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Debate on “The role and responsibilities of local government in protecting LGBTI+ people in the context of rising extremism and homophobia”

The institutions and the member states of the Council of Europe have taken various measures to advance lesbian, gay, bisexual, trans*, and intersex (LGBTI) equality and acceptance in Europe. The Committee of Ministers took significant steps toward securing LGBT equality and acceptance in 2010 with the adoption of the recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity [Recommendation CM/Rec(2010)5]. The recommendation called on member states to sufficiently prosecute hate crimes, combat hate speech, guarantee freedom of association, secure access to public funding for LGBT NGOs, and secure equal treatment in employment for LGBT people. The Council of Europe included specific attention for transgender and intersex rights in Resolutions 2048 and 2191, respectively.

The Congress of Local and Regional Authorities adopted Resolution 380 and Recommendation 370 in 2015. In Resolution 380, the Congress recognized the special role local and regional authorities can play in facilitating LGBT equality and acceptance, writing that “because of the close relationship between citizens and their elected representatives at these levels, local and regional bodies are best placed to analyse the human rights situation, identify the relevant problems which arise and take action to solve them” (2015). With Recommendation 370, the Congress called upon the Committee of Ministers to invite member states to work together with local and regional authorities and LGBT civil society in implementing all Council of Europe texts promoting LGBT equality and acceptance.

In the Priorities of the Congress 2017-2020 the Congress specified that it would “continue to defend the rights of LGBT people and fight all forms of discrimination against them” (2017: 14). In addition to the agreements made by the Committee of Ministers, the Parliamentary Assembly of the Council of Europe, and the Congress, the European Court of Human Rights has ruled in favour of LGBTI equality and acceptance in numerous judgments.

Despite the measures taken by the Council of Europe to advance LGBTI equality and acceptance, recent years have witnessed the intensification of discriminatory discourses and practices directed against individuals identifying as LGBTI within Europe. In some contexts that trend is even supported by changes in government policy. I define the ways in which states go back on the previous commitments to LGBTI equality they have made through the institutions of the Council of Europe as “backsliding”.

Backsliding on LGBTI equality takes place in Europe in four ways (Krizsan and Roggeband, 2018: 93). First, LGBTI policy objectives are discursively delegitimised. Second, existing LGBTI policies are dismantled and reframed. Third, the implementation of LGBTI equality policies is undermined. Fourth, accountability and inclusion mechanisms are eroded. I will address each form of backsliding in turn.

The first form of backsliding, the discursive delegitimization of LGBTI equality policies, refers to the way in which language and speech are utilized as weapons to create an atmosphere that is hostile to both LGBTI policy objectives and to LGBTI people. Discursive delegitimization includes anti-LGBTI discourse and hate speech; attempts to censor the voices of individuals and organizations that are advocating for LGBTI acceptance and equality, for instance through so-called “anti-propaganda legislation”; and by framing LGBTI as an ideology instead of a minority group.

Despite efforts by the Council of Europe to combat hate speech, hate speech remains a problem. In a report published this year, ILGA-Europe identified an increase in hate speech by political and religious leaders in more than a third of member states. 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.

One concrete example of discursive delegitimization is the labelling in Poland of municipalities as so-called “LGBT-free zones”. Local municipalities comprising roughly a third of Poland have now been declared “LGBT-free zones” (Ciobanu, 2020).

The second form of backsliding concerns the dismantling and reframing of existent policies. Some Council of Europe member states have explicitly dismantled policies facilitating LGBTI equality and acceptance through administrative policy change and legislative change. One example is the Hungarian Parliament’s passing in May 2020 of the Omnibus Bill (T/9934) including Article 33, which requires citizens to list their “sex at birth” on their national IDs. The law effectively bans changing legal gender. The dismantling of policies has occurred in the diverse areas of health, schooling, and legal gender recognition, among others.

The third form of backsliding concerns the ways in which government actors undermine the implementation of policies that facilitate LGBTI equality and acceptance. For instance, some member states, such as Poland and Croatia, have failed to implement commitments made in the Council of Europe about protection from hate crimes on the basis of sexual orientation, gender identity and expression, and sex characteristics (Karsay, 2018). Furthermore, some member states, such as Armenia, Bosnia and Herzegovina, Lithuania, Macedonia, Serbia, and Portugal, which have legislation forbidding hate crimes on the basis of sexual orientation, gender identity and expression, and sex characteristics do not effectively monitor hate crimes (Karsay, 2018). Another example is that despite the 21 November 2018 ruling on the case of *Alekseyev and Others v. Russia*, in which the European Court of Human Rights found Russia to be 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 European Convention on Human Rights (Registrar of the Court, 2018), Russia refuses to implement the European Court of Human Rights’ ruling and continues to ban LGBTI manifestations and pride events.

Non-implementation may be used by some states to meet international rights standards on paper without having to actually invest in securing LGBTI equality and acceptance. Legislation, however, requires implementation in order to secure equality and acceptance for LGBTI people.

The fourth form of backsliding concerns the erosion of inclusion and accountability mechanisms. The ability to hold government actors accountable is weakened in situations in which civil society actors are not included in policy processes. The erosion of inclusion and accountability mechanisms through explicit and subtle attacks on LGBTI NGOs and social movement organizations is common practice in several European countries. Karsay, for instance, found that civil society space, particularly for LGBTI organizations, has shrunk in several countries, including Armenia, Azerbaijan, Croatia, Georgia, Hungary, Macedonia, Moldova, Poland, Russia, Slovakia, and Ukraine (2018).

LGBTI NGOs have been hindered in their work by the introduction of so-called “NGO laws” and “Foreign agent laws”. The costs of activism increase through government intimidation and by requiring activists to devote resources to audits and administrative procedures instead of to activism. Many LGBTI NGOs in Europe are not only excluded from policy consultation, but they are being hindered in their basic ability to function as an organization.

Backsliding on commitments to LGBTI equality and acceptance is a persistent problem, and inequality, discrimination, and violence continue to affect the daily lives of LGBTI people throughout Europe. In some national and local contexts in which adequate rights protections are present on paper, they are insufficiently

implemented and are even at risk of being overturned. Combined with widespread hate speech and shrinking civil society space for LGBTI NGOs and movement organizations, these developments are troubling for LGBTI people specifically and for the quality of democracy generally.

Combating the four forms in which backsliding on LGBTI equality occurs is important for three reasons. First, backsliding on LGBTI equality negatively affects the quality of life and full political participation of LGBTI people and risks creating LGBTI people as second-class citizens. From schooling to housing, from healthcare to employment, from the right to assemble to freedom of expression, experiences of discrimination and violence exclude LGBTI people and their families and limit their ability to exercise full citizenship. Second, backsliding on LGBTI equality is inconsistent with international agreements made within institutions of the Council of Europe regarding the protection of LGBTI people from discrimination and violence and the promotion of the acceptance of LGBTI people. Third, backsliding on LGBTI equality may indicate a more general erosion of democratic principles and institutions (Kon, 2010; Takács and Szalma, 2020). When some minority groups are discriminated against, attacked, and excluded from full social and political participation, the strength of democratic institutions generally is weakened, and democracy is undermined.