



**Hate Crimes and Other Hate
Motivated Incidents against
LGBT People in Armenia**

From Theory to Reality

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Foreword

Crimes and other incidents motivated by hatred and intolerance are everyday realities in Armenian society.

In recent years, PINK Armenia has recorded numerous complaints concerning crimes and other violations motivated by a person's real or perceived sexual orientation and/or gender identity. While it is clear that hate crimes are dangerous not only as violations of citizens' equality and because of the impact on the victim, they are also dangerous due to the impact on the victim's community, and in regards to issues of state security.

The latter, in turn, not only affects the function of all of society, but also undermines the prospect of democratic development and human rights principles.

Public Information and Need of Knowledge (PINK Armenia) NGO has initiated this publication with the aim of revealing the overall picture of hate crimes against LGBT people, and to raise awareness about instances of violence motivated by hatred against LGBT people among the legislative, executive and judicial bodies of the Republic of Armenia (RA), as well as among the wider public. The publication describes the forms and characteristics of these crimes, and discusses the importance of access to effective legal protection mechanisms.

Public Information and Need of Knowledge NGO thanks ILGA-Europe, whose financial support made the realization of this publication possible within the framework of the project, "Preventing and addressing hate crimes against LGBT people." Special thanks to Vahan Bournazian, who developed the methodology for the sociological study and the questionnaire for collecting cases. We also thank expert Lusine Ghazaryan, who developed the legal analysis found in the first part of the publication. Thank you to Socioscope NGO, particularly analyst Mariam Khalatyan and analysis consultant Arpi Manusyan, for their analysis of the study data, and of course, to all the interviewers who conducted the data collection in the field.

This report is a message about the possible criminal consequences discrimination and intolerance can have on the security of members of society and the state.

We hope that this publication will become one of the cornerstones and guidelines for prevention, proper investigation and responsibility for hate crimes and other anti-LGBT violence in Armenia.

Yerevan, 25 October, 2016

NvardMargaryan, President

Public Information and Need of Knowledge NGO

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Introduction

The purpose of this report is to reveal hate crimes and other hate-motivated incidents against LGBT¹ persons in Armenia. It also aims to identify issues of the legislative framework of hate crimes and their compliance with internationally accepted standards of LGBT human rights protection and Armenia's international obligations.

This report consists of two main parts. The first part is a summary of legal regulations on hate crimes at the national and international level, basic concepts related to hate crimes, the specific features for investigation, as well as a reflection on sexual orientation and/or gender identity as protected characteristics of fundamental human rights instruments.

In the second part of the survey, the data collected and analyzed during the sociological study is summarized, which aimed to collect and reveal hate crime incidents against LGBT people in Armenia. The cases studied in the survey were collected between 2010-2016. The choice for this time period is not random. In 2010, all Council of Europe member states, including the Republic of Armenia, unanimously adopted a recommendation on combating discrimination based on sexual orientation and gender identity, which committed them to taking concrete steps to fight hate crimes against LGBT people.²

On the one hand, the cases collected during this period show to what extent the 2010 decision by the Council of Europe's Committee of Ministers has been reflected on the realization of collection, documentation, prevention, and proper investigation of cases of discrimination against LGBT persons. On the other hand, they point out what changes have been made in the work of legislative, executive and judicial bodies to this end. Choosing this period allows us to collect relatively new cases, as well as increasing or decreasing trends in the number of cases, and, their social, political, cultural, economic and other factors.

The sociological research also sets out to study, explore and propose solutions to the following issues:

- Why does the public at large carry out hate crimes against LGBT individuals?
- Who and what kinds of groups are committing the hate crimes?

¹ Intersex people are not included in this report, nor were they included in the study, and therefore in the information presented in the report, as well as the research.

² 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

- What concrete actions accompany hate crimes against LGBT individuals?
- How are hate crimes against LGBT individuals being prevented? How are perpetrators identified and how is responsibility upheld in accordance to the law?

The report ends with a set of recommendations for various stakeholders, implementation of which will grant an opportunity to contribute to better prevention, investigation and effective legal remedies for protection against hate crimes.

This report complements Public Information and Need of Knowledge NGO's series of previous studies. The problems found through the study, as well as the issues discovered during the field work, will be included in the organization's strategic plan, aimed at development and implementation of evidence-based advocacy strategies.

PART 1

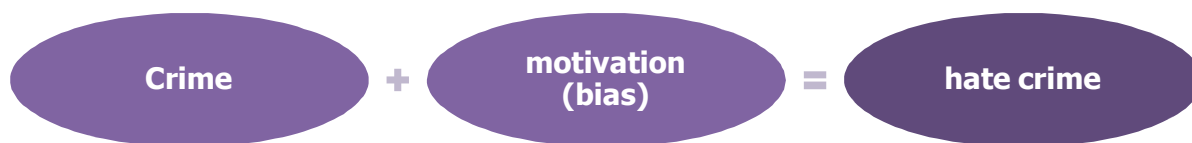
Legal regulations of hate crimes

1.1. The concept and essence of hate crimes

According to the OSCE Office for Democratic Institutions and Human Rights (ODIHR), a hate crime is defined as a criminal offense motivated by a certain hatred or intolerance (bias motive).³

"Hate crime," therefore, implies a kind of crime, and not just a crime punishable according to criminal law. This means that a person may also commit a hate crime when such an act, motivated especially by hatred or intolerance, is not clearly defined by legislation.

As a rule, a hate crime is composed of two main elements: *(1) a crime (2) driven by motives of hatred or intolerance.*



The first element of a hate crime requires that the act be considered a criminal offense under national criminal law. It can be, for example, threats, property damage, beatings, murder, and so on.

The second element of a hate crime implies that the act was committed by certain motives. This means that the alleged perpetrator intentionally chose the victim of a crime because of their *certain protected characteristics*.

A protected characteristic is an attribute or feature of a person or group of persons, such as sex, race, color, ethnic origin, sexual orientation, gender identity, religion, age and so on.

The protected characteristic defines the person's individuality and is part of the person's identity. Denial of a person's protected characteristic diminishes the value of a person's personality, abilities and experience.⁴

It is the presence of the protected characteristic that distinguishes hate crimes from other criminal offenses. Hatred or intolerance toward a person's or group of persons' particular protected characteristic is the central element of a hate crime, as they are the only reason for committing such a crime. Therefore, the absence of such a motive excludes the crime from being a hate crime.

³ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *"Hate Crime Laws: A practical Guide"*, Warsaw, Poland 2009

⁴ Cambridge University Press, *Protected Characteristics and Social Perceptions: An Analysis of the Meaning of 'Membership of a Particular Social Group'*, June 2003, available at: <http://www.refworld.org/docid/470a33b30.html> [accessed 31 October 2016]

National, regional and international human rights mechanisms and organizations have consistently stressed the importance of combating hate crimes, arguing that a hate crime is not just an offense against the directed against the victim, but also against the community. Not only is a hate crime a violation of fundamental rights, but it also poses a serious challenge to the security of the state.

Thus, according to the OSCE ODIHR, hate crimes are different from other acts involving criminal responsibility because of the following main reasons: violation of equality between members of society, the impact on the victim, the impact on the community the victim represents, and issues of state security.⁵

- **A hate crime is a violation of equality between the members of society.** The perpetrator targets the person or the person's group because of certain protected characteristics, due to intolerance towards those characteristics, which puts into question or rejects the person's equality with other members of society.
- **A hate crime is directed not only against the victim but also against the entire community.** In such cases, the mental suffering caused to the victim is greater than those of other crimes because the victim realizes that they cannot eliminate the reason behind the attack, which is a protected characteristic, causing additional anxiety and suffering to the victim. Moreover, the person who committed the crime sends a message to the victim and the victim's group that they are not accepted and do not have the right to be a part of the given society, further marginalizing and making certain social groups more vulnerable.⁶
- **A hate crime is directed against state security and public order.** Crimes of intolerance and discrimination contribute to the isolation of vulnerable groups with certain characteristics, social polarization and public disorder, which, in extreme cases, can turn into wars within the country's borders and beyond.⁷

⁵ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *"Hate Crime Laws: A practical Guide"*, Warsaw, Poland 2009

⁶ *"Hate crimes today: An age-old foe in modern dress"*, American Psychological Association position paper released in 1998, http://209.85.135.104/search?q=cache:qHOGi3CfCR0J:www.apa.org/releases/hate.html+hate+crimes+impact+AMERICAN+Psychological&hl=en&ct=clnk&cd=1&lr=lang_en

⁷ *"Hate Crimes in the OSCE Region: Incidents and Responses"*, Annual Report for 2006, OSCE ODIHR p. 20; OSCE Office for Democratic Institutions and Human Rights (ODIHR), *"Hate Crime Laws: A practical Guide"*, Warsaw, Poland 2009

1.2. Specific features for investigating hate crimes

Identification, as well as full, impartial and thorough investigation of hate crimes, requires a comprehensive approach toward the motives of hatred and intolerance of each violation committed, where, among others, the following circumstances need to be considered:

- **Circumstances related to the alleged victim.** Does the injured person belong to a minority or other vulnerable group? Aside from being endowed with the specific protected characteristics, a person may also be associated with certain characteristics based on their appearance, including dress, gestures, activity and other reasons. To understand the relevance of the characteristics of the victim with the person committing the act, it is first necessary to consider the opinion of the person affected, in particular whether the alleged victim believes that the incident is related to any of their actual or perceived characteristic(s).⁸
- **It should also be considered that the object of a hate crime could be property.** In this case it is necessary to understand whether the offender has targeted a specific object because it is affiliated with a vulnerable or minority group or not. For example, an LGBT-friendly club, a gathering place for a religious organization, etc.
- **Circumstances related to the alleged perpetrator.** Features characterizing the perpetrator can be essential for understanding the motive behind the crime. Is the alleged offender a member of or closely related to any known hate-inciting nationalistic groups or initiatives aimed at preserving traditional values? This may indicate the offender's language and external appearance, including thematic tattoos, symbols on clothing, personal or business ties, and their circles.
- **Behavior of the alleged perpetrator.** The behavior of the perpetrator at the time of the crime can be meant to send a message to the victim—that they are not or have no right to be part of society, based on their particular protected characteristics. This can be displayed at the scene of the crime by images, graffiti or symbols left behind by perpetrators. This can also be displayed by the language or phrases used by the perpetrators during the crime, such as blasphemy, mockery, or degrading treatment based on the victim's certain protected characteristics.

⁸ "Hate crimes against LGBT people in Russia" MOD Russian LGBT Network, St. Petersburg 2013

- **The place and time of the crime.** In some cases, the place and time of a crime can also have bearing on understanding the motive of the crime. For example, in cases when certain elements of the scene indicate a group's gathering place, or if an incident takes place during a special day or event.

1.3. Hate crime legislation of the Republic of Armenia

RA legislation does not provide for comprehensive substantial and procedural regulations for prevention, investigation and responsibility for hate crimes.

RA criminal law does not define any core concepts related to hate crimes, specifically what hate crimes are, which are protected characteristics, or specifications and other issues for responsibility and punishment of such crimes.

Procedural safeguards for full, impartial and thorough investigations of hate crimes are not provided. The experience of different countries and internationally accepted practice assumes that the identification and investigation of hate crimes requires a specific approach, which demands a comprehensive way to address disclosure of the motives of the crimes, provide for adequate responsibility mechanisms, as well as access to justice for victims, excluding any risks of victimization.⁹ Whereas such guarantees, like mechanisms for determining the motive of hatred or intolerance and effective means of redress for victims, are not included in RA legislation for criminal trials.

It should be noted that Article 63 of the Criminal Code provides for criminal responsibility and circumstances aggravating the crime and punishment. Point 6 of Part 1 of the Code indicates: *“Committing a crime motivated by revenge based on ethnic, racial or religious hatred, religious fanaticism.”*¹⁰

The legal norm clearly suggests more severe punishment and prosecution by the law for crimes defined by the Criminal Code that are committed by ethnic, racial or religious hatred, or religious fanaticism. In other words, the Criminal Code provides for a legislative ban on hate crimes, but only on the grounds of ethnic, racial or religious hatred, and on the grounds of religious fanaticism.

This means that hate crimes committed on the basis of a person’s sexual orientation and/or gender identity are not included in the criminal legislation, and therefore are not taken into consideration during the investigation of criminal cases, and not regarded as circumstances aggravating the crime and punishment.

⁹ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *“Prosecuting Hate Crimes: A Practical Guide”* Warsaw, Poland 2014

¹⁰Article 63, RA Criminal Code, 2003, <http://www.arlis.am/DocumentView.aspx?DocID=108718>

According to the "Law on Legal Acts," which, among other things, sets out the general rules of interpreting and clarifying the legal acts of RA, states that, "...the legal act shall be interpreted in the literal meaning of the words and expressions contained, therein taking into account the requirements of the law," and, "if the dispute is not directly regulated by law or other regulations, it can be applied only in cases prescribed by legal acts regulating similar relations to such relations (analogy)... The analogy cannot be applied, if it restricts the rights of natural and legal persons, liberties, or introduces a new obligation or responsibility for them or stricter coercive measures and their implementation procedures applicable to individuals..."¹¹

The principle of legality laid down in the Criminal Code stipulates that, "the criminality of the act, its punishment and other criminal and legal consequences are determined only by the criminal law," and "applying the criminal law with analogy is prohibited."¹²

This means that criminal law is interpreted in its literal meaning, and action could result in criminal responsibility under the law for a person, unless expressly stipulated in the criminal law. In other words, a crime committed on the basis of hatred or intolerance on other grounds cannot be classified as a hate crime.

This means that the crimes which were committed on the grounds of the sexual orientation and/or gender identity of the victim have never been qualified as hate crimes, and have been classified as, for example, an ordinary battery, damage to property, and so on. This in turn means that no effective remedies have ever been available to LGBT victims of hate crimes.

Related legislation

National legislation on the prohibition of discrimination

The existence of anti-discrimination legislation is considered to be a mechanism to prevent hate crimes.¹³

The general prohibition of discrimination in Armenia is enshrined in the Constitution of the Republic of Armenia.¹⁴ However, there are no effective mechanisms to fight against

¹¹ Articles 86 & 88, RA law "On legal acts," <http://www.arlis.am/DocumentView.aspx?DocID=9094>

¹² Article 5, RA Criminal Code, 3003, <http://www.arlis.am/DocumentView.aspx?DocID=108718>

¹³ OSCE Office for Democratic Institutions and Human Rights (ODIHR), "*Hate Crime Laws: A practical Guide*", Warsaw, Poland 2009

¹⁴ Article 29, RA Constitution 06.12.2015 with changes, <http://www.arlis.am/DocumentView.aspx?DocID=102510>

discrimination. Armenia has no standalone legislation to prohibit discrimination, which would make it possible to provide for legal regulations related to the concept of discrimination, forms of discrimination, available legal remedies and means of protection for victims of discrimination, and regulations regarding specific features of investigating instances of discrimination.¹⁵

The legislation does not recognize sexual orientation and gender identity as protected grounds for prohibition of discrimination.

National legislation on hate speech

The legislative ban on hate speech is also considered to be a mechanism preventing and deterring hate crimes.

Hate speech is defined as "any expression which spreads, incites, promotes or justifies racial hatred, xenophobia and anti-Semitism or forms of hatred, based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and violence against minorities, migrants and persons with migrant backgrounds."¹⁶

The hate speech regulations provided for in national legislation are quite limited.

The RA Constitution prohibits the use of fundamental rights and freedoms to overthrow the Constitutional order, to spread ethnic, racial and religious hatred, or to incite violence or war.¹⁷ Article 226 of the Criminal Code defines national, racial or religious hatred. According to Part 1 of the Article, actions that excite national, racial or religious hatred, that are aimed to display racial superiority or humiliating national dignity are punishable by fine and by deprivation of liberty.¹⁸ However, it should be noted that Article 226 of the Criminal Code has almost never been applied in practice, and the analysis hereto makes it clear that the protection against hate speech is provided only on ethnic, racial and religious grounds. The national legislation does not provide for protection for incidences of hate speech on grounds other than those stated in this article. The only exception is Article 397 of the Criminal Code, which in addition provides for skin color and ethnic origin as circumstances aggravating the crime and punishment.

¹⁵ *Legal Research: Is it expedient to adopt a separate "non-discrimination law"*, Eurasian Partnership Foundation, Yerevan 2015, available at: <http://bit.ly/2eTddas>

¹⁶ Recommendation No. R(97)20 of the Council of Europe Committee of Ministers on "Hate Speech" 30 October 1997

¹⁷ Article 17, RA Constitution 06.12.15 with changes, <http://www.arlis.am/DocumentView.aspx?DocID=102510>

¹⁸ Article 226, RA Criminal Code 2003, <http://www.arlis.am/DocumentView.aspx?DocID=108718>

In other words, the prohibition of hate speech based on sexual orientation and gender identity of a person is not provided for in RA legislation.

1.4. International standards regulating hate crimes and Armenia's international obligations

The prohibition of hate crimes and the obligation to undertake effective legal measures to combat hate crimes are enshrined in fundamental human rights documents.

The Universal Declaration of Human Rights stipulates the prohibition of discrimination in general, and the inherent dignity and equality of all members of humankind, and their inalienable rights.¹⁹

Article 2 of the UN International Covenant on Civil and Political Rights stipulates the obligation of states to ensure the recognition of rights without any discrimination, and Article 26 stipulates that *"...all men are equal before the law and without any discrimination to the equal protection of the law; in that regard, any discrimination shall be prohibited by law, and the law shall be guaranteed equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to all persons."*²⁰ With this, the ICCPR obligates member states to carry out an effective investigation of human rights abuses and provide for responsibility mechanisms without any discrimination.²¹

During its 105th session, the UN Human Rights Committee, in its concluding observations on the implementation of the International Covenant on Civil and Political Rights, noted that the government of Armenia should ensure that its definition of discrimination includes all forms of discrimination provided for in the Covenant. It added that the state should fight against violence based on intolerance and hatred, and ensure effective protection of minorities, observing the issue under the light of the violation of several articles (2, 18, 20 and 26) of the Covenant.²²

¹⁹ The United Nations. (1948). *Universal Declaration of Human Rights*, available at: <http://www.un.org/en/universal-declaration-human-rights/>

²⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 31 October 2016]

²¹ UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <http://www.refworld.org/docid/453883fa8.html> [accessed 31 October 2016]

²² UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations Armenia CCPR/C/ARM/CO/2, 105th Session, 9-27 July 2012, available at: <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/AMIndex.aspx>

The UN Convention on the Elimination of All Forms of Racial Discrimination obliges member states to establish a ban on hate crimes and ensure access to justice for victims of hate crimes, in particular the prohibition of victimization, and freedom from harassment both in law and in practice.²³

In one of its decisions, the Committee on the Elimination of Racial Discrimination reiterated that the government, particularly law enforcement agencies, have an obligation to provide comprehensive mechanisms aimed at identifying biases behind criminal acts, and to ensure that the motive of a crime is fully disclosed in practice. Failure to do so, when there is a *prime facie* proof of motivation of a crime, shall be a violation of the Convention's following fundamental provisions; right to an effective remedy (Article 6) and the obligation to eliminate all forms of racial discrimination by all appropriate means (Article 2.1 [d]).²⁴

The European Court of Human Rights has also repeatedly referred to the extent of state obligations in the context of hate crimes. The ECHR has addressed this issue in various cases under the prohibition of discrimination Article (Article 14) of the European Convention on human rights and fundamental freedoms,²⁵ the proper implementation of which implies the state's obligation to undertake necessary legislative, administrative and other measures to ensure people's equality before the law and in practice.²⁶

The principle of equality means not only providing everyone the same treatment under the same conditions, but also infers affirmative actions by the state in cases when it is necessary to eliminate or reduce the incentives of discrimination against a particular group.²⁷

Protection of the right to equality implies not only a prohibition of direct intervention by the state, but also the state's obligation to protect possible interference by third parties. Tolerance of such intervention by the government is unacceptable, because it would mean that prejudice

²³ UN Committee on the Elimination of Racial Discrimination General Comment 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Sixtieth Session, Supplement No. 18 (2005) UN Doc A/60/18, p. 103, para. 15.

²⁴ UN Committee on the Elimination of Racial Discrimination, Communication No. 46/2009, Opinion adopted by the Committee at its eightieth session, 13 February to 9 March 2012, CERD /C/80/D/46/2009, in the case of *Mahali Dawas and Yousef Shava v. Denmark*.

²⁵ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols, 4 November 1950

²⁶ UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, part 6

²⁷ *Ibid*, Part 10

and discrimination against some minorities is justified and acceptable.²⁸ The court also noted that discrimination based on the sexual orientation of a person is just as problematic as discrimination on the basis of "sex, race, color."²⁹

In *Identoba and Others v. Georgia*, the Court held that a hate crime committed on the basis of sexual orientation of a person amounts to a violation of the Convention, particularly, a violation of prohibition of torture or inhuman or degrading treatment (Article 3) and the prohibition of discrimination (Article 14).³⁰

In this case, the Court reaffirmed the fact that the crimes committed on the basis of the sexual orientation and/or gender identity of the victims are just as serious as crimes motivated by other bases of hatred. According to the Court, "treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention."³¹

Moreover, physical violence against individuals based on sexual orientation is considered inhuman and degrading treatment, because it causes feelings of "fear, anxiety and loss of security,"³² in other words, a violation of rights set out in Article 3 of the Convention, an absolute right which is subject to no limitation.

It should also be noted that in the same ruling, the Court clarified the scope of obligations of the state in cases of crimes based on hatred, noting that in cases where there is a negative attitude in society towards sexual minorities and the possibility of attacks against LGBT persons, law enforcement bodies have an "essential positive obligation" to protect LGBT people. Moreover, states have a legal obligation to investigate homophobic violence, with "special attention to unmask the motive of hatred."³³

The Court also referred to its earlier decisions in this matter.

²⁸ *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, §141, ECHR 2007

²⁹ *Vejdeland and others v. Sweden*, no 1813/07, ECHR 2012

³⁰ *Identoba and Others v Georgia*, no 73235/12, ECHR 2015

³¹ *Identoba and Others v Georgia*, no 73235/12, §67, ECHR 2015, *Secic v. Croatia*, no 40116/02, ECHR 2007

³² *Identoba and Others v Georgia*, no 73235/12, §70, ECHR 2015

³³ *Identoba and Others v Georgia*, no 73235/12, § 80, ECHR 2015

For example, in *Nachova and Others v. Bulgaria*, the Court noted that states have an obligation to carry out prompt 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, while on the other hand, requires that investigation of cases takes place within a reasonable timeframe.³⁴

In the absence of legislation on hate crimes, the Court said in *Angelova and Iliev v. Bulgaria* that the absence of a law regulating hate crimes does not prevent law enforcement agencies to identify the motive of the crime during the criminal case, if legislation provides for the prohibition of such crimes.³⁵ This means that the lack of specific legislation in the area does not mean the state can justify inaction or inadequate steps to curb the problem.³⁶

CM/Rec (2010)5 of the Committee of Ministers of the Council of Europe recommendation "on measures to combat discrimination on the on the basis of sexual orientation and gender identity"

In the year 2010, all Council of Europe member states, including the Republic of Armenia, adopted a recommendation on combating discrimination based on sexual orientation and gender identity, which obliged them to take comprehensive measures, including administrative and legislative measures, to fight discrimination based on SOGI.³⁷

The Republic of Armenia committed itself to the following:

- Provide effective, prompt and independent investigation of hate crimes against LGBT people,
- Define sexual orientation and gender identity as circumstances aggravating the crime and punishment,
- Encourage victims and witnesses of hate crimes and other hate motivated incidents to report data to relevant bodies,

³⁴ *Nachova and Others v. Bulgaria*, nos 43577/98 and 43579/98, ECHR 2005

³⁵ *Angelova and Iliev v Bulgaria*, no 55523/00, ECHR 2007

³⁶ Similar cases: *Stoica v. Romania*, no 42722/02, ECHR 2008, *Secic v. Croatia*, no 40116/02, ECHR 2007, *Milanovic v. Serbia*, no 44614/07, ECHR 2010

³⁷ 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

- Document hate crimes and other offenses based on hatred and intolerance on the basis of the sexual orientation and gender identity of a person.

In addition to this recommendation, OSCE participating states' commitment to combating hate crimes should also be emphasized, including the Republic of Armenia's. The commitments are regulated by a number of OSCE Ministerial Council decisions on hate crimes, which provide for comprehensive commitments of action aimed at prevention, documentation, designation of responsibility and effective remedies for hate crimes, as well as developing general state policy to address the issue.³⁸ However, the mentioned OSCE commitments are not legal, but rather political documents.

It should be noted that Armenia has not documented any official or unofficial data on hate crimes, including crimes committed on the grounds of the sexual orientation and gender identity of a person.³⁹ However, when compared with the data documented by civil society organizations and the records in annual reports of the OSCE ODIHR on hate crimes, a clear contradiction arises.⁴⁰

³⁸ OSCE Office for Democratic Institutions and Human Rights (ODIHR), "Prosecuting Hate Crimes: A Practical Guide" Warsaw, Poland 2014, page 89

³⁹ OSCE Hate Crimes Reporting: Official Country Information, available at:

<http://hatecrime.osce.org/armenia>

⁴⁰ Ibid

1.5. Sexual orientation and gender identity as protected characteristics

Article 1 of the Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights.

UN human rights institutions have repeatedly confirmed that sexual orientation and gender identity are grounds that are protected by the prohibition of discrimination. This means that any distinction based on sexual orientation or gender identity is contrary to the fundamental human rights principles, as it would be in the case of color, race, sex, religion or any other characteristics. UN human rights institutions, through their decisions and general comments, have continuously reiterated this fact. They are, as has been mentioned above, the UN Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee Against Torture, the Committee on the Elimination of All Forms of Discrimination against Women, the European Union and Council of Europe bodies, including the judiciary bodies, etc.

Sexual orientation and gender identity, as protected grounds from discrimination, received universally comprehensive interpretation in 2006 with the "Yogyakarta principles on the application of international human rights law in regards to sexual orientation of gender identity," or the "Yogyakarta principles," which reaffirmed the unconditional and inalienable application of fundamental human rights in regards to violations motivated by sexual orientation and gender identity of a person.⁴¹ These principles subsequently served as the basis for regional and international human rights institutions for relevant legal specifications and interpretations, which defined prohibition of violation of human rights based on sexual orientation and gender identity of a person and the applicability of general anti-discrimination norms to the latter.⁴²

For example, the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 20, the purpose of which was the interpretation of a provision of prohibition of discrimination, confirmed that the "other status" protected by the prohibition of discrimination enshrined in the CESCR includes sexual orientation and gender identity, and member states

⁴¹ International Commission of Jurists (ICJ), Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007, available at: <http://www.yogyakartaprinciples.org>

⁴² United Nations, Office of High Commissioner of Human Rights "Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law", UN 2012

should ensure that a person's sexual orientation and gender identity were not an obstacle for the realization of rights of the Convention.⁴³

As noted above, this fact was further affirmed by the ECHR, which stated in its judgments that discrimination based on the sexual orientation of a person is just as problematic as discrimination on the grounds of "sex, race and color," thereby equating sexual orientation and gender identity with other protected characteristics.⁴⁴

As a result, sexual orientation and gender identity form an integral part of international human rights legal documents, and therefore, an integral part of the legislation of states that have ratified these international legal documents, including the Republic of Armenia.

⁴³ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, art. 2, para. 2)

⁴⁴ *Vejdeland and others v. Sweden*, no 1813/07, ECHR 2012

PART 2

Summary of study of documented hate crimes and other hate-motivated rights violations in Armenia from 2010 to 2016

2.1. Description of research and methodology

The data collected as part of the “Hate crimes on the basis of SOGI: Fact finding” study was conducted by “Public Information and Need of Knowledge” NGO. “Socioscope” NGO conducted analysis of the study’s data.

The research aims to reveal incidents of hate crimes against LGBT persons in Armenia.

LGBT people above the age of 16 participated in the study, who have been victims of or witnesses to hate crimes. The study includes testimony from 198 LGBT individuals, who shared information about hate crime incidences against LGBT persons that took place between April 2010 and April 2016.

Because LGBT people in Armenia often hide their sexual orientation and gender identity in order to avoid discriminatory attitudes and violence, their participation was one of the most challenging aspects of conducting the study. To overcome this limitation, the research methodology was constructed using the snowball method. LGBT persons who had previously applied to Public Information and Need of Knowledge NGO’s Legal Clinic because they were targets of hate crimes were approached to participate in the study, and with their help, other LGBT people were reached who have had similar experiences. The anonymity of the study’s participants has been strictly protected, and psychological and legal advice was offered to each participant following interviews.

Given that hate crimes are rarely reported in Armenia, and that it is difficult to assess the underlying motives of crimes, individual interviews with victims and witnesses were selected as the primary method for revealing the issue. A semi-structured questionnaire was implemented to collect qualitative as well as quantitative data.

The questionnaire covers the following range of issues:

- A description of the characteristics of hate crime perpetrators,
- Reasons motivating offenders,
- Detailed description of each incident of intolerance and hate-motivated act against LGBT persons,
- Manifestations of hate speech,
- Intervention by relevant state bodies in the prevention of hate crimes, proper investigation.

As part of the research, hate crime incidents were recorded and analyzed, and indicators showing SOGI as the motive of crimes against LGBT people are revealed. Research data has been sorted and grouped in the report by the time and location of crimes, which are key criteria for identifying possible patterns.

2.2. The manifestation of hate crimes and hate-motivated rights violations in Armenia

According to both national and international acts, Armenia has committed to accept the principles of equality and non-discrimination on the grounds of sexual orientation and gender identity.⁴⁵ Despite this, the Armenian public has expressed manifestations of intolerance toward LGBT people, which are shown in the interviews with LGBT persons and in previous studies. LGBT persons continue to be subjected to intimidation, harassment, and physical and psychological violence in the family, health care, law enforcement bodies, the military, educational institutions, etc. The public generally has limited information and knowledge about issues related to sexuality, sexual orientation and gender identity. The public is often indifferent about violations and repression of the rights of LGBT people. Witnesses to crimes often ignore violence committed against LGBT people, and sometimes even support perpetrators. The crimes committed against LGBT people and the public's position become reasons for psychological distress, self-hatred, and the emergence of complexes and limited self-expression in society. LGBT people often do not call the police to report crimes committed against them. On the one hand, there is a lack of knowledge about how to deal with law enforcement agencies. On the other, distrust towards them. Some instances of harassment and violence against LGBT people are also carried out by law enforcement, but because of legal gaps are not recorded and remain undetected.⁴⁶ Moreover, legislation does not provide special protection for discrimination and crimes based on sexual orientation and gender identity.⁴⁷ Armenia's Criminal Code does not differentiate hate crimes or hate speech as separate types of crimes. Armenia is one of few countries in the region that does not provide official data on hate crimes against LGBT people to the Office of Democratic Institutions and Human Rights (ODIHR).⁴⁸ LGBT people point out that they apply to NGOs more for protection from hate crimes, where a number of organizations implement programs and measures to protect the rights of LGBT persons.

⁴⁵ "From prejudice to equality: Study of societal attitudes towards LGBTI people in Armenia," PINK Armenia, Yerevan, 2016, page 12

⁴⁶ See page 16

⁴⁷ See page 16

⁴⁸ See page 16

The victims and witnesses of the data analyzed in the 198 cases of "Hate crimes on the basis of SOGI: Fact finding" study are collocated as follows:

Table 1

Victims of hate crimes	Witnesses of hate crimes
79.7%	20.3%

Of the 198 cases reviewed in the study, a large majority of instances of intolerance and hate crimes took place in 2015, making up 50%, while in 2016, 16.4%

Table 2

Year	%
2010	1.7%
2011	4.6%
2012	11.6%
2013	6.4%
2014	9.3%
2015	50%
2016 April	16.4%

2.3. Typology of hate crimes

Hate crimes against LGBT persons in Armenia can be classified as criminal acts, i.e. acts that are criminally punishable, as well as other illegal acts that are not criminally punishable. Of the incidents studied, we can separate the ones that are more common, specifying the features of each.

✓ Hate crimes

A threat as a type of hate crime is characterized by abuse and is often manifested as calls for physical violence and force, in particular, statements about killing, destroying, beating, “sacrificing,” and “thrashing.”

When they attacked me, they shouted that they must kill “faggots” like me.

From an individual interview, LGBT person

Physical violence, accompanied by beating, leading to physical harm. Instances of physical violence against LGBT people take place in public places, as well as in homes. This will be covered in more detail in the following sections.

They said that they were ready to destroy me, so that their child could live in peace. They cursed, saying that I am not a human. They also threatened to tell me parents and take me to court so that I would “rot” in prison.

From an individual interview, LGBT person

My father hit me about 13 times. I only remember lying on the floor, and that there was blood coming from either my nose or mouth [I do not remember]. Then he put me on the sofa and began hitting me again.

From an individual interview, LGBT person

Deprivation of liberty, which is perceived by LGBT persons as a violation of the rights of free choice and movement. Restriction of a person's freedom is also classified as a type of hate crime. Such actions impede LGBT persons in their self-realization as full members of society. As hate crimes, restrictions of freedom are widely manifested in families, impeding the victim's circle of communication, as well as isolating them from society.

Physical violence causing damage to health is also a type of hate crime. According to LGBT persons, causing damage to health as a form of violence can lead to acquiring life-threatening illnesses.

I cough up blood. Sometimes I cough up liters of blood. I wake up covered in blood. The doctors say that I can die in my sleep by choking on my own blood.

From an individual interview, LGBT person

Psychological violence as a threat, often when concerning the revealing of LGBT persons' sexual orientation or gender identity. Special mechanisms of pressure apply to LGBT persons, which threaten to reveal their identity to their families, circles, and to the public. This type of hate crime, in turn, influences LGBT persons and disrupts their relationships with their families, and in general, contributes to social alienation. Institutional structures such as the army, schools, universities, etc. come up as examples of environments of psychological violence. Alienating mechanisms apply to LGBT persons, labeling them and eliminating their contact with other group members.

My classmates, as well as a portion of my lecturers (particularly the Deputy Dean), displayed a discriminatory attitude, from time to time making jokes and exerting psychological pressure on me.

From an individual interview, LGBT person

The setting of the army was such that LGBT people are kept far away from other soldiers. Before they would take them to a separate unit. Now, it is as if they are discharged. I know of an incident, when soldiers refused to eat in the cafeteria, reasoning that a homosexual person ate using the same tableware.

From an individual interview, LGBT person

Rape and attempted rape, which transgender sex workers are subjected to in particular. Transgender people have serious recruitment issues: employers refuse to hire them. Sex work becomes transgender people's only possibility for work, which according to respondents, is the grounds for rape or attempted rape. These are not common as a type of hate crime.

Theft or property damage, which does not have a primary aim or motivation in nature, however, as noted by victims and witnesses of hate crimes, are the derivative or consequence of violent actions against them.

They beat me, breaking my nose, opening up my head in a couple places. Afterward they stole my bag and phone.

From an individual interview, LGBT person

✓ **Other hate-motivated right violations**

Harassment as a type of hate crime against LGBT people is often seen on virtual platforms, accompanied by threats aimed at stopping the public activities of LGBT people. Those who commit violence believe their behavior stops "degeneracy" and the spread of LGBT "preaching" in Armenian society. The families of LGBT people often carry out harassment, believing that their actions will change the "wrong" sexual orientation and gender identity of the LGBT family member. The incidents of harassment later develop into complete control over a person in different spheres of life.

They said that they would find out who was involved in the website's editorial staff and take action, including physical violence. That entire conversation was accompanied by cursing.

From an individual interview, LGBT person

Damage to honor, dignity or reputation of LGBT people through insult, libeling, or hate speech. The use of the latter is clearly motivated by the sexual orientation and gender expression, showing the discriminatory attitudes of society against them. Words like "faggot,"

“same-sex addict,” “man-addict,” “dyke,” and “sick,” are often used to refer to LGBT people. Subjected to ongoing discrimination in society, LGBT people demonstrate an evasive attitude and behavior in relation to the threats against them out of fear of hate crimes.

Restriction or refusal of provision of public services, which means that LGBT individuals often face discriminatory attitudes when using community, health and social services, and services in other areas. LGBT people surveyed said that there is an accepted principle or clear order from heads of different service sectors not to serve LGBT people, and to create an environment that forces them to not make use of their services.

They would constantly delay the service and fulfill orders late. They are assigned to not serve LGBT people, in other words serve them in such a way that they will not come anymore.

From an individual interview, LGBT person

Intolerance in employment, which occurs when LGBT people are removed from work or denied employment in general, again on the basis of their sexual orientation or gender identity. Within this context, their abilities and skills are overlooked. According to LGBT people, even doubts about their orientation or identity exclude them from the possibility of employment.

My friend and I went to an interview. They offered her work and not me, even though her professional experience was less than mine. During the interview I felt that they noticed my [true] sexual orientation. After the interview they said they would call and never did.

From an individual interview, LGBT person

While classifying hate crimes and other rights violations against LGBT people, it is noticed that these incidents are closely linked and derived from one another. The initial phase of hate crimes is made up of harassment and threats, which are followed by physical violence accompanied by psychological pressure, and damage to health. The nature of violence against LGBT people both in wider society and domestically hinders the complete self-realization of LGBT people in society.

2.4. Prerequisites of hate crimes

The study's data show that one of the primary prerequisite or bases for hate crimes against LGBT people is appearance that distinguishes them and that does not reflect "normal" standards accepted by the public. The external features that differentiate LGBT people are grooming, clothing, mannerisms, and speaking style. From this perspective, transgender people are subject to obvious discrimination. They are easily distinguishable and become recognizable in society, subjected to physical and psychological pressure primarily from family and friends.⁴⁹ Respondents identified several external characteristics that often result in discrimination against LGBT people. They are LGBT people's voices, colorful clothing, and with men, earrings, grooming, etc.

It seems it was the way I walked, or the person who accompanied me, because they are more feminine than me.

From an individual interview, LGBT person

According to respondents, hate crimes and other offenses are often the result of LGBT people's active presence online. Statements spread online by the LGBT community and the organization of different events or participating in events makes LGBT people more "real" for those with discriminatory positions. As a result, LGBT people become targets of hate speech online as well. LGBT people's sexual orientation and gender identity are often revealed, invading their personal space, publicizing their messages, phone conversations and other content on social media platforms.

Public events organized by the LGBT community in Armenia make society's discriminatory position against LGBT people obvious. In fact, this is one of the primary reasons LGBT people, their activities, issues and rights are raised and made visible in a social situation, when the public at large tends to reject and discriminate against non-heterosexual sexuality. Witnesses of hate crimes, as indirect participants of violence, also point out that emphasizing LGBT people's sexuality in public spaces is an opportunity for pressure and violence.

⁴⁹ "The possibility of sex-reassignment for transgender people: legal barriers," Yerevan, 2013, <http://ngngo.net/>

The boys were sitting in the back of the bus and were caressing and kissing each other. The driver assumed they were not normal. They got mad and kicked the boys out of the bus.

From an individual interview, LGBT person

A question emerges from this case: do emotional relations or sexual expressions by heterosexual people in public spaces also turn into targets of aggressive and violent action? Criticism of violence against LGBT people and protection of their rights often make those who defend the interests of LGBT people vulnerable, as they themselves become targets. The basis of pressure and violence against LGBT people from family members is their desire to change LGBT people's sexual orientation or gender identity, in accordance with general heteronormative convictions.

They ask me if I was gay. I said no. After that they said to me that if they find out that I am that way, they would beat me and would make me heterosexual "with their ways," because being gay is not "normal."

From an individual interview, LGBT person

Violence against LGBT people, physical and psychological pressure, threats and intimidation in Armenia are, in fact, of a continuous nature. A number of institutions are involved in this criminal chain, including LGBT people's families, law enforcement, social, health and educational institutions, a number of public sector institutions, etc. LGBT people's behavior, as well as displays of sexuality in public places, is considered to be convincing reasons justifying violence against them, or to not intervene when violence is committed. Violence against LGBT people and violation of their rights is often justified by LGBT witnesses, who are potential targets of violence themselves.

2.5. Characteristics of perpetrators of hate crimes and other hate-motivated rights violations

The absence of a law criminalizing the spread of hate speech actually deepens and expands its spread on different platforms and areas.⁵⁰ The mass media become spreaders of hate speech, and the state takes no steps to reduce the negative attitude towards LGBT people.⁵¹ Not only are hate crimes against LGBT people not punished to the fullest extent of the law, but the media and other actors that spread official rhetoric continuously empower “right,” “natural,” or “traditional” knowledge and information about sexuality. In this context, the public has few options to receive alternative knowledge about the “other” and to have connections with them. Being outside the scope of “traditional” sexuality labels LGBT people, making them targets of intolerance and violence. LGBT people surveyed described those who have a discriminatory attitude against them as being driven by “traditional” values and the need to emphasize their “right” or “true” identity, who use violence and pressure to attempt to underscore their role in society.

Generally they are “qyartus”. But let me say, there are many homosexual or bisexual people within them.

From an individual interview, LGBT person

Surveyed LGBT people described several characteristics of perpetrators. Using them, we can group perpetrators into the following groups.

- **Young people**, especially those between the ages of 16-19, for who hate crimes against LGBT people mean exerting their individualism, to maintain a positive image in the eyes of their peers or in significant groups.
- **People driven by Christian convictions**. Christianity in general and the church as a religious institution in particular always played a critical role in shaping attitudes and discourses on sexuality. The transition from religiosity to secularism also marked the

⁵⁰ “From prejudice to equality: Study of societal attitudes towards LGBTI people in Armenia,” PINK Armenia, Yerevan, 2016, page 21

⁵¹ “From prejudice to equality: Study of societal attitudes towards LGBTI people in Armenia,” PINK Armenia, Yerevan, 2016, page 21

formation of new knowledge and understanding about sexuality, the body and gender differences, where, in contrast to the church, were dominated by secular authorities.⁵² In Armenia, however, the church, mixed with traditional ideologies, has continuously played a big role and involvement in institutions of the secular sphere, including education, the media, the family, etc. The Armenian Apostolic Church has an openly negative attitude against non-heteronormative sexuality, which is successfully preached and reproduced using the resources of the institutions mentioned above.⁵³ Individuals and groups that commit discriminatory and violent crimes against LGBT people, being the targets of discriminatory preaching, continuously reproduce ecclesiastical dogmatic ideologies about the traditional family and marriage, the “natural” sexual roles of men and women in relations, justifying their behavior and position that people with non-heterosexual sexualities conflict with the God-given “natural” order and break the cycle of reproduction of mankind.

- **Representatives of state, public institutions**, for example, political actors, particularly nationalists (for example, “Hayazn”), as well as nationalist non-governmental organizations, (for example, “One Nation” coalition of organizations) etc. Republican MP Hayk Babukhanyan said that he would not tolerate “same-sex addiction” and encourages the implementation of specific actions that will limit the spread of homosexuality.⁵⁴ Babukhanyan also issued a statement saying that it is necessary to restrict the activities of NGOs that work in the area of LGBT rights advocacy and the promotion of gender equality. The work of these groups is aimed directly to incite hate speech against LGBT people and specific actions based on hatred. Their and a number of state officials’ discriminatory attitudes and behavior have only one result: deepening the culture of impunity.

⁵²Wiesner-Hanks M., “Christianity and Sexuality in the Early Modern World: Regulating Desire, Reforming Practice”, page 2

⁵³“From prejudice to equality: Study of societal attitudes towards LGBTI people in Armenia,” PINK Armenia, Yerevan, 2016, page 13

⁵⁴ See

<http://www.pinkarmenia.org/tag/%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84-%D5%A9%D5%A5%D6%80%D5%A9/>

2.6. Environments of hate crimes and hate-motivated violations

A 2015 study by ILGA Europe singled out the areas where LGBT people are more often exposed to harassment and violence. The data shows that LGBT people are subjected to violence the most on the street (40%). 23% were victims in universities, 21% in schools, 21% in youth groups, 17% in pubs and other entertainment venues, 15% in shops, 13% at home and recreational/sports facilities. On an institutional level, 8% of LGBT people were subjected to violence in the workplace, 6% in healthcare institutions, 4.5% in churches, while 23% were threatened online through e-mail and text messaging.⁵⁵

In addition to this, the given research allows us to describe in detail the factors of the environments where crimes against LGBT people take place.

Public places, according to documented cases included parks, streets, clubs, and public transport. The aim of violence committed in public spaces was to make the incident bigger and to gain public support for the violence. Perpetrators often consider public spaces to be “personal space,” not allowing or tolerating the presence of LGBT people there.

They said that I defile their city Yerevan with my clothing and appearance, my grooming. They said to me that people like me should be burned, that we are not human.

From an individual interview, LGBT person

Areas that are conventionally designed for LGBT people: This is mostly related to transgender people involved in sex work, who are not hired by employers because of their gender identity. Hate crime incidents were documented particularly in English Park, which is better known as Komaygi.

LGBT people’s homes, where their families carry out violence, suppression and intimidation. The home also, in a sense, performs the function of hiding the identity of the LGBT family member from their surroundings.

⁵⁵“From prejudice to equality: Study of societal attitudes towards LGBTI people in Armenia,” PINK Armenia, Yerevan, 2016, page 20

Educational institutions and the Army: Among educational institutions, respondents specified Yerevan State University, public schools, European College, a number of vocational schools, where they have been subjected to hate crimes and pressure. Violence and pressure occurs too frequently in the army against LGBT people.

The Internet, as a virtual platform, is also an environment where hate crimes manifest, where LGBT people's accounts are vulnerable in particular. LGBT people face threatening messages, announcements, texts, and satirical drawings online.

Areas of Employment: Disclosure of an LGBT person's identity or sexual orientation makes them doubly vulnerable as a professional and as a representative of the LGBT community. Respondents who were victims of hate describe instances of violence that took place at Yerevan Mall, in different beauty salons and other locations in the service sector.

2.7. The role of state bodies in the process of identifying hate crimes

As already mentioned, despite the Republic of Armenia's domestic and international legal instruments, which define the protection of and responsibility for violations of human rights of LGBT people, hate crimes are, quite often, not punished. As victims of hate crimes and witnesses say, such crimes remain unpunished and the criminals anonymous, so as to not spoil their public reputation and so that there is no public response.

He was the son of a very high-ranking official, and I was scared, because he could do whatever he wanted.

From an individual interview, LGBT person

For a variety of reasons, LGBT individuals are reluctant to apply to law enforcement authorities after instances of crime, violence or discrimination. LGBT people surveyed indicated, that exposure of hate crimes and punishment of criminals also means the revealing of their sexual orientation and gender identity, which they usually hide from their families and their immediate circles, fearing that it will lead to social conflict and alienation.

I have not applied anywhere because I am scared that my parents will find out everything, and my whole purpose is to not cause them pain.

From an individual interview, LGBT person

Apart from the problem of being revealed, if the incident occurred in a social group of key importance for the LGBT person, such as family or peers, in many cases, the emotional factor keeps them from applying to institutional bodies to seek punishment of offenders.

I thought that I had to tell them, but in reality, I loved them all, and I did not want them to be involved in all of that. I also feared that the news would spread.

From an individual interview, LGBT person

As already mentioned, participants of the study were above the age of 16, but the crime incidents took place between April 2011 and April 2016. This means, that the incidents of

violence could have taken place when respondents were minors. This is another significant factor that prevents LGBT people from applying to law enforcement agencies, particularly for police intervention and help.

LGBT victims and witnesses said that the involvement of law enforcement bodies in addressing the violations were ineffective. Police delay the processing of reports, forcing LGBT individuals into “red tape” battles. In this context, LGBT individuals prefer to avoid legal solutions and try to solve issues themselves independently.

They take a very long time with meaningless back and forth, which lead to no results. All this time and any application to the police has been ineffective.

From an individual interview, LGBT person

I called the police and said what happened. I asked that they send a car. I waited for the car for about 20 minutes. During that time different people from the police called and I explained to all of them what happened, but I did not see a car and requested that they come near the entrance. They came and I went outside. They asked what I wanted. I said that I have no complaint, my only request was that they go with me to the street so I could get a taxi and go home. They put together a record, I signed it.

From an individual interview, LGBT person

If something serious happens, I would not apply to the appropriate body, but instead would take steps that they [the offenders] would never forget.

From an individual interview, LGBT person

Law enforcement agencies are not interested in identifying perpetrators and in applying punitive measures to this end, and rather, act as camouflage for hate crimes and from the position of not publicizing the issue, taking into consideration the important fact that very often the representatives of law enforcement or other state agencies are offenders themselves.

2.8. Summary

To summarize the results of the study "*Hate crimes on the basis of SOGI: Fact finding*," we can speak about the general description of hate crimes against LGBT people, manifestations of public discrimination and intolerance toward LGBT people, the reasons behind them, and about legal barriers to identify crimes and obstacles to applying responsibility measures to this end.

A large part of the 198 hate crimes observed in the study took place in 2015, making up 50% of all the hate crimes included in the study. 16.4% of the hate crimes observed took place in 2016. 79.7% of instances of violence committed on the basis of hatred were presented by the victims themselves, and 20.3% by witnesses.

We can see that hate crimes against LGBT people are closely interconnected. In the first phase of hate crimes, persecution and threats are displayed, followed by acts of physical violence, accompanied especially by psychological pressure. Acts of violence against LGBT persons, as in the wider public and domestically, hinder the full self-realization of LGBT people in society.

As atmospheres of psychological violence, institutional structures such as the army, schools, universities and hospitals often come up. They subject LGBT people to isolating, alienating mechanisms, labeling them, preventing contact with other members of the community, as well as with other social groups.

The study data shows that one of the key bases of hate crimes against LGBT people is their physical appearance, which distinguishes them and does not reflect "normal" or "natural" standards accepted by the public.

Violence toward LGBT people, physical and psychological pressure, threats and intimidations are of a continuous nature in Armenia. A number of institutions are involved in this criminal chain: the families of LGBT people, the public sector and law enforcement agencies in particular, healthcare and educational institutions, social services and other areas.

Not only do law enforcement agencies in Armenia fail to identify perpetrators and make them legally responsible, but they also camouflage hate crimes and contribute to their invisibility. It is important to mention that law enforcement or other government agency representatives are often the perpetrators themselves.

Because LGBT people generally do not trust law enforcement agencies, they will avoid interacting with them completely and will rely on their own methods and mechanisms of punishment.

In this context, hate crimes not only go unpunished, but further continuation of such crimes is also not prevented.

Recommendations for Prevention, Investigation of and Responsibility for Hate Crimes

This documentation research revealed various legal and social issues. Effectively addressing these issues implies the adoption of comprehensive measures by legislative, executive and judicial bodies.

In order to effectively combat hate crimes against LGBT people and to ensure proper realization of the human rights of LGBT people, it is necessary to:

- Develop and implement a common, unified policy for combating discrimination, which should, inter alia, include effective mechanisms to combat hate crimes and other hate-motivated incidents, including prevention of such cases, proper investigation, responsibility mechanisms and effective legal remedies.
- Review and amend Armenian legislation on hate crimes in accordance with international human rights standards, as a means to ensure Armenia's compliance with its international obligations.
- Define the bias of sexual orientation and gender identity as circumstances aggravating the crimes and punishment.
- Develop and implement mechanisms to ensure full, impartial and thorough investigation of hate crimes based on sexual orientation and gender identity, including the development of appropriate legal and procedural mechanisms aimed at identifying the biases of crimes.
- Ensure access to justice for victims of hate crimes, in particular, through for effective protection of the rights violated, which will exclude the risk of victimization, will ensure a person's security and provide comprehensive mechanisms for compensation of damages.
- Encourage victims and witnesses of hate crimes to report data to relevant bodies.
- Document cases of and maintain statistics for hate crimes, including those motivated by sexual orientation and gender identity of a victim, making the issue of hate crimes visible in the country.
- Review Armenian legislation prohibiting hate speech, define the concept of hate speech, define the prohibition of and responsibility for hate speech, incitement of hatred and

intolerance motivated by certain protected characteristics of a person, including against LGBT people.

- Adopt comprehensive legislation on the prohibition of discrimination, which will prevent, as well as set civil, administrative and criminal responsibility for instances of discrimination, as well as ensure protection against discrimination on the grounds of sexual orientation and gender identity of a person.
- Promote the ideas of tolerance and equality in society, particularly through public statements encouraging tolerance, recognizing LGBT individuals as full and equal members of society.

Abbreviations

OSCE	Organization for Security and Cooperation in Europe
CoE	Council of Europe
EU	European Union
LGBT	Lesbian, gay, bisexual, transgender
RA	Republic of Armenia
UN	United Nations
SOGI	Sexual orientation and gender identity
ODIHR	Office for Democratic Institutions and Human Rights
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
UNHRC	United Nations Human Rights Committee
ECtHR	European Court of Human Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
UN CESCR	United Nations Committee on Economic, Social and Cultural Rights

Definitions

Bisexual – a person who has romantic, emotional, erotic and sexual attraction towards people of the same and opposite sex.

Discrimination – any distinction, exclusion, restriction or preference of an individual's rights and freedoms, without an objective basis, legitimate aim and means of reasonable proportion, which has the purpose of violating or limiting a person's rights and fundamental freedoms.

Gay – (homosexual man) a man, who has romantic, emotional, erotic and sexual attraction towards another man.

Gender – refers to a person's internal perception and experience of masculinity and femininity, as well as to the social structure, which defines certain behaviors for the roles of men and women, depending on history, society, culture, and class. Gender is tied to society's expectations and is not just a biological question.

Gender identity – refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerism.

Hate crime – a criminal offence motivated by hatred or intolerance.

Hate speech – any expression that spreads, incites, promotes or justifies racial hatred, xenophobia, anti-Semitism, or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and violence against minorities, migrants and people with migrant backgrounds.

Heterosexual – a person who has romantic, emotional, erotic and sexual attraction towards a person of the opposite sex.

Homosexual (lesbian or gay) – a person who has romantic, emotional, erotic and sexual attraction towards a person of the same sex.

Homophobia - a phobia, fear, hatred and repulsion towards a homosexual person or individuals perceived as homosexual and homosexuality in general.

Individual – physical person, legal person, to extent that the rights and freedoms stipulated according to law are applicable to the legal entity.

Intersex – a person who biologically has both male and female features both on a chromosome or hormonal level, as well as in the form of sexual organs and therefore cannot fully identify herself/himself neither to a male nor a female.

Lesbian – (homosexual woman) a woman who has romantic, emotional, erotic and sexual attraction towards another woman.

LGBT community – a community of lesbian, gay, bisexual, transgender and intersex people united by common interests, problems and goals. It is also composed of various sub-communities, groups and communities.

Protected characteristic – a characteristic or feature of an individual or of groups, based on gender, sexual orientation, gender identity, race, color, ethnic or social origin, genetic features, language, religion, political or other opinion, national minority, property, birth, disability, age or other personal or social circumstances.

Sexual orientation – the romantic, emotional, erotic and sexual attraction of the person towards another person of the same or opposite sex..

Transgender – a common term to denote persons whose gender identity, gender expression and behavior are different from the ones commonly accepted for their biological sex.

Transgender man – a person born female who considers himself a man.

Transgender woman – a person born male who considers herself a woman.

Transphobia – a phobia, fear, hatred and repulsion towards transgender persons.

Sexuality – the entirety of each individual's biological, mental, behavioral, and social characteristics that define a person's identity, behavior, image and role as an individual and as a member of society.

Victimization – an attitude that has negative consequences for an individual, which is caused by the person filing a complaint with for the protection of their rights, or providing information about the application or law, to launch a court case, or to provide information about another's complaint, including provision of evidence.



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