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## Combating rising hate against LGBTI people in Europe

### Report<sup>1</sup>

Committee on Equality and Non-Discrimination

Rapporteur: Mr Fourat Ben Chikha, Belgium, Socialists, Democrats and Greens Group

### *Summary*

Past decades have seen significant progress towards making equal rights a reality for LGBTI people in Europe. However, in recent years, there has been a marked increase in hate speech and hate crime targeting people and organisations throughout the continent, based on sexual orientation, gender identity and sex characteristics. Many attacks on LGBTI people and on the exercise of their civil rights have moreover come from political and religious leaders.

The rising hatred against LGBTI people being witnessed in Europe today is the result of sustained and often well-organised attacks on their human rights. These attacks deliberately mis-characterise the fight for the equality of LGBTI people as so-called “gender ideology” and seek to stifle the identities and realities of all those who challenge the social constructs that perpetuate gender inequalities and gender-based violence in our societies. These attacks are harmful to women as well as LGBTI people.

States must act urgently, through legislation, policy, awareness-raising and other measures, in order to prevent further backsliding, promote the full equality of LGBTI people, and foster full respect for their rights at home and abroad.

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<sup>1</sup> Reference to committee: [Doc. 15121](#), Ref. 4524 of 19 September 2020.

## A. Draft resolution<sup>2</sup>

1. Over the past few decades, significant progress has been achieved towards making equal rights a reality for 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, however, have 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 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, as well as 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, amongst 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 intersexphobia occur in a broader context in which highly conservative movements seek to stifle the identities and realities of all those who challenge the cis- 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 fight 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 work actively to promote full respect for the rights of LGBTI people.
8. In view of all the above, and referring in particular to the relevant provisions of the European Convention on Human Rights and case-law of the European Court of Human Rights, as well as the Assembly’s [Resolution 2239 \(2018\)](#) on “Private and family life: achieving equality regardless of sexual orientation”, [Resolution 2191 \(2017\)](#) and [Recommendation 2116 \(2017\)](#) on Promoting the human rights of and eliminating discrimination against intersex people, [Resolution 2048 \(2015\)](#) on Discrimination against transgender people in Europe, [Resolution 1948 \(2013\)](#) and [Recommendation 2021 \(2013\)](#) on Tackling discrimination on the grounds of sexual orientation and gender identity, and [Resolution 1728 \(2010\)](#) and [Recommendation 1915 \(2010\)](#) on 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) towards drawing 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. It also welcomes the request made on 15 September 2021 to the European Commission for Democracy through Law (Venice Commission) for its opinion on recent modifications to Hungarian legislation that may have a particular impact on LGBTI people.

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<sup>2</sup> Draft resolution adopted by the committee at its meeting on 15 September 2021.

10. 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:

10.1. 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;

10.2. 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;

10.3. 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;

10.4. 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 was found concerning the rights of LGBTI people or organisations, to ensure the rapid and full implementation of the judgment.

11. The Assembly calls on member States to speak out strongly against incidents of homophobia, transphobia, biphobia and intersexphobia 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.

12. The Assembly emphasises that it is precisely when hostility is high or rising that effective criminal provisions and antidiscrimination legislation are most crucial. It calls on member States to strengthen their legislative framework wherever necessary to ensure that it protects the rights of LGBTI people to be 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:

12.1. 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 sexual orientation, gender identity, gender expression and sex characteristics, include proportionate and dissuasive sanctions, protect victims’ rights and make provision for them to receive compensation;

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

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

12.4. amend antidiscrimination 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;

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

12.6. 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.

13. 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 \(2018\)](#) on 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:

13.1. 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 and provide reparation, including compensation, 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;

13.2. 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.

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

14.1. 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;

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

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

14.4. 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;

14.5. 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;

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

14.6.1. the relevant monitoring and standard-setting work of the European Commission against Racism and Intolerance (ECRI);

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

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

14.7. 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.

15. 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.

16. Finally, the Assembly emphasises that hatred against LGBTI people cannot be effectively combatted 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.

17. 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.

**B. Draft recommendation<sup>3</sup>**

1. The Parliamentary Assembly refers to its Resolution ... (2021) on Combating rising hate against LGBTI people in Europe, in which it calls on member States to tackle hatred and discrimination against LGBTI people with renewed energy and urgency.
2. The Assembly believes it is crucial that member States redouble their efforts in this field and that the Council of Europe strengthen its own activities to protect and promote the rights of LGBTI persons in Europe.
3. It therefore invites the Committee of Ministers to:
  - 3.1. bring Resolution ... (2021) to the attention of the governments of all member States;
  - 3.2. ensure that adequate resources are allocated to work on equality of rights for LGBTI persons, combating hate speech and hate crime, and intergovernmental standard-setting in these fields;
  - 3.3. support the periodical review process regarding the implementation of Recommendation [CM/Rec\(2010\)5](#) of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity.

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<sup>3</sup> Draft recommendation adopted by the committee at its meeting on 15 September 2021.

## C. Explanatory memorandum by Fourat Ben Chikha, rapporteur

### 1. Introduction

1. Over the past few decades, significant progress has been achieved towards making equal rights a reality for 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, however, have also seen marked increases in hate speech, violence, and hate crime against LGBTI people, communities, and organisations across many member States of the Council of Europe. Alarming, 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 leadership, including government representatives, as well as from religious leaders. These dynamics have been observed regardless of the extent of protection afforded to the human rights of LGBTI people in any given countries – both very open societies and highly conservative ones have been affected.

3. Concern about this situation led to the adoption by the Committee on Equality and Non-Discrimination on 24 June 2020 of the motion for a resolution which is at the origin of the present report, and I was appointed rapporteur by the Committee at its meeting of 15 October 2020. Many of the issues at stake were already well known to our committee, thanks notably to the series of resolutions and recommendations it has prepared on behalf of the Assembly on various aspects of the rights of LGBTI people since 2010,<sup>4</sup> and to the engagement over the last decade of its successive General Rapporteurs on the rights of LGBTI people, a post I am honoured to hold currently. In order to build the most up-to-date and fullest possible picture of the current situation throughout Europe, I have carried out additional desk research and held numerous bilateral meetings with relevant stakeholders, particularly from civil society, in order to prepare this report.

4. I would like to thank most warmly the Current Affairs Committee of the Congress of Local and Regional Authorities for inviting me to participate in the online meetings it organised on 2 and 3 November 2020 with Polish interlocutors (national, regional and local authorities and civil society actors) in the framework of its own report on “The role of local authorities with regard to the situation and rights of LGBTI people in Poland”. This report was adopted by the Congress on 16 June 2021, together with a related report on “Protection of LGBTI people in the context of rising anti-LGBTI hate speech and discrimination: the role of local and regional authorities”<sup>5</sup>.

5. On 27 November 2020, our committee held a hearing in the framework of the preparation of my report, with the participation of Victor Madrigal-Borloz, United Nations Independent Expert on sexual orientation and gender identity; Teodora Ion-Rotaru, Executive Director, ACCEPT Association, Romania; Tina Kolos Orbán, Project Manager, Transvanilla Association, Hungary; and Miltos Pavlou, Project Manager – Social Research, European Union Agency for Fundamental Rights (FRA).

6. A further hearing was held by the committee on 18 May 2021, with the participation of Dunja Mijatović, Council of Europe Commissioner for Human Rights; Emina Bosnjak, Executive Director, Sarajevo Open Centre, Bosnia and Herzegovina; Marsel Tuğkan, Consultant, ILGA-Europe, Turkey; and Lui Asquith, Legal and Policy Director, Mermaids, United Kingdom.

7. My work on this report has left me with no doubt that the rising hatred we are witnessing today is not simply a product of individual prejudice, or of a sense of greater freedom to express it, but the result of sustained and often well-organised attacks on the human rights of LGBTI people throughout the European continent. These attacks deny the human dignity and the right to equality of LGBTI people, and in so doing, threaten the foundations of our democracies: from the moment that one minority is under attack, all minorities

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<sup>4</sup> [Resolution 2239 \(2018\)](#) on “Private and family life: achieving equality regardless of sexual orientation”, based on the report of Jonas Gunnarsson (Doc. 14620); [Resolution 2230 \(2018\)](#) and [Recommendation 2138 \(2018\)](#) on Persecution of LGBTI people in the Chechen Republic (Russian Federation), based on the report of Piet De Bruyn (Doc. 14572); [Resolution 2191 \(2017\)](#) and [Recommendation 2116 \(2017\)](#) on Promoting the human rights of and eliminating discrimination against intersex people, based on the report of Piet De Bruyn (Doc. 14404); [Resolution 2048 \(2015\)](#) on Discrimination against transgender people in Europe, based on the report of Deborah Schembri (Doc. 13742); [Resolution 1948 \(2013\)](#) and [Recommendation 2021 \(2013\)](#) on Tackling discrimination on the grounds of sexual orientation and gender identity, based on the report of Håkon Haugli (Doc. 13223); [Resolution 1728 \(2010\)](#) and [Recommendation 1915 \(2010\)](#) on Discrimination on the basis of sexual orientation and gender identity, based on the report of Andreas Gross (Doc. 12087).

<sup>5</sup> [Resolution 471 \(2021\)](#) on the role of local authorities with regard to the situation and rights of LGBTI people in Poland; [Resolution 470 and Recommendation 458](#) on the role of local and regional authorities on protecting LGBTI people in the context of rising anti-LGBTI hate speech and discrimination.

are under attack. The significant advances achieved in recent years are today under threat, and it is crucial to react quickly to prevent further backsliding and turn the tide around.

## 2. Heteronormativity, heterosexism, cisgenderism and anti-gender and gender critical movements

8. In this report, I frequently use the terms homophobia, biphobia, transphobia and intersexphobia. They correspond to many phenomena that can be observed in our societies, and make clear who is the target of hostile sentiments or discourse or of hateful offences committed. However, they also tend to suggest that such hatred is only a question of individual psychology (fear). As such, they fail to capture the structural ways in which our societies manufacture this hate, and they marginalise important forms of discrimination experienced by LGBTI people, which I outline briefly below.<sup>6</sup>

9. As the United Nations Independent Expert, Victor Madrigal-Borloz, underlined at our hearing on 27 November 2020, the idea that LGBT lives are somehow antisocial, disordered and sinful has carved deep grooves in the consciousness of societies throughout the world. Even though these ideas are being dismantled, their persisting influence can still be seen in the thinking of significant proportions of the population.<sup>7</sup>

10. Western patriarchal societies have traditionally been built around the notion of hegemonic masculinity: all people are divided into two, unequal, “complementary” groups: the penetrators and the penetrated, who are considered as debased. Virile men are ranked as hierarchically superior to women in this social order, and men deemed insufficiently masculine are relegated to the (inferior) female, feminine category. Everyone is moreover automatically assumed to be heterosexual and cisgender.<sup>8</sup>

11. These artificial social constructs are well known to feminists: they oppress women and are at the heart of persisting gender inequalities and gender-based violence.<sup>9</sup> Equally importantly, however, they set up an opposition between heterosexual and homosexual or bisexual people, and between cisgender and transgender or non-binary people; both groups, and indeed anyone whose sexual orientation, gender identity, gender expression or sex characteristics challenge binary norms, can still often be considered as abnormal, antisocial, and by definition inferior.

12. Heteronormative, heterosexist societies, as described above, collectively stifle the identities and realities of all those who challenge the established sex and gender hierarchy – although this order only works in favour of masculine, cisgender men and the individuals they choose to protect. This is why the fights for women’s rights and the rights of LGBTI people are so closely linked. The prevailing social order designates as shameful the bodies of intersex persons who do not conform to the binary male/female paradigm,<sup>10</sup> and the sexual orientation, gender identity and gender expression of everyone who does not fit the heterosexist norm. Even in societies which have repealed many of the discriminatory laws that are the legal manifestations of heteronormativity and have enacted legislation designed to better protect the rights of LGBTI people, persons who do not hide the fact that they are LGBTI continue to be targets for insult and attack. In the United Kingdom, for example, 99% of pupils hear “gay” used as a term of abuse in schools, and “pédé” (“faggot”) is the most common insult in French schools.<sup>11</sup>

13. There is a direct link between heteronormativity and heterosexism, on the one hand, and the growing anti-gender and gender-critical movements that are examined further below, on the other. Anti-gender and gender-critical movements, which are well-funded and share common patterns, strategies and language,<sup>12</sup> ignore the fundamental human rights issues at stake – the fight for recognition and equal rights – and wrongly

<sup>6</sup> See Fraïssé C. (ed.) (2011), *L’homophobie et les expressions de l’ordre hétérosexiste*, Coll. Psychologies, Presses Universitaires de Rennes, Rennes. The first recorded use of the term “heteronormativity” was in Warner M. (1991), “Fear of a Queer Planet”, *Social Text* No. 21, pp. 3-17.

<sup>7</sup> Victor Madrigal-Borloz, United Nations Independent Expert, committee hearing, 27 November 2020.

<sup>8</sup> This assumption has also strongly influenced medicalised approaches to intersex people’s bodies. See the report of Piet De Bruyn, Promoting the human rights of and eliminating discrimination against intersex people (Doc. 14404), chapter 4.1.

<sup>9</sup> The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (CETS No. 210) recognises that violence against women is a manifestation of the historically unequal power relations between women and men and recognises the structural nature of violence against women as gender-based violence (see the preamble to the convention).

<sup>10</sup> See the report of Piet De Bruyn, Promoting the human rights of and eliminating discrimination against intersex people (Doc. 14404).

<sup>11</sup> Bartram F. (2019), [Ten steps to tackling homophobic, biphobic and transphobic language in your school](#), Stonewall Education Guides, Stonewall, London; Beaulieu B. (2021), “*Comment devient-on homophobe?*”, programme presented by Ali Rebeih, France Inter, 27 May 2021.

<sup>12</sup> Council of Europe Commissioner for Human Rights Dunja Mijatović, committee hearing, 18 May 2021; EPF (2021), [Tip of the iceberg: Religious extremist funders against human rights for sexuality and reproductive health in Europe](#), 2009-2018, Brussels.

characterise efforts to deconstruct deeply harmful gender stereotypes in our societies as so-called “gender ideology”.

14. Whatever their motivations, these movements work to maintain unequal gender relations in the name of “tradition”, “family values”, “Christian values”, or a so-called “natural order”. Attacks on abortion, access to contraception, comprehensive sexuality education, same-sex marriage, gender, legal gender recognition, access to transition-related medical care, trans and intersex persons’ participation in sport, and ratification and implementation of the Istanbul Convention all form part of this agenda<sup>13</sup> – which, by maintaining or exacerbating inequalities, directly violates women’s, children’s and LGBTI people’s human rights. The growing expressions of hatred against LGBTI people that we are witnessing in Europe today must be understood not merely as individual acts, but as part of this broader dynamic which is also harming women and children.

### 3. Anti-gender rhetoric and hate speech

15. Explicitly anti-LGBTI hate speech increased in 2020 in Europe. The trend of politicians verbally attacking LGBTI people is reported to have grown significantly in this period in countries including Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Finland, Hungary, Italy, Latvia, the Republic of Moldova, North Macedonia, Poland, the Russian Federation, the Slovak Republic and Turkey, as well as in Kosovo\*. Religious leaders also propagated hate-speech in Belarus, Greece, the Slovak Republic, Turkey and Ukraine, many of them directly blaming LGBTI people for Covid-19.<sup>14</sup>

16. Hate messages targeting LGBTI people are also disseminated through the media, internet, video games and music. Hate speech is reported to have risen on social media in Belgium, Bulgaria, Croatia, the Czech Republic, Malta, Montenegro, the Russian Federation and Turkey in the past year, and in the general media in Slovenia and Ukraine. It remains an ongoing issue in Georgia, Ireland, Netherlands, North Macedonia, Portugal, Romania, the Slovak Republic, Spain and the United Kingdom.<sup>15</sup>

17. Anti-LGBTI hate speech is often closely entwined with broader anti-gender discourse, which has spread throughout Europe and the world in recent years.<sup>16</sup> On our continent, it has been highly visible in opposition to efforts to achieve greater recognition of same-sex partnerships. Examples include the three-year campaign for a referendum to ban same-sex marriage in the Romanian constitution and the campaigns against recognising same-sex marriage in Slovenia and Croatia.<sup>17</sup> Such discourse was also at the heart of demonstrations against the introduction of same-sex marriage in France in 2013 and the recognition of civil unions in Italy in 2016.<sup>18</sup> It has also been at the heart of attacks on trans people’s rights, notably in the United Kingdom, as discussed further below.

18. Such rhetoric tends to question the very existence of gender as a category of protection under international human rights law, and to reject the notion that gender is a social construct, distinct from (biological) sex and not based on a binary. Yet these features are crucial to understanding the lived reality of gender diverse, non-binary and trans persons, as well as to understanding sexual and reproductive rights. They are also closely linked to notions of power and control over the bodies of persons who have wombs.<sup>19</sup>

19. Public debate surrounding the ratification of the Istanbul Convention that has occurred in several Council of Europe member States in recent years has often reflected these dynamics. Bulgaria is a noteworthy example. During debates on ratification of the convention, misleading narratives were massively propagated, which have been harmful to both women, children and LGBTI people. Since the Constitutional Court found in a majority ruling that the Istanbul Convention was not in conformity with the country’s constitution, women’s rights defenders, NGOs working with victims of violence against women, and LGBTI individuals and organisations in Bulgaria have faced smear campaigns, hate speech in the media, cuts in funding and physical attacks.<sup>20</sup> Similar dynamics – again, harmful to both women’s and LGBTI people’s rights – have led to the Slovak Parliament’s repeated refusal to ratify the convention. The unilateral decision of the President of Turkey

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<sup>13</sup> Datta N. (2018), “*Restoring the Natural Order*”: *The religious extremists’ vision to mobilize European societies against human rights on sexuality and reproduction*, EPF, Brussels, p. 35.

\* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

<sup>14</sup> ILGA-Europe (2021), *Annual Review on the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe and Central Asia*, Brussels, 2021, p. 7.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Teodora Ion-Rotaru, Executive Director, ACCEPT Association, committee hearing, 27 November 2020.

<sup>18</sup> Gunnarsson J, *Private and family life: achieving equality regardless of sexual orientation*, Doc. 14620, para. 16.

<sup>19</sup> Victor Madrigal-Borloz, United Nations Independent Expert, committee hearing, 27 November 2020.

<sup>20</sup> Council of Europe Commissioner for Human Rights Dunja Mijatović, [Report](#) following her visit to Bulgaria from 25 to 29 November 2019, CommDH(2020)8, paragraphs 53-57; ILGA-Europe (2021), p. 35.



in March 2021 to withdraw from the Istanbul Convention (which is currently being contested before the Turkish courts) can also be understood as part of this trend.

#### 4. Instrumentalisation of anti-gender rhetoric and hate speech for political purposes

20. As the United Nations Independent Expert emphasised at our hearing on 27 November 2020, messages of hatred against LGBT persons in public debate, demonstrations and any part of public space are becoming worryingly the norm in vast areas of Europe. Such rhetoric has acquired legitimacy and political acceptance, and populism espousing it is achieving positive results in electoral processes. This gives considerable credit to offensive messages calling for the suppression of non-heteronormative sexual orientations and non-cisnormative gender identities, and for the limitation of the human rights of LGBTI persons.<sup>21</sup>

21. In Poland, politicians have signed up to homophobic so-called “family charters”, and around one hundred local and regional councils have adopted ‘anti-LGBTI-ideology’ declarations (these council areas are frequently referred to as “LGBT-free zones”) or “family charters”. The debates preceding their adoption frequently include aggressive and discriminatory language and depict support for the rights of LGBTI people as propaganda that is harmful to children and that seeks to undermine traditional Polish values.<sup>22</sup> The European Commission has expressed concern that these declarations may violate EU non-discrimination law. In the face of the authorities’ failure to respond adequately to its repeated requests for information on this matter, the Commission launched infringement proceedings against Poland on 15 July 2021.<sup>23</sup>

22. Hate speech against LGBTI people has been employed at the highest political levels, exploiting prejudice for political gain. During the 2020 presidential campaign, the incumbent candidate (who was ultimately re-elected) expressly denied LGBTI people’s dignity, equality and humanity, stating, “They try to tell us that [LGBTI] people are people but it is an ideology”, and referring to so-called “LGBTI ideology” as an “ideology of evil”.<sup>24</sup>

23. As public debate around LGBTI equality becomes increasingly politicised, some actors observe that the main purpose of adopting “anti-LGBTI-ideology” declarations or “family charters” is to show support for the governing party.<sup>25</sup> Yet such declarations, by their very nature, deny LGBTI people’s right to exist, and deprive them of a safe space. They are a blatant violation of human dignity and equality and directly threaten the rule of law and our democracies, which depend on societies in which everyone feels welcome and protected and able to play an active role. Moreover, they harm individuals who need our support.

24. As I noted in my public statement on this subject in June 2020, politicians cannot sit idly by while members of our societies are singled out for attack, stigmatised and dehumanised: we must be uncompromising in our rejection of homophobia, transphobia, biphobia and intersexphobia, and we must call such hatred out whenever we see it. Instead of promoting hatred, I called on all Polish politicians to support stronger anti-hate and anti-discrimination legislation in Poland, and to ensure that it is effectively applied.<sup>26</sup>

25. I find it deeply worrying that the rights of LGBTI people are being politicised and instrumentalised in such a way. I welcome the fact that some municipal, local and regional authorities have revoked anti-LGBTI declarations or charters they had previously adopted – in some cases due to decisions by international counterparts to cease providing funding to these authorities –, and dozens of others that have been lobbied to adopt such texts have rejected them, with some having instead signed declarations against homophobia.

26. The Council of Europe Commissioner for Human Rights emphasised during our hearing of 18 May 2021 that her monitoring work in a number of other countries revealed a clear manipulation of anti-LGBTI prejudice for short-term political gain, notably in electoral contexts.

27. In Armenia in 2018, two anti-LGBTI legislative proposals were introduced in the parliament, one proposing to make it a criminal offence for persons of the same sex to kiss in public, and the other proposing to make it an administrative offence to “propagate non-traditional sexual relations [defined as including homosexual relationships] amongst children”. The Commissioner expressed concern that such bills may be “designed to stoke anti-LGBTI sentiments as an element of rivalry between opposing political groups”, that

<sup>21</sup> Victor Madrigal-Borloz, United Nations Independent Expert, committee hearing, 27 November 2020.

<sup>22</sup> Congress of Local and Regional Authorities of Europe, Report, “The role of local and regional authorities with regard to the situation of LGBTI people in Poland”, [CG\(2021\)40-19](#), Appendix, Fact-finding visit, paragraph 16 and sources cited therein; for a map of the authorities concerned, see the online [Atlas of Hate](#).

<sup>23</sup> European Commission, “[EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people](#)”, Brussels, 15 July 2021.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> “Poland: ‘stop the rhetoric of hate against LGBTI people’ says PACE General Rapporteur”, [statement](#), 25 June 2020.

they were “likely to be instrumentalised to the detriment of the rights of the LGBTI community” and that they would distract from other core human rights issues that the country needed to tackle.<sup>27</sup> The situation of LGBTI people in Armenia, as well as in Azerbaijan and Georgia, is being examined in more detail by my colleague Mr Lacroix.

28. In the Republic of Moldova, hate speech from high-level politicians and religious and community leaders was reported to the Commissioner in 2019. It reportedly intensified around electoral periods and was aggravated by hate speech originating from, or spread by, the media. LGBTI people in the Republic of Moldova have been frequent targets of virulent forms of this hate speech. Neither the authorities nor the media have made strong efforts to tackle it, and the legal framework against hate speech is weak. The Commissioner urged the Moldovan authorities to enact stronger legislative provisions against anti-LGBTI hate speech, give greater powers in this field to the national equality body, and take ownership and responsibility for tackling this human rights issue.<sup>28</sup>

29. Much hate speech occurs online, especially on social media. Leaving a vacuum regarding hate speech on social media amounts to condoning hateful language and incitement, in violation of the European Convention on Human Rights<sup>29</sup> – yet LGBTI organisations are subjected to it constantly, without redress. Social media companies have begun to see that it is in their interest to avoid their platforms being used to incite hate, discrimination or violence, and they respond to government culture. As the Commissioner for Human Rights underlined at our hearing of 18 May 2021, decision-makers have a responsibility to create and set the obligations that social media companies must meet, and the judiciary has a responsibility to enforce them.<sup>30</sup>

30. In countries such as the Netherlands, where progress towards LGBTI equality is well advanced and public attitudes are LGBTI-friendly, homonationalism is used by extreme right parties to advance a racist agenda. They stigmatise minority groups and single out Muslims, in particular, as homophobic and reactionary – casting all Muslims as necessarily harbouring anti-LGBTI hatred, as if all white, western Christians were LGBTI-friendly. While the specific levers pulled here are very different from those described earlier, homonationalism is not only racist but also instrumentalises LGBTI people and their rights to advance a political agenda based on hate. Using such rhetoric harms the national, ethnic and religious groups targeted while remaining totally indifferent to the impact on LGBTI people themselves.

31. The inescapable conclusion is, in the words of the Commissioner at our hearing of 18 May 2021, that political leaders across large parts of Europe are failing in their responsibility to educate, combat stereotypes and work actively for acceptance. Instead, prejudice against LGBTI people is being used to advance harmful political agendas and interests, to the detriment of and with total disregard for LGBTI people’s rights. LGBTI people are, quite simply, being treated by these movements as undeserving of respect and equal dignity as human beings.

32. This cannot be tolerated. Political leaders and public authorities must vigorously challenge the dehumanisation of LGBTI people, and not leave this burden solely to civil society. They must refrain from engaging in hate speech themselves, and take a prompt, firm and public stance against all hate speech targeting LGBTI persons, including LGBTI activists, ensuring also that all such incidents are effectively investigated and prosecuted. They must also ensure that effective legislation is in place, allowing for such action to be taken (see below).

## **5. Growing difficulties in enacting legislation to promote equality, and rollbacks in legislation previously enacted**

33. As the Commissioner for Human Rights has emphasised, a strong legislative framework is even more important when the political and societal climate is hostile. Yet there are still significant gaps in the legal protection of LGBTI people in Europe, whether as concerns hate speech laws, aggravating circumstances for criminal offences, the recognition of same-sex partnerships or marriage or legal gender recognition.<sup>31</sup>

34. The European Commission against Racism and Intolerance (ECRI) has published a factsheet setting out a current snapshot of the standards that should be met in these fields, based on its monitoring work to date and other key Council of Europe standards, including the European Convention on Human Rights and relevant case-law of the European Court of Human Rights, as well as the Assembly’s adopted texts. Despite vital steps

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<sup>27</sup> Council of Europe Commissioner for Human Rights Dunja Mijatović, [Report](#) following her visit to Armenia from 16 to 20 September 2018, CommDH(2019)1, paragraphs 102-103 and 106.

<sup>28</sup> Council of Europe Commissioner for Human Rights Dunja Mijatović, [Report](#) following her visit to the Republic of Moldova from 9 to 13 March 2020, CommDH(2020)10, paragraphs 75-84, and sources cited therein.

<sup>29</sup> See notably *Beizaras and Levickas v. Lithuania*, application no. 41288/15, judgment of 14 January 2020.

<sup>30</sup> Council of Europe Commissioner for Human Rights Dunja Mijatović, and Lui Asquith, committee hearing, 18 May 2021.

<sup>31</sup> Council of Europe Commissioner for Human Rights Dunja Mijatović, committee hearing, 18 May 2021.

forward over the past decades, progress nonetheless remains to be made throughout Europe, to greater or lesser degrees, on legislative provisions to combat hate and prevent discrimination against LGBTI people.<sup>32</sup>

35. Bringing efforts to enact such laws to fruition appears however to be becoming increasingly difficult, and in some cases, progress previously made has been reversed. Here I would like to draw attention to just three examples; many others could however be cited. I examine in a separate section below specific setbacks currently being faced by trans, non-binary and genderqueer people, including some intersex people.

36. In Italy, draft legislation intended *inter alia* to strengthen hate crimes legislation by extending the grounds expressly covered to include sex, gender, sexual orientation, gender identity and disability, approved by the lower house of parliament in November 2020, has been blocked in the Senate since then. The text has been the subject of heated public and political debates, including homophobic or transphobic discourse.<sup>33</sup>

37. In Lithuania, attempts have been made to grant legal recognition to same-sex couples since 2015, but without success. A new gender-neutral partnership bill introduced on 21 May 2021 was sent back to its authors for revision and will not be re-examined for several months; a week earlier, a rally in favour of “traditional family values” was held in Vilnius, reportedly drawing several thousand people. In parallel, numerous legislative initiatives aiming to restrict the rights of LGBTI people have been registered over the past years, including proposed amendments to exclude rainbow families from the constitutional notion of the family. Lithuania also still has in place an “anti-LGBTI-propaganda” law (see further next section).<sup>34</sup>

38. In Hungary, a series of laws deeply harmful to the rights of LGBTI people have been adopted over the past year. In addition to the anti-trans legislative amendments adopted in spring 2020 (see below), the parliament enacted a law in December 2020 that will strip people of the right to adoption unless they are married (which is impossible for same-sex couples in Hungary). It also made constitutional amendments restricting children’s gender identity to their sex assigned at birth, requiring an upbringing based on Hungary’s “Christian culture”, and institutionalising a heteronormative definition of the family. At the request of the Assembly’s Monitoring Committee, the Venice Commission examined these amendments in a recent opinion. It expressed concern, *inter alia*, at the lack of public consultation on the amendments; at their adoption during a state of emergency; at the political instrumentalisation of the constitution; and at the clear or potential discriminatory effect of several amendments on grounds of sexual orientation or gender identity.<sup>35</sup> On 15 June 2021, amendments were enacted to a series of laws, introducing a ban on the “portrayal and the promotion of gender identity different from sex at birth, the change of sex and homosexuality” for persons under 18. All of these changes have been introduced during periods when Covid-19-related restrictions on public gatherings have made it impossible to hold public protests.<sup>36</sup> They are contrary to international human rights standards, including judgments of the European Court of Human Rights and Assembly resolutions, and amount to systematic attacks on the rights of LGBTI people. On 15 July 2021, the European Commission announced that it was launching infringement proceedings against Hungary concerning possible breaches of several articles of the Treaty on European Union and Article 2 of the Charter of Fundamental Rights, guaranteeing equality and the protection of human rights.<sup>37</sup> Shortly afterwards, on 21 July 2021, the prime minister of Hungary however announced his intention to call a referendum inviting Hungary’s population to express its approval of the latest changes. The questions he proposed to submit to a referendum are moreover reportedly highly tendentious: for example, whether voters would be asked whether they “approve of schools talking to children about sexuality without their consent”, or whether they support the “promotion of sex-change treatments for minors”.<sup>38</sup>

<sup>32</sup> European Commission against Racism and Intolerance (ECRI), [Factsheet](#) on LGBTI issues, Strasbourg, 1 March 2021; [Compilation](#) of ECRI country reports recommendations pertaining to LGBT persons (fifth monitoring cycle).

<sup>33</sup> *Disegno di legge S. 2005, Contrasto della discriminazione o violenza per sesso, genere o disabilità* (“Ddl Zan”).

<sup>34</sup> LGL, “[Gender-Neutral Partnership Proposal Meets Failure During its First Reading in Seimas](#)”, 2 June 2021; “[Lithuanian MPs Register Bill to Allow Same-sex Partnership](#)”, 25 March 2015; “[Four Homophobic Legislative Initiatives on Lithuanian Parliament’s Autumn Agenda](#)”, 19 September 2017; “[Lithuanian Parliament Proceeds with Banning Same-Sex Couples from Constitutional Concept of Family Life](#)”, 28 June 2016; “[Protection of minors, or censorship of LGBT content?](#)”, 29 October 2018.

<sup>35</sup> European Commission for Democracy through Law (Venice Commission), [Opinion on the constitutional amendments adopted by the Hungarian Parliament in December 2020](#), adopted at the 127 meeting of the Venice Commission (Venice and online, 2-3 July 2021), CDL-AD(2021)029.

<sup>36</sup> Amnesty International, “[Hungary: Hungarian Parliament must reject amendments further undermining the rights of LGBTI people](#)”, EUR 27/3353/2020; ILGA Europe, “[Hungarian parliament’s proposed amendments censoring public communication about LGBTI people violates EU law](#)”, 11 June 2021; see also my statement of 16 June 2021, “[Hungary: PACE General Rapporteur denounces new legislation as ‘part of a concerted attack on LGBTI people by the authorities’](#)”.

<sup>37</sup> European Commission, “[EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people](#)”, Brussels, 15 July 2021.

<sup>38</sup> Komitid, “[Viktor Orbán convoque un référendum sur la loi anti LGBTI+ critiquée par Bruxelles](#)”, 21 July 2021.

## 6. Freedoms of expression, association and assembly

39. Amongst policies and measures that are directly harmful to the equality and rights of LGBTI people, I also wish to mention a range of restrictions and attacks on the freedoms of expression, association and assembly.

40. So-called anti-LGBTI-propaganda” laws, which the Assembly already condemned in its [Resolution 1948 \(2013\)](#) “Tackling discrimination on the grounds of sexual orientation and gender identity”, remain in force in the countries concerned – and, as noted above, new such provisions have just been adopted by the Hungarian parliament. These laws are promoted on the basis that they protect minors. Yet by preventing access to objective information on sexual orientation, gender identity and expression and sex characteristics, they place young people at far greater risk of harm, and do nothing to break down stigma and create a more open, accepting society. The European Court of Human Rights has moreover found such legislation to be in violation of Article 10 and Article 14 in conjunction with Article 10 of the European Convention on Human Rights.<sup>39</sup>

41. Measures that seek to limit or prevent children’s access to books presenting non-heteronormative families, or to eliminate all discussion of gender at all levels of education, are similarly harmful.<sup>40</sup>

42. In the heteronormative context described above, many LGBTI people internalise shame from an early age and seek to make themselves invisible for as long as they can. Pride events can only be fully understood against this background, as a direct outcome of the shame imposed on LGBTI people and the stigma bred over long periods by heteronormative, heterosexist societies; they are not about imposing a world view but represent a crucial means for LGBTI people to reclaim the space and the dignity that the prevailing social order still denies them.

43. Yet LGBTI people’s freedom of assembly continues to be threatened in many European countries. Police do not always provide adequate protection to Pride marches or other events held by LGBTI organisations, leaving LGBTI people exposed to attack, and the authorities in some countries have prosecuted LGBTI people for exercising their right to peaceful assembly. In 2020 alone, ILGA-Europe drew attention to events attacked or disturbed by extremists in Bulgaria; the denial of a permit for a conference in Greece; anti-LGBTI rallies in Poland at which LGBTI activists peacefully protesting the rallies were arrested; several court cases brought in Turkey against peaceful Pride marchers; and a violent attack on the Odessa Pride event in Ukraine. The European Court of Human Rights has repeatedly found bans on Pride marches, as well as failures to protect them from violent attack, to be in breach of the Convention.<sup>41</sup>

44. In Turkey, Pride events were held peacefully for a number of years. However, hostile statements by the President and the media, which have increased since the failed coup attempt in 2016, target LGBTI people and organisations and have encouraged state and local authorities to restrict LGBTI events.<sup>42</sup> The blanket ban imposed on all LGBTI events in Ankara in 2016 meant LGBTI people were unable to hold any events until a court lifted the ban in February 2019. A Pride event organised on METU grounds in May 2019 was violently dispersed by the police. Although the event was peaceful, 22 people were arrested, and are currently facing charges in court. The trial has been delayed several times, obstructing justice and placing an additional burden on those charged. Peaceful student protests at Boğaziçi University in Istanbul in March 2021 were also violently dispersed, and the LGBTI+ student club was forcibly shut down.<sup>43</sup> As a result of such measures and the hostile stance of the authorities, LGBTI people are unable to go out freely on streets, come together, organise marches, or even gather for a film screening.

45. The 2021 Pride season – crowned by August’s highly successful WorldPride in Copenhagen and Malmö – again saw freedom of assembly challenged on a number of occasions. While there were some highly welcome developments, such as the successful holding of Sarajevo’s third pride event, a number of Pride events faced difficulties. Istanbul’s Pride march, for example, was again banned in 2021, for the seventh year running; some of those who nonetheless assembled to march were met with excessive police force, and dozens of people, including journalists, were arrested.<sup>44</sup> The municipality of Bucharest initially sought to

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<sup>39</sup> *Bayev and others v. Russia*, application no. [67667/09](#), judgment of 20 June 2017.

<sup>40</sup> Povoledo E., “Book ban in Italy spotlights country’s struggle on gay rights”, *International New York Times*, 14 August 2015; Teodora Ion-Rotaru, Executive Director, ACCEPT Association, committee hearing, 27 November 2020.

<sup>41</sup> See inter alia *Genderdoc-M v. Moldova*, application no. [9106/06](#), judgment of 12 June 2012; *Identoba and others v. Georgia*, application no. [73235/12](#), judgment of 12 May 2015.

<sup>42</sup> Marsel Tuğkan, LGBTI consultant, ILGA-Europe, and Melike Balkan, METU Igbti+ solidarity, Turkey, committee hearing, 18 May 2021.

<sup>43</sup> AFP, [Turkish police detain dozens of student protesters](#), 26 March 2021.

<sup>44</sup> ILGA Europe, [“Police violence and ill treatment against peaceful protestors at Istanbul Pride”](#), Rainbow Digest, June 2021.

relocate the Pride march from its planned route in the city centre, before eventually reversing its decision.<sup>45</sup> Far right groups attempted to disrupt the Odesa Pride march in August, clashing violently with and using tear gas against police who were there to protect it, following similar attacks at the previous year's event.<sup>46</sup> Attacks carried out against Pride events in Tbilisi in July will be covered in the report of my colleague Christophe Lacroix on *Alleged violations of the rights of LGBTI people in the Southern Caucasus*.

46. The situation of LGBTI human rights organisations and defenders across Europe is also worsening. The Council of Europe's Commissioner for Human Rights has identified an emerging pattern of insufficient funding, verbal and physical attacks, restrictions on free expression, judicial harassment and leaks of personal data. The Commissioner will publish a detailed report on these issues in the coming months.<sup>47</sup> Two examples can be cited here: first, "foreign agent" legislation, which has severely impacted the work of LGBTI and other human rights organisations in the Russian Federation, with similar legislation subsequently introduced in Hungary having been struck down by the European Court of Justice; and second, recent attempts to impose VAT on NGOs, including LGBTI organisations, in Bosnia and Herzegovina.<sup>48</sup>

47. Businesses seeking to present an inclusive public image that is supportive of diversity have become increasingly willing to provide sponsorship to LGBTI organisations' events, and the need for such support is all the greater where government funding is scarce. To avoid "pinkwashing" (using LGBTI people as tokens enabling companies to present a false image of diversity and inclusion), companies need to be held responsible throughout the year (not just during the event or initiative they are supporting), to put in place policies, targets and clear actions inside the company to support LGBTI equality, and report publicly on the implementation of these measures, and to respect at all times the principles set out in the United Nations Guiding Principles on Business and Human Rights.

## 7. Attacks on the rights and civil liberties of trans people

48. Beyond mere rhetoric, anti-gender discourse also underpins policies that clearly run counter to the rights of LGBTI people, and is used to justify discrimination against them. People who are trans, non-binary, genderqueer, genderfluid, agender or of a non-Western gender identity, and those who have a trans history (all of whom I will include here in the term "trans") have come under increasing attack in recent years.

49. The legislative amendments introduced in Hungary in spring 2020 – when a state of emergency had been declared in the context of the country's efforts to combat the Covid-19 pandemic – changed the mutable category of sex/gender to an immutable one. Although this was not framed as targeting trans people or intersex people facing the same issues, the effect has been to introduce a complete ban on their changing their name or obtaining documents reflecting their gender. Yet this had been possible in Hungary since 2004.<sup>49</sup>

50. In other countries where governments have previously acted to protect the rights of LGBTI people more effectively – notably by strengthening criminal codes or anti-discrimination legislation – legislative progress has in many cases stalled. Thus, commitments to simplify access to legal gender recognition, which is crucial for trans and many intersex people, have not been followed through in countries such as Cyprus, Finland, Germany and the United Kingdom, while the practical implementation of existing procedures is reported to have stalled in countries such as Azerbaijan, Georgia, Serbia and Turkey as well as in Northern Ireland.<sup>50</sup> Activists in Denmark, Finland, Norway and Sweden moreover report a backlash against transgender rights, sometimes including physical attacks.<sup>51</sup>

51. In Spain, work began in 2016 on new legislation to facilitate trans people's access to medical care and bodily autonomy, ensure that legal gender recognition is based on self-determination, and make the latter available to people of all ages. All are in line with Assembly [Resolution 2048 \(2015\)](#) and there was overwhelming public support for these changes (98% of responses to a public consultation carried out at the time were in favour) and cross-party support in parliament. However, the legislative process has since been blocked. Extremely hostile anti-trans discourse has recently come from the highest political levels, including

<sup>45</sup> Mutler A., "[Romanian authorities do about-face, allow Bucharest Pride march to take place in heart of city](#)", Universul.Net, 9 August 2021.

<sup>46</sup> RFE/RL Ukrainian Service, "[Ukrainian police clash with far right group at Odesa Pride march](#)", RFE/RL, 28 August 2021.

<sup>47</sup> Council of Europe Commissioner for Human Rights Dunja Mijatović, committee hearing, 18 May 2021.

<sup>48</sup> See [Resolution 2362 \(2021\)](#) and the report of my colleague Alexandra Louis, on which it based (Doc. 15205); Emina Bosnjak, Sarajevo Open Centre, committee hearing, 18 May 2021.

<sup>49</sup> Tina Kolos Orbán, Transvanilla Association, Hungary, hearing held on 27 November 2020 by the Committee on Equality and Non-Discrimination. See also my declaration of 22 May 2020, "[Depriving trans and intersex people of legal gender recognition in Hungary is intolerable](#)".

<sup>50</sup> Hugendubel K., presentation on 5 May 2021, Digital event organised under the auspices of the German Presidency of the Council of Europe, "Towards the full recognition of LGBTI rights across Europe".

<sup>51</sup> Panel, "Nordic backlash on transgender rights", 20 August 2021, available at <https://youtu.be/pyeAoAi-opk> from 3:10:45.

the Vice-President of the Spanish government, who described legal gender recognition based on self-determination as putting the “identity criteria of 47 million Spaniards at risk”.<sup>52</sup> The bill was eventually debated in May 2021, following a hunger strike by 70 trans activists and parents of trans children, but failed to attain the necessary majority, notably because the majority party abstained. Much of the opposition has come from anti-trans feminist movements that portray trans people as a threat to society, and in particular to women, deny the identities of trans and non-binary people, suggest that they cannot be trusted to know who they are, and depict parents who are supportive of their trans children as criminals. Trans activists underline that the hostile discourse from the highest political levels has legitimised violence against trans people and the denial of care. Trans-specific and non-binary organisations have moreover been excluded from political discussions on these matters, although they are the first concerned.<sup>53</sup> On 29 June 2021, the government agreed on a new bill. Activists welcomed the retention of self-determination as the basis for legal gender recognition as well as a number of significant advances that would be retained in this new bill, but regretted that it did not include a number of other provisions important for achieving LGBTI equality. Meanwhile, opposition has continued to be expressed along similar lines to those raised regarding the previous text.<sup>54</sup>

52. In the United Kingdom, anti-trans rhetoric, arguing that sex is immutable and gender identities not valid, has also been gaining baseless and concerning credibility, at the expense of both trans people’s civil liberties and women’s and children’s rights. At the IDAHOT Forum 2021, Minister for Women and Equalities stated, in contradiction with international human rights standards with respect to the rights of trans people, “We do not believe in self-identification”. Such rhetoric – which denies trans identities – is being used to roll back the rights of trans and non-binary people and is contributing to growing human rights problems. UK hate crime statistics show a sharp increase in transphobic crimes since 2015 – though only 1 in 7 victims report them to an authority. Online abuse is also rising, and many trans people fear for their safety.<sup>55</sup> There is intense and ongoing social, political and legal debate about what constitutes harmful discourse when it comes to trans people and their rights, and arguments defending freedom of expression have been – and are still being – used as a tool to justify transphobic rhetoric, further penalising and harming already marginalised trans people and communities. It is also becoming increasingly difficult for individuals and organisations to publicly affirm young trans people without being subject to hostility and disproportionate questioning from wider society. The ‘gender-critical’ movement, which wrongly portrays trans rights as posing a particular threat to cisgender women and girls, has played a significant role in this process, notably since the 2018 public consultation on updating the Gender Recognition Act 2004 for England and Wales. In parallel, trans rights organisations have faced vitriolic media campaigns, in which trans women especially are vilified and misrepresented. The gender-critical campaign – which continues to gain momentum, power and financial support – has been instrumental in creating a situation in which legal gender recognition processes still require a clinical diagnosis of gender dysphoria, and remain inaccessible to non-binary people and anyone under 18. There is also a concerning, growing account of parents who (due to difficulties in accessing timely public health care) pursue private health care on behalf of their child, being investigated by State authorities. Trans healthcare is also being erroneously portrayed as a form of LGB conversion therapy.<sup>56</sup>

53. Such anti-trans narratives, wrongly portraying trans rights as a threat to women and to others’ rights and insisting on binary categorisations of sex and gender that do not correspond to lived realities, are becoming increasingly pervasive in Europe. Effective criminal and anti-discrimination legislation are more crucial than ever in this context. As politicians, we must listen to trans people and their organisations, educate ourselves about their situation and rights, empower them, and urgently re-set the agenda and narratives, so that debates are reframed to correspond to complex realities rather than catchy but simplistic slogans. Trans people have a right to recognition before the law, to protection of their private and family lives, to freedom from discrimination, and to safety and security, as do all people; it is our responsibility to make these rights a reality.

## **8. Violence, hatred and prejudice against LGBTI people in Europe remain widespread and are rising**

54. According to a recent survey of the European Union’s Fundamental Rights Agency (FRA) on hate crimes and discrimination against LGBTI people, to which some 140 000 responses were received from LGBTI people living in the EU, the United Kingdom, Serbia and North Macedonia, many LGBTI people continue to live in the

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<sup>52</sup> Álvarez P., “Calvo critica que el proyecto de la ‘ley trans’ prevea que ‘el género se elija sin más que la voluntad’”, El País, 4 February 2021; Riveira A and Borraz M., “Igualdad acusa a Carmen Calvo de ‘bloquear’ la llegada de las leyes trans y LGTBI y Moncloa dice que se tramitará ‘con rigor’”, El Diairo, 15 February 2021.

<sup>53</sup> Online bilateral meeting with Spanish trans and non-binary organisations, 26 May 2021.

<sup>54</sup> Álvarez P., “España abre la puerta a la autodeterminación de género tras un duro pulso entre los socios del Gobierno”, El País, 29 June 2021.

<sup>55</sup> Bradley C. (2020), *Transphobic Hate Crime Report 2020*, London, Galop.

<sup>56</sup> Lui Asquith, Mermaids, United Kingdom, committee hearing, 18 May 2021.

shadows, afraid of being ridiculed, discriminated against or even attacked. While real progress towards equality has been achieved in many countries, it is still far too rare.<sup>57</sup>

55. Violence against LGBTI individuals, human rights defenders and organisations is regularly reported in all Council of Europe member States. Some attacks on Pride events have been discussed above. Violence is also expressed through attacks on property and buildings belonging to LGBTI organisations. Such attacks sometimes occur repeatedly. In Montenegro, for example, in a single year, an LGBT centre was attacked 20 times, with stones thrown, windows broken and tear gas bombs used, and the director of the LGBT Forum Progress was attacked 19 times.<sup>58</sup> In Ukraine, three attacks targeting safe spaces and events of LGBTI people in Kyiv, and one in Odesa, were carried out by far right groups in May 2021 alone.<sup>59</sup>

56. Murders motivated by anti-LGBTI hate also occur. To mention only a few of the cases reported over recent years, at least four transgender women were killed in Turkey in 2018.<sup>60</sup> In January 2018, a gender non-conforming person was attacked and beaten in the city centre of Saint Petersburg (Russian Federation) due to their feminine appearance and the lipstick they were wearing.<sup>61</sup> TGEU reported the murder of 11 trans people in Europe in 2020, 50% of whom were migrants.<sup>62</sup> Lesbians are also victims of attacks in many European countries, and of femicide.<sup>63</sup> In 2019, a young lesbian was killed in Italy by a man seeking revenge after she refused his advances.<sup>64</sup> In Latvia, a gay man died on 29 April 2021 after experiencing burns to 85% of his body, when his clothes were soaked with fuel and set alight. He had moved to Tukums after receiving homophobic death threats when living in Riga, but had been physically attacked at least four times after the move. Campaigners denounced police inaction in his case; his death has reportedly sparked debate about homophobia in Latvia.<sup>65</sup> In Spain, a gay man was beaten to death in A Coruña, in July 2021, and there have been violent attacks against LGBTI people in several cities in recent months.<sup>66</sup>

57. Killing, harming or threatening another human being because of their sexual orientation, gender identity, gender expression or sex characteristics can never be justified. It is crucial that such motivations be recognised as aggravating circumstances in criminal legislation, and that hate crimes legislation be effective, and applied in practice. Impunity is the worst possible response, as it legitimises anti-LGBTI violence, discrimination and hate. These phenomena are also legitimised by the anti-gender movement, with its dehumanising discourse insisting that people's innermost identities are nothing but so-called "gender ideology".

58. As discussed below, violent manifestations of hatred towards LGBTI people are not always "simply" random, individual attacks: even more worryingly, some are also highly organised, and even State-sponsored. In September 2017, Azerbaijani police targeted and detained dozens of gay men and transgender women in Baku on dubious charges, ill-treated and humiliated them – including subjecting them to forced medical tests – and imprisoned or fined them.<sup>67</sup> Such actions by the police have moreover emboldened non-State actors to engage in increasingly systematic attacks on LGBTI people.

59. Nowhere, however, has there been more horrifying violence committed against LGBTI people in Europe in recent decades than in the State-sponsored attacks carried out against LGBTI people in Chechnya in 2017, which the Assembly denounced in its [Resolution 2230 \(2018\)](#) "Persecution of LGBTI people in the Chechen Republic (Russian Federation)". The Assembly noted that a campaign of persecution, including cases of abduction, arbitrary detention and torture of men presumed to be gay, with the direct involvement of Chechen law enforcement officials and on the orders of top-level Chechen authorities, unfolded against the backdrop of serious, systematic and widespread discrimination and harassment against LGBTI people in the Chechen Republic. The leader of the Chechen Republic, Ramzan Kadyrov, responded by publicly vilifying LGBTI people

<sup>57</sup> [Does hope or fear prevail among Europe's LGBTI people?](#), Press Release, European Union Agency for Fundamental Rights, 14 May 2021.

<sup>58</sup> ECRI (2017), Report on Montenegro (fifth monitoring cycle), CRI(2017)37, paragraph 44.

<sup>59</sup> ILGA Europe, "[The Ukrainian State must protect the LGBT+ communities](#)", 4 June 2021.

<sup>60</sup> ILGA Europe, Annual Review 2019, Turkey, para. "Bias motivated violence".

<sup>61</sup> ILGA Europe, Annual Review 2019, Russia, para. "Bias motivated violence".

<sup>62</sup> TGEU, TMM Update, Trans Day of Remembrance 2020.

<sup>63</sup> « [Après l'agression d'un couple lesbien à Londres, cinq ados arrêtés](#) », Huffington Post, 9 June 2019.

<sup>64</sup> [Portavoce Gay Center: "Elisa Pomarelli uccisa due volte: come donna e come lesbica"](#), Huffington Post, 9 September 2019.

<sup>65</sup> [Burns death of homophobia victim shocks Latvia](#), Euroactiv, 30 April 2021 ; [Gay Latvian man dies after 'homophobic attack', campaigners say](#), Euronews, 30 April 2021.

<sup>66</sup> Jones S., "[Man 'subjected to homophobic assault' in Madrid says injuries were consensual; LGBTI protests against hate crime in Spain will still go ahead](#)", The Guardian, 9 September 2021.

<sup>67</sup> [Statement](#) by Piet de Bruyn, then General Rapporteur on the rights of LGBTI people for the Assembly, 29 September 2017; [Letter](#) of the Council of Europe Commissioner for Human Rights to the Azerbaijani authorities, 9 October 2017; [Reply](#) of the Azerbaijani authorities, 13 October 2017.

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as “devils” and “subhuman”, and denied their very existence in Chechnya.<sup>68</sup> In an unambiguous reference to so-called “honour” killings, a human rights violation that continues to be practised in Chechnya, a spokesperson for Mr Kadyrov said, “If there were such people in Chechnya, the law-enforcement organs wouldn’t need to have anything to do with them because their relatives would send them somewhere from which there is no returning.”<sup>69</sup> Lesbians and trans people have also been targeted by such attacks.<sup>70</sup>

60. This is the single most egregious example of violence against LGBTI people in Europe that has occurred in decades. Those who survived this violence have been not only physically and psychologically scarred, but forced to flee Chechnya, and in many cases the Russian Federation – fearing for their lives. The involvement of law enforcement officials in this persecution, overtly condoned by the leader of the Republic, made it impossible for victims to turn to the police to seek protection. The one complaint that was brought before the Russian authorities, by a man who was able to leave Chechnya and who did not fear reprisals from his own family, has to date produced no results, and this survivor was also subsequently forced to flee the Russian Federation – with his family.<sup>71</sup> Calls by the Assembly as well as numerous other international actors for an effective investigation into this persecution, and for the prosecution and punishment of offenders, have however gone unheeded.

61. Such attacks must not be allowed to occur with impunity. The Russian Federation must redouble its efforts to prosecute and punish the perpetrators and prevent similar human rights violations from occurring. Other States must also renew their pressure on the Russian Federation to ensure that justice is carried out, at all levels; and in the meantime, they must redouble their own efforts to provide refuge to those still seeking to flee to safety.

## **9. The additional impact of the Covid-19 pandemic on LGBTI people and those defending their rights**

62. The Covid-19 pandemic has contributed to a stark rise in abuse and hate speech directed against LGBTI people. It has also exposed them to an increased risk of domestic violence, in particular in the case of LGBTI youth locked down in a hostile family situation, and placed those who fled such situations at increased risk of homelessness.<sup>72</sup> Few or no measures were adopted by states to ensure that trans people were not subjected to discrimination in the implementation of Covid-19 related interventions.<sup>73</sup> The crisis also had severe consequences on lesbian individuals and groups.<sup>74</sup>

63. In parallel, LGBTI organisations and other civil society organisations working to defend the rights of LGBTI people have had to divert their resources away from advocacy efforts and towards emergency and humanitarian assistance to LGBTI persons in need. The impact of the pandemic on healthcare systems has had also far-reaching effects on trans and intersex persons, and persons living with HIV. Meanwhile, space for activism has narrowed, Pride parades – crucial events for LGBTI people throughout the world – had to be cancelled in 2020, and some policymakers chose to give less priority to LGBTI rights due to the pandemic.<sup>75</sup>

## **10. Governments and parliaments can and must act now**

64. My report necessarily draws attention to serious cases of human rights violations, and points to failings in government actions to prevent and counter such violations. There are however many actions that governments, parliaments and political leaders can undertake to improve the situation.

65. First, when it comes to the situation within their own State, they must ensure that a strong legal framework is in place to prevent and combat hate-motivated offences, hate speech and discrimination based on sexual orientation, gender identity, gender expression and sex characteristics, including when they are

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<sup>68</sup> Interview with Bryant Gumbel, HBO – extracts in the documentary [Welcome to Chechnya](#), by David France, 2020.

<sup>69</sup> Walker S., “[Chechens tell of prison beatings and electric shocks in anti-gay purge: ‘They called us animals’](#)”, *The Guardian*, 13 April 2017.

<sup>70</sup> Im R., “[The unbearable silence of Chechnya’s lesbians](#)”, *Open Democracy*, 19 May 2019.

<sup>71</sup> His case (*Lapunov v. Russia*, application no. 28834/19), is now pending before the European Court of Human Rights, and was communicated to the Russian authorities on 14 November 2019. See also the documentary [Welcome to Chechnya](#).

<sup>72</sup> ILGA-Europe (2021), *Annual Review on the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe and Central Asia*, Brussels, 2021, p. 7.

<sup>73</sup> TGEU (2020), *Impact assessment: COVID-19 and trans people in Europe and Central Asia*, p. 9.

<sup>74</sup> European Lesbian\* Conference (EL\*C) (2021), [Resistance as a way of living: Lesbian lives through the Covid-19 pandemic](#), June 2021.

<sup>75</sup> Hugendubel K., presentation on 5 May 2021, Digital event organised under the auspices of the German Presidency of the Council of Europe, “Towards the full recognition of LGBTI rights across Europe”; see also reports of Outright International on these issues.



committed online, and that it is applied effectively. This is essential at all times, but all the more so when hostility is increasingly being manifested. Governments and parliaments must prevent backsliding and accelerate their efforts to complete other crucial elements of the legal framework that need to be in place to ensure LGBTI equality, notably as regards legal gender recognition, protection of the bodily autonomy of intersex people, the protection of rainbow families, and the exercise of civil rights such as freedom of expression, association and assembly. Now more than ever, it is crucial for parliaments and governments to restart stalled legislative and policy-making processes and ensure that they bring to fruition commitments and promises made with the purpose of driving progress towards full equality for LGBTI people at home and throughout Europe.

66. All States should also have in place a clear policy of protecting and promoting LGBTI equality, and a strategy and action plan for implementing any changes necessary to achieve equality. In this context, I warmly welcome the adoption by the European Commission in 2020 of its first ever LGBTIQ Equality Strategy. It represents a strong, high-level political commitment to achieving measurable progress towards LGBTIQ equality, tackling discrimination and building LGBTIQ-inclusive societies in Europe and around the world.<sup>76</sup>

67. Political leaders must also use existing standards and instruments to hold others to account, both at home and abroad. They must consistently speak out against homophobic, transphobic, biphobic and intersexphobic statements made and acts committed in their own countries, in particular when these come from leading political or public figures or religious leaders. No room should be left for public opinion to be swayed towards more sexism, misogyny or anti-LGBTI hate. Parliaments and governments must of course also avoid adopting homophobic, transphobic, biphobic or intersexphobic laws, policies and measures.

68. Governments can and must make use of existing international standards and commitments to verify their own legislation, policy and practice and to hold others to account. Within the Council of Europe, Recommendation [CM/Rec\(2010\)5](#) of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity sets out clear lines of action that member States can take to improve the legal protection of LGBTI people and the implementation of these standards in practice. The Assembly has expanded on these standards in several texts adopted since then: [Resolution 1728](#) and [Recommendation 1915 \(2010\)](#) on Discrimination on the basis of sexual orientation and gender identity; [Resolution 1948](#) and [Recommendation 2021 \(2013\)](#) on Tackling discrimination on the grounds of sexual orientation and gender identity; [Resolution 2048 \(2015\)](#) on Discrimination against transgender people in Europe; [Resolution 2191](#) and [Recommendation 2116 \(2017\)](#) on Promoting the human rights of and eliminating discrimination against intersex people; and [Resolution 2239 \(2018\)](#) on Private and family life: achieving equality regardless of sexual orientation. In parallel, the European Court of Human Rights has developed and clarified its own considerable case-law regarding the protection of the rights of LGBTI people afforded by the European Convention on Human Rights, through its judgments in a continuing series of cases brought against States having violated the rights of LGBTI people.

69. Member States should work actively to fulfil these standards, if they do not already fulfil them, and participate constructively in the review process of the implementation of Recommendation [CM/Rec\(2010\)5](#) which is carried out every few years by the Committee of Ministers. They should work proactively to implement the standards set out by the Assembly in the above-mentioned resolutions, and to bring their domestic legislation and practice into line with the developing case-law of the Court, whether or not they are the State concerned by a process of supervision of the execution of a judgment finding against them. They should also support related Council of Europe work, whether in providing technical assistance to States that request it or supporting the monitoring and standard-setting work of the European Commission against Racism and Intolerance (ECRI) or the intergovernmental work carried out by the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI). I welcome in this context the conference organised by the German authorities, during the German Presidency of the Council of Europe, on “Towards the full recognition of LGBTI rights across Europe”, on 5 May 2021, and their decision to make the full proceedings available online.<sup>77</sup>

70. Governments should also support the work of LGBTI human rights defenders and organisations, including through funding, and ensure their meaningful involvement in the development, implementation and evaluation of legislation, policies and other measures that are of concern to them. All of the speakers at our hearing on 18 May 2021 also emphasised that parliamentarians should engage directly with civil society, read their reports and invite them to parliaments to listen to what they have to say. Parliamentarians should engage with both local organisations that have knowledge of the realities experienced by LGBTI people in their country

<sup>76</sup> European Commission, Union of Equality: LGBTIQ Equality Strategy 2020-2025, Brussels, 12 November 2020, [COM\(2020\)698 final](#).

<sup>77</sup> See the website of the Council of Europe’s [SOGI Unit](#). The recordings are available on the YouTube channel of Germany’s Federal Ministry for Family Affairs, Senior Citizens, Women and Youth ([BMFSFJ](#)).

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and umbrella organisations that have studied the patterns reproduced by the anti-gender movement, their strategies and the language used to target LGBTI people across Europe.

71. Finally, campaigns to raise awareness and understanding, promote equality and counter misleading or false narratives are crucial, as paradigm shifts in social and cultural understandings of gender equality and the rights and freedoms of LGBTI people are still needed in many societies in order to achieve genuine equality for LGBTI people.

## 11. Conclusions

72. LGBTI people and organisations are today under increasing attack in Europe. Hate crimes and hate speech are rising, and hate speech in particular is coming more and more from religious leaders and high-ranking politicians, and is increasingly being translated into laws that are directly harmful to LGBTI people. This is contrary internationally recognised human rights standards, and in particular to a significant and growing body of case-law of the European Court of Human Rights. It is also contrary to the Assembly's own standards, as expressed in a series of resolutions and recommendations adopted over the past decade. Impunity and indifference are the worst possible responses, as they legitimise violence, discrimination and hate.

73. International organisations such as our own, and human rights defenders at national and international level, must continue to stand up for the rights of LGBTI people. Nonetheless, the responsibility for respecting human rights lies with governments. While tremendous progress has been achieved for LGBTI and women's rights, efforts are now urgently needed to prevent backsliding. Public opinion can never be used to justify violations of human rights, or to reproduce or perpetuate historical stigma and discrimination.<sup>78</sup> All political leaders must take more courageous, forward-looking stances to promote equality of LGBTI people; they must look beyond the next election results and work now to achieve lasting change for the future.

74. As I stated in my declaration for the International Day against Homophobia, Transphobia, Biphobia and Intersexphobia on 17 May 2021, governments and parliaments in Council of Europe member States must tackle hatred and discrimination against LGBTI people within their national borders with renewed energy and urgency, speak out against homophobia, transphobia, biphobia and intersexphobia in discourse, practice and policy wherever they occur, and use the numerous Assembly and Council of Europe standards and instruments at their disposal to hold others to account. We must stop failing LGBTI people in their quest for equality throughout Europe, and work actively to achieve it.<sup>79</sup>

75. I wish to emphasise in addition here that measures to combat hatred against LGBTI people will not be effective if they only seek to address its individual manifestations. Governments and parliaments must also work actively to put an end to the deliberate and coordinated attacks against LGBTI people that are occurring throughout Europe. They must redouble their efforts to dismantle the heteronormative structures and anti-gender movements in our societies, which perpetuate gender inequality and prevent the acceptance of LGBTI people as equals – and which, in so doing, deny LGBTI people (and all women) dignity and respect.

76. LGBTI equality is not a zero-sum game, nor is it a battle for revolutionary ideas. It is a question of dignity and fundamental rights. The recognition of LGBTI people's human rights does not harm society, women, or children: on the contrary, it ensures a safe and welcoming society for all. In the words of Ursula von der Leyen, "Being yourself is not your ideology. It's your identity."<sup>80</sup> None of us can rest until everyone is safe and free to be who they are and love who they love.

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<sup>78</sup> Inter-American Court of Human Rights, Advisory Opinion OC-24/17 of 24 November 2017, requested by the Republic of Costa Rica: Gender Identity and Equality and Non-Discrimination of Same-Sex Couples, paragraph 219, footnote 413 and previous judgments cited therein.

<sup>79</sup> "LGBTI rights: 'It's time to act!' says General Rapporteur", [statement](#), 17 May 2021.

<sup>80</sup> [State of the Union Address](#) by President Ursula von der Leyen at the European Parliament Plenary, 16 September 2020, Brussels.