

## Current Affairs Committee

CG-CUR(2021)16-02 Prov  
25 January 2021

### **Protecting LGBTI<sup>1</sup> people in the context of rising anti-LGBTI hate speech and discrimination: The role of local and regional authorities**

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#### **Summary**

The report draws attention to the situation of LGBTI people and the increasing contestation of their rights recognition and identity, reminding local and regional authorities that the protection of these rights is essential to strengthen social cohesion and democracy. It outlines different ways in which backsliding on international commitments or adopted legislation in this respect occurs and examines how this negative trend has affected the lives of LGBTI people, paying particular attention to the health and well-being of LGBTI youth. The report also provides good practice examples from cities and regions that have adopted policies and legislation and taken action in defense of LGBTI people's rights.

In a resolution, the Congress reminds local and regional authorities of their role in fighting hatred and discrimination against LGBTI people and the violations of their rights. It calls on them to mainstream LGBTI equality in their policies and to introduce legislation forbidding hate speech and crimes, inviting them to monitor progress of these policies through data collection. The report provides local and regional authorities with concrete policy recommendations to promote the social rights, inclusion, and well-being of LGBTI citizens and to ensure the safety of LGBTI youth at school.

In a recommendation, the Congress invites governments of member states to develop national action plans on anti-discrimination and LGBTI inclusion and to gather data regarding these issues, in addition to implementing the recommendations, resolutions and judgements of Council of Europe bodies.

*Document submitted to the Current Affairs Committee for approval at its remote meeting on 10 February 2021*

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<sup>1</sup> The acronym LGBTI is more and more replaced with the term "Sexual Orientation, Gender Identity and Expression, and Sex Characteristics" (SOGIESC) when referring to issues related to LGBTQI+ people. This being said, for ease of presentation and because it is better known by the public, the Rapporteurs have decided to use the LGBTI acronym in this report, when referring to both the issues and the people concerned.

<sup>2</sup> L: Chamber of Local Authorities/R: Chamber of Regions  
EPP/CCE: European People's Party Group in the Congress  
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats  
ILDG: Independent and Liberal Democrat Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

## PRELIMINARY DRAFT RESOLUTION

1. Issues related to sexual orientation, gender identity, gender expression and sex characteristics and the rights of LGBTI people have figured prominently on Council of Europe's (CoE) agenda during the last decade and positive steps have since been taken in many member States to improve the situation. However, rising conservative and fundamentalist voices in Europe are increasingly politicising gender issues and designating LGBTI people as scapegoats, questioning diversity in general, and LGBTI people's rights and the legitimacy of their identity, in particular.
2. The Recommendation of the Committee of Ministers [CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity, established guidelines and standards in this area for public authorities in member States. The same year, the Parliamentary Assembly of the Council of Europe (PACE) adopted [Resolution 1728](#) and [Recommendation 1915](#), addressing discrimination on the basis of sexual orientation and gender identity and calling on member States to develop policies to improve and secure LGBTI equality. The Commissioner for Human Rights, the European Commission against Racism and Intolerance (ECRI), the Sexual Orientation and Gender Identity Unit of the CoE (SOGI), the Venice Commission and the European Court of Human Rights (ECtHR) have in their respective documents touched upon different aspects of the rights of and equality for LGBTI people.
3. The Congress of Local and Regional Authorities of the Council of Europe ("the Congress") adopted resolutions for local and regional authorities and recommendations for member States in 2007 and in [2015](#), drawing attention to the discrimination and challenges faced by LGBTI people, emphasising that it is the duty of local authorities to protect these rights, and inviting them to take note of good practice examples and strategies with proven success in this area.
4. Human rights and LGBTI issues have also increasingly appeared on local and regional government agendas reflecting the conflictual attitudes in society with regard to LGBTI issues. Both good and bad practice examples have been proliferating in several member States.
5. On the one hand, a significant number of cities and regions have adopted policies and legislation and taken action in defence of LGBTI people's rights and anti-discriminatory practices. On the other, discourses that attempt to de-legitimise LGBTI identities have increased and derogatory language has contributed to an atmosphere that is hostile to both LGBTI people and policy objectives. Attempts at creating a conceptual ambiguity around gender and LGBTI issues through the use of terms such as "propaganda of homosexuality", "gender ideology" or "LGBT ideology" contribute to this development.
6. In light of the above,
  - a) reiterating that neither cultural, traditional nor religious values, nor the rules of a 'dominant culture' can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;
  - b) recognising that the protection of LGBTI persons' human rights and equality are essential to strengthen democratic inclusion throughout Europe and to avoid the creation of divided, polarised societies where the rights and psychological and physical integrity of citizens are violated;
  - c) underlining that multilevel cooperation between public authorities fosters an effective exchange of expertise and is needed to develop the policies and action necessary to withstand backsliding on international obligations and to protect and promote the rights of minority groups;
  - d) recalling that local and regional authorities have substantial powers as political leaders, policy makers and legislators to take the lead in improving the situation of LGBTI people, and that whatever their political backgrounds, mayors and local and regional councilors have a responsibility vis-à-vis all their fellow citizens to establish inclusive societies based not on prejudice and the rejection of others, but on dialogue and concertation;
  - e) noting that a well-coordinated movement that has been referred to as the "anti-gender movement" is attempting to reframe measures taken to promote equality and to protect the rights of women and LGBTI people as "ideological";

- f) noting an increase in hate speech against LGBTI people, notably online, and underlining that hate speech used by elected authorities and government actors is particularly harmful, given their representative functions;
  - g) stressing the serious and lasting effects of social and economic exclusion on LGBTI people and youth in particular, including on their mental health and their access to education and employment;
7. the Congress calls on local and regional authorities of its member States to:
- a) mainstream LGBTI equality and human rights in local and regional public policies and monitor the implementation of existing legislation regarding anti-discrimination, particularly in the fields of education, employment and culture;
  - b) introduce local policy or regional legislation forbidding hate crimes, and implement clear codes of conduct for local administrations as well as for organisations that receive funding from local or regional authorities that forbid hate speech on the basis of sexual orientation, gender identity, gender expression and sex characteristics;
  - c) provide training programmes for civil servants, particularly those who interact with local residents directly, create liaison officers in the local police force to lower the barriers for reporting and collect information on good practices to develop LGBTI inclusive policies, monitoring progress by gathering data on occurrences of hate crimes and by including questions on sexual orientation, gender identity, gender expression and sex characteristics when collecting data;
  - d) promote LGBTI inclusion by involving a diversity of local LGBTI organisations through consultation structures and policy processes, adopting inclusive language in all publications and official documents and encouraging dialogue and awareness raising activities regarding human rights and discrimination against LGBTI people,
  - e) promote the social rights and well-being of LGBTI people by assisting in the creation of safe spaces in the fields of counselling, training, education and mental health support, ensuring adequate protection from violence for public LGBTI events and encourage dialogue with and support sports associations and fan clubs in developing awareness regarding discrimination against LGBTI people in sport;
  - f) ensure the safety and well-being of LGBTI youth at school, as far as it is within their mandate, by providing educational resources and training for educators, by promoting plans to address bullying and cyberbullying at school, and by involving organisations of parents of LGBTI youth;
  - g) consider appointing a “Local Expert on Equality and Diversity” aimed to advise the local government on equality and non-discrimination policies and to establish the dialogue with local stakeholders and civil society at large;
  - h) make use of their national associations as a platform to exchange good practices and as a source of expertise for the implementation of international standards and national legislation as well as the development of local equality policies;
  - i) use the co-operation programmes of the Council of Europe and the Congress as a framework to improve LGBTI people’ human rights through concrete action and the UN Sustainable Development Goals as a framework to identify the different tools they provide to combat discrimination against LGBTI persons.

## PRELIMINARY DRAFT RECOMMENDATION

1. Sexual orientation, gender identity, gender expression and sex characteristics issues and the rights of LGBTI people have figured prominently on Council of Europe's (CoE) agenda during the last decade and positive steps have since been taken in many member States to improve the rights of LGBTI people.

2. However, rising conservative and fundamentalist voices in Europe are increasingly politicising the issue of LGBTI identity and designating LGBTI people as scapegoats, questioning diversity in general, and LGBTI people's human rights and the legitimacy of their identity, in particular. Discourses that attempt to de-legitimise LGBTI identities have increased, in which derogatory language and speech are utilised as weapons to create an atmosphere that is hostile to both LGBTI people and to policy objectives. Attempts at creating a conceptual ambiguity around gender and LGBTI issues through the use of terms such as "propaganda of homosexuality", "gender ideology" or "LGBT ideology" contribute to this development.

3. The Council of Europe Committee of Ministers' [Recommendation CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity established guidelines and standards in this area for public authorities in member States, stipulating that "neither cultural, traditional nor religious values, nor the rules of a 'dominant culture' can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity".

4. The same year, the Parliamentary Assembly of the Council of Europe (PACE) adopted [Resolution 1728](#) and [Recommendation 1915](#), addressing discrimination on the basis of sexual orientation and gender identity and calling on member States to develop policies to improve and secure LGBTI equality. Following on this, four other resolutions of PACE reconfirmed "full support" for continuing advancements in LGBTI persons' human rights and equality, focused specifically on advancing equality for transgender people in Europe, paid specific attention to the rights of intersex people, and drew attention to LGBTI people's rights in their private and family life.

5. The Commissioner for Human Rights, the European Commission against Racism and Intolerance (ECRI), the Sexual Orientation and Gender Identity Unit of the CoE (SOGI), the Venice Commission and the European Court of Human Rights (ECtHR) have in their respective documents touched upon different aspects of the rights of and equality for LGBTI people.

6. The Congress of Local and Regional Authorities of the Council of Europe ("the Congress") adopted resolutions for local authorities and recommendations for member States in 2007 and in [2015](#), drawing attention to the discrimination and challenges faced by LGBTI people, emphasising that it is the duty of local authorities to protect these rights, and inviting them to take note of good practice examples and strategies with proven success in this area.

7. In addition to the commitments made at the level of the Council of Europe, many members of the CoE are also members of the European Union (EU) which protects human rights in its treaties and laws. Article 21 of the Charter of Fundamental Rights of the European Union, which became legally binding in 2009, explicitly prohibits discrimination based on sexual orientation. In 2020, the European Commission developed an "[LGBTIQ Equality Strategy](#)", pledging to "defend the rights of the LGBTI people against those who have now more and more an appetite to attack them from an ideological point of view.

8. Finally, member States have commitments under the United Nations (UN) sustainable development goals (SDGs). The SDGs do not explicitly mention LGBTI people, but these goals are based on the principle of "leaving no one behind", which implies combating the exclusion of minorities in society. In this perspective, LGBTI people, who are often excluded from society based on their real or perceived sexual orientation, gender identity or expression, and sex characteristics are concerned by these goals.

9. There are obligations at all levels of government to uphold these commitments and values. Public authorities must not only fight discrimination and raise awareness among the public and among elected representatives as to their responsibilities in this area; they must also cooperate among themselves to develop the policies and action necessary both to withstand backsliding in international obligations and to protect and promote the rights of minority groups.

10. Resisting backsliding in human rights, and further facilitating LGBTI persons' human rights and equality is essential for strengthening democratic inclusion and accountability throughout Europe. Governments and elected representatives at all levels have a responsibility, as forces of cohesion, to prevent the creation of divided, polarised societies where the rights and psychological and physical integrity of their citizens are violated.

11. In light of the above, the Congress calls on Council of Europe member States to:

- a) develop and implement national action plans to reinforce anti-discriminatory and human rights measures, including LGBTI people, ensuring consultation with local and regional authorities as well as NGOs and other civil society initiatives working for the rights and equality of LGBTI people;
- b) assist local and regional authorities in developing strategies and policies aimed at improving LGBTI people's human rights and equality;
- c) include questions in national data gathering surveys regarding discrimination and hate crimes against LGBTI people;
- d) implement the recommendations, resolutions and judgements of the institutions of the CoE concerning the rights and equality of LGBTI people and consult international organisations for assistance when necessary.

## DRAFT EXPLANATORY MEMORANDUM

### 1. INTRODUCTION

1. Sexual orientation, gender identity, gender expression and sex characteristics related issues and the rights of LGBTI people have figured prominently on Council of Europe's (CoE) human rights and anti-discrimination agendas during the last decade. In many member States positive steps have been taken to improve the rights of LGBTI people. However, the rising conservative and fundamentalist voices in Europe are increasingly using the issue of LGBTI identity, both for politicising it to attack the discussion around gender issues or by designating them as scapegoats in order to re-establish social or moral values that question diversity in general, and LGBTI people's human rights and the legitimacy of their identity, in particular.

2. Council of Europe's Committee of Ministers [Recommendation CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity established already in 2010 the guidelines and standards in this area for public authorities in member States. It stipulates that "neither cultural, traditional nor religious values, nor the rules of a 'dominant culture' can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity".

3. The same year, the Parliamentary Assembly of the Council of Europe (PACE) adopted [Resolution 1728](#) and [Recommendation 1915](#), both of which addressed discrimination on the basis of sexual orientation and gender identity and called on member States to develop policies to improve and secure LGBTI equality. Following on this, four other resolutions of PACE respectively reconfirmed full support for continuing advancements in equality and rights for LGBTI people<sup>3</sup>, focused specifically on advancing equality for transgender people,<sup>4</sup> paid specific attention to the rights of intersex people,<sup>5</sup> and drew attention to LGBTI people's rights in their private and family life.<sup>6</sup>

4. The Commissioner for Human Rights<sup>7</sup>, the European Commission against Racism and Intolerance (ECRI)<sup>8</sup>, the Sexual Orientation and Gender Identity Unit of the CoE (SOGI), the Venice Commission<sup>9</sup> and the European Court of Human Rights (ECtHR)<sup>10</sup> have in their respective work touched upon different aspects of the rights of and equality for LGBTI people.

5. Also in 2020, the European Commission developed an "[LGBTIQ Equality Strategy](#)", pledging to "defend the rights of the LGBTI people against those who have now more and more an appetite to attack them from an ideological point of view."<sup>11</sup>

6. The Congress of Local and Regional Authorities of the Council of Europe ("the Congress") had adopted resolutions for local authorities and recommendations for member States in 2007<sup>12</sup> and in [2015](#), drawing attention to the discrimination and challenges faced by LGBTI people, emphasising that it is the duty of local authorities to protect these rights, inviting them to take note of good practice examples and strategies with proven success in this area.

7. These reports had particularly stressed the fact that, although the link had already been made between the importance of local and regional policies in combatting discrimination and inequalities, authorities at these levels did not always know how to tackle these issues or to guarantee LGBTI people's rights and it was rare for LGBTI matters to be on their political agendas especially in rural areas.

<sup>3</sup> [Recommendation 2021 \(2013\)](#) of the PACE on Tackling discrimination on the grounds of sexual orientation and gender identity

<sup>4</sup> [Resolution 2048 \(2015\)](#) of the PACE on Discrimination against transgender people in Europe

<sup>5</sup> [Resolution 2191 \(2017\)](#) of the PACE on Promoting the human rights of and eliminating discrimination against intersex people

<sup>6</sup> [Resolution 2239\(2018\)](#) of the PACE on Private and family life: achieving equality regardless of sexual orientation

<sup>7</sup> Commissioner for Human Rights, [Thematic webpage on the human rights of LGBTI people](#).

<sup>8</sup> ECRI started examining discrimination and intolerance towards LGBTI persons in its fifth cycle of country monitoring (2012-2018) and towards Intersex persons in its sixth monitoring cycle, which was initiated in 2019. In this connection, see ECRI 5<sup>th</sup> Monitoring Cycle, [Recommendations Pertaining to LGBTI Persons](#)

<sup>9</sup> Venice Commission, 2014, [Opinion on the seven amendments to the constitution of "the Former Yugoslav Republic of Macedonia"](#)

<sup>10</sup> ECtHR, 2020, [Factsheet on gender identity issues](#)

<sup>11</sup> European Commission. [LGBTIQ Equality Strategy 2020-2025](#)

<sup>12</sup> <https://rm.coe.int/freedom-of-assembly-and-expression-for-lesbians-gays-bisexuals-and-tra/168071908c>; <https://rm.coe.int/freedom-of-assembly-and-expression-for-lesbians-gays-bisexuals-and-tra/168071a027>

8. Since then, developments have shown that this is no longer the case. Human rights of and equality for LGBTI people have appeared more and more on local government agendas and, not surprisingly, in a way which reflects the conflictual attitudes in society with regard to LGBTI issues. Both good and bad practice examples have been proliferating in several member States. There have been setbacks in a number of countries, often leading to an increase in violence against LGBTI people. These include official political discourses that are backsliding from positions which had been either supportive or silent on gender equality and LGBTI persons' human rights, to statements that now openly challenge these equality objectives.

9. Discourses that attempt to de-legitimise LGBTI identities have increased, in which derogatory language and speech are utilised as weapons to create an atmosphere that is hostile to both LGBTI people and to policy objectives. Attempts at creating a conceptual ambiguity around gender and LGBTI issues through the use of terms such as "propaganda of homosexuality", "gender ideology" or "LGBT ideology" contribute to this development.

10. A well-coordinated movement that has been referred to as the "anti-gender movement" has attempted to reframe as "ideological" the measures taken to protect the human rights of women and LGBTI people and to ensure equality for all. Actors of this movement engage in public protest against LGBTI events, use hate speech against LGBTI people, and commit acts of violence. The widespread use of social media to disseminate hatred and threats against LGBTI people continue to trigger hate speech, hate crimes and stigmatisation against them.

11. On the other hand, there are also a significant number of cities and regions that have adopted policies and legislation and taken action in defence of LGBTI people's rights and anti-discriminatory practices. These good practice examples provide guidance as to how the security, rights and equality of LGBTI citizens can be protected and promoted.

12. The previous Congress reports had underlined that local and regional authorities have quite substantial powers as political leaders, policy makers and legislators and that they can take the lead when national legislation has not yet been established. This leaves a large space in which local and regional authorities can move and improve the situation for LGBTI people. Whatever their political backgrounds, once elected, mayors, local and regional councillors have a responsibility vis-à-vis all their fellow citizens. They have a responsibility to establish inclusive societies based not on prejudice and the rejection of others but on dialogue and concertation that is the foundation of a democratic society.

13. In the current report, the Rapporteurs have been charged with the task of reassessing the situation with regard to local and regional authorities' role in guaranteeing the rights of LGBTI people in Europe, and how this role can be reinforced both at the level of local and regional councils and through the action of their associations and networks. The report will look at the commitments made by Member States, how recognised rights are being contested, how this negative trend has affected the lives of LGBTI people and which policy measures local and regional authorities as well as national governments and the institutions of the Council of Europe can take to facilitate LGBTI equality and protect LGBTI people's rights.

### **1.1 Commitments made by member States to increase equality for LGBTI people**

14. Member States have generally made commitments to ensure equality for LGBTI people via the treaties they have signed, the resolutions and recommendations adopted by the Committee of Ministers, the PACE and the Congress, the judgments made by the ECtHR as well as the statements, reports and recommendations of the Commissioner for Human Rights and the implementation of relevant recommendations made by ECRI<sup>13</sup>.

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<sup>13</sup> See inter alia ECRI 5th Monitoring Cycle, Recommendations Pertaining to LGBTI Persons.



15. Each State that has chosen to become a member of the CoE is represented in these institutions or has accepted their legitimacy and independence, has adhered to the standards set, and committed to respect the judgments pronounced. Although a recommendation may not be legally binding, they are “based solidly on existing legally binding international and European human rights obligations. Member states therefore have a clear duty to implement its measures”.<sup>14</sup> The 2010 Recommendation of the Committee of Ministers cited above was unanimously adopted and called on member states to sufficiently prosecute hate crimes, combat hate speech, guarantee freedom of association, secure access to public funding for LGBTI NGOs, and secure equal treatment in employment.

16. Many members of the CoE are also members of the European Union (EU) which protects human rights in its treaties and laws. Article 21 of the Charter of Fundamental Rights of the European Union, which became legally binding in 2009, explicitly prohibits discrimination based on sexual orientation<sup>15</sup>. Since 2000, discrimination on the basis of sexual orientation – among others – in the fields of employment and occupation is prohibited<sup>16</sup>. Besides protecting EU citizens from being refused a job or from being fired because of their sexual orientation, this EU law also protects them from being harassed by a colleague due to their sexual orientation.

17. In December 2019, the European Parliament adopted a Resolution on public discrimination and hate speech against LGBTI people. The resolution “strongly condemns any discrimination against LGBTI people and their fundamental rights by public authorities, including hate speech by public authorities and elected officials, in the context of elections”, “condemns the incidents of hate crime and hate speech both offline and online”, and “calls on all Member States to monitor hate speech by public authorities and elected officials, as well as during local, regional and national elections, and to take firm and concrete measures and sanctions against it”<sup>17</sup>. Also as noted above in paragraph 5, the European Commission developed an “LGBTIQ Equality Strategy” in 2020, pledging to “defend the rights of the LGBTI people against those who have now more and more an appetite to attack them from an ideological point of view.”<sup>18</sup> In November 2020, 200 MP’s throughout Europe called on the European Commission by a jointly signed letter to launch the infringement procedure invoking the situation of the rule of law, LGBTI people and women in Poland.<sup>19</sup>

18. Finally, member States have commitments under the United Nations (UN) sustainable development goals (SDGs). The SDGs do not explicitly mention LGBTI people, but these goals are based on the principle of “leaving no one behind”, which implies combating the exclusion of minorities in society. In this perspective, LGBTI people, who risk exclusion from society based on their real or perceived sexual orientation, gender identity or expression, and sex characteristics are concerned by these goals.

19. SDG 10, Reducing Inequalities and SDG 11, Inclusive and Safe Cities, provide the overarching goals for local authorities in particular, who, when developing local policies and practises, should make sure that the needs of and impact on their LGBTI citizens are taken into account. This includes guaranteeing accessible and safe public services for LGBTI people as well as improving data collection and reporting on the situation of the local LGBTI communities.<sup>20</sup>

<sup>14</sup> Karsay, Dodo, 2018, *Protecting LGBTIQ rights in Europe. Submission to the second review of the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5)*. ILGA-Europe, Transgender Europe, OII Europe. Available at: <https://tgeu.org/wp-content/uploads/2018/10/COE-Submission-18-TGEU-IE-OII.pdf>

<sup>15</sup> [Charter of Fundamental Rights of the European Union](#), 2000, p.13

<sup>16</sup> Council of the European Union, 2000, [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation](#)

<sup>17</sup> European Parliament, 2019, [European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones \(2019/2933\(RSP\)\)](#)

<sup>18</sup> European Commission, 2020, [LGBTIQ Equality Strategy 2020-2025](#)

<sup>19</sup> European Parliamentary Forum, 2020, “Over 200 parliamentarians call on European Commission to launch infringement procedure against Poland”. Available at: <https://www.epfweb.org/node/765>

<sup>20</sup> OutRight UN Program, 2018, “Brief explanation why LGBTI persons must be included in the efforts to achieve sustainable development goal 11”. Available at: <https://outrightinternational.org/content/brief-explanation-why-LGBTI-persons-must-be-included-efforts-achieve-sustainable-development>



20. Other SDGs that are of particular relevance at the local and regional level to improving LGBTI persons' human rights include, but are not limited to,<sup>21</sup> SDG 1 to end poverty, SDG 3 good health and well-being, and SDG 4 inclusive and equitable quality education.

21. Discrimination on the labour market can directly lead to increased poverty amongst LGBTI people. Bullying leading to increased drop-out rates from education leave LGBTI people at a higher risk of being unemployed or finding themselves in precarious employment leading to social exclusion.<sup>22</sup> Conversely, the creation of inclusive and accepting education environments can give young LGBTI people a positive start in life. A positive rhetoric can also help challenge harmful social attitudes amongst non-LGBTI students. LGBTI people are also overrepresented amongst the homeless, often as a result of being rejected by their family after "coming out".<sup>23</sup>

22. The Rapporteurs underline that there are obligations at all levels of government to uphold these commitments and values. Public authorities must not only fight discrimination and raise awareness among the public and among elected representatives as to their responsibilities in this area; they must also cooperate among themselves to develop the policies and action necessary both to withstand backsliding in international obligations and to protect and promote the rights of minority groups. Local and regional authorities, because they are the closest to the citizens, have a particularly salient responsibility and role to play in this area.

## **1.2 Trends to move the clock back: Backsliding in accepted norms**

23. The concept of "backsliding" has been used to evaluate the ways in which democracy and democratic institutions may be weakened in relation to democracy generally, as well as in relation to specific (political) minority groups. It can be defined as public authorities going back on previous commitments<sup>24</sup>. Recently, one prominent example of such backsliding has been observed around the ratification of the Istanbul Convention where some member States have declared intentions to withdraw from or refuse to ratify the treaty they had signed.

24. With regard to LGBTI equality policies, the ways in which public authorities attempt to go back on their previous commitments to LGBTI equality norms as defined in the international commitments can be analysed in four areas, namely in the changes to the discourse about gender and LGBTI policy objectives, in the dismantling and reframing of existent policies, in how implementation is undermined, and how accountability and inclusion mechanisms are eroded.<sup>25</sup>

25. Understanding the varied forms of backsliding on LGBTI equality is important for three reasons. Firstly, it negatively affects the quality of life and full political participation of LGBTI people and risks relegating them to second-class citizen status. On the one hand, they are discriminated against, targeted for attacks including physical assault and murder, and are sometimes disowned by their families. On the other hand, from schooling to housing, from healthcare to employment, from the right to assemble to freedom of expression, experiences of discrimination and violence discriminate against and exclude LGBTI people and limit their ability to exercise full citizenship.

26. Secondly, backsliding on LGBTI equality is inconsistent with international agreements made within institutions of the CoE<sup>26</sup> regarding the protection of LGBTI people from discrimination and violence and the promotion of the equality for LGBTI people. Identifying the practices through which the implementation of commitments for securing their equality are being undermined can facilitate better implementation of the commitments made at various institutional levels of the CoE.

27. Thirdly, it may indicate a more general erosion of democratic principles and institutions. When some minority groups are discriminated against, attacked, and excluded from full social and political

<sup>21</sup> Stonewall International, 2016, [The Sustainable Development Goals and LGBTI Inclusion](#)

<sup>22</sup> Council of Europe, 2018, [Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe](#)

As many as 7 in 10 (70%) LGBTI respondents to a survey in Bulgaria reported either missing classes or dropping out of school because of systematic harassment, p.20

<sup>23</sup> UN Habitat, 2015, Habitat III Issues Paper [20 – Housing](#)

<sup>24</sup> Krizsan, Andrea & Roggeband, Conny, 2018, Towards a Conceptual Framework for Struggles over Democracy in Backsliding States: Gender Equality Policy in Central Eastern Europe, *Politics and Governance*, 6(3): 92

<sup>25</sup> *Idem.*, p.93

<sup>26</sup> <https://rm.coe.int/168047f2a6>

participation, the strength of democratic institutions generally is weakened, and democracy is undermined.

28. The Rapporteurs will therefore start by looking at the different forms of backsliding in norms, providing examples of how it occurs in varied national and local contexts. Attention is then paid to how it affects the lives of LGBTI people. The report will close with policy recommendations to combat the current negative trends on LGBTI equality policies at the local and regional level of government.

## 2. BACKSLIDING ON ACCEPTED NORMS: FOUR ASPECTS

### 2.1 Delegitimising LGBTI equality policies in public discourse

29. As noted in the introduction, official political discourses have moved from positions either silent or largely supportive on equality for LGBTI people to statements to openly challenging these equality objectives, often going in opposition to a country's formally adopted and accepted policy positions.

30. "Discursive delegitimation" refers to the way in which language and speech are utilised as weapons to create an atmosphere that is hostile to both LGBTI policy objectives and LGBTI people. It includes anti-LGBTI discourse and hate speech as well as successful and unsuccessful attempts to censor the voices of individuals and organisations that are advocating for equality of LGBTI people. There have been more and more examples of such delegitimising discourses coming from public authorities and political figures at all levels in several member States.

POLAND: Political leaders and politicians affiliated with the ruling coalition reframed gender and LGBTI as an "ideology", thereby delegitimising LGBTI as a minority group. This was a good example of how discrimination against LGBTI people can be obscured behind a veil, while politicians continue to claim that their statements do not apply to LGBTI individuals. President Duda stated: "They try to tell us that [LGBTI] are people, but it is an ideology" and referred to "LGBT ideology" as an "ideology of evil".<sup>27</sup> Jarosław Kaczyński, founder and leader of PiS, stated that "LGBT ideology" is a "threat to Polish identity, to our nation, to its existence and thus to the Polish state".<sup>28</sup>

HUNGARY: The Speaker of the Parliament and former President László Kövér (Fidesz) was reported to have stated (sparking outrage) that "morally there is no difference between the behaviour of a paedophile and the behaviour of someone who demands" same-sex marriage and adoption".<sup>29</sup>

CZECH REPUBLIC: Jiří Ovčáček, spokesman of the Czech president, tweeted "The ideologies of climatism, LGBTI and genderism are totalitarian" and "It destroys humanity. An example is enforcing the designation of parent 1 and parent 2 instead of father and mother".<sup>30</sup>

SERBIA: A similar attempt was made at the local government level in Serbia. The City Council of Čačak adopted a recommendation sent to the Republic Broadcasting Agency about the contents of national TV programs, stating that members of the Assembly of the City of Čačak, had sent a strong protest to the Republic Broadcasting Agency against all program content of national television on paedophilia, homosexuality, which insults the dignity of the Serbian Orthodox Church, other traditional religious communities and negatively affects the formation of values of young generations.<sup>31</sup>

<sup>27</sup> Tilles, Daniel, 2020, Polish president condemns LGBT "ideology of evil" in new speech as EU Commissioner issues criticism, *Notes From Poland*. Available at: <https://notesfrompoland.com/2020/06/15/polish-president-condemns-LGBTI-ideology-of-evil-in-new-speech-as-eu-commissioner-issues-criticism/> [accessed 20 July 2020].

<sup>28</sup> The Independent, 2019, Polish cities and provinces declare "LGBTI-free zones" as government ramps up "hate speech". Available at: <https://www.independent.co.uk/news/world/europe/poland-LGBTI-free-zones-homophobia-hate-speech-law-justice-party-a9013551.html> [accessed 20 July 2020].

<sup>29</sup> ILGA Europe, [Annual Review of LGBTI People in Hungary covering the Period of January to December 2019](#)

<sup>30</sup> Ovčáček, Jiří, 2019, Tweet from 12 August, *Twitter*.

<sup>31</sup> Complaint against the Assembly of the City of Čačak for discrimination on the grounds of sexual orientation in the field of public information, [No. 07-00-566/2013-02 of 20/12/2013](#), 2013

### 2.1.1 Anti-LGBTI hate speech, cyberbullying and new technologies

31. An element that supports these effort to delegitimise LGBTI people's identities and rights is hate speech; it is part of the arsenal of those who reject human diversity in all its manifestations, taking form as prejudicial attacks against different categories of people on the grounds of ethnicity, sex, age and disability, and on a more general level, as rejection of those who are considered "other" in a society. It is defined in CoE documents as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"<sup>32</sup>.

32. ECRI's [General Policy Recommendation \(GPR\) No 15](#) on Combatting Hate Speech, adopted in December 2015, includes sexual orientation and gender identity as prohibited grounds of hate speech and thus provides a clear standard against hate speech targeting LGBTI people. It provides that member States should raise public awareness of the dangers of hate speech by also demonstrating both the falsity of the foundations on which it is based and its unacceptability; to provide support for those targeted both individually and collectively by counselling and guidance; to encourage and facilitate the reporting of hate speech; and to provide support for self-regulation by public and private institutions to combat hate speech.<sup>33</sup>

33. Further, as reflected in ECRI's country specific recommendations on LGBTI issues<sup>34</sup>, the relevant authorities in Council of Europe member States should align all the necessary legislation in order to send a clear message that intolerance against LGBTI persons is not acceptable in order to enshrine in law the equality and dignity of LGBTI persons in all areas of life<sup>35</sup>. ECRI's recommendations concern many different policy areas, including such for which local and regional authorities are often responsible for, such as health care and education.

34. In its decisions on the cases of *Beizaras And Levickas v. Lithuania* (2020) and *Lilliendahl v. Iceland* (2018), the ECtHR took a stand against hurtful and hateful online comments directed at LGBTI persons<sup>36</sup>. In 2020, the Court found that the "hate comments had been inspired by a bigoted attitude towards the homosexual community in general and that the same discriminatory state of mind had been at the core of the authorities' failure to comply with their duty to investigate in an effective manner".<sup>37</sup>

35. Despite efforts to combat hate speech, it remains a problem throughout Europe. In a report published this year, ILGA-Europe identified "growing official hate speech from political and religious leaders in countries including Albania, Andorra, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Cyprus, the Czech Republic, Finland, Georgia, Greece, Hungary, Kosovo, Poland, Portugal, Slovakia, Spain, and Turkey"<sup>38</sup>. The Commissioner for Human Rights has made recommendations on tackling hate speech against LGBTI people in three recent reports following visits in Armenia<sup>39</sup>, Bulgaria<sup>40</sup> and Moldova<sup>41</sup> and her Memorandum on the stigmatisation of LGBTI people in Poland<sup>42</sup>. The increasing prevalence of hate speech appears to be a trend across European countries that is neither limited to one region nor a small cluster of countries. In many of the examples of hate speech used against LGBTI people throughout Europe, violence against LGBTI people is (tacitly) condoned.

<sup>32</sup> Council of Europe's Committee of Ministers', 1997, [Recommendation No. R\(97\)20 on "Hate Speech"](#)

<sup>33</sup> Council of Europe's European Commission against Racism and Intolerance (ECRI), 2015, [General Policy Recommendation No.15 on Combatting Hate Speech](#)

<sup>34</sup> Council of Europe's Commission against Racism and Intolerance (ECRI), [Compilation of ECRI Country Reports Recommendations Pertaining to LGBTI persons \(fifth monitoring cycle\)](#)

<sup>35</sup> *Ibidem*.

<sup>36</sup> European Court of Human Rights Judgment, 2018, [Case of Lilliendahl v. Iceland](#)

<sup>37</sup> European Court of Human Rights Judgment, 2020, [Case of Beizaras And Levickas v. Lithuania](#)

<sup>38</sup> ILGA Europe, 2020, [Annual Review of the Human Rights Situation of LGBTI People in Europe and Central Asia](#)

<sup>39</sup> <https://www.coe.int/en/web/commissioner/-/report-on-armenia-recommends-measures-to-improve-women-s-rights-protection-of-disadvantaged-or-vulnerable-groups-and-establishing-accountability-for-p>

<sup>40</sup> <https://www.coe.int/en/web/commissioner/-/stronger-commitment-needed-to-combat-racism-fight-gender-stereotypes-and-increase-media-freedom-in-bulgaria>

<sup>41</sup> <https://www.coe.int/en/web/commissioner/-/the-republic-of-moldova-should-ratify-the-istanbul-convention-improve-its-response-to-hate-speech-and-advance-access-to-quality-healthcare-affordable->

<sup>42</sup> [Poland should stop the stigmatisation of LGBTI people - View \(coe.int\)](#)

ESTONIA: Mart Helme, chairman of the Conservative People's Party of Estonia (EKRE), made the following comments to *Uued Uudised* regarding the pride march in Tallinn in an article entitled "Securing pervert parades is not the role of the police". "In the municipalities we run, gays would certainly not be allowed to march or parade, as their behaviour is provocative and repulsive to the majority of the Estonian population. Such demonstrations can lead to minor and more serious breaches of public order. The police are already overworked. Why should they secure some kind of pervert parade?" he said.<sup>43</sup>

BULGARIA: In the city of Plovdiv, one of the European Capitals of Culture in 2019, has been implicated in an anti-LGBTI scandal as local officials try to dismiss the head of the organising committee of a photo exhibition on LGBTI themes. Alexander Sidi, who belongs to the nationalist party, said: "We don't want them to do it. And we will stop them, using all legal - and, if required, illegal means." Borislav Inchev, who belongs to the same party also said: "I am very curious what would happen if a teacher made a mistake and sent her students to see the exhibition. What would they see? How would she explain it?"<sup>44</sup>

HUNGARY: In 2017, László Toroczkai, mayor of a small municipality with about 4,000 inhabitants in Hungary, said that Muslims and homosexuals were not welcome, despite the need to fill houses in the area. When asked about recent laws he had put forward that discriminate against gay people, Mr Toroczkai said this was also part of the village's drive to "defend" traditions, saying: "We're defending our own traditions. Our city has a by-law that bans homosexual propaganda. We adopted it a few weeks ago."<sup>45</sup>

RUSSIAN FEDERATION: In 2017, Sergey Davydov, mayor of Svetagorsk, declared "This city does not have and will never have any gays. They won't be allowed to come here, even from the West!"<sup>46</sup> Several news articles indicated that two LGBTI activists were physically prevented from entering the city.

BOSNIA HERZEGOVINA: In 2019 in response to the announcement that a pride parade would take place in Sarajevo, MP for Canton Sarajevo, Samra Čosović-Hajdarević of the Party of Democratic Action (SDA) wrote on her Facebook page in reference to LGBTI people "I want such people to be isolated and removed as far from our children and community. Let them go elsewhere and let them make a city, a state, laws and rights for themselves that nobody would dispute. But not here".<sup>47</sup>

36. Hate speech from public officials and elected politicians sets a dangerous precedent. When people with exemplary roles can make such statements without repercussions, it sends a message to other societal actors that they too can engage in hate speech with practical immunity.

37. A growing number of religious leaders have been increasingly vocal in their opposition to LGBTI equality. In Cyprus, the Bishop of Morfou stated that gay men "give off a certain odour" that religious leaders can detect. In 2019, the Archbishop of Krakow (Poland) warned of a "rainbow plague" and of people who "want to control our souls, our hearts and minds"<sup>48</sup>. Religious leaders also increasingly exert pressure to hinder progress or even harm LGBTI persons' human rights. During the fact-finding mission of the Current Affairs Committee, the role the Church in Poland plays was emphasised, noting that it actively played a role in gathering signatures for a citizen's bill banning the organisation of Pride

<sup>43</sup> Helme, Mart, 2017, "Securing pervert parades is not the role of the police", *Uued Uudised*. Available at: <https://uueduudised.ee/uudis/eesti/mart-helme-pervertide-paraadide-turvamine-ei-ole-politsei-rida/>

The EKRE participates in the ruling Ratas II Cabinet in Estonia

<sup>44</sup> The Guardian, 2019, Homophobia scandal hits Plovdiv, Bulgaria's European capital of culture. Available at: <https://www.theguardian.com/world/2019/apr/07/homophobia-scandal-hits-plovdiv-bulgaria-european-capital-of-culture> [accessed ...]

<sup>45</sup> The Independent, 2017, Hungarian mayor seeks to ban Muslims and gay people from his village. Available at: <https://www.independent.co.uk/news/world/europe/muslims-gay-people-not-welcome-hungary-mayor-asotthalom-laszlo-toroczkai-lgbti-rights-islamophobia-a7566916.html> [accessed ...]

<sup>46</sup> The Moscow Times, 2017, A City Without Gays. Available at: <https://www.themoscowtimes.com/2017/03/24/a-city-without-gays-a57529> [accessed ...]

<sup>47</sup> Dragojlovic, Mladen, 2019, LGBTI population in BiH exposed to insults and hate speech, *Independent Balkan News Agency*. Available at: <https://balkan.eu.com/LGBTI-population-in-bih-exposed-to-insults-and-hate-speech/> [accessed ...]

<sup>48</sup> Chadwich, Lauren, 2019, Archbishop warns of 'rainbow plague' amid LGBTI tensions in Poland. Available at: <https://www.euronews.com/2019/08/02/archbishop-warns-of-rainbow-plague-amid-lgbti-tensions-in-poland> [accessed ...]



marches, the use of religious symbols in a manner that might be offensive and the 'promotion' of sexual orientations other than heterosexuality. The bill entitled "Stop LGBTI"<sup>49</sup> was tabled in the Sejm in early November 2020. The Italian bishops conference, which is influential in domestic politics, has actively opposed a proposed bill that would make anti-LGBTI violence a hate crime, arguing that the measure could criminalize expression of the church's belief that marriage should be between a woman and a man, if it were interpreted as incitement to discrimination<sup>50</sup>.

38. The past decade has seen the proliferation of radical extreme-right groupings expressing anti-LGBTI sentiments. Worryingly, these are often organised by and geared towards young people. Groups such as *Schild en Vrienden* (Belgium), *Génération Identitaire* (France), *Identitäre Bewegung Österreich* (Austria), *Generation Identity* United Kingdom and Ireland, *Generazione Identitaria* (Italy) and others claim to defend tradition and oppose increased rights for minorities ranging from LGBTI people, migrants and refugees and for women. While often arguing that they only exercise their right to freedom of speech, these groups often use violent language, referring to themselves as militants and calling on other youth not to be 'spectators', but to be involved in the 'reconquest' of Europe and going as far as to publish 'declarations of war'<sup>51</sup>.

39. It must be noted that these groups do not exist in isolation. Through social media and applications, they interact with each other and fuel each other's rhetoric, organising themselves in an identity movement at European level<sup>52</sup>. Many of them share the same logo (Lambda). It is not just words, rhetoric and ideas that spread through these international networks, but financial means too. In 2020, an "openDemocracy" research revealed that the Billy Graham Evangelistic Association (BGEA) spent more than \$23 million in Europe between 2007 and 2014, including in court cases defending religious freedom<sup>53</sup>. In a later deleted opinion piece, the BGEA president claimed that the "architect behind this offensive (for same sex marriage) is none other than Satan himself<sup>54</sup>". The mayor of Liverpool (United Kingdom) prevented the BGEA from speaking in his city because of their opposition to LGBTI persons' human rights<sup>55</sup>.

40. The rise of hate speech against LGBTI people cannot be seen separately from a general questioning of democratic principles across Europe. According to ILGA Europe "Those groups [that are opposing LGBTI equality] tend to be more active where there is overall insecurity and anxiety in the population, where the overall political discourse, not just on LGBTI persons' human rights, is a bit more toxic, where populist parties are very active"<sup>56</sup>. It is also linked to a growing movement that opposes progress with regards to women's rights, fighting against what they call "gender ideology".

41. With the development of new technologies, it became evident that this new form of online harassment, which mainly affects young people, can be just as violent as "physical" harassment and should in no way be underestimated. Usually, it manifests itself through offensive insults, the spreading of false rumours that go as far as humiliation on the social networks, or the sending of physical threats. With the development of smartphones, tablets and computers, bullying becomes difficult to stop (as perpetrators can hide their identities) and follow the victims everywhere whether at school, at home, or even on vacation.

- Youth and cyberbullying

42. With lockdown measures taken during the COVID-19 Pandemic across Europe, children and young people have been more engaged with online platforms. Although exploring new online content

<sup>49</sup> According to [the Polish Constitution](#), in order to submit a citizens' bill, the signatures of 100 000 citizens who have the right to elect to the Sejm must be collected. More than twice as many signatures were collected under the 'Stop LGBTI' project. <https://notesfrompoland.com/2020/11/10/bill-banning-LGBTI-parades-submitted-to-polish-parliament/>

<sup>50</sup> Bubola, Emma, 2020, Bill Offering L.G.B.T. Protection in Italy Spurs Rallies on Both Sides, *The New York Times*. Available at: <https://www.nytimes.com/2020/10/17/world/europe/italy-LGBTI-hate-crimes.html> [accessed ...]

<sup>51</sup> A Declaration of War From The Generation of National Identity, 2012. Available at: [https://www.youtube.com/watch?v=XA5S5Qrg6CU&feature=emb\\_logo](https://www.youtube.com/watch?v=XA5S5Qrg6CU&feature=emb_logo) [accessed ...]

<sup>52</sup> Identitäre Bewegung Deutschland, Zukunft für Europa - Identitäre Bewegung, 2016. Available at: <https://www.youtube.com/watch?v=rPXl6tA31yI> [accessed ...]

<sup>53</sup> Archer, Nandini & Provost, Claire, 2020, US Christian anti-LGBTI 'hate group' spent more than \$20m in Europe. Available at: <https://www.opendemocracy.net/en/5050/us-christian-anti-LGBTI-20m-europe/>

<sup>54</sup> Obeidallah, Dean, 2019, The man who Trump praised as Pride Month began. Available at: <https://edition.cnn.com/2019/06/02/opinions/donald-trump-franklin-graham-anti-LGBTI-obeidallah/index.html> [accessed ...]

<sup>55</sup> Anderson, Joe, Mayor of Liverpool 2020, Tweet from 26 January, Twitter

<sup>56</sup> Savage, Rachel, 2020, Rising populism stokes homophobic hate speech across Europe – rights group. Available at: <https://www.reuters.com/article/us-europe-LGBTI-rights-trfn-idUSKBN1ZY0X3> [accessed ...]

has expanded areas of learning, it has also increased cyberbullying among youth. For example, the Irish National Anti-Bullying Centre findings show that there was a 20 per cent increase in “cyberbullying victimisation” during the lockdown, with almost a third of the children being the target of cyberbullying<sup>57</sup>. All these aspects can have serious consequences for LGBTI people and increases risk of depression and suicide especially for vulnerable young people.

43. Anti-LGBTI hate speech can decrease LGBTI people’s feelings of safety and may contribute to support for reversing advancements in their human rights and equality. When frequently exposed to hateful online commentaries, the public becomes increasingly desensitised to them, and ultimately the contents of these commentaries come to shape their perception of LGBTI people as out-group members.<sup>58</sup>

44. In May 2020, the Council of Europe published a study on “Models of Governance of Online Hate Speech”. By identifying three main levels of governance for online hate speech (the level of moderation, the level of control and the regulatory level), this study helps to provide useful tools for all actors in society, including local authorities, to limit the dissemination of online hate speech in order to protect individuals.<sup>59</sup>

45. The Rapporteurs have noted that hate speech increasingly takes place online in the form of cyberbullying, which is doubly harmful as it is targeted against specific individuals as well as the larger LGBTI communities. This is a new type of harassment, which uses information and communication technologies, the Internet (email, messaging, chats, the web, games...) and mobile phones to bully classmates<sup>60</sup>. The results of a study confirmed that “the percentage of victims and cyber-victims was significantly higher in non-heterosexual adolescents, compared to the percentage of heterosexual victims and cyber-victims”<sup>61</sup>.

### *2.1.2 Hate speech and hate crimes: the legal framework, policy recommendations and political leadership*

46. To date, not all CoE member states have legislation against hate speech that specifically forbids hate speech against LGBTI people. For example, hate speech against LGBTI people is not prohibited by law in Poland, Bulgaria and Armenia and authorities have taken no steps to curb it<sup>62</sup>. In North Macedonia the legal provisions on hate speech do not include sexual orientation, gender identity and expression, and sex characteristics, despite two recent law reforms in 2014 and 2018 and the tangible increase of hate speech. ECRI in its most recent report on Poland recommended that gender identity and sexual orientation be explicitly added to the prohibited grounds listed in Articles 256 and 257 of the Polish Criminal Code, which prohibit incitement to hatred<sup>63</sup>. In ECRI’s fifth report on Bulgaria, ECRI recommended that the provisions of the Radio and TV act related to hate speech be amended to include the grounds of sexual orientation<sup>64</sup>. In its fifth report on Armenia, ECRI recommended that the Armenian authorities make a public declaration condemning anti-LGBTI hate speech and violence<sup>65</sup>.

47. In some countries in which legislation against hate speech specifically forbids hate speech directed toward LGBTI people, the law is not or is insufficiently enforced. In Serbia the law is in place, but hate speech is common by MPs, church leaders, public officials, the media, and on social media alike, especially around Pride marches. The situation is similar in Lithuania, Cyprus, Portugal, Bosnia and Herzegovina, and Croatia.<sup>66</sup>

<sup>57</sup> Mazzone, Angela, Dr., 2020, Increase in bullying of children online during pandemic. Available at: <https://www.rte.ie/news/education/2020/1105/1176138-children-bullying/> [accessed ...]

<sup>58</sup> Soral, Wiktor & Bilewicz, Michał & Winiewski, Mikołaj, 2018, Exposure to Hate Speech Increases Prejudice Through Desensitization, *Aggressive Behavior*, 44: 136-146

<sup>59</sup> Council of Europe, 2020, [Models of Governance of Online Hate Speech](#)

<sup>60</sup> Garaigordobil, Maite & Larrain, Enara, 2020, Bullying and cyberbullying in LGBTI adolescents: Prevalence and effects on mental health, *Comunicar*, 62(XXVIII): 78

<sup>61</sup> *Idem.*, p.84

<sup>62</sup> ECRI 5<sup>th</sup> Monitoring Cycle, Recommendations Pertaining to LGBTI Persons, pp.12-13

<sup>63</sup> ECRI 5<sup>th</sup> Monitoring Cycle Report on Poland, paragraph 28,

<sup>64</sup> ECRI 5<sup>th</sup> Monitoring Cycle Report on Bulgaria, paragraph 43

<sup>65</sup> ECRI 5<sup>th</sup> Monitoring Cycle Report on Armenia, paragraph 55

<sup>66</sup> ECRI 5<sup>th</sup> Monitoring Cycle, [Recommendations Pertaining to LGBTI Persons](#), p. 13  
Karsay, 2018, *op.cit.*, p.31

48. Some member States have failed to legislate or adopt policy measures in respect the international commitments about protection from hate crimes on the basis of “sexual orientation, gender identity or expression and sex characteristics”. For example, in Poland and Croatia, there are no government issued guidelines for dealing with hate crimes against LGBTI people and in Belgium, Latvia and Italy there are no specialised liaison officers that victims could turn to.<sup>67</sup> Some member States that have legislation forbidding hate crimes on the basis of these grounds do not effectively monitor hate crimes. There is no official data gathered by the state in Armenia, Bosnia and Herzegovina, Luxembourg, Lithuania, Montenegro, North Macedonia, Serbia, and Portugal”.<sup>68</sup>

49. In some countries where hate crime legislation that includes protection based on the above cited grounds has been adopted, the implementation of the legislation is lacking. For instance, there has been a wave of recent violence and hate crimes against LGBTI people in Ukraine. Regarding such instances, Human Rights Watch found that “Law enforcement authorities have rarely opened investigations. In the cases in which they did, there is no indication that authorities took effective investigative measures to identify the attackers, even in cases in which the assailants publicly claimed responsibility on social media”.<sup>69</sup> When the reporting of hate crimes is potentially met with hostility and discrimination and is not adequately investigated or prosecuted, victims of hate crimes are discouraged from reporting<sup>70</sup>. That creates a vicious cycle which facilitates underreporting. Government actors may use the low official rates of hate crimes that result from low reporting as a reason to further deprioritize combatting hate crimes.

50. Censorship is part of this dangerous territory, when hate speech is coupled with government attempts to silence LGBTI voices. Hateful statements made about and directed toward LGBTI people can be coupled with efforts to censor individuals and organisations working to advance equality. In many countries, this has taken the form of attacks on their freedom of association and expression. For instance, the Supreme Council of Radio and Television (RTÜK), an organ of the Turkish state, suspended the airing of a television show, 9-1-1 from FoxLife, for three broadcasts, because an episode showed an elderly gay couple as “normal”.<sup>71</sup> The RTÜK suspended the same show again for five broadcasts because another episode contained a brief scene of two women kissing.

51. The Rapporteurs underline that hate speech goes beyond being a problem and we enter dangerous territory when it is used by government actors and other elected authorities, given their representative function. Hate speech used by politicians is a larger problem when it is committed by politicians from ruling parties, as those politicians are in a position to use their political power to move from speech to action<sup>72</sup>.

## 2.2 Policy Dismantling and Reframing

52. The second form of backsliding examined here is the dismantling and reframing of existent policies. Researchers have noted that this form of backsliding can “take place at the level of the institutional design of a policy regime. Institutional design may include mechanisms such as coordinating authorities, intergovernmental and other partnerships, networks of private and public entities, and contractual relationships. Policies can be abandoned by not continuing their ongoing programmatic processes or made impossible by defunding”.<sup>73</sup> Policies can also be dismantled in more explicit ways through discriminatory legal changes that occur through administrative policy change and legislative change.

53. So-called “anti-propaganda legislation” has been introduced by several local and national governments in Europe. Currently, two member States, Lithuania and the Russian Federation, outlaw

<sup>67</sup> ECRI 5<sup>th</sup> Monitoring Cycle, [Recommendations Pertaining to LGBTI Persons](#), pp. 17-18  
Karsay, 2018, *op.cit.*, p.23

<sup>68</sup> *Idem.*, p.27

<sup>69</sup> Human Rights Watch, 2018, Ukraine: Investigate, Punish Hate Crimes. Violent Attacks by Radical Groups Increasing. Available at: <https://www.hrw.org/news/2018/06/14/ukraine-investigate-punish-hate-crimes> [accessed ...]

<sup>70</sup> See also ECRI 5<sup>th</sup> Monitoring Cycle, [Recommendations Pertaining to LGBTI Persons](#), pp. 17-18

<sup>71</sup> Kaos GL, 2019, Turkish Council of Television fined Ryan Murphy's 9-1-1. Available at: <https://kaosgl.org/en/single-news/turkish-council-of-television-fined-ryan-murphys-9-1-1> [accessed ...]

<sup>72</sup> See also ECRI 5<sup>th</sup> Monitoring Cycle, [Recommendations Pertaining to LGBTI Persons](#), pp. 10-11

<sup>73</sup> Krizsan & Roggeband, *op.cit.*, 2018., p.93



the discussion of sexual orientation or gender identity in objective or positive terms, either in public or in the presence of minors.

54. In 2010, Lithuania amended its Law on the Protection of Minors against the Detrimental Effect of Public Information to outlaw sharing or discussing information that would “promote” (speak objectively or positively about) sexual relations or other concepts of family other than heterosexual relations. This anti-propaganda legislation has been used to limit the right to freedom of expression of LGBTI persons, which was upheld by several [Lithuanian] court decisions. This has caused a chilling effect among online media outlets, who have started branding LGBTI news items as suitable only for adults”.<sup>74</sup>

55. In 2013, the Russian Federation had amended its federal Law on the Protection of Children from Information Liable to be Injurious to their Health and Development to prohibit any discussion of LGBTI issues (referred to as “non-traditional sexual values” and “non-traditional sexual relations”) in the presence of minors. Since the passing of this so-called “homosexual propaganda” law, it is reported that has become more dangerous to organise LGBTI-themed events in public, as activists can be caught and fined for public displays of anything LGBTI. Even when activists do organise events, they are often sabotaged by local authorities”.<sup>75</sup> Addressing issues related to sexual orientation, gender identity or expression and sex characteristics in educational settings has become an issue<sup>76</sup>. In its 2017 judgment for the case *Bayev and Others v. Russia*<sup>77</sup>, the ECtHR held that legislation banning the promotion of homosexuality or non-traditional sexual relations among minors (so-called ‘homosexual propaganda’) amounted to a violation of Article 10, and Article 14 taken in conjunction with Article 10 of the ECHR.

56. This kind of legislation limits both advocacy and access to a resource that is crucial for the LGBTI communities, which is information. The lack of information has affected LGBTI youth the most, as they cannot legally seek out or be exposed to any information that is related to LGBTI topics.<sup>78</sup> Among other consequences, this law led to the closure of the website Children 404, which was hitherto a public source of counselling and support for LGBTI children in Russia. It also contributes to legitimising discrimination and violence against LGBTI people in public and creates a discriminatory and unsafe educational setting for LGBTI children and young people – violating these children’s right to quality education. ILGA-Europe found that “Despite continued criticism, such as by ECRI, the anti-propaganda law continued to be implemented”.<sup>79</sup> Indeed, one example of the law’s recent implementation is the fining in July 2020 of Yulia Tsvetkova for posting drawings online that portrayed homosexuality in a positive light.<sup>80</sup>

57. Some CoE member states have explicitly dismantled policies facilitating LGBTI equality and human rights through administrative policy change and legislative change. Those changes have occurred in the diverse areas of health, schooling, and legal gender recognition (LGR), among others. Such changes are clear cases of backsliding in relation to international commitments made by CoE member states to equal treatment, freedom of expression, rights to private and family life, and LGBTI persons’ human rights and equality.

SERBIA: In August of 2019 the Serbian Ministry of Health imposed a ban on artificial insemination and IVF, for anyone who has a ‘history of homosexual relations during the last five years’.<sup>81</sup> Members of same-sex couples are thereby prevented from donating biological material for in vitro fertilization or artificial insemination to each other, to other same-sex couples, and to heterosexual couples. It was

<sup>74</sup> Karsay, *op.cit.*, p.44

See also ECRI (2016), ECRI Report on Lithuania, 5<sup>th</sup> monitoring cycle, pp. 14-17; 29-30. Available at: <https://rm.coe.int/fifth-report-on-lithuania/16808b587b>

<sup>75</sup> Pakhnyuk, Lucy, 2019, Foreign Agents and Gay Propaganda: Russian LGBTI Rights Activism Under Pressure, *Demokratizatsiya: The Journal of Post-Soviet Democratization*, 27(4): 490

<sup>76</sup> See also ECRI (2019), ECRI Report on the Russian Federation, 5<sup>th</sup> monitoring cycle, pp. 35-36. Available at: <https://rm.coe.int/fifth-report-on-the-russian-federation/1680934a91>

<sup>77</sup> European Court of Human Rights, 2017, Judgment, *Bayev and Others v. Russia*

<sup>78</sup> Pakhnyuk, *op cit.*, p.491

<sup>79</sup> ILGA Europe, [Annual Review of the Human Rights Situation of LGBTI People in Russia covering the Period of January to December 2019](#)

<sup>80</sup> Vasilyeva, Maria, 2020, Russian LGBTI activist fined for “gay propaganda” family drawing. Available at: <https://www.reuters.com/article/us-russia-activist-court/russian-LGBTI-activist-fined-for-gay-propaganda-family-drawings-idUSKBN24B2IY> [accessed ...]

<sup>81</sup> ILGA EUROPE, [Annual Review of the Human Rights Situation of LGBTI People in Serbia covering the Period of January to December 2019](#)

noted that, taken together with Serbia's other laws on marriage and reproductive rights, the decree effectively bans same-sex couples from having children unless they travel abroad to undergo the necessary medical procedures.<sup>82</sup>

ROMANIA: A law adopted by the Romanian parliament in 2020 but not yet signed into law by the President (it is now in the Constitutional Court), bans the teaching of gender studies in schools and universities and forbids teachers and professors even to address the subject of being transgender".<sup>83</sup> If signed into law, it will make it illegal to discuss gender identity in every school and university in the country".<sup>84</sup> The law explicitly refers to "gender ideology", names it a "real danger in the educational system", and forbids, among other things, "proselytism based on gender".<sup>85</sup> The legislation will not only directly affect the lives of transgender and intersex students but will also affect the ability to discuss sexual diversity and engage in research on sexuality.

HUNGARY: In May 2020 the Hungarian Parliament passed the Omnibus Bill (T/9934) including Article 33, requiring "all citizens to write 'sex at birth' on their national IDs", which renders those who have undergone a physical transformation vulnerable to potential discrimination upon document-checking.<sup>86</sup> Since 2017, legal sex changes in the country have effectively been frozen, and now the backlog of people waiting for the legal procedure will all be rejected, along with any new applicants<sup>87</sup>. On 16 December 2020, the Hungarian parliament adopted a proposal by Justice Minister Judit Varga for the amendment of Hungary's constitution, which defines marriage as between a man and a woman, asserting that the "foundation of the family is marriage and the parent-child relationship. The mother is a woman, the father is a man.", and proclaiming that "Hungary protects children's right to an identity with [their] appropriate sex at birth and guarantees education based on values of our homelands constitutional self-identity and Christian culture."<sup>88</sup> The Parliament further adopted legislation allowing only married couples to adopt children, effectively barring same-sex couples from doing so.<sup>89</sup> Coincidentally, the ECtHR ruled in July that Hungary's refusal to change the legal sex of an Iranian resident of Hungary was in violation of Article 8 (Right to respect for private and family life) of the ECHR. The ECtHR "decided that his legal gender recognition should have been considered in light of the rules applicable to Hungarian citizens at the time".<sup>90</sup> The decision in the case means that the ECtHR will likely find Article 33 of the Omnibus Bill also to be in violation of Article 8 of the ECHR.

GEORGIA: In February 2019, an MP for the Alliance of Patriots of Georgia party, submitted an initiative to remove "sexual orientation" and "gender identity" from eight laws that banned discrimination.<sup>91</sup> It was not adopted but even when not adopted, legislative proposals to remove protections for LGBTI people contribute to a hostile environment for LGBTI people. The Tbilisi Pride march in 2019 had to be cancelled due to fears of far-right groups' attacks as the organisers abstained.

SLOVAK REPUBLIC: Despite the existence of a Committee tasked with questions relating to LGBTI persons that has been working since 2012 to improve the situation of LGBTI persons, in June 2014, Parliament approved a draft constitutional amendment by a large majority defining marriage as "the

<sup>82</sup> Synovitz, Ron, 2019, Lesbian PM Or Not, Serbia Blocks Gays' Path To Parenthood. Available at: <https://www.rferl.org/a/lesbian-pm-or-not-serbia-blocks-gays-path-to-parenthood/30123813.html> [accessed ...]

<sup>83</sup> Nuttall, Clare, 2020, Romania becomes the latest battleground in Central Europe's gender wars. Available at: <https://www.intellinews.com/bucharest-blog-romania-becomes-the-latest-battleground-in-central-europe-s-gender-wars-186591/> [accessed ...]

<sup>84</sup> Parsons, Vic, 2020, It will soon be illegal to even discuss being trans in Romanian schools. Available at: <https://www.pinknews.co.uk/2020/06/26/romania-trans-promotion-gender-identity-banned-schools-klaus-iohannis/> [accessed ...]

<sup>85</sup> Lungu, Vasile-Cristian, 2019, *Pl-x no. 617/2019, Legislative proposal for amending and supplementing the National Education Law no. 1/2011* to the Chamber of Deputies of Romania

<sup>86</sup> Pasino, Sara, 2020, New law forces Hungarian transgender people to choose exile. Available at: <https://globalvoices.org/2020/06/21/new-law-forces-hungarian-transgender-people-to-choose-exile/> [accessed ...]

<sup>87</sup> [Hungary votes to end legal recognition of trans people](https://www.theguardian.com/world/2020/jul/16/hungary-votes-to-end-legal-recognition-of-trans-people) | World news | The Guardian

<sup>88</sup> Maksimov, Vlagyislav, 2020, LGBTIQ strategy to protect rainbow families, extend EU crimes to homophobic speech. Available at: [https://www.euractiv.com/section/non-discrimination/news/LGBTIQ-strategy-to-protect-rainbow-families-extend-eu-crimes-to-homophobic-speech/?utm\\_source=EURACTIV&utm\\_campaign=36557e9514-](https://www.euractiv.com/section/non-discrimination/news/LGBTIQ-strategy-to-protect-rainbow-families-extend-eu-crimes-to-homophobic-speech/?utm_source=EURACTIV&utm_campaign=36557e9514-) [accessed ...]

<sup>89</sup> CNN, 2020, Hungary passes anti-LGBTIQ law effectively barring same-sex couples from adopting: Hungary passes law effectively barring same-sex couples from adopting - CNN

<sup>90</sup> Council of Europe, 2020, [Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards](https://www.coe.int/en/web/council-of-europe/call-on-hungarian-parliament-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards)

<sup>91</sup> Human Rights Committee Discusses Emzar Kvitsiani's Legislative Initiative to Remove the Terms "Sexual Orientation" and "Gender Identity", 2019. Available at: <https://www.interpressnews.ge/ka/article/532149-adamianis-uplebata-komiteti-kanonebidan-terminebis-seksualuri-orientacia-da-genderuli-identoba-amogebis-taobaze-emzar-kvicianis-sakanonmdelo-iniciativas-ganxilavs> [accessed ...]

union of a man and a woman", making it impossible for same-sex couples to marry. Furthermore, while leading figures such as the President and the Ombudsman have supported events in favour of LGBTI persons, a 2015 draft Action plan for LGBTI persons was not adopted.<sup>92</sup>

POLAND: In July 2020, Polish government officially declared that Poland should withdraw from the Istanbul Convention, the Council of Europe treaty aimed at preventing gender-based violence against women, including domestic violence. It is found "harmful" because it obliges schools to teach children about non-stereotypical gender roles, which in their view would threaten the "traditional" model of the family. The Polish Minister of Justice, Zbigniew Ziobro, reportedly called the Istanbul Convention a feminist invention that seeks to justify homosexual ideology.<sup>93</sup>

Also in Poland, several local authorities have adopted a charter for family rights since the beginning of 2019. This charter defends the model of the "traditional family", based on the constitutional definition of marriage as a union of a woman and a man. It does not directly refer to LGBTI people but proposes to put in place concrete measures that have impact on the rights of LGBTI people. For example, it calls for cooperation programmes with social organisations to take into account the principle of "strengthening the family and marriage" and to exclude the funding of projects that undermine this definition of the "traditional family".<sup>94</sup>

The case of Poland is particularly interesting in that the local and regional authorities who adopted the Charters for Family Rights were assisted by the *Ordo Iuris Institute for Legal Culture*, a Polish ultra-Catholic research, litigation and lobbying organisation. Founded in 2013 by the Piotr Skarga Institute for Social and Religious Education, it offers support to each local government in adapting the Charter to the needs and conditions of the local community and in implementing it. They also provide legal support in the case against the "Atlas of Hate", an activist initiative which maps the local authorities who have adopted Family Rights Charters in addition to those who have adopted "anti-LGBT ideology" declarations<sup>95</sup>. At the national level, Ordo Iuris contributes to draft legislation such as the 2017 "Stop abortion" bill. They are also active at the international level, submitting written contributions to the European Commission with regards its 2020 consultation for a new LGBTI+ equality strategy<sup>96</sup> and opposing the Council of Europe Istanbul Convention<sup>97</sup> amongst others. Additionally, they have been providing the ECHR amicus curiae briefs in cases concerning LGBTI such as the pending *Dzerkhorashvili and Others v. Georgia* case<sup>98</sup>.

They are a good example of the concerted effort made throughout and beyond Europe, interconnecting politically active Catholic organisations. For example, in 2016 the Piotr Skarga Institute cited above, also provided part of the funding capital for the *Vigilare Foundation* in Croatia. Should the Vigilare Foundation cease operating, its assets would pass to the Stichting Civitas Christiana organisation in the Netherlands, which is part of the transnational Tradition, Family and Property (TFP) network of Catholic lobby organisations, founded in Brazil in 1960.<sup>99</sup>

## 2.3 Undermining implementation of laws and policies

58. Undermining implementation of policies that facilitate LGBTI equality can occur on multiple governmental levels. Government actors can insufficiently implement existing national legislation, local laws and provisions, and international agreements and court rulings. Tactics government actors may use to insufficiently implement legislation include delaying and stalling implementation, withholding the resources necessary to enable implementation, and failing to provide the training and information necessary to make implementation possible. Here below are but a few examples of the different ways in which government actors undermine the implementation of LGBTI equality policies.

<sup>92</sup> ECRI, 2020, [ECRI Report on the Slovak Republic](#).

<sup>93</sup> Tilles, Daniel, 2020, Poland to begin withdrawal from international convention on violence against women. Available at: <https://notesfrompoland.com/2020/07/25/poland-to-begin-withdrawal-from-international-convention-on-violence-against-women/> [accessed ...]

<sup>94</sup> [Local Government Charter of the Rights of the Family in English](#)

<sup>95</sup> Ordo Iuris, 2020, Ordo Iuris in defence of pro-family local governments – [Conference Recording](#)

<sup>96</sup> European Commission, 2020, Feedback from: [The Ordo Iuris Institute for Legal Culture](#)

<sup>97</sup> Ordo Iuris, 2020, Yes to the denunciation of the Istanbul Convention. The official collection of signatures has begun. Available at: <https://en.ordoiuris.pl/family-and-marriage/yes-denunciation-istanbul-convention-official-collection-signatures-has-begun> [accessed ...]

<sup>98</sup> Ordo Iuris Institute for Legal Culture, 5 March 2020, *Dzerkhorashvili and Others v. Georgia*, Written Observations. Available at: [https://ordoiuris.pl/sites/default/files/inline-files/Opinia amicus curiae dla ETPC w sprawie Dzerkhorashvili i inni v. Gruzja 2.pdf](https://ordoiuris.pl/sites/default/files/inline-files/Opinia%20amicus%20curiae%20dla%20ETPC%20w%20sprawie%20Dzerkhorashvili%20i%20inni%20v.%20Gruzja%20.pdf)

<sup>99</sup> Brakus, Ana, 2018, Poland's Hidden Hand Behind Croatian Catholic Lobby Group. Available at: <https://balkaninsight.com/2018/10/30/poland-s-hidden-hand-behind-croatian-catholic-lobby-group-10-29-2018/> [accessed ...]

LITHUANIA: Article 2.27 of the Lithuanian Civil Code provides for legal gender recognition, but the enabling legislation has never been adopted”.<sup>100</sup> A case on the issue was brought before the ECtHR (*L. v. Lithuania*, 2007), which found that Lithuania’s failure to implement the legislation was in violation of Article 8 (Right to respect for private and family life) of the ECHR. As a result of Lithuania’s continuing refusal to implement enabling legislation and its refusal to comply with the ECtHR, “the Committee of Ministers of the Council of Europe applied the enhanced supervision procedure in September 2014 with the view of implementing the judgment”.<sup>101</sup> In 2016, ECRI strongly recommended that the Lithuanian authorities comply without further delay with the judgment of the European Court of Human Rights on regulating the procedure and conditions of gender reassignment; as well as simplify the issuing of new identity cards to persons who have undergone gender reassignment surgery<sup>102</sup>. Some individuals have pursued legal proceedings and been able to receive LGR through the Lithuanian courts, but no administrative procedure is available”.<sup>103</sup>

RUSSIAN FEDERATION: Based largely on the “anti-propaganda legislation”, government actors in Russia have refused to grant permits for LGBTI pride events and have generally reacted with police repression when activists have engaged in pride demonstrations. For instance, in August 2019 “Police in St. Petersburg have reportedly detained at least 11 LGBTI activists, three of whom were taken away in an ambulance, at an unauthorized Pride event”.<sup>104</sup> Another example is that in 2019 “Moscow city hall...rejected four requests for demonstrations, including a gay-pride march, made by Nikolai Alekseyev”<sup>105</sup>, who was one of the complainants in the ECtHR court case *Alekseyev and Others v. Russia*. In the case the ECtHR ruled already on 21 November 2018 that Russia’s refusal to grant permits for LGBTI pride events was in violation of Articles 11 (right to freedom of assembly), 13 (right to an effective remedy), and 14 (right not to be discriminated against) of the ECHR (Registrar of the Court, 2018)<sup>106</sup>.

In 2019, ECRI recommended that the Russian authorities fully implement the judgment of the European Court of Human Rights in the case of *Alekseyev v. Russia* and ensure that LGBTI persons’ human right to freedom of assembly is respected.<sup>107</sup>

TURKEY: In addition to censoring accepting portrayals of LGBTI people in the media, Turkish officials cancelled pride and equality marches since 2015. In Istanbul, the pride march has been banned continuously by the Governor due to “sensitivity” and “security” concerns<sup>108</sup>. When the Istanbul Pride was banned by the provincial governor in 2019 and individuals gathered with pride flags to walk together, they were driven apart with tear gas by police.<sup>109</sup> When they proceeded with a pride event that had been banned, students and a faculty member at Middle East Technical University in Ankara were arrested and charged with “unlawful assembly and protest” and “refusing to disperse”. In addition to tear gas, police used plastic bullets to disperse the protesters.<sup>110</sup> According to ILGA-Europe, Turkish authorities also banned Pride events in Izmir, Antalya, and Mersin” in 2019.<sup>111</sup>

<sup>100</sup> Karsay, *op.cit.*, p.52

<sup>101</sup> Raskevičius, Tomas Vytautas, 2018, We are People, Not Propaganda. Monitoring Implementation of the Council of Europe Recommendation CM/Rec(2010)5 to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity, Documentation Report Lithuania, LGL, p. 66. Available at: [https://tgeu.org/wp-content/uploads/2018/10/COE-Report-Oct18-lithuania\\_1.pdf](https://tgeu.org/wp-content/uploads/2018/10/COE-Report-Oct18-lithuania_1.pdf) [accessed ...]

<sup>102</sup> ECRI (2016), ECRI Report on Lithuania, 5<sup>th</sup> monitoring cycle, pp. 31-32. Available at: <https://rm.coe.int/fifth-report-on-lithuania/16808b587b>

<sup>103</sup> Raskevičius, *op.cit.*, p.68

<sup>104</sup> BBC, 2018, Russia LGBTI activists detained during St Petersburg rally. Available at: <https://www.bbc.com/news/world-europe-45072583#:~:text=Russian%20police%20have%20detained%20at,being%20placed%20on%20the%20rally> [accessed ...]

<sup>105</sup> France 24, 2019, Four arrests in Russian LGBTI protest. Available at: <https://www.france24.com/en/20190517-four-arrests-russian-LGBTI-protest> [accessed ...]

<sup>106</sup> European Court of Human Rights, 2018, Judgment, [Case of Alekseyev and Others v. Russia](#)

<sup>107</sup> ECRI (2019), ECRI Report on the Russian Federation, 5<sup>th</sup> monitoring cycle, p. 38. Available at: <https://rm.coe.int/fifth-report-on-the-russian-federation/1680934a91>

<sup>108</sup> [Official Press Release of the Istanbul Governorship, 2017](#)

<sup>109</sup> The Independent, 2019, Turkish police fire tear gas at crowds gathered for banned Istanbul Pride march. Available at: <https://www.independent.co.uk/news/world/middle-east/LGBTI-pride-turkey-march-ban-tear-gas-istanbul-police-a8981751.html> [accessed ...]

<sup>110</sup> Al Jazeera, 2019, Turkish students, lecturer on trial for banned LGBTI march. Available at: <https://www.aljazeera.com/news/2019/11/12/turkish-students-lecturer-on-trial-for-banned-LGBTI-march/> [accessed ...]

<sup>111</sup> ILGA Europe, [Annual Review of the Human Rights Situation of LGBTI People in Turkey covering the Period of January to December 2019](#)



NORTH MACEDONIA: “During VMRO-DPMNE’s rule, there was not only a proliferation of discriminatory discourses (including those employed by state officials) and anti-LGBTI violence, but also a virtual impunity of the perpetrators, despite the existence of the Criminal Code which proscribed physical violence against people and discrimination based on personal characteristics”.<sup>112</sup> In 2019, ECRI concluded that the North Macedonian authorities had not carried out an independent comprehensive study on all forms of discrimination against LGBTI persons, as previously recommended by ECRI.<sup>113</sup>

59. The Rapporteurs note that non-implementation may be used by some States to meet international rights standards on paper without having to actually invest in securing LGBTI persons’ human rights and equality. Legal changes in which LGBTI equality is secured and rights are promoted are but one step in ensuring that LGBTI equality become a reality. Legislation requires implementation in order to secure equality and human rights for LGBTI people. Public authorities must be vigilant in ensuring that adopted texts do not remain on paper, by developing policy responses and action to promote the rights and equality of those discriminated against.

## 2.4 Erosion of Inclusion and Accountability Mechanisms

60. This last aspect of backsliding primarily concerns the relationship between government and civil society. The ability to hold government actors accountable is already weakened in situations in which civil society actors are no longer included in policy processes. Such erosion through explicit and subtle attacks on LGBTI NGOs and social movement organisations is common practice in several European countries.

61. Civil society organisations have practical knowledge in the sense that they have important insights into the issues they face. A good knowledge of the field gives them the tools to best defend the interests of LGBTI people in the public sphere. As a result, they engage and propose alternative policies to governments, the private sector and other institutions in order to defend citizens’ rights and to change or enforce social norms and behaviours. In particular they are involved in raising awareness on the issue of LGBTI people in order to improve acceptance. To do this they can organise pride marches or artistic and cultural events on the issue of LGBTI people, they set up material assistance to accompany certain LGBTI people in difficulties or they can also provide psychological support to help them face the various forms of discrimination they are victims of. In this sense, they are an important factor for social cohesion within a society and help to improve the acceptance of diversity.

62. For instance, it has been reported that shrinking civil society space has been increasingly present in Europe in the past ten years, with governments such as Armenia, Azerbaijan, Croatia, Georgia, Hungary, Macedonia, Moldova, Poland, Russia, Slovakia and Ukraine restricting the work of civil society and human rights defenders, where civil society space is shrinking, via measures often specifically targeting LGBTI organisations<sup>114</sup>. As highlighted in the 2015 Congress report, local and regional authorities have quite substantial powers as legislators and have in some cases regrettably been at the forefront of the restriction LGBTI persons’ human rights.

63. In the Russian Federation, even before the adoption of the federal law, ten regions had already adopted legislation restricting freedom of expression on sexual orientation issues. The law of the region of Ryazan states that “public actions aimed at propaganda of homosexuality (sexual act between men or lesbianism) among minors shall be punished with an administrative fine between 1,500 and 2,000 roubles” expanding on similar provisions in the Ryazan Regional Law on the “Protection of Morality and Health of Minors”, adopted by the Ryazan Region Duma on 22 March 2006. As a result of this legislation, LGBTI people have suffered unequal treatment, have been denied their rights to freedom of expression and assembly and, in addition, violence against the LGBTI communities is on the increase<sup>115</sup>. Then, in 2019, the LGBTI organisation Rakurs was raided by police officers. The “foreign agent law” and the “NGO law” are mutually reinforcing, as the first has

<sup>112</sup> Miškovska Kajevska, Ana, 2018, A Foe of Democracy, Gender and Sexual Equality in Macedonia: The Worrisome Role of the Party VMRO-DPMNE, *Politics and Governance*, 6(3): 55

<sup>113</sup> ECRI, 2019, [Conclusions on the implementation of the recommendations in respect of North Macedonia](#), p. 5

<sup>114</sup> Karsay, *op.cit.* p. 36

<sup>115</sup> Congress, 2015, *Guaranteeing lesbian, gay, bisexual and transgender (LGBTI) people’s rights: a responsibility for Europe’s towns and regions*, p.7

decreased the amount of time and funding LGBTI organisations can spend on activism while the second “limits the range of activity available to LGBTI organisations work as they had to allocate scarce resources toward their defence.”<sup>116</sup> In its latest report on the Russian Federation, which was published in 2019, ECRI recommended that the Russian authorities carry out an in-depth study on the areas and levels of discrimination faced by LGBTI persons in Russian society.<sup>117</sup> In 2019 the ECtHR ruled in the case of *Zhdanov and Others v. Russia* “that the refusal to register associations set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Russia had violated their right to freedom of association and had amounted to discrimination on grounds of sexual orientation”.<sup>118</sup>

64. In 2019 the Slovakian Minister of Culture denied funding to all civil society proposals that were submitted by LGBTI groups”.<sup>119</sup> The minister rejected the grant applications, even though more than half a dozen of them had been recommended by governmental experts in the commission stage”. A month later the Ministry published a new set of criteria for future funding, which drastically limited the scope of activities NGOs could apply for and will make it impossible for LGBTI groups to apply for funding. According to ILGA, there was no consultation preceding this move.<sup>120</sup>

65. Hungary adopted legislation similar to Russia’s “foreign agent law”, with the introduction in June 2017 of the Law on the Transparency of Organisations Supported from Abroad. According to the European Centre for Not-for-Profit Law, “The Law introduces a new status of ‘organisation supported from abroad’ which applies to all Hungarian associations and foundations that receive funding from any foreign sources...above 7,2 million HUF (approx. €23,500) in a tax year”.<sup>121</sup> In addition to the pejorative labelling an organisation incurs by being labelled as an “organisation supported from abroad”, the legislation also includes burdensome reporting requirements regarding relatively small financial transactions.

66. In many countries, the costs of activism increase through public authorities’ intimidation and by requiring activists to devote resources to audits and administrative procedures instead of to activism. Far from being involved in consultation structures, many LGBTI NGOs in Europe are being hindered in their basic ability to function as an organisation. From the restriction of funding to restricting the activities in which organisations can engage, the civil society space for many European LGBTI organisations is shrinking.

67. Assessing the situation as regards these four aspects of backsliding, the Rapporteurs welcome on the one hand the important progress made at all levels of government and in legal, political, social spheres on matters regarding the human rights and equality of LGBTI people, gender and violence issues, condemnation of hate speech and the understanding that public authorities have the responsibility to protect their citizens’ rights and safety. On the other hand, they observe the reactions and the deeply rooted prejudices that have surfaced in several member States in both public and civil spheres. They emphasise the important role that falls on their shoulders of elected representatives to create the conditions of an inclusive society, based not on prejudice and the rejection of others but on dialogue and concertation. Avoiding this responsibility has a cost, not only in the erosion of democratic values but also in the deterioration of the quality of life of the citizenry - in this specific case the LGBTI people.

### 3. THE EFFECTS OF ANTI-LGBTI POLICIES AND RHETORIC: INEQUALITY, DISCRIMINATION, AND VIOLENCE AGAINST LGBTI PEOPLE

<sup>116</sup> Van der Vet, Freek, 2018, “When They Come for You”: Legal Mobilization in New Authoritarian Russia, *Law & Society Review*, 52(2): 317

Pakhnyuk, Lucy, 2019, Foreign Agents and Gay Propaganda: Russian LGBTI Rights Activism Under Pressure. *Demokratizatsiya, The Journal of Post-Soviet Democratization*, 27(4): 490

<sup>117</sup> ECRI (2019), ECRI Report on the Russian Federation, 5<sup>th</sup> monitoring cycle, pp. 38-39. Available at: <https://rm.coe.int/fifth-report-on-the-russian-federation/1680934a91>

<sup>118</sup> European Court of Human Rights Judgment, 2019, [Case of Zhdanov and Others v. Russia](#)

<sup>119</sup> ILGA Europe, [Annual Review of the Human Rights Situation of LGBTI People in Slovakia covering the Period of January to December 2019](#)

<sup>120</sup> *Ibid.*

ECRI (2020), ECRI Report on the Slovak Republic, 6<sup>th</sup> monitoring cycle, p. 14. Available at: <https://rm.coe.int/ecri-6th-report-on-the-slovak-republic/1680a0a088>

<sup>121</sup> ILGA Europe, 2020, [Annual Review of the Human Rights Situation of LGBTI People in Europe and Central Asia](#), European Center for Non-for-Profit Law, 2017, [Hungary's new Law on the Transparency of Organizations Supported from Abroad: What's At Stake?](#)

68. Inequality, discrimination, and violence continue to affect the daily lives of LGBTI people in Europe. They are hindered in their full participation in the European community and face difficulties in many facets of social life, including education, health, politics, and the economy.

69. In a report released this year, the European Union Agency for Fundamental Rights (FRA) found that one in 10 LGBTI respondents (11 %) in the EU were physically or sexually attacked in the five years before the survey because they are LGBTI. Transgender (17 %) and intersex (22 %) respondents experienced attacks at higher rates.<sup>122</sup> Their survey correlated discourse by public authorities and elected officials with an increasing or decreasing feeling of safety by LGBTI people. Research shows that the anticipation of discrimination and the experience of actual discrimination and violence were associated with a heightened level of psychological distress among sexual minority individuals.<sup>123</sup> The number of those who agreed with the statement that “gay, lesbian, and bisexual people should have the same rights as heterosexual people” dropped by 12% in four years in Bulgaria (39%), and 5% in Czechia (57%) and Slovakia, which has the lowest acceptance rate across the bloc with 31%.<sup>124</sup>

70. In 2020, the European Commission presented its first LGBTIQ Equality Strategy for the next five years, pledging to be “at the forefront of efforts to better protect” the community’s rights by aiming to tackle discrimination, ensuring safety, building inclusive societies and be a global leader in the fight for the minority group’s rights. The Commission will propose next year to extend the list of EU crimes to cover hate crime and hate speech, including when targeted at LGBTIQ people, and channel money for initiatives that aim to combat such crimes and promote the rights of victims of crime, including LGBTIQ people.

71. The situation is not merely one of residual LGBTI-hatred. With greater visibility comes greater vulnerability, and it appears that the discrimination of LGBTI people in Europe is increasing. The FRA comparative figures show that, in 2019 more LGBTI respondents (43%) felt discriminated against than they did in 2012 (37%). This difference is markedly more pronounced for trans respondents; 60% in 2019 compared to 43% in 2012. It would appear that the main contributing factors to this deterioration is the ‘negative public discourse by politicians and/or political parties’, as well as ‘lack of support by civil society’ and ‘lack of enforcement of existing law and policies’ or ‘lack of support by public figures and community leaders’ and of visibility of LGBTI persons”.<sup>125</sup>

72. This information is an affirmation of the crucial role elected representatives at local and regional level both as political leaders and because they are the ones who have an understanding of all the various communities and the ways in which they interact on the ground. Declarations they make as political leaders and policies they adopt have a large impact on citizens’ lives. Politicians who borrow anti-gender and anti-LGBTI discourse facilitate and encourage a public discourse of exclusion and hate.

73. Anti-LGBTI policies and rhetoric negatively impact the wider community at local and regional level. It is at the local level that cracks in social cohesion are first felt. These divisive narratives risk undermining the stability and social peace in local communities. Additionally, exclusion of minorities comes at an economic cost. The more obstacles LGBTI people face to participate in social and economic life, the less likely they are to work, spend or start businesses. Conversely, there is increasing evidence that better LGBTI-equality benefits local and regional communities economically by increasing the talent available on the labour market but also by increasing tourism for example around pride marches.

74. Inaction can also facilitate negativity. Even without adopting outright discriminatory policy measures, politicians and government can pave the way for violence against LGBTI people. It has been observed that the more a given country is blind to the rights of sexual minorities, the higher was

<sup>122</sup> European Union Agency for Fundamental Rights (FRA), 2020, [A long way to go for LGBTI equality](#), p.38

<sup>123</sup> Pereira, Henrique & Costa, Pedro Alexandre, 2016, Modelling the impact of social discrimination on the physical and mental health of Portuguese gay, lesbian and bisexual people, *Innovation: The European Journal of Social Science Research*, 29(2): 14

<sup>124</sup> Maksimov, Vlagyislav, 2020, [op.cit.](#)

<sup>125</sup> FRA, 2020, [A long way to go for LGBTI equality](#), pp.10-12



the level of homophobia among its LGBTI citizens.<sup>126</sup> Public policy, or lack thereof, may affect LGBTI people in other ways too, such as by forcing them into hiding. It has been reported that “In high-stigma countries, sexual minorities were nearly twice as likely to conceal their sexual orientation than in low-stigma countries, which in turn was associated with lower life satisfaction”.<sup>127</sup> Additionally, the rates of discrimination and hostility to LGBTI people that were measured may be artificially low due to some LGBTI people’s ability to avoid discrimination by concealing their sexual orientation and gender identity.

75. LGBTI youth continue to experience unique difficulties, particularly during their schooling<sup>128</sup>. In their study of Spanish high schools, a group of experts found that “in both victimisation and cybervictimisation, the prevalence found in non-heterosexual students almost doubled that found in their heterosexual peers, with almost one half of the non-heterosexual students stating that they had been victimized and almost one quarter cyber-victimised”.<sup>129</sup> Intersex individuals face educational impairments directly linked to the violation of their bodily integrity. Some children drop out of school as a result of surgeries performed at an early age with follow-up operations, leading to some children dropping out of school due to this long-term recovery process.<sup>130</sup> Additionally, non-consensual medical interventions have a severely negative impact on how intersex children perform in school, which affects their future educational prospects and socio-economic status”.<sup>131</sup>

76. As regards health care, people are still discriminated on the grounds of their sexual orientation in Europe. Although the WHO withdrew homosexuality from its classification of diseases in 1990, this still has an influence on the medical practice and the content of the teaching aids used in the educational establishments of certain Member States of the Council of Europe. In the same context, many Council of Europe member countries do not prohibit conversion therapy, which refers to practices aimed at changing a person’s sexual orientation. However, such practices are explicitly discriminatory and degrading<sup>132</sup>. It is essential to stop discriminatory medical treatment that considers LGBTI+ persons to be suffering from a medical condition.

77. Finally, LGBTI people are more prone to suffer from depression and to feel lonely. Indeed, the repetition of violence, discrimination, exclusion and harassment has a strong impact on the mental health of LGBTI persons. This damage to their mental health greatly increases the risk of committing suicide. Despite being a minority group in particular need of quality healthcare, LGBTI people often face barriers in accessing existing services<sup>133</sup>. It is important to ensure that care is more tailored to the problems that LGBTI persons may face and that they have easy access to it.

CROATIA, RUSSIA, SERBIA AND TURKEY: In these countries secondary school textbooks and textbooks intended for medical students are influenced by the old classification of the WHO, which removed homosexuality as a disease in 1990. According to NGOs, some psychotherapists still consider homosexuality of their patients as a medical or psychiatric problem.

TURKEY: Although Turkey does not make it illegal to discuss issues related to sexual orientation, the Ministry of Education prohibits peer education on sexual and reproductive health in schools. Because these issues don’t feature in the curriculum, students can’t access objective information on sexual and gender diversity while they’re at school<sup>134</sup>. This has an impact on school-age children’s understanding of their health, their bodies and their sexuality<sup>135</sup>. Again in Turkey, the military views homosexuality as a condition that renders men “unfit for service” in the armed forces. Gay or bisexual men who apply to

<sup>126</sup> Górka, Paulina & Bilewicz, Michał & Winiewski, Mikołaj, 2017, Invisible to the state. Institutional sexual stigma and collective action of LGB individuals in five East European countries, *Group Processes & Intergroup Relations*, 20(3): 376

<sup>127</sup> Pachankis, John E. & Bränström, Richard, 2018, Hidden From Happiness: Structural Stigma, Sexual Orientation Concealment, and Life Satisfaction Across 28 Countries, *Journal of Consulting and Clinical Psychology*, 86(5): 410

<sup>128</sup> See also ECRI 5<sup>th</sup> Monitoring Cycle, [Recommendations Pertaining to LGBTI Persons](#), p. 27-28.

<sup>129</sup> Elípe, Paz & de la Oliva Muñoz, María & Del Rey, Rosario, 2018, Homophobic Bullying and Cyberbullying: Study of a Silenced Problem, *Journal of Homosexuality*, 65(5): 680-681

<sup>130</sup> Karsay, 2018, *op.cit.*, p.81

<sup>131</sup> *Idem.*, p.131

<sup>132</sup> Council of Europe, Commissioner for Human Rights, 2011, [Discrimination on grounds of sexual orientation and gender identity in Europe](#), pp.104-105

<sup>133</sup> See also ECRI 5<sup>th</sup> Monitoring Cycle, [Recommendations Pertaining to LGBTI Persons](#), p. 26.

<sup>134</sup> Council of Europe, 2018, [Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe](#), p.35

<sup>135</sup> See also ECRI (2016), ECRI Report on Turkey, 5<sup>th</sup> monitoring cycle, pp. 34-36. Available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>

be exempted from military service must undergo "degrading medical and psychological tests" or provide proof of their homosexuality, which can later have detrimental consequences if they consider working in the public service.

UNITED KINGDOM: The 2018-2019 Stonewall Scotland "LGBT in Scotland: Health Report" brought to light that almost two in five trans people avoid seeking healthcare for fear of discrimination from staff and that one in four LGBT people have faced discrimination in healthcare settings<sup>136</sup>.

78. The Rapporteurs note the serious and lasting effects of exclusion on LGBTI people and youth and underline that local authorities can help combat poverty amongst LGBTI citizens (for example, by conducting research to better understand how they are discriminated against economically, but also by ensuring that their own recruitment processes are inclusive), they can develop training-schemes for teachers and school employees and promote debate amongst peers in cooperation with non-governmental organisations, and give access to (mental) healthcare for their LGBTI inhabitants.

79. They can contribute to the good health of LGBTI people by providing training for healthcare providers to understand the needs of LGBTI persons and respond effectively, or to develop services that meet the specific needs of LGBTI persons. They can also open and promote already existing LGBTI support centres that provide (mental) health care, information, legal and social support for LGBTI persons. Particular attention must also be paid to the safety and mental health of LGBTI asylum seekers in asylum shelters.<sup>137</sup> The compulsory or coercive sterilisation practices for transgender persons seeking legal gender recognition and "corrective surgeries" for intersex infants is another area where awareness and training is crucial. With regard to intersex babies in particular, this could be tackled very effectively on a local level with training for medical professionals.

#### **4. LOCAL AUTHORITIES: ROLE AND RESPONSIBILITIES IN PROTECTING LGBTI PEOPLE: GOOD PRACTICE**

80. The Congress has underlined in its previous report that, due to their closeness to the citizens, the elected representatives at the local and regional level of governance are best placed to analyse the human rights situation, identify the relevant problems which arise and take action to solve them. Local and regional levels are decisive in combating discrimination and advancing equality and it is the paramount duty of these authorities to positively protect the rights of all citizens.

81. Public authorities can positively affect the lives of LGBTI people by removing discriminatory laws and policies and actively implementing laws and policies to improve LGBTI equality and rights. They can also strengthen cooperation, exchange good practices, engage in multi-level cooperation involving central government agencies, local and regional authorities, specialised agencies, advocacy groups and voluntary organisations.

82. Despite the examples of backsliding above, during the last five years, there have also been many positive developments at the local and regional levels in Europe testify to the correctness of this affirmation.

83. Municipalities can use their partnerships with other municipalities to facilitate LGBTI persons' human rights and equality in their "sister cities" in at least three ways. First, they can share best practices that they use to facilitate LGBTI persons' human rights and equality in their city with civil servants and politicians in sister cities and encourage them to ensure that none of their residents experience discrimination. Second, they can invite LGBTI activists from sister cities to their city so that they can network with other LGBTI activists. Third, particularly in cases of sister cities that host pride events that are vulnerable and threatened, cities can send civil servants, local politicians, and local LGBTI activists from their own city to the sister city to attend those pride events, thereby supporting local activists and increasing the chances that sufficient security measures will be taken at the events<sup>138</sup>.

<sup>136</sup> Stonewall Scotland, 2017, [LGBT In Scotland. Health Report](#)

<sup>137</sup> Ruckstuhl, Austin, 2016, [Protecting LGBTI Refugees: The Role of Cities](#)

CBS News, 2016, "Constant fear" for gay refugees in Europe's shelters". Available at: <https://www.cbsnews.com/news/refugees-europe-migrants-shelters-gay-asylum-seekers-attack-abuse-LGBTI/> [accessed ...]

<sup>138</sup> ILGA Europe, 2020, [Standing strong against discrimination and the violation of human rights – the question of Town Twinning Advocacy](#)

84. There are many examples of cooperation to protect LGBTI persons' rights, either cities and regions working closely together sharing good practices, exchanging policy initiatives and developing legislation, or projects that are initiated at national level. Sometimes cooperation occurs in the framework of existing partnership structures and agreements, for example twinnings or other networks. For smaller towns, cooperation with bigger cities offers them a chance to increase their expertise on LGBTI issues and to benefit from the experiences of tried and tested initiatives. Cooperation at regional level allows for the protection and guarantee of LGBTI persons' human rights on a larger geographical scale.

85. Twinning programmes have both symbolic and financial significance for cities. Several European cities cut their ties with some Polish cities that adopted the so-called anti-LGBTI declarations. These Polish cities were also denied some EU funding.<sup>139</sup> Following the announcement by the Norwegian Ministry of Foreign Affairs that those who adopted anti-LGBT ideology declarations or charters would not be eligible for the so-called "EEA grants", the town of Tomaszów Mazowiecki annulled its charter for family rights. Moreover, the city adopted a new resolution outlining planned actions for social policy for families and equal treatment, which include awareness raising activities on tolerance and combating violence. Two Belgian regions, Brussels and Wallonia, closed their offices of representations in Poland.<sup>140</sup> The reactions of the twin cities which severed long standing ties with the Polish towns are indicative of their strong rejection of discriminatory practices. On the other hand, it could also be said that this was a missed occasion for the twin cities to get together with their Polish counterparts to discuss the issue and to invite the latter to a more inclusive approach.

POLAND: It is worthy of note that in February 2019, the Mayor of the City of Warsaw, Rafal Trzaskowski signed a 12-point "LGBT Declaration"<sup>141</sup>. The declaration aims at fighting discrimination against LGBTI persons and provides guidance in such areas as security, education, culture, sport, administration, and work. It enables the local administration to provide the basic needs of the LGBTI communities, such as the creation of an LGBTI Interventional Hostel, a shelter and safe haven for those in need; and an LGBTI Community Centre in order to support grassroots movements by creating a safe environment.

Also in Poland, several cities have laid the first contacts amongst themselves to cooperate with regards the fight against discrimination and to exchange good practices with the aim of creating a Polish city coalition for equality policies. During the fact-finding mission carried out by the Rapporteurs in November 2020, the need for intercity support from like-minded cities was highlighted. To mark the International Day for Tolerance on November 16, 2020, the members of the Union of Polish Metropolitan Areas, which brings together twelve of Poland's largest cities, released a joint statement underlining that every citizen in their member cities "has the same rights and obligations, regardless of their nationality, religion, political views, or sexual orientation"<sup>142</sup>. On that day, 50 Polish and European cities such as Ghent, Barcelona and Budapest illuminated their buildings with rainbow colours to express solidarity with people struggling with exclusion, discrimination, and unequal treatment.

ITALY: A good example of cooperation between local and regional authorities is the Italian RE.A.DY Network. In 2006, Rome and Turin City Councils launched RE.A.DY, a network of public administrations that deals with anti-discrimination issues specifically regarding sexual orientation and gender identity.<sup>143</sup> The Network has since expanded and now has 73 partners across Italy, including five regional authorities, eleven provinces, fifty city councils, three municipal districts, three provincial equality bodies and one local government association.<sup>144</sup> The Network's partners share policies and best practices to promote the social inclusion of LGBTI persons, and promote administrative acts and regulations that protect against discrimination. In the absence of national legislation and policies, these Italian local and regional authorities have taken the lead in improving the lives of LGBTI people under their governance.

Aldo in Italy, to raise public awareness of this diversity, but also to recognise its existence in history, local authorities can participate in the creation of archive and/or library centres that highlight documents and knowledge about LGBTI people. In Bologna, a documentation centre has been set up

<sup>139</sup> Politico, 2020, Polish towns pay a steep price for anti-LGBTIQ views. Available at: [Polish towns pay a steep price for anti-LGBTIQ views – POLITICO](#)

<sup>140</sup> Reuters, 2020, Belgian regions close Warsaw office over rule of law record. Available at: <https://www.reuters.com/article/poland-ruleoflaw-belgium-idUSL4N2I62XU>

<sup>141</sup> Love Does Not Exclude Association, 2019, Warsaw Mayor Signs the LGBTI Declaration. Available at: [Love Does Not Exclude Association](#)

<sup>142</sup> [Międzynarodowy Dzień Tolerancji to święto obchodzone corocznie 16 listopada - Unia Metropolii Polskich \(metropolie.pl\)](#)

<sup>143</sup> RE.A.DY Website : [Rete Re.a.dy – Rete nazionale delle Regioni e degli Enti Locali per prevenire e superare l'omotransfobia](#)

<sup>144</sup> Email correspondence with Eufemio Gianluca Truppa, Servizio LGBTI City of Turin. 10 March 2014.

with press cuttings, political manifestos, photos and videos representing the cultural heritage of the Italian LGBTI movement. The centre is affiliated to regional and national archive services and is managed by an LGBTI association which guarantees its accessibility.<sup>145</sup>

FRANCE: On the occasion of the International Day Against Homophobia and Transphobia, the Paris City Hall awarded the "International Prize of the City of Paris for the Rights of LGBTIQ+ People" to national and international associations. This makes these associations visible in order to promote them within society and to reward their commitment. In 2019, the Reunionese association OriZon, which fights against exclusion linked to sexual orientation, gender identity or sexism, received 5000 euros to continue its activity.<sup>146</sup>

86. Driven from their homes by their families, stigmatised because of their sexual orientation and gender identity, LGBTI people can find themselves in precarious conditions. Local authorities can initiate, in cooperation with NGOs, the creation of shelters to provide LGBTI people with a temporary solution to this precarious situation while ensuring that they are not discriminated against in such places.

GERMANY: In Berlin, the Schwulenberatung association has offered around 100 places in shelters for LGBTI immigrants. One of the ways in which the Department for Health and Social Affairs has enabled the establishment of this centre is by modifying the local plan of urban planning.<sup>147</sup>

GEORGIA: On the occasion of 17 May, International Day against Homophobia, Transphobia and Biphobia, in 2018, the Mayor of Tbilisi stated that "Everyone has the opportunity to express their opinions in our country and city...The fact that certain groups have their own views is a normal process. This is part of democracy, so nobody's rights can be restricted".<sup>148</sup>

SPAIN: In Madrid, the municipality provided the LGBTI communities with collective influence to help shape and design an integrated programme to increase the quality of life of LGBTI people in the city. For example, the regional government of Madrid established the Programa LGBTI (LGBTI Programme). This programme is pursued in two broad ways: firstly, by providing a range of services directly to LGBTI people; these include information, social, psychological and legal support. Secondly, by providing services and training to professionals, employers and organisations to enhance their knowledge of LGBTI matters.<sup>149</sup>

BELGIUM: In 2018, with support of the City of Brussels, a refuge was created to provide support and temporary accommodation to young people rejected by their families due to their sexual orientation or gender identity. The apartment houses people between 18 and 25 for up to three months, providing support on five fronts: health, social and judicial, socio-cultural, education and employment and long-term housing. Also, the regional Ministry of Education in Flanders supports NGOs' efforts to raise awareness about LGBTI issues in schools since 1999. Since 2003, the ministry systematically supported the LGBTI NGO, *Çavaria*, to develop a long-term and comprehensive approach – based on scientific findings and their own experience – to help schools prevent and address SOGIE-based violence<sup>150</sup>.

SLOVENIA: In Ljubljana, a scheme to certify organisations and private companies as "LGBTI-friendly" was introduced by the Council as a tool to promote knowledge about LGBTI issues and to help create a climate of tolerance and diversity. The City Council also adopted a general strategy for the development of social care in 2013-2020, following the extensive consultation of various partners and NGOs. Consequently, a number of measures were designed in close collaboration with these organisations. Through this new strategy, the city committed itself to support programmes for parents

<sup>145</sup> For more information: [Centro di documentazione Flavia Madaschi | Cassero](#)

<sup>146</sup> Daily Impact European, 2018, Paris Prize for LGBTI Rights. Available at [Paris Prize for LGBTI Rights](#)  
For more information: [Un prix international pour les droits des personnes LGBTIQ+ - Ville de Paris](#)

<sup>147</sup> Schwulenberatung Association website: <https://schwulenberatungberlin.de/about-us>

<sup>148</sup> Georgia Today, 2018, Tbilisi Mayor Vows Protection of People's Security on May 17. Available at: <http://georgiatoday.ge/news/10289/Tbilisi-Mayor-Vows-Protection-of-People>

<sup>149</sup> European Commission, 2017, [The business case of diversity for enterprises, cities and regions with focus on sexual orientation and gender identity - Report on good practices of cities and regions to promote LGBTI equality](#), p.13

<sup>150</sup> Council of Europe, 2018, [Safe at school: Education sector response to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe](#), p.41.



of LGBTI individuals, awareness-raising initiatives in schools and educational programmes on LGBTI inclusion in public institutions.<sup>151</sup>

DENMARK: In Copenhagen, the Copenhagen Pride, a week-long festival culminating in the Pride Parade, is one of the oldest annual LGBTI film festivals in the world. It is based on the screening of films that seek to challenge and explore sexualities, influence the contemporary gender debate and increase the visibility of LGBTI stories in film and media. During the Festival, screenings are organised in different theatres around the city for up to 10 days.<sup>152</sup>

87. On an international level, there are many examples of cooperation between European cities working together to develop and implement policies and strategies for LGBTI people. Fortunately, good practices have shown that local and regional authorities who work together can find means to overcome hatred movements. The example of “Sister Cities stand together” is one example that proves the positive outcome when local and regional authorities work together. “Sister Cities stand together” is an international exchange programme for LGBTI human rights activists created to build networks and connecting them on an international level.

NETHERLANDS: Rainbow Cities Network. Launched in May 2013, the Network’s members exchange good practices, seek collaboration on projects and share campaign materials. The LGBTI Department of the City of Amsterdam and Movisie, the Netherlands Centre for Social Development, are responsible for coordinating the Network, supported by the Dutch government. Officials from the Rainbow Cities meet annually and communicate between meetings via a mailing list. Their policies and strategies are published online each year in so-called “one pagers”.<sup>153</sup> Any city or region with an active LGBTI policy, or the intention to develop one, can become a member of this informal network.

GERMANY: In July 2019, during Cologne Pride, the city of Cologne hosted this 4-day festival with activists from 6 of Cologne’s 22 sister cities. These cities were Istanbul (Turkey); Katowice (Poland), Cluj-Napoca (Romania), Tel Aviv (Israel), Liverpool (UK) and Barcelona (Spain). This year’s topic put emphasis on the good relation of city cooperation, more particularly on “pride activists and the history of [the] sister cities’ pride movements”. This international exchange brought together different partner stakeholders at all levels, from Cologne’s LGBTI office, Cologne’s Office for International Affairs, local NGOs and pride activists. Cologne’s sister cities later invited the Mayor of Cologne to their local pride event, including in Katowice (Poland) and Cluj (Romania). Showing international solidarity, this project is proof that cooperation between local and regional authorities is necessary to promote and protect LGBTI persons’ human rights.

88. The Rapporteurs underline that multilevel cooperation fosters an effective exchange of expertise, policy initiatives, good practical examples and materials on LGBTI issues, bringing benefits for all stakeholders. The withdrawal of some cities from twinning agreements and two Belgian regions closing their offices of representation in Poland, and the cutting of funds by the EU in reaction to Polish local authorities’ initiatives adopting anti-LGBTI declarations sent a strong message reminding the Polish cities that the larger international community they are part of has a say in how all human beings should be treated. It highlighted in the concrete example of Poland – but also valid for several other countries - that retreating into closed, nationalist/traditionalist positions in some areas of social interaction while propounding to be part of a democratic community of countries where human rights and the rule of law are grounding principles is a contradiction that creates tension and conflict. Action is needed to tackle this wayward trend; awareness raising, and dialogue are important steps in this direction.

<sup>151</sup> European Commission, 2017, *op.cit.*, p.22.

<sup>152</sup> *Idem.* p.29.

<sup>153</sup> One-pagers can be found at: [Resources - Rainbow Cities Network](#)

## 5. THE ROLE OF LOCAL GOVERNMENT ASSOCIATIONS AS A PLATFORM OF EXCHANGE

89. Local government associations represent and lobby for local governments at central government level. They provide services to their members and offer a platform for exchange, learning and networking. They are well placed to be a platform where elected representatives from different political families can be brought together to discuss issues from a local government perspective.

90. The European Charter of Local Self-Government stipulates the right of local authorities “to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest”. As such, they are an essential link in the chain of local and regional democracy.

91. Respect for the human rights of all citizens, including LGBTI people, is vital to ensure social cohesion, peace and democracy at the local level. It should be of common interest to all regional and local authorities. National associations of local and regional authorities thus have a key role to play in this matter. They can promote the respect for LGBTI persons’ human rights by providing support and expertise for the implementation of international standards and national legislation as well as the development of local equality policies.<sup>154</sup>

92. Alongside the local and regional government associations, all platforms that provide local and regional authorities the opportunity to come together and share innovative good practice and lessons learned should be encouraged and developed.

93. This peer learning can focus on different areas of cooperation, such as strengthening the capacity of local and regional elected representatives as drivers of change, give more influence to local and regional authorities by promoting dialogue with central government and strengthening their associations, raise awareness of the principles of local democracy and promote youth involvement at local level and promote learning by doing, through involvement in local initiatives aimed at improving governance, including citizen participation.

94. The rapporteurs underline that these activities directly include the human rights dimension. The aim is to strengthen the capacity of local and regional authorities to protect human rights at the local level and to give them a central place. In this regard, these Congress’ platforms can be very useful for all local and regional authorities in the protection of LGBTI people. The Congress needs the associations’ commitment in order to translate its resolutions into practical activities on the ground, providing both guidance to and putting pressure on local and regional authorities to implement them. This also applies to Congress Resolution 380(2015) “*Guaranteeing lesbian, gay, bisexual and transgender (LGBT) people’s rights: a responsibility for Europe’s towns and regions*”.

## 6. POLICY RECOMMENDATIONS TO COMBAT BACKSLIDING, TO PROTECT THE RIGHTS OF LGBTI PEOPLE AND PROMOTE EQUALITY

95. The Rapporteurs propose a series of interrelated policy recommendations to combat backsliding, ensure compliance with commitments made within CoE institutions, and facilitate LGBTI persons’ human rights and equality. Recommendations for local and regional authorities take central focus. Some attention is also paid to how national governments and institutions of the CoE can facilitate LGBTI persons’ human rights and equality.

96. One way to facilitate LGBTI persons’ human rights and equality without polarising is to include attention for LGBTI discrimination in broader policies and training programmes that address multiple types of discrimination and attempt to simultaneously improve the position of multiple minority groups. In that way, the discussion can then be framed around diversity and inclusion more generally instead of focusing exclusively on LGBTI people.

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<sup>154</sup> The Local Government Association (United Kingdom) has developed an Equality Framework for Local Government. The Framework sets out four modules for improvement underpinned by a range of criteria and practical guidance that can help a Council plan, implement and deliver real equality outcomes for employees and the community. More information available at: <https://www.local.gov.uk/our-support/guidance-and-resources/equality-frameworks/equality-framework-local-government>

97. Local and regional authorities should implement the resolutions and recommendations made by the CoE on LGBTI persons' human rights and equality to the greatest extent possible at the local level. Many tensions exist around implementation, however. LGBTI persons' human rights and equality have become an increasingly polarised and polarising issue in many European contexts, and it is important to avoid further polarisation. National authorities' carrying out their commitments with regard to international human rights standards is important as they also provide guidelines and set the framework for local and regional authorities.

98. In 2018, the Congress devoted a section of its first Volume of the Handbook on Human Rights at Local and Regional Levels to LGBTI persons' human rights. It describes all the challenges and how local and regional authorities can respond to them. There are many areas in which local and regional authorities can take action to improve LGBTI persons' human rights and the Handbook gives a number of concrete examples from which to draw inspiration.<sup>155</sup>

## 6.1 Policy measures local and regional authorities can take to improve LGBTI equality

99. The connection between local and regional governments and LGBTI civil society is crucial for developing and implementing effective policy measures. The local and regional authorities should therefore consult and involve a diversity of local LGBTI organisations in consultation structures and policy processes and include organisations also organisations focused on specific issues, such as bisexual, transgender\*, or intersex organisations. Activists involved in those organisations know what their specific local needs are, and they are the closest to the discriminated community. They can also provide local LGBTI organisations with financial compensation for their assistance in policy formulation and implementation while taking care not to compromise their financial and organisational independence.

100. In order to facilitate LGBTI persons' human rights and equality, local and regional authorities can

- mainstream goals of facilitating LGBTI equality and diversity within existing policies;
- implement active public policy on diversity that explicitly includes attention for LGBTI persons' human rights and equality;
- follow and collect information on good practices to strengthen awareness and integration and share the good practice examples concerning the integration and the development of LGBTI+ inclusive policies;
- be careful to avoid framing being LGBTI as a problem, and in trainings as well as in policy, frame problems that LGBTI people encounter;
- use inclusive language in all publications and official documents, preferring to use terms such as residents" or "citizens" wherever possible rather than "men" and "women";
- include questions on sexual orientation, gender identity, gender expression and sex characteristics wherever they collect data and monitor the progress of policies;
- grant permits for public LGBTI manifestations and ensure that such manifestations are adequately protected from violence;
- develop training programmes in various sectors, such as in health, education, the civil service (particularly for those who interact with local residents at front desks), the police, and the judicial system, to facilitate LGBTI persons' human rights and equality;
- specifically mention LGBTI projects as being able to apply for subsidies in tenders for public funding and include them in participatory budgeting arrangements wherever possible.
- use the UN sustainable development goals as a framework to identify the different tools they provide to combat discrimination against LGBTI+ persons;
- use the co-operation programs of the Council of Europe and the Congress as a framework to improve LGBTI persons' human rights through concrete actions.

101. In order to combat hate speech, and keeping in mind that either cultural, traditional nor religious values, nor the rules of a 'dominant culture' can be invoked to justify hate speech or any other form of discrimination against the LGBTI communities, local and regional authorities can

- implement clear codes of conduct forbidding hate speech, including on the basis of sexual orientation, gender identity, gender expression and sex characteristics, at local and regional

<sup>155</sup> Congress, 2019, [Human Rights Handbook for Local and Regional Authorities, Volume 1](#).



levels of government and at all levels of the public sector as well as for organisations that receive funding from local and regional authorities;

- make reporting of hate speech as easy as possible, for instance by developing social media applications that can be used to report hate speech and discrimination;
- encourage dialogue with and support sports associations and fan clubs in developing awareness raising activities regarding discrimination against LGBTI people in sport.

102. In order to combat hate crimes against LGBTI people, local and regional authorities can

- introduce local legislation forbidding hate crimes, including on the basis of sexual orientation, gender identity, gender expression and sex characteristics;
- create liaison officers within local police forces to maintain contact with LGBTI organisations and work together with those organisations to facilitate reporting, train police officers and local government staff on these issues;
- gather comprehensive data on occurrences of hate crimes and collect data by conducting studies to identify the core causes, consequences and the forms that such discrimination and hatred take in the current context.

103. In order to promote LGBTI inclusion and the social rights and well-being of LGBTI people, local authorities are invited to:

- create cooperation and coordination programmes with different stakeholders such as companies, NGOs and trade unions on how to adopt LGBTI-specific policies and promote diversity management;
- promote and assist the creation of safe spaces such as support centres in the fields of mental health support, counselling, coaching, group and individual consulting, trainings and education;
- monitor the implementation and application of existing legislation of anti-discrimination in the fields of employment, housing, social protection, and health;
- develop and implement training programmes for employers on LGBTI equality.

104. In order to promote LGBTI rights and equality in schools, local and regional authorities can, in so far as it is within their mandate,

- Provide training for educators and youth workers on LGBTI equality;
- require that schools implement LGBTI safety and equality policies in schools as well as clear plans to prevent and address bullying and cyberbullying in the school premises;
- provide educational resources and funding to schools to facilitate the founding of LGBTI/non-LGBTI alliances, i.e. clubs where LGBTI and non-LGBTI students can support and help each other, so as to make it possible to discuss LGBTI issues within schools.

## **6.2 Policy measures national authorities can take to assist local and regional authorities to improve LGBTI equality**

105. The work of local and regional authorities, although they are independent elected bodies, need assistance from the national level to implement their policy measures. The national authorities, keeping in mind that neither cultural, traditional nor religious values, nor the rules of a 'dominant culture' can be invoked to justify hate speech or any other form of discrimination against the LGBTI+ communities can provide such assistance by

- implementing the recommendations, resolutions, and judgments of the institutions of the CoE and consult international organisations, including the CoE SOGI Unit, for assistance where necessary;
- assisting local and regional authorities in all measures aimed at improving LGBTI persons' human rights and equality;
- developing and implementing national action plans, ensuring consultation with local and regional governments as well as NGOs and other civil initiatives working with and on LGBTI persons' human rights and equality;
- including questions in national data gathering surveys regarding discrimination and hate crimes against LGBTI people.

106. The Rapporteurs would highlight that there is a role for the relevant CoE institutions and bodies here, in order to assist governments in understanding how to implement CoE resolutions and recommendations by coordinating the implementation by helping governments exchange best practices between various levels of government, intensify monitoring of the extent to which implementation occurs and advise countries on potential improvements; and improve accountability mechanisms to ensure compliance among member states with judgments of the ECtHR.

## 7. CONCLUSIONS

107. The Rapporteurs draw attention to the serious nature of the developments in member States around LGBTI identities, its politicisation, the increasing attacks on LGBTI people, the harmful and violent public discourse and hate speech targeting them and the legal and policy-based onslaught against their rights and equality and the negative impact this situation has on LGBTI people's lives and safety.

108. They note that the attacks are backed up with increasing attempts at finding moral and ideological justifications, rooted in unilaterally defined traditional values and religious precepts. The defenders of these views are emulating and borrowing from each other and more and more organising themselves across frontiers. This development must be recognised for the serious harm it represents both for LGBTI people and its potential for endangering democracy as a whole. Strong counter measures and counter narratives must be developed, and action must be taken at all levels of government.

109. They underline the obligations of governments to uphold their CoE commitments and fight discrimination, raising awareness among the public and among elected representatives as to their responsibilities in this area. They draw attention to human and social rights as guaranteed by international legal texts such as the European Convention on Human Rights and the European Social Charter which provide guidelines for improving citizen's rights in democratic societies.

110. They emphasise the special role local and regional authorities can play in this respect, as authorities that are closest to the citizens which have an understanding of all the various communities and the ways in which they interact on the ground. Local and regional authorities are well placed to lead and take such action, in cooperation with all stakeholders, including independent national level authorities, NGOs, citizen initiatives, experts and international bodies. They highlight the range of tools available to local authorities for drawing up local/regional provisions within the framework of national legislation and to adopt anti-discrimination policies and strategies, in addition to national laws, or they can take the lead where national legislation has not yet been established or fails to fully guarantee rights.

111. The Rapporteurs stress the harmful effects of online hate speech and cyberbullying on the lives of LGBTI people. They note that fortunately, the development of new technologies also has its benefits for LGBTI people. Social media has helped amplify the voices of LGBTI people and to spotlight key campaigns for change. It has given more visibility to the LGBTI cause and has contributed to increase acceptance in society. Social networks can therefore be a useful tool for local and regional authorities to promote the rights of LGBTI people and to conduct awareness-raising campaigns in order to encourage the population to take action against discrimination. The development of different applications has given them the opportunity to meet people they can identify with, and with whom they can share common issues. It allows to reduce the feeling of isolation and enables them to be part of a group that will allow them to fight more effectively against any type of harassment and to feel supported in openly assuming and expressing their sexual orientation and gender identity.

112. At the international level, the Rapporteurs highlight the role of relevant CoE institutions and bodies in the development of standards on LGBTI equality, in the monitoring of the situation of LGBTI persons as well as in assisting governments in understanding how to implement CoE resolutions and recommendations by coordinating the implementation by helping governments exchange best practices between various levels of government; and improve accountability mechanisms to secure compliance among member states with judgments of the ECtHR and to ensure the effective implementation of ECRI's recommendations

113. They remind all public authorities that resisting backsliding in human rights, and further facilitating LGBTI persons' human rights and equality is essential for strengthening democratic inclusion and accountability throughout Europe. They call on those who govern to assume their responsibilities as forces of cohesion and to resist all foreseeable abuses that derive from rejecting the rights of minority groups which end up creating divided, polarised societies where the rights and psychological and physical integrity of their citizens are violated.