



RIGHT SIDE

HUMAN RIGHTS DEFENDER NGO

LEGAL REPORT

**SITUATION OF HUMAN
RIGHTS OF TRANSGENDER
PEOPLE IN ARMENIA**

2018 - 2019

Abbreviations

- NGO – Non-governmental organization
- RA – Republic of Armenia
- CSRO - Civil Status Act Registration Agency
- HRD – Human rights defender
- ECHR - European Court of Human Rights
- LLC - Limited Liability Company
- LGBT – Lesbian, gay, bisexual and transgender
- GBT – Gay, bisexual and transgender
- ID – Identification number
- HIV - Human immunodeficiency virus
- AIDS - Acquired immunodeficiency syndrome
- PACE - Parliamentary Assembly of the Council of Europe
- UN – United Nations

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Preface and statistics

Since August 2018, the Legal Department of Right Side Human Rights NGO has represented the interests of the organization, its employees and beneficiaries in the RA Police, Prosecutor's Office, courts, and other state bodies, in particular:

- 12 cases of protection of victims' interests were implemented in the RA Police;
- 8 cases of protection of witnesses' interests were implemented in the RA Police;
- 4 cases of protection of the suspects and accused interests were implemented in the RA Police;
- At present 5 cases of hate speech, threats are filed with the Prosecutor's Office regarding dismissal of cases and inaction of investigative bodies;
- In 6 cases there are lawsuits in the courts of general jurisdiction of Yerevan, the Administrative Court of the Republic of Armenia, as well as in one case, the protection of the interests of the victim is implemented in the court of general jurisdiction of Yerevan.
- There are 5 complaint-appeals to the RA Human Rights Defender.
- 72 inquiries were submitted to the RA Investigative Committee, the RA Minister of Justice, the RA Defense Minister and other state bodies for clarification on a number of legal issues.
- Representation in the State Migration Service of the Republic of Armenia was carried out for 7 asylum seekers.
- One case of xenophobia, racism and transphobia was filed against Zvartnots International Airport and one against Yandex Taxi Service. In two cases favorable decisions were made in favor of the complainant.

Description of cases

1. On 28 February 2018, transgender woman E. A. (Jacqueline) was beaten and her renting apartment was burnt

A criminal case has been instituted in connection with the case under Part 1 of Article 112 of the Criminal Code of the Republic of Armenia: to deliberately cause serious harm to the health of E. A. In particular, according to the indictment, defendant Yesayi Sahaki Kajoyan was charged with Part 1 of Article 112 of the Criminal Code of the Republic of Armenia for deliberately causing serious harm to the life of E. A. on February 28, 2018 at 4:40 pm in the building 14 of Mashtots Avenue in Yerevan. Thus, on February 28, 2018, at 03:00 am, knowing through a web site about a user named Jacqueline providing sexual services for Money, Yesayi Kajoyan, having intention to use her services, had a telephone conversation with Jacqueline and arranged meeting in Apt. 21, 14 Mashtots Avenue in Yerevan. Arriving at apartment 21, he met Jacqueline at about 4:00 pm, who was wearing a wig and women's clothing.

After drinking alcohol in the apartment, E. Kajoyan had sex with Jacqueline in a non-traditional way, promising 30,000 AMD. Afterwards, Yesayi Kajoyan offered to have sex once again for the promised sum and, after being denied by Jacqueline, became angry with her and argued with her at the apartment, then went out the front porch, deliberately pushing her down the stairs, then throwing her down the stairs, then multiply struck to Jacqueline's head and various parts of her body, deliberately causing bodily harm to her life:: right front facial, right upper and lower eyelids, right cheekbone, left earlobe, left lateral neck, left cheekbone, left anterior forearm, left lip, lower lip, right breast, right thoracic cavity, left cheekbone haemorrhagic hemorrhage, pair frontal, paired swelling, left anterior, nasal, left thoracic enlargement, left arm, right atrium, subcutaneous, neck, left subcutaneous, left femoral, left femur, left femur mammary gland, left shoulder bladder soft tissue salivary gland, right subcutaneous hematopoietic blood collection, middle and right maxillary head, salivary-torn wounds of the right frontal region, closed cerebral lesion, middle cerebral hemorrhage by means of blood collection and sub-bone bleeding.

The criminal case is currently pending before the Yerevan Court of First Instance. The court hearing on June 24, 2019, did not take place, as the case was assigned to another judge, Armen Vardapetyan.

It should be added that prior to the recording of another judge, the court ordered a forensic examination of the defendant, whose conclusion did not call into question the defendant's ability to understand and manage his actions at the time of the offense.

However, the fact that the court has assigned an expert examination raises a reasonable doubt as to the impartiality of the court, as there was no basis in the RA Criminal Procedure Code for the purpose of such an examination.

2. In September 2018, M.E, N.A. and M.S. have appealed to the organization, saying that Mali Sports Club had banned them from attending the club in August because of their self-expression and alleged sexual orientation.

Employees mocked, insulted, humiliated, terminated gym membership, and barred access to the gym for M.S., N.A. and M.E. During the phone call with Lilit Martirosyan, president of Right Side Human Rights Defender NGO, head of the sports club L. G. has affirmed the discriminatory attitude of his staff towards transgender persons, on which there is a recording.

The latter also wondered if Martirosyan had seen those people's looks and whether it was normal. In her words, "normal" Armenian men were restrained by the presence of trans people because it was not clear whether that person was a boy or a girl. Men come with breasts, you don't know which key of the wardrobe should be given. " He prefers that such people do not attend the gym rather than be deprived of other "normal" clients.

Based on the aforementioned, Right Side Human Rights NGO addressed a request to the Gym Director requesting clarification on which legal basis the Director prohibit the entry of M.S. and N.A. to the Gym, by canceling the abonnements already acquired by the latter.

Due to discriminatory treatment in the use of the services, a lawsuit was filed in the court against Mali Sports Club with a request to recognize violations of rights of M.S., N.A. and M.E.

Up to 19.06.2019, no court hearing is scheduled yet, but the lawsuit has been accepted and is pending before judge R. Apinyan's proceedings. The judge's assistant noted that attempts to notify the respondent had been unsuccessful. The court will now notify the respondent by public notice.

3. In September 2018, M.A. applied to our organization, informing that he had been beaten.

Organization Lawyer visited the police with M.A. and took part in the interrogation. After some time M.A. has left for an indefinite period to the Russian Federation, which made it impossible to protect its interests due to absence of appropriate authorities.

4. In October 2018, N.A., S. Gh. applied to the Civil Status Act Registration Agency of the RA Ministry of Justice to change their name from male to female and from female to male.

As a result, for the first time, the Civil Registry Agency of the Ministry of Justice of the Republic of Armenia has approved the application for renaming two transgender persons without the psychological conclusion proving that they are transgender, meaning that any citizen can now apply for a name change without presenting any document, only the will of the person is enough. In the past, the CSRO of RA Ministry of Justice demanded not only the psychological conclusion about being a transgender, but also the testimony of three people who recognized that transgender person. However, as a result of the effective cooperation of the Right Side Human Rights NGO staff with the Ministry of Justice, the requirement of 3 witnesses was withdrawn in 2017. In 2018, Rights Side Human Rights Defender NGO raised the issue of facilitating the renaming process. Within the framework of the advocacy strategy, the renaming of 2 transgender persons who applied to the CSRO for renaming took place without a psychological conclusion, which is a precedent for Armenia.

In practice, the CSRO body of the RA Ministry of Justice required a psychological conclusion, so the application of the new practice largely balances the rights of individuals, particularly transgender persons.

In particular, according to Part 3 of Article 59 of the RA Law on the Registration of Civil Status Acts, the applicant had to submit other necessary documents for the name change, based on which the CSRO body required a psychological conclusion, but due to Right Side HRD NGO efforts, the CSRO body, using its discretion, no longer requires such a document.

According to Article 7 of the RA Law on Principles of Administration and Administration, administrative authorities are forbidden to take an unequal approach to the same factual circumstances if there is no basis for their differentiation.

If the administrative body has exercised any discretionary power in a particular manner, it shall in the same cases continue to exercise its discretionary power in the same manner (the principle of prohibition of arbitrariness).

Therefore, the CSRO body can no longer request a medical psychological conclusion for a transgender person's renaming.



5. K.A. applied to the CSRO of RA Ministry of Justice to change the gender marker in the registration act from female to male.

Under the current legislation, the CSRO body compels a person to undergo sex reassignment surgery, in which case he/she only considers it possible to register a sex change, which is not in accordance with Article 3 of the RA Constitution, according to which a person is of the highest value.

The inalienable dignity of man is the inalienable foundation of his rights and freedoms. It also compels a person to undergo irreversible surgical intervention, which is also prohibited by the RA legislation and recorded in a number of judgments of the European Court. The European Court of Human Rights, *Garson and Nicot vs France* (ECHR 121 (2017) 06.04.2017) referred to these issues, noting that " *means denial of the full exercise of the right to respect for his / her private life, by refusing to fully exercise his or her right to respect for his or her physical integrity. The Court held that a person's change of appearance should be reversed, stating the failure of the respondent State to fulfill its positive obligation to ensure the right to respect for private life. The Court finds that there has been a violation of Article 8 in this regard.*"

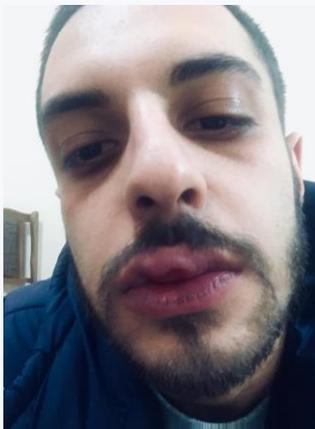
That is to say, the state cannot force a person to undergo sex reassignment surgery as it completely undermines the State's obligation to respect the privacy and liberty of everyone. *Sexual identity is part of a person's private life, and one should not choose between physical immunity and sexual identity. In addition, demanding proof of sexual identity is degrading and violates one's dignity.*

In such circumstances, we filed a lawsuit with the Administrative Court against the requirement to enforce a favorable administrative act of the Ministry of Justice of the Republic of Armenia, namely, to register a sex change without submitting a medical transplant surgery document.

There was one court hearing. The next court hearing is scheduled for October 2019.

It should be noted that we are likely to petition to suspend the case and file a lawsuit with the Constitutional Court, as the provision to obligate to undergo sexually transmitted surgery is contrary to our assessment of several articles of the RA Constitution.

After assessing such a probability, taking into account the tactics of the trial, we will make an appropriate decision.



6. On February 11, 2019, Vrezh Varzhapetyan was beaten at the intersection of Tumanyan and Koghbatsi Streets in Yerevan because of his gender expression.

After the incident Varzhapetyan submitted a report on the crime. A criminal case has been launched in Yerevan Central Division of the RA Police under Article 118 of the RA Criminal Code. We are of the opinion that the investigating body does not have the necessary diligence for a thorough and objective investigation of the case.

The 3rd part of Article 55 of the Criminal Procedure Code of the Republic of Armenia stipulates that the investigator is authorized to give independent direction to the investigation, to take necessary decisions, to carry out investigative and other procedural actions in accordance with the provisions of this Code, unless the criminal procedure law provides for permission from the court. The investigator is responsible for conducting lawful and timely investigative and other procedural actions.

In this case, the failure to submit a pre-emptive recognition order by an investigator for more than two months is not in the legitimate interest of the victim to carry out a thorough and impartial investigation of the case and jeopardizes the State's positive obligation to disclose the crimes.

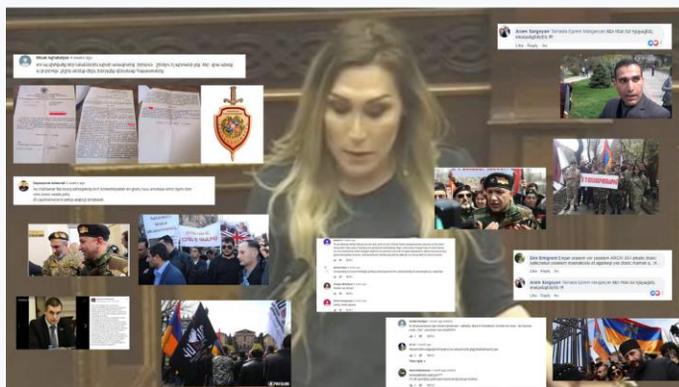
In such a case, the lawyer sent an application to the prosecutor overseeing the proceedings requesting to take measures to expedite the investigation of the case, and a similar request was also sent to the RA Human Rights Defender.

7. Numerous Facebook users threatened Vrezh Varzhapetyan

V. Varzhapetyan posted information on his Facebook page about being beaten on 11 February, 2009, after which numerous users threatened him, and about which Varzhapetyan also reported a crime, and for that the Central Police Department of the Republic of Armenia made a decision to refuse opening a criminal case because of absence of offense .

In our estimation, the police did not take into account the real nature of the threats and the objective circumstances under which they occurred. Torturing a person can be regarded as at least inhuman (see Campbell and Kozans vs The United Kingdom, § 26) and “in particular the fear of physical torture can itself be regarded as mental torture. The qualification as to whether the threat of physical torture is considered to be mental torture or inhuman or degrading treatment depends on the circumstances of the case, including the severity of the pressure exerted and the severity of the mental distress inflicted.” (Geoffen vs Germany, N 22978/05, ECHR 2010).

The refusal of opening the criminal case concerning the threats was appealed to the prosecutor's office, but we are yet to receive a response.



8. After her speech at National Assembly numerous threats of death were heard against Lilit Martirosyan.

On April 5, 2009, Lilit Martirosyan, President of the Right Side HRD NGO, delivered a speech at the Parliamentary Hearings on the Protection of Human Rights in the National Assembly of the Republic of Armenia. After the hearings numerous threats of death were heard against Lilit Martirosyan. After the speech a campaign of discrimination and threats against Lilit Martirosyan was launched, demonstrations were held in front of the National Assembly of the Republic of Armenia against Lilit Martirosyan. Discriminatory and offensive articles were published in the media. Crime reports on death treats were presented by Lilit Martirosyan, in particular:

- Against Harutyun Mkrtychyan,
- Against the threats of "Eagle 30 Ararat sentenced to death" group,
- As well as report on the unlawful dissemination of Lilit Martirosyan's personal data by Karapet Karapetyan.

In all the above cases, the criminal case was dismissed by the police on the ground of absence of criminal offenses, which were appealed to the prosecutor, which were also rejected and the decisions of the prosecutor's office were also appealed to the Yerevan Court of First Instance.

In particular, the court hearing on threats by group called "Eagle 30 Ararat sentenced to death", as well as the case of Karapet Karapetyan's illegal dissemination of Lilit Martirosyan's personal data is scheduled for July 11, 2019, at the Kentron residence of the Yerevan Court of First Instance.

9. After the speech of Lilit Martirosyan in the RA National Assembly there were also expressions of hatred and insult in the media.

In particular, the irates.am website published an offensive article about Lilit Martirosyan, calling her degenerate (article link: <http://www.irates.am/hy/1554757966>).

In particular, the website noted: "At the same time, it should be emphasized that even one year ago it was impossible for anyone to speak in the National Assembly and publicly declare in her speech that she was, for example, is transgender, faggot or another degenerate representative", "After the speech of degenerate, applause was heard. "

For the aforementioned expressions, a lawsuit has been filed in Yerevan City Court of First Instance against "Tesaket" LLC, the owner of irates.am website, demanding an apology for insult, which is in Yerevan City Court of First Instance in Z. Nakhshkaryan's trial, the court date has not been set yet. The case was proceeded on 03.06.2019.

10. On June 20, 2019 , from 21: 00-21: 30, four unknown young men attempted to attack a group of 11 LGBT persons and activists in the English Park in Yerevan.

One of the activists, M.S., noticing that one of the young people was approaching them, pulling out an electric shocker, shoved it up and made a sound for self-defense reasons. The group then started talking aggressively with LGBT activists, and until then one of the young men wanted to have a private conversation with another activist. To prevent a possible clash between the two groups, Lilit Martirosyan immediately alerts the police and within minutes the police group arrived at the place. Following the arrival of the police group, at the request of the police, the majority of LGBT persons left the park area. Two of the activists, M.S. and Lilit Martirosyan, accompanied by police, approached to the group of boys and tried to clarify the situation. In the current situation, the police decided to take the boys to the police station.

Right Side HRD NGO provided legal support to the LGBT activists. M.S. and Lilit Martirosyan presented a report to the Kentron Police Department. LGBT activists pointed out that they were sentenced to mockery for their gender identity, self-expression and alleged sexual orientation. An investigation is underway.

According to the results of the investigation, no decision has been made yet.

11. Number of 11 persons applied to Right Side HRD NGO concerning the military service (for exemption as provided by law).

All persons have been provided with legal assistance, in particular, according to the 404-N decision approved by the Government of the Republic of Armenia on 12 April, 2018, on "The list of diseases determining the level of fitness of a citizen or a soldier for military service" , persons with "Sexual Identification Disorders" are not eligible for military service. In such circumstances, all persons who have applied to the abovementioned matter have been exempted from compulsory military service. In particular, according to the current procedure, a person is subjected to a medical examination which results in a medically appropriate diagnosis of "sexual identification disorder".

Thereafter the GBT person is exempted from compulsory military service and is provided with a military service ID. It should be noted that GBT persons in military commissariats are subject to ridicule, insults, while the Organization does not agree that transgender persons are exempted from military service on the grounds of "Sexual Identification Disorders", and therefore a strategy and recommendations are being developed by the Organization to change the grounds of exemption.



12. In June 2019, 7 transgender Latin American asylum seekers applied to the Right Side Human Rights Defender NGO for support.

One of the strategies of the Right Side Human Rights Defender NGO is human rights advocacy, within which the Right Side NGO immediately provided the necessary legal, social-psychological and other necessary representation and assistance to 7 transgender asylum seekers.

In cooperation with the KASA Fondation Humanitaire Suisse office in Armenia, Right Side NGO advocated for transgender asylum seekers to attend Armenian language courses.

The organization also contacted a number of asylum seekers' organizations, reporting on the situation and directing transgender asylum seekers to those organizations for the necessary social assistance. Dora, the head of health programs at the Right Side NGO, used a variety of translation tools to provide transgender people with a range of health training courses, providing educational information on sexual health, HIV / AIDS and STIs. Since then, the organization has directed transgender asylum seekers to the National Center for AIDS Prevention for HIV testing.

In the words of transgender asylum seekers since the first day of their arrival in Armenia, they have been exposed to various forms of violence, discrimination, transphobia, xenophobia and racism.

In particular, three of them were taken to the central police station without any justification and were detained there for 4 hours against their will, whereas according to the RA Criminal Procedure Code, a person cannot be kept in police station for more than 3 hours unless arrested.

They were sentenced to mockery and were sexually assaulted at the police station. At the same time they were not provided with a proper interpreter, they signed documents and did not receive their copies. Right Side Human Rights Defender NGO has lodged a complaint to the RA Human Rights Defender regarding the above-mentioned case. The complaint is being processed.

Conclusion

Thus, the above cases allow us to state that cases of gender-based offenses have not received proper response by law enforcement agencies. The vulnerable status of the victims has allowed the state to ignore the issue by actually refusing to conduct an effective investigation. As a result, crimes against transgender persons were left unanswered and criminals unpunished. Therefore, in such a situation we can claim that the state failed to fulfill its obligation to protect the rights of transgender persons. At the same time, the Constitution and laws of the Republic of Armenia do not distinguish between crimes based on gender identity, protection against hate speech, hate crimes, stigma and discrimination. It is worth noting that on July 3, 2009, 29 delegates of the Parliamentary Assembly of the Council of Europe (PACE) issued a statement referring to the situation of the protection of LGBT rights in Armenia and the need for further steps. It is also worth mentioning the UN Millennium Declaration, which decided to raise the issue of gender equality. By joining the aforementioned Declaration, Armenia has committed itself to promoting the achievement of the goals outlined in that Declaration, and to incorporating the Millennium Development Goals into its programs. Efforts to achieve these goals can also be reinforced by the adoption of gender-based legislation to prohibit discrimination, taking into account the steadily increasing incidences of violence, hate speech, and appeals. In particular, a study by Right Side NGO showed that there were 223 cases of discrimination against transgender persons during 2016-2018, including violation on the grounds of discrimination, violation of labor rights, abuse of rights in the police, state and other bodies. The report can be sent on request.

Recommendations

As already mentioned, the Republic of Armenia has signed the UN Declaration on Sexual Orientation and Gender Identity, so the need for legislative regulation also stems from international documents and commitments assumed by the Republic of Armenia. Such commitments cannot be declarative in nature, and concrete practical steps must be taken to ensure equal conditions for all persons, to respect and protect the personal freedom of everyone and the right to be free from discrimination.

Taking into consideration the lack of legislation on anti-discrimination, hate speech, gender-based violence in the Republic of Armenia, the number of violence against transgender persons, and the lack of protection for transgender human rights defenders, the atmosphere of fear and impunity, Right Side calls:

To Politicians, Government and MPs:

- *to start working out legislation and policies to protect the rights of transgender people, including:*
- *Development of a law prohibiting discrimination on the basis of gender identity and self-expression;*
- *Criminalization of hate crimes based on gender identity and self-expression;*
- *Adopt legislation prohibiting hate speech;*
- *Development and adoption of medical guidelines in the field of sex reassignment and hormone therapy;*
- *Improving legislation on sex reassignment without mandatory medical interventions based on a person's gender identity;*
- *Adopt legislation ensuring the safety and security of transgender human rights defenders.*

To RA Police:

- *implement policies aimed at protecting the rights of transgender persons targeted by violence, including:*
- *to record violence against transgender persons as gender-based violence;*
- *record the threats voiced as hate speech;*
- *conduct a fair, transparent and impartial investigation of reports;*
- *stop using inappropriate, offensive and discriminatory terminology in transcribing and communicating with transgender persons.*

To Media structures and journalists:

- *Conduct quality and impartial professional activities without forgetting the impact of media on public life, including:*
- *Refrain from spreading aggravating the situation, offensive or derogatory media;*
- *stop publishing materials that offend the dignity of transgender people;*
- *collaborate with Right Side NGO in case of a lack of relevant knowledge and information when addressing transgender issues.*



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