

Europe, Let's Speak Out for LGBTI Rights in South Caucasus

A reflection on the LGBTI human rights situation in the South Caucasus region in the context of the relations to the EU and Russia, and future prospects

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I. The project, its outreach, and the situation of LGBTI rights in the South Caucasus region

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. This project was conducted in cooperation with Ulrike Lunacek¹, Member of the European Parliament (MEP), and the Intergroup on LGBTI Rights² of the European Parliament (EP). The project aimed to provide LGBTI human rights defenders from Armenia, Azerbaijan and Georgia³ with a platform to share their work experiences amongst each other and with representatives of European Union (EU) institutions' and other Brussels-based stakeholders. As part of this project, a conference, hosted by the MEPs of the Greens/EFA Ulrike Lunacek, Terry Reintke and Ernest Urtasun, took place in the EP on December 10th 2015.

Although all three countries of the South Caucasus region decriminalised (male) same-sex activities around the year 2000⁴, the situation of LGBTI individuals in the region is still precarious, with existing differences in the legal, societal, as well as political circumstances for LGBTI rights. In the recent past, significant 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 and gender identity as grounds of discrimination. Nonetheless, these legal mechanisms in place still lack appropriate implementation. 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 kept up.

¹ For more information on Ulrike Lunacek, MEP, and her work: <http://www.ulrike-lunacek.eu/>.

² For more information on the Intergroup: <http://www.lgbt-ep.eu/>.

³ The participants were Maria Abrahamyan (Society Without Violence, Armenia), Nvard Margaryan (Public Information and Need of Knowledge, Armenia), Hasmik Hayrapetyan (hbs, Project Manager for Armenia), Lia Jalagania (Human Rights Education and Monitoring Center, Georgia), Ana Nemsistveridze-Daniels (hbs, Project Coordinator in Georgia), Natia Gvianishvili (Women's Initiatives Supporting Group, Georgia). All those aforementioned persons are involved in the project 'Solidarity Network for LGBTI in Armenia and Georgia (2015-2017)'. The Heinrich-Böll-Stiftung South Caucasus Regional Office is responsible for the overall supervision of this three-year action which is EU-funded. For more information on the project: <https://ge.boell.org/en/2015/02/24/solidarity-network-lgbti-armenia-and-georgia-2015-2017>.

Cavid Nabiyev (Nefes LGBT Alliance, Azerbaijan) participated to report on the LGBTI rights situation in Azerbaijan.

⁴ The Soviet-era anti-sodomy law, which particularly prohibited male homosexuality, was repealed in Azerbaijan in 2000, in Georgia in 2001, and in Armenia in 2003.

Therefore, hate speech and hate crimes continue to be prevalent.⁵ LGBTI individuals in **Armenia** are one of the most marginalised and vulnerable groups in their society who lack legal protection. 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. 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, civil society actors and human rights defenders, engaging in LGBTI issues, often experience an atmosphere of resentment, not only within the population but also from other human rights organisations.⁶ The situation of LGBTI individuals in **Azerbaijan**, like the situation of human rights in general, can only be described as alarming since there is no legal protection against hate crimes or hate speech of any kind, while 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 hatred against LGBTI persons. ILGA-Europe⁷, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, ranked the country last place of 49 reviewed countries in its Annual Review on the Human Rights Situation of LGBTI People in Europe, both in 2014 and 2015. In other words, Azerbaijan superseded Russia as the country with the least recognition of LGBTI people's human rights among the countries monitored by ILGA-Europe. LGBTI individuals "are almost invisible within a highly repressive society"⁸, and this fact further complicates the work of human rights defenders specifically working on LGBTI rights.⁹

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.

This publication reflects, without directly referencing, on the statements articulated and views expressed by the participants in the course of the project. Furthermore, it attempts to summarise the outcome of the project. The project had two main objectives. Firstly, to determine and articulately formulate the difficulties LGBTI activists have on the ground, with regard to national authorities, the respective population, and also in cooperation with the EU delegations in the country. Secondly, draft clear recommendations to EU institutions on how to implement their commitments to better ensure the respect, protection, and promotion of LGBTI people's human rights in the South Caucasus region.

The report at hand will first present existing legal protection of LGBTI human rights in the South Caucasus countries, such as anti-discrimination legislation or the recognition of hate speech and hate crimes on the grounds of sexual orientation or gender identity in the Criminal Code. Moreover, aggravating legal and societal obstacles for LGBTI individuals will be highlighted. The publication will then reflect on the relations between Russia, the EU and the South Caucasus countries to show the impact of geopolitical aspects on LGBTI human rights. Last but not least, it will be pointed out how the EU has tried to improve the situation of LGBTI individuals through its foreign policy, and especially in Armenia, Azerbaijan and

⁵ For more information on the situation of LGBTI rights in Georgia: <https://ge.boell.org/en/2013/05/30/georgia-between-modernity-and-middle-ages>.

⁶ For more information on the situation of LGBTI rights in Armenia: <https://ge.boell.org/en/2013/05/30/armenia-closed-society>.

⁷ For more information on ILGA-Europe: <http://ilga-europe.org/>.

⁸ ILGA-Europe Annual Review 2015, p. 43.

⁹ For more information on the situation of LGBTI rights in Azerbaijan: <http://ge.boell.org/en/2013/05/30/between-appearance-and-reality-baku-lgbt-rights-azerbaijan>.

Georgia in the framework of the European Neighbourhood Policy (ENP), and more specifically the Eastern Partnership (EaP).

II. The legal framework in the South Caucasus countries

Georgia adopted the so-called Law on the Elimination of All Forms of Discrimination in 2013, which includes sexual orientation, gender identity as well as gender expression, as grounds of discrimination. This law came into force in 2014, but legislative flaws and shortcomings hinder its effective implementation. The courts and the Public Defender's Office¹⁰ (PDO) are responsible for the realisation of the legislation, but the latter is not equipped with an effective mechanism to fight actual cases of discrimination. The PDO neither has the obligation nor the right to find a suspected perpetrator of discrimination, which makes it almost impossible to fight discrimination and, furthermore, to obtain a moral compensation for the victim. In the first year of its existence, only a small number of cases, brought to the court in the context of the anti-discrimination law, referred to the grounds of sexual orientation and gender identity or expression. However, none of these claims were recognized on the grounds of discrimination given by the appellants. This poor application is partly due to the fact that the burden of proof for the alleged discrimination still lies with the victim as he or she "shall present relevant evidence"¹¹ to the Public Defender of Georgia. Moreover, the regulation of the victims' moral and material compensation remains imprecise, and the responsible state authorities, such as judiciaries, did not receive any specific training on how to apply the new anti-discrimination law. The latter results in a lack of knowledge on how to comprehend discrimination and to identify sexual orientation, gender identity or gender expression as the grounds of discrimination. Although the Human Rights Committee of the Parliament plans to amend the anti-discrimination law to empower the PDO, CSOs criticise those changes as too general and not feasible, and fear that the amendments will not be adopted by the Georgian Parliament prior to the upcoming elections in October 2016. The aforementioned introduction of a proven hate motive as an aggravating circumstance to the Criminal Code in 2012 does not have the anticipated effect. In addition, the existing legislation is poorly implemented by the state authorities. Although sexual orientation and gender identity are listed among the possible motives, the government fails to acknowledge that hate crimes against LGBTI individuals are committed on a regular basis in Georgia¹². Moreover, an overall strategy, implementation guidelines, and the sensitivity to identify a case as a hate crime are lacking. Furthermore, victims of such hate crimes oftentimes have no confidence in the law enforcement agencies, and might not report the suffered crime. In the aftermath of the violent counter-protests linked to the Orthodox Church, which prevented a gathering of LGBTI community members and allies expressing support for LGBTI rights in the framework of the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT), the insufficient implementation of this hate crime legislation became evident. Only a handful, of presumably thousands, of attackers were arrested and later released as the court neither recognised the violent disruption of the gathering as a criminal offense nor identified a hate motive. In sum, the assessment of the legal situation of LGBTI individuals in Georgia turns out to be ambivalent. On the one hand, remarkable steps have been taken for the adoption of an anti-discrimination law and the amendment of the Criminal Code, which can be acknowledged as more progressive than the current situation in many EU member states. On the other hand, Georgian CSOs are alarmed by the inefficient application of the existing legal norms as well as the lack of awareness among law enforcement forces that are in need of comprehensive, systemic and permanent result-oriented training courses on hate

¹⁰ For more information on the Public Defender (Ombudsman) of Georgia: <http://www.ombudsman.ge/en/public-defender/mandati>.

¹¹ Law of Georgia on the Elimination of All Forms of Discrimination, Article 8, Paragraph 1.

¹² <http://hatecrime.osce.org/georgia>.

crimes. Guidelines for such trainings, or an overall strategy, should be drafted in a transparent manner, and ideally with the involvement of CSOs.

Armenia decriminalised homosexuality in 2003 and has a non-exhaustive non-discrimination clause in its constitution. Unfortunately, the current legal framework does not guarantee the rights of LGBTI persons since an anti-discrimination provision is still missing. As LGBTI individuals are discriminated against in all spheres of their lives, such legislation is urgently needed and demanded by LGBTI organisations on the ground. The recently, qua referendum, decided constitutional changes will lead to 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 on the basis of lack of evidence, or even impose charges on the victim. The latter mostly affects the particularly vulnerable group of trans persons, whose marginalised status within society often forces them to make a living as sex workers. If they report a case of abuse to the police, they will either be ignored, accused of false testimony or the authorities impose administrative fees for illegal sex work on them. Furthermore, LGBTI individuals who have become victims of such criminal offences have no legal basis to claim their rights, and the prosecution of the perpetrators as the Armenian Criminal Code is not considering sexual orientation and gender identity as aggravating circumstances of criminal offences. Hence, the existing statistics on hate crimes in Armenia are far from being extensive, and actual numbers are only provided by CSOs.¹³ In regard to hate speech, the same scope of negligence and inactivity of state authorities can be observed. Cases that are brought to the court are ruled in favour of freedom of speech. Armenia not only lacks any specific legal provision concerning hate speech and hate crimes, but state representatives themselves spread hate speech or, in the case of the firebombing of a gay-friendly pub in Yerevan, they publicly support the perpetrators of hate crimes.¹⁴ As in many other countries around the world, the situation of (alleged) LGBTI individuals in detention facilities in Armenia is especially concerning since the responsible authorities fail to protect them against degradation and ill-treatment, or the prison officers are even involved themselves. It has to be stated that the lack of any legal norms has created a climate of impunity in which LGBTI human rights violations happen on a regular basis, and the government uses homo- and transphobic attitudes to alter the citizens' attention from the very problematic issues of socio-economic and political spheres. In this context, the Armenian State fails on three levels: the duty to not violate rights, the duty to prevent others from violating rights, and the duty to create an environment in which all individuals can enjoy the same rights. However, the need to create a tolerant atmosphere, not only towards human rights issues, but also for sustainable development, conflict resolution and for security issues is evident.

Azerbaijan lacks an anti-discrimination law as well as the inclusion of sexual orientation and gender identity as aggravating circumstances of criminal offences in the Criminal Code. On the contrary, state authorities continuously limit the rights of LGBTI human rights defenders and non-governmental organisations (NGOs) in general. As the work of NGOs is being hampered and thus minimized, the LGBTI community in Azerbaijan lacks urgently needed support, and remains almost invisible. Since its adoption in 2000, the law on NGOs has been amended several times by the Azerbaijani government in order to control those organisations and limit the freedom of association. "In order to acquire legal personality, NGOs have to register under the procedure regulated by the 2003 Law on State Registration and the State

¹³ <http://hatecrime.osce.org/armenia>.

¹⁴ <https://iwpr.net/global-voices/gay-rights-under-attack-armenia>.

Registry of Legal Entities.”¹⁵ Without obtaining the status of a legal personality, those organisations are not able to exert their work as they, for instance, cannot open a bank account. Hence, it is criticised that Azerbaijan made a registration mandatory because it actually restricts the right to freedom of association. The registration itself is a cumbersome process that is often prolonged by the responsible authorities through the demand for additional documentation or corrections. Moreover, the application still has to be made in the capital Baku, which poses additional (financial) difficulties to the aspirants. The new amendments to the NGO law also expanded the scope of reporting obligations towards authorities, which in reality oftentimes leads to the full disclosure of the names and addresses of the NGO’s members. The work of foreign NGOs is restricted since they can only establish one representation or bureau in Azerbaijan. In sum, the current NGO law in Azerbaijan aggravates the establishment of NGOs through the introduction of additional administrative requirements and a more difficult registration process, complicates the actions of foreign NGOs, restricts the access to resources as it prohibits foreign funding of NGOs, and, last but not least, allows for severe sanctions and penalties to be imposed on the NGOs. Over the course of the years, excessive obstacles have been imposed on local and foreign NGOs to silence civil society. LGBTI NGOs oftentimes need to keep a low profile because of the widespread homo- and transphobic attitudes within the Azerbaijani society. As the spaces of civil society in general are closed more and more by the government, those organisations are especially at risk as they are excluded by other human rights NGOs, and exposed to the government’s arbitrariness. The illegal status of LGBTI NGOs not only results in financial straits, but also in a lack of information. The latter occurs as the state authorities have no duty of disclosure towards these organisations, in regard to criminal investigations that may or may not qualify as a hate crime. Ultimately, it is not possible for CSOs to produce reliable statistics about hate crimes committed on the grounds of sexual orientation or gender identity in Azerbaijan.¹⁶

III. A complicated ménage à trois – the relations between Russia, the European Union and the South Caucasus countries in the light of LGBTI human rights

All three countries – Armenia, Azerbaijan, and Georgia – are fully participating in the European Neighbourhood Policy (ENP). This means that they negotiated and agreed with the EU on an action plan, based on existing legal agreements such as an association agreement, for political and economic reforms to be undertaken in the next five years. Those ENP action plans are meant to “reflect the country’s needs and capacities, as well as its and the EU’s interests.”¹⁷ 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. The association agreement of 2014 strengthened the relations between **Georgia** and the EU enormously, both politically as well as economically, and is a sign for Georgia’s will to adjust its legislation and standards to the EU’s level. In addition,

¹⁵ Venice Commission, Opinion 787/2014, On The Law On Non-Governmental Organisations (Public Associations and Funds) As Amended Of The Republic Of Azerbaijan, recital 43.

¹⁶ <http://hatecrime.osce.org/azerbaijan>.

¹⁷ http://eeas.europa.eu/enp/about-us/index_en.htm.

significant progress has been made in the framework of the visa liberalisation negotiations which were finalised in December 2015. By contrast, the EU aims for “[a] more differentiated and tailored approach to relations with **Armenia** [and] Azerbaijan”¹⁸. As the European External Action Service’ (EEAS) website states, “Armenia’s closer political association and economic cooperation with the EU will take account of Armenia’s other international commitments”¹⁹. These ‘other international commitments’ can clearly be understood as a reference to Armenia’s accession to the Eurasian Economic Union²⁰ (EEU). The most difficult relationship within the EaP certainly is the one to **Azerbaijan**, besides Belarus, but the EU is willing to strengthen the partnership. In sum, the EU exerts enormous political and economic influence in the South Caucasus region and plans on continuing to do so or even further the relations. 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. As the case of Ukraine has shown in the recent past, the EU has to proceed with great sensitivity in its ENP, and in particular the EaP, as it is perceived by Russia as a threat to its own geopolitical and economic interests.

Like in numerous countries around the world, homo- and transphobia within all three societies of the South Caucasus countries is perpetuated by state actors and instrumentalised to divert attention from socio-economic problems and political misconduct such as corruption. Additionally, resentments of the majority of the population against the LGBTI community are used to justify geostrategic decisions, in regard to the Russian Federation and the EU, by pitting people’s fears and prejudices.

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 is never defined what exactly is understood by those terms. Georgia is a post-Soviet country and parallels can be drawn to the Russian Federation: Georgia is ruled by one party as well as one leader, and LGBTI issues are politicised to divert attention from socio-economic and political problems. Although 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 with an extensive budget and finds itself in a constant tug-of-war with the government over certain issues. As the Georgian Orthodox Church has close ties to the Russian Orthodox Church, Patriarch Ilia II himself regularly praises Putin’s leadership in his sermons. Moreover, he includes anti-LGBTI and anti-women’s rights narratives in his preaching since these issues are the easiest to mobilise and elevate aggression in church-goers. This is proven by the fact that the Patriarch’s remarks in the forefront of the IDAHOT pride in Tbilisi on May 17th 2013 led to a violent counter-protest, including Orthodox priests.²¹ During the process of adopting the anti-discrimination law in 2014, the Georgian Orthodox Church spread false information about the new law claiming it would introduce same-sex marriage as one of the demands made by the EU. Once again, the lack of education and information within the population became evident and the government failed to create the necessary transparency during the legislation process. Besides the obvious close religious ties between the Russian Federation and Georgia, the exertion of influence can also be stated on a political level. 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

¹⁸ http://eeas.europa.eu/eastern/about/index_en.htm.

¹⁹ *ibid.*

²⁰ For more information on the Eurasian Economic Union: <http://www.eaeunion.org/?lang=en>.

²¹ <http://www.bbc.com/news/world-europe-22571216>.

instance, pro-Ukraine and pro-Russia demonstrations in the case of the Euromaidan or the annexation of Crimea peninsula 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, such as the visa liberalisation which will come into force in early 2016 as it was found that Georgia meets the required criteria²², constitute the only existing mechanism to exert pressure on the Georgian government to improve the human rights situation. Both, the amendment of the Criminal Code in 2012, as well as the anti-discrimination law adopted in 2014, prove the effectiveness of this mechanism as they can be seen as the direct outcome of a checklist imposed by the EU. 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 EU's Neighbourhood Policy 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, excluding economic aspects. Armenia is torn between the orientation towards the West and towards the East. It heavily relies on the EU economically as the trade with EU member states exceeds that with the countries forming the EEU. By contrast, it is dependent on the Russian Federation in regard to its security as "the alliance is seen as a counterbalance to Azerbaijan's heavy spending on arms purchases, given that the Nagorno-Karabakh [conflict] remains unresolved."²³ This conflicting nature reflects in an artificial conflict within the Armenian society with similar "front lines" as in Georgia. Especially since 2012, a heated discourse about LGBTI topics has been taken place in public and incidents of hate speech and violent attacks against LGBTI individuals have risen. The government is suspected of, at the very least, tolerating this atmosphere in order to secure its own power, in particular during election campaigns, and to divert the public's attention. Ultra-nationalist groups can openly act out against the LGBTI community, and are in some cases praised by politicians for defending and restoring "traditional" values. In a society where "morality" is regarded as one of the most precious values by a vast majority of people, this vague sense of what is considered as ethical can easily be used as a tool to strengthen the discourse of authorities and mobilise parts of the population in order to cover up political problems and changes. The lack of knowledge and information as well as the upholding of a certain idea of "morality" makes undifferentiated public discussions possible. In 2013, the adoption of a planned gender equality law was prevented, supposedly by Russian-influenced groups, by openly claiming that the term "gender" is not related to male and female but rather to homosexuality, zoophilia and paedophilia. The resulting "gender hysteria", as it is described by Armenian LGBTI human rights defenders, led to the dismissal of the bill which should have been introduced in the framework of the association agreement with the EU. Subsequently, the association agreement process was halted and Armenia joined the EEU in 2015 instead. CSOs assess this as a tactical manoeuvre to prevent 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

²² Press release of the European Commission: http://europa.eu/rapid/press-release_IP-15-6368_en.htm.

²³ <https://iwpr.net/global-voices/armenias-receding-european-ambitions>.

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.

Recently, **Azerbaijan** is neither clearly leaning towards the West nor is it fully aligning itself with Russia. The country rather has a complicated and oftentimes tense relationship with both sides while its geopolitical position makes it an interesting ally for both, Russia and the EU. 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 and, combined with the reduction of nationwide poverty with the help of the oil industry’s revenues, it was hoped that a strong civil society would emerge. In the framework of the EaP, the EU offered Azerbaijan economic integration and political association, and the visa dialogue was opened in 2014.²⁴ In the last years, however, a “crackdown”²⁵ of the human rights situation and an increase of state repression in Azerbaijan could be observed, which sparked criticism not only among CSOs but also EU officials. The government’s actions against civil society can be seen as a reaction to mass protest which started after the parliamentary elections in 2010. The developments of the past years accumulated in the latest Resolution of the European Parliament (EP) on Azerbaijan from September 2015. Once again, the parliamentarians denounced the lack of rule of law and the disrespect for human rights, while they explicitly expressed concerns over the situation of LGBTI individuals in Azerbaijan. The Resolution “strongly condemns political hate speech against LGBTI people coming from the highest levels; calls on the Azerbaijani government to stop obstructing and intimidating human rights defenders working for the rights of LGBTI people”²⁶. Baku, which already suspended the human rights dialogue with the EU, criticised the document as biased and led by “anti-Azerbaijani forces”.²⁷ Government representatives also often use homophobic references in their statements to justify the estrangement from the EU and link anti-western with anti-LGBTI rhetoric. In sum, the relations between the South Caucasian country and the EU reached a low and as a result, Azerbaijan might align itself with the Russian Federation. However, the Azerbaijani-Russian relationship itself is intricate. Firstly, the Russian Federation is a close partner of Azerbaijan’s rival Armenia and secondly, it regularly threatens the country’s sovereignty with its actions in the Caspian Sea. Even so, Moscow is the main supplier of arms for its southern neighbour Azerbaijan which has an extensive military budget. Moreover, Heydar Aliyev, the former Azerbaijani president and father of the current president Ilham Aliyev, occupied high-ranking positions, both in the Committee for State Security of the Soviet Union (KGB) as well as the Azerbaijani branch of the Communist Party of the Soviet Union, during the Soviet era. This resulted in more cordial relations towards Russia under his rule after the coup d’état in 1993, which is continued by his son. 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, among other things, share the common enemy – Armenia. Ankara, for instance, still upholds an embargo against Armenia which it established in solidarity with Azerbaijan during the Nagorno-Karabakh War in 1993. Hence, the Russian-Turkish dispute engendered public mediation offers by the Azerbaijani government.²⁸ Nonetheless, the possibility exists that Azerbaijan will take sides with Russia and join the EEU in the future. The question arises, which 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

²⁴ <http://www.consilium.europa.eu/en/policies/eastern-partnership/azerbaijan/>.

²⁵ <https://ge.boell.org/en/2014/08/02/human-rights-azerbaijan-chronicles-crackdown>.

²⁶ European Parliament Resolution of 10 September 2015 on Azerbaijan (2015/2840(RSP)), recital 12.

²⁷ <http://eap-csf.eu/en/news-events/articles-analytics/parliament-of-azerbaijan-reacts-to-the-ep-resolution-and-decides-to-withdraw-from-the-euronest-parliamentary-assembly/>.

²⁸ <http://thediplomat.com/2015/11/turkey-russia-tensions-put-caspian-states-in-a-bind/>.

example, anti-propaganda laws might be introduced, as a look to those countries which already joined the EEU indicates. Kyrgyzstan, for instance, “is considering an anti-LGBTI ‘propaganda’ bill, which would outlaw any public information ‘aimed at forming positive attitudes toward non-traditional sexual relations’.”²⁹ Violations could then be punishable with up to one year imprisonment, according to the bill. Kazakhstan drove forth draft legislation against ‘propaganda of non-traditional sexual orientation’ in early 2015, but midyear, Kazakhstan’s Constitutional Council found the pending legislation unconstitutional without addressing the discriminatory nature of the bill. Human Rights Watch stated that “[i]f the bill was rejected only on the grounds that it was vaguely worded, there is no guarantee that future legislation would respect the non-discrimination obligation in international human rights law”.³⁰ 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.

In the last years, Russia has been successfully implementing the manipulation of LGBTI issues to advance Russian foreign policy objectives in its spheres of interest. Hence, 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 the framework of the ENP and EaP. First and foremost, the EU has to find an uncompromising and consistent approach of its foreign human rights policy in general, and towards LGBTI human rights in particular. 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.

IV. 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, instruments and missions of the union and its work is coordinated by the High Representative of the Union for Foreign Affairs and Security Policy.³¹

As explained at the beginning of section III, the EU engages with the South Caucasus region in the framework of the ENP, and as a part of that the EaP. There are various financial EU community instruments, managed by the European Commission, in place to support those policies. Besides the European Instrument for Democracy and Human Rights (EIDHR)³², the main instrument is the European Neighbourhood and Partnership Instrument (ENPI)³³, respectively the succeeding European Neighbourhood Instrument (ENI)³⁴. While the European Commission decides, what the priorities for the next funding period should be, the instruments themselves are coordinated by the EEAS. The EU delegations on the ground then manage the funds on a daily basis, and hence, are responsible for the assessment and monitoring of the projects. Within those programmes’ framework, the EU is eager to involve civil society in all three countries, among other things by supporting them financially or to

²⁹ <http://www.lgbt-ep.eu/press-releases/eu-leaders-demand-answers-from-kyrgyz-president-over-anti-lgbti-anti-ngo-bills/>

³⁰ <https://www.hrw.org/news/2015/07/23/kazakhstan-lgbt-community-living-fear>.

³¹ http://eeas.europa.eu/background/index_en.htm.

³² <http://www.eidhr.eu/whatis-eidhr>.

³³ http://ec.europa.eu/europeaid/funding/european-neighbourhood-and-partnership-instrument-enpi_en.

³⁴ http://eeas.europa.eu/enp/how-is-it-financed/index_en.htm.

make use of their expertise in regard to the monitoring of projects in place.³⁵ The Eastern Partnership Civil Society Forum, for instance, tries to strengthen the dialogue between CSOs in the EaP countries and the EU, as they are seen as a motor for the promotion of human rights and fundamental freedoms, democratic principles, and the demand for government accountability.³⁶ The joint communication of the European Commission on the reviewed ENP from November 2015 reinforced this approach of a close cooperation with CSOs.³⁷ Moreover, the Council agreed on “enhanced support to civil society and a renewed focus on the importance of gender equality”³⁸ in its press release from December 2015. In this context, EU institutions repeatedly stress the importance of a regular exchange with CSOs who work on LGBTI human rights in countries with a precarious situation for LGBTI individuals. Those CSOs remain an important and appreciated source of information about possible LGBTI human rights violations, and their information is also used to draft statements to the government of the country in question.

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. The EU’s four main priority areas of action in regard to LGBTI human rights, as stated in the guidelines, are:

- Decriminalisation and Combatting discriminatory laws and policies,
- Promoting equality and non-discrimination,
- Combating LGBTI-phobic violence,
- Support and protection for human rights defenders.

As a matter of course, the EU delegations and EU member states’ embassies in the South Caucasian countries are obligated as well to implement those guidelines. As a result of the prioritisation of LGBTI human rights in EU foreign politics, the EEAS is also eager to strengthen its cooperation with the Council of Europe (CoE) in regard to those issues. Despite the fact that the CoE has less power and therefore lacks mechanisms to exert pressure on its members, it adopted the ‘Recommendation of the Committee of Ministers to the member states on measures to combat discrimination on grounds of sexual orientation and gender identity’ in 2010, which is a landmark soft law document in regard to LGBTI rights.³⁹ Georgia, for instance, is one of the signatory countries of this document, which can be used by local CSOs as a reference to hold the government accountable. Hence, the symbolic value of this document should not be underestimated, and, for instance, the EU’s LGBTI guidelines regarding third countries include a reference to the recommendation. However, no periodical assessments in the CoE member states are taking place to ensure an effective implementation

³⁵ <https://democracyendowment.eu/>.

³⁶ <http://eap-csf.eu/>.

³⁷ European Commission, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Review of the European Neighbourhood Policy’, JOIN(2015)50 final, p. 5-6.

³⁸ <http://www.consilium.europa.eu/en/press/press-releases/2015/12/14-conclusions-european-neighbourhood/>.

³⁹ Recommendation CM/Rec(2010)5:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2010\)5&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2010)5&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

of this recommendation. By contrast, in some countries, discriminating legislation against LGBTI individuals is (re-)introduced, for example in Russia.

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 LGBTI guidelines 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.

V. Recommendations⁴⁰

The following is a set of general and country-specific recommendations to various EU institutions, member states, EU delegations in South Caucasus countries, local governments and the civil society sector that would contribute to the enhancement of the conditions of LGBTI individuals and communities in each country, the full protection of and respect for their human rights, and their complete integration into the respective societies.

General Recommendations

For all three South Caucasus countries, it is recommended to:

- Introduce measures for better qualification and record-keeping of hate crimes and relevant statistics, as well as measures targeted at specific response to such crimes;
- Enhance communication among the EU, the local governments and civil society organisations (CSOs) in keeping with the Guidelines to Promote and Protect the Enjoyment of All Human Rights by LGBTI Persons;
- Support the freedoms of expression and assembly for the benefit of marginalised groups, including LGBTI groups.

Recommendations: Armenia

For entities in Armenia, it is recommended to:

- Introduce comprehensive stand-alone anti-discrimination legislation, including sexual orientation and gender identity (SOGI) as grounds for discrimination, and ensure the

⁴⁰ The following recommendations are not drafted by the author of this report, but are the outcome of several, internal as well as external, meetings during the 4-day-encounter and were composed by the participating activists. The recommendations were consolidated into a joint document and shared with the interlocutors and other identified relevant actors in follow-up communication.

official involvement of LGBTI organisations in public hearings and discussions regarding the law;

- Raise public awareness of EU-Armenia relations, including EU institutions, and the benefits it entails among the Armenian society;
- Ensure the development of comprehensive hate crime legislation that would employ SOGI as an aggravating circumstance;
- Incorporate the protection of LGBTI human rights and general human rights, as well as anti-discrimination principles, as a prerequisite for donor funding of state programmes.

Recommendations: Georgia

It is recommended to:

- Introduce implementation/enforcement mechanisms in the Law on the Elimination of All Forms of Discrimination;
- Depoliticise LGBTI issues and uphold the principle of state secularism;
- Eliminate legislation flaws to provide equal employment opportunities and transparent precontractual relations, including the eradication of workplace discrimination/harassment;
- Include the SOGI basis (motive) in the process of ratification of the Istanbul Convention;
- Together with the introduction of a streamlined strategy for maintaining hate crime statistics, develop a specialised unit within the Ministry of Internal Affairs that would be specifically tasked with handling hate crimes.

Recommendations: Azerbaijan

For entities in Azerbaijan, it is recommended to:

- Avoid the term “LGBTI” in mission statements, and instead focus on gender and human rights issues to address hate speech and hate crime in Azerbaijan (for human rights organisations working in Azerbaijan);
- Continue “underground” support of the EU for civil society organisations (CSOs) to protect LGBTI organisations from being targeted by the NGO law, which prohibits the operation of non-registered organisations;
- Collect reliable data on hate crimes and hate speech in Azerbaijan in order to raise awareness on the widespread level of human rights violations and impunity in the country.

Long-term recommendations for Azerbaijan are as follows:

- Establish hate crime and hate speech legislation, followed by comprehensive training of state authorities as well as the health sector and media representatives;
- Eradicate impunity within the judiciary and law enforcement agencies and ensure awareness raising on SOGI;
- Ensure proper training and awareness raising of medical personnel in terms of providing discrimination-free targeted care for LGBTI patients;
- Ensure awareness raising and sensitisation of media representatives in order to preclude hate speech in the media and ensure that journalists use human rights language in reporting on LGBTI issues.

VI. Conclusion

In the course of the four-day-encounter, certain important aspects could be extracted. Problems in the day-to-day work of local LGBTI organisations as well as EU delegations on

the ground, flaws in existing legislations, lacks in implementation, and opportunities for future activities and cooperation were identified and clearly named. These findings are reflected in the report as well as the included recommendations.

It has become clear that LGBTI issues remain a sensitive topic in many parts of the world, including the South Caucasus region. 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. However, the EU has to continue to follow a cautious and balanced as well as consistent and persuasive approach to achieve effectiveness. A public and conflictual approach, by contrast, might oftentimes be counterproductive. The participating activists were urged to follow the same approach of EU representatives during the several meetings. Subsequently, the importance of acknowledging positive results in order to make further progress towards the improvement of LGBTI human rights was highlighted. The activists themselves repeatedly outlined the importance of not only the introduction of legislation to protect LGBTI individuals, but also the urgent need for a more effective implementation of the aforementioned. The EU institutions’ officials were therefore reminded to use all mechanisms available to exert (diplomatic) pressure and hold the governments in question accountable for their international commitments. As the draft recommendations illustrate, the communication among the EU institutions and local stakeholders still needs to be improved, with due regard to the Guidelines to Promote and Protect the Enjoyment of All Human Rights by LGBTI Persons.

In all three South Caucasus countries, the 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. Hence, one demand that holds true for Armenia, Azerbaijan, as well as Georgia is the introduction of measures to identify and to record hate crimes, the implementation of comprehensive training for the law enforcement agencies, as well as measures of response to such crimes. In addition, the exertion of the freedoms of expression and assembly in all three countries is oftentimes not (fully) guaranteed for LGBTI groups, and the support for minority rights from the governments’ sides has to increase.

Moreover, it has become evident, that individuals with diverging gender identity constitute an especially vulnerable group within the LGBTI community in the three South Caucasus countries. Hence, they mostly remain invisible, and local LGBTI organisations, therefore, regularly struggle to identify the specific individuals as well as their challenges and needs. One of the outcomes of the encounter was to determine ways to, for instance, better include intersex people in the LGBTI organisations work.

The four-day-encounter in Brussels in December 2015 not only resulted in a vivid exchange of experiences, an elaborate set of recommendations to various EU institutions, member states, local governments and CSOs, and a comprehensive action plan for the follow-up, but was also an example for effective cross-border cooperation, given the bad relations between Azerbaijan and Armenia for instance. Some of the participants of the encounter prove the success of such cross-border initiatives every day as they are part of the three-year EU-funded action titled “Solidarity Network for LGBTI in Armenia and Georgia”, which consolidates the efforts of two organisations from each of the two countries. Within the framework of the project, large-scale country-wide studies on homophobic attitudes as well as assessments of the legal situation of LGBTI persons in the two countries were conducted to combat homo- and transphobia within the societies in the long-run. Moreover, the project also aims to actively work with the Ministry of Internal Affairs and Prosecutor’s Office of Georgia to increase the sensitivity of law enforcement officers to LGBTI issues, and, for that matter, to envision capacity building trainings for relevant CSOs and activists in both countries. The ultimate objective is to enhance the protection of and respect for LGBTI people's rights and

combat homo- and transphobia, as well as promote LGBTI people's inclusion in Georgia's and Armenia's respective societies with long-term prospects.

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.