

THE HUMAN RIGHTS
SITUATION OF LGBT
PEOPLE IN ARMENIA
DURING 2021
ANNUAL REPORT







Annual Report: Human Rights Situation of LGBT People in Armenia During 2021

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## GLOSSARY OF TERMS AND ABBREVIATIONS<sup>1</sup>

Bisexual	a person who has a set of deeply emotional, sensual, and intimate attractions, as well as a desire for sexual relation and/or relationships with more than one sex or gender
Gay	a homosexual man who has a set of deeply emotional, sensual, and intimate attractions, as well as a desire for sexual relation and/or relationships with other men
Gender expression	the expression of a person's own (or perceived) gender identity
Gender identity	is each person's deeply felt internal and individual experience of gender, which is a category of social identity and refers to the identification of an individual as male, female, or another gender(s)
Heterosexual	a person who has a set of deeply emotional, sensual, and intimate attractions, as well as a desire for sexual relation and relationships with another gender
Homosexual	a person who is sexually and emotionally attracted to people of the same gender or sex
Homophobia	the fear, unfounded anger, intolerance, and hatred towards homosexuality. An inclusive term which often includes transphobia
Lesbian	a homosexual woman who has a set of deeply emotional, sensual, and intimate attractions, as well as a desire for sexual relation and/or relationships with other women
Sex	is the classification of a person as male, female, or intersex. A person's sex is a combination of bodily characteristics including chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics.
Sexual orientation	the totality of a person's deeply emotional, sensual, and intimate attractions, as well as a desire for sexual relation and/or relationships with another person
Trans or transgender	a person whose gender identity and gender expression differs from the sex established at birth and includes women and men with transsexual past, people identifying as transgender, transgender people, transvestites, etc. It is an umbrella term inclusive for

transgender, transsexual, and non-binary gender identities.

<sup>1</sup> The main source of these terms is "Guide to working with LGBT people". A Guide for Helping specialists. Pink Human Rights NGO. 2021. https://www.pinkarmenia.org/wp-content/uploads/2021/10/specialists-guideline-2021.pdf

Transphobia negative cultural and personal beliefs opinions, attitudes, and

behaviors based on prejudice against transgender or gender identity and variations in gender expression, and are also based

on disgust, fear, and hatred

ECHR European Court of Human Rights

LGBT lesbian, gay, bisexual, transgender

OSCE Organization for Security and Co-operation in Europe

ODIHR Office for Democratic Institutions and Human Rights

RA Republic of Armenia

SOGI sexual orientation and gender identity and/or gender expression

#### INTRODUCTION

2021 was marked by post-war sentiments; the priorities within the country underwent a turning point and human rights priorities were pushed to the background. In this period, hate speech, speech containing mutual enmity, and intolerance have become more widespread on the Internet. On the one hand, it is due to the uncertain and tense political situation, when in the environment of huge media flow and misinformation the society begins to react emotionally to various vulnerable issues. On the other hand, it is conditioned by political manipulations used by different groups and political forces to create certain predispositions in society. In this context, by becoming a cause for political speculations the LGBT community has once again become a target and means of manipulation. Consequently, all this has had a negative impact on public sentiment, making LGBT people even more vulnerable. This atmosphere of hatred on public platforms was especially tense due to the pre-election period of the snap parliamentary elections when the political forces spared no means to discredit each other.

This report summarizes the human rights violations accompanied by discrimination based on sexual orientation and/or gender identity that were documented by the Pink human rights NGO in 2021. Of course, the documented cases do not fully reflect the violations of the rights of LGBT people, as the victims do not often turn to legal protection or human rights defenders. Victims of discrimination often do not have the confidence to prove the real motives of what happened to them as, on the one hand, the process of proving cases of discrimination contains certain complications, and on the other hand, there is a pattern of courts not always using the tools provided by law to conduct a full, complete and objective investigation of cases. In such circumstances, state bodies make no effort at all to identify and document violations of the rights of LGBT people as discriminatory. The government has taken some steps in this direction in cooperation with the Council of Europe and the OSCE / ODIHR. In particular, the Council of Europe conducted a study on gaps in data collection,<sup>2</sup> and in the frames of a project conducted by ODIHR, the law enforcement officials were trained on how to identify and report bias indicators. More detailed information about the project is summarized in Part 2 of this report.

The second part of the report, in particular, presents hate speech, its concept, and essence as a basis for possible restriction of freedom of expression. The section illustrates various manifestations of hate speech on public platforms during the year, such as social networks and the media.

The process of adopting comprehensive anti-discrimination legislation was pushed out of the government's agenda, and no progress has been seen in this regard. At the same time, the new Criminal Code was finally sent to the National Assembly for a vote, and although it is again incomplete in addressing the existing problems and gaps, it contains some provisions that allow for a broader and more effective application of the Code. The report also presents the relevant legislative changes that took place in 2021, and the analysis of the policy, shortcomings, and gaps of state bodies.

Based on the analysis of the information contained in the report, recommendations have

<sup>2</sup> Collection of data on discrimination, hate crimes, and hate speech in Armenia, Council of Europe, 2019. https://rm.coe.int/situational-analysis-armenia-eng/16809e49f1

been developed for state agencies, international organizations, the media, and Human Rights defender. In frames of Pink's advocacy efforts, the recommendations are regularly submitted to different actors on various platforms. The package of recommendations is presented at the end of the report.

The Annex section of the report discusses the course and developments of strategic litigations initiated by Pink.

# PART 1 VIOLATIONS OF HUMAN RIGHTS OF LGBT PEOPLE

#### State obligations to protect human rights and prevent discrimination

Human rights are the fundamental freedoms that every person is entitled to from birth, which accompany them throughout life. The Republic of Armenia (RA), as a state governed by the rule of law, ensures the undisturbed realization of the rights of all persons in its territory. In this regard, the state has undertaken three main obligations under the Constitution and international treaties recognizing human rights.

The state is obliged to respect human rights, that is, to refrain from human rights violations i.e., negative obligations of the state. Violations of the rights of the individual should not be allowed by state bodies, including law enforcement officers or other persons with state authority.<sup>3</sup>

The state has a positive obligation **to protect the rights of the individual from violations by third parties**. Under this obligation, the state must prevent the violation of individual rights by various individuals and organizations. This implies the creation of effective legal mechanisms to effectively investigate the violations of rights, restore the violated rights, compensate for the damages caused by the violation.

The next positive obligation of the state is **to create an environment for the realization of rights**. The state government must establish such legal mechanisms and such a public environment where individuals can exercise their fundamental freedoms unimpeded.

The primary guarantor of human rights protection in the Republic of Armenia is the supreme law of the country, the Constitution of the Republic of Armenia, which stipulates those human rights operate directly.<sup>4</sup> The supremacy of human rights in the Republic of Armenia is at the same time recognized by international treaties and treaties, which have been ratified by the state. Such international instruments have a higher legal force than the codes, laws, and other normative legal acts in force in the country.<sup>5</sup>

The equal rights of all before the law and of non-discrimination are defined both by the RA Constitution and international conventions. Discrimination based on sex, race, skin color, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances is prohibited by the Constitution of the RA.<sup>6</sup>

All major human rights instruments define the possibility of exercising human rights without discrimination. It underscores the universal value of a person's right to non-discrimination.<sup>7</sup>

Discrimination in international law is defined as an exclusion, distinction, or preference based on a particular circumstance or feature which aims to restrict or recognize or lead to the recognition or exercise of a person's rights and freedoms.<sup>8</sup> In other words, discrimination is the discriminatory treatment of individuals in the same situation

<sup>3</sup> RA Constitution, 2015, Article 3: https://www.arlis.am/DocumentView.aspx?docid=143723

<sup>4</sup> Ibid, Article 3(3)

<sup>5</sup> Ibid, Article 3(3)

<sup>6</sup> Ibid, Article 29

<sup>7</sup> Articles 1 (3) and 55 of the UN Charter, Article 7 of UDHR. Article 2, 4 (1) and 26 of ICCPR, Article 2 of ICESCR, Article 2 of CRC, Article 14 of ECHR, Protocol No. 12 of the ECHR

<sup>8</sup> HRC, General Comment No. 18, § 7

without any reasonable or objective basis.9

In international law, direct discrimination is defined as a form of discrimination, when an individual is treated differently from other people in such a situation, due to any personal, social, or other characteristics of the individual.<sup>10</sup> Indirect discrimination is a virtually neutral provision, standard, or practice that may create certain disadvantageous conditions for individuals from a specific group compared to others.<sup>11</sup> Another type of discrimination is associative discrimination - when a person who, although he or she does not have a non-discriminatory feature, is related to a person who possesses that feature, <sup>12</sup> e.g., their husband, mother, father, etc.

Discrimination is conditioned by a person's trait, which is called the basis of discrimination. Neither the Constitution of the Republic of Armenia and domestic laws nor most international treaties directly mention SOGI as grounds for non-discrimination. However, the list of grounds for non-discrimination in domestic law is open, meaning legal acts do not preclude circumstances of a personal or social nature other than those directly envisaged, which may be the subject of differentiated treatment. This means that SOGI can and must be treated as personal and other social circumstances and be equally protected from discrimination such as gender, race, or disability. Human rights treaty bodies have repeatedly reaffirmed this assertion, stating that the SOGI is fully integrated into the non-discrimination features list.<sup>13</sup>

Thus, the Republic of Armenia must respect a person's right to be free from discrimination. It should protect LGBT people from harassment by government officials, including government, police, and investigators. Ensuring equality is not just about avoiding violations by state bodies, therefore the state must create an environment in which private individuals would not violate the rights of LGBT individuals because of their sexual orientation or gender identity. Moreover, the cases of such violations should be properly investigated, and the perpetrators should be punished.

LGBT people in Armenia are often forced to hide from society, to hide their identity, or to face situations where their normal work and life are hindered by others solely due to their sexual orientation or gender identity.

On December 11-12, 2021, Pink organized "The Dark Side of the Rainbow" camp for LGBT people. The camp was attended by 25 LGBT people and 5 employees of the organization. During the camp, students of a college adjunct to one of the universities of the Republic of Armenia, their parents, and teachers rested there, who made discriminatory expressions and threats against the participants of the camp and the employees of the organization. Noticing the participants of the camp, they said, "Look at them", "yuck" "can't even figure if it's a boy or a girl", etc. During the lunch break, the college teachers, who were in the canteen, shouted, "We will beat them at night", "Look what we are going to do to them at night". One of the teachers or parents mentioned, "The village head is my friend, I will

<sup>9</sup> ECtHR, Judgenment of 23 July 1968, Case of Certain Aspects of the laws on the Use of Languages in Education in Belgium. Willis v. United Kingdom, No. 36042/97, § 48, ECtHR 2002-IV, Virabyan v. Armenia, No. 40094/05, 02/01/2013

<sup>10</sup> Non-Discrimination in International Law A Handbook for Practitioners, 2011 Edition, p. 17-18

<sup>11</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, (b) point of Article 2 (2)

<sup>12</sup> Molla Sali v. Greece [GC], 2018; Guberina v. Croatia, 2016, § 78; Škorjanec v. Croatia, 2017, § 55; Weller v. Hungary, 2009, § 37

<sup>13</sup> Identoba and Others v. Georgia, 2015, § 96; Salgueiro da Silva Mouta v. Portugal, 1999, § 28; Fretté v. France, 2002, § 32; Vejdeland and Others v. Sweden, 2012, § 55; Committee Against Torture, General Comment No.2: Implementation of Article 2 by State parties, § 21, 22

tell him now, so we will solve this issue". They tried to call one of the employees of the organization for a call out but the employee turned to the hotel security staff. Thanks to the latter and the hotel management, the possible violence by college students and their companions was prevented. The camp participants had to change their lunch hours to avoid meeting the offenders.

#### Analysis of human rights violations against LGBT people

In 2021, the legal team of Pink Armenia has provided **298 councilings to LGBT people** and **61 representation in different judicial instances**. The organization registered **35 cases of human rights violations against LGBT people**, combined with discrimination based on their sexual orientation, gender identity, and expression.

The violations registered were:

- Cases of physical violence, including manifestations of torture or inhuman or degrading treatment,
- Cases of sexual violence,
- Cases of illegal dissemination of details and information on personal life, sexual orientation, gender identity, or a threat to do so,
- Cases of extortion,
- Cases of domestic violence, including cases of physical, psychological, economic violence, and restriction of liberty by family members.

As a result of the violations, the rights of victims to be free from torture, inhuman or degrading treatment, respect for private and family life, and freedom from discrimination have been violated. It should be noted that only those cases of violations have been registered when the offender's motive was conditioned by the victims' sexual orientation or gender identity. The cases when the victim's sexual orientation or gender identity were assumed by the offenders based on the latters' perceptions of the LGBT community were considered as such. Domestic violence cases account for a large number of the registered cases. In particular, 17 out of 35 registered cases are cases of domestic violence. Family members of LGBT people, learning about their sexual orientation or gender identity, beat them, insulted, cursed, threatened, used violence, and tried to "cure" them.

It should be noted that although violations against LGBT people occur in different areas, LGBT people avoid appealing to law enforcement agencies to protect their rights. It is noteworthy that out of 35 registered cases, only 10 victims turned to law enforcement agencies.

- They do not trust law enforcement agencies and police officers in particular. They think that their cases are not investigated objectively due to these bodies' biased attitudes,
- they do not consider legal protection mechanisms effective and think that the restoration of rights takes a long time, can be delayed for years, and in the end, will

not work,

- they fear that the information about the crime committed against them, as well as their orientation and identity will be made public by the law enforcement agencies,
- they do not feel protected from the offenders. There is such concern in cases of domestic violence, as victims are forced to continue living in the same house with perpetrators; there is no effective preventive mechanism to protect victims of domestic violence.
- Victims of domestic violence often avoid reporting against their family members.

There are also cases when the victims try to restore their violated rights on their own, for example, by coming to an agreement with the offender, so that the violence is not repeated.

It should be noted that the concerns raised are based on experience: LGBT people are discriminated against by police officers, and their personal information is disclosed to other officers, as well as to the victims' family members. Victims are ridiculed or treated disrespectfully especially when they turn to law enforcement agencies before getting support from a lawyer. After such treatment, they are in such a state of mind that even in the presence of a lawyer, they do not want to contact those bodies again. Given the fact that homosexual, bisexual and trans people become victims of acts prohibited by the Criminal Code on the basis of their sexual orientation or gender identity, it is expected that law enforcement agencies should not only properly report the crime, but also take a special approach. They should assess the individual needs of the victim, demonstrate a sensitive approach, and if necessary, offer other kinds of support, such as psychological and/or social services that various organizations provide.

Complaints on violations combined with discrimination are mostly not processed: Criminal cases are terminated or the investigation of the case is unnecessarily delayed, leading to the victim being disappointed, and in some cases terminating the case by the victim. The aforementioned is backed by the statistics in 2021: only one case was sent to the court with an indictment based on the registered violations.

The cases registered by the organization show that the Republic of Armenia has failed to fulfill its responsibilities to protect LGBT people from discrimination. The rights of LGBT people were violated by both state bodies and individuals, and the violated rights could not be restored due to legislative gaps and the bias of law enforcement agencies.

Violations against LGBT persons included in this report are cases of violation of the right to non-discrimination based on the SOGI, combined with other types of human rights violations. The recording and monitoring of these violations have the same significance, without the supremacy of any specific one. The cases presented in the sections of the report are grouped to point out and highlight some types of human rights violations. Each of the cases has a violation of more than one human rights, although in the report the case may be presented in one of the sections of human rights violations.

### THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

- 1. Everyone shall have the right to inviolability of his or her private and family life, honor, and good reputation.
- 2. The right to inviolability of private and family life may be restricted only by law, for state security, economic welfare of the country, preventing or disclosing crimes, protecting public order, health, and morals, or the basic rights and freedoms of others.

The RA Constitution, Article 31

Everyone has the right to privacy, family, honor, and reputation.<sup>14</sup> The right to private and family life defines the right of every person to recognition before the law, as well as the right to privacy.<sup>15</sup> "Private life" is a broad concept, which includes the physical and psychological integrity of the person. In some cases, it includes aspects of a person's physical or social identity. Circumstances such as gender identity, name, sexual orientation, and sex life, fit in the context of the protection of a person's right to privacy and family life.<sup>16</sup> It includes the state's obligation to recognize an individual's sex and gender identity<sup>17</sup> as presented by the individual, as a fulfillment of their right to private life.

The physical and psychological integrity of a person is also protected under the right to privacy, family life, honor, and reputation.<sup>18</sup> A person's body is the most intimate part of their private life.<sup>19</sup>

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.<sup>20</sup>

The European Court of Human Rights has stated in a number of its rulings that the authorities have a positive obligation to protect the right to physical and psychological integrity of individuals from violations by individuals while stating that states should create and provide a proper framework of legal norms that will allow protecting individuals from violence guaranteed in some cases under Articles 2 or 3 of the ECHR, in other cases under Article 8 either separately or in combination with Article 3.<sup>21</sup>

In the Republic of Armenia in the case of intentional infliction of physical harm on a person, the mechanisms of responsibility are provided by the RA Criminal Code.<sup>22</sup> It prescribes punishment for crimes of varying degrees of endangerment, and physical

<sup>14</sup> Constitution of the Republic of Armenia, article 31. 2015

<sup>15</sup> International Covenant on Civil and Political Rights, 1966, Article 16

<sup>16</sup> Pretty v. The United Kingdom, No. 2346/02, §49

<sup>17</sup> CCPR General Comment No. 16: Article 17 (Right to Privacy)

<sup>18</sup> RA Constitution of the Republic of Armenia, article 31. 2015, European Convention on Human Rights, Article 8

<sup>19</sup> Y.F. v. Turkey, No. 24209/94 ECtHR Judgenment

<sup>20</sup> Connors v. The United Kingdom, No. 66746/01, ECtHR Judgement

<sup>21</sup> Osman v. the United Kingdom, §§ 128-130; Bevacqua and S. v. Bulgaria, § 65; Sandra Janković v.

Croatia, § 45; A v. Croatia, § 60; Đorđević v. Croatia, §§ 141-143; Söderman v. Sweden [GC], § 80

<sup>22</sup> RA Criminal Code, Chapter 16: https://www.arlis.am/documentview.aspx?docid=149259

acts causing different types of injuries.

In this section, cases of physical and psychological abuse have been considered a violation of the right to respect for private and family life. In particular, the cases of physical violence, sexual violence, extortion, dissemination or a threat of dissemination of personal information, as well as cases of domestic violence manifested in both physical, psychological, and economic forms, are summarized. In some of the cases described, the offender is the administrative body that has failed in its obligation to respect human rights as a representative of the state. In other cases, the perpetrators are individuals who have acted in an atmosphere of impunity created by the state. The inability of law enforcement agencies to provide adequate protection for LGBT people has led to a situation where individuals commit acts even prohibited by the Criminal Code but are not held accountable for it. Therefore, the failure of the state's obligation to protect human rights from third-party violations has been observed here.

#### **Cases of physical violence**

Violence and oppression against the victim are often ignored or encouraged by society. Negative public attitudes towards LGBT people are spread in institutions that are obliged to be involved in upbringing, educating people, and shaping opinions. As a result, even these institutions fail not only in educating individuals but also in protecting those that should be under their protection. The problem is more visible in schools, where the victims are minors. Violence against LGBT minors leads to psychological pressure and denial of their identity. At the same time, if minors subjected to violence or harassment on other grounds may receive the support of their teachers or their parents, in the case of LGBT people, the circle or justification of violence may continue shall they refer to these people. This is evidenced by the cases of domestic violence presented below. In addition, minors do not always have access to law enforcement, and when they do, they face legal obstacles, such as involving legal representatives in the investigation. Thus, legal protection mechanisms become inaccessible to minors.

The applicant is a minor boy who lives in one of the regions of Armenia. According to the perceptions of his fellow citizens, he has a different appearance (long hair, differing features). Because of his appearance, the child is bullied at school. During the lessons at school, his classmates throw pens and papers at him, thus disturbing him. Teachers often do not interfere, saying that children at that age always act so.

Classmates regularly insult him, saying «you look like a faggot, bastard, so girlish, there is nothing boyish in you". There were also cases of physical violence in the classroom, in the buildings adjacent to the school, and in the school toilet. His classmates took him to the girls' restroom and tried to use physical violence.

The applicant always wears the same black clothes because of bullying, he tries not to look different. He states that bullying affects him; he does not eat. He avoids reporting violence to teachers, thinking it is the behavior of a "weak" person.

In May 2021, the applicant and his friend were in the building of the educational institution when they noticed that a group of 13-15-year-old boys were trying to involve themselves in a fight. The boys then asked the applicant whether he was a boy, a girl, or what was he, thus insulting him. To avoid a fight, the applicant turned to the principal of the school, who did not take any action, but rather accused the applicant of inciting a fight, clearly saying that the boys at school do not act so towards another boy "like him" (meaning with a different appearance, perceived as homosexual).

Afterwards, the group of boys pushed the applicant around and hit him about 4 times on his back. The applicant informed the school principal about it, who did not take any steps to stop the perpetrators. The school administration then contacted the applicant's mother, who demanded that her son be kept safe, after which the school administration ordered a taxi for the applicant to remove him from the school premises and take him home.

There are many instances when trans people are physically abused outside by strangers who learn about the victims' gender identity either due to their appearance or the location they are at. In this case, it is obvious that the actions of the offenders are not directed against the individuals due to some personal issues, but are rather directed against the given community because of hatred and intolerance towards them. Violence against trans people has been documented and reported by NGOs for years. Victims often turned to law enforcement agencies serving in the area. However, the state has not taken any measures to ensure the security and protection of trans people. The reports submitted to law enforcement agencies were either ignored or their investigation was delayed to an extent that the victims withdrew the complaint. There were also cases when the victims have been accused of false allegations and thus accused of a crime. In an atmosphere of impunity, crimes against the LGBT people do not discontinue, offenders go unpunished, and LGBT people lose trust in the law enforcement system. We can conclude that the state, on the one hand, fails in its obligation to protect LGBT people, and on the other hand, to create a safe living environment. As a result, LGBT people do not feel safe even in public spaces.

Sex workers, who are double vulnerable not only due to their gender identity but also the nature of their work also become victims of violence. Realizing that transgender people are more vulnerable and unprotected, criminals target them for violence. In this way, they often try to show their privileged position over LGBT people, which once again proves that the action is directed not against the individual, but the community.

The victim is a trans woman, a sex worker. On December 15, 2021, the victim was in their apartment with the client. The client used drugs intravenously in the presence of the victim and then demanded from the victim to have sex with him without a condom. The victim refused, after which the client tried to force an injection from the victim's neck with his syringe. The victim grabbed the hand of the offender and did not allow it. After that, the client stole the 50,000 AMD in the room and fled the scene.

The trans woman regularly made purchases from the same supermarket. She noticed that the employees have a negative attitude towards her; they gossiped and threw bad looks at her. In September, at the entrance of the same supermarket, a young man, who is supposedly one of the employees of the supermarket, spat at the victim's feet. When the applicant tried to find out the reason, the person hit her twice in the face.

In July 2021, a trans woman was walking in the center of Yerevan, when two unknown men uttered sarcastic remarks to her, in particular, saying, "Look at the dress she's wearing", "he's a faggot" etc., then approached and hit the woman. The applicant was able to escape from them, approached the patrol officers on duty in the area, and asked them to help catch the criminals, but the officers laughed at her and said that they were not dealing with such a matter.

A person living next to a trans woman regularly disturbed her rest together with the guests at night, talking loudly, shouting, cursing, and hitting the walls. One day these people entered her apartment without the applicant's permission, cursed, insulted, threatened to kill her, as well as hit her several times. The applicant lodged a complaint and a criminal case was initiated in connection with beating and entering an apartment illegally. The case, however, was later terminated on the grounds of lack of corpus delicti, despite the abundant evidence in the case.

In February 2021, at night, the trans woman was at a place considered a meeting point for trans sex workers. She had been walking when 3 to 4 men attacked and started hitting different parts of her body. The applicant could hardly escape the scene. She received bodily injuries as a result of the violence, her tooth was broken.

In March 2021, two trans women were outside when two men approached them. The men wore medical masks and hats - trying to hide their faces as much as possible. The men tried to talk to the women, but the latter smelled alcohol on them, tried to look like tourists, and said in English that they would call the police. That made the men aggressive, they cursed, and tried to take the bag in one of the women's hands. The women fled and entered a nearby hotel. One of the men entered the hotel after them and ran after them all over the area. The other man waited at the hotel door.

One of the hotel employees tried to stop the man, but the latter shouted, "Leave me, I have to hit her, cut her, kill her", referring to trans women. The man also shouted sexual insults. The hotel staff demanded that the trans people leave the hotel. They ran away scared. One of them ran across the street without looking around, where she was almost ran over.

While running, one of the women heard that the man running after her opened the folding knife and demanded to give her the bag. The woman, fearing for her life, threw the bag aside and ran away. According to the victims, there was a 150,000 AMD in the bag and the key to the house they rented. They took refuge in a nearby shop, after which they called the police.

#### Sexual violence

The applicant identifies as a trans person. In 2020, in order to solve health problems, the applicant visited the house of a folk healer. Being aware of the applicant's gender identity, the male folk healer made indecent sexual suggestions, showed his genitals, and made unwanted sexual touches on the applicant.

In this situation, the vulnerable status of the victim was used by the offender. In particular, he was convinced that the person would not apply for any legal protection, as in that case, they would have to reveal their gender identity.

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#### **Extortion**

In Autumn 2020, the male applicant had sex with a gay man. After some time, the homosexual person called the applicant and demanded that he must pay a total of 800,000 AMD in exchange for not informing his family about the sexual intercourse. He also mentioned that he got a sexually transmitted infection as a result of the sexual intercourse and he wants the money for the treatment. When the applicant changed his phone number and tried to cut the connection with the offender, the latter called his family member and demanded that the applicant contacted him. In October 2020, the applicant had to pay that amount in installments. In February 2021, the offender contacted the applicant again, this time demanding another 350,000 AMD. The applicant states that he is married and has children, so he can not afford that information to become known to his family. At the same time, he cannot afford to pay the required amount, as he does not have that much money. By paying the previous 800,000 AMD, he had to accumulate debts.

Extortion cases are quite common among LGBT people. Such have been recorded in previous years as well. In these cases, the offenders use information about the victim's personal life; they are convinced that the victims would be afraid of the information that could be made public and they won't resort to legal protection mechanisms. The atmosphere of impunity when the law enforcement agencies become the ones who disclose the private information creates more favorable environment for perpetrators to oppress the victims.

#### Refusal to provide services

The lack of effective legislation prohibiting discrimination by private actors leads to discriminatory offenses when service providers refuse to provide services to LGBT people because of their sexual orientation or gender identity. The prohibition of discrimination

under the Constitution is not yet considered an effective mechanism of legal protection, as the courts have repeatedly failed to apply the direct provisions of the Constitution.

In March 2021, two trans women entered a grocery store for shopping. The employee told them that the store was closed and did not serve them. Meanwhile, there was another customer in the store, who was being served at that moment.

Another trans woman approached the cashier in the same shop to pay for groceries, but she was told that they did not serve her.

In January 2021, 3 people - 2 men and a woman, were sitting in a pub hugging each other. The pub manager approached them, threw the bill on the table, aggressively demanded that they paid, and left the pub. After leaving the pub, the manager stated that they did not want to have a gay customer, that they were bothering other customers, and that they shall not come to the pub anymore.

#### Dissemination or a threat of dissemination of personal information

At the end of April 2021, the applicant was in a military hospital. Another soldier who was there asked for the applicant's phone. After receiving it he examined the applicant's personal videos without his consent and found videos of the applicant's homosexual relationship. The soldier threatened the applicant that he would spread the information about the applicant's sexual orientation, stated that he had downloaded the videos and that they were at his disposal. On the last day at the hospital, the soldier disseminated information about the applicant's sexual orientation to other soldiers and doctors at the hospital. Other servicemen of the applicant's military unit were in the hospital. The applicant was afraid that the information about his sexual orientation would be disclosed in his military unit and he would be discriminated against and put under pressure. A few days after returning to the military unit, it was not possible to contact the applicant with the phone number provided by him.

In the summer of 2021, a gay man was declared unfit for military service by disclosing his sexual orientation. After some time passed, the applicant's grandmother, who works at the regional military commissariat of the applicant's place of residence, informed the applicant that she was aware of the grounds on which the applicant had been declared unfit for the service. The applicant states that his grandmother was informed about it by the employees of the military commissariat. He suspects that one of the members of the commission did it.

The applicant's grandmother informed about the applicant's sexual orientation to the family members, after which the applicant's mother demanded that he goes to deny him being homosexual and go serve in the army.

In June 2021, 2 trans sex worker women were at a place considered as a meeting point for trans sex workers. An acquaintance approached them, demanded that they leave, and threatened one of the victims to "bring his father", thus wanting to reveal to the father of the victim the gender identity of the applicant and the fact that she is a sex worker. The offender also threatened that he would inform the neighbors of the victims about their gender identity, and the latter would be forced to leave the apartment they rent.

In one of the situations described above, the one who disseminated a person's private information was a representative of a government agency, the military commissariat, which means that the state directly violated its obligation to respect human rights.

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In the other cases, the state has failed to create a safe environment for LGBT people when it would not be possible to put pressure on individuals by disseminating or threatening to disseminate information about their private life. In this situation, LGBT people are not only afraid of information about their sexual orientation being disclosed and disseminated, but also do not see any effective means of legal protection to protect themselves from third-party harassment. In other words, the dissemination of one's personal information by the state creates an atmosphere of impunity and insecurity. Naturally, persons who have been directly harmed by the actions of state bodies cannot view the latter as a mechanism to protect their rights from others.

#### Cases of domestic violence

In 2017, the RA Law on Prevention of violence within the family, protection of victims of violence within the family, and restoration of peace in the family was adopted in the Republic of Armenia, hereinafter referred to as the Law on Prevention of Domestic Violence. It seemed that after its adoption, LGBT people would be more protected in their families, but, to this day, many individuals contact Pink NGO with complaints of being abused by their families.

In cases of domestic violence, the provisions of domestic law have specific provisions,<sup>23</sup> that is, if the applicant wants the offender to bear the punishment provided by the criminal legislation, then they should report to the police with two separate reports: one as domestic violence complaint and another report as a separate crime. In case of non-submission of a separate crime report, only the restrictions provided for in the Law on Prevention of Domestic Violence shall apply to the perpetrator. Exceptions are cases of domestic violence when the victim is unable to defend his or her rights on his or her own due to his or her helplessness or dependence on the perpetrator.<sup>24</sup> And in cases of public accusation, for example, in cases of illegal deprivation of liberty, the law enforcement agencies are obliged to investigate, regardless of the victim's complaint.

In 2021, 17 cases of domestic violence were registered by the organization. In some cases, if a person suffers from certain mental and physical suffering, which is regular, it

<sup>23</sup> The RA Criminal Procedure Code, article 183, part 1. http://parliament.am/law\_docs/010998HO248eng 24 lbid, article 183, part 4

can simultaneously violate not only their right to privacy and family life but also their right to be free from inhuman, degrading treatment.

The applicants reported various types of domestic violence: physical, psychological, and economic. These types of violence were mostly combined, such as the physical with the psychological and the psychological with the economic. In some cases, the cause of domestic violence was the disclosure of personal information about the victim by third parties.

In the reported cases, family members forced the victims to "change" their SOGI through various means: they have been kept under a lock at home, deprived of means of communication, going to educational institutions, deprived of financial means, being insulted, pressured psychologically, forced to see a doctor or psychologist for attempting to change their sexual orientation or gender identity. These practices are known as conversion practices or conversion therapy cases.<sup>25</sup>

The applicant is a gay man. One of his friends showed their personal correspondence to the applicant's parents, thus disclosing his homosexual orientation. After that, the family members argued with the applicant, during which insulting expressions were uttered to the applicant, which the applicant is even ashamed to say out loud. Then they tried to keep the applicant locked up at home, not allowing him to go out, communicate with friends, or go to university. After some time, the family members eased the restrictions, but still exercised control over the applicant's life. To get out of the situation, the applicant ran away from home and moved to his sister's house. However, when the family members found out that he lived in his sister's house, the applicant had to leave to avoid being found and moved to another city. After that, the applicant's brother, who was abroad, called him and threatened to harm and kill him.

The applicant is a minor girl living in the region. She has a differing hairstyle and clothes according to the perception of her fellow citizens. As a result, she is sometimes humiliated outside. Her friends get targeted for "associated" discrimination and insulting expressions for communicating with her. The applicant also has mental health problems. She has several clinical diagnoses. Her parents took her to a psychiatrist for treatment, who prescribed treatment. But according to the applicant, taking the prescribed medication did not have a positive effect. Sometimes, when the applicant does not take her pills and negative consequences follow, the father makes insulting remarks towards her. He constantly mentions that he would not want his child to be "mentally ill".

The applicant's parents are members of a religious organization, and they force their daughter to join them as well, including participating in religious events.

The applicant is regularly subjected to psychological pressure, as well as to physical violence: she is being beaten, and the parents note that it is an upbringing method. The psychological pressures prevail to an extent that the applicant herself started to justify the physical violence against her.

<sup>25</sup> Pink Human Rights Defender NGO. Research on Implementation of Conversion Practices and Therapies in Armenia, 2019. https://www.pinkarmenia.org/en/news/conversion-therapy/

The applicant is a gay man. He pierced his nose, which angered his father. The father mentioned that it was "a girly thing to do", and he demanded to take it out, otherwise the applicant would have to leave the house. The applicant had to remove the piercing in the presence of his father but sometimes wore it in his absence. Once, seeing the nose piercing again, the father shouted at the applicant and made insulting expressions. The father tried to attack the applicant and hit him, but the neighbor who arrived at the moment prevented the father from hitting the applicant. The father again demanded him to leave the house or take the piercing out, giving him a deadline. Not being able to afford to leave the house to live separately, the applicant had to take off his piercing at home and wore it only outside and among friends.

In January 2021, the mother of a bisexual woman hit her 2-3 times with her hands and insulted the applicant in connection with her short haircut on the neck. Previously, upon learning about the woman's sexual orientation, the mother used physical and psychological violence against the applicant.

In the winter of 2021, the family members of a lesbian woman – her mother and sister, upon learning of the applicant's sexual orientation and homosexual relations, regularly put psychological pressure on her, persuaded her to terminate the relationship, insulted her in connection to her sexual orientation, and told her to choose between the family and homosexual relationship. Later, other members of the family, the uncle and the aunt, found out about the applicant's sexual orientation, and regularly urged her to end the same-sex relationship. The family members threatened not to pay the university tuition fee. As a result of family pressure, the applicant terminated the relationship and began to avoid contacting her homosexual friends.

Since May 2020, the applicant's father controlled her actions, did not allow her to leave the house, controlled her communication with friends, and forbade her to communicate with them. In May 2021, after learning about his daughter's samesex relationship, the father threatened the applicant with the murder of the applicant's partner. She then had to leave the house.

Having doubts about the sexual orientation of a lesbian woman her mother and stepfather started to put psychological pressure on her, insulted her, insulted her LGBT friends, and threatened to tell her friends' parents about their sons' and daughters' SOGI. The woman's mother threatened to deprive her of the opportunity to study, not to pay the tuition fee. The applicant's stepfather regularly spoke negatively about the clothes she was wearing. The applicant's mother regularly hit and beat her, and kept her locked in the room. The mother exercised control over the applicant, following her correspondence, regularly digging into her clothes. The mother regularly took the applicant for gynecological examinations to check the fact of her virginity. The mother also threatened to take her to Russia and get her married. The applicant was deprived of means of communication, such as telephone and internet.

The applicant and her partner lived together. In May 2021, the applicant's brother found out about his sister's sexual orientation, started chasing her and her partner, searched for them, and threatened to harm them. The applicant and her partner received calls from various strangers who tried to find out where the applicant and her partner were located. The applicant received calls from one of her relatives, who also made threats. The applicant and her partner had to leave the rented apartment and move to another place so that the applicant's brother could not find them.

In May 2021, the applicant's parents learned about the applicant's sexual orientation from an unknown person, after which he was physically abused, beaten, and locked in a room. The applicant was deprived from means of communication, such as a telephone. The applicant's parents also took away his passport and clothes. To escape from the house, the applicant complained that he needed psychiatrists' support and asked to call a psychiatric brigade. When the parents called the brigade, the applicant left with the doctors, explained the situation to them on the way, and informed them that he was kept locked up, after which he did not return home.

The applicant is a gay man. After suspecting him of being gay, the latter's father regularly dug into his personal belongings and the contents of his phone to obtain personal information. One day his father directly asked him if the applicant was gay. The applicant confirmed it, after which the father, being a doctor, threatened to "make him undergo a sex reassignment surgery" if he does not "correct" himself. He threatened to take him to a psychiatrist or psychologist to "change" him.

Without the applicant's consent, her ex-partner revealed the applicant's sexual orientation to her brother, stating that she was doing it for the sake of the applicant. This information became known to the applicant's parents through the applicant's brother. After that, the applicant's parents physically abused her, in particular, beat her. The applicant's family members restricted her freedom, did not allow her to leave the room, and neglected her. In addition, they deprived her of her telephone and internet, did not allow her to communicate with friends, and forbade her to wear the clothes she wanted. The applicant had difficulty attending Pink's social worker's counseling due to pressure and threats from her brother. To avoid domestic violence, the applicant promised to "change".

The applicant is an underage lesbian. The applicant's parents secretly overheard her conversation with one of her friends, during which the applicant's sexual orientation was discussed. Upon learning of the applicant's sexual orientation, the parents tightened the restrictions on her and, in addition, used physical violence. The applicant ran away from the house and applied to the police. She was taken to a child support center, where she stayed for a week, after which she returned home. After returning home, the violence continued, due to which the applicant left the house again.

During 2020, the applicant's mother regularly quarreled with her in connection with her clothing and friends. In mid-May 2021, the applicant's mother noticed the applicant's intimate touch with her partner in their home, after which she started beating the applicant, including with a slipper. The applicant left home.

The applicant's family members were informed of his sexual orientation. After that, the applicant's father and brother took his cell phone, started to control his personal life and contacts, and tried not to let him go to university, to communicate with friends. In addition, the applicant's father and brother had beaten the applicant during an argument. The applicant's mother and grandmother tried to support the applicant by persuading the offenders to allow him to receive an education. To avoid domestic violence, the applicant fled the house and received shelter at a friend's house for a few days. Through calls or acquaintances, the applicant's father and brother threatened to harm the applicant if he did not return home. The applicant had to leave for another city, but the offenders continued to chase him, contacting friends and trying to find the applicant.

In the winter of 2021, the applicant's family members began to criticize her appearance, considering it boyish, and then threatened to kick her out if she did not change that. Based on stereotypes about the applicant's appearance and behavior, her parents associated her with LGBT people, forcing her to limit contact with friends and go home immediately after school. The family members deprived the applicant of the phone, temporarily not allowing her to leave the room, considering that her friends had a negative effect on her personality and sexual orientation.

The applicant applied to a social worker for assistance with a personal matter, but after some time began to avoid going to counseling during the scheduled hours, as family members exercised control over their life and waited for the applicant at school after classes.

In July 2021, the applicant's sister found her personal diary, read about her sexual orientation, and threatened to inform the parents. The sister psychologically abused the applicant, locked her in a room, and promised that if the applicant did not tell her parents or "did not change", she would inform the latter, and the applicant would be kicked out of their home. The applicant's sister threatened to inform the applicant's partner's family members about her partner's sexual orientation. The applicant decided to disclose her sexual orientation to her mother. As a result, the mother started arguing, saying that she was disappointed, that she was sick, and so on.

In 2019, the applicant told her mother the fact that she was a lesbian, after which the mother decided to register her daughter with a psychologist to "change" her sexual orientation. In addition, the applicant's mother began to exercise control over the applicant's life. The applicant attended several psychological consultations, during which the psychologist tried to influence the applicant's sexual orientation, in

particular, by showing a boy and saying, "Look at him, do you not want him?". The applicant had to pretend that her sexual orientation had changed in order not to visit a psychologist. During 2021, other relatives of the applicant were also informed about her sexual orientation, after which the applicant's uncles beat her, then locked her in a room for several days, deprived her from communication means, and exercised control over her life.

The applicant fled the house and settled in one of her friends' house, turning off her cell phone so that her family members could not call her. The applicant's uncle applied to the police, stating that the applicant had been missing. Turning on the phone, the applicant received many distressing and threatening calls. The applicant had to return home, where she was again locked up and beaten. The applicant's father threatened to harm her and her mother. Moreover, he stated that he had found a fiancé for the applicant in Russia.

After some time the applicant decided to run away from home. However, she was returned by force, the door was locked, and her money and passport were confiscated. The applicant tried to find the key to escape, but her family members pushed her away. Finding the key, being in a severe mental state, the applicant asked to leave the house, but after the negative answer from the family members - mother, brother, grandmother, she tried to commit suicide with the key. The key was taken from her and she was locked in the room where she attempted to commit suicide. Later, taking advantage of the fact that no one was at home, the applicant ran away from the house and left for another city.

In July 2021, the applicant's father, seeing the applicant's tattoos, beat him and broke his cell phone. After that, the applicant was not allowed to leave the house, was deprived of means of communication, was not allowed to communicate with friends, and was deprived of his everyday clothes. Some time later, the applicant's mother read the applicant's personal correspondence and learned about the applicant's sexual orientation. The applicant's mother insulted the applicant and hit him. After that, the parents tried to keep the applicant locked up, but he found the key and ran away from home. The applicant's parents called the applicant's friends and threatened to call the police if the applicant did not return home. A few days after fleeing the house, the applicant's father found him and forcibly returned him home. On the same day, the applicant contacted one of his friends and asked to call the police.

# RIGHT TO BE FREE FROM TORTURE OR INHUMAN, 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 human treatment.

Article 26, Part 1, RA Constitution

Torture is any act by which a state official or a person acting in an official capacity, or by their incitement and knowledge or tacit consent, intentionally inflicts severe pain or suffering, whether physical or mental, to gather information or a confession from a person or 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<sup>26</sup>

Statesmen, law enforcement officials, and persons empowered by the state should not physically or mentally abuse individuals based on any of their characteristics protected from discrimination. Under the international obligations of the protection of this right, the state must prevent the violation of the physical security of others by other persons.<sup>27</sup> At the same time, the state must create mechanisms to eliminate the violation of the right to physical integrity. Such mechanisms may include criminalization of such actions and compensation for damage caused to the victim.<sup>28</sup>

A person's freedom from torture and ill-treatment is an absolute right and cannot be subject to limitation.<sup>29</sup> 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.<sup>30</sup> 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. Whereas ill-treatment is the treatment that causes the person to feel fear, threatened or in danger, and debasement,<sup>31</sup> harms the agency and reputation of the person, their human dignity

<sup>26</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1. 1984

<sup>27</sup> CAT, General comment No. 3. A v. United Kingdom, No. 25599/94, Rep. 1996-VI, judgement of 23 September 1998

<sup>28</sup> Blanco Abad v Spain, CAT Communication No. 59/1996, 14 May 1998, Members of the Gldani Congregation of Jehovah's Witnesses v Georgia, op. cit., §97. CAT, General comment No. 2.; Torture in International Law, a guide to jurisprudence, Association for the Prevention of Torture, page 72 29 Pretty v. The United Kingdom, No. 2346/02, §4

<sup>30</sup> Price v. UK, ECHR ruling No 33394/96, Costello-Roberts v. UK ECHR ruling No. 13134/87, §30 31 Aydin v. Turkey, No23178/94

and makes the person act against their will or conscience.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

At the request of the family members – the mother and brother of a gay man, he was taken to a psychiatric institution by ambulance. The medical commission in the psychiatric institution made a preliminary conclusion on the mental health problems of the person. It should be noted that the written version of the diagnosis does not mention his sexual orientation. The applicant did not want to receive treatment, so the institution applied to the court for involuntary hospitalization or treatment. The person has heard discriminatory and insulting expressions related to his identity, such as "faggot; you're not manly, you behave ladylike". A description of a person's behavior in the psychiatric institution's register states that he has exhibited a set of flirting behaviors, which is not a term for medical diagnosis. In addition, the medical staff avoided commenting on such a note made about the applicant.

In this case, being in a closed institution, the victim found himself in an even more vulnerable position. The mission of the staff of the psychiatric institution was to support the person, not to ridicule and humiliate him. In such a case, when the victim is to some extent dependent on the specialists of the institution, needs their support, humiliating treatment and psychological pressure can be assessed as inhuman treatment.

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The applicant was called to the police station in October 2019, where he was informed that he was suspected of stealing 103,000 AMD from a bag. The police officers accused the applicant since he had been previously convicted of burglary. The applicant denied that he had committed the theft. The police officers used physical violence against him and his friend - beating, slapping, hitting different parts of their body, insulting them, making sexual insults, and threatening to force them to admit guilt. They reported that they would bring the residents of that area, beat and force them to testify against them unless both of them or one of them confessed that they had committed the theft of 103,000 AMD. The attitude of the police was conditioned by the applicant's SOGI, about which the applicant himself informed the police employees. The police threatened to arrest the applicant and his friend if they did not plead quilty. Besides, they were deceived and told that if they admited their guilt, everything would end quickly, the criminal case would be terminated, and they would persuade the victim not to file a complaint if the money was returned. The applicant and his friend were searched, all their belongings, including telephones, were confiscated, they were not allowed to call and talk to a lawyer, and they were not presented with their rights. The applicant had to write an explanation, stating that he had taken the money himself. The

<sup>32</sup> East African Asians v. United Kingdom, No 4715/70, 4783/71, 4827/71

<sup>33</sup> Smith and Grady v. United Kingdom, No 33985/96, 33986/96

<sup>34</sup> 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

applicant later informed the investigator in the case that he had pleaded guilty to the crime as a result of the violence against him, but the investigator did not pay attention to it. The investigator covinced him that he did not need a lawyer, as it would delay the investigation of the case. According to him, the case should have been suspended. The applicant, believing his words, did not demand a lawyer. During the trial, the Public Defender was involved as the applicant's lawyer, on whose advice the applicant asked to apply the expedited procedure, hoping that he would not be sentenced to imprisonment. That is why he did not report to the court about the violence used against him by the police, as he believed that the criminal case would be suspended. On February 10, 2021, the applicant was convicted and sentenced to 4 years in prison. After the verdict, the person realized that he had been deceived, that the criminal case would not have been terminated, and all this was done to force him to confess his guilt in a crime that he did not commit. The applicant reported the crime, but the criminal case was later dismissed.:

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The aforementioned is a classic case of torture combined with discrimination based on the sexual orientation of the victims. The investigative body used the vulnerable position conditioned by the victim's sexual orientation and forced him to admit his guilt by exerting psychological pressure on him.

#### CONCLUSION

Violations of the human rights of LGBT people are ongoing, and the state does not take any measures to increase the trust in the law enforcement system. In fact, the law enforcement agencies do not work on the proper registration and documentation of these cases. Crimes due to SOGI are not reflected in any state statistics. First and foremost, this is conditioned by a legislative gap. The RA Criminal Code does not provide for differentiated liability in cases when the motive of the crime has been the victim's SOGI. Therefore, even if a criminal case is initiated in connection with the submitted reports, the act is qualified as a simple crime, and the intention of the offender to harm a person due to certain characteristics is not taken into account. This leads to an inadequate assessment of the danger of the action and its consequences.

At the same time, during the dialogue with the law enforcement agencies in recent years, it turned out that the latter see the solution to this problem in the conditions set under the current Criminal Code, that is, the qualification of the act under Article 143 of the Criminal Code, which stipulates responsibility for breaching citizens' legal equality. This norm, having gaps in terms of legal certainty, does not in any way limit its applicability by establishing a non-exhaustive list of protected grounds for a differentiated treatment. Despite this circumstance, this article has never been used, even when the victim's representative directly motioned to qualify the act within the framework of this article. As a result, even if the offenders are involved as defendants, they are tried in the framework of a milder article than their action assumes. This can lead to unacceptably mild liability. In no previous case have the offenders been properly held accountable for their actions. In some serious cases, when a criminal case was initiated and there was an indictment, amnesty was applied to them. This also testifies to the state's indifference toward the crimes against the LGBT people.

The next problem is the lack of a policy on collecting data on motives while recording and documenting cases. The relevant police bodies do not record the motive of the action, and then, it is not reflected in any way in the statistics. In this regard, the state needs a new policy, in frames of which special recording and documentation standards will be developed. This will allow the state to have complete, comprehensive information on the nature of the violations taking place in the country and the existing problems.

The legislation is flawed not only in terms of criminal acts but also in terms of understanding the concept of discrimination and applying liability in practice. If in the case of criminal cases the victims have a distrust of the law enforcement agencies and the existing legislation, then the problem in the civil and administrative courts is conditioned by the courts' misunderstanding of the notion of discrimination and by not directly applying the Constitutional norms. The examination of the case in the administrative court takes so long that the restoration of the violated right, if any, is no longer relevant for the victim. When dealing with discrimination cases, civil courts face a legislative gap in terms of the legal capacity to prosecute discrimination by individuals.

The need for legislative changes and the adoption of new policies have been repeatedly raised by both Pink and international organizations through their recommendations.

Information on the measures taken by the state in this direction and the analysis of their effectiveness will be discussed in the next section.

# PART 2. LEGISLATION AND STATE POLICY AIMED AT PROTECTING THE HUMAN RIGHTS OF LGBT PEOPLE

# FREEDOM OF EXPRESSION AND HATE SPEECH AGAINST LGBT PEOPLE

Everyone shall have the right to freely express his or her opinion. This right shall include freedom to hold own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers.

The RA Constitution, Article 42

Freedom of speech, as one of the pillars of a democratic society, includes almost any form and content of expression, including the right to freely express one's gender identity, which includes ideas, opinions, and information about one's identity. Freedom of speech is not an absolute right; it is subject to certain restrictions.<sup>35</sup> It includes the freedom to express ideas, opinions, but at the same time, the obligation to avoid expressions that offend people and violate their rights.<sup>36</sup> In particular, the right to freedom of speech does not presuppose freedom of hate speech.<sup>37</sup>

#### Hate speech regulations

The definition of hate speech does not yet have a universally recognized wording, but in practice, conventional interpretations have been made by international bodies.

Hate speech can be all forms of expression that spread, incite, encourage, or justify racial hatred, xenophobia, anti-Semitism, or other forms of hatred: based on intolerance, including intolerance and hatred expressed by extreme nationalism, ethnocentrism, discrimination against minorities, immigrants (migrants), persons of migrant origin.<sup>38</sup>

Article 19 (2) of the UN Covenant on Civil and Political Rights recognizes freedom of expression, affirming, "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 print, in the form of art, or through any other media of his choice".<sup>39</sup>

Freedom of expression under Article 19 Part 3 of the Covenant may be restricted if the following conditions are met:

a) should be provided by law and should be necessary,

<sup>35</sup> UN Human Rights Committee, General comment No. 34

<sup>36</sup> Erbakan v Turkey, No 59405/00

<sup>37</sup> UN Human Rights Committee, General comment No. 11

<sup>38</sup> Recommendation No. R (97) 20 of the Committee of Ministers to Member Stateson "Hate Speech", 1997. https://bit.ly/2wa4QoE

<sup>39</sup> International Covenant on Civil and Political Rights, 1966, Article 19(2)

- b) aimed at respecting the rights and reputation of others, the protection of public security, public order, public health, or morals,
- c) be necessary for a democratic society to protect these interests. The mere existence of one or two conditions is not sufficient to justify the restriction.

Article 20 (2) of the Covenant states, "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 discrimination or justification, advocacy of violence but also with an insulting, humiliating, hostile attitude, sowing intolerance towards certain groups. On the one hand, it can lead to hate crimes against groups or individuals, on the other hand, it can violate the psychological integrity of individuals with certain characteristics, causing mental suffering or depression.

Hate speech is addressed at different levels by the legislation of some countries. For example, the laws of Canada, Iceland, Great Britain, Finland, France, the Netherlands, and other countries provide criminal liability for hate speech.<sup>40</sup>

The responsibility for hate speech is due to its severity. The following factors are considered to determine the severity of hate speech:<sup>41</sup>

- The context in which it is expressed,
- Its author, its role, the attitude of the society degree of confidence of the author,
- The intent and goal: the speech was expressed intentionally or unintentionally, or was it aimed at causing backlash or achieving a specific effect?
- Content: the speech may be as influential as it can be and to what extent it may cause damage?
- Means of dissemination and audience: is it important to determine the extent of public dissemination?
- Levels of risks.

Based on the analysis of these circumstances, the level of responsibility under the law for hate speech can be distinguished. In a situation where 95% of society has a negative attitude towards homosexual and transgender people,<sup>42</sup> even the most seemingly harmless expression of hatred can deepen the polarization within the society and lead to violations. In the case when the author of the hate speech is a state official, the degree of its peril is higher not only due to the reputation enjoyed by the official but also due to

40 Relevant Legislative Regulations with the following links:

Canada. https://laws-lois.justice.gc.ca/eng/acts/C-46/section-318.html

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

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

Finland. http://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf

France. https://www.legifrance.gouv.fr/affichCode.

do?cidTexte=LEGITEXT000006070719&dateTexte=20181010

Netherlands. https://wetten.overheid.nl/BWBR0001854/2018-09-19

41 Annual report of the United Nations High Commissioner for Human Rights, 2013, Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred. https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\_draft\_outcome.pdf

42 Pink Human Rights Defender NGO. "From Prejudice to Equality: Study of Public Attitudes Toward LGBTI People in Armenia". 2016. https://www.pinkarmenia.org/wp-content/uploads/2016/06/From-Prejudice-to-Equality-English.pdf

the creation of an atmosphere of impunity. The peril of hate speech can be higher due to the identity of its author, its role, and its behavior in society. Hate speech expressed by officials is considered more dangerous, as they are official representatives of decision-making bodies, public policymakers, and, accordingly, opinion-makers in society. Political-religious leaders should refrain from using intolerant calls or expressions that could provoke violence, hostility, or discrimination. They also play a key role in speaking out against intolerance, discriminatory stereotypes, and hate speech.<sup>43</sup>

Carelessly uttered hate speech should be criticized and, in some cases, even prosecuted, but in this case, criminal liability is not mandatory. Such expressions may be condemned by public officials, and disciplinary action may be taken against both public officials and members of the professional community as a violation of professional ethics. For the analysis of the content of the speech, it is especially important to assess the consequences, as it can keep a certain group of people in an atmosphere of fear, psychologically depressed, and under constant threat. It is also important to estimate the reach of the hate speech and its spread among the public, which may be conditioned both by the fact of the location of its publicizing and whether it was widely spread through the mass media or not. The spread of such a word by the media should receive a legal assessment as well. The problem that the media operating in Armenia often spreads false, unconfirmed manipulative news, which contradicts the rules of journalistic ethics, has been raised in the last few years. Moreover, the word often spread in the media goes beyond the limits of freedom of expression, containing discrimination and incitement of hostility, especially towards LGBT people.

It should be noted that most of the examples described in the above sections have again been covered by the media and have not been subjected to restrictive control over hate speech. The word spread through the media, wherever it is initially expressed, is becoming more widespread in society, influencing the public mood. It is no secret that the media, conventionally called the fourth power, can create a broad opinion, atmosphere, and attitude, which often makes them a tool by various political forces. In addition to the coverage of the speech on other platforms, the media also spread their editorial analysis, which can also be described as an abuse of speech.

After all, hate speech must be real and clear, that is, the expressions used in the speech must either contain clear hostility, insult due to a certain feature, calls for violence, discrimination, or must be perceived as such. Its ambiguous perception reduces the degree of dangerousness.

#### State policy aimed at regulating hate speech

The report on 2020, published last year, gave a detailed account of the main manifestations of hate speech, the targets, the authors, and the measures taken by the state against it. Since 2019, the state policy aimed at addressing hate speech has changed significantly

<sup>43</sup> Annual report of the United Nations High Commissioner for Human Rights, 2013, Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred. https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\_draft\_outcome.pdf

in the Republic of Armenia. Back in 2019, on the initiative of the Ministry of Justice, the National Strategy for the Protection of Human Rights, and the resulting action plan 2020-2022 were developed, which included the need for legislation to ban hate speech based on the research of international experience.

Amendments to the Criminal Code in 2020 provide for criminal liability for public calls for violence, public justification, or propaganda of violence (Article 226.2).<sup>44</sup> Yet in 2020, cases on calls for violence registered based on SOGI did not receive a proper response from the law enforcement agencies. No case has been filed based on the reports submitted in this regard, whereas criminal cases have been initiated in cases when the target of calls for violence are representatives of political forces, and there is even a verdict on one of them.<sup>45</sup>

Throughout 2021, hate speech against LGBT people continued, mostly online. In hate speech targeting LGBT people, the publications pursuing political manipulative goals prevailed. In particular, in the context of the post-war events, when a part of the village was handed over to the control of the Azerbaijani armed forces, the events related to the village of Shurnukh began to be actively circulated. The authors of the publications on this matter, referring to the attack on LGBT activists in Shurnukh in 2018, the condemning statements made by both human rights activists and the international community, criticized the silence of the latter on the infringements on the village by Azerbaijan. Of course, the LGBT community was presented in a negative light, making the issue of human rights violations against LGBT people unimportant. Nikol Pashinyan was targeted again by the authors. There were comments that the latter "gave" the village of Shurnukh to Azerbaijan because LGBT people were rejected there. In addition, this time the father of one of the main victims of the incident in Shurnukh in 2018 became the victim of an information campaign for political purposes. He previously stood out for his active civic stance and was present at the meeting with Nikol Pashinyan.<sup>47</sup>

In contrast to the positive development with concerning the legal regulations, in practice, hate speech against LGBT people, as well as speech containing calls for public violence have not been properly assessed by law enforcement agencies and have not been effectively investigated. The police refused to initiate a criminal case on the grounds that the offenders did not call for violence, but rather exercised their right to freedom of expression. This view was defended by the prosecutor's office and the courts.

The discussion of the above-mentioned material, of course, should be considered taking into account the source of the speech and its public availability. This discourse has been taken up not only by Facebook, which has hundreds of thousands of followers but also by media outlets that have both online access but are also print media. These circumstances make the speech even more dangerous through its wider spread. On the other hand, the context in which the issue is raised must be taken into account. In the post-war period, when the emotional state of the population is tense, any publication about the war, the regions, and the people affected by it can get an emotional or aggressive reaction, and

<sup>44</sup> RA law on making amendments to the Criminal Code of the Republic of Armenia. https://www.arlis.am/DocumentView.aspx?docid=141919

<sup>45</sup> GD1/0048/01/21 case indictment: http://www.datalex.am/?app=AppCaseSearch&case\_id=33495522228654572

<sup>46</sup> Gohar Srapionyan 21.04.2021 post on Facebook. https://www.facebook.com/permalink.php?story\_fbid =1815244291995659&id=100005303177726

<sup>47</sup> It was the father of an LGBT activist who welcomed Pashinyan in Shurnukh. Hraparak.am. 17.06.2021. https://hraparak.am/post/dd8328af57a8fd6f973f36bbd2dcbad9

leave an even greater impact than it would have in other conditions.

On January 17 and 18, 2021, a user registered under the pseudonym "Spitak Arch" on Telegram, Instagram and Facebook social networks spread false information that "Pink" human rights defender organization is funded by the state funds of the Republic of Armenia, and that the Armenian government wasted state budget funds to protect the interests of LGBT people, due to which, not being able to buy weapons, the Artsakh war failed. In addition to spreading untrue, defamatory information, photos of the organization's employees were published with the post, which was concluded with the following sentence: "If you see these gypsies in Yerevan, convey your heartfelt greetings. "You know how". The mentioned user has a large number of followers, which makes the post accessible to a large number of people. This is evidenced by the comments on LGBT people addressed to "Pink" human rights NGO by other users under the above-mentioned post. The comments, in particular, contain insulting expressions, profanity, and even calls for violence. The user under the pseudonym "Karda Nzhdeh" (Read Nzhdeh) made the following comment, which calls for violence against the executive director of the organization, 48 whose photo is attached to the post. Two other users also called to set them on fire.



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The aftermath of the post was already evident at the time of submitting a report. In particular, calls for violence and insults were continued by other users, and specific people were targeted. It should be noted that in order to initiate a criminal case under the new article of the Criminal Code, the mere existence of calls for violence should be sufficient. Taking into account the fact that the post is accompanied by photos of employees of "Pink" human rights defender NGO and affiliated persons, the abovementioned calls for violence posed a real threat to the safety of these people and created a feeling of fear and insecurity for them. A report on the crime was filed in connection with these events, but the investigative body decided not to initiate a criminal case on the grounds that the offenders had exercised their freedom of expression. The decision was appealed to the superior prosecutor, then to the court, but no changes took place.

<sup>48</sup> Spitak Arch Telegram channel 16.01.2021

#### Using LGBT issues in a political manipulative context

#### **Targeting Individuals**

The media, including social media platforms, have often been used to target various public figures by associating them in some way with the LGBT community and making degrading expressions or spreading defamatory information.

For example, NA Speaker Alen Simonyan has been regularly targeted for his idea that legalizing same-sex marriage in Armenia is a matter of time.<sup>49</sup> Various users have made insulting expressions toward the author of this idea.

Nikol Pashinyan has been regularly targeted for offensive and insulting remarks, including in the context of him protecting LGBT rights.<sup>50</sup> Given the fact that especially insulting expressions were used in this case, it is obvious that the topic of the LGBT community was raised here as a discrediting phenomenon for Nikol Pashinyan. The thoughts expressed in Nikol Pashinyan's fiction book "The Other Side of the Earth" have become a subject of speculation, this time by the Dean of the Center for European Studies of Yerevan State University, MP Arthur Ghazinyan. Posting on Facebook a section of the book about virgin boys and first intercourse with them, Ghazinyan made the following post: "And this perverted animal has ruled Armenia for three years. So read this and take part in this pedophile parade with your "virgin boys".<sup>51</sup>

Another person targeted was Arman Babajanyan.<sup>52</sup> To dishonor him, information was spread in a humiliating tone and with expressions, mentioning that he was gay or that he was going to take thousands of homosexuals to Nikol Pashinyan's pre-election rally, in return for which Nikol Pashinyan promised to legalize same-sex marriage. Dissemination of such materials, of course, is directed not only against Arman Babajanyan individually, but also against Nikol Pashinyan, and an attempt is being made to discredit him as well by using the stereotypical and homophobic attitude towards the LGBT community and homosexual relations that prevail in the society. It should be noted that in the comments of such posts, different people use utter profanities, hatred, and intolerance not only to the target individuals but also to LGBT people. Such comments contain calls for violence as well. Humiliating materials about Arman Babajanyan's sexual orientation were disseminated during the pre-election period in the context of his alliance formed with Levon Shirinyan, again targeting Nikol Pashinyan in the context of him being their sponsor.<sup>53</sup> False information was also spread about the organization of a gay parade by Arman Babajanyan.<sup>54</sup>

<sup>49</sup> Aghasi Mikayelyan 02.08.2021 post on Facebook. https://www.facebook.com/aghasi.mikaelian/posts/10224433362768860, Legalization of marijuana, prostitution, LGBT marriage. Alen Simonyan's 10 scandalous goals to be achieved. aparaj.am. 03.08.2021 p. https://aparaj.am/marixuanayi-marmnavatcharuthyan-lgbt-andzanc-amusnuthyan-orinakanacum-alen-simonyani-10-skandalayin-iragortcelikh-npataknereh/

<sup>50</sup> Gevorg V. Grigoryan 27.02.2021 post on Facebook. https://www.facebook.com/grigoryangev/posts/10219875737671683

<sup>51</sup> Artur Ghazinyan Facebook page post on 17.06.2021. https://www.facebook.com/story.php?story\_fbid= 4177347785662048&id=473981732665357

<sup>52</sup> Rafael Hovhannisyan 13.05.2021 post on Facebook. https://www.facebook.com/rafael.hovhannisyan.5/posts/4238744256156657

<sup>53</sup> Ruben Mkhitaryan 13.06.2021 post on Facebook. https://www.facebook.com/ruben.mkhitaryan/posts/5605242502883702, hraparak.am Facebook page comments. https://www.facebook.com/hraparak/posts/10158776727829845

<sup>54</sup> Analitik.am website publication on 13.04.2021 and Facebook page comments. https://www.facebook.

The judge of the Constitutional Court, former lawyer Vahe Grigoryan has also been targeted. His photos with human rights activists were spread on the Internet as proof that Vahe Grigoryan is an LGBT activist and now a member of the Constitutional Court.<sup>55</sup>



Another target of the manipulation was Lara Aharonyan, whose activities as a human rights defender have been interpreted as "homosexual propaganda" for years.<sup>56</sup> Any information about her activities turns into a campaign of hatred and intolerance against her, and social media users leave offensive and derogatory comments on various platforms. It is noteworthy that on various occasions that had nothing to do with LGBT people, insults or derogatory expressions were spread. For such, the presentation of a study conducted by the Socioscope NGO, authored by Nvard Margaryan, the former president of the Pink human rights NGO, was artificially linked with LGBT activists thus attempting to discredit it.57 In another case, a user mentioned that the government has the financial means to make a film about Mel Daluzyan, but does not have the money to install a statue of one of the heroes of the Second Artsakh War, Albert Hovhannisyan.<sup>58</sup> It is obvious that shooting the film and the installation of the statue have nothing to do with each other; the financial support of the film was carried out in completely different conditions, within the

framework of a clear program, when even the Artsakh war had not started. Dissemination of such material distorted from the context and artificial associations with the LGBT community creates an atmosphere of hatred and enmity.

It is particularly dangerous that within the framework of such media materials and posts citizens have started spreading insulting, humiliating and discriminatory calls against the LGBT community. In other words, these manipulative materials not only harm the individuals targeted by them but also deepen their intolerance towards the LGBT community.

com/analitik.am.new/posts/3049049225328900, Rafael Gevorgyan 13.04.2021 post on Facebook. https://www.facebook.com/rafael.gevorkyan/posts/3948780258524159

<sup>55</sup> Zakar Khojabaghyan 11.07.2021 post on Facebook. https://www.facebook.com/zakar.khojabaghyan/posts/4452176291468428

<sup>56</sup> The meeting was held in a warm atmosphere. What did Lara Aharonyan and A.Hakobyan talk about? iravunk.com 27.01.2021. https://iravunk.com/?p=194340&I=am

<sup>57</sup> Zakar Khojabaghyan 30.09.2021 post on Facebook. https://www.facebook.com/zakar.khojabaghyan/posts/4703566192996102

<sup>58</sup> Ero Asilyan 23.02.2021 post on Facebook. https://www.facebook.com/zakar.khojabaghyan/posts/4703566192996102

#### **Targeting State Policy**

Snap parliamentary elections of the NA were held in Armenia in June 2021. During the pre-election period, there was a vicious struggle between the ruling party and opposition parties, and the opposition did not spare any means to discredit the ruling party by spreading various insulting, humiliating, false information and manipulative propaganda materials against its representatives.

The opposition groups used the manipulative method that proved to work previously as well, that is, associating the representatives of the government with the LGBT community, which has a negative reputation in society. The idea that voting for the authorities means voting for the LGBT community was raised through various mechanisms.

Mikael Manrikyan, a member of the Prosperous Armenia faction of the Yerevan City Council, called on the citizens not to take part in the rally organized by Nikol Pashinyan in the Republic Square, noting that the participants of that rally oppose the army, the church, support the LGBT community and traitors.

This idea is a simple political manipulation. This member of the Council does not mention any reasonable connection between the LGBT people and the government-organized rally, nor does he mention any justification for the fact that the meeting is against the interests of the army and the church. It is obvious that the author of this idea is trying to use the emotional stances of the society with respect to the army and the church, combining it with the widespread homophobic mood, and linking it with the rally. The expression of such thoughts by a member of the Yerevan City Council has a greater audience and impact on the general public than those of ordinary citizens.

On April 7, a group of opposition women protesting were detained by police, which became another occasion of a negative wave against the LGBT people.<sup>59</sup> In particular, some people started accusing human rights activists of differentiated treatment. For example, Ani Hovhannisyan, a member of the "VETO" initiative, wrote about how "Sorosian human rights activists" would react if it were not the women, but LGBT people detained. Such a judgment, being baseless, obviously aims to present human rights defenders in a negative light, and LGBT people as privileged by the government. It should be noted that not only LGBT people do not have the opportunity to hold any public event, but even non-public gatherings are often obstructed by various groups or individuals, and the existing legal protection mechanisms for such obstructions do not work.

In the presented examples, hate speech was disseminated not only by individuals but also by some politicians with a wide audience. Less dangerous expressions of hate speech are expressions uttered by individuals, which, however, spread through social networks, which are used by thousands of people, gaining a wider audience.

Even though there are not many cases registered in 2021 for calls for violence and discrimination, the expressions that do not constitute such but spread intolerance and enmity between various groups of the society should receive an appropriate response as well. In particular, if the expression has not reached a level to envisage legal liability, it does not contain allegations of discrimination, violence, or justification thereof, it should

<sup>59</sup> Karen Avagyan 11.07.2021 post on Facebook. https://www.facebook.com/karen.avagyan.79462/posts/1091782651330526, The Soros-funded human rights organizations are capital-raising idiots. Ani Hovhannisyan. Analitik.am. 08.04.2021. https://analitik.am/news/view/722130

be criticized and condemned by state authorities to prevent disruption of harmony and solidarity between different groups in society, discriminatory treatment and violence.

#### Measures taken by the State to address Hate Crimes

#### Measures taken with respect to legislative regulations

According to OSCE Office for Democratic Institutions and Human Rights (ODIHR), hate crimes are criminal acts committed with a bias motive.<sup>60</sup> Therefore, the first element of a hate crime is that an act is committed that constitutes an offense under ordinary criminal law, and the second element of a hate crime is that the criminal act is committed with a particular motive, a bias, hatred, intolerance. Hate crime legislation derives from human rights obligations, such as equality, the elimination of discrimination, torture, inhuman or degrading treatment, respect for privacy and family life.

The victim's SOGI is often the cause of crime in the Armenian reality.<sup>61</sup> The Criminal Code of the Republic of Armenia does not provide for the definition of hate crime, as well as effective mechanisms for their identification and responsibility. It should be noted that Article 63 of the Criminal Code provides for criminal responsibility and circumstances aggravating the crime and punishment. Point 6 of Part 1 of the Code indicates: "Committing a crime motivated by revenge based on ethnic, racial or religious hatred, religious fanaticism."<sup>62</sup> The principle of legality laid down in the Criminal Code stipulates that the provisions of the Criminal Code are prohibited by analogy, crimes based on SOGI are not considered in the light of this article and are rather considered as ordinary crimes.

The regulations on hate crimes may be different in domestic law. Pink finds it necessary to advocate for defining the bias of SOGI as circumstances aggravating the crimes and punishment.

Recommendations aimed at developing and implementing mechanisms to ensure a full, impartial and thorough investigation of hate crimes based on sexual orientation and gender identity, have been presented to the RA Government numerous times. Such recommendations have also been provided by several international human rights organizations and are continuous. Some developments have been seen in this respect in 2021 as well.

In its concluding observations adopted by the Human Rights Committee at its 105th session, the Committee mentions,<sup>63</sup> that Armenia should ensure that its definition of discrimination covers all forms of discrimination as set out in the Covenant (race, color, sex, language, religion, political or other opinion, national or social origin, property,

<sup>60</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR), "Hate Crime Laws: A practical Guide", Warsaw, Poland, 2009

<sup>61</sup> Pink Armenia, Hate Crimes and Other Hate Motivated Incidents against LGBT People in Armenia: From Theory to Reality. https://www.pinkarmenia.org/wp-content/uploads/2016/11/hate-crime-monitoring-2016 en.pdf.

<sup>62</sup> RA Criminal Code, article 63, 2003. http://www.arlis.am/DocumentView.aspx?DocID=108718 63 UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations Armenia CCPR/C/ARM/CO/2, 105th Session, 9-27 July 2012. http://www.ohchr.org/EN/Countries/ENACARegion/Pages/AMIndex.aspx

birth or other status). Concerned at the discrimination and violence suffered by LGBT people, the Committee also recommended that the State party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or harassment of, or discrimination or violence against persons because of their sexual orientation or gender identity. The State party should prohibit discrimination based on sexual orientation and gender identity and provide effective protection to LGBT persons.

The RA government, however, has not made a clear statement on the above-mentioned issues. The government report states that the draft law "On Ensuring Equality" is in progress, but no reference was made to discrimination on the grounds of sexual orientation or gender identity. It is noteworthy that the draft law, however, does not meet the above-mentioned requirements for the comprehensive and proper protection of minorities. The government has not provided any information on efforts to combat racial discrimination and to achieve its goals in that respect.

As a result, the Committee sent a new list of issues to the Government, asking to provide updated information on the status of the draft law on ensuring legal equality, to respond to concerns about its non-comprehensiveness and lack of guarantees of effective legal protection. The Committee also asked the Government to indicate whether the proposed amendments to the Criminal Code explicitly prohibit hate crimes and acts of hate speech on all prohibited grounds, including sexual orientation and gender identity, and to describe the measures taken by the State party to effectively address social stigmatization, harassment, violence and discrimination against lesbian, gay, bisexual and transgender persons. The Committee asked the Government to comment on the prevalence of homophobic and transphobic rhetoric by politicians and other public officials, with impunity.<sup>64</sup>

Referring to the legislative changes that provide for effective investigation of hate crimes and effective legal remedies against for crimes based on SOGI, the Government noted that during the reporting period, no criminal cases have been instituted and no materials have been prepared in relation to cases of violence against representatives of the LGBT community.<sup>65</sup> Referring to the Law on Ensuring Equality, the Government mentioned that the recommendations of OSCE/ODIHR are taken into account and the Draft Law is brought into compliance with respective international standards.

In addition to advocating for legislative changes both through direct communication with government agencies and through the use of international mechanisms, Pink also tried to address the issue through strategic litigation, trying to get the legislative gap and improper investigation recognized as a human rights violation. Not being resolved in domestic courts, strategic litigation cases are sometimes conveyed to international courts.

The first application to the European Court of Human Rights against Armenia for improper investigation of hate crimes was filed back in 2013 and is still pending before the ECHR. This refers to the case of Oganezova v. Armenia, who was subjected to a hate crime based on her sexual orientation and did not find effective legal remedies after the

<sup>64</sup> Human Rights Committee, CCPR List of Issues. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fARM%2fQ%2f3
65 Republic of Armenia Government reply to the List of Issues requested by the Human Rights Committee. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fARM%2fRQ%2f3

DIY pub firebombing (see Annex 1). In this case, the government acknowledged that the incident had not been investigated as a hate crime, as there were no relevant regulatory provisions in the criminal law.

After having been discussed for years, the new Criminal Code, which will improve the scope of legal regulation of hate crimes, has been adopted in 2021.

The new Criminal Code was adopted by parliament in 2021 but will enter into force in July 2022. The new Code has expanded the list of circumstances aggravating liability and punishment, making it possible to apply it with a non-exhaustive list of grounds in cases of hate crimes.

In particular, Article 71 (formerly 63) which defines circumstances aggravating the liability and punishment, has been redrafted. According to the new wording, crimes committed with hatred, intolerance or hostility based on race, nationality, ethnic or social origin, religion, political or other views, or other social or personal circumstances will result in more severe punishment. Of course, the best option would be to directly envisage sexual orientation and gender identity as a basis for aggravating circumstances, which would ensure the definiteness and predictability of the legislation. However, these changes can be seen as progress that will allow achieving a proper qualification and substantive investigation of crimes based on SOGI in legal practice.

At the same time, it should be noted that Article 71 (Article 63 of the current Code) is an article of the general part of the Criminal Code that can be applied by a court but can not be applied by the bodies of the preliminary investigation if the articles provided for in the special part of the Code do not directly provide for the aggravating circumstances. Such an approach stems from the requirement of the principle of definiteness of legal acts. In this respect, this new Criminal Code can be considered progress. In particular, the wording of criminal actions and the inclusion of the motive of the offenders in those special articles as an aggravating circumstance have been subject to some editing. If previously articles on battery or causing physical or psychological pain could not be considered as acts in respect to relevance for aggravated circumstances given the absence of envisaging aggravating circumstances in the articles, this issue will be resolved under the new Criminal Code.

The most common hate crimes can be summarized in the following articles, where the new Code envisages heavier liability:

- Physical influence (article 195, previously battery, article 118),
- causing severe physical or mental pain or suffering (article 196, previously envisaged in article 119),
- psychological influence (article 194, previously as a threat that prescribed liability only for the threat to murder, to inflict heavy damage to one's health or to destroy property, article 137), which implies liability for murder, damage to health, torture, crimes against sexual freedom, immunity, kidnapping, unlawful deprivation of liberty, destruction of a large or particularly large property or the threat of such actions.

The act may be qualified as physical violence if the violent act did not cause the consequences provided for in Article 171 (causing minor-gravity harm to health). An act may be qualified as the cause of severe physical or mental pain or suffering if the act

did not cause the consequences provided for in Articles 166 and 167 (grave or medium-gravity harm to health).

Changes have been made in provisions regulating discrimination and hate speech.

Article 203 of the new Criminal Code criminalizes discrimination. The article provides an open list of protected grounds, defining discrimination as a manifestation of discriminatory treatment that violates a person's honor and dignity or rights and freedoms, or that gives a person an advantage without an objective or legitimate purpose based on one's gender, race, skin color, ethnicity or on the basis of social origin, genetic characteristics, language, religion, worldview, political or other views, national minority, property status, birth, health status, disability, age or other personal or social circumstances.

Article 226, which envisaged criminal liability for inciting national, racial or religious hatred, has been removed. However, public speech that incites or promotes hatred, discrimination, intolerance or hostility; as well as dissemination of materials or objects for that purpose on the basis of race, nationality, ethnic or social origin, religion, political or other views, as well as other personal or social circumstances will result in criminal liability (Article 329).

#### Measures taken to change the practice of hate crime investigation

In 2021, in cooperation with the OSCE / ODIHR, the Government of the Republic of Armenia launched a new phase of addressing hate crimes. In particular, a memorandum of cooperation was signed between the OSCE ODIHR, the RA Prosecutor General's Office, the Investigative Committee, the Academy of Justice, and the Educational Complex of Police, in frames of which cascade training courses for police officers, investigators and prosecutors are planned. At the initial stage, a training of trainers was organized, which also involved representatives of civil society, including a representative of "Pink" NGO.

The training program provides a comprehensive overview of the peculiarities of hate crimes. In particular, issues related to the concept of hate crimes, bias, bias indicators, identification, means of proof, as well as the peculiarities of working with victims, sensitive-respectful treatment of them, procedural needs arising during the investigation of cases are included in the agenda of the training. It is envisaged that the trained persons will conduct cascade trainings with the law enforcement bodies through the Educational Complex of Police and the Academy of Justice. Working groups have been set up to develop training programs and timetables, as well as to monitor the effectiveness of the program, where the parties to the Memorandum of Cooperation, as well as representatives of other government stakeholders and civil society are involved.

The launch of this program by the Government can be considered an unprecedented step toward addressing hate crimes and ensuring proper investigation. In the past, not only did the Government not take special measures to make the investigation of hate crimes more effective, but generally refused to acknowledge that such a phenomenon exists in Armenia.

## **CONCLUSION**

Summing up the human rights situation of LGBT people in 2021, it should be noted that even though the number of offenses has not decreased compared to previous years, the nature of the state policy has undergone some changes. New legislative changes, in particular, the adoption of the new Criminal Code, as well as the training of law enforcement agencies, namely police officers, investigators, and prosecutors on the investigation, detection and legal qualification of hate crimes, create favorable conditions for the effective protection of LGBT rights. These changes provide an opportunity to promote the qualification and investigation of violations based on SOGI, which will take into account the biased attitude and motives of offenders. Although sexual orientation and gender identity are not explicitly mentioned as grounds for protection from discrimination, hate crimes, and hate speech, the new non-exhaustive list can be considered a positive shift from the previous limited list of protection grounds.

At the same time, it is clear that violations of the rights of LGBT people still go unpunished and are not addressed as such by law enforcement agencies. The same factors that made an obstacle to the effective operation of legal protection mechanisms in the cases registered in previous years also existed in 2021. The attitude and distrust of the victims towards the law enforcement bodies has not changed as well, which further hinders the situation from the settlement. If this atmosphere of impunity continues, no positive legislative change can be considered effective, and state policy can not be considered human-centered. The effectiveness of the actions taken by the state, and consequently the level of protection of the rights of LGBT people in Armenia, can be assessed only based on an analysis of the developments of the reported cases.

At the same time, it should be noted that the amendment to the Criminal Code of 2020, which criminalized calls for public violence, is not at all effective in law enforcement practice in the context of combating calls for violence and justifying violence in a public speech against LGBT people. On the other hand, law enforcement agencies, including the courts, do not always have sufficient capacity and political will for a broad application of the provisions of the law in cases when such provisions do not contain a literal wording needed and give rise to a discretionary interpretation. In such a situation, it is impossible to unequivocally hope for the effective application of such regulations.

At the same time, the indifference of the state authorities to the calls of violence and hate speech promotes the deepening of negative attitudes towards LGBT people and makes differentiated, discriminatory attitudes in different legal relations more likely to happen.

## **RECOMMENDATIONS**

To ensure proper protection of the rights of LGBT people in Armenia, we recommend:

#### To state bodies and political forces

- Cooperate with human rights defender non-governmental organizations to obtain more detailed information on systematic aspects of LGBT human rights violations.
- Take steps 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.
- Give clear assessments of LGBT human rights violations, do not avoid condemning human rights violations, including condemnation of hate speech and intolerance.
- Carry out a comprehensive study of international human rights instruments, international legal experience, and analysis of the current situation in the country to enact effective hate speech regulations in line with human rights principles, which will protect all vulnerable groups.
- 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.
- Effectively enforce the norm criminalizing public calls for violence and public justification or propaganda of violence to create safe living conditions for LGBT people.
- Adopt separate, comprehensive legislation to prevent and prohibit discrimination by envisaging prevention and prohibition of discrimination and civil, administrative, and criminal liability, which will ensure:
  - the right to be free from discrimination, including on the grounds of sexual orientation and gender identity,
  - effective regulations on non-discrimination by private institutions or individuals,
  - and which will envisage non-governmental organizations as legal entities in the protection of public interests.
- Review the RA legislation that prohibits hate crimes, and expressly consider a crime committed against a person on the grounds of their sexual orientation and/or gender identity as an aggravating circumstance in criminal liability and punishment.
- Develop and implement mechanisms to ensure a comprehensive and objective investigation of crimes based on sexual orientation and gender identity, including by developing appropriate legal and procedural arrangements for identifying the motive of the crime.

- Conduct complete, objective, and thorough investigations of LGBT rights violations, without discriminatory, prejudiced attitudes towards LGBT people by investigative bodies.
- 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.
- Ensure access to justice for victims of hate crimes, through effective mechanisms for the protection of individual rights, which will eliminate the risk of double victimization of the person, ensure the safety of the person, and provide for comprehensive compensation mechanisms.
- Conduct continuous training courses for law enforcement bodies on the peculiarities of working with victims and witnesses of hate crimes and involve trained specialists on hate crimes, including experts from NGOs.
- 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.
- Promote the concepts of tolerance and equality within society, particularly with public statements that instill tolerance.

#### To mass media

- Stop publications that incite hatred and intolerance towards LGBT individuals and offer the public correct, ethically acceptable materials that respect the human rights of LGBT individuals.
- Do not exploit topics concerning LGBT individuals in media reporting, thus avoiding further undue dissemination of hatred and intolerance in society.
- 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

- 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.
- Refer to the practices of LGBT human rights violations raised in this report in their reports concerning human rights.

#### To the Human Rights Defender's office

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

# ANNEX 1. STRATEGIC LITIGATION

Pink Armenia has been pursuing strategic litigation since 2012, to achieve changes both in the legislation and in public policy. Two strategic litigations had some developments in 2021, which are pending in domestic courts. No other developments were observed during 2021.<sup>66</sup>

### The dispute in the Administrative Court concerns the issue of social advertising posters published by Pink in 2017, with the following facts:



In 2017, the above-mentioned advertising posters were submitted to the RA Ministry of Culture with a request to recognize them as public service announcements (PSAs). Recognition of posters as PSAs 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 not 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. 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 lawsuit was rejected by the Administrative Court of First Instance.

The decision was appealed to the Court of Appeal. The Court of Appeal partially upheld the appeal, sending the case to the Court of First Instance for a new examination. In 2021, the examination of the case in the Court of First Instance continued. The verdict is expected in 2022.

### The investigation of the case of violence in Shurnukh village continues in the domestic instances:

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 leave the village and 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. As a result of these two complaints filed in 2020, the courts upheld that the examination was incomplete by the body conducting the proceedings.

No charges have been filed since the case was reopened. The article of the RA Criminal Code envisaging punishment and responsibility for discrimination has not been made a subject of examination.

In February 2021, the body conducting the proceedings again decided to terminate the criminal case, this time on the grounds of the expiration of the statute of limitations for criminal liability. The decision was appealed to the superior court.



# About the organization "Pink" human rights defender non-governmental organization was founded in 2007. The organization is known to its beneficiaries and the public as Pink Armenia. 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.

