

“Pink” Human Rights Defender NGO

Alternative report

***Concerning Discrimination on the Grounds of Sexual Orientation and Gender Identity***

To the UN Human Rights Committee

On the Implementation of the Covenant on Civil and Political Rights

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 ***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.*

**Introduction**

The report contains information concerning human rights situation of LGBT people from 2010 to 2020, based on the monitoring and researches conducted by Pink Armenia. There are also references to reports published by international organizations.

The first part of the report summarized legislative background in Armenia regulating discrimination including hate speech, as well as hate crimes. It also includes brief description of the drafts discussed till now as well as the approach and policies of the State authorities directed to insuring equality for all.

In the second part of the report in presented factual information reflecting the situation in the country. It focuses mostly on the noisy incidents which have been litigated with strategic goals, such as to achieve legislative amendments or policy changes.

The third part of the report is conclusion which briefly describes the situation presented in the report.

The last part of the report contains recommendations to the State based on the abovementioned analysis.

**Legislative background**

The Republic of Armenia Constitution prohibits discrimination providing non exhaustive list of protected grounds.[[1]](#footnote-1) Some legislative acts contain clauses prohibiting discrimination.[[2]](#footnote-2) However, sexual orientation and gender identity are not included in these provisions and there are no effective mechanisms to insure protection of LGBT people. Particularly, despite the recommendations[[3]](#footnote-3), there is no separate anti-discrimination law, 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.

In 2012 a draft of anti-discrimination law was elaborated by the Ombudsman office, however, the law didn’t pass as a result of the pressure of homophobe groups.

Another draft was elaborated by the Ministry of Justice in 2016, which had some problematic causes and was subject of critics by civil society representatives. 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. creation of the equality body, which will provide for professional opinion on each alleged discrimination case. The body will act under the ombudsman’s office which decreases the scope of authority of this body and will make it an artificial unit. The draft has been launched in 2019 and is supposed to be presented to the parliament during 2020. The main argument of the Ministry of Justice related to the absence of the sexual orientation and gender identity as protected grounds, is the political non stable situation in the country, where LGBT issues are being manipulated by homophobic groups to discredit the revolutionary government. Another amendment that has crucial importance for the civil society is the possibility for the NGOs to bring claims to the courts (*actio popularis).* The Ministry, however, has rejected this addition of this clause too without any reasonable justification.

In 2019 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.

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.[[4]](#footnote-4) 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.[[5]](#footnote-5) 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.

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.

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.”[[6]](#footnote-6) 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.

In November 2019, the draft Criminal Code was introduced, with Article 201 providing for criminal liability for discrimination. While discrimination based on sexual orientation and gender identity is not directly enshrined in the draft article, it states that discrimination is also prohibited “on other personal or social circumstances”. This may lead to non proper interpretation during law enforcement practice.

At the same time public calls for violence, public justification or propaganda of violence against a person or group on the grounds of any social or personal characteristics have been criminalized in April 2020.[[7]](#footnote-7) Sexual orientation and gender identity, however, are not included in the protected grounds provided by the clause.

On the other hand, the Human Rights Protection National Strategy and the action plan based on which the State bodies and first of all the legislator must act, does not contain any reference to discrimination on the grounds of sexual orientation or gender identity. Adoption of anti-discrimination law is mentioned as one broad act.

In 2019, where the action plan for 2020-2022 was being elaborated, the prohibition of hate speech came to the State’s agenda. Amendments in the criminal, civil and administrative legislation to regulate prohibition of hate speech based on its’ nature and severity was included in the action plan.

The State avoids to raise the issue of discrimination on the grounds of sexual orientation and/or gender identity in its’ reports on the human rights situation, trying to escape from responding to the recommendations.

It should be noted that Pink Armenia has submitted not only written recommendation but also has presented the necessity of legislative amendments during meetings with Ministry of Justice representatives based on the findings of civil society and the international human rights principles. However, the recommendations to include sexual orientation and gender identity as protected ground in the abovementioned clauses have always been rejected.

**Practice**

Pink Armenia reports dozens of cases of human rights violations in conjunction with discrimination on the grounds of sexual orientation and/or gender identity.[[8]](#footnote-8) These incidents happen in almost every sphere of life: at home, in the educational institutions, in the medical institutions, at the army as well as in public spaces or during service provision. As was mentioned in the previous part of the report, there are no effective legal remedies to litigate discrimination cases in Armenia. Even in case of crimes committed based on the victim’s certain characteristic are being examined as ordinary crimes: motives of the perpetrator are not being taken into account and have no impact on the punishment. Although hate crime incidents on the grounds of sexual orientation and/or gender identity are published each year[[9]](#footnote-9), the law-enforcement agencies refuse to conduct any statistics and state that there have been no crimes with biased motives related to the victim’s identity[[10]](#footnote-10). However, the research witnesses that hate crimes among LGBT community constitute a high percentage.[[11]](#footnote-11) It also shows that victims of hate crimes apply to NGOs for protection more than to law-enforcement bodies.[[12]](#footnote-12) The reason which has created the atmosphere of distrust in not only lack of specific legislative provisions on prohibition and examination of hate crimes on the grounds of sexual orientation and gender identity, which would give opportunity to conduct proper investigation. Another reason is the lack of will to discover the motives of the perpetrator. The representatives of law-enforcement body have no skills to work with the victims of hate crimes, especially LGBT people and have biased approach. As a result, crimes on the grounds of sexual orientation and/or gender identity are more spread than hate crimes with other motives.[[13]](#footnote-13)

Hate crimes on the grounds of sexual orientation and gender identity have not only been left without proper investigation but also directly or non-directly supported by the representatives of the State authorities due to the nature of their speech. Particularly, hateful, abusive speech of the officials are left without any legal consequence. The authors of such speech are not even being condemned. No investigation is carries even in the most severe cases of hate speech, which contains incitement to violence or discrimination. The authors of hate speech continue to occupy responsible posts in State bodies.[[14]](#footnote-14)

*For more precise image of the situation here are the cases examination of which has strategic purposes:*

*On the 8th May 2012, the D.I.Y. club was subject of an arson attack*. Accused ones, acquiring preliminary agreement, had broken the glass of the entrance door, then, in publicly dangerous way, had burned the club by petrol brought by them and escaped. The perpetrators initially claimed to have carried out their act of violence because the pub owner Oganezova was lesbian, took part in a gay pride event in Istanbul, and because LGBT people frequented the pub. A criminal case was initiated on a charge with the intentional infliction of damage to property, which did not, however, fully reflect the nature of the crime or its gravity due to its motive. The precautionary measure applied to detainees were then changed, and the perpetrators were released on bail based on sureties provided MP from the Armenian Revolutionary Federation Party.

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

The owner of the pub has appealed to the European Court of Human Rights. On May 17, 2019, the Court communicated the case.[[15]](#footnote-15)

*The attack was followed with hate speech.*

Artsvik Minasyan, the deputy of the Armenian Revolutionary Party, when questioned on why he had provided sureties to the two men accused of the arson attack on the D.I.Y. club, stated in an interview that “in this case I am sure, that these young people behaved in the context of our societal and the national ideology, in a right way. […] I consider that her type, I don’t want to say a rude word, is destroying Armenian society.” That same evening a group of men entered the club and broke some of the remaining fixtures as well as drawing Nazi symbols and leaving threatening homophobic messages on the wall.

On the 18th May, Eduard Sharmazanov, the deputy speaker of National Assembly of the Republic of Armenia, stated that “as an Armenian citizen and member of a national-conservative party, I find the rebellion of the two young Armenian people against the homosexuals, who have created a den of perversion in our country and have a goal of alienating the society from its moral values, completely right and justified.”

Concerning these statements Pink Armenia presented applications to the ”Ethic committee of the National Assembly of the RA” and to the ”Ethic committee of high-ranking officials” to call the state officials to responsibility. The applications were rejected.

An application was submitted to the European court of human rights, without exhaustion of domestic judicial remedies, because of ineffectiveness of those remedies.[[16]](#footnote-16)

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

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

In 2018, the Court communicated the application of Minasyan and others against Armenia.[[17]](#footnote-17)

*On May 25, 2017, Pink Armenia commissioned social ads* on billboards in the center of Yerevan advocating tolerance towards LGBT people.[[18]](#footnote-18) The ads were installed on the billboards run by the Nushikyan Association advertising agency on a contractual basis. One of the posters illustrated two male homosexual characters in an embrace accompanied by the following text: “Do you wish everyone to be happy? Then wish us happiness”. The other poster illustrated a collage of people of various professions accompanied by the following text: “You meet them every day”. The third poster showed three hands with the following text: “Trans people are part of our society”. On May 27, 2017, however, the ads were removed, torn apart and thrown into garbage bins without informing Pink Armenia․

A few hours after the posters were removed from the billboards, head of Yerevan municipality’s Department for External Design and Advertising made the following Facebook post: “Three advertising posters were illegally installed in the capital city, preaching tolerance towards persons with various orientations... regardless of the content of the posters, they have been removed as Yerevan municipality did not provide permission”.

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

*In 2017, Pink Armenia turned to the Ministry of Culture with a request to recognize the billboard mentioned above as public service announcements (PSAs).[[19]](#footnote-19)* This would allow using the opportunities explicitly created for PSAs, namely the cost-free installation of posters on urban billboards, as well as on specially designated advertisements, in addition to other privileges.

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

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

The claim has been rejected by the court. This decision was appealed to the Court of Appeals, which has satisfied the appeal and the case has been resent to the first instance court to a new examination.

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

**Conclusion**

Discrimination on the grounds of sexual orientation and/or gender identity is one of the deep problems that has Republic of Armenia in the fields of protection of human rights. The situation is being periodically reported through evidence based data to the State authorities with concrete recommendations concerning not only necessary legislative amendments but also the public policies.

Human rights situation of LGBT people is also being observed by international mechanisms, as a result of which the State is being recommended on the measures the letter needs to undertake. However, the State has failed to ensure effective legislative mechanisms for protection of people from violence and discrimination on the grounds of their sexual orientation or gender identity. There is no factual evidence that the State bodies try to make any amendment in their policies to influence the mal practice of human rights in the country.

Hate speech spread by State officials promotes creation of impunity atmosphere.

**Recommendations**

1. 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 nongovernmental organizations to bring claims to the courts in cases of supreme public interest (actio popularis).
2. 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 sexual orientation and gender identity.
3. Amend Armenian legislation on hate crimes in accordance with international human rights standards, defining the bias of sexual orientation and gender identity as circumstances aggravating the crimes, and realize complete, objective and thorough investigations of the cases towards LGBT people, without discriminatory, prejudiced attitudes towards the victims.

**Question to the Government of Armenia**

Please provide information on the measures that the Government has undertaken to prevent, condemn and punish hate speech displayed by the State officials towards LGBT people.

1. Republic of Armenia Constitution, Article 29, available at: https://www.president.am/en/constitution-2015/ [↑](#footnote-ref-1)
2. 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 [↑](#footnote-ref-2)
3. Adoption of separate anti-discrimination law which will include sexual orientation and gender identity as protected grounds has been recommended not only by Pink Armenia, but also by international bodies. In 2020 Armenia has been observed during the 35th session of Universal Periodic Review, during which the same recommendation was made once more by more than ten member states; the report of the working group is available at: https://www.un.am/up/library/A\_HRC\_WG.6\_35\_L.7\_Armenia.pdf [↑](#footnote-ref-3)
4. RA Constitution, Article 17.https://www.president.am/en/constitution-2015/ [↑](#footnote-ref-4)
5. RA Criminal Code, Article 226. [↑](#footnote-ref-5)
6. RA Criminal Code, Article 63. [↑](#footnote-ref-6)
7. Available in Armenia, at: http://www.parliament.am/draftreading\_docs7/K-437\_DR2.pdf [↑](#footnote-ref-7)
8. Pink Armenia, annual reports on the Human Rights Situation of LGBT people in Armenia https://www.pinkarmenia.org/en/publications/reports/ [↑](#footnote-ref-8)
9. OSCE ODIHR, Hate Crime Reporting, Armenia, available at:https://hatecrime.osce.org/armenia [↑](#footnote-ref-9)
10. Research “Hate Crimes and other Hate Motivated Incidents against LGBT People in Armenia”, available at: https://www.pinkarmenia.org/wp-content/uploads/2016/11/hate-crime-monitoring-2016\_en.pdf [↑](#footnote-ref-10)
11. ibid, $ 2.2 [↑](#footnote-ref-11)
12. ibid [↑](#footnote-ref-12)
13. Council of Europe, ECRI report on Armenia, 2016. Available at: https://rm.coe.int/fourth-report-on-armenia/16808b5539 [↑](#footnote-ref-13)
14. Hate Speech Displayed by State Officials Towards LGBT People in Armenia from 2004 to 2018. Available at: https://www.pinkarmenia.org/wp-content/uploads/2019/05/hatespeech\_en.pdf [↑](#footnote-ref-14)
15. https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Oganezova%20v.%20Armenia%22],%22documentcollectionid2%22:[%22COMMUNICATEDCASES%22],%22itemid%22:[%22001-193663%22]} [↑](#footnote-ref-15)
16. ibid [↑](#footnote-ref-16)
17. https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Minasyan%20and%20others%20v.%20Armenia%22],%22documentcollectionid2%22:[%22COMMUNICATEDCASES%22],%22itemid%22:[%22001-181716%22]} [↑](#footnote-ref-17)
18. Available in Armenian at: https://www.pinkarmenia.org/news/poster/ [↑](#footnote-ref-18)
19. Available at: https://www.pinkarmenia.org/en/news/lgbt-ads-are-not-social-ministry-of-culture/ [↑](#footnote-ref-19)
20. Available at: https://www.pinkarmenia.org/en/announce/shurnukh/ [↑](#footnote-ref-20)