

**NATIONAL REPORT ON THE VIOLATIONS
OF HUMAN RIGHTS OF GAY MEN, OTHER
MSM AND TRANS PEOPLE, IN PARTICULAR
THE RIGHT TO HEALTH, IN GEORGIA IN 2018**

2019



National report on the violation of human rights of gay men, other MSM and trans people, in particular right to health, in Georgia in 2018.

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Equality Movement is a non-profit non-governmental organization that aims at creating equal rights and opportunities for lesbian, gay, bisexual, transgender, queer and intersex persons and women in Georgia; fostering their integration into society by the means of empowering LGBTQ community and women, carrying out awareness activities on LGBTQ and women rights issues, and advocating their interests. Thus Equality Movement provides social and legal services to empower and mobilize LGBTQ community and women, as well as public awareness rising and policy advocacy interventions.

www.equality.ge

www.facebook.com/equalitymovementgeorgia/

Abbreviations

HIV - Human Immunodeficiency Virus

AIDS - Acquired Immune Deficiency Syndrome

PLHIV – people who live with HIV

LGBT - Lesbian, Gay, Bisexual, and Transgender people

MSM - men who have sex with men

Trans - people who have a gender identity or gender expression that differs from their birth assigned sex

Intersex – people who are born with any of several variations in sex characteristics including chromosomes, gonads, sex hormones, or genitals that, according to the UN Office of the High Commissioner for Human Rights, "do not fit the typical definitions for male or female bodies"

SOGI - sexual orientation and gender identity

NGO - non-governmental organization

CSOs - civil society organizations, umbrella term which includes non-governmental organizations, professional associations, and community organizations

UN – United Nations Organization

UNAIDS - The Joint United Nations Programme on HIV and AIDS

ECOM - Eurasian Coalition on Male Health

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I. Introduction

Georgia took many steps forward by offering legal protections of the human rights of LGBT people such as accepting anti-discrimination law in 2014 along with establishing Public Defender's (Ombudsperson) Office and creating Human Rights Department within the Ministry of Internal Affairs in 2018. However, despite the existence of anti-discrimination and hate crimes legislation including on the grounds of sexual orientation and gender identity, discrimination and violence against LGBT people still persists and implementation of existing legislation is lacking. Surveys of public opinion¹ also show high level of negative attitudes, highlighting the gap between legislation and reality on the ground. Another indicator that shows the gap between legislation/policies and real everyday life is the immigration rate of LGBT persons. Even though there is no official governmental statistical data, Equality Movement has counted around 50 cases of LGBT persons leaving Georgia and asking for asylum in different European countries in 2018.

The following report describes the situation with the human rights of **gay men, other MSM, and trans people**, in particular the right to health, and includes a brief legislative analysis, information on the documented cases of human rights violations of LGBT persons, conclusions and recommendations.

II. Methodology of Data Collection - Cases of Human Rights Violations

Cases were collected by "Equality Movement" based on the protocol developed by Eurasian Coalition on Male Health (ECOM) within the regional program 'Right to Health'. The information about the cases was collected as a result of the interviews with the legal aid program beneficiaries of Equality Movement and the monitoring of public events organized LGBT activists and/or organizations during 2018 in Georgia.

III. National Legislation and Policy Analysis

(The right to health and other human rights of gay men, MSM and Trans people).

During the last 10-15 years Georgia took several important steps forward to implement international and European standards and incorporate principles of equality of human rights for all groups of people, including PLWH, gay men, other MSM and trans people into the national legislation.

Georgia has adopted the Law on elimination of all forms of discrimination that includes sexual orientation and gender identity among protected grounds in 2014, and also made corresponding amendments to other key norms that regulate different areas of public life. All the amendments provide prohibition of discrimination on the grounds of sex and health status according to General Comments of the Committee on Economic, Social and Cultural Rights and UNAIDS policy guidance.

The body on the enforcement of the law has been allocated Public Defender's Office (PDO) and the special department of Equality has been established within it. The department may be deemed as quasi-judicial body, with the authorization to examine cases of discrimination and make relevant recommendation or general proposals. However, the body faces some essential problems as the legal force of its decisions is not binding for the private sector; they even do not have a legal obligation to cooperate with the PDO, etc.

¹ For example, according to a national survey among respondents of 14 to 29 y.o. conducted by the *Friedrich Ebert Stiftung*, 44 % of the respondents showed distrust toward LGBT persons and would not be happy if a homosexual person or couple moved into their neighborhood. See: <http://library.fes.de/pdf-files/bueros/georgien/13150.pdf>.

The Criminal Code of Georgia also considers motives, based on sex, sexual orientation and gender identity as aggravating circumstance for all relevant crimes, provided for by the Criminal Code. This rule corresponds to requirements, outlined in the recommendations of the Council of Europe Committee of Ministers and Jogjakarta principles².

However, despite of strengthened criminal responsibility for hate crimes, such violations do not lead to proper investigation. The reason for this is usually either the homo/transphobic attitudes in the police or the absence of knowledge about hate crimes.

Ministry of Internal affairs has created the Human rights Department within its system in January 2018. One of the main duties of the following department is to monitor the investigation of hate crime cases. In the process of monitoring the hate crime cases, the department actively communicates with CSOs.

Unlike the Criminal Code of Georgia, the Administrative Offences Code doesn't include bias motive as an aggravating circumstance in the cases of administrative offences. Moreover, the information about the cases of administrative offences that were committed on the bias motive is not recorded by the police.

A major step forward on the way of combating discrimination towards gay men, other MSM is lifting blood donation ban for men who have sex with men. But the regulation (the order by the Minister of Health) still poses ten years ban from the last sexual act on the blood donation for MSM population. The following regulation was challenged by Equality Movement in the constitutional court in 2018 and the legal proceedings are still in progress.

It must be mentioned that Georgian legislation criminalizes transmission of HIV by PLHIV. Article 131 of the Criminal Code of Georgia establishes the responsibility for creating a threat of "intentional infection of another person with AIDS", the punishment is prison term for up to three to five years. Infecting intentionally other person with AIDS is punished by imprisonment for up to four to seven years.

The law on HIV infection/AIDS adopted in 2009 is still in a place. This Law defines the basic principles for taking response measures against HIV infection/AIDS, and matters related to the testing of physical persons for HIV infection, and the care and treatment of persons infected with HIV/ill with AIDS, as well as the rights and obligations of persons infected with HIV/ill with AIDS, and of medical workers. It should be noted that there are no separate laws/regulations for other sexually transmitted infections or viruses. HIV is standing out, being regulated with the separate law of Georgia.

Legislation on legal gender recognition (changing legal gender and related procedures) remains as a challenge for Georgia. Georgian legislation does not ensure full legal recognition person's changed gender in all aspects of life; in particular, it doesn't ensure change gender in official documents if the applicant doesn't undergo gender confirmation surgery. Therefore, according to Georgian laws and practice surgical intervention is mandatory and only way for the gender recognition.

² The Yogyakarta Principles is a document about human rights in the areas of sexual orientation and gender identity, published as the outcome of an international meeting of human rights groups in Yogyakarta, Indonesia, in November 2006

IV. Documented Cases of Human Rights Violations

Cases documented by Equality Movement

Case N1: (Discrimination – Right to Health)

In October 2018, Equality Movement was contacted by a transgender woman K.K., a citizen of Azerbaijan, who had tuberculosis in severe form. At the same time they turned out to have pneumonia. With the help of Equality Movement, beneficiary called an ambulance on October 22. According to the medical personnel, they had right to take the patient only to the Tuberculosis Center - the ambulance would not transfer them to any other facilities. K.K., accompanied by the social worker of Equality Movement, was transferred to the Tuberculosis Center.

Disdainful attitude towards the patient from the doctors on duty has to be noted. They were using phrases like "Is it a girl or a boy?", "Are they wearing nail polish?", "Seems like you were at a gay club and that's why you're sick."

The facility finally refused to hospitalize K.K. because they were the citizen of a foreign country. In addition, they refused to provide any paid services. Despite the fact that the social worker mentioned the severity of the beneficiary's health issues, they denied all kinds of services, including tests or hospitalization of the patient in the clinic.

Potentially violated right: Right to Health

Grounds for discrimination: Gender identity & citizenship

Location: Tbilisi

Potential discriminating entity: Legal Entity (Medical facility) and a doctor.

Legal proceedings: in progress.

Case N2 (Discrimination – Right to Health)

On September 3, 2018, N.G. who identifies as a gay man and serves a prison sentence in Tbilisi, approached Equality Movement asking for the legal aid. N.G. reported that he had some health problems but the medical personnel (2 persons) did not pay enough attention and did not perceive the issue seriously. The medical personnel did not provide medicines. Also, according to N.G., he was being verbally insulted; the doctors/medical workers were expressing doubts about his mental health condition, not in caring but in insulting and disqualifying way.

Equality Movement approached the Public Defender and requested to study the situation and take appropriate measures.

Potentially violated right: Right to Health

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential discriminating entity: individuals

Legal proceedings: in progress.

Case N3 (Breach of confidentiality – revealing patient’s HIV status – Right to Health)

In April, G.K. approached Equality Movement for the legal consultation. According to G.K. AIDs Center revealed the information about G.K’s HIV status to another person - X.X. who was asking for Post-Exposure Prophylaxis (PEP) in the AIDs Center. According to G.K. the doctor of AIDs Center told X.X. that they would only provide PEP if he told the doctor the name of his sexual partner who had unprotected sex with and if this person would happen to be in the data base of HIV positive persons – involved in the treatment program at the AIDs Center. AIDs Center confirmed that they asked X.X. the name of his sexual partner that he had the unprotected sexual contact with and they checked the name of G.K. in the following data base. According to AIDs Center this is the practice that is established while providing PEP for the clients. Also, according to AIDs Center and other relevant stakeholders there is no protocol for delivering PEP unlike PrEP (Pre-Exposure Prophylaxis) where the Ministry of Health has adopted the protocol.

Potentially violated right: Right to Health

Grounds for discrimination: Health status

Location: Tbilisi

Potential discriminating entity: Medical facility

Legal proceedings: in progress

Case N4 (Breach of confidentiality – revealing patient’s HIV status – Right to Health)

In January 2018, B.K. gay man disclosed his HIV positive status to a doctor while receiving dental service at the clinic located near his house. After several minutes from finishing the procedures, B.K. had to return to the clinic to ask questions regarding the prescription, when he overheard the dentist’s phone call. The dentist was talking on the phone with an unknown person and disclosing the patient’s HIV status to them.

Equality Movement contacted the Office of the Personal Data Protection Inspector. An incident was not identified as declassification of personal data, although the medical clinic was given the recommendation to not process personal data without appropriate reason.

Later B.K. informed Equality Movement that the dentist most probably spread the information about his HIV status to the neighbors and due to the hostile environment he had to change living address and move to another neighborhood.

Potentially violated right: Right to Health

Grounds for discrimination: Health condition - HIV positive status

Location: Tbilisi

Potential perpetrator: Individual (a doctor)

Legal proceedings: are finished. Personal Data Protection Inspector studied the case and didn’t identify the rights violation. PDPI issued general recommendation towards the clinic.

Case N5: (Discrimination and Violation of Freedom of Expression)

On September 9, 2018, during Georgia-Latvia game LGBT community members and activists gathered to support the football player Guram Kashia and to stand up for LGBT rights.

LGBT activists had decided to thank Guram Kashia because of his support to the LGBT community by bringing supportive banners and posters at the stadium. However, most of the LGBT activists were deprived of LGBT symbols by force and were not allowed to take them inside the stadium. The law enforcement officers were mobilized on the site, they searched the fans and in case of detecting LGBT symbols and flags, they forced the guests to leave them at the entrance. The fans were only allowed to take those banners inside, in which Guram Kashia did not have the LGBT armband. It should be noted that the activists were acting in full compliance with the Georgian legislation and Dinamo stadium rules. Despite the censorship by the law enforcers, several activists were able to secretly take certain attributes inside the stadium. However, as soon as the LGBT activists decided to publicly wave the rainbow flag, the police took it away forcefully.

The employees of the Ministry of Internal Affairs of Georgia used unreasonable force and engaged in discriminative acts, which resulted in limiting of freedom of expression of LGBT activists. It should also be noted that according to the MIA representatives, they were guided by the instructions of the Football Federation, which had issued a notice about the prohibition of any symbols at the stadium. However, as the football federation officially explained later, they never set such restrictions.

Equality Movement along with the other human rights organizations issued the statement³ assessing the following incident as a restriction of freedom of expression of LGBT activists by law enforcement agencies based on the discriminatory motive, which took place at Dinamo stadium.

Potentially violated right: Right to equality (Art. 14), freedom of expression (Art. 24) of the Constitution of Georgia

Grounds for discrimination: Sexual orientation and gender identity

Location: Tbilisi

Potential discriminating entity: Ministry of Internal Affairs.

Legal proceedings: in progress.

Case N6 (Discrimination and harassment at the workplace)

On July 10, 2018 A.D. who identifies as a gay man approached Equality Movement for legal aid. According to his information, A.D. was the victim of discrimination and harassment at his workplace in Tbilisi. He reported that his colleagues were bullying him by making homophobic comments on his sexual identity.

Equality Movement provided legal consultation for A.D. and submitted a statement to A.D.'s employee asking to ensure equal and safe working environment.

Potentially violated rights: Right to equality (Art. 14), freedom to develop their own personality (Art. 16), Right to inviolability of honor and dignity (Art. 17) and right to inviolability of private life (Art. 20) of the Constitution of Georgia

³<http://www.equality.ge/en/statement-regarding-censorship-lgbt-symbols-dinamo-stadium/>

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential discriminating entity: individuals

Legal proceedings: finished.

Case N7 (Hate speech - incitement to hatred towards members of the LGBT community)

In May 2018, Information Center 'Jikha' (regional media outlet), at different times, in the pre-May 17 period, published homophobic content. Later, on May 20, 2018 they shared the video where Levan Sutidze was giving the speech during the demonstration held on IDAHOT and where he supported LGBT community and criticized homophobia including the attitudes of the Orthodox Church. The video was shared by 'Jikha' on their Facebook page alongside the comment „Caution! The number of openly antichrist-followers in Georgia is increasing.”

Equality Movement sued 'Jikha' in the Georgian Charter of Journalistic Ethics.

Potentially violated right: Degrading the honor and dignity of citizens due to their affiliation to the LGBTQ community

Ground for discrimination: Sexual orientation

Location: Jikha (Samegrelo region)

Potential discriminating entity: Legal entity

Legal Proceedings: finished. By the decision of 21 July 2018, the Charter of Journalistic Ethics found that the journalist (not identified) of Information Center 'Jikha' violated the 7th principle of the Charter⁴ which forbids encouraging discrimination by journalists.

Case N8 (Discrimination)

On March 30, 2018, the same-sex couple - G.M. and his partner - rented an apartment in Tbilisi. In this period of time G.M. and his partner were shot in the video for the civil partnership campaign by Equality Movement which went viral. G.M. and his partner thought that the owner saw the video and found out that the tenants were gay men which became the reason to terminate the agreement.

With the help of Equality Movement, dispute ended with settlement. The agreement was not terminated. No additional measures were taken per beneficiary's decision.

Potentially violated right: Right to inviolability of honor and dignity (Art. 17 of The Constitution of Georgia) and right to inviolability of private life (Art. 20 of The Constitution of Georgia)

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential discriminating individual: Natural entity

Legal Proceedings: finished. Equality Movement used mediation as a method to solve the dispute. No additional measures were taken per beneficiary's decision.

⁴ Decision on case Equality movement v. "Jikha" <https://goo.gl/2cDqra>

Case N9 (Hate crime)

On the evening of September 28, 2018, an informational meeting was being held in the office of the NGO Equality Movement in Tbilisi, which was attended by approximately 30 persons. People participating in the meeting were smoking in the backyard of the office of the organization. There is another house in the yard where the neighboring family resides. At around 22:00-22:30 the woman living in the neighboring house addressed the guests with yelling and aggressive attitude. Her irritation was caused by the noise made by the organization's guests. She threatened the guests in front of the office for several minutes using the following phrases: "We will force you to move out", "You will see what will happen to you soon." Due to this incident, by the decision of Equality Movement, the event was terminated and the organization's staff asked the guests to leave the office. The vast majority of guests left the organization within 20 minutes. At about 23:00, only few employees and guests were left in the office of the organization. Four of them – M.K., S.J., A.B., and M.K., were in front of the office in the street where they were waiting for a taxi. Another four people – V.K., R.K., T.E., and A.U., – went to the back door of the organization to lock it and then walk through the backyard out towards the street. When the four activists were in the yard, a man from the neighboring house approached them. He was verbally insulting them and then he attacked physically. The attacker was trying to choke one of the activists for a few seconds. In this process, the attacker was cursing, using swear words and phrases such as "I will kill you, chickens", "Who gave you the rights" and so on. Suddenly the attacker ran into his house to bring an unidentified item. This situation was witnessed by M. K., who was on the other side of the gate and assisted V.K, R.K, T.E, A.U to open the gate of the backyard while the attacker was in his house. M.K. recorded the video depicting this situation. Soon, the attacker went out on the street as well and went to his car to take something, while continuing threatening the activists. He was referring to the thing he was planning to take from the car in the context of the purpose of killing the activists. His family and neighbors tried to stop him. The activists present had impression that the attacker was threatening by the use of a firearm which supposedly was in the car. Due to the fear, the activists ran and hid behind other cars.

It is noteworthy that the Ministry of Internal Affairs released a statement on September 29, the day after the incident, which evaluated the incident as a two-sided confrontation. The assessment of the violent incident by the MIA as two-sided confrontation, where the aggressor and the victims are seen as equal sides, misses the accurate evaluation of the legal and social aspects of the nature of such violence and creates room for the suspicion of the bias of the law enforcement authorities. Moreover, the statement was released within the first days of the investigation, without proper examination and study, and such action reduces trust in the ongoing investigation.

Equality Movement's office was closed due to the risks of violence and potential escalation of the situation. The staff of Equality Movement wasn't able to provide the HIV related and other services for two weeks until Equality Movement made a decision of moving to the different location and renting the new office.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individual

Legal proceedings: in progress. The investigation is on-going. The attacker has not yet been detained by the police.

Case N10 (Hate Crime)

On September 15, 2018 in Tbilisi T.D. who identifies as a gay man was attacked verbally and physically near his apartment building by some young men. According to T.D., this was not the first case and he was often bullied and insulted on homophobic grounds while moving in and out of his apartment building. As T.D. reports, the boys were laughing at him, making fun of his clothing style and walking manners and called him 'pederast'. But this time, on September 15, one of the boys threw a stone on T.D. which prompted him to ask legal help to Equality Movement.

T.D. approached police with the help of Equality Movement.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings: finished. Police didn't start the investigation. Police identified the attackers and verbally warned them that if the similar actions were repeated they would be held responsible before the law.

Case N11 (Hate Crime)

On September 4, 2018, T.K. who identifies as a gay man and I.S. who identifies as a lesbian woman were verbally insulted in Tbilisi in a 'Bauhaus' café. In the bathroom line of a café some unknown persons asked T.K. to be a "gentleman" and let the girl use the bathroom before him. T.K. refused the following which became the reason for them to start swearing and verbally insulting T.K. The following persons were calling T.K. "pederast". They also asked I.S. – the friend of T.K. if she was a man or a woman and if she was a woman, "there was no point in talking with her".

T.K. called the police. Equality Movement was engaged in the case.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings: finished. Police didn't identify the signs of crime and they only gave the verbal warning to the mentioned persons.

Case N12 (Hate Crime)

On August 2, 2018, M.T., R.D., (who identify as a gay men) and G.J. who identifies as a lesbian woman were walking dogs on the street, when several individuals who were most probably under the influence of unknown substance got curious about R.D.'s gender, asking them "are you a woman or a man?" They were asking questions about their physical characteristics. Afterwards, these people started making fun of R.D. and their friends. They also called R.T., R.D., and G.J. "faggots". After this they started fighting and both of the parties assaulted each other physically. As a result, R.D. cracked their leg bone. Investigation was initiated under the article 126 (Violence) of the Criminal Code of Georgia.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings: in progress. The investigation is on-going.

Case N13 (Hate crime – domestic violence)

On July 23, 2018, in Tbilisi V.K. who identifies as a gay man approached Equality Movement asking for legal aid. As reported by V.K. his family members - mother and stepfather were pressuring him psychologically because they did not like his “lifestyle”. His mother was calling him and threatening that she would show up at his workplace and “make the scenes”, she was promising to do anything to make him feel “ashamed” and to “rectify”.

With the help of Equality Movement V.K. addressed police and requested to issue restraining order. The restraining order was issued towards the mother of V.K.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individuals – family members.

Legal proceedings: in progress. Police issued the restraining order.

Case N14 (Hate Crime)

On July 13, 2018, T.E. who is gay man was on the street in front of a bar in Tbilisi, when three unknown individuals assaulted him verbally using swear words. One of them assaulted T.E. physically as well. In particular, this person called T.E. “faggot” and was swearing at him and hit him in the face afterwards.

T.E. called the police on spot.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings: 2 of the attackers were charged with an administrative offence for ‘Disorderly conduct’ (Article 166, Administrative Offences Code of Georgia).

Investigation upon the fact of physical insult is on-going under part I of the article 126 (Violence) of the Criminal Code of Georgia.

Case N15 (Hate Crime)

On July 9, 2018, M.M. and her friend who identify as transgender women were walking outside at night in Tbilisi. Two strangers assaulted them verbally and physically after they noticed that they were transgender women. In particular, they called them “transgenders and faggots”. M.M. and her friend called the police.

Ground for discrimination: Gender identity

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings: in progress. The investigation is on-going under the Article 126 (Violence) of Criminal Code of Georgia.

Case N16 (Hate Crime)

In June 2018, unknown individuals, supposedly locals arrived by car in front of the gay bar Success and aggressively and dangerously stopped the car at the feet of the bar visitors. Afterwards, these individuals got off the car and started assaulting the guests of the bar verbally. According to the witnesses, one of the attackers also assaulted one of the guests of the bar physically; particularly hit them in the face. Investigation has started with the Article 126 – violence. But police couldn't identify the specific victim who was physically attacked. As for the current information provided by the law enforcement officers, the investigation will be most likely stopped because of this reason.

Grounds for discrimination: Sexual orientation and gender identity

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings: in progress. Investigation is on-going under part I of the article 126 (Violence) of the Criminal Code of Georgia.

Case N17 (Hate Crime)

On June 21, 2018, Z.A. who identifies as a gay man was walking in the underground passage in Tbilisi, when an unknown individual assaulted them verbally and physically. In particular, this person was saying that Z.A. was transgender, asking them why they were wearing an earring and calling them “faggot”. Afterwards, this individual attacked Z.A., ripped the piercing off and hit them in the face. Z.A. called the police. Police workers were treating them indifferently, in particular, not letting them file a report regarding the incident. After some time an investigator started to file a report. Z.A. repeatedly asked the investigator to indicate homophobic motive but the investigator denied the request.

This case was covered by media and became a topic of public interest as Z.A. is openly gay writer. The offender was found guilty under Article 126 (violence) of the Criminal Code of Georgia and court imposed a bail of 1000 GEL as a prohibitive measure before the court ruled the final decision. Transphobic hate motive was outlined by the law-enforcement. Additionally, General Inspection Department investigated abuse of power by law-enforcers and “gave them a strict warning to fulfill their duties attentively and abide the ethic norms while communicating with citizens.”

Grounds for discrimination: Gender identity and gender expression

Location: Tbilisi

Potential perpetrator: Individual and police officers

Legal proceedings: finished. The offender was found guilty. Police officers were warned.

Case N18 (Hate Crime)

On May 31, 2018, G.K. who is a transgender sex worker woman received a letter on her address in Tbilisi; she regularly heard knocking on the door and received phone calls, someone was threatening her to “cut *his* throat because *he* was a “faggot””. G.K. with the help of Equality Movement approached the police.

Ground for discrimination: Sexual Orientation

Location: Tbilisi

Potential perpetrator: Individual

Legal proceedings: in progress. Investigation is on-going under Article 151 (Threat) of Criminal Code of Georgia.

Case N19 (Hate Crime)

On May 30, 2018, O.I. who identifies as a gay man was riding a bike at night in Rustavi, when four strangers assaulted him verbally. According to O.I., their comments and insults were homophobic. O.I. contacted police who filed a report under the Article 166 (Disorderly conduct) of the Administrative Offences Code of Georgia.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings are finished: All four of the perpetrators were charged with an administrative offence for ‘Disorderly conduct’ (Article 166, Administrative Offences Code of Georgia).

Case N20 (Hate Crime)

On May 12, B.G. who identifies as a gay man called the police because he saw that unknown person was walking on his property, in the house yard. As B.G. has reported to Equality Movement, the police officers were using homophobic language while talking to each other about the following incident. B.G. heard that the police officers saying the word “pederast”. Equality Movement contacted the Human Rights Protection Department of the MIA asking adequate reaction upon the behavior of the police officers.

According to the information provided by the department, actions of the police officers did not cause any questions.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Police officers

Legal proceedings: finished. Human Rights Department of MIA studied the case and didn’t identify any violations of rights by the police officers.

Case N21 (Hate Crime)

On April 29, 2018, N.K., N.S., L.K., M.E.H., M.S. (three of them identify as gay men and two of them are heterosexual cisgender couple) were attacked by a fast food worker on a street in Tbilisi, they were assaulted verbally and physically. In particular, N.K., N.S., L.K., M.E.H., M.S. were in a taxi, person sitting next to the taxi driver had tattoos, piercings, was wearing makeup and red nail polish. Passengers asked the taxi to stop near the market to buy cigarettes. N.S. got off the taxi and entered the market to buy cigarettes. A fast food restaurant was located next to the market. Person working at the fast food restaurant saw people sitting in the taxi and started swearing and verbally insulting them. In particular called them “faggots”, “disgrace to the nation”, “chicken” who belong in “Sakatme”⁵, shouted that “they don’t have the right to freely walk on the streets”. Afterwards he left the restaurant and started hitting the person who sat next to the taxi driver first with his feet and then on the face with his hands. At that moment N.S. with a cigarette returned from the market. They saw the situation and tried to stop the attacker but the attacker assaulted him physically and ripped his shirt. During the fight M.E.H. and M.S. got off the car and the attacker assaulted them physically, by hitting their faces as well.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individuals

Legal proceedings: in progress. The investigation is on-going.

Case N22 (Hate Crime)

A.B., a gay man addressed Equality Movement saying that the person with whom he’s had an intimate relationship, extorted money from him for several months by threatening to disclose information about his sexual orientation to the public.

With the help Equality Movement he addressed the police. As a result, the accused was detained on December 19, 2018. He has been deprived of imprisonment for 4 to 7 years.

Ground for discrimination: Sexual orientation

Location: Tbilisi

Potential perpetrator: Individual

Legal proceedings: Investigation is finished. Court rulings are in process.

⁵“Sakatme” (House for chickens) is unofficial name for cells or barracks in penitentiary establishments where a certain group of inmates are placed. The reason for entry into the group can be: sexual orientation or a gender identity of a prisoner which might be true or presumed.

V. Conclusions and Recommendations

Conclusions and recommendations outlined in the report is based on the analysis of the national legislation and the human rights violation cases of LGBT persons documented and litigated by Equality Movement and presented in the following report.

The following report collected 22 cases that represent the Human Rights violations of gay men, other MSM and Trans people.

Conclusions:

- First most wide-spread type of violations is verbal and physical insults/violence against **gay men and trans women** in public spaces such as streets, bars, clubs, etc. The situation remains the same in this regards compared to the analysis of the human rights violations of MSM/Trans people in 2017.
- According to the cases of 2018, **twenty-three gay men** became the victims of hate motivated crimes discrimination/violence (some of the cases has several victims) and **four trans** women.
- The potential perpetrators mostly are **natural entities/individuals (fourteen cases), Law enforcement institution/police officers (four cases) and medical facilities/workers (four cases)**.
- Unlike 2017, the monitoring report of 2018 includes the documented cases of violation of the right to health. According to the cases there are **four medical workers** and **two medical facilities** (AIDs center, Tuberculosis Center) that represent potential perpetrators.
- The report includes one case where the **Ministry of Internal Affairs** presents the potential perpetrator and three cases when the potential perpetrators are **the police officers**.
- Report described **four cases of the violation of the right to health**. In 3 cases, we see the indifferent, ignoring and careless attitudes by doctors and medical workers who tend to show insulting and discriminating attitudes towards patients. In the 4th case of AIDs Center we observed the fact of breaching the confidentiality. Breaching confidentiality throughout treatment programmes, lack of friendly and equality based services and lack of trust for prevention services, stigma and discriminatory attitudes increase risk behavior, complicate the use of services and hinder the effective response to the epidemic in the community.
- In the 4th case of the violation of the right to health, as it turned out AIDs Center has a long-established practice of delivering PEP (Post-Exposure Prophylaxis) service in a way that breaches the confidentiality of HIV positive persons. There is no state approved protocol which would step by step describe the process of delivering PEP and would be used by AIDs Center.
- Case N16 revealed the problem with the criminal law legislation. Specifically, case N16 includes the signs of the crime defined in the Article 156 – Persecution, “persecution of persons because of their speech, opinion, conscience, confession, faith or creed, or political, social, professional, religious or scientific activities, - shall be punished by a fine, or restriction of liberty for up to two years or with imprisonment for the same term. But the article doesn’t include the sexual orientation and gender identity as the protected grounds. This creates the situation when Article 156 cannot be applied to certain situations which should be assessed as persecution such as in case N16. Therefore the investigation stops because there are no signs of other type of crime and the perpetrators are not hold responsible.
- In case N17 EM observed the homophobic and discriminating attitudes by police workers which was expressed by not letting the victim of a hate crime to file a report regarding the incident. Afterwards, when police officers changed the decision and started to file a report Z.A. repeatedly asked the investigator to indicate homophobic motive but the investigator denied the request. It must be mentioned, that this is a

common trend observed by different organizations that provide the legal aid for the victims of homo/transphobic hate crimes.

- Discriminatory attitudes, harassment by police, stigma and discrimination in medical settings, lack of effective mechanisms for the relevant legislation implementation, lack of trust in law enforcement officials still result in impunity for perpetrators and make it difficult for victims of human rights violations to access effective remedies and support.

- Creation of specialized unit – Human Rights Department at MIA is definitely a positive step towards fighting against discriminatory crimes. But according to EMC, “it has rather wide mandate, working as centralized, coordinative body, which creates objective risks that it would not eradicate challenges existing at the local level, and would create challenges in addressing the specific issues in the investigation process. Department does not have a preventive approach, focusing only on the monitoring of the investigation process of the crime.”⁶

- The Law of Georgia on the Elimination of All Forms of Discrimination is not effectively implemented. The reason of the following is the restricted powers of Public Defender. For example, the private entities are not obligated to respond and to provide information to Public Defender. In order to deem the mechanism as a proper remedy mentioned problem has to be eradicated as soon as possible.

- Despite positive developments, Georgia lacks comprehensive policies to address human rights violations against LGBT people. Even though the legislation and some policies are in place, the state does not collect relevant data to measure and evaluate their effectiveness.

- The state does not recognize trans people’s gender identity; Georgia continues to impose abusive preconditions for the change of the sex marker in the official documents that violate international human rights standards. Even though the international medical classifications do not pathologize trans persons and their identities anymore, new standards has not been discussed and adopted on the national level.

- The article on the criminalization of HIV/AIDs transmission in Criminal Code and The law on HIV/AIDs remain in place. AIDS activists and organizations challenge the following regulations, considering them to be stigmatizing and totally unnecessary. All of these regulations are already covered in other laws such as Criminal Code of Georgia, Law of Georgia on Patient Rights and Law of Georgia on Medical Care.

In consideration of all of the above, Equality Movement calls for:

The Ministry of Internal Affairs and the Chief Prosecutor’s Office, to ensure

- Carrying out of a systemic and efficient policy on hate crimes which, on an institutional level, requires the establishment of a strategic plan, and the commissioning of independent internal monitoring mechanisms.

- Regular trainings on the investigation and prosecution of hate crimes for the law enforcement officers and the work on increasing tolerance and acceptance towards LGBT people.

Government of Georgia, to ensure

⁶ Human Rights Education and Monitoring Center (EMC), <https://goo.gl/eJ4ih8>

- The establishment of efficient policies and mechanisms for an appropriate reaction to hate crimes, as well as other criminal activities committed by law enforcement authorities, which includes the commissioning of independent internal monitoring mechanisms.
- Creation of the data collection system that will collect the segregated data related to discrimination and hate crimes case.
- Collection of relevant data to measure and evaluate the effectiveness of the legislation and the policies that are currently in place.

Parliament of Georgia, to ensure

- An efficient parliamentary control of hate crimes and activities of law enforcement authorities that have committed such crimes.
- Holding public campaigns for overcoming violence motivated by homo/bi/transphobia and supporting equality.
- Make the relevant amendments in the anti-discrimination legislation in order to strengthen the Public Defender as an institution that is responsible for reacting on discrimination cases as well as preventing such.
- Make the amendments to the Administrative Offences Code of Georgia and include committing administrative offences motive by hate as an aggravating circumstance.
- Abolish the criminal responsibility for AIDs transmission.
- Abolish the Law of Georgia on HIV/AIDs.

Ministry of Labour, Health, and Social Affairs of Georgia

- Develop and approve the PEP (Post-Exposure Prophylaxis) protocol
- Monitor the protection of the confidentiality principles in the medical facilities and react on the violations accordingly
- Research the attitudes of doctors/medical workers towards LGBT persons and plan the correspondent activities such as trainings in order to provide specific knowledge and raise the sensitivity about LGBT topics in the following group.
- Provide access to gender confirmation in health service institutions without requirement to go under the surgical intervention and make it available for trans people who need it in order to fulfill obligations of Georgia as a member of Council of Europe.

It must be mentioned that number of recommendations remain the same since 2017. It is due to the lack of implementation of the existing recommendations by the state bodies.