



# **CM/Rec (2010)5**

## **მპყველესობის მონიტორინგი MONITORING OF IMPLEMENTATION**

საქართველო 2012 Georgia

პუბლიკაცია მომზადებულია „ქალთა ინიციატივების მხარდაჭერი ჯგუფის“ (WISG) მიერ ილგა-ევროპის ადამიანის უფლებათა დარღვევების დოკუმენტირების ფონდის პროექტის „ევროპის საბჭოს რეკომენდაციის მონიტორინგი ლგბტ საკითხებთან დაკავშირებით“ ფარგლებში. პროექტის ფინანსური მხარდაჭერები არიან პოლანდიის განათლების, კულტურისა და მეცნიერების სამინისტროს გენდერისა და ლგბტ უფლებების დეპარტამენტი და პაინრიხ ბოლის ფონდის სამხრეთ კავკასიის რეგიონალური ბიურო.

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**The Council of Europe's Recommendation to Member States  
On Measures to Combat Discrimination on Grounds of  
Sexual Orientation or Gender Identity in Georgia**

MONITORING OF IMPLEMENTATION

(Extended version)

## TABLE OF CONTENTS

<b>I. EXECUTIVE SUMMARY</b>	<b>97</b>
<b>II. RECOMMENDATIONS TO GOVERNMENT FOR PRIORITY ACTIONS</b>	<b>99</b>
<b>III. INTRODUCTION</b>	<b>101</b>
<i>Background</i>	101
<i>The purpose of this report</i>	101
<i>Methodology</i>	101
<b>IV. SUMMARY REPORT</b>	<b>102</b>
<i>Short summary of findings</i>	102
<i>Appendix to Recommendation CM/Rec(2010)5</i>	103
I. Right to life, security and protection from violence.	103
a. “Hate crimes” and other hate-motivated incidents	103
b. “Hate speech”	105
II. Freedom of association	107
III. Freedom of expression and peaceful assembly	108
IV. Right to respect for private and family life (excluding trans)	109
IVa. Right to respect for private and family life and access to health (Trans specific)	109
V. Employment	112
VI. Education	113
VII. Health (excluding trans)	114
VIII. Housing	115
IX. Sports	116
X. Right to seek asylum	116
XI. National human rights structures	117
XII Discrimination on multiple grounds	117
<b>V. APPENDICES</b>	<b>118</b>
APPENDIX # 1. 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	118
Appendix to Recommendation CM/Rec(2010)5	119
I. Right to life, security and protection from violence	119
A. “Hate crimes” and other hate-motivated incidents	119
B. “Hate speech”	119
II. Freedom of association	119
III. Freedom of expression and peaceful assembly	120
IV. Right to respect for private and family life	120
V. Employment	121
VI. Education	121
VII. Health	121
VIII. Housing	122
IX. Sports	122
X. Right to seek asylum	122
XI. National human rights structures	122
XII. Discrimination on multiple grounds	122
APPENDIX # 2. THE COMPLIANCE DOCUMENTATION REPORT	123
RECOMMENDATION	123
I. Right to life, security and protection from violence	125
A. ‘Hate crimes’ and other hate-motivated incidents	125

B. Hate Speech .....	132
II. Freedom of association .....	135
III. Freedom of expression and assembly .....	138
IV. Right to respect for private and family life .....	140
V. Employment .....	145
VI. Education .....	147
VII. Health (excluding trans) .....	148
VIII. Housing .....	152
IX. Sports .....	153
X. Asylum .....	154
XI. National Human Rights Structures .....	155
XII. Discrimination on multiple grounds .....	157
APPENDIX # 3. LIST OF LETTERS SENT TO MINISTRIES OR OTHER INSTITUTIONS WITH CHECKLIST QUESTIONS REGARDING IMPLEMENTATION OF THE RECOMMENDATION .....	158
APPENDIX # 4. RESPONSE LETTERS FROM MINISTRIES .....	160
APPENDIX # 5. CASE DETAILS .....	187
APPENDIX # 6. TERMINOLOGY .....	209
APPENDIX # 7. ABOUT WISG .....	210

## I. EXECUTIVE SUMMARY

Georgian legislation is not expressly discriminatory or particularly repressive towards LGBT people. Significant changes implemented in the last decade liberalized soviet-times repressive laws and brought Georgian legal system closer to European one, including in the field of human rights and fundamental freedoms. Consensual homosexual sexual conduct was decriminalized in 2000. This was further followed by legislative amendments to expressly outlaw discrimination on the basis of sexual orientation and/or gender identity in several areas of public and private life, including employment and healthcare.<sup>1</sup>

It seems however that these changes resulted from isolated actions and were side-effects of the broader process of Georgia joining and/or aspiring to join European institutions<sup>2</sup> (and therefore liberalizing and harmonizing its legislation with European standards), rather than the result of government's targeted efforts to eliminate discrimination in general, or against LGBT people in particular, to implement CM Recommendation or any other instrument in the field of discrimination and human rights.

It is probably due to this lack of deliberate and well-thought state policy and action against discrimination that some significant shortcomings still remain in law and even more so – in practice. These shortcomings place LGBT people in an unequal position and in concrete cases may further lead to their discrimination and other violations of their fundamental rights and freedoms.

Key problems which exist in law and practice in the field of LGBT rights in Georgia can be summarized as follows:

Violence against LGBT people (verbal as well as psychological and physical abuse, bullying and particularly domestic violence) remains widespread in Georgia.<sup>3</sup> Nevertheless, victims nearly never report such incidents to police or NGOs, primarily because of strong reluctance towards disclosing their sexual orientation/gender identity; moreover LGBT people often fear that they will become victims of homophobic treatment by law enforcement authorities.<sup>4</sup> Such fears are not always unfounded.<sup>5</sup> This reality actually suggests that in order to ensure protection and respect for LGBT rights the government has to do more than adoption of certain legal provisions and creation of units tasked with their enforcement. Awareness-raising programs among public officials and for the broader public are very important, though in and of itself albeit not sufficient, to decrease the level of homophobia and its deleterious effects on realization of LGBT rights.

Hate speech (including political hate speech) is prevalent in Georgia,<sup>6</sup> while no effective mechanisms exist to monitor and fight this phenomenon.

Although homosexuality is officially no longer considered a disease, certain medical professionals and textbooks still view it as a phenomenon requiring medical or religious/spiritual leader's intervention.

Very little, if any, information is available about the situation of LGBT persons in closed institutions, such as e.g. prison, army, etc.

Information about sexual orientation or gender identity was subject to special protection under Georgian legislation as 'personal information.' Last year's legislation amendment however introduced an alarming exception to this rule, stating that "in the interest of public" it is allowed to collect, process and release personal information, including about one's sexual orientation without one's prior consent. While the law failed to define the meaning of "public interest", an MP from the ruling party commented: "Indeed if a homosexual person applies for a job in a kindergarten it is in the public interest to reveal his sexual orientation."<sup>7</sup>

This amendment has not entered into force yet. The Ministry of Justice informed WISG that they have prepared a package

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1 Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia, by independent researcher Ana Natsvlishvili . COWI. 2010. p.3. available at [http://www.coe.int/t/Commissioner/Source/LGBT/GeorgiaLegal\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/GeorgiaLegal_E.pdf)

2 Georgia is a member of the COE and part of EU eastern-partnership initiative

3 CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012. available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

4 *ibid*

5 *Id.*

6 *Id.*

7 <http://www.humanrights.ge/index.php?a=main&pid=12343&lang=eng>

of further amendments to this law in order to bring it in line with European standards. It is noteworthy however, that before this, neither state institutions, nor Ombudsman have raised concerns about the law undermining respect of personal freedom and autonomy. Only a few NGOs have raised alarm around this legislation.

Unlike freedom of association, which can be freely exercised by LGBT community and activists, their right to freedom of assembly has several times come under fierce attack in recent years.

Needs of transgender people are insufficiently addressed by law. This in certain cases may result in deprivation of their fundamental rights.

No particular problem has been identified regarding granting asylum in Georgia based on one's sexual orientation or gender identity.

The highest political officer – the President – who is 'the Constitutional Guarantor of everyone's constitutional rights in Georgia' has never made any explicit statement or action for the protection of LGBT people, or on the contrary - leading to stigmatization and marginalisation of LGBT group. Georgians Ombudsmen in general do not have a very good record of protecting LGBT rights or raising concerns when LGBT people were subjected to violence. Certain shift was noted in 2012 however. It remains to be seen if this shift remains sustainable.

There exists no state action plan to implement CM Recommendation and government has not shown its intention to take active steps for further improving LGBT situation in Georgia. While recent legislative amendment making commission of a crime based on animosity towards LGBT an aggravating circumstance is a welcome step,<sup>8</sup> this again seems to be an isolated measure, rather than a part of a larger state action against homophobia and LGBT discrimination; moreover, much remains to be done to ensure that this provision makes real difference and leads to better protection of LGBT people in practice.

One may say that in a country with deeply conservative mores and strong (if not the strongest) influence of the Orthodox Church on the process of forming public opinion many try to avoid to touch upon LGBT issues publicly. They fear not to anger the Church or its followers; LGBT rights in Georgia remain a tool in the struggle for political power and influence and it seems there is a long way to go till state institutions as well as the broader public view it as a genuine human rights issue.

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<sup>8</sup> Amendment to art. 53 in the Criminal Code of Georgia introduced on 27 March, 2012

## II. RECOMMENDATIONS TO GOVERNMENT FOR PRIORITY ACTIONS

### **Make Legislative Amendments, in particular:**

1. Sexual orientation and gender identity must be explicitly included in the list of anti-discrimination grounds in all the relevant laws; In the meantime, judges should give a broad interpretation to those provisions to read into them prohibition of discrimination based on sexual orientation and gender identity.
2. Amendments must be introduced in the Labour Code of Georgia to ensure non-discrimination not only when the person is already employed but also at the hiring stage and dismissal.
3. Quick, transparent and accessible procedures must be introduced ensuring the full legal recognition of a transgender person's gender identity in all key documents issued by state and non-state actors.
4. Gender reassignment treatment must be developed and regulated, so that transgender persons can have effective access to psychological, endocrinological expertise, based on established international standards and covered by public health care.
5. Ethics Code for MPs must be revised and effectively implemented, in particular as far as concerns the use of homophobic hate speech by MPs.

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

6. Police Ethics Code and those of other civil servants must be effectively implemented to ensure elimination of homophobic and discriminatory treatment of LGBT persons in state institutions. Robust implementation *inter alia* must include imposition of disciplinary and, where necessary, criminal sanctions on those who violate Code(s) of Conduct or other relevant legislative provisions.
7. Convention on Cybercrime must be effectively implemented. State should - among other steps - carry out training and awareness raising campaign for relevant staff of state institutions as well as the general public, study compatibility of national legislation with the convention and make amendments if required.
8. Order of the Minister of Health imposing blanket ban on blood donation by homosexuals must be revisited and amended in line with international best practices in order to ensure proper balance between the right of LGBT people to non-discrimination on the one hand, and interests of public health on the other.

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

9. The Ministry of Education, in cooperation with relevant state agencies and civil society, must introduce programmes to ensure a truly inclusive educational system, e.g., consider inclusion of topics of sexual orientation and gender identity in the school curriculum and initial and in-service training programmes for educational staff, provision of physiological counseling for LGBT pupils, etc.
10. The Ministry of Education must conduct a study in cooperation with civil society and in particular those working on LGBT rights specifically and relevant issues, to see whether textbooks promote tolerance and broad-mindedness or homophobia among the pupils. If the latter is the case, the Ministry must address this issue in close cooperation with civil society representatives, particularly those working on LGBT rights and related issues.
11. CM Recommendation must be included in the basic human rights courses for all civil servants in Georgia. The Recommendation must be further included in the trainings/workshops (and relevant materials) conducted for law enforcement officials, prosecutors and judges on the issues of human rights, non-discrimination, hate crimes, etc.
12. Topics related to sexual orientation and gender identity must be included in initial and in-service training programmes for judges, and other members of the legal profession and law enforcement officials, as well as medical professionals.

13. Ministry of Education and Ministry of Health must take coordinated action to revise current and proposed medical textbooks and curricula to ensure that homosexuality is not featured in the text-books as a disease, mental disorder, sexual perversion, etc.

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

14. Public Defender of Georgia must pay particular attention to the situation of LGBT people in closed institutions, including prison and army. S/he must study this issue meticulously and make the findings public through his annual human rights report or a special report.
15. An adequate mechanism must be devised to ensure that LGBT juveniles can report violence against them to law enforcement officials and participate in the subsequent proceedings without mandatory involvement of their parents/guardians, which makes disclosure of juvenile's identity to the former inevitable.
16. The State must afford effective protection to LGBT juveniles from domestic violence, including pressure to undergo "medical treatment against homosexuality", as well as from bullying at school.

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

17. A medium/long term action plan and timeline for implementing other aspects of the Recommendation must be adopted in close cooperation with LGBT NGOs and other civil society actors involved in LGBT-related work.

### III. INTRODUCTION

#### Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was a historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognized, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.<sup>9</sup>

In broad terms the Recommendation does three things:

- It emphasizes the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognizes that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, 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 section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

#### The purpose of this report

The purpose of this report is to assess what progress has been made by Georgian authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

#### Methodology

The report’s assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which Women’s Initiative Support Group [WISG] has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix #3 to this report, entitled “the Compliance Documentation Report”.

The data used to assess progress in implementation have been obtained from a number of sources:

- Constitution of Georgia, various legislative acts and by-laws, orders of different ministers, soft-law provisions.
- Responses from individual ministries to letters from WISG listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Georgia commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, “Discrimination on grounds of sexual orientation and gender identity in Europe”.
- Research and documentation assembled by WISG and other non-governmental organizations.
- Information available via various Georgian media sources.

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<sup>9</sup> “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons” <https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

## IV. SUMMARY REPORT

### Short summary of findings

The operative text of the Recommendation includes five key messages to the governments of participating states: to review existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity; to introduce effective measures to combat such discrimination; to ensure that victims have access to effective legal remedies; to further ensure that the recommendation is translated and disseminated as widely as possible; in its actions to be guided by the principles and measures contained in the Appendix to the Recommendation.

As responses from different state institutions regarding the progress of the implementation of the CM Recommendation in Georgia suggest, authorities have little knowledge about the Recommendation. The Government has not translated or disseminated the Recommendation into the Georgian language; Furthermore, government has not developed an action plan or a time line for the implementation of the Recommendation.

“LGBT persons often are in unequal position compared to heterosexual persons; in some instances the law is not facially discriminatory, however it leads to discriminatory results in practice and severely affects LGBT community.”<sup>10</sup> Government has not however conducted a review of existing measures to address this situation.

Although certain legislative acts were amended in Georgia in recent years to expressly prohibit discrimination based on sexual orientation and/or gender identity, these amendments were not the results of authorities’ targeted action to comply specifically with the CM Recommendation or to improve protection of LGBT rights for its own sake. These changes were either made in response to pressure from COE to liberalize its legislation or were side effects of Georgia’s efforts to join the EU and therefore harmonize its legislation with European human rights standards.

Existing gaps and shortcomings in the law and practice which constrain LGBT rights and freedoms can be classified under 5 different categories:

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

Cases documented by WISG show that rights of LGBT people are violated in almost every field under the focus of the CM Recommendation, whereas responses from different state institutions demonstrate that not much is being done by the state to redress those violations and take measures to-ensure their non-repetition by means of introducing effective measures to combat discrimination. Answers of different state bodies contain very little evidence - if any - to suggest that the government was guided by the principles and measures contained in the Appendix to the Recommendation in its actions. Rather on the contrary, recent legislative amendment is a clear example of government acting contrary to the Recommendation, as well as generally accepted human rights norms.

In particular, in December 2011 the ruling party adopted the Law on Personal Data Protection which introduced a position of a Data Inspector and obliged employers (public and private) to collect and send personal information about its employees, including information about one’s sexual orientation, to the Data Inspector. The law further authorized the Inspector to process, analyze, store and release such data without prior consent of the individual concerned, provided that such action was “in the public interest.” The law failed to define “public interest” or provide other safeguards against the abuse of these broadly defined and deeply intrusive state powers. Comments made by an MP from the ruling party further sent chilling signals to the LGBT community and LGBT rights activists. He stated that e.g., it was in the public interest to know sexual orientation of people who were going to work in the kindergarten.

The Law has not yet entered in force however and it must be repealed as a matter of urgency.

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<sup>10</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Legal Report: Georgia, by independent researcher Ana Natsvlishvili. COWI. 2010. p.3. available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

## 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 other legislative and other measures to combat “hate crimes” and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field. In total, some 17 measures are identified under this heading in the Compliance Documentation Report.

Georgian legislation does not define or criminalize hate crime. As a consequence, no official statistical data can be gathered about hate crimes in general or hate crimes against LGBT people in particular.<sup>11</sup> Data on the prevalence and nature of LGBT discrimination is not gathered or analyzed. No separate law-enforcement unit exists to receive complaints and investigate hate crimes and hate motivated incidents specifically. Implementation of the Police Ethics Code e.g., - which outlaws discrimination - is overseen by the General Inspectorate at the Ministry of Interior. In addition to usual available procedures for reporting an incident, the Ministry of Interior operates a hotline for reporting incidents to the General Inspectorate. No data is available however about the effectiveness of this hotline or about the practice of General Inspectorate in respect of police officers discriminating against LGBT persons.

Law enforcement officers do undergo basic human rights education courses and/or special training courses, *inter alia*, focusing on fight against discrimination, hate motivated crime, etc. These trainings are organized mostly in cooperation with Ombudsman’s office or human rights NGOs. It is not clear however whether and how concrete outcomes or overall success of those trainings are measured.

Until very recently, commission of a crime due to hatred on account of sexual orientation/gender identity, unlike religious or ethnic hatred, was not considered an aggravating circumstance of a crime. This gap has been appropriately addressed in a recent legislative amendment.<sup>12</sup> The latter added hatred on account of sexual orientation or gender identity to the list of aggravating circumstances of a crime. Although this is a very positive development, one should note that no information is available about the actions taken by the government to ensure effective implementation of these provisions in practice (e.g., training of relevant officials how to identify LGBT hate motive in a particular scenario, etc.); moreover it is unknown what mechanisms, if any, have been put in place to overcome the widespread fear and reluctance of LGBT people to report such incidents to the police.

#### **Case #W19. A Pending Case versus Georgia before the ECtHR about police homophobic behaviour and violation of fundamental rights (Aghdgomelashvili and Japaridze v Georgia, App. no. 7224/11)<sup>13</sup>**

December 15, 2009: police raided the office of “Inclusive Foundation,” the first officially registered NGO in Georgia (2006) openly working on LGBT rights. The police conducted an unauthorized search in the office; they were not wearing any uniforms and failed to present a search warrant to the people in the office. When they became aware of the IF’s work in the field of LGBT rights, they displayed strongly homophobic behaviour towards everyone present in the office. During the raid officials used anti-homosexual slurs, made unnecessary strip searches, damaged organization’s posters, etc. They seized cell phones and did not allow anyone in the office to contact their families, friends or lawyers. The leader of Inclusive Foundation was arrested and later on charged with drug possession. He was released after a few days based on plea bargain agreement.

This incident has received significant amount of attention both in the media and civil society at the national and international levels.

In relation to the incident, two victims Eketarine Aghdgomelashvili (co-founder of Inclusive Foundation, who is currently the Executive Director of ‘Women’s Initiatives Supporting Group’ (WISG) and Tinatin Japaridze (former programme officer from 2006 to 2009 and currently a project manager at the ‘WISG’) filed a complaint before the ECtHR.

11 As noted by WISG in its CEDAW Shadow Report, crimes which in fact are motivated by hatred towards LGBT people are labeled under different provisions of the Criminal Code, such as bodily injury, hooliganism, etc.

12 Amendment to art. 53 in the Criminal Code of Georgia introduced on 27 March, 2012

13 <http://www.interights.org/aghdgomelashvili/index.html>

The applicants are arguing before the court that they have been victims of violation of the following rights: inhuman and degrading treatment (Article 3 of the European Convention on Human Rights) and /or interference in their private lives (Article 8 of the Convention) as well as discrimination based on their actual or perceived sexual orientation (Article 14 of the Convention; Article 1 of Protocol No 12). In addition, they argue that their strip searches were not “in accordance with the law” and did not pursue any of the legitimate aims envisaged by the second paragraph of Article 8 of the Convention. Further, it is submitted that, in the absence of an investigation into the incident, including whether it was motivated by homophobia and a subsequent failure of the State to identify and punish those responsible, there is a continuing procedural violation of Articles 3, 8 and 14. The lack of effective remedies also breaches Article 13 of the Convention.

#### **Case #P21. Law Enforcers Try to blackmail a journalist using prejudice against LGBT people**

November 25, 2009: Tedo Jorbenadze, leading investigative journalist in the newspaper Batumelebi was invited to the office of Adjara Autonomous Republic Division of Special Operative Department (SOD) within the Ministry of Interior of Georgia. Jorbenadze was told that special services of foreign countries – in particular Russia and Turkey - were interested in Batumelebi and since Mr. Jorbenadze was one of the decision-makers in the newspaper, he had to cooperate with Georgian law enforcers. When Mr. Jorbenadze refused to do so, the SOD officers showed him black and white photos of two men in their underwear. They told him that one of them was Mr. Jorbenadze, (however, as Mr. Jorbenadze claims he could not identify himself in any of the men on the photos) and threatened to send these photos to his relatives and colleagues and further disseminate them via the internet if he still refused to cooperate.

Jorbenadze organized a press conference and made the story public. The incident caused outcry among national and international NGOs and media. No official investigation followed.<sup>14</sup>

#### **Case #W28. Police Failure to uphold the law due to victim’s sexual orientation**

Interview with 18 years old gay, sex-worker

In December 2011, in Tbilisi nearby the circus (“pleshka” or cruising area), three unknown people offended me verbally and physically. They tried to take me to the park, far from the road and rape me there. After the respondent lost consciousness, the attackers left.

He called the police. He was transferred to the Police Department. After that policemen contacted the victim’s uncle and told him that, “only gay people usually cruise around the place” where the incident had happened, that the victim was “unworthy person” and the attackers were acquitted because “no Georgian person would bear such a thing.”<sup>15</sup>

#### **Case # W24. Police officers humiliated LB couples**

“On one occasion, when I lived together with my girlfriend and we were drunk and ended up having a serious conflict, our neighbors called the police. When police came, they entered our home and saw what condition we were in ... besides, that girl looked suspicious like that, I mean, you could assume she had a different sexual orientation ... police officer turned to our neighbors with grinning with sarcasm and said that it was a family matter, and they didn’t really want to interfere ... they started making jokes and laughing ... they basically made fun of us. We did not really need to involve the police in this case ... when they came we invited them in and told them to see and make sure that everything was alright, that we were alive, so they started laughing. What if we don’t do anything? Which one of you is a man and which is a woman? Which one is a husband? Should we talk to the one of you who is a man?”<sup>16</sup>

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14 Pressure on Georgian ‘Batumelebi’ newspaper. Statement of the South Caucasus Network of Human Rights Defenders and Human Rights House Tbilisi. available at: <http://humanrightshouse.org/Articles/12654.html>

15 Materials collected for LGBT discrimination survey.Q.87.

16 Materials for preparation of CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012.

## ***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 penalising such “hate speech”, promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, and guidelines to government officials to refrain from such speech and indeed to promote respect for the human rights of LGBT people. In all, some nine measures are identified under this heading in the Compliance Documentation Report.

Homophobic hate speech, including by MPs and other public figures, remains a problem in Georgia and becomes particularly prevalent during pre-election campaign. In addition to deeply rooted prejudices against LGBT people, such prevalence may be due to the fact that existing laws and regulations, including relevant codes of conduct, insufficiently address hate speech by public officials and MPs.

Labeling opponents as LGBT or LGBT supporters is a method used to alienate political opponents from Georgian society, as everything alien is seen to “threaten traditions of the country and contradict to its religious beliefs.”<sup>17</sup> Although it was very rare in the past, authorities are increasingly making public statements to condemn homophobic hate speech, however this is mostly done when their political opponents do so and it is difficult to see whether such condemnation is an expression of genuine state policy or a mere political maneuver to undermine political opponents in the eyes of European institutions and gay-friendly groups in Georgian society.

Moreover, despite its widespread nature, authorities have failed to adequately address the problem of hate speech in media:

1. It remains subject to weak monitoring and disciplinary mechanisms
2. Little has been done to eliminate stereotypes against LGBT people – the root cause which breeds hate speech and “legitimizes” it in the public eye.

Hate speech against LGBT people takes the most offensive form in the internet, moreover it often contains direct incitement to discrimination and even physical violence against LGBT. The scope of homophobic hate speech in social networks is alarming. The creation of anti-LGBT anonymous groups like “Georgians against Homosexuality (LGBT),”<sup>18</sup> Fuck Pederasts<sup>19</sup> and others which call for direct violence against LGBT people became more frequent. Those who engage in such activities are not held to account.<sup>20</sup>

It should be noted that hate speech can be addressed by certain other laws too. e.g., The Election code of Georgia imposes certain restrictions on the use of hate speech and on stirring up animosity among different social groups: “The election program must not contain propaganda ... calling to foster citizen hatred and animosity, religious and ethnic confrontation.”<sup>21</sup>

Organic law of Georgia on political unions of citizens imposes a blanket ban on the formation and functioning of a party, which „stirs up national, community, religious or social animosity“.<sup>22</sup>

On October 2012 Convention on Cybercrime entered into force for Georgia.

### **Cases #W4, W2a, W2b. Georgian politicians about Resolution 1728 (2010) / Discrimination on the basis of sexual orientation and gender identity**

**The Christian Democratic Movement:** “Taking into consideration the blessing of self-governed Georgian Orthodox Christian Church, we appeal to the other representatives of Georgian delegation to consider the call of Georgian Orthodox Church and to not vote for the bill because with its content it is against national and moral

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17 Situation of LGBT persons in Georgia. WISG. Tbilisi. 2012

18 <https://www.facebook.com/anti.lgbt?sk=questions>

19 <https://www.facebook.com/ShevetsiPidarastebs>

20 On June 10, 2012, internet issue “[www.argumenti.ge](http://www.argumenti.ge)” published an article called: “The group of people who plan to burn LGBT people alive in Georgia” the information spread with the article was about facebook page created by nationalists group “The brigade Fighting against Pederasts”. The admin of the group Ilia Malazonia, has plenty of photos uploaded on his page where he is dressed in black uniform. Since the statements contain signs of criminal act considered by the Criminal Code of Georgia, the organization “Identoba” in 16.07.2012 addressed the Chief Prosecutor of Georgia Mustaz Zodelava for referring the case. (Case #I18)

21 Election Code of Georgia. Article 45. Para.3

22 Organic Law of Georgia on Political Unions of Citizens. Article 5. Para 2.

values of our country and represents a threat for the demographic and ethical development of our country. For Georgia, the country of ancient Christian Traditions and history which is the part of European civilization is not acceptable to legalize the issues given in the bill [resolution 1728(2010)], as they are incompatible with the religious and traditional values of the majority of our citizens.<sup>23</sup>

**Petre Tsiskarishvili** (former leader of Georgian Parliamentary Majority): We share the position that Patriarchate of Georgia holds ... ..We will only support the resolution draft if the amendments we demand will be applied and the abovementioned articles will be eliminated. If the resolution project will include the right of the same sex couples to legally marry and adopt children, we will not vote for it. We don't want to receive a recommendation for our country that will imply favoring homosexuality, just as well as, many of the European Christian countries don't want it either... ..Of course we hold the position that it is not based on Christian values and has nothing to do with democracy. No one prevents these people (sexual minorities) from doing whatever they want, but if they [homosexuals] want to be together, that unity should not be called a family."<sup>24</sup>

**Giorgi Gabashvili** (former Chairman of Education, Science and Culture Committee at the Parliament of Georgia): "The rights of minorities should be protected, but it does not mean that the tradition of the majority, should be absolutely ignored. It would not be right to force the interests of one group on the other, that is considered in this initiative"<sup>25</sup>.

#### **Case # W5. Hate speech against LGBT by well-known politicians**

In a weekly talk show "Auditoria" (aired on Georgian Public Broadcaster) a well-known politician, Mr. Zviad Dzidziguri stated: "prostitutes, killers, homosexuals, even heterosexuals who have maniacal and abnormal deviations and inclinations, should not have contact with children."

During the talk-show Mr. Dzidziguri and Dimitri Lortkipanidze (then the deputy chairman of the Human Rights and Civil Integration Committee of the Georgian Parliament) more than once compared representatives of the sexual minorities to zoophiles, necrophiles, pedophiles, gerontophiles, and recidivists and referred to them as "sick people." In order to support his view, Dimitri Lortkipanidze quoted the American researcher Paul Cameron saying: "Homosexuals are dangerous, because one of their strategies is to persuade you into homosexuality. They are subversive and destructive and make people betray their families, country and God. I personally agree with this statement with all my heart."<sup>26</sup>

#### **Case #G8. Homophobic Remarks in Electronic Media**

The Georgian Young Lawyers Association (GYLA), which was monitoring elections, filed a complaint against Lado Sadgobelashvili, running in Tbilisi 's Mtatsminda single-mandate constituency from Freedom Party ("Tavisupleba"), who in May 2010 posted on his Facebook wall messages like "Georgia without sexual minorities" and "days of homosexuals in Georgia is counted".

According to GYLA, Sadgobelashvili violated paragraph 2 of Article 75 of the election code, which reads: "The election programme must not contain propaganda of war and violence, of overthrowing the existing state and social system or replacing it through violence, of violating the territorial integrity of Georgia, of calling to foster hatred and enmity, religious and ethnic confrontation." GYLA deemed that the candidate's Facebook messages contained propaganda of violence and hatred, which should have resulted in suspension of the candidate.

Before the court ruling Sadgobelashvili told to journalists: "It does not matter what the court ruling will be, the most important for me is protection of Orthodox Christian values."

On 25 May 2010 the Tbilisi City Court rejected GYLA's arguments and rejected their appeal to suspend the candidate to stand in the 30 May local elections. According to the court, it was not convincingly established that by the statements - "gay parades do not fit with Georgian mentality" and "gay people's blood has to be spilled" – Sadgobelashvili incited voters to violence. Neither was it convincingly established that the phrases ("gay parades do not fit with Georgian mentality" and "Gay people's blood has to be spilled") were disseminated by Sadgobelashvili himself. As regards some other posts ("all gays will be punished, I promise") Sadgobelashvili stated that he meant punishment by God. In that regard the Court stated that this statement fell within the protected speech. After

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23 EU versus Religious dogmas .D. Gamisonia. Newspaper 24 Saati. 25.01.10. <http://24saati.ge/index.php/category/news/2010-01-25/2943>

24 ibid.

25 Outcry on resolution on sexual minorities. E. Kevanishvili. Radio Tavisupleba. 26.01.10. <http://www.radiotavisupleba.ge/content/article/1940174.html>

26 Discriminatory statements on the First Channel. M.Metskharishvili. Netgazeti. 12.14.10. <http://netgazeti.ge/GE/38/News/3710/>

lodging this lawsuit, GYLA was blamed to have received a huge grant for protecting LGBT rights by Sandro Bregadze from Freedom Party (“Tavisupleba”) in a newspaper “New Generation” (Akhali Taoba).<sup>27</sup>

#### **Case #W9. hate speech during Pre-election campaign**

In August 2012, pre-election advertisement of a political party Free Georgia (Tavisupali Sakartvelo)<sup>28</sup> was made public via social networks. The add stated:

„We will nationalize forests and pastures captured by foreigners.  
Return lands to the Georgian peasant.  
Change English inscriptions and Turkish flags with Georgian ones.  
Stop building Azizie’s complex (mosque) in Batumi.  
Impose a ban on the propaganda of homosexuality and religious sects.”

Together with the above mentioned issues it is important to pay attention to the shots used in the advertisement. For example, when talking about “propaganda of homosexuality and sects” are shots are used from manifestation organized by LGBT (Lesbian, Gay, Bisexual, Transgender) people on May 17 2012.

NOTE: On September 6, 2012, six human rights organizations including WISG and Identoba demanded from the Chairmen of Central Election Commission to take legal action against the above-mentioned. Commission decided to use measure for administrative breach against political union “Free Georgia”, in compliance with article 79 of Organic law of Georgia “Election Code of Georgia”. The chairperson of the CEC drew up the protocol on administrative violations in compliance with paragraph 1 of article 93 of Election Code, which together with the materials of the case was sent to Tbilisi City Court for examination.<sup>29</sup>

#### **Case #P15. Council of Media Ethics: Journalist failed to observe his professional-ethical obligation not to discriminate based on sexual orientation**

March 2010: “Inclusive Foundation” complained before the Council of the Media Ethic that the host of a TV-programme – journalist Aleksandre Elisashvili failed to react to homophobic statements made by his guest – Malkhaz Gulashvili- during the talk-show “Barieri” aired at the Kavikasia TV station on March 9, 2010.

Council ruled that Aleksandre Elisashvili violated the 7th principle of the Charter on Journalism Ethics. According to that principle: “journalist must realize the risk of encouragement of discrimination by media; therefore he/ she must do his/her best in order to avoid discrimination of any person based on that person’s race, sex, sexual orientation, language, religion, political or other views, national or social origin etc.”

Elisashvili stated that he did not agree with the finding of the Council, nevertheless he would respect it. “I will take into consideration the Council’s decision in future and I’ll be more cautious when covering the topics concerning the minorities. I will call upon my respondents to be more reserved so that hate speech is excluded from my programmes” – he said.<sup>30</sup>

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

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

Georgian legislation does not manifestly discriminate against LGBT organizations, as far as their registration and functioning is concerned. Constitution of Georgia contains an exhaustive list of grounds when registration and functioning of an organization can be prohibited; nothing in that provision suggests that LGBT organization can fall under the prohibited category purely

27 Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia by independent researcher Ana Natsvlishvili. COWI. 2010. available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

28 See: <http://www.youtube.com/watch?v=L9HZIjogclc>

29 CEC. Report on The response to applications/complaints submitted to Central Election Commission and Information distributed via media (1 August – 14 October, 2012). pp.163-164. available at: [http://cesko.ge/files/2012/Report\\_on\\_Complaints\\_01\\_08\\_2012\\_-\\_14\\_10\\_2012\\_Eng.pdf](http://cesko.ge/files/2012/Report_on_Complaints_01_08_2012_-_14_10_2012_Eng.pdf)

30 Ethics Council Decided That Aleksandre Elisashvili had Violated Professional Standards. L. Beridze. portal media.ge <http://www.media.ge/node/37242>

due to its focus on protection and promotion on LGBT rights. Civil Code of Georgia which further regulates technicalities of registration however mentions that an organization can be denied registration if its aim are contrary to “public morality.” The meaning of the latter notion remains undefined in the law. As a subordinate legislation, the Civil Code cannot be invoked to trump the Constitution and hinder registration of LGBT organization, even if one interprets protection of LGBT rights as being contrary to “public morality.” Nevertheless, existence of this provision triggers questions and its formulation should be revised. No precedent exists in Georgia when an LGBT organization has been denied registration due to its aims or based on any other ill-founded motivation.

Only in recent years government has created a fund for NGOs. Although LGBT organizations have not yet applied to this fund, nothing suggests that if they do, they will be denied funding based on discrimination.

State authorities rarely initiate a dialogue with LGBT organizations to discuss planned legislative amendments or address the needs of their beneficiaries through policy actions.

#### **Case #W20. Verbal Attacks and Threats against Women’s Fund in Georgia**

In November 2009 Women’s Fund in Georgia announced a call for proposals directed at overcoming homophobia and discrimination against LBT women ... Around 10 homophobic and sexist newspaper articles appeared in the printed press (newspapers Alia, Asaval-Dasavali, etc.) in response to this call for proposals. A discussion topic was also started initiated on Forum.ge (open internet forum where various topics are discussed). On their webpage the entire text of the call for proposal was displayed, furthermore the list of employees, board members, advisory board members of the organization were provided.

“We wanted to involve the police, but when we consulted a lawyer, we were told that the freedom of speech and expression is such an open issue in our legislation and has such an open and broad definition, that it is impossible to hold anyone responsible for what happened, especially since we don’t have any hate speech laws and “hate speech” as such does not exist in our legislation” – said the Head of the Women’s Fund.<sup>31</sup>

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

Freedom of expression is guaranteed under the Constitution of Georgia. The State neither encourages nor prohibits reception or transmission of information and ideas relating to sexual orientation and gender identity; there are several web-sites and blogs on LGBT issues: lesbi.org.ge; minority.ge; identoba.org, gay.ge; gay-batumi.com etc. LGBT organizations publish and disseminate different materials concerning LGBT issues freely.

In their public rhetoric, the government officials were often underlining tolerance and its importance in terms of ethnic and religious minorities, while they prefer to remain silent about the whole range of problems related to the sexual minorities.<sup>32</sup> However certain positive changes can be observed in this respect in 2012.

2009 and 2010 amendments to the Law on Peaceful Assemblies, though not discriminatory to LGBT people specifically, have restricted fundamental freedoms in a disproportionate manner. The Law needs to be revised urgently.

In general human rights defenders do not enjoy risk-free and friendly working environment in Georgia. LGBT activists in particular belong to one of the risk groups of third-party violence. LGBT activists are not however subject to any specific restrictions or particularly visible repressions from state authorities.

#### **Case #W10. March against alleged gay pride plans in Batumi**

In August 2010, in Batumi (Georgia) various spiritual leaders organized a public event of preaching and praying for the salvation of the sinners’ (LGBT people) souls in response to rumors that a gay pride was going to be organized in Batumi.<sup>33</sup> The movement culminated in a public prayer in front of one of the hotels in Batumi,

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31 Materials for preparation of CEDAW shadow report concerning LBT women’s situation in Georgia.WISG. 2012. Women’s Fund in Georgia. Interview with Mariam Gagoshashvili. 25.10.2011

32 E. Aghdgomelashvili. Research on coverage of the issues of sexual orientation/gender identity in the media according to the situation of May 2011. Media Development Foundation’s (MDF). <http://www.mdfgeorgia.ge/index.php?&address=&menuid=16&id=54&lang=1>

33 “Orthodox Congregation gathering in Batumi”, Newspaper Netgazeti. 2010.25.08. available in Georgian at : <http://netgazeti.ge/GE/22/News/2281/>

where foreigners, allegedly planning to participate in the pride, were accommodated.<sup>34</sup>

Some members of anti-gay meeting went to the Mayor's office in Batumi, as they thought that the Mayor's Office had given permission for the gay pride. A representative of Mayor's office tried to convince them that this information was false, furthermore - that he was on "their side" (anti-gay) and that he would never approve gay pride.<sup>35</sup>

#### **Case #I12A. IDAHO March**

On May 17 2012, to celebrate the International Day against Homophobia, LGBT organization Identoba decided to a peaceful march in Tbilisi. Identoba informed the mayor's office and Old Tbilisi Police Department with the letter about its intention in advance and received assurances from police that safety and security of the demonstrators would be guaranteed.

by 13:00 the staff members of the non-governmental organization Identoba and other organizers of the march approached the building of Tbilisi Event Hall where they planned to start the march and walk towards the Freedom Square, which was supposed to be the destination of the rally. By this time, law enforcement officers started to gather around Tbilisi Event hall. In spite of the aggression and verbal insult that the passersby's revealed towards the participants of the demonstration, the march began as planned and without any major obstacles.

As soon as the participants started walking, the representatives of the Orthodox Parents' Union appeared, and called on the participants to stop the march. It was clear that they were mobilized on purpose and at the beginning tried to disrupt the rally through the verbal confrontation. When the rally reached the Academy of Sciences, they made a chain and blocked the road, not letting LGBT activists go further. Their intention to disrupt the march should have been obvious for law enforcement officers too, though; despite multiple requests from the representatives of Identoba they did not intend to interfere. In front of the law enforcement officers religious extremists violated the right of freedom of assembly of the participants of the manifestation – broke posters and LGBT flags, insulted the participants verbally and threatened them with physical abuse and destruction. The police interfered only after several participants of the demonstration were physically abused by the opponents of the LGBT demonstration.<sup>36</sup> Police responded late.

According to the information spread in media, a few days thereby, some of the attackers were caught and brought to the court for an administrative offense and were fined.

The representatives of organization Identoba, consider that "the representatives of law enforcement did not fulfill their duties, because The representatives of organization Identoba believe that "the representatives of law enforcement did not fulfill their duties, as according to existing legislation criminal charges must have been brought against the perpetrators of those acts, whereas the authorities imposed on them only administrative sanctions."

On June 27, 2012, Identoba addressed the chief prosecutor of Georgia with the statement (the copy was sent to the ombudsman), where they demanded: To start an investigation on the basis of the obtained information, according to the demands stated in the article 100 of Criminal Procedure Code.

In case of initiation of criminal case based on information provided by Identoba, to follow the amendment adopted on March 27 2012 in criminal law of Georgia: committing crime on the basis of sexual orientation and gender identity is an aggravating circumstance for all the crimes considered by the code. The organization did not receive any respond to the statement.

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

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

Consensual homosexual sexual conduct was decriminalized in Georgia in 2000. Recently a proposal for re-criminalization has

34 Video recording of a public prayer is available at : [http://www.youtube.com/watch?v=pFYWNJAXGWM&feature=player\\_embedded](http://www.youtube.com/watch?v=pFYWNJAXGWM&feature=player_embedded)

35 "Orthodox Congregation gathering in Batumi", Newspaper Netgazeti. 2010.25.08. available in Georgian at : <http://netgazeti.ge/GE/22/News/2281/>

36 Fighting at gay rights march in Tbilisi Georgia. 17 May 2012. BBC News. <http://www.bbc.co.uk/news/world-europe-18109022>, Georgia gay-pride march ends in fist fight. 17 May 2012. Euronews. <http://www.euronews.com/2012/05/17/georgia-gay-pride-march-ends-in-fist-fight/>; A Backlash in Georgia. By Haley Sweetland Edwards. June 14. 2012. New York Times. <http://latitude.blogs.nytimes.com/2012/06/14/progress-by-georgias-gays-spurs-a-backlash/> etc.

been voiced in Parliament; however, this proposal quickly prompted negative reactions and public condemnation by other MPs. Personal Information, including information about sexual orientation or gender identity, is subject to special protection under the Constitution. However a new Law on Personal Data Protection adopted in December 2011 (not yet in force) sent an alarming signal. The Law introduced a position of a Data Inspector and obliged employers (public and private) to collect and send personal information about its employees to the Inspector, including information about their sexual orientation. The law further authorized the inspector to process, analyze, store and release such data without prior consent of the individual concerned, provided that such action was “in the public interest.” The law failed to define “public interest” or to provide other safeguards against the abuse of these broadly defined and deeply intrusive state powers, whereas an MP from the ruling party stated: “A kindergarten or any medical center shall have information about a person whether she/he has AIDS or a kindergarten shall have information about sexual orientation of the person.”<sup>37</sup>

The law has not yet entered into force and needs to be repealed immediately to make sure that 1. It serves a legitimate aim in a democratic society, 2. It does not threaten protection of fundamental rights and freedoms.

Georgian legislation does not recognize same-sex marriage or any other form of civil partnership, consequently LGBT couples do not enjoy rights provided for married heterosexual couples in Georgia.

### **Case #W3. A Member of the human rights Committee in the Parliament demands Re-criminalization of homosexuality**

July 30, 2009: An MP Dimitri Lortkipanidze (then the deputy chairman of the Human Rights and Civil Integration Committee of the Georgian Parliament), who was nominated for the post of a Public Defender by parliamentary minority (led by the Christian-Democratic Movement), said that homosexuality should be re-criminalized: “I think that homosexuality should be punishable in this country, because it is punishable by our [Orthodox Christian] faith. I think that one of the best means to fight against homosexuality will be if this act becomes punishable under the criminal code,” MP Lortkipanidze said. MP Lortkipanidze’s statement was condemned by several other MPs.<sup>38</sup>

### **Case #W7A. Christian Democratic Movement ‘s initiative of a Constitutional Amendment to ban same-sex marriage**

On May 22, 2012 Giorgi Targamadze’s (MP, Leader of the Christian-Democratic Movement) proposed Constitutional amendment banning same-sex marriage in Georgia.<sup>39</sup> (At present same sex marriage is not allowed, but it is not expressly banned by the Constitution either). „Ladies and gentlemen, after the warning stated by his Holiness during the Easter Epistle about the popularisation of sodomic sin has a pity reality and we see not only popularisation but even a gay pride in the streets of Tbilisi, I feel the responsibility to express the position of Christian Democrats and even more, offer our society, parliament and the whole country constitutional amendments, which contain 5 significant changes in the acting constitution.

I want to underline that we condemn any form of violence no matter who is the perpetrator, but at the same time, we are against portraying it [this march] as a harmless walk by representatives of the sexual minority or by their supporters. We consider that such walks are not the eventual goal of the activity, this is the beginning of a long-term and important process and the eventual goal is legal and moral legalization of homosexuality, indecency and wrong way of life in Georgia.

In order to prove it, we can recall the examples of the countries, where in spite of the fact that sexual minorities do not have any problems regarding human rights and discrimination, and in this regard neither in Georgia do they suffer from criminal prosecution, in spite of this, in European countries these groups are not satisfied with their life, on the contrary, today in some countries homosexuals are holding top level government posts and the right of same sex marriage is constitutionally guaranteed, as a result adoption and surrogacy become possible ... and Adoption is also available through surrogacy etc. and etc... ... That is why we offer society a package of constitutional amendments where 5 changes are considered, we went through all steps considered

37 Nothing personal - Draft Law Which Protects and Makes It Public. M. Metskhvarishvili. Netgazeti. 10.01. 2010. available at: [http://netgazeti.ge/GE/27/News/2534/?sms\\_ss=facebook&at\\_xt=4ca88497a59d6ab6%2C0](http://netgazeti.ge/GE/27/News/2534/?sms_ss=facebook&at_xt=4ca88497a59d6ab6%2C0). English version: <http://www.humanrights.ge/index.php?a=main&pid=12343&lang=eng>

38 Ombudsman Nominee Says ‘Homosexuality should be Punishable’. Civil Georgia, Tbilisi. 31.07.2009. available at: <http://www.civil.ge/eng/article.php?id=21309>

39 <http://www.youtube.com/watch?v=e1zRaTVgxfc>

by parliamentary regulations and for next four months will be gathering signatures of Georgian citizens in order to formally initiate proposed constitutional amendments.<sup>40</sup>

A homophobic statement made by the leader of Christian-Democratic Party – Giorgi Targamadze – when he was presenting to the parliament suggestions for constitutional changes- was criticized by was MPs<sup>41</sup>, as well as ombudsman<sup>42</sup> and other human rights NGO's<sup>43</sup>.

#### ***IVa. Right to respect for private and family life and access to health (Trans specific)***

(Paras 20 -22 and 35 -36)

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 (including any of a physical nature) that are abusive, and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender 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.

Gender reassignment is a complex process and is composed of 3 stages: 1. medical intervention prior to surgery 2. Gender reassignment surgery itself 3. Post-surgery rehabilitation.

Georgian legislation neither prohibits gender reassignment surgery, nor regulates it. This gives absolute discretion to medical institutions when deciding who is eligible for the gender reassignment surgery and on procedures applicable to the entire reassignment process. Such a gap can result in 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 gender reassignment surgery have to be borne by the patient. (Whereas e.g., other medical procedures, e.g., various tests, dental care, birth-giving, etc. can be covered by 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.77 (which approves State Healthcare Programmes for 2011)<sup>44</sup>. The main criteria for selecting which services fall under this category are the importance of the disease and low or special social status of the beneficiaries. Gender reassignment surgery, despite its high social importance, is not included in this category of medical services. Considering the level of poverty and unemployment in Georgia, many may find gender reassignment procedures, which in total costs 19900 GEL, financially inaccessible<sup>45</sup>.

It is mandatory to go through irreversible sterilization, hormonal treatment and preliminary surgical procedures in order to be able to obtain new ID documents. In case of gender reassignment, a person is entitled to change his/her personal data in

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40 From June 4-22, the Caucasus Resource research Centre (CRRC), conducted nation-wide poll in Georgia for the US based non-profit think tank National Democratic Institute (NDI). The NDI and CRRC conducted 6229 face-to-face interviews over the most recent and fourth phase of this study. The survey conducted by NDI involved the question about CDM's initiative of Constitutional Amendments. On the question does the respondent support the change of banning same-sex marriage, 89% answers "Yes", 6%– "No", and 4% "don't know". (q104). Public attitudes in Georgia: Results of a June 2012 survey carried out for NDI by CRRC. <http://www.ndi.org/files/Georgia-NDI-survey-update-June2012-ENG.pdf>

41 **Lasha Tordia** (MP, the former head of the parliament committee for human rights): "It is very regrettable that from this high parliamentary rostrum a lawmaker makes statements, which in fact fuel strife between certain members of the society... ..In Georgian constitution and Georgian legislation it is clearly stated, that all the people in Georgia are equal in the face of the law and discriminatory attitude from anyone toward religious or sexual minorities or other people is forbidden." 22.05.2012. Expressnews. <http://www.epn.ge/?p=109923> ; **Pavle Kublashvili** (MP, former chairman of the legal affairs committee): "I think, the statements made by Mr. Targamadze and Mr. Laliashvili are totally homophobic. These are statements full of discriminatory spirit. Accordingly, I would like to underline, that our country is the country of a free society, where law is the prior guarantor that no restrictions will take place and there will be no discrimination on any basis. In our state there will be no such restrictions for religious and sexual minorities. Government we have today is the guarantor for that. The majority does not support this initiative. Society is much more tolerant than CDM. It is shameful when such homophobic statements are made in Parliament" - stated Kublashvili. Netgazeti. 22.05.2012. <http://www.netgazeti.ge/GE/105/opinion/9905/>;

42 Ombudsman against CDM's homophobic amendment. T.Kupreishvili. Netgazeti. 22.05.2012. <http://www.netgazeti.ge/GE/105/News/9908/>

43 e.g. Constitutional changes presented by "Christian-Democrats" are discriminative. Joint statement of "Article 42 of the Constitution" and "Women's initiative support group" <http://women.ge/2012/06/04/cristiandemocrats/>

44 [https://matsne.gov.ge/index.php?option=com\\_idmssearch&view=docView&id=1208699](https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1208699)

45 Internal study on Transgender's Health Policy in Georgia. Identoba. 2012

the official documents.<sup>46</sup> However, it is impossible to receive a new higher education diploma to reflect changed gender of the diploma owner, as the relevant normative act does not provide for the possibility of issuing a higher education diploma for the second time, irrespective of the reason. This may create significant problems for transgender persons particularly when applying for an employment, when they need to prove their academic background.

Furthermore, the new ID document already has an entry for person's sex which complicates the situation for transgender people, particularly for those who are in the process of changing their sex (which requires undergoing a minimum two years-long procedure).<sup>47</sup>

There seem to be no plans of Georgian authorities to address the problems of transgender persons in the near future.

While there is no case in practice, it is difficult to say whether marriage of a transgender person will be permitted after gender reassignment surgery. In theory there should be no problems as far as legislation is concerned.

## **V. Employment**

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

Labour Code of Georgia expressly prohibits discrimination based on sexual orientation and gender identity. This amendment which was introduced in 2006 has to be evaluated positively. One must note however that prohibition of discrimination only commences once the person is already employed and does not cover the selection stage or the process of hiring. These gaps constitute significant flaw of the legislation and need to be addressed. The incoming government (which has not been officially formed after the very recent Parliamentary Elections on October 1) has made public pledges that Labour legislation will be subject to significant changes; it is not clear however if that will also encompass anti-discrimination clause of the legislation.

Internal regulations in the General Prosecutor's Office which protect employees against sexual harassment at the workplace have to be cited as an example of good practice.

The impossibility to receive higher education diploma for a second time after undergoing gender reassignment surgery makes protection of privacy of transgender individuals in employment impossible.

Information about transgender persons in the armed forces is unavailable<sup>48</sup>.

### **Case #W32. Firing a person on the ground of gender identity**

Interview with a 21 years-old transgender (Male to Female - MtF) person

In 2010-2011 I was working as a bar-man in a cafe. The chief and staff members had good attitude towards me. They knew about my identity. During my second year I decided to be more open in public about my identity and defend my rights freely. I took the initiative to meet a journalist. My photo appeared on a cover of a magazine, which made me very glad. However, the manager of the café fired me as a lot of people were visiting the cafe and they would have negative attitude towards me. I was in a very bad condition. Had financial difficulties and I nearly became a victim of prostitution ... Fortunately my mother helped me. Otherwise I would have done everything... but one needs more than just food, you know... so I was in deep depression... I would stand up for my rights freely, but I did not know what to do... <sup>49</sup>

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<sup>46</sup> Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

<sup>47</sup> CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012. p.71. available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

<sup>48</sup> The Ministry of Defense did not response on WISG's letter.

<sup>49</sup> Materials collected for LGBT discrimination survey. I.47(1)

## 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 sexual orientation or gender identity, 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 LGBT pupils and students, and measures to meet the special needs of transgender students.

Discrimination is prohibited in the field of education and equal access to education is recognized by law both in primary as well as secondary and higher education.<sup>50</sup> The practice does not always correspond with the law however.

Attitudes towards LGBT persons and issues at schools and universities echo general societal patterns and are under strong influence from traditional stigmas, taboo and values promoted by the Georgian Orthodox Church.<sup>51</sup> Although bullying at school represents a problem in Georgia,<sup>52</sup> the Ministry of Education is not looking into the issue, has no plans to identify the nature and scale of the problem or to address it. School curricula do not include sex education. It is alleged that textbooks contain discriminatory materials; however it is difficult to conclusively state this, since no comprehensive study has been conducted on this matter. No special programs (awareness, psychological counseling, etc) are run at schools or in higher education institution to meet the needs of LGBT pupils/students.

On a positive note it should be noted that a Draft of the State Policy on Youth elaborated in 2011 makes express reference to state's obligations towards LGBT youth. In particular the Draft states: "State will organize training courses at schools and higher education institutions, about protection of their human rights, including rights of ethnic, religious and sexual minorities. "<sup>53</sup>It remains unknown however when it will be finalized, what is the concrete plan and time-line for its implementation, what tools will be used to implement it, etc.

It must be noted that the Ministry of Education ignored WISG's inquiries and provided no answer to questions in relation to implementation of CM Recommendation.

### **Case #W38. Bullying at schools and on the streets**

Interview with a teenage gay man

At school they often laugh at me because of the way I behave and conduct myself. I have been called "pederast" a lot of times. They swear and curse me... sometimes they paint on my backpack or hide my chair from me. Last year (in 2011) in winter when I was on my back from school, my classmates called me and took me to the staircase. They were laughing at me, touching me... One of them kicked me... they abused me verbally, when I responded- they hit me in the face several times.<sup>54</sup>

In spring 2011 a guy living in my block learned that I am gay and spread this information in the neighborhood. After this whenever I would meet guys from the neighborhood they used to laugh at me and abuse me verbally. Once, they yelled "you pederast" at me in public. They threatened to beat me up...

In summer I was sitting in the garden with my friend. They came and started making fun of me. One of them pretended he was a gay too and started imitating my manners, as if he wanted to kiss me. I tried to get rid of him while others kept laughing.<sup>55</sup>

### **Case #I40b. Tbilisi State University: Homophobic Psychology for Students**

In 2012 one of the students at the Tbilisi State University reported to Identoba about a statement made by one of their professors during a psychology lecture. The lecturer referred to LGBT people as "unhealthy pervers." Identoba decided to follow the source and ask the professor himself whether or not what we heard was true.

Nugzar Baidurashvili is one of the professors in the department of social and political sciences at the Tbilisi State

<sup>50</sup> The Law of Georgia on General Education

<sup>51</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Sociological Report: Georgia, COWI.2010. para.67. available at [http://www.coe.int/t/Commissioner/Source/LGBT/GeorgiaSociological\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/GeorgiaSociological_E.pdf)

<sup>52</sup> e.g, all the participants (in the age group 16-18) of WISG's research on LGBT discrimination indicated to have experienced bullying at school.

<sup>53</sup> [http://youth.gov.ge/?page\\_id=1158](http://youth.gov.ge/?page_id=1158)

<sup>54</sup> Materials collected for LGBT discrimination survey.Q.13(1).

<sup>55</sup> Materials collected for LGBT discrimination survey.Q.13(2).

University, who lectures the future psychologists on developmental psychology, psychology of problematic children and experimental psychology. In his conversation with us, Prof. Baindurashvili stated his position clearly: “People with such abnormal orientation often express the symptoms in childhood. Parents should pay much attention in order not to miss those signs and provide their children with timely help. It is impossible for a disease to develop without clear symptoms. Parents should be very careful not to miss the symptoms. Whether or not a person like this can be cured, is in God’s hands, no one can guarantee it, but we should at least try. For instance, psycho-correction can be successful. Patient should be treated as long as necessary and possible. We should try our best and cannot deny a person help assuming that the treatment could be unsuccessful. We cannot just leave these people be.”  
*Identoba sent a letter to the university administration, with the request of reacting on public homophobic statements of university lecturers, though, none of the universities have responded yet.*<sup>56</sup>

## VII. Health (excluding trans)<sup>57</sup>

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 sexual orientation or gender identity. Measures proposed include taking account of the specific needs of LGBT 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 sexual orientation or gender identity.

Discrimination of patients based on, inter alia, one’s sexual orientation is expressly prohibited by law, including patients subject to deprivation of liberty.<sup>58</sup> Nevertheless, LGBT persons often report that medical personnel display homophobic attitudes and often advise patients to undergo treatment against homosexuality.<sup>59</sup> It is a positive news that the Ministry of Health is currently reviewing post-graduate curricula and plans to modify them to make sure homosexuality is not viewed as a disease.<sup>60</sup>

Neither the state action plans nor the state’s current strategy on health-care issues,<sup>61</sup> or researches conducted in the field take into consideration any specific needs of LGBT groups. 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.

Blanket ban bars homosexuals from donating blood.<sup>62</sup>

Patients under 16 can receive medical treatment only with the consent of a parent or her legal representative, except when the minor herself demands confidentiality.

On June 8, 2012 the new amendments were proposed to the Law of Georgia on Health Care (N07–3/639; 08.06.12), which will restrict the right to surrogate parenthood only to a childless couple who live in a registered marriage but are infertile.<sup>63</sup>

### **Case #W34a. Denial by medical professionals to provide medical services**

Interview with a 27 years-old transgender (Male to Female - MtF) person

When I needed to obtain approval for gender reassignment all the people working in the clinic, including the sexologist and the psychologist, were very friendly. Later on I needed to do some blood test. As soon as medical staff learned that I was a transsexual, awful things started to happen. I took one of the blood tests in Jordania’s clinic. Some of the doctors treated me normally, and even talked to me warmly.... But generally I found myself

<sup>56</sup> Tbilisi State University: Homophobic Psychology for Students. ID mag. 01.25.2012. <http://identoba.org/6065>

<sup>57</sup> See Section v above.

<sup>58</sup> The Law of Georgia on the Rights of Patient.; The Law on Public Health of Georgia

<sup>59</sup> CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012. p.63. available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

<sup>60</sup> Response letter from the Ministry of Labour, Health and Social Protection of Georgia.n.01/27507, dated by: 15.05.2012

<sup>61</sup> Georgia - national health care strategy 2011-2015 [http://www.healthrights.ge/wp-content/uploads/2012/05/jandacva\\_Eng.pdf](http://www.healthrights.ge/wp-content/uploads/2012/05/jandacva_Eng.pdf)

<sup>62</sup> The Ministerial Order which imposes this ban has been challenged before the Constitutional Court of Georgia

<sup>63</sup> [http://chairman.parliament.ge/index.php?option=com\\_content&view=article&id=1603:2012-07-12-06-31-59&catid=136:prs&lang=en&itemid=0](http://chairman.parliament.ge/index.php?option=com_content&view=article&id=1603:2012-07-12-06-31-59&catid=136:prs&lang=en&itemid=0)

in awful situations...I was insulted many times... but maybe it was not an insult?! ... may be that person (one of the doctors) took all this too close to the heart ... "If my child was in your shoes, I don't know what I would do..." - said the doctor. I asked her, "What would you do? Kill him? Or kick him out from home?"... other abusive words were also used in my respect, but I don't want to talk about it...<sup>64</sup>

#### **Case #W34b. Homophobic attitudes from health professionals**

Interview with a gay man, age group 18–25

In January 2011, a dentist who had treated the respondent for several months, refused to continue the treatment after the respondent changed his appearance. The dentist refused to take money for the treatment and stopped answering respondent's phone calls.<sup>65</sup>

#### **Case #I36. Chief of the psychiatric department of State Medical University describes homosexuality as "abnormality"**

Doctor of Medicine, chief of the psychiatric department of Tbilisi State Medical University, Teimuraz Silagadze, states that even though LGBT people, are no longer seen as abnormal people or deviants by the international healthcare organizations, they still constitute a special case, due to their different behavior:

"Actually, changing names of the phenomena is a common thing: when a term assumes negative meaning and is used to insult people, we try to replace it. For instance, there used to be terms like: psychopath, idiot, imbecile which were commonly used as a regular diagnosis. Now these terms have been replaced with more mild and loyal terms to address these patients, however the facts do not change and replacing names, does not make these conditions less grave. If something has been an anomaly for 20 centuries, you cannot change it by merely changing its name. These people [LGBT people] disrupt the harmony created by God. The most important thing is that the family is harmonious. Even animals and all the living creatures on earth are created on the basis of the opposite sex principle, otherwise they won't be able to reproduce."<sup>66</sup>

#### **Case #W37. Pressuring LBT people to undergo treatment**

Excerpts from the interview with WISG's sexologist

"People who come to us are usually those who already know about their identity and have decided to change their sex. Recently I had a case when the parent of the patient got in touch with me and asked me to "heal" her daughter/son, whereas the patient had completely different interests. Such situations are very difficult."

I recall one case of forced treatment of a person who was FtM and was openly telling his mother that he was a male and that she should leave him alone. Mother was taking him to doctors for various tests. The person was already 25 years old, had a wife, and had a fully harmonious family life with her, however was still compelled to obey his mother's wishes because he was not financially self-sustainable."<sup>67</sup>

## **VIII Housing**

Section VIII of the Appendix requires that adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in the provision of loans for purchase of housing, in the recognition of the rights of a tenant's partner, and evictions; also, the 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 LGBT people, including young persons excluded by their families.

The Constitution of Georgia grants to everyone legally present within the territory of Georgia the right to liberty of movement and freedom to choose his/her residence throughout the territory of Georgia.<sup>68</sup>

64 Materials collected for LGBT discrimination survey. I.45(2)

65 Materials collected for LGBT discrimination survey.Q.108.

66 Perception of Homosexuality in Georgian Medical System.Identoba Magazine.

67 Materials collected for CEDAW shadow report concerning LBT women's situation in Georgia.WISG.2012. Interview with Maia Tchavtchanidze. Women's Initiatives Supporting Group, sexologist 6.10.2011.

68 Constitution of Georgia – Article 22, part 1

However there are cases when LGBT persons are denied the possibility to rent a house based on their status. No legal remedy exists against discrimination in such cases, since the state does not intervene in this type of private relationships between landlords and potential tenants.

LGBT people often face risk of homelessness if their family learns about their sexual orientation, 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 LGBT persons however.

**Case #W39. Refusal for accommodation**

Interview with a teenage bisexual male

In 2011 I decided to leave home because of the conflict with my parents and wanted to rent an apartment together with my friend. The owner of the apartment suspected we were gay and was therefore aggressive. He said he would not allow men dressed like us live in his house. He even threatened us with physical violence if we would not leave the apartment immediately.<sup>69</sup>

## ***IX. Sports***

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

The Ministry of Sports and Youth Affairs informed WISG that they are unaware of the facts of LGBT discrimination in the sports sphere of Georgia. WISG has however documented some cases, which disclose discrimination in sports on LGBT grounds.

No other information was provided by the Ministry, however they affirmed in their letter that they condemn any type of discrimination.

**Case #W33. Discriminatory insults during sports events**

Interview with a 18 years-old lesbian person

On June 28, 2010 I participated in a sporting competition – “Cheerful Starts” in Tbilisi. I heard someone cursing at me from the hall: “you fucking Lesbian” as they could not understand whether I was a girl or a boy. My friend told them to go outside. While we were talking with them a guy came to their support and slapped me in the face. I did not call police because I was afraid of homophobic reaction.<sup>70</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 sexual orientation or gender identity 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 sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

Article 47 of the Constitution guarantees that the rights and obligations of foreign citizens and stateless persons residing in Georgia are equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law.

Georgian legislation protects people from being sent to a country where one’s life and health will be in danger. Deportation of an asylum seeker is prohibited.

No evidence exists to suggest that well-founded fear of persecution based on LGBT status was not considered a sufficient ground to grant asylum or a refugee status.

WISG is unaware of any training programmes conducted for staff members responsible for processing asylum/refugee status applications.

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<sup>69</sup> Materials collected for LGBT discrimination survey.Q.32.

<sup>70</sup> Materials collected for LGBT discrimination survey.Q.74(3).

## ***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 sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

Traditionally Georgian Public Defenders (PDs) have not been particular outspoken about LGBT rights, some changes can be observed in 2012 however. According to the Office of the Public Defender, fighting against discrimination is one his most important functions and priorities.<sup>71</sup>

National law does allow the PD to receive individual complaints, however according to PD LGBT persons do not resort to him (allegedly due to the fear that disclosure of the incident will lead to the disclosure of their sexual orientation or gender identity to third parties which will one way or another get involved in investigating the incident -e.g., police - or learn about it –e.g., family members or broader public).

While PD has organized awareness raising activities for its own staff and the staff of certain governmental bodies, no broader campaign has been carried out to raise awareness of the general public about prohibition of discrimination, etc.

Moreover, according to the PD he actively lobbied the recent amendment, which made commission of a crime due to hate motive on LGBT grounds an aggravating circumstance.

In response to an MP's proposal to introduce a constitutional ban on same-sex marriage, PD stated: "I consider the statements made by the leader and members of the parliamentary minority which were fraught with homophobic spirit no less worrisome than the proposed changes. Unfortunately, a part of their statements contained hate speech, which, in my opinion, encourages stereotypical and discriminatory attitudes in the society, creating a danger that sexual minorities may be assaulted and ostracized from the society. Making statements that equal homosexuality with "depravity, perversity and distorted way of living" in the light of the events that took place a few days ago, on the International Day against Homophobia, contributes to the establishment of incorrect stereotypes in the society and encourages discrimination." – states the Public Defender<sup>72</sup>.

He underlines that the representatives of the legislative body bear not only the responsibility taken with the mandate, but also a high moral responsibility towards the society.

"I consider it unacceptable for MPs to use expressions that insult any member of the society and portray him/her as unequal in relation to other citizens. I would also like to remind everyone once again that the Constitution of Georgia has been and remains the foremost guarantee of equality of rights in our state. I call upon every political force, individual politicians, and the civil society to be particularly attentive and careful, so that expressions that are discriminatory in any sense and hate speech are not spread by or through them in the future." – stressed the Public Defender's Statement.

Public defender of Georgia strongly condemned the raid on IDAHO march which took place on May 17, 2012: "The Public Defender of Georgia considers any violent action that is carried out on the grounds of intolerance inadmissible. It is a positive obligation of the law enforcement bodies to create appropriate conditions for the exercise of the right to hold a peaceful assembly. Violations of law committed against such a march require swift and adequate response.

I consider that, in similar cases, the state must take timely and effective measures with the aim of stopping and preventing actions carried out on the grounds of intolerance".<sup>73</sup>

## ***XII Discrimination on multiple grounds***

No information is available on these issues.

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<sup>71</sup> Response letter from the Office of the Public Defender of Georgia N.706/04-11, dated by: 17.07.2012

<sup>72</sup> Ombudsman against CDM's homophiby. T. Kupreishvili. Netgazeti. 22.05.2012. <http://www.netgazeti.ge/GE/105/News/9908/>

<sup>73</sup> The statement of the Public Defender of Georgia about the events of May 17, 2012. 18.05.2010. <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1501>

## V. APPENDICES

### ***Appendix # 1. 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***

*(Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights; Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as “the Convention”) and its protocols; Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms; Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons; Considering the case law of the European Court of Human Rights (“hereinafter referred to as “the Court”) and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons; Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued; Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity; Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations; Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”; Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity; Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”; Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

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;
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 transgender persons and to promote tolerance towards them;
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;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

## ***Appendix to 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 transgender 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 grounds of a) sexual orientation b) gender identity?<sup>74</sup>*

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

According to the Ministry of Justice they are monitoring whether national legislation is in compliance with European standards.<sup>75</sup> According to the letter, “such monitoring is constantly exercised by the relevant departments of the Ministry of Justice, namely: Department of Public International Law; Department of Legal Drafting; and Analytical Department.”<sup>76</sup> It is unclear what the results of such monitoring are in respect of sexual orientation and gender identity discrimination and whether any further actions have been taken or are planned based on the monitoring results.

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 transgender 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 has adopted certain legislative acts expressly outlawing discrimination on the basis of sexual orientation and/or gender identity.<sup>77</sup> Labour Code, The Law on Patient’s Rights need special acknowledgement in this respect. Nevertheless, these legislative acts still contain flaws and/or lack strong implementation mechanisms and therefore cannot be effectively utilized to fight against LGBT discrimination in practice. In general one can say that in Georgia “LGBT persons often are in unequal position compared to heterosexual persons; in some instances the law does not appear to be discriminatory, however it leads to discriminatory results in practice and severely affects LGBT community.”<sup>78</sup> In the field of education, relevant legislation prohibits discrimination in general, however not expressly on the grounds of sexual orientation/gender identity.

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

No.

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?*

No.

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<sup>74</sup> In addition to public opinion surveys and statistics on hate crimes, these should include complaints directed to national equality bodies and court verdicts.

<sup>75</sup> Though the letter does not specify, what is exactly meant under the notion of ‘European standards’, i.e. is it standards established under ECHR, under EU relevant legislation, or both; the letter is not clear whether monitoring is further conducted regarding compliance with standards established under relevant UN documents.

<sup>76</sup> Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

<sup>77</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia. by independent researcher Ana Natsvlishvili. COWI. 2010 , p.3

<sup>78</sup> ibid

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

Victims of discrimination on any ground, including on the grounds of sexual orientation and gender identity have equal access to courts. They can also file a complaint before Ombudsman or law enforcement authorities and demand steps to be taken within their respective mandates. Victims can also ask for reparations through civil proceedings, most commonly for compensation for material as well as moral damages.

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

No.

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

**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?*

No information available whether any steps have been taken at all in this direction.

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

The Recommendation and its appendix have not been translated and disseminated.

*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?*

## ***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. Do legislative measures to combat “hate crimes” and other hate motivated incidents exist?*

1.1. Georgian legislation does not define or criminalize hate crime. As a consequence, no official statistical data can be gathered about hate crimes in general, and hate crimes in respect of LGBT people in particular. Nevertheless, Georgian Criminal legislation does recognize that crimes can be committed due to hate motive and considers the latter as an aggravating circumstance of a crime leading to a greater penalty.

#### *1.2. Do these measures recognize (a) sexual orientation (b) gender identity as a possible motive in such crimes or incidents?*

1.2. Until very recently, commission of a crime due to hatred towards one’s sexual orientation/gender identity, unlike religious or ethnic hatred, was not considered an aggravating circumstance of a crime. This gap has been appropriately addressed in a recent legislative amendment<sup>79</sup> which added hatred towards one’s sexual orientation and gender identity to the list of aggravating circumstances. [On this issue see further par. 2.1. below.]

#### *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?*

1.3. In response to WISG’s enquiry whether training of police officer ensure that they are aware of the need to make special efforts to investigate any homophobic or transphobic connotations in crimes or incidents effectively, promptly and impartially, the Ministry of Internal Affairs replied that police officers receive basic education in human rights, including on issues of discrimination, as well as specific trainings on effective investigation of hate crimes.

In November 2010 staff of the Ministry of the Internal Affairs was trained within the framework of EU instrument –TAIEX “Hate crimes and their investigation.” The trainers were invited from OSCE/ODIHR, UK and Italy.<sup>80</sup>

Since 2011 the Police Academy, in cooperation with the representatives of the Tolerance Centre under the Public Defender’s Office, has been implementing the EU-funded nation-wide training programmes on Non-Discrimination for the police (five trainings in 5 regions of Georgia). The first training of the cycle was scheduled for 4-5 June 2012. The training programme focuses on review of the Georgian legislation and of the International Law with the focus on non- discrimination, stereotypes, discrimination, xenophobia, racism – definitions and the relevant examples, Georgian cases of acts committed on the basis of intolerance/hatred, relevant case law of the of the European Court of Human Rights.<sup>81</sup>

It is further planned within the framework of this project to prepare and distribute a brochure “Non-discrimination” to all the police stations.<sup>82</sup>

It needs to be noted however that neither the brochure nor the training programs contain information about the CM Recommendation.

In addition to specific trainings, according to MIA, human rights education is part of the basic course taught at the Police Academy. This includes intensive course in human rights protection, as well as the relevant national legislation and international instruments. Non-discrimination is one of the important aspects of the curriculum. Trainings are carried out systematically in cooperation with international and national organizations. Participants get to know fundamental principles of human rights protection and aspects of particular relevance in policing, including the prohibition of dis-

<sup>79</sup> Amendment to art. 53 in the Criminal Code of Georgia introduced on 27 March, 2012

<sup>80</sup> Response Letter from the Ministry of Internal Affairs, N.640758, dated by 18.05.2012.

<sup>81</sup> *ibid*

<sup>82</sup> Response Letter from the Academy of the Ministry of Internal Affairs N.40/5-517, dated by: 22.05.2012

crimination. Strong attention is paid to the Police Ethics Code and society-oriented policing. The latter aspect involves police relations with different types of minority groups and issues relevant in their work with them, elimination of stereotypes, etc.<sup>83</sup>

Ministry of Justice further noted in its letter that it devotes special attention to human rights training of its employees. e.g., it mentioned the training on prohibition of discrimination conducted for investigators with the support of Council of Europe in 2009<sup>84</sup> and training on domestic violence was provided for all district prosecutors supervising the cases related to the domestic violence. Those trainings also contained the issues of gender discrimination.<sup>85</sup> The letter also noted that the Judicial Training Centre under the Ministry of Justice is conducting training of the Ministry's staff on human rights issues within the framework of basic training.<sup>86</sup>

*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?*

1.4. No separate law-enforcement unit exists to receive and investigate hate crimes and hate motivated incidents specifically, but the General Inspectorate investigates breaches of the Ethics Code. About the work of law-enforcement authorities in general the letter from the Ministry of Internal Affairs noted that "the work of law enforcement authorities has become more efficient as a result of reforms carried out in recent years in Georgia. Police officers have eradicated syndrome of impunity and facilitated respect for human rights and fundamental freedoms."<sup>87</sup> However local and international human rights organizations have at times expressed a different perspective on this issue.<sup>88</sup>

One may further note very low level of reporting of such crimes to the police or law-enforcement authorities in general. As WISG's CEDAW shadow report on LBT women in Georgia noted "The survey revealed that LBT women very often do not report cases of violence to the police or rights organizations." As the majority expert opinion suggests, the key problem in that respect is not legislative gaps or deficiencies, but the fear of the victims of having their sexual orientation revealed, which in turn is triggered by the homophobic environment prevalent in Georgian society.<sup>89</sup> LGBT discrimination study conducted by WISG in 2012 revealed the same picture: nearly a third of all respondents, 32% (48 individuals) has at least once experienced physical violence and 89.93% (134) psychological violence. From 48 respondents who were victims of physical violence, 26.09% said they did reported to police (N=12), while 73% of all victims (N=34) did not do so. Out of those who did seek help from police, 46.15% regretted doing so because police reacted in non-friendly and homophobic manner, 30% individuals received friendly attitude and 23.08% persons said they were treated in a neutral manner. Reasons for not reporting (physical violence): police acts ineffectively – 21,62%, was afraid of homophobic reaction – 29,73%, didn't find it serious – 27,03%, other – 21.62%.<sup>90</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. 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?*

2.1. Recent legislative amendment to art. 53 of the Criminal Code of Georgia ensures that bias motivated bisexual orientation or gender identity of a victim maybe taken into account as an aggravating circumstance when determining sanctions. The provision states: "The motive of an offence related to the intolerance on the ground of race, colour, language, sex, sexual orientation, gender identity, age, religion, political and other opinions, disability, citizenship, national, ethnic and

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83 ibid

84 Response letter from the Ministry of Justice, N. 26948, dated by: 26.06.2012

85 ibid

86 ibid

87 Response Letter from the Ministry of Internal Affairs, N. 640758, dated by: 18.05.2012.

88 ee e.g., *Civil Georgia, 26 May'11 - Police Criticized for 'Use of Excessive Force'* at <http://www.civil.ge/eng/article.php?id=23532>; see also HRIDC: Vanishing Rights: Behind the Façade, Georgia: Events of 2009, etc.

89 CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012.pp. 68-69, available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

90 Situation of LGBT Persons in Georgia. WISG. Tbilisi, 2012

social belonging, birth, property or position status, place of residence or any grounds of discrimination represent the aggravating circumstance.<sup>91</sup>

**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>92</sup>*

3. 1. As noted above, Georgian legislation does not provide the definition of a 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?*

3.2. For trainings conducted for police offices, please see 1.3. above.

Regarding protection of witnesses, the response letter from the Ministry of Internal Affairs noted: “Since 2006 Georgia has exercised the Witness Protection Program. In 2010 the UNODC and the DOJ of the US Embassy assisted to elaborate the new program aimed at protecting the parties to the criminal proceedings (including the witnesses, victims and others). The program is in compliance with the requirements of the Criminal Procedural Code of Georgia, and the program itself is confidential. In 2010 and 2011 several of trainings, working meetings and workshops were organized through the assistance of the international organizations on the witness protection issues”.<sup>93</sup>

This however seems to be a measure implemented for witness protection in general and not specifically for protection of witnesses of hate motivated incidents. WISG is not in a position to evaluate efficiency of the above-mentioned programme in general or in respect of witnesses of incidents involving LGBT victims.

WISG is unaware if judges have undergone any similar types of trainings in recent years. The question was sent to the Ministry of Justice; however their response did not provide an answer to this specific question.

*3.3. Do training programmes and codes of conduct for the police and judiciary ensure that LGBT 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?*

3.3. Police Code of Ethics<sup>94</sup> outlines key ethical standards, respect for human rights and the rule of law based on the principles of equality and justice. The Code particularly stresses the duty of a policeman to be guided by the principle of impartiality in his work and not to discriminate.<sup>95</sup>

The letter from the Academy of the Ministry of Internal Affairs further emphasized:

During the learning process in the Police Academy the special focus is made on the Ethic Code and community-oriented policing. The latter concept encompasses how the police interact with different minorities and the factors that should be taken into consideration during such interactions, including elimination of stereotypes, etc.<sup>96</sup>

Implementation of the Police Code of Ethics is overseen by the Office of the General Inspectorate.<sup>97</sup>

To what extent Police Code of Ethics is implemented successfully in practice is difficult to say as official information on this issue is unavailable. It is noteworthy however that the document is not available via internet and it was difficult for WISG as well as other NGOs to get it via other means as well.

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91 Criminal Code of Georgia – Art.53(3<sup>1</sup>)

92 e.g. through police websites or leaflets distributed in the community.

93 Response Letter from the Ministry of Internal Affairs, N.640758, dated by: 18.05.2012.

94 Adopted and in force based on the Order N.119 of the Minister of Internal Affairs dated by January 26, 2007.

95 Response Letter from the Ministry of Internal Affairs, N. 640758, dated by: 18.05.2012.

96 Response Letter from the Academy of the Ministry of Internal Affairs N.40/5-517, dated by: 22.05.2012

97 Response Letter by the Ministry of Internal Affairs, dated by 18.05.2012, N. 640758.

Although there have been some positive changes in police system in Georgia, it is difficult to say that this has had a direct positive effect on police handling crimes against LGBT people or other incidents involving LGBT victims.

The research conducted by WISG revealed cases of police omission in respect of violence committed by third parties; also threats, cynical attitude and verbal abuse by the police towards individual members of the group and LGBT couples (case #W24). Representative of the Public Defender's Office and of "Women's Fund in Georgia" noted in this respect that awareness raising programs are necessary for law enforcement officials to avoid such practices.<sup>98</sup>

There have also been cases when police officers have themselves made threats, attempted to blackmail and otherwise abuse LGBT people on account of their sexual orientation, gender identity (cases #P21, W22).

Such cases clearly indicate that certain police officials ignore requirements of the Ethics Code as well as provisions of legislative acts which may be seen as a sign that a more robust implementation and monitoring of applicable regulations is needed.

Eradication of discrimination is further embodied as one of the key principles in the Ethics Code for Prosecutors. As the letter from the Ministry of Justice notes the Code aims to set high standards of responsibility for prosecutors, establish the principles of impartiality, bring about fair, effective and professional work, uphold human rights standards. Furthermore, it requires any staff member of the Prosecutor's Office to facilitate elimination of discrimination of any type.<sup>99</sup>

The letter further stated: When interacting with the public, staff member of the Prosecutor's Office is under the duty to treat people with respect, when expressing his opinions he should voice well-founded criticism in a tactful manner, he is further obliged to respect freedom of speech, opinion and expression of another person, unless the latter infringes upon the rights and freedom of a third person. Expressing opinions aiming to restrict the person or humiliate him based on race, color, language, sex, religion, political or other opinion, national, ethical or social background, property or status is forbidden.<sup>100</sup>

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

3.4. No specific units exist within the police tasked to investigate crimes and incidents linked to sexual orientation or gender identity.

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

3.5. Information is unavailable whether there are police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust.

The question was sent to the Ministry of Internal Affairs, however their response did not provide an answer to this specific question. LGBT organizations are not aware about the practice when police officers are not given such specific tasks.

*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?*

3.6. There are hotlines operating in the police and prosecutor's office, however WISG are not aware of any monitoring conducted on their effectiveness in general; WISG cannot really evaluate how effective they are specifically in respect of hate motivated crimes or crimes against LGBT community.

The Ministry of Internal Affairs letter further noted: "In its work the General Inspectorate relies on such sources of information as the citizens' complaints (written complaints and those received through the hotline, including anonymous sources), Public Defender, Media etc. When the unlawful act is committed by the police staff anyone can apply to the General Inspectorate and inform them about such fact".<sup>101</sup>

See the cases above concerning ignorance towards such crimes (cases #G8, #I18, #P21); concerning police discriminatory and disrespectful actions see the case below. Although there have been some positive changes in police system in Georgia, it is difficult to say that this has had a direct positive effect on police handling crimes against LGBT people or other incidents involving LGBT victims.

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98 CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012. available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

99 Order N. 5 of the Chief Prosecutor of Georgia dated by 19 June, 2006 regarding adoption of the Ethics Code of the Prosecutors, art. 5(2)

100 Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

101 Response Letter from the Ministry of Internal Affairs, N. 640758, dated by: 18.05.2012.

While working on the report to be submitted to CEDAW Committee and LGBT discrimination survey, the research revealed cases of police omission in respect of violence committed by third parties<sup>102</sup>; also threats, cynical attitude and verbal abuse by the police towards individual members of the group and LGBT couples. Representative of the Public Defender's Office and of "Women's Fund" in Georgia noted in this respect that awareness raising programs are necessary for law enforcement officials to avoid such practices.<sup>103</sup>

On the other hand it has to be stressed that in addition to the facts that there are no specific investigative units dealing with LGBT cases, and the level of awareness and professional and ethical skills of police officers remain questionable (as there have been cases when police showed ignorance and/or discriminatory/homophobic attitude towards LGBT victims of different incidents as indicated above), there have also been cases when police officers have themselves made threats, attempted to blackmail and otherwise abuse LGBT people on account of their sexual orientation, gender identity.

**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 transgender 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 transgender 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?*

4.1. The Ministry of Corrections and Legal Assistance wrote that it is retraining the staff of the penitentiary system of Georgia, a measure that aims to introduce humane and non-discriminative international standards for treatment of prisoners, regardless of their sexual orientation and gender identity.<sup>104</sup> WISG is not in a position to evaluate to what extent these trainings produce desirable results in practice.

Code of Ethics of the Staff member of the Penitentiary Institutions states that they must treat the inmates with respect, not to discriminate them on any ground and not to subject them to inhuman or degrading treatment.<sup>105</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?*

4.2. State is responsible to ensure protection of rights and freedoms of an accused and a convict, also protection of their legal, social and personal security.<sup>106</sup> The accused as well as the convict have rights as guaranteed by the Constitution of Georgia, Georgia's international legal agreements, laws and bylaws.<sup>107</sup> Any type of physical or sexual violence constitutes a crime in Georgia. Professional negligence or failure to exercise proper supervision by the person under the legal duty to do so is punishable by disciplinary or criminal sanction.<sup>108</sup>

The letter from the Ministry of Corrections and Legal Affairs outlined the above-listed standards and further stated: "Any

102 October 15, 2010. Bar Success. A person sitting at one of the tables started taking photos of a lesbian couple that was kissing at the other table. The couple protested. The verbal conflict soon grew into physical violence: "At first, he hit me in the face with his fist and I ended up against the wall. After that I fell down and he started kicking me with his feet, in my face as well ... My friends tried to save me, but he cast them away and threw the tables over. Instead of calling the security guards or trying to help me somehow, the manager kept telling me pay and go. I called the police, which came quite late, but still did. They seemed to be neutral, but still continued to hint that it was my behavior that had provoked those strangers. I believe that their attitude was not strongly homophobic, but the general environment was. Both security guards and police officers had an ironic attitude towards what happened. Instead of intervening, the security guards kept telling me to immediately leave the bar, while, later at the police department, the policemen just kept asking why those guys were taking photos of me at all... Two weeks later I received an official letter, saying that case was submitted to the investigation, but after that I haven't been contacted anymore. Well, after that I didn't actually have any time or energy or hope that this question would be solved, so I didn't follow it to the end..." Case #W26.

103 CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012. available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

104 Response letter from the Ministry of Corrections and Legal Assistance of Georgia N.11266/01, dated by: 14.05.2012

105 Ethics Code of Staff member of Penitentiary Institutions, Order of the Minister No. 151, 16.04.2009, art.2. available at [https://matsne.gov.ge/index.php?option=com\\_idmssearch&view=docView&id=83476](https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=83476)

106 art. 13 (1) and (2) of the Imprisonment Code

107 Response Letter from the Ministry of Correction and Legal Assistance N.11266/01, dated by: 14.05.2012

108 ibid.

convicted person/defendant accommodated at the institution of Georgia's penitentiary system is fully secured to enjoy the rights recognized by the Georgian legislation and the International norms".<sup>109</sup>

Whether this is the case in practice is questionable however, since Georgian Ombudsman and human rights organizations have risen numerous concerns about living conditions as well as standards of treatment of prisoners in Georgian penitentiary institution.<sup>110</sup> As far as specifically LGBT prisoners are concerned – information is hardly available at all. At present it is only the Public Defender of Georgia, who has also been appointed as a National Preventive Mechanism under UNCAT, who has the right to carry out prison monitoring in Georgia. As for now PD has not published any specific statement or a report on conditions of LGBT prisoners in Georgian penitentiary system.

Studying this issue is of particular importance, since there are some reports that in previous years LGBT people were subject to discrimination and violence in prison and there is little reason to believe, especially in the absence of any express evidence in the contrary, that previous practices have been totally eliminated at present.<sup>111</sup>

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

4.3. Upon arrival to the penitentiary institution a detainee has to be immediately acquainted with her rights and duties in a written form, including the right to lodge a petition and the relevant procedure.<sup>112</sup>

Petition in relation to torture, inhuman and degrading treatment must be considered immediately.<sup>113</sup> The head of the relevant penitentiary establishment or the person performing his duties, or the special prevention team must be informed about such a petition no later than within 24 hours.<sup>114</sup>

How effectively these provisions are implemented in practice is difficult to assess, especially in the light of reports of numerous human rights organizations about serious human rights violations in penitentiary institutions in Georgia which- according to the reports- go un-investigated.

*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?*

**4.4.** The Ministry of Corrections has informed WISG that they do not possess information about existence of transgender people in Georgian penitentiary institutions. According to the Ministry, due to this reason, and because the number of such people is low in Georgian society, as the letter said, the Ministry does not have a procedure prescribed to regulate specifically their presence within the penitentiary institutions.

Nevertheless, the letter noted: "If similar issue arises in practice, decision will be made taking into consideration security and interests of the inmate".<sup>115</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 LGBT people, with a view to developing effective policies to combat these phenomena?*

5.1. Based on the answers gathered by WISG from various state institutions, it can be concluded that no state institution has so far carried out a research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena.

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<sup>109</sup> *ibid*.

<sup>110</sup> <http://www.ombudsman.ge/files/downloads/en/wlkxwtamrxqzqvysxoyk.pdf> <http://www.ombudsman.ge/files/downloads/en/hcqkqyh-blwldxcayqiwg.pdf>

<sup>111</sup> CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012. p. 66, available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

<sup>112</sup> art. 97(1) of the Imprisonment Code

<sup>113</sup> According to art. 105(1) and (2) of the same Code.

<sup>114</sup> Response Letter from the Ministry of Correction and Legal Assistance N.11266/01, dated by: 14.05.2012.

<sup>115</sup> *ibid*

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

5.2. Moreover, State report to CEDAW committee (2012) on the implementation of CEDAW in Georgia, which specifically obliges states to eliminate stereotypes against women, says nothing about eliminating stereotypes against LBT women, let alone research conducted to study its root causes.<sup>116</sup>

The letter from the Public Defender noted: “Neither the Public Defender nor his staff has conducted any study, as the study on the issues of social acceptance and the hatred are not included in the Public Defender’s mandate.<sup>117</sup> On the other hand the Office collects statistical data (on the basis of individual applications received). In 2011 however no applications were filed to the Public Defender’s office about the cases of crimes and other incidents, where the sexual orientation or gender identity was reasonably suspected to have constituted a motive for the perpetrator;<sup>118</sup> According to the letter, PDO at that time was investigating only one case related to such motive.”<sup>119</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?*

5.3. According to PD’s Office, the Office of the Main Prosecutor of Georgia has no statistics on the hate-motivated offences related to sexual orientation or gender identity.<sup>120</sup> Ministry of Justice responded to WISG’s enquiry that they “can only exercise the monitoring regarding the compliance with the European standards. Such monitoring is constantly exercised by the relevant departments of the Ministry of Justice, namely: Department of Public International Law; Department of Legal Drafting; and Analytical Department.”<sup>122</sup>

A number of studies have been carried out on related issues by different non-state actors, however up-to-date no comprehensive study has been conducted to study public attitude towards LGBT group in Georgia, the level of homophobic influence and its specificities.<sup>123</sup> A survey conducted by CRRC in 2009-2011 showed that “the number of people who consider homosexuality to be unacceptable remains unchanged and amounts to 90% of the population.”<sup>124</sup>

A study conducted by Heinrich Boll Foundation about public attitudes towards different minority groups conducted in 2011 showed that among different minority groups LGBT group was under greatest pressure [from the public].<sup>125</sup> LGBT group members themselves also indicated in a study conducted in 2012 that public attitude towards them is becoming increasingly negative.<sup>126</sup>

To what extent state institutions/officials are getting themselves acquainted with these and other similar research results and taking them into consideration in formulating their actions and policies is unknown.<sup>127</sup>

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116 CEDAW Fourth and Fifth Periodic Report by Georgia. 2012.

117 Response Letter from the Office of the Public Defender of Georgia N.706/04-11, dated by 17.07.2012

118 *ibid*

119 *ibid*

120 *ibid*

121 It is noteworthy that in the previous years no statistical data was available about crimes committed based on hatred or discrimination on other grounds either (e.g., racial or religious hatred.) Although various provisions in the Criminal Code proscribed such actions, law enforcement authorities were not relying on those articles in practice. Sofo Benashvili, representative of PDO, Public Discussion at Heinrich Boell Foundation in South Caucasus, 04.04.2012. available only in Georgian at: [http://www.ge.boell.org/downloads/2\\_Discrimination\\_as\\_a\\_Grave\\_Circumstance\\_of\\_a\\_Crime\\_Ge.pdf](http://www.ge.boell.org/downloads/2_Discrimination_as_a_Grave_Circumstance_of_a_Crime_Ge.pdf)

122 Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

123 Situation of LGBT persons in Georgia. WISG. Tbilisi, 2012

124 Caucasus Research Resource Center (CRRC), Programme of Eurasia Foundation: Knowledge and Attitudes toward the EU in Georgia. 2011.

125 Public attitudes towards minorities. Heinrich Boell Foundation in South Caucasus. 2011.

126 Situation of GBT persons in Georgia. WISG. Tbilisi, 2012

127 As regards LGBT discrimination study conducted by WISG in 2012, the scope of the study and limitations does not give us the opportunity to generalize the results to the country. However, the results of this survey provide us with certain information about the discriminatory practices and experiences, encountered by the participants of the research. This information is sufficient to shed the light on the type of problems that LGBT people face in their daily life. The results of the survey remind us, that discrimination based on sexual orientation and gender identity is an important human rights issue, which requires response both from the government and from the society.

## 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 transgender 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?*

6.1. Hate speech is not criminalized in Georgia, but regulated only by means of civil legislation, charters of ethics and codes of conduct for journalists and media outlets<sup>128</sup>.

Everyone has a right to report instances of hate speech to different self-regulatory mechanisms.

The Election code of Georgia imposes certain restrictions on the use of hate speech and on stirring up animosity among different social groups: “The election program must not contain propaganda of war and violence, of overthrowing the existing State and social system or replacing it through violence, of violating the territorial integrity of Georgia, of calling to foster citizen hatred and enmity, religious and ethnic confrontation.”<sup>129</sup>

Organic law of Georgia on political unions of citizens completely bans formation and operation of a party, which is aimed at subversion or forced change of constitutional order of Georgia, infringement upon the country’s independence, interference with its territorial integrity or which propagates war or violence or stirs up national, community, religious or social animosity.<sup>130</sup> None of them encompass SOGI however.

### *6.2. Do these measures penalise (a) homophobic (b) transphobic “hate speech”?*

6.2. There are no penal measures, but content-related restrictions regulating the work of broadcast media and internet-providers include prohibition of homophobic hate speech. In particular: “It is prohibited to broadcast programs that aim to degrade or discriminate a person or a group on the basis of ethnic background, religion, opinion, age, gender, sexual preference 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 program and when this aims to illustrate already existing animosity [towards the person or a group]”.<sup>131</sup>

Furthermore, non-ethical advertising, i.e. advertising that violates the universally recognized humane and ethical norms by insulting nationality, race, occupation, social belonging, age, sex, language, religious, political and philosophical faith is prohibited.<sup>132</sup>

The charter on journalistic ethics of Georgia (adopted in 2009) adopted by 138 journalists establishes a self-regulation mechanism of media. The Charter contains 11 principles two of which are particularly relevant to LGBT 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, gender, sexual orientation, language, religious, political or other grounds; as well as based on ethnic or social grounds;” Principle 10 further provides for respect of a personal life, it states 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 Charter is monitored by a supervisory body.<sup>133</sup>

Non-compliance with the above-listed regulations can only be sanctioned by self-regulatory mechanisms. In this regard both positive and negative experiences exist. In practice defenders of LGBT rights are trying to use any available legal norm and mechanism, in addition to media self-regulation mechanisms to fight against use of hate speech by politicians/public figures. (See cases #G8 , #W9 basing arguments against hate speech on the Election Code).

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<sup>128</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia by independent researcher Ana Natsvlishvili. COWI. 2010, available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

<sup>129</sup> Election code of Georgia. Article 45. Para.3

<sup>130</sup> Organic Law of Georgia on Political Unions of Citizens. Article 5. Para 2.

<sup>131</sup> Georgian National Commission on Communications, Article 591 of the Law on broadcasting,

<sup>132</sup> The Law of Georgia on Advertising – Article 3(5)

<sup>133</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia by independent researcher Ana Natsvlishvili. COWI. 2010. available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

6.3. 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 LGBT people?

6.3. please see answer 6.2.

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

6.4. N/A

6.5. Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic (b) transphobic “hate speech”?material, threats and insults?

6.5. Internet provider is 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 programs.<sup>134</sup>The product is unacceptable if it disseminates hatred or particularly grave forms of violence.<sup>135</sup>

Internet-domain provider shall regularly check the content of the Internet websites registered by him/her in order to avoid placing unacceptable product on such websites. If this happens the domain 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 ignored, block the website.<sup>136</sup>

In 2012 Georgia ratified Convention on Cybercrime which enters into force for Georgia starting from 01.10.2012.

It is more or less possible to react on homophobic hate speech spread through conventional media; addressing internet-based hate speech remains a serious challenge however. This is particularly troublesome considering that the hate speech in the internet addressed to LGBT people is the most categorical and offensive. It also often contains direct incitement to discrimination and physical violence. (case #G8, #I18)

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

6.6. Reactions to the speech of PM Giorgi Targamadze made in May 22, 2012 (see case #W7A) by the PD along with other public figures was the first case when the PD publicly condemned hate speech against LGBT people.<sup>137</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?

7. 1. WISG is unaware of any similar guidance being issued in any state institution.

Conduct of civil servants is regulated by the Law of Georgia on Civil Service. The law does not expressly regulate public statements made by civil servants. Art. 73(1) ( 6 ) of the law states that “A civil servant must avoid any action, which might damage his/her reputation, reputation of his/her agency or the Civil Service”.<sup>138</sup> Whether or not making a xenophobic statement comes under such restriction is unclear.

Code of Ethics of the Members of the Georgian Parliament adopted in 2004 bans the use of degrading phrases or offensive language by parliamentarians<sup>139</sup>. However it says nothing about the use of xenophobic language by MPs. Such instances are considerably widespread both in respect of LGBT as well as ethnic or religious minorities. NGOs consider that this Code - as

134 The Regulations on Service Provision and Customers’ Rights Protection in the Sphere of Electronic Communications. Article 101, para 4 of the Regulation

135 *ibid*, art.3

136 *ibid*. Article 10<sup>3</sup>

137 Ombudsman against CDM’s homophily. T. Kupreishvili. Netgazeti. 22.05.2012. <http://www.netgazeti.ge/GE/105/News/9908/>

138 The Law of Georgia on Civil Service.art. 73(1), para.6

139 Code of Ethics of the Members of the Georgian Parliament.para 4.

a self-regularity mechanism – is ineffective.<sup>140</sup> Some MPs have also shared this opinion and have spoken about the need to amend the Code.<sup>141</sup>

“Hate speech” often is a part of educational activities of the PDO. The seminar on this issue was organized for the staff of the Public Defender’s Office. The participants get to know international standards for fighting against the ‘hate speech’. Generally, the training aimed at promoting the knowledge of the staff to make it more effective in preventing from and fighting against the ‘hate speech’.”<sup>142</sup>

*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?*

7.2. According to the several studies on homophobic hate speech in Georgia, homophobic hate speech is often used in political context; its use reaches its peak during pre-election period. Labeling opponents as LGBT or blaming them for the support of LGBT community is a method used to alienate political opponents from Georgian society, as everything alien is construed to “threaten traditions of the country and contradict to its religious beliefs.”<sup>143</sup>

During the period of 2010-2012 the state actors and the representatives of public agencies made some statements that may be assessed as discriminatory and offensive against certain groups.<sup>144</sup> This also includes LGBT group. (please see cases # W7A)

Until recently it was mainly NGOs reacting to homophobic hate speech of politicians or other public figures. Moreover, there were several cases when public figures were even encouraging authors of homophobic statements. In 2010, before a debate in the Parliamentary Assembly of the Council of Europe on a report focusing on LGBT human rights, different religious communities in Georgia collaboratively protested about “abnormalities, such as homosexuality, bisexuality another sexual perversions, that are considered not only by Christianity but also by all other traditional religions as the greatest sin, causing degeneration and physical and mental illnesses”<sup>145</sup> MPs not only failed to protest against this, but some of them even joined religious communities (See cases #W1, #W2A, #W2B) or made statements reinforcing stereotypes and marginalization of LGBT people (see cases #W3, #W5, #G8, #W9).

The situation changed in 2012. A homophobic statement made by the leader of Christian-Democratic Party – Giorgi Targamadze – when he was presenting to the parliament suggestions for constitutional changes- was criticized by MPs as well as Ombudsman and NGOs. (see the notes 42, 43, 44)

It is noteworthy that some human rights defenders<sup>146</sup> have also made homophobic statements triggering strong reactions

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140 Georgia’s Parliamentary Code of Ethics - A Need For Reformation. Transparency International Georgia. 23 April 2012. <http://transparency.ge/en/post/report/georgias-parliamentary-code-ethics-need-reformation>

141 Mikheil Machavariani, First Deputy Speaker of Georgian Parliament opened the Conference: Codes and Standards of Ethics for Parliamentarians. 19.04.2012. [http://old.parliament.ge/index.php?lang\\_id=ENG&sec\\_id=40&info\\_id=34797](http://old.parliament.ge/index.php?lang_id=ENG&sec_id=40&info_id=34797)

142 Repsonse letter from the Office of the Public Defender of Georgia N.706/04-11, dated by: 17.07.2012

143 E. Aghdgomelashvili. Research on coverage of the issues of sexual orientation/gender identity in the media according to the situation of May 2011. Media Development Foundation’s (MDF). <http://www.mdfgeorgia.ge/index.php?&address=&menuid=16&id=54&lang=1>

144 Repsonse letter from the Office of the Public Defender of Georgia N.706/04-11, dated by: 17.07.2012

145 Joint written statement by the Patriarch of the Georgian Orthodox Church, the Ambassador Extraordinary and Plenipotentiary of the Holy See to Georgia, Head of the Georgian Eparchy of the Armenian Apostle Church, Acting Chief Rabbi of Georgia and the Plenipotentiary Representative of the Caucasian Muslims’ Organisation in Georgia, 29 January 2010.

146 Interview with Nana Kakabadze, human rights defender, Head of HR NGO “Former Political Prisoners for Human Rights” was published in Newspaper “Asaval-Dasavali’s” March 19-25, 2012 issue. It is stated in the interview that she supports the restoration of Article 121 of the Criminal Code of the Soviet Union which provided punishment for homosexuality. “It’s also a crime,” she said, “when you are engaging in [homosexual] propaganda and giving a gay an opportunity to speak out about unhealthy sexual orientation.” “State must protect these people from physical violence and insults in the streets, but it is equal to a crime to exhibit these people every day, make them TV stars, impose the idea that this is not shameful. This way they irritate, depress and violate the rights of formed personalities and brainwash young people, distort their mentality and make them get accustomed to the idea that it is not bad at all. Mainstreaming this issue is harmful not only for our families and children, but also for future of Georgia. No one should dare promote Sodomitic sin in the country of such traditions and religion. In Orthodox Christianity Sodomy is considered a mortal sin!” I am in favor of the restoration of the Soviet Union Criminal Code Article 121. Interview with Nana Kakabadze. Newspaper “Asaval-dasavali” #910, available at: March 19-25, 2012. <http://asavali.ge/archive/910/files/1-41pm5.pdf> ; In the following issue of the newspaper, an interview with the representative of the same organization Gela Nikoleishvili was published (lawyer, HR NGO “Former Political Prisoners for Human Rights”). The lawyer evaluates amendments in Georgian Criminal Law about recognition of the aggravating circumstance of the crime based on sexual orientation and gender identity: „Everything can happen in nature. Sometimes humans are born with defects and

from NGOs as well as media.

**8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender 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?*

8.1. WISG is unaware of any similar guidance being issued in any state institution.

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

8.2. Examples of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society are rare. Analysis of Political discourse in Georgia demonstrates that LGBT issue is highly politicized and often used to mobilize electorate, undermine public support for a political opponent, or similar purposes.<sup>147</sup> Statements which genuinely aim to promote equality and support LGBT group is exceptionally rare in Georgia.

## **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 LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?*

9.1. Everyone has the right to form and to join public associations, including trade unions.<sup>148</sup>

According to legislative changes of 25 December 2009 the process of registration of the non-commercial organizations, their regional branches, NGOs registered abroad and of the International NGOs was simplified. Registration period is reduced to 1 working day and the list of documents necessary for registration was reduced. There are no different regulations for local and foreign non- governmental organizations. Separate registration of regional offices of the non-governmental organizations is not necessary either.<sup>149</sup>

Formation of associations is impermissible if such association aims at overthrowing or forcibly changing the constitutional structure of Georgia, infringing upon the independence and territorial integrity of the country or propagating war or violence, provoking national, local, religious or social animosity.<sup>150</sup>

There is no impediment for the registration of organizations, including those, which have the aim to work for LGBT people's welfare and protection of their rights. The service of the Registry is transparent and with high quality. The increased number of the registered entities is the evidence of its success. More than 1000 non-commercial legal entities are registered annually. Until now there are no cases of refusal of registration to an LGBT NGO.<sup>151</sup> WISG also is unaware of any case of an

persecution on the grounds of these defects is absolutely wrong and the one that commits crime on this basis deserves to be punished, but on the other hand, considering this defect as a norm and imposing this idea upon the majority is totally unacceptable... When a gay person, or a witness of Jehovah is trying to influence someone by their opinion and is breaking into someone's home, a citizen has the right to push them away and the law cannot punish him/her for this!" Mr. Nikoleishvili also stated that same-sex relationships are not only against religious dogmas, but also against nature. Glory of same-sex lov an act against God's will. Zaza Davitaia. Interview with Gela Nikoleishvili . Newspaper "Asaval-dasavali" #912, April 2-8, 2012. <http://asavali.ge/archive/912/index.html>; This position is shared by lawyer Lali Aptsiauri: "If they even dare to organize a gay pride in Georgia, I as a lawyer, will break the legal frames and go to the pride to kick the participants' asses". I am in favor of having an article in the legislation, which will forbid the propaganda of this abomination. Megi Sajaia Interview with Lali Aptsiauri. Newspaper "Asaval-dasavali", #911, March 26-April 1/2012. available at: <http://asavali.ge/archive/911/files/1-41pm5.pdf>

147 E.Aghdgomelashvili. Representation of sexual orientation/gender identity in Georgian media (2007-2011). WISG. Tbilisi, 2012

148 Constitution of Georgia, Article 26(3)

149 Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

150 Constitution of Georgia – Article 26(3)

151 Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

organization that has made public its aims to work on LGBT issues and that has been denied registration on that ground.

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?*

9.2. N/A

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

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

9.3. There are no specific measures in place to ensure free and safe work of LGBT organizations in particular.

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

9.4. NO.

**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 LGBT organisations without discrimination?*

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

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

10.2. No.

**11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender 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 human rights organisations?*

11.1. Experience shows that often there is 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. (see the case #118 about threats disseminated via internet, the case #112A about attack and crack down of IDAHO and abstract from an interview with GiorgiGotsiridze made for the CEDAW shadow report<sup>152</sup>)

11.2. *If so, do these also include LGBT human rights organisations?*

11.2. see answer 11.1. above

11.3. *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?*

11.3. After the crack down on IDAHO demonstration in Tbilisi on the May 17, 2012 (see case # 12A), organization Identoba – who was the organizer of the event - and its employees faced certain difficulties, in particular in their relationship with the people living in the neighborhood of their office. When they were leaving the office, some of the neighbors saw posters they were carrying and made offensive statements and also some threats in relation to employees of Identoba. (IDAHO demonstration and its crackdown was covered almost by every media in Georgia.) On the day when the IDAHO demonstra-

152 “George Gotsiridze from Georgians Young Lawyers’ Association noted the lack of a political will of the state to investigate effectively abuses against LGBT people. He cited the cases of threats against LGBT sent through different social network in the internet as an example. “Despite the fact that it is quite easy to identify an author of such a threat via requesting information on computer IP from internet providers, investigators remains reluctant to do so and carry out effective investigations into these cases. This is the case when the problem exists not in the law but in its implementation. Law enforcement officers should pursue investigation of such cases with more diligence.” CEDAW shadow report concerning LBT women’s situation in Georgia.pp. 66-67. WISG. 2012. available at: [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

tion was attacked a patrol-police car was patrolling near Identoba's office, however they did not liaise with anyone from the organization. Identoba had to change office and was hosted by WISG for some time before moving to a new place.

*11.4. Are LGBT human rights organisations able to work with*

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

11.4. a) LGBT human rights organisations are able to work with national human rights institutions and ombudsmen in Georgia. In this regard WISG has as an positive also negative experience of cooperating with ombudsman.<sup>153</sup>

In its letter to WISG, PDO wrote that: "The Public Defender and his office always express their readiness to cooperate with any non-governmental organization. At the current stage the Public Defender has a close cooperation with a few organizations protecting the rights of LGBT people. Unfortunately the cooperation with regard of individual cases is not intensive due to the lack of cases. Over the recent years we have witnessed only a few cases when they applied to the Public Defender. The Public Defender effectively responded to those facts and reflected them in his parliamentary report. It should be mentioned that there was no special chapter on the sexual minorities in the Report due to the lack of applications. This fact was underlined in the preface to the Report stating that the lack of applications may be assumed as the indicator of non- existence of the problems in this field."<sup>154</sup>

b. All 3 LGBT organizations working in Georgia at the moment actively cooperate with LGBT friendly media, organizations who have signed Charter of Journalists and Council of Media Ethics.

c. All three of these organizations cooperate with human rights organizations and those who work on related issues: health, gender and women issues, minority issues. (There are some exceptions however since some human rights organizations and lawyers have homophobic mindset as they have made it public. (see note 147).

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

11.5. Local LGBT organizations are members of national and international networks; they regularly take part in conferences, trainings and session both at national as well as international levels.

*11.6. Has provision been made for assistance and protection measures for human rights defenders in third countries, such as attending/observing trials or issuing emergency visas?*

11.6. Not enough information to evaluate

**12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender 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 LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

12.1. At present the cooperation is more of a one-sided process. It is mostly LGBT organizations who send their proposals and suggestions to state institutions (such was e.g., the case of initiating amendment to art. 53 of the Criminal Code of Georgia which added hate-motive to LGBT people as an aggravating circumstance for commission of a crime,<sup>155</sup> proposals prepared by Identoba for state co-sponsorship of gender reassignment surgery, preparation of a policy paper regarding challenges transgender people face for changing their documents, etc).

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

12.2. No.

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<sup>153</sup> In his public appearances, current Public Defender of Georgia, Giorgi Tugushi underlines that there has not been a single case related to the crime motivated by homophobia, since he has been holding this position (since September 16, 2009). Although, it is clear that the case Aghd-gomelashvili and Japaridze v Georgia (Application no. 7224/11), which was the first case from Georgia to the European Court of Human Rights concerning police homophobia (see case # 19.) has been reported to the public defender; His opinion however is that this was not a homophobic case.

<sup>154</sup> Response letter from the Office of the Public Defender of Georgia N.706/04-11, dated by: 17.07.2012

<sup>155</sup> However it was also noted in the PDO letter that PD actively lobbied this amendment too.

### **III. Freedom of expression and 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 LGBT 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?*

13.1.-2. State neither encourages nor prohibits reception or and transmission of information and ideas relating to sexual orientation and gender identity; There are several web-sites and blogs on LGBT issues: lesbi.org.ge; minority.ge; identoba.org, gay.ge; gay-batumi.com etc. LGBT organization were published and dissemination different materials concerning LGBT issues freely; organized meetings.

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

13.3. There was no such precedent until 2012. In their public rhetoric, the government officials were always underlining tolerance and its importance in terms of ethnic and religious minorities, while they prefer to remain silent about the whole range of problems related to the sexual minorities<sup>156</sup>. In 2012 state authorities as well as Public Defender made such statements for the first time<sup>157</sup>.

**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 LGBT people*

14.1. In 2011-2012 WISG has conducted a number of thematic flash-mobs. The City Council was informed in advance about each of these actions. The City Council was also informed in advance about the IDAHO march organized by Identoba on May 17, 2012. In none of the cases City Council denied permission to carry out these activities and responded to our notes always in good time.

**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 transgender 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 LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

15.1. As for the effective defense from the police of LGBT peaceful march experience on this issue is both-negative as well as positive. On May 17, 2012 e.g., police failed to protect peaceful demonstrators from third-party violence (case #12A). On the 18<sup>th</sup> of May however, when a demonstration was organized in front of the Parliament in Tbilisi, the police effectively protected demonstrators from those who were involved in a counter-demonstration<sup>158</sup>. LGBT organizations and their sup-

<sup>156</sup> E. Aghdgomelashvili. Research on coverage of the issues of sexual orientation/gender identity in the media according to the situation of May 2011. Media Development Foundation's (MDF). <http://www.mdfgeorgia.ge/index.php?&address=&menuid=16&id=54&lang=1>

<sup>157</sup> "Discrimination is forbidden." 22.05.2012. Expressnews. <http://www.epn.ge/?p=109923> ; Kublashvili: In our state there will be no such restrictions for religious and sexual minorities. Netgazeti. 22.05.2012. <http://www.netgazeti.ge/GE/105/opinion/9905/>; Ombudsman against CDM's homophobic amendment. T.Kupreishvili. Netgazeti. 22.05.2012. <http://www.netgazeti.ge/GE/105/News/9908/>

<sup>158</sup> On May 18, 2012 several dozens of gay rights activists and their supporters gathered outside the Parliament to protest against the violence that took place a day earlier, when the march marking the International Day Against Homophobia ended in a brawl after a radical Orthodox group

porters, including representatives of diplomatic missions to Georgia, were present at the demonstration in front of the Parliament.

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

15.2. see answer 15.1 above

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

15.3. 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?*

16.1. Authorities have never restricted freedom of assembly to LGBT people or LGBT- related events as of today.

*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?*

16.2. None of the permits issued by the city council authorizing these events entailed any specific preconditions regarding time or place for organizing these events.

*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?*

16.3. 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 transgender persons.**

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

- Has there been encouragement to public authorities to condemn such interferences?*
- Have public authorities actually condemned such interferences?*

17.1. National and international media covered the raid.<sup>159</sup> Local Human Rights organizations spread special statements in social network and media.<sup>160</sup> However, there has not been an official public statement of condemnation from the government.

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

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

17.2-3 On May 17 after the crackdown on IDAHO demonstration (see case #112A), the Chairman of the Parliamentary Committee on European Integration David Darchiashvili made the following statement: „In free country an action that is not directed to the rights violation is held as the form of self representation. Either we are free country or not. We cannot talk about democracy and at the same time want democracy for us only“, – said the MP and pointed that any physical confron-

blocked the marchers' way not allowing them to continue procession in downtown Tbilisi. Although there were some tense moments at the rally on May 18<sup>th</sup>, with some by-passers protesting against such a gathering, one-hour rally outside the Parliament ended without any major incidents. At one point police, which was heavily present nearby, dragged away a man to prevent verbal argument from growing into a scuffle. An Orthodox priest from Kashveti church on the opposite side of the street was telling his parish not to approach the rally outside the Parliament warning them against "provocation" on the part of gay activists. web-portal civil.ge. 18.05.2012. <http://www.civil.ge/eng/category.php?id=87&gallery=81>

<sup>159</sup> Fighting at gay rights march in Tbilisi Georgia. 17 May 2012. BBC News. <http://www.bbc.co.uk/news/world-europe-18109022>, Georgia gay-pride march ends in fist fight. 17 May 2012. Euronews. <http://www.euronews.com/2012/05/17/georgia-gay-pride-march-ends-in-fist-fight/>; A Backlash in Georgia. By Haley Sweetland Edwards. June 14. 2012. New York Times. <http://latitude.blogs.nytimes.com/2012/06/14/progress-by-georgias-gays-spurs-a-backlash/> etc.

<sup>160</sup> NGO Statement on the Violation of LGBT Right to Assembly. 18.05.2012. <http://www.npo.ge/story/arasamtavroboebis-gantskhadeba-lgbt-pirebis-shekrebis-uple>; Coalition for European Georgia Statement about the incident happened on May 17. <http://www.npo.ge/story/koalitsia-evropuli-sakartvelostvis-gantskhadeba-17-maiss-m>

tation is illegal and must be regulated by law enforcement representatives<sup>161</sup>.

Public defender of Georgia, who made a statement about previous May 17<sup>162</sup>, also strongly condemned the raid: "The Public Defender of Georgia considers any violent action that is carried out on the grounds of intolerance inadmissible. It is a positive obligation of the law enforcement bodies to create appropriate conditions for the exercise of the right to hold a peaceful assembly. Violations of law committed against such a march require swift and adequate response".

In consider that, in similar cases, the state must take timely and effective measures with the aim of stopping and preventing actions carried out on the grounds of intolerance".<sup>163</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?*

18.1.No, there is no such legislation. 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?*

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

18.2. The criminal law does not contain any provisions that can 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?*

19.1 Information about sexual orientation or gender identity was subject to special protection under Georgian legislation as falling under the category of 'personal information.' A 2011 legislative amendment however introduced an alarming exception to this rule, stating that "in the interest of public" it is allowed to collect, process and release personal information, including about one's sexual orientation.<sup>164</sup> While no official or authoritative interpretation of the notion of "public interest" is provided, introduction of this amendment was immediately followed by the following statement of an MP from the ruling party: "Indeed if a homosexual person applies for a job in a kindergarten it is in the public interest to reveal his sexual orientation."<sup>165</sup>

This amendment is not in force yet.

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161 David Darchiashvili considers the demonstration of sexual minority as the form of self representation. Informational agency Medianews. 17.05.2012. <http://medianews.ge/ge/davitdarchiashviliseqsaluriumtsiresobebisaqtsiasvtigamokhatvisformadmiichnevs/4486>

162 Public Defender's statement in connection with the International Day against Homophobia. 17.05.2012. <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1500>

163 The statement of the Public Defender of Georgia about the events of May 17, 2012. 18.05.2010. <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1501>

164 Other similar type of information such as e.g., religion, philosophical belief, etc.

165 Nothing personal - Draft Law Which Protects and Makes It Public. Newspaper Netgazeti. 10.01.2010. available at: [http://netgazeti.ge/GE/27/News/2534/?sms\\_ss=facebook&at\\_xt=4ca88497a59d6ab6%2C0](http://netgazeti.ge/GE/27/News/2534/?sms_ss=facebook&at_xt=4ca88497a59d6ab6%2C0). English version: <http://www.humanrights.ge/index.php?a=main&pid=12343&lang=eng>

This changes caused a serious outcry among human rights organizations in Georgia. The main criticism was that the law, and particularly the concept of “public interest” was not defined in the law and provided a wide possibility for abuse of power and human rights violations.

In its letter to WISG, Ministry of Justice wrote that it had prepared a set of amendments to the Law on Personal Data Protection which has been submitted to the Parliament. According to the changes the restriction [on gathering and processing of the data] will not be effective in the following cases: a) The subject of data gave the written consent on the processing of special category data; b) The subject of data made public the information about him/her without clear prohibition of using the data on him/her. The data processing is necessary for a person who processes it for fulfilling his/her labour responsibilities, or for implementation of the right related to it. 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 data processing is exercised in the course of legitimate activity by the associations or other non-commercial organizations of political, philosophical, religious or trade character. In such case the data processing may cover only the members of this organization, of those persons, who have the constant communication with this organization. (In such case disclosure of the information to the third person will be inadmissible without consent of the data subject).<sup>166</sup>

The Ministry of Justice further clarified that “the said exception will be introduced as an amendment to the law on Personal Data Protection. It is thematically linked with the importance of processing of the sensitive data. The grounds for data processing envisaged in the EU Directive (EC/95/46) have been introduced in Article 6 of the Georgian law. The changes are aimed at securing better compliance with the European standards and CoE requirements.

Government authorities further emphasize that person whose data is being gathered or processed is given certain rights “which provide him/her the possibility to control the process. S/he is entitled to ask the data processing body for the information regarding his/her data processing. The data processing body shall provide him/her with the following information within 10 days: 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.”<sup>167</sup>

This latter right, which could in other contexts provide an important safeguard against abuse of power under the Law on Personal Data Protection is unlikely to be effective in the context of LGBT rights' protection. If the person belongs to an LGBT group, then s/he is not entitled to file a request for deleting/blocking/destroying the data about his sexual orientation or gender identity. Whereas, due to homophobic environment in the country, the very 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 LGBT community to undermine their reputation in the public eye. It is difficult to see how to change this practice.

The Civil acts registration in Georgia is carried out by the Civil Registry Agency of the Ministry of Justice of Georgia. This includes: a) Registration of birth, marriage, divorce, filiations, adoption, death and change of surname, name, patronymic; b) Amendments, alterations, restoration and annulling of acts of civil status; c) Reissue of certificates and confirmations on registration of acts of civil status; d) Establishment, registration and storage of funds on acts of civil status; e) Registration and removal from the registry of natural persons according to their domicile, issue of the respective identity documents and temporary residence cards; f) Issue and replacement of the passport of a citizen of Georgia (travel passport for persons, temporarily residing in Georgia without Citizenship of Georgia); g) Issue of informational card; h) Issue of certificates to citizens of Georgia on absence of circumstances, impedimental to marriage for marriage abroad; i) Issue of permits for marriage between a foreigner and a citizen of Georgia, for marriage registration of foreigners; j) Consideration and approval of the application of a citizen on change of a name, surname, patronymic and enclosed documents submitted by a territorial office of the Agency; k) Consideration and approval of the application of a citizen on correction (restoration) of a surname and enclosed documents submitted by a territorial office of the Agency; l) Organization, coordination and methodic admin-

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<sup>166</sup> Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

<sup>167</sup> *ibid*

istration concerning registration of acts of civil status in the order, established according to the current legislation; decision of the issues related to registration of various kinds of acts of civil status; m) Maintenance of the Civil Registry; m.a.) Maintenance of citizenship registration, acts of civil status, establishment of information-migration bank; m.b.) Establishment of the information bank related to the issue of identification cards, passports of a citizen of Georgia (travel passport) to citizens of Georgia and foreign citizens, residing in Georgia; m.c.) Establishment of an information bank concerning registration of foreign citizens, temporarily residing in Georgia; n) Periodical summarization, assessment and analysis of the activity of the territorial offices of the Agency; o) Provision of the territorial offices of the Agency with forms (documents of strict registration), control over their storage and application; p) Elaboration and implementation of prospective and current plans for perfection of the activity of the territorial offices of the Agency; q) Periodic preparation of offers on perfection of the normative acts, operating in the sphere of competence of the Agency and control over performance of the current legislation in the given sphere within its competence; r) Methodological administration and control over the activity of the territorial offices of the Agency; s) Realization of other authorities, stipulated in the legislation of Georgia.

Everyone is entitled to file a request to the Registry Agency to make changes, amendments and/or additions to the data about him/her in the acts issued by the registry. Parents/foster parents are entitled to do the same on behalf of their children/adopted children.<sup>168</sup>

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

19.2.No information about such steps being taken.

*19.3. Have these steps been effective? Is there any evidence of:*

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

19.3. In 2011 the Parliament adopted amendment to the Law on Personal Data Protection which authorized collection of such data.

**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?*

20.1. In case of gender reassignment, a person is entitled to change his/her personal data in the official documents.<sup>169</sup> The new ID document already has an entry for person's sex which complicates the situation for transgender people, particularly for those who are in the process of changing their sex (which requires undergoing a minimum two years-long procedure).<sup>170</sup>

*20.2. Are there still requirements which might be considered disproportionate or even abusive,<sup>171</sup> 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?*

20.2. In Georgia Sex reassignment is a long process. Before the actual surgery a transgender 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 transgender person has the right to undergo the sex reassignment surgery. One more thing to do before the operation 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.

<sup>168</sup> The Law of Georgia on Civil Acts - Article 77 (1,2), cited in a Response letter from the Ministry of Justice N. 26948, dated by 26.06.2012.

<sup>169</sup> Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

<sup>170</sup> CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012. p.71. available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

<sup>171</sup> The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

**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.**

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

*21.2. Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

*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?*

*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?*

21.1-3. The Law on Registration of Civil Acts expressly mentions gender reassignment as one of the grounds for changing names. Although it is not explicitly stated in the law, its wording implies that the name and gender of a person should 'match' with each other in line with the socially established understanding of *female* and *male* names.<sup>172</sup> Some gender-neutral names are also inherent to Georgian culture however.

Change of the name or surname provides a basis for issuing a new ID, but the law does not provide for the possibility to issue a birth certificate or an academic diploma the second time, for any reason whatsoever.<sup>173</sup>

It is also unclear if certificates of employment can be changed in practice.

**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 transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.**

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

22.1. Civil Code defines marriage as "a union of a woman and man." It can be assumed that if the person's gender is legally changed in his/her documents, there should not be an obstacle for marriage for transgender people. But WISG is not aware of any similar cases in practice.

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

**23.1.** N/A (no obligations on unmarried couples) Unmarried couples may claim certain rights if they can prove that they have been taking care of common household for certain period of time. Whether homosexual partners' attempt to prove the same will be accepted by different institutions on equal footing with heterosexual partners is to be tested in practice.

WISG is unaware of any relevant cases on this issue.

One example highlighting the problem is the right to visit a prisoner. Married partners, as well as people who have been leaving together in a relationship for 2 or more years are entitled to such visits. If an LGBT partner requests such a visit, even if she can get it – that may cause stigmatization of the inmate visited.

**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.**

<sup>172</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia. by independent researcher Ana Natsvlishvili .COWI. 2010. p. 6 available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

<sup>173</sup> *ibid.* p. 21

24.1. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?

24.1. Georgian legislation do not recognize registered same-sex partnerships

**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?*

25. 1. No

**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?*

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

26. 1-2. 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 or (b) gender identity?*

27.1. Article 1246 of the Civil Code of Georgia authorises adoption by a couple only if they are married. Since same-sex marriage is not recognised under Georgian legislation, same-sex partners can not adopt a child. Georgian legislation allows adoption by a single parent, except to those persons who due to illness, moral or other personal characteristics cannot exercise the rights of parents.<sup>174</sup> The law does not however specify criteria for moral eligibility, neither does there exist an authoritative judicial or academic interpretation of how to ascertain moral eligibility for being a parent. Considering that in Georgia public opinion widely considers homosexuality to be immoral, there exists a high probability that a lesbian, homosexual or transgender single parent will not be recognised as 'morally fitting' for being a parent.<sup>175</sup>

However, the letter from the MOJ stated: The law of Georgia on Adoption and Foster Care has no restrictive provisions against the rights of adopting parent on the ground of sexual orientation.<sup>176</sup>

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

27.2. WISG is unaware of any relevant cases on 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?*

28.1. Assisted reproduction is allowed to a single woman, however in analogy of the adoption legislation, a lesbian woman can be denied the right to become a mother inter alia through assisted reproduction.<sup>177</sup>

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<sup>174</sup> The Civil Code of Georgia, article 1245.

<sup>175</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia. by independent researcher Ana Natsvlishvili COWI. 2010. p. 13 available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

<sup>176</sup> Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

<sup>177</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia. by inde-

28.2. In practice, is such access granted on a non-discriminatory basis?

28.2. The relevant practice is unknown to WISG.

## 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<sup>178</sup> exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?

Does it cover:

- access to employment (including recruitment); promotion,
- dismissals,
- pay,
- harassment and other forms of victimisation?

29.1. Any type of discrimination in labour relations on the ground of race, colour, language, ethnic and social origin, nationality, birth, property and position status, place of residence, age, sex, sexual orientation, disability, religion or belonging to any other association, family status, political or other opinion is prohibited by law.<sup>179</sup>

The main shortcoming of the Code however lies in the fact that this provision applies only to those who are already employed and not to the candidates at the selection stage. On the other hand the Code does not oblige the employer to provide explanation to the employee about the reasons and grounds for dismissal.<sup>180</sup> WISG has several cases when gender identity/sexual orientation became the basis for dismissal. (see case #W32)

Another shortcoming is that gender identity is not expressly mentioned in the law as a prohibited ground of discrimination.

29.2. 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 LGBT persons;
- the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;
- co-operation with and support for employee groupings of LGBT persons?

29.2. The practice of the Ministry of Justice should be mentioned as a good practice. Their letter noted: *“The Ministry of Justice 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 Ministry of Justice is intended to prevent any staff from restriction and exclude inimical and abusive relations during the working process”*.<sup>181</sup>

On the other hand one should mention as a good practice the following example from the Ministry of Justice. In particular,

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pendent researcher Ana Natsvlishvili.COWI. 2010. p. 4 available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

178 Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights. Interpretation of the Different Provisions. Article 1. right to work. [http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf)). The EU Employment Directive provides the following definition of indirect discrimination: “where an apparently neutral provision, criterion or practice would put persons having a ... particular sexual orientation at a particular disadvantage compared with other persons ...”.

179 Article 2(3) of the Georgian Labour Code

180 CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012. p. 83, available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

181 Response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

it has elaborated the guidelines for the staff with the aim to secure the ethical and polite working conditions. Each staff 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 serves to increasing the working process effectiveness within the healthy environment.

Every staff of the Ministry of Justice is entitled to inform promptly about any attempt of sexual harassment to the General Inspectorate and the Department of Human Resources Management, which will take adequate measures on such facts.<sup>182</sup>

Another good example comes from the field of higher education.

Discrimination is also inadmissible while holding the competition for electing the leaders of the higher educational institutions. The Charter of the Higher educational institution may define the qualification requirements to the candidates to 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>183</sup>

Despite the fact that self-regulation mechanisms have been created, it is difficult to evaluate its effectiveness<sup>184</sup>.

*29.3. 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?*

*29.4. Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBT 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 LGBT persons and promote tolerance and respect?*

*29.5. Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

*29.6. Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

29.4-6. The Ministry did not reply to these questions.

**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 transgender persons' gender history or former name in the context of employment?*

30.1. There remains a serious legislative gap in the field of employment for transgender people. Procedures governing the

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182 *ibid*

183 *ibid*

184 The raids of IDAHO march on May 17<sup>th</sup>, 2012 had caused massive response on Facebook. Giorgi Mikanadze who teaches banking jobs at the university published the following statement on his wall: "The organizers of this LGBT rally should be beaten up. They are homophobes themselves, they who went there are scared and cannot stand the environment. I wonder who do they blame for their unhappy life?! I mean organizers, this is my position and I don't hide it! The majority's interests should be taken care of in the first place and only after that can we think of the minorities, if minority interests are at odds with majority interest... I think nobody should hold neutral position considering this issue and everybody must state their opinion. LGBT situation has never been new for the world, this is the kind of news that Georgian society cannot bear. This is something we will never accept. No one goes to their bedrooms and let the organizers too stay away from others". „I work in five different organizations, and teach in other places too... It does not matter where I give lectures, it did not happen on a lecture. It would be different if I had been preaching about this issue on a lecture, but I live a free life and no one can forbid me anything",— said Giorgi Mikanadze to the correspondent of Netgazeti. As for the threats, he says that it was said generally and he did not threaten a concrete person. The rector of Ilia State University, Gigi Tevzadze thinks that blaming lecturer in homophobia is a serious charge, whether homophobic statements were done during a lecture or publicly, and academic council will discuss this issue. However, later the rector changes his opinion: "Mikanadze made a statement in his private space and then publicly apologized. Regarding the discussion of the issue by the council, nobody addressed us, If someone has addressed we would discuss this concrete fact, but no one spoke out and addressed us officially", - stated Gigi Tevzadze. Iliauni didn't discuss the lecturer's homophobia. Ani Berukashvili. Netgazeti. 01.07.2012. <http://www.netgazeti.ge/GE/105/Life/10528/>

issue of academic diplomas make no provision to reissue the diploma a second time, including in case of gender reassignment. This constitutes a barrier to employment for transgender persons. In such a situation, according to the established practice concerning a change of name and surname, a person should add to the diploma a document issued by a court that would certify that the two names refer to the same person. However, in the case of transgender persons this solution might be useless, moreover – it can even harm and become a basis for discriminatory decision in employment.<sup>185</sup>

## 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.**

### 31.1. Have

- equality and safety policies,
- codes of conduct and
- handbooks

*for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?*

31.1. Discrimination is prohibited in the field of education and equal access to education is recognized by law both in primary as well as secondary and higher education.<sup>186</sup>

According to the law on General Education any discrimination is unacceptable while admitting a child in the school. This norm does not exclude possibility for holding the selection contest for those general educational establishments, which provide the training in military, art and sport professions, also at schools with the other statuses. During the contest the special educational needs shall be taken into account.<sup>187</sup>

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.<sup>188</sup>

The law on Higher Education also makes obligatory the equal treatment at the institutions of higher education, regardless of ethnic origin, sex, social belonging, political or religious opinion and other grounds.<sup>189</sup>

All the participants (in the age group 16-18) of WISG's research on LGBT discrimination indicated to have experienced bullying at school.<sup>190</sup> (e.g. see case #W38).

Attitudes to LGBT persons and issues at schools and universities echo general societal patterns and are under strong influence from traditional stigmas, taboo and values promoted by the Georgian Orthodox Church.<sup>191</sup>

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185 Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia. by independent researcher Ana Natsvlashvili.COWI. 2010. p. 17-18 available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

186 The Law of Georgia on General Education

187 *ibid.* art. 13(3) cited in response letter from the Ministry of Justice N. 26948, dated by: 26.06.2012.

188 *ibid.* art. 3(3)j

189 *ibid.* art. 16(1)d

190 Identoba has sent an official enquiry to the Ministry of Education if the latter was looking into the issue of bullying at school and if it was taking measures to create LGBT-friendly environment at schools and universities. However the Ministry left this enquiry, as well as the enquiry sent by WISG regarding implementation of the CM Recommendation unanswered.

191 Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Sociological Report: Georgia.

In 2011 a draft of the state policy on youth was elaborated. NGOs were also taking part in this process. One of the chapters (special support and protection) was devoted inter alia to LGBT youth. According to it state should address the problems of LGBT youth. "State will organize training courses at schools and higher education institutions, about protection of their human rights, including rights of ethnic, religious and sexual minorities."<sup>192</sup> Head of the PR office of the Ministry of Sports and Youth Affairs stated that once the document is finalized, it will be implemented. Answering the question which state institution will be responsible for protecting the rights of LGBT at schools and what mechanisms will be used for this, he stated that this issue is not yet decided. Despite the fact that self-regulation mechanisms have been elaborated, it is difficult to evaluate their effectiveness. (see cases #I36, I40B, note 185).

*31.2. Do initial and in-service training programmes for teachers and other educational staff address the need for them to*

- a. treat their LGBT pupils and students with respect*
- b. be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

31.2. The relevant practice is unknown to WISG.

*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 LGBT organisations?*

31.3. 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?*

*32.2. Is it provided in a respectful and objective manner?*

*32.3. Are LGBT 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?*

*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?*

32.1-4. Ministry of Education did not provide any answers regarding questions on implementing CM Resolution. School curricula do not include sex education. It is alleged that textbooks contain discriminatory materials; however it is difficult to convincingly argue for or against this issue, since no comprehensive study has been conducted on this matter.

WISG is unaware of any special programs (awareness, physiological counseling, etc) at schools or higher education institution to meet the needs of LGBT students/pupils.

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

**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 transgender 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.**

COWI.2010, p.3 para.67. available at [http://www.coe.int/t/Commissioner/Source/LGBT/GeorgiaSociological\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/GeorgiaSociological_E.pdf)

192 [http://youth.gov.ge/?page\\_id=1158](http://youth.gov.ge/?page_id=1158)

The health related legislation of Georgia prohibits discrimination against patients on any ground, including sexual orientation. Medical assistance provided through state programs must be accessible for any citizen. The law of Georgia “on Public Health” prohibits discrimination against patients on the ground of race, colour, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and position status, residence, morbidity, sexual orientation or personal negative mood. There are cases however when discrimination still takes place in practices. (see e.g., case #W34A, W34C)

Discrimination against inmates while providing them with medical assistance is also prohibited.<sup>193</sup>

On the other hand however the Order of the Ministry of Health imposes blanket ban on donation of blood by homosexual persons under the pretext that they belong to high-risk group.<sup>194</sup>

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?*

33.1. Neither the state action plans nor the state’s current strategy on health-care issues<sup>195</sup> take into consideration any specific needs of LGBT people. The same could be said about researches conducted in the field of health care: none of the researches conducted as of to-date look into the needs of LGBT people or other issues related to this group. As regards suicide-prevention, there are no programmes in Georgia. The response letter from the Ministry of Health says nothing about medical training programmes. WISG has gathered relevant information from other sources, however it does not enable us to see a clear picture on that issue. With regard of the issue of not considering homosexuality as a disease in the textbooks and teaching materials, let us inform you that currently we are reviewing post-graduate curricula and we plan to modify them for further regulating of this issue.<sup>196</sup> The response letter from the Ministry says nothing about monitoring and quality assessment of health-care services, WISG has gathered relevant information from other sources, however it does not enable us to see a clear picture on that issue. A patient who is not satisfied by the service can appeal to the Agency Regulating Medical Activities. The latter will discuss the issue and establish whether the doctor has violated the law.

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?

33.2. We have not received clear answer as to whether training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for SOGI or not.

33.3. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?

33.3. The response letter from the Ministry did not address the issue of education, prevention, care and treatment programmes and services in the area of sexual and reproductive health availability to LGBT people. On June 8, 2012 the new amendments were drafted for the Law of Georgia on Health Care (N07–3/639; 08.06.12), which will regulate issues related to surrogation. According the draft-law, only childless couple who live in a registered marriage but are infertile will be entitled to surrogate parenthood.<sup>197</sup>

33.4. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?

33.4. Information on some programmes or any steps from the state in direction to encourage health professionals and social workers to create an environment that is reassuring and open to young LGBT persons is unknown

193 The Law on Public Health of Georgia lth – arts 5-6. Cited in the cited in response letter from the Ministry of Justice n.26948, dated by: 26.06.2012.

194 This Order has been appealed in the Constitutional Court by Identoba (the case has not been resolved yet.)

195 [http://www.healthrights.ge/wp-content/uploads/2012/05/jandacva\\_Eng.pdf](http://www.healthrights.ge/wp-content/uploads/2012/05/jandacva_Eng.pdf)

196 Response letter from the Ministry of Labour, Health and Social Protection of Georgia.n.01/27507, dated by: 15.05.2012

197 [http://chairman.parliament.ge/index.php?option=com\\_content&view=article&id=1603:2012-07-12-06-31-59&catid=136:prs&lang=en&itemid=0](http://chairman.parliament.ge/index.php?option=com_content&view=article&id=1603:2012-07-12-06-31-59&catid=136:prs&lang=en&itemid=0)

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?*

33.5. The Law on Patient’s rights defines a relative of a patient in the following way:

Next of kin – person who according to the legislation of Georgia has priority to participate in making decision about the patient’s medical care or issues, related to patient’s death.<sup>198</sup> The list of people who qualify as “next of kin” is further given in the criminal legislation: parent, child, spouse, sister or brother, grandparents or other relatives as defined in the legislation, or a person who permanently lives together with the patient. The law does not restrict gender/sex of the latter person.

Working with children and juveniles entails a number of significant problems. As Sexologist of WISG noted: “We cannot work with children without their parents. It is not actually clear who should work with children. I am the doctor for adults and have the right to work only with patients who are 18 years old and above. However the problem is that the age below 18 is the most important. The issue who should deal with children and juveniles needs to be regulated”.<sup>199</sup>

**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?*

34.1. As stated in response letter from the Ministry of Labour, Health and Social Protection of Georgia: “According to the international statistical classification ICD-10 on morbidity and health issues, which is in effect in Georgia, homosexuality is not included in the list of diseases”.<sup>200</sup> However homosexuality is seen as illness, which needs treatment. This sort of perceptions in general is widespread among medical professionals in Georgia (see cases #35, 36). Primary reason for this is lack of knowledge about how contemporary medicine looks at homosexuality, what scientific approaches it takes, etc.<sup>201</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?*

34.2. It was mentioned in several interviews with experts conducted by WISG that homosexuality was considered as a disease in certain text-books and by some medical practitioners. In response to specific enquiry about this issue, the Ministry of Health replied: “we are reviewing post-graduate curricula and we plan to modify them for further regulating of this issue. Pre-diploma preparation process is regulated by the Ministry of Education and Science through the authorization of education institutions and program accreditation.”<sup>202</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 sexual orientation or gender identity?*

34.3. If the patient is discriminated she/he can appeal to the Agency Regulating Medical Activities who will discuss the issue and establish whether the doctor has violated the law. The Agency has the authority to impose sanctions upon the doctor; this, *inter alia*, can result in the deprivation of the licence to carry out medical activities. Confidentiality as well as the dignity of the patient is protected under the law<sup>203</sup>. Protection of children against forced medical procedures to “cure” them against homosexuality is not sufficiently ensured in the legislation.

**35. Member states should take appropriate measures to ensure that transgender 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 transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

198 The Law of Georgia on the Rights of Patient. art.4 (e,f)

199 CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012.p.79, available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

200 Response letter from the Ministry of Labour, Health and Social Protection of Georgia. n.01/27507, dated by: 15.05.2012

201 CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012.p.78, available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf).

202 Response letter from the Ministry of Labour, Health and Social Protection of Georgia.n.01/27507, dated by: 15.05.2012

203 *ibid*

35.1. This issue is not regulated by law. Legally speaking transgender people have the access to gender reassignment services, according to the Ministry of Health; a multi-profile team guarantees the coordinated activity, respecting the right to health of an individual.<sup>204</sup> However Gender reassignment services are costly and thus financially inaccessible for many (see answ.36.1. below).

*35.2. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

35.2. According to 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>205</sup>

However, there are some cases, cases when family members force LBT person to see psychologist or sexologist due to "incorrect" orientation or to be "cured from"<sup>206</sup>. (see case #W37)

*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?*

35.3. We have not received an answer to this question from the Ministry, however a patient under 16 can receive medical treatment only with the consent of a parent of a legal representative, except when the minor herself demands confidentiality. Moreover, patient's participation in the decision making process about medical treatment is mandatory, taking into consideration her age and the level of intellectual development. Some types of treatment however can be given without patient's participation in the decision-making process since it is assumed that her age and level of development does not provide the basis for this. Such treatment includes urgent surgical treatment, vaccination, certain types of medical checks, etc.<sup>207</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?*

36.1. Gender reassignment services are not covered by state-funded programs or any of the private insurance packages available in the country. According to the internal study conducted by Identoba:

Gender reassignment is a complex process and consists of three stages: checks and consultation procedure before the operation, operation and post-operation rehabilitation process. The break-down of costs are the following:

1. Costs related to checks and consultation procedure prior surgery. These among others include: initial consultation with a sexologist, two tests with different psychologist, two tests with different psychiatrist, 12 visits to the sexologist, consultations regarding genetics, etc.

2. Costs related to the surgery itself.

3. Post-surgery tests, endocrinological tests, hormone therapy.

In total, these services cost 19900 GEL, which is 9500 EURO. Thus these services are financially inaccessible for many people in Georgia. Identoba has already send a recommendation to relevant state authorities to co-fund gender reassignment procedure.<sup>208</sup>

*36.2. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

36.2. N/A.

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204 ibid

205 The Law of Georgia on the Rights of Patient.art.22

206 CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012.p.80, available at [http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report\\_eng.pdf](http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_eng.pdf)

207 <http://www.osgf.ge/files/publications/2010/book.pdf>

208 Internal study on Transgender's Health Policy in Georgia. Identoba. 2012

## **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;*
- *the recognition of the rights of a tenant's partner;*
- *evictions*

*on the grounds of (a) sexual orientation and (b) gender identity?*

37.1. The Constitution of Georgia grants to everyone legally present within the territory of Georgia the right to liberty of movement and freedom to choose his/her residence throughout the territory of Georgia.<sup>209</sup> According to the Civil Code of Georgia any natural or legal person may be a subject of private law relations. This rule applies to both, entrepreneurial and non-entrepreneurial persons of Georgia and of other countries.<sup>210</sup> Therefore, any person may formalize the deal about purchasing or renting and become participant of the private law relations.

In addition, the Civil Code also recognizes equality of persons in property, family and personal relations of a private nature.<sup>211</sup> It proceeds from the aforementioned that in the civil relations, like purchasing of housing/renting, credit guarantees etc., the legislation excludes any discrimination on the ground of sexual orientation and gender identity.

In spite of this, the results of LGBT discrimination survey show that there are cases when renters refuses the customer on this bases.<sup>212</sup> (see case #W39)

*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?*

37.2. There are no shelters for LGBT persons in general, shelters for elderly e.g., - not clear whether their statutes contain non-discrimination clauses.

*37.3. Is information available to landlords and tenants aimed at preventing such discrimination?*

37.3. No information available if this is the case.

*37.4. Are adequate and effective legal or other remedies available to victims of such discrimination?*

37.4. This is a private relationship not regulated by the state. Georgia does not have general anti-discrimination which covers state as well as non-state actors. No effective remedy against landlord refusing to rent a flat.

*37.5. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

37.5. WISG is not aware that such campaigns have ever been conducted.

**38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender 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 LGBT people, especially children and young people, including schemes of neighbourhood support and security?*

*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 LGBT people facing homelessness, particularly young persons?*

<sup>209</sup> Constitution of Georgia – Article 22, part 1

<sup>210</sup> The Civil Code of Georgia – Article 8, para 1

<sup>211</sup> Ibid. Article 1

<sup>212</sup> Situation of LGBT persons in Georgia. WISG. Tbilisi. 2012

38.1-2. LGBT people often face the risk of homelessness if their family members will learn about their sexual orientation, however no state programme exists to address this issue. In the letter of The Ministry of Labour, Health and Social Affairs of Georgia, who is responsible for shelters there in no answer on this question. According to the information gained from other sources, the types of the shelters in Georgia are considered for the specific groups. As for emergency shelters and temporary residences, the government makes temporary measures to address the critical situations (for example, because of the severe winter in 2012 in Tbilisi, in free dining halls temporary shelters were made for homeless people). Also several shelters function in the country for the victims of domestic violence conducted by NGO-s (they say that up today no one has addressed them on this basis) and the shelters near the residence of Patriarch. In practice LGBT people cannot use any of these shelters.

## 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.**

*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?*

*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 transgender persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

*40.3. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

*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,<sup>213</sup> the European Sports Charter<sup>214</sup>*
- *and ECRI's General Policy Recommendation No.12<sup>215</sup> been implemented in respect of (a) sexual orientation and (b) gender identity?*

*40.4. Have specific appropriate measures been taken to:*

- *put an end to the exclusion of transgender persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognize their preferred gender?*

40.1-4. The government has not provided information regarding this issue.

<sup>213</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CL=ENG> – see particularly Articles 2 (“Domestic coordination”), 3 (“Measures”), 5 (“Identification and treatment of offenders”).

<sup>214</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75); See particularly: Article 1.1 (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).

<sup>215</sup> [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N12/e-RPG%2012%20-%20A4.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf): Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.

**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 transgender 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 behaviour during and in connection with sports events?*

41.1. The Ministry of Sports and Youth Affairs informed WISG that they are unaware regarding the facts of LGBT discrimination in the sports sphere of Georgia. Their letter further stated: "In case such facts or any misconduct are revealed, we will apply the measures pursuant to the legislation (administrative or criminal). In addition, we also express our readiness to implement the adequate steps together with the national sport federations and other organizations to secure implementation of measures [referred to COE Recommendation], which will serve for elimination of facts of discrimination in the sports sphere, if such occurs in the future. The letter of the Ministry also stressed that the Ministry finds inadmissible any kind of discrimination on the ground of sexual orientation and gender identity within the sphere of sports."<sup>216</sup> (see case #W33)

## **X. 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 recognized as a valid ground for the granting of refugee status and asylum?*
- 42.2. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*
- 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?*

**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?*
- 43.2. Are there documented cases where asylum seekers have been returned to such a country?*

**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 centres, 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?*

42-44. As per the 'Law of Georgia on Refugees' (1998), "the Refugee is a person without Georgian citizenship who entered the territory of Georgia and to whom Georgia is not the country of origin and who was forced to leave his/her country of citizenship or permanent residence owing to a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or political opinion, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country."<sup>217</sup> "Membership of a social group," may include the LGBT group as well." This is not clear, however, by law or the practice.

<sup>216</sup> Response letter from Ministry of Sports and Youth Affairs N. 04-12/813, dated by: 02.05.2012

<sup>217</sup> Law of Georgia on Refugees. art.1

Upon registration, the applicant is recognised as a status seeker. The Department of Migration, Repatriation and Refugee Issues at the Georgian Ministry of Refugees and Accommodation studies the facts of the case. The fact-finding involves an interview and completion of the questionnaire. It could last up to four months. During this period, the Ministry of Refugees and Accommodation of Georgia in cooperation with the international organisations, namely, the office of the UN High Commissioner for Refugees (UNHCR) provides applicants with the shelter at the temporary settlement centre.

The law guarantees the right of a refugee not to be returned back to his/her country of citizenship or permanent residence against his/her own will as long as the conditions for granting a refugee status (i.e., persecution on the listed grounds) still persist in that country. Denial of a refugee status can be appealed to the Court. It is prohibited to deport a refugee to a country where his/her life will be at risk due to race, religion, nationality, *belonging to a social group* or a political opinion.

The Law of Georgia on the Legal Status of Aliens (in force since 2006) prohibits the deportation of an alien from Georgia to a country where: one is being persecuted for political opinion or an act which is not considered a crime under Georgian legislation, for protecting human rights or peace or progressive political and public or scientific, or other activity, or where one's life and health will be in danger. The decision to deport an alien can be appealed in court.

Article 47 of the Constitution guarantees that the rights and obligations of foreign citizens and stateless persons residing in Georgia are equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law. It further states: "(2) in accordance with universally recognised rules of international law, the procedure established by law, Georgia shall grant asylum to foreign citizens and stateless persons. (3) It shall be inadmissible to extradite/transfer an individual seeking a shelter, being persecuted for political creed or prosecuted for an action not regarded as a crime under the legislation of Georgia."

It is the President of Georgia who decides upon the issue of granting asylum. The procedure for considering the applications, granting, terminating and cancelling asylum to foreigners, as well as their rights and obligations are defined by the Resolution of the President of Georgia on Granting Asylum to Foreigners, dated 1998. The Resolution contains a list of conditions which provides the basis for granting asylum, it states: "the President of Georgia grants asylum to foreigners who do not have citizenship of Georgia, who are persecuted in their own countries for the protection of human rights or peace, for progressive public, political, scientific or other creative activities." Whether or not LGBT persons can fall under these categories is not very clear in the law and there exists no relevant Case Law or practice on that matter.

On the other hand, however, the law prohibits deportation of an asylum seeker.

The Resolution further provides for the prohibition of deporting an asylum seeker to another country where the person is being persecuted for his political opinion or any other act which is not considered to be a crime under the legislation of Georgia. (Decision on granting or refusing asylum is taken within four months from the registration of the application.) Refusal of the asylum can be appealed to a court within 15 days.<sup>218</sup>

WISG is unaware how these provisions are implemented in practice or has any recorded case when the right of an LGBT refugee or asylum seeker were violated.

## ***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?*

45.1. According to the law of Georgia "on Public Defender of Georgia", for the purpose of securing state guarantees for the protection of human rights and freedoms, the Public Defender shall supervise that the state and local self-government bod-

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<sup>218</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia. by independent researcher Ana Natsvlshvili. COWI. 2010. p. 13-14 available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

ies, public entities and officials observe and respect the rights and freedoms recognized by the state for all persons within its territory and jurisdiction regardless of race, colour, language, sex, religion, political or other opinion, national, ethnic and social belonging, origin, property and title, place of residence or other status.<sup>219</sup> Therefore, working on the issues related to the discrimination and fighting against it is one of the most important functions and priorities of the Public Defender.<sup>220</sup>

PD also has the function of the National Preventive Mechanism under the UNCAT. This gives him an exclusive power to monitor situation in penitentiary institutions in Georgia.

*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 LGBT people, for example, when freedom of assembly events are opposed,*

*in relation to (a) sexual orientation or (b) gender identity?*

45.2. Until now neither the Public Defender nor his office has made any concrete recommendations in this direction. The Public Defender was very active in lobbying the changes to the Criminal Code of Georgia, in which the offence committed under the motive of intolerance against race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other opinion, disability, citizenship, national, ethnic or social origin, birth, property or position status, place of residence or other status containing the discrimination shall be considered as aggravating circumstance.<sup>221</sup>

The PDO letter emphasized four main areas of its work: educational activities, review of individual complaints, participation in court proceedings and making public statements.

PDO response to WISG letter noted that PD is very active in undertaking educational activities. Currently, on the basis of Memorandum of Understanding with the Ministry of Internal Affairs, the PDO is organizing the trainings for the Staff of the Ministry of Internal Affairs on the topic “Prohibition of Discrimination”. Within the frame of the said training the staff of the Ministry of Internal Affairs learns the national legislations and international standards. In addition, round-table discussions/seminars on the general issues related to discrimination were organized for the students.

The letter further noted that reacting to individual complaints is one of the main functions of the Public Defender of Georgia. Over the recent years only a few individuals applied on the ground of sexual orientation. As mentioned above, the Public Defender exercised the relevant measures, which later were reflected in the Parliamentary Report.

The letter noted that as so far the Public Defender has received no information regarding the court proceedings on the facts of discrimination on the ground of sexual orientation or gender identity – either from individuals, or from the NGOs; and he was not asked to exercise his *Amicus Curiae* function in the court.<sup>222</sup>

On the other hand during 2012 the Public Defender made a few public statements regarding the similar facts. One of them was about the parade organized by the LGBT people protesting against homophobia, when the facts of insult against the parade participants were registered. And another statement was about the public statement made by the member of the Parliament.

In addition, it should be mentioned that for the purpose of raising civil awareness on these issues, on 17 May 2012 the Public Defender made the public statement about the International Day of Fighting against Homophobia.<sup>223</sup>

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219 Organic Law of Georgia on the Public Defender of Georgia .Art.3(1)

220 Response letter from the Office of the Public Defender of Georgia N.706/04-11, dated by: 17.07.2012

221 The Criminal Code of Georgia, Article 53, para 31

222 Response letter from the Office of the Public Defender of Georgia N.706/04-11, dated by: 17.07.2012

223 *ibid*

## ***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.**

*46.1. Do legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of a) sexual orientation? b) gender identity?*

46.1. In Georgia there is no specific law regarding prohibition of discrimination. The norms prohibiting the discrimination can be found in several of laws and legal acts. Under the recent change made to the Criminal Code of Georgia the offence committed under the motive of intolerance against race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other opinion, disability, citizenship, national, ethnic or social origin, birth, property or position status, place of residence or other status containing the discrimination shall be considered as aggravating circumstance.<sup>224</sup> The Public Defender was an active lobbyist of the said change.<sup>225</sup>

In application of this Article the court has possibility to identify the discrimination on multiple grounds. However, as the norm is relatively new, so far there are no cases of its application in the court practice.<sup>226</sup>

*46.2. Does the mandate of national human rights structures enable them to tackle such discrimination on multiple grounds?*

46.2. PDO has no registered cases of discrimination on multiple grounds.<sup>227</sup>

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224 Criminal Code of Georgia, Article 53, para 31

225 Response letter from the Office of the Public Defender of Georgia N.706/04-11, dated by: 17.07.2012

226 *ibid*

227 *ibid*

**Appendix #3. List of letters sent to ministries or other institutions with checklist questions regarding implementation of the Recommendation**

State bodies (Ministries)	Article #	WISG's Letter #	Person to whom sent	Send Date	Register #	Date receiving answers	Letter #	reply/ Comments
Ministry of Sport and Youth affairs	/ 39, 40, 41	No_ C-COM-5/1	<b>Mr.Vladimer Vardzelashvili</b> (former) Minister of Sport and Youth affairs	30.04.2012	04/810	02.05.2012	04-12/813	<b>G. Avaliani</b> First Deputy Minister
Ministry of Defense	/ 29	No_ C-COM-5/2	<b>Mr. Bachana Akhalaia</b> , (former) Minister of Defence	01.05.2012	1-418			<b>No answer</b>
Ministry of Education and Science	/ 31, 32,	No_ C-COM-5/3	<b>Mr. Dimitri Shashkin</b> , (former) Minister of Education and Science	30.04.2012	47096			<b>No answer</b>
Ministry of Internal Affairs	/ 1, 3, 5, 19,	No_ C-COM-5/6	<b>Mr. Ivane Merabishvili</b> , (former) Minister of internal affairs	30.04.2012	551380	18.05.2012	640758	<b>Zviad Tavartkiladze</b> Deputy Head of Administration
Ministry of Justice	1, 2, 3, 5 / 2, 3, 6, 9, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 37, 42, 43, 44	No_ C-COM-5/10	<b>Mr. Zurab Adeishvili</b> , (former) Minister of Justice	30.04.2012	01/27577	26.06.2012	26948	<b>Tamar Tomashvili</b> Head of the Department of Public International Law
Ministry of Corrections and Legal Assistance	/ 4	No_ C-COM-5/12	<b>Ms. Khatuna Kalmakhelidze</b> (former) Minister of Corrections and Legal Assistance of Georgia	30.04.2012	01/13548	14.05.2012	11866/01	<b>Giorgi Khojevanishvili</b> The Head of International Relations Department
Ministry of Labour, Health and Social Affairs	/ 21, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38	No_ C-COM-5/13	<b>Mr. Zurab Chiaberashvili</b> , (former) Minister of Labour, Health and Social Affairs	1.05.2012	35540	15.05.2012	01/27507	<b>Ekaterine Jojua</b> Responsible person for issuing public information Head of Activity Planning and Organizing Division
Prosecutor's office	2, 6	No_ C-COM-5/16	<b>Mr. Murtaz Zodelava</b> , (former) chief prosecutor	30.04.2012	01/13-27581			Redirect letter to Ministry of Justice
Academy of the Ministry of Internal Affairs	/1, 3	No_ C-COM-5/5	<b>Ms. Khatia Dekanoidze</b> (former) Director of Academy of the Ministry of Internal Affairs	01.05.2012	120	22.05.2012	40/5-517	<b>Nino Esartia</b> Deputy Head of Administration
Human rights and civil integration committee	1, 2, 3, 5 / 5, 7, 8, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 42	No_ C-COM-5/8	<b>Mr. Lasha Tordia</b> (former) Chairman of the Committee	02.05.2012	<b>4833</b>	<b>22.06.2012</b>	4/2/5462	<b>Mr Lasha Tordia</b> Chairman of the Committee

Gender equality advisory council under the chairman of the parliament of Georgia	1, 2/	No_C-COM-5/9	<b>Ms. Rusudan Kervalishvili</b> (former) Head of Gender equality advisory council	02.05.2012	<b>4833</b>	<b>25.06.2012</b>	2/5/5531	<b>Ms. Rusudan Kervalishvili</b> Head of Gender equality advisory council / Redirect letter to Human rights and civil integration committee
Legal issues committee	1, 2, 3, 5 / 5, 7, 8, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 29, 42,	No_C-COM-5/14	<b>Mr. Pavle Kublashvili</b> (former) Chairman of the Committee	02.05.2012	<b>4833</b>	<b>04.07.2012</b>	4/10/5814	<b>Mr Pavle Kublashvili</b> Chairman of the Committee / Redirect letter to Gender equality advisory council
Healthcare and social issues committee	1, 2/ 21, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38,	No_C-COM-5/15	<b>Mr. Otar Toidze</b> (former) Chairman of the Healthcare and social issues committee	03.05.2012	<b>4886</b>			<b>No answer</b>
Committee on European integration	1, 2, 5 /	No_C-COM-5/17	<b>Mr. David Darchiashvili</b> (former) Chairman of the European Integration Committee	02.05.2012	<b>4833</b>	<b>17.05.2012</b>	4/7/4222	<b>Mr David Darchiashvili</b> Chairman of the European Integration Committee
Foreign relations committee	1, 2, 5 /	No_C-COM-5/18	<b>Mr. Lasha Zhvania,</b> (former) Chairman of the Foreign relations committee	02.05.2012	<b>4833</b>			Redirect letter to Human rights and civil integration committee
Public Defender of Georgia	/ 5, 7, 11, 45	No_C-COM-5/7	<b>Mr. Giorgi Tugushi,</b> (former) public defender of Georgia	02.05.2012	<b>348</b>	<b>17.07.2012</b>	706/04-11	<b>Irakly Mzhavanadze</b> The Head of Justice Department
The Georgian Charter of Journalistic Ethics	/ 6, 13	No_C-COM-5/20	<b>Mr. Zviad Koridze,</b> Chairman of Charter Council	01.05.2012		<b>27.07.2012</b>	g/12/27.07-2012	<b>Tamar Kordzaia</b> Executive Director of the Charter of Journalistic Ethics
Georgian National Communication Commission	/ 6, 13	No_C-COM-5/4	<b>Mr. Irakli Chikovani</b> Chairman of the Commission	03.05.2012	<b>03/1164-12</b>	<b>16.05.2012</b>	03/1164-12	<b>I. Chikovani</b> Chairman of the Commission

#### ***Appendix #4. Response letters from ministries***

Ministry Of Sports And Youth Affairs .....	161
Ministry Of Internal Affairs Of Georgia .....	162
The Ministry Of Justice Of Georgia.....	164
Ministry Of Corrections And Legal Assistance Of Georgia.....	172
The Ministry Of Labour, Health And Social Protection Of Georgia.....	173
The Academy Of The Ministry Of Internal Affairs .....	175
Human Rights And Civil Integration Committee Of The Parliament Of Georgia.....	176
Gender Equality Consultative Council Under The Chairman Of The Parliament Of Georgia .....	177
Legal Issues Committee Of The Parliament Of Georgia.....	178
European Integration Committee Of The Parliament Of Georgia .....	179
The Office Of The Public Defender Of Georgia.....	180
Georgian National Commission On Communications .....	183
The Georgian Charter Of Journalistic Ethics .....	184

**MINISTRY OF SPORTS AND YOUTH AFFAIRS**

N.04-12/813

02.05.2012

In response to your letter of 30 April **N.C-COM-5/1** we inform you that the Ministry of Sports and Youth Affairs finds inadmissible any kind of discrimination on the ground of sexual orientation and gender identity within the sphere of sports. At the same time the Ministry has no information regarding the facts of such discrimination in the sports sphere of Georgia. In case of revealing the facts of offence or misconduct we will apply the measures pursuant to the legislation (administrative or criminal). In addition, we also express our readiness to implement the adequate steps together with the national sport federations and other organizations to secure implementation of measures referred to in your letter, which will serve for elimination of facts of discrimination in the sports sphere, if such occurs in the future.

*Respectfully,  
G. Avaliani  
First Deputy Minister*

## MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

18.05.2012

N.640758

In response to your letter dated on April 30 regarding the recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity we send you the public information on the measures aimed at eliminating the discrimination exercised by the MIA within its competence.

Annex: 4

*Respectfully*  
*Zviad Tavartkiladze*  
*Deputy Head of Administration*

The recent reforms in the police system have considerably improved the effectiveness of performance of the law enforcement bodies; the focus was made on the promotion of human rights and fundamental freedoms.

The Ministry of Internal Affairs has made active steps to introduce the relevant protective mechanisms within the system of the Ministry, namely:

The structural changes were implemented at the Ministry; the mechanism of internal control in a form of Inspectorate General was introduced, through which the facts of violation of law and human rights were eradicated and the self-discipline of the police staff was improved.

The Code of Ethics of the Police was adopted and it is in operation.

The changes and amendments were introduced to the legal base regulating the police performance in order to meet the universally recognized principles and norms of the International Law.

The police shall undergo systematic obligatory trainings on different issues, including anti- discrimination measures.

### **General Inspectorate**

General Inspectorate is an independent operative structural unit of the MIA under immediate subordination to the Minister. For the purposes of strengthened internal control it is implementing office monitoring, conducts the measures for detection and elimination of the disciplinary violations. It is aimed at detecting, eliminating and preventing the human rights violations committed by the MIA staff; review of the individual complaints is also within the competence of the General Inspectorate.

In its work the General Inspectorate relays on such sources of information as the citizens' complaints (written complaints and those received through the hotline, including anonymous sources), Public Defender, Media etc. When the unlawful act is committed by the police staff anyone can apply to the General Inspectorate and inform them about such fact.

### **Code of Ethics**

The Code of Ethics of the MIA had been adopted and acts under the Decree #119 of the Minister of Internal Affairs since 26 January 2007.

The Code provides for major ethic standards for the police. **It underlines the importance of the respect of human rights, compliance to and act within the law, based on the principles of equality and justice.** The Code puts a special

stress on the responsibility of the Police to be guided by the principles of impartiality and not to resort to any discriminative act while exercising their duties.

The General Inspectorate is the body exercising the supervision over the implementation of the Code.

### **Trainings**

Learning of the human rights issues is a part of basic curriculum of the MIA Academy. It is also in the agenda of continues projects and trainings implemented in cooperation with the local NGOs and International Organizations.

#### **Basic Training Course**

Basic Training Program of the MIA Police Academy includes the **intensive course in human rights protection**, as well as the relevant national legislation and international instruments. The students of the Academy learn the general principles of the human rights protection and the special entitlements that should be taken into account while exercising the police duties. **Non-discrimination** is one of the important aspects of the curriculum.

During the learning process the special focus is made on the Ethic Code and the public-focused police, which includes the relations with the different types of minorities and the factors that should be observed while dealing with these groups, including combating the stereotypes etc.

#### **Implemented projects/trainings**

In November 2010 within the instruments of the EU TAIEX the staff of the MIA received the training “Hatred driven offences and their investigation”. The trainings were conducted by the experts from OSCE ODHIR, also from Italy and Great Britain.

Since 2011 the Police Academy, in cooperation with the representatives of the Tolerance Centre under the Public Defender’s Office, has been implemented the nation-wide trainings for the police (five trainings in 5 regions of Georgia) on **Non-Discrimination**. The project is financed by the EU and it includes the following issues:

Review of the Georgian legislation and of the International Law with the focus on non-discrimination

Stereotypes, discrimination, xenophobia, racism – definitions and the relevant examples

Georgian cases of acts committed on the basis of intolerance/hatred

The relevant cases of the European Court of Human Rights

The first training of the sickle will be conducted on 4-5 June 2012. Within the frame of the project the MIA Academy, in consultation with the Public Defender’s Office will elaborate and distribute to all the police stations the brochure “Non-discrimination”.

Since 2006 Georgia has exercised the **Witness Protection Program**. In 2010 the UNODC and the DOJ of the US Embassy assisted to elaborate the new program aimed at protecting the parties to the criminal proceedings (including the witnesses, victims and others). The program is in compliance with the requirements of the Criminal Procedural Code of Georgia, and the program itself is confidential.

In 2010 and 2011 several of trainings, working meetings and workshops were organized through the assistance of the international organizations on the witness protection issues.

## THE MINISTRY OF JUSTICE OF GEORGIA

#26948

26 June 2012

In response to your letters dated on April 30 N\_C\_COM-5/10 and N\_C\_COM-5/16 regarding the recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)5 we send you the information on the measures exercised by the agencies subordinate to the Ministry of Justice.

Annex: 15 pages

*Tamar Tomashvili*

*Head of the Department of Public International Law*

### **General Recommendation**

Elaboration of legislative changes and proposals is one of the dimensions of the activity of the Ministry of Justice. This function is exercised periodically and needs the relevant resources. Over the recent period the existing legislation, which could cause any direct or indirect discrimination on the ground of sexual orientation or gender identity, has not been revised. As for the monitoring over the direct or indirect discrimination on the ground of sexual orientation or gender identity, the Ministry of Justice can only exercise the monitoring regarding the compliance with the European standards. Such monitoring is constantly exercised by the relevant departments of the Ministry of Justice, namely: Department of Public International Law; Department of Legal Drafting; and Analytical Department.

At the same time, the Ministry of Justice, within its competence, secures the legislative measures and their effective implementation in order to eliminate discrimination on any ground.

The legislation of Georgia, currently in force, prohibits discrimination on several grounds. According to the Constitution of Georgia everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.<sup>224</sup> Anti-discriminative legislation also was introduced in other spheres:

#### Employment

According to the Labour Code of Georgia any type of discrimination due to the race, colour, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations;<sup>225</sup>

#### Healthcare

The health related legislation of Georgia prohibits discrimination against patients on any ground, including the sexual orientation. Medical assistance provided through the state programs of health is accessible for any citizen. The law of Georgia "on Public Health" prohibits the discrimination against patients on the ground of race, colour, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and position status, residence, morbidity, sexual orientation or personal negative mood. Discrimination against inmates while providing them with medical assistance is also prohibited.<sup>226</sup>

#### Education

The law of Georgia on General Education contains the provision, which prohibits discrimination on any ground and recognizes access to the education for all. According to the law on General Education any discrimination is unacceptable while admitting a child in the school. This norm does not exclude possibility for holding the selection contest for those

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<sup>224</sup> Constitution of Georgia, Article 14

<sup>225</sup> The Labour Code of Georgia – Article 2, para 3

<sup>226</sup> The Law on Public Health of Georgia – arts 5-6

general educational establishments, which provide the training in military, art and sport professions, also at schools with the other statuses. During the contest the special educational needs shall be taken into account.<sup>227</sup>

Higher education is also accessible and non-discriminative. The law provides clear determination of 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.<sup>228</sup>

The law on Higher Education also makes obligatory the equal treatment at the institutions of higher education, regardless of ethnic origin, sex, social belonging, political or religious opinion and other grounds.<sup>229</sup>

Discrimination is also inadmissible while holding the competition for electing the leaders of the higher educational institutions. The Charter of the Higher educational institution may define the qualification requirements to the candidates to 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>230</sup>

#### The remedies of legal protection

Georgian legislation provides the effective legal remedies for the victims of discrimination. The victim of discrimination, like the other persons, is eligible to legal advice and legal aid at the expense of the State.<sup>231</sup>

The Legal Aid Service was established under the Ministry of Corrections and Legal Assistance, which is financed by the state. This agency provides the legal assistance free of charge. It was created in July 2007 and today covers the whole territory of Georgia through its Bureaus and Consultation Centres.<sup>232</sup> The Legal Aid Service also offers to the citizens online consultations and the mobile group of legal aid, as an additional service.

In addition, every person (including the victim of discrimination) has the right to apply directly in person or through a representative to a court for protecting his rights and freedoms.<sup>233</sup>

### **I. Protection of life, security and protection from violence**

#### **a. Hate-crimes and hate-motivated incidents**

According to the Georgian penal legislation the hate-motivated offence on the ground of sexual orientation and gender identity shall be taken into account while determining the offence. Pursuant to the Criminal Code of Georgia, when imposing a punishment, the court shall take into account circumstances aggravating or mitigating the responsibility of a criminal, in particular, motive and purpose of a crime, wrongful intents revealed in the act, character and extent of the breach of obligations, the way and manner in which the act was carried out and its wrongful result, past life of the criminal, his/her personal and economic status, behaviour after the act, especially aspiration of a criminal to compensate damage, become reconciled with the victim.

The motive of an offence related to the intolerance on the ground of race, colour, language, sex, sexual orientation, gender identity, age, religion, political and other opinions, disability, citizenship, national, ethnic and social belonging,

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<sup>227</sup> The Law of Georgia on General Education – art. 13(3)

<sup>228</sup> *ibid.* art. 3(3)j

<sup>229</sup> *ibid.* art. 16(1)d

<sup>230</sup> *ibid.* art. 22(4) and 29(2)

<sup>231</sup> The Law of Georgia Legal Aid

<sup>232</sup> [http://www.legalaid.ge/index.php?action=page&p\\_id=433&lang=geo](http://www.legalaid.ge/index.php?action=page&p_id=433&lang=geo)

<sup>233</sup> Organic law of Georgia on the Common Courts – Article 3(1)

birth, property or position status, place of residence or any grounds of discrimination represent the aggravating circumstance.<sup>234</sup>

### *The Prosecutor's Office of Georgia*

The Code of Ethics for the staff of the Prosecutor's office was elaborated. It provides the guarantees for eliminating discrimination in prosecutors' activities and in the process of providing the service to the citizens.

In addition, the aforementioned Code of Ethics aims at establishing the high standards of responsibility, fostering the principles of impartiality, improving the effective and professional activities and protecting the human rights standards by the prosecutors. The Code of Ethics is especially focused on the prohibition of discrimination. According to the Code of Ethics the staff of the prosecutor's office is obliged to facilitate to the elimination of any kind of discrimination.<sup>235</sup>

While dealing with the public the staff of the prosecutor's office shall respect the citizens and express his/her justified criticism in a polite manner. The staff of the prosecutor's office shall respect the freedom of speech, ideas and expression of others, if such conduct does not violate the rights and freedoms of the third parties. Expression of the ideas with the intention to restrict or humiliate a person on the ground of race, colour, language, sex, religion, political and other opinions, national, ethnic or social origin, property and position status is impermissible.<sup>236</sup>

Special attention is devoted to the relevant trainings in the human rights field. In 2009 the Council of Europe supported the seminar for investigators on the topic of Prohibition of Discrimination.

At the current stage the Judicial Training Centre under the Ministry of Justice is conducting the trainings on human rights issues within the frame of basic training. In 23-27 April of 2012 the trainings on domestic violence were provided for all district prosecutors supervising the cases related to the domestic violence. Those trainings also contained the issues of gender discrimination.

It also should be mentioned that the Ministry of Justice offers the equal opportunities to all staff regarding employment and to the candidates, regardless the race, colour, religion, sex, nationality, age, etc. Such policy of the Ministry of Justice is intended to prevent any staff from restriction and exclude inimical and abusive relations during the working process.

The Ministry of Justice elaborated the guidelines for the staff with the aim to secure the ethical and polite working conditions. Each staff 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 signs. This policy serves to increasing the working process effectiveness within the healthy environment.

Every staff of the Ministry of Justice is entitled to inform promptly about any attempt of sexual harassment to the General Inspectorate and the Department of Human Resources Management, which will take adequate measures on such facts.

#### **b. "Hate Speech"**

Georgian legislation is regulating the major principles of broadcasting and media activities, trying to eliminate so called "hate speech". The law on Broadcasting stipulates the conditions for broadcasting regulation in accordance with the principle of free expression and free enterprise; defines the rules of establishment of an independent regulatory authority in the broadcasting sector and determines the terms and procedures for issuing licenses and reviewing complaints. According to this law general and specialized, public and community broadcasting license holders shall ensure accurate and fair coverage of facts and opinions and the identification of personal views, as well as the establishment of non-discriminatory and pluralistic coverage of public views and concerns.<sup>237</sup> The same law prohibits broadcasting the programs containing material to stir up hatred, discrimination that is offensive to any person or group

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<sup>234</sup> The Criminal Code of Georgia – Art. 53(3<sup>1</sup>)

<sup>235</sup> The Order of the Prosecutor General of Georgia №5, 19 June 2006, "On Approval of the Code of Ethics of the Staff of the Prosecutor's Office of Georgia" – Article 5(2)

<sup>236</sup> The Order of the Prosecutor General of Georgia №5, 19 June 2006, "On Approval of the Code of Ethics of the Staff of the Prosecutor's Office of Georgia". Article) 6

<sup>237</sup> The Law of Georgia on Broadcasting . Article 54

on the basis of ethnic background, religion, opinion, age, gender, sexual preference or disability, or any other feature or status. Special emphasis of these features or statuses is only permissible within the context of a program if it aims merely to illustrate such hatred or discrimination, as they already exist in society.<sup>238</sup>

In addition to the restriction of programs, the legislation also regulates the conditions for advertising at any broadcasting channel. Namely, the law on Advertising states that placement and distribution of the improper advertising is prohibited.<sup>239</sup> Improper advertising is unfair, unreliable, non-ethical, obviously false or other promotion where the requirements for its content, time, place or distribution established by the law of Georgia are violated. Accordingly, non-ethical advertising is also prohibited, and according to the law non-ethical advertising is advertising that by insulting nationality, race, occupation, social belonging, age, sex, language, religious, political and philosophical faith violates the universally recognized humane and ethical norms.<sup>240</sup>

## **II. The Right of Association**

According to the Constitution of Georgia everyone shall have the right to form and to join public associations, including trade unions.<sup>241</sup> The legislation regulating the rules and conditions for registration of associations includes: the Civil Code; the Law on Entrepreneurs; and the Law on Public Registry. It should be noted that since 2007 the Parliament of Georgia has elaborated the package of changes aimed at simplifying the registration of associations. At first the unified approach was established for all associations regarding their registration; the legal requirement on the structure of the decision making body was abolished and the associations were provided with the right to make their own choice regarding the structure of such bodies. Another requirement on obligatory submission of the charter during the registration also was abolished.

On 25 December 2009 the Parliament of Georgia elaborated the legislative changes with the aim to simplify the process of registration of the non-commercial organizations. These changes also touched upon the provisions that were relating to the registration of regional branches of the aforementioned organizations. As a result of changes introduced to the relevant law the final term reduced to 1 working day. The list of documents necessary for registration also was simplified and reduced. The registration of NGOs registered in abroad and of the International NGOs also became simpler. There are no different regulations for local and foreign non-governmental organizations. Separate registration of regional offices of the non-governmental organizations is not necessary either.

Several institutional measures have been taken recently in order to simplify the registration process; namely:

In 2010 the registration procedure of the non-commercial legal entities was transferred from the Ministry of Finance to the Public Registry, which provides customer-oriented, high-quality, simple and prompt service. Therefore, the citizens have the possibility to save time and resources, as they don't have to walk around the different agencies to get the relevant service.

In 2011 the state elaborated concept "All in one space", it means to receive all kind of services within one space through simple and fast procedures. This concept made the process of non-commercial legal entities even simpler. The House of Justice has assumed all kind of services, which are provided by the Civil Registry, Public Registry, National Archive, National Bureau of Enforcement and Georgian Notary Chamber. Accordingly, the House of Justice now is exercising the registration of non-commercial legal persons. The Houses of Justice currently operate in Batumi, Rustavi, Mestia and Kutaisi. At the end of 2012 the Houses of Justice will be open also in other cities of Georgia.

Some services also are available in online regime, which makes easier the access to the certain category of services and needs no additional effort from the customer.

According to the standards of the House of Justice, the employees, while providing the service, shall take into account the principle of equality. All staff at the Houses of Justice has been retrained with this purpose. Currently the number of retrained personnel reaches 389 people, who are well aware about the principle of non-discrimination.

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<sup>238</sup> *ibid.* Article 56(3)

<sup>239</sup> The Law of Georgia on Advertising. Article 4(8)

<sup>240</sup> *ibid.* Article 3(5)

<sup>241</sup> Constitution of Georgia, Article 26(3)

It is worth to mention that the right of association is not an absolute right and it can be restricted in the cases provided for by the law. According to the Constitution of Georgia formation of associations is impermissible if such association aims at overthrowing or forcibly changing the constitutional structure of Georgia, infringing upon the independence and territorial integrity of the country or propagandising war or violence, provoking national, local, religious or social animosity.<sup>242</sup>

At the Public registry, while registering the non-commercial legal person, the Registry may refuse to register the organization if the applicant failed to submit all necessary document, and if the applicant failed to eradicate the discrepancies; or if the other legal entity with the same title has already been registered;<sup>243</sup> or if the legal entity is exercising illegal activity. However, the administrative body gives 30 days to the applicant for correction of the shortcomings. The Public Registry refuses to register only if the applicant fails to take into account the notes.<sup>244</sup>

The aforementioned measures considerably simplified the procedure of registration for non-commercial legal entity and now it takes only one working day. Therefore, there is no impediment for the registration of organizations, including those, which have the aim to work for LGBT people's welfare and protection of their rights. The service of the Registry is transparent and with high quality. The increased number of the registered entities is the evidence of its success. More than 1000 non-commercial legal entities are registered annually. Until now there are no cases of refusal the registration to the LGBT NGO.

#### **IV. The Right to Respect Private and Family Life**

Under the Georgian law rape is punishable (.e. the sexual affair through violence, threat to violence or helplessness of the victim). The other cases of sexual affairs, both between homo and heterosexual couples, are not criminalized. The age of consent is the same for both – homo or heterosexual couples, and it is 16.<sup>245</sup> Under the Criminal law the sexual affair with a person under 16 is punishable, and forced sexual affair with a person under 14 is recognized as the aggravated circumstance.<sup>246</sup>

##### Protection of personal data

Information about sexual orientation or gender identity belongs to the personal data and it should be subject of special protection regime, with some exceptions. According to the law of Georgia on Protection of Personal Data, processing of certain category of information is prohibited.<sup>247</sup> The data of special category (sensitive data) includes: person's race or ethnic origin; political opinion; religion; philosophical belief; trade union membership; health status; sexual life or conviction history; also biometric data, upon which a person can be identified.

The data of special category may be processed under the certain circumstances. For the exceptional cases the Ministry of Justice elaborated the package of changes to the law on Personal Data Protection. The package has been submitted to the Parliament. According to the changes the restriction will not be effective in the following cases:

- The subject of data gave the written consent on the processing of special category data;
- The subject of data made public the information about him/her without clear prohibition of using the data on him/her
- The data processing is necessary for a person who processes it for fulfilling his/her labour responsibilities, or for implementation of the right related to it.
- Data processing is necessary for protecting the vital important interests of the data subject of the third person and the data subject has no physically or legal capacity to give the consent

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<sup>242</sup> Constitution of Georgia – Article 26(3)

<sup>243</sup> Order of the Minister of Justice of Georgia #241, Article 16

<sup>244</sup> Order of the Minister of Justice of Georgia #241, Article 15, para 2

<sup>245</sup> Criminal Code of Georgia – Article 140

<sup>246</sup> Criminal Code of Georgia – Articles 137(5) and 138 (5)

<sup>247</sup> The Law of Georgia on Personal Data Protection. Article 6

- 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

Data processing is exercised in the course of legitimate activity by the associations or other non-commercial organizations of political, philosophical, religious or trade character. In such case the data processing may cover only the members of this organization, of those persons, who have the constant communication with this organization. (In such case disclosure of the information to the third person will be inadmissible without consent of the data subject).

The said exception will be introduced as an amendment to the law on Personal Data Protection. It is thematically linked with the importance of processing of the sensitive data. The grounds for data processing envisaged in the EU Directive (EC/95/46) have been introduced in Article 6 of the Georgian law. The changes are aimed at securing better compliance with the European standards and CoE requirements.

It should be mentioned that the data subject enjoys certain rights, which provide him/her with the possibility to control the process of his/her data processing. The data subject is entitled to ask the processing body for the information regarding his/her data procession.<sup>248</sup> The data processing body within 10 days shall provide the data subject with the following information: 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.

#### Changing and updating of the data

The data subject also has the possibility to change/update his/her personal data. In case he/she requires such, the data processing official s obliged to correct, update, add, block, delete or destruct the data, if they are incomplete, incorrect or outdated, or if they have been collected and processed unlawfully.<sup>249</sup>

In addition, according to the law on the Civil Acts, a person has a right to ask to the civil act registration body to make changes, amendment and/or additions to his entry. The same request can be also made by parents/foster parents regarding the entry about themselves in the civil act registry on his/her child/adopted child.<sup>250</sup>

On the basis of the law on Civil Acts one of the following circumstances should be present to make changes in the entry:

- Registration on adoption – if the entry in the civil registry shall be changed under the court decision on adoption, or under the request of adopting parent;
- Registration of paternity;
- Registration of parent's marriage – if the parent changed the last name upon marriage;
- Registration of parent's divorce – if a parent changed last name upon divorce;
- Registration of change of name or/and last name;
- Identification of the last name;
- Change of a gender – if a person likes to change name or/and last name due to the change of gender;
- The court decision on making change to the civil act entry;
- identification of a dead person – if the civil acts registration body registered his/her death as a death of unknown person;
- Change of a person's civil status – if a person was granted or suspended Georgian citizenship, or if a person lost Georgian citizenship.<sup>251</sup>

Therefore, in case of changing the gender, a person is entitled to change his/her personal data in the official documents.

#### Private life

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<sup>248</sup> *ibid.* Article 21(1)

<sup>249</sup> *ibid.* Article 22

<sup>250</sup> The Law of Georgia on Civil Acts. Article 77 (1,2)

<sup>251</sup> The Law of Georgia on Civil Acts - Article 78

Inviolability of personal life is guaranteed by the Constitution of Georgia. The relevant provision states that everyone's private life, place of personal activity, personal records, correspondence, and communication by telephone or other technical means, as well as messages received through technical means shall be inviolable. Restriction of the aforementioned rights shall be permissible by a court decision or also without such decision in the case of the urgent necessity provided for by law.<sup>252</sup>

#### Child adoption

There is no discrimination on the ground of sexual orientation and gender identity in procedures of child adoption. According to the law on Adoption and Foster Care, adopting parent may be any capable adult, except of those:

who was deprived from the right of parent or previously had adopted person, was a guardian of minor or exercised the function of foster parent but these relations were annulled due to the improper performance of his/her duties;

Whose right to parenthood has been restricted under the procedure established for by the Georgian legislation;

Who is not capable to exercise the parent's duties properly due to his/her physical state (according to the list of morbidities approved by the Ministry);

Who was convicted by the court for grave or especially grave crime and the conviction is not removed or annulled pursuant to the procedure provided for by the Georgian legislation;

Who is convicted for the offence considered in the Chapter XXIV of the Criminal Code of Georgia and his/her conviction is not removed or annulled pursuant to the procedure provided for by the Georgian legislation.<sup>253</sup>

Therefore, the law of Georgia on Adoption and Foster Care has no restrictive provisions against the rights of adopting parent on the ground of sexual orientation.

#### **VIII. Housing**

The Constitution of Georgia states that everyone legally within the territory of Georgia shall, within throughout the territory of the country, have the right to liberty of movement and freedom to choose his/her residence.<sup>254</sup>

According to the Civil Code of Georgia any natural or legal person may be a subject of private law relations. This rule applies to both, entrepreneurial and non-entrepreneurial persons of Georgia and of other countries.<sup>255</sup> Therefore, any person may formalize the deal about purchasing or renting and become participant of the private law relations.

In addition, the Civil Code also recognizes equality of persons in property, family and personal relations of a private nature.<sup>256</sup> It proceeds from the aforementioned that in the civil relations, like purchasing of housing/renting, credit guarantees etc., the legislation excludes any discrimination on the ground of sexual orientation and gender identity.

#### **X. The right to seek asylum**

According to the *law of Georgia on IDPs from the Occupied Territories of Georgia – Refugees* a person citizen of Georgia or permanent resident of Georgia without citizenship may be considered as IDP from the occupied territory – refugee who had to leave his/her place of permanent residence due to the threat to life, health and freedom of this person and his/her family members due to the occupation of the territory by foreign country, aggression and mass violation of human rights.

Pursuant to the same law discrimination is inadmissible on any ground against IDPs while exercising by them their own rights and freedoms, regardless race, colour, language, sex, religion, political and other opinions, national, ethnic and social origin, birth, property and title status, place of residence and also for the reason of displacement.<sup>257</sup>

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<sup>252</sup> Constitution of Georgia – Article 20(1)

<sup>253</sup> The Law of Georgia on Adoption and Foster Care – Article 5

<sup>254</sup> Constitution of Georgia – Article 22, part 1

<sup>255</sup> The Civil Code of Georgia – Article 8, para 1

<sup>256</sup> *ibid.* Article 1

<sup>257</sup> The Law of Georgia “on IDPs from the Occupied Territories of Georgia – Refugees”. Article 1

Every internally displaced person – refugee has the right to shelter. Therefore, the legislation excludes any discrimination in asylum seeking on any ground, including the sexual orientation and gender identity.

The law of Georgia on Refugee and Humanitarian Statuses declares that the status of refugee can be granted to a person if he/she has a justified fear that he/she may become the victim of persecution due to his/her race, religion, belief, nationality, belonging to the particular group or political opinion, and he/she cannot or does not want, because of that fear, to return in the country of his/her origin, or enjoy protection of that country.<sup>258</sup>

The same law regulates the procedure for granting the statuses of refugee, which covers the whole process, beginning from the initial application, ended with the stage of adopting the relevant decision. After granting the status of refugee or humanitarian status through passing these procedures a person will receive the certificate for temporary residence.<sup>259</sup>

A person having the refugee status is entitled to ask for asylum. The application of an asylum seeker, who is in Georgia, shall be reviewed by the Ministry within 10 days after its submission, and then makes decision on registration as an asylum seeker, or on refusal to registration.<sup>260</sup>

The law on Refugee and Humanitarian Statuses provides the asylum seekers with the following rights:

- To receive interpreter's service and get the information about procedures for granting the refugee or humanitarian status;
- To receive the application for temporary accommodation and to live free of charge at the accommodation centres, and in a special case – at the place of temporary residence identified by the Ministry;
- To receive other types of assistance at the accommodation centres or at the place identified by the Ministry;
- To enjoy the right to education equal to the citizen of Georgia;
- To receive medical and social assistance as provided for by the legislation of Georgia;
- To be free from payment at any instance regarding the review process of application and to receive interpreter's service free of charge;
- To enjoy the right to employment pursuant to the Georgian legislation;
- To apply to the court on the basis of Article 42 of the Constitution of Georgia
- To be informed about possibility to communicate to the UN High Commissioner of Refugees.<sup>261</sup>

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<sup>258</sup> The Law of Georgia on Refugee and Humanitarian Statuses. Article 2

<sup>259</sup> *ibid.* Article 10

<sup>260</sup> *ibid.* Article 12

<sup>261</sup> *ibid.* Article 18

**MINISTRY OF CORRECTIONS AND LEGAL ASSISTANCE OF GEORGIA**

N.11266/01

14/05/2012

In response to your letter dated on April 30 N 01/13548 regarding the recommendation of the Committee of Ministers of the Council of Europe CM/Rec (2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity we inform you that any convicted person/defendant accommodated at the institution of Georgia's penitentiary system is fully secured to enjoy the rights recognized by the Georgian legislation and the International norms. As for the questions attached to the letter we provide the answers to them in the same order:

4.1 The Ministry of Corrections and Legal Assistance is exercising retraining of the staff of the penitentiary system of Georgia. It is aimed at introducing the humane and non-discriminative international standards for treatment of prisoners, regardless their sexual orientation and gender identity.

4.2 According to the Georgian legislation any physical or sexual violence is punishable under the Criminal Code, and for improper supervision and professional negligence disciplinary punishment can be exercised against the relevant official, including the criminal liability.

According to para 1 and 2 of Article 13 of the Law on Imprisonment the State shall provide protection of legal rights and freedoms, as well as for legal, social and personal safety of those accused and convicted. During pre-trial detention of accused and deprivation of liberty of convicted, they shall be guaranteed rights and freedoms determined by the Constitution of Georgia, international treaties and agreements of Georgia, the present Code, legislation and sub-legislative normative acts.

4.3 On the basis of legislation a detainee has the opportunity to inform the relevant bodies about violation of his/her rights.

According to para 1 of Article 97 immediately upon admission of an accused/convict in the establishment, the staff in charge shall provide possibility for him/her to read written information about his/her rights and obligations, including rules for filing complaints and appeal procedure prescribed by the Law.

Paragraphs 1 and 2 of Article 105 of the same Code Complaints on torture, inhuman and degrading treatment shall be considered as a special case and shall be reviewed immediately. The Director or designated person of the establishment and/or Special Preventive Group shall be informed within 24 hours about such complaints.

4.4 Due to the low number of transgender people in Georgia and in accordance to the information at our disposal there are no such prisoners within the national penitentiary institutions. Therefore, it should be mentioned that the procedures for their accommodation are not regulated. However, if such case becomes actual the decision will be made observing the prisoner's security and interests.

We hope that this information will help you in your future activities.

*With respect,*

*Giorgi Khojevanishvili*

*The Head of International Relations Department*

## THE MINISTRY OF LABOUR, HEALTH AND SOCIAL PROTECTION OF GEORGIA

N.01/27507

15.05.2012

In your letter N.33540 01.05.12 sent to the Ministry of Labour, Health and Social Protection of Georgia you asked for a public information regarding fulfillment of obligations under the Recommendation CM/Rec(2010)5 of the Council of Europe. On the measures aimed at eliminating the discrimination on the ground of sexual orientation and gender identity we provide the following information.

Article 14 of the Constitution of Georgia states that Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence. Under Article 5 of the law of Georgia on Adoption and Foster Care, adopting parent can be any capable adult, except of those: a) who was deprived from the right of parent or previously had adopted person, was a guardian of minor or exercised the function of foster parent but these relations were annulled due to the improper performance of his/her duties; b) whose right to parenthood has been restricted under the procedure established for by the Georgian legislation; c) who is not capable to exercise the parent's duties properly due to his/her physical state (according to the list of morbidities approved by the Ministry); and d) who was convicted by the court for grave or especially grave crime and the conviction is not removed or annulled pursuant to the procedure provided for by the Georgian legislation. Therefore, the Georgian legislation contains no restriction of child adoption and foster care on the ground of sexual orientation.

Article 2(3) of the Georgian Labour Code prohibits any discrimination in labour relations on the ground of race, colour, language, ethnic and social origin, nationality, birth, property and position status, place of residence, age, sex, sexual orientation, disability, religion or belonging to any other association, family status, political or other opinion.

Georgian health legislation prohibits patient's discrimination on any ground, including the sexual orientation. Namely, according to articles 5 and 6 of the law of Georgia on Public Health:

“Georgian citizens have the right to enjoy the medical care envisaged by the state programs on health care and approved by the determined rule. The medical care is accomplished by the proper legal entity of medical activity irrespective of the ownership and of organizational-legal form”.

Discrimination of patient for his/her race, skin colour, sex, religious convictions, political and other views, ethnic and social origin, property or title status, place of residence, disease, sexual orientation or negative personal attitude is prohibited.

The discrimination of patient in detention and in penitentiary institution during medical care is inadmissible.

According to the international statistical classification ICD-10 on morbidity and health issues, which is in effect in Georgia, homosexuality is not included in the disease list.

With regard of the issue of not considering homosexuality as disease in the textbooks and teaching materials, let us inform you that currently we are reviewing post-graduate curricula and we plan to modify them for further regulating of this issue. Pre-diploma preparation process is regulated by the Ministry of Education and Science through the authorization of education institutions and program accreditation.

The transgender people have the access to the gender-change service, where the multi-profile team guarantees the coordinated activity, respecting the right to health of an individual.

In addition to the aforementioned, we would like refer to item 28 in chapter 4 – “Respect of Private and Family Life”. Please be advised that according to national legislation extra corporal fertilization is allowed in the case of childlessness (The Law of Georgian on Health Care, Article 143); therefore, the requirement mentioned there runs counter to the legislation.

*Respectfully,  
Ekaterine Jojua  
Responsible person for issuing public information  
Head of Activity Planning and Organizing Division*

## THE ACADEMY OF THE MINISTRY OF INTERNAL AFFAIRS

N.40/5-517

22.05.2012

In response to your letter dated on April 30 regarding the recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity we inform you that at MIA Academy the education in human rights is organized at the relevant basic training courses. At the same time it is the issue constantly included in the projects or trainings exercised together with the non-governmental and international organizations. Basic Training Program of the MIA Police Academy also includes the intensive course in human rights protection, as well as the relevant national legislation and international instruments. The students of the Academy learn the general principles of the human rights protection and the special entitlements that should be taken into account while exercising the police duties, including the principle of Non-discrimination. During the learning process the special focus is made on the Ethic Code and the public-focused police, which includes the relations with the different types of minorities and the factors that should be observed while dealing with these groups, including combating the stereotypes etc. Since 2011 the Police Academy, in cooperation with the representatives of the Tolerance Centre under the Public Defender's Office, has been implemented the nation-wide trainings for the police (five trainings in 5 regions of Georgia) on **Non-Discrimination**. The project is financed by the EU and it includes different issues. The first training of the sickle will be conducted on 4-5 June 2012. Within the frame of the project the MIA Academy, in consultation with the Public Defender's Office will elaborate and distribute to all the police stations the brochure "Non-discrimination".

*Respectfully,*  
*Nino Esartia*  
*Deputy Head of Administration*

## HUMAN RIGHTS AND CIVIL INTEGRATION COMMITTEE OF THE PARLIAMENT OF GEORGIA

N.5462/4-2

22.06.2012

The Committee has reviewed the application by the “Women Initiative Support Group” and herewith we submit the available information on the issues raised in it. In the Georgian legislation there are some provisions which directly refer to the rights of LGBT people. Although these provisions have no direct mention of the said category of people the general content of them cover all people, including LGBT.

Article 14 of the Constitution of Georgia states: “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”. Sexual orientation is not mentioned here, however, according to Article 39 the Constitution does not deny the universally recognized human rights, freedoms and guarantees, which are not listed here, but naturally proceed from the constitutional principles.

Non-discrimination on the basis of gender identity and/or sexual orientation is covered by many legal acts adopted in Georgia, namely: the labour Code (Article 2), the Law on Broadcasting (Article 56), the Law on Patients’ Rights (Article 6), the Criminal Code of Georgia (Article 53), Georgian law on Gender Equality and others. On 26 March 2010 the Parliament of Georgia adopted the law on Gender Equality, which aims at securing the principle of non-discrimination in every sphere of social life, establishing the relevant conditions for realization of equal rights, freedoms and opportunities of men and women, and encouraging the elimination of and prevention from discrimination.

On 27 March 2012 the changes were introduced to the Criminal Code of Georgia, upon which the sexual orientation and/or gender identity, as a motive for offence, represent the aggravating circumstances for every crime covered by the aforementioned Code. Here it also should be mentioned that according to 1999 Criminal Code unisex voluntary relations have been decriminalized. The age for consent is the same for both, unisex and heterosexual relations.

According to Article 2 of the Labour Code any discrimination is prohibited in the labour relations, including the discrimination on the ground of sexual orientation.

The Georgian laws “on Health Protection” and on “Patients’ Rights” prohibit the patient’s discrimination on the ground of race, colour, language, sex, belief, political and other opinions, national, ethnic and social origin, birth, property and position, place of residence, morbidity, sexual orientation or personal negative mood.

The law on Broadcasting prohibits the programs containing material to stir up hatred, discrimination that is offensive to any person or group on the basis of ethnic background, religion, opinion, age, gender, sexual preference or disability, or any other feature or status. Special emphasis of these features or statuses is only permissible within the context of a program it aims merely to illustrate such hatred or discrimination, as they already exist in the society. The Law of Georgia on Personal Data protection prohibits processing of certain categories of data. These special categories imply the data relating to the racial or ethnic belonging, political opinion, religious or ideological belief, membership of the professional organization, health status, sexual life or conviction history; also the biometric data, upon which the person can be identified. The same law regulates the rules for personal data processing and provides the measures for violation of the security principles.

Georgian legislation allows changing the sex. In the course of sex change a person is entitled to ask for changing name and/or last name (The law on Civil Acts, Article 78).

It also should be mentioned that the Committee has not received any claim regarding the human rights violation on the ground of sexual orientation or gender identity.

Indeed a lot shall be done for deliberation of the legislation, as well as for its proper implementation. With this respect the committee is cooperating with your organization; it also would be good to establish the cooperation with the organizations of similar profile.

*With respect,  
Lasha Tordia  
Chairman of the Committee*

**GENDER EQUALITY CONSULTATIVE COUNCIL UNDER THE CHAIRMAN OF THE PARLIAMENT OF GEORGIA**

N. 5531/2-5

25.06.2012

In response to your letter (N4833, 02.05.2012) regarding elimination of discrimination against LGBT (Lesbians, gays, Bisexuals, Transgenders) people as required by the recommendation of the Council of Ministers of the Council of Europe, let me inform you that the similar letters with the same number have been delivered to the following parliamentary committees: Foreign Affairs Committee, Legal Committee, Human Rights and Civil Integration Committee. The Committee of Foreign Affairs transferred your letter to me on 12 June 2012 (N. 4458).

It also should be mentioned that the most of the questions designed in the Annex #1 cover the human rights field, in general. Therefore, having consultations with the Human rights and Civil Integration Committee we decided to reflect the answers to the questions within our competence in the response by the Human Rights and Civil Integration Committee.

*With respect,  
Rusudan Kervalishvli*

**LEGAL ISSUES COMMITTEE OF THE PARLIAMENT OF GEORGIA**

N.5814/4-10

04.07.2012

To the Chairperson of the Gender Equality Council  
of the Parliament of Georgia  
Ms Rusudan Kervalishvili

Dear Ms Rusudan,

Herewith we send you an application submitted by the Women Initiative Support Group, where the author asks to provide her with the information on the measures taken in the country with the aim to eliminate discrimination on the ground of sexual orientation and gender identity.

*Respectfully,*  
*Pavle Kublashvili*  
*Chairman of the Committee*

## EUROPEAN INTEGRATION COMMITTEE OF THE PARLIAMENT OF GEORGIA

N.4222/4-7

17.02.2012

In response to your letter #4833 (02.05.12) we inform you that Georgia has the aspiration to be integrated into the civilized world. For this purpose the country is establishing and developing the democratic values. Therefore, the Parliament of Georgia and, namely, European Integration Committee makes its contribution to the promotion and development of the state through application of legislative, supervising and other instruments.

Please find below the activities implemented at the Parliament of Georgia within the context raised in your letter:

In 2011 the European Integration Committee at the session of the EU-Georgia Parliamentary Partnership Committee (PPC) considered the issue on sexual minorities. The issue was reflected in the Final Statement and Recommendations.<sup>262</sup>

In December of 2010 Georgia adopted the Organic law – the Labour Code of Georgia, according to which discrimination in labour relations on the ground of sexual orientation is prohibited.<sup>263</sup>

Through the changes of 27 March 2012 a new 3<sup>1</sup> paragraph was added to article 53 of the Criminal Code of Georgia, according to which the motive related to sexual orientation shall be taken into account as an aggravating circumstance.<sup>264</sup>

The European Integration Committee, in its legislative activities, is always guided by the European legal practice that is in fact one of the guarantors of establishing high standards of human rights and freedoms in Georgia.

*Respectfully,*

*David Darchiashvili*

*Chairman of the European Integration Committee*

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<sup>262</sup> “underlines the need for the full implementation of anti-discrimination legislation for all minorities – including sexual minorities and people with disabilities; calls on the Georgian government to strengthen public education programs on tolerance and nondiscrimination across the board”. Final Statement and Recommendations pursuant to Article 89 of the Partnership and Cooperation Agreement, EU-Georgia Parliamentary Cooperation Committee Thirteenth MEeting 15-16 March 2011, Brussels, Co-chairs: Mr Milas Cabrnach and Mr David Darchiashvili.

<sup>263</sup> “Article 2. Labour Relations, para.3. Any type of discrimination due to race, color, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations”

<sup>264</sup> Article 53. General Grounds of Imposition of Punishment. para. 3<sup>1</sup>. The motive of an offense related to the intolerance on the ground of race, colour, language, sex, sexual orientation, gender identity, age, religion, political and other opinions, disability, citizenship, national, ethnic and social belonging, birth, property or position status, place of residence or any grounds of discrimination represent the aggravating circumstance (27.03.2012. N5925 N5925)

THE OFFICE OF THE PUBLIC DEFENDER OF GEORGIA

17.07.2012  
N.706/04-11

Let me inform you that in response to your letter of 2 May 2012 #C-COM-5/7 and the information you required on July 4 was sent by E-mail. Please find attached the hard copy of the aforementioned information.

*Enclosure: 6 pages.*

*With respect*

*Irakly Mzhavanadze*

*The Head of Justice Department*

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

According to the Organic Law of Georgia on the Public Defender of Georgia, for the purpose of securing state guarantees for the protection of human rights and freedoms, the Public Defender **shall supervise that the state and local self-government bodies, public entities and officials observe and respect the rights and freedoms** recognized by the state for all persons within its territory and jurisdiction.

Neither the Public Defender nor his staff conducted any study on this issue is not covered by the Public Defender's mandate. However, the Public Defender always learns the results of studies conducted in this sphere and applies them for different purposes.

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

As mentioned above neither the Public Defender nor his staff conducted any study, as the study on the issues of social acceptance and the hatred are not included in the Public Defender's mandate.

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

The Public Defender and its office, on the basis of established facts (individual applications) collect the statistical data for different dimensions. However, in 2011 no applications were filed to the Public Defender's office about the cases of crimes and other incidents, where the sexual orientation or gender identity was reasonably suspected to have constituted a motive for the perpetrator; therefore, we have no such statistics. Currently we are investigating only one case related to the said motive.

As to the existence in the state of such statistics, at the current stage, as far as we know, the Office of the Main Prosecutor of Georgia has no statistics on the hate-motivated offences related to sexual orientation or gender identity.

**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?**

The Public Defender of Georgia and his Office are active in combating the "hate speech". In Georgia "hate speech" is not a punishable act and it comes under the umbrella of regulation of the civil legislation. "Hate speech" often is a part of educational activities of the PDO. The seminar on this issue was organized for the staff of the Public Defender's Office. The participants go squinted with the international standards for fighting against the 'hate speech'. Generally, the training aims at promoting the knowledge of the staff to make it more effective in preventing from and fighting against the 'hate speech'.

In addition, the Public Defender is always responsive to the applications submitted by the government/public institutions' representatives that contain the 'hate speech'. The Public Defender of Georgia, as a rule, makes the public statements on such facts.

**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?**

In 2012 the state actors and the representatives of public agencies made some statements that may be assessed as discriminatory and offensive against certain groups. On each of such facts, as mentioned above, the Public Defender made special statements.

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

**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?**

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

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

The Public Defender and his office always express their readiness to cooperate with any non-governmental organization. At the current stage the Public Defender has a close cooperation with a few organizations protecting the rights of LGBT people. Unfortunately the cooperation with regard of individual cases is not intensive due to the lack of cases. Over the recent years we have witnessed only a few cases when they applied to the Public Defender. The Public Defender effectively responded to those facts and reflected them in his parliamentary report. It should be mentioned that there was no special chapter on the sexual minorities in the Report due to the lack of applications. This fact was underlined in the preface to the Report stating that the lack of applications may be assumed as the indicator of non-existence of the problems in this field.

**45.1 Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation? (b) gender identity?**

According to the law of Georgia “on Public Defender of Georgia”, for the purpose of securing state guarantees for the protection of human rights and freedoms, the Public Defender shall supervise that the state and local self-government bodies, public entities and officials observe and respect the rights and freedoms recognized by the state for all persons within its territory and jurisdiction regardless of race, colour, language, sex, religion, political or other opinion, national, ethnic and social belonging, origin, property and title, place of residence or other status. Therefore, working on the issues related to the discrimination and fighting against it is one of the most important functions and priorities of the Public Defender.

**45.2 In practice do they**

- make recommendations on legislation and policies,

Until now neither the Public Defender nor his office has made any concrete recommendations in this direction. The Public Defender was very active in lobbying the changes to the Criminal Code of Georgia, in which the offence committed under the motive of intolerance against race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other opinion, disability, citizenship, national, ethnic or social origin, birth, property or position status, place of residence or other status containing the discrimination shall be considered as aggravating circumstance. (Criminal Code of Georgia, Article 53, para 3<sup>1</sup>).

- conduct awareness-raising among the general public

Education is one of the important functions of the Public Defender. The Public Defender is very active in undertaking educational activities. Currently, on the basis of Memorandum of Understanding formalized with the Ministry of Internal Affairs, the PDO is organizing the trainings for the Staff of the Ministry of Internal Affairs on the topic “Prohibition of Discrimination”. Within the frame of the said training the staff of the Ministry of Internal Affairs learns the national legislations and international standards. In addition, round-table discussions/seminars on the general issues related to the discrimination were organized for the students.

- examine individual complaints

To react upon the individual complaints is one of the main functions of the Public Defender of Georgia. Over the recent years only a few individuals applied on the ground of sexual orientation. As mentioned above, the Public Defender exercised the relevant measures, which later were reflected in the Parliamentary Report.

- **Participation in the court proceedings**

In general, according to the Organic law on the Public Defender of Georgia, the public Defender of Georgia is authorized to exercise the *Amicus Curiae* function in Common Courts of Georgia. Until now the Public Defender used this particular authority only twice. However, so far the Public Defender has received no information regarding the court proceedings on the facts of discrimination on the ground of sexual orientation or gender identity – either from individuals, or from the NGOs; and he was not asked to exercise his *Amicus Curiae* function in the court.

- **speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed, in relation to (a) sexual orientation? (b) gender identity?**

During 2012 the Public Defender made a few public statements regarding the similar facts. One of them was about the parade organized by the LGBT people protesting against homophobia, when the facts of insult against the parade participants were registered. And another statement was about the public statement made by the member of the Parliament.

In addition, it should be mentioned that for the purpose of raising civil awareness on these issues, on 17 May 2012 the Public Defender made the public statement about the International Day of Fighting against Homophobia.

**46.1 Do legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of (a) sexual orientation? (b) gender identity?**

In Georgia there is no specific law regarding prohibition of discrimination. The norms prohibiting the discrimination can be found in several of laws and legal acts. Under the recent change made to the Criminal Code of Georgia the offence committed under the motive of intolerance against race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other opinion, disability, citizenship, national, ethnic or social origin, birth, property or position status, place of residence or other status containing the discrimination shall be considered as aggravating circumstance. (Criminal Code of Georgia, Article 53, para 3<sup>1</sup>). The Public Defender was an active lobbyist of the said change.

In application of this Article the court has possibility to identify the discrimination on multiple grounds. However, as the norm is relatively new, so far there are no cases of its application in the court practice.

**46.2 Does the mandate of national human rights structures enable them to tackle such discrimination on multiple grounds?**

As mentioned above, the Public Defender works actively in this direction, but the facts of discrimination on multiple grounds have not been registered in his practice.

## GEORGIAN NATIONAL COMMISSION ON COMMUNICATIONS

N.03/1164-12

16.05.2012

Georgian National Commission on Communications considered your application regarding the measures aimed at eliminating discrimination against LGBT people and elaborated the following answer:

Broadcasting license holders shall avoid.

According to Article 56(2) of the law on Broadcasting, broadcasting programs containing material to incite ethnic or religious hatred and which are of a discriminatory nature to any group is prohibited.

Article 56(3) of the law of Georgia on Broadcasting prohibits broadcasting the programs containing material to stir up hatred, discrimination that is offensive to any person or group on the basis of ethnic background, religion, opinion, age, gender, sexual preference or disability, or any other feature or status. Special emphasis of these features or statuses is only permissible within the context of a program if it aims merely to illustrate such hatred or discrimination, as they already exist in society.

The Regulations on the Service Provision and Customers' Rights Protection in the Sphere of Electronic Communications provides the definition for "unacceptable product", namely, Article 3 states that unacceptable product is pornography, and other products broadcasted through electronic communications expressing the hate and violence in especially grave forms, offensive, violating of presumption of innocence, incorrect, violating the copyrights and the Georgian legislation;

The Regulations also determine the obligations of internet providers and of the internet-domain providers regarding placing unacceptable product; namely:

Pursuant to Article 10<sup>1</sup>, para 4, internet provider is obliged to elaborate such mechanisms, which enable him/her to annul or disconnect the user if the latter disseminates/resends undesirable electronic messages, unacceptable products, PC viruses, fraudulent and/or other hazardous programs.

According to Article 10<sup>3</sup>, para of the Regulations, Internet-domain provider shall regularly check the content of the Internet websites registered by him/her in order to avoid placing of unacceptable product. In revealing such fact, the domain provider shall promptly exercise the relevant measures for its elimination:

to notify the owner of the domain and determine the deadline for removal of the unacceptable production;

In case of negligence from the side of domain owner, he/she should block the internet website.

In addition we inform you that according to Article 59<sup>1</sup> of the Law on broadcasting, in case of violation of Article 56 (program restrictions) by broadcaster, the response may be exercised only within the mechanisms of self-regulation.

*Respectfully,*

*I. Chikovani*

*Chairman of the Commission*

## THE GEORGIAN CHARTER OF JOURNALISTIC ETHICS

27.07.2007

G/12/27.07-2012

Dear Ms. Eka,

In response to your letter dated of 30 April 2012 let us inform you that *The Georgian Charter of Journalistic Ethics* does not work specifically on the issues relating to the sexual orientation and gender identity as they are not covered by its mandate. The discrimination on the said ground may occur when there is a violation of the 7<sup>th</sup> principle of the Charter by its member. Namely, the 7<sup>th</sup> principle states: “The journalist shall realize the threat coming from encouraging the discrimination; therefore, he/she shall carry out all possible measures to prevent the discrimination on the ground of race, sex, sexual orientation, language, religion, political and other opinions, national or social origin or any other grounds”.

The Charter ensures immediate response to the application on violation of the aforementioned provision by its member journalist. At the same time, the Charter retains the right to express publicly the position of the organization on dissemination of such journalistic materials. However, it should be mentioned that the Charter have not performed any study on discrimination on the sexual and gender grounds in the Georgian media. Therefore, we may not provide you with the comprehensive answers to our questions. Below you will find the answers to the questions on which our organization has certain information.

### a) brief legal observation

Are there any legally established measures against the “hate speech”? Do these measures relate to the ‘hate speech’ regarding: (a) homophobia or (b) trans-phobia?

Article 14-2 of the Constitution of Georgia declares: “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”. Although there is no special reference to the prohibition of discrimination on the ground of gender or sexual orientation, in the case *Shota Beridze and others v the Parliament of Georgia* the Constitutional Court of Georgia provided the following interpretation for Article 14 of the Constitution of Georgia: “It is aimed at securing the equality before law for everyone, not allowing to consider substantially equal as unequal and vise-versa. From the grammatical point of view in this Article the list of grounds, at one glance, look exhaustive, but the purpose of the rule is much more comprehensive than the prohibition of discrimination only on the grounds listed in the Article”. This interpretation provides a high standard of equality.

Article 19 of the Constitution of Georgia states that: “Everyone has the right to freedom of speech, thought, conscience, religion and belief”. This provision is the recognition of the freedom of thought and conscience and this right may be restricted if their manifestation “infringes upon the rights of others”. Article 24 of the Constitution also recognizes the right to freedom of expression, i.e. to express and impart freely information and ideas; however it also has the legitimate ground for restriction – the protection of the rights and freedoms of others. Therefore, if the expressed idea infringes the interests of a third person (in particular case, of the LGBTs), then the freedom of expression may subject of legitimate restriction.

The special standard regarding the LGBT people is not adopted, there is no legal base or a legal norm specifically on this issue, which could impose some sanctions for committing any unlawful (it means the discrimination and persecution of LGBT people on the ground of belonging to the LGBT) act against the LGBT person.

The law of Georgia on *Freedom of Speech and Expression* determines the grounds for restriction freedom of speech. It states, that “Content regulation of the freedom of speech and expression can be established by law if it is related to: a)

Defamation; b) Obscenity; c) Fighting words; d) Incitement to commit an offence; e) Threat; f) State, commercial, private or professional secret; g) Advertising, TV shopping or sponsorship” etc. In the saving of this Article, both, the “Obscenity” or the “Fighting words” can be understood as a barefaced disrespect and degrading treatment.

The law of Georgia on Broadcasting stipulates that “Broadcasting license holders shall avoid broadcasting programs containing materials to stir up hatred, discrimination that is offensive to any person or group on the basis of ethnic background, religion, opinion, age, gender sexual preference or disability, or any other feature or status. Special emphasis of these features or statuses is only permissible within the context of a program if it aims merely to illustrate such hatred or discrimination, as they already exist in society.” In addition, Article 2 of the Labor Code goes further and states: “Any type of discrimination due to race, color, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations”.

The issues to “Hate speech” are considered in the relevant articles of the *Broadcaster’s Code of Conduct*,<sup>265</sup> according to which “Broadcasting license holders shall refrain from publishing materials, which may stir up hatred or intolerance on the ground of race, language, sex, religious belonging, and political opinion, ethnic, geographic or social origin”. The principles of the said Code clearly state that “The interests of the different social groups shall be respected regardless their political, cultural, ethnic, religion, regional, language, age or gender belonging”. Furthermore, “inviolability of personal life, freedom of expression” shall be secured on the basis of casting the balance between the public interest and the principle of personal life’s inviolability.

It should be mentioned that according to the amendments introduced to the Criminal Code on 27 March 2012 “Commission of an offence with the sign of intolerance on the ground of race, color, language, sex, sexual orientation, gender identity, age, religion, political or other opinions, disability, citizenship, nationality, ethnic or social origin, property or title status shall be considered as aggravated circumstance for all the relevant offenses covered by this Code”.<sup>266</sup>

#### **b) Activity of the “Charter”**

With regard of activity of our Organization in this direction, as mentioned above, the “Charter” has considered a few cases related to the discriminative expressions by its member-journalists. According to Principle 7 of the Charter: “The journalist shall realize the threat coming from encouraging the discrimination; therefore, he/she shall carry out all possible measures to prevent the discrimination on the ground of race, sex, sexual orientation, language, religion, political and other opinions, national or social origin or any other grounds”.

The “Charter” received only three complaints regarding violation of this principle:

- Youth Center Independent Life v Shorena Shaverdashvili;
- Tea Topuria v Mirian Bokolishvili;
- Foundation “Inclusive” v Aleko Elisashvili.

It should be mentioned that from the above three decisions only one was about discrimination on the ground of homosexuality, namely, the Foundation “Inclusive” v Aleko Elisashvili. In the case of Shorena Shaverdashvili the claim was about disable person, and in the case of Mirian Bokolishvili – about stigmatization of persons united under the common trait. In all three cases the “Charter” established the violation of Article 7 by its members.<sup>267</sup>

Finally we would like to make clear that the Georgian Charter of Journalistic Ethics is not a public agency determined under the General Administrative Code of Georgia and it is not subjected to the requirements for freedom of

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<sup>265</sup> The Decree of 21 April 2007 issued by the Georgian National Commission on Communication “on Approval of the Broadcaster’s Code of Conduct”. It should be mentioned that the aforementioned normative act is valid only within the frame of self-regulation.

<sup>266</sup> ([http://matsne.gov.ge/index.php?option=com\\_1ldmssearch&view=docView&id=1637963](http://matsne.gov.ge/index.php?option=com_1ldmssearch&view=docView&id=1637963))

<sup>267</sup> See all three decisions in the Annex, p 32

information established by the said law, as the “Charter” is non-profit (non-commercial) legal entity, it does not exercise the public legal authority and is not financed either by state budget or by the local one.

The Charter find that the discrimination in media is one of the most sensitive issues and it stands ready to cooperate within its mandate with any organization working in this sphere or having interests towards these issues.

*Respectfully,  
Tamar Kordzaia,  
Executive Director*

## Appendix #5. Case details

CASE # 1. A statement by Christian-Democratic Movement about the bill on sexual minorities.....	188
CASE # 2A. Refusal to support a CoE Resolution on Discrimination on the basis of SOGI .....	188
CASE # 2B. Refusal to support a CoE Resolution on Discrimination on the basis of SOGI .....	188
CASE # 3. A Member of the human rights Committee in the Parliament demands Re-criminalization of homosexuality .....	189
CASE # 4. New law on personal data protection threatens LGBT rights.....	189
CASE # 5. Hate speech against LGBT people by well-known politicians .....	189
CASE # 6. Hate Speech against LGBT people by Human Rights defenders and lawyers .....	190
CASE # 7A. Christian Democratic Movement 's initiative of a Constitutional Amendment to ban same-sex marriage.....	190
CASE # 7B. Reaction on CDM 's initiative of Constitutional Amendments .....	191
CASE # 8. Tbilisi City Court, Case No. 3/2069-10, dated May 25, 2010 .....	193
CASE # 9. Hate speech during Pre-election campaign.....	193
CASE # 10. March against alleged gay pride in Batumi .....	194
CASE # 11. Attack against “liberasts” .....	194
CASE # 12A. IDAHO March .....	195
CASE # 12B. IDAHO March (reaction).....	196
CASE # 13. Gay Activists Rally Outside Parliament.....	197
CASE # 14. Public Defender’s statement in connection with the International Day against Homophobia.....	197
CASE # 15. Council of Media Ethics: Journalist failed to observe his professional-ethical obligation not to discriminate based on sexual orientation .....	198
CASE # 16. TV Rustavi 2 reacted on the insulting comments made by TV hosts about the sexual minorities.....	198
CASE # 17. Identoba vs TV Rustavi 2 and TV Imedi .....	198
CASE # 18. Hate speech on internet.....	199
CASE # 19. A Pending Case versus Georgia before the ECtHR about police homophobic behaviour and violation of fundamental rights (Aghdgomelashvili and Japaridze v Georgia, App. no. 7224/11) .....	200
Case #20. Verbal Attacks and Threats against Women’s Fund in Georgia .....	200
CASE # 21. Law Enforcers Try to blackmail a journalist using prejudice against LGBT people.....	200
CASE # 22. Blackmailing of a sex-worker.....	201
CASE # 23. Incident with a police officer .....	201
CASE # 24. Police officers humiliated LB couples .....	201
CASE # 25A. Police officers humiliated sex-workers .....	201
CASE # 25B. Police officers humiliated sex-workers.....	202
CASE # 26. Police fails to appropriately handle an incident against lesbian couple .....	202
CASE # 27. Police did not react to an incident .....	202
CASE # 28. Police Failure to uphold the law due to victim’s sexual orientation.....	203
CASE # 29. Effective police intervention .....	203
CASE # 30. Abuse of Power by police officers against a lesbian couple .....	203
CASE # 31. Arbitrary detention of sex-workers .....	203
CASE # 32. Firing a person on the ground of gender identity.....	204
CASE # 33. Discriminatory insults during sports events .....	204
CASE # 34A. Denial by medical professionals to provide medical services.....	204
CASE # 34B. Homophobic attitudes from health professionals.....	204
CASE # 34C. Denial by medical professionals to provide medical services.....	204
CASE # 35. Medical Magazine “mkurnali.ge” about Homosexuality .....	205
CASE # 36. Chief of the psychiatric department of State Medical University describes homosexuality as “abnormality” .....	206
Case #. 37. Pressuring LBT people to undergo treatment .....	206
CASE # 38. Bullying at schools and on the streets .....	206
CASE # 39. Refusal for accommodation .....	207
CASE # 40A. Ilia University lecturer’s homophobic statement on Facebook.....	207
CASE # 40B. Tbilisi State University: Homophobic Psychology for Students .....	207

#### **CASE #W1. A statement by Christian-Democratic Movement about the bill on sexual minorities**

**The Christian Democratic Movement** comments on discussion of "the bill on discrimination based on sexual orientation and gender identity" on the next session of Council of Europe Parliamentary Assembly (on 24.01.2010).

"Taking into consideration the blessing of self-governed Georgian Orthodox Christian Church, we appeal to the other representatives of Georgian delegation to consider the call of Georgian Orthodox Church and to not vote for the bill because with its content is against national and moral values of our country and represents a threat for the demographic and ethical development of our country. For Georgia, the country of ancient Christian Traditions and history, which is the part of European civilization, it is not acceptable to legalize the issues given in the bill [CM/Rec(2010)5], as they are incompatible with the religious and traditional values of the majority of our citizens."

During the winter session of the Parliamentary Assembly of Council of Europe (PACE) the issue of hearing on the resolution on "Discrimination on the basis of sexual orientation and gender identity" caused controversy in Georgia, thus prompting the leaders of several religious communities to condemn PACE's intention to address the issue of homophobia. The Christian Democratic Movement, a political party represented in the Georgian Parliament misinterpreted the resolution as obligatory instrument for recognizing same sex marriage and parental rights and was able to create a negative impression of the resolution in Georgia<sup>268</sup>.

#### **CASE #W2A. Refusal to support a CoE Resolution on Discrimination on the basis of SOGI**

**Giorgi Gabashvili (Chairman of Education, Science and Culture Committee at the Parliament of Georgia)** speaks in an interview (on 26.01.10) with a journalist of Radio Tavisupleba, about the position of Georgian delegation. The Debates about the resolution about discrimination on the basis of sexuality and gender identity were planned for January 27. The position of Georgian delegation is already known – the member of the delegation in Strasbourg, Giorgi Gabashvili told in the interview with Radio Tavisupleba, that Georgia will not support the resolution. The reason for the rejection of the initiative started by the head of socialists Andreas Gross, by Georgian delegation was as follows: "The rights of minorities should be protected, but it does not mean that the tradition of the majority, should be absolutely ignored. It would not be right to force the interests of one group onto another, which is exactly what this initiative suggests"- says Giorgi Gabashvili<sup>269</sup>.

#### **CASE #W2B. Refusal to support a CoE Resolution on Discrimination on the basis of SOGI**

"We share the position that Patriarchate of Georgia holds ..." declared the **leader of Georgian Parliamentary Majority, Petre Tsiskarishvili** in Strasbourg, in his interview to "24 Saati". He explained that the Georgian delegation has been working on this issue for two weeks together with the Italian colleagues. He assures that the Georgian delegation is against letting the same sex couples marry and adopt children. "We will only support the resolution draft if the amendments we demand will be applied and the abovementioned articles will be eliminated. If the resolution project will include the right of the same sex couples to legally marry and adopt children, we will not vote for it. We don't want to receive a recommendation for our country that will imply favoring homosexuality, just as well as, many of the European Christian countries don't want it either."

According to Tsiskarishvili, Italians are also against approving the current version of the resolution. Together they elaborated specific amendments, which imply that sexual minorities should not receive the rights included in the resolution. Tsiskarishvili also explained the reasons for such a decision: "Of course we hold the position that it [parts of the resolution concerning sexual minorities] is not based on Christian values and has nothing to do with democracy. No

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<sup>268</sup> <https://zazagabunia.wordpress.com/%E1%83%9E%E1%83%9D%E1%83%9A%E1%83%98%E1%83%A2%E1%83%98%E1%83%99%E1%83%90-2/24.01.2010>.

<sup>269</sup> Outcry on resolution on sexual minorities. Radio Tavisupleba. 26.01.10. <http://www.radiotavisupleba.ge/content/article/1940174.html>

one prevents these people (sexual minorities) from doing whatever they want, but if they [homosexuals] want to be together, that unity should not be called a family.”<sup>270</sup>

**CASE #W3. A Member of the human rights Committee in the Parliament demands Re-criminalization of homosexuality**  
**MP Dimitri Lortkipanidze (deputy chairman of the Human Rights and Civil Integration Committee of the Georgian Parliament)**, who was nominated for the post of Public Defender by parliamentary minority in which Christian-Democratic Movement is a leading party, stated on July 30, 2009, that he believed homosexuality in Georgia should be re-criminalized.

“I think that homosexuality should be punishable in this country, because it is punishable by our [Orthodox Christian] act of faith. I think that one of the best means to fight against homosexuality will be if this act becomes punishable under the criminal code,” MP Lortkipanidze said.

He was speaking at a meeting of two candidates for the Public Defender’s post with a group of civil society representatives. MP Lortkipanidze’s response triggered negative reaction among some of the participants of the meeting. “That’s what I think about this matter and I do not know why it triggered such a reaction among you, but I can’t give a kind of an answer which may be favorable for you, but disastrous for me,” MP Lortkipanidze added<sup>271</sup>.

#### **CASE #W4. New law on personal data protection threatens LGBT rights**

On December 28, 2010, the Parliament of Georgia passed the draft-law on the protection of personal data on its special session with the third hearing and 88 MPs voted for it.

The personal data in the new draft-law, related to racial or ethnic belonging, political opinion, religious or philosophic faith, membership of a professional organization, health conditions, sexual life or criminal record, are defined as a particular category... The article 6 of the draft-law prohibits processing of the data belonging to the special category, although it also allows some exceptions: if a person, whose personal data is to be processed, made a written notification or became a public figure, or the data is processed in accordance “with the law due to protection of significant public interest.”

**Lasha Tordia** (Human Rights and Civil Integration Committee’s Chairman) clarified the significant public interest as follows: “A kindergarten or any healthcare center, due to the nature of these institutions, should have information about a person whether she/he has AIDS ... or a kindergarten should have information about sexual orientation of the person.”<sup>272</sup>

#### **CASE #W5. Hate speech against LGBT people by well-known politicians**

“I am saying that blind and deaf people as well as those born with other defects should not be educating our future generations” stated **Zviad Dzidziguri - one of the leaders of the Georgian Conservative Party**, on December 13, 2010, in Eka Khoperia’s talk-show, Auditoria aired on Georgian Public Broadcaster. When the host protested against the abovementioned statement, the politician tried to correct himself: “I did not mean “blind people” literally. In the beginning of the show I clearly mentioned that prostitutes, killers, homosexuals, even heterosexuals who have maniacal and abnormal deviations and inclinations, should not have contact with children.”

**Dimitri Lortkipanidze (deputy chairman of the Human Rights and Civil Integration Committee of the Georgian Parliament)** and Zviad Dzidziguri more than once compared representatives of the sexual minorities to zoophiles, necrophiles, pedophiles, gerontophiles, and recidivists and called them “sick”. In order to illustrate his point of view,

<sup>270</sup> EU versus Religious dogmas .Dato Gamisonia. Newspaper 24 Saati. 25.01.10. available at: <http://24saati.ge/index.php/category/news/2010-01-25/2943>

<sup>271</sup> Ombudsman Nominee Says ‘Homosexuality should be Punishable’. Civil Georgia, Tbilisi.31.07.2009. available at: <http://www.civil.ge/eng/article.php?id=21309>

<sup>272</sup> Nothing personal - Draft Law Which Protects and Makes It Public. Netgazeti. 10.01. 2010. available at : [http://netgazeti.ge/GE/27/News/2534/?sms\\_ss=facebook&at\\_xt=4ca88497a59d6ab6%2C0](http://netgazeti.ge/GE/27/News/2534/?sms_ss=facebook&at_xt=4ca88497a59d6ab6%2C0). English version: <http://www.humanrights.ge/index.php?a=main&pid=12343&lang=eng>

Dimitri Lortkipanidze quoted the American researcher Paul Cameron: "Homosexuals are dangerous, because one of their strategies is to persuade you into becoming homosexual. They are subversive and destructive and make people betray their families, country and God. I personally agree with this statement with all my heart," – stated the Member of Parliament.<sup>273</sup>

#### **CASE #W6. Hate Speech against LGBT people by Human Rights defenders and lawyers**

Interview with **Nana Kakabadze, human rights defender, Head of HR NGO "Former Political Prisoners for Human Rights"** was published in Newspaper "Asaval-Dasavali's" March 19-25, 2012 issue.

It is stated in the interview that she supports the restoration of Article 121 of the Criminal Code of the Soviet Union which provided punishment for homosexuality. "It's also a crime," she said, "when you are engaging in [homosexual] propaganda and giving a gay an opportunity to speak out about unhealthy sexual orientation."

"State must protect these people from physical violence and insults in the streets, but it is equal to a crime to exhibit these people every day, make them TV stars, impose the idea that this is not shameful. This way they irritate, depress and violate the rights of formed personalities and brainwash young people, distort their mentality and make them get accustomed to the idea that it is not bad at all. Mainstreaming this issue is harmful not only for our families and children, but also for future of Georgia. No one should dare promote Sodomitic sin in the country of such traditions and religion. In Orthodox Christianity Sodomy is considered a mortal sin!"<sup>274</sup>

In the following issue of the newspaper, an interview with the representative of the same organization **Gela Nikoleishvili** was published (**lawyer, HR NGO "Former Political Prisoners for Human Rights"**). The lawyer evaluates amendments in Georgian Criminal Law about recognition of the aggravating circumstance of the crime based on sexual orientation and gender identity: „Everything can happen in nature. Sometimes humans are born with defects and persecution on the grounds of these defects is absolutely wrong and the one that commits crime on this basis deserves to be punished, but on the other hand, considering this defect as a norm and imposing this idea upon the majority is totally unacceptable... When a gay person, or a witness of Jehovah is trying to influence someone by their opinion and is breaking into someone's home, a citizen has the right to push them away and the law cannot punish him/her for this!" Mr. Nikoleishvili also stated that same-sex relationships are not only against religious dogmas, but also against nature<sup>275</sup>.

This position is shared by **lawyer Lali Aptsiauri**: "If they even dare to organize a gay pride in Georgia, I as a lawyer, will break the legal frames and go to the pride to kick the participants' asses".<sup>276</sup>

The statements mentioned above were negatively evaluated by other human rights organizations.

#### **CASE #W7A. Christian Democratic Movement 's initiative of a Constitutional Amendment to ban same-sex marriage**

Transcript of Giorgi Targamadze's (MP, Leader of the Christian-Democratic Movement) speech in Georgian Parliament, on May 22, 2012.<sup>277</sup>

"Ladies and gentlemen, after the warning stated by his Holiness [the Patriarch of Georgia Ilia II] during the Easter Epistle, regarding the popularization of sodomitic sin, has become a bitter reality and we see not only popularization but even a gay pride in the streets of Tbilisi, I feel the responsibility to express the position of Christian Democrats and even more,

<sup>273</sup> Discriminatory statements on the First Channel. Netgazeti. 12.14.10. available in Georgian at :

[http://netgazeti.ge/GE/38/News/3710/დისკრიმინაციული-გამონათქვამები-პირველი-არხის-ეთერში-აუდიტორია-დისკრიმინაცია-სექსუალური-ნიშნით-მედიამ.htm?top\\_pro=&tpid=21&ls-art0=48](http://netgazeti.ge/GE/38/News/3710/დისკრიმინაციული-გამონათქვამები-პირველი-არხის-ეთერში-აუდიტორია-დისკრიმინაცია-სექსუალური-ნიშნით-მედიამ.htm?top_pro=&tpid=21&ls-art0=48)

<sup>274</sup> I am in favor of the restoration of the Soviet Union Criminal Code Article 121. Interview with Nana Kakabadze. Newspaper "Asaval-dasavali" #910, available at: March 19-25, 2012. <http://asavali.ge/archive/910/files/1-41pm5.pdf>

<sup>275</sup> Glory of same-sex love an act against God's will. Zaza Davitaia. Interview with Gela Nikoleishvili . Newspaper "Asaval-dasavali" #912, April 2-8, 2012. <http://asavali.ge/archive/912/index.html>

<sup>276</sup> I am in favor of having an article in the legislation, which will forbid the propaganda of this abomination. Megi Sajaia Interview with Lali Aptsiauri. Newspaper "Asaval-dasavali", #911, March 26-April 1/2012. available at: <http://asavali.ge/archive/911/files/1-41pm5.pdf>

<sup>277</sup> <http://www.youtube.com/watch?v=e1zRaTVgxfc>

offer our society, parliament and the whole country constitutional amendments, which contain 5 significant changes in the acting constitution.

I want to underline that we condemn any form of violence no matter who is the perpetrator, but at the same time, we are against portraying it [the abovementioned march] as a harmless walk taken by representatives of the sexual minority or by their supporters. We consider that “walks” as such are not the eventual goal of the activity, this is the beginning of a long-term and important process and the real goal is legal and moral legalization of homosexuality, indecency and wrong lifestyle in Georgia.

In order to prove it, we can recall the examples of the countries, where in spite of the fact that sexual minorities do not have any problems related to human rights and discrimination, and in this regard, neither in Georgia do they suffer from criminal prosecution, in spite of this, in European countries these groups are not satisfied with their life, on the contrary, today in some countries homosexuals are holding top-level government posts and the right of same sex marriage is constitutionally guaranteed, as a result even child adoption and surrogacy become possible and etc.

Yes we have a secular state, we are strongly in favour of separation of the Church from the state and separation of the Church from the education system and other institutions, but it does not mean that we should be a society empty of religious values and in this case example of some European states cannot serve as a guideline for us. In these European countries the number of atheists is more than 50 %, while we live in Georgia – the country, where, fortunately, traditional values are still strong and where over 80% of the population states that they are Christians and where over 7% of the population says they are Muslims... In accordance with the fact that 90 % of the population is openly a believer, we consider that the Georgian legislation and the constitution should reflect values, which are valuable for the multi-ethnic, multi-confessional society of this country.

That is why we offer the society a package of constitutional amendments where 5 changes are considered, we went through all steps considered by parliamentary regulations and for next four months will be gathering signatures of Georgian citizens in order to formally initiate proposed constitutional amendments, we believe the number of signatures will not be limited to the 200 000 defined by legislation but will be even more, as the expectation of such initiative has existed for a long time in our society, we are sure many inhabitants of our country, despite their ethnical, confessional belonging or political outlook will join this campaign.

We are not fighting against anyone, we are protecting our traditional way of living. Georgia is important to us, just as our predecessors brought it to modern times and preserved it until today, so all these amendment must be discussed neither as fighting against progress nor as an aggressive act.”

NOTE: Between June 4-22, the Caucasus Resource research Centre (CRRC), conducted a nation-wide poll in Georgia for the US based non-profit think tank National Democratic Institute (NDI). The NDI and CRRC conducted 6229 face-to-face interviews over the most recent and fourth phase of this study.

The survey conducted by NDI involved the question about CDM’s initiative of Constitutional Amendments. On the question does the respondent support the change of banning same-sex marriage, 89% answers “Yes”, 6%– “No”, and 4% “don’t know”. (q104)<sup>278</sup>

## **CASE #W7B. Reaction on CDM 's initiative of Constitutional Amendments**

### **A) Parliamentarians:**

**Pavle Kublashvili** (MP, chairman of the legal affairs committee): “I think, the statements made by Mr. Targamadze and Mr. Laliashvili are totally homophobic. These are statements full of discriminatory spirit. Accordingly, I would like to underline, that our country is the country of a free society, where law is the supreme guarantor that no restrictions will be imposed and no discrimination will take place on any basis. In our state there will be no such restrictions for religious and sexual minorities. The government we have today is the guarantor for that. The majority does not support this

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<sup>278</sup> Public attitudes in Georgia: Results of a June 2012 survey carried out for NDI by CRRC. available at: <http://www.ndi.org/files/Georgia-NDI-survey-update-June2012-ENG.pdf>

initiative. Society is much more tolerant than CDM. It is shameful when such homophobic statements are made in Parliament” - stated Kublashvili.

**Lasha Tordia (MP, the former head of the parliament committee for human rights):** “some of our colleagues are making provocative statements about some issues, and Giorgi Targamadze’s today’s speech regarding sexual minorities and the events that took place on May 17<sup>th</sup>, was an example of this. It is very regrettable that from this high parliamentary rostrum a lawmaker makes statements, which, in fact, fuel strife between certain members of the society.

Mr. Giorgi I want to draw your attention towards the fact that in Georgian constitution and Georgian legislation it is clearly stated, that all the people in Georgia are equal in the face of the law and discriminatory attitude from anyone toward religious or sexual minorities or other people is forbidden. This is the guaranteed right established by civilized world and we are part of the civilized world, and the basic, fundamental values of this world state that all people in our country are equal and that attempts to change someone’s standpoint by beating, outraging, scalding are prohibited and unacceptable for citizens of Georgia. First of all, this responsibility must be taken by the members of the Georgian parliament, which in reality develops this controversy in society. This is unacceptable and a crime from your side. I was expecting you to make a call for being tolerant and to say that what happened on May 17 was immoral and unacceptable for everyone who stands for the principle of building a democratic state. Building a country where opinion of each person.... expression of the opinion is free, everyone is able to state critical position publicly and no one has the right to change someone’s standpoint by violent means. It is very unfortunate for me that such statements are made in Parliament, it is unacceptable to claim being a human rights defender and at the same time make homophobic statements. Once again, I completely reject such statements and such standpoint about the way our state, social and civil freedom should be ... I personally want to underline that such thoughts, such dispositions are inclined to develop controversy among different groups of society, that is why I absolutely reject the statement made by Mr. Giorgi Targamadze here today.”

**B) Ombudsman Giorgi Tughushi:** “I consider the statements made by the leader and members of the parliamentary minority which were fraught with homophobic spirit no less worrisome than the proposed changes. Unfortunately, a part of their statements contained hate speech, which, in my opinion, encourages stereotypical and discriminatory attitudes in the society, creating a danger that sexual minorities may be assaulted and ostracized by the society. Making statements that equal homosexuality with “depravity, perversity and distorted way of living” in the light of the events that took place a few days ago, on the International Day against Homophobia, contributes to the establishment of incorrect stereotypes in the society and encourages discrimination.” – states the Public Defender.

He underlines that the representatives of legislative body bear not only the responsibility taken with the mandate, but also a high moral responsibility towards the society.

“I consider it unacceptable for MPs to use expressions that insult any member of the society and portray him/her as unequal in relation to other citizens. I would also like to remind everyone once again that the Constitution of Georgia has been and remains the foremost guarantee of equality of rights in our state. I call upon every political force, individual politicians, and the civil society to be particularly attentive and careful, so that expressions that are discriminatory in any sense and hate speech are not spread by or through them in the future.” – is said in Public Defender’s Statement.

**C) NGO’s : “Article 42 of the Constitution” and “Women’s initiative support group”** respond to the statement made by the leader of “Christian -Democrats” movement – Giorgi Targamadze at the Parliamentary session of May 22, 2012.

Organizations assume that Targamadze’s initiative on constitutional changes, which by his own claim, serves to “protect the society’s moral interests”, is discriminative. Breach of equality without grounded reason is a violation of fundamental human rights, which negatively affects all aspects of human life.

Prohibition of discrimination is established by article 14 of European Convention, which strictly indicates, that no one should be discriminated against on any grounds. Moreover, additional protocol #12 of the European Convention of Human Rights interprets frames of discrimination prohibition and stresses the principle that enjoyment of any right should be equally protected.

Purpose of nondiscrimination is to provide every individual with equal and fair availability of means existing in the society. On May 22, during a Parliamentary session, the leader of “Christian-Democrats” presented a proposal of

constitutional changes, consisting of five paragraphs. Targamadze claimed that a statement issued by the Patriarchate of Georgia and the peaceful rally planned on May 17, to celebrate the international day of homophobia and transphobia, constituted a reason for the above mentioned proposal. Mr. Targamadze called the rally in question a “gay parade”.

Every individual is free by birth and equal before law. Proposed constitutional changes oppose this principle of equality. This initiative may disturb peaceful coexistence and became reason of people’s marginalization.

In addition, changes presented by “Christian-Democratic Movement” oppose such fundamental rights, as right to assembly and manifestation, right to expression and right to collect and spread information. Limitation of fundamental human rights on the basis of their cultural, traditional or religious values or “dominant culture” rules is also inadmissible. The project of changes establishes the term “public morals”, which is a vague and relative category and the country’s constitution should not include such a definition.

Georgia is a multilingual country, where people of different religious views, ethnic origin or different traditions have lived for centuries. All of them enjoy equal rights before the law and changes mentioned above may foster rivalry among them. Proposed changes, which stress out priority of Christian religion and its followers, absolutely violates not only the principle of equality but hinders peaceful coexistence. Giving priority to one particular group on any ground and discrimination of others is inadmissible in any democratic country<sup>279</sup>.

#### **CASE #G8. Tbilisi City Court, Case No. 3/2069-10, dated May 25, 2010**

The Georgian Young Lawyers Association (GYLA), which was monitoring elections, filed a complaint against **Lado Sadgobelashvili**, running in Tbilisi’s Mtatsminda single-mandate constituency from Freedom Party (“Tavisufleba”), who in May 2010 posted on his Facebook wall messages like “Georgia without sexual minorities” and “days of homosexuals in Georgia are counted”.

According to GYLA, Sadgobelashvili violated paragraph 2 of Article 75 of the election code, which reads: “The election programme must not contain propaganda of war and violence, of overthrowing the existing state and social system or replacing it through violence, of violating the territorial integrity of Georgia, of calling to foster hatred and enmity, religious and ethnic confrontation.” GYLA deemed that the candidate’s Facebook messages contained propaganda of violence and hatred, which should have resulted in suspension of the candidate.

Before the court ruling Sadgobelashvili told to journalists: “It does not matter what the court ruling will be, the most important for me is protection of Orthodox Christian values.”

On 25 May 2010 the Tbilisi City Court rejected GYLA’s arguments and rejected their appeal to suspend the candidate to stand in the 30 May local elections. According to the court, it was not convincingly established that by the statements - “gay parades do not compatible with Georgian mentality” and “gay people’s blood has to be spilled” – Sadgobelashvili incited violence among the voters. Neither was it convincingly established that the phrases (“gay parades are not compatible with Georgian mentality” and “Gay people’s blood has to be spilled”) were disseminated by Sadgobelashvili himself. As in regards to some other posts (“all gays will be punished, I promise”) Sadgobelashvili stated that he meant punishment by God. In that regard the Court stated that this statement fell within the protected speech. After lodging this lawsuit, GYLA was blamed to have received a huge grant for protecting LGBT rights by Sandro Bregadze from Freedom Party (“Tavisufleba”) in a newspaper “New Generation” (Akhali Taoba.)<sup>280</sup>

#### **CASE #W9. Hate speech during Pre-election campaign**

In the first part of August 2012, a pre-election advertisement of **political party Free Georgia (Tavisupali Sakartvelo)**<sup>281</sup> was spread in the social networks. Pre-election program which the party is going to implement in case of being elected to government is presented in the advertisement. Alongside with other issues, the video contains following statements:

<sup>279</sup> Constitutional changes presented by “Christian-Democrats” are discriminative . available at: <http://women.ge/en/2012/06/04/cristiandemocrats/>

<sup>280</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Legal Report: Georgia by independent researcher Ana Natsvlshvili. COWI. 2010. available at: [http://www.coe.int/t/commissioner/source/lgbt/georgialegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/georgialegal_e.pdf)

<sup>281</sup> See: <http://www.youtube.com/watch?v=L9HZljogclC>

„ We will nationalize forests and pastures captured by foreigners.  
Return lands to the Georgian peasant.  
Change English inscriptions and Turkish flags with Georgian ones.  
Stop building Azizie’s complex (mosque) in Batumi.  
Forbid propaganda of homosexuality and religious sects.”

In addition the above mentioned issues, it is important to pay attention to the shots used in the advertisement. For example, when mentioning foreigners in negative context we can see Chinese workers, and when talking about “propaganda of homosexuality and sects” we see video materials from the manifestation organized by LGBT (Lesbian, Gay, Bisexual, Transgender) community and organizations on May 17, 2012.

NOTE: On September 6, 2012, six human rights organizations including WISG and Identoba demanded from the Chairmen of Central Election Commission to take legal action against the above-mentioned. Commission decided to use measure for administrative breach against political union “Free Georgia”, in compliance with article 79 of Organic law of Georgia “Election Code of Georgia”, which envisages the fine in amount of 2000 GEL. The chairperson of the CEC drew up the protocol on administrative violations in compliance with paragraph 1 of article 93 of Election Code, which together with the materials of the case was sent to Tbilisi City Court for examination.<sup>282</sup>

#### **CASE #W10. March against alleged gay pride in Batumi**

In August 2010, in Batumi (Georgia) various spiritual leaders organized a public event of preaching and praying for the salvation of the sinners’ (LGBT people) souls in response to rumors that a gay pride was going to be organized in Batumi.<sup>283</sup> The movement culminated in a public prayer in front of one of the hotels in Batumi, where foreigners, allegedly planning to participate in the pride, were accommodated.<sup>284</sup>

Some members of anti-gay meeting went to the Mayor’s office in Batumi, as they thought that the Mayor’s Office had given permission for the gay pride. A representative of Mayor’s office tried to convince them that this information was false, furthermore - that he was on “their side” (anti-gay) and that he would never approve gay pride.<sup>285</sup>

#### **CASE #W11. Attack against “liberasts”**

On the 3<sup>rd</sup> of May 2010 representatives of **Public Orthodox Movement and Union of Orthodox Christian Parents** held a demonstration in front of Ilia State University. They requested<sup>1</sup> withdrawal of Irakli Deisadze’s book from the university bookstore (the book contained several homosexual scenes). They found the book “humiliating for the orthodox church and Georgian tradition. They blamed the head of the University (Gigi Tevzadze) in “popularizing homosexuality and perversion among the students”.

The next day (04.05.2010), defenders of the book and of free speech held a counter protest, with the slogan, “No to Fascism”. The confrontation of the representatives of Public Orthodox Movement and free speech defenders resulted in physical insults. Some participants were beaten up by the members of Public Orthodox Movement (some of them in front of police officers), others were chased in the streets and underground passages. According to the eyewitnesses’ account (published on facebook), assailants were asking about participants’ sexual orientation and called them perverts etc. No criminal case has been brought on the incident.

The fact that the police ignored the abovementioned case, caused another provocation on 7th of May.

<sup>282</sup> CEC. Report on The response to applications/complaints submitted to Central Election Commission and Information distributed via media (1 August – 14 October, 2012). pp.163-164. available at: [http://cesko.ge/files/2012/Report\\_on\\_Complaints\\_01\\_08\\_2012\\_-\\_14\\_10\\_2012\\_Eng.pdf](http://cesko.ge/files/2012/Report_on_Complaints_01_08_2012_-_14_10_2012_Eng.pdf)

<sup>283</sup> “Orthodox Congregation gathering in Batumi”, Newspaper Netgazeti. 2010.25.08. available in Georgian at : <http://netgazeti.ge/GE/22/News/2281/>

<sup>284</sup> Video recording of a public prayer is available at : [http://www.youtube.com/watch?v=pFYWNJAXGWM&feature=player\\_embedded](http://www.youtube.com/watch?v=pFYWNJAXGWM&feature=player_embedded)

<sup>285</sup> “Orthodox Congregation gathering in Batumi”, Newspaper Netgazeti. 2010.25.08. available in Georgian at : <http://netgazeti.ge/GE/22/News/2281/>

The representatives of the confronted parts were invited to participate in a talk-show on TV "Caucasia". During the show Malkhaz Gulashvili repeated the statement made in front of Ilia University: "You are not liberals; you are liberasts." He used a term which apparently represents wordplay between *liberals* and *pederasts*; the latter is used in Georgia as a derogatory term for gays.<sup>1</sup> At the time of the above mentioned talk-show, the representatives of Public Orthodox Movement and the Union of Orthodox Christian Parents gathered outside the TV studio. Conflict between journalists and extremists started soon after the beginning of the show.

When the program resumed, the host announced that after several guests of the program left the studio, before the commercial break, representatives of Union of Orthodox Christian Parents, outside the studio, started to verbally insult them, "trying to provoke them". She said it grew into a fistfight in which several TV staff members were also physically assaulted. Kavkasia TV's founder, Davit Akubardia, was also attacked. This time police arrested some members of the movement. It is worth mentioning that they were not charged with hooliganism, but with interruption of journalistic work. Malkhaz Gulashvili, founder of People's Orthodox Christian Movement is in Russian Federation at the moment. He was charged with illegally crossing the border of Georgia. On May 11, Gulashvili told various Georgian media outlets over the phone from Tskhinvali, that he had to flee from Tbilisi after his teenage son was assaulted "with an attempt to rape him."

Such inadequate reaction from the state is dangerous as it can cause the repetition of such incidents in another form and other circumstances. It can be interpreted as an encouragement of hate speech which can lead us to hate crime<sup>286</sup>.

### CASE #12A. IDAHO March

On May 17 2012, to celebrate the International Day against Homophobia, LGBT organization Identoba decided to hold a peaceful march in Tbilisi.

Identoba informed the mayor's office and Old Tbilisi Police Department with the official letter. Two days prior to the event, Identoba's office manager Ketevan Tsagareishvili and lawyer Nino Bolqvadze talked to the officer of old Tbilisi police department Giorgi Chogoshvili, who introduced himself as the person who was responsible for the security of rallies planned between May 8 and May 17, 2012. Officer Giorgi Chogoshvili said that security would be provided by law enforcement officers and the police would arrest anyone even for merely verbally assaulting the peaceful participants of the rally.

On May 17 2012, by 13:00 the staff members of the non-governmental organization Identoba and other organizers of the march approached the building of Tbilisi Event Hall where they planned to start the march and walk towards the Freedom Square, which was supposed to be the destination of the rally. By this time, law enforcement officers started to gather around Tbilisi Event hall. In spite of the aggression and verbal insults that the passersby revealed towards the participants of the demonstration, the march began as planned and without any major obstacles.

As soon as the participants started walking, the representatives of the Orthodox Parents' Union appeared, and called on the participants to stop the march. It was clear that they were mobilized on purpose and at the beginning tried to disrupt the rally through the verbal confrontation. When the rally reached the Academy of Sciences (on Rustaveli Street), they made a live chain and blocked the road, not letting LGBT activists go further. Their intention to disrupt the march should have been obvious for law enforcement officers too, although, despite multiple requests from the representatives of Identoba they did not intend to interfere. In front of the law enforcement officers, religious extremists violated the right of freedom of assembly of the participants of the manifestation – broke posters and LGBT flags, insulted the participants verbally and threatened them with physical abuse and destruction. The police interfered only after several participants of the demonstration were physically abused by the opponents of the LGBT demonstration. Police responded late.

<sup>286</sup> "Georgia: "Liberasts" Traitors Against Orthodox "Fascists", available at : [http://www.caucas.com/home\\_eng/breve\\_contenu.php?id=375](http://www.caucas.com/home_eng/breve_contenu.php?id=375) ; "The Geopolitics Of Religious Extremism", available at : [http://georgiandaily.com/index.php?option=com\\_content&task=view&id=18683&Itemid=133](http://georgiandaily.com/index.php?option=com_content&task=view&id=18683&Itemid=133); Video recordings depicting violence against civil activist are available at : <http://www.youtube.com/watch?v=8T142zvUBpE&feature=related> (see in particular 1.21.-1.30), religious extremists swearing at the participants of a counter protest, calling them "pederasts" and shouting out a slogan "Georgia without pederasts", another video depicting a clash between the participants of the counter protest and members of religious unions available at : <http://www.youtube.com/watch?v=AEPkpJGix0&feature=related>

According to the information spread by media, a few days thereby, some of the attackers were caught and brought to the court for an administrative offense and were fined.

The representatives of organization Identoba, consider that “the representatives of law enforcement did not fulfill their duties, since according to the acting legislation criminal charges must have been brought against the perpetrators, whereas the authorities imposed on them only administrative sanctions.”

On June 27, 2012, Identoba addressed the chief prosecutor of Georgia with the statement (the copy was sent to the ombudsman’s office), where they demanded:

“To start an investigation on the basis of the obtained information, according to the demands stated in the article 100 of Criminal Procedure Code.”

In case of initiation of criminal case based on information provided by Identoba, to follow the amendment adopted on March 27 2012 in criminal law of Georgia: committing crime on the basis of sexual orientation and gender identity is an aggravating circumstance for all the crimes considered by the code.

NOTE: The organization did not receive any respond to the statement.

### **CASE #W12B. IDAHO March (reaction)**

Almost all of the local media covered the raid of the demonstration. Nor did the international media leave the issue without attention<sup>287</sup>. **Local Human Rights organizations** spread special statements in social network and media outlets<sup>288</sup>, where it was stated that: “We consider, that on May 17 2012, during the demonstration, LGBT people’s right for freedom of assembly was violated both with counterdemonstrator’s destructive actions and inaction or illegal action from the side of the representatives of the law enforcement. These facts require a comprehensive and effective investigation.”

The **Chairman of the Parliamentary Committee on European Integration David Darchiashvili**: „In a free country an action that is not directed to the rights violation, is held as a form of self-representation. Either we are a free country or not. We cannot talk about democracy and at the same time want democracy for ourselves only“, – said the MP and pointed out that any physical confrontation is illegal and must be regulated by law enforcement representatives<sup>289</sup>.

The dispersal of protesters was addressed by **USA ambassador in Georgia, John Bass**, who said that people of every sexual orientation should be able to express themselves in public in a peaceful way “without suffering fear of retribution from other people in society, even if they disagree with them.”

“One of the features of a healthy, vibrant democracy is the opportunity for people who have differing views on a wide range of issues to be able to express themselves and engage in a debate but to be able to do so without fear of retribution without fear of violence, simply by virtue of what they believe or who they are. And we think that is a fundamental tenet and a foundation of democratic societies,” Bass said.<sup>290</sup>

**Public defender of Georgia**, who made a statement about previous May 17<sup>291</sup>, also strongly condemned the raid: “The Public Defender of Georgia considers any violent action that is carried out on the grounds of intolerance inadmissible. It

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<sup>287</sup> Fighting at gay rights march in Tbilisi Georgia. 17 May 2012. BBC News. <http://www.bbc.co.uk/news/world-europe-18109022>, Georgia gay-pride march ends in fist fight. 17 May 2012. Euronews. <http://www.euronews.com/2012/05/17/georgia-gay-pride-march-ends-in-fist-fight/>; A Backlash in Georgia. By Haley Sweetland Edwards. June 14. 2012. New York Times. <http://latitude.blogs.nytimes.com/2012/06/14/progress-by-georgias-gays-spurs-a-backlash/> etc.

<sup>288</sup> NGO Statement on the Violation of LGBT Right to Assembly. 18.05.2012. <http://www.npo.ge/story/arasamtavroboebis-gantskhadeba-lgbt-pirebis-shekrebis-uple>; Coalition for European Georgia Statement about the incident happened on May 17. <http://www.npo.ge/story/koalitsia-evropuli-sakartvelostvis-gantskhadeba-17-maiss-m>

<sup>289</sup> David Darchiashvili considers the demonstration of sexual minority as the form of self representation. Informational agency Medianews. 17.05.2012. <http://medianews.ge/ge/davitdarchiashviliseqsualuriumtsiresobebisaqtsiastvitgamokhatvisformadmiichnevs/4486>

<sup>290</sup> March of Gay Activists Ends in Scuffle in Downtown Tbilisi Civil Georgia, Tbilisi / 17 May '12 / <http://www.civil.ge/eng/article.php?id=24775>

<sup>291</sup> Public Defender’s statement in connection with the International Day against Homophobia. 17.05.2012. <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1500>

is a positive obligation of the law enforcement bodies to create appropriate conditions for the exercise of the right to hold a peaceful assembly. Violations of law committed against such a march require swift and adequate response. ... In similar cases, the state must take timely and effective measures with the aim of stopping and preventing actions carried out on the grounds of intolerance".<sup>292</sup>

#### **CASE #P13. Gay Activists Rally Outside Parliament**

On May 18, 2012 several dozens of gay rights activists and their supporters gathered outside the Parliament to protest against the violence that took place a day earlier, when the march marking the International Day Against Homophobia ended in a brawl after a radical Orthodox group blocked the marchers' way not allowing them to continue procession in downtown Tbilisi.

Although there were some tense moments at the rally on May 18<sup>th</sup>, with some by-passers protesting against such a gathering, one-hour rally outside the Parliament ended without any major incidents. At one point police, which was heavily present nearby, dragged away a man to prevent verbal argument from growing into a scuffle. An Orthodox priest from Kashveti church on the opposite side of the street was telling his parish not to approach the rally outside the Parliament warning them against "provocation" on the part of gay activists.<sup>293</sup>

#### **CASE #P14. Public Defender's statement in connection with the International Day against Homophobia**

On May 17th, the entire world marks the International Day against Homophobia. This day is connected to the removal of homosexuality from the classification of diseases by the World Health Organization on May 17, 1990.

In a resolution adopted by the European Parliament, the term "homophobia" is defined as "an irrational fear of and aversion to homosexuality and to lesbian, gay, bisexual and transgender (LGBT) people based on prejudice and similar to racism, xenophobia, anti-semitism and sexism." The aforementioned definition of homophobia, and equating it with racism, xenophobia, anti-semitism, and sexism, clearly indicates how important it is to fight homophobia and eradicate it.

In spite of the progress achieved in terms of human rights, homophobia remains as one of the most important problems around the world, and, unfortunately, Georgia is no exception. Expressions of a negative attitude of the society towards lesbian, gay, bisexual, transgender, and intersex people are frequent. Homophobic expressions or other kinds of actions often insult the concrete group of persons and contribute to the formation of stereotypes in the society.

Equality is a leading value of any democratic state, and it should constitute a fundamental principle of the activity of all institutions. The development of tolerant values is one of the most important preconditions for the formation of democratic society, whereas homophobia causes disagreement and confrontation between social groups. Each of us should always keep in mind that it is necessary to respect and accept forms of self-expression and expressions of a person's individuality.

I consider that contributing to a culture of tolerance, including taking an interest in the rights and problems of lesbian, gay, bisexual, transgender, and intersex people, should become a very important task for politicians and representatives of the civil sector and the media. It is only in this case that it will become possible for our state and society to develop in a democratic and liberal direction.

We should all together manage to create an environment, which will be free from any kind of hatred and in which everyone will be equal regardless of their sexual orientation and gender identity<sup>294</sup>.

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<sup>292</sup> The statement of the Public Defender of Georgia about the events of May 17, 2012. 18.05.2010.

<http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1501>

<sup>293</sup> web-portal civil.ge. 18.05.2012. <http://www.civil.ge/eng/category.php?id=87&gallery=81>

<sup>294</sup> <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1500>

#### **CASE #P15. Council of Media Ethics: Journalist failed to observe his professional-ethical obligation not to discriminate based on sexual orientation**

"Inclusive Foundation" complained before the Council of the Media Ethic about homophobic statements made by Malkhaz Gulashvili (TV station Kavkasia, talk-show Barrier. March of 9, 2010) and journalist (**Aleksandre Elisashvili**) failed to react to this statements adequately in his show.

Council ruled that Aleksandre Elisashvili violated the 7th principle of the Charter on Journalistic Ethics. According to this principle: "a journalist must realize the risk of encouragement of discrimination by the media; therefore he/she must do his/her best in order to avoid discrimination of any person based on that person's race, sex, sexual orientation, language, religion, political or other views, national or social origin etc."

"I don't think homophobic statements were made during that program, Malkhaz Gulashvili as well as any other person has the right to have and voice certain opinions about certain issues; besides, I let other guests of the program answer him and they made certain remarks in connection with Gulashvili's words" - Aleksandre Elisashvili said during the Council session. In spite of that Elisashvili said that he respected the decision made by the Council: "I will take into consideration the Council's decision in future and I'll be more cautious when covering the topics concerning the minorities. I will call upon my respondents to be more reserved so that hate language is ruled out in my programs"<sup>295</sup>.

#### **CASE #I16. TV Rustavi 2 reacted on the insulting comments made by TV hosts about the sexual minorities**

Among positive precedents it is worth mentioning that **broadcasting company Rustavi 2** reacted on the mocking and insulting comments made by TV hosts about the sexual minorities in TV show "Good Morning Georgia" in December 2010. The comments supported the negative stereotypes about the above mentioned group. Unlike the two previous examples, this time, television management reacted immediately and took the initiative in its own hands. On January 5, 2011, TV company Rustavi 2 explained to the organization Identoba (who issued a complaint regarding the above mentioned homophobic incident) that, on the same day the official reprimand was issued for the producer of the show and both of the hosts. The issue was also discussed on a weekly meeting.<sup>296</sup>

#### **CASE #I17. Identoba vs TV Rustavi 2 and TV Imedi**

Organization Identoba, working on the rights of LGBT people, addressed the self-regulatory boards of Imedi TV and Rustavi2 broadcasting company with a complaint for verbal insult of the LGBT (lesbian, gay, bisexual and transgender) community. Identoba sent the coinciding complaint on March 9.

Identoba's complaint regards the Georgian subtitles to the movie Justifying Anger aired by TV Imedi on February 12, 2012. Identoba claims that in the given movie an English word gay appeared four times and all four times the word was translated into Georgian not as 'gay', but "tsisperi" (faggot), which, "in addition to the fact that it is not a precise translation of the original text, also is a verbal insult of the LGBT group members," Identoba complaint against Imedi reads.

The organization quotes the Article of the Code of Conduct of Broadcasters according to which " a broadcaster must avoid insulting any religious, ethnic, or other groups, including using certain words and expressions." Identoba also quotes Article 56 of the Georgian Law on Broadcasting, according to which "it is prohibited to air programs aimed at insulting a person, or a group of people on the basis of sexual orientation."

Identoba believes that Imedi TV should have avoided using the word "faggot." "Despite the fact that it was not Imedi TV product, the broadcaster was still responsible to control the adequacy of translation and usage of correct words," the complaint reads.

Identoba complaint against Rustavi2 regards the phrases used in The Vano's Show and Comedy Show. According to the Organization, during the Comedy Show, aired on February 20, 2012 a phrase – "faggots rule" – was used. During The

<sup>295</sup> Ethics Council Decided That Aleksandre Elisashvili had Violated Professional Standards. <http://www.media.ge/node/37242>

<sup>296</sup> Interview with chairman of Identoba Irakli Vacharadze. 25.06.2012.

Vano's Show, aired on March 3, the host Vano Javakhishvili asked the actress Shorena Begashvili to read out the following text – “why aren't you trying to hit on me? Should I call you a faggot?”

As in the case of Imedi TV the LGBT community members believe that the broadcaster has insulted them by using the words “faggot”. The complaint is also based on the Georgian Law on Broadcasting and the Code of Conduct of Broadcasters.

Identoba requests disciplinary punishment of the relevant employees of the broadcasters and a public apology from them.<sup>297</sup> Considering that Identoba is not “the interested person/party” according to the law “about broadcasting”, the complaints commission of the self-regulatory mechanism of Company “Imedi” left the complaint without discussing it yet. After Identoba has improved the defect pointed out by Imedi (submission of Power of Attorney on the name of concrete victim), the commission refused to satisfy the complaint. The same formal obstacles were encountered by Identoba with TV Company “Imedi”, regarding other complaints too.<sup>298</sup>

### **CASE #18. Hate speech on internet**

The use of homophobic hate speech in social network is particularly alarming. The creation of anti LGBT anonymous groups like “Georgians against Homosexuality (LGBT)”<sup>299</sup>; Fuck Pederasts<sup>300</sup> and etc. become more frequent. On Such web-sites one can easily find the direct call for violence.

On June 10, 2012, internet issue “www.argumenti.ge” published an article called: “The group of people who plan to burn LGBT people alive in Georgia”<sup>301</sup> the information spread with the article was about facebook page created by nationalists group “The brigade Fighting against Pederasts”. The admin of the group Ilia Malazonia, has several photos uploaded on his page where he is dressed in a black uniform. Malazonia explains why “The brigade Fighting against Pederast” was formed.

“The aim of the unit is to save Georgian spirit, religion, history and value system. So the group members are obliged to fight both physically and morally against those who hamper it” – is said in the definition.

Of course, there were people who protested against this, but these people were also threatened by the group members. “We have plenty of supporters, and will be able to mobilize forces in a short time”.

Ilia Malazonia shares the video made by Russian skinheads where they beat the representatives of sexual minorities. The headline of the video was a comment that stated: “that's what they deserve”

The next comment was made by a member of the same group where it is mentioned that the “mistakes of nature” (homosexuals) should be murdered. In the further discussion group members are talking about how they should be killed: with knife, torture or simply by burning. The most of the fascists considered that LGBT people should be burned. The members of the unit have already chosen the T – shirts with inscription “Kill Gay” on it.

NOTE: Since the statements contain signs of criminal act considered by the Criminal Code of Georgia, the organization “Identoba” in 16.07.2012 addressed the Chief Prosecutor of Georgia Murtaz Zodelava for referring the case but they did not react on it.

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<sup>297</sup> Identity vs Rustavi 2 and Imedi . Nata Dzvelishvili. 10 March, 2012 . web-portal media.ge.  
[http://www.media.ge/en/stories/identity\\_vs\\_rustavi\\_2\\_an](http://www.media.ge/en/stories/identity_vs_rustavi_2_an)

<sup>298</sup> The complaint was covered in TV show “Special report” on “Imedi TV” on February 6 2011.

<sup>299</sup> <https://www.facebook.com/anti.lgbt?sk=questions>

<sup>300</sup> <https://www.facebook.com/ShevetsiPidarastebis>

<sup>301</sup> <http://www.argumenti.ge/?p=1476>

**CASE #W19. A Pending Case versus Georgia before the ECtHR about police homophobic behaviour and violation of fundamental rights (Aghdgomelashvili and Japaridze v Georgia, App. no. 7224/11)<sup>302</sup>**

December 15, 2009: police raided the office of “Inclusive Foundation,” the first officially registered NGO in Georgia (2006) openly working on LGBT rights. The police conducted an unauthorized search in the office; they were not wearing any uniforms and failed to present a search warrant to the people in the office. When they became aware of the IF’s work in the field of LGBT rights, they displayed strongly homophobic behaviour towards everyone present in the office. During the raid officials used anti-homosexual slurs, made unnecessary strip searches, damaged organization’s posters, etc. They seized cell phones and did not allow anyone in the office to contact their families, friends or lawyers. The leader of Inclusive Foundation was arrested and later on charged with drug possession. He was released after a few days based on plea bargain agreement.

This incident has received significant amount of attention both in the media and civil society at the national and international levels.

In relation to the incident, two victims Eketarine Aghdgomelashvili (co-founder of Inclusive Foundation, who is currently the Executive Director of ‘Women’s Initiatives Supporting Group’ (WISG) and Tinatin Japaridze (former programme officer from 2006 to 2009 and currently a project manager at the ‘WISG’) filed a complaint before the ECtHR.

The applicants are arguing before the court that they have been victims of violation of the following rights: inhuman and degrading treatment (Article 3 of the European Convention on Human Rights) and /or interference in their private lives (Article 8 of the Convention) as well as discrimination based on their actual or perceived sexual orientation (Article 14 of the Convention; Article 1 of Protocol No 12). In addition, they argue that their strip searches were not “in accordance with the law” and did not pursue any of the legitimate aims envisaged by the second paragraph of Article 8 of the Convention. Further, it is submitted that, in the absence of an investigation into the incident, including whether it was motivated by homophobia and a subsequent failure of the State to identify and punish those responsible, there is a continuing procedural violation of Articles 3, 8 and 14. The lack of effective remedies also breaches Article 13 of the Convention.

**Case #W20. Verbal Attacks and Threats against Women’s Fund in Georgia**

“[On November 29, 2009] Women’s Fund in Georgia announced a call for the projects aimed at overcoming homophobia and discrimination against LBT women ... Media found out about the call and there appeared around 10 homophobic and sexist newspaper articles about it, in the Newspapers like Alia, Asaval-dasavali etc. There was also a discussion topic on Forum.ge, where the users not only had copied and posted the text of our call, but also the list of our employees, board members, advisory board members, and we all got insulted ... We wanted to involve the police, but when we consulted a lawyer, we were told that the freedom of speech and expression is such an open issue in our legislation and has such an open and broad definition, that it is impossible to hold anyone responsible for what happened, especially since we don’t have any hate speech laws and “hate speech” as such does not exist in our legislation.”<sup>303</sup>

**CASE #P21. Law Enforcers Try to blackmail a journalist using prejudice against LGBT people**

November 25, 2009: Tedo Jorbenadze, leading investigative journalist in the newspaper *Batumelebi* was invited to the office of Adjara Autonomous Republic Division of Special Operative Department (SOD) within the Ministry of Interior of Georgia. Jorbenadze was told that special services of foreign countries – in particular Russia and Turkey - were interested in Batumelebi and since Mr. Jorbenadze was one of the decision-makers in the newspaper, he had to cooperate with Georgian law enforcers. When Mr. Jorbenadze refused to do so, the SOD officers showed him black and white photos of two men in their underwear. They told him that one of them was Mr. Jorbenadze, (however, as Mr. Jorbenadze claims he could not identify himself in any of the men on the photos) and threatened to send these photos to his relatives and colleagues and further disseminate them via the internet if he still refused to cooperate.

<sup>302</sup> <http://www.interights.org/aghdgomelashvili/index.html>

<sup>303</sup> Materials for preparation of CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012. Women’s Fund in Georgia. Interview with Mariam Gagoshashvili. 25.10.2011

Jorbenadze organized a press conference and made the story public. The incident caused outcry among national and international NGOs and media. No official investigation followed.

“This incident shows that the government of Georgia is concerned with the fact that international community is actively supporting increase of the level of media freedom and independence in Georgia. “Batumelebi” has been pressed for a long time now – says a well-known Georgian journalist Zviad Koridze, - “when the government failed to subordinate this media outlet using financial means, it started to use method of pressing on morality.” The South Caucasus Network and Human Rights House Tbilisi remind the government of Georgia that interference within the work of a journalist is a criminal offence prohibited by Georgian Criminal Code. Moreover, inviolability of personal life, honor and dignity is guaranteed to all by the Constitution of Georgia and numerous international human rights instruments to which Georgia is a party<sup>304</sup>.

#### **CASE #W22. Blackmailing of a sex-worker**

Male, homosexual, age group 18–25, sex-worker

Since December 2011, during a whole month a policeman tried to blackmail him. He called the respondent on the phone and insulted him. He had attempts to negotiate and “talk sweetly”. Once the policeman took him away from the settlements and made him sign the letter which obliged him to cooperate with police. He reminded him about his sexual orientation frequently and told that he would tell others about it too. The respondent has a suspended sentence. He thinks that police blackmailed, threatened and insulted him because they were ordered to by the institution, but he does not know the particular purpose. The last time he saw the policeman was January 2012. Since then he has not contacted the respondent.<sup>305</sup>

#### **CASE #W23. Incident with a police officer**

July 7, 2011, “I was waiting for the bus, although in the end I had to walk home anyways. While I was walking, a patrolling police car pulled over and the officer stopped me and asked: “What are you doing here, bitch?” I replied “You are a bitch yourself!” After that he called me a lesbian and tried to grab me, but his partner stopped him on time. The incident ended there”<sup>306</sup>.

#### **CASE #W24. Police officers humiliated LB couples**

“On one occasion, when I lived together with my girlfriend and we were drunk and ended up having a serious conflict, our neighbours called the police. When police came, they entered our home and saw what condition we were in ... besides, that girl looked suspicious like that, I mean, you could assume she had a different sexual orientation ... police officer turned to our neighbours with grinning with sarcasm and said that it was a family matter, and they didn’t really want to interfere ... they started making jokes and laughing ... they basically made fun of us. We did not really need to involve the police in this case ... when they came we invited them in and told them to see and make sure that everything was alright, that we were alive, so they started laughing. What if we don’t do anything? Which one of you is a man and which is a woman? Which one is a husband? Should we talk to the one of you who is a man?”<sup>307</sup>

#### **CASE #W25A. Police officers humiliated sex-workers**

Male, bisexual, age group 18-25, sex-worker

In June 2011, in Tbilisi, nearby Dinamo stadium, while the respondent was with a friend, two strangers asked him for cigarettes. After having refused they assaulted them, verbally insulted them and started beating them. The respondent

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<sup>304</sup> Statement of the South Caucasus Network of Human Rights Defenders and Human Rights House Tbilisi. available at: <http://humanrightshouse.org/Articles/12654.html>

<sup>305</sup> Materials collected for LGBT discrimination survey. Q.33.

<sup>306</sup> Materials for preparation of CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012.

<sup>307</sup> Materials for preparation of CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012.

called for help, wanted to call police but they appeared by themselves and the attackers ran away. The respondent and his friend were taken to the Didube-Chughureti police department.

In the department the respondent faced three police officers. They made fun of him, asking whether his sex was male or female and if he minded that they took a picture of him. Both of them were released after the protocol was ready.<sup>308</sup>

#### **CASE #W25B. Police officers humiliated sex-workers**

Male, homosexual, age group 26–40, sex-worker

In summer 2011, two strangers approached him and asked for a cigarette on Heroes Square. After that they asked – “what are you doing here”, “are you also ‘that’ (meaning gay)?” This is how the conflict started. One of the strangers tried to kick him down and the respondent kicked him back, after that both of the attackers ran away and the respondent called police.

Police came to the place on time; the crew consisted of two people. Police did not take him to the department they filled the protocol where the incident happened. All this time they addressed the victim cynically like: “perhaps you have a special nickname”, “how many man do you fuck within a day” etc. The respondent emphasized his rights and told them that he was aware that police did not have right make fun of him and they stopped.<sup>309</sup>

#### **CASE #W26. Police fails to appropriately handle an incident against lesbian couple**

October 15, 2010. Bar Success. A person sitting at one of the tables started taking photos of a lesbian couple that was kissing at the other table. The couple protested. The verbal conflict soon grew into physical violence: “At first, he hit me in the face with his fist and I ended up against the wall. After that I fell down and he started kicking me with his feet, in my face as well ... My friends tried to save me, but he cast them away and threw the tables over. Instead of calling the security guards or trying to help me somehow, the manager kept telling me pay and go. I called the police, which came quite late, but still did.

They seemed to be neutral, but still continued to hint that it was my behavior that had provoked those strangers. I believe that their attitude was not strongly homophobic, but the general environment was. Both security guards and police officers had an ironic attitude towards what happened. Instead of intervening, the security guards kept telling me to immediately leave the bar, while, later at the police department, the policemen just kept asking why those guys were taking photos of me at all... Two weeks later I received an official letter, saying that case was submitted to the investigation, but after that I haven’t been contacted anymore. Well, after that I didn’t actually have any time or energy or hope that this question would be solved, so I didn’t follow it to the end...<sup>310</sup>

#### **CASE #W27. Police did not react to an incident**

Male, homosexual, age group 26-40

In January, in Gori respondent was in a bar with two of his friends. Three strangers approached them and asked who they were, then went away. Soon thereafter the same strangers returned with ten more people. They sat down nearby and started bullying the respondent and his friends. The verbal confrontation turned into a physical one and the respondent called police. Police officers and the representatives of criminal police arrived. After they found out what the situation was about (that the reason of the incident was his and his friends’ sexual orientation), police did not find necessary to react. The victims felt very humiliated, but did not do anything.<sup>311</sup>

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<sup>308</sup> Materials collected for LGBT discrimination survey. Q.70(1).

<sup>309</sup> Materials collected for LGBT discrimination survey. Q.71.

<sup>310</sup> Materials collected for CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012

<sup>311</sup> Materials collected for LGBT discrimination survey. Q.38.

#### **CASE #W28. Police Failure to uphold the law due to victim's sexual orientation**

Male, homosexual, age 18, sex-worker

In December 2011, in Tbilisi on a "pleshka" (a cruising area for gay and transgender people) nearby the circus, three unknown people assaulted him verbally and physically. They tried to take the respondent deeper in the park, far from the road. They attempted to rape him. After the respondent lost consciousness, the attackers left.

The respondent called police. He was transferred to the Police Department. After that policemen contacted the victim's uncle and told him that, "only gay people usually cruise around the place" where the incident had happened, that the victim was "unworthy person" and the attackers were acquitted because "none of the Georgians would bear such a thing".<sup>312</sup>

#### **CASE #W29. Effective police intervention**

Male, bisexual, age group 18-25, sex-worker

On March 24, 2012, in Tbilisi nearby the circus, 2 unknown men attacked him. Two more community members were present, alongside with the respondent. One of them had fallen down. The respondent managed to run away and call the police. The respondent states that the police officers were friendly and supportive. A month later the attackers were captured and victims were informed about it. Respondent says that policemen told them to always contact police in case of the similar incidents as they are "the representatives of minority group and police will always help them".<sup>313</sup>

#### **CASE #W30. Abuse of Power by police officers against a lesbian couple**

On August 18, 2010 (approximately) we were in the car with my girlfriend somewhere around the Lisi Lake, which is very cozy and isolated place. We were in the backseat of the car, naked above the waist. All of a sudden we heard a car pull over behind us. It was not a police car, but one of the men who stepped out of it was wearing a uniform. I don't remember what others were wearing. We got really frightened, we thought that they might have been drunk and tried to start the car, but they blocked the passage with their vehicle. They asked us to step out of the car and started verbally insulting us: "what the hell is this? Aren't there any men left in this country?" One of them told us: "If I were a different type of person, I would show your faces on TV!" They asked us to show ID's which we did; they also asked where we worked. They kept us there for 10-15 minutes and let us go afterwards.<sup>314</sup>

#### **CASE #W31. Arbitrary detention of sex-workers**

Male, bisexual, age group 18-25, sex-worker

In summer 2011, in Tbilisi, while walking together with a friend on Tamar Mepe Bridge (nearby the circus) a car approached the respondent. Several unknown men came out of the car, without uniforms and forcedly brought them to the police department in Nadzaladevi. In the department they learned that those unknown people were policemen. The respondent spent the whole night at the police department. Policemen grabbed and touched him roughly several times and insulted him verbally. His friend was detained separately. Respondent says that police let them go in the morning.

Respondent did not address police because the attackers were policemen.<sup>315</sup>

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<sup>312</sup> Materials collected for LGBT discrimination survey. Q.87.

<sup>313</sup> Materials collected for LGBT discrimination survey. Q.81.

<sup>314</sup> Materials collected for preparation of CEDAW shadow report concerning LBT women's situation in Georgia. WISG. 2012.

<sup>315</sup> Materials collected for LGBT discrimination survey. Q.70(1).

### **CASE #W32. Firing a person on the ground of gender identity**

Transgender (MtF), age 21

"In 2010-2011 I was working as a bar-man in a cafe. The chief and staff members had good attitude towards me. They knew about my identity. During my second year I decided to be more open in public about my identity and defend my rights freely. I took the initiative to meet a journalist. My photo appeared on a cover of a magazine, which made me very glad. However, the manager of the café fired me as a lot of people were visiting the cafe and they would have negative attitude towards me. I was in a very bad condition. Had financial difficulties and I nearly became a victim of prostitution ... Fortunately my mother helped me. Otherwise I would have done everything... but one needs more than just food, you know... so I was in deep depression... I would stand up for my rights freely, but I did not know what to do..."<sup>316</sup>

### **CASE #W33. Discriminatory insults during sports events**

Lesbian , age 18

"On June 28, 2010, in Tbilisi I participated in a sporting competition – "Merry Starts". I heard someone cursing at me from the hall: "you fucking Lesbian"; because they could not understand whether I was a girl or a boy. My friend invited them to come outside and they started quarrelling. While we were talking with them a guy came to their support and slapped me in the face."

The respondent did not call police because she was afraid of the homophobic reaction.<sup>317</sup>

### **CASE #W34A. Denial by medical professionals to provide medical services**

Transgender (MtF), age 27

"When I needed to obtain approval for gender reassignment all the people working in the clinic, including the sexologist and the psychologist, were very friendly. Later on I needed to do some blood test. As soon as medical staff learned that I was a transsexual, awful things started to happen. I took one of the blood tests in Jordania's clinic. Some of the doctors treated me normally, and even talked to me warmly.... But generally I found myself in awful situations...I was insulted many times... but maybe it was not an insult?! ... may be that person (one of the doctors) took all this too close to the heart ... "If my child was in your shoes, I don't know what I would do... "- said the doctor. I asked her, "What would you do? Kill him? Or kick him out from home?"... other abusive words were also used in my respect, but I don't want to talk about it..."<sup>318</sup>

### **CASE #W34B. Homophobic attitudes from health professionals**

Male, homosexual, age group 18–25

In January 2011, a dentist who had treated the respondent for several months, refused to continue the treatment after the respondent changed his appearance. The dentist refused to take money for the treatment and stopped answering respondent's phone calls.<sup>319</sup>

### **CASE #W34C. Denial by medical professionals to provide medical services**

Male, Queer, age group 18–25

"last year in November, in an eye clinic, the ophthalmologist told me in the presence of other patients:" act as a man, get yourself a priest, go get laid with a woman and you will see better", he also told me " I am sure you are not a believer, since believers are nothing like you" and refused to give a medical service."

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<sup>316</sup> Materials collected for LGBT discrimination survey. I.47(1)

<sup>317</sup> Materials collected for LGBT discrimination survey. Q.74(3).

<sup>318</sup> Materials collected for LGBT discrimination survey. I.45(2)

<sup>319</sup> Materials collected for LGBT discrimination survey. Q.108.

### CASE #I35. Medical Magazine “mkurnali.ge” about Homosexuality

Medical journal “Odjaxis Mkurnali” (family healer) has been published once in two weeks, since 2001. Alongside with the published copies, the electronic version of this publication is also available. Authors of the articles published in the journal are healthcare professionals. Their internet portal also provides online consulting section, where readers can send their questions and receive answers.

Homosexuality is defined by this outlet as “unnatural sexual attraction to a person of the same sex”<sup>320</sup>. Different articles, published on the website, regarding homosexuality are also of a discriminatory nature and help promote common stereotypes. A two pages long article “Possible Complications of Homosexuality” is completely dedicated to HIV/AIDS, and relative situation in Georgia. Homosexuality is mentioned only once throughout the article, when the author speaks about the ways of HIV spreading and names Georgian statistics (3,7%). By mentioning “homosexuality” in the title of the above mentioned article, the author aims to artificially associate HIV/AIDS with sexual orientation<sup>321</sup>. Another article called “Sexual Orientation” is dedicated to exploring a variety of paraphilias and sexual perversions.<sup>322</sup>

As for the consulting section present on the website, you can see some of the excerpts regarding the issue of homosexuality below.

**Q:** I am a 35 year old male. Before I turned 30 I had a regular heterosexual life. After I turned 30, some kind of a turning point occurred in my life and I changed my orientation, I became “gay”. I need help, I want to turn straight again, or bisexual, how can I achieve this?

**A:** You should address a psychotherapist (for instance, Centre for Psychological Aid at the Patriarchate of Georgia), also you should see an andrologist to check the levels of sex hormones in your blood.

If you are really willing to change it, you can achieve anything. If you like something, that does not belong to you and that you cannot buy, what will you do, steal it? I believe, you would rather restrain from thievery!.. The same goes for that thing, that you are doing right now – you are born a man and a male orientation belongs to you! What sex do the followers of the untraditional orientation represent? None, I believe, whereas a person should by all means possess sex/gender. This means that when you change your orientation you refuse to be a human being.

Think about it carefully, what will homosexuality bring you? Frequent change of partners, which provides basis for neurosis and depressive condition; high risk of sexually transmitted diseases (among those AIDS), inner discomfort, which you will by all means experience, because you are acting against nature; refusing to have a family and become a father and what is the most important thing: you turn your back on God (it does not matter which religion you belong to, every religion counts homosexualism as a sin.)

The interesting thing, however, is that, you don’t want to go back to your normal condition. You just have grown bored of this situation, and now wish to become a bisexual and want us to show you how to switch from one form of depravity to another. Excuse us, but, unfortunately, we do not have such experience and there’s nothing we can advise.<sup>323</sup>

**Q:** I am a 16 years old, adolescent boy and my attraction is towards people of my own sex. I try to hide it, and I manage to, but I feel that it grows stronger and stronger. I have learned that it is caused by low levels of testosterone, how can I increase these levels, or how else can I overcome this horrible thing? I beg you, help me. Thank you in advance.

**A:** First of all, you need to decide for yourself that **this attraction is not normal**, and what you are going through is a deviation from the norm (as you mentioned yourself – it is something horrible). Psychological factor – or your attitude towards this issue - plays an utterly important role. As soon as you start believing, that homosexualism is something absolutely normal and start listening to the senseless arguments, that homosexuals use to justify their depraved actions,

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<sup>320</sup> <http://mkurnali.ambebi.ge/enciklopedia.html?task=term&id=4755>

<sup>321</sup> <http://mkurnali.ambebi.ge/daavadebebi-mkurnaloba/seqsologia/3482-homoseqszualizmis-shesadzlo-garthulebebi.html>

<sup>322</sup> <http://mkurnali.ambebi.ge/daavadebebi-mkurnaloba/seqsologia/3485-sqesobrivi-orientacia.html>

<sup>323</sup> <http://mkurnali.ambebi.ge/kitxva-pasuxi.html?view=question&id=18040>

a battle will begin in your mind between your conscience and depravity and conscience can only win this battle if there is a strong psychological-spiritual motive.<sup>324</sup>

**CASE #I36. Chief of the psychiatric department of State Medical University describes homosexuality as “abnormality”**

**Doctor of Medicine, chief of the psychiatric department of Tbilisi State Medical University, Teimuraz Silagadze,** states that even though LGBT people are no longer seen as anomalies or deviants by the international healthcare organizations, they still constitute a special case, due to their different behavior:

“Actually, changing names of the phenomena is a common thing: when a term assumes negative meaning and is used to insult people, we try to replace it. For instance, there used to be terms like: psychopath, idiot, imbecile which were commonly used as a regular diagnosis. Now these terms have been replaced with more mild and loyal terms to address these patients, however the facts do not change and replacing names, does not make these conditions less grave. If something has been an anomaly for 20 centuries, you cannot change it by merely changing its name. These people [LGBT people] disrupt the harmony created by God. The most important thing is that the family is harmonious. Even animals and all the living creatures on earth are created on the basis of the opposite sex principle, otherwise they won’t be able to reproduce.”<sup>325</sup>

**Case #W37. Pressuring LBT people to undergo treatment**

Excerpts from an interview with WISG’s sexologist

“People who come to us are usually those who already know about their identity and have decided to change their sex. Recently I had a case when the parent of the patient got in touch with me and asked me to “heal” her daughter/son, whereas the patient had completely different interests. Such situations are also very difficult.”

„I recall one case of forced treatment of a person who was FtM (female to male) and was openly telling his mother that he was a male and she should leave him alone. Mother was taking him to doctors for endocrinological examinations. The person was already 25 years old, had a wife, and had a fully harmonious family life with her, however was still compelled to obey his mother’s wishes because he was not financially self-sustainable”.<sup>326</sup>

**CASE #W38. Bullying at schools and on the streets**

Male, homosexual, age group 16-18

“At school they often laugh at me because of the way I behave and conduct myself. I have been called “pederast” a lot of times. They swear and curse me... sometimes they paint on my backpack or hide my chair from me. Last year (in 2011) in winter when I was on my back from school, my classmates called me and took me to the staircase. They were laughing at me, touching me... One of them kicked me... they abused me verbally, when I responded- they hit me in the face several times.”<sup>327</sup>

In spring 2011 a guy living in my block learned that I am gay and spread this information in the neighborhood. After this whenever I would meet guys from the neighborhood they used to laugh at me and abuse me verbally. Once, they yelled “you pederast” at me in public. They threatened to beat me up...

<sup>324</sup> <http://mkurnali.ambebi.ge/kitxva-pasuxi.html?view=question&id=21177>

<sup>325</sup> Perception of Homosexuality in Georgian Medical System. Identoba Magazine. available in Georgian at <http://identoba.wordpress.com/2012/04/23/%E1%83%B0%E1%83%9D%E1%83%9B%E1%83%9D%E1%83%A1%E1%83%94%E1%83%A5%E1%83%A1%E1%83%A3%E1%83%90%E1%83%9A%E1%83%9D%E1%83%91%E1%83%90-%E1%83%A1%E1%83%90%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94/>

<sup>326</sup> Materials collected for CEDAW shadow report concerning LBT women’s situation in Georgia. WISG. 2012. Interview with Maia Tchavtchanidze. Women’s Initiatives Supporting Group, sexologist 6.10.2011.

<sup>327</sup> Materials collected for LGBT discrimination survey.Q.13(1).

In summer I was sitting in the garden with my friend. They came and started making fun of me. One of them pretended he was a gay too and started imitating my manners, as if he wanted to kiss me. I tried to get rid of him while others kept laughing.<sup>328,,329</sup>

#### **CASE #W39. Refusal for accommodation**

Male, bisexual, age group 16–18.

In 2011 he decided to leave home because of the conflict with parents and rented an apartment together with friends. The owner of the apartment suspected they were gay and addressed them aggressively. Said he would not have men dressed like that living in their house, that it was because of them that young people are so depraved. The owner even threatened that he would kick them down the stairs if they did not leave the apartment immediately.<sup>330</sup>

#### **CASE #I40A. Ilia University lecturer's homophobic statement on Facebook**

The raids of IDAHO march on May 17<sup>th</sup>, 2012 had caused massive response on Facebook. Giorgi Mikanadze who teaches banking jobs at the university published the following statement on his wall:

“The organizers of this LGBT rally should be beaten up. They are homophobes themselves, they who went there are scared and cannot stand the environment. I wonder who do they blame for their unhappy life?! I mean organizers, this is my position and I don't hide it! The majority's interests should be taken care of in the first place and only after that can we think of the minorities, if minority interests are at odds with majority interest... I think nobody should hold neutral position considering this issue and everybody must state their opinion. LGBT situation has never been new for the world, this is the kind of news that Georgian society cannot bear. This is something we will never accept. No one goes to their bedrooms and let the organizers too stay away from others “

„I work in five different organizations, and teach in other places too... It does not matter where I give lectures, it did not happen on a lecture. It would be different if I had been preaching about this issue on a lecture, but I live a free life and no one can forbid me anything”,— said Giorgi Mikanadze to the correspondent of Netgazeti. As for the threats, he says that it was said generally and he did not threaten a concrete person.

The rector of Ilia State University, Gigi Tevzadze thinks that blaming lecturer in homophobia is a serious charge, whether homophobic statements were done during a lecture or publicly, and academic council will discuss this issue.<sup>331</sup> However, later the rector changes his opinion: “Mikanadze made a statement in his private space and then publicly apologized. Regarding the discussion of the issue by the council, nobody addressed us, If someone has addressed we would discuss this concrete fact, but no one spoke out and addressed us officially”, - stated Gigi Tevzadze.<sup>332</sup>

#### **CASE #I40B. Tbilisi State University: Homophobic Psychology for Students**

One of the students at the Tbilisi State University has recently reported to us about a homophobic statement made by a professor during the lecture. According to our source, the lecturer called LGBT people “unhealthy perverts” in front of his students. This incident is even more alarming considering the fact that the above mentioned professor is working for the department of psychology and teaches those young people who might one day find LGBT people among their clients, and instead of offering adequate help, might violate their rights and cause them more psychological damage.

Identoba decided to follow the source and ask the professor himself whether or not what we heard was true.

Nugzar Baindurashvili is one of the professors in the department of social and political sciences at the Tbilisi State University, who lectures the future psychologists on developmental psychology, psychology of problematic children and experimental psychology. In his conversation with us, Prof. Baindurashvili stated his position clearly: according to him

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<sup>328</sup> Materials collected for LGBT discrimination survey.Q.13(2).

<sup>329</sup> Materials collected for LGBT discrimination survey. Q.13(2).

<sup>330</sup> Materials collected for LGBT discrimination survey. Q.32.

<sup>331</sup> Iliauni will discuss the lecturer's homophobia. Ani Berukashvili. Netgazeti. 06.08.2012. <http://www.netgazeti.ge/GE/105/Life/10219/>

<sup>332</sup> Iliauni didn't discuss the lecturer's homophobia. Ani Berukashvili. Netgazeti. 01.07.2012. <http://www.netgazeti.ge/GE/105/Life/10528/>

LGBT people are unhealthy and they need special approach and special help both from psychologists (in case they address one) and from family members and friends.

“People with such abnormal orientation often express the symptoms in childhood. Parents should pay much attention in order not to miss those signs and provide their children with timely help. It is impossible for a disease to develop without clear symptoms. Parents should be very careful not to miss the symptoms. Whether or not a person like this can be cured, is in God’s hands, no one can guarantee it, but we should at least try. For instance, psycho-correction can be successful. Patient should be treated as long as necessary and possible. We should try our best and cannot deny a person help assuming that the treatment could be unsuccessful. We cannot just leave these people be. When a person does something and fails, he/she often needs help and rehabilitation, in order to avoid depression. Psychotherapy can be efficient, but also problematic. First of all psychotherapists have a suspicious reputation. We don’t have many professional and qualified psychotherapists so it might be hard for the patient to be honest.”

It seems that Prof. Baindurashvili is unaware of the fact that “abnormal orientation” is an incorrect and discriminatory term and has been put out of use by the international health organizations, more than 20 years ago. Also, no one can take the assumption that homosexuality can be “cured” seriously today, especially when Prof. Baindurashvili himself questions the actual outcome of such a “treatment”. Thus, the only conclusion we can draw from his statement is that we should experiment on people, and especially children, not taking into consideration the fact the patient might not benefit from those experiments at all.<sup>333</sup>

NOTE: Identoba sent a letter to the university administration, with the request of reacting on public homophobic statements of university lecturers, though, none of the universities have responded yet.

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<sup>333</sup> Tbilisi State University: Homophobic Psychology for Students. ID mag. 01.25.2012. <http://identoba.org/6065>

## ***Appendix #6. Terminology***

**BISEXUAL** refers to a person who is attracted to both sexes.

**GAY** is a synonym for homosexual. It is sometimes used to describe only males whose primary emotional and physical attraction is to other males.

**GENDER** is a socially constructed concept, or social classification, of certain sets of behaviors, character traits and roles as “feminine” or “masculine.” Though the specifics of what may constitute feminine/female and masculine/male behaviors can vary across cultures, they uniformly impose a set of restrictions and rules on how each man or woman should behave in all areas of life.

**GENDER EXPRESSION** refers to the external manifestation of one’s gender, usually expressed through “masculine,” “feminine” or gender variant dress, appearance, mannerisms, speech patterns, and behavior. Gender expression is not necessarily an indication of sexual orientation or gender identity.

**GENDER IDENTITY** refers to a person’s deeply felt sense of identification with a specific gender, in relation to the social construction of masculinity and femininity. A person’s gender identity may be male, female, or something other than or in between male and female. A person’s gender identity may or may not correspond with the sex assigned at birth. Since gender identity is internal, one’s gender is not necessarily visible to others. Gender identity is different from sexual orientation.

**GENDER NON-CONFORMING OR GENDER VARIANT** describes individuals who do not conform to prescribed social “norms” regarding “gender appropriate” conduct and presentation, whether or not they identify with the gender associated with their sex assigned at birth.

**HOMOPHOBIA** refers to an irrational fear or hatred of homosexuality and people who are (or are perceived to be) homosexual. Similarly, biphobia refers to an irrational fear or hatred of bisexuality and transphobia refers to an irrational fear or hatred of transgender people. All of these phobias manifest themselves in harassment, prejudicial and negative treatment, violence and other forms of discrimination.

**HOMOSEXUAL** refers to a person whose primary emotional and physical attraction is to people of the same sex.

**INTERSEX** refers to when a person’s biological anatomy varies from the standards usually used to classify bodies as male or female. Intersex variations describe a large variety of conditions where a body varies from the male or female standard in areas such as chromosomes, hormonal makeup and genitalia. Intersex variations may be noticeable at birth or develop later in life.

**LESBIAN** refers to a female whose primary emotional and physical attraction is to other females.

**LGBT** is an abbreviation for Lesbian, Bisexual and Transgender. This umbrella term is meant to include lesbians, bisexual women, transwomen (male-to-female transgender persons) and transmen (female-to-male transgender persons). LBT women are sexually marginalized in their societies on the basis of their sexual orientation, gender identity and/or gender expression.

**SEX** is the classification of bodies as male or female. At birth, infants are assigned a sex based on the socially constructed understanding of a certain combination of biological characteristics as representative of either male or female. These characteristics include: chromosomes, hormones, internal reproductive organs, and genitals.

**SEXUAL ORIENTATION** describes an individual’s physical, romantic, emotional and/or spiritual attraction to another person, including lesbian, gay, bisexual and heterosexual orientations.

**TRANSGENDER** is an umbrella term for people whose gender identity, expression or behavior is different from that typically associated with their assigned sex at birth, including but not limited to transsexuals, travestis, transvestites, transgenderists, cross-dressers, and gender non-conforming people. Transgender people may be heterosexual, lesbian, gay or bisexual.

## **Appendix # 7. About WISG**

**WISG** is a non-governmental women's right organization established on 29 July 2000 by 8 women with different professions to unite our resources and who share the principles, that women should be involved in the activities directed to social changes.

**Our vision** is the justice, equity, and democratic society where all women are aware of their right and are able to participate in all areas of the life.

**Our mission** is to support democratic state building in Georgia; improving cultural, economic and social environment through the promotion of women's initiatives.

**Our key strategy** in terms of women's empowerment is consolidation of women through creation of groups and networks to make "changes from beneath".

WISG began activities addressing homophobia and LBT issues in 2002 (the first Georgian language web site concerning gender and sexual orientation – 2002. Within the frames of the programme WISG made the first Georgian language website [www.minority.ge](http://www.minority.ge) that contains scientific-popular information about sexual orientation, gender identity, and other forms of sexuality. In 2005, the survey on printed media (political homophobia) has been conducted. Within the frames of same project, WISG started collection of LBT women's oral histories and consequently, the first LGBT online magazine has been prepared. In addition, brief report on the situation of LGBT people was made. During 2007-2009 WISG was involved in the five years regional project funded by COC Netherlands. Initially WISG was represented as an initiative group within the project, and later from 2010 WISG received the status of national partner of the project.

Since 2010 **overall goal** for the WISG's Women's rights program is to support LBT women in having an absolute right and a full accessibility to participate in all the areas of life through empowerment of the group, advocacy and increasing the level of tolerance towards LBT group in society.

In this regard we define following directions:

- Empowerment of the LBT Group
- Promotion of healthy sexual lifestyle
- Raising public awareness
- Improvement of legislative base and its implementation

During 2011-12 WISG submitted application to the European Court of Human Rights (Application no. 7224/11: First case from Georgia to the European Court of Human Rights concerning police homophobia, ) prepared CEDAW shadow report concerning LBT women's situation in Georgia; conducted LGBT discrimination survey; prepared research on coverage of the issues of sexual orientation/gender identity in the media according to the situation of May and November 2011; analyzed homophobic hate speech for the years 2007-2011; Now WISG is working on guideline for journalists to promote of non-discriminatory coverage LGBT issues; on revealing and addressing of LBT women's needs in Health Care sphere, etc.

**Membership:** WISG is a member of **Eastern Partnership Civil Society Forum in Georgia**, **AWID** (an international, multi-generational, feminist, creative, future-orientated membership organization committed to achieving gender equality, sustainable development and women's human rights.); **ILGA-EUROPE** (Non-governmental umbrella organisation which represents its members, principally organisations of lesbian, gay, bisexual and transgender persons, at the European level), **IGLYO** (International Gay Lesbian Youth Organisation).

WISG's web sites: [www.women.ge](http://www.women.ge)  
[www.lesbi.org.ge](http://www.lesbi.org.ge)  
[www.minority.ge](http://www.minority.ge)

„ქალთა ინიციატივების მხარდამჭერი ჯგუფი“ (WISG) წარმოადგენს ქალთა უფლებებზე მომუშავე არასამთავრობო ორგანიზაციას, რომელმაც ჰომოფობიის საკითხებზე მუშაობა 2002 წელს დაიწყო. 2003 წლიდან ორგანიზაცია მუშაობს ჰომოფობიური სიძულვილის ენის კვლევაზე ქართულენოვან მედიაში. 2005 წლიდან (WISG)-ის ქალთა უფლებების პროგრამა ფოკუსირებულია ლბტ ქალების გაძლიერებაზე საქართველოში.

Women's Initiatives Supporting Group (WISG) is a non-governmental organization working on women's rights in Georgia. WISG started to work on the issue of homophobia in 2002. Since 2003 WISG has been working on research and analysis of homophobic hate speech in Georgian media. Since 2005 its women's rights program has been focusing on LBT women's empowerment in Georgia.



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