



Annual Report: Human Rights Situation of LGBT People in Armenia, 2019

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#### INTRODUCTION

Pink human rights defender NGO does LGBT rights advocacy work through the provision of legal services and support, as well as advocacy of effective legislative mechanisms for protection against discrimination based on sexual orientation, gender identity, and hate crimes.

Pink annually presents a report on the human rights situation of LGBT persons, which is based on the documentation of violations on the grounds on sexual orientation and/or gender identity, as well as monitoring of discussions and developments on legislative or other public agendas.

Accordingly, the report consists of three main sections.

The first section summarizes the facts on violations recorded by the organization during the year and their legal interpretations. In 2019, Pink took a record of 37 violations coupled with discrimination based on sexual orientation and/or gender identity. One or several rights of the victims have been violated simultaneously, such as the right to be free from inhuman or degrading treatment, the right to respect for private life, including the right to privacy, physical or bodily integrity, the right to free choice of employment. Only 16 of the victims expressed a desire to apply for legal protection mechanisms, and Pink reported two more offences to law enforcement bodies. In the event of all the incidents reported, only 5 instituted a criminal case. In contrast, criminal proceedings did not follow for the rest of the cases given various reasons, such as lack of corpus delicti, failure to detect the perpetrator, retraction of the victim's report. The motive of the offence, namely the person's sexual orientation, gender identity and/or expression, was not a subject of investigation in any of the criminal cases.

The second section of the report contains assessments and expressions targeting LGBT persons by state bodies and officials, and they have been given legal commentary. In particular, calls of hatred, intolerance, discrimination, and violence by state officials, as well as other assessments by representatives of authorities are presented. Reference was also made to some legislative initiatives which are fundamentally discriminatory. It should be noted that such actions were launched in 2018, after the Velvet Revolution and were consistently rejected by the acting authorities.

Recommendations addressed to state authorities, mass media and the Human Rights Defender are presented in the third section of the report based on the identified issues.

The investigation of strategic litigation cases run by Pink's legal team is still pending in domestic courts and the European Court of Human Rights.

On May 17, 2019, the European Court of Human Rights communicated two cases concerning Oganezova v Armenia. In particular, the cases are about the firebombing of the DIY pub in 2012 and the subsequent persecutions conditioned by the homosexual orientation of the pub owner. By failing to receive a complete, thorough and objective investigation, the case contributed to deepening the atmosphere of impunity for hate crimes. Moreover, the young people who committed the crime received support from the Armenian Revolutionary Federation and Republican Party of Armenia MPs. MP Artsvik Minasyan and Deputy Speaker of the National Assembly Eduard Sharmazanov publicly justified their actions, thus rising tide of intolerance. The European Court will, therefore,

address the issue of incomplete legislative regulations and ineffective investigation of hate crimes in Armenia.

The investigation of Minasyan and others v Armenia is still pending in ECtHR. The case relates to an article published in Iravunk newspaper, titled "They serve the interests of international homosexual lobbying" which included a blacklist of persons whom the author urged to discriminate.[1]

The decision on manifestly ill-founded and unjustified dismissal of Pink's claim against the Yerevan Municipality at Administrative Court in 2018 has been appealed to the Administrative Court of Appeal. The decision to dismiss the lawsuit against the Ministry of Culture has also been appealed. To recall, according to the 2017 contract between Pink and the "Nushikyan Association" agency, billboard posters promoting tolerance with slogans "Do you want everyone to be happy?", "Then Wish Us Happiness" and "Trans people are a part of our society" were installed in central Yerevan. Two days after the installation, however, the City Hall ordered its removal from Yerevan. Pink then turned to the Ministry of Culture with a request to recognize the billboard posters as public service announcements (PSAs). The Ministry of Culture rejected the proposal.[2]

Investigation of the criminal case concerning the 2018 attack against LGBT persons and activists in the village of Shurnukh is also pending. It should be noted that the decision of the investigating body to grant amnesty was quashed by the court.[3]

## STATE OBLIGATIONS

The state has obligations to safeguard a safe and equal environment for the unhindered enjoyment of human rights and freedoms by all.

Failure to perform these obligations directly or indirectly leads to human rights violations.

The state is first and foremost obliged to respect human rights, refrain from unrightful interferences to the enjoyment of human rights. This obligation also entails respect for the efforts a person makes to exercise their human rights. The state should not allow such direct or indirect intrusions into the human rights and freedoms of persons that go beyond the permissible restrictions of these rights.

The next obligation of the state is to protect human rights, which entails the protection of individuals from human rights infringements by other individuals. As part of this obligation, the state must put in place effective and functioning legal protection mechanisms by which any such incident will be investigated; offenders will be held liable, victims of such offences will be ensured with adequate compensation.

Finally, it is the obligation of the state to ensure an environment enabling the enjoyment of human rights, which means that the state must take such legislative, administrative, budgetary, judicial measures that will create sufficient conditions for the full exercise of human rights. That includes the state's obligation to take such steps that promote a culture of respect towards human rights and create an equal and safe environment in the society for all.

The state carries out its obligations to respect, protect and create an enabling environment for human rights within its territorial jurisdiction. This means that the state is responsible for the protection of human rights of each individual within its territory, regardless of citizenship or another status.

# DOCUMENTED HUMAN RIGHTS VIOLATIONS

### RIGHT TO BE FREE FROM TORTURE OR INHUMANE, DEGRADING TREATMENT

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

Article 26, Part 1, RA Constitution[4]

Torture is any act by which a state official or a person acting in an official capacity, or by their incitement and knowledge or tacit consent, intentionally inflicts severe pain or suffering, whether physical or mental, to gather information or a confession from a person or a third party related to a crime committed by that person or a third party, as well as intimidation or coercion of a person or a third party, or for any other reason based on discrimination of any kind. This characterization does not include pain or suffering arising from lawful sanctions, inseparable from those sanctions or derived from them inadvertently.[5]

A person's freedom from torture and ill-treatment is an absolute right and cannot be subject to limitation.[6] If the ill-treatment is to fall within the scope of violation of the above-stated right, it must attain a minimum level of severity. It must consider the circumstances of the case, such as the nature of ill-treatment, the context within which it occurred, the duration of the treatment, its physical and mental effects and, in some cases, the sex, age, and state of health of the victim.[7] It is essential to make a distinction between torture, inhuman treatment, and degrading treatment, wherein torture is qualified by the intention of the perpetrator and the intensity of suffering, i.e. it is the deliberate inhuman treatment that causes very serious and cruel suffering.[8] Whereas ill-treatment is the treatment that causes the person to feel fear, threatened or in danger, and debasement,[9] harms the agency and reputation of the person, their human dignity and makes the person act against their will or conscience.[10] When causing physical or mental suffering has not attained a minimum severity or did not pursue an intention as defined by torture, then the act is inhuman treatment. In some cases, discrimination and threats based on sexual orientation or gender identity can be considered degrading treatment.[11] In these cases, it is not necessary to establish the intent on behalf of the state to recognize the violation of the right to be free from inhuman or degrading treatment.[12]

### Inhuman Treatment Based on Discrimination in Armed Forces

#### Case 1.1

During compulsory military service, after the individual's homosexual orientation was revealed, he was kept isolated from others in an area where basic living conditions could not be provided. In particular, he was held in a room with crumbling walls, without bedding, given food in a separate, non-common dining room. They have argued that the purpose of such an approach is to ensure the safety of the individual. After some time, the soldier was transferred to another military unit.

## Inhuman Treatment Towards a Homosexual Person by Their Acquaintances

#### Case 1.2

The two acquaintances of a homosexual man called him to the "Pak Shuka" area and climbed to the roof of the building. They threatened to call other people to beat him if he does not cut his hair right then. One of the acquaintances then took the scissors and tried to cut his hair. The victim told he would do it himself, took the scissors and cut his hair. The two acquaintances then humiliated him, saying that no one needs him, tried to induce him jump off the roof and took money from him.

On the same day, three acquaintances (including one from the case mentioned above) forced him to go to a café, humiliated him again, took his phone and tablet, forced to decode it. They took pictures of the photos in tablet with their phones where he was dressed as a different gender. Then again, they tried to tempt him to suicidal thoughts, forced to leave a note to the parents mentioning that it was his own decision to commit suicide. But then they tore the letter.

After the incident, the applicant walked over to Kievyan Bridge, tried to jump off, but one of the persons who humiliated him earlier approached and did not let it happen, saying that he should not end his life at least on that same day.

A few days later, it turned out that the photos taken from the person's cell phone had been shared with his classmates. Classmates cursed at him and then demanded his dismissal.

The victim did not want to report the crime because as he feared it could harm his relationship with the management of the educational institution and that he could be dismissed from the college.

It should be noted that in one of the situations described, human rights were violated directly by a state body when a person was in a closed state institution. Previously published annual reports also covered about the degrading and inhuman treatment towards gay men in armed forces. Pink's representatives tried to contact the Human Rights and Benevolent Center of the Ministry of Defense to discuss the current situation and possible solutions. The representative of the Center, however, insisted that they can only give a solution if the victim's name and surname is known. At the same time, soldiers in service avoid disclosing their personal information as they fear further pressure. In addition, the problem needs a systematic and in-depth solution, which implies a thorough study of the situation.

The second case is not new in the Armenian reality either. For years, bullying of LGBT persons by peers has been manifested not only in schools but also on the streets. However, to date, no one has been held responsible for humiliation, oppression, causing or abetment to suicide because of a person's sexual orientation or gender identity. In such an atmosphere of impunity, the state bears responsibility for any such crime. The next section of the report describes similar cases of persecution, physical violence, and other acts that may not be considered inhuman or degrading in their severity but constitute a violation of individuals' physical and psychological integrity.

### RIGHT TO PRIVATE AND FAMILY LIFE, HONOR AND REPUTATION

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

*Article 31, RA Constitution[13]* 

The right to a private and family life defines each individual's right to recognition before the law, as well as the right to privacy.[14] It includes the state's obligation to recognize an individual's sex and gender identity,[15] as presented by the individual, as a fulfilment of their right to private life.

"Private life" is a broad concept that includes a person's physical and psychological integrity. In some cases, it also includes a person's physical and social identity aspects. Circumstances such as one's gender identification, name, sexual orientation, and sexual life, for example, fall within the sphere of private and family life.[16] A person's body is the most intimate part of their private life.[17]

The right to private and family life also anticipates ensuring the right to self-development and establishment and development of relationships with others, effective realization of personal relations, and the right to have a safe environment within a given community. [18]

#### **Cases of Persecution, Physical Violence or Its Threat**

#### Case 2.1

During the conscription, the individual presented themselves to the Central Medical Commission for medical examination. In the applicant's medical record, there was a reference to "sexual preference disorder based on a personality disorder" which is a ground for the Republic of Armenia to declare a person unfit for military service.

While coming before the committee, they heard the committee members studying their papers in the room were discussing their homosexuality, using expressions such as "a faggot is coming now" and so forth. These expressions were heard by other conscripts standing behind the door.

Once inside, the chairman of the committee expressed disdain for their appearance (outfit, long hair). Learning that themselves and the conscript were from the same

province, he made sexual obscenities and insults the victim and their family members. He threatened to inform the conscript's father about their sexual orientation, noting that there could be no "people like them" in his region. He then demanded that the conscript approach him, hit them in the face with the conscript's file, raised his leg to strike, but one of the committee members removed the conscript from the room. The entire conversation, including the insults, was heard outside by other conscripts.

Yerevan Military Police Department of the RA Ministry of Defense has rejected the initiation of a criminal case on the grounds of the absence of corpus delicti in the actions of the chairman of the commission and lack of evidence. The decision was appealed to the prosecutor overseeing the case, who then rejected the appeal. An appeal has been filed to the Yerevan Court of First Instance seeking to remedy the violation of the applicant's rights and to examine the lawfulness of the preliminary ruling. The case is pending judicial review of the pre-trial proceedings before the Yerevan Court of First Instance of General Jurisdiction.

#### Case 2.2

In January 2019, one of the individual's friend's brothers called with their friend's phone number with the pretext of meeting and talking with them. The person was later informed by a friend that his brothers and cousins had intended to meet and beat them because they had learned about their homosexual sexual orientation. Sometime later, the applicant periodically received phone calls from unknown telephone numbers, which were later found to belong to their friend's brothers. The applicant also learned from their friend that his brothers were going to follow them because they knew where they worked, lived, and what they was doing. Besides, they are aware of the applicant's home address and threaten to disclose their sexual orientation to their family.

An application was lodged with the police to stop the persecution and to prevent the danger to their life or health. The police refused to file a criminal case in the absence of corpus delicti.

#### Case 2.3

The individual got acquainted with a man through the internet and arranged a meeting. In February 2019, an unidentified vehicle approached several meters away from the arranged place, in the dark. The victim approached the car, opened the front door, saw that the driver was a different person - not the man he had arranged to meet. The driver pointed a gun at the victim and demanded to get in the car.

In the car, he struck the victim's face several times with his hands, demanded from the victim to empty his pockets, took 28,000 AMD the victim had on him. He also took the victim's phone, wrote down the victim's friends' and relatives' phone numbers, threatened to reveal the victim's sexual orientation. In the course of the attack, the victim was repeatedly hit and sexually assaulted and insulted. The offender demanded another 50,000 AMD not to disclose the victim's sexual orientation to the relatives and also reported that he was a police officer, a former military guy and that he had called many homosexual boys to a meeting to "educate" them. The victim was also threatened to be taken to a police station for his homosexual conduct, where all the police officers

would subject him to sexual and physical violence. The offender demanded the victim to have oral sexual intercourse with him, and when the victim refused, he was forced to do it. After the forced sexual intercourse, the perpetrator allowed the victim to leave. A criminal case has been initiated and is currently under investigation.

#### Case 2.4

The person was walking near Swan Lake when he noticed three people looking at him and cursing at him. He then noticed that the same three were following him. They asked the victim whether he was Armenian, and after a positive response of the victim, they immediately began beating him. They threw the victim from the sidewalk to the street, where cars drove. They continued to curse the victim and tell that he had no right to be called an Armenian, that he was not a boy, but rather a "sissy". As a result of the violence, the victim's tooth was broken, his face, nose, and upper lip were damaged. A report was filed to the police, but the case was dismissed.

#### **Case 2.5**

The victim was walking down the street with friends when he accidentally met his acquaintance's sister and two of her friends. Passers-by have begun arguing, the victim's acquaintance's sister has urged her friends to beat the victim. Two men each hit the victim's head once, the victim fell, and they continued to kick various parts of the victim's body. The victim's ear was damaged. During the incident, the two men beating the victim said: "those like you shall be ruined and thrown off the lines". They also told the friend of the victim "are you a guy or a girl?", "if you're a girl, then why do you look like a guy?".

The victim's acquaintance's sister urged him to stay away from her brother, calling him "a faggot". The victim did not want to turn to law enforcement authorities, as his mother spoke with the families of offenders, and they promised that such a thing would not happen again.

#### Case 2.6

The individual was heading home from the educational institution by a minibus. Three unknown young men in the minibus have insulted him, saying: "This is that faggot", and so on. After getting off the minibus, the young men ran after the person with knives, saying aloud: "We need to get rid of people like you. We won't let you live". The individual entered a building, waited for half an hour, then, seeing that the young men had left the vicinity of the building, went down, and went home. The next morning, the person saw the same young men near his building.

He saw the same young men near his educational institution but bypassed the building so that he would not be seen. After the classes, the young men ran after him again, threatening to harm him. The individual managed to escape from them. He did not wish to file a complaint, fearing that it might affect his studies.

#### Case 2.7

The victim was walking to the gym when several juveniles, 15-17-year-old boys, according to the victim, threw at her rocks off the road, calling her "a faggot" and chasing her to the gym. Afterwards, they did not leave the area adjacent to the gym for some time.

The perpetrators had already left when the victim had finished training and prepared to go, so the victim found it senseless to file a complaint.

#### Case 2.8

During the conscription of compulsory military service, a homosexual man was referred to a psychiatric institution by the commission. In the hallway of the building, three other boys photographed and mocked him.

On the way home from the medical facility, the same three persons followed the guy, then stopped him in the deserted part of the street, seized his glasses and bag, threatened him with a knife and demanded to know whether he was homosexual.

The attack was stopped by the intervention of another person.

#### Case 2.9

Transgender women in women's clothing and wigs were standing near the Yerevan Municipality when two men approached them by car. One of them, lowering the car window, pointed a weapon-like object at the transgender women, saying: "These must be eliminated". The transgender women demanded to leave them alone and walked away. The men, however, went after them, one of them approached one of the transgender women, pushing her and pulling her wig. The transgender woman called the police, after which the perpetrators fled from the scene.

#### Case 2.10

The victims - two women, were crossing Baghramyan Avenue. Members of "The Will" Initiative campaigning against ratification of the Istanbul Convention – 3 men in front of the National Assembly offered to sign a petition. The victims refused to do so, after which the men used sexual profanity against them. One of the victims cursed in response, after which three members of the initiative approached and started pushing and hitting the victims. The perpetrators also cursed the casual passer-by for trying to calm the controversy. The attack on victims is described as a "provocation by LGBT persons" by the leader of the initiative and its affiliates; they are speculating the appearance of one of the victims, particularly the bright red hair.

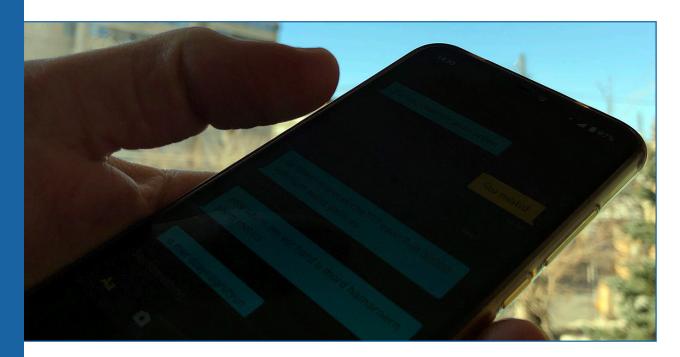
#### Case 2.11

A transgender woman left the nightclub with her friend. She noticed men arguing near the club, who made offensive remarks to her address. She left the area where men were arguing, after which some of the same men approached. One of them attacked from behind and struck the victim in face with his hand, and the victim fell. The 4-5 men began to hit with legs and arms on different parts of the victim's body, resulting in

various bodily injuries and a broken nose. During the assault, the men cursed the victim and made obscenities and insults related to the victim's sexual orientation. According to the victim, one of the perpetrators knew her because he saw her providing sex services in the Cruising park area.

#### Case 2.12

The perpetrator, having learned about a transgender woman and her husband's affair, made contact with the victim via the Internet and insulted her mentioning her gender identity, threatened she would be beaten whenever seen in Yerevan, and warned to beware of her.



## Disclosure of Personal Information or Threat Thereof, Offensive tTreatment

#### Case 2.13

A fake Facebook account user has threatened homosexual women to disclose their sexual orientation to their friends and relatives unless each of them transfers 200,000 AMD to her account. The perpetrator sent the victim's personal photos where one could guess about their homosexual orientation and threatened to send the pictures to the parents of the applicants. The victims did not want to apply to the RA law enforcement bodies as they feared their sexual orientation would be disclosed. A few days later the criminal withdrew the request.

#### Case 2.14

Personal information about a homosexual person acting as a victim of a criminal offence

of sexual assault has been disseminated by the investigating authority. The latter also provided his testimony to the victim's acquaintance. The acquaintance told the victim about it, urging him to withdraw the complaint because his homosexuality had become known and his name had been "defaced".

According to the victim, the acquaintance also told his father about the criminal case and its details.

A report on crime was submitted. RA Special Investigation Service stated in a letter that corpus delicti was missing.

#### Case 2.15

An unidentified Facebook user has contacted the individual's army friends, saying he wants to get information about him to "disgrace him". The same user sent out erotic pictures of various Facebook fake accounts to his friends as if those were his photos. In the individual's words, this Facebook user is one of his fellow soldiers who learned about his sexual orientation during military service and is now trying to "tarnish his honor" by spreading pictures.

#### Case 2.16

An acquaintance of the individual revealed her sexual orientation to her family and provided personal photos that have caused problems in the family. The victim did not apply to law enforcement bodies as she was previously in good relations with the offender.

#### Case 2.17

The perpetrator filmed the transgender women, chased, insulted and threatened them. The video has been made public via Facebook.

#### Case 2.18

During the episode of 02.09.2019 titled "Hot Breakup" of a TV show "Kisabats Lusamutner" (Half-Open Windows) nude photos of the individual were published, which have been provided by the victim's wife.[19] The victim's wife said that the pictures were provided by a person named "homosexual Armen", who had been in a relationship with her husband and had sexual relations with him. According to the victim's wife, because of these photos, the victim was also fired.

#### Case 2.19

A transgender person shot a woman singing on North Avenue on her cellphone. After finishing the song, the offender recognized the transgender person from public broadcasts, insulting her, calling her a "sacrilegious" and saying that "preaching such things" should not be allowed. The crowd applauded the woman, threatened the transgender person and pushed her away. One of those present approached the

transgender person and said: "if you are a woman, prove it. Pull down your skirt". Then one of those present approached and tried to kick her. The police intervened and apprehended only the singing woman.

After the incident, personal information of the transgender person, such as the phone number, the name before the name change occurred, etc. was disseminated on the Internet. No formal case has proceeded. The police did not proceed with the matter.

#### Case 2.20

One of the friends of the individual found out about the victim's sexual orientation, secretly accessed her phone and obtained personal photos of the victim and her girlfriend. The friend then reported on the victim's sexual orientation and relationships with her partner to other friends and acquaintances of the victim. She met with the victim's parents, told them about the victim's sexual orientation, sent them personal photos of the victim and her partner. The offender also reported the victim's sexual orientation to her brother, who, in his turn, disseminated the information to others. The victim did not wish to file a complaint because she did not want to involve family members in legal proceedings, avoiding further strain on their relationship.

#### Case 2.21

Having fallen in love with a lesbian and knowing about her homosexual relationship, her colleague demanded her to end the relationship or else he would disclose it to her and her partner's parents.

#### Case 2.22

A friend revealed an individual's family about him being homosexual to make his situation worse in the family. That same person also showed the victim's family their joint pictures showing homosexual relationships.

#### Case 2.23

A homosexual person attempted to prevent violence against another person, in response to which the perpetrator voiced about the victim's sexual orientation in public and made offensive remarks concerning sexual orientation.

#### **Domestic Violence Cases**

#### Case 2.24

In December 2018, the individual attended a birthday party of one of her friends from the LGBT community, after which her family suspected her of being homosexual. After that, she was locked up at home, deprived of means of communications - telephone, internet. The victim's grandmother and mother made calls to the victim's friends and reported that they had beaten the victim and would not allow her to get in touch with LGBT friends. At the same time, they said that they were going to inform the parents of the victim's LGBT friends about their children's sexual orientation.

There is also information that the victim's father had beaten her in the park on suspicion of homosexuality. In particular, the father struck the victim, after which her face began to bleed. The victim was then forced into the father's car and headed in an unknown direction.

#### Case 2.25

Family members found out about the individual's homosexual orientation. They deprived her of means of communication, banned from leaving the house, tied to a chair using a sticky tape sharply restricting her freedom of movement. They also made her visit a psychologist who tried to change the applicant's sexual orientation through counselling. The individual did not want to file a complaint against the family.

#### Case 2.26

A woman who was in a same-sex relationship was subjected to psychological abuse in her family by her aunt. The latter, knowing about the same-sex relationship, threatened to file a complaint against her partner with the police if they did not end their relationship. Threats were repeated regularly, but the victim did not want to go to the police. Later, the victim's parents learned about the victim's homosexual relationship, forced her to leave the Republic of Armenia and move to Russian Federation, took away her passport and deprived her of access to telephone, internet, thus restricting her freedom. A complaint was submitted to the RA Police, which informed the relevant department of the RF Police about it. Also, Pink sent an application to the Armenian Ambassador to the Russian Federation asking to intervene in the situation. After the request was sent to the Ambassador, the victim and her family were called to the police to clarify the circumstances of the case. After the police call, the pressure on the victim decreased.

#### Case 2.27

An individual identifying as a transgender man spoke positively about LGBT persons in front of the family, which has led to family disputes. In particular, the victim's father, mother, and brother subjected him to psychological abuse in connection with his ideas. The victim was then forced to wear women's clothing, make-up and have long hair, and his clothes were thrown in the garbage. The victim was also subjected to physical violence – they hit him, and after he fell they hit him more with feet.

The victim was deprived of any means of communication - telephone, computer, communication with acquaintances. The victim managed to tell a classmate about the pressures who then informed the teacher about the situation. The latter called the victim's mother and demanded an end to the violence. The violence stopped for a few days but resumed after. His mother even used physical abuse outside, in the street.

The victim's brother also threatened to kill the boy who the victim was in love with. The

individual did not want to go to the police because he is still at school. An application was lodged with the police, a criminal case was opened, but the victim reconciled with the family.

#### Case 2.28

The individual's father found nude photos of other young men on the phone and beat him after. The next day he went to school with bruises. He told his classmates about it. The teacher's support was in vain. No institution has been able to provide support. After being subjected to regular violence, the child fled the house. The child was found during a police search. However, even though knowing that the father was severely beating the child, the police handed him over his father.

The father announced that he would stop his son's education at school and would arrange to homeschool, after which the child did not attend the school anymore.

#### Case 2.29

Learning about the person's homosexual orientation, his father kept him locked up for a day. The victim managed to run away, came to the organization, then contacted and met his father.

During the meeting, the father used physical violence against the victim, pushed him and tried to choke. As a result, both were taken to the police station.

#### Case 2.30

The person's father, learning about her sexual orientation, had physically abused and insulted her. The father then demanded that either she would end homosexual relationships or leave home and live independently. The victim left home despite having no other home, not having a job and studying at the university while her parents were paying the tuition fee. The victim did not wish to file a complaint against family members.

#### Case 2.31

The person's mother arranged for her abduction to keep her at home, isolate her, change her sexual orientation, and prevent her from providing sexual services. The kidnapping was carried out by three persons. The latter called the victim, pretending to be a client, and under the pretext of having sex with her for money, they arranged to meet by fraud. She was abducted from the scene of meeting by force, taken to a nearby neighborhood and held in a car for some time.

A criminal case has been initiated. Four people, including the mother of the victim, were charged with kidnapping. The case is pending judgment.

#### Case 2.32

A person diagnosed with a sexual orientation disorder has been found unfit for military service. His parents and brother found out about it, after which he was locked up at home

for about two months, deprived of any means of communication. Moreover, abusive statements were regularly made to the applicant regarding his sexual orientation.

First and foremost, the victims of the described offences generally avoid reporting to law enforcement bodies because of the distrust towards them. In the past, there have been numerous cases where the investigating authority has disseminated information about the victim's personal life. In one of the above instances, we are witnessing a similar situation.

In addition to the fact that hate crimes based on sexual orientation or gender identity are not adequately investigated by the police and the investigative body, there are also insufficient legal grounds for a thorough and comprehensive investigation. The cases are treated as ordinary crimes. The motive of the offender is not taken into account even though hate crimes are much more dangerous and need to be approached and prosecuted differently.[20]

Among the recorded violations, disseminating information about a person's private life is particularly common. Cases of physical violence or threats are also widespread. Under such factual circumstances, persons were persecuted by strangers, who, however, at some point, ceased their actions.

In cases of domestic violence, individuals refuse to apply to law enforcement authorities based on the fact that the offender is a member of their family. By taking on the responsibility of protecting human rights, the state is obliged not only to enact legislation but also to take more comprehensive measures to raise the level of awareness and tolerance of the public. These measures should include increasing the educational level of individuals on homosexuality, transgender identity, and sexuality in general.

## FREEDOM TO CHOOSE EMPLOYMENT AND LABOUR RIGHTS

- 1. Everyone shall have the right to free choice of employment.
- 2. Every worker shall have the right to protection against unjustified dismissal from work. The grounds for dismissal from work shall be prescribed by law.

Article 57, RA Constitution[21]

The right to free choice of employment is one of the socio-economic rights underlying a person's social security. It allows a person to freely choose the means of making their living and ensure their well-being. Changing or quitting a job shall be at the will of the person, and dismissal must be carried out on a justified basis, without discrimination. Attempting to dismiss a person at their request by creating an oppressive environment in which a person voluntarily leaves, is also a violation of the labour rights.

#### Case 3.1

After the head of a state institution has been changed, the employer mentioned to a gay employee that his colleagues did not want to work together because of his sexual orientation. It was therefore advised that the employee resigned on his request. The individual submitted a request for dismissal. He did not then wish to apply to the court to restore his infringed right.

#### Case 3.2

The applicant's director and other colleagues, having learned about his sexual orientation, began humiliating him by regularly insulting, shouting at him, uttering harmful and abusive words about homosexuals, created an atmosphere of anxiety, but did not directly tell the applicant that they were aware of him being bisexual. After the applicant got into a heterosexual marriage and had a child, the pressures increased to the point that such many more assignments were given to the applicant, which required more significant effort and time. At the same time, the humiliations continued. According to the applicant, the administration is trying to create an oppressive atmosphere so that he would resign on his request.

In the cases described above, revealing about individuals' sexual orientation, such conditions were created at workplaces for the individuals to resign at their own request voluntarily. As a result, victims of wrongdoing do not have sufficient evidence of the motives for violating their labour rights, which deprives them of access to legal remedies.

The absence of the law on non-discrimination also contributes to a situation where one cannot argue the fact of being discriminated against without sufficient evidence. In particular, in the event of availability of data proving the breach of labour law one has the opportunity to apply to the court on a general basis, bearing the burden of proving the circumstances of the plea. The burden to prove the discriminatory nature of labour law violations is also borne by the victim, which is almost impossible because of initially unequal conditions between the employer and employee.

## FREEDOM OF ASSOCIATIONS

- 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests. No one may be compelled to join any private association.
- 2. The procedure for the establishment and operation of associations shall be prescribed by law.
- 3. The freedom of associations may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the basic rights and freedoms of others.
- 4. The activities of associations may be suspended or prohibited only upon court decision, in the cases and under the procedure prescribed by law.

Article 45, RA Constitution[22]

Association is an organized, independent, non-profit making body founded on the free will of individuals and pursues a specific purpose.

Associations can take a variety of legal and organizational forms. The importance of these in social life is that people have the opportunity to express their position and engage in joint activities aimed at representing and/or protecting the interests of a particular group.

Freedom of association should not only be protected by general means, through the development of legislative arrangements, but appropriate measures should also be made to ensure the unhindered operation of associations. These include actions to eliminate discrimination against associations. That is to say, the state must not only provide the ability of any individual to join a union, regardless of their sexual orientation or gender identity but must also create a secure environment for the unhindered activity of an association representing the interests of any group and pursuing a legitimate aim. [23]

#### Case 4.1

Residents of the building where "FemLibrary" NGO is located, seeing a hugging and kissing lesbian couple in the building, turned to the mayor of Yerevan / Kentron district municipality, saying that FemLibrary was "spreading perversion". Afterwards, local government officials announced that they would fine the NGO on the basis not provided by the RA legislation, that the NGOs could not rent an apartment, but should rent only a public place, and that then they would evict the NGO through the police. Local government officials did not conceal that their actions have punitive elements and that they are deliberately trying to fine that specific NGO. The pressure on the NGO lasted for several days only stopped after some members of the Yerevan City Council intervened. However, the organization eventually had to move out of the area.

In the aforementioned case, the unhindered activity of public unions was disrupted due to the sexual orientation of its visitors. Not only did the state body failed to take measures to create a safe environment for the union's activity, but it also attempted to directly impede its operations, which deepened the negative attitude of citizens and put the organization in a vulnerable position.

## PUBLIC SPEECHES OF STATE OFFICIALS

### HATE SPEECH

5

Hate speech does not have one generally recognized definition yet, but in practice, conditional interpretations have been made by international organizations.

Hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.[24]

Article 19 (2) of the UN International Covenant on Civil and Political Rights recognizes freedom of expression, stating that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".[25]

The third part of Article 19 defines the conditions under which freedom of expression can be restricted, stating that restrictions should: a) be provided by law and be necessary; b) serve to protect the rights or reputations of others, national security, public order, or public health or morals; and c) be necessary in a democratic society to protect these interests. The existence of one or two of these conditions is not enough for the restrictions to be considered lawful.

According to Article 20 (2) of the ICCPR, "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

Hate speech is expressed not only by calls for violence, discrimination, or justification and advocacy thereof but also by offensive, degrading, hostile treatment, instilling intolerance towards certain groups. On the one hand, it can lead to hate crimes against groups or individuals; on the other hand, it can disrupt the psychological integrity of individuals with certain traits, causing mental distress or depression.

Hate speech is addressed at various levels by the laws of different countries. For example, in Canada, Iceland, the United Kingdom, Finland, France, the Netherlands, and some other countries, criminal responsibility is provided for hate speech.[26]

The responsibility for the hate speech is conditioned by its severity. The following considerations are taken into account when determining the severity of hate speech:[27]

- Context, where the hate speech has been displayed
- Speaker, the position and status of the speaker in the society, who may have an impact on certain groups in the society
- Intent it is vital to understand whether such speech was deliberately intended to produce a consequence or if it was done by negligence
- Content and form: it is necessary to analyze the content of the speech to assess its provocative nature and the harm it may cause

- The extent of the Speech Act, the reach of the speech act, its magnitude and size of its audience
- The likelihood, including imminence

Based on an analysis of these circumstances, the degree of responsibility for hate speech may be varied. In a situation where 95% of the public has a negative attitude towards homosexual and transgender people, even the most seemingly harmless expression of hate speech can deepen the polarization of society and lead to offences. Where the author of hate speech is a public official, its degree of danger is higher not only because of the reputation enjoyed by the official but also due to the creation of an atmosphere of impunity.

Negligent hate speech should be criticized and even lead to liability in some cases. However, criminal liability is not necessary in this case. The content of the speech is of particular importance for assessing its consequences: it can keep a certain group of people in an atmosphere of fear and a state of psychological distress, under constant threat. Public access to hate speech depends both on where it was expressed and whether it was spread through the media. The spread of hate speech by the media also needs to be legally assessed. And finally, hate speech must be real and precise: its unambiguous perception reduces the degree of danger.

In 2019, the most widespread hate speech in the country was addressed to homosexual and transgender people, their human rights defenders and allies.\* Below, the most evident and dangerous manifestations of hate speech are presented.

#### Lilit Martirosyan's Speech at the National Assembly

On April 5, 2018, the Standing Committee on Human Rights and Public Affairs of the National Assembly initiated a discussion on Universal Periodic Review of the United Nations, in which representatives of the RA Government, National Assembly, as well as representatives of the UN, European Union, ambassadors, and civil society participated.

During the discussion, following the procedure set out in the agenda, after registering, Lilit Martirosyan, president of the Right Side NGO made a speech, presented herself as a transgender woman and raised the issue of crimes based on gender identity against transgender people.

Following the speech, Naira Zohrabyan, the Chairperson of the Standing Committee on Human Rights and Public Affairs who also chaired the session, stated:

"As a chairperson of the session, I use my right and note that we had three topics of discussion, that is, judicial reforms, the protection of children and people with disabilities. I consider it disrespectful first of all towards myself as a president of the committee, and secondly towards the parliament to take the chance and try to raise an issue from this

<sup>\*</sup> Armenian Helsinki committee "Hate Speech Monitoring: Pilot report", page 6. Available in Armenian at: https://bit.ly/2xwthgG

podium that is not on our agenda right now. No one violates your rights, but we have a clear agenda, and you have violated our agenda. I consider this a mere disrespect to the Committee on Human Rights and the agenda we have set. You can't break the agenda; this was a clear set agenda. And no! There is no matter of discrimination concerned here; when the problem would concern you, we would invite you to speak. We had a clear agenda here; you broke the agenda. Please, leave the hall".[28]

After the hearings, Naira Zohrabyan was hosted on "1in.am" to a TV show called "With Nver Mnatsakanyan". During the interview, Zohrabyan mentioned that she was so shocked to see Lilit Martirosyan approaching the podium that she didn't even remember what she talked about".[29]



Gagik Tsarukyan, the leader of the Prosperous Armenia faction, expressed the following position on this matter:

"As Tsarukyan, as the leader of the Prosperous Armenia Party, as the head of a family brought up in Armenian traditions and faith, this is unacceptable for us ... This is a vice, and we must hide the vice as it was before. We will never allow this phenomenon to spread. Just like it always has, the law still works, and everyone has human rights".

Prosperous Armenia MP Gevorg Petrosyan expressed the following position:

"... Within the law, at all costs, I will fight against the sex-perverts and spreading ideas of destructive sects.

Even if no one supports me or only a few do, consider the start of this struggle, with expectations on any kind of ending..."

MP from the same faction Vardan Ghukasyan expressed the following position:

"It is an embarrassment to give the most important political platform of the country to such people... No, not all people have equal rights; this is not Europe. And in Armenia, our tradition is more important than anything else. In general, such people have not been given space. Now if you want to bring European values to Armenia, then you are

greatly mistaken. Some people are against it – most of the people, in fact. Let those with degenerated behavior go live in Holland, not in the Republic of Armenia".

...

Males are males: Now males and females are mixed up. That's enough – Europe, Europe".[30]

Following the transgender person's speech, during a protest in front of the National Assembly, Father Ghazar Petrosyan spoke about his demands regarding homosexuality to be criminally punishable with a sentence of four years' imprisonment'. Vardan Ghukasyan responded to the demand and said: "Four years is not enough; they shall be publicly burnt".[31]

These statements contain offensive, degrading expressions, as well as calls for violence. The status of the authors of the phrases and their means of distribution, its reach on certain groups in the society, as well as its impact, should be taken into account when assessing the impetus for hate crimes. As MPs from the second large faction at the National Assembly, the authors of the above quotes have a broad audience, and therefore the degree of danger of their speech is considered higher. Moreover, as they received the people's vote represented their vote in the legislative body of the country, they have, in their own words, formed a particular understanding of the position of their electorate, which may also have a misleading influence on the attitudes of larger groups. However, since the Constitution of the Republic of Armenia has the highest legal force, and any legal act must comply with the Constitution, the legislature must not only refrain from adopting unconstitutional laws but also encourage the creation of adequate safeguards ensuring the exercise of the rights recognized by the Constitution.

In connection with the statements mentioned above, a request was submitted to the President of the National Assembly to form an ad-hoc committee on ethics and to examine the positions expressed by the MPs. No response has been received from the National Assembly so far. Vardan Ghukasyan's statements were submitted to the RA Police with the request to provide them with appropriate legal assessment and to initiate a criminal case. However, the appeal to initiate a criminal case was dismissed on the ground of absence of elements of a crime.

Meanwhile, one of the protesters in the vicinity of the National Assembly showed a household knife in his bag in front of cameras and, having in mind the homosexual people, informed about his intention to harm them.[32] The same intention was emphasized in another interview. A report was made to the police on this occasion, but no prosecution was conducted on the grounds of lack of corpus delicti.

#### **Prime Minister's Public Reflection to the Situation**

Prime Minister Nikol Pashinyan responded to the reporters' questions and expressed the following position: "It was a sitting of the parliamentary Human Rights Committee. Now I am asking you all: is Lilit Martirosyan, who received a passport of the Republic of Armenia, a human being or not? Let everyone answer this question - the clergymen,

members of the Republican and Prosperous Armenia Parties and the conservatives. Secondly, the behavior that the chair of the parliamentary commission on human rights manifested in this situation calls into question the situation with human rights. Prosperous Armenia should think she can remain a representative of this commission and if she meets the minimum standards required to chair a Human Rights Commission".[33]

Prime Minister Nikol Pashinyan has also commented on the government's funding of Mel, a film documenting the life of Armenian transgender weightlifter Mel Daluzyan, which is partly funded by the RA Ministry of Culture. In particular, he mentioned: "That's true, I was unaware, but I am very pleased that this film was funded because it the moral and psychological portrait of Armenia we imagine is not like that".[34]

## ASSOCIATED DISCRIMINATION AND HATE SPEECH

During 2019, various attempts were made to manipulate LGBT issues, prompting the Government to express its position and introduce legal regulations to limit the activities of LGBT persons and human rights defenders. The actions of individuals and organizations not directly involved in LGBT advocacy work have also been linked to gay "propaganda", and allegations were made against them for "propagating perversion". In particular, their activities were hindered, public insults and threats were made against them.

#### Presentation of the Book "My Body is Private"

The staff of the Sexual Assault Crisis Center organized the presentation of the book "My Body is Private" aimed at educating parents and children against sexual abuse. [35] During the event, about 10-25 people according to various reports, ambushed and disrupted the presentation of the book. Afterwards, a group of men joined them and chanted "Shame! Shame! You preach perversion and immorality!" etc.[36] The incident was followed by insults and hate speech online - on Facebook and in the media. Some individuals who represent themselves as neurosurgeons, sexologists, and other specialists have criticized the book as if it was promoting pedophilia and homosexuality. [37]



#### **Ratification of Istanbul Convention**

The Istanbul Convention on Violence against Women has already been signed by the Republic of Armenia. Its ratification is still expected. In 2019, some groups began

disseminating disinformation about the Convention and organizing protests against it. In particular, the Convention was presented as a Convention for the Protection of Homosexuals, which aims to "introduce third sex" in addition to male and female sexes, to allow same-sex couples to marry and adopt children. Ara Zohrabyan, Chairman of the Chamber of Advocates of the Republic of Armenia, Doctor of Law, Professor, former Minister of Justice of Armenia Gevorg Danielyan and others, who considered the Istanbul Convention as unconstitutional, expressed such an opinion. Ara Zohrabyan has launched an online petition to reject the Istanbul Convention.[38]

During the discussions on ratification of the Istanbul Convention, in the area adjacent to the National Assembly, a protest action was organized by the "Kamk" (Will) NGO, arguing that the ratification of the "anti-Armenian", "anti-national" document should not be allowed.

The petition against the ratification of the Convention has been carried out for months by misleading the public that the Convention is intended to permit same-sex marriage and the adoption of children. Several MPs from the ruling "My Step", "Prosperous Armenia" factions also joined the petition. MP Gevorg Petrosyan, who also joined the petition, mentioned that "Prosperous Armenia" leader Gagik Tsarukyan agrees that the Convention does not correspond to our national values and ideas.[39]

#### **Fem Library**

One of the news outlets had reported that there was a library-gathering place for LGBT persons and feminists in Yerevan.[40] It stated that the library was mainly a gathering place for LGBT persons and that those with "traditional" sexual orientation, conservative, non-liberal views were not allowed. Photos were released targeting those in the library.



#### "Huzank u Zang" Performance

A group of artists, who received a grant from the Ministry of Education, Science, Culture and Sport, staged a performance called "Huzank u Zang" in near the Republic Square subway station in Yerevan. According to the authors, the performance is a synthesis of modern dance and poetry rhythms, in an experimental re-reading of the 1920s futuristic poetry by Charents, Gevorg Abov, Azat Vshtuni.

On the eve of the show, a group of people known to be protesting against LGBT people called for a gathering to allow the staging of the performance to take place. In particular, they have argued that the performance is "satanic" and have linked it with LGBT persons and the propaganda of "non-traditional sexual orientation". During the performance, those gathered obstructed the staging, one of them threw an antiseptic liquid that has a green coloring (triarylmethane antiseptic dye also known as zelyonka) at one of the artists and was subsequently arrested by police.[41] Abusive statements inciting hatred and hostility were also spread in social media, and some have accused the Ministry of funding "perversion". The performance, however, was staged till the end. The Minister of Education, Science, Culture and Sport has announced the names of the members of the committee who decided to grant funding to organize the performance. Some members of the committee told the media that they were unaware of the way the play would be staged.



#### A Campaign Against the Open Society Foundations-Armenia

The "Veto" Initiative has carried out a long campaign against the Open Society Foundations, making offensive statements against them, describing their activities as "destroying the state", "preaching abomination and perversion", and so forth. The initiative has been demonstrating in front of the Foundation's office for more than twenty days, trying to reach out to office staff and visitors. The participants of the demonstration, in particular, asked the visitors questions about the grants they received. At the same time, members of the Initiative made speeches linking the foundations' activities with the "propaganda of perversion" and LGBT persons. They also referred to one of the LGBT activists in person, spreading insults and defamation against that person.\*

The Open Society Foundations released a statement, reiterating their appeal to the law-enforcement agencies and the Office of Armenia's Human Rights Defender to accurately assess what happened and to act in the interests of democracy and the rule of law to reinstate the rights, honor, and dignity of Armenian citizens.[42] No response was received from law enforcement bodies.



<sup>\*</sup>Protest action of the "Veto" Initiative in front of the Open Society Foundations' office. https://youtu.be/9F9jxSo8alo

## DELIBERATIONS ON LEGISLATIVE CHANGES

7

#### **Discriminatory Legislative Initiatives**

On May 16, 2019, Members of the Prosperous Armenia Faction proposed to criminalize the preaching of "Non-Traditional Sexual Orientation" among Persons under 16.[43]

The proposal was not approved by the RA Government on the grounds that the protection of children could be carried out with existing elements of crime, and there is no need for new elements to be introduced.

On November 12, 2019, the National Assembly debated the issue of including the draft laws on amending the RA Family Code presented by several NA deputies in the agenda of the Third Session of Seventh Convocation.

One of the drafts amendments, in particular, was to amend Article 116, paragraph 1, of the Family Code, which provides for a list of circumstances limiting the right to adopt a child, adding:

- Persons in a same-sex marriage, in accordance with the law of the state permitting such marriage,
- Persons who underwent sex reassignment.

Arguments to substantiate this supplement include statements such as:

"The family is complete when there are two parents, father and mother, each of whom has a special role in the Armenian family. A child inside orphanage walls or without parental care cannot feel full and healthy in an environment where he or she does not understand who their mother is and who their father is.

... There is a need to understand how a child can live with same-sex spouses. Living in such inadequacy, children can develop mental disorders by not being able to express their inner feelings. In the ARMENIAN society, this phenomenon will become more vulnerable, because looking back at our history, we cannot meet such families...".[44]

The next draft proposes a prohibition on marriage between same-sex persons, as well as marriages where at least one of the spouses changed their sexes, in the circumstances prohibiting marriage registration under Article 11 of the Family Code.

In justifying the necessity of this draft, its author stated: "Especially while the Republic of Armenia remains in a state of war, action is urgently needed to prevent phenomena that impede the normal reproduction of our population".

...

Neither the Constitution of the Republic of Armenia nor the international commitments of the Republic of Armenia set out requirements for the state to provide legal preconditions for the union of same-sex persons (marriage registration). That is to say, Armenia has no legal obligation to permit the marriage of homosexual or transgender

persons in its territory. Moreover, Article 23, Part 2 of the International Covenant on Civil and Political Rights states that "The right of men and women of marriageable age to marry and to found a family shall be recognized". According to Article 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms, "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right".

This provision enables every state to regulate marital relations per national and cultural values. Based on the peculiarities of our country, the state must fulfil the main goals of the state policy enshrined in the Constitution, the most important of which is "to create favorable conditions for the full and comprehensive development of the individuality of children".[45]

By voting the NA rejected the inclusion of the drafts in the NA agenda. At the same time, the debate was accompanied by a heated debate between MPs from the ruling "My Step" faction and the author of the draft Gevorg Petrosyan. Maria Karapetyan, an MP from the ruling party, mentioned, that "if the propaganda of "non-traditional sexual orientation" is criminalized, Gevorg Petrosyan should be the first to be held accountable since he is the one who speaks and 'propagates' the topic the most". Kristine Poghosyan said that according to psychologists, homophobia is vividly expressed among people who are latent homosexuals. Prior to voting, Gevorg Petrosyan asked whether lawmakers who would vote against the draft would like to see such a "phenomenon" in their family. NA Speaker Ararat Mirzoyan Urges Gevorg Petrosyan to beware of his expressions.[46]

It should be noted that back in 2018, the Republican and Prosperous Armenia factions also came up with draft banning the propaganda of "non-traditional sexual orientation". The drafts were not approved by the Government because the concepts used were not clear and could lead to legal uncertainty.

Not only is this text problematic due to its non-compliance with the RA Law on Normative Legal Acts as it contains the term "non-traditional" that does not comply with the principle of legal certainty, but it also creates real risks for the protection of human rights and freedoms and for adequately safeguarding them by the state. In discussing the adoption of similar legislative prohibitions of the so-called "propaganda of homosexuality" in the Russian Federation, Ukraine and Moldova, the European Commission for Democracy Through Law (Venice Commission) has addressed the compliance of these laws with principles of democracy and human rights. It has concluded that these are a restriction of freedoms to expression and assembly.[47]

Pink Human Rights Defender NGO presented detailed legal positions about the legislative drafts in its 2018 Report of Human Rights Situation of LGBT People.[48]

# LEGISLATIVE INITIATIVES REGULATING DISCRIMINATION, HATE CRIMES, AND HATE SPEECH

A draft amendment to the RA Criminal Code has been put into discussion, proposing to criminalize public calls for violence, publicly justifying or preaching violence.[49] Human rights advocates suggested specifying the content of the intended article to avoid misinterpretation and prevent abuse of freedom of speech. The draft is still under revision.

In November 2019, the draft Criminal Code was introduced, with Article 201 providing for criminal liability for discrimination. While discrimination based on sexual orientation and gender identity is not directly enshrined in the draft article, it states that discrimination is also prohibited "on other personal or social circumstances".

On "e-draft", an online platform for public discussion of draft legal acts, as a widespread problem in the country, it has been suggested to stipulate the prohibition of discrimination based on sexual orientation and gender identity. Not only the documented information on the situation but also the recommendations by international institutions to Armenia and the commitments undertaken by the RA were presented as a justification. The Ministry of Justice rejected the recommendation, noting that the list of grounds for discrimination is not exhaustive and that "other personal and social characteristics" also includes sexual orientation and gender identity.[50] It shall be noted that the article prohibiting discrimination in the draft law presented for public discussion in 2017 also did not explicitly include sexual orientation as a protected ground.

Article 72 of the Draft, which provides for aggravating circumstances for criminal liability and punishment, has been rephrased as follows: "Committing a crime motivated by ideological, national, ethnic, racial, social or religious hatred, intolerance or hostility or religious fanaticism".

It should be noted that the basis for "social hatred" has been added, which is unclear and may give rise to misunderstanding. However, during the public discussions of the draft, the authors commented that the motive for hatred based on sexual orientation and gender identity fit into this concept. The same comment was made in response to a recommendation submitted to the Ministry of Justice on "e-draft", an online platform for public discussion of draft legal acts.[51]

Article 315 of the draft law, which provides for criminal liability for spreading hostility, hatred or intolerance, has also been edited as follows: "National, ethnic, racial, political, ideological or religious hostility, hatred or intolerance, as well as hatred, intolerance or hostility towards another social group". It should be noted that the draft added responsibility for the act of inciting "hatred, intolerance or hostility towards another social group". Such a broad definition, of course, involves inciting hatred towards homosexual and transgender persons, but can, at the same time, allow law enforcement

agencies to interpret the article narrowly and not apply it to hate speech against LGBT persons. In a recommendation to the draft in "e-draft" system, that sexual orientation and gender identity should be explicitly stated as a basis for more widespread hate speech, the Ministry of Justice responded that the wording of "another social group" included these grounds.[52]

## NATIONAL STRATEGY OF HUMAN RIGHTS PROTECTION

During 2019, the Ministry of Justice initiated a discussion for the National Strategy of Human Rights Protection and its Action Plan for 2020-2022. The distinctive feature of the discussion was based on the fact that civil society was not presented with a prepared draft strategy and action plan but instead invited to talk about problems and solutions to human rights issues in various areas.

After the discussions, civil society representatives were invited to submit written recommendations and substantiations to the Ministry.

The Draft Law on National Strategy of Human Rights Protection and Action Plan for 2020-2022 Stemming from it were subsequently published. It is worthy to note, that it includes the need for legislative adjustments to prohibit hate speech. Although Pink has identified discrimination based on sexual orientation and gender identity as a widespread problem in Armenia and provided justifications for legal measures to be undertaken, the adoption of anti-discrimination law has been enshrined as a measure against discrimination on any grounds in the Action Plan.

# CONCLUSION

In 2019, hate speech against LGBT people had reached unprecedented levels. The authors of hate speech based on sexual orientation or gender identity are not only private individuals but also representatives of public authorities whose message is widely circulated through the mass media. Some MPs have put forward draft amendments to laws that are discriminatory and may violate the human rights of LGBT persons. These drafts, however, have received a negative response from the ruling party. Discussions of these drafts, yet, were broadcast online and accompanied by offensive, degrading, intolerant expressions that promoted hostility. Some of the statements made by the MPs included calls for violence, but were not given any legal assessment.

At the same time, some groups and initiatives have manipulated with disinformation through the media and various protests, linking state-funded activities or measures performed within the framework of state obligations to LGBT persons. Although the rallies have been accompanied by calls for violence and discrimination and armed men took part in them, no action was taken by law enforcement bodies to curb intolerant and hostile measures. The organizers of the petition against the Istanbul Convention, which was deliberately linked to LGBT people, have been aggressive towards passers-by who refused to sign.

Draft Laws "On Ensuring Equality" and Criminal Code were put for public discussion again. The latter provides aggravating circumstances for acts based on discrimination, hatred, intolerance and inciting hatred. However, sexual orientation and gender identity were not mentioned as protected grounds in either of the drafts.

However, the state is beginning to take steps by rejecting bills that contravene human rights principles, as well as initiating systemic amendments to prevent hate speech.

# **RECOMMENDATIONS**

#### To State Bodies and Political Forces

- O Cooperate with human rights defender non-governmental organizations to obtain more detailed information on systematic aspects pf LGBT human rights violations.
- O Envisage actions aimed at preventing discrimination and violence based on sexual orientation and gender identity in different areas of public life in the Action Plan arising from the National Strategy on Human Rights Protection.
- O Give precise assessments when addressing LGBT human rights violations, and do not avoid condemning human rights abuses.
- O Conduct a thorough review of international human rights documents, international legal practices, and analysis of the current situation in the country to provide effective statutory regulations on hate speech in line with human rights standards.
- O Review the RA legislation that prohibits hate speech, define the concept of "hate speech," and put into force a ban on hate speech and intolerance against people with certain characteristics, including against LGBT people.
- Take appropriate steps to prevent intolerance and hate speech by state authorities towards LGBT persons, and hold persons who engage in acts of intolerance and hate speech accountable.
- Conduct complete, objective and thorough investigations of LGBT rights violations, without discriminatory, prejudiced attitudes towards LGBT people by investigative bodies.
- O Take appropriate measures to ensure the safety of LGBT persons in closed institutions, to prevent cruel and degrading treatment and, where applicable, conduct a proper investigation. Do not avoid cooperation with human rights defender organizations to eliminate the problem.
- O Adopt separate, comprehensive legislation ensuring the protection of the right to be free from discrimination, including on the grounds of sexual orientation and gender identity by envisaging prevention and prohibition of discrimination and civil, administrative and criminal liability.
- Review the RA legislation that prohibits hate crimes, expressly consider a crime committed against a person on the grounds of their sexual orientation and/or gender identity as an aggravating circumstance in criminal liability and punishment.
- O Develop and implement mechanisms to ensure a comprehensive and objective investigation of crimes based on sexual orientation and gender identity, including by developing appropriate legal and procedural arrangements for identifying the motive of the crime.
- O Encourage the victims of hate crimes, as well as witnesses thereof, to report on crimes committed.
- O Document and run statistics on hate crimes in Armenia, including based on sexual orientation and gender identity, thus making the issue of hate crimes visible in Armenia.
- O Ensure that hate crime victims have access to justice. In particular, envisage effective

- mechanisms for the protection of human rights, which will exclude the risk of double victimization, will ensure the safety of the individual and will provide comprehensive compensation mechanisms for damages.
- Organize and hold trainings for law enforcement bodies on the peculiarities of working with victims and witnesses of hate crimes.
- Instill the ideas of tolerance and equality within state bodies, particularly among the parliamentarians of the National Assembly, representatives of the government of the Republic of Armenia and other officials.
- O Promote the ideas of tolerance and equality within society, particularly with public statements that instill tolerance.

#### To Mass Media

- Stop publications that incite hatred and intolerance toward LGBT individuals and offer the public with correct, ethically acceptable materials that respect the human rights of LGBT individuals.
- O Do not exploit topics concerning LGBT individuals in media reporting, thus avoiding further undue dissemination of hatred and intolerance in society.
- O Do not disseminate hate speech, calls of intolerance, hostility, violence or discrimination or its justification from officials and other figures.

### **To International and Regional Organizations**

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

## To the Human Rights Defender's Office

 Increase public awareness about discrimination and its negative consequences, as well as the importance of the principles of non-discrimination and equality.

- O Raise public awareness about the illegality of hate speech and its dissemination.
- O Advocate for developing a strategy to create and adopt effective legislation on equality, as well as define effective measures for the protection of LGBT persons in other legal documents.
- O Make public statements condemning known cases of human rights violations of LGBT people and give an adequate response to complaints.



# STRATEGIC LITIGATION

Pink Armenia has been pursuing strategic litigation since 2012,[53] to achieve changes both in the legislation and in public policy. This annex summarizes the developments of the previously launched strategic litigation in 2019.

Three of the cases are being considered by national judicial bodies. The two are related to the disputes over social ads commissioned by Pink Armenia in 2017.

#### Pink Armenia v Yerevan Municipality

On May 25, 2017, Pink Armenia commissioned social ads on billboards in the center of Yerevan advocating tolerance towards LGBT people. The ads were installed on the billboards run by the Nushikyan Association advertising agency on a contractual basis. One of the posters illustrated two male homosexual characters in an embrace accompanied by the following text: "Do you wish everyone to be happy? Then wish us happiness". The other poster illustrated a collage of people of various professions accompanied by the following text: "You meet them every day". The third poster showed three hands with the following text: "Trans people are part of our society". On May 27, 2017, however, the ads were removed, torn apart and thrown into garbage bins without informing Pink Armenia.[54]

A few hours after the posters were removed from the billboards, Araz Baghdasaryan, head of Yerevan municipality's Department for External Design and Advertising made the following Facebook post: "Three advertising posters were illegally installed in the capital city, preaching tolerance towards persons with various orientations... regardless



of the content of the posters, they have been removed as Yerevan municipality did not provide permission".

Pink Armenia lodged a suit at the Administrative Court of Armenia against Yerevan Municipality with the claim to recognize the acts of Yerevan Municipality to have the three social ad posters removed as interference into the freedom of speech, right to be free from discrimination and overall unlawful. The Administrative court heard the case and decided it does not fall into the jurisdiction of the court. This decision has been appealed to the Court of Appeals.

#### Pink Armenia v the Ministry of Culture

In 2017, Pink Armenia turned to the Ministry of Culture with a request to recognize the billboard mentioned above as public service announcements (PSAs). This would allow using the opportunities explicitly created for PSAs, namely the cost-free installation of posters on urban billboards, as well as on specially designated advertisements, in addition to other privileges.

The Ministry of Culture rejected Pink Armenia's proposal with the justification that the ads do no address any issue of social importance and do not contain any element of public awareness-raising, plus the public is already aware of the existence of persons with a "non-traditional" sexual orientation from TV programs, therefore there is no need to spread information about them.[55]

Pink Armenia has filed a complaint with the Administrative Court with a claim to recognize the Ministry of Culture's administrative act on rejecting the application as unlawful and to oblige the Ministry to identify the ads as PSAs.

The claim has been rejected by the court. This decision was appealed to the Court of Appeals. On October 22, 2019, the first hearing was held in the Administrative Court of Appeals. The representative of the respondent petitioned to involve the Ministry of Education, Science, Culture, and Sport as the successor, and the hearing was postponed. The next hearing is scheduled for February 27, 2020.

#### The Case of Violence in Shurnukh Village

On August 3, 2018, 9 young people, including LGBT activists who were in Shurnukh village of Syunik province for leisure were beaten and psychologically abused by over 20 residents of the same village and Goris town. The perpetrators demanded the victims to leave the village, kicked them with stones, hands, and feet. A criminal case on violence has been initiated only based on the article on battery, and no one has been involved as a defendant. Amnesty has been applied to the perpetrators, and the criminal proceedings have been dropped. All the other persons involved were not prosecuted as the investigative body found that there was no corpus delicti in their actions.

In December 2019, the criminal proceeding was resumed after the decision to terminate the criminal case was quashed on appeal by the injured party. Appeals against the decisions not to prosecute others are still under investigation.



Three of the strategic litigation cases are pending before the European Court of Human Rights and have already been communicated with the Government of the Republic of Armenia.

#### Minasyan and Others v Armenia

In 2014, "Iravunk" newspaper published an article titled "They serve the interests of international homosexual lobbying: The blacklist of enemies of state and nation," with the Facebook profile links of 60 users who were accused in "homo-addicted lobbying". The article called everyone to express zero tolerance towards the blacklisted individuals, to fire them from work or not to employ them, not to interact with them. The blacklist was made based on Facebook users who posed questions containing criticism to singers Inga and Anush Arshakyans. Earlier, a member of the Eurovision Song Contest jury, Anush Arshakyan gave an interview to Aravot daily, where she mentioned that Conchita Wurst, representative of Austria, a homosexual winner of the contest in a female appearance and with a beard, "caused her repulsion, as do people with mental illnesses".[56]

Sixteen of the people featured in the blacklist of "Iravunk" newspaper turned to the court. After no success in all the instances of Armenia's judicial system, which found that the newspaper had exercised its right to freedom, 14 of these persons turned to the European Court of Human Rights in 2015.[57]

In 2018, the Court communicated the application of Minasyan and others against Armenia by addressing the following questions to the Armenian government.

- 1. Has there been a violation of the applicants' right to "respect for private and family life" contrary to Article 8 of the Convention?
- 2. Has there been discrimination against the applicants contrary to Article 14 of the Convention?
- 3. Were the acts or omissions of the State in the present case aimed at the destruction or the limitation of any of the rights and freedoms set forth in the Convention to a greater extent than is provided for in the Convention, within the meaning of Article 17?[58]

It is important to note that the position of the ECtHR on Article 17 will play a pivotal role not only for this case and the prospects of developing Armenia's legislative regulations but also in terms of advancing law in Europe as it will address the rightfulness of setting limitations to freedom of speech as a means of prohibiting hate speech.

#### Oganezova v. Armenia

In 2012, the DIY pub was firebombed by a group of people. The perpetrators initially claimed to have carried out their act of violence because the pub owner Oganezova was lesbian, took part in a gay pride event in Istanbul, and because LGBT people frequented the pub. This is evidenced by the fact that sometime before the explosion, a group of people broke into the pub trying to harass and intimidate those gathered there. Consequently, many members and allies of the LGBT community have begun to fear possible attacks by homophobic groups at the pub. The incident was followed by persecutions and threats against the pub's owner.

A criminal case was initiated on a charge with the intentional infliction of damage to property, which did not, however, fully reflect the nature of the crime or its gravity due to its motive. The precautionary measure applied to detainees were then changed, and the perpetrators were released on bail based on sureties provided MP from the Armenian Revolutionary Federation Party.

The defendants were sentenced to two years' imprisonment by the ruling of the Court of First Instance, but a clause on non-conditional sentence was applied, and they were released. The Court of Appeal upheld the verdict, and the Court of Cassation did not accept the appeal.

The owner of the pub has appealed to the European Court of Human Rights. On May 17, 2019, the Court communicated the case.

The Government of the RA has to answer to the following questions:

- 1. Did the applicant suffer ill-treatment and interference with her right to respect for her private life, in breach of Articles 3 and 8 of the Convention, as a result of the arson attack of 8 May 2012 and the following events, including the alleged threats, humiliation and harassment?
- 2. Regard having had to the positive obligations enshrined in Articles 3 and 8 of the Convention, was the investigation into the arson attack of 8 May 2012 and into the

- applicant's subsequent allegations of ill-treatment and harassment adequate for the purposes of these provisions, including for the unravelling of any discriminatory motives of the insulters?
- 3. Did the applicant have effective domestic remedies at her disposal for her complaints under Articles 3 and 8 of the Convention, as required by Article 13 of the Convention?
- 4. Has the applicant suffered discrimination on the ground of her sexual orientation contrary to Article 14 of the Convention, this provision taken in conjunction with Articles 3 and 8 of the Convention?



## **REFERENCES**

- [1] The content of these strategically important cases is outlined in Annexe
- [2] See Annexe for detailed description of the case
- [3] See Annexe for detailed description of the case
- [4] Article 26, RA Constitution, adopted 06.12.2015, available at https://www.president.am/hy/constitution-2015/
- [5] Article 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN 1984
- [6] Pretty v. UK, ECHR ruling No 2346/02, §49
- [7] Price v. UK, ECHR ruling No 33394/96, Costello-Roberts v. UK ECHR ruling No 13134/87, §30
- [8] Aydin v. Turkey, ECHR ruling No 23178/94
- [9] East African Asians v. the UK, ECHR ruling No 4715/70, N 4783/71 and No 4827/71
- [10] Pears v. Greece, ECHR ruling N 28524/95, as well as UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2001 Report, UN Doc No A/56/156, 2001 16
- [11] Smith and Grady v. the UK ECHR ruling N 33985/96 and 33986/96
- [12] Pears v. Greece, ECHR ruling No 28524/95, as well as UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2001 Report, UN Doc No A/56/156, 2001
- [13] Article 31, RA Constitution, adopted 06.12.2015
- [14] Article 16, UN Covenant on Civil and Political Rights, 1966
- [15] Articles 16 and 17, Human Rights Committee, General Comment 16
- [16] Pretty v. the UK, ECHR ruling No 2346/02, §49
- [17] Y.F. v. Turkey, ECHR ruling No 24209/94
- [18] Connors v. the UK, ECHR ruling No 746/01
- [19] Episode from 02.09.2019, "Kisabats Lusamutner" (Semi-Open Windows), available at https://youtu.be/FXuUOMRc6RM
- [20] Information on initiatives aimed at changing legal regulations is available in Section 8 of the report
- [21] Article 57, RA Constitution, adopted 06.12.2015
- [22] Article 45, RA Constitution, adopted 06.12.2015
- [23] Article 3 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that states take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men". Article 7 of CEDAW

states that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: [...] c. to participate in nongovernmental organizations and associations concerned with the public and political life of the country". Through the Beijing Platform for Action, governments have also specifically committed to protect and promote the equal rights of women and men to freedom of association, including membership in political parties, trade unions, and other professional and social organizations, as well as to "[a]adopt policies that create an enabling environment for women's self-help groups, workers' organizations and cooperatives through non-conventional forms of support and by recognizing the right to freedom of association and the right to organize" (Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, A/CONF.177/20 and Add.1, , Strategic Objectives I.2 and G.1. See also UN CEDAW Committee, General Recommendation No. 23: Political and Public Life, adopted at the Sixteenth Session of the Committee on the Elimination of Discrimination against Women, in 1997 (Contained in Document A/52/38).

- [24] Council of Europe Committee of Ministers, Recommendation No. R97(20), 1997, available at https://bit.ly/2wa4QoE
- [25] United Nations International Covenant on Civil and Political Rights, 1966, available at https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf
- [26] The respective legislative regulations are available at https://laws-lois.justice.gc.ca/eng/acts/C-46/section-318.html

https://www.government.is/library/Files/General\_Penal\_Code\_sept.-2015.pdf

http://www.legislation.gov.uk/ukpga/2003/44/section/146

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https://wetten.overheid.nl/BWBR0001854/2018-09-19#BoekTweede\_TiteldeelV\_Artikel137c

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- [28] See, https://youtu.be/KaWfXaE3\_WQ
- [29] See, https://youtu.be/JQYSbAGkJY8
- [30] See, https://youtu.be/jNj1iJFBdII
- [31] See, https://youtu.be/iNQP6NWs0Fg
- [32] See, https://youtu.be/vJoNsplqRgl
- [33] See, https://www.azatutyun.am/a/29869980.html
- [34] See, https://armeniasputnik.am/society/20191113/21088616/es-shat-gohem-vor-finansavorvele-pashinyany-mel-daluzyani-filmi-masin.html

- [35] See, https://www.facebook.com/hayk.ayvazyan77/videos/2001530689957149/
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- [37] See, https://blog.iravaban.net/183293.html
- [38] See, https://bit.ly/2JvGGYG
- [39] See, https://bit.ly/39y5tGe
- [40] See, https://bit.ly/3aAYI7M
- [41] See, https://bit.ly/39wrRPZ
- [42] See, https://bit.ly/3fzboPv
- [43] Draft Amendments to RA Criminal Code, available at http://www.parliament.am/drafts.php?sel=showdraft&DraftID=10461&Reading=0
- [44] Draft Amendments to RA Family Code, available at http://www.parliament.am/drafts.php?sel=showdraft&DraftID=10764&Reading=0
- [45] Ibid.
- [46] See, https://youtu.be/H5i0xRF61\_0
- [47] European Commission for Democracy through Law Opinion 70/2012, 2013, available at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD (2013)022-e
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- [49] Draft Law on Amending RA Criminal Code, available at https://www.e-draft.am/projects/1862/about
- [50] RA Draft Criminal Code, available at https://www.e-draft.am/projects/2115/digest [51] Ibid.
- [52] Ibid.
- [53] Summaries of Strategic Litigation Cases by Pink Human Rights Defender NGO, https://www.pinkarmenia.org/en/strategic-litigations/
- [54] See, https://bit.ly/2R1JNf4
- [55] See, http://www.pinkarmenia.org/hy/2017/12/psa-conclusion/
- [56] See, https://www.aravot.am/2014/05/14/460287/
- [57] Brief summary of Minastyan and others v. Armenia, available at https://www.pinkarmenia.org/en/strategic-litigations/minasyan-and-others-v-armenia/
- [58] The case of Minasyan and others v. Armenia has been communicated, available at http://hudoc.echr.coe.int/eng?i=001-181716

# **About the Organization** "Pink" human rights defender non-governmental organization was founded in 2007. Pink is a community-based LGBT (lesbian, gay, bisexual, transgender) organization, which means the organization has been established by LGBT community, serves and

supports the needs of the community, and promotes the LGBT persons' human rights protection process and advocates for the change of public policy around LGBT issues.

