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«NEW GENERATION» Humanitarian Non-Governmental Organization

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COUNTERPART INTERNATIONAL

COMPARATIVE ANALYSIS OF THE LOCAL LEGISLATION AND INTERNATIONAL AGREEMENTS AND CONVENTIONS SIGNED BY THE REPUBLIC OF ARMENIA REGARDING LGBT RIGHTS PROTECTION

R E P O R T

INTRODUCTION

From April to June 2014, "New Generation" Humanitarian NGO funded by Counterpart International Branch studied the national legislation and international obligations on LGBT, made comparisons with the practices in other countries. The main fields of study are:

- The decriminalization of LGBT people
- Hate speech against LGBT persons
- The right to gay marriage
- The right to change biological sex
- The right of access to health care services
- LGBT rights in penitentiaries

In almost all countries, during formation of democracy and civil society the LGBT movement and the fight for equal rights has always been a critical issue. In almost all societies, the idea of equal rights and diversity issues raised against the spread of intolerance and sexual orientation stereotypes. Traditional long existence of "standards" are typical patterns in families, which is a problem for the rights protection of LGBT persons.

As in other former Soviet republics, in Armenia the rights of LGBT people have been violated. They are the targets of stigma and discrimination. This is evidenced by the recent proposal of the police on the amendments in "Administrative law" which add "non-traditional sexual propaganda", in Article 47.8.

Although the bill has been withdrawn and removed from consideration, however, this step taken by the police show the existence of potential threats against targeted individuals and which must be regulated by law. In this case, if not directly then at least indirectly, target is the LGBT community. LGBT-related issues have more acute manifestations in the regions who are not yet ready to break stereotypes and accept them as full members of the society.

The same problem is also present in the Armenian media. Considering the fact that the media are responsible for the public opinion for the certain period of time, their involvement in the dissemination of LGBT issues in the distribution may qualify as propaganda and slander.

It is also important to emphasize that the majority of human rights organizations do not take responsibility in provinces to protect the rights of LGBT people, having the fear of losing prestige.

While addressing the problems in the field, should be noted that there is also a need to clarify the concepts defining LGBT people.

CONCEPTS

LGBT	**Abbreviation is composed from the first words of Lesbian, Gay, Bisexual and Transgender.**
Lesbian	The origin of the word originated thanks to the ancient inhabitants of the island of Lesbos, Greece. It means a woman who has an emotional and physical predilection to another woman. Characterized by a constant emotional, sensory, sensual and sexual slant to her sex.
Gay	Characterized by a constant emotional, sensory, sensual and sexual slant to his sex.
Bisexual	Bisexual person who has the same emotional and physical preference to the same and the opposite sex. Characterized by a constant emotional, sensory, sensual and sexual slant to both his and the opposite sex.
Transgender	Those individuals who do not perceive themselves as to the sex of which they are born. They may be men who have woman's external or women who have a man's external.
Heterosexual	Characterized by a constant emotional, sensory, sensual and sexual slant to the opposite sex.
Homosexual	This word formed from the Greek word "homos", meaning "equal, the same", which should not be confused with the Latin word «homo" which means human being. It characterized people who constant emotional, sensory, sensual and sexual slant to the same sex.
Intersex	Person to whom biological organs of man and woman develop simultaneously (primary and secondary sexual characteristics).
MSM	"Men who have sex with men" the abbreviation of the word formation. It is not important they have sexual relations with women, or they consider themselves gay or bisexual.
WSW	"Women who have sex with women" the abbreviation of the word formation. It is not important they have sexual relations with men, or they consider themselves lesbian or bisexual. This term is important, because most of them considers themselves heterosexual however, are having sex with other women.
Transphobia	Demonstration of fear, rejection or hostility / often with a form of stigma and discrimination / to transsexuals, transvestites and transgender people.
Transvestite	A person who is wearing the clothes of the opposite sex in order to have a sense of ownership of the opposite sex. It is not necessary that he wants to have a sex change, or surgical intervention.
Transsexual	A person who is in surgery or hormone therapy or surgical intervention and / or passed on to hormonal treatment in order to give body to the sex characteristics.
Homophobia	(Origin old Greek words homos: like and phobos: fear), negative attitudes or hostility to homosexuality manifesting in various forms, as well as related social phenomena.
Biphobia	(origin: from the word bi, means two , and an old Greek word phobos: fear) It is not a phobia / fear clinical sense but hatred and discrimination against persons with bisexual orientation.
"Homosexuality" term entered in force In 2003 and used till 2013 in RA's criminal code's 139 and 140 articles, which consists of the words homogeneous / same sex, same type / and mania. This term until 1990 was considered a mental illness, but in 1990. On May 17, the General Assembly of the World Health Organization removed homosexuality from mental illnesses. This term until 1990 was considered as a mental illness, but on 17th of May in 1990, the General Assembly of the World Health Organization removed homosexuality from the list of mental illnesses.	

THE DECRIMINALIZATION OF HOMOSEXUALITY

In 1991 after the independence, Armenia has tried to integrate into the international community, signed a number of documents that were calling to respect **human rights**, to treat all people equally, without any discrimination. As the plan itself was responsible for the prevention of discrimination in violation of the norm, so in 2013 RA's Human Rights Defender stuff has developed RA's Law "against discrimination", but it was not accepted just because it had the responsibility to the LGBT people, for discriminative treatment on the basis their sexual orientation. However, we should note that it is not accidental that the public and public authorities and especially pressure of Mass Media did not let law to be accepted, because until 2003 Homosexuality which was titled; "homo-addicted" term was considered a criminal offense. This mentality came more from the Soviet Union, which had left its influence on, already independent and a number of international documents ratified, republic of Armenia.[1]: Criminalization of homosexuality comes from the Soviet times. Although Soviet Armenia during 1920-1936 homosexuality is not punishable by the Criminal Code, but in 1936 the Code criminalizing homosexuality in itself added to Article 116, after 01.07.1961 till 18.04.2003 In The current Criminal Code of the Armenian SSR Supreme Council. Armenian SSR Supreme Soviet Presidium on 29th of October in 1969 edition of the decree – based on the article HSSHGST, 1969, N 21, 155 are accepted the article 116, It is "homosexuality" which had the following contents verbatim quote from the article. "Sexual intercourse with a man (homosexuality) is punishable by imprisonment for up to five years". Homosexuality, if committed by using physical violence or threats against the juvenile or the victim's dependent position, shall be punished by imprisonment for three to seven years.

As seen on homosexuality, which is called "homo-addicted" in Armenia considered as a criminal offense in different periods. From the literal interpretation of article, it is clear that in Armenia a criminal act has been considered just for a man who has sex with a man, as there was not mention about lesbians relationship considered as a criminally prohibited act. However, the mentioned article renamed "Homosexuality" and included on RA's Criminal Code articles 139 and 140, which entered into force in 01.08.2013 the following are the contents of the literal quotes from articles. Article 139 of the Criminal Code: "1. Homosexuality or other sexual acts against the will of the victim or other person with violence or threat of violence or a victim's helpless condition, " Article 140 "Person to sexual intercourse, homosexuality, and other sexual acts to make a blackmail, destroying property, or harming or threatening to take the victim's material or other dependency, ..."

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[1] European Convention "On Protection of Human Rights and Fundamental Freedoms"
UN Universal Declaration of Human Rights,
UN Declaration on "sexual orientation and gender identity"
EU Declaration on "International Day Against Homophobia"
The UN Human Rights Council to the Vienna Declaration and Program of Action review and implementation of the EU declaration
PACE resolution, the "discrimination based on sexual orientation and gender identity."
Council of Europe Committee of Ministers to member states on the basis of sexual orientation or gender identity eliminate discrimination measures.

Then, in 12.11.13 on the base of 112-N law of Armenian Legislation changes have been done in above mentioned articles and the word "homosexual" was replaced with the term "homogenous action", then the "homosexuality" was decriminalized.

Due to 139 article of Criminal Code of Armenia the sexual actions, including homogenous actions against the victims will or violating another person or using victim's helpless condition…

Due to 140 article of Criminal Code of Armenia by means of sexual relations the person, including **homogenous actions** by blackmail, property destruction, damaging or threatening or using the victim's dependency, if the features of intended offenses by 132 and 132.2 articles are absent.

Taking in account that "homogenous" word means the same sex, the same kind of action, as well as the sexual violating actions exclude man-woman sexual no natural way actions, so the sexual action doing by homosexual person included in that actions, therefore using the term "homogenous actions" not only wrong but also is not advisable, because it emphasizes the same person twice as a performer.

But to decriminalize the relations of homosexual persons is a problem not only for new developed country as Armenia is, also for many countries in the world, whose governments has delivered as lawmaking bodies in the human rights sphere while creating fundamental documents. **The UNO Universal Declaration of Human Rights and the European Convention of Human Rights and Fundamental Freedoms Defense** are among them.

In 2014 the homosexual adults' (the term "adult" is mentioned in any case, as the children are considered marginal group and have a need of special protection) relations are allowable in 115 countries of **UNO**. The last country is Southern Cyprus, which's parliament in 27th of January 2014 decriminalized the relations of homosexual men with other men. Recently the reception of law for homosexual men relations decriminalization in Cyprus was not occasional, because as in many countries the legislative norms were based on the religious convictions of that country. About this question the statement of Cyprus is emphasized with the **Dadjen against Great Britain** precedential case which is served as ground for legislative reforms in many countries. Here the Cyprus representative didn't consider as a violation Ireland's government's criminalization of homosexuals, because the Cyprus and the Ireland are countries loyal to their religious and moral norms and European any concept about morality does not exist. It has observed the homosexuality in light of religion and moral norms and has found that the countries restricting the rights knew better what moral norms must be contained in their legislation.

However, there are some countries, which legislations condemn homosexual people to imprisonment. In that list are Muslim countries and the most African countries. Moreover, in some countries there are rules which allow to execute homosexual person /Iran, Yemen, Mauritania, Saudian Arabia, Sudan/. The statement in Iraq and India is debatable; we will refer to them below. The 377 article of 1861 in India considered up to 10 years imprisonment for "no natural crime", including also homosexual adult people for their volunteer relations. In 2009 the

High Court of Deli had cancelled the above mentioned article and noted that it violated the human rights equality and defined discrimination. The Court decision had been claimed in the Supreme Court, which one on 11.12.2013 had reversed and changed the decision of Deli's High Court and mentioned that the court had abused its powers. According to the verdict the homosexuality in India has been defined as "Sexual action, which contrary to the natural rules of products". But the Government of India has been suggested to receive a legislation which will provide invalidation of the provision of mentioned article.

In 2003 after the invasion of USA troops to Iraq in the country again began to act the Criminal Code of 1969, which has decriminalized the homosexual relations. But the execution and other punishments were going to be implemented by the self-proclaimed Shariat judges.

Therefore as Armenia, Iraq too has signed the memorandum in order to improve the legal and social status of LGBTIQ people (lesbian, gay, bisexual, transgender, intersex, queer). Particularly Iraq has condemned the use of criminal and personal laws in criminalizing of non-traditional sexual orientation and gender identity in Iraq and foreign interference and damaging to the culture and people commenting as incorrect application of Iraq's LGBTIQ people rights. Signing of such memorandum talks about the influence of USA, as Iraq is a Muslim country, and studying the legislations of Muslim countries it becomes clear that Islam and Shariat have the main role of the law in a certain sense. There is mentioned that "No law should not contradict the principles of Shariat."

It's the reason that in august 5th of 1990 in Cairo has adopted **"The Islamic Memorandum of Human rights".**

If to compare the countries attitudes towards LGBT people rights, so it should be noted that western countries are more tolerant than the eastern ones, although it is directly related to the religion they faith. The Muslim countries are more intolerant and they subject the homosexuals not only to certain imprisonment, but also there are some countries which execute them. But the same tolerant western countries do not stay back from eastern countries and change their legislation only after several court cases and decriminalize the relations between homosexual people.

As the cornerstone of Human Rights UNO's Human Rights Universal Declaration's fatherland USA, which still in 1948 had declared that all the people born free and equal, had defined criminal punishment for homosexual men, which later decriminalized in the court cases results. For the mentioned law the base was the work **Laurens against Texas**. The applicants were arrested in 1998 in their homes during sexual actions, the whole night they have passed in the prison and in the morning were released on bail. Then each of them had been fined by 125 dollar according to Texas legislation.

The applicants have presented a lawsuit to the Criminal Court of Kharis and have found that the penalties which have been applied to them were contrary to the 14 change of USA's Constitution, which defines that all the people are equal ahead the law. The law, on the base of which they had been fined, forbids sexual relations only between men. But the Court rejected their lawsuit and added the size of penalties and defined 142.25 dollar for each one. In 1999 the

applicants applied to Court of Appeals of Texas 14th region. The base of the law is the principles of equality and personal life security. The Court of Appeals also rejected their claim. In 2001 the applicants again applied to the Criminal Court of Texas, where their appeal again has been rejected. In 2002 the applicants applied to **USA Supreme Court**, where this case had been already examined in 1986. It was the **Bowers against Hardwika** work. In this case the court has left in force the homosexualism as a criminal act considering law. Although the Case of Laurens was like to **Bowers against Hardvika** case with its facts, but in 26th of June, 2003 the Court declared invalid the Texas law. The Court had found that the law was contrary to and violated the personal life right guaranteed by the USA Constitution. It is noteworthy, that the judge of Supreme Court Kennedy had referred to the case **Dadjen against Great Britain,** which had been examined by **ECHR** in 1981.

The **ECHR** had recorded a violation in the 8th article of European Convention, as by the agreement of homosexual people sexual relations' prosecution in criminal base violates the right of person's private life. In the Case of Laurens the judge had mentioned that the case of Bowers against Hardvika was wrong at that time and is wrong till now. As the sexual relations of adults according to their agreement are considered as an integral part of their private life, they must be defended by the 14th article of USA Constitution. Though the case of **Dadjen against Great Britain** became the case law and legislative reforms basis for USA, but it was not the only case against United Kingdom which should be examined by **ECHR**. In the case of **BB against United Kingdom** a criminal case had been instituted towards the applicant in the basis of having sexual relations with 16 years old person. According to the legislation of 1998-1999 the sexual relations between men up to 18 years old were considered as criminally punishable, and with others up to 16 years old. With this case the ECHR recognized as a violation the 14th and 8th articles of the Convention. ECHR against the United Kingdom, another case has been examined on the same basis, which was removed from the list of cases examined after the adoption of the new law, which is set at the same age and same-sex and different sex sexual relations. (**Shuterland against the United Kingdom**)2: Despite the presence of the ECHR's decision, the European Court continues to consider the grounds of violation of Article 8 of the European Convention of complaints. Cases are heard by the ECHR included violation of Article 8 of the Convention. They are **Dadjenn v. The United Kingdom, Norris v. Ireland [3], Modinosn v Cypros[4], A D Ti v. The United Kingdom [5]** cases: Provides for criminal liability in cases of persons with same-sex relations. In the cases examined by the **ECHR** are not limited by Article 8 of the Convention.Դրանք պարունակել են նաև **Կոնվենցիայի14**-րդ հոդվածի խախտում: They also contain a violation of the Article 14 of cconvention. The applicants of the **cases L and V vs. Austria and S L against Austrian[6]** were sentenced for having a relationship with people aged 14-18.: Austrian legislation provides criminal liability only for same-sex relations between

[2] Sutherland v. the United Kingdom (no. 25186/94), 27.03.2001
[3] Norris v. Ireland (no. 8225/78)26.10.1988
[4] Modinos v. Cyprus (no. 15070/89)22.04.1993
[5] A.D.T. v. the United Kingdom (no. 35765/97)31.07.2000
[6] L. and V. v. Austria (nos. 39392/98 and 39829/98) and S.L. v. Austria (no. 45330/99)09.01.2003.

adult men and 14-18 years for young men, but not for having relations with women of the same age teens. In the mentioned cases **ECHR** recognized violation to the articles 14th and / prohibition of discrimination and / 8th / right to respect for private and family life /.

Although the **ECHR's** decisions in similar cases already acknowledged the violation of Article 8 of the Convention, however, continues to protest against the **Austria**. In particular the applicants of the cases Fi Ji against Austria,E Bi against Austria, A Ji against Austria[7], noted that the police continue keeping such materials , which had been taken by law, but the cases L and V against Austria, S L against Austria was recognized violation of the article 8 by ECHR . If after these studies we turn to Armenia, it should be noted that against Armenia was not examined case in ECHR, and during the study of the judicial practice in the online platform any case has not found, however, this does not mean that no one has ever been convicted of a sex crime in Armenia. Just such cases are conducted behind closed doors and are inaccessible to the public. Although we should mention a famous Armenian film director Sergey Parajanov as a victim of Soviet traditions who has twice convicted in 1948 and in 1974 of "homosexuality" item.

The Rights of LBGT people in PENITENTIARIES

Armenia has signed many international agrrements[8] that are aimed at respecting human rights, the right to be protected from torture and ill-treatment. Thus RA has a contract to take over the defense of human rights violations record, prevention and liability obligations. However, the extent to which it is implemented obligations under the international and local independent monitoring groups seen in the reports. However how it is implemented corresponding to the honoring obligations is seen in international and local independent monitoring groups' reports. In penitentiaries about the prevention of torture of international commitments by Armenia expressed concern about the consultation document the violence between prisoners and prison conditions in Armenia. There is no direct reference to the mentioned documents in attitudes toward LGBT people, but this information is entirely filled due to the annual published reports by the Independent Monitoring Group. From the research of the mentioned report we can conclude that the LGBT rights protection is implemented in the hardest places of detention. There they were exposed to ill-treatment, torture and sexual violence, depending on their sexual orientation. Although the government's No. 1543-N decision (on August 3, 2006,) every arrested or convicted person must keep his personal hygiene, but the homosexuals are charged and forced to do the cleaning of toilet and bathroom, scavenging and area cleaning.

[7] F.J. v. Austria (no. 2362/08),E.B. v. Austria (no. 26271/08),H.G. v. Austria (no. 48098/07)

[8] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Optional Protocol to the Convention;
Human Rights and Fundamental Freedoms of the European Convention
UN Universal Declaration of Human Rights
Torture and Inhuman or Degrading Treatment or Punishment, the European Convention

According to the decision of the Government mentioned 56 remand prisoners' acceptance of food is organizing according to the daily routine at the determined hours, in cells. The acceptance of food of prisoners organizes according to the daily routine at the determined hours in closed and semi- closed rectifier institutions in cells and in canteen at semi- opened and opened institutions. With the acceptance of the chief of rectifier institution or retention of prisoners in feasibility service or other jobs included prisoners can receive (suppose) the food apart. Homosexuals don't use the same canteen. Its food and utensil are apart. Although to acceptance of the food the decision of the Government is not always available. Based on threat of being a direct victim of the sexual violence the CSO administration keeps them apart from prisoners, however their cells are more bed condition. This is planned by the European Prison Rules of 18.6 points, it said. more prisoners are accommodated together only when it is convenient for the goal, and the case should be selected to fit together with each other to communicate with each other in terms of a suitable penalty, moreover, the case should be selected to accommodate together with each other to communicate with each other in terms of suitable prisoners. According to the 18.5 point the prisoners should usually accommodated in cells during the night, except when it is preferable to accommodate them during the night sleeping in the same cell. Although it should be noted that the European Prison Rules maintenance of the points is not that in certain CSOs LGBT persons are kept in separate cells. The administration of the CSO explains this that LGBT persons are kept in cells apart, because of their security, especially of their exploitation, sexual violence, inhuman or to protect treatment degrading dignity. That is to say that the administration confirms that indicated persons are violated at the places of duress, and it is symptomatic, that the problems are solved at the cells apart. If we take into consideration the fact that not the all executive institutions of the Republic of Armenia are considered closed, so it should be noticed that LGBT persons also could be obeyed to violence during the most day together hold. It's symptomatic that there are not discovered neither court case on the online platform, which would be filed against LGBT people in places of detention under Article 119 of the Criminal Law sexual or protecting articles. Perhaps it is conditioned that circumstance, that CSOs discipline is ensured not only by the administration, but also by the "zone observer" and "criminals». This phenomenon is related to the prevention of torture in prisons Armenia's international commitments consultation document, the Group has recorded that it was "concerned about the fact that this seems normal prison personnel and has a positive attitude."[9]

According to the point 25.4 on European prisons rules it's necessary to pay vital attention to the need of those prisoners who have experienced sexual or psychological violence. As the maintenance of penitentiaries is a part of administrations' daily duties, so we should mention that according to the information given to observer groups, LGBT persons experience violence, but cannot defend their rights. Studying the international experience on the rights of imprisoned LGBT persons, we may conclude, that Turkey doesn't criminalize homosexuality,

[9]Prevention of torture in prisons Armenia's international commitments consultation document, page 31

moreover, it is planned to impose a separate jail for LGBT persons. The Minister of Justice mentioned, that it has a direction to maintain their security, while the main idea has been boycotted by some social groups, underlining that imprisoned persons has equal rights and there would be some persons that would not be willing to expose their sexual orientation. Human Rights Watch has commented the statements on hiding the sexual orientation on its 2008 researches, according to which the statement " a homosexual is a beast", is not well-explained. Quoting the thoughts of homosexual people, it concluded, that connected with their sexual orientation, they experience sexual violence and abusing the most, bringing about the result of preferring to hide their orientation. Although after carried out researches, it became clear that not only LGBTs' experience violence, but also cast in a role of violators. According to Amnesty International[10] , LGBTs' are endangered caused by tortures. LBGT persons are a target group and often experience violence and get killed by both by co-habitants and jail personnel[11]:

The objectives of this practice must have a legal regulation, particularly given the fact that Article 68 of the Criminal Code of RA provides for the possibility of keeping prisoners in isolation is only when their life or health is in danger. The article listed separately from the other bases can not be viewed as a defensive measure on the grounds of sexual orientation or gender identity of the victim status of persons. Taking into account voiced issues, it is also necessary to make bases for protection the dangers against harassment and sexual dignity.

And what concerns about keeping separately as a mean of defense, we may conclude, that the European Court's " X against Turkey" court case has detected a Convention's violation of the statements number 3 and 14, as the prisoner had been keeping in a separate 7 square meters jail for more than 13 months, without an opportunity of walk and having a conversation with other prisioners.

According to the 9th principle of Giocarto the states seek to provide its prisoners' participation in making the resolution on latter's' keeping, which will be appropriate with sexual orientation and gender identity, provide defense mechanisms for all prisoners, who may be vulnerable to abuse or improper treatment of sexual orientation and gender identity in terms of motives, as well as reasonably ensure that accompany these remedies are more restrictive than those usually used in relation to other prisoners.,

Basically, this protective measure can be applied without the defendant's consent and during the short duration of the deprivation of the right to use this part also confirms that the Criminal Code, Article 68 does not define a separate agreement for keeping the prisoner's decision-making basis.

Referring to the rights of LGBT persons deprived of their liberty should be noted that the Criminal Code of the prisoners have their family members, close relatives in contact with Law / Article 50 /.

[10] "No Escape: Male Rape in US Prisons". Human Rights Watch. Retrieved 2008-12-28.
[11] Crimes of Hate, Conspiracy of Silence: Torture and Ill-treatment based on Sexual Identity". Amnesty International. Retrieved 2008-12-28.

In this regard, it is noteworthy the "e" point Giokarto's 9th principle, according to which states shall ensure that, where permissible, providing equal opportunities regardless of gender identity matches spouses.

How to prove later, according RA legislation same-sex couples do not have a spouse or close relative status, which unequal conditions compared to heterosexual couples.

Thus we can state that in prisons for LGBT people protection are needed additional settings.

Recognition of marital right

Article 35 of the Constitution defines the right of man and woman's marriage based on the autonomy of the will.

RA's Family Code of marriage as a basic condition for marriage fundamental condition, set apart from the will of freedom and age, also indicate the subjects they are man and woman.

In RA's judicial practice, there is no precedent for this broader interpretation of legal norms and law makers' expansion. In the norms of international law reflected almost the same approach and marital relations are provided by men and women, with the exception of a few documents. In particular, "About Economic, Social and Cultural Rights," International Covenant, which 10th article says the term "entering into marriage", and also number of EU documents, such as the EU Charter of Fundamental Rights, according to which 9th article the right of marriage and the family shall be guaranteed by the national legislation, that regulate these rights. The article 12 of the European Convention "About Human Rights and Fundamental Freedoms" also defines the right of marriage between man and woman, and the implementation of its discretion left to the states according to state legislation.

Initially, European court of human rights practice leads to the same-sex relationships which were not considered persons under the article 8 of the Convention, and therefore were deemed inadmissible. Then a series of decisions of the ECHR began to examine the right of marriage and family of LGBT under Article 8 of the Convention the definition of "private life"[12]:

Further, the Court reviewed this position, noting that the Convention is a living document that must be interpreted in accordance with the today's existing conditions and explained the ECHR has used the approach only to develop its jurisdiction, when noticed the difference of standarts in member countries. / IB v France's 92 point /[13].

In the case of Schalk and Kopf against Austria the ECHR has commented "Individual observed, it is possible to interpret the wording of Article 12 so that would not rule out marriage between two men or two women. However, under all other fundamental rights and freedoms, everyone shall confer or announce that no one shall be subjected to any kind of illegal behavior. **Article 12 of the formulation of choice, thus, should be considered as an intentional.** Moreover, should be taken into account of the historical context in which the Convention was adopted: In the

[12]X. and Y. v. the United Kingdom, complaint № 9369/81, 03.05.1983., W. J. and D. P. v. the United Kingdom, complaint № 12513/86, 13.07.1987թ., C. and L. M. v. the United Kingdom, complaint № 14753/89, 09.10.1989 .
[13]E. B. v. France, complaint № 43546/02, 22.01 2008

1950s, the marriage was clearly understood in the traditional sense, as a union between partners of different gender»[14]:

In the case of Pi. Bi. And Jay. Si. Against Austria the European court emphasized. "Taking account into this evolution, the European court considers artificial to claim that, unlike sex unions, same-sex couples cannot maintain a family life under Article 8 of the Convention. Therefore, applicants relationship as a same-sex couple, based on the long-term beneficial partnership, are included in the "family life" concept, as different-sex couples with similar circumstances"[15].

The ECHR has also referred to the transgender person's marriage law.

Initially, **the ECHR** agreed with the discretionary powers of the state, as well as the biological basis of sex, there was a violation of Article 12.[16]

But in 2002, **the European Court** reversed its stance against **Christine Gudvinn UK and I. Against UK cases** indicating that transgender individuals changed sex marriage law imposed unacceptable, adding that a couple's inability to conceive or parent can not by itself be deprived of the right to marriage.

Regarding to that the 22nd point of recommendation of **the Council of Europe Committee of Ministers REC (2010) 5** books:

"States countries shall take all necessary measures so according to the 20-th and 21-th points after the correction and legal recognition of sex, to ensure that transgender persons have right to marry the person with the opposite sex in their recognized new gender."

Thus, referring to the acceptance of international legal norms and their purpose and importance of current developments, we can state that the marriage law legal entities at the time of booking decision determining the **"biological sex",** while later in the social life of the changes resulted from the fact that these norms interpreted on the basis of **"social gender"** term.

Changes in the field of **LGBT** couples marriage recognition of member states have broad discretion, but is not limited solely at the discretion hereto will refer below. As seen above, the European Court of Justice case law practice of ECHR rights profile of LGBT marriage "marriage" and "family" within the framework of concepts. Changes in the field of LGBT couples marriage recognition member countries have broad discretion, but is not limited. Hereto will refer below. As seen above, from the precedential practice of **European Court**, ECHR views the right of LGBT marriage within the framework of concepts "marriage" and "family".

In terms of resolution **No. 1728** was raised de facto **"LGBT families"** legal recognition and protection as a solution to the problem and urged to ensure legal recognition of same-sex

14 Schalk and Kopf v. Austria, № 30141/04, 24.06.2010
15 P. B. and J. S. v. Austria, № 18984/02, 22.07. 2010
16 Van Oosterwijck v. Belgium, complaint. № 7654/76, 06 .11. 1980 թ. Rees v. the United Kingdom, complaint № 9532/81, 17.10. 1986.

partners in several ways, including providing a **"close relative"** status if the national legislation plans such status.

First, note that the RA's Family Code does not define **"family"** and **"close relative"** concepts, does not mention family members, close relatives, but gives the composition related to the prohibition of marriage between persons, that is the direct ascending and descending relatives, parents and children, grandparents and grandchildren, as well as relatives and stepfather or stepmother brothers and sisters, the children of aunts, uncles and cousins.

In the Criminal Procedure Code of RA close relatives group is wider, ie, parents, children, adoptive parents, adopted children, native and non-native (stepfather or stepmother) brothers and sisters, grandfather, grandmother, grandchildren, as well as her husband and his parents, the latter the groom and bride.

Of course, these relations are regulated by different laws, different goals, but they are not intended or partner with another term that will include same-sex couple individuals / family/. Therefore, **they are not provided with such fundamental rights such as the right of refusal to testify against close relatives, right between successors of the victim** and so on.

CE Figure REC (2010) 5 Recommendation in accordance with paragraph 25, if the national legislation does not recognize same-sex partners, and is not registered with reservation of rights or obligations and unmarried couples, member countries are encouraged, without any discrimination, including sex couples of the same sex or other legal means of providing safeguards aimed at the problems arising in practice, which refers to the social reality in which they live.:

This interpretation of paragraph 25 of the explanatory memorandum to the member countries undertake to provide any protection to same-sex couples, it it legal or otherwise, that they will guarantee the absence of marital status. Connected with that it should be noted that in 2000 **the Council of Europe Parliamentary Assembly adopted the 1474 (2000) recommendation**, on which the member countries were recommended to adopt a law on same-sex persons partnership proposed registration. And in 14.01.2009 **European Parliament** called for all member countries, which had not yet done this obligation, for applying principle of equality to adopt legislative measures to combat discrimination, which was exposed to some couples because of their sexual orientation.

RA's Family Code defines only recognition the civil registry body registered marriage, which raises the rights and responsibilities of spouses.

In RA factual marriage does not have any legal status and does not generate any legal consequences.

Of course, RA's legislation provides for the institution of marriage contract, but the latter shall enter into force only after the state registration, therefore **LGBT** marital relations can not be resolved by contractual relations.

As you can see there has been **LGBT legal system of segregation, discrimination** based on perceived sexual orientation and gender identity, **as opposed to actual sex marriage, and who have the right to register their marriage, LGBT persons are deprived of this opportunity.**

Hereto based on evidence that having a spouse or close relative status of **LGBT** persons are deprived of a number of rights as a shareholder or inherit property acquired during the marriage or family member of the tenant's enjoyment of the rights of others. In this part, the **ECHR** referred to in **Article 12** of the Convention, provided the terms of the interpretation of the national laws governing the exercise of the right of marriage.

ECHR in the case of **Mata Estavezn against Spain** said:

"Although a number of European countries, gay stable de facto partnership between the legal and judicial recognition of the growing trend, based on a commonality between the availability of the Contracting States, this is still an area where they enjoy a large scope of discretion."[17]

But in 2003 in the case **Karnern against the Austrian** Court reversed its position and stated that the elimination of discrimination is necessary to justify the existence of a legitimate purpose, as well as a reasonable proportionality between the means employed and the aim and stressed that countries with **limited** discretion in regard to sexual orientation, and therefore differentiated approach to justifying the need for special reasons**, it is necessary to show that the objective** of achieving a legitimate legislative process from the field to the exclusion of gay couples.[18]

At the same time, the case **Kozak against Poland**, the court emphasized that states, maintaining a balance between family and sexual minority rights should take into account the changes in society, including the fact that private life can be realized not only through one. Homosexual couples complete exclusion of leasehold rights from inheritance cannot be considered necessary for the protection of the traditional family way.[19]

Taking into account the above mentioned reason of the fact that **LGBT** people are completely excluded from a range of material legal institutions, pased on the above positions as well as **European Court**, it is clear that in such circumstances the intervention of the Republic of Armenia **LGBT** rights cannot be considered as a necessary means for the preservation of traditional families.

Noteworthy is the fact that Article **143** of **RA's Family Code** provides for the recognition of a marriage contracted outside **the ratification of consular legalization.**

The 52 article of RA's law **"About Consular Service» stipulates** that it is not subject to ratification documents and acts that are contrary to the laws of the Republic of Armenia or their contents may be harmful to the interests of the Republic of Armenia, or contain information about the honor and dignity of citizens of the Republic of Armenia.

The Hague on October 5, 1961: "Abolishing the Requirement of Legalization for Foreign Public Documents" convention, to which **Republic of Armenia was joined by 14.08.1994,** the release states / documents, including judicial and administrative acts / legalization, which must be submitted their area.

[17] Mata Estevez v. Spain, complaint № 56501/00, 10.05.2001.
[18] Karner v. Austria, complaint № 40016/98, 24.07.2003.
[19] Kozak v. Poland, complaint № 13102/02, 02.03. 2010.

This convention is not any exception to the exemption provided for legalization, only the documents already provided for in its non-trading activities directly related to customs or administrative documents.

Therefore, "Consular Services" are not in compliance with statutory exceptions to the above Convention, and thus can not be used.

From the above-mentioned follows that in the Republic of Armenia above are valid in the territory of a state signed the Convention for **LGBT** couples marriage without consular legalization, which is manifested in the case of a differentiated approach to **LGBT** couples living.

Thus, studying **LGBT** couples and the recognition of the scope of discretion in the implementation of RA's legislation and practice of the **ECHR:** we can fact that :

1. **The LGBT couples who still do not have any legal status or other defense, which is contrary to the EC PQ REC (2010) 5 Recommendation 25 of the Convention,**
2. **Although the legislation is designed to "close relative" status, but did not include same-sex couples, which does not comply with the resolution 1728/2010 / of Parliamentary Assembly,**
3. **According to the legislation of RA not fixing LGBT couples legal status their discrimination is concerned, in contrast to the actual marital sex couples, who can register their marriage,**
4. **The exclusion of LGBT couples from the RA the legislation can not be considered as a necessary measure of protecting the traditional family practice in conformity with the ECHR,**
5. **The number of states signed a valid marriage recognition of LGBT couples is a discrimination against LGBT couples in RA.**

The Right of Blood Provision

The Right of Changing Biological Sex and the Legal Recognition of New Sex

In the base of sexual orientation and gender identity in the 1728/2010/ formula of discrimination is characterizes the term "**transgender**" as **"these are the men, whose gender identity doesn't corresponding to their biological sex".**

In Case Law of Human Rights European Court about transgender people developments have been registered only in two ways: the correction of the sex and the legal recognition of new sex. The Committee of Ministers of Council of Europe in his Rec (2007)17 recommendation is mentioned: **"The men and women, both have inalienable right to decide their own body's question and the sexual and rehabilitative questions, too."**

According to 35 point of **REC(2010)5** recommendation of The Committee of Ministers of Council of Europe the participating countries must take measures to ensure the real right of accessibility of correction of sex of transgender persons, as well as psychological, endokrinological and surgical services must be supported to these people **without excessive demands**. The person can't be subjected to sex correction act without his agreement.

The Case Law views the sexual self-right as a component of private life and demands from the signed countries to guarantee the chance of surgical operations on changing sex completely, as well as from the "point of view of medicine the whole insurance of treatment" which is part of the operation. "

The insurance of sex-changing treatment costs due to recommendation's 36 point demands to take in some legally measures for providing the legality of decisions, objectiveness and equability.

As you seen, the 35 point of recommendation highlights a number of significant conditions: **1. impossible services and reality of their access, 2. excessive consumption of inadmissibility, 3. the person's agreement to that activity.**

In the conditions are used evaluating values, which have interpretation problems and in the case of not proper administration they can lead to appeal rising the proof question. This part puts an importance in **General Assembly's** demand for sex-changing treatment as well as the regulation of operations and fixing of questions by the legal level.

Particularly the 16.11.3 point of 1728 formula of Assembly calls the participating countries to take measures against the human rights violations and stigma and discrimination of transgender people, particularly in the legislation and practice to fix their right for sex-changing treatment availability and medical service equal status.

As to equal status or costs in medical serving center, so European Court has referred to sex-changing medical costs' compensation to some cases and has mentioned that medical resources question is not a legal question for sex-changing. In transsexuals case the necessity of medical interference, as well as the causes of transsexualism have medical character, that's why the courts can't allow them without the involvement of relevant professional. Besides, the burden of proof for need of surgery to put on transsexual is impermissible. /the cases of Van Kyuk against Germany and Shliumpf against Switzerland/

So the sex-changing right the transgender must do with judicial protection, which has the medical conclusion about the necessity of intervention.

This is an international practice, while the legislation in Armenia is intended not only to "transgender" definitions of the term, but also their rights and responsibilities, including the law of changing gender and its consequences.

Noteworthy is the fact that on 20.05.2013 The National Assembly adopted the "Women and men have equal rights and equal opportunities" of the law, which Article 3 defines "gender" concept, describing it as a different gender acquired, socially fixed behavior.

Given that the legislation adopted by the norm that "gender" shall be interpreted as a developmental and social behavior, then life itself from such behavior must be regulated by the law of self-determination. It is also associated with a legal issue, which is fixed to a number of international acts, including "Civil and Political Rights." Article 16 of the Covenant. With Christine Goodwin's case, the Court noted that the chromosomal elements can no longer play a

decisive role in a person's sexual orientation, and the tendency is observed among the member states transsexuals' new gender identity "in recognition of their operations. This and B. Against the France case, the court stated that the refusal was gender`s changing legal recognition by the state is violation of Article 8 of the Convention, and added that the States have a positive obligation to recognize the transgender's new identity, which includes an official documents such as a birth certificate, driver's license, passport, social security card and electoral, land and tax registry accounts of this instruction related to paragraph 21 requires the member states to implement the necessary measures after the legal recognition in all areas, particularly in official documents, change of name and sex journey with a quick post to ensure transparent and available resources, as well as private entities such recognition by the outgoing documents such as diplomas.

As you can see in Recommendation attention was paid to the recognition of continuity and transparency of the legal person, but this field is protected by the confidentiality of personal data in accordance with paragraph 19: Paragraph 20 of the Recommendation specifies that sex-changing legal recognition needs to be regularly reviewed in order to exclude non-humanitarian needs.

The point 16.11.2 of the Assembly No. 1728 calls the states to take measures against the discrimination and human rights violations of transgender people, in particular to fix the legislation or practice of sterilization or other medical procedures without prior exposure to get an indication of their preferred gender identity documents. Thus, according to this research and based on lack of legislation about sex-changing we must fix that Armenia does not comply with its obligations undertaken by signing the European Convention, taking into account the issues raised.

1. There are no mechanisms of transgender people's care and also for sex-changing operations in Armenia. It relates to the recognition of sex-changing right, to the substantive and procedural characteristics of its fixing connected with the need and real accessibility of medical services, including the presence of doctor in judicial process and social insurance.
2. There aren't any norms recognizing the new sex of transgender after the sex-changing operation, which includes change of name in official and non-official documents, as well as changed-sex notes and provision of appropriate documents.
3. As we know the 14th article of the Convention forbids the demonstration of discrimination within the framework of the rights guaranteed by the Convention. But Armenia has adopted the protocol No. 12 and according to the 1st article any right prescribed by law must be used without sex, race, color, religion, political or other opinion, national or social origin, belonging to ethnic minority, property, birth or discrimination on other statement. That is, the Protocol No.12 forbids discrimination using any right prescribed by law. By this case attention should be paid on the question of blood donation by the homosexual men. Particularly, the Armenian law about **"Medical help of Person's blood and its ingredients donors and transfusion"** regulates

blood and its ingredients inflation, donor and transfusion medical help's quality and security-related relationships. The 2nd article of this law defines who can be blood donor: 18 years old person, who hasn't a contradiction of blood donation, who voluntary donates blood or blood ingredients. Among the conditions of age and voluntary blood donations, this article notes the circumstance of not having a contradiction of blood donation. "Before taking blood or blood ingredients in order to keep donor's health the free of charge medical research and the list of contraindications for donors" the 2nd article of the command of Minister of health of Armenia in 07.02.2013 with the donor contraindications A point says: for the blood donation exclusion basis are some persons of certain risk groups, as well as homosexuals… That means, homosexuals are deprived to be donors and are involved in risk groups. This is discrimination towards homosexual men, as all the donors are researched by the same command for the detection of some diseases.

4. The State bears the obligation to prove the provision of booking a legitimate purpose, necessity and intervention measures for symmetry because sex can be infected by any person, regardless of sexual orientation. In this case, the State must prove the risk and the fact that the homosexual people who are a threat to the blood transfusion, which is derived from the "risk group" combination of the article. Such formulating of the article contains elements of offense, which contradicts to the law of sexual orientation, which one is guaranteed by EC CM REC(2010)5 recommendation, formula, European convention and other acts. It is significant, that in the 14th article, 6th point of Armenian law about **"Blood and its ingredients donations and transfusion medical help"** are defined the discrimination bases during the blood donations, where the base of sexual orientation is missing. **But, of course, in the Article the list of established bases is not complete.** Moreover, it's a question, how to disclose the fact of homosexuality, as in the command N02 in 24.01.2012 of Minister of Health of Armenia is defined the form of donor's questionnaire, where there is no any question for disclosing the fact. Dashed fact is included under the protection of personal data, hence without no formal form to ramp the person's identity information is inappropriate.
5. So, by the Armenian Case Law manifested discrimination towards homosexual men by the base of sexual identity, which is more specialized the fact that during blood donations the donors have a right to receive compensation.

Hate Speech

According to intercultural dialogue of **White Book** the communities must receive and respect the cultural diversity. The **5.1 section** of this book indicates that the countries must receive legislation about prohibition of hate propaganda, **expressed with race, xenophobia, homophobia, islamophobia, antitypes and other looks, which are lead to hatred incitement and violence.**

According to 30.10.1997 EC CM N R(97)20 recommendation about **"Hate Speech"** the **hate speech** implies the all forms of expression, which spread, incite, encourage and justify the race hate, xenophobia, anti-Semitism and other hate versions based on intolerance, including aggressive nationalism , discrimination and revulsion against minorities, migrants and persons of immigrant origin.

In the explanation of EC CM REC (2010) recommendation the concept "hate speech" covers all forms of expression of hate, regardless of the used expressions, including internet and mass information of other measures. The hate speech excludes the right of free expression and the right to freedom of assembly, and thus enters the field of rights abuse guaranteed by the Convention. Particularly, the mentioned stems from 4th principle of the recommendation No R(97)20, according to which some forms of hate speech incitement can so hurt the persons or group of persons, that they can be removed from the frames of defined speech protection of Human Rights European Convention's 10th article. It happens when hate speech is directed to **elimination of Rights and Freedoms defined by the Convention or their limitation to a greater extent than it is provided by the Convention**.

In each case of limiting the right of freedom of speech it's necessary to know that the aim is to protect people who have specific beliefs and opinions, and not to protect belief systems from the criticism. The defined freedom right stems to give necessary opportunity to discuss in open dialogue and criticize rudely and unreasonably the belief systems, opinions and institutions **as long as such criticism is not turning into hate speech directed at individuals or groups of individuals**. By this case in formula No 1728 the Assembly stressed that the very important problem of governors is not only the protection of rights guaranteed by the international documents, but also be free from such definitions, which can lead to discrimination and legalization or promotion of hate. The border through the support to hate propaganda and crimes and freedom of speech should be determined taking into account the practice of the European Court of Justice.

The European Court in the work "Hendisayda against Great Britain" has mentioned: **"The user of the right to freedom of expression carries duties and responsibilities"**. The measure of this obligations and responsibility is connected with the facts of specific case and used technical means, and the realization can be limited according to 10th article of the Convention. Note the Criminal Code of Armenia, where the definition of hate speech is not given, but a punishment is defined for national, race and religious hostility instigation, for humiliation of racial superiority or national dignity /article 226/. As we see in contradiction of EC CM REC (2010)5 and R (97)20 recommendations in the article isn't fixed the prohibition of acts against minorities /connected with sexual orientation and gender identity/. Moreover, the 63rd article defines the aggravating facts of responsibility and punishment, which design the crime in **national, racial and religious fanaticism**, other unlawful acts of revenge-motivated crime. This article gives a list of aggravating circumstances with base of hate, where is not included the base of sexual orientation and gender identity. In contrast of this, the disposition of equality of rights violation is not opened, though it does not define the base of sexual orientation and gender

identity. But not consuming of the base definitions gives a chance to realize not included bases support, and to take into account the practice and comments of Human Rights European Court and Convention. In such cases when the law does not forbid the harming of LGBT people with hate speech, as well as such behavior does not considered as aggravating fact on responsibilities and punishment, as a members of social group the LGBT people are excluded from the protection in general, so to speak about crime prevention is excessive.

About this by the General Assembly's No 1948/2013/ formula, point 9.1.7 for the equality and discrimination the Assembly calls to receive criminal code about the responsibility for crimes done on base of intolerance for sexual orientation and gender identity. EC MC REC (2010)5 recommendation obliges with normative acts **to consider sexual orientation or gender identity bias motive as an aggravating circumstance.** With this recommendation the attention is paid on **hate speech through internet and other modern measures to spread information**.

On 28th of January, 2003 Armenia has signed the recommendation about "Criminalization of Racial and Xenophobic acts by the Computer systems" which is attachment of Convention about cyber-crimes. There is mentioned: "Considering the impact growth of computer and the investigation and prosecution complexes of hate speech users the **participating countries must create a normative-legal base** and support media, Internet services and social networks adaptability, especially connected with hate speech, which **base is orientation and gender identity. "**

In the recommendation memorandum is mentioned, that the countries are responsible:

- to consider and discuss the motivation of sexual orientation and gender identity in internet crime discoveries
- to take measures against the items to spread, which are encourage hate or other kinds of discrimination towards LGBT people, as well as to take measures against providers of access control in computer networks for fighting against threats and insults

By the Criminal code of Armenia there is not provided a separate section for cyber-crimes, and the definition of crimes against the security of information doesn't compliance to the instructions for following above reasons:

- at first, the measures of information use and spread doesn't listed totally, particularly there aren't mentioned the social networks and blogs
- there isn't mentioned the base of sexual orientation and gender identity as a motivation
- the mentioned motivation must be equalized as aggravating circumstance for responsibility and punishment

In this Recommendation and formula No 1728 special attention is paid on hate speech authors associated with the fact that that persons has some sphere of influence and levers, therefore obliged to refrain from any statement, which can be perceived as hate speech justification or preaching and inciting. Especially, this requirement is directed to their relations to media, political, non-governmental organizations and society output representatives. Herein the Recommendation obligates the participant countries to raise their right of information to be refrained from similar violations.

In turn, the media taking advantage of their rights must stay refrain from hate speech preaching and inciting, too, so prioritizing their specialist practice and responsibility, the Recommendation obliges to support tolerance culture and diversity's spread and development. It is worth attention that the 7th article of Armenian law of Mass media forbids **confidential or criminally punishable acts preach** as well as the spread of the information which is violating the inviolability of person's private and family life.

The above mentioned analyzes demonstrate that this law doesn't defend LGBT people's rights in media sphere, because there isn't crimes on base of hate and sexual orientation and gender equality's motivations in Armenian Criminal Code.

In the sphere of this research, we would like to mention that LGBT people who are manifested to encroachment by this case haven't victim status by Armenian Criminal Code and can't realize their adequate and effective protection, therefore enjoy the right to a fair trial. Moreover, they cannot claim compensation for moral damage caused to them, and therefore cannot be recognized as civil claimants. In addition to victim status and the status of the claimant's lack of legislative norms the 1087.1 article of Armenian Criminal Code guarantees the damage cause of person's honor and dignity and business reputation, which has been manifested by offense and defamation. The provision of this article the offense is a public expression by the speech, image, voice, mark or other means in order to damage honor, dignity or business reputation. Meanwhile, hate speech defense sector is higher, it's excludes the 10th and 11th articles of the Convention, which are addressed to the person's rights elimination or restriction guaranteed by the Convention. Moreover, the Armenian Criminal Code has decriminalized the offense and defamation, so its defense field is weaker and the hate based violations are crimes, which are infringing higher values. The crimes against LGBT people are bias-motivated crimes. OSCE has developed a guide about "Hate bias crimes", where is noted: "Hate-bias crimes are violent expressions of intolerance and deeply influenced not only on victim, but also on the group which identifies itself the victim. Making a target the identity of someone the hate-bias crimes are causing much harm than the usual crimes. **The primary victim can receive big psychological injuries and greater sense of vulnerability, because he can't change the character which has made him a victim**.

Based on this analysis we can fix that in the case of hate-bias crimes and crimes against sexual orientation and gender identity the sizes of compensation for moral damages are not legally stipulated. In the Constitution Court Decision No1121 the 2nd point of 17th article of Armenian Civil Code had been recognized as contrary and invalid to Constitution in the extent that moral damage hasn't been looked as kind of damage and hasn't protected a chance for compensation of moral damage. This gave a chance to legislative body to develop a law about moral damage compensation institute, but at the presence of this institute sexual orientation crimes law's absence didn't allowed to define the sizes of moral damage.

Based on the foregoing, we can state that

1. the international law forbids hate speech against LGBT people due to their sexual orientation, regardless of the used expressions

2. free speech and hate speech borders are changed due to ECHR practice
3. in contradiction to EC MC REC(2010)5 and R(97)20 recommendations a crime on the hate bias against sexual minorities is not intended in Armenian Legislation
4. sexual orientation and gender identity's motive as an aggravating circumstance is not intended in Armenian Legislation, which is contrary to the EC MC REC(2010)5 recommendation
5. sexual orientation and gender identity's motive as an aggravating circumstance for internet crimes is not intended in Armenian Legislation
6. in Armenian Legislation as a means of internet crimes haven't been intended the social networks and blogs in contradiction of convention of cyber-crimes recommendation

SUGGESTIONS

Based on studies carried out in this article, identified issues and international regulatory requirements to which Armenia have joined, is suggested:

1. In the articles N 139 and N 140 of criminal code of Armenia to make changes and to protrude the phrase "homosexual acts".
2. To fix norms about LGBT concepts in Armenian Legislation
3. In the Criminal Code of Armenia foresee the dangers of exposure to torture and sexual harassment as prisoners kept separate from the base
4. To fix norms about legal status of LGBT couples
5. To give a status of "near relationship" to LGBT couples in the civil, family and criminal legislative regulations connected with heritage, leases and other legal origin
6. To accept a law about changing the sex of transsexual person, about the realization of its conditions and categories, about the provided insurance of it, other substantive and judicial features appropriate to international law and the ECHR case-law
7. To set a norm about the recognition of new sex of transsexual after the operation, which includes changes of name, sex post and provision of documents in formal and non-formal documents
8. To take measures in Health sphere to eliminate the discrimination against the LGBT people connected with the blood providing and inserting them in risk groups
9. To fix hate speech by Armenian Criminal Code due to international practice
10. To plan the fixing criminal against the LGBT people due to sexual orientation and gender identity.
11. To plan the motivation of sexual orientation and gender identity as punishment and responsibility aggravating circumstance.
12. To plan the way of cyber crimes the social networks and blogs, and their aggravating circumstance will be the motivation of sexual orientation and gender identity.
13. To accept a separate law about LGBT rights, about the measures of discrimination against them.