



OVERVIEW OF INTERNATIONAL STANDARDS FOR THE PROTECTION OF LGBT+ PEOPLE'S RIGHTS AND COMMITMENTS OF GEORGIA



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ACRONYMS

BPfA	Beijing Platform for Action
CEDAW	UN Committee on the Elimination of Discrimination Against Women
CRC	United Nations Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ICCPR	International Covenant on Civil and Political Rights adopted by the UN
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICPD	International Conference on Population and Development
SDG	Sustainable Development Goals
SRHR	Sexual and Reproductive Health and Rights
UNFPA	United Nations Population Fund
WHO	World Health Organization
CC	The Criminal Code of Georgia
SOGI	Sexual Orientation and Gender Identity
ILO	International Labor Organization

PREAMBLE

International and regional human rights instruments serve as a guide and benchmark for states to ensure that LGBT+ human rights and equality are effectively implemented. These instruments establish minimum standards for human rights protection that ensure equal access to fundamental and universal human rights, their dignity, and democratic participation in public policy. At the national level, ensuring these minimum standards is a direct commitment of states and the bedrock of a country's democratic development. As a result, states recognize the importance of ensuring these rights and their practical implementation by acceding documents established by international and regional human rights organizations.

Georgia is a member of several international and regional organizations and a signatory to several essential and fundamental international agreements, indicating its recognition and commitment to ensuring the realization and protection of the rights enshrined in these agreements at the national level. Among the documents are critical commitments to combat discrimination and violence against people based on their sexual orientation or gender identity, as well as to overcome negative societal prejudices.

This review summarizes the essential international and regional standards for combating sexual orientation and gender-based violence, discrimination, and social exclusion and the commitments made by Georgia to promoting the protection of LGBT+ human rights and their civic inclusion and providing them with an adequate standard of living.

METHODOLOGY

This document uses a desk research methodology to review international standards for the protection of LGBT+ rights, which includes outlining and analyzing key international standards on LGBT+ rights as well as Georgia's international commitments. As such, the document makes reference to the following international and regional instruments, as well as their conventions, recommendations, resolutions, and reports:

The Council of Europe

- ECRI Relevant Documents and Observations on Georgia
- CM/Rec(2010)5 Recommendation and monitoring of implementation
- The Case Law of the European Court of Human Rights (ECHR)
- PACE Resolutions (Resolution 1728 (2010))

The United Nations

- ICCPR, ISESCR
- CEDAW Committee Concluding Observations on Georgia (2014)
- IE SOGI Reports, including Report on Georgia (2018)
- Resolutions of the UN General Assembly and the Human Rights Council on the protection against discrimination on the grounds of sexual orientation, gender identity, and sex characteristics
- ILO Standards and Reports on Georgia
- WHO Standards and Reports

The Organization for Security and Co-operation in Europe (OSCE)

- Special guidelines and standards for the protection of the right to assembly and expression and combating and preventing hate crimes

The European Union

relevant directives, namely:

- Directive 2000/78/EC - equal treatment in employment and occupation
- Directive 2006/54/EC - equal treatment between men and women in EU labour law (amended by Directive 2002/73/EC)
- Directive 2004/113/EC - Gender Equal Access to Goods and Services
- The Victims' Rights Directive (2012)

In light of the aforementioned documents, this article highlights Georgia's commitments and the recommendations or instructions issued to it. Adopting appropriate measures and establishing accountability are necessary for the practical implementation of these commitments at the national level.

CHAPTER 1. AN OVERVIEW OF THE PRINCIPLE OF PROHIBITION OF DISCRIMINATION ON THE GROUNDS OF SOGI IN THE INTERNATIONAL LEGAL SYSTEM

Although the rights of LGBT+ people have always been a subject of international law, the 1990s saw the most visible implementation of the principle of non-discrimination on the basis of sexual orientation and gender identity.¹ The major international treaties, such as the United Nations' International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), do not include the SOGI markers explicitly. However, in subsequent explanatory documents or decisions, these markers are considered on the grounds of non-discrimination. For example, the UN Human Rights Committee, in its 1994 case, *Toonen v. Australia*,² pointed out that states must protect individuals from discrimination based on sexual orientation. A similar position was reflected in a subsequent decision of the Committee, *Young v. Australia*,³ and in the General Comment Nº20 of the Committee on Economic, Social and Cultural Rights, which states that the "other status" referred to in the Covenant also implies the grounds of the SOGI.⁴

In 2011, the UN Human Rights Council adopted its first resolution⁵ on sexual orientation and gender identity, expressing grave concern about the practice of violence and discrimination against people on the basis of their sexual orientation and gender identity and requesting a report from the UN High Commissioner for Human Rights on the situation of LGBT+ people.⁶ As a result, the Commissioner issued two major reports in 2012⁷ and 2015,⁸ both of which documented systemic discrimination against LGBT+ people and high rates of violence in all areas. In the reports, the Commissioner highlighted the negative consequences of discriminatory practices and identified the most problematic areas in terms of discrimination, including labor relations, education, the right to adequate housing and social protection, as well as violence and even murder. The Commission noted that discrimination against LGBT+ people is frequently observed in labor relations as a result of failure to conform to binary perceptions of sex and gender, resulting in harassment practices.⁹

1 One of the first comprehensive documents based on the principle of non-discrimination on the grounds of sexual orientation and gender identity is the Yogyakarta Principles (2007) Which is a document created by a collective agreement of international human rights experts and activists to eliminate all forms of discrimination and violence against sexual orientation and gender identity. The document states that everyone has the right to Universal Enjoyment of Human Rights and Non-Discrimination on the grounds of SOGI. The law should prohibit any discrimination and guarantee equal protection of the rights of all. see: https://outrightinternational.org/sites/default/files/Activists_Guide_Yogyakarta_Principles.pdf

2 *Toonen v. Australia*, communication No. 488/1992 (CCPR/C/50/D/488/1992).

3 *Young v. Australia*, communication No. 941/2000 (CCPR/C/78/D/941/2000).

4 Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), 2009, par. 13; Human Rights Committee, General Comment No. 18, 1989, par. 13.

5 see: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19

6 This study uses the acronym "LGBT+"; however, where it refers to the content of a particular document, it uses the acronym used in that document. Consequently, there may be different forms of use of this acronym in the study, and it should be understood not as representing any new group but as interchangeable acronym.

7 The United Nations High Commissioner for Human Rights on "Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity" (A/HRC/19/41), 2011.

8 The United Nations High Commissioner for Human Rights on "Discrimination and Violence against individuals based on their sexual orientation and gender identity" (A/HRC/29/23), 2015.

9 A/HRC/19/41, par. 50.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women includes a provision requiring the elimination of discrimination based on sexual orientation or gender identity. According to CEDAW General recommendation No. 28, the Committee introduces the concept of intersecting forms of discrimination, stating that Intersectionality is a basic concept for understanding the scope of the general obligations of states parties contained in article 2 (non-discrimination). Discrimination against women on the basis of their sex and gender is inextricably linked to other factors affecting women, including race, ethnic origin, religion or belief, health, status, age, class, caste, sexual orientation, and gender identity. Discrimination based on sex or gender imposes a double burden on women who identify with these groups. As a result, states parties must legally recognize and understand these intersecting forms of discrimination in order to prohibit them.¹⁰

In its 2014 concluding observations on Georgia, the CEDAW Committee also addressed the state's commitment to eradicating discrimination based on sexual orientation and gender identity and urged the state to take action to end violence and harassment against lesbian, bisexual, and transgender women.¹¹

Several recommendations made during the UN Human Rights Council's Universal Periodic Review in 2015 sought to protect the rights and freedoms of LGBT+ people, which the State has agreed to implement. In 2021, the third cycle of the United Nations Periodic Review discussed the state of implementation of Georgia's recommendations and, on the other hand, resolving new challenges that require additional state action.

The special procedures mandate established by the decision of the UN Human Rights Council in 2016 was of particular importance in the UN system - Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity.¹² Among other responsibilities, the Independent Expert's mandate includes analyzing and gathering information on LGBT+ human rights violations, evaluating the compliance of specific state laws and policies with international standards, planning and conducting special visits to the country, and making recommendations to specific states and target groups.

During the visit to Georgia in 2018,¹³ the UN Independent Expert thoroughly assessed the state's efforts to protect the LGBT+ community's rights and the group's and its supporters' actual situation, the findings of which were summarized in the visit's report. Along with numerous positive steps, the report assessed significant challenges, including widespread discrimination in labor, services, health, and social protection.¹⁴

Georgia is also committed to achieving the Sustainable Development Goals (SDGs) of the United Nations by 2030. States commit to eradicating all forms of discrimination against women and girls under the SDG's Fifth Target, and to this end, states must enforce, monitor, and promote gender equality.¹⁵ Although the

10 General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 2010, par. 18, see: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>

11 CEDAW/C/GEO/CO/4-5*, Concluding observations on the combined fourth and fifth periodic reports of Georgia, 2014, par. 35 (e)

12 See in details: <https://www.ohchr.org/en/issues/sexualorientationgender/pages/index.aspx>

13 It is noteworthy that an Independent Expert arrived in Georgia at the request of the state.

14 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Visit to Georgia, 15 May 2019, see: <https://undocs.org/en/A/HRC/41/45/ADD.1?fbclid=IwAR>

15 SDG's Goal 5, Target 5.1.1.

official document of the SDGs does not refer to a distinct LGBT+ group, the concept of intersecting forms of discrimination is recognized by the international legal system, and this recognition includes this document. The same can be said of the Beijing Declaration and Platform for Action (BPfA), whose 12 Critical Areas of Concern do not explicitly include the elimination of discrimination based on sexual orientation or gender identity. Nonetheless, the document acknowledges “Numerous women face unique obstacles as a result of a variety of different factors in addition to their gender. Frequently, these disparate factors marginalize or isolate such women. They are denied human rights, denied access to education and vocational training, employment, housing, and economic self-sufficiency, and excluded from decision-making processes, among other things”.¹⁶

According to the 2010 Parliamentary Assembly of the Council of Europe (PACE) Resolution on discrimination based on sexual orientation and gender identity, all human beings are born free and equal in dignity and rights. According to the European Court of Human Rights, discrimination is unjustifiable if it lacks an objective and reasonable justification. “Because sexual orientation is such an intimate aspect of an individual’s private life, the Court believes that only the most grave reasons may justify treatment differences based on sexual orientation. In its 1999 judgment in *Lustig-Prean and Beckett v. the United Kingdom*, court emphasized that negative attitudes on the part of a heterosexual majority against a homosexual minority cannot amount to sufficient justification for discrimination”.¹⁷

Also, the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on the grounds of sexual orientation or gender identity¹⁸ is distinguished by an exceptional value. Which comprehensively includes the state’s measures to eliminate discrimination in all areas of life and calls on them to create an effective legal mechanism.

It is worth noting that the European Commission Against Racism and Intolerance (ECRI) has paid particular attention in recent years to the high rate of homophobia in its member states, and thus requires member states to combat discrimination based on sexual orientation or gender identity. ECRI’s report on Georgia highlights the country’s high rate of homophobic discrimination and violence and “recommends taking steps to combat intolerance and discrimination against LGBT¹⁹ people. This should be accomplished in close collaboration with the LGBT community and the Public Defender, who should be assisted in establishing an LGBT unit. Additionally, convenient elements for raising awareness in schools should be developed”.²⁰

16 Beijing Declaration and Platform for Action, Beijing+5 Political Declaration and Outcome, par. 31.

17 Resolution 1728 (2010) Final version, Discrimination on the basis of sexual orientation and gender identity, par. 3, see: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17853&lang=en>

18 see: <https://www.coe.int/en/web/sogi/rec-2010-5>

19 The study uses the acronym “LGBT”.

20 European Commission against Racism and Intolerance, report on Georgia (fifth monitoring cycle) adopted on 8 December 2015, published on 1 March 2016, par. 108, see: <https://rm.coe.int/fourth-report-on-georgia/16808b5773>

CHAPTER 2. INTERNATIONAL STANDARDS FOR COMBATING HATE CRIMES

A hate crime is a criminal offense that is motivated entirely or partially by prejudice and negative attitudes toward a particular group. According to the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), hate crimes are "any criminal offense, including offenses against persons or property, in which the victim, premises, or target of the offense are chosen for their actual or perceived connection, attachment, affiliation, support, or membership in a [specific] group."²¹

Hate crimes are comprised of two components:

- Committing a criminal offense
- Motivated by intolerance

In contrast to crimes, hate incidents are physical or verbal acts motivated by intolerance that do not qualify as a hate crime because this type of unlawful act is not a criminal offense under national law. Additionally, there is hate speech, which refers to public statements that spread, incite, promote, or justify hatred, discrimination, or violence directed at such individuals.²²

The international community has taken several measures to combat hate crimes motivated by sexual orientation or gender identity. The United Nations and Council of Europe increasingly call on states to ensure the prevention, investigation, and punishment of hate crimes.

The OSCE Decision No. 9/09 on combating hate crimes expressly addresses states' obligation to identify and publicly condemn hate crimes and their motivations, not just through law enforcement agencies, but also through political leadership.²³ According to the Decision, states should take appropriate measures to assist victims, make appropriate referrals to law enforcement agencies for illegal actions, and acknowledge that low rates of police referrals impede governments' planning and development of effective policies.²⁴ The same is true of Council of Europe Recommendation CM/rec(2010)5, which urges member states to take appropriate measures to encourage victims and witnesses of sexual orientation or gender identity-related "hate crimes" and other hate-motivated incidents to come forward. To this end, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the knowledge and skills necessary to identify such crimes and incidents and to provide adequate assistance and support to victims and witnesses.²⁵

Recommendation CM/rec(2010)5 additionally calls on member states to ensure effective, expeditious, and impartial investigations into alleged crimes and other incidents in which the victim's sexual orientation or

21 OSCE/ODIHR annual report for 2006, page 9. see: <http://www.osce.org/odihr/26759?download=true>

22 "Policing Hate Crime against LGBTI persons: Training for a Professional Police Response", written by Joanna Perry and Paul Franey, Council of Europe, 2020, see: <https://rm.coe.int/policing-hate-crime-against-lgbti-persons-geo/1680a2ef71>

23 OSCE, Decision 9/09, Combating Hate crimes, see: <https://www.osce.org/files/f/documents/d/9/40695.pdf>

24 *ibid.*

25 CoE, CM/rec(2010)5, Section A.3. see: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805cf40a

gender identity is reasonably suspected to have been a motivating factor for the perpetrator. Additionally, they should ensure that special attention is paid to the investigation of such crimes and incidents when they are alleged to have been committed by law enforcement officials or other individuals acting in an official capacity.²⁶

Additionally, the UN High Commissioner for Human Rights' 2015 report notes that the state is required to treat murders and other forms of violence against the LGBT+ community with **due diligence**. UN mechanisms call on states to fulfill this obligation by enacting legislation and taking other measures to prevent, investigate, and prosecute hate crimes and incitement against LGBT+ people, as well as providing unrestricted protection and assistance to victims.²⁷

As with other international instruments, the European Court of Human Rights' case law establishes a high bar for the investigation of hate crimes. This implies both the investigation's effectiveness and the necessity of identifying a discriminatory motive in order to prevent such crimes. The European Court of Human Rights has repeatedly held that a state's failure to consider discriminatory motives when investigating a case or imposing a sentence constitutes indirect discrimination. In *Angelova and Iliev v. Bulgaria*, the court emphasized the government's commitment to conducting investigations into violent incidents. "State authorities also have an obligation to take all reasonable steps to elucidate any [racist] motivation and to determine whether or not [ethnic] hatred or prejudice played a role in the events. [...] Treating racially motivated violence and brutality on an equal footing with cases with no [racist] overtones would be to ignore the unique nature of acts that are especially destructive to fundamental rights. Failure to distinguish between fundamentally distinct situations may constitute unjustified treatment incompatible with Article 14 of the Convention."²⁸

In terms of the importance of identifying the motive, the European Court's 2015 judgment in the case of *Identoba and Others v. Georgia* is particularly significant. In this case, the Court found violations of Articles 3 and 11, both in conjunction with Article 14, and noted that "the imperative of conducting a meaningful inquiry into the discrimination that motivated the attack on the march of 17 May 2012 was unavoidable given, on the one hand, the hostility toward the LGBT community and, on the other hand, the clearly homophobic hate speech uttered by the assailants during the incident." Without such a strict approach by law enforcement, the Court believes that prejudice-motivated crimes will inevitably be treated on an equal footing with non-prejudice-motivated crimes, and the resulting indifference will amount to official acquiescence in or even connivance with hate crimes".²⁹

Notably, this decision is subject to intense scrutiny by the Council of Europe's Committee of Ministers, which requires the state to take general and specific measures at the national level to effectively enforce the decision, as well as to submit periodic reports/action plans to the Committee of Ministers. In one of its most recent decisions assessing the case's enforcement in 2019,³⁰ the Committee urged the state to fully enforce hate crime legislation, particularly in cases where the crime was committed directly by members of the law enforcement system. The Committee emphasizes explicitly the importance of law enforcement agencies identifying hate motives and calls on the state to conduct thorough and effective investigations into such

26 *ibid.*, Section A.1.

27 A/HRC/29/23, 4 May 2015, par. 11.

28 ECHR, *Angelova and Iliev v. Bulgaria*, No. 55523/00, judgment of 26 July 2007, par. 115.

29 ECHR, *Identoba and others v. Georgia*, No. 73235/12, judgment of 12th of May, 2015, par. 77.

30 1355th CM meeting, 23-25 September 2019 (DH).

crimes In this regard, the Committee's unwavering appeal to the Georgian government is critical - to establish a special investigative agency within the Ministry of Internal Affairs to conduct a thorough and effective investigation into hate crimes.³¹

A similar recommendation was made by the European Commission Against Racism and Intolerance (ECRI). In its 2016 report on Georgia, the Commission emphasizes the systemic nature of the fight against homophobic and transphobic crime and recommends addressing intolerance and discrimination against LGBT+ people.³² As the Commission notes, this should be done in collaboration with the LGBT+ community and the Public Defender, who should be assisted in establishing a hate-crime unit, and appropriate components should be developed to raise awareness in schools.³³

a) Mechanisms for protecting and assisting victims of hate crimes

Hate crimes can have a particularly severe impact and effect on marginalized groups. Fear, insecurity, guilt, and shame are more likely to affect victims of this crime. As a result, the trauma associated with intolerance is much more intense, even when the criminal offense appears to be minor.³⁴

Eliminating the harm caused by homophobic/transphobic crime and rehabilitating victims is one aspect of implementing the due diligence standard. Protecting victims' rights on a broad level entails more than specific measures; it also entails a broad understanding of crime and its fundamental impact. According to the United Nations Special Rapporteur on violence against women, its causes, and consequences, the goal of reestablishing victims' rights should be to eliminate structural subordination, gender hierarchies, systemic marginalization, and structural inequalities that are at the root of the violence women experience. As the Special Rapporteur notes, its purpose cannot be limited to restoring women to their pre-violence state, but should aim for transformative potential.³⁵

The EU Victims' Rights Directive 2012/29/EU³⁶ serves as a critical framework for implementing appropriate measures. According to this, Member States shall ensure that victims have free access to confidential victim support services that act in their best interests prior to, during, and after criminal proceedings, based on their individual needs. States shall establish general victim assistance services or enable specific organizations to access specialized assistance. These services can be found in both public and private organizations.³⁷

To effectively protect and support victims of hate crimes, the OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR) calls on states to conduct an individual assessment of each victim's needs in

31 *ibid.*

32 European Commission against Racism and Intolerance, report on Georgia (fifth monitoring cycle) adopted on 8 December 2015, published on 1 March 2016, par. 108, see: <https://rm.coe.int/fourth-report-on-georgia/16808b5773>

33 *ibid.*

34 FRA, Ensuring justice for hate crime victims, a professional perspective, 2016.

35 A/HRC/23/49, par. 75, see: <https://undocs.org/A/HRC/23/49>

36 DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, see: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>

37 *Ibid.*, Article 8, Section 1; 3; 4.

order to ensure their protection and support, as well as timely referral to appropriate services, if necessary.³⁸ Individual needs assessments should follow a predetermined methodology to ensure consistency of approach.³⁹ Additionally, states should provide for the victim's medical needs, emotional and psychosocial support, as well as any financial and practical assistance necessary to meet their emotional and psychosocial needs.⁴⁰

b) Violent Groups and Preventive Policy

Georgia lacks a unified strategy or concept for combating hate crimes, as well as a mechanism for preventing radical right-wing and violent groups, and there is no strategy or action plan to combat this type of organized crime, indicating that the state does not place high priority on preventing hate crimes.

In contrast, international practice demonstrates that a high priority is placed on crime prevention and a reinterpretation of police preventive functions in the fight against hate crimes. According to the broad definition, crime prevention refers to the efforts of public and private individuals or institutions, programs, and measures aimed at preventing, minimizing, and mitigating crime as a public or individual manifestation.⁴¹ "That is why it is not considered a part of the criminal justice system but is viewed as an issue that needs broader control, which goes beyond police, criminal and penal justice systems and is expressed in social, situational and third-level prevention."⁴²

According to the UN Economic and Social Council (ECOSOC) Resolution 2002/13,⁴³ states should approach crime prevention through social development and situational crime prevention and reintegration programs, i.e., third-level prevention. The social approach to crime prevention entails state-led efforts to improve people's well-being and promote pro-social behavior through non-stigmatizing social, economic, health, and educational programs and measures, with a particular emphasis on children and youth and an emphasis on risk factors for crime and victimization.

Situational crime prevention aims to thwart the crime's source. In this case, crime prevention aims to influence the threat's, potential offense's, and criminogenic situation's circumstances. Situational prevention is directed at specific groups, individuals, and circumstances that increase the likelihood of becoming an offender or victim. It aims, directly or indirectly, at preventing/avoiding crime and the fear of crime, thereby enhancing the community's sense of security.⁴⁴ The third level, reintegration, is similar to prevention of recidivism in that it aims to prevent recidivism by re-socializing and rehabilitation of offenders, as well as assisting them in their social reintegration.⁴⁵

38 OSCE/ODIHR, Understanding the Needs of Hate Crime Victims, 2020, see: <https://www.osce.org/files/f/documents/0/5/463011.pdf>

39 *ibid.*

40 *ibid.*

41 G. Imnadze and others, "Prevention of Crime Risk Related to Police Control", Social Justice Center, 2017, page 15.

42 *ibid.*

43 ECOSOC Resolution 2002/13, Action to promote effective crime prevention, see: https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/resolution_2002-13.pdf

44 *ibid.*

45 Erich Marks/Wiebke Steffan, Prävention braucht Praxis, Politik und Wissenschaft, 2014, page 66-68. Also, ECOSOC Resolution 2002/13, Action to promote effective crime prevention, see: https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/resolution_2002-13.pdf

Exposing the social impact of crime becomes critical in the case of hate crimes in order to take preventative measures. Hate crimes are distinguished from other types of criminal behavior by their social impact. It is frequently a direct reflection of societal negative attitudes and cannot be combated solely through the individual response of a law enforcement agency.⁴⁶

Georgia's crime reduction and prevention measures, on the other hand, are based solely on the second level of situational prevention, and thus the individual response to a specific action occurs in a split second. As a result, its effects are transient and do not adequately mitigate the risk of recidivism, including recurrence. As a result, the state's strategy for combating hate crimes is responsive, focuses on post-crime response, and the only outcome is prosecution and aggravation of the sentence against the potential offender.⁴⁷ While sentencing is critical in the fight against crime, the absence of tertiary prevention measures - reintegration and rehabilitation - renders the state's preventive policies repressive and, thus, ineffective.⁴⁸

Although general preventive policies against hate crimes are distinct from those against radicals and violent groups, they may be incorporated into the general framework.⁴⁹ Recent years have seen the emergence of new waves of violent extremism, posing a significant threat, including the rise of violent extremism and its spread at the national and governmental levels, eroding opportunities for democracy and peaceful coexistence.

International experience in development and peacebuilding demonstrates that increasing levels of inclusion and tolerance within communities can result in both improved diversity governance and more resilient societies that are better protected against violent extremism.⁵⁰ Promoting diversity, tolerance, and intercultural understanding is one of the Sustainable Development Goals (SDG 16) for 2030, which aims to create more peaceful, just, and inclusive societies.

The drivers of violent extremism are complex and interconnected, affecting the political, economic, historical, ideological, and religious dimensions of communities, groups, and individuals on a local, national, and global scale.⁵¹ As a result, prevention of violent and deviant behaviors is becoming increasingly important, and in addition to police measures, should be based on an interdisciplinary analysis focusing on the consequences, as well as the causes and risks/phases of its occurrence, in order to plan an effective, timely, and early intervention.

In terms of policing measures, different countries emphasize interagency and community work as effective crime prevention mechanisms. The general holistic approach to prevention is based on coordination between different actors and includes the following fundamental measures:⁵²

46 Chakraborti N., Garland J. "Hate Crime: Impact, Causes and Responses", Second Edition, Sage publication, 2015.

47 G. Imnadze and others, "Prevention of Crime Risk Related to Police Control", Social Justice Center, 2017

48 *ibid.*

49 UNDP, PREVENTING VIOLENT EXTREMISM THROUGH PROMOTING INCLUSIVE DEVELOPMENT, TOLERANCE AND RESPECT FOR DIVERSITY, United Nations Development Programme A development response to addressing radicalization and violent extremism, 2016.

50 *ibid.*

51 *ibid.*

52 RAN, Lessons from crime prevention in preventing violent extremism by police, 2020, page 8.

- Coordination and information sharing between police and security forces
- Coordination and information sharing between police and other public agencies
- Long-term measures aimed at trust-building
- Measures to combat the polarization of society

The guide developed by the Swedish Ministry of Justice and the Institute for Strategic Dialogue⁵³ exemplifies effective preventive policy planning. It takes a structural approach to the problem of radical right-wing extremism and the associated violence, hate speech, and radicalization, involving the equal application of several strategic methods and steps, namely:

1. Diverting people from getting involved in radical right-wing extremism;
2. The adequate response to hate speech and incitement;
3. Envisaging and managing threats to public order;
4. Ending violent behavior and fragmenting movements;
5. Supporting and empowering victims;
6. Outlining extremism as a problem and raising awareness;
7. Strengthening public agencies and promoting their adequate actions.

The guide considers implementing the listed measures through a multi-sectoral approach, which entails the involvement of as many individuals and organizations as possible. Educational and youth organizations, social workers, local and self-governments, the police, victims' advocates, activists, and civil society organizations are among those targeted.

Georgia's current situation, in terms of the strengthening of violent groups, necessitates immediate intervention. The state should take proactive measures to prevent these groups from consolidating and attracting new members, in order to protect the lives and health of women and LGBT+ people, as well as the democratic development of society and peaceful coexistence in general.

⁵³ ISD, On the Front Line, A guide to countering far-right extremism, 2014, see: https://www.isdglobal.org/wp-content/uploads/2016/03/On_The_Front_Line_Far_RightHANDBOOK.pdf

CHAPTER 3. INTERNATIONAL STANDARDS FOR THE PROTECTION OF FREEDOM OF ASSEMBLY AND EXPRESSION

The right to freedom of expression, assembly, and association is one of the fundamental guarantees of political participation and the ability to have one's voice heard in society. For marginalized groups, peaceful assembly and demonstration are frequently the only effective means of expressing their concerns. As a result, despite its contradictory nature, the right to peaceful assembly enjoys a high level of protection in the international legal system, and the scope of interference with this right is also subject to appropriate assessment tests. States must view freedom of assembly and demonstration as a fundamental right, not a privilege, under international law. As a result, states must ensure that all persons participating in assemblies are treated equally and without discrimination on any basis.⁵⁴

The 2020 Joint Declaration on the Right to Peaceful Assembly and Democratic Governance reaffirms states' commitment to ensuring the right to peaceful assembly is realized. It requires states to refrain from interfering with assemblies but also to take proactive measures to facilitate individuals' expression of views, including by protecting assemblies from third-party attacks.⁵⁵

All participants in peaceful assemblies must be protected from violence, intimidation, harassment, surveillance, and retaliation, according to international standards. State and non-state actors who commit, advocate for, or support acts of violence against individuals exercising their right to peaceful assembly must face appropriate legal consequences.⁵⁶ Smear campaigns and online harassment should be publicly condemned.⁵⁷

Additionally, information access is a necessary component of exercising the right to peaceful assembly. International standards require that media have access to and the ability to safely cover assemblies. States must ensure that journalists and media representatives covering protests do not face arrest, intimidation, or violence, and that their equipment is not confiscated or damaged.⁵⁸

States must prohibit gatherings that explicitly advocate national, racial, or religious hatred and act as a catalyst for discrimination, hostility, or violence.⁵⁹

54 The United Nations Special Rapporteur on Freedom of Assembly and Association, the InterAmerican Commission for Human Rights (IACHR) and its Special Rapporteur on Freedom of Expression, Special Rapporteur on Human Rights Defenders and focal point for reprisals in Africa of the African Commission on Human and Peoples' Rights (ACHPR), and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Joint declaration on the right to freedom of peaceful assembly and democratic governance, see: <https://www.ohchr.org/Documents/Issues/FAssociation/joint-declaration-democratic-governance/declaration-en.pdf>

55 *ibid.*

56 *ibid.*

57 *ibid.*

58 The United Nations Special Rapporteur on Freedom of Assembly and Association, the InterAmerican Commission for Human Rights (IACHR) and its Special Rapporteur on Freedom of Expression, Special Rapporteur on Human Rights Defenders and focal point for reprisals in Africa of the African Commission on Human and Peoples' Rights (ACHPR), and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Joint declaration on the right to freedom of peaceful assembly and democratic governance, see: <https://www.ohchr.org/Documents/Issues/FAssociation/joint-declaration-democratic-governance/declaration-en.pdf>

59 *ibid.*

Additionally, the European Court of Human Rights has a substantial body of case law on restricting the right to peaceful assembly. The Court raised awareness about discrimination against LGBT+ people, women, and people with disabilities during a public march in Warsaw in 2007 in *Bczkowski and Others v. Poland*.⁶⁰ The Court found a violation of Articles 11, 13, and 14 of the Convention, stating that, while the march continued, it was not authorized by the state, owing primarily to decision-makers' negative attitudes toward homosexuals. The Court reached a similar conclusion in two identical cases against Russia in 2010 and 2020, *Alekseyev v. Russia*, in which applicants cited national government agencies' continued refusal to host an LGBT+ Pride/ March. The government stated in a 2010 case that the purpose of prohibiting LGBT+ assemblies was to protect participants from violence; the Court stated that the risk of unrest by hostile or opposition groups could not be used to justify restricting peaceful assembly. The Court concludes that "if every possibility of tension and heated exchange between opposing groups during a demonstration were sufficient to justify its prohibition, society would be deprived of the opportunity to hear alternative viewpoints on any issue that offends the majority opinion's sensibility."⁶¹

Berkman v. Russia, one of the most recent European Court of Human Rights judgments, addresses non-compliance with the obligation to protect participants in peaceful assembly from attack and violence (2020). The Court emphasized the government officials' unique responsibilities and stated that the principle of regulating counter-demonstrations and protecting peaceful demonstrations by marginalized groups extends well beyond maintaining public order. The state is obligated to protect equality in this case. The Court concludes that "the police officers' passive behavior at the outset, the apparent absence of any preliminary measures (such as official public statements promoting tolerance, monitoring the activity of homophobic groups, or establishing a channel of communication with the event's organizers), and subsequent arrests [of peaceful protesters] on the basis of alleged administrative offenses demonstrate that the police officers were concerned only with the alleged administrative offenses."⁶²

Along with the preceding judgments, the European Court of Human Rights' decision in *Identity and Others v. Georgia* (2015) is critical for the Georgian context, as the Court evaluated states' failure to fulfill positive obligations critically. The Court reiterates that "given the attitudes toward sexual minorities in some segments of Georgian society, the authorities were aware of or should have been aware of the risk of tensions associated with the applicant organization's street march commemorating International Day Against Homophobia." They were thus obligated to use all available means, including public statements prior to the demonstration, to advocate unequivocally for a tolerant, conciliatory stance and to warn potential lawbreakers about the nature of possible sanctions. Furthermore, as evidenced by the outcome of the LGBT⁶³ procession, the number of police patrol officers dispatched to the demonstration site was insufficient, and it would have been prudent for domestic authorities to ensure additional police manpower by mobilizing, for example, a squad of anti-riot police."⁶⁴

60 EHCR, *Bączkowski and Others v. Poland* (application no. 1543/06)

61 ECHR, *ALEKSEYEV v. RUSSIA* (application nos. 4916/07, 25924/08 and 14599/09), par. 77.

62 ECHR, *BERKMAN v. RUSSIA*, Application no. 46712/15, par. 53.

63 The Judgement uses the acronym "LGBT".

64 ECHR, *Identoba and Others v. Georgia*, par. 99.

CHAPTER 4. INTERNATIONAL STANDARDS FOR THE RIGHT TO EDUCATION

International organizations and states recognize the critical role of education in ensuring people's well-being and full development. The right to education, as a significant component of universal human rights, is inextricably linked to the effective realization of other rights. As a result, states commit to ensuring that individuals have adequate access to secondary and higher education.⁶⁵

The United Nations Sustainable Development Goal 4 aims to ensure inclusive and equitable quality education for all and to promote opportunities for lifelong learning for all. Goal 4's first target is to ensure that all girls and boys complete a free, equitable, and high-quality primary and secondary education that results in relevant and effective learning outcomes by 2030. Additionally, Goal 4's Target 7 requires states to ensure that all learners acquire the knowledge and skills necessary to promote sustainable development by 2030, including through education for sustainable development and sustainable lifestyles, human rights, gender equality, the promotion of a culture of peace and nonviolence, global citizenship, and an appreciation for cultural diversity and culture's contribution to sustainable development.

The UN institutions have developed the Incheon Declaration and Framework for Action (Education 2030) to achieve Sustainable Development Goal 4.⁶⁶ According to one of its indicators, Sustainable Development Goals Target 4.7. includes addressing issues such as human rights, gender equality, health, comprehensive sexuality education, climate change, sustainable livelihoods, and responsible and engaged citizenship, all of which are informed by national experiences and capabilities. Additionally, states must ensure that people of all sexes and ages have opportunities to acquire the knowledge, skills, values, and attitudes necessary to build peaceful, healthy, and sustainable societies throughout their lives.⁶⁷

The UN Special Rapporteur on the Right to Education critically examines the issue of limiting diversity in educational spaces in 2021 report. According to the Special Rapporteur, "education systems are assimilation machines with reductive objectives, including blind obedience to social rules, norms, and moral values; labor market training; propagation of systems of dominance; and adherence to State, nationalist, or religious ideologies [...], they establish a hierarchy of different cultures, world views, and ways in which people identify as human."⁶⁸

Along with promoting diversity, international instruments require states to take appropriate measures to prevent and combat violence in school and university environments. Among them, educators should place a premium on bullying and discriminatory practices. According to the UNESCO Convention against Discrimination in Education,⁶⁹ which Georgia ratified in 1993, education should be geared toward the full development of the human personality and the reinforcement of respect for human rights and fundamental freedoms; it should foster understanding, tolerance, and friendship, as well as the maintenance of peace between groups defined by distinct characteristics.⁷⁰

65 A/72/496, Report of the Special Rapporteur on the right to education, 2017.

66 Education 2030: Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4, 2016, see: <https://unesdoc.unesco.org/ark:/48223/pf0000245656>

67 *ibid.*, par. 61.

68 A/HRC/47/32, Right to education: the cultural dimensions of the right to education, or the right to education as a cultural right Report of the Special Rapporteur on the right to education, Koumbou Boly Barry, 2021, par. 9, see: <https://undocs.org/A/HRC/47/32>

69 UNSECO, Convention against Discrimination in Education 1960, see: http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html

70 UNSECO, Convention against Discrimination in Education 1960, Article 5.

CHAPTER 5. EXISTING INTERNATIONAL STANDARDS REGARDING THE RIGHT TO WORK AND THE RIGHT TO OBTAIN DECENT WORK

Protecting labor rights is the primary safeguard for social and economic independence, which enables individuals and their dependents to live comfortably.⁷¹ Economic, Social, and Cultural Rights Committee of the United Nations Additionally, General Comment No20 includes sexual orientation and gender identity as prohibited grounds of discrimination and notes that members of the LGBT+ community, particularly those who are transgender or intersex, face multiple forms of workplace discrimination.⁷²

The Council of Europe's Recommendation CM/Rec(2010)5 urges member states to ensure the establishment and implementation of appropriate measures that ensure effective protection against discrimination on the basis of sexual orientation or gender identity in employment and occupation, both public and private. These measures should cover employment and promotion conditions, dismissals, compensation, and other working conditions, as well as the prevention, detection, and punishment of harassment and other forms of victimisation.⁷³

According to the Recommendation, special attention should be paid to protecting transgender individuals' right to privacy effectively in the context of employment, particularly during the application process, in order to avoid any unnecessary disclosure of their gender history or former name to the employer or other employees.⁷⁴

In the context of Georgia, Primary EU Directives are critical for eradicating workplace discrimination, a goal that the State has committed to achieving under the terms of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States. The Agreement became effective on July 1, 2016. The Association Agreement defines employment, social policy, and equal opportunity in detail in Annex XXX, which contains a list of directives explicitly prohibiting workplace discrimination and promoting gender equality (6 Directives). Among these directives, the prohibition of discrimination on the basis of sexual orientation is directly incorporated by Council Directive 2000/78/EC of 27 November 2000,⁷⁵ establishing a general framework for equal treatment in employment and occupation and reiterating the obligation to prohibit discrimination not only in the workplace but also in the process of employment access. Article 3 of the Directive, in particular, applies to all individuals with regard to employment conditions, including selection criteria and recruitment conditions at all levels of the professional hierarchy, including promotion.⁷⁶

71 UN Committee on Economic, Social and Cultural Rights, General Comment No. 18, 24 November 2005, Article 6, par. 4.

72 UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 on non-discrimination, par. 32

73 CM/Rec(2010)5, par. 29.

74 *ibid.*, par. 30.

75 see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>

76 Directive 2000/78/EC, Article 3, paragraph a).

CHAPTER 6. INTERNATIONAL STANDARDS FOR GUARANTEEING THE RIGHT TO HEALTH

The right to health is one of the social rights that are considered fundamental. According to the Pan American Health Organization (PAHO) and the World Health Organization (WHO), “expressions of intolerance and hatred harm the LGBT+ community’s well-being; cause distress and stress; and increase other risks, such as violence.” Homophobia and transphobia must be addressed as public health issues for these reasons alone.”⁷⁷

Article 12 of the United Nations-adopted International Covenant on Economic, Social, and Cultural Rights guarantees everyone the right to the highest attainable standard of health.⁷⁸ This right encompasses the autonomy of one’s health and body, as well as sexual and reproductive freedom. Additionally, the right entails establishing a healthcare system that enables each individual to receive the highest possible standard of care without regard for discrimination.⁷⁹ Additionally, healthcare facilities, services, and medications should be accessible to all, particularly the most marginalized groups. Additionally, states should take appropriate measures to safeguard marginalized groups as they exercise their right to health.⁸⁰

The right to the highest attainable standard of health is also reflected in the UN Sustainable Development Goal 3 targets, which focus on enhancing the quality of physical and mental health services. The objective of Target 3.8 is to achieve universal health coverage, which includes financial risk protection, access to high-quality essential healthcare services, and affordable access to safe, effective, high-quality, and essential medicines. Target 3.4 aims to promote mental health and well-being, with a reduction in the suicide mortality rate serving as an indicator.

States must ensure universal access to sexual and reproductive health and rights in accordance with the International Conference on Population and Development’s Programme of Action and the Beijing Platform for Action, as well as the outcome documents of their review conferences (Target 5.6). Although the International Conference on Population and Development’s (ICPD, 1994) program of action does not specifically address the LGBT+ community, an established general framework enables it to be distributed equally to LGBT+ individuals.⁸¹

The Council of Europe’s Recommendation CM/Rec(2010)5 states that member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without regard for sexual orientation or gender identity. They should take into account the unique needs of lesbian, gay, bisexual, and transgender people, including suicide prevention measures, health surveys, medical curricula, training courses, and materials, as well as the quality of healthcare services when monitoring and evaluating them.⁸²

77 Stigma and discrimination jeopardize the health of lesbians, gays, bisexuals, and transgender people, PAHO/WHO calls for equitable access to care and respectful treatment for LGBTs in health services, see: https://www3.paho.org/hq/index.php?option=com_content&view=article&id=8670:2013-stigma-discrimination-jeopardize-health-lesbians-gays-bisexuals-transgender-people&Itemid=1926&lang=en

78 IESCR, Article 12.

79 A/HRC/14/20, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, 2010, par. 3, see: <https://undocs.org/A/HRC/14/20>

80 Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000).

81 see: https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf

82 CoE, CM/Rec(2010)5, par. 33.

According to the aforementioned Recommendation, member states should take appropriate legislative and other measures to ensure that transgender individuals have effective access to appropriate gender reassignment services, including psychological, endocrinological, and surgical expertise, without being subjected to unreasonable requirements; no individual should be subjected to gender reassignment procedures without his or her consent.⁸³ Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs of gender reassignment procedures covered by health insurance are lawful, objective, and proportionate.⁸⁴

83 CoE, CM/Rec(2010)5, par. 35.

84 CoE, CM/Rec(2010)5, par. 36.

CHAPTER 7. INTERNATIONAL SOCIAL SECURITY STANDARDS

International human rights standards place a premium on states' commitment to developing mechanisms for social security and homelessness prevention. The United Nations Covenant on Economic, Social, and Cultural Rights recognizes the right of all individuals to equal access to adequate housing, free of discrimination, and requires States Parties to take immediate action to prevent, diminish, and eliminate the conditions and attitudes that contribute to or perpetuate substantive or de facto housing discrimination.⁸⁵

There is no internationally agreed definition of homelessness; as a result, definitions vary according to national contexts; there are both narrow (e.g., rooflessness) and broad interpretations of its definition, depending on the criteria used. For instance, the adequacy of the dwelling, the risk of becoming homeless, the duration of exposure to homelessness, and joint responsibilities for alleviating homelessness.⁸⁶ According to the UN Special Rapporteur, the tendency in different countries to define homelessness narrowly is problematic, i.e., an individual is considered homeless solely on the basis of rooflessness (not having a physical space).⁸⁷ The United Nations Statistics Division distinguishes two broad categories of homelessness - in addition to rooflessness,⁸⁸ it defines secondary homelessness as individuals without a permanent residence who frequently move between different types of accommodation to sleep, as well as groups living in shelters or similar conditions for extended periods of time.⁸⁹

According to the United Nations Human Settlements Programme (UN-Habitat), "homelessness" encompasses not only a lack of physical housing but also a sense of belonging."⁹⁰ However, the absence of an internationally recognized definition makes it difficult to assess the magnitude of this phenomenon and generate comprehensive statistical data that could be used to develop appropriate policies. The European Typology of Homelessness (ETHOS), developed by FEANTSA and the European Observatory on Homelessness (EOH), is particularly noteworthy in this regard, as it distinguishes four conceptual groups of homeless people:

- Roofless persons
- Houseless persons
- People living in insecure accommodation
- People living in inadequate accommodation

85 International Covenant on Economic, Social and Cultural Rights, Article 11(1), Committee on Economic, Social and Cultural Rights, General Comment No. 7 (E/1992/23), 1992 and General Comment No. 20 (E/C.12/GC/20), 2009, par. 8.

86 UN HABITAT, The Right to Adequate Housing, Fact sheet No. 21, see: https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

87 Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Homelessness, E/Cn.4/2005/48, par. 11-14.

88 UN HABITAT, The Right to Adequate Housing, Fact sheet No. 21, see: https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

89 UN-Habitat Response to Questions from the Special Rapporteur on Adequate Housing (12 November 2015) https://www.ohchr.org/Documents/Issues/Housing/Homelessness/Unagencies_Regionalbodies/13112015-Un_Habitat.Docx

90 UN HABITAT, The Right to Adequate Housing, Fact sheet No. 21, see: https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

The first two of these categories are directly related to homelessness, while the final two are related to isolation/inadequate housing as a risk of homelessness.⁹¹

However, due to the disparate approaches taken by European countries in defining homelessness, it became necessary to develop a standardized approach to homelessness, dubbed ETHOS Light, “which focuses on the operational categories of homelessness” (and not housing exclusion). The ETHOS Light is based on the European Typology (ETHOS) operational categories, but excludes certain groups of people who live in substandard or insecure housing.”⁹²

According to the United Nations Special Rapporteur on the right to adequate housing, individuals who face discrimination due to their sexual orientation or gender identity are more likely to become homeless.⁹³ LGBT+ youth face stigma and social exclusion from their families and communities, are more vulnerable to violence, and are more likely to be turned away from shelters, according to the 2015 report.⁹⁴

The Council of Europe’s Recommendation CM/Rec(2010)5 commits Member States to take measures to ensure that all people have effective and equal access to adequate housing, free of discrimination based on sexual orientation or gender identity. These measures should aim to safeguard against discriminatory evictions and to ensure equal rights to acquire and rent land and other property.⁹⁵

Additionally, the Recommendation states that adequate attention should be paid to the risks of homelessness faced by LGBT+ individuals, including young people and children who may be particularly vulnerable to social exclusion, including from their own families;⁹⁶ in this regard, relevant social services should be provided based on an objective assessment of each individual’s needs, without regard for discrimination.⁹⁷

Additionally, state-led domestic policies addressing homelessness must address the structural causes of the problem, which are reflected in national policies, programs, and legislation, as well as international financial and development agreements that contribute to and create homelessness.⁹⁸ Discrimination and violence should be considered structural causes of homelessness, even though they also present a significant barrier to emancipation.

States have an immediate obligation under the United Nations Sustainable Development Goals to address the issue of homelessness and to take appropriate measures to eliminate the structural causes of homelessness by 2030. In this context, national and local governments should prioritize the needs of LGBT+ people and take all necessary measures to protect LGBT+ youth from homelessness.⁹⁹

91 “The Notion of a Homeless Person and the Criteria for Determining the Status of the Homeless”, Author: Nino Kashakashvili, Social Justice Center (former EMC), page 7, see: https://socialjustice.org.ge/uploads/products/pdf/COMBATING_HOMELESSNESS_-_THE_NOTION-merged_1613543072.pdf

92 *ibid.*, page 8.

93 Reports of the Special Rapporteur on the right to housing (A/HRC/31/54), 2015, par. 39, 44, 87.

94 Report of the Special Rapporteur on the right to housing (A/HRC/31/54) 2015, par. 44.

95 CM/Rec(2010)5, par. 37.

96 *ibid.*, par. 38.

97 *ibid.*

98 Report of the Special Rapporteur on the right to housing (A/HRC/31/54) 2015, par. 28.

99 see: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24877>

CHAPTER 8. INTERNATIONAL STANDARDS FOR GUARANTEEING THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Recognizing the rights of non-heterosexual couples is a critical component of the right to respect for private and family life. This includes marriage equality, access to civil partnerships, and enjoyment of social and cultural rights. The exercise of this right is also inextricably linked to certain rights concerning social protection, inheritance, criminal justice, and, more broadly, the fundamental right to self-determination of an individual. International organizations are increasingly focusing their attention on states' obligations to ensure the practical implementation of the right to respect for private and family life. The Council of Europe's Recommendation CM/Rec(2010)5 calls on member states to ensure that heterosexual and non-heterosexual partners receive equal treatment; additionally, the recommendation notes that states should provide opportunities for same-sex couples to resolve social reality issues through legal and other mechanisms.¹⁰⁰

The Council of Europe's General Assembly calls on member states to refrain from amending their constitutions or enacting legislation that would preclude the recognition of same-sex marriage or other forms of family and to instead delegate such decisions to their legislatures or highest courts.¹⁰¹ Additionally, the Assembly states that states must conform their constitutional and other legislative provisions governing same-sex partners to the European Court of Human Rights' case law.¹⁰² Additionally, the Assembly states that states must ensure that their constitutional, legal, and administrative standards and policies governing parental rights apply equally to parents and children regardless of sexual orientation or gender identity, and that all unjustified disparities based on SOGI must be eliminated.¹⁰³

Despite similar recommendations from international organizations, it should be emphasized that states continue to apply a broad margin of appreciation when deciding on these issues, based on cultural-social readiness, public consensus, and prevalent attitudes toward LGBT+ people in the country.¹⁰⁴

The European Court of Human Rights, on the other hand, is generally strict when it comes to differential treatment based on sexual orientation or gender identity, emphasizing this group's historical experience of oppression. In *Kiyutin v. Russia*, the courts' ruling on differential treatment of the LGBT+ community is particularly harsh, as this group has historically been and continues to be a victim of stereotypes and social exclusion.¹⁰⁵ Thus, in *Oliari v. Italy*, a case concerning the absence of legal recognition of same-sex relationships, the Court, among other things, speaks of the urgent need for legal recognition of the group's partnership and the corresponding positive obligations to be fulfilled by the state, in light of the group's historically difficult legal situation.¹⁰⁶

100 Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted 31 March 2010, par. 23-25.

101 PACE, Private and family life: achieving equality regardless of sexual orientation, Report, Doc. 14620|September 2018, Section 4 (4.2.), see: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25048&lang=en>

102 *ibid.*, Section 4 (4.3).

103 *ibid.*, Section 4 (4.1.).

104 ECHR, Judgment of.

105 par. 48: 'In assessing whether a difference of treatment was justified, the Court had identified a number of particularly vulnerable groups – for instance, Roma, homosexuals, persons with mental disabilities – that had suffered a history of prejudice and social exclusion, in respect of which the State had a narrower margin of appreciation.'

106 CASE OF OLARI AND OTHERS v. ITALY (Applications nos. 18766/11 and 36030/11) JUDGMENT, STRASBOURG, 21 July 2015.

International experience overwhelmingly demonstrates that the marriage institution's traditional nature significantly impedes consideration of non-heterosexual couples and their ability to access the named institution. As a result, institutions created as alternatives to marriage, such as civil partnerships, registered unity, and others, give LGBT+ couples more consideration.¹⁰⁷ In most cases, the civil partnership institution confers the same rights and obligations as marriage.¹⁰⁸ Certain countries, however, may establish guarantees distinct from marriage. The civil partnership institute's primary mission is to legalize same-sex relationships. While a registered union, like marriage, entails a number of safeguards (such as social security, medical, criminal law, and other areas).

The evolution of court practice relating to the establishment/dissemination of the civil partnership institute is a sign of recognition of similar needs for rights of same-sex partners. The European Court of Human Rights ruled in 2013 in *Vallianatos and Others v. Greece* that limiting civil partnership institutes to heterosexual couples constitutes discrimination. The Court has previously stated that "same-sex couples are just as capable of developing stable, committed relationships as heterosexual couples." Same-sex couples who cohabit share the same needs for mutual support and assistance as heterosexual couples [...] Extending civil unions to same-sex couples would enable them to regulate property, maintenance, and inheritance issues not as private individuals entering into contracts under ordinary law, but under the legal rules governing civil unions, thereby having their relationship recognized officially by the State."¹⁰⁹

In its 2015 decision in *Oliari v. Italy*,¹¹⁰ the Court affirmed the practice of recognizing partnerships in situations where the absence of a specific legal framework for homosexual couples in committed and stable relationships violates the right to respect for private and family life. As a result, it can be stated that the Court recognized the positive obligation to regulate non-heterosexual couples' relationships in general with this judgment.¹¹¹ This interpretation is significant because it is no longer connected to the evolution of the European consensus and views the recognition of non-heterosexual couples as a state obligation.

107 Because these institutions have a desacralized and less symbolic nature.

108 For example, there is a difference in terms of entering into a partnership; in the case of marriage, it is permissible to celebrate it in a religious/civil ceremony, while registering a civil partnership is usually a civil and non-public procedure.

109 ECHR, *CASE OF VALLIANATOS AND OTHERS v. GREECE* (Applications nos. 29381/09 and 32684/09) JUDGMENT, STRASBOURG, 7 November 2013, par. 81.

110 *CASE OF OLIARI AND OTHERS v. ITALY* (Applications nos. 18766/11 and 36030/11) JUDGMENT, STRASBOURG, 21 July 2015.

111 However, there is another consideration according to which this judgment should be interpreted only in relevance to Italy.

