised for the purposes of public health, by the medical institution (medical worker) for protection of a person's health, also if it is necessary for management or functioning of the healthcare system; e) The subject of data made public the information about him/her without clear prohibition of using the data on him/her; f) data processing is exercised in the course of legitimate activity by the associations or other non-commercial organisations of political, philosophical, religious or trade character. In such case the data processing may cover only the members of this organisation, of those persons, who have the constant communication with this organisation; g) processing data for the personal cases of defendants/convicts in order to considerate matters relating to the modification of their penalty with lighter; etc.<sup>241</sup> Herewith, article 15 of the same law guarantees the right of data subject to receive information about the processing data about him/herself, request to correct, update, add, block, delete, and destroy them.

Therefore, data subjects are kind of given the certain rights to "control the process," as they are entitled to ask what kind of data about him/her is being processed; the purpose of data processing; the legal base for data processing; how the data was collected; to whom the data was submitted, the ground and purpose of submission. If requested, the data processing official is obliged to correct, update, add, block, delete or destroy the data, if it is incomplete, incorrect or outdated, or if it has been collected and processed unlawfully. The information about a person's sexual life includes information about their sexual orientation and is covered by the law. Unlawful treatment of this information is a criminal offence.<sup>242</sup> Hence, as mentioned above, data regarding sexual life is strictly limited to be collected, stored or otherwise used.

Whereas, due to homophobic environment in the country, the existence of such information in official form, and moreover – its release to thirds parties – can have significant negative repercussions on person's life and enjoyment of his/her fundamental rights and freedoms. On the other hand, Georgian society has certain soviet legacy when people were labeled as representatives of LGBTI community to undermine their reputation in the public eye. Therefore, strict limitation in accordance to mentioned regulations is essential to be ensured.

*19.2. What steps have the authorities taken to ensure that existing records are destroyed?*

No answer has been provided by relevant authorities.

*19.3. Have these steps been effective?*

See 19.2.

*19.4. Is there any evidence of:*

- *the continued existence of such records*
- *the continuing collection of such data?*

In its response Personal Data Protection Inspector noted that the only citizen has approached the Office of the Personal Data Protection Inspector about alleged illegal processing of data on sexual life. The applicant alleged that the certain private and public agencies were processing data regarding his/her sexual life. The citizen explained such allegation by scornful and flouting attitude demonstrated by the employees of these institutions. The Office has examined the legality of processing special data category of the applicant's by requesting information from the state organisations indicated in the application; also, conducting on spot inspection at the agencies. (Application

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<sup>240</sup> The law of Georgia on Personal Data Protection, article 4.

<sup>241</sup> *ibid.*, article 6.

<sup>242</sup> The Criminal Code of Georgia, Article 157

was examined prior to the legislative amendments, when the Inspector's authority was limited in private sector.) However, examination of the circumstances did not affirm processing data of applicant's sexual life.<sup>243</sup>

**20. 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.**

*20.1. Has a review of such prior requirements been conducted?*

MoJ has not provided answer to that question.

Trans people living in Georgian are deprived from the most important recognition. They cannot change the gender marker on their IDs since the LGR mechanism is not regulated by the law. As of today, trans people have been forced to undergo unwanted, medically unjustified, expensive and life-threatening procedures in order to change their gender marker. Namely, new ID and birth certificate can be issued only when the person changes sex and only after he/she undergoes the surgery. According to the law on the Civil Acts, a person has a right to request changes or amendments to his/her entry including the name.<sup>244</sup> The ground of such request includes the change of gender. On the other hand, there is no official definition or explanation of how we should understand "change of gender" or what are the specific documents, that the applicant is required to present in order to achieve legal recognition of his/her gender. According to the existing practice in the civil acts registration body, in case of fully underwent medical procedures of gender reassignment, a person is entitled to change his/her personal data in the official documents, which is a long process. Before the actual surgery a trans person has to be observed by psychologists and sexologists. These observations last for more than a year. At the end of the process the special committee has to conclude on whether or not the applicant is a "true transsexual" and then issues a relative document. Only after this document is issued a trans person has the right to undergo the gender reassignment surgery. One more thing to do before the surgery is the hormone therapy. Consequently, irreversible sterilization, hormonal treatment and preliminary surgical procedures are mandatory procedures which one has to go through in order to be able to obtain new documents.

As a result, trans people become victims of discrimination every day and at every place where they are asked to show their IDs. This means that trans people are in unequal conditions at the times of employment, service delivery and participation in daily life.

Taking into account all mentioned, organisations working on LGBTI rights demand the MoJ to develop LGR mechanism as trans people should be given opportunity to carry the IDs that confirm their real sex, without undergoing compulsory medical procedures.<sup>245</sup>

However, in June 2018, MoJ, Thea Tsulukiani had noted "speaking about the failure of reforms, NGOs are complaining that we do not sign sex in the documents as they demand. This is a huge reform if it is carried, but I admit that I have not conducted it... these NGOs ask me that the person having organs of male was registered as female and person having female's organs – as male. I admit that I have not carried such reform."<sup>246</sup> Such declaration by the MoJ is extremely alarming as it straightens stigma towards trans persons and encourages their marginalization from the society. Moreover, the statement is another example of political homophobia and transphobia.

*20.2. Are there still requirements which might be considered disproportionate or even abusive, such as:*

- *irreversible sterilisation,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

See above 20.1.

**21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official**

<sup>243</sup> Response letter from Office of the Personal Data Protection Inspector N271/01, dated by: 20.11.2014.

<sup>244</sup> The law of Georgia on the Civil Acts, article 78.

<sup>245</sup> May 17 appeals, available online at: <https://bit.ly/2tg25xs> [accessed 21.06.2018]

<sup>246</sup> Available online at: <https://bit.ly/2KRk8KN> [accessed 21.06.2018]

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.

21.1. *Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

None of such procedures do exist.

21.2. *Do these make possible the change of name and gender in official documents including*

- *birth certificates,*
- *identity papers,*
- *driving licenses,*
- *passports,*
- *social insurance cards and numbers,*
- *electoral, land and text registers*

*in a quick, transparent and accessible way?*

As the governing rules are not underwritten, according to the existing practice, gender record may be changed in birth and death certificates, as well as in the ID cards, but only after the gender reassignment surgery. Changing name is less confusing and can be made prior or after surgery.

21.3. *Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as;*

- *diplomas,*
- *certificates of employment, and*
- *insurance or banking documents?*

It is worth mentioning that until 2012, it was impossible to obtain repeated higher education diploma. Relevant normative act prohibited issue of the repeated higher education diploma for any reason. Pursuant to the 26 June 2012 Order (№120/n) of the Minister of Education and Science of Georgia concerning the use, registration-reporting and issue of strict registration forms of documents attesting education, it is allowed to issue a duplicate of a diploma if a person submits a document confirming the change to name and/or surname.

21.4. *If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

Such cases have not been documented.

**22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of trans persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.**

22.1. *Is the right of a legally recognized trans person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

Georgian legislation does not provide trans person with the right to marry, unless the mates are representatives of biologically different genders. Namely, Civil Code and the new amendments of the Constitution define marriage as the "union of woman and man." Thus, we may assume that in case the person's gender is legally changed, there should not be any obstacles for marriage of transgender couple. However, such cases have not been documented.

**23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.**

23.1. *Does legislation confer rights and obligations on unmarried couples?*

No obligation on unmarried couples is applicable. However, unmarried couples may claim certain rights if they prove that they have been taking care of common household for certain period of time. WISG is unaware of any relevant case related to same-sex couples.

On the other hand, highlighted problem due regard rights of homosexual partners is inability to visit in prison.<sup>247</sup> The provision of the Code of Imprisonment, stating that the convict may be granted the right of long term visit with her/his child, adopted child, grandchild, spouse, with the person whom he/she has a child, parents, fosters, grandparents and siblings,<sup>248</sup> was appealed at the Constitutional Court of Georgia. According to the regulation, applicant, a member of the LGBTI community, was deprived the right to be visited (long term visit) by his partner. Under the Constitutional claim, when the heterosexual prisoners enjoy the right to a long-term visit to their spouses, homosexual prisoners are deprived of such right, in addition Georgian legislation doesn't recognises any form of same-sex partnerships and as a result, such situation violates principle of equality against LGBTI community. However, because the lack of comparator the Constitutional Court of Georgia denied the examination of the case.<sup>249</sup>

*23.2. If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

Nothing has been done to ensure these rights for same-sex couples; in contrast amended Constitution defines marriage as the union of woman and man, that clearly encourages negative attitude of society against LGBTI persons and excludes further possibility of same-sex marriage.

**24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.**

*24.1. Does legislation recognise registered same-sex partnerships?*

Georgian legislation does not recognise registered same-sex partnership.

*24.2. If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

N/A.

**25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.**

*25.1. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

Authorities have not considered possibility to implement legal or other means to address the practical problem arising from the lack of recognition. As already mentioned, due regard the constitutional amendment Venice Commission recommended Georgian authorities not to interpret "union of man and woman" in a way that precluded same-sex partnership. Commission highlighted that Georgia, as well as all member states of CoE are obliged to accomplish standards set by ECtHR. However, no steps have been made in regard this recommendation. Herewith, the law of Georgia on Violence against Woman and Domestic Violence does not consider an intimate partner as a family member, respectively doesn't regulate violence committed by him/her. Unfortunately, no positive changes have been made in this regard.

**26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.**

*26.1. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

No steps have been taken in this regard.

*26.2. In practice, are such decisions taken on a non-discriminatory basis?*

<sup>247</sup> Available online at: <https://bit.ly/2Ma4EYM> [accessed 21.06.2018]

<sup>248</sup> The Code of Imprisonment, article 17.

<sup>249</sup> Constitutional Claim available online at: <https://bit.ly/2MlxTmx> [accessed 21.06.201]

No steps have been taken in this regard.

- 27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.**

*27.1. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

According to the response letter from the MoLHSA the procedure of adopting a child is regulated under the law on Adopting and Fostering and under the order of the Minister on Approving the Rules of Adoption. Those regulations equally cover the target group without discriminating on the grounds of SOGIE.<sup>250</sup>

However, as mentioned, Civil Code of Georgia authorises child adoption by the couple only if they are married. Since the same-sex marriage is not recognised under the Georgian legislation, same-sex partners cannot adopt a child. Georgian legislation allows adoption by a single parent, except when she/he cannot exercise the right of parent because of illness, moral or other personal characteristic.<sup>251</sup> However, the law does not specify criteria for moral eligibility, neither does exist an authoritative judicial or academic interpretation how to ascertain moral eligibility for being a parent. Speaking in Georgia, where the public opinion widely considers homosexuality to be immoral, there exists a high probability that a lesbian, homosexual or transgender single parent won't be recognised as "morally fit" for being a parent.

*27.2. In practice, are such decisions taken on a non-discriminatory basis?*

WISG is unaware of any relevant cases regarding this issue.

- 28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.**

*28.1. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*

Assisted reproduction is allowed to a single woman.

*28.2. In practice, is such access granted on a non-discriminatory basis?*

The MoJ had not responded to that question, however WISG is unaware of any relevant cases regarding this issue.

## **V. Employment**

- 29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.**

*29.1. Does legislation exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*

Under the Labor Code of Georgia, labor and pre-contractual relations shall prohibit any type of discrimination due to race, skin color, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, public, political or other affiliation, including affiliation to trade unions, political or other opinions.<sup>252</sup>

As shown, labor Code expressly prohibits discrimination based on sexual orientation and gender (the bases of prohibition do not include gender identity, however in case of necessity it shall be easily invoked). Nevertheless, these legislative acts still contain flaws and/or lacks strong implementation mechanisms; thus, cannot be effectively

<sup>250</sup>Response letter from MoLHSA, N 01/29158; dated by: 17.05.2018

<sup>251</sup> The Civil code of Georgia, article 1245.

<sup>252</sup> Labor Code of Georgia, article 2 (3).

utilized to fight against LGBTI discrimination in practice. Some community members recalled that they are not employed because of their orientation, which is obvious based on their ways of dressing up.<sup>253</sup>

Moreover, the purpose of the law on "Elimination all Forms of Discrimination" is to eliminate each form of discrimination and to ensure equal rights of every natural and legal persons under the legislation of Georgia, irrespective of race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics. Therefore, it is the additional legislative guarantee to prohibit discrimination in labor relations.

#### 29.2. Does it cover:

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

Above mentioned legislative records cover labor and pre-contractual relations. Hence, it theoretically includes access to employment, promotion, dismissals, pay, etc.

The Labor Code of Georgia includes far important regulation that bounds employer to provide a written substantiations of the grounds for terminating the labor agreement within 7 days after submitting the request for its termination.<sup>254</sup> Such provision is the essential precondition for protecting rights before the national mechanisms, in PDO as well as litigating at courts. Despite mentioned legislative limitations, labor disputes on the grounds of SOGIE are not pending. WISG has requested relevant information from the courts and it revealed that they either have not considered labor disputes on these grounds or do not administer such statistics. However, employment is the field of public relations where LGBTI persons often face discrimination and it has to be underlined that trans persons are especially vulnerable at the labor relations. Owing to current practice of legal recognition of gender, their majority do not possess identification documents matching their gender self-expression. For this reason, trans persons try to employ unofficially and have to agree lower working conditions. Some of them (mostly transgender women), are involved in commercial sex, thus making them more vulnerable and unprotected towards violence.<sup>255</sup>

The practice of PDO includes much cases of discrimination based on sexual orientation. According to the report of 2016-2017, 11% of the cases proceeded by PDO concerned discrimination based on SOGIE.<sup>256</sup> In one of its decisions Ombudsman mentioned: "LGBTI community is one of the most vulnerable groups in Georgia. They face problems in a number of spheres of public life, including personal, professional, social or cultural aspects of life. The aggressive attitudes existing in society, which feeds on established stereotypes, limits the possibilities for LGBTI people to be an absolute members of the society and avoid verbal or physical abuse against them."<sup>257</sup>

29.3. *Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:*

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBTI persons;*

<sup>253</sup> Materials for preparation of CEDAW shadow report concerning LBT women's situation in Georgia, WISG, 2012.

<sup>254</sup> The Labor Code of Georgia, 38(5).

<sup>255</sup> Gvianishvili N., Status of Trans persons in Georgia, WISG, Tbilisi, 2014.

<sup>256</sup> "Fight against Discrimination, Its Prevention and Situation of Equality," PDO, Tbilisi. 2017, available online at: <https://bit.ly/2lo3gX7> [accessed 20.06.2018]

<sup>257</sup> Available online at: <https://bit.ly/2kU1n46> [accessed 20.06.2018]



- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBTI persons?*

No updated information has been provided by the relevant authorities. However, according to existing information the letter of 2012 of MoJ noted: “The MoJ offers the equal opportunities to all staff regarding employment and to the candidates, regardless of the race, colour, religion, sex, nationality, age, etc. Such policy of the MoJ is intended to prevent any staff from restriction and exclude inimical and abusive relations during the working process”.<sup>258</sup>

On the other hand one should mention as a good practice the following example of MoJ. In particular, MoJ has elaborated the guidelines for the staff to secure the ethical and polite working conditions. Each staff member of the Ministry has a right to have working environment where he/she is free from restrictions and hostile attitudes on the ground of race, colour, religion, sex, nationality, age and other similar characteristics. This policy increases the working process effectiveness within the healthy environment. Every staff member of the MoJ is entitled to inform General Inspectorate and department of HR about any attempt of sexual harassment.

Another good example may be found in the field of higher education. Discrimination is inadmissible while holding the competition for electing the leaders of the higher educational institutions. Higher Educational Institutions may define the requirements for the candidates of a dean, however, it is prohibited to establish any restriction on the ground of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and position status, place of residence, citizenship and academic position.<sup>259</sup>

Despite the fact that self-regulation mechanisms have been created, it is difficult to evaluate its effectiveness.

*29.4. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

As already mentioned the law of Georgia on “Elimination all forms of Discrimination” prohibits discrimination on any ground, including SOGIE. Upon the recommendations of Georgian Trade Unions Confederation amendments of the Labor code entered into force that precluded discrimination on any ground in pre-contractual period. However, in its letter, the Union notes that even such regulation does not provide proper protection, as according to article 5 of the Labor Code employer is not obliged to provide substitution on refusal to hire.

Therefore, it is crucial to make changes in the given provision and impose obligation to employer so that in case candidate invokes circumstances that create reasonable grounds on the discriminatory treatment, the employer shall be obliged to substantiate refusal on hiring. Otherwise, it encourages discrimination that causes serious problems for the marginalized job seekers, as it does not oblige the employer to document the reasoning for its refusal.

Under the information provided by the Civil Service Bureau, in order to establish discrimination free environment both in the public and private sector, also bearing in mind importance of the issues related to SOGIE, certain regulations had been introduced at the government’s resolution (#200, dated by 20.04.2017) on the “General Rules of ethics and conduct in the Public Institutions,” including prohibition of sexual harassment and hate speech ban.<sup>260</sup>

*29.5. Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBTI persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBTI persons and promote tolerance and respect?*

The law of Georgia on the “Status of Military Servants” lays down social and legal guarantees for military servants, which includes equality before law, freedom of speech and information, freedom of religion and belief, protection

<sup>258</sup> Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

<sup>259</sup> Ibid.

<sup>260</sup> Response letter from Civil Service Bureau №5082; dated by: 11.05.2018

of their freedom, honor and dignity. However, the law does not specify forms of discrimination or protected grounds. Moreover, neither includes provisions regarding general or sexual harassment.

According to the letter provided by the Ministry of Defense<sup>261</sup> under the Minister's decree they had adopted the "Code of Ethics of Military Servants within the system of Ministry of Defense of Georgia," which serves to create a non-discriminatory environment among military personnel. Moreover, the resolution on the "Approval of Military Disciplinary Rules among Military Servants within the System of Ministry of Defense of Georgia" is directed to establish discipline and prevent unethical behavior. According to the amendments made in 2017, sexual harassment is deemed as disciplinary violation that invokes relevant sanction. In this regard, electronic course on elimination of sexual harassment will be introduced to civilians and military servants, which would cover issues of prohibiting harassment of sexual minorities.

*29.6. Do measures designed to combat discrimination in employment fully and effectively cover trans persons?*

Trans persons are especially vulnerable at labor market. Due to established practice of legal recognition of their gender, the majority of trans persons do not have proper identification documents that correspond to their gender expression. This obligates them to seek unofficial employment that often consist risks to their life and well-being. Unfortunately, state does nothing to change this situations; moreover, Minister of Justice proudly declared that they have not carried such reform.<sup>262</sup>

*29.7. Have employment programmes focusing specifically on employment opportunities for trans persons been developed?*

The MoLHSA did not provide exact answer on the question and informed in a general way. According to response letter,<sup>263</sup> measures and services, envisaged by the current governmental programmes in the field of employment, are equally applicable to all job seekers registered at the informative system of labor market and ensure their involvement in the following programmes: "State programme for development of employment promotion services of 2018"<sup>264</sup> and "State programme for professional preparation/learning and qualification rising of job seekers."<sup>265</sup>

**30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.**

*30.1. Have measures been taken to avoid disclosure of trans persons' gender history or former name in the context of employment?*

Personal data consists different categories and the level of their protection varies. Information about person's sexual life is considered as specific personal data, processing or passing of which to a third party is only possible within the written consent of this person, or in the case when she/he made it public.<sup>266</sup> The information about a person's sexual life includes information about their SOGIE and is covered by the law. Misuse of such information is deemed as a criminal offence.<sup>267</sup> WISG is unaware about the case when the disclosure of trans persons' gender history or former name in the context of employment reflected the process of employment.

## **VI. Education**

**31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence,**

<sup>261</sup> Response letter from Ministry of Defense N MOD 7 18 00478050; dated by: 16.05.2018.

<sup>262</sup> Available online at: <https://bit.ly/2K8K8KN> [accessed 21.06.2018]

<sup>263</sup> Response letter from the MoLHSA # 01/29158, dated by: 17.05.2018.

<sup>264</sup> Resolution of Government N11 of January 15, 2018.

<sup>265</sup> Resolution of Government N76 of February 12, 2018.

<sup>266</sup> The Law of Georgia on Personal Data Protection, article 6 (2.D).

<sup>267</sup> The Criminal Code of Georgia, article 157.

## **bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.**

### *31.1. Have*

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

*for educational staff been introduced or updated to ensure that LGBTI pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?*

Discrimination is prohibited in the field of education and equal access to education is recognised by law both in primary as well as secondary and higher education.<sup>268</sup> Moreover, The law expressly determines the purposes of higher education, which secures accessibility and openness of higher education; academic freedom in teaching, learning and research; provision of lifelong learning opportunities; Involvement of academic personnel and students of higher education institutions in making decisions and in monitoring their implementation; publicity and transparency of higher education institution management and the competitions held there; prohibition of all forms of discrimination in the sphere of higher education, including academic, religious and ethnic grounds, and/or views, gender, social origin or any other grounds.

Under the resolution of government, on the procedural rules of Referring Child protection,<sup>269</sup> public schools have adopted internal rules on prohibition of violence. Those provisions envisaged the rights and obligation of the person responsible on referring violence, as well as the procedure on revealing cases of using force over children and referring them to Social Agencies. The authority responsible for such procedure are resource officers of educational institutions, in case of their absence – principal or deputy principle of the school. The responsible authority properly reveals the cases of bullying and refers victim/supposed victim immediately to the Social Agency. According to the same letter, within the office of resource officers of educational institutions, the division of psychological service provides psycho-social assistance upon the cases of behavior or emotional disorder for children, youth, their parents, if necessary for teachers and administrators of the school. The beneficiaries are not distinguished regardless of their skin color, religion, ethnics, gender identity, sexual orientation or other grounds.

Due regard the resolution no specific guarantees are underwritten for LGBTI pupils and students. In fact, there have not been any concrete steps taken in terms of preventive and/or awareness raising measures in the field of education and youth. Bullying in general and especially towards LGBTI youth in schools remains a problem in Georgia. No detailed analysis of school textbooks has been conducted, which would render it possible to determine, whether the texts are free of homophobic stereotypes, whether they include adequate information about sexual orientation/gender identity, and etc. It should be mentioned that no special programmes (awareness, psychological counseling, etc) are being implemented at schools or higher education institutions to meet the needs of LGBTI pupils/students. Attitudes towards LGBTI persons and issues at schools and universities echo general societal patterns and are under a strong influence of traditional stigmas, taboos and values promoted by the Georgian Orthodox Church.<sup>270</sup>

*31.2. Do initial and in-service training programmes for teachers and other educational staff address the need for them to*

- a. treat their LGBTI pupils and students with respect*
- b. be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

The Psychological Services Center is involved in the training process of resource officers of educational institutions, who are responsible for schools' security. The trainings are conducted by psychologists and cover issue such as: stages of child development, communication, conflict management and mediation, mental health, stress,

<sup>268</sup> The Law of Georgia on Basic Education, article 3.

<sup>269</sup> The Resolution of Government N437 dated by: 12.10.2016.

<sup>270</sup> Available online at: <https://bit.ly/2MfZXwJ> [21.06.2018]

psychological trauma and violence, identifying and referring children under the risk of violence. Hence, the training-module has been established due regard „procedures on referring cases of violence against children.“ According to the response letter,<sup>271</sup> 1300 resource officers of educational institutions and 1576 representatives (principal/deputy principal) had undergone the course. Moreover, since 2016 the training is available on prevention bullying at schools and encouraging cultural tolerance. During that period of time 634 teachers of civil education were trained about the forms of violence, stigmas and stereotyped attitudes that influence violence and bulling.

WISG notes that in order to effectively improve de-facto (not merely just legal) situation of LGBTI community members it is important to ensure launching of a large scale campaign to raise awareness and sensitivity of teachers/educational staff towards hate crimes in general, including LGBTI people, in order that dialogues about SOGIE related issues moved from informal sources to formal education.

*31.3. Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBTI organisations?*

No information is provided by the MES in this regard. However, the relevant practice is unknown to WISG.

- 32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.**

*32.1. Is information on*

*a. sexual orientation*

*b. gender identity*

*provided in school curricula and sex and health education classes?*

Firstly, school curricula do not include sex education. Moreover, no special programmes (awareness, psychological counseling, etc) are run at schools or in higher education institution to meet the needs of LGBTI pupils/students.

According to the information provided by the Ministry of Education and Science [currently under the name of the Ministry of Education, Science, Culture and Sports of Georgia], National Educational Plan does not include topics regarding sexual orientation, gender identity and sex education.<sup>272</sup> However, pupils of VII-IX grade are suggested Civil Educational Plan, which explicitly covers issues of gender equality and child marriage. In this regard, reads the letter, teaching human rights and principals of democracy are carrying the central importance. The Ministry underlines that one of the main principles they run is equality, which means that every citizen is equally valuable and that everyone should have equal right and opportunities to demand elimination of discrimination regardless of their race, religion, sex, and ethnicity. However, WISG is unaware regarding the content and methodology of such teaching.

Thus, as it reveals neither curricula nor National Educational Plan contains or explicitly covers SOGIE as protected grounds that clearly is the huge step backwards in relation to awareness and sensitivity rising toward LGBTI people.

*32.2. Is it provided in a respectful and objective manner?*

N/A

*32.3. Are LGBTI pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

Ministry of Education and Science did not provide any answers regarding this question. However, as mentioned there are no special programmes, including awareness, psychological counseling, etc., run at schools or in higher

<sup>271</sup> Response letter from the Ministry of Education and Science # MES 9 18 00612561, dated by: 23.05.2018.

<sup>272</sup> *ibid.*

education institution to meet the needs of LGBTI students.<sup>273</sup> Moreover, taking into account a strong influence of traditional stigmas over pupils, also bearing in mind taboos on the sex education, LGBTI students and pupils are not provided with the relevant information, protection or support.

*32.4. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

Ministry of Education and Science did not provide any answers regarding this question.

No such case was recorded till this day, however according to the law on the Civil Acts<sup>274</sup> changing the name is only possible after reaching the age of majority. In other cases, if the person is between the age of 16 and 18 the consent of the parent or the legal representative is requested. In case the parent is the initiator of name changing, the consent of the child from the age of 10 is required.

## VII. Health

- 33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and trans persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.**

### 33.1. Do

- a. *the design of national health plans,*
- b. *health surveys,*
- c. *suicide prevention programmes,*
- d. *medical training programmes,*
- e. *training courses and materials*
- f. *the monitoring and quality assessment of health-care services*  
*take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

The law of Georgia on Healthcare prohibits discrimination of patients based on race, color, language, sex, belief, political or other opinion, national, ethnic or social belonging, origin, property or social status, residence, disease, sexual orientation or personal negative attitude.<sup>275</sup> According to the information provided by MoLHSA, <sup>276</sup> above mentioned principles and needs of special target groups are reflected at the relevant strategic healthcare documents, programmes, educational curricula and textbooks. However, Ministry has not referred to any of it.

Therefore, discrimination of patients based on, *inter alia*, one's sexual orientation is expressly prohibited by law, including patients subject to deprivation of liberty. Breach of the law can be appealed before the Agency of Regulation of Medical Activities. The latter is authorized to impose sanctions upon the medical professional, e.g. deprive one of her professional license. In practice however these norms do not work effectively. According to the information provided by the State Regulation Agency for Medical Activities of MoLHSA, the Agency received seven complaints regarding the provision of medical services to representatives of LGBT+ community in 2017, but signs of violation were detected only in one case.<sup>277</sup>

Despite legal improvements, studies conducted by WISG show that the significant gaps in the field of healthcare remains, both in terms of legal regulations and practice. These shortcomings place LGBTI people in an unequal position. Moreover, State action plans, strategies and research do not take into consideration any specific needs of LGBTI people, especially of trans persons.

<sup>273</sup> ECRI CBC Monitoring pro forma on LGBTI issues, Georgia, WISG.

<sup>274</sup> Available online at: <https://bit.ly/2M1FkZj>

<sup>275</sup> The law of Georgia on Healthcare, article 6.

<sup>276</sup> Response letter from the MoLHSA # 01/29158, dated by: 17.05.2018.

<sup>277</sup> Annual report of the PDO, on the Situation of Protection of Human Rights and Freedoms in Georgia, 2017.

Moreover, there are no suicide prevention programmes in Georgia. The response letter from the Ministry does not say anything about monitoring and quality assessment of the healthcare services; WISG is also unable to see a clear picture in this regard. Thus, measures proposed by WISG cover specific needs of LGBTI people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of SOGIE.<sup>278</sup>

*33.2. Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

According to the response letter post-graduate as well as continual programmes of professional development, are directed to provide qualified and safe healthcare services to the patients.<sup>279</sup>

However the reality speaks contrary, experts and respondents noted that medical professionals often violate above mentioned norms when working with LGBTI patients and show homophobic/transphobic attitude. LGBTI persons often report that medical personnel display homophobic attitudes towards them.<sup>280</sup> Primary reason for this is lack of knowledge about contemporary medical views on sexuality, etc. for instance that World Health Organisation no longer views homosexuality as illness.

*33.3. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBTI people, and do they respect their needs?*

The response letter from the Ministry did not address the issue.

*33.4. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBTI persons, for example through information campaigns?*

According to provided letter, the personal of independent medical practice shall be guided by the following principles: establish healthy lifestyle in patients and society; shall be guided by the idea of humanism and respect dignity, confession and traditions of patients'; highly bear in mind patients' medical interest; being non-profitteering; free and independent while making professional decisions; patiently perform medical oath. Personal of independent medical practices are obliged to enforce ethical and incompatibility provisions prescribed by the Georgian law on Healthcare. Otherwise, violation of those principles invokes professional or administrative liabilities.<sup>281</sup> Moreover, discrimination of patients based on, *inter alia*, SOGIE is expressly prohibited by the law. Breach of the law can be appealed before the Agency of Regulation of Medical Activities. The latter is authorized to impose sanctions upon the medical professional, e.g. deprive one's professional license.

On the other hand, in practice these norms do not work effectively. Despite the legislation, the study of practice, knowledge and attitudes of medical staff towards patients representing the LGBTI group, in which 352 respondents took part, showed that 13.8% of the respondents think that bisexuals are persons with "double biological sex" (e.g. due to genetic, hormonal, or anatomic characteristics). Only 73.8% of the interviewed medical professionals were able to select the correct definition of "transgender". Hereby, 15.1% believe that a "transgender"/"transsexual" individual is "a person who has an unrestrained sex life and has simultaneous sexual relationships with several people of different sexes." According to 39.3% of respondents, homosexuality is a disease, which can be cured. More than half of respondents either agree with this statement or do not have a fixed position: 27.7% believe that homosexuality can be cured; 33.0% do not know whether this is possible.<sup>282</sup>

Thus, findings of a number of studies confirm that marginalization, stigma and minority stress in addition to other social and economic factors have a significant influence on LGBTI persons' health and well-being, as well as on the frequency of their visits to health care providers and usage of their services. Their "reaction to inappropriate

<sup>278</sup> ECRI CBC Monitoring pro forma on LGBTI issues (Georgia, WISG)

<sup>279</sup> Response letter from the MoLHSA # 01/29158, dated by: 17.05.2018.

<sup>280</sup> CEDAW shadow report concerning LBT women's situation in Georgia, WISG, 2012.

<sup>281</sup> Response letter from the MoLHSA # 01/29158, dated by: 17.05.2018.

<sup>282</sup> Serebriakova L., Study of Knowledge, Practice and Attitudes of Medical Staff towards LGBTI patients, 2015.

treatment is postponing appointments with doctors, or hiding their sexual orientation from them, which might lead to wrong diagnoses.”<sup>283</sup>

*33.5. Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

LGBTI patients do not have the right to freely designate “next of kin” as the legislation gives an exhaustive and limited list of who can be regarded as such.

#### **34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.**

##### *34.1. Has homosexuality been removed from the national classification of diseases?*

According to the information provided by the Healthcare Committee of the Parliament of Georgia the international statistical classification ICD-10 on morbidity and health issues (WHO) is used in Georgia.<sup>284</sup> According to the classification, sexual orientation is not deemed as pathology in se; but included in the chapter of “psychological and behavioral disorders related to sexual development and orientation” (code F66). “ICD-10 does not recognize the term homosexuality and refers as ego-dystonic sexual orientation (code F66.1) that is defined as the issue of the sex affirmation or sexual preference is not in doubt (heterosexuality, homosexuality, bisexuality, pre-sexual maturation disorder), but the individual wishes he/she was different because of associated psychological and behavioral disorders, and may seek treatment to change sex.”<sup>285</sup>

However in Georgian society homosexuality is seen as illness, which needs treatment. This sort of perceptions in general is widespread among medical professionals. Primary reason for this is lack of knowledge about how contemporary medicine looks at homosexuality, what scientific approaches it takes, etc.<sup>286</sup>

*34.2. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

Under the information provided by the Parliament, postgraduate education and residency programmes<sup>287</sup> has been emended.<sup>288</sup> However, the Committee did not provide the mentioned programmes. It needs to be noted that some residency programmes published on the web of MoLSHA shows in contrast.<sup>289</sup>

*34.3. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their SOGIE?*

According to the response letter provided by the Parliament there is no provision in Georgian legislation that allows forceful placements of the person at the medical institutions or any treatment, medical or psychological examination on the grounds of sexual orientation or gender identity.<sup>290</sup> MoLSHA also notes that any medical intervention is performed based on the medical condition and welfare of the patient; conducted by the medical professionals in accordance with the ethical standards grounded by the international evidences. In addition, surgeries shall be performed only at the authorized medical institutions.<sup>291</sup>

On the other hand, the lack of regulations in regard “sex normalization” of the intersex children is a huge problem as the intersex persons face various challenges due regard legislative regulations, as well as in medical procedures. Hence, it is crucial that medical personnel were acknowledged on the necessities of intersex persons, especially toward the needs and fundamental rights of intersex children. In addition, states should try to avoid “sex

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<sup>283</sup> Aghdgomelashvili E., Study of the Needs of LGB People in Health Care, WISG, 2014.

<sup>284</sup> The resolution of Minister of Labor, Health and Social Affairs #92/N, dated by: 12.04.2010.

<sup>285</sup> Response letter from the Parliament of Georgia N 5011/2-7, dated by: 15.05.2018. Response letter clearly shows that terminological confusion of sex, gender and sexual orientation remains problematic.

<sup>286</sup> CEDAW shadow report concerning LBT women’s situation in Georgia, WISG, 2012.

<sup>287</sup> The residential programme of pediatrics and the residency programmes of allied pediatrics.

<sup>288</sup> Response letter from the Parliament of Georgia N 5011/2-7, dated by: 15.05.2018.

<sup>289</sup> For an example see also the residency curriculum in pediatrics. Article 3. Module 3. Pediatrics of Development and Behavior. o) “Sexual behavior/sex identification disorders: onanism, transsexualism, transvestism, homosexuality.”

<sup>290</sup> Aghdgomelashvili E., Study of the Needs of LGB People in Health Care, WISG, 2014.

<sup>291</sup> Response letter from the MoLSHA # 01/29158, dated by: 17.05.2018.

normalization" cases while absence of the consent of the intersex person.<sup>292</sup> In Georgia there has not been conducted any research to examine the medical need of intersex children and to evaluate undertaken medical procedures or the surgeries including "sex nominalization" in line with international standards. Hence, to protect rights of intersex children it is vital that their medical needs were properly examined and the relevant guidelines for the medical personnel were developed. Special trainings is required for the relevant medical staff in order to avoid discrimination against intersex persons and to provide them with necessary services.

In general, if the patient is discriminated she/he can appeal to the Agency Regulating Medical Activities that will discuss the issue and rule whether the doctor has violated the law or not. The Agency has the authority to impose sanctions upon the doctor; this, *inter alia*, can result in the deprivation of the license to carry out medical activities. On the other hand, respondents, who reported negative attitudes of the medical personnel, stressed that such attitude is mostly linked to the gap of the education system, lack of knowledge, and non-awareness. Indeed, the WISG's survey has shown that healthcare workers have a quite vague or non-existent knowledge about SOGIE.<sup>293</sup> Nevertheless, LGBTI persons often report that medical personnel display homophobic attitudes and often advise patients to undergo treatment against homosexuality.<sup>294</sup>

**35. Member states should take appropriate measures to ensure that trans persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.**

*35.1. Do trans persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

The right to access qualified medical services, which is regulated by the Georgian legislature as well as by the ethical and medical standards, is also infringed in case of trans people: in spite availability of trans-specific services in Georgia, there are no clinical guidelines that underwrites procedural rules of diagnose and treatment.<sup>295</sup>

It has to be noted that WISG, with the financial support of ILGA-EUROPE, ASTRAEA and COC Netherlands, translated WPATH guidelines for healthcare professionals to assist transgender, and gender nonconforming people with safe and effective pathways to achieve lasting personal comfort with their gender-selves. The aim of this translation was to introduce trans-specific healthcare standards in Georgia, which would be unified for all health care providers and acknowledged by the MoLHSA. However, document did not get any feedback from the Ministry.

*35.2. If it was the practice to make trans persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

According to responding letter, such practice does not exist from the perspective of the state.<sup>296</sup> Besides, under the Law of Georgia on the Rights of Patient: Informed consent of the patient or in case of his/her incapacity, informed consent of patient's relative or legal representative shall be a prerequisite for providing medical service to the patient.<sup>297</sup> However, there are some cases, when family members force LGBTI persons to visit psychologist or sexologist due to "incorrect" orientation or to be "cured from that."

*35.3. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

Georgian legislation protects patients' rights in medical care and affirms that the informed consent of the patient is the precondition of any medical service; a patient under 16 can receive medical treatment only with the consent

<sup>292</sup> FRA, The fundamental rights situation of intersex people, 04/2015

<sup>293</sup> 44% of the interviewed LGB persons have considered suicide in the past 2 years, 7% have attempted suicide, 11% took an overdose, 16% have engaged in different self-harm behaviors (for example: cutting). Aghdgomelashvili E., Study on LGB Needs in the Healthcare, technical report, WISG, 2014.

<sup>294</sup> CEDAW shadow report concerning LBT women's situation in Georgia, WISG, 2012.

<sup>295</sup> Aghdgomelashvili E., Gvianishvili N., Todua T., Ratiani T., Health Care Needs of Trans persons in Georgia, Policy Paper, Tbilisi, 2015, WISG.

<sup>296</sup> Response letter from the MoLHSA # 01/29158, dated by: 17.05.2018

<sup>297</sup> The Law of Georgia on the Rights of Patient, art 22.



of a parent of a legal representative, except when the minor herself demands confidentiality.<sup>298</sup> Moreover, patient's participation in the medical decision making process is mandatory, taking into consideration its age and the level of intellectual development. Namely, written informed consent is the essential base of the upcoming surgery.<sup>299</sup> However, in case of urgent necessity the medical care provider makes decision in regard patients interests without his/her consent. Such treatment includes urgent surgical treatments, vaccinations, certain types of medical checks, etc.<sup>300</sup>

**36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.**

*36.1. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

Georgian legislation neither prohibits nor regulates gender reassignment surgery. This gives absolute discretion to medical institutions to decide who is eligible for the gender reassignment surgery; also to make decisions on the existing procedures for the reassignment process. Such a gap may result arbitrariness, lack of consistency and create obstacles for people willing to undergo the procedure. While gender reassignment services are available in Georgia, all the costs for the surgery have to be borne by the patient (whereas e.g., other medical procedures can be covered by the various private and state-sponsored health insurance packages available in Georgia). Certain category of medical operations is funded or co-funded by the state based on the Decision of the Georgian Government No.7734 (which approves State Healthcare Programmes for 2011). The main criteria for selecting which services fall under this category is the importance of the disease and low or special social status of the beneficiaries. However, despite its high social importance, gender reassignment surgery is not included in that category of medical services.<sup>301</sup> Thus, gender reassignment procedure is not covered under any kind of insurance.

This is grounded by the fact that even those clinics in Georgia, which have certain specific medical services for transgender persons, refuse to register special standards in the special database of the Ministry.<sup>302</sup> The standard represents "any pricing document approved by the supplier, which may evidentially depend on the respective protocol of medical treatment and which presents the consisting components of the service and their price calculations;" suppliers note that the registration of medical procedural standards for trans persons is not profitable, - firstly due to the small demand of such services and secondly because of the possible denial of the decision-making committee to fund it through the "Referral Service." This case represents yet another vivid example of refusal specific needs of trans persons. State is obliged to take into account their special needs and caring shall not be solely depended on the free will of the individual clinics.

*36.2. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

N/A

## VIII. Housing

**37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.**

*37.1. Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing;*
- *the provision of loans for purchase of housing;*

<sup>298</sup> The law of Georgia in the Rights of Patient, article 41.

<sup>299</sup> *ibid.*, article 22.

<sup>300</sup> Available online at: <https://bit.ly/2Klzy3j> [accessed 21.08.2018]

<sup>301</sup> Monitoring of implementation of CM/REC(2010)5 in Georgia, p.111. WISG, Tbilisi, 2012.

<sup>302</sup> This standard is defined by the ordinance №177 of the Government of Georgia as of 14 May, 2012, "On Adopting the Regulations of Providing Medical and Insurance Services in the Framework of the State Health Insurance Programme."

- *the recognition of the rights of a tenant's partner;*
- *evictions*

*on the grounds of (a) sexual orientation and (b) gender identity?*

The Constitution of Georgia grants everyone with the right to liberty of movement and freedom to choose his/her residence within the territory of Georgia.<sup>303</sup> According to Civil Code of Georgia any natural or legal person may be a subject of private relations. This rule applies to both, entrepreneurial and non-entrepreneurial persons of Georgia and ones from other countries.<sup>304</sup> Hence, any person may enter into deal in purchasing or renting, as become participant of the private law relations. In addition, the Civil Code also recognises equality of persons in property, family and personal relations of a private nature.<sup>305</sup> Thus, in the civil relations, like purchasing of housing/renting, credit guarantees etc., the legislation excludes any discrimination on the ground of SOGIE.

Moreover, the law of Georgia on Elimination all Forms of Discrimination prohibits discrimination both in public and private sector upon every relation on any ground, including SOGIE.<sup>306</sup>

Despite above mentioned regulations that cover all aspects of housing, cases of discrimination of LGBTI persons show different scenario, - as the members of community are refused on housing just because of SOGIE. PDO discussed case of NGO working on LGBTI's rights that was refused to rent an office because of the sphere of its activity (*case #15-2016*) and ruled discrimination on the ground of sexual orientation; the case of discrimination based on gender identity and expression had also been examining as the member of LGBTI community were demanded to leave rented apartment (*case #30-2018*).

*37.2. Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

In many cases "coming out" of LGBTI persons is followed by being thrown out of their families and consequently – from the family houses by their family members. In such cases the house legally belongs to other member/s of the family, but it is common in Georgia for all members of the family to live together. However no state programme exists to offer them temporary accommodation or address this issue otherwise. There exist a limited number of shelters for specific groups in Georgia (e.g., elderly people), not for LGBTI persons however.

*37.3. Is information available to landlords and tenants aimed at preventing such discrimination?*

No information is available; however the law prohibiting discrimination in this regard do exists.

*37.4. Are adequate and effective legal or other remedies available to victims of such discrimination?*

Despite the fact that the law on Elimination of All Forms of Discrimination regulates private sector, the decisions ruled under it by its supervisor body (PDO) are not binding for private sector; in addition they even do not have legal obligation to cooperate with the PDO. Hence, none of fully effective remedy exists against landlords rather than applying to general Courts.

*37.5. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

WISG is not aware whether such campaign ever took place.

- 38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and trans persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.**

*38.1. Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBTI people, especially children and young people, including schemes of neighborhood support and security?*

There are no specific social programmes for LGBTI people.

<sup>303</sup> The Constitution of Georgia, article 22 (1).

<sup>304</sup> The Civil Code of Georgia, article 8 (1).

<sup>305</sup> *ibid.*, article 1.

<sup>306</sup> The law of Georgia on Elimination all Forms of Discrimination, article 1.

*38.2. Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBTI people facing homelessness, particularly young persons?*

As mentioned no specific social programmes for LGBTI people do exist. However, Social Service Agency shall carry its duties without discrimination on any ground. In addition, it has to be noted that neither exist special legislation regarding the right to proper housing that would suggest systematized regulation of the issue. Existing rules are having general content and are included within the Law on Social Assistance. In particular, under the law, local self-governments are liable for providing shelters for homeless persons and registering sheltered ones.

## **IX. Sports**

### **39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.**

In 2017, Georgian footballer Guram Kashia performed Eredivisie match wearing LGBTI flag-handcuff demonstrating his support to LGBTI community as the gesture that the sport corresponds to everyone, regardless their cultural belonging, color, race, sexual orientation or religion, - everyone having the right to participate or be a fan. Guram Kashia was supported by the Georgian Football Association that was followed by the protest of ultra-nationalist group "Georgian March." They deemed withdrawal of Kashia from the team and apology of GFA for supporting LGBTI people. The protest got extreme homophobic forms (*case #31-2017*). It needs to be noted that President Giorgi Margvelashvili also affirmed his support to Kashia and condemned homophobia.

In fact this is the only case known in regard discrimination at sports.

### **40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.**

*40.1. What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

According to the information provided by the Ministry of Culture and Sports [currently under the name of the Ministry of Education, Science, Culture and Sports of Georgia], in regard questions N 40.1 and 40.5, no specific measures have been taken by the Ministry in relation to SOGIE.<sup>307</sup> Moreover, response letter notes that all the infrastructural projects implemented by the Ministry are planned in way that it provides equal service for sportsman regardless of their gender.

*40.2. By encouraging, for example:*

- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
- *partnerships between associations representing lesbian, gay, bisexual and trans persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and trans persons themselves.*

None of such specific measures have been taken by the Ministry of Culture and Sports.

*40.3. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

None of such effective measure had been taken in regard the case of Guram Kashia (*case #31-2017*). According to the letter provided by the Ministry of Culture and Sports<sup>308</sup> in 2016 Georgia joined to sign the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events,

<sup>307</sup> Response letter from the Ministry of Culture and Sports N 13/13-3217, dated by: 07.06.2018.

<sup>308</sup> *ibid.*

which aims to regulate the important issues of sports such as ensuring safety, security and service standards at football matches and other events. To date, working on the implementation of the mentioned Convention is in process, within the latter, the Ministries of Culture and Sports and of the Internal Affairs are actively working on the draft law on safety, security and service approach at sports competitions, cultural and other mass/public events, which further will result some amendments to the Administrative Offences Code of Georgia.

However, the Ministry has not provided answer regarding measures preventing discrimination and it seems that none of such practices do exist.

*40.4. In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter*
- *and ECRI's General Policy Recommendation No.12 been implemented in respect of (a) sexual orientation and (b) gender identity?*

The government has not provided information on this question.

*40.5. Have specific appropriate measures been taken to:*

- *put an end to the exclusion of trans persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognise their preferred gender?*

See 40.1.

**41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and trans persons in sport and in condemning manifestations of intolerance towards them.**

*41.1. Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*

- *developing awareness-raising activities*
- *condemning homophobic and transphobic behavior during and in connection with sports events?*

Under the information provided by the Ministry, none of such steps has been taken in regard condemning homophobic and transphobic behavior specifically. However, upon the recommendation by the Ministry of Culture and Sport, national sports organisations are encouraged to dialogue with their fan clubs in this regard.<sup>309</sup>

## **X. Right to seek asylum**

**42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.**

*42.1. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognised as a valid ground for the granting of refugee status and asylum?*

According to information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia<sup>310</sup> [topic currently regulated by MIA], under the Law of Georgia on International Protection, refugee status shall be granted to an alien or a stateless person, who is outside the country of origin, and has a well-grounded fear that he/she may become a victim of persecution on the grounds of his/her race, religion, nationality, affiliation to a certain social group or political views, and who does not wish to, or cannot,

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<sup>309</sup> *ibid.*

<sup>310</sup> Response letter from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of GeorgiaN04/07/11665, dated by: 08.05.2018.

return to his/her country of origin or enjoy the right to be protected from such country due to such fear.<sup>311</sup>This provision is based on and invokes article 1 of the 1951 Refugee Geneva Convention.

As it reveals neither sexual orientation nor gender identity are explicitly mentioned as the protected grounds. However, according to letter, in case an alien or a stateless person is endangered based on the SOGIE, he/she is considered as persecuted and would invoke ground of "affiliation to a certain social group." Moreover, under the law on International Protection the persecution may be expressed, *inter alia*, in the form of an act, which, by its nature, is related to gender identity, sex or a minor.<sup>312</sup>

**42.2. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBTI refugees or asylum seekers?**

Authorities, who are engaged at the asylum procedures, regularly undergo trainings to raise qualifications in regard specific problems of LGBTI asylum seekers and refugees. Moreover, department of migration, repatriation and refugee issues operating within the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, runs the unit for Provision of the Asylum Seekers' Country of Origin Information. The purpose of the unit includes obtaining, process, analyzing and updating information about the country of origins of asylum-seekers. Hence, the unit, *inter alia*, examines treatment toward LGBTI persons within the particular state, as well existing standards of their protection.<sup>313</sup>

It has to be noted that after receiving response letter, the Ministry has been abolished by the newly elected Prime Minister and its governing spheres joined respectively to MoLSA and MIA.

**42.3. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?**

According to the purposes of article 15 of the Law of Georgia on International Protection refusal is prohibited to the asylum seeker to grant the international protection on the grounds that she/he may not be persecuted by concealing/hiding the reason of persecution in her/his country of origin. In this regard, it should be noted that the purpose of the asylum procedure is to ensure protection of the asylum seeker from the persecution against him within the framework guaranteed by the international and domestic law to protect the freedom of expression. In given situation, concealing/hiding sexual orientation/gender identity by an asylum seeker in order to avoid the danger/insecurity from the persecution agents is deemed as a persecution.

**43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.**

**43.1. What procedures are in place to ensure compliance with this obligation?**

Taking into consideration above mentioned the shelter runs on the non-refoulement principle, according to which an asylum seeker or an internationally protected person shall not be returned or refused to the border of the country where his/her life or freedom is endangered on the grounds of his/her race, religion, nationality, affiliation to a certain social group or political views.<sup>314</sup> Moreover, principle of non-refoulement is guaranteed under the articles 15 and 19 of the Georgian Law on International Protection, which define the grounds of granting refugee and humanitarian status.

WISG has worked on the case of trans woman who had flee from Azerbaijan and has refugee status in Georgia (*case #33-2018*).

**43.2. Are there documented cases where asylum seekers have been returned to such a country?**

According to the response letter from the Ministry, none of such cases have been documented.<sup>315</sup>

<sup>311</sup> The law of Georgia on International Protection, article 15.

<sup>312</sup> *ibid.*, article 32.

<sup>313</sup> Response letter from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia N04/07/11665, dated by: 08.05.2018.

<sup>314</sup> Law of Georgia on International Protection, article 8.

<sup>315</sup> Response letter from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia N04/07/11665, dated by: 08.05.2018

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

44.1. *What measures have been taken to comply with this requirement?*

44.2. *In particular, have the staff of administrative detention centers, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

Regarding the question 44.1-44.2 former Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia noted that this issue was not under their competence.<sup>316</sup>

## **XI. National human rights structures**

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

45.1. *Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

The law of Georgia on Elimination of All Forms of Discrimination is intended to eliminate each form of discrimination and to ensure equal rights to every natural and legal persons regardless their race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics.<sup>317</sup> Hence, PDO is the one who shall monitor situation on eliminating discrimination and ensure equality<sup>318</sup> *inter alia* on the grounds of SOGIE.

45.2. *In practice do they*

- *make recommendations on legislation and policies,*
  - *conduct awareness-raising among the general public*
  - *examine individual complaints*
  - *participate in court proceedings*
  - *speak out in support of the exercise of rights by LGBTI people, for example, when freedom of assembly events are opposed,*
- in relation to (a) sexual orientation or (b) gender identity?*

To exercise the powers under the legislation of Georgia, the PDO shall: discuss the applications and complaints of natural and legal persons or groups of persons, who consider themselves to be victims of discrimination; examine acts of discrimination based on applications or complaints, as well as on his/her own initiative and make appropriate recommendations; prepare and forward general proposals to relevant institutions or persons on the issue of preventing and combating discrimination; for the purposes of this Law, prepare opinions regarding necessary legislative changes and submit them to the Parliament of Georgia as legislative proposals; invite a victim of discrimination and an alleged discriminating person, and try to settle the case by mutual agreement of the parties; submit recommendations to relevant institutions or persons to restore the rights of victims of discrimination if the parties fail to reach an agreement and if there is sufficient evidence of discrimination; be authorised to apply to a court, as an interested person, according to the Administrative Procedure Code of Georgia,

<sup>316</sup> The Ministry has been abolished by the newly elected Prime Minister and its governing spheres joined respectively to the MoLSA and MIA.

<sup>317</sup> The Law of Georgia on the Elimination of All Forms of Discrimination, article 1.

<sup>318</sup> *ibid.* article 6.

and request the issue of an administrative legal act or the performance of an action, unless an administrative body responds to or shares a recommendation and there is sufficient evidence of discrimination; record and analyze statistical data on discrimination cases; organise events to raise public awareness of discrimination; cooperate with various international governmental and non-governmental organisations, local NGOs and the representatives of local civil society on discrimination issues.<sup>319</sup> It has to be mentioned that PDO often condemns homophobic expressions and tries to promote equality and human rights of marginalized groups (*cases #10-2018; 01-2017*).

According to PDO record, 201 new discrimination cases had been examined during the time period of 2016-2017, developing 11 recommendations, 11 general proposals and 4 Amicus Curie briefs; Most of the cases concerned alleged discrimination on protected grounds *inter alia*, of SOGIE (11%).<sup>320</sup>

## XII. Discrimination on multiple grounds

- 46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.**

*46.1. Do legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including grounds of a) sexual orientation? b) gender identity?*

Georgian legislature prohibits multiple discrimination that implies discrimination based on two or more characteristics.<sup>321</sup> The characteristics defined by the law are quite broad and include “race, skin color, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions.” At the same time, grounds are not listed exhaustively, which means that the law prohibits discrimination based on any ground and on any characteristic.

Accordingly, a number of other factors shall be considered to ensure that LGBTI persons exercise their rights. Belonging to this group may have an influence on one’s wellbeing, as the number of circumstances reflect the whole picture.

*46.2 Does the mandate of national human rights structures enable them to tackle such discrimination on multiple grounds?*

As mentioned the law on Elimination of All Forms of Discrimination explicitly prohibits multiple discrimination; herewith, the body on the enforcement of the law is the PDO upon its special department of Equality. Thus, the mandate of national human rights structure is able to tackle with the cases of multiple discrimination. PDO has examined such cases and respectively invoked clause on multiple discrimination; namely, grounds of sexual orientation and the sphere of activity were highlighted in discussed case (*case #15-2016*). However, the effectiveness of the measures taken by Ombudsman may be questionable in regard private sector as its decisions, even in the cases of discrimination, does not have a binding force. It has to be noted that the request on its amendment has been applied to the Parliament of Georgia.

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<sup>319</sup> *ibid.*

<sup>320</sup> Available online at: <https://bit.ly/2HprwUj> [accessed 06.06.201]

<sup>321</sup> The Law of Georgia on the Elimination of All Forms of Discrimination, article 2 (4).