

The cover features several large, rounded square shapes in shades of blue and red, scattered across the white background. Some are solid colors, while others are slightly transparent or layered. The shapes are of various sizes and orientations, creating a dynamic, abstract composition.

REGIONAL REPORT

**ON VIOLATIONS OF THE RIGHT
TO HEALTH OF GAY MEN,
OTHER MSM AND TRANS PEOPLE
IN THE CEECA REGION IN 2018**

Tallinn, Estonia, 2018

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The information presented in this document may be useful for non-governmental organizations, community activists, and government representatives in planning advocacy processes and in promoting the rights of gay men, other MSM and trans people, as well as in overcoming barriers that limit their access to services.

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LIST OF ABBREVIATIONS

AIDS	Acquired immune deficiency syndrome
CEECA	Central and Eastern Europe and Central Asia
ECOM	Eurasian Coalition on Male Health
HIV	Human immunodeficiency virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
IH	Internalized homonegativity
LGBT	Lesbian, gay, bisexual and trans people
MSM	Men who have sex with men
NGO	Non-governmental organization
PLHIV	People living with HIV
SOGI	Sexual orientation and/or gender identity
STI	Sexually transmittable infection
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organization



EXECUTIVE SUMMARY

This report explores health rights of gay men, other men who have sex with men (MSM) and trans people in the context of HIV in the region, where HIV incidence is still increasing. Unfortunately, in most countries HIV prevalence has reached a concentrated epidemics level, especially among MSM and other key affected populations. Vulnerability of trans people to HIV infection should not be diminished just because there is no available evidence to discuss the prevalence data in this community.

The Global Fund supported regional programme «Right to Health» has considered as vitally important to monitor the cases of violation not only the right to health but also violations of other human rights of MSM and trans people. These cases have a common discrimination ground – the sexual orientation and gender identity (SOGI) and all of them are indirectly hindering realization of the right to health of LGBT communities. The cases were collected by community-based NGOs and independent activists from CEECA countries, which are participating in the programme: Armenia, Belarus, Georgia, Kyrgyzstan and North Macedonia. Previous empirical experiences of these teams have demonstrated that state officials often deny existence of the SOGI-based discrimination, thus, documented cases are to prove the problem and to justify the need for the policy and legislative changes.

This is a consolidated report, which is build on five national reports developed by the country teams and aims to illustrate the social, institutional and legal barriers that limit the opportunities of gay men, other MSM and trans people to fully realize their right to health in the CEECA region. It provides an overview of the typical gaps in the legislative frameworks on the cross-cutting themes of SOGI-based discrimination and HIV. The report compares the cases of discrimination collected in 2017 and 2018 and describes any changes and developments since publishing the first report in 2017.

The key conclusions of the report are as following:

- 1** The practice of documenting SOGI-based discrimination cases proved to be effective;
- 2** The cases analyzed in this report are about different types of SOGI-based discrimination, for example, denied healthcare, personal data disclosure and hate speech/crimes. Along with, the ordinary citizens at public places, unfortunately, the perpetrators were the healthcare personnel, police officers, State officials including the minister and prime minister;
- 3** There is a high level of stigma against gay men, MSM and trans people in all five countries, which leads to mental breakdowns, self-stigmatization of LGBT communities, who are forced to hide medical and psychological problems;
- 4** There is incredibly high level of homophobia and transphobia among state officials, medical personnel and police officers. The state officials are often using their power to break the gatherings of LGBT communities when they intend to stand for own rights;
- 5** The specific healthcare services for gay men, other MSM and trans people are either unavailable or inadequate. These problems are partly determined by general problems of national healthcare systems. However, for these specific communities the healthcare issues are largely determined by negativity expressed by state officials and healthcare personnel;

- 6 Most countries are criminalizing HIV transmission and have the law on HIV/AIDS, which create unfair attitudes towards the patients from specific communities;
- 7 There are significant gaps in anti-discrimination legislation and in legal recognition of gender identity.

The analysis of discrimination and violation cases provided in this report reaffirms existing systematic character of the problem with discrimination on the ground of sexual orientation and gender identity in CEECA region. **These recommendations are made for civil society sector and state institutions:**

Civil Society Organizations

- Sensitize, educate and encourage LGBT communities to report the cases of SOGI based discriminations;
- Ensure continued psychological and legal assistance services for MSM, LGBT and PLHIV;
- To continue the work on the law adoptions and enforcement by closely partnering with the Ministry of Health and the Ministry of Internal Affairs;
- To continue cooperation with the UN and other International rights protecting institutions;
- Contribute to establishing of standards for service delivery for MSM and LGBT within a healthcare system and to promote development of targeted healthcare programmes;

Decision-makers

- Support the adoption of comprehensive anti-discrimination legislation;
- Ensure that anti-discrimination legislation clearly articulates the SOGI as ground for discrimination;
- Ensure adopting effective policies and monitoring mechanisms for reacting on hate crimes;
- Abolish the criminal responsibility for HIV transmission and the laws about HIV;
- Sensitize and educate respective state officials and healthcare personnel.



INTRODUCTION

The second CEECA regional report on violations of the right to health of gay men, other MSM and trans people is a consolidated report, which is based on five country reports developed by the community based organization teams representing Armenia, Belarus, Georgia, Kyrgyzstan and North Macedonia.

The country reports are mostly based on the empirical evidence (cases) collected through direct observation or experience. The country teams have also analyzed secondary data, such as media products and other documents. These are descriptive studies aiming to describe a specific phenomenon – discrimination against or rights violation of gay men, other MSM and trans people based on their sexual orientation and/or gender identity (SOGI). The main purpose of these reports is to document the cases and thus, to prove an existence of the systematic violation facts. Previous empirical experiences of these teams have demonstrated that state officials often deny existence of the SOGI-based discrimination, thus, documented cases are to prove the problem and to justify the need for the policy and legislative changes.

The country reports follow a standard format that includes: a. Methodology of data collection; b. Overview of the national health legislation; c. Narrative section with the cases of SOGI-based discriminations and violations; d. Conclusions and recommendations. The cases were collected by the following organizations, in Armenia: Humanitarian NGO «New Generation», in Belarus: Individual activists and consultants, in Georgia: NGO «Equality Movement», in Kyrgyzstan: Public Organization «Kyrgyz Indigo» and in North Macedonia, by three organizations: Association to Support People Living with HIV «Stronger Together», NGO «EGAL», the First Association of Sex Workers in the Balkans «STAR-STAR».

The cases described in the country reports are quite diverse, as they illustrate violations of different rights (including but not limited to the right to health), and concern different community representatives (gay men, MSM, trans people), however the ground for discrimination in all cases is similar, and it is a victim's sexual orientation or gender identity (SOGI). Some cases have multiple grounds for discrimination and concern LGBT people, who also belong to sex workers and/or PLHIV communities.



Increased vulnerability of MSM and LGBT to HIV

Exploring the health rights of MSM and LGBT populations is particularly interesting in the context of the HIV epidemic. The latest epidemiologic review¹ (13) suggests that EECA region remains the only part of the world where HIV incidence is increasing and HIV prevalence among MSM is more than 5% in most countries, which is considered as concentrated epidemic.

Although MSM are seen as a one of the main drivers of the HIV epidemic in the region, vulnerability of trans people to HIV infection should not be diminished just because there is no available evidence on HIV prevalence in this community.

¹ <https://ecom.ngo/wp-content/uploads/2018/12/HIV-among-MSM-in-EECA-2018-1.pdf>

Increased vulnerability of gay men, other MSM and trans people to HIV or other sexually transmittable infections (STI) is strongly linked with numerous factors limiting realization of their right to health. For example, low quality or lack of specific health services; negative attitude or aggression expressed by wider society, medical personnel and state officials (Figure 1). These factors can lead to increased internalized homo-negativity and force gay men, other MSM and trans people to hide their problems, not to seek help and healthcare (14). Country teams have documented diverse cases of rights violations including the right to health. All of these cases have a common ground for discrimination – sexual orientation and gender identity. This highlights that gay men, other MSM and trans people are indirectly hindered from realization of their right to health. These connections are explained in more details in the Chapter 2.

Purpose of Documenting Discrimination Cases

Documenting and analyzing the rights violation cases is one of the activities of the Global Fund regional programme «Right to Health», implemented by Eurasian Coalition on Male Health (ECOM). The programme stands for the health rights of gay men, other MSM and trans people and fights against the social and legal factors, which hinder these communities from receiving adequate health and HIV services. Another objective of the programme is to empower the communities to the extent when they are able to professionally participate in the national policy-making processes. Entire process of the data collection and the reports development has empowered community activists with the sense of ownership and equipped with necessary skills, knowledge and self-confidence to proudly represent their communities at different levels. The final output of their work-the national reports-are powerful advocacy instruments for policy changes in their respective countries².

Purpose and objectives of consolidated report

This consolidated report is to examine the experience of five national teams, which have identified, reported and followed up the SOGI-based discrimination cases collected throughout 2018 in their respective CEECA countries. The synthesis report presents the main findings from their reports, demonstrates the similar and/or distinctive aspects of the problem across the region and elaborates recommendations for the country actors by building on the solutions suggested by the national teams. These countries share important similarities and can serve as examples for other comparable countries in the region in planning for legislative and policy changes that could help to improve the specific health services for gay men, other MSM and trans people.

The main purpose of this report is to illustrate the social, institutional and legal barriers that limit the opportunities of gay men, other MSM and trans people to fully realize their right to health in the CEECA region, and to compare the cases of discrimination collected in 2017 and 2018 and describe any changes or developments since publishing the first report (2017).

Therefore, the objectives of this report are: a) to evidence existence of SOGI-based discrimination cases; b) to describe the cases in order to illustrate the existing problems; c) to draw attention to the negative consequences of these problems; and d) to suggest effective and evidence-based solutions to the problem of SOGI-based discrimination.

² The national reports are available online on the ECOM website

Limitations

A number of limitations were encountered when conducting the analysis, which are summarized below:

- Consolidated report is based on five country reports representing their specific national realities. The findings may not be translatable to all contexts, which limits their generalizability. However, the conclusions of the analysis may be relevant to other countries with similar contexts or may be useful by other countries as lessons learned.
- The cases were identified and documented by different teams in 2017 and 2018. The number and the nature of the cases were determined by the capacity, expertise and profile of the teams, also including the social norms, socio-economic and political situation in each country. Therefore, number of cases quantitative data in these reports does not reflect the extent of predominance of these case in the countries.
- Finally, there were some limitations in terms of comparability of the reports developed in 2017 and 2018, as the methodology of data collection has not been not standardized.

Structure of Report

The first chapter presents overview of the gaps in the legislative frameworks on cross-cutting themes of the discrimination on the grounds of HIV and SOGI. The second chapter analyses the cases of SOGI-based discrimination by categorizing perpetrators and the violation actions in the cases. This chapter also explains the connections between violation of the right to health of MSM and trans people and their vulnerability to HIV infection. The chapter three is summarizing the findings of the analysis and the last section elaborates the evidence-based recommendations on how SOGI based discrimination problem can be resolved.



1. OVERVIEW OF LEGISLATIVE AND POLICY GAPS: SIMILARITIES ACROSS THE REGION

In this chapter we provide a brief overview of similar gaps in the legislative frameworks on cross-cutting themes of the discrimination on the grounds of HIV and SOGI. This is not a comprehensive review of all the policies, laws and norms. The information provided in this chapter is a result of analyzing 68 legal cases collected by the country teams. We have highlighted these aspects of the legislative frameworks, listed by the country teams as serious barriers to initiating the cases, and that indirectly lead to the restriction of the right to health for gay men, other MSM and trans people (Figure 1, page 12)³.

This is a consolidated report produced on the basis of national reports⁴, which provide a more detailed review of the laws and policies, and describe the gaps and contradicting articles or provisions in the respective national legislations. Moreover, ECOM has published a comprehensive legislative analysis in 2017 in the context of the national HIV control systems and the human rights of LGBT for five countries, covered in this consolidated report⁵. The readers, who have a more in-depth interest in exploring these frameworks, are advised to refer to the country reviews published in 2018⁶. Current analysis shows that there are no significant changes in the legislative framework on the cross-cutting themes of the discrimination on the grounds of HIV and SOGI in these five countries.

Therefore, this chapter provides just a brief overview of gaps in the legislative frameworks (for cross-cutting themes of the discrimination on the grounds of HIV and SOGI), which are typical across the five countries. To better illustrate some legislative or policy gaps described in this chapter, we have selectively included some examples to show the humiliating and distressing impact of the laws/regulations on individual human lives. By documenting such cases the country teams illustrated situations when one single person have sufficient grounds for the communities to demand legislative/policy changes from decision-makers.

Therefore, this is not a classical policy or a legislation review, either. Most of the problems highlighted in this chapter have been identified by the country team while documenting cases on the grassroots level and then trying to follow up on them by proceeding with law enforcement bodies.

The review is structured around three major areas of concern revealed by the country community teams:

- 1** Anti-discriminatory legislations do not cover discrimination on the ground of SOGI;
- 2** HIV-related legislations and policies may become discriminatory in a certain context;
- 3** The legislation on gender expression/recognition and related administrative procedures impedes LGBT communities in realization of their right to health⁷.

³ The figure 1 illustrates the connection between SOGI-based discrimination and increased vulnerability of MSM and LGBT to HIV infection.

⁴ National Reports on the violations of human rights of gay and bisexual men, other MSM and trans people, in particular right to health in the Armenia, Belarus, Georgia, Kyrgyzstan and North Macedonia in 2018.

⁵ The results of analyses unique to the EECA region concerning the national legislation in Armenia, Belarus, Georgia, Kyrgyzstan, and Macedonia, which was conducted within the framework of the «Right to Health» programme funded by the Global Fund to Fight AIDS, Tuberculosis, and Malaria (<https://ecom.ngo/en/ecom-legislation-analysis/>).

⁶ Concerning the HIV/SOGI/MSM/LGBT/human rights.

⁷ See some more details in the annex 1 providing specific provisions within each of these areas.

Anti-discrimination legislation

In general, the countries covered in this review are at different stages of introducing and developing anti-discrimination legislation frameworks. Consequently, each country provides different level of protection to their citizens in case of SOGI-based discrimination. However, there are important similarities that can serve as a learning experience, especially for those countries which are at the earlier stage of developing their anti-discrimination legislative frameworks.

Protection against discrimination of the citizens in Belarus and Armenia is guaranteed solely by the respective state constitutions, however, these documents do not explicitly mention the SOGI-based discrimination. According to the country teams, the vague definitions such as «based on the gender» or «based on other personal and social grounds» limit the gay men, other MSM and trans people in initiating legal actions against violation of their rights. This means that some countries completely lack the legal mechanisms to protect their citizens from SOGI-based discrimination. For example, the victims of discrimination are deprived of opportunity to refer to the bodies specialized in human rights or non-discrimination.

It is quite notable that in Georgia, despite adopting the law on the elimination of all forms of discrimination on the grounds of SOGI, and after amending most legislative norms accordingly, and even after establishing the institute of a public defender, enforcement of the law is still ineffective. The country teams have identified a number of misalignments that hinder the enforcement of anti-discrimination laws in real life, for example, when the private sector is not legally obliged to abide by the decisions of the public defender in regards to the SOGI-based discrimination; or when anti-discrimination laws do not explicitly list the SOGI as one of the grounds of discrimination; or when state officials (i.e. police officers) simply do not know how to handle the cases of SOGI-based discrimination.

The Georgian team has revealed a gap in the criminal law concerning hate speech (Article 156 on Criminal Code). The article does not list SOGI among the grounds for discrimination. For this reason, investigation of some cases was stopped. Therefore, perpetrators are not formally responsible for the crime of hate speech against gay men, other MSM and trans people, and it is not practically possible to start legal proceedings or prosecution against them.

Therefore, all the countries are lacking the complex and comprehensive anti-discrimination legislative framework at a certain individual extent, which would leave no room for misinterpretation and have a clear enforcement mechanism to be applied by professionally trained staff and controlled by highly sensitized state officials.

HIV-related legislation and policies

It is a common practice in most EECA countries to have a law regulating the issues related to HIV and AIDS. Usually, such laws define the basic principles of epidemiological surveillance in the countries, HIV testing, ARV-treatment and patient care, also the rights and obligations of patients and the healthcare personnel. Georgian national team has significantly challenged the need of HIV law in the country (10). The authors of the report considered that there is no need to have a specific law for one infection (HIV), as most countries have a general law on public health regulating all the important issues regarding the infections.

This consideration is based on the opinions of the local Georgian experts in public health and policy. However, shall we abolish the HIV law or not is a debatable question and it cannot have a simply «yes» or «no» answer. The decision requires further assessment of the laws/policies in order to understand whether they increase the vulnerability of HIV patients, or protects human rights and defends people at healthcare facilities, at workplace and etc. Compromising decision can be abolishing discriminating articles, however, the best solution would be a desk research in order to understand what are the best worldwide practices to approach this issue.

Abolishment of the laws on HIV and AIDS is still a highly debated topic in most countries in the EECA, however, there is one element of the HIV legislation that really draws attention in the context of the right to health and especially for vulnerable communities such as LGBT: in all five countries, transmission of HIV is criminalized. Technically, this means discrimination of citizens on the ground of a disease, especially those who represent vulnerable communities such as gay men and trans people. The country teams have described numerous cases when HIV-positive patients are abused by healthcare personnel based on their diagnosis and sexual orientation.

Experience of the country teams have shown that SOGI-based discrimination leads to the internalized homo-negativity of gay and trans communities, which forces them to hide their problems, such as HIV status. To avoid stigmatization, the people from LGBT communities often stop their treatment. Another reason of why MSM/LGBT living with HIV may avoid showing up at healthcare institutions is a risk of disclosure of their diagnosis and/or sexual orientation and gender identity. Although most countries have a legislation in place that regulates confidentiality of medical diagnosis, in practice, healthcare institutions do not have any monitoring mechanisms to protect their patients (included but not limited to MSM/LGBT), especially in rural areas and small towns.

◆ Gender recognition laws and administrative procedures

There are significant gaps in all countries in regard to the legal regulation of gender recognition and for setting up relative administrative procedures. For example, a person cannot change gender in official documents in Georgia, until the gender reassignment surgical intervention is performed. Belarus has developed quite a comprehensive administrative procedure to confirm a gender, but when it comes to the passport, there is no way to change the identification number, that also includes the initial gender identification code. This policy creates serious problems for trans people in terms of keeping confidentiality of their changed gender identity.

In conclusion, all countries lack comprehensive legislative frameworks to address the human rights violations against LGBT people. Despite adopting some laws, there are significant gaps in regard to establishing the mechanisms for their enforcement, monitoring and evaluation. As a result of these legislative gaps, the LGBT community is one of the most vulnerable groups for discrimination, which is confirmed by numerous cases described in the country reports.



2. ANALYSIS OF THE CASES

This report presents analysis of 68 cases of discrimination identified and documented by five country teams in Armenia (15 cases), Belarus (9 cases), Georgia (22 cases), Kyrgyzstan (2 cases) and North Macedonia (20 cases). All these cases concern gay men, other MSM and trans people. The common ground for discrimination for all cases is sexual orientation and/or gender identity (SOGI), while some of them have multiple ground, SOGI and HIV diagnosis or SOGI and nature of work (sex work). Out of these 68 cases, there were 23 concerning direct violation of the right to health: refusal to provide healthcare assistance, disclosure of the medical diagnosis or SOGI, which forced the patients to stop the treatment.

Other actions of rights violations are: disclosure of the SOGI by civil registry officials; HIV-testing request by the employer; bullying, homophobic language, or verbal aggression, or harassment by state officials, healthcare personnel, police officers, journalists; hate crimes by ordinary citizens including physical injury; using official power to cancel LGBT events or impunity of perpetrators violated rights of the LGBT; blackmailing by police officers or ordinary citizens. These cases were grouped into six categories (Annex 2) and the analysis presented in this chapter is following mentioned categories.

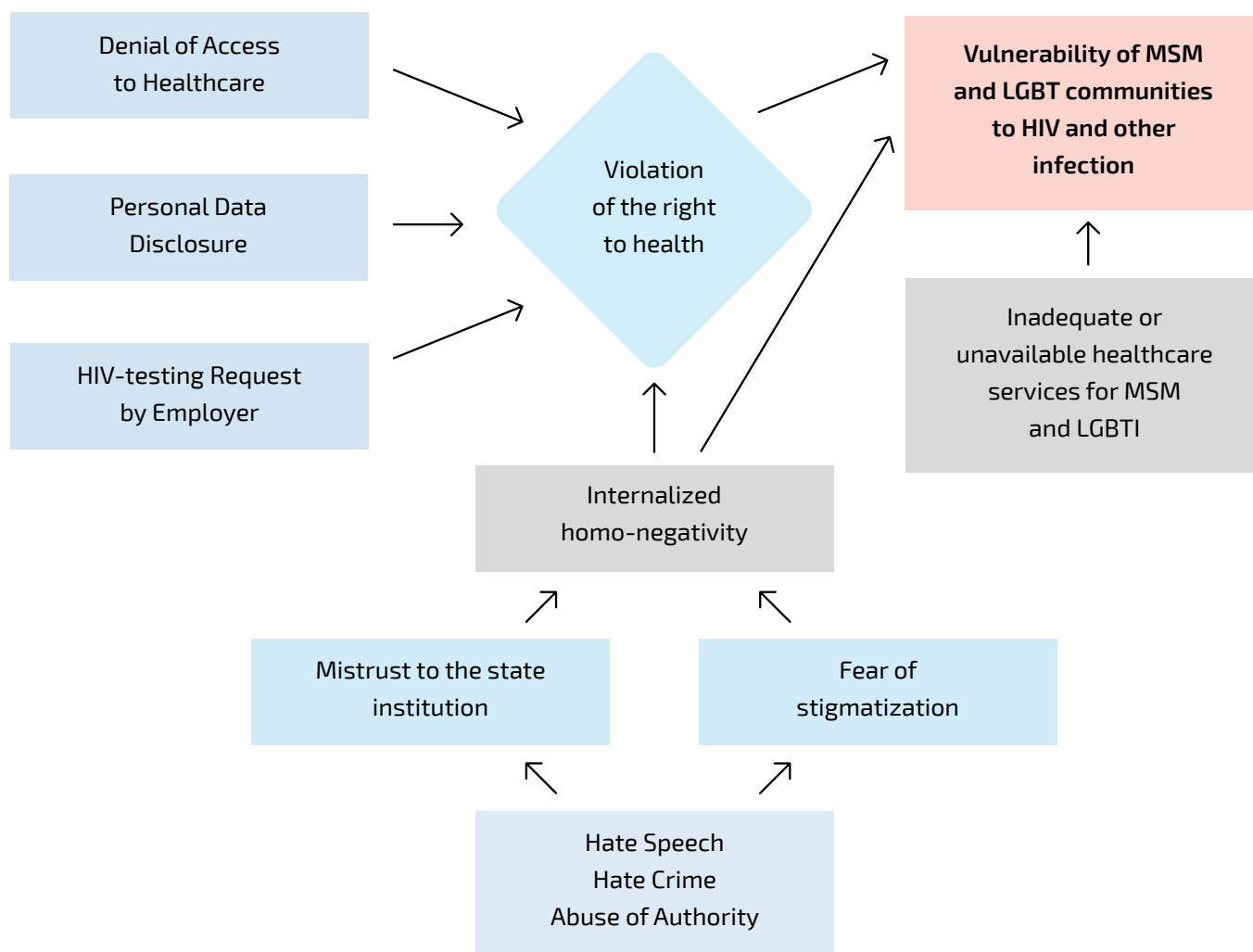
It is important to explain how violations of other rights than the right to health can contribute towards vulnerability of gay men, other MSM and trans people to HIV infection.

To demonstrate the importance of documenting of any discrimination based on SOGI, we have developed a logical framework illustrating the connections between 1) all categories of discriminative actions, 2) the right to health, 3) inadequate and/or unavailable healthcare services and 4) vulnerability of gay men, other MSM and trans people to HIV and other infections (Figure 1 page.12).

We do not provide analysis of quantitative characteristics of the cases for two reasons: firstly, most cases are complex and imply violation of different national laws involving several rights of one person; and secondly, it is important to emphasize that neither the number of the cases identified by each team nor predominance of the rights violated cannot be generalized and should not be used for comparing the country situations. The number and the nature of the cases were determined by the capacity, expertise of the teams and readiness of each violated individual to share own stories, also on the level of democracy in the countries, and the culture, social norms, socio-economic and political situation, which significantly differs across the region.

The reports developed by the country teams are just descriptive empirical studies based on their personal observations and experiences. The main purpose of these studies was collecting evidence and describing a problem of SOGI-based discrimination. The process of documenting the cases and launching the investigations revealed some legislative gaps and developed a solid ground for the further advocacy actions. The national reports developed by the country teams left no room for the state officials to deny existence of the problem of SOGI-based discrimination, calling them to take relevant follow up actions.

Figure 1. Logical Framework. SOGI-based discrimination and increased vulnerability of gay men, other MSM and trans people to HIV and other STI



Perpetrators

In the cases described by the country teams, the perpetrators were: 1) healthcare personnel and/or Institutions (26 cases), 2) police officers, state officials including the prime or sector ministers (12 cases), 3) journalists and representatives of private business, faith-based organizations (4 cases), and 4) ordinary citizens in public places, landlords, family members and etc. (26).

The following sub-section is structured by categories of the cases. The detailed figures according to the countries, four categories of perpetrators and six categories of violation types are presented in the annexes 2-3⁸.

⁸ We have not based the analysis on the figures presented in the annexes 2 and 3, as they are not statistically valid. These figures are just internal indicators of the project to give a very rough idea of what type of violations were revealed by the country teams, who are perpetrators and where these cases mostly take place.

Denial of Access to Healthcare

The country teams have described 15 cases, when patients were denied access to healthcare either by the medical institution or by individual healthcare personnel. We acknowledge that these cases are strongly linked with health system related problems of each particular country (i.e. privatization, absence of quality control system and etc. and analyzing of these factors are beyond our scope of work). Hypothetically, the similar problems can be experienced by other patients too (for example discrimination based on the social status or age and etc.), however, the cases have clearly revealed that MSM and trans people are among those vulnerable groups of populations, who can be turned down by the healthcare system in fulfillment of their right to health.

The Armenian team has described a number of heartbreaking cases, when medical personnel have refused to provide healthcare to trans people. For example, a sex worker was assaulted by the client who slit her throat during the course of the assault. Reportedly, the medical personnel refused to provide first medical aid to this person because she was trans (8). The Belarusian team has described a few cases when HIV-positive patients who were MSM, have been denied access to adequate healthcare, one of them was told that «there is no point to treat him as he is going to die soon anyway» (9). There are also cases when MSM were turned down by the dentist in the fear that they may have HIV (8). Usually, such cases are pushing HIV-positive patients to hide their status.

There is a need to highlight a case from Georgia when an AIDS center agreed to provide post-exposure prophylaxis treatment on the condition that patients revealed their sexual partner's identity (10). This case has demonstrated the need to introduce/review the Pre and Post-Exposure Prophylaxis (PrEP and PEP) protocols to make sure that the right to health of the patient is respected. This case could also be attributed to the group of cases discussed in the next sub-heading.

The country teams have documented the cases when foreign nationals belonging to LGBT communities were denied healthcare. We acknowledge that each country has different health financing arrangements and health insurance requirements for the foreign nationals also differs across the countries. Even if the citizen of other countries is not eligible for free public health services, abusive and offensive treatment by medical personnel cannot be tolerated.

Georgia

A transgender woman, a citizen of Azerbaijan applied to Equality Movement for support. She had severe form of tuberculosis complicated by pneumonia. An ambulance transported the patient to the TB Center. The patient was accompanied by a social worker from the Equality Movement. When doctor saw the patient she inquired whether she was 'a girl or a boy' and why the patient had nail polish. The doctor also concluded that the reason why the patient got sick was that she probably frequented a gay club. The TB Center refused to hospitalize the patient as she was a foreign citizen. Nor did the Center agree to provide any paid service to her.

Armenia

A citizen of Czech Republic referred to a local community organization «New Generation», working on the issues of LGBT. Reportedly, he was a PLHIV. He referred to the National AIDS Center, as he required medical support. The Center turned him down because he was a foreign national.

Personal Data Disclosure

In this group we have included 7 cases of personal data violation, for example when HIV diagnosis of a person was disclosed by healthcare personnel or when SOGI of a person was disclosed either by healthcare personnel or civil registry officers.

The Kyrgyz team has documented a case when a young man applied to an out-patient facility in a small town to undertake an examination and blood test. The next day he learned from the doctor that he was HIV-positive. A nurse disclosed his diagnosis to her friend, who happened to be the patient's sister. To avoid stigmatization, the young man left his town, he also decided against going to law enforcement agencies fearing that more people would find out about his condition.

Experience of the country teams suggests that there are many similar cases across all countries, and in particular, in small, rural areas. Most MSM or trans people are reluctant to have their stories documented or investigated. Nor do they trust official institutions since they fear that they may fall victims to hate speech or hate crimes (described in the following sub-sections).

Belarus

An HIV-positive gay man referred to an outpatient clinic. A doctor sent him to take a blood test and marked a referral paper with a bold red sign. The patient who spotted the sign asked for the doctor what the mark was. The doctor did not answer directly and just said that it was meant for better diagnostics. In the clinic people were staring at the patient and the red sign on his referral paper. Then he checked with a nurse once again and the nurse explained that this was a special mark for HIV-positive patients. The patient was very distressed and embarrassed as the nurse was his acquaintance sharing many friends while he unintentionally disclosed his HIV status to her.

Several cases documented by the Belarus team concern trans people bullied by the officials after having found out that the gender identity of these persons had been changed (9). The Belarus team has revealed quite a significant problem related to people's ID numbers. More specifically, ID numbers in Belarus also include a gender identification code, which cannot be changed under any circumstances. Therefore, the officers at the civil registry can easily identify those who have their gender identity changed.

HIV-testing request by employer

The Kyrgyz team has documented a case when an employer (international company of the fast-food chains) has requested the applicant to undertake an HIV-test along with other mandatory examinations. The Kyrgyz NGO sent an appeal to the company and requested to exclude an HIV-test from the list of mandatory examinations. In their appeal, they have explained that this requirement is discriminatory and contradicts with the national legislation. After internal investigation, the company has excluded HIV-tests from the mandatory tests (11).

Although there is only one case documented by the country teams, we nevertheless have singled it out to exemplify the problem and its effective resolution by the community based NGO.

Hate speech

The great majority of documented cases (totaling 24) can be qualified as hate speech. The cases falling under this category are quite diverse by nature of violations or outcomes for MSM and trans people. However, these cases are about bullying and verbal assault by either citizens or state officials and even healthcare personnel. Some of these cases concern the use of homophobic language by ministers, police officers and journalists.

For example, in one case a landlord saw a tenant on TV and found out that he was an LGBT activist. The next day the landlord demanded that the tenant leave the apartment immediately (10). In two other cases, gay men were abused by their family members after they had found out about their sexual orientation. One of them was physically assaulted by her brother (10), another one, the minor, was thrown out of the house by his father (12). There are also several cases documented by the Belarusian and Armenian teams, when medical personnel have bullied and harassed their patients (8, 9).

An important finding is that healthcare institutions in most countries do not have policies or procedures regulating ethical norms and communication standards between healthcare personnel and patients. Therefore, even if the patient complain about derogatory language or discriminatory treatment resorted to by healthcare personnel, usually there is no mechanism to address such cases.

Armenia

A trans sex worker applied to a plastic surgery clinic to have a rhinoplasty. The doctor requested a certificate proving that she was «transsexual». The person tried to find out how her gender identity was related to rhinoplasty. The doctor did not provided any explanation and refused to provide any service without a certification in a very rude manner.

North Macedonia

A gay man applied to the association «Stronger Together» for the legal advise and support. He reported that he had been offended and verbally assaulted by a psychologist, who openly expressed homophobic views in a rude manner. The association sent a complaint to the Chamber of Psychologists, a regulatory and supervisory body of psychology professionals in North Macedonia. The association also informed about this case the Ombudsman and the Sanitary and Health Inspectorate.

The Chamber did not answer for 9 month despite multiple reminders by the Ombudsman and the Sanitary and Health Inspectorate. After 9 months of delay, the President of the Chamber replied to the Association explaining that they had no regulation on how to proceed with requests for undertaking disciplinary measures against their members and that they were in the process of developing such policy.

Finally, when association received an official answer on the complaint along with the minutes of the disciplinary procedure led by the Court of Honour of the Chamber, it become clear that the Chamber had not addressed any of the issues raised in the complaint. Moreover, the response demonstrated a strong bias and the Chamber's attempt to protect their member.

According to the lawyer of Stronger Together Association there were significant legal gaps in the procedure which rendered the decision invalid. In addition, according to a new regulation introduced by the Chamber, the Association, acting as a third party while filing the complain mentioned above, was not authorized to submit a complaint regarding decisions made at the first instance. However, the Association is going to nevertheless challenge this decision as it is inconsistent with the legal principle of two instances.

Hate crime

Hate crime is also quite a widespread category of cases registered: the country teams have documented 12 of such cases. The majority of the cases took place in the streets or public places and the absolute majority of perpetrators were ordinary citizens. These cases were documented by Georgian (7) and Macedonian (5) teams. They described different situations with similar scenarios, when MSM and trans people have been stalked and physically assaulted by strangers in the street.

Wide-spread cases of hate crime create a fear of stigmatization and exclusion from the families among MSM and trans people. As a result, they are forced to hide their SOGI and they choose either not to seek for healthcare or try to find a doctor within a close circle of friends, and this definitely can be considered as restriction of their right to health.

Unfortunately, due to legislative gaps described earlier, while dealing with hate crimes, it is not always easy to launch investigation, or cases are dropped before they are brought to court. Below we present a successfully completed case by the Georgian team:

Georgia

A gay man applied to Equality Movement for legal counselling. He was reportedly abused and blackmailed by his intimate partner, who had been extorting money from him for several months in return for not disclosing his sexual orientation to other people.

Equality Movement helped the gay man to go to the law enforcement agencies as a result of which the perpetrator has been detained and sentenced to imprisonment.

But this case also indicates state-sponsored homophobia as both parties involved (victim and perpetrator) were gay or MSM.

Abuse of authority

The country teams have reported 7 cases when state officials or police officers have used their power of authority to discriminate against MSM and trans people or support their discrimination. Cases from Belarus (3), Georgia (2) and North Macedonia (2) involve using official power to cancel LGBT events or to protect aggressors against the MSM and trans people, blackmailing of the gay person forcing him to cooperate with police by treating him to disclose his sexual orientation.

The cases when officials use the power of their authority to support a SOGI-based discrimination are particularly alarming, as they generate fear among MSM and trans people, force them to hide their problems from the public and law enforcement officials. Therefore, it is important to document such cases and to follow them up, as such cases could make valuable evidence for legislative gaps and justification for the policy changes.



3. CHANGES SINCE 2017

This is a second report describing the violation cases of gay men, other MSM and trans people and highlighting the barriers to fulfillment of their right to health. Therefore, in this second analysis, we had an objective to compare the cases documented in 2017 and 2018 and to assess all notable changes. It should be emphasized that difference of the contents and the formats between the two reports, also the difference in methodologies of the data collection has not allowed us to conduct a comprehensive comparative analysis, however, we have attempted to present a brief description of the changes that are notable based on empirical experience of the country teams.

According to the country teams, the practice of collecting and documenting the cases proved to be useful and effective. The process has helped the national teams in developing skills and gaining knowledge, it also generated more trust to community based NGOs organizations. The country teams in Armenia and North Macedonia noticed that more people from LGBT communities are willing to share their personal experiences about violations. While documenting and following up the cases, communication process with the victims was used by the activists to sensitize and educate them. The work process has revealed some hidden nuances and gaps of the legislation, institutional policies, regulations and normative acts. The empirical knowledge gained through documenting of SOGI-based discrimination cases was used in developing recommendations and would be further used in advocacy for effective policy changes.

The areas of violation and categories of perpetrators are relatively similar to last year's situation. Figures presented in the annex-2 and annex-3 are just internal indicators of the project to give a very rough idea of what type of violations were revealed by the country teams, who are perpetrators and where these cases mostly take place. But they cannot be used for a quantitative analysis of situation themselves. These figures allow us to assume that there are more cases that were not identified and documented. The purpose was to evidence a problem of SOGI-based discrimination/violation, and if there is even one case of any type of discrimination, state officials are obliged to address the problem to ensure that people are protected from these violations. Existence of these cases justifies that there is a need for change.

The country teams reported that there were no significant improvements in the legislative frameworks on the crosscutting themes of SOGI and HIV. **However, some positive accomplishments have been mentioned:**

- > In February 2017, an inter-party parliamentary group for promotion of the human rights of LGBT people was formed in the Parliament of North Macedonia.
- > The draft Law on prevention and protection against discrimination has been amended in North Macedonia to explicitly include SOGI as discriminatory ground.
- > Armenian humanitarian NGO «New Generation» has started development of the draft law on gender change regulation.
- > Draft of the comprehensive antidiscrimination law in Kyrgyzstan has been developed, and currently it is in the first review phase.



4. CONCLUSIONS

- The practice of documenting SOGI-based discrimination cases proved to be effective: the country teams reported that since 2017 the trust to their organizations has increased, more people from LGBT communities are willing to share their personal experiences about violations; while documenting and following up the cases, communication process with the victims was used by the activists to sensitize and educate them; the work process has revealed some hidden nuances and gaps of the legislation, institutional policies, regulations and normative acts;
- In 2018, a total of 68 discrimination cases were documented in five CEECA countries. These cases highlighted SOGI-based discrimination, harassment and violation of dignity, violation of the rights to health, security, bodily integrity, freedom of movement, also hate speech, hate crimes and domestic violence. Perpetrators were the healthcare personnel and/or institutions, police officers, state officials including a minister and prime minister, journalists or representatives of private business, faith or other organizations, ordinary citizens in public places, in the streets, landlords and family members;
- There is a high level of stigma against gay men, other MSM and trans people in all five countries. Majority of population are against equality of LGBT. Most cases are about verbal and physical assaults and violence in public spaces such as streets, bars, clubs, etc. The cases analyzed in this report illustrate negative consequences of unfair treatment (mental breakdowns, self-stigmatization, hiding medical and psychological problems), which leads to increased vulnerability of gay men, other MSM and trans people towards HIV and other infections;
- There is extremely high level of homophobia and transphobia among state officials, medical personnel and police officers. The documented cases demonstrated that state officers, including police and even ministers are sometimes in the role of perpetrator. This leads to mistrust towards the state and law enforcement institutions and as a result, MSM and LGBT people have fear to report their cases or to seek for help. The state officials are often using their power to break the gatherings of LGBT communities when they intend to stand for own rights;
- The specific healthcare services for gay men, other MSM and trans people are either unavailable or inadequate. Healthcare personnel is not aware of hormonal treatment of trans people. There is no policy of monitoring of ethical norms or discrimination and rights violation cases at healthcare institutions. Healthcare personnel lacks basic knowledge, and the situation is worse in rural areas as compared to big cities;

- Most countries criminalize HIV transmission and have laws on HIV/AIDS. There is an opinion among some public health experts that stand aside laws considering on specific disease (HIV/AIDS) are stigmatizing and unnecessary, as the regulations regarding the infectious diseases are already covered in other laws (i.e. public health); this opinion requires further research of worldwide best practices. Meanwhile it is suggested to revise these laws to make sure they support protection of population and are not discriminative towards one specific marginalized group;
- There are significant gaps in anti-discrimination legislation. Most state legislations do not comprehensively address human rights violations against LGBT people. Some countries still do not have legal framework for gender conformation procedures and continue to impose abusive preconditions for the change of the gender marker in the official documents.



5. RECOMMENDATIONS

These recommendations are elaborated based on the solutions developed by the country teams of this report. The major solutions presented this year are similar to the ones suggested in 2017, which demonstrates that the problems identified from the cases documented in 2017, are still valid in 2018-2019. This is not something too unexpected, as change of attitudes, approaches and practices takes time. NGO teams also emphasized reluctance of the national governments to accept and/or implement suggested changes.

Therefore, the foremost recommendations to teams involved in the Right to Health programme in regards of below listed recommendations are as follow:

- Integrate the recommendations into the advocacy plans of the regional and national community-based NGOs;
- Discuss the recommendations with the relevant decision makers and take steps to integrate these actions into the relevant long-term national plans, sectoral strategies, plans for the sectoral reforms and/or other strategic documents.



Civil Society Community-Based Organizations

- Sensitize, educate and encourage LGBT communities to report the cases of SOGI based discriminations;
- Ensure continued psychological and legal assistance services for MSM, LGBT and PLHIV;
- Fight stigma and raise awareness of the general public in partnership with state institutions and international donors;
- Continue the work on the adoptions and enforcement of the antidiscrimination laws in close partnership with the Ministries of Health and the Ministries of Internal Affairs;
- To continue cooperation with UN and other international human rights institutions (sharing the cases, reports and statistics);
- Contribute to development of standards for service delivery for MSM and LGBT within healthcare system.

Decision-makers

- Support the adoption of comprehensive antidiscrimination legislation to ensure the protection LGBT rights and interests in all spheres of life including the right to health and healthcare; including gender confirmation procedures;
- Ensure that anti-discrimination legislation clearly articulates the SOGI as ground for discrimination;
- Ensure adopting effective policies and monitoring mechanisms for reacting on hate crimes;
- Abolish the criminal responsibility for HIV transmission and the laws about HIV;
- Sensitize and educate respective state officials and healthcare personnel on MSM, trans people and SOGI-based discrimination issues;
- Ensure that healthcare personnel, police officers and other state officials are aware about SOGI-based hate crimes and discrimination cases, and have relevant knowledge to handle such cases;
- Work with media towards public perception that is more tolerant of LGBT issues, and contribute to impartial media coverage of human rights issues including those of LGBT communities;
- Establish and/or amend gender confirmation procedures and ensure that these regulations are in line with the right to inviolability of privacy.

GLOSSARY

DISCRIMINATION

«Discrimination is the selection for unfavorable treatment of an individual or individuals on the basis of: gender, race, color or ethnic or national origin, religion, disability, sexual orientation, social class, age (subject to the usual conventions on retirement), marital status or family responsibilities, or as a result of any conditions or requirements that do not accord with the principles of fairness and natural justice»⁹.

STIGMA

Stigma is a Greek word that in its origins referred to a type of marking that was cut or burned into the skin of criminals, slaves, or traitors in order to visibly identify them as blemished or morally polluted persons. These individuals were to be avoided particularly in public places. According to Erving Goffman's theory of social stigma, a stigma is an attribute, behavior, or reputation which is socially discrediting in a particular way: it causes an individual to be mentally classified by others in an undesirable, rejected stereotype rather than in an accepted, normal one¹¹.

INTERNALIZED HOMONEGATIVITY

Or self-stigma, «Internalized homonegativity is an important factor related to the poor health of MSM and their inadequate access to relevant services. IH can be defined as a negative attitude towards one's own homosexuality, adopted by MSM themselves in homophobic societies»¹⁰.

TRANS PEOPLE

Describes a person who identifies themselves as transgender, non-binary, or gender nonconforming, including, but not limited to, transsexual, gender-queer, gender-fluid, non-binary, agender, bigender.

⁹ http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/discrimination/?fbclid=IwAR1LXpkbqKBvlgED3C8CDfIA2vKx0HAs4yvVyGf_mITxVgsj0iREy-y7FJ8, accessed 17 February 2019).

¹⁰ Study of Internalized Homonegativity Analytical Report, The Eurasian Coalition on Male Health (ECOM), Tallin, 2018 (<https://ecom.ngo/en/library/internalized-homonegativity/>), accessed 17 February 2019).

¹¹ Goffman, Erving (2009). *Stigma: Notes on the Management of Spoiled Identity*. New York: Simon and Schuster. p. 1.

According to Constitution of the World Health Organization (WHO) (5), «health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity» and «Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures». «The right to health, as with other rights, includes both freedoms and entitlements: 1. Freedoms include the right to control one's health and body (for example, sexual and reproductive rights) and to be free from interference (for example, free from torture and non-consensual medical treatment and experimentation). 2. Entitlements include the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health» (WHO) (6).

The right to health (3) is an integral element of the international human rights law, which sets the norms for the governments. The authoritative sources of norms that form the basis for the right to health are the Universal Declaration of Human Rights (UDHR) (1), International Covenant on Civil and Political Rights (2) and International Covenant on Economic, Social and Cultural Rights – ICESCR(3).

We suggest to read two interesting documents (4,7) by the UN and WHO concerning the right to health of the key affected populations. Here we present just the brief excerpts:

UN statement, on September 2015, titled as Ending violence and discrimination against lesbian, gay, bisexual, trans and intersex people says: «Failure to uphold the human rights of LGBT people and protect them against abuses such as violence and discriminatory laws and practices, constitute serious violations of international human rights law and have a far-reaching impact on society – contributing to increased vulnerability to ill health including HIV infection, social and economic exclusion, putting strain on families and communities, and impacting negatively on economic growth, decent work and progress towards achievement of the future Sustainable Development Goals»(4).

WHO policy brief, in 2015, titled as 'Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations' says: «In all countries and settings key populations are disproportionately affected by HIV. This disproportionate burden reflects both behavior common among members of these populations and specific legal and social issues that increase their vulnerability. Yet HIV services for key populations remain largely inadequate. In many settings HIV incidence in key populations continues to increase, even as incidence stabilizes or declines in the general population»(7).

¹² For further reading on this topic please see References 1-7.

Annex 1: Characteristics of legislative framework regulating crosscutting themes of HIV, MSM/trans, SOGI-based discrimination

Legislative Framework (crosscutting themes of HIV, MSM, LGBT, SOGI-based discrimination)	Armenia	Belarus	Georgia	Kyrgyzstan	North Macedonia
Is there a national law prohibiting discrimination that specifically mentions SOGI in the list of protected grounds?	No	No	Yes	No	No
Is there a national anti-discrimination law with an open list of grounds (but it does not specifically mention SOGI)?	No	No	Yes	No	Yes
Are there any national laws prohibiting discrimination that specifically mention SOGI in limited spheres (such as Labor Code or Education Law or Health Care Law)?	No	No	Yes	No	Yes
Are there specific and clear hate crime provisions in the Criminal Code that protect on the ground of SOGI?	No	No	No	No	No
Are your country's hate crime provisions in the Criminal Code general and not mentioning SOGI?	Yes	Yes	No	Yes	Yes
Does your country have general laws providing for the freedom of assembly and setting rules for the protection of public order?	Yes	Yes	Yes	Yes	Yes
Do LGBT community members report hate crimes to the police without fear of discrimination and victimization?	Yes	No	Yes	No	Yes
Does police provide enough security and support to Pride participants to make sure that Pride participants are not attacked by far right and religious groups during the march?	No	Yes	No	No	Yes

Legislative Framework (crosscutting themes of HIV, MSM, LGBT, SOGI-based discrimination)	Armenia	Belarus	Georgia	Kyrgyzstan	North Macedonia
Is there a law specifically prohibiting freedom of assembly and freedom of speech for LGBT people?	No	No	No	No	No
Are national and/or local authorities banning Pride marches?	No	No	No	No	No
Are there any legal limitations for NGOs providing HIV services to gay men, MSM or trans people?	No	No	No	No	No
Is there an active law about the prohibition of propaganda	No	No	No	No	No
Are there petitions about traditional values (such as family as a union of man and woman, etc.) that also mention LGBT people and/or gender theory?	No	No	Yes	Yes	No
Does your country's Criminal Code (or other legislation) specifically set responsibility for intentional HIV transmission?	Yes	Yes	Yes	Yes	No
Does your country's Criminal Code (or other regulations) set responsibility for unintentional HIV transmission?	Yes	Yes	Yes	Yes	Yes
Do your country's healthcare rules set limitations for gay men, other MSM and/or trans people to become blood donors?	Yes	No	Yes	No	Yes
Do your country's donor screening procedures and/or forms that donors have to fill in require donors to answer questions about their SOGI?	No	No	Yes	No	Yes
Is it possible for an immigrant in your country to get ART freely and regularly?	Yes	Yes	No	Yes	No

Legislative Framework (crosscutting themes of HIV, MSM, LGBT, SOGI-based discrimination)	Armenia	Belarus	Georgia	Kyrgyzstan	North Macedonia
Do trans people have to get medical diagnosis (mental health diagnosis) before receiving access to the gender recognition procedure?	No	Yes	No	Yes	Yes
Are there any other obstacles that might prevent a person from entering the legal gender recognition procedure (such as age limitations (both for minors and for people of elder age), minor children, compulsory medical interventions, etc.)?	No	Yes	No	Yes	No
Are there any sex reassignment and/or gender recognition or other related procedures for trans people set in legal acts (laws, bylaws, protocols, etc.)?	No	Yes	Yes	Yes	No
Is it possible to legally change one's name and gender without third party decision involved (judge, medical commission, etc.)?	No	No	No	No	No
Is there a law regulating legal status of same-sex couples?	No	No	No	No	No
Is there a law allowing same-sex couples to adopt children?	No	No	No	No	No
Do trans people have to divorce (if they are married) before the gender recognition procedure?	No	No	No	No	No

Annex 2: Number of cases by the category of perpetrator

Perpetrator Categories	Total (by year/ category)		Armenia		Belarus		Georgia		Kyrgyzstan		North Macedonia	
	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
Healthcare personnel and/or Institutions	15	26	5	13	1	5		4	5	1	4	3
Police officers, state offi- cials including ministers	13	12			3	4	7	4			3	4
Journalists, representa- tives of private business or other organizations	4	4			3		1	2		1		1
Citizens at public places, in the streets, landlords, family members and etc.	27	26		2	1		26	12				12
Total (by year/country)	59	68	5	15	8	9	34	22	5	2	7	20

Annex 3: Number of cases by the categories of violations

Case Categories	Total (by year/ category)		Armenia		Belarus		Georgia		Kyrgyzstan		North Macedonia	
	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
Denial of Access to Healthcare	2	14	1	8		2		3			1	1
Personal Data Disclosure	3	4	1	1				1	1	1	1	1
HIV-testing Request by Employer	0	1								1		
Hate Speech	27	29	2	6	2	4	16	8	4		3	11
Hate Crime	22	13	1		3		16	8			2	5
Abuse of Authority	5	7			3	3	2	2				2
Total (by year/country)	59	68	5	15	8	9	34	22	5	2	7	20

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