

# EHRAC

## Bulletin



## Are Lesbian, Gay, Bisexual and Transgender (LGBT) persons protected against discrimination and hate crime in Georgia?

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Georgia is dominated by deeply rooted traditions, history and religion which promote stigmatisation and enhance existing negative stereotypes of the LGBT community. This is aggravated by state practice and poor legislation which fail to ensure adequate protection of LGBT individuals against discrimination and hate crime.<sup>1</sup> Even though homosexuality was de-criminalised in Georgia in 2000, hostility towards sexual minorities still prevails at most levels of Georgian society, prompting LGBT individuals to remain invisible.<sup>2</sup>

### **i. Law**

Article 14 of the Georgian Constitution aims to ensure equality before the law.<sup>3</sup> In contrast to the ECHR, the Constitution provides an exhaustive list of prohibited grounds of discrimination. The list does not include sexual orientation

or gender identity. In theory, 'sex' may be interpreted as encompassing 'sexual orientation',<sup>4</sup> but, as of yet, no guidance has been provided by the Constitutional Court.<sup>5</sup> Article 142 of the Penal Code of Georgia<sup>6</sup> criminalises the failure to treat people equally, including on account of their sex. Again, sexual orientation or gender identity are not expressly prohibited.

Georgian legislation does not define hate crime, although hate motive is considered an aggravating circumstance and results in heavier sanctions for certain crimes (e.g. crimes committed on religious or ethnic grounds).<sup>7</sup> However, sexual orientation and gender identity are not expressly mentioned. At the time of writing, a new law amending the Georgian Criminal Code has been passed by the Parliament of Georgia. The law defined hatred directed, inter alia, against members of ethnic and re-

ligious minority groups as a general aggravating circumstance for all criminal offences.<sup>8</sup> In addition, as recommended by various Georgian LGBT NGOs, sexual orientation and gender identity have also been included as hate crimes indicators. The law has recently been adopted and will enter into force shortly. Hate speech is not criminalised in Georgia either. It is mainly regulated through charters of ethics and codes of conduct.<sup>9</sup>

### **ii. State practice**

Hate crimes against LGBT persons usually go unreported. In addition to the absence of hate crime legislation, reasons for not reporting hate crimes include a fear of an individual's sexual orientation being disclosed to the public and a lack of confidence in the law-enforcement system.<sup>10</sup> Hate crimes against LGBT persons are usually labelled under other provisions of the Criminal Code

and is consequently there is no indication as to whether or not a particular crime was motivated by hate.<sup>11</sup>

Homophobic public statements are not unusual. For example, on 30 July 2009, during a meeting with civil society representatives, one of the two candidates for the Ombudsperson's position stated that homosexuality should be re-criminalised in Georgia.<sup>12</sup> In contrast, however, a TV journalist was recently held responsible under the Charter of Journalists' Ethics for failing to prevent homophobic statements from being made by a programme guest.<sup>13</sup>

A negative reaction towards LGBT activities in Georgia is often pre-emptive. A recent example of this was a rumoured gay pride event which was due to take place in Batumi, Georgia, in August 2010, which the religious authorities sought to prevent.<sup>14</sup> Similarly, in 2007, organisers were forced to cancel a Council of Europe campaign 'All Different, All Equal', which promoted tolerance and cultural dialogue, and was

not specifically focussed on LGBT rights. False rumours about the campaign being a disguised gay pride event gave rise to protests and condemnation from the Orthodox Church and television stations, causing fear of attacks.<sup>15</sup>

### iii. Pending ECHR challenge

To date, the ECtHR has not had the opportunity to consider instances of discrimination and homophobic ill-treatment towards LGBT persons in Georgia. However, the recently lodged case of *Aghdgomelashvili and Japaridze v Georgia* (No. 7224/11), concerning a police search of the premises of the LGBT organisation 'Inclusive Foundation', presents the ECtHR with such an opportunity. In this case, the applicants allege that extreme homophobic behaviour was displayed towards them by the police on the basis of their actual or perceived sexual orientation. This behaviour included multiple insults, rough treatment and unlawful strip searches. Despite numerous public statements made by both national and interna-

tional NGOs condemning the police's behaviour and the applicants' petitions to commence a pre-trial investigation, there has been no effective investigation into the case and none of the police officers have been held accountable.<sup>16</sup>

This case illustrates suppression of LGBT activism in the former Soviet Union. Other examples include banning gay pride marches,<sup>17</sup> use of hate speech<sup>18</sup> and refusing to register LGBT NGOs.<sup>19</sup> It is significant not only as the first Georgian case concerning homophobic ill-treatment but also, given the absence of similar judgments against other states, for its potential ramifications for the protection of LGBT rights more broadly in the Council of Europe.

In summary, whilst Georgian human rights legislation and practice has improved since the country joined the Council of Europe, further efforts are needed to ensure that the rights of LGBT individuals to equality and non-discrimination are secured and that they are protected against hate crime.

1 ECtHR case-law suggests that difference in treatment on grounds of sexual orientation requires particularly weighty reasons to be justified under the Convention and that States are afforded a narrow margin of appreciation. See *E.B. v France* (No. 43546/02), 22.01.08 § 91; *Schalk and Kopf v Austria* (No. 30141/04), 24.06.10 § 97; *Kiyutin v Russia* (No. 2700/10) 10.03.11 § 63.

2 See *H.J. (Iran) & H.T. (Cameroon) v Secretary of State for the Home Department*, [2010] UKSC 31.

3 "Everyone is free by birth and is equal before the law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence."

4 See *Toonen v Australia*, UNHRC, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4.04.94, para. 8.7.

5 See an "Overview of Georgian Legislation in relationship to LGBT human rights": <http://inclusive-foundation.org/home/?page=publications&lang=en>.

6 "Breaching equality of humans due to their race,

skin colour, language, sex, religion, political and other opinion, national, ethnic and social belonging, origin, place of residence or material condition that has substantially violated human rights."

7 See Article 109.2 (d) of the Penal Code.

8 This amendment has been made following the recommendation made by the European Commission against non-tolerance and discrimination (ECRI). See para 21 of ECRI general policy recommendation no 7 on national legislation to combat racism and racial discrimination adopted on 13 December 2010.

9 See the Charter of Journalists' Ethics and the Code of Conduct of Public Broadcasters

10 See 'Forced Out: LGBT People in Georgia', a report on ILGA-Europe /COC fact-finding mission, Sheila Quinn, August 2007, p.35: [http://www.ilga-europe.org/home/publications/reports\\_and\\_other\\_materials/%28offset%29/15](http://www.ilga-europe.org/home/publications/reports_and_other_materials/%28offset%29/15)

11 *Ibid*, p.58.

12 Dimitri Lortkipanidze, an incumbent deputy chairman of the Human Rights and Civil Integration

Committee of the Georgian Parliament. See <http://www.civil.ge/eng/article.php?id=21309>.

13 See <http://www.media.ge/en/node/37242>.

14 See statement of the Patriarchate of Georgia: [http://www.patriarchate.ge/?action=news\\_show&mode=news&id=565](http://www.patriarchate.ge/?action=news_show&mode=news&id=565).

15 See "Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Georgia" [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GRPJ\\_Georgia.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GRPJ_Georgia.pdf), p.11-12.

16 The case was submitted by INTERIGHTS and Article 42 of the Constitution. See: <http://www.interights.org/aghgomelashvili/index.htm>.

17 See *Alekseyev v Russia*, (No. 4916/07, 25924/08 and 14599/09) 21.10.10; also statement of facts in *Genderdoc-M v Moldova* (No. 9106/06).

18 See statement of facts in *Alekseyev et al v Russia* (No 39954/09).

19 See statements of facts in *Zhdanov & Rainbow House v Russia* (No 12200/08).

