

Legislative analysis related to LGBT rights and HIV in Belarus

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on Male Health

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The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning advocacy processes, promoting the rights of PLWH, gay men, other MSM, and trans* people and eliminating the barriers hindering their access to services.

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EURASIAN COALITION ON MALE HEALTH

**LEGISLATIVE ANALYSIS RELATED TO LGBT RIGHTS
AND HIV IN BELARUS**

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Tallinn - 2017

Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ART	antiretroviral therapy
CSO	civil society organizations, umbrella term with includes non-governmental organizations, professional associations, and community organizations
ECOM	Eurasian Coalition on Male Health
ECRI	the European Commission against Racism and Intolerance
GB	the Global Fund
HIV	Human Immunodeficiency Virus
IDAHOT	International day against homophobia and transphobia
Intersex	people who are born with any of several variations in sex characteristics including chromosomes, gonads, sex hormones, or genitals that, according to the UN Office of the High Commissioner for Human Rights, "do not fit the typical definitions for male or female bodies"
FtM	transgender male, person in transition from female to male
LGBT	Lesbian, Gay, Bisexual, and Trans* people
MSM	men who have sex with men
MtF	transgender female, person in transition from male to female
ODIHR	the Office for Democratic Institutions and Human Rights OSCE
OSCE	Organization for Security and Co-operation in Europe
NGO	non-governmental organization
PLWH	people who live with HIV
PWID	people who use injection drugs
PWUD	people who use drugs
SOGI	sexual orientation and gender identity
STD	sexually transmitted disease
SR	sub-recipients
Trans*	people who have a gender identity or gender expression that differs from their birth assigned sex
TB	tuberculosis
UN	United Nations Organization
UNHRC	United Nations Human Rights Committee



The goal of this review is to identify the legal barriers for people living with HIV, gay men, other men who have sex with men and trans*people in exercising their rights in different areas. To conduct such review, ECOM developed a methodology and a survey questionnaire, which we filled in with the help of our local partners. When analyzing legal practices, consideration was given both to judicial practices and to the information provided by activists, received from the organizations documenting cases of human rights violations and protection of such rights, news in mass media, and reports of non-governmental organizations submitted to the international agencies.

Both legislation and law enforcement practices were analyzed in terms of their compliance with the international and European standards. Besides, we analyzed the recommendations received by Republic of Belarus within the international monitoring mechanisms as well as performance of such recommendations by the government.

To present information on the legislation currently in force, in this review we used extracts from the regulatory documents, which are, unfortunately, not always correct and fail to comply with the international politically correct terminology standards. In this case, the original wording is presented to ensure objective demonstration of the existing regulatory framework and the language used in the matters analyzed. All quotations from the regulatory documents are given in quotation marks.

The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning the advocacy processes, promoting the rights of PLH, gay men, other MSM, and trans*people and eliminating the barriers hindering their access to services.



Summary and key recommendations

Review of the regulatory framework demonstrated compliance of the Belarusian laws with the international requirements in terms of the freedom of movement for people living with HIV – there is no prohibition for the entry of PLWH and no requirement of mandatory HIV testing, with ART being offered to people who have residence permits. The possibility of gender reassignment is also an indicator of compliance with the rights of trans* people in line with the requirements of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe, but there is a big gap in terms of compliance with the right to privacy and the right to private life, which requires introducing amendments to the procedure of legal gender recognition and all the relevant changes in documents.

Unfortunately, in the laws and in the legal practice of the Republic of Belarus there are numerous gaps, leading to the violations of the rights of PLWH, gay men, other MSM and trans* people in other areas of life – rights to the freedom of expression, peaceful assembly and association. This also relates to the matters of private and family life of LGBT, including not only the matters of partnership and/or marriage, but also adoption and/or child care.

Another critical issue is registration and effective investigation of the hate crimes against LGBT. Currently, relevant barriers include not only legislation issues, but also reluctance of the law enforcement bodies to accept complaints from the members of LGBT community, investigate such crimes and take them to courts. A separate barrier worth mentioning is homophobia of the law enforcement bodies towards the victims of such crimes, which prevents many victims from filing complaints with law enforcers.



Recommendations

- To avoid violations of the right to the freedom of association, the procedure of NGO registration should be made clear and transparent, the practice of refusal to register such organizations due to formal reasons should be eliminated and a mechanism should be created to challenge such refusals.
- Article 193-1 stipulating responsibility for unlawful organization of a civil society association, a faith-based organization or a foundation or participation in the activities of such entities should be withdrawn from the Criminal Code of Belarus.
- To enforce the freedom of expression and peaceful assembly, it is important to simplify the procedure of conducting rallies and demonstrations in Belarus.
- Effective and careful investigation of all reports of SOGI-based crimes and relevant punishments should be ensured.
- Provisions prohibiting hate crimes are to be introduced to the legislation, together with an aggravating circumstance – committing an offense due to the reason of intolerance to a wide range of characteristics, including SOGI.
- Anti-discrimination laws, in particular protecting people from SOGI-based discrimination, are to be developed and adopted.
- The prohibition of adoption by PLWH should be canceled considering the general considerations of the United Nations Committee on the Rights of the Child and UNAIDS recommendations stating that the priority should be the interests of the child and the right to family without any discrimination.



Prohibitions of travel and immigration for people living with HIV

In the laws of the Republic of Belarus, there are no prohibitions on the entry and migration of people living with HIV (hereinafter – PLWH). HIV is not included into the list of diseases, which pose a threat to the public health and which are taken into consideration when granting residence permits. HIV positive status is also not a ground to refuse to issue a permit to engage foreign labor.

Non-citizens are warned in writing about criminal responsibility for the "transmission of HIV".¹ "Transmission of HIV" is a ground to refuse a residence permit. Besides, there are certain restrictions for accepting students with HIV who are non-citizens. Some higher educational institutions of Belarus, before admission of non-citizens, require applicants to submit certificates on their HIV status issued by the official health care institutions of the country of their residence.² Thus, if they are HIV positive they may be denied admission.

People living with HIV who have residence permits are provided with free antiretroviral therapy and the required medical help. They are covered by the Resolution of the Council of Ministers³, which approves the list of diseases, giving citizens a right for free medications provided based on the doctors' prescriptions in the outpatient settings. The disease caused by human immunodeficiency virus is included into this list.



Criminalization of HIV transmission

Article 157 of the Criminal Code of the Republic of Belarus sets forth criminal responsibility for HIV transmission to another person. Part 1 of this article stipulates responsibility for the exposure to virus – from a fine to up to three years of imprisonment. Considering that part 2 of this article stipulates responsibility for HIV transmission to another person due to recklessness or with indirect intent by a person who knew that he had this infection, it may be concluded that criminal responsibility according to the first part of this article is also applied in case if the person is not aware of his or her HIV-positive status. The maximum sentence determined for the transmission of HIV is up to 13 years of imprisonment, it is applied if the offender has a direct intent or if there is no direct intent but if HIV is transmitted to an underage person or to more than one persons. This article sets forth responsibility for offenders from the age of 16 years.

The laws of Belarus also set forth administrative responsibility for non-disclosure of the source of infection and/or for non-disclosure of the list of persons with whom the infected person had sexual contacts.

Criminal responsibility is stipulated in cases if a person with STI or an individual who "had a sexual intercourse with such person" avoid medical examination.⁴ The same rules related to non-disclosure and avoidance of the medical examination are applied in similar cases to people with HIV-positive status and their partners.

In Belarus, there is criminal responsibility for negligently infecting a patient with HIV by a health worker – restriction of freedom for a term of up to 5 years or confinement for the same term with a fine and with disqualification of the right to hold certain positions or conduct certain activities or without such disqualification (article 162 of the Criminal Code). Only doctors, paramedics, nurses or obstetricians, i.e. staff members of the health institutions who carry out medical practice, may be held responsible in accordance with this article.

If any data are received on the presence of STIs and/or HIV in any patients, such patients are informed by health institutions in writing about such infections and about the need to observe safety precautions to prevent their transmission as well as about the responsibility for knowingly exposing other people to the threat of infections and for transmitting such infections to other people in accordance with the Law "On health care".



Blood donation and MSM

In Belarus, there is no prohibition for MSM to be blood donors. In accordance with the Law "On donation of blood and blood components", donors of blood and blood components may be all citizens of Belarus and non-citizens who reside in Belarus, aged from eighteen to sixty years, who have full legal capacity, do not suffer from any diseases or conditions which are contraindications for the donation of blood and/or its components.

The questionnaire, which is to be filled in by potential donors, does not contain any questions about homosexual contacts. The donor has to state if he took any narcotic drugs, had any unprotected sex or done any tattoos or piercing in the recent 6 months. Besides, the donor has to provide a medical certificate on the state of his health and any diseases, injuries and operations he had. According to the List of Diseases and Conditions Which are Contraindications to Blood Donation,⁵ STIs, hepatitis and "AIDS, HIV infection" are contraindications to the donation of blood and/or its components.



Access of NGOs working with MSM or LGBT community to the state funding to provide social and health care services

In the beginning of this section, it should be mentioned that at the present moment there are no NGOs registered in Belarus, who state the protection of LGBT human rights among their statutory activities.

At the governmental level, allocation of funds to NGOs is conducted based on the Law "On social services", which defines the list of social services, the powers of local executive and regulatory bodies in the area of social services in terms of developing, coordinating and implementing social programs and social projects. It also sets forth their powers on a competitive basis to sign agreements with legal entities and individual entrepreneurs providing social services, agreements on the conditions of providing and financing such services, and control over their activities.

The concept of social contracting means that the government recognizes the need of certain categories of citizens in social services and their right to receive relevant social services free of charge and delegates the functions to satisfy such needs to various entities, including NGOs. In this regard, the state keeps the functions of identifying the needs of citizens in social services, defining the best service providers on a competitive basis, providing financial and other support to such service providers, and monitor the delivery of such services.⁶

Another example of the legislative instruments regulating the support of a separate NGO is the Law "On the Belarus Red Cross Society" in line with which the government provides support to the Belarus Red Cross Society in performing the activities set forth in the Law.⁷ Every year, when planning the national budget, the state includes financing of the activities of the Republican Committee of the Belarus Red Cross Society. Such financing has also been planned for 2017. The government may also support individual organizations in other formats: providing tax or other⁸ privileges and direct program financing through subsidies – payments from the state or local budgets⁹. On 13 June 2017, the House of Representatives of the National Assembly of the Republic of Belarus adopted the draft law "On Amendments to the Law "On Prevention of Diseases Dangerous to Public Health, Human Immunodeficiency Virus". The law was published on July 18th, 2017 and will come into force 6 months after its publication. It was developed to improve provisions of the Law "On Prevention of Diseases Dangerous to Public Health, Human Immunodeficiency Virus", considering the practices of its implementation and also taking into account the need to introduce social contracting to prevent the spread of diseases dangerous to public health and human immunodeficiency virus. To implement the social contracting mechanism in practice, the law introduces new terms, such as the "state social contracting in the area of prevention of socially dangerous diseases, HIV", "project aimed at the prevention of socially dangerous diseases, HIV", "service aimed at the prevention of socially dangerous diseases, HIV", with the relevant definitions.

Taking into account the existing experience of interaction among different governmental agencies and NGOs within implementation of the international support projects, the law expands the possibilities of interaction of the governmental agencies, including local

executive and regulatory bodies, health care institutions and non-governmental non-profit organizations, in "implementing interventions to prevent the spread of socially dangerous diseases and HIV." At the same time, the law expands the list of interventions to "prevent the spread of socially dangerous diseases and HIV", and in this regards it is stated that most of such interventions may be implemented by forming and placing requests for social contracts.



Social services

In practice, in Belarus implementation of the social contracting mechanism in the area of social services started back in 2014, but it still refers rather to separate projects than to large-scale implementation. Thus, according to the information provided by the ACT International Educational Association, in 2014 there were 33 contracts signed within the social contracting mechanism, and in 2016 – 53.¹⁰

During the two years, funding within the social contracting mechanism was aimed at: social welfare services; health improvement of children with disabilities and people with disabilities under 30 years of age; social, psychological and vocational rehabilitation of people with mental health disorders; support of people with sight disabilities; social rehabilitation services for people with disabilities living with HIV; social and psychological support services for the victims of human trafficking and domestic violence.¹¹

NGOs working in the area of HIV

As for the cases of state funding received by the NGOs working in the area of HIV, there is only one agreement dated 28 February 2017 to perform social contract of the "Territorial Center of Social Services" in Pinsk with the branch of the Positive Movement NGO in Pinsk to provide social rehabilitation services for the people living with HIV, including people who use drugs. When providing relevant services, the program first of all covers people who are in need of social support, PLWH, people who use drugs and raise children. The Positive Movement NGO in Pinsk already received funding from the state budget for this type of activities before.

No funds are allocated from the state budget to work with gay men, other MSM and trans*people as the laws currently in force state that HIV prevention in vulnerable populations is to be organized by the Hygiene, Epidemiology and Public Health Centers. Currently, in Belarus there is only one organization – NGO "Vstrecha" – carrying out HIV prevention interventions for MSM within the Global Fund grant.



Health care

The key issues in health care, including the response to tuberculosis and HIV/AIDS, are resolved through relevant vertical programs, which are implemented alongside with the main activities of the governmental health care system. In Belarus, such programs are implemented by the Ministry of Health, others republican bodies of state administration, as well as regional executive committees, including regional health departments. It is planned to finance these programs both from the republican and local budgets.

For a long time, lack of program interventions did not allow local executive and regulatory bodies to allocate funds to implement social contracting mechanism for NGOs working in the area of health care. In the course of review of the laws on social contracting and on prevention of the spread of socially dangerous diseases, certain gaps were identified, hindering implementation of this mechanism in HIV prevention. The government approved the National Program "Public health and demographic safety of the Republic of Belarus" for 2016–2020. The program is aimed at creating conditions to improve public health, promote healthy lifestyles, develop and strengthen family values, increase the prestige of parenting, reduce the death rates, and increase the life expectancy. It should improve the quality and accessibility of the health services and optimize the internal migration processes. The program includes seven subprograms: "Family and Childhood", "Prevention and Control of Noncommunicable Diseases", "Prevention and Management of Alcohol Abuse and Addiction", "Tuberculosis", "HIV Prevention", "External Migration", and "Ensuring Functioning of the Health Care System of the Republic of Belarus".

In accordance with the "Plan to Implement the Concept of Sustainable Development of the HIV/AIDS and Tuberculosis Prevention, Treatment, Care and Support System", the Ministry of Health approved the list of activities to be implemented together with NGOs in 2017–2018. In particular, the following goals have been set:

- improve the regulatory framework to ensure sustainability of the governmental programs in response to HIV/AIDS and TB;
- ensure effective funding of the activities in response to HIV/AIDS and TB;
- ensure development of the system to provide medical or medical and social care in the area of HIV/AIDS and TB prevention, treatment, care and support;
- coordinate joint programs.

An example of allocation of the state funding for the NGOs working in the area of health care is creation of the Republican Clinical Center of Palliative Medical Care of the Charitable Organization "Belarusian Children's Hospice". The Center was created in 2016 in accordance with the order of the Ministry of Health and works in close cooperation with the Charitable Organization "Belarusian Children's Hospice" within the private-public partnership.¹²



Laws and policies in the area of sexual orientation and gender identity

Same-sex relations

In Belarus, there is no criminal responsibility for voluntary homosexual relations. Criminal responsibility is applied for sexual assault, irrespective of the sexual orientation. In April 2005, a proposal of one of the deputies was submitted to the House of Representatives of the National Assembly of the Republic of Belarus, suggesting bringing back criminal responsibility for voluntary same-sex relations. This initiative, however, was supported neither by other deputies nor by representatives of the executive authorities.

The age of consent does not depend on the sexual orientation. Voluntary same-sex relations between two men or two women are possible from the age of 16. Otherwise, there is a criminal responsibility stipulated in article 168 of the Criminal Code of Belarus "Sexual intercourse or other sexual acts with a person under 16 years of age." This crime may be committed by male or female perpetrators aged 18 and above as of the date of committing such acts. Responsibility is punishment in the form of restriction of freedom for the period of 2 to 4 years or imprisonment for the period of 2 to 5 years. In accordance with article 167 of the Criminal Code of Belarus, responsibility for the "acts of sexual nature conducted against the will of the victim" and also "involving use or threat of violence or using the helpless state of the victim" is also set forth irrespective of the gender of perpetrator or the victim of such crime.

Prohibition of the "propaganda of homosexuality"

In the current laws of Belarus, there is no term "propaganda of homosexuality" as homosexuality is not considered as a wrongful act. Formally, presenting information about same-sex relations is not prohibited in Belarus. However, on 11 May 2016 some amendments were introduced into a number of regulations to protect children from information harmful for their health and development. In particular, such harmful information includes any information "compromising the institution of family and marriage". Such prohibition may endanger the freedom of expression.

Taking into account that in the laws a family is defined as the union between a man and a woman, any information about same-sex relations may be assessed as a breach of law. As NGOs pointed out in their report to the Committee on the Elimination of Discrimination against Women (CEDAW): "There are concerns that vague and general wording may cover the plans to restrict the freedom of disseminating information related to lesbian, bisexual and transgender women." CEDAW has already emphasized that the laws on the prohibition of the so-called "propaganda of homosexuality" adopted in some countries may be harmful for the LBT-women. In case if the Council of Ministers of the Republic of Belarus expands the definition of the "information compromising the institution of family and marriage" on the information related to the matters of sexual orientation and gender identity, it may "contribute to stigma and discrimination of LGBT people" and "harassment of the members of LGBT community in the country, in particular through abuse and violence"¹³.



Laws on gender identity/expression (legal gender recognition and related procedures)

The matters of gender reassignment are regulated by the Resolution of the Ministry of Health of Belarus "On certain questions of sex reassignment and correction". Gender reassignment is conducted using surgical or hormone therapy and is provided free of charge for the citizens of Belarus. The decision on gender reassignment is taken by the Interdepartmental Commission (hereinafter – the Commission) for medical, psychological and social rehabilitation of people with "sex denial syndrome." Medical indication for gender reassignment is the established diagnosis of "Transsexualism"¹⁴. For such diagnosis to be established, the patient should have an initial appointment with the head of the sexology department of the local City Mental Health Clinic. After that, according to the laws, such patient has to go through a comprehensive medical and psychological examination to exclude other sexual, mental health and physical disorders.

Examination of the patients who wish to perform gender reassignment surgery is carried out for a year, is comprised of three stages and includes:

1. Consultative and diagnostic (initial) appointment (first stage); medical and psychological examination (second stage), including complete sexual examination and complete psychological examination;
2. Inpatient examination in the state institution "Republican Research and Practice Center for Mental Health" (hereinafter – the RRPC for Mental Health);
3. Genetic, gynecological, endocrinological, urological, therapeutic examination, dynamic observation (third stage), including appointments of the patient who wants to change his/her/their gender marker, with the head of the sexology department of the City Mental Health Clinic at least once every three months during a year after the primary diagnostic consultation.

The examination is conducted on a mandatory basis by health institutions based on the referral slips issued to the patient. If there are health indications and no health contraindications, the Commission makes a decision on gender reassignment of the patient. After the Commission issues the decision on the need to reassign the patient's gender, such patient shall remain under the dynamic follow-up of a sexologist and a psychologist of the sexology department of the City Mental Health Clinic for one year to assess such patient's social and psychological adaptation to the new gender identity. After the above-mentioned term, the patient should be referred to the Commission to make a decision on the need of gender reassignment (with hormone therapy and/or surgery).

Health contraindications for the gender reassignment include "mental health and behavior disorders, in particular related to the use of alcohol, narcotic drugs, psychotropic, toxic and other mind-altering substances; homosexuality, transvestism on the background of the gender role transformation and (or) presence of other perversions (perversion trends)."¹⁵

In the recent 20 years, over 70 people had their gender reassignment. As a rule, these are people aged 23 to 25 years.



Legal gender in the personal identification documents may only be changed after surgical and/or hormone gender reassignment and only based on the decision of the Commission. For such changes to be made, a person should apply to the local registration office, where his/her/their birth certificate and passport are re-issued. After that, the person changes his/her/their diploma, driver's license, and resolves the issue of military duty.

At the same time, in the "Passport" database maintained by the Ministry of Internal Affairs, the reason for re-issuing a passport after changing the gender marker is stated as "Changed sexual identity." Any law enforcer, e.g. when conducting routine information identity check, may have access to such information if he opens the database.¹⁶ NGOs point out that this circumstance may lead to discrimination, denial of assistance and further disclosure of the information about such person being transgender.

When undergoing legal gender recognition, personal identification number remains unchanged. Taking into account the rules of assignment of such numbers, it may be an issue for trans* people after they gender reassignment due to the following reasons:

"1) The numbers generated before 2013 (most adults have such numbers) have a gender indicator: the first digit is odd for men and even for women. Thus, even a glance at the passport of a transgender woman will make it clear to any person that her gender marker used to be male.

2) The numbers assigned starting from 2013 do not have a gender identifier, but the databases of many institutions (banks, social security fund, etc.) contain information about identification numbers linked with other personal data. Thus, when checking such databases, staff members of the above-mentioned institutions can see that a woman who comes to the bank has already been entered into the database with a male name."¹⁷ NGOs, raising this questions in the report to the Committee on the Elimination of Discrimination against Women, described specific cases when trans* people, after gender reassignment were not able to get registered for employment purposes or receive certain documents because it led to the disclosure of information about their transition and they were subject to ostracism and/or harassment from the side of general public or governmental authorities.

Analyzing the above-mentioned fact, it should be emphasized that changing the gender marker is not possible without surgery and/or hormone therapy, and gaps in the mechanism of introducing changes into the personal documents lead to violation of the right to personal life and discrimination of trans* people.



Anti-discrimination laws related to sexual orientation, gender identity and gender expression

In Belarus, there are no special mechanisms to protect the members of LGBT community from discrimination. Constitution of the Republic of Belarus stipulates the equality of all before the law and the equal protection of rights and lawful interests without discrimination. However, there are no laws defining the way and the conditions of implementing this norm and protection in case of its violation. Prohibition of discrimination in the workplace is formalized in the Labor Code. Article 14 of the Labor Code contains the list of the characteristics, which are prohibited as the grounds of discrimination. This list does not include sexual orientation and gender identity, but it is open, and the wording "other circumstances not related to the professional competences or the specific professional functions of the employee" may include SOGI. As there is no separate anti-discrimination law in Belarus, courts refuse to recognize discrimination as a sufficient ground to pursue a case.

In 2013, after publication of the report "Half an Hour to Spring", NGOs raised a question on the need to develop anti-discrimination laws. Back then, the Belarus Helsinki Committee, the Office for the Rights of Persons with Disabilities, Civil Initiative for Free Denomination and the LGBT Human Rights Project "GayBelarus" signed a memorandum to overcome discrimination in the Republic of Belarus.²² Besides, an announcement was made about the creation of the Anti-Discrimination Network in Belarus. Members of the Network pointed out that in the laws there are certain anti-discrimination norms, "which are mostly declarative and do not stipulate any mechanisms for the effective countering of discrimination."²³ Despite such statements and recommendations of the UN Special Rapporteur,²⁴ no changes have been introduced into the legislation.



Freedom of expression and assembly of the LGBT community members

Members of the LGBT community can conduct peaceful assemblies in line with the general requirements. The procedure of getting permissions for peaceful assembly is defined in the Law "On mass events in the Republic of Belarus" and is rather complicated. In accordance with article 4 of this Law, a meeting, a rally, a street procession, a demonstration or a picket, if the expected number of participants of such event is up to 1,000 people or any other mass event irrespective of the expected number of participants, may be organized only by the citizens of the Republic of Belarus, permanently residing on its territory, who have reached the age of eighteen and have the right to vote, who are stated in this capacity in the request to conduct such mass event and undertake written obligations to organize and conduct the event in line with the Law and only those political parties, professional unions and other organizations of the Republic of Belarus, which are duly registered in accordance with the set procedure.

Any events, meetings, street processions, demonstrations or pickets, with the expected number of participants exceeding 1,000 people, may be organized only by political parties, professional unions and other organizations of the Republic of Belarus. Request to conduct a mass event is to be submitted in writing to the local executive and regulatory authority at least 15 days before the expected date of such event. The request should be accompanied with a statement of the organizer (organizers) or the person (persons) responsible for organizing and conducting the mass event concerning its organization.

In practice, members of the LGBT community only once got a permission to conduct a mass event: representatives of a non-registered initiative group «IDAHOBelarus» got a permission from the Minsk City Executive Council to carry out a campaign against homophobia to protect the rights of LGBT on 14 February 2011. After this case, members of the LGBT community got refusals in response to their numerous requests to carry out mass events.

Besides, article 193-1 of the Criminal Code of Belarus stipulates the responsibility for unlawful organization of a civil society association, a faith-based organization or a foundation and for participation in their activities. Responsibility in the format of a fine, an arrest for up to six months or imprisonment for up to two years is applied in case if such organization has not been registered in line with the set procedure. This norm is a strong mechanism to put pressure of the activists of non-governmental organizations, taking into account systematic ungrounded refusal to register new organizations. In the long list of documents to be submitted for registration, public authorities always find some information which is missing or some mistakes, e.g. in writing telephone numbers or addresses."¹⁸

LGBT organization "Lambda Human Rights Center" several times tried to get registered. When it made another attempt to register in 2013, it was denied because in its statutory documents there were no statements to confirm that its activities will contribute to the comprehensive development and social formation of the youth.¹⁹ The Supreme Council issued a decision that such denial was lawful. In January-March 2013, community members

were called to so-called "preventive conversations" to the drug control and anti-human trafficking departments of different regional branches of the Ministry of Internal Affairs. As a ground for such calls, law enforcers mentioned the need to get witness statements concerning some alleged crimes of sexual nature. However, mainly in their conversations the law enforcers were raising the questions of registration of the LGBT organization and the reasons of the activists to take part in the establishment of such organization. There were threats to bring the community members to responsibility for their activities on behalf of an unregistered organization. Besides, people were asked personal questions, questions about their sexual orientation and about their relations with partners.²⁰

After pressure on the LGBT activists, two of the three acting LGBT initiative groups ceased to exist, and their leaders had to leave the country due to the prosecutions and threats from the side of law enforcers. In the recent years, the situation has not changed, which is confirmed by the LGBT activist Mankovska, who made five attempts to register an organization to protect the rights of LGBT people in 2016. According to Mankovska, all five times she was refused for some unsubstantiated reasons, e.g. saying that the name of the organization "contradicts the public morals and the traditional values."²¹

Due to such refusals in registration, currently in the Republic of Belarus there are no civil society organizations protecting the human rights of LGBT people. Thus, despite the guarantees stipulated in articles 35 and 36 of the Constitution of the Republic of Belarus, their practical implementation is hindered both with complicated administrative procedures and with the reluctance of the executive authorities to comply with the said constitutional rights.

Hate crimes

Article 130 of the Criminal Code of Belarus stipulates criminal responsibility for the intentional acts aimed at inciting racial, national, religious enmity or discord, humiliation of the national honor and dignity.²⁵ It does not stipulate intentional acts inciting enmity or discord for any other reasons, including SOGI. LGBT people rarely file complaints on the hate crimes committed against them, and the few complaints that are filed are very rarely brought to courts.

The motive of hatred is also not included into the list of circumstances aggravating the responsibility for the criminal offenses against the person. Paragraph 9 in part 1 of article 64 of the Criminal Code²⁶ stipulates aggravation of the responsibility for committing crimes for the reasons of enmity or discord towards certain social group. This norm can also be applied to cover sexual orientation, but in the law enforcement practice this circumstance is not used, which leads to less strict measures of criminal responsibility being applied as compared to the crimes based on other motives.

Thus, there is no effective and timely investigation of the cases of hate crimes against the members of LGBT community. On 25 May 2014, a young man named Mikhail Pischevsky was attacked when he was leaving a gay party organized in one of the Minsk clubs. Mr. Pischevsky died in a hospital on 27 October 2015 from the complications caused by the injuries he acquired when he was attacked. Even considering the fact that at the court hearings his murderer recognized that initially he started harassing Mr. Pischevsky due to his homosexual orientation, the court decided that the crime was committed by "recklessness." The offender was sentenced to two years and eight months of imprisonment and set free on parole 11 months after the sentence was announced.²⁷



Legal status of the same-sex couples

Laws of the Republic of Belarus do not recognize the legal status of same-sex couples. Part 2 of article 32 of the Constitution of the Republic of Belarus states that a woman and a man, upon reaching the age of marriage, have a right to get married and create a family on a voluntary basis. Article 12 of the Family Code defines marriage as a voluntary union of a man and a woman, which is concluded according to the procedure, on the conditions and in line with the requirements set forth in the laws, is aimed at creating a family and imposes mutual rights and obligations on the parties. Thus, lack of the legal regulation of the same-sex relations leads to the following issues:

- lack of possibility to divide the marital property;
- lack of possibility to register one of the partners at the place of other partner's residence;²⁸
- impossibility to make health decisions for one's partner, if needed, lack of possibility to receive health-related information about the partner;
- partners are not included into the first line to inherit in case of death of one of the partners;
- lack of possibility to represent each other's interests in court;
- according to the Criminal Code of the Republic of Belarus, there is no obligation to inform one of the partners in case of other partner's arrest, and it is not possible to refuse to give testimony against the other partner in criminal proceedings.



Adoption

In Belarus, there is no express prohibition for members of the LGBT community to adopt children. In the list of reasons, prohibiting adoption, there is no sexual orientation. However, in accordance with article 122 of the Family Code, only married people may adopt a child. Taking into account the fact that same-sex couples are not able to get officially married, only one of the partners may adopt a child, whereas the relations of the other partner with such child will not be legally recognized.

In line with the current laws of Belarus, HIV positive status is a reason to refuse a person in adopting a child or acting as a legal guardian..



Using international and regional mechanisms to change laws and practices to protect human rights of gay men, other MSM, and trans* people

In 2014, the LGBT Human Rights Project "GayBelarus" made a submission for the Universal Periodic Review "Human rights of LGBT people in Belarus."²⁹ The report contains information on compliance with the human rights of LGBT people and the cases of discrimination based on sexual orientation and gender identity, violation of the rights to association, peaceful assembly and expression as well as the cases of hate crimes.

In 2016, the Republic of Belarus presented its eighth Report on the Implementation of the International Convention on the Elimination of All Forms of Discrimination against Women.³⁰ The report describes the situation of women in various areas of life as well as the governmental activities aimed at HIV-infected women, but nothing is said about women belonging to the community of lesbian, bisexual and trans* people (LBT). As for the women living with HIV, the report points out a high percentage of HIV-positive women of reproductive age, growth in the number of children born to HIV-positive mothers and increase in the number of PLWH among the pregnant women who get tested for HIV.

The alternative report on implementation of the International Convention on the Elimination of All Forms of Discrimination against Women submitted by NGOs³¹ underlines gaps in the laws of the Republic of Belarus, which lead to the undesirable disclosure of the transgender status, and, consequently, to discrimination and violence, as well as ineffective protection from the undesirable disclosure of the transgender status, in particular when changing documents in case of sex reassignment. NGOs drew attention of the Committee to the fact that transgender women are especially vulnerable in this situation, because the society in Belarus is dominated by the patriarchal stereotypes, and people who make MtF transition are a constant object of humiliation, derision, harassment and other forms of aggression. The report contains the following recommendations: introduce legislative changes stipulating re-issuance of the identification number when changing the gender marker; withdraw from the list of reasons for changing passport of Belarusian citizens "changing family name, name or patronymic" and "changing gender identity", substituting them with a single provision "changing personal data"; refer the cases initiated based on part 1 of article 179 of the Criminal Code of the Republic of Belarus to the area of private-public prosecution; create an effective system to prevent and work with the consequences of the undesirable disclosure of the information on transgender status by the representatives of authorities and private actors; organize training of militia officers and other law enforcers on the matters related to gender identity.

In its observations on the eighth periodic report of Belarus³² (2016), the Committee on the Elimination of Discrimination against Women expressed its concerns about the significant level of discrimination, stigmatization and violence in the society against LBT women, in particular from the side of law enforcers. The Committee also

expressed its concern that discrimination and hate crimes against the LBT women are frequently not prosecuted and that the recently adopted Act No. 362-Z providing for amendments to regulatory acts for the protection of children from harmful information, may be used to discriminate against lesbian and bisexual women and transgender persons.

The Committee pointed out that the registration procedure for non-governmental organizations is cumbersome, lengthy and costly and involves requirements that may constitute a basis for discriminatory and arbitrary refusal of registration and result in only a small number of women's organizations being registered.³³

The issues of LGBTI rights violation were brought up in the reports of the Special Rapporteur on the situation with human rights in Belarus. In his 2016 report³⁴, the Special Rapporteur³⁵ pointed out the wide-spread homophobic attitudes at the governmental level and lack of protection for the victims of SOGI-based discrimination. In 2017 Report of the Special Rapporteur, concerns were expressed on the statements of violence and threats against members of the lesbian, gay, bisexual, transsexual and intersex community and on the lack of proper investigation of such cases when they are brought to the attention of the law enforcers. The Special Rapporteur made a focus on the inter-agency plan, which does not include any provisions to end violence towards the people whose sexual orientation is different from the "traditional" orientation or facilitate their integration into the society.³⁶

In Belarus, LGBT use the procedure of submitting individual complaints to the United Nations Human Rights Committee. Thus, in 2016 the Committee issued its decision based on the communication submitted by Sergei Androsenko against the Republic of Belarus.³⁷ The author filed a complaint with the Committee for his arrest and administrative fine for his participation in the rally on 16 December 2009 at the embassy of the Islamic Republic of Iran in Minsk. Then three activists of the LGBT movement of Belarus came to the embassy and held a poster "Stop killings of gays" in Russian and in English. It was a protest against ten gay men sentenced to death penalty in Iran. In its decision, the Committee stated that Belarus violated the right of the author to free expression of his view and right to peaceful assembly under articles 19(2) and 21 of the International Covenant on Civil and Political Rights. Similar violations were recognized when making a decision based on the communication of Sergey Praded, who also took part in the protest on 16 December 2009, against Belarus.³⁸

Legislation

- Criminal Code of the Republic of Belarus
- Law "On the legal status of foreign citizens in the Republic of Belarus" dated 3 June 1993 N 2339-XII
- Law "On immigration" dated 29 December 1998 N 224-3
- Law "On the procedure of departure from the Republic of Belarus and entry into the Republic of Belarus of citizens of the Republic of Belarus" dated 20 September 2009 N 49-3
- Law "On external labor migration" dated 30 December 2010 N 225-3
- List of the diseases, which pose a threat to the public health, approved with the Resolution of the Ministry of Health of the Republic of Belarus dated 15 June 2012 N 75
- List of medical contraindications for the education of non-citizens who arrive to get education in the Republic of Belarus approved with the Resolution of the Ministry of Health of the Republic of Belarus dated 25 April 2015 N 61
- Code of Administrative Offenses of the Republic of Belarus
- Law "On health care" dated 18.06.1993 N 2435-XII
- Law "On donation of blood and blood components" dated 30 November 2010 N 197-Z
- Law "On organ and tissue transplantation"
- The List of Diseases and Conditions which are Contraindications to Blood Donation and the Instruction on the Procedure of Medical Examination of the Donors of Blood and Blood Components approved by the Resolution of the Ministry of Health of the Republic of Belarus dated 19 May 2011 N 37
- Law "On social services" dated 22 May 2000
- Law "On state support of youth and children's non-governmental associations in the Republic of Belarus" dated 9 November 1999
- Law "On the Belarus Red Cross Society" dated 24 October 2000 N 437-Z
- National Program "Public health and demographic safety of the Republic of Belarus" for 2016-2020
- Resolution of the Council of Ministers of the Republic of Belarus "On some matters of the social contracting" dated 27 December 2012 N 1219
- Order of the President of the Republic of Belarus "On some matters of governmental support of the Belarusian Republican Youth Union" dated 17 December 2012 N 559
- Plan to Implement the Concept of Sustainable Development of the HIV/AIDS and Tuberculosis Prevention, Treatment, Care and Support System dated 27 April 2016
- Order of the Ministry of Health of the Republic of Belarus "On creation of the state institution Republican Clinical Center of Palliative Medical Care for Children" dated 29 July 2016 N 710
- Law "On the republican budget for 2017" dated 18 October 2016 N 431
- Law "On introducing amendments to some laws of the Republic of Belarus" dated 11 May 2016 N 362-Z [26]
- Resolution of the Ministry of Health of the Republic of Belarus dated 9 December 2010 N 163 "On certain questions of sex reassignment and correction" on approval of the Regulation on the Interdepartmental commission for medical, psychological and social rehabilitation of people with sex denial syndrome at the Ministry of Health of the Republic of Belarus and the Guidelines on the procedure of sex reassignment and correction at the request of a full-aged patient in governmental health care institutions

- Law "On mass events in the Republic of Belarus" dated 30 December 1997
- Family Code of the Republic of Belarus
- Civil Code of the Republic of Belarus
- Criminal Procedure Code of the Republic of Belarus
- Civil Procedure Code of the Republic of Belarus
- Law "On health care" dated 18 June 1993 N 2435-XII
- Order of the President of the Republic of Belarus on approval of the Regulation on registration of citizens at the place of residence and the place of stay, approved on 7 September 2007 N 413
- Order of the President of the Republic of Belarus dated 26 April 2010 N 200 "On administrative procedures performed by governmental authorities and other organizations at the request of citizens"
- List of the diseases which do not allow people to act as legal guardians or caregivers approved with the Resolution of the Ministry of Health of the Republic of Belarus dated 25 February 2005 N 4
- Regulation on the family-based care home approved with the Resolution of the Council of Ministers of the Republic of Belarus dated 28 February 2006 N 289
- Regulation on the foster care approved with the Resolution of the Council of Ministers of the Republic of Belarus dated 28 June 2012 N 596
- Regulation on the adoptive family approved with the Resolution of the Council of Ministers of the Republic of Belarus dated 28 October 1999 N 1678
- Regulation on the procedure of arranging adoption and foster care (guardianship) of underage children approved with the Resolution of the Council of Ministers of the Republic of Belarus dated 20 May 2006 N 637
- Regulation on some matters of adoption, establishment of guardianship, transfer of children to foster care, family-type children's homes and return of children to their parents approved with the Resolution of the Ministry of Education of the Republic of Belarus dated 12 March 2007 N 20
- Regulation on the procedure of adoption and control over the conditions of life and upbringing of children in adoptive families on the territory of the Republic of Belarus approved with the Resolution of the Council of Ministers of the Republic of Belarus dated 28 February 2006 N 290
- Regulation on the procedure of international adoption, international foster care and guardianship of children approved with the Resolution of the Council of Ministers of the Republic of Belarus dated 31 January 2007 N 122



International and regional documents which were ratified/signed/passed the procedure of accession by the Republic of Belarus



12 November 1973

International Covenant on Civil and Political Rights, 16 December 1966

International Covenant on Economic, Social and Cultural Rights, 16 December 1966



4 February 1981

Convention on the Elimination of all Forms of Discrimination Against Women, 18 December 1979



13 October 1987

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984



1 October 1990

Convention on the Rights of the Child, 20 November 1989



30 September 1992

Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966



29 November 2016

Convention on the Rights of Persons with Disabilities, 13 December 2006

¹ Article 157 of the Criminal Code of Belarus http://kodeksy-by.com/ugolovnyj_kodeks_rb/157.htm

² Applicant 2017, The Procedure of Admission of Foreign Applicants <http://abiturient.vstu.by/ru/poryadok-priema-inostrannyx-grazhdan/>

³ Resolution of the Council of Ministers of the Republic of Belarus "On some questions of free and subsidized provision with medications and medical dressing of some categories of citizens" dated 30 November 2007 N 1650

⁴ Article 16.2 of the Code of Administrative Offenses

⁵ The List of Diseases and Conditions which are Contraindications to Blood Donation and the Instruction on the Procedure of Medical Examination of the Donors of Blood and Blood Components is approved by the Resolution of the Ministry of Health of the Republic of Belarus dated 19 May 2011 N 37.

http://minzdrav.gov.by/ru/static/acts/normativnye/postanovlenia_ministerstva/ob-ustanovlenii-perechnja-zabolevanij-i-sostojanij-pri-kotoryx-sdacha-krovi-i-ee-komponentov-protivopokazana-i-utverzhenii-instruktsii-o-porjadke-meditsinskogo-osmotra-donorov-krovi-i-ee-komponentov-instruktsii-o-porjadke-ucheta-donorov-krovi-i-ee-komponentov_i_382.html

⁶ Public contracts in the area of social services: review of the first stage of practical implementation in Belarus. N.V. Milkota |Economic Bulletin of the University| Issue No27/1

⁷ Article 7 of the Law "On the Belarus Red Cross Society" <http://laws.newsby.org/documents/laws/law0758.htm>

⁸ Law "On the republican budget for 2017"

⁹ <http://www.lawtrend.org/other/gosudarstvennaya-podderzhka-nekommercheskih-organizatsij>

¹⁰ Results of the social contracting mechanism implementation in 2014-2016

Parameters	2014	2015	2016 ¹⁰
Number of contracts signed	33	46	53
Amount of subsidies	1.8 million rubles	2.4 million rubles	300.4 thousand rubles
Percentage of the expenses for social contracting in the total amount of local budget expenses to implement social policy	0.032%	0.052%	0.086%

¹¹ <http://www.actngo.info/article/prezentaciya-gosudarstvennyy-socialnyy-zakaz-v-belarusi> NGOs which received financing within the social contracting mechanism in 2015

No.	Name	Number of contracts
1	Belarus Red Cross Society	33
2	Evangelical Christian Church "Grace", Brest	1
3	Roman Catholic Parish of St. Joseph, Krupki	2
4	Christian charitable association "Tabeya", Mogilev	2
5	The house of social service (village of Tarasovo, Minsk district)	1
6	Positive Movement NGO, Pinsk	1
8	Oblast Charitable Association "Helping Hand", Gomel	1
7	Grodno oblast organization of the Civil Society Movement "Belarusian Association of the Visually Impaired Persons"	2

¹² <http://palliativ.by/>

¹³ Report on the implementation of the International Convention on the Elimination of All Forms of Discrimination against Women by the Republic of Belarus, 2016 http://romaintegration.by/wp-content/uploads/2017/05/CEDAW_shadow_2016_rus.pdf

¹⁴ The diagnosis complies with the WHO-approved classification.

¹⁵ <http://pravo.by/document/?guid=3871&p0=W21023106>

¹⁶ Report on the implementation of the International Convention on the Elimination of All Forms of Discrimination against Women by the Republic of Belarus, 2016 http://romaintegration.by/wp-content/uploads/2017/05/CEDAW_shadow_2016_rus.pdf

¹⁷ Report on the implementation of the International Convention on the Elimination of All Forms of Discrimination against Women by the Republic of Belarus, 2016 http://romaintegration.by/wp-content/uploads/2017/05/CEDAW_shadow_2016_rus.pdf

¹⁸ Report of the Special Rapporteur on the situation of human rights in Belarus on 21 April 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/097/73/PDF/G1709773.pdf?OpenElement>

¹⁹ The Ministry of Justice of the Republic of Belarus failed to register the "Lambda Human Rights Center" <http://www.ihahr-nis.org/ministerstvo-yusticii-respubliki-belarus-ne-zaregistrovalo-pravozashchitnyy-centr-lyambda>

²⁰ Human rights of LGBT people in Belarus 2014, submission for the Universal Periodic Review, LGBT Human Rights Project "GayBelarus"

²¹ BBC Gay life in Belarus: either clear off or keep a low profile <http://www.bbc.com/russian/features-39954700>

²² [Anti-discrimination memorandum of the Network](http://www.rounasc.info/be/content/memorandum-seti-poprivotivodeystviyu-diskriminacii-v-respublike-belarus) <http://www.rounasc.info/be/content/memorandum-seti-poprivotivodeystviyu-diskriminacii-v-respublike-belarus>

²³ Belarus needs an anti-discrimination law http://naviny.by/rubrics/society/2013/12/16/ic_articles_116_183973

²⁴ Report of the Special Rapporteur on the situation of human rights in Belarus on 21 April 2017 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/40

²⁵ Criminal Code of the Republic of Belarus

http://etalonline.by/?type=text®num=HK9900275#load_text_none_1_2

²⁶ see above

²⁷ Report of the Special Rapporteur on the situation of human rights in Belarus on 21 April 2017 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/40

²⁸ Regulations on registration of citizens at the place of residence and the place of stay set forth the following restrictions for the registration at the place of residence: after registration, the minimum living area per one person should be at least 15 sq. meters, in Minsk — at least 20 sq. meters, in dormitories — at least 6 sq. meters. Such restrictions are not applied to a spouse when registered at the place of residence of the other spouse. It leads to certain difficulties when same-sex partners live together, if one of them lives at the place of residence of the other partner. Besides, considering the fact that such partner is not first in line to inherit according to the laws, he may lose all legal connections with the residential property even if he invested certain funds into such property.

²⁹ <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1739&file=RussianTranslation>

³⁰ <http://undocs.org/ru/CEDAW/C/BLR/8>

³¹ http://romaintegration.by/wp-content/uploads/2017/05/CEDAW_shadow_2016_rus.pdf

³² Concluding observations on the eighth periodic report of Belarus, 18 November 2016

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BLR/CO/8&Lang=En

³³ Taking into account the given circumstances, the Committee recommends that the state party:

- ensure adequate protection of lesbian and bisexual women and transgender persons and/or activists protecting their rights from intimidation, retaliation and violence, and that the perpetrators of any such acts are prosecuted in a timely manner and adequately punished;
- ensure an interpretation of Act No. 362-Z that will not restrict the dissemination of information about lesbian and bisexual women and transgender persons;
- review the registration requirements for non-governmental organizations in order to ensure that the aforementioned organizations that are involved in human rights, in particular women's rights, can be established and operate without undue restrictions.

³⁴ Report of the Special Rapporteur on the situation of human rights in Belarus on 21 April 2016

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/40

³⁵ Report of the Special Rapporteur on the situation of human rights in Belarus on 21 April 2017

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/40

³⁶ Based on the information presented in the Report, the Special Rapporteur issued recommendations for the Republic of Belarus, in some aspects repeating the previous recommendations, in particular:

- abandon policies based on authorizations and accreditations and move towards a system of notification to ensure respect for the freedoms of assembly, association and expression;
- register the civil society organizations and political parties that have been denied official recognition;
- end the practice of discrimination against individuals and groups that are marginalized on the basis of their belonging to a minority;
- draft an anti-discrimination law encompassing all grounds of discrimination.

³⁷ Sergei Androsenko against Belarus, 11 May 2016, Communication No. 2092/2011

<http://juris.ohchr.org/Search/Details/2103>

³⁸ Sergey Praded against Belarus, 25 November 2014, Communication No. 2092/2011

<http://juris.ohchr.org/Search/Details/2103>

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