Thursday 11 March 2021

P9_TA(2021)0089

Declaration of the EU as an LGBTIQ Freedom Zone

European Parliament resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone (2021/2557(RSP))

(2021/C 474/15)

The European Parliament,

— having regard to the Charter of Fundamental Rights of the European Union (the 'Charter'),

— having regard to Article 2 of the Treaty on European Union (TEU),

— having regard to the European Convention on Human Rights and the related case-law of the European Court of Human Rights,

— having regard to the Universal Declaration of Human Rights,

— having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([1]),

— having regard to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ([2]),

— having regard to Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services ([3]),

— having regard to Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation ([4]),

— having regard to the case law of the Court of Justice of the European Union (CJEU),

— having regard to the Commission communication of 12 November 2020 entitled 'Union of Equality: LGBTIQ Equality Strategy 2020-2025' (COM(2020)0698),

— having regard to its resolution of 14 February 2019 on the future of the LGBTI List of Actions (2019-2024) ([5]),

— having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI-free zones ([6]),

— having regard to the EU Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, adopted by the Council in 2013,

— having regard to the results of the EU LGBT Survey launched by the European Union Agency for Fundamental Rights (FRA) in 2019,

([1]) OJ L 303, 2.12.2000, p. 16.
([2]) OJ L 158, 30.4.2004, p. 77.
([3]) OJ L 373, 21.12.2004, p. 37.
([4]) OJ L 204, 26.7.2006, p. 23.
([5]) OJ C 449, 23.12.2020, p. 146.
([6]) Texts adopted, P9_TA(2019)0101.

— having regard to its resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law ([7]),

— having regard to its resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded ([8]),

— having regard to the Council of Europe's Recommendation of 31 March 2010 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5) and to the standards adopted by the Parliamentary Assembly of the Council of Europe,

— having regard to the Memorandum of 3 December 2020 of the Commissioner for Human Rights of the Council of Europe on the stigmatisation of LGBTI people in Poland,

— having regard to the debate in the Council of Europe's Congress of Local Regional Authorities Current Affairs Committee, and to its subsequent reports entitled 'Fact-finding report on the role of local authorities with regard to the situation and rights of LGBTIQ people in Poland' of 27 January 2021 and 'Protecting LGBTIQ people in the context of rising anti-LGBTIQ hate speech and discrimination: The role of local and regional authorities' of 10 February 2021,

— having regard to Rule 132(2) of its Rules of Procedure,

A. whereas LGBTIQ rights are human rights;

B. whereas the right to equal treatment and non-discrimination is a fundamental right enshrined in the EU Treaties and in the Charter, and should be fully respected; whereas all Member States have assumed obligations and duties under international law and the EU Treaties to respect, guarantee, protect and fulfil fundamental rights; whereas combating inequality in the EU is a shared responsibility, requiring joint efforts and action at every level of government;

C. whereas since March 2019, over 100 regions, counties and municipalities across Poland have adopted resolutions declaring themselves free from so-called LGBTI ideology or have adopted 'Regional Charters of Family Rights'; whereas in November 2020, the Hungarian town of Nagykáta adopted a resolution banning the 'dissemination and promotion of LGBTQ propaganda'; whereas these resolutions discriminate directly and indirectly against LGBTIQ people; whereas LGBT-free zone resolutions declare opposition to the 'ideology of the LGBT movement' and call on local governments to refrain from any action that would encourage tolerance towards LGBTIQ people, including withdrawing financial assistance from organisations that aim to promote non-discrimination and equality; whereas the 'Regional Charters of Family Rights' use a very narrow definition of the family, while calling on municipalities to protect family rights in all their policies, initiatives and funding; whereas by focusing only on these types of family, the Regional Charters are indirectly calling for discrimination against all other forms of families, in particular single-parent, same-sex couples' and rainbow families, and to refrain from providing financial support to projects and initiatives which protect and promote fundamental rights, organise anti-discrimination education or in any other way support equality and LGBTIQ people;

D. whereas the Polish Ombudsman for Human Rights has initiated nine complaints against some of the regions, counties and municipalities which have adopted resolutions on being free from 'LGBT ideology', which has resulted to date in four resolutions being declared unconstitutional by administrative courts; whereas in January 2021, the Polish town of Nowa Dęba withdrew its resolution declaring itself free from so-called LGBT ideology following the loss of a twinning

([7]) Texts adopted, P9_TA(2020)0225.
([8]) OJ C 433, 23.12.2019, p. 66.

agreement with the Irish town of Fermoy; whereas the Polish county of Sztum and the Polish town of Tomaszów Mazowiecki withdrew their resolutions adopting Regional Charters of Family Rights in September and October 2020 respectively;

E. whereas Norway withdrew from granting funds to the Polish regions, counties and municipalities which had adopted resolutions declaring themselves free from so-called LGBTI ideology or had adopted 'Regional Charters of Family Rights'; whereas the Commission has rejected applications for EU funding under its town twinning programme from Polish towns that had adopted LGBTI-free zones or family rights resolutions; whereas all EU funds managed under the Common Provisions Regulations 2021-2027 must respect the principle of non-discrimination and respect fundamental rights as set out in the Treaty, including on the basis of sexual orientation, and whereas municipalities acting as employers must respect Directive 2000/78/EC, which prohibits discrimination and harassment on the ground of sexual orientation in employment, in accordance with the judgment in Case C-507/18 Associazione Avvocatura per i diritti LGBTI ([9]);

F. whereas a legal complaint was submitted to the Commission by three NGOs highlighting that 'Regional Charters of Family Rights' and resolutions declaring regions, counties and municipalities to be free from so-called LGBTI ideology introduce discrimination against LGBTIQ people and thus breach Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, as well as Articles 15 and 21 of the Charter on the freedom to choose an occupation and the right to engage in work and on non-discrimination respectively; whereas to date the Commission has neither provided a response to this legal complaint nor formally recognised a violation of EU law;

G. whereas the adoption of resolutions on being free from so-called LGBT ideology or 'Regional Charters of Family Rights' are part of a broader context of increased discrimination and attacks against the LGBTIQ community in Poland, which include characterising diversity of sexuality, identity and expression as a dangerous ideology, of growing hate speech by public authorities, elected officials — including by the current President — and the pro-Government media, as well as of arrests of LGBTIQ rights activists, of attacks against and bans on Pride marches and awareness-raising programmes and actions, including in schools, and of discriminatory anti-LGBT demonstrations; whereas hate speech by public authorities legitimises and further fuels the climate of intolerance and discrimination against LGBTIQ people; whereas exercising freedom of expression carries duties and responsibilities, particularly for public authorities, politicians and opinion leaders, and whereas they should not engage in hate speech or any discourse stigmatising LGBTIQ people, and should firmly denounce and counter such narratives and stigmatisation, including when they are expressed by private parties;

H. whereas the Polish activists who are acting against and informing the public about the resolutions on being free from so-called LGBTI ideology and the 'Regional Charters of Family Rights' are facing strategic lawsuits against public participation (SLAPP) owing to their work; whereas the Polish activists who are working to denounce anti-LGBTIQ declarations and family charters, including the authors of the 'Atlas of Hate' website and the creator of the 'LGBT-free zone' photo project, have been subjected to unfounded lawsuits filed by local governments or fundamentalist organisations claiming substantial financial compensation, and to a smear campaign labelling them as liars for using creative advocacy tools; whereas these actions are clearly intended to intimidate and silence civil society; whereas the Polish authorities have a duty to fully protect all persons belonging to minorities, including LGBTIQ people, from hostility and aggression, and to enable them to carry out their activities freely; whereas the Commission has not introduced anti-SLAPP legislation, despite repeated calls from Parliament;

I. whereas two petitions (No 0448/2020 and No 0354/2020) on the issue of 'LGBTI-free zones in Poland' have been submitted to the Committee on Petitions; whereas these petitions were discussed in the Committee on Petitions on 26 January 2021 and, owing to the unsatisfactory answer from the Commission, remain open for the Commission to further clarify the situation;

([9]) Judgment of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI*, C-507/18, EU:C:2020:289.

J. whereas the LGBTI Survey II published by the FRA in May 2020 highlights an increase in intolerance and violence towards LGBTIQ persons or persons who are perceived to be LGBTIQ in Poland, and shows Polish LGBTIQ respondents' complete absence of faith in the government's efforts to combat discrimination and violence, recording the lowest percentage of anywhere in the Union (only 4 %), and the highest percentage of respondents avoiding going to certain places for fear of being assaulted, harassed or threatened (79 %); whereas this shows a clear correlation between LGBTIQ-phobic governance and increased discrimination and violence against LGBTIQ people;

K. whereas Parliament has already encouraged the Member States to criminalise 'so-called conversion therapy' practices; whereas the May 2020 report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has called on Member States to adopt bans on practices of 'conversion therapy'; whereas the practice is still carried out in at least 69 countries worldwide, including in the European Union, where the use of medication, psychotherapy and ritual cleansing in conversion therapy have been reported to have taken place in EU Member States ([10]); whereas the practice has only been banned in two Member States of the European Union, namely Malta and Germany;

L. whereas the backlash against LGBTIQ people is often coupled with a broader deterioration in the situation of democracy, the rule of law and fundamental rights; whereas the European Parliament has expressed its deep concern in several resolutions on the deterioration in the rule of law in Poland, in particular with regard to the independence of the judiciary and the protection of fundamental rights; whereas no proper response has yet been given to Parliament's initiative on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights to be governed by an interinstitutional agreement between Parliament, the Commission and the Council;

M. whereas Parliament has expressed its position in several of its resolutions on the situation of the rule of law, fundamental rights and democracy in Poland, concluding that a systemic threat to the values of Article 2 TEU exists and that it constitutes a clear risk of a serious breach thereof; whereas the hearings with the Polish authorities organised by the Council under Article 7(1) TEU in response to threats to common European values in Poland have not produced any results; whereas the situation of the rule of law and fundamental rights in Poland has not only not been addressed but has also seriously deteriorated since the triggering of the procedure, alongside the situation of fundamental rights, specifically those of LGBTIQ persons and women; whereas the Council should ensure that hearings under Article 7(1) TEU also address new developments and assess risks of breaches of fundamental rights;

N. whereas the President of the Commission Ursula von der Leyen declared in her 2020 State of the Union address to the European Parliament Plenary that 'LGBTQI-free zones are humanity free zones. And they have no place in our Union'; whereas the Commission President also declared that LGBTQI is a person's identity not an ideology ([11]); whereas the Commission and the Council should refrain from narrowly interpreting the principle of the rule of law; whereas the Commission should not hesitate to use all tools, including infringement procedures, the Rule of Law Framework, Article 7 TEU, as well as the recently adopted Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, in order to address violations of the fundamental rights of LGBTIQ people everywhere in the Union; whereas the new Citizens, Equality, Rights and Values programme can contribute to building a non-discriminatory and more equal society through making funds available to civil society organisations promoting LGBTIQ equality;

O. whereas many Member States have in the past discriminated against and persecuted LGBTIQ people through discriminatory laws and policies; whereas thousands of LGBTIQ people were arrested, incarcerated and died in concentration camps during the Second World War; whereas while LGBTIQ persons in Poland face systematic discrimination, this is also an issue across the EU, with little to no progress being made in alleviating the persistent discrimination against and harassment of LGBTIQ people; whereas public discrimination, hate speech and hate crimes against LGBTIQ people are still prevalent across the EU; whereas these attacks violate the fundamental rights of LGBTIQ people and responses from public authorities too often remain inadequate; whereas LGBTIQ persons in every

([10]) https://www.theparliamentmagazine.eu/news/article/meps-condemn-lgbt-conversion-therapy-in-appeal-to-european-commission
([11]) https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

Member State still face a higher rate of discrimination in all areas of life, including at work and at school, and a high prevalence of physical, emotional and sexual attacks, both online and offline, which leads to a worrying suicide rate among young LGBTIQ people ([12]), and especially among young transgender people; whereas several Member States have updated legislation so as to be more inclusive of LGBTIQ persons; whereas there are nevertheless several legislative gaps that require political will and commitment by national legislators so as to ensure true equality for LGBTIQ people;

P. whereas transgender persons continue to face some of the worst forms of discrimination, violence and persecution; whereas in 2018 the Commission published a study entitled 'Trans and intersex equality rights in Europe — a comparative analysis'; whereas only 13 out of the 31 countries surveyed in the study have national legislation, at least to some extent, providing protection on the basis of gender identity and/or sex characteristics;

Q. whereas 2021 has seen the emergence of social media initiatives such as the #MeTooGay movement to denounce sexual abuse within the LGBTIQ community; whereas Guillaume Tran Thanh, the student who initiated this manifestation of freedom of expression, ended his life shortly afterwards, under too much pressure after his denunciation on social media; whereas such a tragedy raises questions about the shortcomings in support for victims of sexual violence;

R. whereas many Member States lack specific non-discrimination laws which at least adhere to minimum EU standards that protect people from discrimination, hate speech and violence based on sexual orientation, gender identity, gender expression and sex characteristics, and whereas they have failed to take action to remedy this legal lacuna; whereas the horizontal directive on non-discrimination, which could partially fill this this gap in protection beyond employment, has remained blocked in the Council for over 10 years; whereas the implementation of legal measures against discrimination, where present, is still insufficient in many Member States; whereas the Commission intends to extend the list of 'EU crimes' under Article 83(1) of the Treaty on the Functioning of the European Union to cover hate crime and hate speech, including when targeted at LGBTIQ people;

S. whereas discrimination and violence against LGBTIQ people by the police remains an issue in the Union; whereas, without adequate training, the police may deter LGBTIQ people from reporting violence and discrimination against them; whereas this remains a major obstacle to effective equality; whereas training programmes for law enforcement authorities help to prevent and tackle discriminatory practices and hate crimes; whereas hate speech and crimes against LGBTIQ persons should be fully investigated, taking into account bias motivation and, where appropriate, should be duly prosecuted;

T. whereas only Malta, Portugal and some regions of Spain have prohibited medical intervention on intersex persons without their consent; whereas many Member States continue to follow an approach that is highly medicalised and pathologising;

U. whereas legal developments in Hungary have severely hindered the fundamental rights of LGBTIQ people; whereas the adoption of Article 33 of the Omnibus Bill T/9934 de facto bans legal gender recognition for trans and intersex persons in Hungary, exposing them to discrimination and infringing their right to privacy; whereas in December 2020, the Hungarian Parliament adopted constitutional amendments which further restrict the rights of LGBTIQ people, neglect the existence of transgender and non-binary persons and restrict their right to family life, and a law that will strip non-married couples of the right to adoption;

V. whereas in January 2021, the Latvian Parliament began examining the constitutional amendment seeking to restrict the extension of the concept of family, as indicated in the ruling by the Constitutional Court, whereby the latter recognised the application of the Labour Law to different family models and obliged the legislator to ensure support and protection of same-sex couples;

([12]) *A long way to go for LGBTI equality*, FRA, 2020, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf; 2020 Rainbow Europe report, ILGA-Europe, https://www.ilga-europe.org/rainboweurope/2020

W. whereas a bill to prohibit activities aimed at addressing gender identity theory in educational contexts was adopted by the Romanian Senate in June 2020; whereas the Romanian President refused to promulgate the law, asking instead for a constitutionality review; whereas the Romanian Constitutional Court declared in December 2020 that the law was incompatible with the Constitution; whereas this shows that effective checks and balances in Member States as regards the rule of law and democracy are crucial for the protection of LGBTIQ rights;

X. whereas being a parent in one Member State means that you are a parent in all Member States; whereas there are cases of children with two same-sex parents who are facing difficulties owing to the lack of legal provisions for the mutual recognition of a birth certificate with two same-sex parents; whereas a CJEU preliminary ruling referred by the Administrativen sad Sofia-grad (Bulgaria) in Case C-490/20 will decide on the case of a child with two lesbian mothers who faces statelessness due to this legal lacuna; whereas the LGBTIQ Equality Strategy envisages a legislative initiative to close this legal gap and a revision of the 2009 guidelines on free movement, both scheduled for 2022; whereas same-sex couples continue to face difficulties when exercising freedom of movement within the EU, but the Commission has nevertheless not proposed initiating legislation on the mutual recognition of relationships;

Y. whereas combating inequality in the EU is a shared responsibility, requiring joint efforts and action at every level of government, and whereas local and regional authorities have a key role to play in this; whereas these authorities are often responsible for implementing EU laws and embracing equality and diversity; whereas the Congress of Local and Regional Authorities of the Council of Europe has adopted a resolution recalling the responsibilities of local authorities in protecting the rights of LGBTIQ persons and has invited them to appoint a 'Local Expert on Equality and Diversity' ([13]);

Z. whereas the European Committee of the Regions, as a representative of local and regional EU authorities, has been invited to consider taking action, within the remit of its competences, in response to the development of zones free from so-called LGBT ideology;

AA. whereas LGBTIQ persons everywhere in the European Union should enjoy the freedom to live and publicly show their sexual orientation, gender identity, gender expression and sex characteristics without fear of intolerance, discrimination or persecution on those grounds; whereas the right of asylum is guaranteed by the Charter; whereas appropriate protection of vulnerable applicants, including LGBTIQ applicants, needs to be ensured in the context of the common European asylum system and its reform;

AB. whereas, rather than discriminating against LGBTIQ persons, the authorities at all levels of governance across the entire European Union should protect and promote equality and the fundamental rights of all, including LGBTIQ persons, and ensure their rights in full;

1. Hereby declares the European Union an 'LGBTIQ Freedom Zone';

2. Denounces all forms of violence or discrimination against persons on the basis of their sex or sexual orientation; condemns in the strongest possible terms the manifestly homophobic murder of David Polfliet committed in Belgium;

3. Instructs its President to forward this resolution to the governments and parliaments of the Member States, the Council, the Commission, the European Committee of the Regions and the European Economic and Social Committee.

([13]) https://rm.coe.int/protecting-lgbti-people-in-the-context-of-rising-anti-lgbti-hate-speec/1680a16129