

# COMPARATIVE LEGISLATIVE ANALYSIS

2017-2019

related to LGBTQ rights and HIV  
in 5 EECA countries: Armenia, Belarus,  
Georgia, Kyrgyzstan and North  
Macedonia

2019



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

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## LIST OF ABBREVIATIONS

<b>EECA</b>	Eastern Europe and Central Asia
<b>HIV</b>	Human immunodeficiency virus
<b>LGBT</b>	Lesbian, gay, bisexual and trans people
<b>MSM</b>	Men who have sex with men
<b>NGO</b>	Non-governmental organization
<b>PLHIV</b>	People living with HIV
<b>SOGI</b>	Sexual orientation and gender identity

## LIST OF THE EECA COUNTRIES

Armenia

Kazakhstan

Russia

Azerbaijan

Kyrgyzstan

Tajikistan

Belarus

Moldova

Ukraine

Georgia

North Macedonia

## FIVE COUNTRIES OF THE EECA REGION WERE IN FOCUS OF OUR ANALYSIS IN 2019

Armenia

Kyrgyzstan

Belarus

North Macedonia

Georgia

*Besides, the report contains data for all 11 countries collected by ECOM in 2017 and 2018.*

The goal of this comparative analysis is to define the barriers not allowing gay men, other MSM and trans people to fully enjoy their rights in five EECA countries selected for the assessment in 2019: Armenia, Belarus, Georgia, Kyrgyzstan and North Macedonia. In addition to identifying the existing legal barriers in those countries, this review illustrates trends in the search for solutions to eliminate those barriers both through legislative changes and through the development of relevant law enforcement practices.

To conduct the analysis, in 2018 ECOM developed a methodology and a questionnaire, which was completed with the help of our partners in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, North Macedonia, Tajikistan and Ukraine. In 2019, the methodology was improved, with the comparative analysis covering 2018 data together with 2019 data for five focus countries – Armenia, Belarus, Georgia, Kyrgyzstan and North Macedonia.

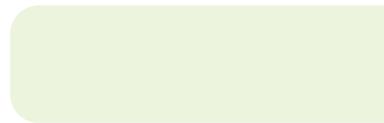
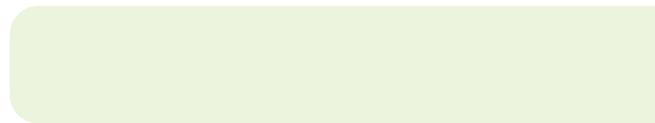
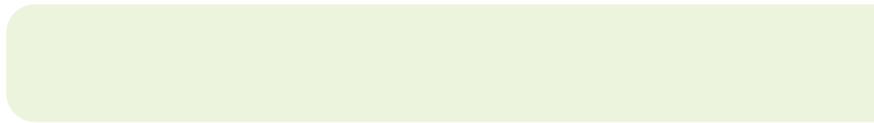
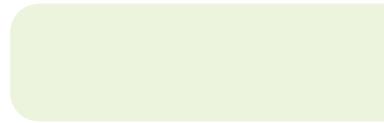
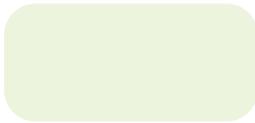
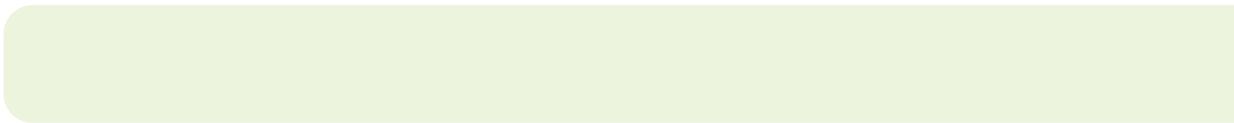
When conducting the analysis, consideration was given to regulations, judicial practices, statements of activists, information received from civil society organizations engaged in human rights activities, messages in mass media, and reports of civil society organizations submitted to the international agencies.

Legislation and law enforcement practices were analyzed in terms of their compliance with the international standards of human rights and freedoms. Consideration was given not only to whether relevant laws are available and comply with the standards, but also whether such laws are accessible to gay men, other MSM and trans people as even the fact that a certain law is available in the country, but some people cannot use it, still means that there are legal barriers.

Besides, when conducting the analysis in 2019, national partners were asked to both define the priority areas for advocacy in future and outline the areas, which are currently not prioritized by the community or in which there are significant barriers because of the public opinion and/or the state being not ready to define them as the advocacy goals in the next few years. Thus, in three of the five countries advocacy of the right to private and family life, especially in terms of the marriage equality, is definitely not among the priorities because the society is very conservative (Georgia and Kyrgyzstan) or because of the readiness of the community itself to pursue such goals (North Macedonia). Whereas in Armenia and Belarus local activists mentioned holding peaceful assemblies and working with police to improve the investigation of hate crimes as the existing problems, they pointed out that their resolution is to be postponed so far.

To present information on the legislation currently in force, in this review we use extracts from regulatory documents or references thereto, which are, unfortunately, not always correct or fail to comply with the international terminology standards. In such cases, the original wording is retained to ensure objective demonstration of the existing regulatory framework and the language used. All the extracts from regulatory documents are given in italics with relevant references. References for data verification are provided at the end of this review.

The information presented in this document may be useful both for civil society organizations and community activists and for the government, when planning advocacy processes, promoting the rights of gay men, other MSM and trans people and eliminating the barriers hindering their access to services and protection of their rights and freedoms.



In 2017-2019, ECOM has been implementing the "Right to Health" regional program to contribute to the growing number of MSM and trans people who have permanent access to the continuum of HIV services in Central and Eastern Europe and Central Asia.

One of the objectives of the program is to strengthen enabling environments in terms of HIV services for MSM and trans people through fighting stigma and discrimination, promoting and protecting human rights, and removing legal and policy barriers.

The program team developed and improved the tools to study and assess the situation with the possibility to exercise the right to health for gay men, other MSM and trans people in the EECA countries.

This research is based on collection and assessment of the information in each country using the methodology<sup>1</sup>, developed specifically to assess the progress in eliminating the legal barriers for gay men, other MSM and trans people in their everyday lives and when seeking HIV and other health services. The research tools allowed analyzing both the data for each separate year (2017-2019) and successive analysis by countries for a certain period. Besides, a comparative analysis in the EECA region is presented, which allows illustrating similar and different trends in the region as well as in separate countries.

The tool to calculate the country scores and collect the basic country information included two main sections: **Legal Barriers** and **Protection**. Thus, both the legal barriers and the existing level of protection of the rights and freedoms<sup>2</sup> of gay men, other MSM and trans people in every country were analyzed in such areas as healthcare, exercising rights to the freedom of expression, peaceful assembly and association for LGBT, possibility of legal name change as well as gender reassignment for trans people, protection from discrimination on the grounds of SOGI as well as opportunities to receive state funding for the organizations providing services to the LGBT community.

### ***In this report, we suggest to view the following cases as legal barriers:***



situations when the existing legislation in the country directly prevents gay men, other MSM and trans people from exercising the same rights that people from the general population have (e.g., prohibition for MSM to be blood donors or requirement to provide HIV status certificates for migrants);

<sup>1</sup> All the tools developed, including tables for the desk research and focus points for further comparative and cumulative analysis by countries and years, may be adjusted to other goals and other populations.

<sup>2</sup> In each of the two sections, questions for each of the areas analyzed were duplicated and took into account various nuances. Full list of the questions is attached in Annex 1.



situation when the existing legislation in the country excludes gay men, other MSM and trans people from different areas of social life by not mentioning their existence (e.g. SOGI not mentioned in the national anti-discrimination laws, lack of gender reassignment procedures).

**In this document, enabling legislation that allows exercising rights and freedoms means:**



situations when the existing laws directly mention SOGI (e.g., SOGI mentioned in the anti-discrimination law or in the Criminal Code);



availability of separate, clear and realistic legal name change as well as gender reassignment procedures for trans people;



situations when the legislation does not mention SOGI but is equally used to protect people irrespective of their characteristics (e.g., in terms of opportunities to exercise rights to the freedom of expression, peaceful assembly and association for LGBT).

To perform cumulative analysis and identify the key problems and trends in the region as well as define the focus of advocacy efforts by countries, data was analyzed over the time for three years for each country separately and in general for the EECA region.

The **Legal Barriers** section allows assessing the number of the existing legal barriers<sup>3</sup> (in laws and other regulations) hindering gay men, other MSM and trans people from exercising their rights and freedoms as compared to heterosexual people.

The second section called **Protection** uses the same yes/no scoring system<sup>4</sup> and shows the number of regulations and law enforcement practices, which create the basis for the protection of gay men, other MSM and trans people in case if their rights and freedoms are violated as well as the level of freedom they enjoy as compared to heterosexual people when they attempt to exercise their rights and freedoms on equal terms.

To prepare the final report for three years (2017-2019) with a focus on analyzing the trends and priorities of advocacy for civil society activists in the region, the existing methodology<sup>5</sup> was used with some amendments. This approach included cumulative and comparative analysis of the data received through desk research for three years using the existing tools. Such data was complemented with the data collected in 2019 in five countries of the region with a focus on the advocacy achievements in 2019 as well as future priorities.

<sup>3</sup> «Yes» response in this section means presence of a certain legal barrier (law or regulation, containing prohibition or restriction for certain actions or rights and freedoms for gay men, other MSM and trans people as compared with heterosexual people). «No» answer in this section means that the same legal norms are applied to all people irrespective of their sexual orientation and/or gender identity, with gay, other MSM and trans people having the same rights as heterosexual people.

<sup>4</sup> A similar assessment approach was used. Each of the questions also offered «yes» or «no» answers, with 1 score assigned for «yes» and 0 – for «no».

<sup>5</sup> The lower the final score of a country is (with a difference between the barriers and the protection), the better is the situation for gay, other MSM and trans people.

For each block of questions, the number of legal barriers existing in the region with a focus on the progress in their elimination and/or the advocacy activities in the recent three years is compared for the five countries selected for analysis in 2019.

Consideration is given not only to the question «Does the level of protection improve with the growth in the number of eliminated barriers?», but also to the question «Does the efficiency of protection depend on other factors?», which will be defined and analyzed in parallel with the successes of 2019 in each of the five countries.

**The existing level of protection in the EECA region and its quality considerably depend not only on the development and introduction of legislative changes, but also have to take into account the development of law enforcement practices and other external factors defining the pace of changes and their quality.**

**Desk research** conducted by the local consultants of ECOM in 11 EECA countries in 2017-2018 allowed answering a number of questions necessary to assess the number and nature of the existing legal barriers as well as their practical impact on the lives of gay men, other MSM and trans people. Based on the responses to structured questions in each country, the project team assessed the country development and the number of existing legal barriers. Besides, elimination of the legal barriers through launching and strengthening anti-discrimination system was analyzed, taking into consideration not only the presence of certain regulations, but also law enforcement practices.

Desk research covered various areas<sup>6</sup>, starting from immigration rules for people living with HIV and ending with access to general health services for gay men, other MSM and trans people. There are also sections with questions on legal protection from discrimination and on the government response to hate crimes and prosecution of the offenders committing such crimes.

The data for 2019 is only available for five selected countries. Comparative analysis of the three-year progress will focus on Armenia, Belarus, Georgia, Kyrgyzstan and North Macedonia.

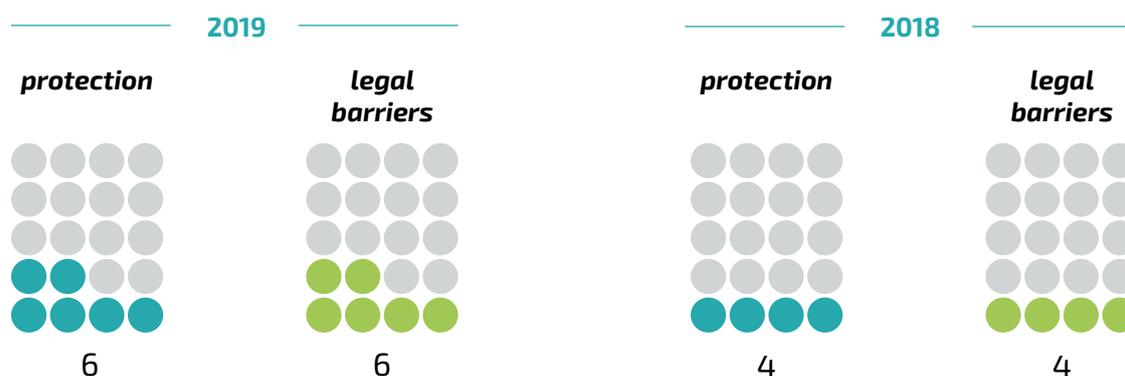
<sup>6</sup> Complete data for all 11 countries of the EECA region in 2018 is available at.

## SCORES OF THE FOCUS COUNTRIES IN 2019 AS COMPARED TO THE PREVIOUS YEAR

### ARMENIA

*The number of legal barriers increased, with the level of rights protection going up.*

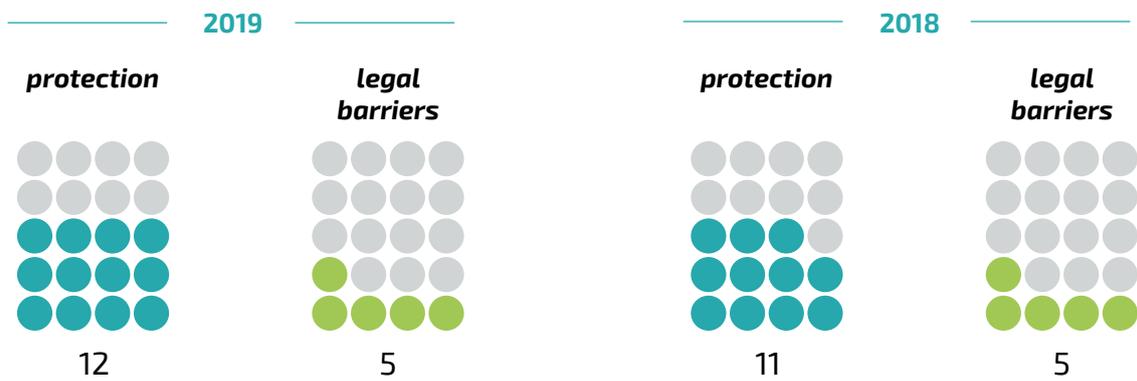
An important achievement of the national activists is introduction of a social contracting mechanism and creation of safe environment both for testing and for further counseling. Besides, it is important to point out improvements in communication among the civil society activists, local authorities and police in maintaining public order when holding peaceful assemblies. However, holding an open public Pride is not possible yet. On the other hand, negative trends in the region, such as the attempts to amend the Criminal Code to restrict the freedom of expression for LGBT (to ban the so-called «gay propaganda»), also influenced Armenia in the reporting period.



### BELARUS

*The number of legal barriers has not changed as compared to 2018, whereas the level of protection increased.*

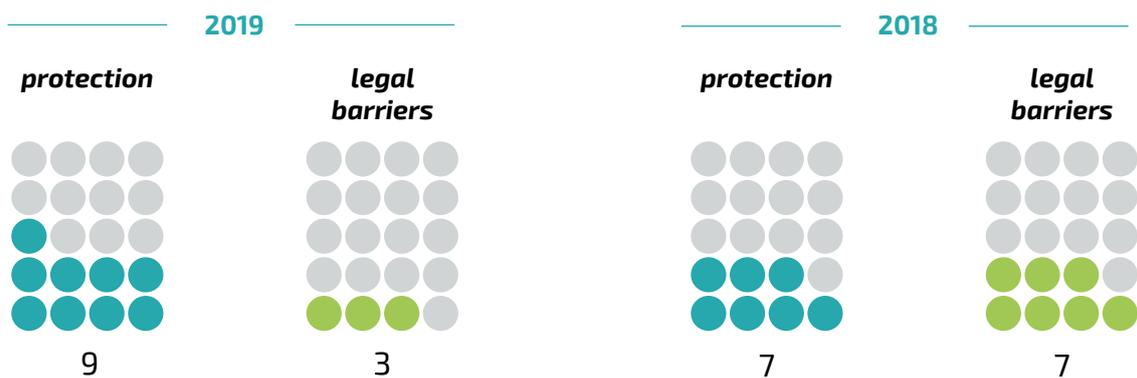
The only legislative innovation in the country is the Decree of the Cabinet of Ministers «On approval of the Regulation on the procedure of payment for the services to maintain public order provided by law enforcement bodies and covering costs related to health care and cleaning services after public events». It is hard to say if it is going to lead to any changes in the possibility to exercise rights to the freedom of expression and peaceful assembly for LGBT — these two rights were not accessible throughout the period analyzed. However, a big success of the national activists is systematic advocacy at the level of UN committees and receiving the resulting recommendations to the government, which turn into clear action plans covering the «problem areas».



 **GEORGIA**

The level of legal barriers decreased significantly – by 4 points, while the level of rights protection grew by 2 points.

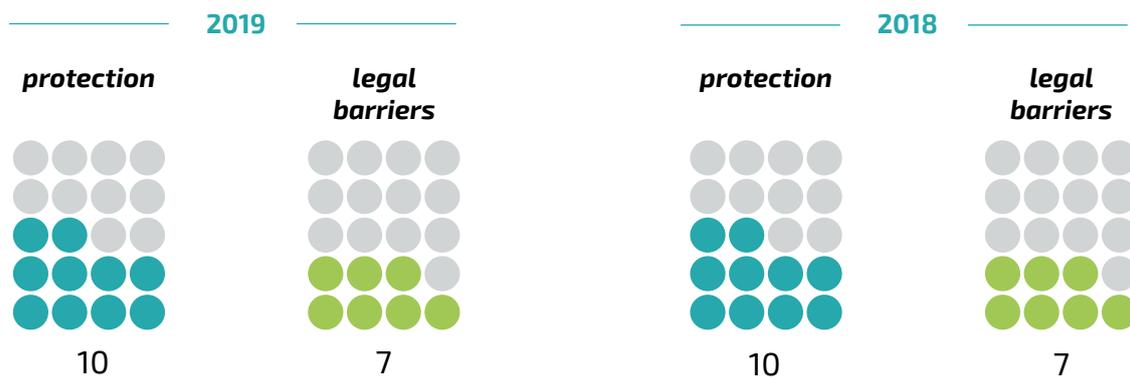
The biggest changes in the analyzed period happened in Georgia, including elimination of the barriers in health care, decision of the Constitution Court of Georgia confirming that the prohibition for gay men, other MSM and trans people to be blood donors is unconstitutional; efforts aimed at educating police officers and build their capacity in investigating hate crimes as well as working with the community to increase the number of cases of such crimes reported to police; strengthening civil society and building its capacity in protecting the rights of LGBT, in particular efforts aimed at improving visibility and providing an opportunity to exercise such rights as the right to the freedom of expression and peaceful assembly on equal terms with other groups, consolidation around Tbilisi Pride 2019 and searching for a compromise with the authorities.



 **KYRGYZSTAN**

*The legal barriers as well as the protection of rights remained at the same level.*

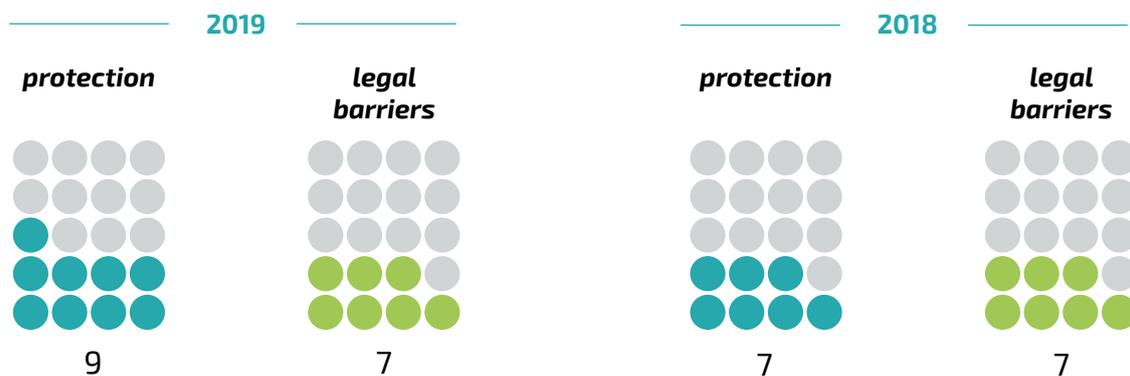
There have been rather significant changes in the country (if measured not only by the number of legislative acts developed and approved), including mobilization and consolidation of the local leaders promoting the rights of LGBT community as well as other human rights organizations. It led to the issue of developing and approving an anti-discrimination law being raised and included into the government plan. Intensive activities are currently carried out to prepare such anti-discrimination draft law for public hearings. Besides, civil society organizations are starting to perform social contracts in delivering HIV prevention services.



 **NORTH MACEDONIA**

*The number of legal barriers remained the same as in 2018, while the level of rights protection increased by 2 points.*

North Macedonia is the country with the biggest legislative changes. In particular, SOGI was added to the list of protected grounds in the national anti-discrimination law and in the Criminal Code to set the responsibility for homophobic and transphobic crimes, with a working group established to further harmonize other laws and regulations and strengthen the anti-discrimination legal framework. The second vital achievement of the local LGBT community was holding the first public Pride in 2019. A working group was created at the Ministry of Justice and is currently active in preparing a draft law setting forth the gender reassignment procedure.



## 1 THE FIRST BARRIER

Relevant for ten countries of the EECA region is the requirement for migrants to submit HIV status certificates to receive entry permits or prolong their right to stay in the country. This situation has not changed. The only country in the region, which does not have this requirement, is North Macedonia.

In 2019, only in Georgia activists plan to make a general assessment of the scope and quality of health services available to migrants in the country, including services for people living with HIV, so that later they can develop the required amendments to the Law on HIV/AIDS and the Criminal Code.

There is an interesting situation in Belarus, where HIV status is not a ground to reject an immigration permit. However, the law makes it mandatory for foreigners to provide HIV status certificates and there is a separate regulation<sup>7</sup>, concerning foreign students, which allows refusing entry permission and/or prolongation of the permanent residence permit, which can potentially be a barrier for PLHIV in terms of getting education.

## 2 THE SECOND IMPORTANT BARRIER

Related to health, which is often overlooked by the governments, is prohibition for MSM to be blood donors.

In Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Belarus there are no mandatory questionnaires with such restrictions to be filled in by blood donors. Direct legislative ban was applied in four countries of the EECA region – Armenia, Georgia, North Macedonia and Ukraine. In 2018 - 2019, the situation changed only in Georgia, where the Constitution Court passed a judgment that such restriction for gay men and other MSM was unconstitutional and it was abolished.

**Armenia,  
North Macedonia**



no resources to support efforts to eliminate the barrier

**Belarus,  
Kyrgyzstan**



no barrier

**Georgia**



barrier eliminated as per judgment of the Constitution Court

<sup>7</sup> List of the medical contraindications for providing training services to foreign citizens and stateless individuals who arrive to the Republic of Belarus to receive education, approved by the Decree of the Ministry of Health N 61 dd. 25 April 2015.

In other countries, there were no changes. This barrier still exists in Armenia and North Macedonia. On the other hand, local activists in Armenia do not define this issue as one requiring an urgent response. This is a question of distribution of funds and efforts in the countries, where the level of development and capacity of LGBT activists is lower than among human rights activists promoting a more general agenda.

In 2019, there were changes in Belarus. In January this year, an amendment to the Criminal Code was approved, allowing to relieve the responsibility for HIV transmission in case if the partner provides informed consent to have sex with a person living with HIV<sup>8</sup>. For Belarus, where legislative changes are rare, it is a huge step for the civil society as it shows that laws can be changed and barriers in exercising rights and freedoms can be eliminated.

<sup>8</sup> Article 157 of the Criminal Code of the Republic of Belarus to be amended adding the following note: «Note. The individual who committed actions stipulated in the first and second parts of the article, may be relieved from the criminal liability in case if another person, who was exposed to HIV or was infected with HIV, was in advance warned about the fact that such individual had the virus and voluntarily agreed to perform any acts, which led to the danger of HIV transmission».

## ACCESS TO STATE FUNDING

This section analyzed the opportunities of funding HIV services from the national and/or local state budget and the way the social contracting mechanism is applied to the organizations providing services to gay men, other MSM and trans people.

Are there any legal limitations for NGOs providing HIV services to gay men, MSM or trans people?



«YES»

0



«NO»

Armenia, Belarus, Georgia, Kyrgyzstan, North Macedonia

While there are no formal restrictions in any of the EECA countries, in Russia and Tajikistan there are barriers for NGOs — the foreign agent law in Russia and lack of opportunity to register any non-governmental organizations in Tajikistan. Similarly, it is nearly impossible to register an NGO in Belarus and Azerbaijan, though there are no formal prohibitions. Thus, this barrier strongly affects not only the possibility for the third sector to take over the delivery of social services, but the development of activism in the country in general. As of 2018, there were cases of NGOs working with MSM and LGBT receiving state funding only in Azerbaijan, Georgia, North Macedonia and Russia.

### Belarus



changes started

### Armenia



successful participation in the call for proposals and provision of services

### Kyrgyzstan



new social contracting program approved for 2019-2020 with engagement of community-based organizations

In 2019, situation in the EECA region improved, with Armenia and Kyrgyzstan joining the list of the countries allocating state funding for NGOs. In late 2018, a social contracting program to procure social services in 2019-2021 was approved in Kyrgyzstan. In May 2019, the Ministry of Social Development announced a call for proposals for NGOs to implement social projects with a total budget exceeding 500 thousand US dollars. Local NGOs, including organizations providing services to the community and/or positioning themselves as LGBTQI organizations, participated in this call for proposals.

In 2019, a local Armenian organization, representing the LGBT community, was awarded a grant by the government to provide services within the social contracting mechanism to fund HIV prevention services and was to start implementing an HIV prevention program among gay men, other MSM and trans people, but because the suggested contracts had some provisions which could lead to disclosure of the beneficiaries' information, the project was launched with some delay as there was a need to amend the contracts. The government committed to introducing the required changes to guarantee safety of the beneficiaries' data.

Transferring the burden of funding health-related social services to the state with mandatory inclusion of all the key populations in the lists of both recipients and providers of services is an important indicator showing how the government takes over the responsibility for public health.

In this context, there are also certain changes in the advocacy themes and approaches in Belarus, where so far there is no practice for the NGOs providing services to gay men, other MSM and trans people to receive funds within the social contracting mechanism and it is still very difficult to register new NGOs. However, in 2019 Belarusian AIDS Network launched a training course to build the capacity of key populations in advocating for the sustainable access to a comprehensive package of HIV services. NGOs working with key populations always raise the issue that the Ministry of Health has not approved the list of services to be provided within the social contracting mechanism as well as the procedure of calculating the cost of such services.

## FREEDOM OF PEACEFUL ASSEMBLY AND FREEDOM OF EXPRESSION



There is a growing demand in the LGBT community to exercise rights to the freedom of expression and freedom of peaceful assembly. It can be seen in the systematic work of local activists and CSOs in the countries of the region with regular attempts to hold Prides and monitor the situation with application of the «gay propaganda» laws (if there is such a risk) and constant monitoring of and response to the threats of endangering the freedom of expression from the side of traditionalist groups.

All the countries of the EECA region have certain legislative procedures for holding peaceful assemblies. Only in some countries of the region, such procedures take the form of notification<sup>9</sup>, i.e. when the civil society only notifies the local and/or national authorities about its intention to conduct a peaceful assembly if a big event is planned requiring police assistance to maintain the public order. In other countries, it is mandatory for CSOs to get permission before holding peaceful assemblies, which allows government authorities to deny such permission.

Among 11 EECA countries, only Russia still has a legislative provision restricting specifically LGBT community (as compared to the general population) in exercising the right to freedom of expression and peaceful assembly – it is article 6.21 of the Code of Administrative Offenses setting the responsibility for the **«promotion of non-traditional sexual relations to minors»**. Within our assessment, we view this article as directly restricting the right to the freedom of peaceful assembly for LGBT community members in the Russian Federation as there is evidence that it is applied in this context to persecute/punish LGBT activists. In other EECA countries, the laws regulating the procedure of conducting peaceful assemblies do not contain any special restrictions, which specifically limit the possibilities of gay men, other MSM and trans people in exercising their right to peaceful assembly.

Comparing data on the presence of any legislative barriers and/or prohibitions with the data on the feasibility of conducting peaceful assemblies and/or data on the previously conducted LGBT peaceful assemblies in the EECA region in general and in the five focus countries in 2019, we can see a slightly different picture. Notification procedures applied to peaceful assemblies do not serve as a sufficient guarantee that such procedures will be used without discrimination<sup>10</sup> against the LGBT community.

<sup>9</sup> If only notifications are required (as in Ukraine, Georgia, Moldova and North Macedonia), the authorities cannot ban a peaceful assembly at their own discretion and need to take legal action if there is a suspicion that such peaceful assembly may jeopardize the public order and security.

<sup>10</sup> We have to distinguish between the situation in North Macedonia, for instance, where LGBT activists have certain issues ensuring that the Pride is conducted safely, and the situation in Belarus, where civil society activists cannot conduct any peaceful assemblies at all. In the second case, the problem is not only about discrimination of LGBT in their attempts to exercise their right to peaceful assembly, but there is a wider problem as the right of all citizens to peaceful assembly is violated without separate groups being discriminated against.

### **Belarus**



issue of peaceful assemblies  
cannot be raised

### **Kyrgyzstan**



holding the first feminist march  
and negotiations with local authorities  
and police regarding unacceptability  
of its prohibition/crackdown

### **Armenia and Georgia**



attempts to negotiate with police  
and local authorities organizing  
closed/half-open events

### **North Macedonia**



first public peaceful Pride  
in the capital city

Thus, despite the need to only notify the government about holding peaceful assemblies, North Macedonia was able to agree on holding a Pride with the local and national authorities only in 2019. The first ever Pride was held in the capital city of North Macedonia, Skopje, in June 2019. The Pride was supported by the government, with several ministers and MPs attending the event. Local activists did not observe any cases of violence during the Pride. However, there was a report of one participant who was attacked after the event. Besides, before the Pride there was a rather big wave of hate speech used against LGBT, especially in social media.

In May 2019, the Armenian activists were able to agree with the police on the maintenance of public order on the half-closed event dedicated to the International Day Against Homophobia and Transphobia (IDAHOT). Such format of events, where the presence of police is still required (while it cannot always be ensured) is an evidence that the law enforcement practices do not comply with the legislative norms<sup>11</sup>.

<sup>11</sup> According to the laws, in Armenia everybody has a right to peaceful assembly, but in practice LGBT activists face attempts of the government authorities to prohibit peaceful assemblies and refusals to maintain public order or ensure the safety of activists from the participants of counter-demonstrations.

It also shows that, while ensuring public order, law enforcers follow not human rights standards or relevant laws, but their own homophobic attitude to the participants of peaceful assemblies, thus justifying their inaction.

In Belarus, there were certain regulatory changes: in early 2019, the Decree of the Cabinet of Ministers N 49 «On approval of the Regulation on the procedure of payment for the services to maintain public order provided by law enforcement bodies and covering costs related to health care and cleaning services after public events» was approved. So far, local activists cannot assess the scope of influence of this innovation in terms of the freedom of assembly or its positive or negative impact as there were no signals from the government yet that the "usual" ban for peaceful assemblies not only for LGBT, but for any group of people, has been abolished.

In Kyrgyzstan, so far there were no coordinated large-scale attempts by the LGBT activists to organize any public events. However, in 2019 feminist groups with support of the LGBT community and some human rights activists received approval and held a public event on March 8 with a big number of participants for Bishkek (about 300 people). Bishkek mayor's office attempted to prohibit the march, but then canceled their decision because of public pressure. About 300 participants attended this peaceful assembly, with approximately 250 police officers securing their safety. The situation before and after the march was very tense due to the calls for violence and personal threats to the march participants, which came both from extremist groups and from some MPs. After the march, a number of activists filed complaints about the incitement of hatred. Some cases were already closed, others are still investigated. Support of this event and things that happened after it triggered a wave of discussions and arguments in the civil society, in particular related to the solidarity among the activists representing different populations. Two biggest LGBT organizations in Kyrgyzstan — Kyrgyz Indigo and Labrys — supported the march and condemned the actions of government authorities.

In 2019, there were no major changes in Georgia. In the recent years<sup>12</sup>, even considering laws generally favorable for LGBT and lack of the necessity to get permissions to hold peaceful assemblies, in Tbilisi there have been no attempts to organize a Pride which could be called successful (even considering the minimum criteria defined in our review for such event to be successful — enough police representatives holding the security line between the participants of the march and counter-demonstrators, adequately responding to the attempts to cross such security line and arresting the aggressive counter-demonstrators, with no physical violence against the demonstrators and the Pride participants being able to follow their planned route with no need of emergency evacuation)<sup>13</sup>. Impossibility to hold a peaceful pride in Georgia is related to two factors. Firstly, the topic of peaceful assemblies of the LGBT community in Tbilisi and in Georgia in general is unacceptable for the society. Secondly, the Georgian police refuses to do their work and provide protection to LGBT activists on equal terms with any other demonstrators. Uncoordinated, insufficient and utterly unprofessional actions of police led to the cases of physical violence during Prides organized in past.

<sup>12</sup> The report analyses data for 2017-2019.

<sup>13</sup> If we assess success using such minimum criteria, we can say that the top-3 leading countries in the EECA region are Ukraine (since 2016), Moldova (since 2018) and North Macedonia (since 2019).

In 2019, local activists made another attempt to agree on holding a Pride in Tbilisi. An immediate reaction followed both from ultra-right activists and from religious leaders. The situation became even tenser, when the Georgian Ministry of Interior announced that it would not be able to ensure the security of the march of LGBT activists and recommended organizing closed events to promote the rights of LGBT community<sup>14</sup>. Responding to the threats of radical groups about the launch of so-called «revolution of batons» against the «gay parade», Georgian law enforcers initiated a criminal case based on article 223 of the Criminal Code<sup>15</sup>. On June 14, Tbilisi Pride organizers announced and held a street campaign in front of the government building to draw public attention to intimidation of the participants of future Pride and homophobic statements about the LGBT community in general. As a result, 28 people were arrested for their attempts to disrupt the event and inflict physical harm. Later, the Georgian Ministry of Interior made a statement that fighting the crimes on the grounds of discrimination and their effective investigation are among its priorities<sup>16</sup>. On July 8, Tbilisi Pride organizers publicly announced that they cancel the peaceful assembly. On the same day, a small group of protesters (about 40 people guided by the organizers of Tbilisi Pride) went to the building of the Ministry of Interior and held an improvised pride as a response to threats and intimidation to demonstrate dignity and solidarity of the LGBT movement<sup>17</sup>.

In Georgia, there is still an urgent need to establish communication between the LGBT community and the general population, reduce the level of homophobia and make sure that police properly performs its functions, in particular in maintaining public order during peaceful assemblies of LGBT community, ensuring adequate response to and investigation of hate incidents.

Another legal barrier, which may impede the use of the freedom of expression by LGBT community, is «gay propaganda» laws or draft laws. Such draft laws, initiated earlier by the traditionalist MPs in Russia, from time to time also appear in other EECA countries. Such draft law is currently being considered in the Parliament of Kyrgyzstan. In 2019, a new attempt to initiate a similar draft laws was observed in Armenia, where a traditionalist party offered to amend the Criminal Code, adding a provision on «prohibition of the propaganda of non-traditional sexual orientation among individuals under 16 years of age».

<sup>14</sup> Source: <https://www.golos-ameriki.ru/a/georgia-lgbt-parade-details/4965282.html>

<sup>15</sup> This article provides for the imprisonment of six to twelve years for the creation of illegal armed groups or participation in them.

<sup>16</sup> Source: [https://ru.espreso.tv/news/2019/06/16/patryarkhyia\\_gruzyy\\_pryzvala\\_ne\\_dopustyt\\_gey\\_prayd\\_v\\_tbylysy\\_vo\\_vremya\\_stolknovenyy\\_mezhdu\\_storonnykamy\\_y\\_protyvnykamy\\_lgbt\\_zaderzhany\\_28\\_chelovek](https://ru.espreso.tv/news/2019/06/16/patryarkhyia_gruzyy_pryzvala_ne_dopustyt_gey_prayd_v_tbylysy_vo_vremya_stolknovenyy_mezhdu_storonnykamy_y_protyvnykamy_lgbt_zaderzhany_28_chelovek)

<sup>17</sup> Source: [https://civil.ge/archives/312596?fbclid=IwAR0RztC6s\\_R7\\_wRa9p24daX7qCW6aAdQssNUZ-GXDKS4zTiZMtBx-VCBRMh4](https://civil.ge/archives/312596?fbclid=IwAR0RztC6s_R7_wRa9p24daX7qCW6aAdQssNUZ-GXDKS4zTiZMtBx-VCBRMh4)

**Belarus, Georgia and North Macedonia**



no draft laws aimed at restricting the freedom of expression for LGBT (no attempts to submit «gay propaganda» laws to the parliaments in 2019)

**Armenia**



a draft law «on protecting children from gay propaganda» developed, which was not supported or adopted by the Parliament

**Kyrgyzstan**



draft law on «prohibition of gay propaganda» is still in the Parliament, though it was not supported



## PROTECTION FROM DISCRIMINATION AND INVESTIGATION OF HATE CRIMES

In 2019, there were no major legislative changes in five focus countries as well as in the region as a whole.

Let us recall that initially only in Georgia SOGI was directly listed among the protected grounds in anti-discrimination law. In North Macedonia, which also has an anti-discrimination law, SOGI was not directly mentioned and in 2017-2018 local activists advocated for including SOGI in the open list of grounds protected from discrimination. Their efforts paid off on 22 May 2019, when the Parliament approved a new version of the «Law on Prohibition of and Protection against Discrimination», which explicitly mentions SOGI in the list of protected grounds. A working group was established to coordinate the changes to be made in other acts because of the amendments introduced into the anti-discrimination law. In particular, SOGI had to be included in the lists of protected grounds in other legislative documents.

In 2018, local activists representing the Coalition for Equality were able to bring up draft anti-discrimination law prepared by them for public discussion in Kyrgyzstan. Currently, this draft law is revised and prepared for repeated public hearings in autumn 2019. As a result of the international advocacy by civil society, in the recent years the government of Kyrgyzstan received numerous recommendations to develop and approve an anti-discrimination law. This task was listed in the national action plan to promote human rights, which is to be implemented by 2021.

Armenia and Belarus received similar recommendations from the UN bodies. However, in those countries such draft laws are developed neither by MPs nor by human rights activists. They could use the experience of Kyrgyzstan, where there is an Anti-Discrimination Coalition, which includes both community organizations and other human rights organizations.

Among all the EECA countries, only in Georgia and North Macedonia SOGI is explicitly mentioned in the list of aggravating circumstances when defining the punishment for offenses.

However, in Georgia police is ineffective in its efforts to record, investigate and punish hate crimes against the LGBT community members.

The situation in North Macedonia is somewhat better. In particular, in the recent years there have been a growing number of complaints filed with police, which was largely due to the assistance and support of the victims, which is systematically provided by human rights and LGBT organizations.

A minor progress in police operation was registered by the activists in Kyrgyzstan, where Kyrgyz Indigo helps victims to file complaints with police, leading to the growing number of reported cases. Hate crimes, which were earlier silenced, are now reported both within civil society monitoring and within the statistics of law enforcement bodies. The situation is worse for trans women and sex workers, who can fall victims of hate crimes, in particular beating and humiliation from the side of police officers. In such cases, victims often refuse to report the hate crimes committed against them to police as they fear that it will only make things worse

### **Georgia**



lack of effective investigation, civil society is just starting to receive signals on the readiness to change approaches to investigation

### **Kyrgyzstan**



the number of cases reported to police is growing as a result of activists' efforts and creating of a victim support system

### **North Macedonia**



a network of legal support for victims was established in a number of NGOs, there are lawyers providing assistance in drafting complaints to police, with the number of such complaints growing significantly

In other countries, there were no changes in the protection from discrimination and in the investigation of hate crimes. The victim support systems implemented by local civil society organizations are in various formats available in four countries – Armenia, Georgia, Kyrgyzstan and North Macedonia. In Belarus, such support is not provided as there are no formally registered LGBT organizations and because people are afraid to seek help in human rights organizations. This gap in resources may be the factor, which does not allow assessing the real scope of the problem of hate crimes in the country.

## LEGAL BARRIERS AND PROCEDURES FOR TRANS PEOPLE

The main barrier for trans people which still exists in some countries of the region is availability of the gender reassignment procedures officially approved in the format of laws, orders or medical protocols. It is not only about medical services for trans people but also about the issues related to legal gender recognition as well as accompanying consultations and services.

There have been no changes in five focus countries in terms of developing and legislative approval of such procedures. In the countries where such procedures existed, there were no major steps to set up any formal procedures, which would regulate both medical and legal aspects of transition.

The other part of transition related to the legal change of name, passport and other identification documents and interaction with the state agencies in this regard is the most complicated and less effectively regulated in EECA countries. In neither of the five focus countries, it is possible to have legal gender recognition in documents at the request of an individual without going to court. The only exceptions are the countries, where legal gender recognition is linked with an approved medical procedure, so the problem in this case is that the patient is not able to change his legal documents before going through gender reassignment surgeries.

Are there any gender reassignment and/or gender recognition or other related procedures for trans people set in legal acts (laws, bylaws, protocols, etc.)?



«YES»  
Belarus  
Kyrgyzstan



«NO»  
North Macedonia,  
Armenia, Georgia

A typical issue for the region is the situation when national laws define only certain aspects of the procedure necessary for trans people, while other aspects remain unregulated and as a result trans people are not able to complete their transition within the existing legal mechanisms with no involvement of courts or lawyers.

In 2018, a new problem was identified in Kyrgyzstan, which can lead to violation of the right to private life and bears a threat of disclosing the status of trans people. Activists received confirmation that personal identifiers (IDs) are not changed after transitioning. Thus, it is easy to define what the person's gender was before gender reassignment. The fact is that such IDs are received only once for the whole life. However, activists made an analysis and found out that a special regulation allows changing IDs in certain cases, such as the need to change birth date, two or more identical IDs or technical errors. If this list was supplemented with another ground for changing ID, such as gender reassignment, it would allow trans people to change their IDs.

### Armenia



issues of gender reassignment and advocating for developing and adopting relevant procedures were not the focus of civil society's activities in 2019

### Georgia



civil society raises the issue of the need to develop a procedure at the Ministry of Health, with the first constitutional complaint submitted

### North Macedonia



ECHR confirmed that the lack of relevant procedure violates article 8 of the Convention, with the Ministry of Justice starting to develop such a procedure with representatives of relevant human rights organizations being part of the working group

Only North Macedonia, which is one of the three countries of the region, where there is no procedure of gender transitioning, started developing relevant laws and regulations in 2019. The reason of such progress in this area was resolution of the European Court of Human Rights regarding case of X against North Macedonia dd. 17 January 2019<sup>18</sup>. In this resolution, the Court confirmed that lack of a clearly regulated gender reassignment procedure in the country violates article 8 of the European Convention on Human Rights, i.e. the right to private and family life.

*The court concluded that the existing legal framework fails to contain «quick, transparent and accessible procedures» for gender recognition. Such legislative gaps «leave the applicant in a situation of distressing uncertainty vis-à-vis his private life and the recognition of his identity»<sup>19</sup>.*

After this judgment came into force and was published, the Ministry of Justice started working on developing a procedure engaging representatives of the human rights organizations working in this area to a relevant working group.

<sup>18</sup> The case X v FYR Macedonia (Application no. 29683/16) from 17.01.2019, full text of the Court judgment in English is available at.

<sup>19</sup> Quote from the Court judgment, paragraph 70.

## ADVOCACY PRIORITIES SELECTED BY THE LOCAL ACTIVISTS

When we conducted our assessment in 2019, we asked local activists to rank the issues, which remain unresolved in the focus countries and hinder LGBT people from fully enjoying their human rights. All the problems existing in the region, such as the lack of legislative guarantees of certain rights and the problems related to the barriers faced in practice when attempting to exercise a certain right, were consolidated in one table (Annex 2) to rank them based on five possible scenarios to help us define the priority issues, which local activists are ready to focus on in future as well as the «bottlenecks», for which currently resources are lacking or which cannot be resolved taking into account the existing political and social conditions in the countries.

### ARMENIA

#### PRIORITY ISSUES

advocating for an anti-discrimination law

advocating for developing an adequate gender reassignment procedure

abolishing criminalization of HIV transmission

#### ISSUES FOR WHICH THERE ARE NO RESOURCES/ADVOCACY WINDOW

improving the efficiency of hate crime investigation

holding peaceful assemblies

## BELARUS

### PRIORITY ISSUES

advocating for the access to social contracting

advocating for an anti-discrimination law

### ISSUES FOR WHICH THERE ARE NO RESOURCES/ADVOCACY WINDOW

advocating for developing an adequate gender reassignment procedure

advocating for the right to exercise the freedom of peaceful assembly

## GEORGIA

### PRIORITY ISSUES

abolishing criminalization of HIV transmission

advocating for developing an adequate gender reassignment procedure

working with police to sensitize police officers and improve the investigation of hate crimes

### ISSUES FOR WHICH THERE ARE NO RESOURCES/ADVOCACY WINDOW

advocating for the access to social contracting

advocating for equal marriages

## KYRGYZSTAN

### PRIORITY ISSUES

advocating for anti-discrimination laws

advocating for developing an adequate gender reassignment procedure

Working with law enforcement bodies to ensure they understand their obligation to provide adequate protection to LGBT community during equality marches and the importance of providing such protection

### ISSUES FOR WHICH THERE ARE NO RESOURCES/ADVOCACY WINDOW

abolishing the provision on criminalization of HIV transmission

advocating for equal marriages

## NORTH MACEDONIA

### PRIORITY ISSUES

advocating for developing an adequate gender reassignment procedure

investigating hate crimes

### ISSUES FOR WHICH THERE ARE NO RESOURCES/ADVOCACY WINDOW

advocating for equal marriages

abolishing criminalization of HIV transmission

## GENERAL RECOMMENDATIONS FOR ADVOCACY

In this sub-section, we point out general recommendations by the topics analyzed above. Those recommendations are mainly relevant for all 11 countries of the EECA region with minor amendments in cases when certain recommendations have already been implemented.



### HIV PREVENTION AND ACCESS TO TREATMENT

- cancel regulations, which require immigrants to submit HIV status certificates;
- change the rules of providing ART to non-residents and provide access to treatment to all people on the territory of the country to avoid treatment interruption;
- cancel criminal responsibility for HIV transmission;



### BLOOD DONATION AND HEALTH CARE

- enforce the procedures to ensure non-disclosure of HIV status and SOGI of people who seek health services;
- remove any questions about SOGI and lifestyle discriminating against gay men and other MSM and preventing them from being blood donors from current regulations<sup>20</sup>;



### MEDICAL SERVICES FOR TRANS PEOPLE AND LEGAL GENDER RECOGNITION PROCEDURES

- embed the gender reassignment procedure in laws;
- define the national body responsible for the quality of medical services provided to trans people;
- set forth the legal gender recognition procedure with no linkage to any medical manipulations;
- include medical services for trans people within gender reassignment procedure into the list of services covered from the state budget;

<sup>20</sup> Achieved in Georgia.



## PROTECTION FROM ALL FORMS OF DISCRIMINATION

- approve separate anti-discrimination laws in line with the minimum standards set forth by the international treaty bodies – open list of protected grounds, including SOGI, definition of various forms of discrimination, mechanism of control over the enforcement of such laws and responsibility for discrimination<sup>21</sup>;
- in the countries where separate anti-discrimination laws already exist, SOGI should be included into the lists of protected grounds in all such laws;
- introduce changes into Criminal Codes to set forth the responsibility for hate crimes on certain grounds, including SOGI<sup>22</sup>;
- train police officers, representatives of prosecutor's offices and judiciary to effectively document, investigate, qualify and handle reports of hate crimes as crimes which are particularly dangerous for the society;
- ensure national mechanisms to monitor the investigation of hate crimes;



## СВОБОДА СЛОВА И СВОБОДА АССОЦИАЦИЙ

- abolish the laws and draft laws on the so called «gay propaganda»;
- make sure that LGBT on equal terms with any other social groups can exercise the freedom of expression and peaceful assembly and ensure the security of such peaceful assemblies<sup>23</sup>;
- introduce changes into the NGO registration procedures and enable the organizations representing the interests of LGBT community to register associations, conduct their activities and participate in calls for proposals to receive governmental support from the local budgets on equal terms with any other civil society actors in the country<sup>24</sup>;
- ensure public order and security of the LGBT community members when conducting peaceful assemblies and public events;
- guarantee effective public investigation of all the cases of attacks on LGBT community members during the previous peaceful assemblies in EECA countries and hold the offenders accountable;

<sup>21</sup> Achieved in Georgia and North Macedonia.

<sup>22</sup> Achieved in Georgia and North Macedonia.

<sup>23</sup> Achieved in North Macedonia.

<sup>24</sup> Changes concerning the access to social contracting mechanism have been to a certain extent implemented in Armenia, Kyrgyzstan and North Macedonia.



## PRIVATE AND FAMILY LIFE

- legalize same-sex marriages or partnerships in line with PACE Resolution 1547 (2007);
- regulate the possibility for homosexual couples to settle property-related matters (including partition of property, maintenance obligations, inheritance rights and other matters that are regulated for people with registered marriages) on equal terms with heterosexual couples;
- amend the adoption rules to include same-sex couples in the list of those who can adopt a child together.



