Resolution 2417 (2022)[1]

Combating rising hate against LGBTI people in Europe

Parliamentary Assembly

1. Over the past few decades, significant progress has been achieved towards making equal rights a reality for lesbian, gay, bisexual, transgender and intersex (LGBTI) people throughout Europe. While the picture is chequered and varies widely from State to State, overall, hate crime and anti-discrimination laws have been strengthened, legal gender recognition procedures have been simplified, the bodily integrity of intersex people has started to be better protected and the rights of rainbow families have increasingly been recognised. This substantial progress is welcome, albeit insufficient.

2. Recent years have however also seen a marked increase in hate speech, violence and hate crime against LGBTI people, communities and organisations across many member States of the Council of Europe. The Parliamentary Assembly notes with deep concern that a significant proportion of hate speech, vilification and scapegoating of LGBTI people, as well as broad attacks on the exercise of their civil rights, have come from political figures and leaders, including government representatives, and from religious leaders.

3. The Assembly deplores these phenomena, which can be observed throughout Europe regardless of the extent of protection already afforded to the human rights of LGBTI people in any given country. It moreover condemns with particular force the extensive and often virulent attacks on the rights of LGBTI people that have been occurring for several years in, among other countries, Hungary, Poland, the Russian Federation, Turkey and the United Kingdom.

4. The rising hatred we are witnessing today is not simply an expression of individual prejudice, but the result of sustained and often well-organised attacks on the human rights of LGBTI people throughout the European continent. Individual expressions of homophobia, biphobia, transphobia and interphobia occur in a broader context in which highly conservative movements seek to stifle the identities and realities of all those who challenge the cisnormative and heteronormative social constructs which perpetuate gender inequalities and gender-based violence in our societies, and which affect women as well as LGBTI people.

5. The Assembly condemns the highly prejudicial anti-gender, gender-critical and anti-trans narratives which reduce the struggle for the equality of LGBTI people to what these movements deliberately mis-characterise as “gender ideology” or “LGBTI ideology”. Such narratives deny the very existence of LGBTI people, dehumanise them and often falsely portray their rights as being in conflict with women’s and children’s rights, or societal and family values in general. All of these are deeply damaging to LGBTI people, while also harming women’s and children’s rights and social cohesion.

6. The Assembly deplores the fact that such discourse is leading to stagnation and even backsliding in progress towards LGBTI equality, sexual and reproductive rights and women’s and children’s rights – and in so doing, it poses a direct challenge to democracy and the rule of law. In many countries, legislative processes aimed at improving the protection of the rights of LGBTI people have stalled, and in some, progress previously achieved has been undone.

7. The significant advances achieved in recent years are today under threat. It is crucial to react quickly in order to prevent further backsliding, and to work actively to promote full respect for the rights of LGBTI people.

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1. *Assembly debate* on 25 January 2022 (3rd sitting) (see Doc. 15425, report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Fourat Ben Chikha). *Text adopted by the Assembly* on 25 January 2022 (3rd sitting).
See also Recommendation 2220 (2022).

8. In view of all the above, and referring in particular to the relevant provisions of the European Convention on Human Rights (ETS No. 5) and the case law of the European Court of Human Rights, as well as the Assembly's Resolution 2239 (2018) "Private and family life: achieving equality regardless of sexual orientation", Resolution 2191 (2017) and Recommendation 2116 (2017) "Promoting the human rights of and eliminating discrimination against intersex people", Resolution 2048 (2015) "Discrimination against transgender people in Europe", Resolution 1948 (2013) and Recommendation 2021 (2013) "Tackling discrimination on the grounds of sexual orientation and gender identity" and Resolution 1728 (2010) and Recommendation 1915 (2010) "Discrimination on the basis of sexual orientation and gender identity", the Assembly urges governments and parliaments in Council of Europe member States to tackle hatred and discrimination against LGBTI people with renewed energy and urgency.

9. It welcomes in this context the ongoing work of the European Commission against Racism and Intolerance (ECRI) to draw up a general policy recommendation to combat discrimination and intolerance against LGBTI persons, as part of its 2019 Roadmap to Effective Equality, and the adoption by the European Commission in 2020 of its LGBTIQ Equality Strategy 2020-2025.

10. The Assembly also welcomes Opinion No. 1059/2021 of the European Commission for Democracy through Law (Venice Commission) on recent modifications to Hungarian legislation that may have a particular impact on LGBTI people, adopted and published in December 2021 following the request made by the Committee on Equality and Non-Discrimination.

11. It draws attention in particular to the previous opinion of the Venice Commission of July 2021 on Hungarian constitutional amendments, in which the commission had already warned against the danger of "further strengthen[ing] an attitude according to which non-heterosexual lifestyles are seen as inferior and fuel a hostile and stigmatising atmosphere against LGBTQI people", and to the statement in the new opinion, according to which "the amendments stigmatise LGBTI persons and discriminate against them on the basis of sexual orientation, gender identity and gender expression".

12. The Assembly calls on member States to refrain from enacting legislation or adopting constitutional amendments that are contrary to the rights of LGBTI people, and to repeal any such provisions already in force. It urges in particular:

12.1. the Hungarian authorities to repeal with immediate effect all the measures adopted in May 2020, December 2020 and June 2021 that prevent individuals who need it from obtaining the legal recognition of their gender identity, preclude children from obtaining recognition of their gender identity when it is different from the sex assigned to them at birth, bar adoption by anyone other than married heterosexual couples, block access to comprehensive sexuality education and ban the portrayal of trans identities and homosexuality. As stated in Opinion No. 1059/2021 of the Venice Commission, these amendments "contribute to creating a threatening environment where LGBTQI children can be subject to health-related risks, bullying and harassment";

12.2. the Polish authorities to support stronger anti-hate and anti-discrimination legislation in Poland, to ensure that it is effectively applied and to work to overturn all declarations and charters contrary to the rights of LGBTI people adopted at local, county and regional level;

12.3. all member States having in place so-called "anti-LGBTI-propaganda" laws, that is, any legislation that prevents persons and especially minors from having access to complete and objective information about the different forms of sexual orientation, gender identity, gender expression or sex characteristics that exist in society, to repeal this legislation with immediate effect;

12.4. all member States concerned by a process of execution of a judgment of the European Court of Human Rights in which one or more violations were found concerning the rights of LGBTI people or organisations, to ensure the rapid and full implementation of the judgment.

13. The Assembly calls on member States to speak out strongly against incidents of homophobia, transphobia, biphobia and interphobia in discourse, practice and policy wherever they occur, and to use the numerous Assembly and other Council of Europe and international standards and instruments at their disposal to hold others to account.

14. The Assembly emphasises that it is precisely when hostility is high or rising that effective criminal provisions and anti-discrimination legislation are most crucial. It calls on member States to strengthen their legislative framework wherever necessary to ensure that it protects the right of LGBTI people to live free from

hatred and discrimination, and to apply it effectively in practice. In line with the above-mentioned standards, and without prejudice to the more specific or far-reaching obligations they may already entail, it calls on member States in particular to:

14.1. amend criminal legislation as necessary to ensure that its provisions with respect to hate crimes clearly cover all offences committed against a person or group of persons based on their sex, sexual orientation, gender identity, gender expression and sex characteristics, provide for proportionate and dissuasive sanctions, protect victims' rights and make provision for them to receive compensation;

14.2. make motivations based on sex, sexual orientation, gender identity, gender expression and sex characteristics an aggravating circumstance for all ordinary offences;

14.3. ensure victims of crime are supported and that they are protected against re-traumatisation on the grounds of their sex, sexual orientation, gender identity, gender expression or sex characteristics caused by law-enforcement and support structures, including shelters;

14.4. amend anti-discrimination legislation as necessary to ensure that it covers all forms of discrimination, in all areas of life, based on sexual orientation, gender identity, gender expression and sex characteristics;

14.5. fully train police, judges and prosecutors on these provisions, in order to ensure their effective application in practice and to avoid impunity;

14.6. initiate, if this has not already been done, and bring to fruition in all cases, the legislative and policy-making processes necessary to complete other elements of the legal framework that are crucial to LGBTI equality, notably as regards legal gender recognition, the bodily integrity of intersex people, the protection of rainbow families, access to trans-specific healthcare and the exercise of civil rights such as the freedoms of expression, association and assembly.

15. Having regard to the egregious human rights violations committed against LGBTI people in the Chechen Republic (Russian Federation), which the Assembly condemned in its Resolution 2230 (2018) and Recommendation 2138 (2018) "Persecution of LGBTI people in the Chechen Republic (Russian Federation)" but which continue to occur and to have a devastating impact today, the Assembly urges:

15.1. the authorities of the Russian Federation to implement fully and immediately Assembly Resolution 2230 (2018) and redouble its efforts to prosecute and punish the perpetrators of these acts and provide reparation, including compensation, to victims, in order to put an end to the persecution of LGBTI people in the Chechen Republic and ensure that there is no impunity for the perpetrators of such human rights violations;

15.2. all other Council of Europe member States to renew their pressure on the Russian Federation to ensure that justice is done, intensify their own efforts to provide refuge to those still seeking to flee to safety and ensure that their asylum legislation provides effective protection to all LGBTI people forced to flee their country due to persecution based on their sexual orientation, gender identity, gender expression or sex characteristics.

16. The Assembly further calls on all member States to:

16.1. put in place a clear human rights policy to protect and promote LGBTI equality, including a strategy and action plan with clear and measurable targets and timelines for implementing any changes to legislation, policy or practice necessary to achieve equality, and effective accountability mechanisms;

16.2. mainstream the rights of LGBTI people in all key legislative, policy and other measures;

16.3. work proactively to bring their domestic legislation and practice into line with the developing case law of the European Court of Human Rights;

16.4. ensure that children are provided with objective, non-stigmatising information on sexual orientation, gender identity and sex characteristics;

16.5. refuse to provide funding to local, regional or national authorities or other State or non-state actors that deny the human rights of LGBTI people, and to withdraw such funding if it has already been granted;

16.6. participate constructively in the periodical review process carried out by the Committee of Ministers regarding the implementation of Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity;

16.7. contribute to and advance other Council of Europe work concerning the rights of LGBTI people, notably through actively supporting:

16.7.1. the relevant monitoring and standard-setting work of the ECRI;

16.7.2. the intergovernmental work carried out in this field by the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI);

16.7.3. the provision to States that request it of technical assistance aimed at advancing LGBTI equality and rights;

16.8. ensure the meaningful involvement of and consultation with civil society organisations and human rights defenders seeking to protect and promote the rights of LGBTI people in the development, implementation and review of all policies and measures that concern them, and more generally, enable and support the work of civil society in this field.

17. The Assembly strongly encourages parliamentarians to improve their understanding of the human rights challenges faced by LGBTI people in their country and abroad, by engaging bilaterally with and inviting to their parliaments local, national and umbrella civil society organisations and LGBTI human rights defenders with direct knowledge of the realities and issues at stake.

18. Finally, the Assembly emphasises that hatred against LGBTI people cannot be effectively combated if it is treated purely as an individual phenomenon. Paradigm shifts in social and cultural understandings of gender equality, harmful masculinities and the rights and freedoms of LGBTI people are still needed in many societies in order to achieve genuine equality for LGBTI people. The Assembly therefore urges member States to carry out extensive public awareness-raising campaigns so as to counter misleading or false narratives, increase understanding of the situation and rights of LGBTI people and actively promote their equality.

19. In the light of all the above, the Assembly considers that a network of its interested members should also be formally established, in order to facilitate co-operation between national parliaments aimed at promoting full and effective equality for LGBTI people throughout the continent.