

MONITORING OF THE
IMPLEMENTATION OF
COMMITTEE OF MINISTERS'
RECOMMENDATION
CM/REC (2010)5 ON
MEASURES TO COMBAT
DISCRIMINATION ON
GROUNDS OF SEXUAL
ORIENTATION OR GENDER
IDENTITY IN ARMENIA



“RIGHT SIDE”
HUMAN RIGHTS
DEFENDER NGO
2018

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RIGHT SIDE

HUMAN RIGHTS DEFENDER NGO

ABOUT “RIGHT SIDE” HUMAN RIGHTS DEFENDER NGO

Right Side is a community based, democratic, human rights defender NGO, founded in January 2016 by trans activists in Armenia. It is the first and only NGO, run by and for trans people in Armenia and in the South Caucasus region. Right Side works on national level and in Nagorno Karabakh Republic, which is conflicted area between Armenia and Azerbaijan.

Mission

To ensure well - being, protection and equality of trans community in Armenia by achieving social - cultural and legal changes through cooperation with state bodies, civil society and with international organisations.



INTRODUCTION

Year 2010 was an important year for LGBT community in Europe because that was the year when the Committee of Ministers of Council of Europe adopted the Recommendation on measures to combat discrimination based on sexual orientation and gender identity. This significant document lists measures that countries should adopt in order to combat discrimination on this bases. “Right Side” Human Rights Defender NGO analyzed in this document the implementation of recommendations by state authorities and progress made to improve trans people lives in Armenia. This is the first review of the implementation of recommendations related to trans community in Armenia. The last state report did not reflect the situation of trans people in Armenia and hopefully this review will be helpful for Armenia to improve situation of trans people in Armenia. The Recommendations recognizes that LGBTI community has been subjected to homophobia, transphobia and other forms of discrimination and violence for centuries, and it is still ongoing in great number of states. That is why the recommendation includes number of measures to be applied in order to overcome discrimination, intolerance and social exclusion. Member States ought to review existing legislative measures and collect relevant data in order to monitor implementation of these measures, and to make sure that victims of discrimination and violence have access to effective legal remedies. Armenia (official name, Republic of Armenia) is a low middle--income, landlocked country in the South Caucasus. It is geographically located in northwestern Asia, but politically and cultural is considered a European country. Armenia gained its independence from Soviet Union in 1991, and it was the first state that adopted Christianity as a state religion in 301. The modern Armenian Republic recognizes the Armenian Apostolic Church, the world's oldest national church, as the main religion in the country. The Constitution of the Republic of Armenia was adopted on 1995 by a nationwide referendum. According to this constitution, the Republic of Armenia is a sovereign, democratic, social and legal state. Armenia is a member of the UN and the Council of Europe. The political regime in Armenia is broadly conforming to the category of “hybrid regimes”. In 2015, Armenia held a referendum and changed its form of government from a presidential to a parliamentary republic. Over the last three years after the registration of “Right Side” Human Rights defender, trans people have indeed become more visible and active in the public sphere. Nonetheless, the state and society never cease to force them back “into the closet” with threats of harassment, physical and psychological violence, hate speech and hate crime. Generally, trans people are still deemed at best non--existent, and at worst deviant, immoral, abnormal and diseased. Conforming to the category of “hybrid regimes” In 2015 Armenia held a referendum and changed its form of government from a presidential to a parliamentary republic. Over the last three years after the registration of “Right Side” Human Rights defender, trans people have indeed become more visible and active in the public sphere. Nonetheless, the state and society never cease to force them back “into the closet” with threats of harassment, physical and psychological violence, hate speech and hate crime. Generally, trans people are still deemed at best non--existent, and at worst deviant, immoral, abnormal and diseased.

METHODOLOGY

The new questionnaire has been drawn on the basis of the 2012 version, containing different sets of questions based on the structure of the Recommendation. Questionnaire has been disaggregated in different parts taking into consideration the jurisdiction of ministries and institutions the questionnaire was addressed to. The general conclusion on the implementation of measures is concluded based on the answers to official writing to these institutions, as well from documentation and reports published by “Right Side” Human Rights Defender NGO.

HATE CRIMES AND HATE RELATED INCIDENTS

“Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.”

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Hate crimes

Armenia does not collect disaggregated data and on hate crimes against trans people, sanction hate crimes on the basis of gender identity and expression, or and take any specific measures to combat hate crimes. On the contrary, Armenian bureaucratic culture more often suggests a formal creation of an idyllic situation in which the absence of various kinds of problems is desirable, and their presence, on the contrary, only hinders, creates a negative image of the police or even the country as a whole. In practice, it means for state bodies "no data, no problem" which give an opportunity for policy maker to not prioritize trans rights.

Unfortunately, Armenian law enforcement bodies do not collect information about hate crimes, including when it comes to offenses against trans people. The data on trans community's situation is extremely limited in Armenia, there is no data collection mechanism available, which that would allow to document hate crime cases in a consistent and highly professional manner, enhancing trans visibility not only in the society as such but also within the civil society sector. The violations of rights of trans people are routinely not included in national and international human rights reports produced by prominent general human rights organizations or by state bodies.

In this situation, our organization as a part of Armenian Civil Society tries to fill the gap, raise the hidden problems in society, and advocate for changes. "Right Side" Human Rights Defender NGO collected 100 cases (happened 01.01.2016 - 31.10.2017). Most reports were collected via face-to-face interviews with victims and witnesses. Altogether, 76 trans people, victims of hate crimes, were interviewed, along with 24 witnesses. The monitoring project was funded by ILGA-Europe in 2017.

The vast majority of reported incidents took place in the capital city Yerevan 74%. 45 % of all reported cases took place in cruising areas, 15% of all cases happened in other public places. 10 incidents happened in Government offices and 1 in border crossing point, and 5 in Police stations.

The majority of cases - 77%, happened to young trans people aged 18--30, although there were reported cases from different age groups too: 19 respondents were in a group of 31--45, 3 respondents were in age group of 41--60 and only one person was older than 61. The youngest respondent was 18 years old, the oldest one was 63. Most of the respondents mentioned their sexual orientation as heterosexual. All respondents were "out" in some capacity in their lives except 7 witnesses, who said that they don't belong to LGBTI community.

49% of all reported cases happened at nighttime and 19% happened in the evening. There were only 8 cases happened in the morning and 14 in the afternoon. Most of the incidents were threat of violence - 31%, insults or verbal abuses - 19% and physical violence - 12%. More than half of the incidents reported, were done by 1 perpetrator, 21 reported that there were 2 perpetrators and 14 cases were reported about group of perpetrators (more than 3 people). The fact that the perpetrator knew their trans identity was mentioned by 39%. Only few number of cases has been reported to the Police. There was also one case when Yerevan City Council member with her husband attacked a transgender person in the building, where trans organization is situated. There is not much information about the second case when the perpetrator was public official, because the respondent was fearing for their life to speak about the perpetrator. 89% of all cases were reported to LGBTI NGOs, 1 case reported to the General Prosecutor's Office, because the victim was not satisfied with the decision of Police. None of the cases reported, respondents mentioned that it was not considered as a hate crime. Thus, police and other law enforcement are classifying transphobic violence as ordinary crimes or administrative offenses. The majority of victims turn to "Right Side" Human Rights Defender NGO for legal assistance and advice.

In general respondents mentioned fear from Police and lack of trust while reporting the incidents.

As the report shows, trans people are targets of hate crimes in Armenia, while they also normalize the violence they do not report the cases to Police and avoid visiting medical institutions.

As such there is no hate crime legislation and Armenian legislation does not recognize SOGIESC as aggravating circumstances in a crime. However, Article 77 of the Constitution states that: "The use of basic rights and freedoms for the purpose of violent overthrow of the constitutional order, incitement of national, racial or religious hatred or propaganda of violence or war shall be prohibited".

The Criminal Code of the Republic of Armenia defines racism as a specific crime, and as a qualitative criterion of other crimes. Article 143 defines a criminal liability for a direct or indirect violation of human rights and freedoms, if they were based on a number of characteristics, protected with the prohibition of discrimination, including the race, skin color, ethnic origin, membership of a national minority, but not gender identity nor expression. The same crime, if committed by a public officer and with the abuse of office, implies aggravation of punishment. Article 226 implies criminal liability for incitement of national, racial or religious hatred, as well as for actions aimed at the racial superiority or humiliation of national dignity. If the same actions were committed publicly or by mass media, with violence or threat of violence, or abuse of office, as well as by an organized group, they would be punished by imprisonment for the term of 3--6 years. Article 392 implies imprisonment for the term of 10-- 20 years or life sentence for deportation, illegal arrest, enslavement, mass and regular execution without trial, kidnapping followed by disappearance, torture or cruel treatment of civilians, which are committed on the basis of racial, national, ethnic identity, political views and religion. Armenia's laws do recognize certain motives as aggravating factors but not SOGIE.

Measures to be taken to ensure protection of trans people from hate crime have not been implemented.

Recommendations

- 1. Introduce mandatory trainings of judges, prosecutors, police officers and civil servants in order to inform them on discrimination, hate crimes and incitement to hatred and violence against trans persons.**
- 2. Develop a unique system for tracking hate crimes against trans persons, which would represent a specific register to collect data on crimes which are motivated with hatred towards trans persons.**
- 3. To adopt trans inclusive hate crime legislation**

Hate speech

“Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.”

In terms of hate speech, the level of transphobia is so high that the word “trans” in itself is considered to be a profanity by general society. Although there are no studies and public reports done, “Right Side” human rights defender NGO has internally documented number of cases of hate speech done by general society, some civil society representatives, public officials and media against trans community. Armenia does not have specific legislation about hate speech, and protection and monitoring mechanisms are not available. Though Article 77 of the Constitution which refers to prohibition of Abuse of Basic Rights and Freedoms says that “The use of basic rights and freedoms for the purpose of violent overthrow of the constitutional order, incitement of national, racial or religious hatred or propaganda of violence or war shall be prohibited”. Measures to combating all forms of “hate speech” against lesbian, gay, bisexual or trans persons have not been introduced.

Measures to protect trans people from hate speech have not been implemented.

Recommendations

- 1. Update school curriculum and include there lessons about SOGIE.**
- 2. Develop a unique system for tracking hate speech against trans persons.**
- 3. To adopt trans inclusive hate speech legislation.**

FREEDOM OF ASSOCIATION, EXPRESSION AND PEACEFUL ASSEMBLY

“Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.”

Freedom of assembly is a constitutional right which is guaranteed by constitution of Armenia. There is no restriction on freedom of expression in Armenia except in the exclusive cases provided by the Law on Dissemination of Mass Information, which does not affect lives of trans people

For the last couple of years “Right Side” Human Rights Defender NGO held number of small public events on trans rights. the most of the public events were safe. Although there were no limitation registered by state bodies while organizing public events, there were no significant LGBT rallies or demonstrations organized up until now, because community itself is not ready to come out and feels insecure and unprotected.

FREEDOM OF ASSOCIATION

In summer 2017 a woman representing herself as an employee of Yerevan Municipality, illegally entered “Right Side” Human Rights Defender NGOs office and requested the president of the NGO L. Martirosyan to show the documents of the NGO. L. Martirosyan under the psychologic pressure presented the contract, during which the mentioned woman, requested L. Martirosyan to collect belongings and move the office to another place, otherwise, she will close the NGO. During this period, an unknown man physically harmed one of the organisation’s beneficiaries at the entrance of the office and hit the president of the organisation, L. Martirosyan. On the same day, L. Martirosyan reported the case to the Police Department of Arabkir, requesting to initiate a criminal case. Despite all efforts of “Right Side” Human Rights defender NGO, the Police, later General Prosecutor Office terminated the case, and “Right Side” Human Rights defender NGO has never received answers on official writings to Yerevan Municipality and from the President of Armenia – Serzh Sargsyan, who is the leader of RPA party.

The woman, who presented herself as an employee of Yerevan Municipality was Naira Nahapetyan, a member of Yerevan City Council, from the Republican Party of Armenia.

This incident illustrates that public officials can abuse their power with impunity.

Measures to protect trans people's freedom of association and peaceful assembly.

Recommendations

1. Conduct fair and appropriate investigation to ensure the protection of rights of trans NGOs

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

“Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.”

“Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.”

According to the Constitution, men and women of marriageable age have the right to marry and found a family according to their free will. The Family Code states two preconditions for marriage: the voluntary mutual accord and the marriageable age.

But On 3 July 2017, the Ministry of Justice stated that all marriages performed abroad are valid in Armenia, including marriages between people of the same sex. According to the Family Code, marriages between Armenian citizens, those between Armenian citizens and foreigners or stateless persons, which have been registered outside Armenia, are valid inside the country after consular legalization. The article makes no reference to the sexes of the married partners and stipulates that marriages registered in another country which are in line with that particular state’s legislation, are valid in Armenia

Trans people have access to legal gender recognition, but it is very bureaucratic and unregulated process by any policy. For name change, Ministry of Justice requires mental health record from psychologist that person is diagnosed as a trans. For legal gender recognition an epicrisis about “sex change surgery” (not gender reassignment surgery) is required, which must include genital surgery. On the other hand there is an absence of medical policies on gender reassignment surgeries. Although not regulated by law, trans people are wrongly diagnosed as intersex by surgeons in order to be somehow “legally” perform the surgery. The surgery is made to “correct the sex of the person” by a professional invited from another country by a trans person and payed by trans person. There are no psychologists, endocrinologists and surgeons trained and educated on trans issues. Official documents, including diplomas, birth certificate, driver license, do not include gender marker, except ID and Passport. trans people do not need to change them, if they did not change their name.

In case of name change, a certificate issued by Ministry of Justice about the new name, with this certificate the person requests a new ID. Then with the ID and certificate person can request a new travel document (passport) birth certificate and other documents. For the name change a diagnosis by psychologist of being a transgender is requirement.

Recommendations

1. Adopt a legislation regarding equal marriage.
2. Adopt legislation to grant adoption rights.
3. To provide qualification courses to trans specific specialists, such as endocrinologists and surgeons,
4. To adopt regulations, health protocols or other legislation to make GRS legally available,
5. to adopt legislation to make change of gender marker available based on self determination.
6. To improve legal procedures for legal gender recognition, remove forced medical interventions and adopt accessible, transparent legal gender recognition procedures based on self--determination,
7. To adopt trans inclusive codes of conduct and guidelines at the level of medical institutions.

“Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimization.

According to RA Constitution

Article 29. Discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, worldview, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited. According to the Article 30. women and men shall enjoy legal equality. The Article 29 defines also an open list (“personal or social circumstances”) of grounds or characteristics to be prohibited for discrimination but does not include gender identity and/or expression and these have not been recognized under “other circumstances” either. Armenia lacks of anti-discrimination legislation which covers SOGIE grounds and there is no body which deals with discrimination cases.

The most vulnerable people among LGBT community are trans people. On the basis of personal accounts and reports to Right Side, it is known that trans people in Armenia are routinely bullied and discriminated at schools, most of them do not have higher education. They are not competitive in the labor market and employees avoid hiring trans people. They are in very high risk of being homelessness or being victims of trafficking.

Recommendations

1. To take appropriate measures to ensure that trans people have equal access to education and employment, without discrimination on the basis of SOGIE.
2. To train and educate public servants on SOGIE issues in order to eliminate discrimination.
3. To adopt comprehensive anti-discrimination legislation, which prohibit discrimination on “Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-- care services.”

Trans community reports to Right Side NGO, extremely high level of transphobia in healthcare institutions, high degree of psychological and physical violence, absence of medical guidelines on trans-specific health services, very expensive medical procedures required for transition, no awareness of medical staff on trans issues etc. A needs assessment has been done by "Right Side" Human rights defender NGO on "Access to healthcare service" in winter 2018. Focus group participants (with 15 trans people) mentioned that they have been bullied and discriminated in medical institution, which prevents them from receiving high quality medical services or to visit a doctor. Participants reported about discriminative approach by medical personal and link it with the educational system, lack of knowledge on sexual orientation and gender of medical staff. Most of the focus group participants does not undergo regular medical check-ups to understand their health status which is related to lack of understanding of importance of such check-ups and/or fear of being discriminated at the medical institutions. When seeking medical support, trans people often faced disrespectful attitude, and even openly are refused to be provided by medical assistance or help. Participants indicated that they were faced with actual denials of medical care due to a mismatch between their appearance and passport sex and there gender expression. The state does not finance programs aimed at the prevention of sexually transmitted infections, or HIV/AIDS among trans people. Such programs are supported only by non-governmental organizations financed by foreign grants. Vulnerability to HIV among trans people in Armenia is high due several factors. One of them is involvement in sex work. All trans women participants involved in focus group were sex workers. Another issue contributing to high exposure to HIV is migration, which has been evolving in Armenia. Trans sex workers have been reporting main destination of sex work being Turkey, Russia and Georgia. Not all participants were aware of what HIV/AIDS is, and its ways of transmission and prevention, but anyway they have unprotected sexual intercourse. The fact that trans people, although being under the highest risk of HIV, are omitted in the National Plan Against AIDS, demonstrates ignorance of this group from the national authorities and lack of political will to cover the trans community's needs. The need for effective prevention methods targeting trans people is critical, especially within such population. In addition, usually MSM service organizations provide services to trans community using the same approaches as for MSM while trans people said that have different needs and current services are not tailored to their needs. They mentioned that they don't want to be identified with MSM, since whole life they were trying to avoid of "being men", and they feel transphobia while approaching to MSM organization for services.

There were people who approached for STI/HIV testing in a specialized STI center, but unfortunately medical staff could not test her, because she was their first patient who underwent vaginoplasty .

As which was sent by Right Side in Spring 2018, for the gender reassignment procedures, stated that there is no legislation to regulate “sex the response letter of the Ministry of Health, change”, although Ministry of Justice requires certificate about “sex change” for legal gender recognition. Gender Reassignment surgeries are done secretly in Armenia, since there are no regulations and specialized surgeon. It is done by mutual agreement between non local surgeon (invited by the patient), medical institution and the patient. Patients signs document that they take full responsibility about the risks related to the surgery. Additionally there is no specialized endocrinologists and usually trans people who are on HRT, self-medicate. Some trans people mentioned that there is only one person, who prescripts the same hormones for all trans people approached to her.

Recommendations

1. To provide revision of textbooks and programs in medical universities, and include there information about SOGIE,
2. To provide trainings for medical staff to eliminate discrimination against trans people while accessing healthcare services,
3. To provide qualification courses to trans specific specialists, such as endocrinologists and surgeons,
4. To adopt regulations, health protocols or other legislations to make GRS legally available,
5. To adopt trans inclusive codes of conduct and guidelines at the level of medical institutions,
6. To make size estimation of trans community and evaluate their risk to STI/HIV/AIDS,
7. To include trans community in the list of most at risk population in National program against AIDS.

Glossary

Bisexual: when a person is emotionally and/or sexually attracted to persons of more than one gender. **Gay:** a man who is sexually and/or emotionally attracted to men. Gay is sometimes also used as a blanket term to cover lesbian women and bisexual people as well as gay men. However, this usage has been disputed by a large part of the LGBTI community and gay is therefore only used here when referring to men who are emotionally and/or sexually attracted to men. **Gender:** refers to people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviors into male and female roles.

Gender Expression: refers to people's manifestation of their gender identity. Typically, people seek to make their gender expression or presentation match their gender identity/identities, irrespective of the sex that they were assigned at birth.

Gender Identity: refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex they were assigned at birth.

Hate Crime: offences that are motivated by hate or by bias against a particular group of people. This could be based on gender, gender identity, sexual orientation, ethnicity, religion, age or disability. Also called bias crime. **Lesbian:** a woman who is sexually and/or emotionally attracted to women.

LGBTI: Acronym for lesbian, gay, bisexual, trans and intersex people. This is the acronym that ILGA--Europe use to reflect our advocacy priorities; our members may use different formulations to more accurately describe their own work, for example LGBTI*, LGBTIQ.

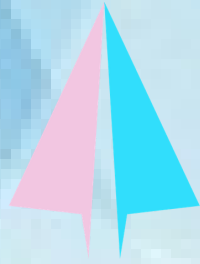
Sexual Orientation: refers to each person's capacity for profound affection, emotional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Transgender/Trans Person/People/Man/Woman: is an inclusive umbrella term referring to those people whose gender identity and/or a gender expression differs from the sex they were assigned at birth. It includes, but is not limited to: men and women with transsexual pasts, and people who identify as transsexual, transgender, transvestite/cross--dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which is not standard male or female and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures.

Transphobia: refers to negative cultural and personal beliefs, opinions, attitudes and behaviors based on prejudice, disgust, fear and/or hatred of trans people or against variations of gender identity and gender expression.

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