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"On Discrimination on the Grounds of Sexual Orientation and Gender Identity"

Submission by:

"Pink" human rights defender NGO (Pink Armenia)

The Advocates for Human Rights

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Pink Armenia is a human rights defender non-governmental organization founded in 2007. Vision of Pink Armenia is to have a society, where human rights of all are protected and everybody is accepted regardless of sexual orientation and gender identity and/or gender expression. Organization aims to create a safe space for LGBT+ people by promoting well-being and protection in all spheres of life. To reach these goals Pink Armenia provides professional services to LGBT+ community, such as legal, psychological and social, advocates for comprehensive legislation ensuring protection from discrimination, hate crimes and hate speech, as well as conducts awareness raising campaigns and other activities.

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including

monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States, including LGBTIQ+ individuals who have experienced discrimination and violence based on sexual orientation, gender identity and expression, and sex characteristics.

Introduction

This report concerns the situation of LGBT+ people in Armenia. It particularly focuses on discrimination that LGBT+ people face in the field of education and healthcare system, hate crimes and hate speech, as well as domestic violence. The first part of the report includes a description of the new legislative regulations and policies with short notice on implementation of the recommendations made during the previous UPR cycle. The second part of the report summarizes the practice of discrimination, hate crimes and hate speech, with short evaluation of implementation of the new legislation and the recommendations from the previous UPR cycle concerning the practical measures that must be undertaken to insure effective legal remedies. The data analyzed in the report is based on the evidence revealed and documented by the organization during its' work of the last five years. The recommendations of Pink Armenia and The Advocates for Human Rights are reflected in the last third part of the report and refer to both legislative and practical measures that are needed to be undertaken by the State to combat discrimination and to provide for effective protection for LGBT+ community.

Legislative amendments and policies

1. Despite the recommendations to adopt a comprehensive anti-discrimination law, the draft law still has not been sent to parliament. According to the 2023-2025 Action Plan deriving from the Human Rights Protection National Strategyⁱ, adopted on 28 of September, 2023, the "Law on Ensuring Equality" must be adopted during the second semester of 2024. The draft has already been published at the e-draft online public discussion platform and several meetings have been organized by the Ministry of Justice with the civil society organizations, however, the recommendations have not been yet considered and the final draft has not yet been sent.
2. The main concerns related to the draft law are first the absence of sexual orientation and gender identity as protected grounds despite it containing a non-exhaustive list of characteristics, lack of legal subjectivity for the civil society organizations to bring claims of public interest, as well as non-sufficient authority of the Equality body to be an effective extra judicial mechanism to combat discrimination.

3. It is noteworthy that the recommendation concerning adoption of a comprehensive anti-discrimination law which would provide protection for LGBT+ people has been recommended to Armenia during the previous two cycles, however, the drafts discussed since 2016 do not provide for effective mechanisms to combat discrimination on the grounds of sexual orientation and gender identity.
4. The new Criminal Code adopted in 2022 provides for amended provisions on aggravating circumstances for punishment (Article 71). While previously only acts committed with hateful motivation based on religion, race and ethnicity would lead to severe punishment, now the list of protected characteristics is non-exhaustive. However, sexual orientation and gender identity are not explicitly included in that list, which leaves the interpretation of the provision to law-enforcement bodies while giving legal qualification to the crimes. At the same time, only specific aggravating provisions defined in the special part of the Code can be applied and if a crime has been committed the aggravating circumstance can be applied only in case of being explicitly mentioned in the article providing liability for that crime.
5. Discrimination has been criminalized in the new Criminal Code, under Article 203. Sexual orientation and gender identity are again excluded from the list of protected grounds, which makes the application of this article in cases of discrimination towards LGBT+ people not guaranteed in practice.
6. Article 330 of the Code prescribes criminal liability for public calls for violence, public justification and advocacy of such violence, as well as for dissemination of any material or object for that effect against individuals or groups on the grounds of their racial, ethnic, national or social background, political and other views or other circumstances of a personal or social nature.ⁱⁱ This offence was enacted in the earlier Criminal Code in April 2020 as an amendment; however, it was never effectively applied to situations of calls for violence on the grounds of sexual orientation or gender identity.
7. Article 329 of the new Criminal Code prescribes liability for inciting or advocating, via speech as well as dissemination of materials or objects for that effect, hatred, discrimination, intolerance or hostility against an individual or group of persons on the grounds of racial, national, ethnic or social background, political or other opinions or other circumstances of personal and social nature.
8. The European Court of Human Rights published its judgement on the case "Oganezova vs. Armenia" concerning attack on the DIY pub, where it found a violation of the fundamental rights of the Applicant recognized by the articles 3 and 14 of the European Convention on Human Rights and Fundamental Freedoms asserting that the State must make legislative amendments to provide effective protection from hate crimes and hate speech on the grounds of sexual orientation and gender identity. However, there is still no initiative to make any legislative amendment or undertake policy measures to provide

proper interpretation of current provisions and effective implementation of the Criminal Code.

9. During the last UPR cycle recommendations regarding the measures to combat hate speech and hate crimes referred not only to legislation, but also the law-enforcement practice, emphasizing the need to address such crimes on the grounds of sexual orientation and gender identity. So, the current legislation is not comprehensive in terms of providing effective measures for LGBT+ people. The law-enforcement practice does not fill the gap, which is witnessed by the situation described in the second part of this report.
10. The UN Committee on Elimination of All Forms of Discrimination against Women referred to the issues of LBT women in Armenia. In its Concluding Observations published in 2022ⁱⁱⁱ expressing concern about discrimination based on sexual orientation and gender identity, harassment and hate speech, as well as lack of legal regulations on gender recognition and gender-affirmation, and the lack of training of medical staff related to the latter issue.
11. The 2024-2028 Strategy for the Implementation of Gender Policy in the Republic of Armenia^{iv} and the Action Plan Derived from it, though being a step forward in terms of addressing gender-based discrimination and violence, again leaves aside the needs of LGBT+ people, providing zero action directed to ensuring equality and combating violence towards LBT women.
12. The amendments to the law on domestic violence were also positive: the term "partner" was included in the law, creating a mechanism for LGBT+ people who are not in a registered marriage, to protect themselves from partner abuse.

Discrimination and violence towards LGBT+ people in practice

13. Pink Armenia documents around 40-50 cases of violation of human rights of LGBT+ people in conjunction with discrimination related to their sexual orientation or gender identity each year. Data gathered during the year is being summarized and analyzed through annual reports.^v
14. Incidents happen in almost every sphere of life, such as educational institutions, the workplace, healthcare institutions, service provision, public places, armed forces, as well as at home.
15. At the same time, very few cases are being reported to law-enforcement bodies. The main reason for this is lack of trust towards police and investigative authorities, based on the several factors, such as:
 - Mistreatment by law-enforcement agencies, mockery, and justification of violence;

- Dissemination of information related to the personal life of victims by the authorities investigating the case, including within families;
 - Ineffectiveness of investigating cases leading to impunity; and
 - Fear of facing more violence as a result of filing a complaint.
16. Notwithstanding the recommendations of Council of Europe based on the report conducted in 2019^{vi} and Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation Europe regarding elaboration of hate crime data codes, State bodies still have no official data on hate crimes and hate speech.
17. Armenia implemented ODIHR's programmes on Prosecutors and Hate Crime Training (PAHCT) and Training Against Hate Crime for Law Enforcement (TAHCLE) in 2021 and 2022, respectively. However, though the trainings for police, investigators and prosecutors were supposed to be cascaded and involve more people, were stopped by the Academy of Justice and the Police Educational Complex, after a short period of time, which speaks of a lack of will to educate law-enforcement bodies' officers on the specificities of identification and investigation of hate crimes, as well as on sensitive and needs-based treatment towards the victims.
18. The level of hate speech continues to be worrisome during the last several years. After the revolution in Armenia in 2018, the previous government started engaging in political manipulations to discredit the new government, including using LGBT+ issues and trying to affiliate LGBT+ people with the government representatives. Using different techniques of manipulation, they did not refrain from targeting the community in general and individuals. At the same time, the community did not receive proper protection from the government, only condemnation. Even during the war in Nagorno-Karabakh in 2020, one of the hateful ideas spread on the social media was the call to send LGBT+ people to the front line so that the international community would pay attention to the issue.^{vii} Analysis of the results of public speech monitoring can also be found in Pink Armenia's annual reports.
19. As mentioned in the paragraph 6, public calls to violence have been criminalized since 2020, however, there has been no filed cases regarding calls to violence or justifying the violence towards LGBT+ people since then, though many reports by Pink Armenia have been presented to the police.
20. The amendment of the Criminal Code mentioned in paragraph 4 concerning hateful motivation of the perpetrator being in force since July 2022, the Criminal Code cannot still be considered as an effective legal protection measure. Many bias- motivated crimes committed towards LGBT+ people have not been qualified as crimes committed in aggravating circumstances, although in only one case – the stabbing of a gay man and citizen of United States – were aggravating circumstances recognized.

21. A transgender woman was killed, and her apartment was burned on 21st of August 2023.^{viii} However, the bias indicators have not been revealed and the motivation of the perpetrator has not been qualified by the investigator. As in this case, in other cases as well, the motions of the attorneys to consider biased motivation while qualifying the crime are left unexamined or rejected.

Domestic Violence Towards LGBT+ People

22. More than half of the cases of human rights violations documented during the year are cases of domestic violence. The law enforcement system does not have a remedy mechanism that would enable the protection and safety of a person who reports against family members. This is the main reason why survivors of domestic violence avoid lodging complaints. For instance, during 2023, out of a documented 22 domestic violence cases, only five victims initially wanted to file a complaint with law enforcement authorities. However, four of them later decided against filing a complaint or reporting the crime altogether, and one case was suspended by the investigative body, citing the justification that the parent intended to address a perceived “sick” phenomenon.
23. Protection of victims of domestic violence becomes even more difficult in the case of minors when the offender is the legal representative of the victim, and the victim must continue living with the perpetrator. Even the guardianship body representatives are not sensitive and do not find it necessary to address this issue more properly.
24. At a temporary shelter for minors, a social worker presented a pre-drafted document to a transgender individual and instructed them to sign, renouncing their foster family, with the statement: “Nobody would want to take you anyway.” The individual signed the document. The social worker also consistently scrutinized the person’s appearance, including their hair and choice of accessories, like rings, and colorful clothing. Such incidents witness that even the state care institutions, such as temporary shelters for minors don't have capacity to treat LGBT+ people properly and sensitively, according to their needs. Consequently, applying to the shelters provided by the state and hope for child centered care is not a guarantee that children becoming victims of domestic violence will find care and protection.

Discrimination Towards LGBT+ People at School

25. LGBT+ people are being bullied at schools and sometimes even denied access to education. It is noteworthy that in the documented cases, the persons subjecting LGBT+ persons to bullying and violence are either classmates or the teaching staff, who encourage or at least ignore the violence and mocking, which leads to a violation of the person's right to education on the one hand, and on the other hand, is a breach of the psychological integrity of children. Further, this bullying is a violation of the right to private life, accompanied with serious psychological consequences, which is even more dangerous in the case of minors.

Transgender healthcare

26. Transgender people still have no access to gender-affirming procedures. Hormonal therapies and gender-affirming surgeries are excepted from the list of the medical services being provided in the country.^{ix} However, surgeries are being registered as body correction and are being carried without proper hormonal therapy and post-surgical care.
27. At the same time, a change of the gender marker in personal documents is available only after presenting medical documents confirming gender-affirming surgery. Such practice violates the rights of people who have no intention to change their sex, but their gender identity does not correspond to their biological sex. However, it is not possible to pass these procedures according to law in the country. Consequently, people who have an appearance which differs from their gender marker are having problems while crossing borders, applying for different services etc.

Recommendations

28. Adopt a comprehensive anti-discrimination law, which will provide sexual orientation and gender identity as protected grounds, will define jurisdiction for non-governmental organizations in cases of protection of public interest, as well as a procedure for the formation and operation of an independent equality body;
29. Revise the Republic of Armenia Criminal Code clauses providing for hateful motivation as an aggravating circumstance for liability and include sexual orientation and gender identity in the list of protected characteristics;
30. Conduct effective investigation of hate crimes, considering hateful motivation as an aggravating circumstance;
31. Invest a system of hate crime and hate speech data coding and maintain statistics of such crimes;

32. Publicly condemn hate speech towards LGBT+ community and political manipulations targeting LGBT+ people;
33. Monitor the sensitive treatment of LGBT+ persons by law enforcement agencies in case of domestic violence;
34. Conduct separate statistics on domestic violence cases towards LGBT+ people.
35. Conduct periodic trainings for the administration and teaching staff of educational institutions on sexuality and gender minorities, a sensitive approach to LGBT+ people, and supporting self-recognition and self-expression;
36. Include gender-affirming surgeries in the list of medical services provided by the country and create comprehensive transgender care system within healthcare system;
37. Advocate for the ideas of tolerance and equality in society; in particular, make public statements advocating tolerance and condemn any manifestation of violence and intolerance.

ⁱ 2023-2024 Human Rights Protection National Strategy, <https://moj.am/storage/uploads/1674.1.pdf>

ⁱⁱ RA Criminal Code, Article 330 <https://www.arlis.am/documentview.aspx?docID=15308>

ⁱⁱⁱ CEDAW Concluding Observations on Armenia, point 49 <https://digitallibrary.un.org/record/3999851>

^{iv} 2024-2028 Strategy for the Implementation of Gender Policy in the Republic of Armenia <https://www.e-draft.am/projects/6821>

^v The Human Rights Situation of LGBT people in Armenia, Annual reports.

<https://pinkarmenia.org/en/publications/?sort=date-DESC&terms%5B%5D=reports>

^{vi} Council of Europe, Collection of data on discrimination, hate crimes, and hate speech in Armenia Situational analysis report, 2019 <https://rm.coe.int/situational-analysis-armenia-eng/16809e49f1>

^{vii} Human Rights Situation of LGBT people in Armenia, annual report, 2020, part 2.

<https://pinkarmenia.org/wp-content/uploads/2024/02/lgbt-report-2020-en.pdf>

^{viii} Azatutyun Radio, A transgender woman has been killed in Armenia. LGBT community raises the issue of hateful atmosphere. <https://www.azatutyun.am/a/32557553.html>

^{ix} RA Government Decision N 276, dated 27.03.2008, on types of medical care and services that are conducted for the population of the Republic of Armenia, Available in Armenian at: <http://www.arlis.am/DocumentView.aspx?DocID=69784>