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TEXTS ADOPTED

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**P9\_TA(2019)0101**

**Public discrimination and hate speech against LGBTI people, including LGBTI free zones**

**European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones (2019/2933(RSP))**

*The European Parliament,*

- having regard to the Universal Declaration of Human Rights and other UN human rights treaties and instruments, notably the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted on 16 December 1966 by the UN General Assembly in New York,
- having regard to the European Convention on Human Rights and the related case-law of the European Court of Human Rights (ECtHR),
- having regard to the Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’),
- having regard to the UN Convention on the Rights of the Child (UNCRC),
- having regard to Articles 2, 3, 8, 21 and 23 of the Treaty on European Union (TEU),
- having regard to Article 207 and Titles IV and V of Part Three of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 45 of the Charter,
- 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 Yogyakarta Principles (on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity) adopted in November 2006 and the 10 complementary principles thereto (YP+10, Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics) adopted on 10 November 2017,
- having regard to Recommendation CM/Rec(2010)5 of the Committee of Ministers of

the Council of Europe of 31 March 2010 on measures to combat discrimination on grounds of sexual orientation or gender identity,

- having regard to Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime<sup>1</sup>,
  - having regard to its resolution of 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity<sup>2</sup>,
  - having regard to its resolution of 14 February 2019 on the future of the LGBTI List of Actions (2019-2024)<sup>3</sup>,
  - having regard to its resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017<sup>4</sup>,
  - having regard to its resolution of 26 November 2019 on children’s rights on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child<sup>5</sup>,
  - having regard to its resolution of 13 February 2019 on experiencing a backlash in women’s rights and gender equality in the EU<sup>6</sup>,
  - having regard to its resolution of 14 November 2019 on the criminalisation of sexual education in Poland<sup>7</sup>,
  - having regard to its resolution of 17 April 2018 on gender equality in the media sector in the EU<sup>8</sup>,
  - having regard to its resolution of 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information<sup>9</sup>;
  - having regard to the results of the EU LGBT Survey launched by the EU Agency for Fundamental Rights (FRA) in 2012,
  - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the right to equal treatment and non-discrimination is a fundamental right enshrined in the Treaties and the Charter, and should be fully respected;
- B. whereas all Member States have assumed obligations and duties under international law and the EU Treaties to respect, guarantee, protect and fulfil fundamental rights;

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<sup>1</sup> OJ L 315, 14.11.2012, p. 57.

<sup>2</sup> OJ C 93, 24.3.2017, p. 21.

<sup>3</sup> Texts adopted, P8\_TA(2019)0129.

<sup>4</sup> Texts adopted, P8\_TA(2019)0032.

<sup>5</sup> Texts adopted, P9\_TA(2019)0066.

<sup>6</sup> Texts adopted, P8\_TA(2019)0111.

<sup>7</sup> Texts adopted, P9\_TA(2019)0058.

<sup>8</sup> OJ C 390, 18.11.2019, p. 19.

<sup>9</sup> OJ C 224 E, 19.8.2010, p. 18

- C. whereas research, surveys and reports<sup>1</sup> show that public discrimination and hate speech against LGBTI people are growing across the EU; whereas hate crimes motivated by LGBTI-phobia are on the rise across the EU; whereas these attacks violate the fundamental rights of LGBTI people and responses from public authorities too often remain inadequate;
- D. whereas attacks on the fundamental rights of LGBTI people represent a serious threat to respect for fundamental rights in the EU, and whereas these attacks are often coupled with attacks on women's rights and minority rights;
- E. whereas hate speech against LGBTI people by public authorities has a wider impact in legitimising and creating the conditions for persecution, violence and discrimination against LGBTI people in society as a whole;
- F. whereas the safety of the LGBTI community is not separate from the safety of all who live in Europe, and the erosion of that safety is a marker for the erosion of all fundamental rights; whereas xenophobic rhetoric has also contributed to creating an increasingly unsafe and unsustainable environment for organisations and human rights defenders advocating for LGBTI rights;
- G. whereas there is a backlash against gender equality in the EU and beyond which is directly targeting and impacting LGBTI people, along with women in general; whereas this backlash has been fuelled by populism and far-right extremism;
- H. whereas stigmatisation because of actual or perceived sexual orientation, gender identity or sex characteristics persists throughout the EU;
- I. whereas there is a serious lack of systematic monitoring, documenting and data collection regarding hate and violence against LGBTI people;
- J. whereas too many LGBTI-phobic crimes remain unreported; whereas reporting carries with it the risk and fear of disclosure of one's sexual orientation, gender identity, sex characteristics and gender expression;
- K. whereas legal measures against discrimination and violence are in place in the vast majority of Member States; whereas implementation, however, continues to be insufficient, leaving LGBTI people vulnerable to hate crimes, hate speech and discrimination, especially in the areas of healthcare, education, employment and housing;
- L. whereas many attacks carried out by public authorities against LGBTI people have targeted educational institutions and schools; whereas this is particularly detrimental to young LGBTI people;
- M. whereas sexual orientation and gender identity fall within the remit of an individual's right to privacy, guaranteed by international, European and national human rights law,

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<sup>1</sup> Fundamental Rights Report, FRA, 2019, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-fundamental-rights-report-2019\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-fundamental-rights-report-2019_en.pdf); EU LGBT survey, FRA; 2019 Rainbow Europe report, ILGA-Europe, <https://www.ilga-europe.org/rainboweurope/2019>

and whereas equality and non-discrimination should be promoted by public authorities<sup>1</sup>;

- N. whereas freedom of expression should be guaranteed offline and online for the media, cultural organisations, non-governmental organisations (NGOs) and individuals, in particular in light of the worrying trend towards the removal and prohibition of LGBTI content on social networks;
- O. whereas discrimination and violence against LGBTI people has taken multiple forms, with recent examples including homophobic statements in the campaign for a referendum on narrowing down the definition of family in Romania, attacks on LGBTI social centres in several Member States such as Hungary and Slovenia, homophobic statements and hate speech targeting LGBTI people, as recently observed in Estonia, Spain, the United Kingdom, Hungary and Poland, in particular in the context of elections, and legal instruments which might be applied to restrict media, culture, education and access to other forms of content in a manner that unduly restricts freedom of expression regarding LGBTI issues, such as in Lithuania and Latvia;
- P. whereas, since the beginning of 2019, in Poland there have been over 80 instances where regions, counties or municipalities have passed resolutions declaring themselves free from so-called ‘LGBT ideology’, or have adopted ‘Regional Charters of Family Rights’ or key provisions from such charters, discriminating in particular against single-parent and LGBTI families; whereas these resolutions call for local governments to refrain from taking any action to encourage tolerance of LGBTI people, providing financial support to NGOs working to promote equal rights, organising anti-discrimination education or in any other way supporting LGBTI people; whereas the creation of LGBTI free zones, even if it does not consist in the introduction of a physical border, represents an extremely discriminatory measure limiting the freedom of movement of EU citizens; whereas these resolutions are part of a broader context of attacks against the LGBTI community in Poland, which include growing hate speech by public and elected officials and public media, as well as attacks and bans on Pride marches and awareness-raising programmes and actions such as Rainbow Friday;
- Q. whereas according to the FRA LGBT Survey<sup>2</sup>, 32 % of respondents felt discriminated against in areas outside of employment, such as education; whereas the risk of suicide among LGBTI children is higher than it is for non-LGBTI children; whereas inclusive education is key to creating school environments that are safe and in which all children can thrive, including those that belong to minorities, such as LGBTI children and children from LGBTI families; whereas the primary victims of attacks against LGBTI rights are children and young people living in rural areas and smaller urban centres, who are particularly vulnerable to violence and often face rejection and uncertainty, and therefore require special support and assistance from state and local government institutions or NGOs;

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<sup>1</sup> ECtHR Case of *S. and Marper v. The United Kingdom*, 4 December 2008 (Application Nos. 30562/04 and 30566/04), para. 66, [https://hudoc.echr.coe.int/eng#{"itemid":\["001-90051"\]}](https://hudoc.echr.coe.int/eng#{); Opinion of Advocate General Sharpston, 17 July 2014 on joined cases C-148/13, C-149/13 and C-150/13, paras. 38 and 39, <http://curia.europa.eu/juris/document/document.jsf?text=%2522gender%2Bidentity%2522&docid=155164&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=4735298#ctx1>

<sup>2</sup> FRA EU LGBT survey, summary of results, <https://fra.europa.eu/en/publications-and-resources/infographics/eu-lgbt-survey>

- R. whereas the lack of non-discrimination law in many Member States puts the most marginalised populations at risk of discrimination and violence; whereas the horizontal directive on non-discrimination would fill this gap in protection but has been stalled in the Council for 11 years; whereas there is a legislative gap in protection from bias-motivated crimes based on sexual orientation and gender identity in the EU and many Member States;
- S. whereas people can be exposed to multiple and intersectional discrimination; whereas policies targeting one ground of discrimination should pay heed to the situation of specific groups that are likely to be victims of multiple discrimination that could be based on, among other grounds, age, race, religion, sexual orientation, gender or disability;
- T. whereas LGBTI people face discrimination and violence worldwide;
1. Recalls that LGBTI rights are fundamental rights, and that the EU institutions and the Member States therefore have a duty to uphold and protect them in accordance with the Treaties and the Charter, as well as international law;
  2. Expresses deep concern at the growing number of attacks against the LGBTI community that can be observed in the EU, coming from states, state officials, governments at national, regional and local levels, and politicians;
  3. Strongly condemns any discrimination against LGBTI people and their fundamental rights by public authorities, including hate speech by public authorities and elected officials, in the context of elections, as well as the recent declarations of zones in Poland free from so-called 'LGBT ideology', and calls on the Commission to strongly condemn these public discriminations;
  4. Regrets the fact that LGBTI people experience bullying and harassment that begins at school and urges the Commission and the Member States to take concrete actions to end discrimination against LGBTI people, which can lead to their being bullied, abused or isolated, in particular in educational settings; firmly denounces the fact that schools in some Member States are prevented by public authorities from fulfilling their role of promoting fundamental rights and protecting LGBTI people and recalls that schools should not only be safe places, but also places that reinforce and protect the fundamental rights of all children; stresses the importance of health and sexuality education, in particular for girls and young LGBTI people, who are particularly impacted by inequitable gender norms; stresses that such education must include teaching young people about relationships based on gender equality, consent and mutual respect as a way of preventing and combating gender stereotypes, LGBTI-phobia and gender-based violence;
  5. Recalls that LGBTI-phobia at sporting events remains common and that measures to combat it are lacking; calls on the Member States to pay special attention to how homophobia in sport is affecting young LGBTI people in order to improve inclusion and raise awareness;
  6. Calls on the Commission to take concrete measures to ensure freedom of movement for all families, including LGBTI families, in line with the June 2018 judgment by the

Court of Justice of the EU in the *Coman* case<sup>1</sup>; calls on the Member States to introduce legislation for equal recognition of same-sex marriages and partnerships so as to ensure full respect for the right to private and family life without discrimination;

7. Is concerned by increasing racism and xenophobia; calls on the Commission and the Member States to intensify work on exchanging best practices and to strengthen their cooperation in combating racism, xenophobia, homophobia, transphobia and other forms of intolerance, with the full inclusion of civil society and with the contribution of relevant stakeholders such as the FRA;
8. Condemns the incidents of hate crime and hate speech both offline and online motivated by racism, xenophobia or religious intolerance, or by bias against a person's disability, sexual orientation, gender identity, sex characteristics or minority status, as well as the trend towards the removal and prohibition of LGBTI content on social networks, which occur in the EU on a daily basis; deplores the increasing levels of hate speech from within certain public authorities, political parties and media; calls for the EU to set an example by opposing hate speech within its institutions; is concerned by the growing presence of hate speech on the internet and recommends that the Member States put in place simple procedures enabling members of the public to report the presence of hateful content online;
9. Expresses its concern at the lack of reporting of hate crimes by victims owing to inadequate safeguards and to the failure of authorities to investigate properly and obtain convictions for hate crimes in the Member States; calls on the Member States to develop and disseminate tools and mechanisms for reporting hate crimes and hate speech, and to ensure that any case of alleged hate crime or hate speech is effectively investigated, prosecuted and tried;
10. Calls on the Commission to support training programmes for law enforcement and judicial authorities, and for the relevant EU agencies, with the aim of preventing and tackling discriminatory practices and hate crimes;
11. Recognises that, in the absence of comparable and disaggregated equality data collected by Member States, the full extent of inequality in the EU remains unacknowledged; considers the collection of such data by Member States to be essential for the formulation of meaningful policies for the implementation of EU equality law; calls on the Commission and the Council to acknowledge the need for reliable and comparable equality data that can provide measures on discrimination, disaggregated by discrimination grounds, in order to inform policymaking; calls on both institutions to define consistent equality data collection principles, based on self-identification, EU data protection standards and the consultation of the relevant communities;
12. Condemns any kind of discrimination or violence on the basis of sexual orientation, gender identity or sex characteristics; encourages the Commission to come up with an agenda that ensures equal rights and opportunities for all citizens, while respecting the competences of Member States, and to monitor proper transposition and implementation of EU legislation relevant to LGBTI people; welcomes, in that regard, the list of actions prepared by the Commission to advance LGBTI equality, including its communication campaign to fight stereotypes and improve social acceptance of LGBTI people; urges the Commission and the Member States to work in close cooperation with civil society

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<sup>1</sup> ECLI:EU:C:2018:385.

organisations working for the rights of LGBTI people; calls on the Commission to make adequate funding available to support such organisations active at national and local level, in particular, by means of the Rights and Values programme; notes that field research by the FRA shows that public officials see EU law and policy as major drivers in support of national efforts to promote LGBTI equality;

13. Recalls the case-law of the ECtHR pertaining to LGBTI rights; calls on the Commission and the Member States to share best practices with regard to protecting fundamental rights, and encourages the Member States to inform LGBTI people fully about their rights;
14. Reiterates its calls for a comprehensive, permanent and objective EU mechanism on democracy, the rule of law and fundamental rights that includes the protection of LGBTI rights; underlines that such a mechanism is more urgently needed now than ever before; reiterates the need for an impartial and regular assessment of the situation with regard to the rule of law, democracy and fundamental rights in all the Member States and calls on the Commission to monitor fundamental rights violations in the framework of its announced rule of law review cycle;
15. Calls on the Commission and the Council to use all the tools and procedures at their disposal to ensure the full and proper application of Treaty principles and values, such as infringement procedures, budgetary procedures, the rule of law mechanism and the Article 7 procedure, including those ongoing;
16. Calls on the Commission to assess whether the creation of LGBTI free zones amounts to a violation of freedom of movement and residence in the EU, infringing Article 3 (2) TEU, Article 21 TFEU, Titles IV and V of Part Three TFEU and Article 45 of the Charter; calls on the Commission to assess whether Poland has failed to fulfil an obligation under the Treaties and whether it should deliver a reasoned opinion on the matter, in accordance with Article 258 TFEU;
17. Calls on the Commission to monitor the use of all EU funding streams, including EU Structural and Investment Funds, and to use regular dialogues with national, regional and local authorities to remind stakeholders of their commitment to non-discrimination and that such funds may under no circumstances be used for discriminatory purposes; calls on the Commission to take concrete measures to address clear and direct breaches of anti-discrimination rules, in particular the prohibition of the instruction to discriminate under Directive 2000/78/EC, by local councils adopting regulations that attack LGBTI rights;
18. Reiterates its call on the Commission to adopt an EU LGBTI strategy that takes into account Parliament's previous demands, ensuring continuity and a strong follow-up to the work of the previous Commission with the list of actions to advance LGBTI equality;
19. Calls on the Commission to make it a priority to effectively ensure that everyone has equal and strong legal protection on all the grounds included in Article 19 of the TFEU; calls for the Council to immediately unblock and conclude the negotiations on the horizontal directive on non-discrimination and welcomes the new commitments of the Commission in this area;
20. Calls on the Commission to continue working with the Member States to enhance

investigation of hate-based crimes, such as crimes motivated by LGBTI-phobia, and support for victims; notes that some Member States have extended the protection granted to victims of discrimination based on other grounds, such as sexual orientation, gender identity or sex characteristics, when implementing the EU framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, and encourages such extensions; reiterates its call on the Commission to revise, following an impact assessment, the framework decision currently in force, in order to include incitement to hatred on grounds of gender, sexual orientation, gender identity and sex characteristics;

21. Invites the Committee of the Regions, as a representative of local and regional EU authorities, to consider taking action, within the remit of its competences, in response to the development of zones free from so-called 'LGBT ideology' in Poland;
22. Supports the work of the EU in defending and promoting human rights in its external action, including LGBTI rights; calls for the soon-to-be-adopted EU Action Plan on Human Rights and Democracy to keep its strong commitments to and focus on LGBTI issues in the next five years, as it did from 2015-2019;
23. Calls on all Member States to uphold their duty to protect the fundamental rights and freedoms of all EU citizens, including LGBTI people, without exception, at national and local levels; invites the Member States to take positive measures to increase social acceptance towards the LGBTI community;
24. Calls on Poland to firmly condemn discrimination against LGBTI people, including when it originates from local authorities, and to revoke resolutions attacking LGBTI rights, including local provisions against 'LGBT ideology', in accordance with its national law as well as its obligations under EU and international law;
25. Condemns misuse of the laws on information available to minors, especially in the field of education and the media, in order to censor LGBTI-related content and materials, in particular Article 4(2)(16) of the Law on the Protection of Minors against the Detrimental Effects of Public Information in Lithuania and Article 10.1 of the Education Law in Latvia; calls on the Member States to amend such legislation so as to comply fully with fundamental rights as enshrined in EU and international law; calls on the Commission to take all the necessary steps to ensure such compliance;
26. Calls on all Member States to monitor hate speech by public authorities and elected officials, as well as during local, regional and national elections, and to take firm and concrete measures and sanctions against it;
27. Instructs its President to forward this resolution to the governments and parliaments of the Member States cited in this resolution, the Council, the Commission and the Committee of Regions.