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Provisional version

Alleged violations of the rights of LGBTI people in the Southern Caucasus

Draft report¹

Committee on Equality and Non-Discrimination

Rapporteur: Mr Christophe Lacroix, Belgium, Socialists, Democrats and Greens Group

Summary

The progress achieved in Europe over the last decades in relation to the rights of LGBTI people is remarkable, but it is not homogenous. This report focuses on three Council of Europe member States, namely Armenia, Azerbaijan and Georgia, which share a common recent history and are geographically close but differ in terms of combating discrimination. The report aims to take stock of their current situations and to support opportunities for positive change.

Georgia has made progress in antidiscrimination legislation, notably in the area of sexual orientation, gender identity and gender expression, and it should fully implement this legislation, which is a positive example for the countries of the Southern Caucasus region to follow. In Armenia, the on-going process of democratic transition is an opportunity which should not be missed to strengthen the human rights protection system and combat discrimination.

Protecting the human rights of LGBTI people implies changing cultural and political attitudes, which requires long-term efforts. In addition to anti-discrimination legislation and policies, support from all sectors of the administration is essential, as is cooperation with civil society.

¹ Reference to committee, [Doc. 14879](#), Ref. 4453 of 25 June 2019.

A. Draft resolution²

1. The fight against discrimination is one of the cornerstones of democratic systems and one of the core values upheld by the Council of Europe. Discrimination based on sexual orientation, gender identity, gender expression and sexual characteristics must be prevented and combated in the same way as that based on any other ground. This applies to all the Council of Europe member states.
2. Currently, the situation of LGBTI people and respect for their human rights in the Council of Europe member states is uneven. Protection of the rights granted by legislation and the effectiveness of anti-discrimination policies vary greatly from one country to another. This inequality must be eliminated. It is the responsibility of all member states to ensure that human rights and fundamental freedoms are respected.
3. The Parliamentary Assembly considers that a country's cultural and religious traditions cannot be used to justify discrimination based on sexual orientation, gender identity, gender expression, and sexual characteristics. Each signatory State to the European Convention on Human Rights (ETS n° 005) has an obligation to guarantee the enjoyment of fundamental rights, finding how best to prevent conflicts between them. Nor is it inevitable that there will be incompatibilities between the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, and freedom of assembly and association. Therefore, public events to combat discrimination against LGBTI people and promote their rights, such as Gay Pride marches, do not constitute an infringement of, or restriction on, the rights of persons who disagree with them.
4. The Parliamentary Assembly is concerned about the situation of LGBTI people in Armenia, Azerbaijan and Georgia, noting that many infringements of these people's human rights have been alleged or confirmed. These countries should adopt effective legislation and policies to strengthen action against discrimination based on sexual orientation, gender identity, gender expression, and sexual characteristics.
5. The Assembly nonetheless welcomes the progress made by Georgia in combating discrimination through the adoption of legislation which adds sexual orientation and gender identity to the prohibited grounds for discrimination and through the introduction of LGBTI-phobia into criminal legislation as aggravating circumstances. It emphasises the importance of fully implementing this legislation, which is a positive example for all the region's countries to follow.
6. The Assembly also considers the democratic transition process in Armenia to be an opportunity that should not be missed to strengthen the human rights protection system and combat discrimination, including discrimination based on sexual orientation, gender identity and expression and sexual characteristics
7. The Council of Europe supports the reform processes undertaken by the South Caucasus countries in the fields of democracy, human rights and the rule of law through action plans negotiated with the national authorities and taking into account the findings of monitoring and standard-setting bodies, including the European Commission against Racism and Intolerance (ECRI); in addition, activities specifically concerning the rights of LGBTI persons are organised by the SOGI (Sexual Orientation and Gender Identity) Unit.
8. The Assembly also recalls its [Resolution 2239 \(2018\)](#) on "Private and family life: achieving equality regardless of sexual orientation", [Resolution 2191 \(2017\)](#) and [Recommendation 2116 \(2017\)](#) on Promoting the human rights of and eliminating discrimination against intersex people, [Resolution 2048 \(2015\)](#) on Discrimination against transgender people in Europe, [Resolution 1948 \(2013\)](#) and [Recommendation 2021 \(2013\)](#) on Tackling discrimination on the grounds of sexual orientation and gender identity, and [Resolution 1728 \(2010\)](#) and [Recommendation 1915 \(2010\)](#) on Discrimination on the basis of sexual orientation and gender identity.
9. In the light of the foregoing, the Parliamentary Assembly invites the authorities of Armenia, Azerbaijan and Georgia to:
 - 9.1. guarantee the right to hold public events to support the rights of LGBTI people such as Gay Pride marches, ensure that they can take place safely and protect the participants from any violence;
 - 9.2. promote the adoption of codes of conduct for the media and members of parliament, prohibiting stigmatising and discriminatory comments and hate speech targeting LGBTI people, and the use of counter-narratives to combat LGBTI-phobic hate speech;

² Adopted by the committee at its meeting on 30 November 2021.

- 9.3. ensure the freedom and independence of the media and the safety of their personnel;
 - 9.4. conduct effective investigations and prosecute cases of violence against LGBTI people;
 - 9.5. adopt and implement action plans concerning discrimination based on sexual orientation, gender identity, gender expression and sexual characteristics with the aim of raising public awareness about the rights of LGBTI people and their living conditions and preventing and combating social exclusion, stigmatisation and all forms of discrimination against LGBTI people;
 - 9.6. improve access to sexual and reproductive health care and information and awareness-raising about sexually transmitted diseases;
 - 9.7. introduce rapid, transparent and accessible procedures, based on self-determination, which allow transgender persons to change their name and sex on birth certificates, identity cards, passports, diplomas and similar documents; and ensure that such procedures are clear and that the institutions responsible for this are properly designated;;
 - 9.8. guarantee that comprehensive sexuality education is taught in schools and to ensure that this deals with the theme of gender identity and sexual orientation, taking an inclusive approach;
 - 9.9. run public information and awareness-raising activities on the subject of LGBTI people, designed to tackle prejudice and stigmatisation;
 - 9.10. promote human rights education for officials of all the public bodies concerned and for the judiciary and the law enforcement agencies with a view to fostering understanding of issues of gender, inclusion, non-discrimination on the basis of sexual orientation, gender identity, gender expression and sexual characteristics;
 - 9.11. offer members of the judiciary and the law enforcement agencies specific and continuous training on LGBTI-phobic hate speech and hate crime;
 - 9.12. set up a reference framework on the effectiveness of criminal proceedings and court judgments given in this area;
 - 9.13. promote the role and the powers of Ombudsmen, guarantee their independence, improve the financing of these institutions so that they can perform all their tasks in complete independence and ensure that these tasks include combating discrimination against LGBTI people;
 - 9.14. continue and step up their co-operation with the relevant Council of Europe bodies including the European Commission against Racism and Intolerance (ECRI) and the Sexual Orientation and Gender Identity (SOGI) Unit; support the implementation of action plans launched in co-operation with the Council of Europe;
 - 9.15. strengthen co-operation with civil society organisations working to protect human rights including those of LGBTI people; to guarantee their independence and protect their safety and that of people working with them; to consult these organisations when devising, implementing and assessing the impact of anti-discrimination activities;
 - 9.16. consider setting up specific activities for the social and vocational integration of LGBTI people, particularly transgender and intersex people;
 - 9.17. implement, through the adoption of relevant legislation and policies, Recommendation CM/Rec(2010)5 to member States on measures to combat discrimination on grounds of sexual orientation or gender identity and actively participate in the periodic review process conducted by the Committee of Ministers concerning its implementation.
10. In particular, the Assembly invites the authorities of Armenia and Azerbaijan to:
 - 10.1. adopt anti-discrimination legislation adding sexual orientation, gender identity, gender expression and sexual characteristics to the prohibited grounds for discrimination;
 - 10.2. adopt civil, administrative and/or criminal legal standards to protect people from hate speech and hate crimes;
 - 10.3. add LGBTI-phobia to criminal legislation as aggravating circumstance.

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11. The Assembly invites the authorities of Armenia to stop considering homosexuality as a mental illness for legal, administrative, health and other purposes.
12. The Assembly invites the authorities of Azerbaijan to investigate cases of wrongful arrest of LGBTI people and prevent and combat police violence against these people.
13. The Assembly invites the authorities of Georgia to:
 - 13.1. include in anti-discrimination legislation the grounds of gender expression and sexual characteristics;
 - 13.2. ensure that equality and non-discrimination legislation and policies are fully implemented, to monitor the situation regularly and to allocate appropriate financial and human resources to the relevant bodies and authorities;
 - 13.3. set up, as part of the activities to prevent and combat LGBTI-phobic hate speech in the public and political sphere, a body to establish dialogue with the Orthodox Church in order to calm the attitude of its representatives towards public events such as Gay Pride marches and to alert them to the need to avoid stigmatising comments about LGBTI people.

B. Explanatory memorandum by Mr Christophe Lacroix, rapporteur

1. Introduction

1. The progress achieved in Europe over the last decades in relation to the rights of LGBTI people is remarkable, but it is not homogenous. This observation has led me to preparing a report focussed on a specific region within the members States of the Council of Europe, that of the Southern Caucasus. The three countries which compose this region, namely, Armenia, Azerbaijan and Georgia, share a common recent history in achieving independence during the same era after having been part of the Soviet Union for the major part of the 20th century and are geographically close. However, in terms of combating discrimination, the three countries are very different. This report aims to take stock of their current situations and, more importantly, to accompany and support opportunities for positive change.

2. The 2020 annual review of the human rights situation of LGBTI persons published by ILGA Europe³ provides us, with a key to understanding the situation in the three countries covered by this report. This review ranks Azerbaijan last in the league table of countries for respect of the rights of LGBTI persons, with a score of barely 2% (a percentage of 100% representing a hypothetical situation of full equality). Armenia is ranked 47th, out of 49, with 8%. Georgia's score is 30%, thanks, in particular, to anti-discrimination and anti-hate speech legislation, respect for the freedom of civil society organisations and freedom of expression, as well as the regulation of the legal recognition of gender. This score puts the country 25th in the ranking.

3. This report took as its starting point the findings of international organisations and their specialised bodies such as the European Commission against Racism and Intolerance (ECRI); the Office of the Commissioner for Human Rights of the Council of Europe; the UN Independent Expert on Protection against Violence and Discrimination on Grounds of Sexual Orientation and Gender Identity (UN IE SOGI); and non-governmental organisations such as ILGA which I have already mentioned. Subsequently I had the opportunity to interact with organisations that campaign for the rights of LGBTI people in the three countries under review. Discussions in the Equality and Non-Discrimination Committee also helped to shape the content of this report. Finally, I made fact-finding visits to Armenia and Georgia. A visit to Azerbaijan, which had been authorised by the Committee on Equality and Non-Discrimination, did not take place as the country's delegation to the Parliamentary Assembly did not respond to my request.

4. On 12 March 2021, I held online meetings with institutional and civil society interlocutors from Armenia. In view of the Covid-19 pandemic and travel restrictions, the fact-finding visit previously authorised by the Committee on Equality and Non-Discrimination was held virtually. I would like to thank the Armenian authorities and the other participants, as well as the Armenian delegation to the Parliamentary Assembly, for their assistance. I had the opportunity to meet with the Deputy Minister of Justice, Ms Kristinne Grigoryan; fellow parliamentarians including Mr Ruben Rubinyan, Chairperson of the Armenian delegation to the Assembly; Mr Mikael Khachatryan, Head of the International Cooperation Department of the Human Rights Defender's Office; two independent experts as well as representatives of several civil society organisations.

5. The visit took place at a delicate phase of the country's internal politics, and in the aftermath of the war between Armenia and Azerbaijan. I appreciated the willingness of the authorities' representatives to meet me in this difficult context. I made it clear to my interlocutors that the purpose of the meetings was to learn more about the situation of LGBTI people in the country and to discuss possible measures to combat discrimination, but not to lecture them as a representative of the Council of Europe or of my country.

6. On 1 - 2 July 2021 I conducted a fact-finding visit to Georgia, where I had the opportunity to exchange with members of the government and parliament as well as representatives of civil society. The visit coincided with the opening of the Tbilisi Pride Week, a series of cultural and political events aimed at drawing the attention of the Georgian authorities and society to the situation of LGBTI people in the country and demanding recognition of their rights. The violent protests against this event showed that a determined action of Georgian authorities in favour of equality and against all forms of discrimination is urgently needed.

2. Armenia

7. Sweeping political change has been under way in this country since April 2018, entailing a reform of its governance system which has broad public support and was welcomed *inter alia* by the former PACE President Ms Liliane Maury Pasquier when visiting Yerevan in 2019.

³ ILGA-Europe, *Rainbow map 2020*.

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8. A 2019-2022 Action plan⁴ was launched jointly by the Council of Europe and the Armenian authorities in June 2019. The plan is based on the priorities set by the Armenian authorities in the legal and institutional reform under way. It "aims to bring Armenia's legislation, institutions and practice further into line with European standards in the areas of human rights, the rule of law and democracy". The objective is therefore to reinforce human rights, guarantee justice and promote democratic governance.

9. In 2017, a comprehensive and enhanced Partnership Agreement between Armenia and the European Union was signed. It is a legal basis for strengthening political dialogue, expanding economic and sectoral cooperation and increasing mobility of citizens. The agreement entered into force on 1 March 2021.

10. The consolidation of democratic institutions affords an opportunity to forge an open and inclusive society where individual sexual orientation, gender identity or gender expression is no obstacle to equality for all citizens. In April 2019, at the 10th round of the Human Rights Dialogue held within the framework of cooperation between the European Union and Armenia, the two parties stated that it is crucial that Armenia adopt an anti-discrimination law in line with international standards and establish a national equality body under the Human Rights Defender's Office.⁵ The Council of Europe Commissioner for Human Rights and the Organisation for Security and Cooperation in Europe (OSCE) called for the inclusion of a reference to sexual orientation and gender identity in the future anti-discrimination law.

11. The 11th edition of the EU-Armenia Human Rights Dialogues took place via video conference on 25 March 2021. Anti-discrimination policies, gender equality, domestic violence and freedom of assembly and expression were among the topics discussed at the Dialogues. Civil society organisations were invited to submit their reports on the human rights situation. The non-governmental organisations Pink Armenia and ILGA Europe responded to this call and provided information and recommendations regarding the situation of LGBTI persons in the country.

12. As my Armenian interlocutors indicated during the interviews on 12 March, since the beginning of the political transition in 2018 the debate in the country has become highly politicised. Issues that should be consensual, such as combating violence against women, can become divisive, and anti-discrimination legislation and policies are presented by some politicians as an imposition from the 'West'. Mr Khachatryan explained that social networks, particularly Facebook, and the scourges that typically accompany them, such as fake profiles, disinformation and pervasive hate speech, are the thermometer of Armenian society.

13. Ms Grigoryan, Deputy Minister of Justice, also referred to misinformation which is channelled through message chains on the Telegram platform and portrays, for example, politicians of the current majority as emissaries of George Soros. She explained to me that there is a lack of understanding in the Armenian public debate of the relatively new topic of LGBTI rights and gender issues. Opposition to the Istanbul Convention, for example, is centred on a criticism of the notion of gender contained in this text, which is misinterpreted.

14. Ms Grigoryan illustrated several activities of her ministry which aim to improve the protection of vulnerable groups, such as the training of judges, or the joint training of the police and the prosecutor's office. In 2019, the Armenian Parliament adopted the government's draft law on the criminalisation of "public calls to violence" and "public promotion of violence" (about ten cases have already been prosecuted). In addition, a reform of criminal procedure is under discussion in parliament and its preparation has seen the participation of experts from the Council of Europe, particularly with regard to crimes related to discrimination. With regard to the anti-discrimination law, the Deputy Minister cited the opinion of the Human Rights Defender that the law should reflect the grounds of discrimination indicated in Article 29 of the Armenian Constitution. Sexual orientation and gender identity would therefore not be explicitly mentioned but would rather be included among the "social circumstances". Were there to be an explicit enumeration, she believed there would be a risk the text would not be adopted. Ms Grigoryan advocates an open dialogue with society, stressing the importance of raising awareness and combating misinformation. I would like to stress, however, that the goal of an effective anti-discrimination law should be a key priority for the government forces. The specific indication of sexual orientation and gender identity as prohibited grounds for discrimination would make the law clearer and easier to apply. I would add that such an enumeration would have an awareness-raising, almost pedagogical, effect, making it clear that discrimination of persons on these grounds is unacceptable and condemnable, in the same way as discrimination on grounds that are already mentioned in Armenian legislation, such as gender, religion, ethnic origin or others.

15. The discussion with the members of the parliamentary delegation confirmed that the majority forces favour a cautious approach to reforms: there is a will to improve the protection of vulnerable groups, including

⁴ [Council of Europe Action Plan for Armenia 2019-2022](#), CM(2018)168-final, 9 January 2019.

⁵ EU and Armenia hold 10th Human Rights Dialogue, [Joint press release](#), European Union External Action Service (EEAS), 8 April 2019.

LGBTI persons, but in a pragmatic way, "without causing more difficulties" for this very group, said Mr Rubinyan, Chairperson of the delegation. He added that progress must be made in the area of human rights, but "in such a way that the reform succeeds". The government majority is large but includes different layers. He therefore believes that priority should be given to more widely shared issues, such as the fight against hate speech.

2.1. *Situation of the rights of LGBTI people in Armenia*

16. Violations of the rights of LGBTI people are legion in Armenia according to the reports of local and international NGOs and intergovernmental organisations.⁶

17. Hate speech by political leaders and negative media coverage targeting LGBTI people are frequently reported.⁷ In 2019 Ms Lilit Martirosyan, chairperson of the Right Side NGO, addressed the Armenian parliament and called for the rights of transgender persons to be upheld. Several political figures subsequently engaged in hate speech against her, with some of them calling for LGBTI people to be burned alive.⁸

18. LGBTI people's rights defenders are often subjected to death threats and physical attacks, a concern expressed by the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in April 2019.⁹

19. The freedom of expression of LGBTI people is often targeted by these attacks. On 20 June 2019, 11 LGBTI activists were insulted in a park in Yerevan and then ordered to leave the park by the police.¹⁰ On 2 November 2019, former government supporters and "traditional values" advocates voiced anti-LGBTI slurs as they forcefully disrupted a street art performance in Yerevan city centre which they called feminist, satanic and perverse.¹¹

20. LGBTI persons who fall victim to violence are reluctant to report incidents to the police, against whom there have been various allegations of abuse. It is alleged, for example, that the police have prosecuted hate-speech victims coming in to lodge complaints for making false accusations.¹² The low number of prosecutions and convictions for LGBT-phobic violence is a further factor in the under-reporting of violations by victims.¹³ To cite one example, the arson attack against an LGBTI club in the capital in 2012 was not considered to be a homophobic hate crime by the authorities. This case is currently pending before the European Court of Human Rights.¹⁴

21. The Human Rights Defender intervenes discreetly in many of these cases to guarantee the protection of the victims and to ensure that there is legal action. Cases of violence and more generally of rights violations are reported by individuals and non-governmental organisations, in writing and possibly even by telephone. Mr Mikael Khachatryan, an official of this institution, explained to me that the Defender can intervene with prosecutors to request action, and that the number of complaints is increasing. The assistance provided to victims is free and confidential. The Defender also plays a public role, can give opinions on draft laws under discussion and launches information and awareness-raising actions. It was during an "open day" at the Armenian Parliament promoted by the Defender of Rights, allowing civil society representatives to address parliamentarians, that Lilit Martirosyan of Right Side NGO was able to speak publicly and draw attention to the specific challenges faced by transgender people in Armenia.

22. There are regular reports of physical violence. In 2018, the PINK Armenia NGO logged 25 violations of the human rights of LGBTI persons in the country.¹⁵

23. Prohibition of discrimination (as I stated in my introduction) and the criminalisation of incitement to hatred against LGBTI persons are not provided for in Armenian legislation, and nor is any consideration of aggravating

⁶ ILGA-Europe, *Rainbow map 2019*.

⁷ ECRI, Report on Armenia (5th cycle). Para. 30.

⁸ ILGA-Europe, *Annual review of the human rights situation of the LGBTI people in Armenia covering the period of January to December 2019*.

⁹ United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, *Communication AL ARM2/2019*, 18 April 2019.

¹⁰ *Idem*. 3.

¹¹ United States Department of State, Bureau of Democracy, Human rights and Labor, *Armenia 2019 Human rights Report*, page 36.

¹² *Idem* 2, para. 61.

¹³ *Idem* 2, paras. 42 and 60.

¹⁴ *Idem* 3.

¹⁵ *Idem* 3.

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circumstances in cases of hate-motivated crimes and misdemeanours against this group.¹⁶ On the other hand, a bill banning the promotion of homosexuality among children under 16 years of age was tabled in Parliament in May 2019 before ultimately being rejected.¹⁷

24. In Armenia, homosexuality is still regarded for certain purposes in the law as a mental illness. To be exempted from military service, homosexuals must undergo an examination in a psychiatric medical centre to establish whether they are homosexual. The codes used to establish a person's homosexuality are the same as those used to establish psychiatric disorders such as schizophrenia.¹⁸

25. Finally, young LGBTI persons are also victims of harassment and other violence during their studies. ECRI cited the figures provided by one local NGO revealing that 55% of respondents refused to reveal their sexual orientation at school or university. 36% of them had been victims of verbal harassment. Questions relating to sexual orientation and gender identity receive very little attention in school curricula.¹⁹

26. The exchange I had, during the meetings of 12 March 2021, with Ms Lusine Karamyan and Mr Nikolay Hovhannisyanyan, lawyers specialising in human rights and involved in civil society and international cooperation respectively, highlighted the fact that the reforms are not progressing at the desired pace. On the contrary, my interlocutors spoke of a "blockage". Discrimination against LGBTI people is a reality and protection is not effective explained Ms Karamyan, who believes that when a case of violence is reported to the police, very often there is no follow-up. The subject of LGBTI people, which was very sensitive before 2018, remains weak and open to manipulation even after the "revolution". The current government is approaching it with caution and the result is a real stagnation, despite the urgency of dealing with a difficult situation. According to a survey conducted by the NGO Pink Armenia, 55% of the people consulted would not like to have an LGBTI neighbour. The 2020 war and the current political tensions are further obstacles to progress in the field of anti-discrimination.

27. Several civil society organisations representing the LGBTI community participate in public and political debate and carry out advocacy activities. They do not receive public funding but rather individual contributions and in some cases are supported by international cooperation agencies. In talking to their representatives, I got the impression that these organisations are aware of the mechanisms of politics and that they try to maintain a constructive dialogue with the institutions. The results, however, are not yet up to their expectations.

28. The rights of LGBTI people are finally entering the political debate, one activist explained to me. The controversies over the film "Mel", a documentary about Mel Daluzyan, a famous Armenian weightlifter and three-time European champion, who is transgender, are proof of this. The film has been criticised for promoting a vision that is not in line with "traditional Armenian values", but Prime Minister Nikol Pashinyan has defended the government's choice to partially finance its production. On the other hand, the activists I met describe a hostile climate for LGBTI people in Armenian society, fuelled by a lack of knowledge and information. According to them, this issue is sometimes manipulated and used for political purposes. This creates a real problem of hate speech and at the same time impunity for those responsible for it. I had the opportunity to talk to Lilit Martirosyan, whom I had mentioned in connection with the controversy that followed her public speech in the Armenian parliament, about the situation of transgender people. This group is particularly vulnerable to violence and faces barriers in accessing employment, justice and medical care. Armenian law does not yet regulate gender recognition in registers and identification documents, which has a negative impact on the daily lives of transgender people and exposes them to increased risks of discrimination.

29. I can only encourage the Armenian government to continue on the path of the reforms, intensifying its efforts. At the same time, I encourage it to continue and further strengthen its co-operation with the various Council of Europe bodies. Although I made it clear to my interlocutors that I did not wish to give lessons, it should be stressed that the Council has created a system of recommendations, standards and guidelines which is valuable in the field of combating discrimination in general and, more specifically, with regard to sexual orientation and gender identity.

¹⁶ ECRI, Report on Armenia (5th cycle), Paras. 25, 91. See also: ILGA-Europe, [Annual review of the human rights situation of the LGTI people in Armenia covering the period of January to December 2019](#).

¹⁷ Idem 3.

¹⁸ United States Department of State, Bureau of Democracy, Human rights and Labor, *Armenia 2019 Human rights Report*, Pages 37-38.

¹⁹ Idem 2, Para. 98.

3. Azerbaijan

30. In the preparation of this text, I have used reports and documents from different bodies within the Council of Europe such as the European Commission against Racism and Intolerance (ECRI), the Office of the Commissioner for Human Rights and the Sexual Orientation and Gender Identity (SOGI) Unit, but also from the United Nations Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity (UN IE SOGI). Subsequently, I have developed the part concerning the situation in Azerbaijan, thanks to the contributions received from my colleagues in the Commission, whom I thank, and to the elements collected by an independent consultant, hired by the Sexual Orientation and Gender Identity Unit (SOGI) of the Council of Europe. The latter includes input from civil society organisations such as NAFAS LGBT and AZAD LGBT.

3.1. *Situation of the rights of LGBTI people in Azerbaijan*

31. According to ECRI, in 2014 60% of the individuals surveyed took a negative view of LGBTI people and more than one in two (52%) were also of the opinion that homosexuality was an innate disease.²⁰ According to a study conducted by the non-governmental organization NAFAS LGBT, “over half of respondents believed homosexuality was the result of illness, another 28% believed it was a personal choice”. As reported by AZAD LGBT, “in a 2013 blog entry, the Caucasus Research Resource Center used data from the 2011 Caucasus Barometer to show that 84% of Azerbaijan's population thinks homosexuality is never justified”.²¹

32. Harassment and violence against LGBTI people are frequently reported by civil society. Examples include the homophobic harassment suffered by a 14-year-old girl resulting in her suicide in 2019.²² According to ILGA Europe, on 28 June 2019 five transgender women were physically assaulted by a gang of 15 persons on a beach.²³ On 18 June 2020, a transgender woman named Aysu Mammadli was stabbed to death in what appears to be a hate crime. The victim was a sex worker. Two more attacks targeting transgender women took place in the following month.²⁴

33. Numerous incidents of domestic violence have also been logged in recent years. In 2014, for example, when the rape of a young homosexual aged 17 was filmed, the video was handed over to his family, who beat him as punishment. In the same year, another young homosexual was viciously beaten, whipped and then had petrol poured over him by his parents for attending an LGBTI conference.²⁵ Still today, there are similar cases recurring in the country on a regular basis. In September 2019, a gay man was beaten, harassed and expelled from his village by his family for dishonouring them.²⁶

34. According to a survey conducted by NAFAS LGBT on discrimination in access to the labour market and in the workplace, “labour rights of LGBTI individuals are violated in Azerbaijan. 64% of respondents do not want to work with LGBTI people, and 60% generally have a negative attitude towards LGBTI people. At the same time, 60% of respondents said that if they were entrepreneurs they would refuse to hire LGBTI people”.²⁷

35. In Azerbaijan, transgender individuals have legal access to sex reassignment surgery. However, the law does not provide for gender recognition after sex reassignment, with consequent challenges including the obligation for transgender women to serve in the military as men. In addition, they face harsh discrimination in access to work, making them more likely to resort to sex work for a living.²⁸

36. Cases of police brutality are commonly reported by NGOs to international organisations. In 2017, over 80 LGBTI people were arrested in the capital city Baku. Numerous cases of torture and inhuman and degrading treatment have been reported to the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (UN IE SOGI). In order to obtain confessions, the authorities have, among other things, used physical violence, threats and torture, including electric shocks and forced medical examinations. Nearly all the detainees appearing before Baku Appeal Court had had their head forcibly shaved. At the time, the United Nations expert noted that arrests and intimidation involving the LGBTI community had never taken place on such a scale and in such an organised manner.²⁹

²⁰ ECRI 5th monitoring cycle, Azerbaijan, para. 78.

²¹ AZAD LGBT Website.

²² ILGA Europe, Annual review 2020, [Azerbaijan, para. on "Education"](#).

²³ ILGA Europe, Annual review 2020, [Azerbaijan, para. on "Bias-motivated violence"](#).

²⁴ NAFAS LGBT Website.

²⁵ ECRI 5th monitoring cycle, Azerbaijan, para. 40.

²⁶ ILGA Europe, Annual review 2020, [Azerbaijan, para. on "Bias-motivated violence"](#).

²⁷ LGBT Labour Rights Survey by NAFAS LGBT.

²⁸ AZAD LGBT Website.

²⁹ UN IE SOGI, [Communication of 9 October 2017](#), ref: UA AZE2/2017.

37. Based on the ECHR Application no.17184/18 A against Azerbaijan and 24 other applications, “the applicants are members of the LGBT community who were arrested during the raids launched by the police in mid-September 2017. The applicants complain that their arrest and subsequent administrative detention were unlawful and arbitrary, and based solely on their actual or perceived sexual orientation. They further argue that they were ill-treated by police officers and custodial staff and that the relevant authorities failed to conduct an effective investigation into their alleged ill-treatment. The applicants also complain that they were subjected to forced medical examinations during their detention.”³⁰

38. A new wave of arrests took place on 1 April 2019, with at least eight gay and transgender persons detained by the police in Baku. Further arrests were made over the following days. The detainees were forced to undergo medical screening for sexually transmissible illnesses.³¹ According to ECRI's report, LGBTI persons are fearful of the police as a result of this violence and do not report the attacks they suffer in their day-to-day lives.³²

39. There are a number of noteworthy cases of hate speech by political and media outlets. In 2012, a leader of the Islamic Party of Azerbaijan pledged bloodshed in the country if the Pride parade took place.³³ More recently, in 2019, the Deputy Chairperson of the State Committee for Family, Women and Children Affairs accused western Europe of seeking to impose same-sex marriage on other countries.³⁴ News items relating to LGBT persons often contain humiliating language, and allegations of LGBT sexual orientation have also been used to discredit political opponents and journalists.³⁵ Recent cases of hate speech by politicians targeting LGBTI people include the statement of member of parliament Mr Fazil Mustafa, who described homosexuality as contrary to virtue and nature,³⁶ and the words of Mr Rafiq Manafli, chairperson of the Supreme Assembly of the Civil Solidarity Party and a member of the union of opposition parties. On 14 May 2020, during an online meeting, Mr Manafli said that he was “very sorry that Hitler did not destroy those gays in 41-45”.³⁷ The video of the meeting was leaked and circulated publicly on the Internet.

40. A 2016 report published by the Heinrich Boell Stiftung suggests that “Islamic groups, which are often influenced by the clergy of the neighbouring country Iran, fuel the hostile climate against LGBTI persons”.³⁸

41. Regarding legislation, there were no provisions in Azerbaijani law banning discrimination based on sexual orientation or gender identity at the time of ECRI's last monitoring cycle.³⁹ The situation has not evolved since then. Article 25 of the Constitution of the Republic of Azerbaijan of 1995 introduces the principle of the equality of all citizens.

42. However, “the Constitution does not mention sexual orientation, gender identity and expression, or variations in sex characteristics. No other legal text explicitly mentions these grounds or includes specific provisions on the implementation of the right to equality for LGBTIQI persons. There are no concrete policies or action plans to tackle homophobic, biphobic, transphobic or interphobic bullying”.⁴⁰ Sexual orientation, gender identity or gender expression of the victims of criminal offences are not considered as aggravating circumstances by the Criminal Code.

43. On the contrary, civil society representatives denounce that State authorities limit the rights of LGBTI human rights defenders and non-governmental organisations (NGOs) and hinder their activity.⁴¹

44. Local non-governmental organisations have welcome the New National Action Plan (NAP) on Gender Equality 2019–2024. According to the UN Shadow Report submitted by NAFAS LGBT, “some of the actions listed in the NAP would be very relevant for LBT women and intersex persons. Specifically, the following actions: improvement of the legislation and raising public awareness of gender equality and women's rights; increasing response measures in relation to gender-based violence; attaining gender equality in the economic area; preventing and fighting against gender stereotypes and discrimination. However, LBT women and

³⁰ ECHR - “Application against Azerbaijan and 24 other applications”.

³¹ ILGA Europe, Annual review 2020, [Azerbaijan, para. on "Bias-motivated violence"](#).

³² ECRI 5th monitoring cycle, Azerbaijan, para. 41.

³³ ECRI 5th monitoring cycle, Azerbaijan, para. 27.

³⁴ ILGA Europe, Annual review 2020, [Azerbaijan, para. on "Bias-motivated speech"](#).

³⁵ ECRI 5th monitoring cycle, Azerbaijan, para. 27.

³⁶ NAFAS LGBT Website.

³⁷ CEDAW Shadow Report.

³⁸ Heinrich Böll Stiftung - “Europe, Let’s Speak Out for LGBTI Rights in South Caucasus”

³⁹ ECRI 5th monitoring cycle, Azerbaijan, para. 27.

⁴⁰ IGLYO LGBTIQI Inclusive Education Report.

⁴¹ Heinrich Böll Stiftung - “Europe, Let’s Speak Out for LGBTI Rights in South Caucasus”.

intersex persons are not explicitly mentioned in the NAP. Generally speaking, provisions, objectives and tasks refer to "gender" or "women" only".⁴²

45. A recent positive step is the creation of the "Equality Platform Azerbaijan", a coalition anti-discrimination NGOs and researchers, established in September 2020. The platform will be active among other things in the area of the rights of LGBTI people. Representatives of the Equality Platform held a meeting with the national Ombudsman.⁴³ This body enjoys the support of the co-operation projects of the Council of Europe.⁴⁴

4. Georgia

4.1. *Situation of the rights of LGBTI people in Georgia*

46. Thanks in particular to the introduction of anti-discrimination legislation covering sexual orientation and gender identity,⁴⁵ Georgia is ranked 26th out of the 49 States examined in the ILGA Europe benchmarking tool for 2019, with a score of 30%.⁴⁶ Georgia also sets itself apart from its neighbours through legislation banning hate speech based on sexual orientation and gender identity.⁴⁷ The situation of LGBTI people in this country therefore seems distinctly more favourable than elsewhere in the region.

47. However, violations of LGBTI persons' rights have been reported by a number of sources, which should be an incentive to the national authorities to further improve the legislative framework and their policies. Same-sex partnerships are not authorised⁴⁸ and there are no plans for legislation recognising gender reassignment of transgender persons.⁴⁹

48. Numerous cases of hate speech by political and religious authorities have been logged in the country in recent years. In 2019, the Patriarch of the Georgian Orthodox church also made a public call on the authorities to cancel the Pride parade, calling it a means of popularising the "sinner" lifestyle of LGBTI people.⁵⁰ In 2018, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (UN IE SOGI) also expressed criticism of the lack of statements condemning this type of hate speech.⁵¹

49. A vision of society presented as consisting solely of heterosexual and cisgender people is broadly conveyed by the media.⁵² Medical personnel also support the idea that homosexuality is a disease. In a survey in 2015, 39% of them claimed that homosexuality was treatable.⁵³

50. The freedom of expression of the LGBTI community is commonly violated, as evidenced by the numerous cases of incitement to hatred and violence surrounding LGBTI events, which are disrupted or even prevented from being held. On 8 November 2019, hundreds of far-right protesters blocked the entrance of the cinema at the premiere of the film "And Then We Danced", which tells the story of a relationship between two male Georgian dancers, and a rainbow flag was burned.⁵⁴

51. Death threats against those defending LGBTI rights have also been logged on several occasions.⁵⁵ Instances of abuse and brutality meted out by the police against LGBTI persons, especially transgender persons, have been reported to the UN IE SOGI.⁵⁶ Cases of blackmail have been among those raised by the United Nations Independent Expert. All these situations make the LGBTI community reluctant to report acts of violence to the police.⁵⁷

⁴² CEDAW Shadow Report, NAFAS LGBT.

⁴³ Press release by the Commissioner for Human Rights of the Republic of Azerbaijan - Ombudsman

⁴⁴ The project "Strengthening access to justice for victims of discrimination, hate speech and hate crimes in the Eastern Partnership countries".

⁴⁵ ECRI, 5th monitoring cycle, Georgia, para. 8.

⁴⁶ ILGA Europe, Rainbow map 2019.

⁴⁷ United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (UN IE SOGI), Report on the visit to Georgia from 15 September to 5 October 2018, A/HRC/41/45/Add.1, para 13.

⁴⁸ UN IE SOGI, Report on the visit to Georgia from 15 September to 5 October 2018, A/HRC/41/45/Add.1, para. 70.

⁴⁹ Idem 3, para. 21.

⁵⁰ UN IE SOGI, Communication on Georgia, 20 June 2019. Ref: UA GEO1/2019.

⁵¹ Idem 3, para. 52.

⁵² Idem 3, para. 27.

⁵³ Idem 3, para 76.

⁵⁴ ILGA-Europe, *Annual review 2019 Georgia*, Para. on "Freedom of expression".

⁵⁵ Idem 10, para. on "Human rights defenders".

⁵⁶ Idem 3, para. 40.

⁵⁷ Idem 3, para. 40.

52. Homophobic and transphobic statements are made in schools. School curricula make no mention of homosexuality and there is no neutral teaching on LGBTI issues.⁵⁸ Members of the LGBTI community have also complained that certain parents and teachers have tried to persuade pupils to change their sexual orientation, including with the aid of counselling, giving the erroneous impression that the child in question had to be "cured".⁵⁹ Young people who come out are often thrown out of the family home.⁶⁰

53. While 27% of the respondents to the 2019 national democratic survey thought it was important to protect the rights of LGBTI people, this group continues to have the least support of any minority group in the country.⁶¹

54. During my visit to Georgia, after a meeting with the Deputy Head of the Council of Europe Office in Tbilisi, Mr Vahagn Murdyan, who gave me an overview of the political situation in the country, I had the opportunity to meet with political scientists, human rights activists, notably those defending the rights of LGBTI persons, and media representatives. Subsequently I held exchanges with the Public Defender (Ombudsman) of Georgia, fellow parliamentarians, members of the government and representatives from the Prosecutor General's Office and the Secretariat for Human Rights of the Georgian government.

55. Civil society organisations presented me with a rather bleak picture of the situation. Hostile feelings towards LGBTI persons are widespread in Georgian society, they confirmed. LGBTI youth often lack support from their families and face the risk of marginalisation. I have noticed a divide among Georgian NGOs between those who advocate a more visible approach, such as Tbilisi Pride, and those who are more cautious, fearing that "provocation" could be counterproductive. I believe that, beyond the differences in strategy, civil society should be united in the defence of fundamental rights. The courage of the Tbilisi Pride leaders in the face of strong opponents, such as the Orthodox Church, and the hostility rooted in more traditional mentalities, is remarkable and deserves to be supported.

56. The Public Defender of Georgia Ms Lino Lomjaria demonstrated at our meeting that she knew and followed closely the situation of LGBTI people and the challenges they face, including as regards freedom of expression, with very aggressive opposition from anti-gender groups and insufficient protection from the authorities on the occasion of public demonstrations in the past. The lack of criminal prosecution of those responsible for violence was problematic, as it could lead to a situation of impunity with detrimental effects. Transgender persons faced specific difficulties, particularly in accessing work and when in detention. However, Ms Lomjaria felt that there has been a slow but real improvement in Georgian society, including more politicians willing to speak openly about the rights of LGBTI persons, which was particularly difficult until recently. The Office of Ms Lomjaria plays an important role in receiving complaints from citizens and intervening with the different administrations to redress any wrongs.

57. Mr Mikheil Sarjveladze, Chairman of the Committee on Human Rights and Integration of the Parliament of Georgia, explained that he had been involved in the drafting of the anti-discrimination legislation and that this process had not been easy. He felt there had been an improvement in the situation of the rights of LGBTI people in the country and that more politicians, both from the majority and the opposition, were willing to speak out in favour of these rights. According to Mr Sarjveladze, there was a need to prevent anti-LGBTI forces from freely spreading their message of hatred, and to remain vigilant as these groups were often anti-western in inspiration and under the influence of hostile foreign powers, and their opposition to LGBTI rights was just a theme used to gain support from more conservative citizens. I also had the opportunity to hold exchanges with Ms Tamar Taliashvili, member of the Georgian delegation to PACE, and I sincerely thank the delegation for the hospitality and support it provided in organising my visit.

58. The meetings with members of the Georgian government, Mr Aleksandre Darakhvelidze, Deputy Minister of the Interior, and Ms Ekaterine Dgebuadze, First Deputy Minister of Education, Science, Culture and Sport, provided an opportunity to discuss the importance the authorities attach to non-discrimination. Mr Darakhvelidze explained, among other things, that a unit dedicated to hate crimes or crimes committed on the grounds of discrimination was created in 2018 and a manual for police forces on this subject has been published. Data is collected annually. The penalties for these crimes have been increased. In addition, cooperation with the Office of the Human Rights Defender is intense.

59. Ms Natia Merebashvili, Deputy Prosecutor General of Georgia, explained to me that the fight against discrimination has been one of the main priorities of her administration since 2016, with training activities, a continuous programme of awareness-raising for prosecutors, and the creation of a unique database (undertaken with the support of the Tbilisi office of the Council of Europe). To my question about a risk of

⁵⁸ Idem 2, para. 106.

⁵⁹ UN IE SOGI, Report on the visit to Georgia from 15 September to 5 October 2018, A/HRC/41/45/Add.1, para. 82.

⁶⁰ Idem 14, para. 74.

⁶¹ ILGA-Europe, *Annual review 2019 Georgia*, Para. on "Public opinion".

impunity for those responsible for violent attacks at LGBTI events, Ms Merebashvili replied that criminal prosecutions had increased in recent years. I hope that vigilance and effectiveness in this regard will be a real priority for the Georgian authorities. In view of the violence that is unleashed during public demonstrations by LGBTI organisations and which hinders progress in this area, the fight against impunity is in my opinion crucial.

60. Ms Maka Peradze, Head of the Secretariat for Human Rights of the Government of Georgia, presented the activities of her Secretariat, which coordinates the work of different Georgian administrations in the field of human rights. It is currently preparing a second human rights strategy and a roadmap for its implementation. The first strategy covered the period 2014-2020. An important chapter of the strategy concerned hate crimes. However, the rights of LGBTI persons were not specifically mentioned. Instead, Ms Peradze assured me that civil society organisations are consulted and involved in the implementation of human rights strategies, including in the implementation of awareness raising activities.

61. After the meetings on 1 July, I should have attended the opening event of the Tbilisi Pride week, with the presentation of a documentary on the 2019 Tbilisi Pride march, which was disrupted by LGBT-phobic violence. Unfortunately, I was forced to cancel my participation due to a violent demonstration with bottles, stones and eggs being thrown at those present, targeting in particular representatives of the international community. An American diplomat was hit by an egg. In the end, the event went ahead as planned. After the film was shown, spectators were able to leave the hall in complete safety thanks to a police cordon.

62. The worrying events of 1 July seemed to confirm the elements provided by almost all my interlocutors: on the one hand, a serious infringement of human rights, including freedom of expression, by the extremists opposing Tbilisi Pride. On the other hand, a more open attitude than in the past from the authorities, who expressed their willingness to ensure that LGBTI events are held in complete safety.. The large deployment of law enforcement officers at the opening event showed that this commitment was real.

63. Advocacy for the authorities to guarantee the fundamental freedoms and safety of demonstrators, in line with the 2015 European Court of Human Rights judgment in *IDENTOBA and others v Georgia*, was part of the objectives of my visit. This seemed to be a given in the meetings I held. Not only did the politicians reassure me, but the NGO representatives also acknowledged that the attitude of the institutions had changed and that currently a higher level of protection of freedom of expression was guaranteed. The awareness raising and moral persuasion by civil society and international community actors, including the Council of Europe, several embassies in Tbilisi and, recently, the European Parliament's LGBTI Intergroup, have contributed to this result.

64. Unfortunately, over the following days there was an increase in violence and the situation became more complicated in the political world. On 4 July, a mob of homophobes attacked the Tbilisi Pride headquarters, symbolically tearing down a rainbow flag before vandalising the organisation's premises and destroying its computers. The next day, the march that was supposed to be the final and most important moment of the events was cancelled due to the extremely violent attacks carried out by opponents. The victims were mainly journalists who were preparing to cover the march. According to official sources, 55 people were attacked, including 53 media representatives.

65. A 36-year-old cameraman from Pirveli TV, Lekso Lashkarava, was "beaten mercilessly for 20 minutes" by anti-Pride extremists according to one of his colleagues. He was treated for several fractures and bruising, and died a few days after leaving the hospital. While the direct cause of death is still to be determined, this tragic event sparked a wave of outrage in the country, with public demonstrations protesting against the government and showing solidarity with the media and Tbilisi Pride.

66. In response to the events of 4 - 5 July, while Georgian President Salome Zurbashvili publicly supported freedom of expression in the context of Tbilisi Pride in a statement issued on 1 July, Prime Minister Irakli Garibashvili was less supportive. On the eve of the week of demonstrations, he stated that the holding of the march would be "unreasonable" and suggested that former Georgian President Saakashvili was behind the organisers. According to the head of government the march was likely to "lead to a confrontation between citizens". In the aftermath of the violence against journalists and the impromptu demonstration in front of the Parliament in solidarity with the Tbilisi Pride and the press, Mr Garibashvili said that the demonstration conveyed "anti-state, anti-church and anti-national messages". On the other hand, Mr Garibashvili confirmed that criminal investigations were underway and expressed his firm support for this approach. According to the available information, the authorities are cooperating actively with the victims and a large number of alleged perpetrators of violence have been arrested. It is reassuring to see that the Prime Minister and the Georgian authorities are actively engaged in fighting impunity, a prerequisite for ensuring that violent attacks on freedom of expression are not repeated in the future.

67. I believe that in the face of such violent attacks on freedom of expression, the right to information and the safety of media representatives, condemnation from the institutions should be strong and unanimous. The

rights of LGBTI persons and their visibility have become an important and divisive issue in the Georgian political debate. It has become a kind of symbolic element that reflects the values of the different political actors and even their opinion on the international positioning of their country. The most convinced defenders of freedom of expression in the Tbilisi Pride are generally in favour of a pro-western European stance. My interlocutors, although not explicitly, made it clear that the opposition to LGBTI rights, led by the more conservative Georgian forces and the Orthodox Church, is at the same time the result of pressure from "hostile" foreign countries (the term was used several times). In order to carry out its work on equality and non-discrimination, Georgia needs the support of the international community and organisations such as the Council of Europe. As far as the Parliamentary Assembly is concerned, the recent visit of President Daems conveyed a welcome and necessary message of attention and solidarity.

5. Conclusions

68. Respect for the rights of LGBTI persons is an issue that reflects cultural and political attitudes and is an important aspect of non-discrimination in a country's legislation and policies. Changing the situation therefore requires long term efforts. The introduction of anti-discrimination measures is essential but insufficient. The other necessary aspect is the effective implementation of these measures, with the support of all sectors of the administration - from national education to the police force and the judiciary, in cooperation with civil society and the cultural industries. I would like to stress that the cultural and religious traditions of a country should not be invoked to justify forms of social exclusion or even discrimination. All members of society must be able to exercise their rights, including the right to respect for private and family life, freedom of expression and freedom of thought, conscience and religion. It is the responsibility of each Council of Europe member State to respect these rights. Politics has an important role to play in identifying the best balance between the expectations and rights of the different components of society.

69. The Parliamentary Assembly and the Council of Europe as a whole are in a position to facilitate this delicate task, through the legal arsenal they have produced over the decades (both through binding texts and "soft law"), through information and awareness-raising programmes and, equally important, through their function as a permanent forum for reflection and discussion on human rights.