



**Universal Periodic Review
Republic of Armenia**

**Submission to the Human Rights Council at the 35th Session of the Universal Periodic Review
(Report submitting in July 2019)**

***“On Discrimination on the Grounds of
Sexual Orientation and Gender Identity”***

Joint submission by:

“Pink” human rights defender NGO (Pink Armenia)
Eastern European Coalition of LGBT+ Equality

Contact information for the report:

“Pink” human rights defender NGO (Pink Armenia)

119/2 Hovsep Emin, Yerevan 0012, Armenia

www.pinkarmenia.org

Ms. Lilit Avetisyan, email: lilit.avetisyan@pinkarmenia.org

Ms. Hasmik Petrosyan, email: hasmik.petrosyan@pinkarmenia.org

***Pink Armenia** is a human rights defender non-governmental organization founded in 2007. Vision of Pink Armenia is to have a society, where human rights of all are protected and everybody is accepted regardless of sexual orientation and gender identity and/or gender expression. Organization aims to create a safe space for LGBT people by promoting well-being and protection in all spheres of life.*

***Eastern European Coalition for LGBT+ Equality** is a network of LGBT+ organizations from the Eastern Partnership Countries and Russia, focused on working with the community and seeking to improve the situation of LGBT+ in their countries and in the region.*

Introduction

This report compiled by Pink Armenia focuses on equality and anti-discrimination issues towards LGBT people. The observations are made based on the years' work of Pink Armenia in LGBT human rights protection field, within the framework of which the organization has not only provided legal, psychological and social assistance but also has carried advocacy for comprehensive legislation on prohibition of discrimination and for State policy to address sexual minorities' issues.

The report is composed of a short notice on implementation of the recommendations made during the previous cycle, as well as of description of practical situation. At the end of the report are presented the recommendations to the State.

Legislative Context

1. Despite Constitutional clause on prohibition of discrimination providing non exhaustive list of protected groundsⁱ, as well as the requirement of direct implementation of the Constitution, there are no effective legal remedies to litigate and get protection from discrimination on the grounds of sexual orientation and gender identity.
2. Prohibition of discrimination is defined by several legislative actsⁱⁱ, but anyway, there are no mechanisms to ensure identification and examination of discrimination incidents as well as to provide for independent body with appropriate legal capacity to address discrimination cases.
3. Notwithstanding the recommendations made during the universal periodic review on adoption and effective implementation of anti-discrimination legislation providing effective protection for LGBT people, there is still no separate anti-discrimination law. In 2017 the draft of the anti-discrimination law, named "Law in regards to ensuring equality" was presented to public discussion. However, it is hard to stand that the draft law could be considered as a comprehensive mechanism to combat discrimination. Particularly, sexual orientation and gender identity were missing from the list of protected characteristics. In the same year the Ministry of Justice also published the draft of the new Criminal Code, which provided discrimination as a criminal offence by the Article 197, including sexual orientation in the list of protected grounds. The draft is still in the elaboration stage.
4. The hate speech regulations provided in national legislation are quite limited. The RA Constitution prohibits the use of fundamental rights and freedoms to overthrow the

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

5. RA legislation does not provide for comprehensive substantial and procedural regulations for prevention, investigation, and responsibility for hate crimes. RA criminal law does not define any core concepts related to hate crimes, specifically what hate crimes are, which are protected characteristics, or specifications and other issues for responsibility and punishment of such crimes.
6. It should be noted that Article 63 of the Criminal Code provides for criminal responsibility and circumstances aggravating the crime and punishment. *for crimes motivated by revenge based on ethnic, racial or religious hatred, religious fanaticism.*^v Hate crimes committed on the basis of a person's sexual orientation and/or gender identity are not included in the criminal legislation, and therefore are not taken into consideration during the investigation of criminal cases, and not regarded as circumstances aggravating the crime and punishment.

National Policies on Combating Discrimination

7. Creation of effective mechanisms to combat discrimination based on sexual orientation and gender identity was not included in the Human Right Protection National Strategy of RA. No measures are being undertaken to prevent discrimination and to spread anti-discrimination and equality culture within educational institutions, as well as in the society at large in the state level. Recommendations to provide particular steps in the action plan towards implementation of the strategy from 2017 to 2019 in this regard were rejected by the Ministry of Justice.

Discrimination in Practice

8. Discrimination on the grounds of sexual orientation and gender identity continues to be on a worrisome level. Despite dozens of discrimination cases reported by civil society organizations^{vi}, the State has not still referred to this issue neither on legislative not on policy level. The incidents happen not only in the street and at home, but also in the State institutions such as the Army, the educational institutions, the medical institutions etc.
9. Another attack on LGBT human rights defenders was on legislative level. Two legal amendments were initiated by the “Republican” and “Prosperous Armenia” parties’ representatives. The first one was on making amendments to the Republic of Armenia law “On The Child's Rights”, to ban the propaganda of "non-traditional sexual orientation". Pink Armenia sent opinion concerning this draft to the Government based on the interpretations of international treaty based bodies. The Government rejected the proposal.
10. The same MPs initiated a new amendment criminalizing “non-traditional sexual orientation propaganda”, in May, 2019. The Government didn’t approve this draft neither.
11. Another initiative was on making amendments in the Family Code to ban same-sex marriages. The Government rejected this proposal justifying that same-sex marriages are already banned in Armenia.

Discrimination in the Healthcare System

12. In Armenia, there is no legislation regulating the change of legal gender and gender reassignment procedures are not legally available in the country. Article 4 of the RA law “On Medical Care and Services of the Population” stipulates that everyone has a right to medical care and services without discrimination based on nationality, race, sex, language, religion, age, the status of health, political and other opinion, social origin, property and other status. However, RA Government Decision N 276, dated 27.03.2008, which provides for the types of medical care and services that are conducted for the population of the Republic of Armenia, does not include sex/gender reassignment as a type of healthcare service available in the country.^{vii} The lack of regulation does not allow healthcare professionals to provide for such services. Sex reassignment surgeries are being officially registered as “correction” of body deformation.

13. LGBT people face irreverent treatment in the medical centers. In a case reported in 2016 a transgender person (G.A) was attacked outside and then admitted to University Hospital N1 Clinic to treat their injuries. The medical staff providing the service mocked the patient. Specifically, the medical personnel grinned at G.A's presence and laughed loudly from the next room. Among them were the urologist and other medical personnel. After the examination of first-aid doctors, G.A. asked if further testing is needed to be carried out, in response to which a healthcare provider said: "Let's get you a blood test and see if you have any abnormalities we could cure". The environment created by the staff of the hospital has constrained G.A. to undergo full examination.^{viii}
14. LBT women have no access to the information concerning puberty, sexual upbringing, sexual relations, sexual harassment, sexually transmitted diseases and HIV. LBT women do not or avoid applying to gynecologist or urologist because of non professional and biased approach and lack of knowledge of the doctors on same sex relations.^{ix}
15. Another discriminatory practice is that specialists from medical and psychological professions continue to pathologize homosexuality and transgender identities, publicly coming up with anti-scientific or biased information on sexual orientation, gender identity and its development.^x
16. Medical professionals and psychologists publicly declare homosexuality and transgender identities as "curable mental disorders" or preventable characteristics. The specialists incite people to undergo harmful services such as conversion therapy and promote prevention mechanisms among minors.

Discrimination in the Educational Institutions

17. LGBT people become victims of discrimination at school and at universities when their sexual orientation or gender identity is being disclosed. In a latest case a transgender woman has applied to the minister of education demanding restoration of her violated right to education and science. She had particularly been withdrawn from two schools because of her gender identity.^{xi} This is not a single situation. Becoming victims of systemic violation of the right to education transgender people are deprived from opportunity to gain profession and make career. Many transgender people gain for life by sex work.
18. Such cases are not unique. According to the research lead by the "Society without violence" NGO, LGBT people become subject of bullying and discrimination on the grounds of their

sexual orientation and/or gender identity not only by other pupils/students but also by teachers.^{xii}

19. According to the online survey made by Pink Armenia children are being subject of bullying at schools. There have been reported not only physical violence but also blackmail cases. 82% of the respondents have been subjected to bullying, 35% of which have become victims multiply times.^{xiii}

Domestic Violence

20. The reported cases of domestic violence on the grounds of sexual orientation and/or gender identity are between parents and children.^{xiv} Parents usually get to know about the sexual orientation of their children by hacking (accessing without permission) their social media accounts and reading their personal correspondence.
21. There are cases when a person's sexual orientation or gender identity is revealed by family members who decide to kick the person out of home, often keep them under house arrest, and often deprive them of the opportunity to attend an educational institution. Besides, parents threaten their children with taking to the psychiatric hospital, and often they do so if the child persists that they are indeed homosexual.
22. When located in shelters provided by NGO's or friends, they are typically brought back home by force or lies, and then the violence and home arrest continues. In the case of domestic violence, a person is vulnerable not only due to financial reasons and the threat of being left outside with no shelter but also because of the sense of impossibility to restore their violated rights. This is conditioned by the fact that the case is never brought to law enforcement bodies, as the person does not want to call the police against family members. Additionally, the fear of increasing the frequency and intensity of violence is also a reason for not contacting the police.

Hate Speech

23. Cases of hate speech on the grounds of sexual orientation and gender identity are not being addressed by the State authorities. Law-enforcement bodies reject the complaints because of lack of appropriate legislative regulations.

24. At the same time the amplitude of hate speech is becoming wider. A huge wave of hate speech followed the attack in the Armenian village Shurnukh in 2018, when 9 young people were beaten and evicted from the village because of their real or alleged sexual orientation.^{xv} Authors of hate speech are not only private individuals but also State officials, who not only express degrading irreverent speech but also call for discrimination and violence.
25. Public hearings on UPR were organized at the Parliament on 5 April, 2019. A transgender woman made a speech concerning hate crimes to which transgender people are being subjected based on their gender identity. Discriminatory and hateful speech by MPs (“Prosperous Armenia” fraction) followed the speech.
26. Particularly, Naira Zohrabyan, head of the “Human Rights Protection and Public Affairs” committee declared that the speech did not correspond to the hearing agenda, asking the speaker and the supporter to leave the hall.
27. Vardan Ghukasyan said during a briefing with the journalists that not everyone is equal, this is not Europe, such people must be burnt.
28. Gevorg Petrosyan declared that he will fight against sexually deviated people with expectation of any possible ending.
29. Gagik Tsarukyan, head of the fraction, declared that homosexuality is a “blemish”.
30. A research concerning hate speech towards LGBT people by State officials from 2004 to 2018 shows the systematic nature of such speech and the absence of State policy to combat such incidents.^{xvi}

Hate Crimes

31. As a result of the lack of legislative regulations hate crime incidents on the grounds of sexual orientation and gender identity are being examined as general crimes, without considering the motives of the perpetrator. Despite reported hate crimes^{xvii} there are no statistics lead by investigative bodies. European Commission against Racism and Intolerance has raised this issue in its’ report on Armenia in 2016, recommending amendments not only on legislative level but also in practice of investigative bodies.^{xviii}
32. One of the severe incidents was the attack in Shurnukh described above. Transgender people become victims of hate crimes both in the street and at home, while providing sexual services. None of these cases has been investigated and effectively examined.

Recommendations

33. Develop and implement a common, unified policy for combating discrimination, which should, inter alia, include effective mechanisms to combat hate speech, hate crimes and other hate motivated incidents, including prevention of such cases, proper investigation, responsibility mechanisms and effective legal remedies.
34. Adopt comprehensive legislation on the prohibition of discrimination, which will prevent and provide responsibility for instances of discrimination, including discrimination on the grounds of sexual orientation and gender identity of a person, as well as will provide possibility for non-governmental organizations to bring claims to the courts in cases of supreme public interest (*actio popularis*).
35. Make a legislative amendment to define the concept of hate speech, define the measures of prohibition of and responsibility for hate speech including incitement to hatred and intolerance motivated by certain protected characteristics of a person, including SOGI.
36. Review and amend Armenian legislation on hate crimes in accordance with international human rights standards, as a means to ensure Armenia's compliance with its international obligations. Define the bias of sexual orientation and gender identity as circumstances aggravating the crimes and punishment.
37. Realize complete, objective and thorough investigations of the cases towards LGBT people, without discriminatory, prejudiced attitudes towards the victims by investigative bodies that stop LGBT people from applying for assistance after incidents, to the detriment of the victims.
38. Organize and implement trainings for law-enforcement bodies concerning the investigation of hate crimes, as well as the specificities of work with the victims and witnesses of hate crimes, including on the grounds of sexual orientation and gender identity.
39. Create ethics committees examining the cases of hate speech displayed by State officials.

40. Elaborate educational programs for health care professionals to raise professional knowledge on latest scientific developments.
41. Make legislative amendments and implement administrative proceedings to examine and prevent anti-scientific statements and announcements provoking harmful practices by medical professionals and psychologists.
42. Adopt a law on legal gender recognition which will provide opportunity for transgender people to change gender markers in their documents without any medical or surgery intervention requirement.
43. Make appropriate legislative amendment to authorize sex reassignment surgeries, hormonal therapy and other medical intervention aiming to correspond the appearance to the perceived gender identity, as well as to elaborate system of transgender care during these procedures inter alia.
44. Publicly condemn discrimination towards LGBT people, promoting tolerance.
45. Include education on human rights and equality issues at the programs of school educational programs to promote tolerance among minors and provide social worker services at public schools.
46. Ensure that domestic violence victims have access to justice. In particular, encourage the victims to report on the cases, envisage effective mechanisms for the protection of human rights, which will exclude the risk of victimization, ensure the safety of the individual, including prevention of further violence and provide comprehensive compensation mechanisms for damages.

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- ⁱ Republic of Armenia Constitution, Article 29, available at: <https://www.president.am/en/constitution-2015/>
- ⁱⁱ Vahe Grigoryan, Ara Ghazaryan, Legal research “Is the adoption of anti-discrimination law needed”, available in Armenian at: http://www.justice.am/storage/uploads/k1k_1HRAP.pdf
- ⁱⁱⁱ RA Constitution, Article 17. <https://www.president.am/en/constitution-2015/>
- ^{iv} RA Criminal Code, Article 226.
- ^v RA Criminal Code, Article 63.
- ^{vi} PINK Armenia, Human Rights Situation of LGBT people in Armenia, annual reports, available at: <http://www.pinkarmenia.org/en/publications/report/>
- ^{vii} RA Government Decision N 276, dated 27.03.2008, on types of medical care and services that are conducted for the population of the Republic of Armenia, Available in Armenian at: <http://www.arlis.am/DocumentView.aspx?DocID=69784> [accessed 05 November 2017].
- ^{viii} Pink Armenia, Human Rights Situation of LGBT people in Armenia, 2016 Annual report http://www.pinkarmenia.org/wp-content/uploads/2017/07/2016annualreview_en.pdf
- ^{ix} “Invisible right of women” research. Available in Armenian at: <http://www.yasu.am/files/%20%D5%AB%D6%80%D5%A1%D5%BE%D5%B8%D6%82%D5%B6%D6%84%D6%8A%D5%AB%D6%80%D5%A1%D5%BE%D5%AB%D5%B3%D5%A1%D5%AF%D5%AB%20%D5%BE%D5%A5%D6%80%D5%AC%D5%B8%D6%82%D5%AE%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6.pdf>
- ^x Research conducted by Pink Armenia, Available at: http://www.pinkarmenia.org/news/conversion-therapy-research/?fbclid=IwAR3aW_mB-PRYXazMPTASomiRestTrSrJ7g7QdEwAachwFLVmvznDkCaW3Us#.XTA57pMzZE4
- ^{xi} Available in Armenian at: <https://www.tert.am/am/news/2018/11/06/Garik-amolikyan/2837677>
- ^{xii} “Society without violence”, research “Practical assessment of LGBT human rights in Armenia.” <http://www.swv.am/attachments/article/1184>
- ^{xiii} Available at: <http://www.pinkarmenia.org/hy/2017/04/dos2017/>
- ^{xiv} Pink Armenia: Human rights situation of LGBT people in Armenia. Annual reports. Available at: <http://www.pinkarmenia.org/publications/report/#.XTA2gZMzZE4>
- ^{xv} LGBT Activists Attacked in Shurnukh Village. <https://www.civilnet.am/news/2018/08/06/LGBT-Activists-Attacked-in-Shurnukh-Village/342671>
- ^{xvi} “Hate Speech Displayed by State Officials Towards LGBT People in Armenia”. Available at: http://www.pinkarmenia.org/wp-content/uploads/2019/05/hatespeech_en.pdf
- ^{xvii} OSCE ODHIR, Hate crimes reporting, Armenia. Available at: <http://hatecrime.osce.org/armenia>
- ^{xviii} European Commission against Racism and Intolerance, Report on Armenia, 2016. Available at: <https://rm.coe.int/fourth-report-on-armenia/16808b5539>