



General Assembly

Distr.: General
24 October 2019

English only

Human Rights Council

Forty-first session

24 June–12 July 2019

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his visit to Georgia

Comments by the State*

* The present document is being issued without formal editing.



Comments by the Government of Georgia on the report of the Independent Expert regarding his mission to Georgia

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Georgia (25 September to 5 October 2018): comments by the State

1. The following document represents the views and comments of the Government of Georgia (hereinafter the Government or the GoG) in respect of the Report of Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, drafted following a country visit to Georgia from 25 September to 5 October 2018.
2. The Government thanks the Independent Expert for the assessments and recommendations and welcomes this opportunity to respond to the report.
3. Comments and observations of the Government of Georgia on the Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity
4. Concerning paragraph 1 of the Report, the GoG deeply regrets that the Independent Expert was unable to assess the situation in Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia.
5. Concerning paragraph 6 of the Report, it should be mentioned that Georgia has endured periods of armed conflict and civil unrest followed by a full-fledged military aggression of the Russian Federation against Georgia in 2008 and subsequent occupation of Georgia's sovereign territories.
6. Concerning Part A. Legal Framework of the report the GoG would like to kindly note that on 19th of February 2019, the Parliament of Georgia adopted amendments to the labour legislation. The legislative package was prepared in compliance with EU directives (2000/78/EC, 2000/43/EC, and 2004/113/EC) and includes following organic laws and laws of Georgia: Organic Law of Georgia "Georgian Labour Code", Law of Georgia on "Elimination of All Forms of Discrimination", Law of Georgia on "Public Service", and Law of Georgia on "Gender Equality".
7. The above-mentioned amendments aim to establish principles that serve to eliminate and prohibit discrimination in labour and pre-contractual relations, employment and occupation based on religion or faith, disabilities, age, sexual orientation, racial or ethnic origin and apply to all persons employed in public and private sectors.
8. To highlight, the Law of Georgia on "Elimination of All Forms of Discrimination" defined sexual harassment as any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. While Law on "Gender Equality" defines that harassment and sexual harassment in labour relations/at work place are prohibited.
9. Amendments also determine that principle of equal treatment applies to labour and pre-contractual relations, including conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion, access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience, membership of, and involvement in, an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations, etc.
10. Concerning Paragraph 13b of the report, the GoG kindly notes that the prohibition of discrimination based on sexual orientation was introduced in the Law of Georgia on Health Care back in 1997, when the law itself was adopted.

11. Concerning Paragraph 13c of the report, the GoG kindly notes that separate article was introduced in CCG, which ones again outlines the upgraded importance of GoG to the topic.

12. Concerning Paragraph 13g of the report, the GoG kindly notes that the hate speech is criminalized under article 239¹ of the Criminal Code of Georgia. Therefore, article 239¹ should be replaced by article 239¹.

13. Concerning Paragraph 36 of the report, the GoG kindly notes that Human Rights Protection and Quality Monitoring Department of the Ministry of Internal Affairs of Georgia aims to ensure prompt response and effective investigation of domestic violence, hate crime, violence against women, trafficking and crimes committed by/towards minors. To this aim, the Department elaborated internal and external monitoring mechanisms. The internal monitoring mechanism envisages monitoring of criminal cases on a daily basis through a special electronic program. The Department also regularly receives letters from the Public Defender's Office and different NGOs with requests for various types of information. Based on the above, it should be noted that Ministry of Internal Affairs ensures effective investigation of domestic violence, in spite of the sexual orientation of a victim. Moreover, following to the initiative of the Ministry of Internal Affairs, Criminal Code of Georgia has been amended and the gender motive appeared in the relevant articles of the code.

14. Concerning Paragraph 39 of the report, the GoG kindly notes that the Human Rights Protection and Quality Monitoring Department of the Ministry of Internal Affairs monitors all criminal cases that may involve hate motives and one of the functions of the department is to oversee effectiveness of investigation of hate crimes. As a result of successful cooperation among the territorial units of the Ministry and the mentioned Department, in 2018 the indicator for identifying hate motive is improved.

According to the report of Prosecutor's Office of Georgia, in 2017 criminal prosecution for hate-motivated crimes was initiated against 44 persons. In 2018, 151 persons were charged with hate-motivated crimes (discrimination based on sexual orientation – 15 persons, discrimination based on gender identity – 12 persons). These data exceed the previous year's data and it demonstrates that the efficiency of police work has increased. Representatives of the Human Rights Protection and Quality Monitoring Department of the ministry of Internal Affairs closely co-operate with the organizations working on the rights of LGBT community and information/report is received on a daily basis through them. Active communication with them also contributed that hate motive identification increased. Also, awareness raising and change of attitude on the side of police officers is one of the priorities of MIA. Based on that, during 2018 MIA conducted number of trainings and actively implements training-programs in cooperation with the international organizations.

It is noteworthy, that Public Defender in 2018 annual report on equality and discrimination noted that the Department of Human Rights Protection and Quality Monitoring Department has been set up in the Ministry of Internal Affairs of Georgia and this is a very important step made towards the fight against discriminatory crimes.

15. Concerning Paragraph 40 of the report, the GoG would like to kindly note that police work is regularly monitored by General Inspection of the Ministry, which is responsible body to internally reveal and disciplinary sanction the wrongdoings by the police. The efficiency of the General Inspection is illustrated in numbers of the imposed sanctions for improper fulfilment of service available at the Ministry's web page. Also, it should be noted that within the scopes of the unified informational policy of the MIA the General Inspection operates the hotline (126), supporting effectiveness of control by the civil society over the MIA. Application of such communication means by the population support to the process of revelation and consequential response to any and all violations or disciplinary norms, improper performance of service duties and the illegal acts in the Ministry.

16. Concerning Paragraph 41, the GoG kindly notes that in 2018 article 531 of the Criminal Code was applied and hate motive was studied in 210 criminal cases. Particularly, 28 cases concerned sexual orientation, 29 cases - gender identity. Charges were brought against 151 individuals. In particular, 15 were charged with committing crime under sexual orientation-based discrimination, 12 - gender identity-based discrimination.

17. Concerning Paragraph 44 the GoG kindly notes that during the meeting with the Independent Expert, the Justice has brought an example of one of the case related to the murder of the transgender person. The Supreme Court reversed judgment of the lower courts and found defendant guilty of murder sentencing him to 10 years of imprisonment. However, the Supreme Court has not discussed the discriminatory motive of the perpetrator (i.e. murder due to the transgender identity of the person) as the factual circumstances of the case did not allow the court to elaborate on the potential intolerance towards transgender persons. Similarly, no such motive was present within the charges submitted by the Prosecution. Therefore, the Court would have been unable to identify discriminatory motive in the case due to lack of the factual elements present.

18. Concerning Paragraph 47 of the report, the GoG kindly notes that in most penitentiary establishments LGBT detainees contact and communicate normally with other beneficiaries. Reports of PDO on Human Rights Situation in Closed Institutions (2017 and 2016) do not explicitly indicate that ostracization results in less accessibility to rehabilitation or other activities. Participation in rehabilitation programs and leisure activities is a right of prisoners guaranteed under the law, which prohibits discrimination on any ground, including on the ground of sexual orientation or gender identity. The penitentiary authorities safeguard effective implementation of this right. Moreover, it should be underscored that after the government structural changes which resulted in the merger of two Ministries (the Ministry of Corrections and the Ministry of Justice of Georgia) important reforms are being implemented in penitentiary system. In order to secure and strengthen the rehabilitation and resocialization dimension in the penitentiary establishments, the new Department on Resocialization-Rehabilitation of Inmates was established at the Special Penitentiary Service in February, 2019 and the role of social work has been significantly increased. The new approaches within the system strengthen social work process with inmates. According to the recent reform, two kinds of social workers are introduced in the system the terms of references for which are elaborated and clearly - case managers (professional social workers who are responsible for risks and needs assessment of inmates and provision of relevant interventions/services) and case administrators (responsible for technical assistance and coordination of low risk cases). The mentioned approach aims at further intensifying the work related to provision of interventions for each inmate tailored specifically to their needs.

19. Concerning Paragraph 48 of the report, the GoG kindly notes, that placement of the inmates in separate cells does not put any limitations on interaction with other prisoners and movement around premises of the semi-open prisons. Furthermore, allocation of LGBT inmates in separate cells does not exclude them from being benefitted from different services, programs, out-door activities, rehabilitation programs, etc. Furthermore, they also enjoy the same areas where the rest of the prison population is walking during the day in open/semi-open prison facilities. Moreover, the GoG clarifies that court does not indicate in its decision which detention facility a person should be placed in. This issue (where the prisoner should be placed) is regulated under the Imprisonment Code and depends not only on the sanctions but also on other circumstances, such as the motive and the result of the crime, personal characteristics and the risk of danger related to the prisoner. The sexual orientation or gender identity of the prisoner is not the ground for determination of the type of penitentiary facility where he/she should be placed.

20. Concerning Paragraph 50 of the report, the GoG kindly notes that one of the main goals of the Strategy is to create a safe and secure environment in penitentiaries and probation bureaus for defendants, convicts, staff and visitors and to respect and ensure the human rights of defendants, convicts, visitors, with particular attention to vulnerable groups and staff. In this regard improvement of work opportunities, vocational trainings, education and recreation for convicts and creation of systems and infrastructure are planned with particular attention to vulnerable groups, including LGBT. Moreover, within the framework of ongoing reforms Risk and Needs Assessment (RNA) tool is revised which represents valuable tool for identification of potential risks and needs, ensures improved assessment process and provides opportunity for collecting aggregate data in penitentiary system as a whole. Also, in terms of planning the needs based interventions (e.g. rehabilitation programs, medical care, etc.) relevant individual assessments are made for each inmate, including LGBT, in penitentiary system. In addition to the above-mentioned, for further clarification, the GoG would like to note that elaboration of specific/separate strategy and

action plan for vulnerable detainees is not planned at the time. The State stands ready to develop proper particular policies in this regard but prior to that studying of good practices and tailoring approaches to existing needs has been already planned under the draft Anti-Torture Action Plan for 2019-2020 which will be adopted in the nearest future. The GoG would also like to add, that after structural changes in the government which resulted in the merger of two Ministries (Ministry of Corrections and the Ministry of Justice of Georgia) one of the top priorities of the Ministry of Justice of Georgia is to design and build new small-scale prisons and improve existing prisons in order to meet International Standards for security, human rights and rehabilitation. In this direction Ministry of Justice introduced modern approaches for addressing the various issues among which the management of inmates and providing outdoor activities for them represent important areas. After implementation of clearly prescribed activities of the mentioned Strategy and Action Plan newly built penitentiary establishments will have opportunity to further develop holistic approaches towards the management of each inmate, take into account each individuals needs with the mentioned components such as care, protection and social integration.

21. Concerning Paragraph 76 of the Report, the GoG assumes that LGBT people avoid doctor visits due to the same reasons as it is in general population and these reasons are less likely to be related to the discriminatory attitude of the medical personnel as a group. However, the Government does not exclude the existence of such cases and finds it necessary to detect and prevent them.

22. Concerning Paragraph 77, the GoG kindly notes that information about the awareness, knowledge and attitude of medical personnel towards LGBT patients is serious and important for us.

23. Concerning Paragraph 80, the GoG kindly notes that the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs is gradually implementing the new safety strategy and blood service reform, which will include the improvement of testing quality (mandatory nucleic acid testing), as well as significantly improve the existing principles of blood donation.

24. Concerning Paragraph 81, the GoG kindly notes that in addition to the norms existing in the Law of Georgia on Higher Education, 2nd standard of higher educational institutions authorization approved by the Order №07/N of the Minister of Education and Science of Georgia (dated 31.01.2019) promotes ethical principles and integrity. According to the standard, higher educational institutions have regulations and mechanisms designed to ensure the principles of ethics and integrity. Institutions have developed the rules of ethics and behavior for students and personnel. Appropriate procedures are in place to respond to the violation of the rules Administration of the institutions promotes ethical and behavioral norms by taking relevant measures.

25. Concerning Paragraph 85, the GoG would like to kindly clarify that there is a State Sport Policy Document of Georgia 2014-2020, which addresses discrimination issues covering LGBT topics as well.

26. With regard to footballer Guram Kashia's case, the GoG kindly notes that statements made by the Football Federation representatives as well as the Head of the Agency were made on TV channels on 29 August 2018.

27. Concerning recommendations 98 and 100, the GoG would like to kindly note that in cooperation with the Council of Europe, a project is currently underway to develop a methodology of the hate crimes statistic registration. The main aim of the project is to collect statistical data through the common methodology within the justice system (The Ministry of Internal Affairs, the Prosecutor's office and the Court). The project also aims to introduce the concept and the main aspects of hate crime. The project is in line with the objective of the Co-operation Project "Fight against Discrimination, Hate Crimes and Hate Speech in Georgia" implemented under the Council of Europe Action Plan for Georgia 2016-2019 assisting authorities to improve the data collection process. Also, the Human Rights Protection and Quality Monitoring department of MIA elaborated internal and external monitoring mechanisms (Internal monitoring mechanism - Criminal case investigation is monitored through the electronic case management system "CRIMCASE"; External monitoring mechanism - cooperation with the NGOs are in place and information/report is received on a daily basis). The Department also receives information

on incidents/reports from all police departments throughout the country. In case the employee of the Department reveals gaps or problems in the investigation process or investigation was not launched when necessary, he/she reacts promptly, contacts the relevant police officer, and provides legal consultations. As a result of the above mentioned activities, the department produces internal statistics regarding on hate crimes, for the further analysis. Based on the analysis the department develops a guidelines, recommendations, legislative amendments and etc. One of the main function of the department also is to improve statistical data in coordination with the Analytical Department.

28. Concerning recommendation 99, the GoG kindly notes that Ensuring human rights protection is one of the key priorities for the MIA. It requires special efforts to implement sensitive approaches in parallel with providing effective response to the crime. For this reason, in January 2018, the Human Rights Protection and Quality Monitoring Department was established under the Ministry. This new department aims to ensure prompt response and effective investigation of domestic violence, hate crime, violence against women, trafficking and crimes committed by/towards minors. The Human Rights Protection and Quality Monitoring Department of the MIA monitors all criminal cases that may involve hate motives. As a result of successful cooperation among the territorial units of the Ministry and the mentioned department, in 2018 the indicator for identifying hate motive is improved. The progress is expressed in numbers. Also, the specialization process has been started in the Ministry. During 2018, in cooperation with the Public Defender's office, two 3-days long trainings on hate crime were conducted for 50 police officers; Also, the Ministry has been implemented the TAHCLE (Training Against Hate Crimes for Law Enforcement) Program together with the OSCE ODIHR. Based on the agreement between the Ministry and the OSCE ODIHR, the TAHCLE program will be developed jointly by the Human Rights Protection Department, the Academy of the MIA, with participation of the Prosecutor's Office, the Public Defender's Office and relevant NGOs; Together with the Council of Europe the training module "Policing Hate Crimes against LGBTI persons" was developed. The training module aims to raise awareness, and increase sensitization of the investigators. Cascade trainings will be held in June-July, 2019 and all investigators will be trained with the above-mentioned programs throughout Georgia.

29. Concerning recommendation 101, the GoG kindly notes, that in order to plan the needs based interventions (e.g. rehabilitation programs, medical care, etc.) for every prisoner, including LGBT, assessments of their needs are made in the penitentiary system. The Strategy and 2019-2020 Action Plan on the Development of the Penitentiary and Crime Prevention Systems were adopted aiming at respect and ensure the human rights of defendants, convicts, visitors, with particular attention to vulnerable groups and staff. Furthermore studying good practices and tailoring approaches to existing needs of LGBT detainees is planned during the next 2 years.

30. Concerning recommendation 104, the GoG kindly notes, that court does not indicate in its decision which detention facility a person should be placed in. This issue where the prisoner should be placed is regulated under the Imprisonment Code and depends not only on the penalty size but also on other circumstances, such as the motive and the result of the crime, personal characteristics and the risk of danger related to the prisoner. The sexual orientation or gender identity of the prisoner is not the ground for determination of the type of penitentiary facility where he/she should be placed.

31. Concerning recommendation 114, the GoG kindly notes that Patient organizations, community organizations, including LGBT people widely participated in the development Georgia HIV/AIDS National Strategic Plan 2019-2022.

32. Concerning recommendations 116 and 117 the GoG kindly notes that according to the Article 6 of the Law on "Health Care": "It shall be prohibited to discriminate against a patient due to his/her race, skin colour, language, sex, religion, political and other beliefs, national, ethnic and social affiliation, origin, property status and title, place of residence, disease, sexual orientation, or a personal negative attitude".