

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

2017



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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 LGBTQI community and women, carrying out awareness activities on LGBTQI 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.

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Abbreviations

HIV	Human Immunodeficiency Virus
AIDS	Acquired Immune Deficiency Syndrome
PLWH	people who live with HIV
LGBT	Lesbian, Gay, Bisexual, and Trans* 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 with 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
EMC	Human Rights Education and Monitoring Center
GYLE	Georgian Young Lawyers Association
WISG	Women's Initiatives Supportive Group

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Introduction

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 information on the documented cases of such violations as well as a brief legislative analysis. The information on the documented cases of Human Rights violations were provided by non-governmental organizations that work on LGBTQI topics and The Public Defender of Georgia (Ombudsman). The document provides relevant conclusions and recommendations on the following topic.

Methodology of Data Collection- Cases of Human Rights Violations

In order to collect the information about the cases of Human Rights violations of gay men, other MSM and Trans* people in 2017, Equality Movement approached LGBT community organizations, other Human Rights NGOs and Public Defender of Georgia to provide information about such violations. As a result, you can find the information about the cases that were documented and/or run by 3 organizations: Equality Movement, Human Rights Education and Monitoring Centre (EMC) and Public Defender's Office.

It should be mentioned that LGBTQI people approach LGBT community organizations, other Human Rights NGOs or Public Defender's Office if they think that their rights have been violated. Therefore, these are the relevant bodies to approach for the purposes of the following report.



National Legislation Analysis

National Legislation Analysis

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

According to current analysis Georgia took many 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, 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 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 principles.

However, despite of anti-discrimination legislation, such violations are not dealt by the state effectively. The reason for this is the insufficient power/resources of the Ombudsman and lack of knowledge on the following topic in judges. Also, despite of strengthened criminal responsibility for hate crimes, such violations do not lead to proper investigation.

A major step forward on the way of combating discrimination of gay men, other MSM is lifting blood donation ban for men who have sex with other men and planned amendments to the order of the Ministry of Health to reflect this.

It must be mentioned that Georgian legislation criminalizes transmission of HIV by PLWH. 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.

In 2009 Georgian parliament adopted law on HIV infection/AIDS. The purpose of this Law is to ensure the health care of physical persons and the safety of the State and the public, and to fulfill the requirements provided for by the international treaties and agreements of Georgia with regard to HIV infection/AIDS. 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.

The following law is challenged by AIDS activists and organizations. As they mention, this law is stigmatizing and totally unnecessary. All the regulations set by the following law is already covered in other laws such as Law of Georgia on Patient Rights and law of Georgia on Medical Care. 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 gender identity and expression (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 of name and gender in official documents if the applicant doesn't undergo gender correction surgery. Therefore, according to Georgian laws surgical intervention is mandatory and only way for the gender recognition.



Documented Cases of Human Rights Violations

Cases documented by Equality Movement

Case 1 (discrimination)

In May of 2017, oral agreement about renting the apartment was concluded between the parties.

Three days after renting the apartment, the owner contacted L.I. via phone and told that they needed to pick up several things from the apartment. When the owner came to L.I., they had guests – their friends G.D., L.C., L.K., and T.T. The owner took some books that were in fact left in the apartment and saw L.I.'s friends who are gay. One of them had long hair and was wearing makeup that day; the other one had their hair colored red. The landlord left without saying anything, but approximately in 30 minutes returned with their son, a 30-year-old man. They aggressively declared to L.I. and their friends that they needed to leave the house immediately. L.I. demanded an explanation for why they needed to leave, the landlord said that something important happened and they needed the apartment for their own necessities. L.I. and their friends left the location because they assumed they would get more aggression in response if they hadn't left and it might have turned into violence. After several days from the incident, L.I. turned to NGO asking for legal aid because they perceived the owner's action as discriminatory. Equality Movement employee contacted the landlord and asked them on what grounds they made L.I. evacuate the apartment, the landlord said that L.I. and their friends were 'faggots' and that was the reason they made them leave the apartment.

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

Protected class: sexual orientation/gender identity

Venue: Tbilisi

Potential discriminating individual: natural entity

Legal proceedings are in progress. In July 5 of 2017, L.I applied the court for sexual orientation discrimination and asked the compensation for moral harm. Court session date is unclear for now.

Case 2 (discrimination)

In July of 2017, T.A., their romantic partner A.W. who was from Great Britain visiting Batumi, and their friends T.K., L.B., and G.D. visited a recently opened club Yellow in Batumi. They paid the entrance ticket fee – 20 Lari each. While having fun in the club, T.A. and A.W. kissed each other, after 2-3 minutes, they were approached by three security guards. Without saying a word, they grabbed T.A. and A.W. and lead them out of the club using force. The couple was demanding an explanation for why they got kicked out of the club. Security guards answered – "What did you, faggots think?" Afterwards T.A. asked to speak with the manager of the club. The manager came and declared that they were kicked out by their order because T.A. and A.W. were not behaving normally.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia)

Protected class: sexual orientation

Venue: Batumi

Potential discriminating individual: private entity (Ltd.)

Legal proceedings are in progress. In August 29 of 2017, T.A. applied the court for sexual orientation discrimination and asked the compensation for moral harm. Court session date is unclear for now.

Case 3 (discrimination)

In April of 2017, V.E rented the flat from K.L, where he lived for several months. Later, landlord asked to terminate the rental agreement. The potential offender stated that the reason for termination the contract was that V.E. "had different sexual orientation" and was visited by LGBT persons.

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

Protected class: sexual orientation

Venue: Tbilisi

Potential discriminating individual: natural entity

Legal proceedings are in progress. In June 27 of 2017, V.E. applied the court for sexual orientation discrimination against the landlord and asked the compensation for moral harm. Court session date is February 13, 2018, Tbilisi City Court.

Case 4 (discrimination)

In February 14, 2016, watch store Time Georgia and shoe store Dioggi announced the Valentine's Day deal, according to which they had discounts on their products if they were bought in pairs – two watches and two pairs of shoes but only if one of them is women's and the other one men's. T.K. contacted both stores by phone and expressed interest in the deal but since his partner is a man, T.K. asked both items to be men's although stores refused to do so. Both stores declared that the deal was only for couples of different genders, where one of the partners is male and the other one female.

Right: right to respect for family life (Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Protected class: sexual orientation

Venue: Tbilisi

Potential discriminating individual: private entity (Ltd.)

Legal proceedings are in progress. In March 1 of 2017, court was applied for sexual orientation discrimination. Suit asks for the compensation for moral harm due to sexual orientation discrimination. Court session date is unclear for now.

Case 5 (hate crime)

In February 6, 2017, transgender woman and three more transgender women accompanying her were beaten due to transphobia near one of the nightclubs of Tbilisi.

In May 3, Tbilisi Regional Prosecutor's office declared the transgender G.K. as a victim. Order about declaring G.K. as a victim says that it was gender identity crime. 3 persons on case were charged.

Protected class: gender identity

Venue: Tbilisi

Potential perpetrator: natural entities/individuals

Legal proceedings are in progress. Criminal case is being processed at the first instance court.

Case 6 (hate crime)

L.G. was with friends at the Kutaisi center, when a group of 3-4 underage people approached them. They were calling L.G. by homophobic and insulting slurs to which L.G. was not responding. This incident was repeated the following day on roughly the same location. On the third day, when L.G. was walking home, they encountered a group of underage boys. Three people were standing near one of the entrances, the rest, 7-10 people were hiding inside of the entrance, and one of these people was L.G.'s neighbor. The group dragged L.G. into the building entrance and started beating them with a steel armature. They were beating on the upper body, including head area. L.G. got numerous bruises and a head injury. While being beaten, L.G. lost his consciousness and minors thought they killed L.G. and left. After investigation, mediation contract was issued with only one of the minors. After this incident, this person continues to insult L.G. whenever they meet on the street. They also declared to a friend of L.G. that they will avenge L.G. and threatened another friend of L.G. who is also a member of LGBT community, to burn them alive.

In June 14, 2017, Equality Movement asked the prosecutor to pay attention to the homophobic grounds of the crime.

Protected class: sexual orientation

Venue: Kutaisi

Potential perpetrator: natural entities/individuals

Legal proceedings are in progress, though L.G. refused to use legal assistance from the organization and the organization discontinued defense.

Case 7 (hate crime)

T.S. LGBT community member was in one of the nightclubs of Tbilisi, when he was unexpectedly attacked by a stranger, considering homophobic background; attacker humiliated him verbally and beat him. Police was called. Investigation was launched. T.S. and one of the witnesses were questioned about the case.

Legal proceedings are in progress

Protected class: sexual orientation/gender identity

Venue: Tbilisi

Potential perpetrator: natural entity/individual

Legal proceedings are in progress. Attacker is still unidentified. T.S. is not confirmed as a victim. Presently he is abroad and investigation is still in progress.

Case 8 (hate crime)

In April 20, 2017, an under aged individual threw stones to a transgender woman and abused her verbally near one of the squares, in Tbilisi. Victim applied to law-enforcement authorities. Investigation was launched and abusers were identified. They were charged and the transgender woman was granted the status of the victim.

Protected class: gender identity

Venue: Tbilisi

Potential perpetrator: natural entity/individual

Legal proceedings are finished. In July 26, 2017, Criminal Cases Chamber of Tbilisi City Court passed the sentence, where the under aged individual was declared guilty and was sentenced to 6 months house imprisonment.

Note: In court decree, it was explained that the accused individual due to intolerance towards the gender identity, threw the stones to her, incurring her physical pain.

Case 9 (hate crime)

In August 18, 2017, stranger abused verbally and beat the member of LGBT community, in Kutaisi. G.K. applied the police and investigation was launched. G.K. was questioned and testimonials were received. No status of victim is yet granted.

Protected class: sexual orientation

Venue: Kutaisi

Potential perpetrator: natural entity/individual

Legal proceedings are in progress. Case is still under the investigation.

Case 10 (hate crime)

In November 16, 2017, a street stranger abused verbally and beat 2 transgender sexworker women. Police was called on site. Investigation was launched on homophobic-transphobic hate crime.

Protected class: gender identity

Venue: Tbilisi

Potential perpetrator: natural entities/individuals

Legal proceedings are in progress. Transgender individuals were questioned and due testimonials were received. Presently, the case is still under the investigation.

Cases documented by Human Rights Education and Monitoring Centre (EMC)

Case 1 (hate crime, homophobic violence against N.kh.)

Overview of the factual circumstances related to the case: On 29 April 2017, when standing in the queue of the night club toilet, a young man N.J. physically abused N.Kh. that was caused by his gender identity, In particular, the attacker first told N.Kh. that the toilet was intended for men and there was no place for women there, then he tried to take him out with the use of physical force which resulted the physical abuse. According to the explanation of eyewitnesses N.J. and the man accompanying him might be the employees of the Ministry of internal affairs, as the man accompanying N.J. allegedly showed the official card of MIA to the Officers of the criminal police. As a result, the officers of the criminal police freely released N.J. From the crime scene, they failed to interrogate N.Kh. and provide the appropriate legal response.

The essence and the reasoning of the case: In the given case, EMC conducts proceedings in two directions, in particular, with respect of N.J.'s action, the investigation is conducted by the Investigative Department of Tbilisi Prosecutor's Office, and the omission of act of the officers of the criminal police was examined by the General Inspectorate of MIA in the context of disciplinary misconduct.

Taking into consideration the fact that N.J. might be the employ of the Ministry of Internal Affairs of Georgia, in compliance with the investigative jurisdiction, the request was submitted to Tbilisi Prosecutor's Office. In addition, it shall be taken into consideration that N.J.'s action was motivated by intolerance (of gender characteristic) that is provided for in Article 531 of the Criminal Code of Georgia as the aggravating circumstance of the criminal liability.

With respect of omission of act by the officers of the criminal police, EMC indicates that conduct of the officers of Central Criminal Police Department of the Ministry of Internal Affairs should be in compliance with the Article 16(c) of Police Law of Georgia and Article 3(a) and (c) of the Order of 11 February 2015 of the Minister of the Internal Affairs of Georgia on Approval of the Statute of the Central Criminal Police Department of the Ministry of Internal Affairs of Georgia, which unequivocally indicate the obligation of the police to identify the crime and protect citizens from unlawful violation within the limits of powers granted. However, police officers arrived at the crime scene, regardless the fact that they received notice of alleged criminal action, did not provide adequate legal response, including commencement of the investigation.

Case proceedings: Investigation has been commenced in the 5th Division of Old Tbilisi Main Division of MIA on the fact of N.J.'s beating, under Article 126(1) of the Criminal Code of Georgia, however, taking into consideration the factual circumstances and investigative jurisdiction, the investigation is currently conducted by Investigation Unit of Tbilisi Prosecutor's Office and investigative actions are ongoing.

The action of the criminal police officers have been examined by the General Inspectorate of the Ministry of Internal Affairs of Georgia and formal response was given to the EMC that the fact of disciplinary misconduct has not been identified. The General Inspectorate has not submitted any reasoning.

Case 2 (hate crime, homophobic violence against N.G.)

Overview of the factual circumstances related to the case: EMC was rendering legal assistance to the member of LGBT community, N.G. Who, on 5 March 2017, was verbally and physically abused with homophobic motivation by A.B. in one of the bars of Kutaisi. In particular, N.G. was hit in facial area, was called 'gay' and 'ladylike' and was sworn. As a result, N.G.'s lobule was injured and it began to have heavy bleeding.

The essence and substantiation of the dispute: In the given case, similar to the other cases against LGBT community members, EMC considers that violation of Article 126(1) of the Criminal Code of Georgia against N.G. - beating committed on the homophobic motivation, - took place. The motivation of the attacker could be identified by using the homophobic speech and consequent perception of the victim. Due to the above mentioned EMC applied to the Prosecutor's Office with description of factual circumstances of the case and requested identification of homophobic motivation and its reflection in the legal documents. The special emphasis in the prosecution decision was made on referring the homophobic motivation as provided for in Article 531 of the Criminal Code of Georgia, since referring the motivation in the prosecution decision is the mean for court to discuss the motivation of the action and determine the criminal liability taking it into account.

Case proceedings: Kutaisi City Court reviewed this case and established that A.B. committed the crime on the grounds of sexual orientation, with the motivation of intolerance, which was considered as an aggravating circumstance of his/her liability pursuant to Article 53(3)(1) of the Criminal Code of Georgia. Kutaisi District Prosecutor's Office established the homophobic motivation before the court, by reflecting it in the resolution of the charges against A.B. of appropriate motivation and in it's the introductory and the sum-up speech.

Significance of the case: In the given case, it is of particular importance that the Prosecutor's Office provided the motivation of intolerance in legal documents and before the court. In other cases, position of the Prosecutor's Office was negative regarding provision of motivation; therefore, this case is an important precedent.

Case 3 (hate crime, examination of factual circumstances regarding threat of violence against LGBTQ activists Koba Bitsadze and Beka Gabadadze)

On November 1, 2017, Facebook user - "Tetri Natsisti" (white Nazi), identified as a specific person, made some statements against the activists containing brutal violence and threats. The act was repeated for several times.

As factual circumstances show, threats against K. Bitsadze and B. Gabadadze are linked to their sexual orientation and public activism. Such threats aim to threaten the activists, to force them to stop their activities and to humiliate them because of their sexual orientation and gender identity.

Case progress: Ministry of Internal affairs started investigation according to the 151st article (threatening) of the criminal code. EMC asks the Ministry of Internal Affairs and Prosecutor's Office to provide examine the various episodes threatening against Koba Bitsadze and Beka Gabadadze, as a whole and to qualify it in the context of humiliating attitude. Thus, it is important that these actions should be qualified according to the standard of 144th article (3) of Criminal Code (humiliating and insulting behavior) and to provide identification of hate crime.

Cases documented by Public Defender of Georgia (Ombudsman)

Case 1 (hate crime)

On April 10, 2017, human rights advocate applied to the Ombudsmen of Georgia, where advocate explained that the under aged individual was suffering from psychological violence from the family members as a consequence of his orientation. Organization asked the ombudsman to monitor for avoiding isolation from school or hormonal therapy. Ombudsman applied to the Social Service Agency, and we have been notified that the person was returned to the family. Presently, psychologist works with the under aged individual and family members. Process of searching the parents is in progress.

Protected class: sexual orientation

Venue: Samegrelo

Potential perpetrator: family members

Case 2 (hate crime)

On June 29, 2017, information was received via Ombudsman's hotline that brother and father were physically abusing 16 years old individual, forcing him to work as a consequence of sexual orientation. There are also additional statements including Facebook messaging and verbal insulting from other young people living in the house. Ombudsman applied to the Ministry of Internal Affairs and Prosecutor's Office, whether they were informed about the case or not and what actions were taken by them. We have also applied to the Social Service Agency. As we were informed, family members were questioned and medical expertise was carried out. Applicant didn't want to live with the parents and presently, applicant leaves in family house. Investigation is launched based on "a" subsection of 2nd part of 126¹ article. We have received same information from the Social Service Agency. Case is still examined and evaluated.

Protected class: sexual orientation

Venue: Imereti

Potential perpetrator: family members

Case 3 (discrimination)

On June 5, 2017, accused transgender woman (in a penitentiary facility) applied the Ombudsman's office, saying that she is kept in unbearable condition; she is treated with disguise as she is HIV positive. As she continued, they do not allow her to enter the certain part of the institution. Ombudsman visited the accused individual and the problem was solved successfully.

Right: right to inviolability of honour and dignity (art. 17 of The Constitution of Georgia)/ right to health care/patient's rights

Protected class: gender identity/HIV status

Venue: Tbilisi

Potential discriminating individual: law-enforcing institution

Case 4 (discrimination)

On June 12, 2017, LGBT advocacy organization applied to the Ombudsman's Office saying that it became victim of sexual orientation and business field discrimination from the side of private entity, in contractual relations. Applicant indicated that the private entity didn't conclude the rental agreement with discrimination motives. Legal proceedings are in progress.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia), right to inviolability of place of personal activity (Art. 20 of The Constitution of Georgia)

Protected class: sexual orientation and working field

Venue: Tbilisi

Potential discriminating individual: private entity

Case 5 (discrimination)

On April 25, 2017, private entity applied to the Ombudsman. According to the application, applicant and applicant's friends were subject to sexual and gender discrimination from the employees of one of the bars in Kutaisi. Applicant explained that as soon as they entered the bar, employee approached and asked the transgender friend of the applicant to leave the bar, without any explanation.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia)

Protected class: gender identity

Venue: Kutaisi

Potential discriminating individual: private entity, individual entrepreneur

Legal proceedings were terminated due to the lack of evidences, as the respondent didn't provide the ombudsmen with required information.

Case 6 (discrimination)

On April 28, 2017, at 20:25, person - transgender woman contacted the Ombudsman's Office via hotline. Applicant explained that due to the conflict with the men, she is in one of the departments of Batumi Police, where she is abused verbally and she is addressed as a man. Applicant considers herself as a victim. Case is in progress.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia), right to an effective remedy (Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Protected class: gender identity

Venue: Batumi

Potential discriminating individual: public institution (police unit)

Case 7 (discrimination)

On January 10 of 2017, LGBT advocacy organization applied us, saying that transgender individual was beat and personal belongings were stolen. No investigation was initiated by the police. Application also included that police officers abused her verbally. For the purposes of exploring the case, Ombudsman's Office applied to the Ministry of Internal Affairs, General Inspection and Prosecutor's Office. As we were informed, fact of power

abuse by the MIA employee was not proved. Investigation on case was initiated. The accused was found guilty. Case is closed.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia), right to an effective remedy(Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Protected class: gender identity

Venue:Tbilisi, street

Potential discriminating individual: natural entity/individual and police officers.

Case 8 (discrimination)

On April 24, 2017, transgender individual contacted the Ombudsman's Office via hotline regarding assumed violation of rights. According to the assumed victim, employees of MIA treated her and her friends improperly, abused verbally. For the purposes of exploring the case, we applied to the Prosecutor's Office of Georgia. Based on submitted information, investigation is being held on criminal case on abuse of power by the police officers. Case is in progress.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia), right to an effective remedy(Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Protected class: gender identity

Venue:Tbilisi, nightclub

Potential discriminating individual: police officers

Case 9 (discrimination)

On August 7, 2017, accused individual applied to the Ombudsman's Office, saying that there was improper attitude toward LGBT people in the prison. Applicant was asking the Ombudsman to pay more attention to the issue.

Ombudsman of Georgia prepared the letter on case, including results of monitoring/recommendations and opinion about homophobic environment in penitentiary institutions of Georgia. The issue will be also considered in Parliament Report of the Ombudsman of Georgia.

Right:right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia)

Protected class: sexual orientation

Venue:Penitentiary institution

Case 10 (discrimination)

On June 27, 2017, a transgender woman contacted the Ombudsman's Office via hotline, saying that she and her friends were attacked by strangers, beat her and stole the money. As it was informed, police was called. According to the applicant, police officers also humiliated her. Ombudsman of Georgia applied to the law-enforcement authorities, whether they knew about the case or not and what measures were taken by them. Based on the received information, investigation was initiated on the case of stealing, 178tharticle of the Criminal Code of Georgia. Offender was arrested and sentenced to pledge in amount of 3000 GEL, securing the imprisonment. On duty checkup was carried out in the General Inspection of MIA and no power of abuse by MIA employees was revealed.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia)

Protected class: gender identity

Venue: Tbilisi

Potential discriminating individual: natural entities / police officers

Case 11 (discrimination)

On August 29, 2017, Ombudsman's Office received information via hotline, saying that 2 strangers attacked transgender women near circus, where police didn't provide relevant aid. Ombudsman of Georgia applied to the law-enforcement authorities, whether they knew about the case or not and what measures were taken by them. Based on the received information, investigation was initiated according to 126th article and first part of 342nd article. Case is in progress.

Right: right to an effective remedy (Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Protected class: gender identity

Venue: Tbilisi

Potential discriminating individual: law-enforcement authority (police officers)

Case 12 (hate crime)

On February 6, 2017 Ombudsman's Office received information via hotline, saying that about 10 individuals attacked and beat 4 transgender women in the street. Ombudsman of Georgia applied to the Ministry of Internal affairs, whether they knew about the case or not and what measures were taken by them. Based on the received information, investigation is initiated with the evidences of crime under 120th article. According to the information of the Prosecutor's Office of Georgia, forensic expertise was instructed, thus qualification of crime was changed and investigation continues under the first part of 118 article and the first part of 126th article. Listed individuals were declared victims. Prosecutor's Office also indicated hate crime. Case is in progress.

Protected class: sexual orientation/gender identity

Venue: Tbilisi

Potential perpetrator: natural entities/individuals

Case 13 (hate crime)

On February 23, 2017, Ombudsman's Office received information, saying that applicant (transgender woman) was verbally and physically abused by 5-6 individuals on Tamar Mope Av. and they were filming all. Ombudsman of Georgia applied to the law-enforcement authorities, whether they knew about the case or not and what measures were taken by them. Based on the received information, investigation is initiated under the first part of 126th article and the first part of 187th article. Case is in progress.

Protected class: sexual orientation/gender identity

Venue: Tbilisi

Potential perpetrator: natural entities/individuals

Case 14 (hate crime, hate-motivated incident)

On May 2, 2017, Ombudsman's Office received information via hotline, where the assumed victim informed that neighbors were threatening to transgender woman and throwing stones at the house. Ombudsman of Georgia applied to MIA and Prosecutor's Office of Georgia, whether they knew about the case or not and what measures were taken by them. Police didn't respond to the fact. Based on the received information, investigation is held under 151st, 166th and 173rd articles. Case is in progress.

Protected class: gender identity

Venue: Tbilisi

Potential perpetrator: natural entities/individuals

Case 15 (discrimination)

On July 6, 2017 Ombudsman's Office received information via hotline, saying that transgender woman was in police department, abused her and didn't accept her application. Hotline squad was on site. Ombudsman of Georgia applied to MIA and General Inspection of Georgia, whether they knew about the case or not and what measures were taken by them. Based on the received information, 112 call was revealed and patrol police arrived on site. Applicant canceled the call at the moment of talk. As for power abuse by the MIA employees, it was not proved.

Right: right to an effective remedy (art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Protected class: gender identity

Venue: Tbilisi

Potential discriminating individual: representatives of law enforcement authorities

Case 16 (hate crime)

On July 1, 2017, human rights advocate applied to the Ombudsman of Georgia, saying that an under aged individual was subject to violence due to sexual orientation by family members. NGO applied to the hotline and social officer appeared on the other day, who verified psychological violence. Ombudsman of Georgia applied to the law-enforcement authorities of Georgia, whether they knew about the case or not and what measures were taken by them. We have also applied to the Social Service Agency. As we were informed, applicant has not applied to this institution. Social Agency informed that psychological violence was revealed based on questioning. For the regulation of their relations, working with the parents and under aged individual is in progress. Psychologist works with the under aged individual and soon we shall have due conclusion. If the situation is escalated, under aged individual will be placed in alternative family.

Protected class: sexual orientation/gender identity

Venue: Tbilisi

Potential perpetrator: family member

Case 17 (discrimination)

On December 4, 2017, assumed victim contacted the Ombudsman of Georgia via hotline, saying that transgender women were having protest rally in the yard of one of the TV channels, regarding homophobic expressions of journalists. Guards physically and verbally abused them. Police was called, which also physically and verbally abused them and moved transgender women to police department. Hotline squad arrived at crime scene. Ombudsman of Georgia applied to MIA and General Inspection, whether they knew about the case or not and what measures were taken by them. Based on the received information, no power abuse from MIA officers was proved.

Right: right to public assembly (Art. 25 of The Constitution of Georgia)

Protected class: gender identity

Venue: Tbilisi

Potential discriminating individual: law-enforcement authority

Case 18 (discrimination)

On November 9, 2017, assumed victim contacted the Ombudsman of Georgia via hotline, saying that strangers verbally abused her friends and threatened to kill because they were transgender women. Based on the received information, police was called, but it didn't appear on site and the applicant stopped the patrol police that was passing by and was trying not to arrest assumed offender. Applicant admitted that her rights were violated at the police department, as she was not allowed to use the toilet for 3 hours. Ombudsman of Georgia applied to MIA and Prosecutor's Office of Georgia, whether they knew about the case or not and what measures were taken by them. Based on the received information, investigation is held under the first part of 151st article. Applicant willingly appeared at the police department, wishing to provide additional information and she was refused. As we were informed, she was at the administrative building of investigative department for 17 minutes and her rights were not violated during this period. Case is in progress.

Right: right to inviolability of honour and dignity (Art. 17 of The Constitution of Georgia), right to an effective remedy (Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms)

Protected class: gender identity

Venue: Tbilisi

Potential discriminating individual: law-enforcement authority

Case 19 (hate crime)

On November 1, 2017, assumed victim contacted the Ombudsman of Georgia via hotline, identifying herself as a transgender woman, complaining about violence from MIA employee. Patrol arrived on crime scene, which also abused, beat, spat and mocked on her. Emergency team also verbally abused her. Hotline squad was on site as well. Ombudsman of Georgia applied to Prosecutor's Office of Georgia, whether they knew about the case or not and what measures were taken by them. We have also applied to LEPL Agency of State Regulation of Medical Business. As we were informed, investigation was initiated under the first part of 126th article, against Medical Service Center. Forensic expertise was decided. Investigation was initiated on power abuse of MIA employees, under the first part of 33rd article of the Criminal Code. Case is in progress.

Protected class: gender identity

Venue: Tbilisi

Potential perpetrator: law-enforcement authority

Case 20 (hate crime)

On April 29, 2017, human rights advocate contacted the Ombudsman of Georgia via hotline, saying that 4 members of LGBTQ association were attacked by 4 people. They were verbally and physically abused. Ombudsman of Georgia applied to MIA and general inspection, whether they knew about the case or not and what measures were taken by them. Based on the received information, administrative violation was not proved and legal proceedings were suspended. Abuse of power by the policemen was also not proved.

Protected class: gender identity

Venue: Achara, Batumi

Potential perpetrator: law-enforcement authority

Case of homophobic violence against L.B. and T.K. (hate crime)

At dawn on the 25 August 2017, in Batumi, an unknown person, allegedly acting on the basis of homophobia and transphobia, physically and verbally assaulted Tornike Kusiani, Levan Berianidze, and three other persons accompanying them. Other people also took part in this violent incident. The victims asked the police officers nearby for help, but, in spite of witnessing the criminal incident, the officers did not react at all and restricted the victims from calling the police. Furthermore, they arbitrarily detained L. Berianidze and T. Kusiani and used obvious homophobic language towards them. The police officers did not explain the procedural rights of the detainees or the reason of their detention, and also did not permit them to use the phone. During the transfer of detainees to the 6th headquarters of the Batumi municipal police, the officers committed violence against the detained activists. Moreover, during physical inspection in police headquarters, the officers demanded the detainees to strip and, along with derogatory treatment, verbally assaulted them. In addition to the above, the detainees noted that the doctor treated them indifferently during medical inspection in temporary detainment isolators, did not properly evaluate the degree of injuries inflicted on L. Berianidze, and did not document them.

In addition, a few days ago, officers of the 6th precinct of the Batumi municipal police did not take adequate measures with respect to violent acts committed against several members of the LGBT community and, instead of the perpetrators, detained the aforementioned members. There have been a few cases in the past (the arbitrary detainment of White Noise Movement activist, Paata Sabelashvili, on 20 August 2016 and the beating of one of the members by police officers on transphobic motives) which also show probable participation of police officers in arbitrary detainments and incidents of homophobic violence.

The factual circumstances presented above point to inhumane and derogatory treatment of L. Berianidze and T. Kusiani, including the beating of the latter, allegedly on homophobic motives and inflicting physical, mental pain and suffering on the victims, which, respectively, qualify as criminal activities envisaged under articles 126 and 1443.2 of the Criminal Code of Georgia (CCG), committed on the basis of sexual orientation (article 531 of the CCG).

Legal representation on the following case is ensured by Equality Movement, Human Rights Education and Monitoring Centre (EMC) and Georgian Young Lawyers' Association (GYLA).



Conclusions and Recommendations

The following report collected 34 cases that represent the Human Rights violations of gay men, other MSM and Trans* people. 20 cases were documented by Ombudsman, 10 cases by Equality Movement, 3 cases by EMC and 1 case co-represented by Equality Movement, EMC and GYLA.

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. From the report we can see that trans women, especially trans sex-worker women become the victims of hate motivated crime in most cases. **The potential perpetrators mostly are police officers and natural entities (individuals).**

Documented cases show that many of the victims accuse police representatives for insulting these persons verbally and physically. Also, according to the cases, police officers tend to ignore violation of rights of LGBT persons and investigate the crimes improperly.

Over the years, organizations working on protecting human rights have been pointing out the absence of a unified strategy and systemic policy for battling hate crimes; however, because of the lack of political will, the authorities have not even begun working on such reform. Crimes motivated by homo/bi/transphobia frequently remain without due attention and investigation from the police and the victims of such violations of human rights become subject to repeat victimization, due to homophobic policies and police culture. In such cases, the police are showing a tendency of shifting the blame onto the victims and arresting them. Even more, on certain occasions the police themselves turn to violence towards LGBT members and show their homo/bi/transphobic attitude in the cruelest ways.

The existing inefficient, discriminatory, and repressive law enforcement policy reinforces the predisposed homo/bi/transphobic notions entrenched in society, creates the environment of impunity, and excludes discriminated groups from political and social systems. Homophobia institutionalized in law enforcement authorities deepens the oppression of LGBT groups and makes it impossible to carry out equality-based policies. Police involvement in such violent incidents weakens the trust of members of the LGBT community and other minorities in state institutions and leaves them alone in the face of violence.

Second wide-spread type of violation is discrimination in private relations. Gay men and other MSM as well as trans* people are refused to be provided services in different facilities such as bars, clubs, etc. Also, transgender people are often refused on the rent of the apartment.

According to CSOs, the anti-discrimination legislation in Georgia is not effective. This is caused by the insufficient power/resources of the Ombudsman as the basic mechanism for reacting on and preventing discrimination based on SOGI or other grounds defined in the The Law of Georgia On the Elimination of All Forms of Discrimination.

On the other hand, it is important to see the link between the right to health and the other human rights violations such as the right to privacy, being treated in an inhuman and humiliating way and others.

Social-ecological model which distinguishes external factors that affect sexual behavior of the MSM people living in Georgia, and more specifically, whether this behavior is risky in terms of HIV infection, helps us analyze the way a person's right to health is related to other human rights violations.

The main idea of the social-ecological paradigm, the evaluation model, is the following: Change in one of the parts of the ecological system causes other components to change as well, providing the need for systems adaptation (balance). The main factors that determine sexual behavior of MSM people are:

- Individual (Psycho-emotional state of the person, physical health, self-esteem, knowledge about HIV infection, personal opinions, preconditioned attitude, age);
- Relationship with family (Having the support from family members or relatives, how it is expressed, the reason support exists);
- Relationship with a partner (Number of partners, type, sexual practice);
- Relationship with other community members;
- Policy regarding MSM people that the state follows and puts into practice (legislation, preventive programs: services of psychologists, social workers and lawyers; distribution of STD prevention tools, practice of investigating hate crimes and reviewing discrimination cases in courts, etc.);
- State healthcare programs (HIV and STD prevention, diagnostics, treatment);
- Community attitudes towards MSM people (existence of educational programs).

Effects and interactions of these abovementioned factors determine a person's willingness to take care of their health, to ask for medical help, raise knowledge and participate in prevention programs.

The information presented in this report points out several main conditions that are responsible for a person's safe sexual behavior and are not presented properly, which makes practicing the right to healthcare impossible.

Legal mechanism that is supposed to protect from discrimination is weak and therefore ineffective. Actions of employees at the Investigation bodies in most cases are illegal, and they don't respond to hate crimes effectively. Because of everything mentioned above, the factors that are responsible for sexual behavior of MSM people cause this behavior to remain/become risky.

Based on this, until the state doesn't work on essential changes that will eliminate systematic flaws, MSM people's right to health won't be properly protected and all the expenses invested in prevention and treatment arrangements will be wasted.

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

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

- The carrying out of a systemic and efficient policy on hate crimes which, on an institutional level, requires the establishment of a strategic plan, specialized police services*, and the commissioning of independent internal monitoring mechanisms;

*Create a specialized unit/department to fight against hate-motivated crimes.

Government of Georgia, to ensure

- 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.

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.

Ministry of Labour, Health, and Social Affairs of Georgia

- Research the attitudes of doctors/medical workers towards LGBTI persons and plan the correspondent activities such as trainings in order to provide specific knowledge and to raise the sensitivity about LGBTI topics in the following group;
- Provide access to gender reassignment 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;
- Establish shelters, taking into account the needs of each group, within the LGBTI community.