Introduction

The Human Rights Situation of LGBT People in Armenia, 2017 report summarizes the cases filed to and documented by PINK Armenia, presents excerpts from interviews with LGBT persons, introduces the court cases filed in 2017 and publications from online and mass media.

The violation of LGBT people’s rights is presented in the report in the following structure.

1. Key provisions of human rights protection in national and international law that have been violated or restricted in the documented cases.

2. General description of cases involving violation of rights.

In 2017, discrimination of LGBT persons and restrictions imposed upon them were poignant particularly in terms of violations of the right to freedom of expression.

In May 2017, the Municipality of Yerevan instructed removal of billboards with LGBT-related PSAs. In July 2017, the Armenian Apostolic Church shepherded the removal of two LGBT-themed films from the "Golden Apricot" International Film Festival.

In 2017, one person died as a result of human rights violation based on sexual orientation. In early 2017, Zourab Nemsadze, a citizen of the Russian Federation of Georgian origin, committed a suicide. Zourab Nemsadze had arrived in Armenia upon the request of his partner in order to help him out of his parents’ pressures.

In 2017, the new draft Criminal Code was introduced to the public for discussions. Article 197 of the draft stipulated a ban on discrimination on the basis of sexual orientation, nonetheless omitting gender identity.

During the same year, PINK Armenia documented 30 cases of violations of rights on the basis of sexual orientation and/or gender identity. These violations were accompanied by discrimination.

8 of the cases are still being processed; 14 of the cases did not receive a legal follow-up due to several reasons; 4 of the lawsuits were terminated; no criminal investigation was initiated for 2 of the cases due to non-identification of the victim. In the event of these last 2 cases, the victims did not wish to have their identities disclosed, which resulted in the avoidance of reporting their violations to the law enforcement bodies. The termination of cases occurred as a result of a mutual agreement between the victim and the offender, and the victim retracted their complaint.

Another person who avoided filing a complaint against violations inflicted upon them was a mandatory conscript in military service. This was a reason for fearing to report a complaint against the actions of the military commanders with whom they had a dependency relationship.

Given that the human rights violations in the army were exclusively inflicted by the command staff, no measures have so far been taken to prioritize the safety of military servants and to investigate this specific case and to bring those in charge to accountability.

Amongst the cases that have not been followed up 8 are domestic violence cases.
are domestic violence cases. The victims did not wish to report against their family members. In these situations, the social worker of PINK Armenia got involved and provided social support both to the victim and their family members.

As for the rest of the cases, the victims did not wish to follow up with reporting to the law enforcement bodies on violations of their rights as they predicted a risk of their confidential information disclosure by these bodies, in addition to their distrust towards the law enforcement system overall and doubts for the possibility of the offenders to be held accountable. In these situations, the offenders were contacted privately and the continuation of the abuses was prevented.

There are 2 administrative and 6 criminal cases in legal procedures. Two of the criminal cases are still in a court trial, while a pretrial investigation of two of the other cases has been completed, but not yet sent to court.

The plaintiff of both administrative cases is PINK Armenia. The cases are under pretrial court investigation.

2 persons have turned to Armenia’s Human Rights Defender’s office; 1 through a written appeal and 1 by a phone call. In both cases, the complaint was related to illegal disclosure of private information.

This report is concluded with PINK Armenia’s recommendations to state institutions, mass media, international and regional organizations, the Ombudsman’s office. Implementation of these recommendations will secure a safe environment for LGBT persons in the society, where they will be full members of the society and will have an opportunity to successfully exercise their rights and freedoms.
1. The Obligation of the State to Respect and Protect LGBT People’s Human Rights

1.1 The Right to Life

1. Every individual has the right to life.
2. No one can be deprived of life arbitrarily.
3. No one can be sentenced or subjected to death penalty.

Article 24, RA Constitution

The state’s obligation to secure the realization of a person’s right to life presumes not only that the state shall not interfere directly in that realization, but also that the state shall protect it against attacks from private individuals. In other words, even if the state is not directly responsible for interfering with an individual’s right to life, this does not clear off the state’s responsibility when such a violation occurs. Nevertheless, the right to life must be interpreted in such a way that a disproportionately heavy load is not placed on authorities. In the event that a third party commits a violation, an encroachment on the right to life can be reported when it is established that the state was aware of or is obliged to be aware of the real and immediate danger inflicted by a third party to an individual’s life and, did not undertake, in the framework of its obligations, necessary and adequate measures to prevent this threat.

Pushing to Suicide

In February 2017, Zourab Nemsadze, a national of the Russian Federation turned to PINK Armenia and informed that he had arrived in Armenia upon the request of his partner who was being harassed in his family.

According to Nemsadze, the issue had arisen yet in 2015, when the mother of his partner had read her son’s private communication without his consent, had learned about her son’s sexual orientation and threatened to send him to a psychiatric hospital.

In early January 2017, Nemsadze arrived in Armenia to meet his partner. The latter’s parents learnt about his arrival and inflicted physical violence against their son and restricted his movement and threatened to disown him.

Around January 20, when Nemsadze had returned to Russia, his partner attempted suicide by taking pills and was hospitalized.

1 Article 24, Constitution of the Republic of Armenia, accepted 06.12.2015.
2 Angelova and Iliev v. Bulgaria, ECHR ruling N 55523/00,§ 93
3 Council of Europe Recommendation CM/Rec(2010)5 on “measures to combat discrimination on grounds of sexual orientation or gender identity”
4 Osman v. the United Kingdom, ECHR ruling N 23452/94
After the suicide attempt, he wrote to Nemsadze that his parents continually humiliated him, forcefully locked him in, used derogatory language and degraded him based on his sexual orientation and threatened to take to a psychiatric hospital.

At the beginning of February, Nesadze’s partner asked him to help him out of the situation. On February 9, the parents of Nesadze’s partner forced him to report to the police that Nesadze had had a sexual contact with him without his consent, had disseminated pornographic material featuring him.

On February 11, Zourab Nemsadze was found dead in his room at Ani Hotel. A criminal investigation was instigated based on pushing Zourab Nemsadze to suicide. The pretrial investigation is still ongoing.

Zourab Nemsadze’s partner’s complaint based on which a criminal case was instigated was later closed on the basis of his death; however, the investigator had found his guilt confirmed. PINK Armenia’s lawyer appealed this decision of the investigator to court, which subsequently satisfied it and found that Zourab Nemsadze’s guilt is not found. The case’s investigation is still in process.

**Threats**

The hostile and negative discourse against LGBT persons is a reason for people to hide their sexual orientation or gender identity for fear of shame and stigma. This is a pretext for abusers to take advantage of the vulnerability of LGBT persons and exploit them by means of threats.

In addition, threats are addressed at LGBT persons inside families when parents or other relatives learn of their child’s sexual orientation and intimidate to take them to a psychiatric hospital or quit education, restrict their movement and interaction with others.

There are also cases when LGBT persons are threatened with psychical violence when their sexual orientation or gender identity becomes public. Threats against LGBT rights organizations and individual rights defenders are not infrequent.

In 2017, Tatev Hovhannisyan, a former employee of the German Savings Banks International Cooperation (Sparkassenstiftung für internationale Kooperation e.V. Armenia), in her Facebook post called for attacking PINK Armenia’s office by disclosing the office address. The call was liked by many Facebook users. Tatev Hovhannisyan is a person who in the past had organized a meeting for the German International Cooperation Agency (GIZ) and PINK Armenia and had herself visited the office. PINK Armenia had to operate in an emergency mode for a week; no attack occurred.

In 2017, PINK Armenia documented 7 cases of threats when the offence was either directly aimed at forcing the victim to succumb to the desires of the offender, or the offence was accompanied by threats. Two additional cases of threats were reported by media.

According to one of the cases documented by PINK Armenia, the photo of a gay couple appeared in the hands of a third person who threatened to disclose it and afterwards actually carried out the threat.

In the event of another case, a third person had obtained the private correspondence of a homosexual man who explicitly talked of his sexual orientation. The third person threatened
to disseminate the correspondence if the victim refused to pay 30,000 AMD on a monthly basis.

In the event of the other two cases published in the press, the offenders had video-recorded their sexual intercourse with their partner and extorted a significant amount of money under the threat of publishing the video material.

5 “Video-recorded homosexual sex and demanded money for non-disclosure”, pastinfo.am, 09.04.17
6 “A man in Yerevan video-recorded sexual relations with another man and demanded money”, tert.am, 11.09.17
1.2 Right to Be Free from Torture or Inhumane, Degrading Treatment

1. No one can be subjected to torture, inhuman or degrading treatment or punishment.
2. Corporal punishments are prohibited.
3. Prisoners have the right to humane treatment.

Article 26, Part 1, RA Constitution

Torture is any act by which a state official or a person acting in an official capacity, or by their incitement and knowledge or tacit consent, intentionally inflicts severe pain or suffering, whether physical or mental, to gather information or a confession from a person or third party related to a crime committed by that person or a third party, as well as intimidation or coercion of a person or third party, or for any other reason based on discrimination of any kind. This characterization does not include pain or suffering arising from lawful sanctions, inseparable from those sanctions or derived from them inadvertently.

A person’s freedom from torture and ill-treatment is an absolute right and cannot be subject to limitation. In order to cause cruel treatment in violation of the rights of a person, it is necessary to reach a minimum level of severity; depending on the specific circumstances of the case, other factors should also be taken into account, such as the nature of the treatment, the context of what happened, its duration, its physical and psychological consequences, and in some cases, a person’s age, gender and health status. It is necessary to distinguish between torture and inhuman and degrading treatment, where torture is the intentional infliction of pain by a person that is very severe and causes cruel suffering, whereas degrading treatment can be considered the attitude of a person that causes a person to feel fear, threatened or in danger, and humiliation, harms the agency and reputation of the person, their human dignity, and makes the person act against their will or conscience. In some cases, discrimination and threats based on sexual orientation or gender identity can be considered degrading treatment. In these cases, it is not necessary to establish the intent on behalf of the state in order to recognize the violation of the right to freedom from inhuman or degrading treatment.

The Situation of LGBT People in the Armed Forces

In 2017, PINK Armenia suggested a meeting to the Defense Minister’s Human Rights and Integrity Center in order to discuss and find solutions to issues related to the conscription of GBT persons of military service age, as well as the problematic issues related to both legislative regulations and the actual situation during military service. The aim of the meeting was to make sure violations of the rights of GBT persons are excluded. The center responded that PINK Armenia needs to present specific cases in order for the center to start addressing them. PINK Armenia, understandably, cannot provide data revealing the identity of the alleged victims of offences as such disclosure will jeopardize their safety. This is the reason why the attempt of cooperation failed.

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7 Article 26, RA Constitution, adopted on 06.12.2015
8 Article 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN 1984
9 Pretty v. UK, ECHR ruling N 2346/02, §49
10 Price v. UK, ECHR ruling N33394/96, Costello-Roberts v. UK ECHR ruling N 13134/87, §30
11 Aydin v. Turkey ECHR ruling N 23178/94
12 East African Asians v. the UK, ECHR ruling N 4715/70, N 4783/71 and N 4827/71
13 Smith and Grady v. the UK ECHR ruling N 33985/96 and 33986/96
14 Pears v. Greece, ECHR ruling N 28524/95, as well as UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2001 Report, U.N. Doc. No. A/56/156, 2001
In 2017, PINK Armenia recorded a case when the command staff of the army, in violation of the conscript’s right to private life, learned about his sexual orientation. According to the information provided to PINK Armenia, while undergoing treatment at the military hospital, the conscript was visited by a deputy of a high command staff and informed that they are aware of his sexual orientation and telephone correspondence. Then the soldier was urged to write an explanation and repeat the content of the short messages on his phone. This demand was articulated and carried out in the presence of the medical staff, deputy commander of the military unit and a representative of the military police. After submitting the written explanation, the soldier was isolated in one of the hospital’s rooms. The next day this person, whose rights were violated, was granted a vacation from service and was promised that he would be released from military service upon his return on grounds of being infected with an intestinal virus. While this was a medical condition the person had, it was not so acute as to make him unfit for military service. His telephone was not returned to him under the justification that an investigation was ongoing.
1.3. Right to Private and Family Life, Honor and Reputation

1. Every individual has the inviolable right to a private and family life, dignity and reputation.

2. The right to an inviolable private and family life can only be restricted by law for national security, for the country’s economic welfare, to prevent or expose crime, and for the protection of public order, health, morals, or the fundamental rights and freedoms of others.

Article 31, RA Constitution

The right to a private and family life defines each individual’s right to recognition before the law, as well as the right to privacy. It includes the state’s obligation to recognize an individual’s sex and gender identity as provided by the individual exercising the right to privacy. “Private life” is a broad concept that includes a person’s physical and psychological integrity. In some cases, it also includes a person’s physical and social identity. In such circumstances, a person’s gender identification, name, sexual orientation and sexual life, for example, all fall within the context of personal and family life. A person’s body is the most intimate part of their private life.

The right to private and family life also anticipates ensuring the right to self-development and to establish and develop relationships with others, effective realization of personal relations, and the right to have a safe environment within a given community.

Assaults against Transgender Persons

PINK Armenia has been alerted that a man refused to pay the preliminarily agreed payment for the sexual services of a transgender person, threatened by holding a knife against the transgender person’s neck and forced to leave his home.

The victim reported to the police, a criminal investigation was instigated. During filing the complaint, the victim mentioned their concern that the investigation would not result in a fair ending. The case was later on terminated on grounds of missing evidence of a crime.

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Within a case filed to PINK Armenia, 4 people assaulted and beat a transgender person, after which the victim called the police. However, when the police arrived, the victim felt intimidated to open the door. The next day the victim personally visited the police department. At the police department, the victim was derided and maltreated by police officers.

The investigator urged the victim to give a false complaint, mainly that those beating were the victim’s clients. The victim refused to write a false complaint and left the police.

The case was investigated and referred to the General Jurisdiction Court of the first instance. Those beating the victim were charged for violating privacy in one’s own apartment as

15 Article 31, RA Constitution, adopted on 06.12.2015
16 Article 16, UN Covenant on Civil and Political Rights, 1966
17 See 35 Articles 16 and 17, Human Rights Committee General Comment 16
18 See 9
19 Y.F. v. Turkey, ECHR ruling N 24209/94
20 See 38
21 Connors v. the UK, ECHR Ruling N 746/01
defined by Part 1 of Article 147 of the Criminal Code, and for an unauthorized activity accompanied by violence or threat of violence as defined by Part 2 of Article 322 of the Criminal Code.

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PINK Armenia also documented a case in which a trans person cross-dressed in female clothes standing in Komaygi Park was approached by 6-7 people. One of them used swearwords and punched in the face and other parts of the trans person’s body. When the victim fell on the ground, the rest of the group attacked and starting beating. The beating was accompanied by swear words. After beating, all of the attackers left.

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A person told PINK Armenia that they were in Komaygi Park together with trans sex-workers, where unknown people approached and beat them.

Assaults on the Basis of Sexual Orientation

PINK Armenia received a complaint that a while walking along Northern Avenue a homosexual man and his male partner were called at with swear words by young men. The man approached them and responded with swearwords. One of the men in the group punched him in the face and then the entire group of men started beating him. The victim reported to the police, a criminal case opened. Later on, with doubts that the case will ever be investigated, the victim retracted the complaint from the police.

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A story was shared at PINK Armenia that a person fell victim to a robbery committed by their partner and three other collaborators.

After having met with the partner, they were approached by 3 people who presented themselves as policemen and intended to conduct a house ‘search’, informed that the person’s partner is sought for and needs to be arrested.

During the house search, the victim was confiscated of their tablet, recharger, passport, hat, scarf, gloves, supermarket card, Yunibank card and 2700 AMD.

The victim demanded that their items be returned. The two impostors promised that they would come back and would return the items, at the same time, they threatened that if the victim would follow them, they would arrest them too.

The victim actually followed them and heard the partner laugh. Having seen the following victim they all ran away. The victim ran after them and caught one of the guys who pretended to be a policeman. The partner saw this and came up and punched in the face of the victim.

When the partner intended to punch again, a car stopped nearby and the stranger from the car came and held the partner’s hands back. The victim turned to the police. The case is currently under court investigation.
According to a case documented at PINK Armenia, the parents of a person’s friend turned to the police with a notification that the friends of their child are engaged in sex work.

The person was taken to the police, forced to open their facebook account, to read the private communication related to the provision of sexual services and sexual orientation in the presence of other staff of the police.

The person was derided and maltreated in other ways at the police. The police also discovered the persons who had used the sexual services and arrested them.

PINK Armenia documented a case when a person was approached on the street at night by two men, one of which called out: “This is that fagot!” The person turned around, one of the guys attacked them and hit in the back.

Then the victim turned around, twisted the arm of the attacker and fell on him with their body. The other young men ran away. The victim called the police right away.

This case is in court at the moment.

A Facebook user by the name ‘Albert Sargsyan’ left a comment where the following was described: “10 days ago we beat up a fagot, we beat the blood out of his mouth, one of his green eyes was gone. I’ve kept the photo, whoever wants, I can send you how we picked the eye out with a spoon. In short, we made him disabled. The thing couldn’t even cry, was begging that we stop beating, at the end we decided to punch his balls so that he wouldn’t infect others with AIDS. So this guy is now disabled, without balls, with one blue eye.”

The post was followed by comments containing swearwords and confessions that it is not the first time they’re doing such things.

PINK Armenia reported to the police, however, no criminal case was opened due to a missing victim.

The Clergyman of the Armenian Apostolic Church has Withdrawn his LGBT-friendly Opinions

Father Vazgen Movsessian serving at the Western Diocese of the Apostolic Church in the USA, became a board member of the “Equality Armenia” LGBT rights organization.

Before becoming a board member, in the air of KPFK 90.7FM radio channel, Movsessian talked with Armen Abelyan, the founder of “Equality Armenia” about the importance of protection of LGBT human rights.

However, a letter signed by Vazgen Movsessian and addressed to the Catholicos appeared on the Facebook page of the Holy See, where Vazgen Movsessian denied that he was LGBT-

22 http://archive.kpfk.org/mp3/kpfk_171128_001500goharrison.mp3
friendly and a board member of “Equality Armenia” and that he only acknowledges marriage
between a woman and a man.

At the end of the letter, Movsessian apologized for causing undue concerns to the Catholicos.
Abel Abelyan wrote on Facebook that Movssian had received death threats.

**Firing a Homosexual Professor from the University**

A case was documented with PINK Armenia that after having taught at a university for
several years, a professor was no longer assigned classes. They got a phone call from the
head of the Chair that according to the Rector’s ordinance of 2017-2018, they would no
longer be assigned classes as the rector had heard bad things about them.

It was further clarified that they “should stay away from kids if they want to keep the honour
of the university shameless.”

According to the victim, the reason for being fired was that the rector and the head of the
Chair became aware of their sexual orientation. Having fears that their sexual orientation
would be revealed to their family, the person was forced to leave Armenia.

**Domestic Violence**

In 2017, PINK Armenia documented 8 cases of domestic violence, wherein as a result of 1
of the cases a homosexual man committed a suicide (see section on Right to Life). Often
families learn about their member’s sexual orientation by violating their private space,
reading private correspondence in social media and phone messages.

There are also cases when a person’s sexual orientation and gender identity is revealed by
family members who decide to kick the person out of home, often keep them under house
arrest, and often deprive them of the opportunity to attend an educational institution.

Besides, parents threaten their children with taking to the psychiatric hospital, and often
they do so if the child persists that they are indeed homosexual.

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A case was recorded at PINK Armenia, when someone’s aunt and mother, having read their
family member’s messages in social media, learned about their homosexual relations and
decided to place them under house arrest, depriving of means of communication, restricting
meetings with friends and attendance to the university.

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In another case documented by PINK Armenia, the parents of a person learned about their
sexual orientation and kept them under house arrest, banned interaction with friends and
threatened to take out of university.

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In another case, the parents learned about their child’s sexual orientation and inflicted
physical and psychological violence against them and threatened to forbid attendance to
college.
The child left home and started living at a friend’s place. The father met the friend and punched them. The friends chose not to turn to the police as they didn’t want to deepen the conflict.

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In another case, the parents learned about their child’s homosexuality, turned to violence as a result of which the victim promised to “straighten up.”

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In another case, the parents learned of their child’s homosexuality and kicked out of home, rejected to accept back home if they attempted to return.

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There was a case when the brother of a homosexual person learned about the person’s sexual orientation, kicked out of home and didn’t allow to come back, then changed the door lock in order to forbid this person to be able to access the house.

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According to another case, the brother of the victim read their telephone correspondence and learnt about their sexual orientation and informed the entire family, after which the victim’s father turned to physical violence and maltreated them. Then the father demanded that the victim leave home denouncing his parenthood. The person turned to PINK Armenia for shelter.

The brother, who had taken phone numbers from their phone, called the victim’s friends and PINK staff members, called names and threatened to annihilate them once found.
1.4. Freedom of Expression

... Everyone has the right to freedom of expression. This right includes the freedom to have a personal opinion, to seek, receive and disseminate information and ideas without the interference of state and local authorities and regardless of state borders.

Article 41, RA Constitution 23

Freedom of speech, one of the pillars of a democratic society, includes speech of any form and content of expression, including the right to express gender identity, which involves the expression of ideas, opinions and information about a person’s identity.

Freedom of speech is not an absolute right and is subject to certain restrictions. 24 It does contain the freedom to disseminate ideas and opinions, however, at the same time sets out an obligation to avoid such expressions about other individuals that violate their rights. 25 More specifically, freedom of speech does not entail freedom of hate speech. 26

Hate speech covers “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities and other groups...” 27

The Attitude of the Yerevan Municipality

On May 25, 2017, PINK Armenia commissioned social ads on billboards in the center of Yerevan advocating tolerance towards LGBT people. The ads were installed by Nushikyan Association advertising agency. On May 27, however, the ads were removed at the instruction of Yerevan municipality.

The municipality informed that the decision was due to the fact that they were not asked for permission. Nushikyan Association clarified that they normally do not ask for a permission from the municipality and there was never a case for the municipality to remove the ads if the content of the ads had no violation.

PINK Armenia suggested Nushikyan Association request a permission from the municipality in order to re-install the ads, however, the advertising agency refused to do this.

23 Article 42, RA Constitution, adopted on 06.12.2015
24 UN Human Rights Council, General Comments N 34
25 Erbakan v. Turkey, ECHR ruling N 59405/00
26 UN Human Rights Council, General Comments N 11
27 Council of Europe Committee of Ministers, Recommendation No. R (97) 20 to member states on “hate speech”, adopted on October 30, 1997
Later on, PINK Armenia attempted to have these ads installed by other advertising agencies, but to no avail, they all rejected.

PINK Armenia has sued the municipality at the administrative court of Armenia with a demand to recognize the actions of the municipality as an intervention into the plaintiff’s right to freedom of expression and freedom from being discriminated, to recognize the actions overall unlawful and to take measures to have the ads re-installed.

The Attitude of the Ministry of Culture

In 2017, PINK Armenia turned to the Ministry of Culture with a request to recognize the billboard posters and video clips promoting tolerance towards LGBT+ persons as public service announcement (PSAs). The Ministry of Culture rejected the proposal with the justification that the public is already aware of the existence of persons with a “nontraditional” sexual orientation and that the ads do no address any issue of social importance and do not contain any element of public awareness raising. One of the reasons for the rejection was also the QR codes and addresses visible in the ads. The republican committee under the body authorized for oversight over implementation of the regulations on social advertising rejected to recognize these ads as PSA with the following voting results: 0 in favour, 0 abstaining, 11 against. This decision compelled PINK Armenia to file a suit with the Administrative Court with a claim to recognize the action of the Ministry of Culture impeding the plaintiff’s right to freedom of expression and being free from discrimination, overall unlawful and to oblige to recognize the ads as PSAs.

Removal of Films from the Golden Apricot Film Festival

The fourteenth Golden Apricot International Film Festival included “Listen to me” documentary film about LGBT persons and “Apricot Groves” feature film about transgender persons in its out-of-competition rubric. The entire rubric’s films were supposed to be screened at the Henrik Malyan theatre owned by the Union of Cinematographers of Armenia. A public outcry erupted in social media and several media outlets around the films a few days before the opening of the festival. Nonetheless, Harutyun Khachatryan, the director of Golden Apricot Film Festival declined the offer to organize the screenings at a new venue. A few people had called up Golden Apricot organizers, the Union of Cinematographers, Yerevan Municipality and Ministry of Culture with a demand to ban the screening of the films. As a result, the Union of Cinematographers denied screening the films.

At the opening press conference of the festival, director of Golden Apricot film festival Harutyun Khachatryan informed that the Union of Cinematographers had told him that they are grieving the death of the Chairman of the Union Ruben Gevorgyants and cannot screen such films.28 On the opening day of the festival, a group of people were protesting against the

28 The new administration of the Union of Cinematographers has declined screening films about the LGBT community at “Golden Apricot”: Harutyun Khachatryan, tert.am, 07.07.17
screening of the film with posters “no to preaching perversion”.

Later on, we became informed that the Armenian Apostolic Church had urged the Golden Apricot to remove the films from the festival, which eventually was executed.

"Apricot Groves” Feature Film

"Apricot Groves," a joint Armenian-Iranian production by Pouria Heydari and Armenia’s National Film Center, is about a trans person. After payment to the Film Center and approval of the script, a contract was signed by which the Film Center committed to organizing the screening of the film in Armenia’s movie theatres.

However, according to Heydari, the Film Center did not comply by the contract and refused to organize screenings and send the film to film festivals due to its theme. The Film Center also demanded to withdraw its name from the film.

Heydari had also turned to movie theatres to organize the film screening, however, the theatres would decline this request by various justifications.

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29 Golden Apricot enters the scene with protests, photos, a1plus.am, 07.09.2017
30 Holy See urged “Golden Apricot” not to screen the films on LGBT persons, epress.am, 13.07.2017
1.5. The Right to Freedom from Discrimination and Hate Speech

Discrimination based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion, worldview, political or other views, belonging to an ethnic minority, status of property ownership, origin, disability, age or other private or social factors, is prohibited.

Article 29, RA Constitution

The ban on hate speech and on speech containing intolerance implies not only that the state must not disseminate such speech, but also a responsibility to take appropriate measures to ensure that such speech is not encouraged by third party persons. In this regard, it is the responsibility of the state to take legislative and other measures to prevent the spread of intolerant and hate speech toward people in certain platforms and forms of content dissemination.

Hatred against LGBT persons was heightened particularly after the removal of LGBT PSAs in downtown Yerevan and 2 films, “Listen to me: Untold Stories Beyond Hatred” documentary and “Apricot Groves” feature film from the Golden Apricot International film festival.

A number of media outlets and journalists contributed to the discrimination of LGBT persons, and even to the dismantlement of the social ads and the removal of the LGBT films from “Golden Apricot”.

Artur Hovhannisyan of irates.am was calling upon people both in his Facebook page and the media, to make phone calls to Golden Apricot, the Union of Cinematographers, Yerevan Municipality and Ministry of culture with a demand to remove the films. Levon Sardaryan, an anchor at the Public TV channel wrote on his Facebook “I was personally against the screening of these films at Golden Apricot. But I didn’t utter a word on this topic, moreover, I didn’t push my opinion right? How come that now every shitty fagot is availing themselves the right to qualify me as regressive, and at occasion also to throw swearwords at me? Listen, you, I’ll slap your asses so long that you become a branch of PINK Armenia. Behave yourselves!”

Besides those media outlets that have been writing anti-LGBT materials, a number of attorneys headed by the head of the Chamber of Advocates of Armenia, Ara Zohrabyan, also joined this hate speech and discrimination promotion. Back in 2017, Zohrabyan demonstrated his discriminatory attitude towards LGBT persons a few times.

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31 Article 29, RA Constitution, adopted on 06.12.2015
32 Ozgur Gundem v. Turkey, ECHR ruling N 23144/93
33 The facebook post of the Public Television anchor
Commenting on the removal of the LGBT-themed films from “Golden Apricot” (see section on Right to Expression) Zohrabyan said that his attitude towards LGBT people is negative and that he was happy that the films were removed from the festival, which he justified with the law on protection of the rights of children and Christian faith.\(^{34}\)

Zohrabyan also demonstrated his discriminatory attitude towards LGBT persons while speaking against Article 197 of the draft Criminal Code, as he didn’t like the formation by which discrimination on the basis of sexual orientation was banned. He said: “There may be people who may decide to start eating dung and will start a movement. For example, they may create a union of dung eaters, will take the streets, will go to schools and will preach that this is the right thing.”\(^{35}\)

Comedy shows are also part of this discourse. Actor and stand-up comedian Hovhannes Davtyan, whose Facebook page has more than 91,000 likes and whose YouTube channel has 21,000 subscribers, turns to the theme of sexuality from time to time and insults LGBT people and incites hatred towards them.

This comedian, for example, calls a transgender person a monkey, slobber, a street dog, and accuses the police and heads of the government that they do not annihilate them.\(^{36}\)

The Attitude of State Officials Towards LGBT Persons

In 2017, there was a trend among the state officials to avoid responding to the questions regarding LGBT people, whereas in previous years they would express their unambiguous negative attitude. Some of the state officials did confess that they would not answer questions regarding the LGBT topic directly.

In their 2017 election campaign for the parliament, of the 9 political parties participating in the race, only one party mentioned anything about LGBT issues and that being the following: “to consistently fight against various newly emerging “western” phenomena in Armenia, such as homosexuality, same-sex marriages, transgenderism and other such manifestations that go against our people’s mentality and traditions.”

“Partnership for Open Society” initiative had sent a questionnaire to the political parties participating in the electoral race. Amongst many questions, they also asked whether homosexual people should have the same rights as other citizens.

Of the 9 parties, only 4 responded to the questionnaire – Armenian Revolutionary Federation (ARF), “Yelq” Coalition, “ORO” Coalition and “Free Democrats.”

All these parties and/or coalitions had responded “yes” to the question. However, as a follow-up to this response, LGBTnews.am website called them up and further inquired about the extent to which they meant “yes”. Gayane Manukyan, the PR representative of ARF, was perplexed\(^{37}\) when she learnt that the answers were publicized. Specifically, she had clarified that these persons have a right to vote.

RA Prosecutor in Chief, Gevorg Kostanyan

RA prosecutor in chief, Gevorg Kostanyan avoids speaking about the human rights of LGBT people.

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\(^{34}\) Hovhannes Davtyan’s stand-up show

\(^{35}\) What did ARF mean by answering “yes”? LGBTnews.am, 31.03.2017
In his interview to LGBTnews.am, to the question on whether he indeed does not see discriminatory attitude towards LGBT persons, the prosecutor in chief responds that he does not have information on the topic and would not like to speak about it.

To the remark of the journalist that it is not plausible that he has no information about the question, Kostanyan smiles and says: “I chose to answer in that manner.”

**Parliamentarian Mihran Hakobyan**

Mihran Hakobyan of the Republican party, in his interview to LGBTnews.am also mentioned that he had no information on the issues of LGBT people.

Member of the Eurointegration Committee of the Parliament, Hakobyan reacted to the journalist noting that he was avoiding the question by saying: “The more directly you ask that question, the less directly will I answer.”

**Parliamentarian Naira Karapetyan**

Another member of the Republican Party, again a member of the Eurointegration Committee of the parliament, Naira Karapetyan believes that it is LGBT people that in reality make up problems for themselves.

To the LGBTnews.am question whether the MP does not see a discriminatory attitude on the basis of sexual orientation, she responded: «Sexual minorities, according to me, are creating problems for themselves, making them up and then fighting against them.” She then refused to continue the interview.

**Parliamentarian Ruzanna Muradyan**

Ruzanna Muradyan of the Republic Party, in her interview to LGBTnews.am in 2015 mentioned that she does not consider the rights of LGBT persons human rights, whereas in a brochure published by her NGO called “Education without Border” in 2017, school children are taught tolerance towards sexual minorities.

Given this, LGBTnews.am decided to talk to MP Muradyan once again to check whether her attitude towards LGBT persons had changed. She mentioned that she does not give commentaries on this topic. To the question of the journalists, why? She answered: “I am conservative, don’t turn to me with those questions.”

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38 Gevorg Kostanyan to join those “who do not have information on the topic”, LGBTnews.am, 24.03.2017
39 I haven’t studied this area, I have no opinion, Republican Parliamentarian, LGBTnews.am, 23.10.2017
40 MP Naira Karapetyan of the Republican Party believes that LGBTI persons are making up problems themselves and then fighting against them, LGBTnews.am, 10.20.2017
41 I am conservative, don’t turn to me with those questions: Republican Ruzanna Mouradyan, LGBTnews.am 19.09.2017
Parliamentarian Suren Manoukyan

Parliamentarian Suren Manoukyan of the ARF does not view LGBT persons with a “normal eye.”

In his interview to LGBTnews.am, he expressed his opinion that the people are not ready to view LGBT persons with a «normal eye” either. To the question whether he would vote for or against laws on LGBT rights, he said he didn’t know.

Parliamentarian Vardan Bostanjyan

Vardan Bostanjyan of Prosperous Armenia party, also chairman of the Standing Committee on Science, Education, Culture, Youth and Sport, in an interview to Iravunq newspaper on the removal of LGBT-themed films from “Golden Apricot” film festival (see section on Freedom of expression) said: “It is useless to ask this question to me. I treat [them] terribly bad. Maybe I am a regressive patriarchal man. Out of manners, I don’t want to use other words. I don’t understand who is promoting, contributing, financing, funding. In any case, the Armenian people... at least, I would prefer to die than know that there is “homosexualism” in Armenia.”

Parliamentarian Mane Tandilyan

Parliamentarian Mane Tandilyan of “Yelq” coalition believes that the issues of LGBT people are not yet a high priority on the agenda.

According to her, the public and the state should be prepared to protect basic human rights and no “artificial” laws should be adopted.

To the LGBTnews.am question on how would she vote at the parliament on a law regulating the marriage of LGBT persons, she responded: “I will think about it if it will be high on the agenda. I don’t think this issue is high on the agenda for our society.”

Yerevan Municipality Official, Araz Baghdasaryan

After the removal of social ads promoting tolerance towards LGBT persons in Yerevan (see section on Freedom to expression), Araz Baghdasaryan, head of Yerevan municipality’s Department for Exterior Design and Advertising, urged the journalists to never ask him questions on this topic. “I don’t want there to be a new conversation on this topic because of me, because as a specialist of advertising, I believe that our discussions are a better advertisement to what is secret than if it would be posted in some 3 places in the city. That’s the reason, excuse me, I will not touch on this topic”.

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42 ARF MP not viewing LGBTI persons “with a normal eye”, LGBTnews.am, 19.11.2017
43 “Iravunq”: I wish i’d die and then learn that there is homosexualism in Armenia, Vardan Bostanjyan tert.am, 07.07.17
44 I don’t think this issue is a high priority on the agenda at the moment: Mane Tandilyan on homosexual marriages. LGBTnews.am, 03.11.2017
45 Municipality official on the LGBT-themed ad: “These discussions serve towards advertising the issue more”, aravot.am, 29.05.2017
2. The Obligation of the State to Secure Individuals’ Rights and to Establish a Safe Environment

Golden Apricot” International Film Festival has become a carrier and advocate of high taste, true art, and ideas of peace-loving and humanitarianism”, - are the words of President Serzh Sargsyan at the closing of the 14th Golden Apricot film festival, after the removal of two LGBT-themed films from the festival (see section on Right to Expression).

It is not the first time that Serzh Sargsyan speaks about humanitarianism and tolerance with violations of LGBT rights in the backstage. This leads to concluding that humanitarianism for the authorities is applicable to only a fragment of Armenia’s citizens, and discrimination of LGBT persons comes into a conflict with the state obligation enshrined in the constitution to secure the rights of individuals and to establish a safe environment.

While Armenia’s constitution bans discrimination (Article 29), various regulatory gaps do not allow for LGBT persons to fully exercise their rights.

In 2017, the government of Armenia initiated discussion of the new draft Criminal Code, where Article 197 was formulated in the following reading: “Discrimination is direct or indirect violation of human rights, freedoms and rightful interests on the basis of sex, race, color, ethnic or social origin, genetic characteristics, language, religion, worldview, political or other views, belonging to national minority, status of property ownership, origin, health condition, disability, sexual orientation, age or private or other social factors. Discrimination is punishable by a fine not exceeding a maximum of 20-fold of minimum wage, or by public works not exceeding 80 hours, or by restriction of freedom not exceeding two years of confinement.

The clause misses out discrimination on the basis of gender identity. Still, various anti-LGBT groups and Ara Zohrabyan, head of the Chamber of Advocates of Armenia, expressed their objection to this formulation. It is important to note that the government must be guided by the state’s obligation to secure the rights of individuals and to establish a safe environment, otherwise following the anti-LGBT groups, it will fail its obligation.

46 At the backstage of banning LGBT-themed films at Golden Apricot, Serzh Sargsyan speaks of humanitarianism, epress.am, 08.02.2017
Conclusion

In 2017 too, the authorities of Armenia demonstrated their indifference towards securing a safe environment and safe state for LGBT people. In addition to this, a number of state institutions, such as the Ministry of Culture, Yerevan municipality and other state bodies intervened and obstructed the rights of LGBT persons. The Ministry of Defense declined PINK Armenia’s offer to discuss and find joint solutions to the issues of LGBT persons in armed forces. By this, the Ministry of Defense demonstrated that it is not concerned with the dignified service of LGBT persons.

While there is a change in the rhetoric of state officials in comparison with previous years, as manifested by the transition from outright anti-LGBT propaganda to avoidance of speaking about LGBT persons, their actions continue to demonstrate that they differentiate LGBT persons from the other groups of the society and that LGBT persons cannot make their call to the public.

Having all of this at place, there are still people at the authorities who do not believe or are not aware that LGBT people’s rights are in violation in Armenia.

Oppositional figures also avoid bringing the issues of the human rights of LGBT persons onto their political agendas.

In 2017, the interference of the Armenian Apostolic Church against LGBT persons was extraordinary. Besides the fact that the Church has an explicit negative position towards LGBT people, in 2017 the Church influenced public and cultural life and decision-making, by obstructing the right of LGBT persons to expression, by exerting pressure against clergy members who were supportive of LGBT.

The lack of regulations related to LGBT people leaves an impression among some people that they can avail themselves to assault LGBT persons, threaten or deceive them, physically abuse them in families and deprive them of the right to speech. This is also catered by the widespread negative attitude towards LGBT people often heightened by state officials, the church, certain media outlets and attorneys, as well as some celebrities.
Recommendations

To state bodies and political forces:

- Damaging statements that incite hatred and discrimination against LGBT people from representatives of state bodies must stop. Take appropriate measures to prevent hate speech against LGBT people that incite hatred and intolerance from representatives of state bodies, and hold those who do spread hate speech accountable.

- Realize complete, objective and thorough investigations of the violations of rights of LGBT people, without discriminatory, prejudiced attitudes towards LGBT people by investigative bodies.

- Take appropriate measures to ensure the safety of LGBT people in closed institutions to prevent cases of cruel and degrading treatment, and conduct proper investigations when such cases arise. Do not shun cooperating with human rights organizations that work to abolish the issue.

- Take appropriate steps to prevent discrimination against LGBT people in state bodies, through inter alia, training, awareness-raising, and other measures involving servants at the police and prosecution authorities, and the judges.

- Adopt a separate, comprehensive legislation that will prevent and prohibit discrimination and define civil, administrative and criminal responsibility, and that will ensure individuals’ protection from discrimination on the grounds of sexual orientation and gender identity.

- Review the RA legislation that prohibits hate speech, and define the concept of “hate speech,” and put into force a ban on hate speech, intolerance against people with certain characteristics, including LGBT people.

- Review the RA legislation that prohibits hate crimes, expressly consider a crime committed against a person on the grounds of their sexual orientation and/or gender identity as an aggravating circumstance in criminal liability and punishment.

- Develop and implement mechanisms to ensure a comprehensive and objective investigation of crimes based on sexual orientation and gender identity, including developing appropriate legal and procedural mechanisms for identifying the motive of the crime.

- Encourage the victims of hate crimes, as well as witnesses to report on crimes committed.

- To document and conduct statistics on hate crimes in Armenia, including on the basis of sexual orientation and gender identity, thus making the issue of hate crimes visible in Armenia.

- Ensure that hate crime victims have access to justice. In particular, envisage effective mechanisms for the protection of human rights, which will exclude the risk of double victimization, ensure the safety of the individual and provide comprehensive compensation mechanisms for damages.

- Promote the concepts of tolerance and equality within state bodies, particularly among the parliamentarians of the National Assembly, representatives of the government of the Republic of Armenia and other officials.

- Promote the concepts of tolerance and equality in society, particularly with public statements that promote tolerance and that recognize LGBT people as full members of society and as citizens.
Not avoid talking and looking into issues of LGBT human rights violations. Bring the issue onto the public agenda.

**To mass media:**
- Stop publications that incite hatred and intolerance toward LGBT people and give the public educated, unbiased, ethically acceptable materials that respect the human rights of LGBT people.
- Do not exploit topics concerning LGBT people in media reporting, thus avoiding the spread of hatred and intolerance.
- Take measures at the level of editorial policies aimed at stopping journalists from disseminating hate speech.
- Stop biased coverages that give a voice to groups harassing LGBT persons.

**To international and regional organizations:**
- Accurately monitor the implementation of international commitments on the rights of LGBT people undertaken by the Republic of Armenia.
- Publicly stand in support of LGBT people and the protection of their rights in Armenia with official announcements, stressing the importance and priority of defending their rights.
- Refer to the practices of violations of the rights of LGBT people raised in this report in their own reports concerning human rights.

**To the human rights defender’s office:**
- Increase public awareness about discrimination and its negative consequences, as well as the importance of the principles of non-discrimination and equality.
- Raise public awareness about the illegality of hate speech and its dissemination.
- Advocate for developing a strategy to create and adopt an effective law on Equality, as well as define effective measures for the protection of LGBT persons in other legal documents.
Annex 1

Discrimination on the Basis of Sexual Orientation or Gender Identity

Article 29 of the RA Constitution stipulates: discrimination based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion, worldview, political or other views, belonging to an ethnic minority, status of property ownership, origin, disability, age or other private or social factors, is prohibited.  

Discrimination is an act, inaction or regulation that is expressed by differentiating, excluding, restricting or privileging the rights and freedoms of people without any objective ground and reasonable proportionality between the pursuit of the rightful ends and chosen means on the basis of sex, race, color, ethnic or social origin, genetic characteristics, language, religion, worldview, political or other views, belonging to an ethnic minority, status of property ownership, origin, disability, age or other private or social factor, be it real or imagined.  

The forms of discrimination are: direct, indirect, incitement of discrimination, harassment, segregation, victimization and accompanied (associated) discrimination.  

European Human Rights Court’s rulings on Nachova and others v. Bulgaria and Virabyan v. Armenia interpret discrimination as expression of a differentiated attitude to persons in the same situation without any objective grounds and reasonable explanation, in other words, when means do not pursue a rightful end and there is no reasonable proportionality between the means and the pursued rightful end.  

Vejdeland and others v. Sweden ruling sets out that discrimination on the basis of a person’s sexual orientation is as problematic as discrimination on the basis of race, origin, color.  

Despite the availability of a large bulk of norms prohibiting discriminatory treatment, none of the norms directly prohibits discrimination on the basis of sexual orientation and/or gender identity. This leads to a differentiated attitude towards LGBT persons both when they exercise their rights and when they attempt to reclaim their rights violated by others, the state and the local governance institutions.  

In its 2017 report, the Coalition for Equality and Anti-Discrimination notes that 36 cases of human rights violations associated with discrimination were documented in 2017. The majority of the cases (77%) were related to discrimination based on sexual orientation or gender identity.  

Discrimination against LGBT persons is accompanied by a number of human rights violations, namely the right to life and health, right to personal and family privacy, right to free movement, to education, labor rights. Reports prepared by a number of local and international

46 RA Constitution, 2015, Amended, Article 29  
47 RA Draft Law on Ensuring Equality, 2018, Article 4, Part 1  
48 Is there a Need for Adopting a Separate Law on Anti-Discrimination, legal analysis, Yerevan, 2015, p 12.; RA Draft Law on Ensuring Equality, 2018, Article 4, Part 2  
49 Nachova and others vs. Bulgaria, 6/07/2005; Virabyan v. Armenia 02/10/2012, §199  
50 Vejdeland and others v. Sweden, N 1813/07, 09.02/2012  
51 Prohibition of discrimination and equality before law are set out in the European Convention on Protection of Human Rights and Fundamental Freedoms /Art 14/, RA Law on Civil Trial /Art. 3 and Art. 11/, RA Criminal Code /Art. 6/, RA Criminal Trial Code /Art. 8/ and a number of other legal acts. See Is there a Need for Adopting a Separate Law on Anti-Discrimination, legal analysis, Yerevan, 2015, pp 10-11  
52 Non-Discrimination and Equality Coalition, 2017 Report  
organizations highlight that prohibition of discrimination at the level of Constitution is not sufficient for comprehensive, complete and objective investigation of discrimination cases, as the courts are not sufficiently specialized in applying the Constitution directly on the one hand, and on the other hand, there is a lack of a law setting out mechanisms for investigating the specificities of such cases. As a result, human rights violations associated with discriminatory treatment are not qualified as such, are not investigated as such and are not classified and filed.

In 2017, PINK Armenia documented cases of discrimination with direct abuse of official powers:

- PINK Armenia had commissioned an advertisement agent to place social ads promoting tolerance towards LGBT people on a number of downtown Yerevan’s billboards. The municipality of Yerevan demanded that the agent remove the ads. The ads were removed, while the agent refused to place them again.
- PINK Armenia turned to the Ministry of Culture with a request to recognize the billboard posters and videos promoting tolerance towards LGBT persons as PSAs (public service ads). The Ministry of Culture declined the request with a justification that the public is already informed about the existence of “non-traditional” people and that the ads were not addressing any issue of public importance and did not contain any element of awareness raising.

Both of these instances are being disputed in Armenia’s courts.

It is noteworthy that in 2010 the Council of Europe adopted the Recommendation on Fighting against Discrimination based on Sexual Violence and Gender Identity by which the member-states of the Council, including Armenia, commit to a number of obligations, such as:

- To review the existing legislative and other measures, to revise them, to collect and analyze data in order to identify cases of direct and indirect discrimination on the basis of sexual orientation and gender identity.
- To ensure that the legislative and other measures are adopted and effectively implemented in the fight against discrimination on the basis of sexual orientation and gender identity in order to safeguard respect towards the human rights of lesbian, gay, bisexual, transgender persons and to promote tolerance towards them.
- To ensure that victims of discrimination are informed of and have access to effective national legal protection measures. Also to ensure that the measures envisaged by the fight against discrimination include, if needed, sanctions against violations and compensation to victims of discrimination.

55 Council of Europe Ministers’ Committee Recommendation CM / Rec (2010) 5 on Fighting against Discrimination based on Sexual Violence and Gender Identity, 31/03/2010
language, religion, worldview, political or other views, belonging to national minority, status of property ownership, origin, health condition, disability, sexual orientation, age or private or other social factors (...).”

To PINK Armenia’s proposal that gender identity also be included in the list of protected factors, because cases of such discrimination are no less in number and severity than those based on sexual orientation, the Ministry of Justice responded: “the formulation "private or other social factors" addresses that issue.”

At the beginning of 2018, the draft law on Ensuring Equality57 started to be circulated, where sexual orientation and gender identity were again missing among protected aspects. At the same time, the 2017 Report of the Coalition for Equality and Anti-Discrimination, as well as other national and international reports and recommendations provide evidence that discrimination based on sexual orientation and gender identity is one of most widespread areas of discrimination in Armenia.

In order to overcome the discriminatory treatment of LGBT persons and to prevent the crimes incited by discriminatory treatment, PINK Armenia NGO calls on the Republic of Armenia to take steps in order to carry out its obligations under international agreements which are part of its national legislation, as well as obligations under legal acts adopted on the basis of these agreements.58 Namely, we urge to adopt legal acts prohibiting discrimination on the basis of sexual orientation and gender identity, to promote elimination of discrimination on these grounds and to establish tolerance.

56 RA draft Criminal Code, 2017, Article 197, Part 1
57 Ra draft law on Ensuring Equality, 2018, Article 4, Part 1
58 According to Articles 5 and 81 of RA Constitution (with 2015 amendments), the international treaties ratified by Armenia have a legal force and that the practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution
Annex 2

Crimes Committed on the Basis of Sexual Orientation or Gender Identity (SOGI)

A hate crime is a criminally punishable offense inflicted upon a person with a motivation of hate or intolerance.\(^{59}\)

Hate crimes have two components: an act prohibited by the criminal code, i.e. an offense, and a motivation guided by a real or imagined characteristics of the person or group of persons.

According to the observations of OSCE ODIHR, hate crimes are different from other criminally punishable offenses inasmuch as they violate people’s right to equality; their impact on victims is different, they impact the community the victim represents, they have implications on state security.\(^{60}\)

Article 63 of the RA Criminal Code, defines the following aspects aggravating the responsibility and punishment for a crime: motivations driven by ethnic, racial or religious hatred, religious bigotry, revenge against the rightful acts of others.

This means that the Armenian legislation sets out a prohibition for hate crimes based on ethnic, racial or religious hatred or bigotry. The RA Criminal Code does not envisage a direct prohibition of hate crimes based on sexual orientation or gender identity which results in incomplete, non-comprehensive and ineffective investigation of cases.

The European Commission Against Racism and Intolerance prepared a report in 2016\(^{61}\) on hate crimes in Armenia, where it also addressed the issue of effective investigation of crimes based on sexual orientation and gender identity. Namely, the report expressed a concern over the existing legal gap and ineffective investigation of cases as major issues in Armenia:

In their ruling over Identoba and others v. Georgia, ECHR noted that a hate crime carried out on grounds of sexual orientation, is a violation of the European Human Rights Convention provisions on freedom from torture or inhuman or degrading treatment (Article 3) and prohibition of discrimination (Article 14).\(^{62}\)

In their ruling over Nachova and others vs. Bulgaria, the European Human Rights Court ruled that the state has an obligation to conduct a quick and comprehensive investigation of hate crimes, which on the one hand obliges the state to ensure that persons under its jurisdiction are not subjected to hate crimes by private individuals, and on the other hand that it is obliged to carry out an investigation within a reasonable period of time.\(^{63}\)

Still in 2010, all the member states of the Council of Europe, including the Republic of Armenia, unanimously adopted the recommendation on fighting against discrimination based on sexual orientation and gender identity, by which they assumed a duty to take

\(^{59}\) OSCE Office for Democratic Institutions and Human Rights (ODIHR), "Hate Crime Laws: A practical Guide", Warsaw, Poland 2009

\(^{60}\) OSCE Office for Democratic Institutions and Human Rights (ODIHR), "Hate Crime Laws: A practical Guide", Warsaw, Poland 2009

\(^{61}\) www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Armenia/ARM-CbC-V-2016-036-ARM.pdf

\(^{62}\) Identoba and Others v. Georgia, no 73235/12, ECHR 2015

\(^{63}\) Nachova and Others v. Bulgaria, nos 43577/98 and 43579/98, ECHR 2005
comprehensive, meaning legislative, administrative and other measures to fight against discrimination based on SOGI.\textsuperscript{64}

By this same recommendation, the Republic of Armenia, has committed, inter alia, to the following:

- to ensure effective, quick and independent investigation of hate crimes against LGBT people,
- to define the hate crime based on sexual orientation and gender identity as a factor aggravating the punishment and/or responsibility,
- to encourage that victims and witnesses of hate crimes feel free to report to the relevant bodies about such crimes and other hate-related offenses,
- to conduct due filing of crimes based on sexual orientation and gender identity and other hate-related and intolerance-related offenses.

In 2017, the RA Ministry of Justice started to circulate the new draft Criminal Code, wherein Article 72 substituting former Article 63 reformulates the factors aggravating an offense in the following reading “...an act of hate, intolerance and religious bigotry against other social groups.”

In other words, the existence of such a formulation in the criminal code will enable the law enforcement bodies to give a correct criminal legal characteristic to hate crimes based on sexual orientation or gender identity and to carry out an effective, complete and comprehensive investigation of such cases.

This kind of a legislative formulation is the necessary minimum, which, however, is not sufficient for ensuring effective investigation of hate crimes.

It is noteworthy that 9 of the cases discussed in this report are acts prohibited by the criminal code, which were inflicted because of the sexual orientation or gender identity of the victims.

In 7 of these cases, a criminal case was instigated, however, the criminal-legal characteristics of the acts did not take into account the motivations of these crimes.

In the event of the other 2 cases, wherein the victims chose not to report to law enforcement bodies, one of the victims was a minor whose defense would have been impossible with the consent of their legal representative, and in the second case, the victim was in mandatory military service and chose not to further jeopardize their safety.

\textsuperscript{64} CoE Committee of Ministers, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, 1081st meeting of the Ministers’ Deputies, 31 March 2010
Domestic Violence on the Basis of Sexual Orientation and Gender Identity


Articles 36 and 37 of the Armenian Constitution also reinforce the importance of the family as the nucleus of the society, emphasize the need for protecting the rights of family members by defining the rights and duties of parents and children.\(^{65}\)

Violence in the family is a sexual, psychological or economic act of violence, as well as negligence, that is inflicted by one family member upon the other/s.\(^{66}\) The following are forms of domestic violence:

1. physical violence; beating as defined by Armenia’s Criminal Code and other violent acts, inflicting an intentional harm upon one’s health, illegally depriving of freedom, inflicting an intentional physical pain upon somebody;

2. sexual violence; crimes against the bodily integrity and sexual freedom as defined by Armenia’s Criminal Code;

3. psychological violence; intentionally inflicting severe psychological suffering, including by realistic threats of physical, sexual or economic violence, intentionally regularly carrying out such acts that inflict justified fear for one’s or one’s family member’s personal safety, regularly degrading one’s dignity, causing extreme social isolation, forcing an abortion;

4. economic violence; depriving a person of primary means of survival (food, clothes, accommodation, medication) for the purpose of keeping them in forced material dependency or dominating over them, disproportionally restricting rights to use, own, and manage property or common property, restricting rights to free choice of education or work;

5. negligence; intentional non-satisfaction of the minimal livelihood means (food, clothes, abode, health care and health services, education) for a child by the parent or legal guardian and/or for a disabled and financially challenged adult by their abled adult children, if the parent/legal guardian or adult abled children are duly informed and have adequate capabilities and if relevant services are accessible to them.\(^{67}\)

According to the interpretation in the ECHR ruling over Opuz v. Turkey, the issue of domestic violence can be manifested in various ways from physical violence to psychological violence or verbal abuse, (…) it is a major issue related to all member states as it often takes place in private relations or a close circle and it is not only women who fall victim to it. ECHR acknowledges that men too fall victim to domestic violence. In reality, children are also the frequent victims of this type of violence, be it direct or indirect.\(^{68}\)

\(^{65}\) RA Constitution, amended in 2015, Article 36, the Rights and Duties of Parents, Article 37, the Rights of Children

\(^{66}\) RA Law on Preventing Violence in the Family, Protecting Persons Subjected to Violence in the Family, Restoring Harmony in the Family, 2017, Article 3, Part 1

\(^{67}\) RA Law on Preventing Violence in the Family, Protecting Persons Subjected to Violence in the Family, Restoring Harmony in the Family, 2017, Article 3, Part 2

\(^{68}\) Opuz v. Turkey, 09.07.2009, §132
In 2017, Pink Armenia documented 8 cases of domestic violence committed on the basis of sexual orientation or gender identity. Private relations in family relationships are superior to property rights. More valued are the spiritual and/or kinship relations. In the event of domestic violence, a person is vulnerable not only because they face being thrown out of home and experiencing financial hardships, but also hardships exercising their constitutional rights, as those who should be called to responsibility happen to be their family members. These and other cases prove that victims of domestic violence avoid reporting to law enforcement bodies as this may risk deepening their conflict, heightening the level of violence or pressures, also because they do not wish to report against their family member. In other words, there are both objective (heightened pressures, deepened conflict) and subjective (not wishing to report against a relative) obstacles to reporting, therefore this issue begs comprehensive tackling. In the events of domestic violence, Pink Armenia’s social worker is engaged in providing social assistance both to the victims and other family members.

The acts of violence against LGBT persons in the family instigated on the basis of their sexual violence and gender identity are accompanied by violation of a number of rights enshrined in Armenia’s constitution and international law, namely, family members learn about a person’s sexual orientation/gender identity by reading their private correspondence. This is a violation of a person’s right to privacy and confidentiality of correspondence. The 2017 Report on “Human Rights Situation of LGBT People in Armenia” documents cases where domestic violence was accompanied by such violations of constitutional rights and freedoms, as the right to physical and mental integrity, personal freedom, private and family life, honour and good reputation, freedom and privacy of communication. These rights and freedoms are interrelated.

The European Court for Human Rights has established a legal position that “private life” is a concept that contains the physical and moral integrity of the individual, including their sexual life. This position was re-affirmed in another ruling, with an addition that a person’s body is the most intimate aspect of their private life. According to the Armenian Constitution, everyone has a right to inviolability of private and family life, honour and good reputation, right to inviolability of physical and mental integrity, right to personal freedom. Therefore, a person’s gender identity and sexual orientation are part of their private life and consequently are subject to protection. In those cases when a person’s personal freedom was restricted as documented by Pink Armenia, the conditions of restriction did not meet the requirements of the Constitution. In addition, the right to confidentiality of communication was violated and given all these, the family members unlawfully intruded into the “space” of private life. On these grounds, the persons who were subjected to domestic violence in the above-stated cases fall under the risk zone of being subjected to physical, psychological and economic violence as defined in the RA Law on “Preventing Violence in the Family, Protecting Persons Subjected to Violence in the Family and Restoring Harmony in the Family.”

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70 RA Constitution, amended in 2915, Article 33, Part 1
71 X and Y v. Netherlands, 26.03.1985, §22
72 Y.F. v. Turkey, 22.10.2003, §33
73 RA Constitution, amended in 2015, Article 31, Part 1
74 RA Constitution, amended in 2015, Article 25, Part 1
75 RA Constitution, amended in 2015, Article 27, Part 1, Clause 1
However, even in this case, the lack of direct regulatory norms gives the interpreting entity-wide opportunities for interpretation. Issues arising in family life require a comprehensive approach, and in order to address them adequately, it is necessary to assess not only given situation, evaluate the harm inflicted, but also to pay attention to the reasons and foundations of the violation in order to ensure adequate protection for the victims.

In order to prevent or minimize the number of the above-presented and similar situations, firmly fixed and effective legal mechanisms are necessary, which will directly ban and place under sanctions domestic violence on grounds of sexual orientation and gender identity. Domestic violence-related offenses do fall under punishable violations of rights, however, the issue begs legal specificity and avoidance of misinterpretation and therefore the best solution, in this case, is the above-stated recommendation.
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