

Ref: CommHR/MOF/sf 095-2024

Mr Shalva PAPUASHVILI
Chairman of the Parliament of Georgia

Strasbourg, 6 September 2024

Dear Chairman,

Further to our previous exchange of letters regarding the draft law “On transparency of foreign influence”, I wish to continue the dialogue on ensuring the effective observance of human rights in Georgia.

Accordingly, I share with you my concern about the draft law “On protecting family values and minors,” including amendments to 18 other laws (N 07-3/466/10, registered in the Parliament on 10 June 2024 and passed in second reading on 4 September 2024).

I understand that the draft law limits educational institutions, broadcasters and advertisers from “promoting” information about gender identity and same-sex relationships, and restricts the right to hold assemblies and manifestations for lesbian, gay, bisexual, transgender or intersex (LGBTI) people. Further, the draft law proposes a total ban on legal gender recognition: it is not permitted to change the indication of sex in a person’s identification document and health professionals providing gender affirming healthcare face up to four years of imprisonment. The draft law also prohibits legal recognition of same-sex relationships and LGBTI people are not allowed to adopt children or be foster parents.

The draft law provides a legal footing for discrimination against LGBTI people and appears to be at variance with the European Convention on Human Rights (the Convention). I provide below a brief overview of some of the relevant caselaw of the European Court of Human Rights (the Court), as it applies to the various matters covered in the draft law.

According to the well-established caselaw of the Court, “a democratic society within the meaning of the Convention rejects any stigmatisation based on sexual orientation” (see *Bayev and Others v. Russia*). Such a society is built on the equal dignity of individuals and is sustained by diversity, which it perceives not as a threat but as a source of enrichment (see *Nachova and Others v. Bulgaria* [GC]).

With regard to the banning of gatherings and of the distribution of information regarding LGBTI people, the Court has repeatedly ruled that such measures are discriminatory, and that they violate LGBTI people’s rights to freedom of assembly (see, for example, *Genderdoc-M v. Moldova*; *Alekseyev and Others v. Russia*) and freedom of expression. In *Bayev and Others v. Russia*, for example, the Court held that the legislative ban prohibiting information about homosexuality among minors “embodied a predisposed bias on the part of the heterosexual majority against the homosexual minority.” It concluded that “by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.” In *Macaté v. Lithuania* [Grand Chamber (GC)], the Court held that restrictions on children’s access to information about same-sex relationships which are based solely on considerations of sexual orientation – that is to say, where there is no basis in any other respect to consider such information to be inappropriate or harmful to children’s growth and development – are incompatible with Article 10 of the Convention (freedom of expression).

When it comes to access to legal gender recognition for transgender people, the Court already found in *A.D. and Others v. Georgia* a violation of Article 8 (respect for private and family life) of the Convention in connection with the imprecision of the current domestic legislation in Georgia which undermined the availability of legal gender recognition in practice, and the lack of a clear legal framework which left the domestic authorities with excessive discretionary powers, and which could lead to arbitrary decisions. The Court observed that such a situation was fundamentally at odds with Georgia’s positive obligation

to provide quick, transparent and accessible procedures for legal gender recognition. Prohibiting access to legal gender recognition altogether, as proposed in the draft law, would further entrench existing violations of the right of transgender people to respect for their private and family life.

With regard to the legal recognition of same-sex relationships, the Court has found in *Fedotova and Others v. Russia* [GC], that “in accordance with their positive obligations under Article 8 of the Convention, the member States are required to provide a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship.” This interpretation of Article 8 of the Convention is guided by the concern to ensure effective protection of the private and family life of same-sex couples in a stable relationship and of their families. The Court has further observed that “many authorities and bodies view the recognition and protection of same-sex couples as a tool to combat prejudice and discrimination against homosexual people,” which is in keeping with the values of the “democratic society” promoted by the Convention.

When it comes to other aspects of the right to respect for family life, including adoption, the Court has consistently found no valid justification to deny a specific right solely because of homosexual sexual orientation, when the right is available to heterosexual people in the same situation. For example, in *E.B. v. France*, which concerned adoption by a single lesbian woman, the Court found that domestic authorities made a distinction based on considerations regarding her sexual orientation, “a distinction which is not acceptable under the Convention”.

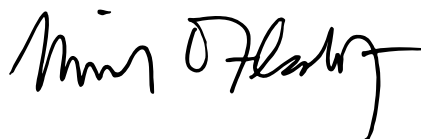
Furthermore, I am concerned about prejudice against LGBTI people in segments of Georgian society, including among some politicians. My predecessors have repeatedly stated that LGBTI people continue to be the target of hate crimes and discrimination. I recall that several provisions of the draft law list sexual orientation and gender identity alongside incest. Doing so only perpetuates the stigma and discrimination faced by LGBTI people. When it comes to ensuring effective protection of children against incest, sexual exploitation and abuse, and bearing in mind that Georgia is a party to the Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse (also known as the “Lanzarote Convention”), any existing lacuna in this domain should be addressed through a targeted legislative intervention, without jeopardising any other human rights protected under the Convention, and without encouraging societal prejudices against LGBTI people.

Finally, I recall that the content of the draft law is similar to the draft constitutional law “On protecting family values and minors,” registered in the Parliament on 3 April 2024, on which the European Commission for Democracy Through Law (the Venice Commission) issued an opinion on 25 June 2024. The Venice Commission concluded that “the mere proposal of adopting this text risks to (further) fuel a hostile and stigmatising atmosphere against LGBTI people in Georgia.”

In the light of the above, I respectfully ask members of the Parliament to refrain from adopting the draft law “On protecting family values and minors”, and to engage with national and international partners, including the Council of Europe, on how best to protect the human rights of LGBTI people and combat discrimination against them. I also respectfully ask members of Parliament to refrain from using rhetoric that stigmatises LGBTI people, including depicting their legitimate actions to obtain equal rights as LGBTI “propaganda/promotion”. Continued engagement with the Council of Europe and other relevant partners in this regard would ensure that Georgia’s legislative and policy framework is brought in line with key legal standards.

I would be grateful if you could ensure that all members of the Parliament receive a copy of this letter. I stand ready to continue our constructive dialogue on this and other human rights issues in Georgia.

Yours sincerely,



Michael O'Flaherty