



# The Rights of LGBTI people in Eastern Europe Partnerships

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## General situation of LGBTI people

LGBTI people in the EU Partnership countries, Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine, continue to face discrimination and violence based on their sexual orientation or/and gender identity and are deprived of the access to the fundamental human, civil and political rights, as well as to basic services in comparison with other non-LGBTI citizens of their countries.

After the collapse of the Soviet Union in 1991, 15 republics that comprised that geopolitical union declared independence. Six of them – Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine – became members of the EU Eastern Partnership initiative inaugurated by the European Union in 2009. Despite the decriminalisation of same-sex sexual acts in all of them between 1991 and 2003, societies in respective states maintain the Soviet-influenced perception that homosexuality is a psychological disorder and crime. This mentality is enforced by the religious dogma, both Christian Orthodox and Islamic, that opposes LGBTI equality with the concept of 'traditional values' based on the understanding of 'traditional family' as a union between a cis-gender man and cis-gender woman.

Russia has an important geopolitical influence in the region, with the Russian political, economic and cultural presence. Generally, in all of the six countries, mass media outlets cover or report on LGBTI issues predominantly from the sensational or scandalous perspective and not from the perspective of a fundamental human rights issue. The situation has worsened after the adoption of discriminatory so-called 'anti-homosexual propaganda' laws in Russia on the regional and federal levels, beginning from 2011. The effects of this legislation has crossed Russia's borders and thus, adoption of so-called 'anti-

propaganda' laws was considered and even adopted by regional and national authorities in Moldova (2012 – 2013), by national parliaments in Ukraine (2012 – 2013) and Armenia (2013); however, the attempts have failed so far owing to the international pressure. Common perceptions in these countries are that any expression of non-heterosexual orientations and gender non-conforming behaviour is harmful to children under 18, a perception that these laws enforce at the same time build upon.

In all six countries LGBTI rights activists, individuals and gay-friendly organisations are subjected to verbal and physical assaults for their human rights activity or even existence. To mention, in Armenia, a gay-friendly bar in Yerevan was attacked with a fire bomb in 2012; recently, one activist in Azerbaijan has committed suicide and two other fled the country due to homophobic persecution; in Ukraine, KyivPride organisers were physically attacked by the far-right extremists in 2012; in Georgia, IDAHO rally, its organisers and participants were attacked by several thousands of aggressive Christian Orthodox clergymen and extremists in May 2013; in Moldova, LGBTI activists have received threats and the country's only LGBTI organisation's office has been attacked with eggs by far-right extremists in 2014.

In Belarus the situation is of LGBTI persons is even worse, because verbal, psychological and physical violence and persecution of LGBTI activists are perpetrated both by extremists *and* state authorities, including police who detain and torture LGBTI activists or force them to flee the country. The high level of homophobia and transphobia perpetuated in Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine due to persisting stereotypes and lack of reliable information, as well as human rights and sexual education, force LGBTI individuals to remain in the closet and lead double life.

## Legal and human rights instruments

### Constitutional provisions and legal framework

Same-sex sexual acts were decriminalised in all aforementioned countries between 1991 and 2003, and in all countries age of consent is equal for same-sex and opposite-sex sexual acts.

| Same-sex sexual acts<br>Legal   | Prohibition of all forms of discrimination based on sexual orientation, gender identity and expression | Prohibition of discrimination in employment based on sexual orientation, | Provides hate crime legislation where sexual orientation /gender identity are considered an aggravating circumstance | Provides or recognise sex re-assignment                    |
|---|--|--|--|--|
| Armenia (2003), Azerbaijan (2000), Belarus (1995), Georgia (2000), Moldova (1995), and Ukraine (1991) | Georgia (2014)   | Moldova (2012)   | Georgia (2012)   | Azerbaijan, Belarus, Georgia, and Ukraine.<br><br>Moldova* |

\* trans individuals seeking name and gender marker change in their identification documents can do so through a supreme Court of Justice's Recommendation, in Moldova

None of the states provides legal recognition and regulation of same-sex relations and adoptions despite the de facto existence of same-sex families who bring up children in hostile environments. In cases of discrimination or other human rights violations, most LGBTI persons prefer not to report them to the police, other law-enforcement authorities or, sometimes, even to local LGBTI organisations out of fear that their sexual orientation or/and gender identity might be disclosed.

None of the Constitutions of the six states provide explicit prohibition of discrimination on grounds of sexual orientation or/and gender identity, neither do their respective authorities apply the constitutional principle of equal treatment towards LGBTI citizens. However, in Georgia only, prohibition of all forms of discrimination based on sexual orientation, gender identity and expression (in employment, goods and services, education, healthcare) was adopted in 2014. Georgia also, since 2012, provides hate crime or bias-motivated legislation where sexual orientation and gender identity are considered an aggravating circumstance.

None of the six states include LGBTI issues in their national human rights policies or action plans. Also, in Moldova, prohibition of discrimination based on

sexual orientation is explicitly prohibited only in employment through the Law on Ensuring Equality adopted in 2012. In Ukraine, the anti-discrimination law adopted in 2013 does not include either sexual orientation or gender identity.

All of the six EU Eastern Partnership countries enjoy fairly liberal legislation with regard to freedom of assembly and freedom of association. In countries like Georgia, Moldova and Ukraine it even complies with the European legal standards. However, when it comes to exercising these freedoms by LGBTI groups or individuals, authorities in the respective state tend to obstruct or even prohibit public demonstrations, rallies, gatherings or other forms assemblies and associations organised by LGBTI groups or individuals.

Between 2005 and 2012 Moldovan authorities banned or demanded relocation of demonstration organised by local LGBTI organisation, GENDERDOCM, during the annual Pride Festival. Only in 2013 and 2014 did activists manage to hold Marches for Equality that were protected by the police - although opposed by religious fundamentalists and far-right extremists. In Ukraine, KyivPride march was cancelled in 2012 just 30 minutes prior to its beginning due to the high risk of violence against participants by far-

right extremists; in 2013 KyivPride march took place briefly and was well protected by the special police forces from counterdemonstrators; in 2014 march was cancelled again after authorities said they would not be able to guarantee protection to participants. In Belarus, where any unauthorised public activity by human rights defenders is roughly ceased and prosecuted by state authorities, local activists attempted to hold several demonstrations either on the outskirts of Minsk or by using public transportation. In Georgia, the first and so far last attempt to hold a Pride rally on the 17<sup>th</sup> of May 2013 ended with casualties when thousands of Orthodox Christian activists broke through police cordon and pursued LGBTI rights activists in Tbilisi injuring at least 28 people in the process.

Official registration of non-governmental associations who work with LGBTI and/or MSM communities is allowed in all EU Eastern Partnership countries except Belarus, where human rights defenders are persecuted by state authorities.

### **Regional/international human rights instruments**

All EU Eastern Partnership countries have signed the European Convention on Human Rights (ECHR) and are, except Belarus, members of the Council of Europe and its related bodies, including the European Court of Human Rights (ECtHR). Thus they ought to comply with the Council of Europe standards and requirements in the field of human rights. So far, ECtHR has released two judgements concerning violation of fundamental rights based on sexual orientation in cases 'GENDERDOC-M vs Moldova' and 'Aghdgomelashvili and Japaridze vs Georgia'.

Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine are signatories to the Universal Declaration of Human Rights and members of the United Nations and its related bodies and structures, including Human Rights Council and its Universal Periodic Review mechanism. All six countries have gone through the first UPR cycle that finished in 2011. In 2011, Moldova received and accepted 11 explicit recommendation concerning LGBTI issues, including recommendations to take concrete measures to raise public awareness about LGBT rights and to address

and prevent discrimination of LGBT persons and other minorities. In 2012, during the second UPR cycle, Ukraine received four recommendations on SOGI issues, accepting to ensure that legislation, is compliant with Ukraine's international commitments under the European Convention on Human Rights and to adopt a comprehensive anti-discrimination law, and noting the recommendation to apply the Yogyakarta principles in policy development.

Armenia, Belarus, Georgia, and Moldova are scheduled to undergo the second UPR cycle in 2015 and 2016. This provides an opportunity to engage these countries in dialogue on LGBTI rights.

### **Sexual and Reproductive Health and Rights and HIV/AIDS**

According to the statistics from the UNAIDS for 2013, HIV prevalence among MSM is 2.9% in Armenia, 2% in Azerbaijan, 6.2% in Belarus, 13% in Georgia, 5.4% in the Republic of Moldova, 5.9% in Ukraine. In all six countries MSM are included in the National Programme on Prevention and Control of HIV/AIDS and STI.

Transgender people (including sex-workers) are included in HIV/AIDS prevention programs by MSM-services organisations in Armenia, Azerbaijan and Georgia.

Medically assisted insemination for single women is legal and available in Armenia, Belarus, Georgia, Moldova and Ukraine.

Legal gender recognition procedure of trans-persons' gender identity exists in Azerbaijan, Belarus, Georgia, and Ukraine; however, it can be firmly stated that this procedure is inadequate to the contemporary human rights standards and even abusive. In Armenia and Moldova there is no legal gender recognition procedure in place; however, trans-individuals seeking name and gender marker change in their identification documents can do so through a court judgement in Moldova. At the same time, in all six countries trans-persons are required to be psychiatrically diagnosed with 'transsexualism' also known as 'gender identity disorder' in order to proceed with the name and ID gender marker change.

One of the most abusive legal gender recognition procedures exists in Ukraine. The Ukrainian Ministry of Health Protection requires transgender people to first undergo 30 to 45 days of confinement in a psychiatric institution to be diagnosed with 'transsexualism'. People under the age of 18, being married, or disagreeing with the volume of surgeries required by law all are obstacles for legal change of gender.

Sterilisation, medical (e.g. hormone replacement therapy), and surgical intervention (e.g. mastectomy) is compulsory for all trans-persons seeking official gender reassignment in documents in Azerbaijan, Georgia, and Ukraine. In Belarus, only medical intervention is compulsory out of these three criteria.

Legal gender recognition, whether with or without a special procedure in place, is not available for people under 18. In all six states trans-persons are allowed to marry the person of the other gender. However, trans-persons seeking their gender identity to be legally recognised may be forced to divorce their spouses as, for instance, it is required by law in Ukraine.

Trans-persons is a most vulnerable group in the LGBTI community in all EU Eastern Partnership countries. They face multiple forms of discrimination on grounds of gender identity and gender expression and other criteria such as social status, being deprived of family, education, employment, right to vote and freedom of movement. In general, there is huge societal ignorance of the sexual orientation and gender identity matters as both are often confused. For instance, in Azerbaijan and Armenia trans-women often see no other possibility than to do sex work as they are unable to secure employment and basic living conditions.

### **Civil society organisations active in the LGBTI field**

The biggest and most well-known organisations, operating openly with web-pages are:

We for Civil Equality (Armenia), <http://www.wfce.am>

PINK Armenia (Armenia),  
<http://www.pinkarmenia.org>

Gender and Development (Azerbaijan), Nefes LGBTI Azerbaijan (Azerbaijan), <http://en.lgbtaz.org>,

GayBelarus (Belarus) <http://gaybelarus.org>,

Vstrecha (Belarus), <http://www.vstrecha.by> ,

Women's Initiatives Supporting Group (Georgia) <http://women.ge/en> ,

Identoba (Georgia) <http://identoba.com> , which has received a long term support from RFSU

Tanadgoma (Georgia) <http://tanadgomaweb.ge> , which is receiving core support from RFSU

GENDERDOC-M (Moldova) <http://www.gdm.md>

Insight (Ukraine) <http://insight-ukraine.com.ua>,

Gay Alliance (Ukraine) <http://upogau.org/eng/> ,

Nash Mir (Ukraine) <http://www.gay.org.ua> ,

GayForum (Ukraine) <http://lgbtua.com> ,

International HIV/AIDS Alliance in Ukraine (Ukraine) <http://www.aidsalliance.org.ua>

Mykolayiv Association for Gays, Lesbians and Bisexuals 'LiGA' (Ukraine) <http://www.lgbt.mk.ua> ,

Fulcrum <http://www.t-o.org.ua> (Ukraine)

South Caucasus Network of MSM/Trans Organisations (Armenia, Azerbaijan and Georgia)

### **What Sweden can do? – 8 questions to discuss**

Within the broader context of the support to strengthened democracy, greater respect for human rights and a more fully developed state under the rule of law in the Eastern Partnership region, Sweden has a great opportunity to include issues related to the rights of LGBTI persons and their access to justice. When addressing LGBTI in non-supportive government context as many of the countries operating in this region, it is very important to consult LGBTI organisations in the country to make sure not to overrule their agenda.

The Swedish strategy for Eastern Europe, among other things, aims at the delivery of higher quality public services, based on principles of non-discrimi-

nation and equal rights and with less corruption; More efficient judicial systems that guarantee the right to a fair trial and include a developed sentencing system in accordance with European standards; a reduction in gender-based violence, hate crimes and human trafficking; a more democratic and effective police and a stronger and more pluralistic civil society. The strategy specifically mentions LGBTI rights as a focus area.

Taking this into consideration embassies in the region could discuss the following:

- Could Sweden do more to stay updated on the legal and security situation and the judgements and priorities of the LGBTI movements?
- Could Sweden do more to support the judiciary to stay firm in defending human rights of LGBTI persons and activists and include LGBTI awareness in e.g. police cooperation?
- Could Sweden do more to offer protection to activists and attend court cases as well as contribute to protection of organisations at risk?
- Could Sweden do more to support exchange visits and programmes for organisations and activists?
- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations nationally and regionally?
- Could Sweden do more to open doors for LGBTI organisations by inviting them to social and cultural events and include them in professional human rights and civil society networks?
- Could Sweden do more to seek strategic alliances and continue to bring up LGBTI rights in the dialogue with the governments, after consultation

with LGBTI organisations? To support and monitor upcoming UPR processes to engage with LGBTI rights?

- Could Sweden do more to support organisational capacity building of LGBTI organisations so that they can improve their effectiveness and networking?

Presently, discrimination within the health sector and public sectors is a factor that strongly contributes to the marginalisation of LGBTI persons, and puts them at risk of poverty. The Swedish strategy aims at strengthening the “Delivery of higher quality public services, based on principles of non-discrimination and equal rights and with less corruption.”

- Could Sweden do more to promote inclusion of LGBTI persons and MSM group in supported SRHR initiatives, work with HIV/AIDS or other initiatives regarding e.g. health or legal recognition of LGBTI persons e.g. sex reassignment?
- Could Sweden do more to encourage gender based violence and trafficking initiatives to include the LGBTI population?

For further advice on dialogue regarding LGBTI issues, download the [Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). More specific advice and support measures, as well as contact information to mentioned groups, can also be provided through ILGA or RFSL, should the Embassy wish for a dialogue. Also refer to the [EU tools](#) and guidelines in the reference list.

## References

ILGA, 2014, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults*. (see updated version at [www.ILGA.org](http://www.ILGA.org))

ILGA Europe [www.ilga-europe.org](http://www.ilga-europe.org)

ILGA-Europe *Annual Review and Rainbow Map 2014* [http://www.ilga-europe.org/home/publications/reports\\_and\\_other\\_materials/rainbow\\_europe](http://www.ilga-europe.org/home/publications/reports_and_other_materials/rainbow_europe)

European Parliament's Intergroup on LBGT <http://www.lgbt-ep.eu/>

EU news, tools and guidelines: [http://eeas.europa.eu/human\\_rights/lgbt/index\\_en.htm](http://eeas.europa.eu/human_rights/lgbt/index_en.htm)

The EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#).

RFSL, *LGBTI in Development*, An introduction in how to include LGBTI in programming in development: [http://www.rfsl.se/public/LGBTI\\_in\\_development.pdf](http://www.rfsl.se/public/LGBTI_in_development.pdf)

Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue' and the Ministry of Foreign Affairs [Dialogue brief](#).

Trans Rights Europe *Map 2014* [http://www.tgeu.org/sites/default/files/Trans\\_Map\\_Index\\_2014.pdf](http://www.tgeu.org/sites/default/files/Trans_Map_Index_2014.pdf)

UNAIDS *Country reports* <http://www.unaids.org/en/regionscountries/countries/>

The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, guidance notes have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.