

Monitoring of the implementation of Committee
of Ministers' Recommendation CM/Rec (2010)5 on measures to
combat discrimination on grounds of sexual orientation or
gender identity in ARMENIA

“Right Side” Human Rights Defender NGO

2018

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ABOUT “Right Side” Human Rights Defender NGO

Right Side is a community based, democratic, human rights defender NGO, founded in January 2016 by trans activists in Armenia. It is the first and only NGO run by and for trans people in Armenia and in the South Caucasus region. Right Side works on national level and in Nagorno Karabakh Republic, which is a conflicted area between Armenia and Azerbaijan.

Mission - To ensure the well-being, protection and equality of the trans community in Armenia by achieving social-cultural and legal changes through cooperation with state bodies, civil society and with international organisations.

INTRODUCTION

2010 was an important year for the LGBT community in Europe with the enactment of the Recommendation on measures to combat discrimination based on sexual orientation and gender identity by the Committee of Ministers of the Council of Europe. This important document lists measures that countries should adopt in order to combat discrimination on SOGIESC grounds. In this report, “Right Side” Human Rights Defender NGO analyses the implementation of these Recommendations by Armenian state authorities and the progress made to improve the lives of trans people in Armenia. This is the first review of the implementation of Recommendations related to the trans community, as the last state report did not reflect the situation of trans people in Armenia. We hope that this review will help to improve situation of trans people in Armenia.

The Recommendations recognise that the LGBTI community has been subjected to homophobia, transphobia and other forms of discrimination and violence for centuries, with much of it still ongoing in many states. The Recommendations include a number of measures that can be applied in order to overcome discrimination, intolerance and social exclusion. Member States are expected to review existing legislative measures and collect relevant data in order to monitor the implementation of these measures, and to ensure that victims of discrimination and violence have recourse to legal justice.

Armenia (official name, Republic of Armenia) is a lower middle-income, landlocked country in the South Caucasus. It is geographically located in north-western Asia, but politically and cultural is considered a European country. Armenia gained its independence from the Soviet Union in 1991, and it was the first state that adopted Christianity as a state religion in 301. The modern Armenian Republic recognizes the Armenian Apostolic Church, the world's oldest national church, as the main religion in the country. The Constitution of the Republic of Armenia was adopted on 1995 by nationwide referendum. According to this constitution, the Republic of Armenia is a sovereign, democratic, social and legal state. Armenia is a member of the UN and the Council of Europe. The political regime in Armenia is broadly conforming to the category of “hybrid regimes”. In 2015, Armenia held a referendum and changed its form of government from a presidential to a parliamentary republic. Over the past three years, after the registration of “Right Side” Human Rights Defender as an NGO, trans people have become more visible and active in the public sphere. However, they still face regular threats of harassment, physical and psychological violence, hate speech and hate crime from the state and general society. Generally, trans people are still considered to be, at best, non-existent, and, at worst, deviant, immoral, abnormal and diseased.

METHODOLOGY

The questionnaire upon which the we draw findings of this report, is based on the 2012 questionnaire, with different sets of questions included, based on the structure of the

Recommendations. The questionnaire has been disaggregated into different parts, taking into consideration the jurisdiction of ministries and institutions to which the questionnaire was addressed. The general conclusion of the implementation of the measures is based on the answers in official correspondence with these institutions, as well from documentation and reports published by “Right Side” Human Rights Defender NGO.

Each chapter in this report starts with the passage from the Recommendation (2010)5.

HATE CRIMES AND HATE RELATED INCIDENTS

“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.”

Hate Crimes

Armenia does not: collect disaggregated data on hate crimes against trans people; sanction hate crimes on the basis of gender identity and expression; or take any specific measures to combat hate crimes. On the contrary, Armenian bureaucratic culture encourages belief in an idyllic situation in which the absence of various kinds of problems is desirable, and their presence a hindrance, implying that bringing problems to light will create a negative image of the police or the country as a whole. In practice, it means that state bodies act on the principle of "no data, no problem", which allows policy makers to ignore issues regarding trans rights.

Unfortunately, Armenian law enforcement bodies do not collect information about hate crimes, including offenses against trans people. Data on the situation of the trans community is extremely limited in Armenia. There is no data collection mechanism available, which could facilitate documentation of hate crime cases in a consistent and professional manner, enhancing trans visibility not only in society but also to the government. Violations of the rights of trans people are routinely excluded from national and international human rights reports produced by prominent general human rights organizations or by state bodies.

To remedy this situation, our organization, as a part of Armenian Civil Society, is attempting to fill this gap, raise awareness of the hidden problems in society, and advocate for change. “Right Side” Human Rights Defender NGO collected 100 cases (between 1st January 2016 and 31st October 2017). Most reports were collected via face-to-face interviews with victims and witnesses. Altogether, 76 trans people who were victims of hate crimes were interviewed, along with 24 witnesses. The monitoring project was funded by ILGA-Europe in 2017.

The vast majority (74%) of reported incidents took place in the capital city, Yerevan. 45% of all reported cases took place in cruising areas, with 15% happening in other public spaces. 10 incidents happened in Government offices, 5 in police stations and 1 at a border crossing point.

The majority of cases (77%) involved young trans people aged 18-30, although there were some reported cases from other age groups: 19 respondents were aged 31-45, 3 respondents were aged 41-60 and only one person was older than 61. The youngest respondent was 18 years old, the oldest was 63. Most of the respondents identified their sexual orientation as heterosexual. All respondents were “out” in some capacity in their lives except 7 witnesses, who said that they don’t belong to LGBTI community.

49% of all reported cases happened at night, with 19% taking place in the evening. There were only 8 cases in the morning and 14 in the afternoon.

Most of the incidents were threat of violence: 31% were insults, 19% were verbal abuse; and 12% involved physical violence. More than half of the incidents reported involved 1 perpetrator, 21 reported that there were 2 perpetrators and 14 cases were reported group of perpetrators (more than 3 people). The fact that the perpetrator knew their trans identity was mentioned by 39% of respondents. Only a few cases have been reported to the Police.

One incident involved a Yerevan City Council member and her husband attacking a transgender person in the building where the trans organisation is located. There is not much information about another case involving a public official as the perpetrator, as the respondent is too afraid for their life to speak about the perpetrator. 89% of all cases were reported to LGBTI NGOs, 1 case was reported to the General Prosecutor's Office, because the victim was not satisfied with the decision of the Police. None of the cases reported were considered by law enforcement as hate crime. Thus, police and other law enforcement officials are classifying transphobic violence as ordinary crimes or administrative offenses. The majority of victims seek legal assistance and advice from "Right Side" Human Rights Defender NGO.

In general, respondents mentioned fear of Police and lack of trust in reporting the incidents. As the report shows, trans people are targets of hate crimes in Armenia. Many trans people see the violence inevitable, thus they do not report the cases to Police and avoid visits to medical institutions.

There is no hate crime legislation in Armenia, and Armenian legislation does not recognize SOGIESC as aggravating circumstances in hate crime. However, Article 77 in the Constitution states that: "The use of basic rights and freedoms for the purpose of violent overthrow of the constitutional order, incitement of national, racial or religious hatred or propaganda of violence or war shall be prohibited".

The Criminal Code of the Republic of Armenia defines racism as a specific crime, and as a qualitative criterion of other crimes. **Article 143** defines a criminal liability for direct or indirect violation of human rights and freedoms as based on a number of protected characteristics, including race, ethnic origin, membership of a national minority, but not gender identity or expression. The same crime, if committed by a public officer and with the abuse of office, is prosecuted as aggravation of punishment. **Article 226** prosecutes criminal liability for incitement of national, racial or religious hatred, as well as for actions aimed at the racial superiority or humiliation of national dignity. If the same actions are committed publicly or by mass media, with violence or threat of violence, abuse of office, or by an organized group, they would be punished with a term of imprisonment of 3-6 years. Article **392** calls for a term of imprisonment of 10-20 years or life sentence for deportation, illegal arrest, enslavement, mass and regular execution without trial, kidnapping followed by disappearance, torture or cruel treatment of civilians, which must be committed on the basis of discrimination against racial, national, ethnic identity, political views and religion. Thus, Armenia's laws recognize certain

motives as aggravating factors, but not SOGIESC. **Measures that need to be taken to ensure protection of trans people from hate crimes have not been implemented.**

Recommendations

1. Introduce mandatory trainings of judges, prosecutors, police officers and civil servants in order to inform them about discrimination, hate crimes and incitement to hatred and violence against trans persons.
2. Develop a unique system for tracking hate crimes against trans persons, which would represent a specific register for collecting data on crimes which are motivated by hatred towards trans persons.
3. Adopt trans-inclusive hate crime legislation

Hate Speech

“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.”

In terms of hate speech, the level of transphobia is so high that the word “trans” itself is considered to be a profanity by general society. Although there are no studies or public reports on this, “Right Side” Human Rights Defender NGO has internally documented a number of cases of hate speech from general society, civil society representatives, public officials and media outlets against the trans community.

Armenia does not have specific legislation about hate speech, and protection and monitoring mechanisms are not available. Although Article 77 of the Constitution, which refers to prohibition of Abuse of Basic Rights and Freedoms, states that “The use of basic rights and freedoms for the purpose of violent overthrow of the constitutional order, incitement of national, racial or religious hatred or propaganda of violence or war shall be prohibited”, measures to combating all forms of “hate speech” against lesbian, gay, bisexual or trans persons have not been introduced. **Measures to protect trans people from hate speech have not been implemented.**

Recommendations

1. Update school curriculum to include lessons about SOGIESC.
2. Develop a unique system for tracking hate speech against trans persons.
3. Adopt trans-inclusive hate speech legislation.

FREEDOM OF ASSOCIATION, EXPRESSION AND PEACEFUL ASSEMBLY

“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.”

Freedom of assembly is a right guaranteed by the constitution of Armenia. There is no restriction on freedom of expression in Armenia, except in the exceptional cases provided by the Law on Dissemination of Mass Information, which does not affect the lives of trans people

Over the last couple of years, “Right Side” Human Rights Defender NGO has held a number of small public events on trans rights. On the whole, most of the public events were safe. Although there are no limitations registered by state bodies on organizing public events, to date there have been no significant LGBT rallies or demonstrations because the community itself is not ready to come out as it feels unsafe and unprotected.

FREEDOM OF ASSOCIATION

In the summer of 2017, a woman presenting herself as an employee of Yerevan Municipality illegally entered “Right Side” Human Rights Defender NGOs office and requested that the president of the NGO, L. Martirosyan, to show the documents of the NGO. Under pressure, L. Martirosyan presented the contract, during which the aforementioned woman requested that L. Martirosyan collect their belongings and move the office to another location, under threat of closing the NGO. During this period, an unknown man physically harmed one of the organisation’s beneficiaries at the entrance of the office and hit the president of the organisation, L. Martirosyan. On the same day, L. Martirosyan reported the case to the Police Department of Arabkir, requesting the opening of a criminal case. Despite all the efforts of “Right Side” Human Rights defender NGO, the Police, and later the General Prosecutor’s Office, terminated the case. “Right Side” Human Rights Defender NGO has never received answers to official letters to Yerevan Municipality and the President of Armenia, Serzh Sargsyan, who is the leader of RPA party. The woman, who presented herself as an employee of Yerevan Municipality, was Naira Nahapetyan, a member of Yerevan City Council of the Republican Party of Armenia.

This incident illustrates that public officials will abuse their power with impunity. **Measures to protect trans people's freedom of association and peaceful assembly.**

Recommendations

1. Conduct fair and appropriate investigation to ensure the protection of the rights of trans NGOs.

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

“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.”

“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.”

According to the Constitution, men and women of marriageable age have the right to marry and found a family according to their free will. The Family Code states two preconditions for marriage: the voluntary mutual accord; and the marriageable age.

On 3 July 2017, the Ministry of Justice stated that all marriages conducted abroad are valid in Armenia, including marriages between people of the same sex. According to the Family Code, marriages between Armenian citizens, those between Armenian citizens and foreigners or stateless persons, which have been registered outside Armenia, are valid inside the country after consular legalization. The article makes no reference to the sexes of the married partners and stipulates that marriages registered in another country which are in line with that particular state’s legislation are valid in Armenia

Trans people have access to legal gender recognition, but the process is very bureaucratic and is unregulated by policy. For name changes, the Ministry of Justice requires a mental health record from a psychologist that the person requesting a name change has been diagnosed as trans. For legal gender recognition, a medical case history detailing “sex change surgery” (not gender reassignment surgery) is required, which must include genital surgery. However, there is an absence of medical policies on gender reassignment surgeries. Although not regulated by law, trans people are wrongly diagnosed as intersex by surgeons in order to be "legally" allowed to perform surgery. The surgery to “correct the sex of the person” is performed by a professional invited from another country by the trans person and paid for by the trans person. There are no psychologists, endocrinologists or surgeons trained and educated on trans issues.

Official documents, including diplomas, birth certificates and driver licences, do not include a gender marker, with the exception of National IDs and passports. Thus, trans people do not need to change them, unless they changed their name.

In the case of a name change, a certificate issued by the Ministry of Justice regarding the name change is required when requesting a new National ID. With the National ID and name change certificate, a trans person can then request a new passport, birth certificate and other documents. For the name change, a diagnosis as transgender from psychologist is required.

Recommendations

1. Adopt legislation regarding equal marriage.
2. Adopt legislation to grant adoption rights.
3. Provide qualification courses to trans-specific specialists, such as endocrinologists and surgeons.
4. Adopt regulations, health protocols or other legislations to make GRS legally available.
5. Adopt legislation to make change of gender marker available based on self-determination.
6. Improve legal procedures for legal gender recognition, remove forced medical interventions and adopt accessible, transparent legal gender recognition procedures based on self-determination.
7. Adopt trans-inclusive codes of conduct and guidelines applicable to medical institutions.

EMPLOYMENT

“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.”

According to RA Constitution **Article 29**, “Discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, worldview, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited”. According to **Article 30**, “Women and men shall enjoy legal equality”. Article 29 also defines an open list (“personal or social circumstances”) of grounds or characteristics for anti-discrimination but does not include gender identity and/or expression, neither of which have been recognized under “other circumstances”. Armenia lacks anti-discrimination legislation covering SOGIESC grounds, and there is no official body to deal with discrimination cases.

The most vulnerable people among the LGBT community are trans people. Based on personal accounts and reports to “Right Side”, we know that trans people in Armenia are routinely

bullied and discriminated against in school, as a result of which most have not received higher education. This results in a lack of capacity to compete in the labour market, and employees discriminated against hiring trans people. The trans community is at very high risk of being homeless or victims of illegal labour/sex trafficking.

Recommendations

1. Take appropriate measures to ensure that trans people have equal access to education and employment, without discrimination on the basis of SOGIESC.
2. Train and educate public servants on SOGIESC issues in order to eliminate discrimination.
3. Adopt comprehensive anti-discrimination legislation to prohibit discrimination on the grounds of SOGIESC in all areas of life.

HEALTH

“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.”

The trans community reports to Right Side NGO an extremely high level of transphobia in healthcare institutions, a high degree of psychological and physical violence, an absence of medical guidelines on trans-specific health services, very expensive medical procedures required for transition, and no awareness of medical staff regarding trans issues. A needs-assessment was completed by “Right Side” Human Rights Defender NGO on “Access to healthcare service” in the winter of 2018. Focus group participants (including 15 trans people) mentioned that they have been bullied and discriminated against in medical institutions, which prevents them from accessing high quality medical services or basic visits to a doctor. Participants reported a discriminative approach from medical personnel, and linked the lack of knowledge on sexual orientation and gender identity from medical staff to the education system. Most of the focus group participants do not undergo regular medical check-ups of their health status, which is related to a lack of understanding of the importance of such check-ups and/or fear of being discriminated against at the medical institutions. When seeking medical support, trans people often face disrespectful attitudes, and are even openly refused provision of medical assistance. Participants indicated that they were faced with the actual denial of medical care due to a mismatch between their physical appearance, gender marker on their passport, and gender expression.

The state does not finance programs aimed at the prevention of sexually transmitted infections, or HIV/AIDS among trans people. Such programs are supported only by non-governmental organizations financed by foreign grants. Vulnerability to HIV among trans people in Armenia is high due to several factors. One of them is involvement in sex work. All participants involved in focus group who identified as trans women were sex workers. Another factor contributing to the high exposure to HIV is migration, which has been evolving in Armenia. Trans sex workers report that the main destinations for sex work are Turkey, Russia and Georgia. Not all participants were aware of what HIV/AIDS is, let alone the routes of transmission and methods of prevention, resulting in unprotected sexual intercourse. The fact that trans people, despite being at high risk of HIV, are omitted from the National Plan Against AIDS demonstrates lack of awareness within national authorities of the needs of this group and lack of political will to meet those needs. The need for effective prevention methods targeting trans people is critical, especially within the sex worker population. Furthermore, the trans community usually access HIV/STI services through MSM organizations, which use the same approach for treating the trans community as they do for the MSM community. However, trans people have different needs and current services are not tailored to those needs. **Trans women participants mentioned that they don't want to be identified as MSM, as they have spent their whole life trying to avoid "being men", and they experience transphobia when engaging with MSM organizations for HIV/STI services. One participant attempted to access STI/HIV testing at a specialized STI centre, but medical staff were unwilling to test her, as she was the first patient to present who had undergone vaginoplasty.**

Regarding gender reassignment procedures, the response from the Ministry of Health to a letter sent by "Right Side" in Spring 2018, stated that there is no legislation to regulate "sex change", although the Ministry of Justice requires a certificate about "sex change" for legal gender recognition. Gender reassignment surgeries are done secretly in Armenia, since there are no regulations or specialized surgeons. It is done by mutual agreement between a non-local surgeon (invited by the patient), an Armenian medical institution and the patient. Patients sign a document stating that they take full responsibility for the risks related to the surgery. Additionally, there are no specialized endocrinologists and usually trans people on HRT self-medicate. Some trans people mentioned that there is only one person who prescribes hormones, and that she prescribes the same hormones to all trans people that approach her, without consideration of differentiated treatment plans for individuals.

Recommendations

1. Revise textbooks and programmes in medical school and include information about SOGIESC.
2. Provide trans-awareness and anti-discrimination training to medical staff to eliminate discrimination against trans people while accessing healthcare services.
3. Provide qualification courses to trans-specific specialists, such as endocrinologists and surgeons.

4. Adopt regulations, health protocols or other legislation to make GRS legally available.
5. Adopt trans-inclusive codes of conduct and guidelines for medical institutions.
6. Create a plan to make an estimate of the size of the Armenian trans community and evaluate their risk for STIs/HIV/AIDS.
7. Include the trans community in the list of most-at-risk populations in the National Program Against AIDS.

GLOSSARY

Bisexual: a person who is emotionally and/or sexually attracted to persons of more than one gender.

Gay: a man who is sexually and/or emotionally attracted to men. Gay is sometimes used as a blanket term for lesbian women and bisexual people, as well as gay men. However, this usage has been disputed by a large part of the LGBTI community and gay is therefore only used in this report when referring to men who are emotionally and/or sexually attracted to men.

Gender: refers to people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours to male and female roles.

Gender Expression: refers to people's manifestation of their gender identity. Typically, people seek to make their gender expression or presentation match their gender identity/identities, irrespective of their sex assigned at birth.

Gender Identity: refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with their sex assigned at birth.

Hate Crime: offences that are motivated by hate or bias against a particular group of people. This could be based on gender, gender identity, sexual orientation, ethnicity, religion, age or disability (not exhaustive). Also known as bias crime.

Lesbian: a woman who is sexually and/or emotionally attracted to women.

LGBTI: Acronym for lesbian, gay, bisexual, trans and intersex people. This is the acronym that ILGA-Europe uses to reflect their advocacy priorities; their members may use different formulations to more accurately describe their own work, for example LGBTI*, LGBTIQ, etc.

Sexual Orientation: refers to each person's capacity for profound affection, emotional and sexual attraction to, and intimate and sexual relations with, individuals of another gender / the same gender / more than one gender.

Transgender/Trans Person/People/Man/Woman: a term referring to those people whose gender identity and/or a gender expression differs from their sex assigned at birth. It includes, but is not limited to: men and women with transsexual/transgender pasts, and people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which does not conform to social expectations of male or female gender expression. It can include the expression of gender through clothing, presentation or body modification, including surgical procedure(s) and/or hormonal treatment.

Transphobia: refers to negative cultural and/or personal beliefs, opinions, attitudes and behaviours based on prejudice, disgust, fear and/or hatred of trans people or against people who demonstrate variations in their gender identity and/or gender expression.

LITERATURE

- Access to healthcare and legal protection of trans community in Armenia, Needs assessment and policy brief, “Right Side” Human Rights Defender NGO, 2018
- Criminal Code of the Republic of Armenia
- Glossary, ILGA-Europe

https://www.ilga-europe.org/sites/default/files/glossary_october_2015_edition.pdf

- Family code of the Republic of Armenia
- Hate Crimes in the Republic of Armenia, Ara Ghazaryan, Stepan Danielyan, Collaboration For Democracy Centre, 2016

<http://www.v1.religions.am/eng/articles/hate-crimes-in-the-republic-of-armenia/>

- Report on hate crimes and other hate motivated incidents against trans people in Armenia, “Right Side” Human Rights Defender NGO, 2018
- The Constitution of the Republic of Armenia of 5 July 1995, with the amendments of 2015