

**THE STATUS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS
IN GEORGIA**
**Submission to the Human Rights Council for the 10th session of Universal Periodic Review
Working Group**

Introduction

This information is submitted by ILGA -Europe¹, COC Netherlands², the Office of Public Defender (Ombudsman) of Georgia³ and Inclusive Foundation⁴, lesbian, gay, bisexual and transgender rights organization from Georgia, in the framework of the Universal Periodic Review for Georgia, in order to draw attention of the Human Rights Council on lesbian, gay, bisexual and transgender (LGBT) rights in Georgia. This report is largely based on Inclusive Foundation's reports and website, as well as reports and website of the Office of Public Defender (Ombudsman). It was written by Paata Sabelashvili, Chairperson of the Inclusive Foundation, and member of ILGA Eurobe Executive Board.

1. Overview

Georgian legislation has improved significantly since it joined the Council of Europe in 1999. In 2000, Georgia adopted a new Criminal Code that did no longer contain an article incriminating male homosexuality. Georgia's Constitution does not specifically mention sexual orientation or gender identity in its article prohibiting discrimination. Georgia is a signatory of the European Convention of Human Rights (ECHR). Article 14 of the Convention provides for nondiscrimination. It lists a wide range of grounds for non-discrimination, yet omits sexual orientation. This gap was bridged with Protocol 12 to Article 14 which does specify that, based on the case law of the European Court of Human Rights (ECtHR), sexual orientation is considered as an explicit ground for nondiscrimination. Georgia signed the protocol and ratified it in 2005.

The municipal legal system of Georgia avoids mentioning of sexual orientation. There is only one exception where the law covers the topic of sexual orientation: the new Labor Code of Georgia adopted in 2006. Article 2.3 lists sexual orientation as one of the grounds for non-discrimination in the employment relations. The limitation of this instrument is that there is no further specification of rules of application of this article⁵.

¹ ILGA-Europe, the European Region of the International Lesbian and Gay Association, enjoys consultative status at Economic and Social Council of United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organizations in 47 European countries; it receives financial support from the European Commission. www.ilga-europe.org

² COC Nederland is Dutch federation for the integration of homosexuality, established in 1946. COC Netherlands is in Special Consultative Status with the Economic and Social Council of the United Nations. www.coc.nl

³ Ombudsman is the Public Defender of Georgia. www.ombudsman.ge

⁴ Inclusive Foundation is national LGBT organization that protects rights of LGBT people in Georgia. Inclusive Foundation is member of ILGA, South Caucasus Network of Human Rights Defenders. www.inclusive-foundation.org

⁵ Inclusive Foundation, GYLA, ILGA Europe. *Shadow report on the implementation of the European Social Charter by Georgia: Employment issues in relation to sexual orientation*. Available at <http://www.inclusive-foundation.org/home/?page=publications&lang=en>

On a ministerial decree level, there is a discriminatory clause⁶ that prohibits LGBT people from donating blood. The Decree of the Minister for Health, Labor and Social Affairs explained that this refusal is based on homosexuals belonging to the high risk group for HIV/AIDS. This article is a result of the inability to distinguish between sexual identity and risky sexual behavior.

In all other instances, Georgian legislation does not include openly discriminating clauses. The absence of anti-discrimination legislation, definitions of hate speech and hate crimes, as well as appropriate punishment for those acts, leaves many gaps that allow for discriminatory practices.

Social attitudes public opinion surveys conducted since 1998 mentioned homosexuals in their questionnaires⁷. According to all of these surveys, homosexuals stand out as the most despised group in Georgian society. The majority of respondents preferred to have an alcoholic colleague rather than a homosexual person at work.

The situation has worsened during last few years since Georgia underwent security, economic and internal political crises. There has been manifestation of negative attitudes toward traditionally discriminated minorities, specifically LGBT people. In July 2009 candidates for Office of Public Defender (Ombudsman) were asked about their stance on exclusion on grounds of sexual orientation. One of the candidates spoke for re-criminalization of homosexuality since it is a crime according to the Church law. This candidate was not appointed as an Ombudsman, however he still occupies position of Deputy Head of parliamentary committee on human rights and civil integration.

2. Promotion and Protection of Human Rights on The Ground

A. Cooperation with human rights mechanisms

B. Implementation of international human rights obligations

1. Right to equality and non-discrimination (Article 26 ICCPR, article 14. ECHR, Protocol no.12 Principle 2. Yogyakarta Principles)

The Georgian legislation was significantly improved since joining the Council of Europe in 1999. In 2000 homosexuality was decriminalized. However, Georgia still lacks an anti-discrimination law to protect traditionally discriminated minorities from exclusion and discriminative treatment. As LGBT community remains as one of the most stigmatized groups of the society it is hard to reveal real level of discrimination. However, Inclusive Foundation was able to identify the most vivid examples of discrimination on grounds of sexual orientation.

In October 2007 a gay man was expelled from the reality TV show Bar-4 after coming out on live broadcast. He was told that he was demanded off the private TV station Rustavi 2 arranged show with the influence of Georgian Orthodox Church and country's leadership. Inclusive Foundation consulted him on his case and he initially planned to bring the channel to the court. However, he later refused to complain as he wanted to avoid more pressure than he had already encountered as the result of his coming out on nation wide audience.

Article 138 of Georgian Penal Code criminalizes sexual assault. In its several paragraphs it lists sexual contact and then specifically mentions “buggery, lesbianism and any other inverted intercourse”⁸. It is discriminatory to equate homosexual contact with “inverted intercourse”. It is

⁶ Ministerial decree # 241/N (2001). Ministry of Health, Labor and Social Affairs of Georgia

⁷ Quinn Sheila Report of ILGA-Europe/COC mission to Georgia Brussels 2007

⁸ http://www.parliament.ge/_special/kan/files/673.pdf

also noteworthy that the article assigns more severe sentence compared to the article 137 which deals with rape, concept of which exclusively limited to heterosexual contact.

Ministerial decree # 241/N (2001) of the Ministry of Health, Labor and Social Affairs of Georgia lists the grounds that permanently prohibit one to become a blood donor. It mentions infections that can prevent one from donating blood (HIV/AIDS, B, C hepatitis etc.) The decree also specifies risk populations for contracting the abovementioned infections. While doing so, it also specifies that those who belong to the risk groups are also unable to donate their blood. The decree mentions “Prostitution, homosexuality, tattoos, use of needles and intravenous drug use” to be factors for defining these risk groups. Homosexuality is mentioned along with concrete behavior that homosexuals as well as heterosexuals might be practicing. Besides this, it mentions homosexuality in pathologization term (homosexuality).⁹

RECOMMENDATIONS:

1. State has the positive duty to protect its citizens from exclusion and discrimination. Therefore, Georgian state needs to adopt comprehensive anti-discrimination legislation criminalizing discrimination on all grounds, including sexual orientation and gender identity.
2. The Parliament of Georgia has to eliminate discrimination on grounds of sexual orientation during penalizing sexual assault.
3. The Ministry of Health, Labor and Social Affairs of Georgia has to recall its ban for homosexuals to donate blood.

2. Right to life, liberty and security of the person (Article 3. Universal Declaration of Human Rights, article 20. ICCPR, Principle 5. Yogyakarta Principles)

Hate speech is not restrained in Georgia. The definition of bias crimes \ is limited to the grounds of ethnic and religious origin. In practice this prevents from monitoring the full picture of homophobic biased crimes and incidents. Recently, cases of promotion of hatred on grounds of sexual orientation have increased. Law enforcement officers and media fail to address this issue in their respective competences. One of the example is the case of a hate group page established on Facebook.

In March 2010 Facebook page entitled “death to homosexuals” was registered. It took Facebook awhile to remove the page based on numerous reports by the users. The page, which was available in Georgian and accessible to everyone promoted violence based on sexual orientation. The administrators of the page posed threats to several persons, including the representative of the Inclusive Foundation. The administration of the webpage repeatedly threatened this person and were cited to know his telephone and address. Victim filed a complaint to the police. Investigation has started but authors are not aware of any result of the investigation.

RECOMMENDATIONS

4. State shall adopt policy to prevent promotion of hate against its citizens.
5. Competent State authorities shall undertake prompt and objective investigation of any action directed against life, liberty and security of the person.

3. Administration of justice, including impunity, and the rule of law

⁹ Ministerial decree # 241/N (2001). Ministry of Health, Labor and Social Affairs of Georgia

Police reform in Georgia was one of most successful undertakings of Georgian government in fighting corruption and ensuring transparent investigation process. However, recent political instability in Georgia challenged the assumption that changes in the system are irreversible. One of the most brutal police actions against LGBT people in Georgia was evidenced during raiding offices of the only openly LGBT NGO in the country.

On December 15, 2009, officers of 3rd unit of Old Tbilisi Department of the Tbilisi Main Unit of the Ministry of Internal Affairs (MIA) of Georgia arrested Mr. Paata Sabelashvili, Chairperson of Inclusive foundation. Mr. Sabelashvili was charged with crimes provided for by Art. 260 (1) and Art. 262 (1) of the Criminal Code of Georgia¹⁰. At 7:00 pm the organization was raided by the police, who did not wear police uniforms and refused to provide a search warrant at the request of the organization members. The also refused to reveal their identity. The police officers searched thirteen individuals present at the office, while making degrading, humiliating, abusive and threatening remarks toward the organization members. Paata Sabelashvili, the leader of the organization was arrested and charged with drug possession¹¹.

Those present at the office were searched without a warrant. Their cell phones were seized, although it is unclear whether substantial evidence existed that they were hiding an item to be found. Police officers searched individuals that arrived at the office later without a search warrant, although it was impossible for them to hide the item to be found, as they were not present when police officers started searching. Personal search reports were not drawn up and the office search report was never handed.

Regulations of law were violated during the search. As the defendant declares, all three packages were placed in a black plastic bag, rolled over and kept that way (one of the police officers put it in his pocket). The defendant signed the seal later at the police station. An item or a document obtained as a result of an unlawful search, through violating noted regulation loses or does not acquire the status of evidence and is inadmissible in trials to substantiate the accusation or the verdict of guilty.

During the search of the Inclusive Foundation office unnecessary damage of items occurred on part of searching officers. LGBT posters were torn down. Noted actions could have never been relevant to purpose of the search to find and seize the evidence of an offence or an item obtained illegally. Apart from the above mentioned procedural violations, we consider that abasement of dignity of sexual minorities by MIA officers during fulfillment of their duties, as well as the use of uncensored vocabulary, threats made against foundation members, use of homophobic expressions intended to intimidate them, is directed against ethical norms and is discrediting MIA at the same time.

On the positive note, we would like to add that MIA has stated that its General Inspection Office gave one officer a reprimand at the "severe" level in accordance with the police code of ethics, as his actions were determined to be nonethical and inappropriate for police officers. Two other officers were also given a reprimand at the "severe" level for not preventing the above-mentioned officer from making the unethical statements¹².

RECOMMENDATIONS

¹⁰ Ombudsman's statement on the case. <http://ombudsman.ge/index.php?page=1001&lang=1&id=1154>

¹¹ GYLA's Statement on Illegal Actions against Inclusive Foundation. http://gyla.ge/index.php?option=com_content&view=article&id=672%3Agylas-statement-on-illegal-actions-against-inclusive-foundation&catid=45%3Anews-eng&Itemid=1&lang=en

¹² US Department of State, Bureau of Democracy, Human Rights, and Labor, [2009 Country Reports on Human Rights Practices](http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm) – Georgia. <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm>

6. State shall guarantee equal treatment before the law of every citizen. It is necessary to take active steps to educate law enforcers on human rights, equality and nondiscrimination.

4. Right to privacy (Article 8, ECHR)

Decriminalization of homosexuality was a huge step forward for Georgia to guarantee equal rights to all of its citizen. Georgian officials have taken steps to prevent the security services from interfering in citizen's private life¹³. However, the communist legacy of criminalization had lead law enforcers to blackmail homosexuals on numerous occasions. In one of the most recent cases of top police officials attempted to pressurize investigative journalist.

On November 25, representatives of security services of Adjara Autonomous Republic Police (Special Operative Department) summoned Mr. Tedo Jorbenadze, a head of investigative journalism team at the Batumelebi newspaper. They presented printed photo materials to Tedo Jorbenadze. They told Mr. Jorbenadze the photos were depicting him in the company of naked men (as the journalist asserts, he was not able to identify himself in these printouts). He was also told that in case he chose not to cooperate with them, the pictures would be made available for public appearance¹⁴.

RECCOMENDATIONS

7. State shall ensure that police does not collect information on private lives of its citizen.

5. Right to freedom of expression, association and peaceful assembly

(Article 21. ICCPR, Articles 10. and 11. ECHR, Principle 20.The Yogyakarta Principles)

Freedom of expression and peaceful assembly are relatively new to contemporary Georgian civil culture. Georgia has achieved much to guarantee these freedoms to its citizen. However, situation is far from being ideal. It is a very sad fact that law enforcers do not interfere timely to guarantee these freedoms to their fellow citizen. In the recent case described below police failed to interfere timely and prevent homophobic bullying, leading to aggravation of the case.

On 20th of May 2009 a public discussion titled "Homophobia, Public and Private" was held at the Heinrich Böll Foundation's Tbilisi office on 20 May. The event was timed to coincide roughly with both the International Day Against Homophobia and Transphobia on 17 May and the anniversary of the decriminalization of homosexuality in Georgia on 1 June 2000. Taking part in the discussion were representatives of the Inclusive Foundation, as well as the leader of the Christian Democratic Institute, Nodar Sarjveladze. After the presenters spoke, several persons calling themselves members of the radical Union of Orthodox Parents disrupted the discussions. They stated grievances against the Foundation, saying "we demand that these immoral people be forced to leave", and issued threats; they then aggressively argued with audience members. Police arrived at the scene 40 minutes after they were called, long after the people who disrupted the event had left the building. Despite the fact that the disrupters had openly threatened a representative of the Boll Foundation and the moderator of the discussion, the police did not open a criminal case.

May 3rd 2010, International Press Freedom Day, extremist orthodox organizations: Peoples' Orthodox Movement and Orthodox Parents' Union organized a rally in front of Ilia State University that later on was joined by two Mayoral candidates. They requested withdrawal of Irakli Deisadze's book from the university bookstore. This newly published book criticized extremist orthodox ideology, allegedly including passages that may upset the feelings of Christian Orthodox believers.

¹³ In 2002, then Minister of Justice, Mikheil Saakashvili made statement in governmental council criticizing Minister of Interior in surveilling citizen's private lives.

¹⁴ Georgian security services suppress Batumi based independent newspaper *Batumelebi*. Me magazine # 1 (13) 2010 <http://inclusive-foundation.org/home/?page=publications&lang=en>

On May 4th 2010, responding to this attack on Ilia State University, a number of civil activists decided to stage flash mob in front of the same university to defend the constitutional right to freedom of expression and access to information. During the protest several persons from People's Orthodox Movement joined the mob and attempted to disrupt it. Later on, members of extremist groups, they steadily outnumbered the civil activists, have started targeting organizers and participants. Street bullying has taken place, coupled with anti-gay slogans and chase, beating and otherwise attacks on civil activists physical and mental integrity¹⁵.

Police have not interfered adequately, they only tried to separate individuals when fight had become extreme. Neither did they stop perpetrators from limiting right of freedom of assembly of mob participants. In addition to this they made participants leave the territory while letting perpetrators remain in control of the vicinity until they made sure mob was disrupted.

Several participants were severely beaten up in front of police officers, others were chased in the street by perpetrators with knives in their hands. Perpetrators were individually asking about the participants' sexual orientation while targeting them. While doing so, they have been threatening with physical liquidation and sexual assault. Several persons have suffered concussion and physical injuries. Some have been targeted on following day in their neighborhoods after been identified through television coverage.

***On May 7th**, private TV company "**kavkasia**" organized a live talk show about this issue. Members of the two radical orthodox groups raided studios and physically assaulted participants and the head of the TV company. The head of newly founded Peoples Orthodox Movement, Malkhaz Gulashvili told the opponents a couple of times: "You are not liberals; you are liberasts." He used a term which apparently is wordplay of liberals and pederasts; the latter is used in Georgia as a derogatory term for gays. Only after this did police intervene and put 8 perpetrators to custody and Tbilisi city court sentenced them to two months pretrial detention.*

They are charged with hooliganism and preventing journalists from carrying out their duties. Now, although police had reacted, their intervention was not timely and did not include the aggravated element of homophobia.

RECOMMENDATIONS

8. State is obliged to guarantee freedom of assembly and expression to everybody. State shall ensure that infringement of these rights is not left without proper intervention from police.

9. Hate crimes shall be defined in Georgian law.

10. Cases of religious extremism shall be qualified as such and investigated in timely and transparent manner.

¹⁵ Statement of Inclusive Foundation