



RIGHTS TO EQUALITY AND NON-DISCRIMINATION IN ARMENIA

Discrimination and violence against women

The national legislation on anti-discrimination is not comprehensive and does not provide practical mechanisms for effective protection against discrimination. Legal provisions prohibiting discrimination are scattered throughout the legal system. However, they neither define discrimination, nor provide for regulations. The provisions of the Criminal Code indicate only national, racial, or religious grounds as aggravating circumstance for serious crimes disregarding other manifestations of discrimination and hate crime. The procedural norms of proving differential treatment in the court are not regulated by the law. Court's approaches to evidential issues, particularly, the burden of proof, do not comply with international standards of anti-discrimination law further undermining the possibility for victims to claim effective legal protection and prosecution of perpetrators.

The Ministry of Justice introduced the draft 'Law on Equality' in February, 2015 in response to UPR recommendations and EU budget support conditionality requiring adoption of a comprehensive and effective anti-discrimination legislation. The draft law formally addresses the gaps in current legislation, however it fails to provide mechanisms for prevention and combating discrimination, and to establish an effective and independent national equality body.

2014 - 2016 Action Plan for the National Strategy on Human Rights Protection, which was developed for the enforcement of state policy on human rights, was not effectively implemented in areas of inclusive education, mental health, rights of ethnic and religious minorities. The new Action Plan for 2017-2019, like its predecessor, completely disregards the discrimination faced by LGBT people and implies no activities in this regard.

The effective enforcement of the legal and policy regulations of gender inequality and gender-based violence is significantly lowered due to the absence of functional implementation mechanisms. Particularly, there are no authorized duty-bearers with clearly defined functions and necessary resources.¹

Gender-based discrimination is especially evident in the spheres of political representation, employment, education and health. Political participation of women is low, as only 18% of Members of Parliament and 11.7% of members of community councils are women. Even though the government has a commitment to increase the proportional representation of men and women to 70/30, the new quota system will not be enforced until 2022. The rate of economic activity for women is lower than compared to that of men: about 55% vs. 72%, and this proportion has remained almost unchanged over the last decade.² Gender pay gap persists, as women still earn about 34% less than men.³ As for the sexual and reproductive health, Armenia has the third highest level of sex-selective abortions (SSA) in the world with a ratio of 114 boys - 100 girls.⁴ The new legal regulations initiated by the government aimed at preventing SSA threaten to create undue burdens for women seeking safe abortion. Additionally, women in rural areas are vulnerable to HIV infection, as the growing number of new HIV cases is connected with male labor migration to Russia (75% of registered HIV cases).⁵ As for the education, the State continuously fails to ensure adequate gender-sensitive education. Furthermore, the teachers usually transfer (or often impose) gender stereotypes and the textbooks also include descriptions of stereotypical roles of men and women.⁶

At the same time, domestic violence increased without due redress from the part of authorities. In the last six years, 40 women were killed because of violence committed by a current or former intimate partner.⁷ The national statistics reveal that 17% of the total homicides recorded in Armenia in 2015 were committed by family members.⁸ Due to the absence of legislation, the cases of domestic violence are still investigated as other criminal cases, with no accent on gender sensitivity. This not only leads to impunity of perpetrators, but also to further victimization of women subjected to domestic violence, as the battered women refrain from reaching out for assistance from authorities.

¹ Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Country Visit Report, 2014, <https://goo.gl/l6lw0w>

² Center for Gender and Leadership Studies, Economic activity of women and men in Armenia, 2016 <https://goo.gl/KVo0Er>

³ UNFPA, Diagnostic Study of Discrimination against Women in Armenia brief report 2016, <https://goo.gl/XXRN0K>

⁴ UNFPA, Sex Imbalances at Birth in Armenia, 2016, <https://goo.gl/tDYoaU>

⁵ NGOs' shadow report on the 5th and 6th periodic reports submitted by Armenia on the implementation of CEDAW, available at <https://goo.gl/EH1QQJ>

⁶ Society Without Violence, "Integration of gender component into social science subject: Recommendation package (2014), available at <https://goo.gl/j2cUFC>

⁷ Coalition to Stop Violence Against Women, 2016, "Femicide in Armenia: A Silent Epidemic"; available at <https://goo.gl/chd1jH>; Legalizing the stereotypes: women victims' access to justice and gender stereotyping in the framework of gender based violence judicial proceedings, Coalition to Stop Violence against Women, 2017, short summary in English available at <https://goo.gl/v9XNmV>

⁸ A study by RA Investigative committee, summary of findings available at: <https://goo.gl/0PgHFP>

Discrimination against LGBT people

Since Armenia's accession to Eurasian Economic Union in September, 2013, the "anti-gender" movement in the country has become more influential. Nowadays, Russia-sponsored entities are working very actively on hindering the work of human rights organizations by disseminating populist messages through traditional and social media.⁹ They successfully sabotaged adoption of laws on discrimination and domestic violence and created widespread misperceptions on gender equality. Meanwhile, the government fails to educate public on the concept of 'gender' and the principle of equality between men and women. Furthermore, an internal decision was made to avoid using the term 'gender' in legal documents.

Armenia was named the 3rd worst country in Europe for LGBT people by ILGA-Europe due to the lack of effective protection mechanisms and highly negative societal attitudes towards LGBT people.¹⁰ LGBT people lack legal recognition as sexual orientation and gender identity (SOGI) are not included in Armenian legislative framework thus limiting legal recourse for many crimes against them.

LGBT people and human rights defenders and activists face bias-based speech and violence, while the authorities fail to carry out efficient, prompt and impartial investigation of such violations. In 2015 civil society reported 9 cases of hate crime (5 violent attacks, 4 threats) on the grounds of SOGI to OSCE/ODIHR, while the government 'has not reported reliable statistics on hate crimes'.¹¹ Existing legislation does not provide a definition of "hate speech" and does not imply liability for it. The Criminal Code does not consider SOGI grounds as aggravating circumstance for serious crimes. The recent amendment to the marriage definition in the Constitution has limited the union to different-sex couples only.

Professional communities, such as doctors, lawyers, and teachers predominantly view homosexuality as a disease.¹² At the same time, representatives of the ruling political party and media affiliated with them spread and endorse hate speech towards LGBT persons and defenders of their rights labeling them as 'traitors' and 'enemies of the state' and strengthening the environment of impunity in the country. In July, 2017 two LGBT-themed movies were withdrawn from the program of 'Golden Apricot' International Film Festival in an act of censorship and discrimination by the Union of Cinematographers of Armenia.¹³

LGBT persons are frequent targets for discrimination in closed institutions such as prisons and the army. Homosexual prisoners face physical and psychological violence, degrading treatment and discriminatory attitude displayed both by prison officers and inmates. They are segregated in penitentiaries, being placed in separate cells, which are usually in worse conditions, and are forced to implement the most 'humiliating' duties in penitentiaries, such as cleaning of penitentiary territories, toilets and restrooms, and dumping of garbage.¹⁴ Being unable to ensure the safety of LGBT people in the armed forces, the state exempts them from mandatory military service. However, as there is no relevant legal provision, the military applies a legal provision qualifying homosexual persons for exclusion from service under the mental disability exception. The soldiers, whose homosexuality is discovered during military service, are immediately separated and isolated from the rest of the troops. Eventually, they are sent to a military hospital, where they are assigned the most degrading tasks and are segregated.¹⁵

Religious freedom

The current law on Freedom of Conscience and Religious Organizations implies limitation for religious minorities. Specifically, it has restrictions regarding registration and practice of religious organizations. At the same time, however, it gives privileges to the Armenian Apostolic Church: the latter has exclusive access to hospitals, orphanages, boarding schools, military units, and penitentiaries.

The amendments in the Constitution indicate a concerning intention to define different legal statuses for "religious organizations" and the "Armenian Apostolic Church" (AAC). While the amended Constitution provides that religious organizations shall be separate from the state, it proclaims the 'exclusive mission of the Armenian Apostolic Holy Church as the national church in the spiritual life, development of the national culture, and preservation of the national identity of the people of Armenia'. The current Law on Religious Organizations does not regulate this issue, while in 2017 a new draft law was introduced which mentions 'religious organizations' and the 'Armenian Apostolic Church' as separate legal categories.¹⁶

Furthermore, both the amended Constitution and the proposed law allow restrictions on the expression and practice of freedom of religion in order to protect state security. This provision not only contradicts the case law of the European Court of Human Rights, but also may lead to negative developments considering the numerous statements of the public officials and the AAC calling for limitation of rights of religious organizations to protect 'national security'.¹⁷

⁹ Union of Informed Citizen, Russian Trace behind Groups Fighting against Domestic Violence Law, 2016 <http://uicarmenia.org/en/2288>

¹⁰ ILGA-Europe, Annual Review of the Human Rights Situation of LGBTI People in Europe, 2017 <https://goo.gl/MVtw1V>

¹¹ OSCE/ODIHR, Hate Crime reporting, <http://hatecrime.osce.org/armenia>

¹² Lusine Karanyan, Armenian Helping Professionals about LGBT Community, 2013

¹³ Censorship in Armenian cinematography: "Golden Apricot" has removed the "Armenians: Internal and External Views" program from the festival; <https://goo.gl/oQMb7g>

¹⁴ Penitentiary Monitoring Group, Annual report, 2014-2015 <https://goo.gl/sCGq0C>

¹⁵ Society Without Violence, The Human Rights Situation of LGBTI Individuals in Armenia: A Practical Assessment, 2016 <https://goo.gl/dgiAk1>

¹⁶ OSF-Armenia Justice Group Observations and Recommendations on the Draft Amendments to the RA Law on Freedom of Conscience and Religious Organizations and related legal acts; July 2017

¹⁷ Helsinki Committee of Armenia, Observer: Human Rights in Armenia in 2015, <https://goo.gl/gmRpf2>

People with disabilities: mental health

The preferential government support for the AAC and its exclusive presence in public education and closed institutions leads to discrimination in these fields. Particularly, the AAC holds religious classes and prayers in the army, which conscripts are forced to attend. Moreover, soldiers who have religions other than the AAC or are atheists forcefully undergo baptism into the Armenian Apostolic faith. As for the education, students have to take a mandatory class named "History of the Armenian Church". The latter comprises religious propaganda, which is against OSCE Toledo principles and has prompted religious intolerance among students. The Ministry of Education stated that the government had no intention of following the 2013 recommendation by the UN Committee on the Rights of the Child to revise school curricula to eliminate the course.¹⁸ Religious minorities also encounter the following discriminatory regulations. Firstly, they face restrictions for renting spaces and getting building permits for places of worship, as the permission is granted by AAC. Secondly, they are required to pay VAT on donations that were imported from abroad, notwithstanding a legal exemption.¹⁹

It is challenging for the Armenian civil society to push forward changes concerning these issues, as the general public attitude towards religious minorities is negative, which is reinforced by media outlets and politicians labeling these minority groups as "sects" and "enemies of the state."

Armenia has developed and adopted Mental Health Strategy for 2014-2019 and an Action Plan for Delivery of Alternative Care and Social Services for persons with psychosocial disabilities. Nevertheless, the existing mental health care practices in Armenia prevent people with psychosocial disabilities from living independently and being included in the community. Furthermore, they are often subject to forced psychiatric interventions, violence and abuse.

Persons in psychiatric institutions are subjected to ill-treatment, namely physical and psychological violence, labor exploitation, excessive use of restraints, and are not provided with proper and qualified health care. Deaths in institutions are not investigated fully and effectively. In 2006-2015 the number of death cases in eight psychiatric institutions totaled to 373, out of which seven were ruled as suicide, with criminal cases were initiated only in the case of 42 deaths. All 42 criminal cases were closed without completion under the pretext of "absence of criminal evidence".

Many patients undergo compulsory treatment in psychiatric hospitals, which they cannot challenge on their own: there are no direct mechanisms for an affected individual to seek review of hospitalization. A court decision on their release might be sought only by the hospitals. In the meantime, applications for compulsory hospitalization are numerous and they are overwhelmingly granted by the courts. In the period of 2010-2014, courts throughout Armenia received 252 requests for compulsory treatment of citizens in psychiatric institutions: 194 of the applications were granted and only one decision was appealed.

Under the current legislation, persons with mental health problems may be recognized legally incapable by thus being deprived of the possibility to exercise their rights fully and properly and to make decisions about their life independently. There are no effective mechanisms for restating person's legal capacity. The court trials of cases challenging person's legal incapability fail to ensure the "equality of arms," and a guardian is appointed for the legally incapable declared person without consulting them.

The right of persons to live independently and be included in the community is violated as mental health care and treatment are performed in closed institutions. As of July 2016, around 50,000 people were registered as patients with mental disabilities. According to the assessment of physicians 50% of institutionalized individuals do not need to be confined in an institution, but rather need social support and inclusion into community. Yet, mental health services continue to be provided mainly in psychiatric institutions,²⁰ which also increases the cases of ill-treatment and abuse of patients.

Recommendations:

- Adopt an effective and comprehensive anti-discrimination legislation in line with European and international standards, ensuring provision of effective prevention and protection mechanisms, including establishment of independent and effective national equality body.
- Amend the civil, administrative and criminal codes according to ECRI General Policy Recommendation N7.
- Adopt a comprehensive and effective standalone law on domestic violence in line with Istanbul Convention and CEDAW General Recommendation N19.
- Develop effective mechanisms for enforcement of the law on equal rights and equal opportunities for men and women.
- Establish a multi-sectoral referral mechanism to assist victims of domestic and gender-based violence through timely and appropriate support services.
- Establish state-funded support centers, covering all regions of Armenia and the capital, delivering services to victims of domestic and gender-based violence.
- Develop and implement structured policy of gender mainstreaming in education system primarily in terms of revision of content as well as awareness and sensitivity of teachers and students.
- Adopt effective legal and policy measures, including strong state oversight mechanisms, to overcome gender pay gap and ensure equal access to employment for men and women.

¹⁸US Department of State, International Religious Freedom Report for 2015, <https://goo.gl/pTBkoe>

¹⁹Ibid

²⁰National data reveals that, at present, only 2.7% of the total health care spending is allocated to mental health, and the lion's share (88%) of such spending is allocated for psychiatric treatment

- Review the existing legislation regarding hate speech and hate crime, including providing definitions and defining liability for hate speech as well as considering the committal of a crime on the basis of sexual orientation and / or gender identity of a person as a circumstance aggravating the crime and punishment.
- Effectively and comprehensively investigate human rights violations against LGBT people ruling out any discriminatory and biased approach towards LGBT people in the investigatory bodies
- Undertake appropriate measures to ensure the safety of LGBT people in closed institutions and to prevent cases of inhuman and degrading treatment against them.
- Review the 2011 Draft Law on Religious Organizations based on Venice Commission/ODIHR commentary to rule out preferential government support for the Armenian Apostolic Church in law and in practice;
- Align the teaching practice of religious course "History of the Armenian Church" with OSCE Toledo Principles.
- Ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- Ensure the proper, effective, and accountable implementation of the Mental Health Strategy for 2014-2019 for persons with mental health issues and the Concept Paper and Action Plan for the Delivery of Alternative Care and Social Services to Persons with Mental Health Issues, including allocation of necessary funding from state budget
- Introduce legislative provisions requiring the participation of an advocate from the very beginning of the process of admitting a person to a psychiatric medical institution.
- Ensure independent civilian oversight over the institutions providing government supported care and treatment services.

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