



## Europe, Let's Speak Out for LGBTI Rights in South Caucasus<sup>1</sup>

### Background

In continuation of the so-called project “Europe, Let's Speak Out for LGBTI Rights in Africa”, which took place in December 2014 in Brussels, the European Union Office of the Heinrich-Böll-Stiftung (hbs) organised a four-day-encounter of LGBTI activists from South Caucasus in December 2015. The project aimed to provide LGBTI human rights defenders from Armenia, Azerbaijan and Georgia with a platform at EU level to share their work experiences, since the situation of LGBTI individuals in the South Caucasus region is still precarious.

### The situation of LGBTI human rights in the South Caucasus countries

In the recent past, significant legal improvements in the situation of LGBTI rights in **Georgia** were achieved as the state authorities determined a proven hate motive in criminal offenses as an aggravating circumstance in 2012. In addition, the government introduced the Law of Georgia on the Elimination of All Forms of Discrimination in 2014, which also recognises sexual orientation, gender identity and gender expression as grounds of discrimination. Nonetheless, these legal mechanisms in place still lack appropriate implementation.

The courts and the Public Defender's Office (PDO) are not equipped with effective mechanisms to fight actual cases of discrimination, and law enforcement agencies are not trained adequately to develop the necessary skills and sensitivity. As a result, reported hate crime cases are mostly not prosecuted, and the perpetrators go unpunished. As the Georgian Orthodox Church remains a powerful agent within politics as well as society, conservative beliefs, and thus negative attitudes towards LGBTI individuals, are perpetuated. Therefore, hate speech and hate crime continue to be prevalent and the effective implementation of the existing legal norms is urgently needed.

LGBTI individuals in **Armenia** are one of the most marginalised and vulnerable groups in their society who lack legal protection, as no anti-discrimination law, including sexual orientation and gender identity, exists. Moreover, hate speech and hate crimes are often fuelled by the media and state officials. Relevant civil society organisations (CSOs) state a deterioration of the general climate towards and an increase of verbal and physical attacks against LGBTI individuals since the year 2012. By contrast, the recently, via referendum, decided constitutional changes will lead to

<sup>1</sup> The publication at hand is an executive summary of the report “Europe, Let's Speak Out for LGBTI Rights in South Caucasus” on the eponymous project organised by the hbs EU Office, The Greens/EFA, and the Intergroup on LGBTI Rights of the EP. The detailed report is available on: <http://eu.boell.org/en/2016/02/24/europe-lets-speak-out-lgbti-rights-south-caucasus>

an accumulation of power within the Armenian Parliament, where many representatives have expressed homophobic attitudes in the past. Hence, the adoption of an anti-discrimination law became less likely, and instead, further limitations of fundamental rights are feared. As the law enforcement agencies are often homo- and transphobic themselves, LGBTI individuals whose rights are violated rather strive to keep a low profile and not out themselves than to report a criminal offence. Prosecuting authorities regularly dismiss reported cases of discrimination or hate crime on the basis of lack of evidence, or even impose charges on the victim, for instance for illegal sex work. In regard to hate speech, the same scope of negligence and inactivity of state authorities can be observed. Cases that are brought to court are ruled in favour of freedom of speech. Although the influence of the church is not as dominant as in Georgia, the majority of the population identifies with traditional values that perpetuate heteronormativity. Hence, the government is oftentimes able to use homo- and transphobic attitudes to alter the citizens' attention from the very problematic issues of socio-economic and political spheres.

The situation of LGBTI individuals in **Azerbaijan** is alarming since there is no legal protection against hate crime or hate speech of any kind. In addition, the Azerbaijani government has expanded its repressions. In addition, the Azerbaijani government has expanded its repressions in recent years, and hence limited the space for civil society's activities. Amendments to the country's non-governmental organisation (NGO) law aggravates, if not makes impossible, the work of local as well as foreign entities engaging in human or LGBTI rights. The further complicated registration process for NGOs ensures a strong grip of the state on its population. At the same time, traditional gender roles and values remain deeply rooted within Azerbaijani families. Furthermore, Islamic groups, which are often influenced by the clergy of the neighbouring country Iran, fuel the hostile climate against LGBTI persons. Those individuals "are almost invisible within a highly repressive society"<sup>2</sup>. In a nutshell, it is hardly impossible for LGBTI human rights defenders to work in Azerbaijan, although their efforts are desperately needed to increase the population's acceptance for LGBTI issues.

In all three countries, the situation of individuals with a diverging gender identity is especially perilous. Widespread discrimination and a low level of awareness adamantly endure not only among the ordinary population but also in healthcare personnel, including counsellors and psychologists, who are unable or unwilling to provide trans and inter persons with proper care.

## Russia, the European Union and the South Caucasus region

The geographical location of Armenia, Azerbaijan and Georgia results in a complicated political situation as the three South Caucasus countries find themselves torn between a possible economic and political integration into the EU, and an alignment with Russia and other former Soviet countries in the Eurasian Economic Union (EEU). This complicated 'ménage à trois' differs from country to country in the South Caucasus region. A variety of factors determine if Russia or the EU is perceived as the more adequate cooperation partner. In this context, like in numerous other countries around the world, homo- and transphobia is perpetuated by state actors, and frequently used to justify geostrategic decisions by pitting people's fears and prejudices, as it will become clear hereafter.

Armenia, Azerbaijan, and Georgia are fully participating in the European Neighbourhood Policy (ENP). This means that the three countries each agreed on an action plan, based on existing legal agreements for political and economic reforms to be undertaken in the next five years. One of the main interests of the EU in regard to its own single market is, among other things, to set the standards for products and future technological development in the ENP countries. To this end, the EU supports its southern and eastern neighbouring countries with financial aid, promises further economic integration and visa liberalisation, as well as technical and policy support. In the context of the ENP, the three South Caucasian countries are involved in the joint initiative of the Eastern Partnership (EaP), which exists since 2009, and is grounded on the principles of democracy, the rule of law and respect for human rights and fundamental freedoms, as well as a free market economy. The depth of the EU relations to a specific country within the framework of the EaP, however, is determined by the ambition of this country to pursue this partnership, and hence, make a commitment to the above mentioned principles. As these countries are also within Russia's sphere of interest and partly are close trade partners, it repeatedly expressed reservations about the EU's involvement with its eastern neighbours. The case of Ukraine in the recent past has shown that the EU has to proceed with great sensitivity in its ENP and EaP, as it is perceived as a threat to its own geopolitical and economic interests by Russia.

Along the lines of Putin's methods within the Russian Federation, an artificial conflict between so-called "traditional" and "western" values determines the public discourse about LGBTI rights in **Georgia**, although it remains vague what is understood by those terms. Despite the fact that same-sex relations have been decriminalised for more than a decade, politicians and public figures are using (male) homosexuality to discredit their political opponents, to hush up the malfunctioning of the political elites or even possible crimes, for instance fraud or corruption, and to justify anti-western sentiments spread by certain actors. One of the

main actors inciting hatred against LGBTI individuals is the Georgian Orthodox Church who is a powerful political player and finds itself in a constant tug-of-war with the government over certain issues. The Georgian Orthodox Church has close ties to its Russian counterpart, and Patriarch Ilia II himself regularly praises Putin's leadership in his sermons. Moreover, Orthodox priests were on the front line of the protest against events in the framework of the International Day Against Homophobia, Transphobia and Biphobia in Tbilisi in 2013. Besides the obvious close religious ties between the Russian Federation and Georgia, the exertion of influence can also be stated on a political level as pro-Russian non-governmental groups and activists who are supposedly (financially) supported from Moscow are recently emerging. This results in an overt opposition within the Georgian society as, for instance, pro-Ukraine and pro-Russia demonstrations simultaneously take place and further the division of the society. Those pro-Russian non-governmental groups regularly use extensive homophobic language to mobilise supporters and, especially, to discredit supporters of a continuing association process with the EU. They directly link the alignment to the West with homosexuality and predict the introduction of same-sex marriage. Although the Georgian government oftentimes fails to respond effectively and to press its point on human rights for all Georgian citizens, it has become clear that the state leadership aims to meet the obligations imposed by the EU in regard to further integration. In fact, the prospects of future political and economic concessions constitute the only existing mechanism to exert pressure on the Georgian government to improve the human rights situation. One example for this is the visa liberalisation negotiations that were concluded at the end of 2015 as Georgia was found to meet the required criteria. Evidently, the religious ties between the Georgian Orthodox Church and the Russian Orthodox Church are close, but the political influence that Putin's administration can exert on its neighbouring country in the South is limited as the ENP and the association process have borne fruits.

**Armenia** is, economically as well as politically, strongly linked to the Russian Federation as the accession treaty to the EEU came into force in early 2015. Nonetheless, the country is also participating in the EaP and negotiations for an association agreement with the EU were again launched in December 2015. On the one hand, Armenia heavily relies on the EU economically as the trade with EU member states exceeds that with the countries forming the EEU. On the other hand, it is dependent on its powerful partner Russia as the unresolved Nagorno-Karabakh conflict with Azerbaijan is perceived as a security risk. As a result, an artificial conflict, with similar 'front lines' as in Georgia, arose within the Armenian society. In this atmosphere, the exploitation of LGBTI topics within the political discourse is common-place, and hence hate speech and hate crime are increasing. The government is suspected of, at the very least, tolerating this hostile climate in order to secure its own power, in particular during election campaigns, and to divert the public's attention. In the context of the halted association agreement process with the EU and the following accession of Armenia to the EEU in 2015, CSOs also suspect a tactical manoeuvre behind the erupting heated

debate about gender as it prevented a larger public controversy about the reasons for cutting ties with the EU for the time being and moving towards Russia. Within this discourse, "traditional" values merge with patriotic and nationalist rhetoric and an artificial contrary to the EU and its "western" values is built. In this manner, terms like "gender" or "LGBTI" are presented as unethical, alien to Armenian culture, and opposed to the concept of state sovereignty and nationalism which hinders an actual debate about those issues in terms of equality and the respect of all human rights.

**Azerbaijan** has a complicated and oftentimes tense relationship with both, Russia and the EU, while its geopolitical position makes it an interesting ally for both. After the collapse of the Soviet Union and gaining independence, Azerbaijan was keen to maintain close ties to the EU. The country joining the ENP and the Council of Europe is proof for its orientation towards the West. In the framework of the EaP, the EU offered Azerbaijan economic integration and political association, and visa liberalisation negotiations were opened. An increase of state repression in the last years sparked criticism not only among CSOs but also EU officials. It accumulated in the suspension of the human rights dialogue from the Azerbaijani side, and the latest Resolution of the EP on Azerbaijan from September 2015 in which the European parliamentarians, among other things, explicitly expressed concerns over the situation of LGBTI individuals in Azerbaijan. Although the Azerbaijani-Russian relationship is intricate, it is possible that Baku might align itself with Moscow as a reaction to the deterioration of the relationship with the EU. On the one hand, Russia is a close partner of Azerbaijan's rival Armenia and it regularly threatens Azerbaijan's sovereignty with its actions in the Caspian Sea. On the other hand, Moscow is the main supplier of arms for its southern neighbour Azerbaijan which has an extensive military budget. The governments' rhetoric, regularly linking anti-western with anti-LGBTI sentiments, also resemble. Moreover, the Aliyev clan occupied high-ranking positions during the Soviet era and therefore traditionally maintains cordial relations with Moscow. This ambivalent relationship is further complicated by the latest tensions between Russia and Turkey in the context of the Syrian Civil War. Turkey is one of Azerbaijan's closest allies as both of the countries share the common enemy – Armenia. Nonetheless, the possibility exists that Azerbaijan will take sides with Russia and join the EEU in the future. The question arises, what impact this might have on the overall situation of human rights, and LGBTI human rights in particular, in the country. It is feared that, following the Russian example, anti-propaganda laws might be introduced, as a look to those countries which already joined the EEU, such as Kyrgyzstan or Kazakhstan, indicates. Parallels to the situation in Azerbaijan are evident, since hate speech against LGBTI individuals occurs on the highest levels of the political system, as the EP stated in its Resolution.

It appears that in the last years, close ties of post-Soviet countries to Russia have either prevented anti-discrimination legislation from being adopted or have led to the introduction of so-called anti-propaganda laws, or at least the proposal of bills, which are inspired by the Russian example. So far, the EU has

yet to come to a conclusion on how to effectively respond to those developments in order to further promote LGBTI human rights in the region.

In short, LGBTI issues are politicised in all three South Caucasus countries, and also find themselves in the tug-of-war between the EU and Russia as both try to enforce their economic and geostrategic interests upon the region.

## The EU's efforts to strengthen LGBTI human rights among its member states and third countries

The launch of the European External Action Service (EEAS) in 2011 can be seen as an attempt to realise a common, consistent and effective EU foreign policy. This diplomatic body oversees the external policies, strategies and missions of the union and is, therefore, also responsible for the implementation of the EU's thematic guidelines towards third countries. With the adoption of the Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons in 2013, the EU expressed, at the highest political level, the determination to make LGBTI human rights one of the EU's foreign policy priorities. The guidelines are constituted of a set of norms, priority areas of actions, instruments, as well as the applicable international and regional law. As there are only eleven guidelines in total, the set of those main priorities is limited and it, once again, reveals the importance that is given to LGBTI issues by EU policymakers. The EU's aspiration to mainstream human rights in all of its foreign actions also refers to LGBTI human rights, and the EU delegations, being part of the EEAS, and EU member states' embassies should work together in third countries to pursue the objectives of the guidelines.

As mentioned before, as a result of the ENP, and more specifically the EaP, progress has been made in the case of Georgia in regard to the legal protection of LGBTI people's human rights. The EU has been able to use the association process and the negotiations about the prospective visa liberalisation as leverage in order to improve certain aspects of LGBTI individuals' lives. However, as CSOs on the ground criticise, the introduced norms are not effectively implemented by the Georgian government. The same is feared for the EU guidelines on LGBTI rights by the relevant NGOs. Although the efforts are apparent, the EU still lacks a coherent common approach regarding its foreign policy, and the promotion of LGBTI human rights in particular. As EU-based NGOs have pointed out on a regular basis, a comprehensive roadmap for

LGBTI issues inside the EU, analogous to the LGBTI guidelines concerning third countries, is still missing. This, of course, results in a diminished credibility of the union's attempt to export ideas that are not fully internalised by its own member states. The discrepancies between the legal situations of LGBTI individuals in the different EU countries lead to violations of their rights within the EU on a regular basis. One could, for example, argue that the right to freedom of movement is seriously limited for a legally married same-sex couple, for instance from Spain or Belgium, in case they move to Italy, where no legal recognition of same-sex partnership whatsoever exists. A unified approach to legally change sex markers for trans persons has also not been found among the EU member states. Moreover, a majority of EU countries still lack comprehensive anti-discrimination legislation which includes sexual orientation, gender identity and gender expression as grounds of discrimination. Hence, the question arises, how the EU can successfully implement its guidelines on LGBTI rights and promote equality in third countries without resolving these distinct contradictions.

## Conclusion

It is clear that LGBTI issues remain a sensitive topic in many parts of the world, including the South Caucasus region. LGBTI communities constitute especially vulnerable societal groups, as they either lack any legal protection at all or the laws in place are not effectively implemented.

With the adoption of the "Guidelines to Promote and Protect the Enjoyment of All Human Rights by LGBTI Persons", LGBTI human rights have become a priority of the EU's human rights policy towards third countries. The EU, therefore, has to continue to follow a cautious, consistent and persuasive approach to achieve effectiveness. However, the encounter's participants from the countries in question themselves repeatedly reminded the EU representatives of the importance of using all mechanisms available to exert (diplomatic) pressure and hold the governments in question accountable for their international commitments.

To sum up, LGBTI human rights defenders in the South Caucasus region are not only LGBTI activists, but political activists who fight against all types of human rights violations and malfunctioning of the political system, such as corruption, election fraud, repression, and so forth. It is, therefore, inevitable to support those human rights defenders and their work to achieve improvements in regard to not only human rights, but also democracy and rule of law.

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