

Arménie : situation des personnes LGBTQI+ et protection de l'État

Renseignement de l'analyse-pays de l'OSAR

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Organisation suisse d'aide aux réfugiés (OSAR)
Case postale, 3001 Berne
Tél. 031 370 75 75
Fax 031 370 75 00
E-mail : info@osar.ch
Internet : www.osar.ch
CCP dons : 10-10000-5

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Ce rapport repose sur des renseignements d'expert-e-s et sur les propres recherches de l'Organisation suisse d'aide aux réfugiés (OSAR). Conformément aux standards COI, l'OSAR fonde ses recherches sur des sources accessibles publiquement. Lorsque les informations obtenues dans le temps imparti sont insuffisantes, elle fait appel à des expert-e-s. L'OSAR documente ses sources de manière transparente et traçable, mais peut toutefois décider de les anonymiser, afin de garantir la protection de ses contacts.

1 Introduction

Les questions suivantes sont tirées d'une demande adressée à l'analyse-pays de l'OSAR :

1. De quelles informations dispose-t-on sur la situation des personnes LGBTQI+ en Arménie ?
2. Quelles sont les possibilités pour une femme homosexuelle de vivre en Arménie avec sa compagne ? Ces personnes sont-elles obligées de vivre caché ?
3. Quelles persécutions étatiques et familiales subissent les personnes de ce groupe ?
4. Que fait l'Etat pour protéger ces personnes ?

L'analyse-pays de l'OSAR observe les développements en Arménie depuis plusieurs années.¹ Sur la base de ses propres recherches ainsi que de renseignements transmis par des experts externes, elle apporte les réponses suivantes aux questions ci-dessus.

2 Cadre légal

L'homosexualité est légale, mais les couples de même sexe ne peuvent ni se marier, ni adopter des enfants. Il n'existe pas de législation complète contre la discrimination envers les personnes LGBTQI+ Les motivations anti-LGBTQI+ ne sont pas considérées comme des circonstances aggravantes par le Code pénal, et les crimes ainsi motivés sont considérés comme « ordinaires ». Selon l'*Institute for war and peace reporting* (IWPR), l'homosexualité a été décriminalisée en 2003. Toutefois, le mariage ou l'adoption par des personnes du même sexe restent interdits et il n'existe pas de législation spécifique contre la discrimination pour protéger les personnes LGBTQI+ (IWPR, 22 novembre 2022). En effet, selon *Human Rights Watch* (HRW), l'Arménie ne dispose pas d'une législation complète contre la discrimination et le Code pénal arménien ne reconnaît pas l'animosité due à l'orientation sexuelle ou à l'identité de genre comme une circonstance pénale aggravante dans les crimes de haine (HRW, 12 janvier 2023). Le *Département d'État américain* (USDOS) confirme également que les lois anti-discrimination ne protègent pas les personnes LGBTQI+. Il n'existe pas de lois sur les crimes de haine ou de mécanisme judiciaire pour aider à la poursuite des crimes commis contre les personnes LGBTQI+ (USDOS, 12 avril 2022). Dans un rapport publié en août 2022, l'ONG internationale *Eurasian Coalition on Health, Rights, Gender and Sexual Diversity* (ECOM) et l'ONG arménienne *New Generation* estiment également que la législation arménienne ne prévoit pas ni dispositions matérielles, ni procédurales pour prévenir, enquêter et punir les crimes de haine, en particulier ceux fondés sur l'orientation sexuelle et l'identité de genre. Ces crimes ne sont pas stipulés dans la législation de manière appropriée et le discours de haine n'est pas non plus défini et règlementé (ECOM et *New Generation*, août 2022).

¹ www.osar.ch/publications/rapports-sur-les-pays-dorigine

Adoption en 2021 d'un nouveau Code pénal, entré en vigueur en juillet 2022, qui améliore la portée de la réglementation juridique des crimes de haine. La liste des circonstances aggravant la responsabilité et la peine est élargie et peut être appliquée aux cas de crime de haine avec une liste non exhaustive de motifs. Peines plus sévères prévues pour ces crimes. Comme le précise *Pink Armenia*, la plus importante organisation arménienne de défense des droits des personnes LGBTQI+, le Code pénal arménien ne définit pas les crimes de haine et ne prévoit pas de mécanismes efficaces pour les identifier et les punir. L'article 63 du Code pénal (point 6, partie 1), indique notamment comme circonstances aggravantes les cas où le crime commis est « motivé par la vengeance basée sur la haine ethnique, raciale ou religieuse, le fanatisme religieux ». Toutefois, les crimes motivés par l'orientation sexuelle ou l'identité de genre ne sont pas considérés comme relevant de cet article. En juillet 2022, un nouveau Code pénal, adopté en 2021, est entré en vigueur. Selon *Pink Armenia*, ce nouveau Code pénal améliorera la portée de la réglementation juridique des crimes de haine. Il élargit notamment la liste des circonstances aggravant la responsabilité et la peine et pourra être appliqué aux cas de crime de haine avec une liste non exhaustive de motifs. L'article 63, devenu article 71, a été reformulé afin que « les crimes commis avec haine, intolérance ou hostilité fondée sur la race, la nationalité, l'origine ethnique ou sociale, la religion, les opinions politiques ou autres, ou d'autres circonstances sociales ou personnelles » mènent à des peines plus sévères. Pour *Pink Armenia*, même si l'orientation sexuelle et l'identité de genre ne sont pas spécifiquement mentionnés dans le nouveau Code pénal comme des motifs de protection contre la discrimination, la nouvelle liste non exhaustive peut néanmoins être considérée comme un changement positif (*Pink Armenia*, mai 2022). Selon la *Coalition to Stop Violence Against Women*, sous le nouveau Code pénal, les crimes commis avec haine, intolérance ou hostilité en raison de la race, de la nationalité, de l'origine ethnique ou sociale, de la religion, des opinions politiques ou autres, ou d'autres circonstances sociales ou personnelles, donneront lieu à des peines plus sévères. La *Coalition* estime que ces changements reflètent un progrès qui devrait en principe permettre une qualification appropriée et une enquête de fond sur les crimes basés sur l'orientation sexuelle dans la pratique juridique (*Coalition to Stop Violence Against Women*, 11 septembre 2022).

Absence de mesures juridiques pour prévenir la violence contre les femmes LGBTQI+ et pour y remédier. Projet de loi sur la garantie de l'égalité en attente depuis 2018. Selon ECOM et *New Generation*, il n'existe pas de mesures juridiques préventives pour protéger les femmes LGBTQI+ de la discrimination fondée sur l'orientation sexuelle, ni de dispositions juridiques pour remédier à une discrimination fondée sur la haine de la victime une fois qu'elle a eu lieu. Un projet de loi sur la garantie de l'égalité est en attente depuis 2018, mais il n'inclut pas l'orientation sexuelle et l'identité de genre comme motifs protégés. Selon ECOM et *New Generation*, il n'y a aucune raison valable pour que cette loi soit restée à l'état de projet pendant plus de quatre ans, si ce n'est le fait que les autorités arméniennes n'ont pas l'intention de l'adopter réellement et de protéger adéquatement les personnes LGBTQI+ (ECOM et *New Generation*, août 2022).

Absence de dispositions juridiques pour réglementer la chirurgie de réassignation sexuelle. Selon le *Comité pour l'élimination de la discrimination envers les femmes* (CEDAW), il n'existe pas de dispositions juridiques réglementant la chirurgie de réassignation sexuelle et de changement de marqueur de genre (CEDAW, 1^{er} novembre 2022).

2.1 Mise en œuvre

En pratique, les violations des droits des personnes LGBTQI+ ne sont pas traitées de manière efficace par la police et restent largement impunies. Peu d'enquêtes et de poursuites. Pour la *Coalition to Stop Violence Against Women*, malgré les changements apportés au Code pénal en 2020, et qui prévoient notamment une responsabilité pénale pour les appels à la violence et à la haine, les cas enregistrés de violence fondée sur l'orientation sexuelle et l'identité de genre n'ont pas reçu de réponse appropriée de la part des forces de l'ordre. En 2020, aucune affaire pénale n'a été ouverte pour des appels à la violence contre des personnes LGBTQI+ (*Coalition to Stop Violence Against Women*, 11 septembre 2022). Pour *Pink Armenia*, même si les changements apportés au nouveau Code pénal entré en vigueur en juillet 2022 sont positifs, en pratique, les violations des droits des personnes LGBTQI+ ne sont pas traitées de manière efficaces par la police et restent largement impunies. Cela est notamment dû au fait que les obstacles au bon fonctionnement des mécanismes de protection juridiques existent toujours et que les victimes continuent de se méfier des organismes chargés d'appliquer la loi. Pour *Pink Armenia*, tant que le climat d'impunité persistera pour les auteurs de crimes contre les personnes LGBTQI+, les changements législatifs continueront d'être inefficaces (*Pink Armenia*, mai 2022). Selon ECOM et *New Generation*, en tant que victimes, la plupart des personnes LGBTQI+ ne reçoivent pas de qualification pénale appropriée de la part des forces de l'ordre et peu d'affaires pénales sont lancées à la suite d'incidents de violence et de menaces basés sur l'orientation sexuelle ou l'identité de genre. Quand elles le sont, les auteur-e-s sont souvent accusé-e-s de crimes plus légers, comme celui d'hooliganisme. Cela est favorisé par le fait que la loi ne considère pas un préjugé fondé sur l'orientation sexuelle comme un motif pour commettre un crime contre les personnes LGBTQI+. Il n'existe pas non plus de précédent juridique que les tribunaux pourraient suivre (ECOM et *New Generation*, août 2022). Selon l'*Association internationale des lesbiennes, gays, bisexuels, trans et intersexes* (ILGA-Europe), qui cite *Pink Armenia*, sur les 44 cas de discrimination recensés en 2022, 16 ont été signalés aux organes chargés de l'application de la loi, mais la plupart des cas ont été rejetés ou n'ont pas été traités de manière significative. Selon *ILGA-Europe*, en 2022, *Pink Armenia* a déposé une requête auprès de la Cour européenne des droits de l'homme dans le cas d'une femme trans brutalement agressée en 2018. Les autorités arméniennes avaient abandonné les poursuites contre l'auteur de cette agression, qui avait tenté de tuer la femme et incendié son appartement (ILGA-Europe, 20 février 2023).

Les dispositions pénales prévues dans le nouveau Code pénal pour punir les appels à la haine ou la violence ne sont pas appliquées dans les cas où les cibles sont les personnes LGBTQI+. Selon *Pink Armenia*, malgré des modifications apportées au Code pénal en 2020, qui prévoient la responsabilité pénale pour des appels publics à la violence ou la propagande de la violence, en pratique, la police n'a pas donné de réponse appropriée dans les cas d'appels à la violence contre les personnes LGBTQI+. Ces incidents n'ont pas fait l'objet d'enquêtes efficaces et dans certains cas, la police a refusé d'engager des poursuites pénales en invoquant le droit à la liberté d'expression. Ce point de vue a ensuite été confirmé par le bureau du procureur et par les tribunaux (*Pink Armenia*, mai 2022). Selon USDOS, les organes chargés de l'application des lois ont refusé d'engager des poursuites dans un certain nombre d'affaires où les auteur-e-s ont appelé à la violence contre les personnes LGBTQI+ sur la base de leur orientation sexuelle ou identité de genre (USDOS, 12 avril 2022).

L'interdiction de la discrimination inscrite dans la Constitution n'est pas appliquée dans le cas des personnes LGBTQI+. Selon *Pink Armenia*, les cas de discrimination envers les personnes LGBTQI+ par des acteur-e-s privé-e-s, par exemple lorsque des prestataires

de services refusent de fournir des services à ces personnes en raison de leur orientation sexuelle ou identité de genre, ne sont pas punis par la législation existante. La Constitution arménienne interdit la discrimination, mais elle n'est pas considérée comme un mécanisme efficace de protection juridique, car les tribunaux ont échoué plusieurs fois à appliquer les dispositions de la Constitution. Pour *Pink Armenia*, il existe, au niveau des tribunaux, une compréhension limitée du concept de discrimination et de responsabilité. Les tribunaux civils et administratifs n'appliquent pas directement les normes constitutionnelles en la matière (*Pink Armenia*, mai 2022).

3 Traitement des personnes LGBTQI+ par des acteurs étatiques et non-étatiques

3.1 Persécution et discrimination par des acteurs étatiques

Discrimination et violences envers des personnes LGBTQI+ perpétrées par des agents de l'État. Mauvais traitements et humiliation de la police. Divulgarion d'informations personnelles des victimes par la police à d'autres agents de police, ou aux familles de victimes. Selon *Human Rights Watch* (HRW), en Arménie, les personnes LGBTQI+ continuent d'être victimes de harcèlement, de discrimination et de violence (HRW, 12 janvier 2023). Pour USDOS, des rapports indiquent que certaines de ces violences sont perpétrées par des agents du gouvernement (USDOS, 12 avril 2022). Selon ECOM et *New Generation*, la plupart des victimes de violences et de menaces ne portent pas plainte à la police, car elles ont été soumises auparavant à des mauvais traitements, des menaces et des abus de la part des forces de l'ordre. L'absence de lois de protection nécessaires et la forte stigmatisation encouragent la discrimination perpétrée contre les personnes LGBTQI+ par les organes censés protéger leurs droits humains (ECOM et *New Generation*, août 2022). Selon *Pink Armenia*, les personnes LGBTQI+ sont victimes de discrimination de la part des agents de police. Elles sont souvent traitées de manière irrespectueuse ou même humiliées par la police surtout lorsqu'elles n'ont pas encore reçu le soutien d'un avocat. Face à cette attitude hostile, les personnes LGBTQI+ sont souvent découragées de s'adresser à la police. Les agents de police divulguent également les informations personnelles des victimes d'attaques anti-LGBTQI+ à d'autres agents de police, ou même aux familles de ces victimes les faisant craindre des représailles (*Pink Armenia*, mai 2022).

Discours de haine anti-LGBTQI+ très répandus, véhiculés parfois par des personnalités publiques et responsables du gouvernement. Discours de haine favorisés par l'absence de lois les interdisant. Pour ECOM et *New Generation*, les discours de haine à l'encontre des personnes LGBTQI+ sont très répandus en Arménie. Ces discours se sont intensifiés dans le cadre du conflit frontalier avec l'Azerbaïdjan en 2020, avec la désignation des personnes LGBTQI+ comme une menace pour la sécurité nationale. Les auteur-e-s de ces discours ne sont pas seulement les groupes nationalistes radicaux, mais également des personnalités publiques et des responsables du gouvernement. Ces discours ont été tenus notamment par les personnes partisans de l'ancien gouvernement à des fins politiques, afin de retourner la population contre le gouvernement actuel. Pour ECOM et *New Generation*, ces discours sont favorisés par l'absence de loi les interdisant et sont utilisés par les médias

et les personnalités publiques pour promouvoir la haine sous couvert de la liberté d'expression (ECOM et *New Generation*, août 2022).

3.2 Stigmatisation et discrimination par la société et l'entourage

Une violence et une oppression des personnes LGBTQI+ ancrée dans une société très traditionnelle et patriarcale. Intensification des discours de haine en 2020 et 2021. Selon *Pink Armenia*, la société arménienne encourage la violence et l'oppression des personnes LGBTQI+. Les attitudes négatives et les discours haineux sur ces personnes sont très répandus dans la société en général, mais également au niveau institutionnel, par exemple dans les écoles où les personnes mineures LGBTQI+ sont victimes de violence et d'un déni de leur identité (*Pink Armenia*, mai 2022). Selon le CEDAW, un durcissement des attitudes traditionnelles et patriarcales, qui limitent l'usage de leurs droits par certains groupes de femmes et de filles, en particulier les femmes lesbiennes, bissexuelles, transgenres et intersexuées, a eu lieu. Le comité a exprimé sa préoccupation par les informations faisant état de discrimination, de harcèlement et de discours de haine à l'encontre des femmes LGBTQI+ (CEDAW, 1^{er} novembre 2022). Pour USDOS, les discours de haine et les appels à la violence contre les personnes LGBTQI+ se sont intensifiés après les combats de l'automne 2020 et avant les élections parlementaires de juin 2021 (USDOS, 12 avril 2022). Selon ILGA Europe, en octobre 2022, deux jeunes homosexuels se sont suicidés en se jetant d'un pont à la suite de la publication d'une photo les montrant en train de s'embrasser. Cette photo est devenue virale et a suscité un grand nombre de messages de haine et de déclarations anti-LGBTQI+ (ILGA-Europe, 20 février 2023).

Fréquentes attaques et violences contre les personnes LGBTQI+. Au moins 27 incidents de violences physiques et sexuelles ou de menaces en 2022. Au moins 35 cas enregistrés en 2021. Selon USDOS qui cite des organisations de défense des droits de l'homme, il y a eu en 2022 une augmentation générale du nombre d'attaques sociétales fondées sur l'orientation sexuelle et l'identité de genre (USDOS, 12 avril 2022). Selon ILGA-Europe, en 2022, *Pink Armenia* a documenté 27 incidents de violences physiques et sexuelles ou de menaces à l'encontre de personnes LGBTQI+. Sur les 27 cas de violence, sept étaient des femmes lesbiennes ou bissexuelles, onze des hommes gays ou bissexuels, et douze des personnes trans ou non binaires. En 2022, *Pink Armenia* a également enregistré 44 cas de discrimination fondée sur l'orientation sexuelle (ILGA-Europe, 20 février 2023). Selon le rapport annuel de *Pink Armenia* portant sur l'année 2021, l'organisation a enregistré, cette année-là, 35 cas de violations des droits humains à l'encontre de personnes LGBTQI+, associées à des discriminations fondées sur leur orientation sexuelle et leur identité de genre. Ces violations incluaient des cas de violences physiques et sexuelles, des cas d'extorsion, des cas de diffusion illégale de détails et d'informations sur la vie personnelle et l'orientation sexuelle de personnes LGBTQI+, et des cas de violence domestique, c'est-à-dire des violences ou menaces provenant des familles des personnes LGBTQI+ (*Pink Armenia*, mai 2022). Selon ECOM et *New Generation*, qui se basent sur des informations d'ONG, en 2020, ce sont 130 cas de discrimination et de violence sur la base de l'orientation sexuelle et de l'identité de genre qui ont été enregistrés (ECOM et *New Generation*, août 2022).

Une part importante des violences et discrimination vient de l'entourage et de la famille. Cette violence et ces menaces surviennent généralement lorsque les familles apprennent l'orientation sexuelle de leurs proches et tentent alors par tous les moyens de les en faire changer. Selon ILGA-Europe, en 2022, sur les 27 cas de violence enregistrés par Pink Armenia à l'encontre des personnes LGBTQI+, dix ont été le fait des membres de la famille. Dans la plupart de ces cas, les familles ont appris l'orientation sexuelle LGBTQI+ des victimes, puis les ont battues, harcelées, menacées ou enfermées (ILGA-Europe, 20 février 2023). Selon *Pink Armenia*, les cas de violence de la part de membres de la famille représentent une proportion importante des violations des droits humains contre les personnes LGBTQI+. En 2021, ils représentaient 17 des 35 cas (*Pink Armenia*, mai 2022). Selon ECOM et *New Generation*, dans 13 des 20 incidents d'attaques physiques, de menaces et d'appels à la violence physique et psychologique enregistrés en 2021, c'était un membre de la famille qui était à l'origine des violences et des menaces (ECOM et *New generation*, août 2022). *Pink Armenia* indique que cette violence domestique s'abat généralement sur les personnes LGBTQI+ lorsque les familles apprennent leur orientation sexuelle ou identité de genre. Elles sont alors souvent battues, insultées, menacées pour les punir ou pour tenter de les « guérir ». Les moyens employés par les familles incluent la séquestration, la privation de moyens de communication ou financiers, des pressions psychologiques, des consultations forcées avec des médecins ou des psychologues pour subir des thérapies de conversion (*Pink Armenia*, mai 2022). Selon IWPR, qui cite un jeune homosexuel arménien, si l'orientation sexuelle d'une personne LGBTQI+ est rendue publique, cela entraîne le déshonneur pour cette personne, mais également pour toute sa famille et ses proches (IWPR, 22 novembre 2022).

La discrimination limite l'accès à l'emploi, à un logement, à l'éducation et aux soins de santé. Les personnes LGBTQI+ forcées de se cacher. Selon la *Coalition to Stop Violence Against Women* les personnes LGBTQI+ sont confrontées à une discrimination sociétale fondée sur leur identité de genre et leur orientation sexuelle. Cette discrimination a des répercussions négatives sur leur accès à l'emploi, à un logement, à l'éducation et aux soins de santé, mais également sur les relations familiales (*Coalition to Stop Violence Against Women*, 11 septembre 2022). USDOS confirme également que la discrimination dont font l'objet les personnes LGBTQI+ affecte négativement tous les aspects de leur vie, notamment, l'accès à l'emploi, à un logement, à l'éducation et aux soins de santé, mais aussi les relations familiales (USDOS, 12 avril 2022). Selon le CEDAW, le personnel médical manque de formation sur les droits des femmes LGBTQI+ (CEDAW, 1^{er} novembre 2022). Selon *Pink Armenia*, en Arménie, les personnes LGBTQI+ sont forcées de se cacher de la société et de dissimuler leur orientation sexuelle et leur identité de genre. Leur situation professionnelle et leur vie sont entravées par d'autres personnes uniquement en raison de leur identité LGBTQI+ (*Pink Armenia*, mai 2022). Selon IWPR, qui se base sur le témoignage d'un jeune homosexuel arménien, il est courant pour les personnes LGBTIQ de quitter leur région d'origine, surtout dans les régions rurales, pour venir se réfugier dans la capitale Erevan (IWPR, 22 novembre 2022).

4 Protection et assistance

4.1 Capacité de protection et d'assistance de l'État

Pas de statistiques au niveau national sur les cas de violences et de discrimination envers les personnes LGBTQI+. Selon *Pink Armenia*, les cas de discrimination et de violations des droits des personnes LGBTQI+ ne sont pas correctement enregistrés et documentés par la police et donc ne sont pas reflétés dans des statistiques nationales. Cette lacune est notamment liée au fait que le Code pénal ne distingue pas entre un crime simple et un crime commis sur la base de l'orientation sexuelle ou l'identité de genre de la victime. En conséquence, la police ne collecte pas de données sur les motifs des crimes commis (*Pink Armenia*, mai 2022).

Les personnes LGBTQI+ victimes de violences et de discrimination évitent de faire appel à la police, par manque de confiance envers celle-ci et le système judiciaire, mais aussi par peur de subir des mauvais traitements et de humiliations. Selon *Pink Armenia*, les personnes LGBTQI+ victimes de violations des droits humains évitent en général de faire appel à la police pour protéger leurs droits. Sur les 35 cas enregistrés par Pink en 2021, seules dix victimes ont fait appel aux forces de l'ordre. Selon *Pink Armenia*, cela s'explique par le manque de confiance des victimes envers la police. En particulier, celles-ci pensent que la police n'est pas impartiale et n'enquêtera pas de manière objective. Les victimes craignent aussi que la police rende publique les informations relatives au crime, ainsi que des données personnelles des victimes, notamment leur identité de genre et orientation sexuelle. Dans les cas de violence domestique, les victimes sont souvent contraintes de continuer à vivre avec les personnes les ayant agressées. Il n'existe pas non plus de mécanismes de prévention efficace pour protéger ces victimes. *Pink Armenia* relève qu'il est rare que les victimes de violence domestique portent plainte contre les membres de leur famille. Le manque de confiance des victimes dans la justice tient également au fait qu'elles ne considèrent pas les mécanismes de protection juridique comme étant efficaces. Les procédures prennent souvent des années et ne débouchent sur rien (*Pink Armenia*, mai 2022). Pour HRW également, les crimes contre les personnes LGBTQI+ ne sont souvent même pas signalés par les victimes, car celles-ci craignent d'être victimes de discrimination et d'humiliation dans le cas où leur orientation sexuelle serait révélée publiquement (HRW, 12 janvier 2023). Pour USDOS également, les victimes des agressions sont souvent réticentes à contacter la police en raison du manque de confiance dans le fait qu'une enquête serait ouverte et que les auteur-e-s des attaques soient puni-e-s (USDOS, 12 avril 2022).

Peu de plaintes traitées efficacement par la police, peu d'enquêtes ouvertes. Selon *Pink Armenia*, il est rare que les plaintes déposées par les personnes LGBTQI+ victimes d'agressions ou de discrimination soient traitées par la police. Ces affaires sont souvent classées sans suite, ou alors l'enquête inefficace et les longues procédures poussent les victimes à y mettre fin elles-mêmes. En 2021, seul un cas relatif à une violation des droits des personnes LGBTQI+ a été envoyé au tribunal (*Pink Armenia*, mai 2022). Pour HRW, qui se réfère à un jugement de la Cour européenne des droits de l'homme contre l'Arménie, dans le cas de l'attaque contre la militante LGBTQI+ Oganezova, dont le club a été incendié en 2012, les autorités arméniennes ne se sont pas acquittées de leur obligation d'enquêter efficacement sur l'incendie criminel commis avec un motif homophobe. HRW relève que de manière générale, les enquêtes concernant les crimes commis contre les personnes LGBTQI+ sont souvent peu concluantes ou inefficaces (HRW, 12 janvier 2023). USDOS indique également que dans la plupart des cas d'attaques fondées sur l'orientation sexuelle et l'identité de genre, aucune mesure officielle n'a été prise pour enquêter sur ces agressions ou en punir les auteurs (USDOS, 12 avril 2022).

Le climat d'impunité pour les auteur-e-s de violences envers les personnes LGBTQI+ encouragent encore davantage de violence et sapent leur confiance dans la volonté des autorités de les protéger. Selon *Pink Armenia*, le climat d'impunité dont bénéficient les auteur-e-s de violences et d'agressions contre les personnes LGBTQI+ encourage encore plus de crimes contre ces personnes. Cela entraîne aussi une perte de confiance des personnes LGBTQI+ dans la volonté ou la capacité des autorités de les protéger. En conséquence, ces personnes ne se sentent pas en sécurité, y compris dans les lieux publics. La divulgation de données personnelles de victimes, sans leur consentement, par la police, exacerbe ce sentiment de méfiance envers les forces de l'ordre. Cette divulgation d'informations personnelles favorise également des tentatives d'extorsions envers les victimes, par des personnes qui misent sur le fait que celles-ci feront tout pour éviter que leur orientation sexuelle ou identité de genre soit rendue publique (*Pink Armenia*, mai 2022).

5 Sources :

CEDAW, 1er novembre 2022 :

« The State party has also experienced the hardening of traditional and patriarchal attitudes that limit the enjoyment by women and girls of their rights, particularly in the case of disadvantaged groups of women, such as internally displaced women, women in a refugee-like situation, rural women, older women, women with disabilities, women belonging to ethnic minorities, and lesbian, bisexual, transgender and intersex women. Nevertheless, it considers that implementation of the Convention, especially at times of conflict, is the most effective means of safeguarding full respect for, and the realization of, women's rights, given that women are a driving force of the country's socioeconomic development. [...]

National human rights institution

19. The Committee notes with appreciation that the Armenian Human Rights Defender has been accredited with "A" status by the Global Alliance of National Human Rights Institutions since 2006, which was reviewed and confirmed in 2021, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It also welcomes the Human Rights Defender's intervention during the constructive dialogue with the State party. However, the Committee is concerned that the Human Rights Defender's mandate does not comprehensively address protection of the rights of lesbian, bisexual, transgender and intersex women. [...]

Lesbian, bisexual, transgender and intersex women

49. The Committee is concerned about reports of discrimination, harassment and hate speech against lesbian, bisexual, transgender and intersex women, and about the absence of legal provisions regulating gender reassignment surgery and gender marker change, as well as the lack of training for medical personnel on the rights of lesbian, bisexual, transgender and intersex women. » Source: UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the seventh periodic report of Armenia, 1er novembre 2022, p.3, 5-6, 15: www.ecoi.net/en/file/local/2081950/N2266621.pdf.

Coalition to Stop Violence Against Women, 11 septembre 2022 :

« LBTI women are still subjected to violence and discrimination in various sphere of life. To our knowledge, no measures have been taken to counter stereotypical attitudes towards women and girls who experience intersecting forms of discrimination on the basis of their ethnicity, age, disability, or sexual orientation and gender identity. Moreover, substantial measures have not been taken to criminalize hate speech and gender-based violence against LBTI women and ensure that victims have access to justice.

In 2020, there were 23 incidents of anti-LGBTI violent hate crimes not reported to the police, 10 gender-based hate crimes, 1 disability hate crime, and 1 racist and xenophobic hate crime. In 2021, there were 35 registered cases of human rights violations against people in the LGBTI community and, of these individuals, only 10 reported violations to the police due to fear of harassment and abuse by the police. There was also one case in which a gay man was told he was unfit to join the military after he disclosed his sexual orientation. Members of the LGBTI community who face societal discrimination based on their gender identity and sexual orientation experience negative impacts on employment, housing, family relations, and access to education and health care.

Amendments to the Criminal Code in 2020 provide for criminal liability for public calls for violence, public justification, or propaganda of violence (Article 226.2). Yet, in 2020, registered cases of violence based on sexual orientation and gender identity did not receive a proper response from the law enforcement agencies: While no case has been filed based on the reports submitted against the LBTI community, criminal cases have been initiated in cases when the target of calls for violence are representatives of political forces.

The new Criminal Code will provide for more inclusive regulation for hate crimes. According to the new wording, crimes committed with hatred, intolerance or hostility based on race, nationality, ethnic or social origin, religion, political or other views, or other social or personal circumstances will result in more severe punishment. While the best option would be to directly envisage sexual orientation and gender identity as a basis for aggravating circumstances, these changes reflect progress that will enable a proper qualification and substantive investigation of crimes based on SOGI in legal practice. »

Source: Coalition to Stop Violence Against Women, Armenia's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women, 11 septembre 2022, p.1-2: www.ecoi.net/en/file/local/2081971/INT_CEDAW_CSS_ARM_50124_E.docx.

ECOM & New Generation, août 2022 :

« 6. Armenia still has not adopted a law that would ban all forms of discriminations, including, discrimination based on SOGIE. There is a draft law “On Ensuring Equality” pending since 2018. The draft law was published on the unified website for publication of legal acts drafts (e-draft.am). However, the law has still not been adopted. Moreover, as previously reported by ECOM, the draft law in itself misses a number of provisions prohibiting discrimination, for instance, it does not include sexual orientation and gender identity as protected grounds. NNGO documented 130 cases of discrimination and violence on the basis of SOGIE in 2020 alone, and 106 cases of SOGI-based discrimination and human rights violations in 2021. PINK Armenia, an LGBT rights group, documented 12 incidents of physical attacks based on sexual orientation or gender identity from January through August 2021, and eight cases of threats and calls for physical and psychological

*violence. In 13 cases, violence and threat of violence were committed by a family member. The majority of victims refuse to proceed with legal action against their abusers as they have been repeatedly subjected to ill-treatment or otherwise abused by the law enforcement itself or have been threatened with ill-treatment by the bodies that should, in essence and as defined by Armenian law, protect them. Human Rights Watch indicates that “fear of discrimination and possible humiliation due to public disclosure of their sexual orientation or gender identity prevent many LGBT people from reporting crimes against them, even when these are clearly motivated by anti- LGBT bias.” Even when reported, investigations into such crimes are often inconclusive or ineffective. There is no proper, explicit law that would ban discrimination based on SOGIE and would define respective hate crimes and aggravating circumstances. LBT women lack preventive legal measures to be safe from SOGIE-based discrimination and, once such discrimination has occurred, they lack the legal provisions that would allow them to protect and defend themselves in accordance with the motive of the perpetrator — which would be hate for the victim based on their SOGIE. Various LGBT+ NGOs, including NGNGO, filed recommendations regarding the said draft law “On Ensuring Equality” with propositions on how to improve it. The Armenian government rejected it, arguing that all legislation of the Republic of Armenia shall proceed with the Constitution of the Republic of Armenia, whereas, **Article 29 thereof: The Prohibition of Discrimination does not provide SOGIE as protected grounds from discrimination. There is no valid reason for such a fundamental law to remain a draft for over four years, since 2018, except for the fact that RA is not intent on actually adopting it and extending proper protection against discrimination for everyone, regardless of their social attributes, including regardless of their SOGIE.***

7. With this in mind, there are no appropriate laws that allow the victims of SOGIE-based discrimination to effectively restore their violated rights. The analysis of the documented cases by NGNGO shows that most LBT people (as victims) do not receive proper legal criminal qualification by the law enforcement agencies: they are often qualified under lighter articles or, most often, as hooliganism, and, in most cases, criminal cases are not launched based on the actual case materials and evidence. The motive — SOGIE-based bias — for committing a hate crime or a hate speech act against an LBT person is not foreseen by any criminal or administrative legislation. There is no legal precedent for the courts to follow as well. Moreover, the high levels of stigma against the LGBT+ community as a whole from the general public and state-sponsored acts of homophobia and transphobia prohibit any law enforcement agencies or judiciary from trying to extend the existing general provisions to somehow include protection for SOGIE grounds. On the contrary, the absence of the necessary protection laws and the high level of stigma invite discrimination perpetrated against the LBT by the very bodies established to protect their human rights. There is no possibility for trans women, to restore their rights that have been violated based on their SOGIE. RA’s criminal legislation has no material and procedural provisions to prevent, investigate, and punish hate crimes, especially SOGIE-based hate crimes. Hate crimes as such are not even stipulated legislatively the way the international community understands them. Hate speech is not commonly defined and regulated by the Armenian law either.

8. Hate speech against the LGBT+ is widespread in Armenia. 2021 was a year full of events for the State Party. NGNGO conducted a monitoring of the Internet and mass media for bias mentioning of LGBT in 2021 where it found the already stereotypical weaponisation of LGBT to discredit any opposition that would argue for progressive change. After the war between

Armenia and Azerbaijan, a number of movements started demanding the resignation of Nikol Pashinyan, Prime Minister of the Republic of Armenia, and it continued until April 2021. **The border issues that arose after the war further inflamed the situation.** The Internet was full of hate speech and videos. Some actors did not miss the opportunity to target LGBT people as well. **Many politicians and public figures, particularly those who supported the previous government, used anti-LGBT rhetoric, often presenting LGBT people as a threat to national security.** [...]

9. **Such hate speech against LGBT+ people goes unpunished in Armenia. LBT people often become the target of hate speech not only by radical nationalist groups but also by public figures and other officials.** All this is presented in the Armenia 2020 Human Rights Report published by the Bureau of Democracy, Human Rights, and Labor of the US Department of State, indicating that “transgender persons were especially vulnerable to physical and psychological abuse and harassment.” **The events taking place in 2021 indicate that anti-LGBT discourses and hate calls escalated particularly during the period of intensification of political processes, i.e. for political purposes. Many political and public figures, especially supporters of the former government, used anti-LGBT rhetoric, often presenting LGBT people as a “threat to national security” in order to turn the population against the current government.** Each time such manifestations of hate condition the boundaries from the point of view of moderate application of the right to freedom of expression, and, in this sense, are defined as “hate speech.” **The absence of a law against hate speech allows public figures and the media to promote hate in the context of freedom of speech. LBT women, and the LGBT+ community as a whole, are weaponised by any political forces whenever they need to discredit their opponents, especially those who are trying to usher in progress and positive change.** [...] » Source: Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (ECOM) & New Generation, Human Rights Violations Based on Sexual Orientation and Gender Identity in the Republic of Armenia; Alternative Report; août 2022, p.4-6: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=/FD43aUhbzqqLOGcCynonHLc0gWQK/TfqeFdAQ77rbKaSS3AuiHiRp6ay6SWmOdtldpPiquxaHnZQXGOn1CM6JQ==

HRW, 12 janvier 2023 :

« **Lesbian, gay, bisexual, and transgender (LGBT) people in Armenia continue to face harassment, discrimination, and violence. The criminal code does not recognize animus due to sexual orientation or gender identity as aggravating criminal circumstances in hate crimes.**

In March a criminal court delivered the first verdict in which violence against a person was committed based on a homophobic motive.

In its May judgement, the European Court of Human Rights found that Armenia violated the prohibition against torture and anti-discrimination in the case of Oganezova v. Armenia. Oganezova was a well-known LGBT activist whose club was attacked and set on fire in 2012. The court also found that Armenian authorities failed to discharge their positive obligation to effectively investigate the arson attack, which was committed with a homophobic motive.

Fear of discrimination and humiliation due to public disclosure of their sexual orientation or gender identity continue to prevent many LGBT people from reporting crimes against them, even when they are clearly motivated by anti-LGBT bias. When reported, investigations into such crimes are often inconclusive or ineffective.

In August, a man used anti-trans slurs while approaching a trans woman standing on a street and slapped her hard with a ring on his finger, causing an injury. A local group with homophobic and transphobic bias handed him a certificate for "carrying out patriotic acts." There was no effective investigation at time of writing.

New Generation and PINK, two LGBT rights groups, documented 27 incidents of physical attacks based on sexual orientation or gender identity through September. Authorities initiated criminal investigation in 12 cases. Armenia lacks comprehensive anti-discrimination legislation. » Source: Human Rights Watch (HRW), World Report 2023 - Armenia, 12 janvier 2023: www.ecoi.net/en/document/2085384.html

ILGA-Europe, 20 février 2023 :

«ACCESS TO GOODS AND SERVICES

In March, the Administrative Court again refused to recognise Pink's 2017 campaign as a social advertisement. Activists in the room protested the judgement by wearing T-shirts saying, "Your biased decision is killing me".

BIAS-MOTIVATED SPEECH

*Following the opening of the first Trans LGBTIQ Community Safe Space in August (see under Security and Social Protection), **trans activist Lilit Martirosyan and RightSide NGO were targeted by hate speech and death threats online.***

BIAS-MOTIVATED VIOLENCE

Hate crimes continued to be a serious issue this year, with several attacks being documented. Several incidents targeted trans people. In August, for instance, a trans woman was physically attacked by a far-right extremist - the perpetrator recorded and live-streamed the assault. Throughout the year, cases of family violence were reported to Pink. On IDA-HOBIT, Pink held a roundtable event to address impunity in hate crime cases and launched a video on the topic. The event brought together state representatives, embassies, civil society, and the Ombudsperson's Office.

In February, the First Instance Court of Ararat and Vayots Dzor regions delivered a landmark judgment, finding the perpetrator in a homophobic hate crime, involving extortion, blackmail, physical, and sexual violence, guilty and sentencing him to seven and a half years in prison. This is the first case in years that ended with a guilty verdict and civil society hopes it will serve as an important precedent.

In May, the European Court of Human Rights delivered its first judgement on LGBTI people's rights in Armenia. In the Oganezova v. Armenia case, the court established the authorities' failure to conduct an effective investigation into a 2012 arson attack without considering the homophobic motive, and secondly, their failure to protect the applicant from the threats and harassment against her in the aftermath.

In October, two young gay men committed suicide after a photo of them kissing went viral and received endless hate messages. The suicide shook the community. A discussion was broadcast on TV afterwards, featuring anti-LGBT statements. Pink has filed an application to the European Court in the case of a trans woman who was brutally assaulted in 2018. In that case, the authorities dropped the charges against the perpetrator, who tried to kill the woman and also set her apartment on fire.

Pink documented 27 cases of physical and sexual violence, and threats of violence and threats towards LGBT people during 2022, ten of which were committed by family members. These included beatings, stabbings, and other serious attacks. The ten recorded cases of domestic violence on grounds of SOGI were of physical, psychological and economic nature. In most cases, the parents learned about the LGBT identity of the victims, and then beat, harassed, threatened, or locked them up. One case was partner violence. Of the 27 cases of violence, seven were lesbian or bisexual women, 11 were gay or bisexual men, and 12 were trans or non-binary.

EQUALITY AND NON-DISCRIMINATION

In January, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on alleged violations of the rights of LGBTI people in the Southern Caucasus, including Armenia. The resolution calls on Armenia to adopt legislation and policies that safeguard against discrimination on the basis of SOGIESC, to sanction hate crimes and hate speech against LGBTI people, to introduce legal gender recognition procedures on the basis of self-determination, to provide comprehensive sex education in schools, and depathologise 'homosexuality'.

Pink documented 44 cases of discrimination based on SOGI this year, of which 16 were reported to law enforcement bodies. Some of these were rejected, and others have not been processed in a meaningful way.

Pink's report on 2021 cases was published in May. The Ombudsman's 2021 annual report was once again weak on violations against LGBTI people, which was strongly criticised by civil society. Civil society hopes that the new Ombudsperson will remedy this gap. Civil society has supported LGBTIQ people who have had to flee Ukraine this year. In October, the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) called on Armenia to tackle discrimination and violence against LGBTI women.

FREEDOM OF ASSEMBLY

The CEDAW called on Armenia to ensure LGBTI women's freedom of assembly.

HUMAN RIGHTS DEFENDERS

In May, the EU Ambassador to Armenia expressed concern about hate speech against LGBT people in Armenia and increased hatred and criticism against human rights defenders.

LEGAL GENDER RECOGNITION

The CEDAW called on Armenia to ensure trans women's access to legal gender recognition.

PARTICIPATION IN PUBLIC, CULTURAL AND POLITICAL LIFE

'Let Me Be Me' was published this year, reflecting on discrimination, stigma, and violence against trans and sex worker communities in the country. The book was launched at a

roundtable event held by RightSide NGO on how to improve the situation of trans people in Armenia.

SEXUAL AND REPRODUCTIVE RIGHTS

RightSide NGO held a series of meetings focusing on “Problems of sex workers living in the Republic of Armenia, sex work and sexual violence”

SOCIAL SECURITY AND SOCIAL PROTECTION

In August, RightSide NGO opened its new office and the first Trans LGBTIQ Community Safe Space, in Yerevan. Pink published a guide for psychologists, social workers, peer counsellors, and other professionals who work with parents of LGBT children. In January, RightSide NGO held an event for parents of LGBTIQ persons. » Source: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), 2023 Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe and Central Asia, 20 février 2023, p.29-30: www.ecoi.net/en/file/local/2087591/annual-review-2023.pdf.

IWPR, 16 novembre 2022 :

*« On the evening of October 20, **two young men jumped to their deaths from a bridge in Armenia’s capital city Yerevan.***

The couple - 16-year-old Arsen and 21-year-old Tigran - had recently posted photos on Instagram with the caption, “Happy end: decisions about sharing the photos and our future actions were made jointly by both of us.”

*Although an investigation into their deaths is ongoing, with few details having yet emerged, **the deaths led to an outpouring of hate speech on social media.** [...]*

Although homosexuality was legalized in Armenia in 2003, widespread prejudice remains. The state is yet to allow same sex marriage or adoption, and there is no dedicated anti-discrimination legislation to protect LGBTI people.

IGLA-Europe’s Rainbow Index ranks Armenia 47 out of 49 countries in Europe and Central Asia for LGBTI rights, and society remains overwhelmingly hostile to same sex relationships

*Some members of Armenia’s LGBTI community said that they were not surprised by the young men’s tragic fate. **Social attitudes to same-sex relationships remained overwhelmingly hostile.***

Armen (not his real name), lives in Yerevan, has a good job in a top IT company and leads an active social life. When it comes to personal matters, however, he prefers to keep silent.

“I am not interested in the opposite sex, have never been interested. When I was younger, I thought I just hadn’t found my other half yet, that’s why I didn’t have the feelings that my classmates were talking about. However, already at the age of 15, I began to recognise...that I have a different sexual orientation.”

Armen was born in a village in the Armavir region, in western Armenia. If his sexual orientation had become public knowledge, he continued, not only he but his entire family and all his relatives would have been disgraced.

“It is especially difficult in the village when you are different,” Armen continued. “Society will not only refuse to accept you in its ranks, but will also destroy you, make you feel like scum. I understood this very well the moment I started talking to my parents about a homosexual couple. To test them, I told them that I heard there was such a couple in the next village. My parents’ reaction was terrible. I realized that they will not even spare me in this matter.”

This deeply-rooted prejudice led Armen to leave the village at the age of 16 for Yerevan. After finishing school and graduating from university, he found work there in a well-known company.

“It is easier in Yerevan,” he explained. “Well, here too, no one welcomes you with open arms when they understand who you really are. However, there are clubs and cafes where I can go and spend time without thinking that someone will harass me at any moment, unfortunately there are not many of them, but I can still endure.”

Armen said that he believed he would leave Armenia eventually to start a life elsewhere. He dreamed of adopting children; something both Armenian society and the legal system prevented him from doing as a gay man.

Mamikon Hovsepyan, communications director of the Pink human rights NGO, said that many young LGBT people followed the same trajectory as Armen.

“From the very beginning, people with a different sexual orientation face the problem of intolerance in the family,” he said. “It is because of discriminatory treatment in the family that young people prefer to run away from home, do not stay in a small community, move to Yerevan, as Yerevan is large in size and they can get ‘lost’ here.”

Armenian culture allowed for little privacy in a person’s private life, Hovsepyan continued.

“When there is a family gathering, the first question an unmarried young man is asked is when will he get married, when will he have a girlfriend? Sometimes they even say that someone they know has a good daughter or son and offer to introduce them, and in this case, no one even thinks about your sexual orientation.”

Activists argue that changing social attitudes was key to preventing future cases where young people felt they had little choice but to take their own lives. » Source: Institute for War and Peace Reporting (IWPR), Armenia: a Young Gay Couple’s Tragic Fate, 16 novembre 2022: <https://iwpr.net/global-voices/armenia-young-gay-couples-tragic-fate>.

Pink Armenia, mai 2022 :

« LGBT people in Armenia are often forced to hide from society, to hide their identity, or to face situations where their normal work and life are hindered by others solely due to their sexual orientation or gender identity. [...]

In 2021, the legal team of Pink Armenia has provided 298 councilings to LGBT people and 61 representation in different judicial instances. **The organization registered 35 cases of human rights violations against LGBT people, combined with discrimination based on their sexual orientation, gender identity, and expression.**

The violations registered were:

- **Cases of physical violence, including manifestations of torture or inhuman or degrading treatment,**
- **Cases of sexual violence,**
- **Cases of illegal dissemination of details and information on personal life, sexual orientation, gender identity, or a threat to do so,**
- **Cases of extortion,**
- **Cases of domestic violence, including cases of physical, psychological, economic violence, and restriction of liberty by family members.**

As a result of the violations, **the rights of victims to be free from torture, inhuman or degrading treatment, respect for private and family life, and freedom from discrimination have been violated.** It should be noted that only those cases of violations have been registered when the offender's motive was conditioned by the victims' sexual orientation or gender identity. The cases when the victim's sexual orientation or gender identity were assumed by the offenders based on the latter's perceptions of the LGBT community were considered as such. **Domestic violence cases account for a large number of the registered cases. In particular, 17 out of 35 registered cases are cases of domestic violence. Family members of LGBT people, learning about their sexual orientation or gender identity, beat them, insulted, cursed, threatened, used violence, and tried to "cure" them.**

It should be noted that although violations against LGBT people occur in different areas, **LGBT people avoid appealing to law enforcement agencies to protect their rights. It is noteworthy that out of 35 registered cases, only 10 victims turned to law enforcement agencies.**

- **They do not trust law enforcement agencies and police officers in particular. They think that their cases are not investigated objectively due to these bodies' biased attitudes,**
- **they do not consider legal protection mechanisms effective and think that the restoration of rights takes a long time, can be delayed for years, and in the end, will not work,**
- **they fear that the information about the crime committed against them, as well as their orientation and identity will be made public by the law enforcement agencies,**
- **they do not feel protected from the offenders. There is such concern in cases of domestic violence, as victims are forced to continue living in the same house with perpetrators; there is no effective preventive mechanism to protect victims of domestic violence.**
- **Victims of domestic violence often avoid reporting against their family members.**

There are also cases when the victims try to restore their violated rights on their own, for example, by coming to an agreement with the offender, so that the violence is not repeated.

*It should be noted that the concerns raised are based on experience: **LGBT people are discriminated against by police officers, and their personal information is disclosed to other officers, as well as to the victims' family members. Victims are ridiculed or treated disrespectfully especially when they turn to law enforcement agencies before getting support from a lawyer. After such treatment, they are in such a state of mind that even in the presence of a lawyer, they do not want to contact those bodies again. [...]***

Complaints on violations combined with discrimination are mostly not processed: Criminal cases are terminated or the investigation of the case is unnecessarily delayed, leading to the victim being disappointed, and in some cases terminating the case by the victim. The aforementioned is backed by the statistics in 2021: only one case was sent to the court with an indictment based on the registered violations.

The cases registered by the organization show that the Republic of Armenia has failed to fulfill its responsibilities to protect LGBT people from discrimination. The rights of LGBT people were violated by both state bodies and individuals, and the violated rights could not be restored due to legislative gaps and the bias of law enforcement agencies.

Violations against LGBT persons included in this report are cases of violation of the right to non-discrimination based on the SOGI, combined with other types of human rights violations. The recording and monitoring of these violations have the same significance, without the supremacy of any specific one. The cases presented in the sections of the report are grouped to point out and highlight some types of human rights violations. Each of the cases has a violation of more than one human rights, although in the report the case may be presented in one of the sections of human rights violations. [...]

In the Republic of Armenia in the case of intentional infliction of physical harm on a person, the mechanisms of responsibility are provided by the RA Criminal Code. It prescribes punishment for crimes of varying degrees of endangerment, and physical acts causing different types of injuries. [...]

Violence and oppression against the victim are often ignored or encouraged by society. Negative public attitudes towards LGBT people are spread in institutions that are obliged to be involved in upbringing, educating people, and shaping opinions. As a result, even these institutions fail not only in educating individuals but also in protecting those that should be under their protection. The problem is more visible in schools, where the victims are minors. Violence against LGBT minors leads to psychological pressure and denial of their identity. At the same time, if minors subjected to violence or harassment on other grounds may receive the support of their teachers or their parents, in the case of LGBT people, the circle or justification of violence may continue shall they refer to these people. This is evidenced by the cases of domestic violence presented below. In addition, minors do not always have access to law enforcement, and when they do, they face legal obstacles, such as involving legal representatives in the investigation. Thus, legal protection mechanisms become inaccessible to minors. [...]

There are many instances when trans people are physically abused outside by strangers who learn about the victims' gender identity either due to their appearance or the location they are at. In this case, it is obvious that the actions of the offenders are not directed against the individuals due to some personal issues but are rather directed against the given community

*because of hatred and intolerance towards them. **Violence against trans people has been documented and reported by NGOs for years. Victims often turned to law enforcement agencies serving in the area. However, the state has not taken any measures to ensure the security and protection of trans people. The reports submitted to law enforcement agencies were either ignored or their investigation was delayed to an extent that the victims withdrew the complaint. There were also cases when the victims have been accused of false allegations and thus accused of a crime.***

In an atmosphere of impunity, crimes against the LGBT people do not discontinue, offenders go unpunished, and LGBT people lose trust in the law enforcement system. We can conclude that the state, on the one hand, fails in its obligation to protect LGBT people, and on the other hand, to create a safe living environment. As a result, LGBT people do not feel safe even in public spaces.

Sex workers, who are double vulnerable not only due to their gender identity but also the nature of their work also become victims of violence. Realizing that transgender people are more vulnerable and unprotected, criminals target them for violence. In this way, they often try to show their privileged position over LGBT people, which once again proves that the action is directed not against the individual, but the community. [...]

Extortion cases are quite common among LGBT people. Such have been recorded in previous years as well. In these cases, the offenders use information about the victim's personal life; they are convinced that the victims would be afraid of the information that could be made public and they won't resort to legal protection mechanisms. The atmosphere of impunity when the law enforcement agencies become the ones who disclose the private information creates more favorable environment for perpetrators to oppress the victims. [...]

The lack of effective legislation prohibiting discrimination by private actors leads to discriminatory offenses when service providers refuse to provide services to LGBT people because of their sexual orientation or gender identity. The prohibition of discrimination under the Constitution is not yet considered an effective mechanism of legal protection, as the courts have repeatedly failed to apply the direct provisions of the Constitution. [...]

In one of the situations described above, the one who disseminated a person's private information was a representative of a government agency, the military commissariat, which means that the state directly violated its obligation to respect human rights.

*In the other cases, the state has failed to create a safe environment for LGBT people when it would not be possible to put pressure on individuals by disseminating or threatening to disseminate information about their private life. In this situation, LGBT people are not only afraid of information about their sexual orientation being disclosed and disseminated, but also do not see any effective means of legal protection to protect themselves from third-party harassment. In other words, **the dissemination of one's personal information by the state creates an atmosphere of impunity and insecurity. Naturally, persons who have been directly harmed by the actions of state bodies cannot view the latter as a mechanism to protect their rights from others. [...]***

In 2017, the RA Law on Prevention of violence within the family, protection of victims of violence within the family, and restoration of peace in the family was adopted in the Republic of Armenia, hereinafter referred to as the Law on Prevention of Domestic Violence. It seemed that after its adoption, LGBT people would be more protected in their families, but, to this day, many individuals contact Pink NGO with complaints of being abused by their families.

In cases of domestic violence, the provisions of domestic law have specific provisions, that is, if the applicant wants the offender to bear the punishment provided by the criminal legislation, then they should report to the police with two separate reports: one as domestic violence complaint and another report as a separate crime. In case of non-submission of a separate crime report, only the restrictions provided for in the Law on Prevention of Domestic Violence shall apply to the perpetrator. Exceptions are cases of domestic violence when the victim is unable to defend his or her rights on his or her own due to his or her helplessness or dependence on the perpetrator. And in cases of public accusation, for example, in cases of illegal deprivation of liberty, the law enforcement agencies are obliged to investigate, regardless of the victim's complaint.

In 2021, 17 cases of domestic violence were registered by the organization. In some cases, if a person suffers from certain mental and physical suffering, which is regular, it can simultaneously violate not only their right to privacy and family life but also their right to be free from inhuman, degrading treatment.

The applicants reported various types of domestic violence: physical, psychological, and economic. These types of violence were mostly combined, such as the physical with the psychological and the psychological with the economic. In some cases, the cause of domestic violence was the disclosure of personal information about the victim by third parties.

In the reported cases, family members forced the victims to “change” their SOGI through various means: they have been kept under a lock at home, deprived of means of communication, going to educational institutions, deprived of financial means, being insulted, pressured psychologically, forced to see a doctor or psychologist for attempting to change their sexual orientation or gender identity. These practices are known as conversion practices or conversion therapy cases. [...]

Violations of the human rights of LGBT people are ongoing, and the state does not take any measures to increase the trust in the law enforcement system. In fact, the law enforcement agencies do not work on the proper registration and documentation of these cases. Crimes due to SOGI are not reflected in any state statistics. First and foremost, this is conditioned by a legislative gap. The RA Criminal Code does not provide for differentiated liability in cases when the motive of the crime has been the victim's SOGI. Therefore, even if a criminal case is initiated in connection with the submitted reports, the act is qualified as a simple crime, and the intention of the offender to harm a person due to certain characteristics is not taken into account. This leads to an inadequate assessment of the danger of the action and its consequences.

At the same time, during the dialogue with the law enforcement agencies in recent years, it turned out that the latter see the solution to this problem in the conditions set under the current Criminal Code, that is, the qualification of the act under Article 143 of the Criminal Code,

which stipulates responsibility for breaching citizens' legal equality. This norm, having gaps in terms of legal certainty, does not in any way limit its applicability by establishing a non-exhaustive list of protected grounds for a differentiated treatment. Despite this circumstance, this **article has never been used**, even when the victim's representative directly motioned to qualify the act within the framework of this article. As a result, **even if the offenders are involved as defendants, they are tried in the framework of a milder article than their action assumes. This can lead to unacceptably mild liability.** In no previous case have the offenders been properly held accountable for their actions. **In some serious cases, when a criminal case was initiated and there was an indictment, amnesty was applied to them. This also testifies to the state's indifference toward the crimes against the LGBT people.**

The next problem is the lack of a policy on collecting data on motives while recording and documenting cases. **The relevant police bodies do not record the motive of the action, and then, it is not reflected in any way in the statistics.** In this regard, the state needs a new policy, in frames of which special recording and documentation standards will be developed. This will allow the state to have complete, comprehensive information on the nature of the violations taking place in the country and the existing problems.

The legislation is flawed not only in terms of criminal acts but also in terms of understanding the concept of discrimination and applying liability in practice. If in the case of criminal cases the victims have a distrust of the law enforcement agencies and the existing legislation, then the problem in the civil and administrative courts is conditioned by the courts' misunderstanding of the notion of discrimination and by not directly applying the Constitutional norms. The examination of the case in the administrative court takes so long that the restoration of the violated right, if any, is no longer relevant for the victim. When dealing with discrimination cases, civil courts face a legislative gap in terms of the legal capacity to prosecute discrimination by individuals. [...]

Since 2019, the state policy aimed at addressing hate speech has changed significantly in the Republic of Armenia. Back in 2019, on the initiative of the Ministry of Justice, the National Strategy for the Protection of Human Rights, and the resulting action plan 2020-2022 were developed, which included the need for legislation to ban hate speech based on the research of international experience.

Amendments to the Criminal Code in 2020 provide for criminal liability for public calls for violence, public justification, or propaganda of violence (Article 226.2). Yet in 2020, cases on calls for violence registered based on SOGI did not receive a proper response from the law enforcement agencies. No case has been filed based on the reports submitted in this regard, whereas criminal cases have been initiated in cases when the target of calls for violence are representatives of political forces, and there is even a verdict on one of them. [...]

In contrast to the positive development with concerning the legal regulations, **in practice, hate speech against LGBT people, as well as speech containing calls for public violence have not been properly assessed by law enforcement agencies and have not been effectively investigated. The police refused to initiate a criminal case on the grounds that the offenders did not call for violence, but rather exercised their right to freedom of expression. This view was defended by the prosecutor's office and the courts.**

The discussion of the above-mentioned material, of course, should be considered taking into account the source of the speech and its public availability. This discourse has been taken up not only by Facebook, which has hundreds of thousands of followers but also by media outlets that have both online access but are also print media. These circumstances make the speech even more dangerous through its wider spread. On the other hand, the context in which the issue is raised must be taken into account. In the post-war period, when the emotional state of the population is tense, any publication about the war, the regions, and the people affected by it can get an emotional or aggressive reaction, and leave an even greater impact than it would have in other conditions. [...]

The media, including social media platforms, have often been used to target various public figures by associating them in some way with the LGBT community and making degrading expressions or spreading defamatory information. [...]

*The victim's SOGI is often the cause of crime in the Armenian reality. **The Criminal Code of the Republic of Armenia does not provide for the definition of hate crime, as well as effective mechanisms for their identification and responsibility. It should be noted that Article 63 of the Criminal Code provides for criminal responsibility and circumstances aggravating the crime and punishment. Point 6 of Part 1 of the Code indicates: "Committing a crime motivated by revenge based on ethnic, racial or religious hatred, religious fanaticism."** The principle of legality laid down in the Criminal Code stipulates that the provisions of the Criminal Code are prohibited by analogy, crimes based on SOGI are not considered in the light of this article and are rather considered as ordinary crimes. [...]*

*After having been discussed for years, **the new Criminal Code, which will improve the scope of legal regulation of hate crimes, has been adopted in 2021.***

The new Criminal Code was adopted by parliament in 2021 but will enter into force in July 2022. The new Code has expanded the list of circumstances aggravating liability and punishment, making it possible to apply it with a non-exhaustive list of grounds in cases of hate crimes.

*In particular, **Article 71 (formerly 63) which defines circumstances aggravating the liability and punishment, has been redrafted. According to the new wording, crimes committed with hatred, intolerance or hostility based on race, nationality, ethnic or social origin, religion, political or other views, or other social or personal circumstances will result in more severe punishment.** Of course, the best option would be to directly envisage sexual orientation and gender identity as a basis for aggravating circumstances, which would ensure the definiteness and predictability of the legislation. However, these changes can be seen as progress that will allow achieving a proper qualification and substantive investigation of crimes based on SOGI in legal practice. [...]*

Summing up the human rights situation of LGBT people in 2021, it should be noted that even though the number of offenses has not decreased compared to previous years, the nature of the state policy has undergone some changes. New legislative changes, in particular, the adoption of the new Criminal Code, as well as the training of law enforcement agencies, namely police officers, investigators, and prosecutors on the investigation, detection and legal qualification of hate crimes, create favorable conditions for the

effective protection of LGBT rights. These changes provide an opportunity to promote the qualification and investigation of violations based on SOGI, which will take into account the biased attitude and motives of offenders. Although sexual orientation and gender identity are not explicitly mentioned as grounds for protection from discrimination, hate crimes, and hate speech, the new non-exhaustive list can be considered a positive shift from the previous limited list of protection grounds.

At the same time, it is clear that violations of the rights of LGBT people still go unpunished and are not addressed as such by law enforcement agencies. The same factors that made an obstacle to the effective operation of legal protection mechanisms in the cases registered in previous years also existed in 2021. The attitude and distrust of the victims towards the law enforcement bodies has not changed as well, which further hinders the situation from the settlement. If this atmosphere of impunity continues, no positive legislative change can be considered effective, and state policy can not be considered human-centered. The effectiveness of the actions taken by the state, and consequently the level of protection of the rights of LGBT people in Armenia, can be assessed only based on an analysis of the developments of the reported cases.

At the same time, it should be noted that the amendment to the Criminal Code of 2020, which criminalized calls for public violence, is not at all effective in law enforcement practice in the context of combating calls for violence and justifying violence in a public speech against LGBT people. On the other hand, law enforcement agencies, including the courts, do not always have sufficient capacity and political will for a broad application of the provisions of the law in cases when such provisions do not contain a literal wording needed and give rise to a discretionary interpretation. In such a situation, it is impossible to unequivocally hope for the effective application of such regulations. At the same time, the indifference of the state authorities to the calls of violence and hate speech promotes the deepening of negative attitudes towards LGBT people and makes differentiated, discriminatory attitudes in different legal relations more likely to happen. »

Source: Pink Armenia, The human rights situation of LGBT people in Armenia during 2021, Annual report, mai 2022, p.10-45: www.pinkarmenia.org/wp-content/uploads/2022/05/lgbtreport2021_en.pdf.

USDOS, 12 avril 2022 :

« There were isolated reports that government agents perpetrated violence against LGBTQI+ individuals. On March 13, conscript H. A. applied to the NGO New Generation for assistance, stating his fellow servicemen began harassing him after learning of his sexual orientation. He was subsequently moved to another military unit, where another conflict arose due to his orientation. He alleged that after learning of his sexual orientation, acting chief of regional military police G. L. insulted him, then loaded his pistol and shot twice at the left and right sides of his feet. G. L. then aimed the loaded pistol at H. A.'s forehead, threatening to kill him, and hit H. A. with the handle of the pistol, fracturing his nose and teeth. Later that day, H. A. was moved to the Stepanakert military police department where G. L. and several other officials allegedly beat him with wooden clubs causing bodily injuries. H. A. was left in a cell for several days. He reported the abuse only after he was moved to another military unit. Authorities opened a criminal case which was ongoing by the end of the year.

Human rights organizations reported an overall increase in the number of societal attacks based on sexual orientation and gender identity during the year. In most cases there was no official action to investigate or punish the perpetrators. The NGO Pink Armenia documented 28 cases of human rights violations from January 2020 to August, including 12 incidents of domestic violence. The victims reported the cases to police in only seven cases, three of which were dismissed. LGBTQI+ individuals were reluctant to report cases to law enforcement due to lack of trust that they would be properly examined and investigated and that the offenders would be punished. In July for example, New Generation reported that a college student from the LGBTQI+ community had been beaten by his classmates. The physical abuse was preceded by repeated insults related to his sexual orientation or gender identity. The victim reported the assault to police, but authorities did not open a criminal case. [...]

Law enforcement bodies declined to prosecute a number of cases in which perpetrators called for violence and attempted to “justify” violence against LGBTQI+ persons on the grounds of their sexual orientation or gender identity.

Antidiscrimination laws do not extend protections to LGBTQI+ persons on the basis of sexual orientation or gender identity. There are no hate crime laws or other criminal judicial mechanisms to aid in the prosecution of crimes against members of the LGBTQI+ community. Societal discrimination based on sexual orientation and gender identity negatively affected all aspects of life, including prospects for employment, housing, family relations, and access to education and health care. Calls for violence against LGBTQI+ individuals escalated after the fighting in fall 2020 and in advance of the June parliamentary elections. Transgender persons were especially vulnerable to physical and psychological abuse and harassment. [...]

Many employers reportedly practiced discrimination, most commonly requiring job applicants to be of a specific gender, age, and appearance. Such discrimination appeared to be widespread, but there were no reliable surveys, and authorities did not take any action to mitigate the problem. While there was little awareness of and no comprehensive reporting to indicate the scale of sexual harassment in the workplace, media reports suggested such abuse was common. Vacancy announcements specifying young and attractive women for various jobs were common. Unemployed workers, particularly women, who were older than 40 had little chance of finding jobs appropriate to their education or skills. LGBTQI+ persons, persons with disabilities, and pregnant women also faced employment discrimination. Religious minorities reportedly also faced discrimination in public employment. »
Source: US Department of State (USDOS), 2021 Country Report on Human Rights Practices: Armenia, 12 avril 2022: www.ecoi.net/en/document/2071159.html.

En tant que principale organisation d'aide aux personnes réfugiées en Suisse et faitière des œuvres d'entraide et des organisations actives dans les domaines de l'exil et de l'asile, l'Organisation suisse d'aide aux réfugiés (OSAR) s'engage pour une Suisse qui accueille les personnes réfugiées, les protège efficacement, respecte leurs droits fondamentaux et humains, favorise leur participation dans la société et les traite avec respect et ouverture. Dans sa fonction, l'OSAR renforce et défend les intérêts et les droits des personnes bénéficiant d'une protection et favorise la compréhension de leurs conditions de vie. Grâce à son expertise avérée, elle marque le discours public et exerce une influence sur les conditions sociales et politiques.

D'autres publications de l'OSAR sont disponibles sur le site www.osar.ch/publications. La newsletter de l'OSAR, qui paraît régulièrement, vous informe des nouvelles publications. Inscription à l'adresse www.osar.ch/newsletter.