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**Study on Homophobia, Transphobia and Discrimination on  
Grounds of Sexual Orientation and Gender Identity**

**Legal Report: Georgia**

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## **A. Executive summary**

1. Following decriminalisation of homosexuality in Georgia in 2000, several laws were amended to expressly outlaw discrimination on the basis of sexual orientation and provide for a greater protection of LGBT rights. Some legislative gaps and limitations remain however, which put LGBT persons in unequal position compared to heterosexual persons; in some instances the law is not facially discriminatory, however in practice leads to discriminatory results and severely affects LGBT community.

### *Overall legal framework*

2. Equality clause of the Constitution provides an exhaustive list of the grounds on account of which discrimination is prohibited. This does not include sexual orientation or gender identity. However, a Constitutional Court interpretation of this article suggests that it covers other groups as well including those not directly/expressly envisaged in this provision.
3. Criminal Law provisions prohibiting discrimination do not list sexual orientation or gender identity as a prohibited ground of discrimination.
4. Homosexuality is decriminalised in Georgia however several Articles remain in the Criminal Code which sanction homosexual intercourse under certain circumstances (for example under compulsion) separately from a general prohibition of similar acts and refer to homosexual sexual intercourse as “distorted sexual contact”.
5. Violation of equality leading to violation of human rights is criminalised in Georgia; this article does not however explicitly list LGBT status as one of the grounds.
6. No specific training of awareness-raising programmes dealing with LGBT rights have been introduced for public officials yet.
7. Gender identity is not listed as a specific exemption ground in the legal framework, the only ground which can be interpreted so as to apply to LGBT is the notion of ‘social group’.

### *Freedom of Assembly and Association*

8. While the Constitution of Georgia provides everyone with the right to form and join public associations, theoretically LGBT organisations can be denied registration based on the Civil Code provision which allows denial of registration if the aims of the organisation in question “are in contradiction with recognised moral norms.” However no such case has been documented in practice. Constitutionality of this Civil Code provision has not yet been challenged in court.
9. No legal restriction of the right to assembly for LGBT persons exists. The State has a negative as well as a positive obligation to ensure realisation of this right.

### *Freedom of Expression*

10. The Constitution guarantees to everyone the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or in any other means. This right also encompasses freedom from coercion to expression of one’s opinion.

11. Freedom of expression may be restricted on several grounds, among others for the protection of the rights and dignity of others and prevention of the disclosure of information classified as confidential.
12. Hate speech is not criminalised in Georgia.
13. Legislation guarantees the right of a citizen to become acquainted with the information about him/her stored in state institutions; non-disclosure and confidentiality of the state-held information pertaining to private matter is guaranteed.

#### *Hate Crimes*

14. No definition of hate crime exists in Georgian legislation, in respect of certain crimes hate motive constitutes an aggravating circumstance resulting in heavier sanctions; however, LGBT status is not explicitly mentioned in those provisions.

#### *Family Issues*

15. Georgian legislation does not recognise civil marriage of same-sex people. No alternative registration scheme exists in Georgia for the registration of same-sex people in any form or granting them any rights whatsoever.
16. Same-sex partners cannot legally adopt a child. Adoption by a single parent is envisioned by the legislation; however the law can be interpreted in a way as to deny adoption to a lesbian person. Assisted reproduction is allowed to a single woman, however in analogy of the adoption legislation, lesbian woman can be denied the right to become a mother *inter alia* through assisted reproduction.
17. Temporary reunification in prison for LGBT partners can be allowed if they lived together and ran a joint household for the last two years before arrest/detention. However, no rigid guarantee exists to ensure that the provision guaranteeing the right to reunification will not be interpreted and applied arbitrarily against LGBT couples by the prison administration, or that use of this right will not lead to future discrimination in the prison.
18. Family reunification is not guaranteed to LGBT refugees or aliens residing in Georgia.

#### *Asylum and refugee issues*

19. LGBT persons may be granted refugee status on account of membership of "a social group." However, there is no evidence in practice, neither an explicit mentioning of 'sexual orientation' in the Law of Georgia on the Legal Status of Aliens.
20. The Law of Georgia on the Legal Status of Aliens (in force since 2006) prohibits deportation of an alien from Georgia to a country where one is being persecuted for an act that is not considered a crime under Georgian legislation or where one's life and health will be in danger. This may also apply to LGBT refugees.

#### *Social security, social care and insurance*

21. Legislation regulating this field does not appear to be discriminatory against LGBT persons in particular.

### *Education*

22. Discrimination in the educational system is expressly prohibited without further specifications about particular grounds.
23. The right to personal safety, freedom from abuse, inviolability of personal life at school are guaranteed by law.
24. The curriculum in public schools does not include sexual education or life skills. There are no sex-segregated courses taught in public schools.
25. Georgian legislation does not envisage a procedure for reissuing a diploma to reflect a person's new/altered gender.

### *Employment*

26. The Labour Code of Georgia contains an anti-discriminatory clause with a specific reference to sexual orientation as one of the prohibited grounds of discrimination.
27. However, the Code prohibits discrimination only in employment relations, not during the recruitment process.

### *Housing*

28. The issues of right to land and home ownership are regulated by the Civil Code of Georgia which are gender and sexual-identity neutral.
29. An LGBT partner can inherit his/her deceased partner's property only through the latter's will, as opposed to heterosexual married person who can inherit the spouse's property automatically through the law, as well as the will.

### *Health Care*

30. The Law on the Rights of the Patient provide every citizen of Georgia the right to receive from any healthcare provider medical service in accordance with the professional and service standards, acknowledged and established in Georgia.
31. Trans-specific healthcare, including gender reassignment surgery, is available in Georgia without any discrimination in law. Financial costs must be borne by the individual in question.
32. The Law on the Rights of the Patient as well as the Law on the Protection of Health explicitly outlaw discrimination due to sexual orientation.
33. Georgian law expressly prohibits discrimination on the basis of an HIV/AIDS status, the law does not however prescribe any sanction for violating this provision.
34. Ministerial Order on Blood Donation bars HIV/Aids risk groups, such as those including homosexuals, from being blood donors.

### *Media*

35. Preamble of the Code of Behaviour of the Public Broadcaster states that the public broadcaster strives to establish equality and eliminate discrimination based on religious, ethnic, racial, gender or sexual orientation. The Code expressly prohibits use of pejorative words (e.g., "pederast"). However, effectiveness of this Code to deter hate speech or provide post hoc remedy has yet to be tested.
36. Little evidence exists to demonstrate that self-regulatory mechanisms of any broadcast media in the Georgian media are effective to sanction discriminatory statements.
37. The Charter of Journalist Ethics in Georgia states that a journalist should take all measures to avoid any kind of discrimination on racial, gender, *sexual orientation*, language, religious, political or other grounds; as well as based on ethnic or social grounds.
38. The way the Georgian media covers LGBT issues adds to their stigmatisation and prevents the processes of coming out and integration. Two main characteristics of this coverage are monopolisation of the discourse by three main actors: the media, politicians and the church and Mythologisation (both stigmatization and stereotyping ) of LGBT persons.

### *Access to goods and services*

39. No special legislation exists in this field that is relevant to LGBT status.
40. Violation of equality leading to substantial violation of human rights is criminalised in Georgia, but sexual orientation is not expressly mentioned in the provision.

### *Transgender issues*

41. Gender reassignment is openly performed in Georgia without prosecution.
42. The Law on Registration of Civil Acts expressly mentions gender reassignment as one of the grounds for changing names. Although it is not explicitly stated in the law, its wording implies that the name and gender of a person should 'match' with each other in line with the socially established understanding of *female* and *male* names.
43. Change of name provides the basis for issuing a new ID document, but not the birth certificate or any academic diplomas.
44. Transsexualism is not an obstacle in remaining married to a person of the other sex than the gender assigned at birth (or of the same sex), or to marry a person of the other sex than the chosen gender (or the same sex).
45. The law provides for privacy protection of all individuals specifically in relation to healthcare services, in practice however transgender persons have reported cases when this guarantee is violated, including by healthcare professionals. No case law exists challenging such practices, however. As the law does not allow to issue a birth certificate or university diplomas for a second time, a transgender person is deprived the possibility to protect one's privacy while applying for a job or in other situations when a person needs to submit his/her birth certificate or diploma.

*Intersex issues*

46. No specific legislation pertaining to intersex people exist in Georgia.
47. No compulsory operations are mandated by the law.
48. No right to choose gender is provided by law.

## B. Findings

### B.1. Overall legal framework

49. The Constitution of Georgia, the supreme law of the state, recognises everyone's equality before the law and the inviolability of individual's honour and dignity.<sup>1</sup> While exercising authority, the people and the state are bound by these principles as directly applicable law.<sup>2</sup> The equality clause of the Constitution, Article 14, in particular states: "Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence." Although the Constitutional list of prohibited grounds of discrimination does not include sexual orientation or gender identity, there exists a Constitutional Court interpretation of this article which suggests that it also covers groups identified by such characteristics which are not directly/expressly envisaged in this provision.<sup>3</sup> Hence, protection provided by this clause also applies to LGBT people.
50. Homosexuality was decriminalised in *Georgia in June 2000*. Several articles still remain in the Criminal Code however which sanction homosexual intercourse under certain circumstances separately from a general prohibition of similar acts and refer to homosexual acts as 'abnormal'. Article 138 states: "homosexual, lesbian or other type of *distorted* sexual contact committed by violence, threat of violence or by using *the helpless situation* of the victim is punishable." Article 139 of the Criminal Code further proscribes compulsory sexual intercourse or homosexual, lesbian or other sexual act using threat or employment dependency *etc.* Article 140 proscribes sexual intercourse, homosexual, lesbian or other type of "*distorted* sexual contact" committed by an adult with a person under 16. Sanctions for these crimes are however equal, whether committed by homosexual or heterosexual person. The criminal law of Georgia is based on "personal inviolability, respect to her/his dignity, humanism, democracy, *fairness and equality*. These principles define goals, structure, function and rule of the criminal procedure."<sup>4</sup> Violation of equality triggers one's criminal responsibility if it results in a human right's violation. Violation of equality among others is punishable on accounts of "social belonging," "political or other opinion" or "the fact of belonging to any public association," LGBT status is not expressly mentioned in the law. No judicial decision exists yet confirming or rejecting the possibility to interpret the named grounds so as to encompass LGBT status.
51. In some cases violation of equality will constitute an aggravating circumstance of a crime, for example Article 144<sup>3</sup> of the Criminal Code proscribes "humiliation or coercion, inhuman treatment or treatment which violates one's dignity and honour and causes strong physical, physiological pain or moral suffering." It further states that violation of equality while committing this crime constitutes an aggravating factor and will result in a heavier sanction.
52. The Codes of Conduct or Ethics of various public institutions also contain anti-discrimination clauses and strive to foster equality. For example, the Code of Ethics for the Employees of the Office of the Prosecutor of Georgia, adopted in 2006, states that the prosecutors have a duty to promote eradication of all forms of discrimination and respect the principle of equality before the law as the highest legal value. Breach of this Code can

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<sup>1</sup> *The Constitution of Georgia*, articles 14 and 17.

<sup>2</sup> *Ibid.*, article 7.

<sup>3</sup> Decision of the Constitutional Court of Georgia *Shota Beridze and others versus Georgia* (dated 31.03.2008)

<sup>4</sup> *The Criminal Procedure Code of Georgia*, article 6.



lead to disciplinary measures envisaged by the Organic Law of Georgia on Prosecutor's Office.

53. A special chapter on covering diversity is included in the Code of Behaviour of the Public Broadcaster. Along with the section about ethnic and religious minorities, women, disabled, old people, etc., there is a section (15.9) on the coverage of sexual minorities. The section states: "Homosexuals often become victims of offensive stereotypes. Homosexuals and bisexuals constitute a minority and authors of TV programs should remember, that like others, they are also a part of the society. Sexual orientation of a person should be mentioned only if that has a direct relevance to the topic of the TV program. Otherwise, by mentioning person's sexual orientation, one will violate the right to privacy and strengthen a stereotype. One should be careful while choosing words and expressions, one should use words homosexual or bisexual, it is prohibited to use such words as "tsisperi"<sup>5</sup>, pederast, or sodomite, Do not use such words, and do not allow your guests in the TV program to use them either.
54. The Charter of Ethics of Georgian Journalists (which is mandatory only for those who sign it) states in principle 7 that "journalists should understand the danger of media encouraging discrimination. Therefore, they should take all the measures to prevent discrimination of any person based on race, sex, sexual orientation, language, religion, political or other opinions, national or social origin, or based on any other characteristics."
55. Human rights education is not part of the school curriculum in public schools in Georgia. There are few governmental programmes conducted from time to time focusing on human rights in general. International treaties and agreements ratified by Georgia are of prior legal force over internal normative acts if they are not in contradiction to the Constitution of Georgia.<sup>6</sup>
56. International human rights treaties ratified by Georgia:
  - International Covenant on Civil and Political Rights (acceded on 3 May 1994)
  - Optional Protocol to the International Covenant on Civil and Political Rights (acceded on 3 May 1994)
  - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (acceded on 22 Mar 1999)
  - International Covenant on Economic, Social and Cultural Rights (acceded on 3 May 1994)
  - International Convention on the Elimination of All Forms of Racial Discrimination (acceded on 2 Jun 1999, made the declaration under Article 14 of the Convention in June 2005)
  - The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), acceded on 26 October 1994
  - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (acceded on 1 August 2002)
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (acceded on 26 Oct 1994)

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<sup>5</sup> "Tsisperi" is a pejorative word commonly used from Soviet times, it is a translation of Russian "goluboi" (literal translation into English would be "blue").

<sup>6</sup> *The Constitution of Georgia*, article 6.

- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (acceded on 9 August 2005)
- Convention on the Rights of the Child (acceded on 2 June 1994)
- The United Nations Convention Relating to the Status of Refugees and 1967 protocol relating to the Status of Refugees (acceded to both in 1999)

57. Council of Europe Conventions:

- European Convention on Human Rights and Fundamental Freedoms – (ratified in 1999)
- Protocol 12 of the Convention on Human Rights and Fundamental Freedoms - (ratified in 2001, entered into force in April 2005)
- (Revised) European Social Charter – (ratified in 2005, entered into force in October 2005)

58. Georgia has neither signed nor ratified the following treaties:

- Additional Protocol to the Convention on Cybercrime is an additional protocol to the Council of Europe Cybercrime Convention, addressing materials and "acts of racist or xenophobic nature committed through computer networks"
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

## **B.2. Freedom of assembly and association**

59. While the Constitution of Georgia provides for the right to form and join public associations, theoretically LGBT organisations can be denied registration based on the Civil Code provision which allows denial of registration if the aims of the organisation in question “are in contradiction with recognised moral norms.” Controversy of opinion exists regarding the meaning attached to the term “recognised moral norms.” On the other hand the Constitution provides an exhaustive list of those public associations in which the creation and operation are impermissible, the provision says nothing about the morality criteria however.<sup>7</sup> Thus constitutionality of the mentioned Civil Code provisions is questionable; it has not yet been challenged in court however.

60. It is difficult to say what effect this provision of the Civil Code has in practice. Over the last several years there have not been any reported cases of denial of registration to LGBT organisations on account of this provision. The first organisation openly working on the rights of LGBT persons, the Inclusive Foundation was registered and began operating in 2006. According to Inclusive, they did not encounter any significant problems during the registration process. The Women’s Initiatives Supporting Group (WISG) was registered in 2000. Its focus, as far as official documents are concerned, are not LGBT issues but women’s rights, though now it works with the LBT community extensively without any problems or limitations.

61. Article 25 of the Constitution provides for everyone, except for the members of the armed forces and Ministry of

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<sup>7</sup> These are associations which aim at: 1) overthrowing or to changing the constitutional structure of Georgia by force c, 2) infringing independence and territorial integrity of the state or propagate war or violence, 3) provoking national, local, religious or social animosity. The Constitution does not mention compatibility with moral values as a precondition to exercise one’s right to association.

62. Internal Affairs, “the right to public assembly without arms either indoors or outdoors without prior permission. Only the authorities shall have the right to break up a public assembly or manifestation in case it assumes an illegal character.” Open use of this right, especially the right to manifestation, by the LGBT community remains rare however, no public assembly or manifestation has yet been held in Georgia to raise and/or openly support LGBT issues *per se*.

### **B.3. Freedom of expression**

63. The Constitution guarantees everyone the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by any other means. This right may be restricted for the protection of the rights and dignity of others, prevention of the disclosure of information acknowledged as confidential.<sup>8</sup> These rights can be restricted: (1) by law (2) on such conditions that are necessary in a democratic society (3) in order to achieve at least one of the legitimate aims listed in the Constitution, including the prevention of crime, the protection of rights and dignity of others, prevention of the disclosure of information acknowledged as confidential. The Law on Freedom of Speech and Expression further states that, in order to be in line with the law the restriction must be non-discriminatory and proportionately restrictive.<sup>9</sup>
64. Inviolability of honour and dignity, private life, place of personal activity, personal records, correspondence, communication by telephone or other technical means, as well as messages received through technical means is also guaranteed by the Constitution.<sup>10</sup> Restriction of the aforementioned rights shall be permissible by a court decision or also without such decision in the case of the urgent necessity provided for by law.<sup>11</sup> The Civil Code grants to everyone the right to court to protect one’s honour, dignity, private life, personal inviolability or business reputation against defamation.
65. Protection of honour, dignity and privacy and business reputation shall be exercised regardless of culpability of the wrongdoer. And if the violation has been caused by culpable action, a person may claim damages (compensation for harm). Damages may be claimed in the form of the profit accrued to the wrongdoer. In the case of culpable violation, the injured person may also claim compensation for non-property (moral) damage. Moral damage can be compensated independently from material damage.<sup>12</sup>
66. The consent of the person is not required when photo-taking (video recording etc.) in connection with one’s public notoriety, the office the person holds, the requirements of justice or law enforcement, scientific, educational or cultural purposes, or when the photo-taking (video recording etc.) has occurred in public circumstances, or when the person has received remuneration for posing.<sup>13</sup>
67. The freedom from coercion to express one’s opinion and prohibits compulsion to express one’s opinion, thought, conscience, religion and belief is guaranteed by the Constitution.<sup>14</sup>
68. Every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secrets. Information existing on official papers pertaining to an individual’s

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<sup>8</sup> *The Constitution of Georgia*, article 24.

<sup>9</sup> *The Law on Freedom of Speech and Expression*, article 8.

<sup>10</sup> *The Constitution of Georgia*, articles 17 and 20.

<sup>11</sup> *Ibid*, article 20.

<sup>12</sup> *Ibid*. articles 18 and 19.

<sup>13</sup> *The Civil Code of Georgia*, article 19.

<sup>14</sup> *The Constitution of Georgia*, article 19.

health, his/her finances or other private matters, shall not be accessible to anyone without the consent of the individual in question except in the cases determined by law, when it is necessary for ensuring state security or public safety, for the protection of health, rights and freedoms of others.”<sup>15</sup>

69. Hate Speech is not criminalised in Georgia. It is mainly regulated through the charters of ethics and codes of conduct for journalists and media outlets. The scope of hate speech in Georgian reaches a significant level, however it primarily goes unreported. Since it cannot be addressed by the legal means, it is not reported to any authority. There also does not exist NGO-created unified database of hate speech cases in Georgia.
70. There are instances of hate speech in media as well, especially in the print media, however, since hate speech is not criminalised and cannot be *per se* addressed by civil law procedure, there exists neither official statistics nor NGO-created comprehensive database of such instances or main trends observed.

#### **B.4. Hate crime - Criminal law**

71. The creation and operation of public or political associations that aim towards ... violence and/or provoking national, local, religious or social animosity is constitutionally prohibited in Georgia.<sup>16</sup> In addition, the violation of equality and discrimination is explicitly prohibited by Criminal Law.
72. Georgian legislation does not provide for a definition of hate crime and consequently does not provide sanctions for it. There is no general provision in the Georgian Criminal Code that expressly mandates taking into consideration a perpetrator's hate motive. In respect of certain crimes however, if it is committed on the account of for example, religious or ethnic grounds, a hate motive will be considered as an aggravating circumstance and will result in heavier sanctions. For example, murder committed on racial, religious, national or ethnic grounds. Sexual orientation, gender identity or gender is not, however, expressly mentioned as aggravating circumstances for commission of any crime.
73. Hate crimes against LGBT persons which are reported are usually labelled under different provisions of the criminal code, such as hooliganism, bodily injury etc. which do not reflect whether or not the action in question was hate-motivated, especially when it concerns statistics. Therefore, it is impossible to create a reliable and comprehensive database on hate motivated crimes against LGBT. No case has been identified in the field of hate crime (involving hate crime against LGBT persons) that was effectively investigated and where the perpetrator was held accountable. Two things have to be kept in mind in this respect: no unified and comprehensive data of harassments experienced by LGBT persons exist, this is particularly relevant as far as the most vulnerable group - sex-workers from the LGBT community are concerned, since Inclusive Foundation practically did not cover this group. So, it is a serious challenge to track the cases at different stages of their development. Moreover, Georgia lacks an effective investigation procedure and impunity is a widespread problem in general, especially as far as crimes committed by state agents are concerned.
74. No information of any widespread or systematic nature of hate crimes is reported, they are rather isolated and sporadic. There are no data on LGBT persons killed due to a hate motive.

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<sup>15</sup> *Ibid.*, article 41.

<sup>16</sup> *Ibid.*, article 26.

## B.5. Family issues

75. Same-sex marriage is not legally allowed in Georgia as the Civil Code defines marriage as “a union of a woman and man.” No alternative registration scheme exists in Georgia for the registration of same-sex couples in any form or granting them any rights whatsoever. According to the Civil Code, the rights and duties of spouses, including those related to property issues, arise only when the marriage is officially registered. This provision places people in unregistered marital relationships (whether heterosexual or homosexual) in an unequal position compared to those whose marital relationships are officially registered.
76. Article 1246 of the Civil Code of Georgia authorises adoption by a couple only if they are married. Since same-sex marriage is not recognised under Georgian legislation, same-sex partners can not adopt a child. Georgian legislation allows adoption by a single parent, except to those persons who due to illness, moral or other personal characteristics cannot exercise the rights of parents.”<sup>17</sup> The law does not however specify criteria for moral eligibility, neither does there exist an authoritative judicial or academic interpretation of how to ascertain moral eligibility for being a parent. Considering that in Georgia public opinion widely considers homosexuality to be immoral, there exists a high probability that a lesbian, homosexual or transgender single parent will not be recognised as ‘morally fitting’ for being a parent.
77. Article 47 of the Code on Imprisonment states that “the administration of the penitentiary unit facilitates prisoners’ relationship with the family, relatives and other close people. Complete isolation of the prisoner is prohibited. Control by the administration over the relations with the persons envisaged by the law should be exercised without breaching the dignity of the prisoner.” Article 48 further regulates meetings of a prisoner with family members and other close relatives who are defined as follows: spouse, parent, grandparents, adoptees, adopters, sister, brother and those with whom the prisoner lived with and ran joint economy for the last two years before arrest/detention.<sup>18</sup> It is not clear in the law if this includes same-sex partners meeting these criteria. The question here is implementation of this provision in an indiscriminate way and so that the dignity of both the prisoner and the visitor is not injured.
78. A new Imprisonment Code adopted on March 9, 2010 entered into force on October 1, 2010. According to the Code, prisoners have a right among others to personal security (article 14). Complete isolation of a prisoner is prohibited. (article 17), In particular, prisoner has a right to a short meeting (1-2 hours length) with close relatives (exhaustive list given in the law) and with a person who has been having a common household with the prisoner for at least two years before the imprisonment. Prison administration should be informed about the date 5 days earlier to obtain permission for a date a person has to submit a paper certifying close relationship with the prisoner to the prison administration. It is unclear however, how this certificate can be obtained in case of an LGBT partner, even if the person satisfies the two year cohabitation requirement.
79. Another problematic provision in the Code of Imprisonment is the absence of an appeal mechanism for the denial of the permission for a date. Article 17 regulating the date related issues says nothing about it. Although it stipulates that the denial should be justified, it does not further clarifies what can or cannot provide a legally valid justification and how the denial can be appealed.
80. Georgian legislation guarantees refugees the right to family reunification. Members of the refugee family include a spouse and the minor children of a refugee and incompetent

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<sup>17</sup> *The Civil Code of Georgia*, article 1245.

<sup>18</sup> *The Law of Georgian on Imprisonment*, article 48(3).

parents dependent upon a child who is a refugee.<sup>19</sup> Consequently this legal guarantee does not apply to LGBT partners, as the Georgian legal system does not recognise same-sex partners as spouses. The standard is the same in respect of aliens residing in Georgia.

81. According to the Georgian Law on Health Protection a different-sex couple or single women are allowed to undergo the fertilisation procedure. Nothing in the law indicates that the single person has to be heterosexual in order to be entitled to the fertilisation procedure. However, it is almost certain that a lesbian, if she makes her sexual orientation public, may be denied the right to undergo the fertilisation procedure, by applying the principle of a legal analogy and referring to the example of the case of adoption, where a person can be denied the right to adopt a child “on the grounds of moral or other personal characteristics based on which she cannot exercise the rights of parent“, as provided by the Civil Code of Georgia.

## **B.6. Asylum and refugee issues**

82. As per the 'Law of Georgia on Refugees' (1998), *"the Refugee is a person without Georgian citizenship who entered the territory of Georgia and to whom Georgia is not the country of origin and who was forced to leave his/her country of citizenship or permanent residence owing to a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or political opinion, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country."* "Membership of a social group," may include the LGBT group as well." This is not clear, however, by law or the practice.
83. Upon registration, the applicant is recognised as a status seeker. The Department of Migration, Repatriation and Refugee Issues at the Georgian Ministry of Refugees and Accommodation studies the facts of the case. The fact-finding involves an interview and completion of the questionnaire. It could last up to four months. During this period, the Ministry of Refugees and Accommodation of Georgia in cooperation with the international organisations, namely, the office of the UN High Commissioner for Refugees (UNHCR) provides applicants with the shelter at the temporary settlement centre.
84. The law guarantees the right of a refugee not to be returned back to his/her country of citizenship or permanent residence against his/her own will as long as the conditions for granting a refugee status (i.e., persecution on the listed grounds) still persist in that country.<sup>20</sup> Denial of a refugee status can be appealed to the Court.<sup>21</sup> It is prohibited to deport a refugee to a country where his/her life will be at risk due to race, religion, nationality, *belonging to a social group* or a political opinion.
85. The Law of Georgia on the Legal Status of Aliens (in force since 2006) prohibits the deportation of an alien from Georgia to a country where: one is being persecuted for political opinion or an act which is not considered a crime under Georgian legislation, for protecting human rights or peace or progressive political and public or scientific, or other activity, or where one's life and health will be in danger. The decision to deport an alien can be appealed in court.
86. Article 47 of the Constitution guarantees that the rights and obligations of foreign citizens and stateless persons residing in Georgia are equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law. It further states: "(2) in accordance with universally recognised rules of international law, the procedure

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<sup>19</sup> Procedures for Granting Refugee Status adopted by the Ministry of Refugees and Resettlement (2005).

<sup>20</sup> Law of Georgia on Refugees, article 8.

<sup>21</sup> Ibid., article 4.

established by law, Georgia shall grant asylum to foreign citizens and stateless persons. (3) It shall be inadmissible to extradite/transfer an individual seeking a shelter, being persecuted for political creed or prosecuted for an action not regarded as a crime under the legislation of Georgia.”

87. It is the President of Georgia who decides upon the issue of granting asylum. The procedure for considering the applications, granting, terminating and cancelling asylum to foreigners, as well as their rights and obligations are defined by the Resolution of the President of Georgia on Granting Asylum to Foreigners, dated 1998.
88. The Resolution contains a list of conditions which provides the basis for granting asylum, it states:
89. “the President of Georgia grants asylum to foreigners who do not have citizenship of Georgia, who are persecuted in their own countries for the protection of human rights or peace, for progressive public, political, scientific or other creative activities.” Whether or not LGBT persons can fall under these categories is not very clear in the law and there exists no relevant Case Law or practice on that matter.
90. On the other hand, however, the law prohibits deportation of an asylum seeker.
91. The Resolution further provides for the prohibition of deporting an asylum seeker to another country where the person is being persecuted for his political opinion or any other act which is not considered to be a crime under the legislation of Georgia. (Decision on granting or refusing asylum is taken within four months from the registration of the application.) Refusal of the asylum can be appealed to a court within 15 days.

#### **B.7. Social security, social care and insurance**

92. Legislation regulating this field does not appear to be discriminatory to LGBT persons in particular. The Nation-wide insurance plan has been recently introduced in Georgia and time is needed to assess its practical effectiveness. Transgender-specific healthcare is not covered by this plan.
93. Healthcare is currently provided through state and private medical institutions which vary in quality, scope and costs. The Ministry of Labour, Health and Social Affairs (MoLHSA) is the lead agency for the delivery of the State healthcare system. MoLHSA’s main responsibility is the implementation of government policy on healthcare and coordinating all activities.
94. Man who have sex with men (MSM), along with commercial sex workers (CSW) and intravenous drug users (IDU), were recognised as high-risk behaviour groups of the population in the National Action plan of Action for HIV/AIDS Prevention in Georgia (2003-2007). By 25 July 2010 a total of 2,471 HIV/AIDS cases had been registered in the Infectious Diseases, AIDS & Clinical Immunology Research Center, including 1,828 men and 643 women. The majority of patients are within the age group of 29-40. 1,353 patients developed AIDS. 530 patients have died. Among the routes of transmission 2.6 % out of the total number registered comes from homo/bisexual contacts.<sup>22</sup> Since December 2004,

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<sup>22</sup> Data available from the Georgian AIDS and Clinical Immunology Research Center, the main institution responsible for development, implementation and coordination of all activities against HIV/AIDS epidemic spread in Georgia. It is the governmental institution affiliated with Department of Public Health of the Ministry of Labor, Health and Social Affairs. See at [http://www.aidscenter.ge/epidsituation\\_eng.html](http://www.aidscenter.ge/epidsituation_eng.html)

Georgia has ensured universal access to treatment for all people registered as living with HIV/AIDS free of charge in the public sector.<sup>23</sup>

## **B.8. Education**

95. Both the Law of Georgia on General Education and the Law of Georgia on Higher Education contain declaratory statements providing that key goals of education system are development of a free individual, promotion of Georgian and world cultural values, orientation towards the ideas of democracy and humanism, facilitation to the development of personal potential and satisfying one's interests and capabilities, etc. Discrimination in the educational system is expressly prohibited.
96. The Law on General Education provides: "a pupil, parent and a teacher as well as their associations are entitled to enjoy all the rights and freedoms guaranteed under this law and recognised by the school, as well as the right to enjoy all school resources equally, without discrimination. The school has the right to restrict freedoms and rights during class and on the school territory on a non-discriminatory basis. This law does not deny universal rights and freedoms which are not mentioned here but stem naturally from the Georgian legislation."
97. The Law on General Education further states that "everyone has an equal right to receive full general education in order to fully develop oneself and acquire the knowledge and skills necessary to have equal opportunities and achieve success in private and public life." Discrimination when accepting considering a pupil for admission to a school is unacceptable. Schools are obliged to facilitate the establishment of tolerance and mutual respect among pupils, parents and teachers, irrespective of their social, ethnic, religious, and linguistic belonging or worldview." The Law on Higher Education prohibits all forms of discrimination in the sphere of higher education, including academic, religious and ethnic grounds, and/or views, gender, social origin or any other grounds.
98. The Law on General Education guarantees a pupil the right to be protected from inappropriate treatment, inattentiveness and insult. Moreover, the "school is obliged to create an environment safe for health, life, property during school hours, in the school and adjacent area. School is obliged to take all the reasonable measures to protect rights of pupils and parents during school hours, in the school and adjacent area to prevent or stop violation. "
99. The law does not however, provide a practically enforceable mechanism to uphold this provision. There are unofficial reports about bullying in schools over LGBT pupils from the peers and usually ends in the victim changing the class or the school, however such reports are not recorded anywhere in a systematised form and verification of the stories remains difficult.
100. The law protects inviolability of personal life to a pupil, teacher and a parent and proscribes violence at school against a pupil or any other person and obliges the school to immediately react according to the procedure prescribed by the legislation in case of verbal or physical abuse of a person.
101. A school curriculum is defined under the National Education Plan. As defined in the law, it is composed of the following subjects: Georgian language and literature, Georgian history, geography and social sciences, maths, natural sciences, foreign languages, physical, education labour and aesthetical education. The curriculum in public schools does not

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<sup>23</sup> World Health Organization (WHO), [www.who.int/hiv/HIVCP\\_GEO.pdf](http://www.who.int/hiv/HIVCP_GEO.pdf), accessed 24 September 2010



include sexual education or life skills. There are no sex-segregated courses taught in public schools.

102. The law requires that courses envisioned under the National Education Plan should be taught in an academic, objective, neutral and pluralistic way.
103. Georgian legislation does not envisage a procedure for reissuing a diploma after gender reassignment.

## **B.9. Employment**

104. The Labour Code of Georgia explicitly prohibits discrimination based on sexual orientation. The Code describes “direct or indirect oppression of a person, aimed at or causing creation of harassing, hostile, humiliating, dignity harming or insulting environment, or creation of such conditions which directly or indirectly impair his/her state compared with other persons being in the analogous conditions shall be construed as discrimination; The necessity of making distinction between the people judging from the essence, specifications of the employment or the conditions of its performance, which serves to achievement of legitimate goal and is the reasonable and necessary way of its achievement shall not be deemed as discrimination.”
105. However, the antidiscrimination clause in the Labour Code fails to provide protection from discrimination in the recruitment process in relation to sexual orientation, or any other grounds. It only prohibits discrimination in employment relations, not the recruitment process.<sup>24</sup> To that end, Article 5.8 explicitly gives the employer the right to reject a person’s application for a job without any reasoning: according the law “The employer is not required to prove his/her decision on refusal of employment.”
106. The Labour Code further fails to provide tangible safeguards to protect employee’s rights and interests during the employment relationship. It states that employment relationships can be terminated on several grounds, including invalidation of employment agreement upon the initiative of either party. The Code does not set out limitations to the authority of the employee to invalidate the agreement. This renders protection from discrimination in “employment relations” vulnerable to arbitrary and discriminatory application.
107. While the government has adopted a number of policy documents regarding discrimination against ethnic and religious minorities, it has no strategies or policies to address discrimination in employment on the grounds of sexual orientation or gender identity. By the same token, it has not involved employers’ or workers’ organisations in combating discrimination on these grounds.
108. There exists no specific procedural mechanism to prevent or remedy discrimination on any grounds in public or private employment. One can appeal employment related issues under standard civil procedure in the civil court of appropriate jurisdiction. However, this standard procedure, especially in the light of the difficulties involved in preserving and presenting evidence of discriminatory treatment, may not be sufficient to practically safeguard the right to non-discrimination enshrined in the Labour Code.
109. Procedures governing the issue of academic diplomas make no provision to reissue the diploma a second time, including in case of gender reassignment. This constitutes a barrier to employment for transgender persons. In such a situation, according to the established

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<sup>24</sup> As defined in the *Labour Code*: “Employment relations are established on the basis of the agreement reached between the parties as a result of voluntary expression of goodwill and equitability.”

practice concerning a change of name and surname, a person should add to the diploma a document issued by a court which would certify that the two names refer to the same person. However, in the case of transgender persons this solution might be useless, moreover – it can even harm and become a basis for discriminatory decision in employment.

## **B.10. Housing**

110. The right to land and home ownership and inheritance are regulated by Civil Code of Georgia which are gender and sexual-identity neutral and do not appear to discriminate against LGBT persons. The only inequality in respect of inheritance rights emerges in relation to inheritance from a partner. The Civil Code provides a list of potential heirs in priority order which does include “spouse” but not a “partner” or “person connected with close relationship” or etc. It needs to be noted here, however, that the situation is the same in respect of unregistered different-sex couples.
111. An alternative option for inheriting a property which may be used by LGBT partners is through the will of a partner. In the absence of such a will, for whatever reason, a partner cannot receive anything from the deceased partner’s property. In Georgia no state-funded houses and shelters for LGBT persons exist, neither for general situations nor for emergency cases. Georgian legislation in general does not provide protection from eviction or the right to resettlement.

## **B.11. Health care**

112. The Law on the Rights of the Patient as well as the Law on the Protection of Health<sup>25</sup> explicitly outlaw discrimination due to sexual orientation and guarantees the right of patients to equal access to medical services through State Medical Programmes.”<sup>26</sup> The patient further is granted the right to require from the healthcare provider to be treated with dignity and to respect his/her culture, religious convictions and personal values.<sup>27</sup> The healthcare provider should keep confidential the information about the patient both within the period of his/her life as well as after the patient’s death.<sup>28</sup>
113. The Law on the Rights of the Patient provides the right to every citizen of Georgia to receive from the healthcare provider medical service in accordance with the professional and service standards, acknowledged and established in Georgia.<sup>29</sup>
114. The Law prohibits intrusion into the private and family life of the patient, with the exception of cases where: a) intervention is necessary for the establishment of diagnosis, for treatment and care of the patient. Consent of the patient in such cases is prerequisite; b) the health and/or life of the patient’s family members are endangered.<sup>30</sup> Georgian legislation does not provide for a third person’s (including a partner) right to know about the health condition of the patient without the latter’s consent. The only exception provided in the law is when the health or life of a third person is in danger.<sup>31</sup> The Law grants a patient the exclusive right to decide whether or not another person is entitled to receive information about his health condition, in case of a positive decision the patient should nominate such

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<sup>25</sup> The Law on the Rights of the Patient, article 6 and Law on the Protection of Health, article 6.

<sup>26</sup> The Law on the Rights of the Patient. articles 6 and 11.

<sup>27</sup> Ibid. article 15.

<sup>28</sup> Ibid. article 27.

<sup>29</sup> Ibid. article 5.

<sup>30</sup> Ibid. article 29.

<sup>31</sup> Ibid. article 28.

a person whose name will be recorded in the medical file. Thus, it is up to the partner to grant access to his/her medical files.

115. Access to courts is guaranteed by the law for a) compensation of financial and non-financial damages as a result of: a) infringement of patient rights; b) medical malpractice; c) other faults of the healthcare situation; d) inadequately conducted supervision or control by the State; b) suspending or revoking the license of a healthcare provider; c) changing state medical and sanitary standards.<sup>32</sup>
116. Georgian law expressly prohibits discrimination on the basis of HIV/AIDS status however NGOs reported that societal stigma resulted in individuals avoiding testing or obtaining health care for fear of discrimination. According to reports, some health care providers, particularly dentists, refused to provide services to HIV-positive persons. Individuals often concealed their HIV-positive status from employers for fear of losing their jobs. In addition, the ministry of internal affairs conducted mandatory HIV testing on all job applicants.<sup>33</sup>
117. The Law of Georgia on Donation of Blood and its Components of 1995 regulates blood donation. Georgian citizens serve as blood donors after they undergo medical checks, although the law does not provide a clear list of prohibitions for blood donations. This issue is clarified by an Order of the Minister of Labour, Healthcare and Social Protection, #241, 5 December 2000, which provides an extensive list of diseases and circumstances that forbid blood donation, including HIV/Aids risk groups, such as those who are homosexuals, have a drug addiction, are engaged in prostitution, alcoholism, have tattoos or piercings. According to the wording it seems it applies to gay men, no information or case law exists to clarify how this provision is enforced or if it is interpreted by the practitioners in a way to apply to lesbians or MSM as well. The Law of Georgia on Donation of Blood and its Components establishes an obligation of the donor to report all diseases, use of drugs or psychotropic materials. Any violation of this obligation results in criminal punishment.<sup>34</sup> Gender reassignment surgeries are legally allowed in Georgia, they are financed by individuals themselves and not the State. According to several people who underwent it, it was difficult to access this service as it involves running from one instance to another to collect papers etc. and there are also reports that medical practitioners as well as others who learn about it show extra curiosity towards the patient, try to talk to them and change their mind, etc. which causes discomfort to them. It is difficult to give estimated costs involved. It is time consuming and a long procedure to access gender confirming treatment.
118. The Law on HIV/AIDS Prevention and Control (adopted in 1995 and amended in 2000) provides that HIV counselling and testing is voluntary for all population groups, except blood donors. The law ensures equal access to free diagnostic and treatment services, including antiretroviral therapy for everyone living with HIV/AIDS. Substitution therapy is legal in Georgia.

## **B.12. Access to goods and services**

119. Discrimination and violation of equality in general is proscribed by the law, which among other fields applies to one's right to goods and services. As stated above, although the relevant provisions do not expressly mention LGBT status as a prohibited ground of discrimination, the law can be interpreted so as to apply to LGBT persons as well. For now, however, there exists no relevant case law on that matter. No data are available

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<sup>32</sup> Ibid. article 10.

<sup>33</sup> United States Department of State, Country Reports on Human Rights Practices: Georgia, 6 Marts 2006, [www.state.gov/g/drl/rls/hrrpt/2006/78813.htm](http://www.state.gov/g/drl/rls/hrrpt/2006/78813.htm), accessed 24 September 2010.

<sup>34</sup> Order of the Ministry of Health and Social Protection #241/N of December 5, 2000.

about the cases of homophobia/transphobia and/or discrimination on the grounds of sexual orientation and/or gender identity in relation to goods and services.

### **B.13. Media**

120. The Preamble of the Code of Behaviour of the Public Broadcaster states that public broadcasters strive to establish equality and eliminate discrimination based on religious, ethnic, racial, gender or sexual orientation. Article 15.9 of the Code prohibits use of words such as “pederast” and “blue.” Enforcement of the Code remains weak however.
121. The authority to decide whether or not the broadcaster complies with these requirements is vested in the self-regulatory body which obliges broadcasters by law to set up under Article 14. The Law states explicitly that violation of these provisions as well as of the ethical and professional standards enshrined in the Code of Behaviour cannot be appealed to the court. Moreover, the self-regulatory body is entitled to take a final decision on the matter and it cannot be challenged in any other higher body or authority.
122. Each broadcaster is responsible to make sure that its programmes and advertisements are in compliance with the requirements of the legislation and the conditions of licensing. Sole authority to supervise compatibility of the work of a broadcaster with the legislation of Georgia rests within the Commission of Broadcasting, together with the tax inspection and law enforcement authorities in the fields of their respective competencies. If the broadcaster is in violation of the legislation of Georgia, a decision of the Commission or license conditions, the Commission will warn the broadcaster about this with a written notice.
123. If the broadcaster does not eliminate the violation indicated in the written notice within the reasonable time, the Commission is authorised to impose a fine amounting to 0,5% of the annual income of the broadcaster but no less than 2500 Georgian Lari; If within one year of receiving the written notice the broadcaster commits another violation, the Commission is authorised to impose a fine amounting to 3% of the total income of the broadcaster but no less than 5000 Georgian Laries) or, alternatively to initiate the procedure of putting the broadcasting license of the violator on hold.
124. During recent years from time to time there have been programmes on TV or radio where the issue of homophobia has been discussed as a serious human rights issue. However, there have also been cases of explicit hate speech, which have remained unsanctioned. The case of a journalist Aleksandre Elisashvili being held responsible under the Journalists' Ethics Code and the precedent of bringing a politician running for municipal elections (Lado Sadgobelashvili) to court for homophobic statements - described in detail below, are important new developments in that regard.
125. The charter on journalistic ethics of Georgia (adopted in 2009) adopted by more than 130 journalists establishes a self-regulation mechanism of media. The Charter contains 11 principles two of which are particularly relevant to LGBT persons. Principle 7 in particular states that the “journalist shall be aware of the threat to encourage discrimination in media; so s/he should take all measures to avoid any kind of discrimination on racial, gender, sexual orientation, language, religious, political or other grounds; as well as based on ethnic or social grounds;” Principle 10 further provides for respect of a personal life, it states that the “journalist shall respect private life of a person and shall not interfere in the personal life of a person if it is not public necessity.” Adherence of those journalists to their commitments undertaken by the Charter is monitored by a supervisory body.

#### **B.14. Transgender issues**

126. All the other acts discussed in the remainder of this study, pertaining to freedom of expression, assembly and manifestation, asylum and refugee issues, social security, social care and insurance, housing apply in the same way to transgender persons as to LGB people. Protection of their rights in the fields such as employment, education (particularly, issue of diploma), access to healthcare is different due to certain constraints or on the contrary – freedoms/rights enshrined in the law, which will be discussed in this section in further detail.
127. It is possible to carry out gender re-assignment surgery in Georgia. The procedure is as follows: transgender persons come to the clinic, where a doctor refers them to the State Commission on Bioethics. The Commission appoints two independent observation committees, both of which include a psychologist, a sexologist, and a psychiatrist. There are two clinics available where such committees can be set up capable of giving the diagnosis of “genuine transsexuality” - Georgia’s Association of Sexologists and The League of Sexologists. After one year of observation if both committees establish that the person under observation is a ‘genuine transsexual’ they send their evaluation to the Commission, which will then refer the person back to the clinic to carry out the gender reassignment. This is the exiting practice; however the procedure is not prescribed in the law.
128. Constitutionality of a discriminatory act or law can be challenged on several grounds, but only the two – sex and social belonging, the most commonly listed grounds in anti-discrimination clauses of different laws in Georgia– can be relevant and applicable to transgender persons. No Case Law or any authoritative legal source exists so far to provide a clear answer on this issue however,
129. Georgian legislation guarantees everyone’s right to name and the right to change names (first and family names), The law is silent about the preconditions, if any, for changing the name. It only states that one can change the name based on personal will and expressly provides for the possibility to correct the name when it is “necessary in connection with the change of sex”.. The Law on the Registration of Civil Acts differentiates between three instances of the change of name: 1) to change the name, based on a personal will 2) if the actual name of a person is written incorrectly or is not written fully in the civil registration act in question, 3) “to correct the name when it is necessary in connection with the change of sex;” Although it is not expressly stated in the law, the use of the term “to correct the name” rather than “to change the name” when it is necessary in connection with the gender reassignment can be understood to imply that a person should have the name matching with one’s sex, based on the common understanding of what names are appropriate for male persons and what are appropriate for female persons. Thus, if the name no longer matches with the preferred gender of the person, it should be corrected, as stated in the law.
130. It is possible to change one’s name into a gender-neutral name without any legal restrictions. Change of the name or surname provides a basis for issuing a new ID, but the law does not provide for the possibility to issue a birth certificate or an academic diploma the second time, for any reason whatsoever.
131. According to the Law on the Registration of Civil Acts, an application for changing the name should be submitted to a territorial office of the Civil Registry Agency (a public body under the Ministry of Justice) according to the applicant’s place of registration. As stated in the law, in case of the gender reassignment, the application can also be submitted according to the location of the medical unit which has issued an authorisation for changing sex (i.e., certificate of genuine transsexuality, as stated above).

132. Documents to be enclosed to the application on changing of the name:
133. Identity document of the applicant, Birth certificate of the applicant; Marriage certificate of the applicant, if the applicant is married; Birth certificates of minor children of the applicant, if the applicant has minor children; Written agreement of a parent (parents), a person performing parental liabilities on changing of the name, patronymic, and surname if the applicant is a minor from between 16 to 18 years old; If the applicant wishes to have the surname of the actual custodian or a relative of the direct line ascending, documents certifying the respective fact; Receipt of payment of the state duty; A person under 18 needs consent from the parent or a guardian for the change of name. A person between 16 and 18 cannot take this decision on his/her own, it is the parents or the guardian who makes the decision, if the child is 10 years old or older then his/her consent is also necessary.<sup>35</sup>
134. It takes 45 days to make the decision and issue the certificate for a change of name. For issuing the certificate on the 45th day the state duty makes 50 GEL, and the cost of service is not paid; For issuing it on the 30th day the state duty makes 50 GEL, and the payment for service is 100 GEL; For issue on the 15th day the state duty makes 50 GEL, and the payment for service is 170 GEL.[one EURO is approximately 2.32 GEL]
135. The law does not allow the changing of legal gender by transgender persons who do not want to undergo the gender reassignment procedure. As stated above, there is no expression mentioning in the law that a name has to match with the gender, however it is tacitly implied in the law. Choosing a gender-neutral name can provide a valid legal solution in such case.
136. Transsexualism is not an obstacle to remain married to a person of the other sex than the original one (or of the same sex), or to marry a person of the other sex than the new one (or the same sex). There is no legislation with regards to health insurance coverage of gender confirming surgeries by health insurance schemes. Thus, in the Civil Code of Georgia (which regulates marriage issues) several grounds are listed which result in the termination of a marriage (for example, death of one of the spouses, etc.) and other grounds which, if discovered (for example, mental disability if the person is deprived of legal capacity), results in the marriage being declared null and void. These grounds listed are exhaustive and there is no mentioning of transsexualism as a ground for terminating the marriage, or declaring it null and void. So, if a married person undergoes gender reassignment, but wishes to stay in a marriage and the spouse is not against it either, one can remain married to a person of the other sex than the gender assigned at birth (or of the same sex), or to marry a person of the other sex than the chosen gender (or the same sex).
137. The Law on the registration of civil acts, Article 14, states that information received in relation to registration of civil acts must remain confidential. However, there remain practical obstacles to privacy protection of transsexual people due to lack of adequate legal regulation of this issue. For example, procedures governing the issue of academic diplomas make no provision for reissuing the diploma second time neither in general nor in particular situations for example, following a gender reassignment treatment. This constitutes a barrier to employment for transgender persons. In such situations, according to established practice concerning change of a name and a surname, a person should add to the diploma a document issued by a court that would certify that the two names refer to the same person. This however, will violate privacy and confidentiality of personal information and may also encourage discrimination. In other situations, transgender persons often complain in private conversations that when they visit medical clinics to receive the certificate of genuine transsexuality or undergo medical surgery, staff of the

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<sup>35</sup> *The Law of Georgia on Registration of Civil Acts*, article 73.

clinic often show extra curiosity towards them (e.g., they frequently visit the rooms where the transgender persons are placed), this practice exists despite the duty of doctors not to disclose to third parties the information received in a professional capacity.

138. The number of visible transgender people is very small. As of 2007 there were 18 consultations and only five genital surgeries carried out, all of them MTF (male-to-female).<sup>36</sup>
139. No data about violent deaths of transsexuals.

#### **B.14.1. Intersex issues**

140. Georgian legislation does not allow one to freely choose gender unless one undergoes a reassignment surgery. Neither does the law allow compulsory operation by doctors on intersex people. No specific legislative act or regulation exists regulating the status or issues pertaining to intersex people.

#### **B.15. Good Practices**

- Ethics charter of journalists, which also sets up a Supervisory Council – the charter was elaborated upon by the journalists themselves and it establishes a self-regulation mechanism – the Council. Principle 7 expressly targets and prohibits homophobia.
- Gender reassignment is expressly mentioned in the law as one of the grounds for changing a name.
- Discrimination on sexual orientation is expressly outlawed in the employment relationships and healthcare laws.

#### **B.15.1. Annex 1**

##### *Case 1*

#### **141. Homophobic Remarks in Electronic Media (2010)**

142. Tbilisi City Court, Case No. 3/2069-10, dated May 25, 2010

143. The Georgian Young Lawyers Association (GYLA), which was monitoring elections, filed a complaint against Lado Sadgobelashvili, running in Tbilisi's Mtatsminda single-mandate constituency from Freedom Party ("Tavisufleba"), who in May 2010 posted on his Facebook wall messages like "Georgia without sexual minorities" and "days of homosexuals in Georgia is counted".

144. According to GYLA, Sadgobelashvili violated paragraph 2 of Article 75 of the election code, which reads: "The election programme must not contain propaganda of war and violence, of overthrowing the existing state and social system or replacing it through violence, of violating the territorial integrity of Georgia, of calling to foster hatred and enmity, religious

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<sup>36</sup> The Greenwood Encyclopaedia of LGBT Issues Worldwide, edited by Chuck Stewart, 2010, [http://books.google.com/books?id=X6-qGoFIGngC&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0](http://books.google.com/books?id=X6-qGoFIGngC&printsec=frontcover&source=gbs_ge_summary_r&cad=0) \l "v=onepage&q=georgia&f=false" \t "\_blank", accessed 24 September 2010.

and ethnic confrontation.” GYLA deemed that the candidate’s Facebook messages contained propaganda of violence and hatred, which should have resulted in suspension of the candidate.

145. Before the court ruling Sadgobelashvili told to journalists: “It does not matter what the court ruling will be, the most important for me is protection of Orthodox Christian values.”
146. On 25 May 2010 the Tbilisi City Court rejected GYLA’s arguments and rejected their appeal to suspend the candidate to stand in the 30 May local elections. According to the court, it was not convincingly established that by the statements - “gay parades do not fit with Georgian mentality” and “gay people’s blood has to be spilled” - Sadgobelashvili incited voters to violence. Neither was it convincingly established that the phrases (“gay parades do not fit with Georgian mentality” and “Gay people’s blood has to be spilled”) were disseminated by Sadgobelashvili himself. As regards some other posts (“all gays will be punished, I promise”) Sadgobelashvili stated that he meant punishment by God. In that regard the Court stated that this statement fell within the protected speech.
147. After lodging this lawsuit, GYLA was blamed to have received a huge grant for protecting LGBT rights by Sandro Bregadze from Freedom Party (“Tavisufleba”) in a newspaper “New Generation” ( Akhali Taoba.)
148. **Journalistic Ethics and Gay Rights (2010)**
149. On May 2010 the Council on Journalism Ethics decided upon the first case brought before it concerning gay rights.
150. Elisashvili's case was heard on the basis of complaint filed by the President of Inclusive Foundation Paata Sabelashvili. According to the complaint, one of the guests on the TV programme aired on March 9 made homophobic statements and, he host of the program, Elisashvili did nothing to defend the minorities.
151. The guest of the TV programme who made such statements was the founder of the media holding company Georgian Times - Malkhaz Gulashvili.
152. Both the journalist and the author of the complaint, Paata Sabelashvili, attended the Council meeting and fully answered the questions asked by the Council members.
153. Council ruled with 7 votes against 1 that Aleksandre Elisashvili had violated the 7th principle of the Charter on Journalism Ethics. According to that principle: "journalist must realise the risk of encouragement of discrimination by media; therefore he/she must do his/her best in order to avoid discrimination of any person based on that person's race, sex, sexual orientation, language, religion, political or other views, national or social origin etc."
154. Aleksandre Elisashvili stated he did not think the statements made by Gulashvili were homophobic: “Malkhaz Gulashvili as well as any other person has the right to have and voice certain opinions about certain issues; besides, I let other guests of the programme answer him and they made certain remarks in connection with Gulashvili's words."
155. Despite that Elisashvili stated that he respected the decision made by the Council and said: "I will take into consideration the Council's decision in future and I'll be more cautious when covering the topics concerning the minorities. I will call upon my respondents to be more reserved so that hate language is ruled out in my programmes."
156. **Raid on Inclusive Foundation (2009)**



157. On 15 December 2009 police raided the office of "Inclusive Foundation," the first officially registered NGO in Georgia (2006) openly working on LGBT right. The office of the NGO was searched by police. Reportedly, during the raid officials used anti-homosexual slurs, made unnecessary strip searches, unnecessarily damaged organisational posters, and unnecessarily ransacked the offices, the law enforcement officials were not wearing any uniforms and did not have a search warrant. They confiscated the staff's cell phones and did not allow contact with families and friends. The leader of Inclusive Foundation was arrested charged with drug possession - and released after a few weeks.
158. The Ministry of Internal Affairs denied that any procedural violations took place and maintained that the profile of the organisation was irrelevant in terms of the law. The ministry reported that its General Inspection Office gave one officer a reprimand at the "severe" level in accordance with the police code of ethics, as he verbally abused Paata Sabelashvili, the president of the Inclusive Foundation, while Sabelashvili was being transported from the courtroom to the prison. These actions were determined to be non-ethical 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 statements.
159. Investigation into the alleged procedural violations during the search of the office and homophobic statements made by the police officers towards the staff of the Inclusive Foundation and the community members is ongoing.
160. **Homophobic statements by an MP running for Ombudsman's Office**
161. In August 2009 a new ombudsman was appointed in Georgia. One of the two candidates for the Ombudsperson's position, Dimitri Lortkipanidze, stated during his speech in the Parliament that homosexuality should be re-criminalised in Georgia. The statement was negatively assessed by some media outlets and MPs as well as civil society.
162. Mr Lortkipanidze is the incumbent deputy chairman of the Human Rights and Civil Integration Committee of the Georgian Parliament which has the right to initiate and prepare legislation, propose amendments to existing laws relating to the promotion and protection of human rights, consider specific human rights issues as they relate to the government's implementation of existing legislation and to the human rights situation in general.
163. **Hate Speech, distorting the message and negative coverage in the media (2009)**
164. Excerpts from the roundtable discussion on the Public Broadcaster initiated by *The Hot Chocolate* magazine (January 2009)
165. **David Makaridze** – .....In order to better address the interest of the society, all its layers should be shown on TV. The most important is that the Public Broadcaster shows what one cannot see elsewhere. Minorities, for example, I don't mean just ethnic minorities; subcultures like alternative art should be represented on the Public Broadcaster much more than on other TV channels...
166. **Gia Chanturia (then the deputy to the Executive Director of the Public Broadcaster)**– There are topics that no one is interested in. Can you name the topic that is a very interesting but has not been covered on public broadcaster?
167. **David Makaridze** – Name just one programme that is created for the minorities.
168. **Gia Chanturia** – For pederasts?

169. **David Makaridze** – Do you have TV hosts that represent any minority or any subculture?
170. **Gia Chanturia** – Should a host be disabled? Are you telling me that a homosexual should host a show about homosexuals?

Case 2:

171. Part one:
172. The former Chairperson of the Parliamentary Committee for Human Rights and Civil Integration Ms. Elene Tevdoradze is a very important personality in the fields of Georgian politics and human rights. She was a member of parliament and the chairperson of the above committee for more than a decade, she is perceived as the most active promoter and defender of human rights in Georgia today. Our hope that she would take up LGBT rights actively faded with the very first contact we established with her.
173. In April 2005, the author of this report and a colleague approached the Heinrich Böll Stiftung (HBS) requesting the inclusion of sexual minorities as a topic in their regular public discussion programme. They kindly agreed, and invited civil society representatives and speakers. Below we quote all the correspondence that was involved in this case as this material is necessary to understand the full rationale behind the reactions of two important public officials – Ms Tevdoradze and the Public Defender of Georgia -- to our efforts to involve them.
174. Public discussion announcement by the Heinrich Böll Stiftung made on 20.04.05
175. On Wednesday, April 27, 2005 South Caucasus Regional Office of the Heinrich Boell Foundation will conduct discussion on the subject: "Sexual minorities: Taboo in Georgia?"
- Speakers: Salome Asatiani (Cultural Studies Expert), Eka Aghdgomelashvili (Head of the Women's Initiative Support Group), Levan Tarkhnishvili (Sociologist)
- Facilitator: David Paichadze (Radio Free Europe)
176. The debate will take place at 5:00 pm at 5, Radiani St.
177. Language of the discussion: Georgian (You're welcome to bring your interpreter)
178. This was when Inclusive Foundation first contacted Ms. Tevdoradze through her public e-mail. The invitation read:
179. Dear Ms. Elene Tevdoradze,
180. My name is Paata. I am the person who asked Pierre to obtain your e-mail to enable us to invite you to the event we quote below. Although my own work involves the problems of a different group in society, I believe that this field also requires attention. We appreciate that the subject matter is singular and that people usually avoid making public their involvement with it. It is also obvious that your working schedule is overloaded. However, we hope that a human rights defender like yourself will allocate some time to focus on these issues. The Heinrich Böll Stiftung has kindly decided to include the topic in their regular discussion programme. They are going to organize this discussion on April 27<sup>th</sup> (coinciding with the date of Georgia's CoE membership). The date is not final and as soon as it is confirmed we will forward you the invitation with the full details. We regard your participation as very

important for confirming the message that it is not so human to judge that one person is more human than another.

181. The discussion is entitled “Sexual Minorities: Taboo in Georgia?”. It is intended to be scholarly in tone, and to address legal rights protection. The target audience is human rights experts, public figures and civil society in general.
182. We kindly ask you to inform us of your response. If you are interested, we are ready to discuss our vision with you.
183. Yours Sincerely,
184. Paata
185. Ms. Tevdoradze did not respond to this message. Nor did she attend the public discussion. She did however give an interview to the Kavkas-Press news agency, which was reported as follow: “Georgian Homosexualists have founded an underground round table”
186. Tbilisi. Kavkas-Press. 05.05.05
187. Georgian Homosexualists have to remain deep underground. The Head of the Parliamentary Human Rights Committee, Elene Tevdoradze, has told Kavkas-Press that a Tbilisian Homosexualists ‘round table’ was established recently.
188. Tevdoradze was invited to the club in a letter sent to her via electronic mail. However the letter, the author of which is somebody named Paata, did not gave the address where the homosexualists ‘round table’ is to be conducted.
189. In his invitation, Paata requested the legalisation of homosexualists, because we need to understand that this is not a sickness, but a natural desire to love a person of the same sex”.
190. Part Two:
191. The discussion itself went off quietly. No major problems were encountered. However, an employee of the Heinrich Böll Stiftung, who sent out the invitations for the round table, and who happened to visit the Office of the Public Defender of Georgia (Ombudsman), had to face media harassment in front of the Ombudsman himself.
192. According to Nino Lezhava (an employee of the The Heinrich Böll Foundation) she was approached by Ombudsman Mr. Sozar Subari and a news reporting team from the Rustavi 2 TV. The Ombudsman told journalists that it was Nino’s organisation that had organised the discussion and that all questions should be addressed to her. The questions that the journalists asked Ms. Lezhava were outrageous, although they did not appear to cause any concern to the Ombudsman. Ms. Lezhava was asked how many homosexuals were present at the discussion, who were Pierre and Paata (whose names they had been given by Elene Tevdoradze), whether they were demanding legalisation of homosexuality etc. Ms. Lezhava expressed her protest to the Ombudsman, saying that this type of harassment, especially in front of the Ombudsman, was simply inadmissible. The Ombudsman told her that it was not his business, but that he did not approve of requests for equality for homosexuals.
193. Ms. Lezhava obtained the above news release and made it available to Inclusive Foundation. She continued her visit in the Ombudsman’s office for the other matter that brought her there that day. After a while she received a call from the director of the HBS.

He asked her whether she had sent journalists to the HBS to record an interview. Nino said that she had not. The Director gave more details and said that a news reporting team was picketing the entrance of the foundation demanding the contacts for Paata and Pierre. Ms. Lezhava contacted Paata and asked about the content of his correspondence with Elene Tevdoradze. Paata clarified the details and she was assured that none of the information used by the journalists in questioning her had come directly from Inclusive Foundation.

194. After this, Paata Sabelashvili of ***Inclusive*** wrote another e-mail to Ms. Tevdoradze, in which I asked for an explanation of how the misleading information had got into the hands of the media. She never replied to that e-mail either.
195. Later that year Ms. Tevdoradze further clarified her stance on these issues in an interview with the Akhali Taoba (New Generation) newspaper addressing the severe crime situation:
196. *"...our problems today, are unemployment, drug dependency, organised crime and changing orientation.*
197. *- What do you mean by changing orientation?*
198. *- I mean sexual orientation, certainly. In my opinion it is most unfortunate when so many young people change their sexual orientation. If we do not take proper care of this, we might be facing a terrible catastrophe tomorrow.*
199. *- In your mind, what are the ways of combating the problem of changing sexual orientation?*
200. *- We cannot do anything about those who were born with this orientation. But we all know perfectly well that many change orientation, copying others. This awful behaviour is regarded as fashionable for some reason. We should not enable our youth to think about things like this. A mass change of sexual orientation could be more harmful than our youth embarking on the road to organised crime."* ("Why does Georgian youth change sexual orientation?" "Akhali Taoba" (New Generation) # 307)
201. **Transgender rights and employment problems (2006)**
202. Gender reassignment surgery is legally possible in Georgia. In June 2006 a court recognised the right of a female-to-male transsexual to be recognised as a man. The individual in question was a teacher with many years' experience. Despite the court ruling, he has not been able to regain employment as a teacher. One of the barriers to his re-employment relates to the Georgian procedures regarding academic diplomas: there is no procedure for reissuing diplomas to reflect a person's reassigned gender. Thus, the individual in question was not able to present his academic qualifications when applying for jobs.