



**FRIEDRICH NAUMANN
FOUNDATION** For Freedom.

South Asia

Navigating Progress: A Comprehensive Overview of LGBTQIA+ Rights in Europe and Emerging Trends

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ANALYSIS

**Navigating Progress:
A Comprehensive Overview of
LGBTQIA+ Rights in Europe and
Emerging Trends**

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Notes on using this publication

This publication employs various acronyms that are a part of publications and research papers, and these acronyms are specific to certain countries and reflect the publication and research papers, not necessarily the editorial stance of Friedrich Naumann Foundation for Freedom (FNF) Regional Office, South Asia.

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About FNF



**FRIEDRICH NAUMANN
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South Asia

The Friedrich Naumann Foundation for Freedom (FNF) is committed to advancing liberal democratic values, human rights, good governance, economic freedom and digital transformation globally. In line with this mission, FNF seeks to facilitate cooperation and mutual understanding between South Asian countries and European nations on LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual) rights and issues.

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Executive Summary

The European Union remains one of the foremost global champions of LGBTQIA+ rights. Its efforts are apparent in the way the general situation of LGBTQIA+ people in Europe has improved in recent years, legally and in terms of societal attitudes. EU authorities, in particular the Commission and the Parliament, are keen to adopt and implement new initiatives to promote LGBTQIA+ rights internally and globally (in external relations). Symbolic of such efforts is the LGBTIQ Equality Strategy 2020-2025, aimed at tackling discrimination, ensuring safety, building inclusive societies and leading the call for LGBTIQ equality around the world. However, the efforts of EU institutions do not necessarily correlate with cohesion within member states on this issue. The acceptance gap between the EU's progressive North and West on one side and the conservative South and the East on the other is actually widening; beyond the EU are many European countries wherein the situation of LGBTQIA+ people is difficult or even life threatening.

In general, the situation of LGBTQIA+ people is ideal nowhere within Europe, nor can LGBTQIA+ rights be taken for granted anywhere on the continent. Europe is a battlefield, with right-wing populists gaining popularity by promoting discrimination, hate speech, homophobia and transphobia. Wherever popular enough to form a government, these right-wingers fight to undo (not without success) the achievements of previous generations of activists and inclusive decision-makers. In the spectrum of this decade's socio-political discourse on the future of LGBTQIA+ rights, some topics have become particularly prominent, namely hate speech and hate crime, trans rights and migration and asylum; these topics are the focus of this article.

From afar, Europe is often seen not only as safe haven for LGBTQIA+¹ people but also almost a rainbow paradise. Admittedly, from a global perspective, Europe remains a relatively inclusive and

¹"No term is perfect or perfectly inclusive", wrote a National Academies of Sciences, Engineering and Medicine committee in a 2020 report. In the publication terms LGBTQI+ is used as the basic one. If other, in particular narrower, terms are used, e.g. LGBT, it is done for a specific purpose or derived from a certain source.

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progressive place; yet, it is far from ideal. The notion of a monolithic Europe is illusory; the community faces different challenges across the continent, the situation of LGBTQIA+ people varying widely with geography. It is noteworthy that there isn't a single country that guarantees full protection and equality for LGBTQIA+ people. Furthermore, even in countries where the situation looks great on paper – where legal measures are in place – there is insufficient implementation, leaving members of the LGBTQIA+ community vulnerable in everyday life.

An improvement in the general situation of LGBTQIA+ people in Europe in recent years is accompanied by regression in certain areas, highlighted by increased political repression, the spreading of LGBTQIA+ - phobic hatred and legislative set-backs. It is not the purpose of this article to present a detailed analysis of the LGBTQIA+ socio-economic and legal situation in Europe; there are already several comprehensive reports that describe changes in social attitudes and document improvements and deterioration in terms of the breadth of human rights accorded to the LGBTQIA+ community in different regions. What this article does seek to do is present the most important current trends (where possible, presenting data and examples from reports dating 2022 and 2023). These are trends that have attracted the attention of policy-makers, activists and commentators, impacted the wellbeing of LGBTQIA+ people across the continent, generated interest in their allies and enemies and created opportunities and dangers for the community's future. These trends are categorized as follows:

1. A rise in anti-LGBTQIA+ right-wing populism (a meta-trend leading to the emergence of other trends)
2. Hate speech and hate crime
3. Trans rights
4. Migration and asylum.

Before dealing with these themes, the article shall describe the general landscape of LGBTQIA+ rights in the European Union and in Europe.

2 Europe, EU & Beyond

The European Union (EU) is one of the most outspoken global actors in the realm of protection and promotion of LGBTQIA+ rights. The EU's forward-looking initiatives are lauded by experts and activists, promoting equality not only within the EU but also advocating for the same externally. The EU boasts of some of the most comprehensive anti-discrimination legislation in the world. The principle of equality and the prohibition of discrimination on the basis of sexual orientation have extensive coverage in the EU's founding agreements, the EU Treaties.² The Treaty provisions are complemented by the Charter of Fundamental Rights of the EU, which was the first international human rights charter to prohibit discrimination on the grounds of 'sexual orientation' explicitly.

The region is also impelled by several directives (the EU's secondary law), for instance, the Race Equality Directive, implementing the principle of equal treatment irrespective of racial or ethnic origin, and the Employment Equality Directive, prohibiting discrimination on the grounds of, among other characteristics, sexual orientation, both adopted in 2000. Other crucial pieces of legislation are the Free Movement Directive (the recognition of same-sex marriages concluded and registered partnerships by other Member States), the Family Reunification Directive (upholding the entry and residence rights of LGBTI third-country nationals) and the Qualification Directive (granting of asylum on the basis of belonging to a particular sexual orientation and gender identity).

² E.g. Article 10 of the Treaty on the Functioning of the European Union, and Articles 2 and 3 of the Treaty on European Union (TEU).

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S.no	Areas of Inclusion
1	EU Treaties
2	Charter of Fundamental Rights
3	Race Equality Directive
4	Employment Equality Directive
5	Free Movement Directive
6	Family Reunification Directive
7	Qualification Directive
8	Equal Treatment in Goods and Services Directive
9	Victims' Rights Directive
10	Temporary Protection Directive

The EU has recognized that legislative protection against discrimination is, on its own, insufficient in providing the expected outcomes, and it has created various strategies and programmes to accelerate change. In 2020, the European Commission (the EU's executive) adopted its new EU LGBTIQ Equality Strategy, 2020-2025, aimed at tackling discrimination, ensuring safety, building inclusive societies and leading the call for LGBTIQ equality around the world. The strategy will, among others, support activities to combat hate speech and hate crimes, promote workplace inclusions and ensure safe and inclusive education and health care; it will guarantee that LGBTIQ rights are prioritized across all EU policies. The 2023 progress report shows that the strategy works, directing our attention to its first achievements.³

Within the multiannual financial framework (the long-term EU budget) for 2021-2027, LGBTI rights are covered in the Justice, Rights and Values Fund. It is subdivided into the Justice programme (JUST) and the Citizens, Equality, Rights and Values programme (CERV). The CERV programme receives a total of €1553.7 million (three times as

³ Among the key achievements are: proposals to strengthen the role of equality bodies adopted by the Commission in 2022, and Recommendation on pathways to school success adopted in 2022. European Commission (2023). Progress Report. On the implementation of the LGBTIQ Equality Strategy 2020-2025. https://commission.europa.eu/system/files/2023-04/JUST_LGBTIQ%20Strategy_Progress%20Report_FINAL_WEB.pdf

much as that in the previous iteration). Over 100 projects focused on promoting LGBTIQ equality have been funded under the Erasmus+ and European Solidarity Corps.⁴

The promotion of human rights and non-discrimination is also part of the EU's enlargement and external policy.⁵ The EU will step up efforts to prevent, denounce and combat all forms of discrimination and harassment against LGBTI persons, including LGBTI-phobic violence, hate speech and hate crime, support NGOs working against discrimination outside the EU, including homophobic and transphobic violence, and promote general freedoms of assembly, association and expression (EU Action Plan on Human Rights and Democracy 2020-2024 and the European Instrument for Democracy and Human Rights).

2.1. European Parliament

It is important here to highlight the role of the European Parliament (EP), an institution that speaks up most frequently for LGBTQIA+ rights. The agenda is largely determined by the LGBTI Intergroup – an informal platform for MEPs from different political families – that monitors the EU executive's work on LGBTI rights and calls for action.

The EP has addressed the issue of LGBTQIA+ rights on numerous occasions, starting with the adoption of a resolution on the rights of homosexuals at the workplace in 1984. The Parliament has condemned all forms of discrimination against LGBTI people, including the practice of so-called conversion therapies and the pathologization of trans and intersex people, e.g., it urged Member States to include gender identity and sex characteristics in their national equality legislation, to allow legal recognition of a person's preferred gender, and to introduce legislation prohibiting 'sex-normalising treatments and surgery' on intersex people. The EP emphasized on several occasions the urgent need to tackle the

⁴ Ibid

⁵ It is a consequence of the failure of the previous strategy which oversaw LGBTQIA+ rights in the enlargement process, allowing the situation of LGBTQIA+ people to deteriorate in Central and Eastern European countries that entered the EU in 2004 and later.

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growing problems of hate speech and hate crime. It took a clear stand against the ongoing anti-LGBTQIA+ backlash in some EU countries. Furthermore, in 2021, it declared the entirety of the EU an 'LGBTIQ Freedom Zone'. Finally, the EP promotes the rights of LGBTI people internationally; an example of this was its initiation of a UN declaration calling for the worldwide decriminalization of homosexuality.

2.2. Inside the EU

Even though the EU ranks among global leaders, its power does not obviate certain challenges, which becomes apparent upon scrutiny. There is a marked difference between the EU's approach and that of its Members States. The status of the EU's laws remains an object of discussion in all 27 capitals, and many principles and freedoms guaranteed at the level of its international community are not reflected at the national level. There are open questions concerning the interpretation and application of directives mentioned earlier in the article. The divergence between Member States in adherence to cultural mores, the influence of religion/ the Church and the conservativeness of the ruling class leads to significant variance in the according of rights, like that seen in the legal recognition of same-sex relationships.

The EU's mandate does not extend to recognition of marital or family status of same-sex couples. As of December 2023, 15 European countries legally recognize and perform same-sex marriages: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, Malta, Netherlands,⁶ Norway, Portugal, Slovenia, Spain and Sweden.⁷ Estonia will begin performing same-sex marriages from 2024. An additional twelve European countries legally recognize some form of civil union for same-sex couples, namely Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Italy and Latvia.⁸ In contrast, the laws of the following EU countries do not provide for any form of

⁶ It was only 2001 when the Netherlands became the first country in the world to open up civil marriage to same-sex couples.

⁷ Additionally, Andorra, Iceland, Switzerland, and the UK.

⁸ Additionally, Liechtenstein, Monaco, Montenegro, and San Marino.

registration of partnership for same-sex couples: Bulgaria, Lithuania, Poland, Romania and Slovakia;⁹ some Member States even have constitutional provisions against same-sex marriage, such as Bulgaria, Croatia, Hungary, Latvia, Lithuania, Poland and Slovakia.¹⁰

The disagreement between Eastern and Western EU countries over the protection of LGBTQIA+ rights is readily apparent, extending beyond recognition of same-sex unions. A glance at the Rainbow Europe Map, a visual representation of the ILGA-Europe's Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe and Central Asia, reveals the dissension between Northern and Western countries (marked by green) and those on the Eastern side (red and yellow). The Rainbow Map and Index assigns 49 European countries a percentage score, judging them by their legal and policy practices (across 74 categories) towards LGBTI people. To become green, a country must score at least 50%. Malta, Denmark and Belgium are EU's champions with 92%, 74% and 72%, respectively; Poland, Romania and Bulgaria stand at the other end with 15%, 18% and 20%, respectively. The division goes deeper than legislation and policies; it is also visible in social attitudes. The majorities in Western European countries favor LGBTQIA+ rights, while those in Central and Eastern European (CEE) countries oppose it, e.g., 98% of Swedes believe that LGB people should have the same rights as heterosexual people, in contrast to 31% in Slovakia.¹¹ The path to evening out differences between Members States and making the entirety of the EU an 'LGBTQI Freedom Zone'¹² seems long indeed.

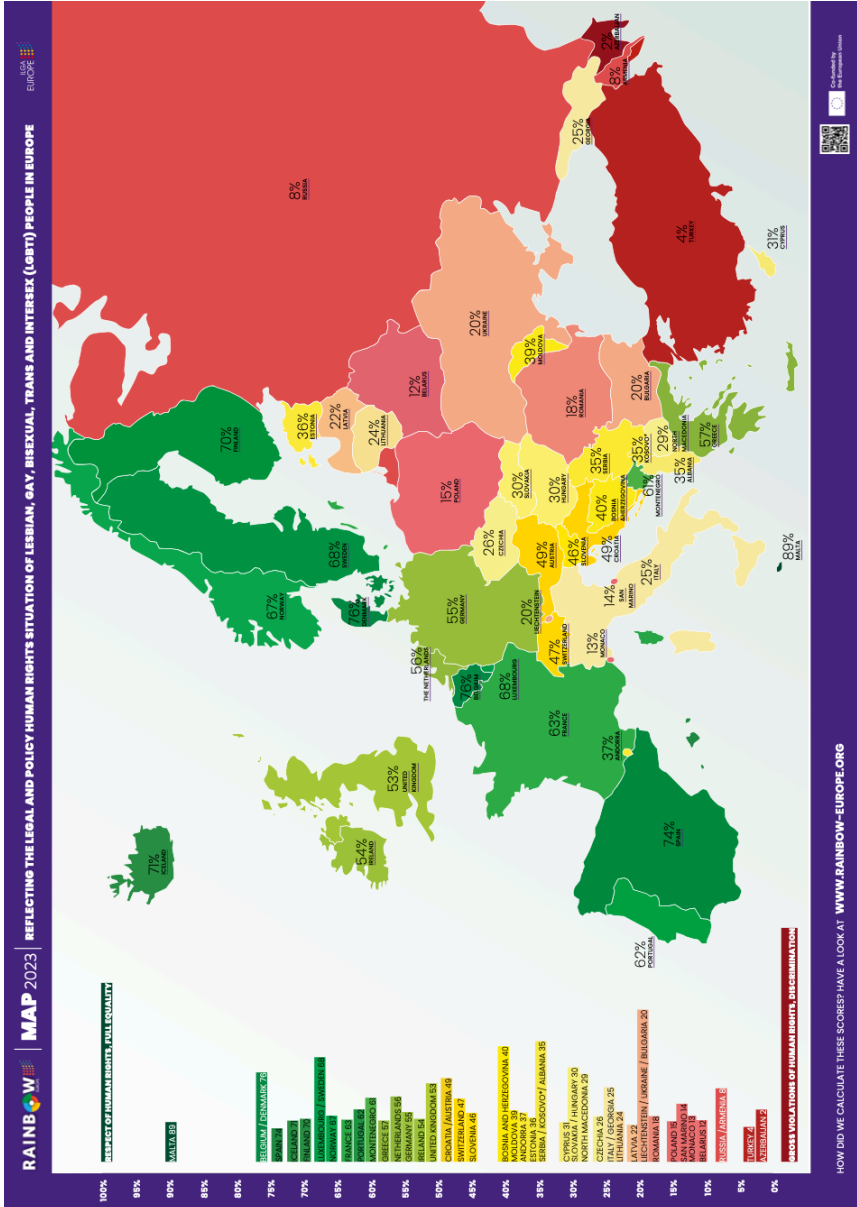
⁹ However, the Member States whose laws do not provide for same sex unions must submit to the case-law of the CJEU, which can order the recognition of such a union concluded in another EU country. In 2018, there was a precedent-setting judgment on this issue.

¹⁰ The topic of rainbow families goes beyond the possibility of formalization of same-sex relations. It also covers the parenthood and its recognition (among others, automatic co-parent recognition, recognition of children of non-biological parents, recognition by education and health system, access to assisted reproduction). In the EU, the theme of rainbow families, and legal changes introduced to regulate it, is particularly interested from the perspective of free movement (one of four fundamental principles the European integration was built on). Family law is a competence of the Member States, and this can create barriers to free movement as to differences in family law across Member States, rainbow family ties often cease to be recognized when crossing the EU's internal borders.

¹¹ E.g. European Commission (2019). Eurobarometer on the social acceptance of LGBTIQ people in the EU – 2019. https://commission.europa.eu/system/files/2019-10/infographics_2019_lgbti_final.pdf

¹² To be fair, it is important to stress that some of the Eastern EU states have made progress and are steadily catching up with the West. Estonia and Slovenia are regional champions, and Latvia is one of the countries with the biggest jump in scores in the latest edition of the Rainbow Europe ranking.

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2.3. Non-EU States

It must be borne in mind that Europe is a larger geographical entity than the EU. Beyond the microstates, inextricably linked with bigger member states, there are two additional groups of states:

1. The UK and the EFTA (Norway, Switzerland and Iceland) and
2. Non-EU Eastern European countries. The former group is scarcely a cause for concern (only conservative Switzerland ranks poorly in Rainbow Europe), unlike the latter, which spans a massive area comprising the sub-regions of the Western Balkans, South Caucasus, Russia and Belarus. On one hand, countries with aspirations for EU membership are amending their laws, adopting anti-discrimination policies faster than many Member States (with Montenegro being a regional leader in the Rainbow Europe ranking, with a score at the level of Spain and Sweden); in stark contrast, Russia and Azerbaijan have created a system of state-sponsored homophobia which propagates hate and violence towards LGBTQIA+ people (e.g., the so called gay propaganda laws in Russia, coinciding with secret abductions and murders of gay men in Chechnya).¹³

This article, recognizing the diversity of Europe, will focus on the EU and countries that remain in the orbit of the EU's influence, leaving aside states that unequivocally reject fundamental European values.

¹³ Hodun, M. (ed)(2021). Free Voices. LGBT+ Rights in Eastern Europe. Brussels: ELF. https://liberalforum.eu/wp-content/uploads/2022/02/free_voices_www.pdf

3 Trends

3.1. Populism

One of the most worrisome trends observed in Europe is the rise of right-wing populism that targets LGBTQIA+ people and their rights. Populism has been labeled one of the biggest threats to the EU, a phenomenon poised to undo the most definitive accomplishments of European liberal democracy, imperiling freedom, human rights and the rule of law. The draw of populism is that it promises better democracy, a new form of exercising power, to a specific group of people. In other words, populist parties or movements do not seek to represent all citizens nor act in their best interests. On the contrary, they actively discriminate and act against arbitrarily chosen segments of society, and minorities tend to be their easiest targets.

LGBTQIA+ people are among the many targets of far right populists, chosen because they are vulnerable, symbolizing a shift from traditional perspectives of sexual roles and family models; more generally, their struggle for equality is the embodiment of the dramatic changes in culture and society that populists fight against. In some cases, strong attachment to religion plays an important role too.

With the ascent of populists to power, much legal and social progress in LGBTQIA+ rights, achieved slowly over the span of two decades, has been undone. Poland and Hungary are the embodiment of such regression. Mobilization against LGBTQIA+ rights became one of the primary political tools for the ascent to and retention of power for ruling parties in Budapest and Warsaw.¹⁴ They decided to attack their own citizens to win necessary votes, having chosen LGBTQIA+ people as enemies of the nation and begun their persecution, the long-term effects of which are difficult to foresee.¹⁵ The political parties Law and Justice (PiS) and Fidesz, instead of fighting hate speech, promote

¹⁴ Political Capital & Projekt: Polska (2022). The anti-gender and anti-LGBTQI mobilisation in Hungary and Poland.

¹⁵ Hodun, M. (ed)(2021).

it to achieve a new, hitherto unknown level of societal polarization, which is necessary to maintain complete authority. Dehumanization of the community, symbolized by 'LGBT-free zones' established by local and regional authorities in Poland,¹⁶ has become an official doctrine of the state apparatus controlled by the ruling parties. These 'LGBT-free zones,' introduced by municipalities, counties and regions, encompass a third of the expanse of the country.¹⁷ This is merely accompaniment to hostility towards same-sex adoption and legal recognition of gender change; underway are education reforms aimed at eliminating evidence-based sexuality education and minority rights SCOs from schools and an amendment to the Passport Act that makes it more difficult for same-sex parents to get passports for their children.

It's important to note that homophobia has entered the mainstream in other countries of the region as well. Slovenia, Romania, Bulgaria and even the Czech Republic are grappling with anti-LGBTQIA+ rhetoric, which is promoted by the most important participants in the public political debate, including Prime Ministers and Presidents. Ultra-conservative groups such as the World Congress of Families establish their branches in capitals of the region and vehemently fight against what they term genderism or LGBTQ+ ideology. Such groups use techniques like disinformation and manipulation to accomplish their long-term goals. Their local branches and allies are not afraid to seek money from the Kremlin and the 'anti-gender movement', a network that includes some churches and far-right parties. Examples of the latter are Hungarian GONGOs with ties to the Republican Party and the American Conservative Union, and even the Russian Orthodox church; there are Budapest branches of CitizenGo and Tradition, Family and Property (TFP).¹⁸ Anti-LGBTQIA+ narratives usually frame the alleged 'gender and LGBTQI ideology/

¹⁶ In some cases, the principles of gender equality and LGBTQIA+ rights are being incorporated into otherwise right-wing populist strategies to demarcate the divide between white/local/Christian "us" and dark/foreign/Muslim "them", e.g. PVV, the winner of the recent (2023) general elections in the Netherlands, and the Finns Party which finished second in recent (2023) elections and are a part of the ruling coalition.

¹⁷ These local and regional entities – inspired by ultra-conservative NGOs - declared themselves free from "LGBT ideology. They were criticized, among others, by the Poland's Ombudsman, and the European Commission (blocking some funds for regions that adopted such declarations). The European Parliament condemned these declarations and called entire EU an 'LGBTIQ Freedom Zone'.

¹⁸ Political Capital & Projekt: Polska (2022).

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propaganda’ as one that attacks ‘normality’; ‘normality’ here means striving towards traditional values, children and family. According to these narratives, the main disseminators of the alleged “gender and LGBTQI ideology/ propaganda” are usually entities who oppose the government in some way, such as the Liberals, the Left and the West/ Brussels/ the EU.¹⁹

The rise of right-wing politicians and a dip in public support for the LGBTQIA+ community is a concern not only for the East, but all of Europe. Vox in Spain, the Alternatvite for Germany (AfD, some parties in the Italian government coalition and France’s Zemmour are only the most obvious examples.²⁰ The EU’s far right currently appears to enjoy a surge in the run up to next year’s EU elections.²¹

There are attempts to roll back LGBTQIA+ rights in all European countries; targeted campaigns are being devised everywhere, from the Iberian Peninsula to Scandinavia. European “political homophobia,” or homophobia as a political strategy, is a dangerous phenomenon that reminds us that the state of LGBTQIA+ rights in Europe is not a given but something that current and following generations will have to fight to sustain and advance.

3.2. Hate speech and hate crimes

Inextricably linked with political homophobia is the rise in hate speech against LGBTQIA+ people in Europe. For years now, hate speech has been devastating the European public space and mercilessly invading the private sphere. The Council of Europe’s monitoring body, the European Commission against Racism and Intolerance (ECRI), concluded in its 2020 annual report that the climate of opposition to LGBTI persons’ human rights has gained ground in

¹⁹ Political Capital & Projekt: Polska (2022).

²⁰ In some cases, the principles of gender equality and LGBTQ+ rights are being incorporated into otherwise right-wing populist strategies to demarcate the divide between white/local/Christian “us” and dark/foreign/Muslim “them”, e.g. PVV, the winner of the recent (2023) general elections in the Netherlands, and the Finns Party which finished second in recent (2023) elections and are a part of the ruling coalition.

²¹ EuropeElects predicts the parliament’s far-right Identity and Democracy group is vying to become the third-biggest party (fifth last time). EuropeElects. EU Election Projection 2024. <https://europe-elects.eu/ep2024/>

certain European countries in 2020, linked to populist homophobic and transphobic rhetoric and the 'anti-gender movement'. According to a 2018 Eurobarometer survey, hate speech is the type of online illegal content that Europeans encounter the most, as reported by respondents in 10 countries.²² Eurostat, in its report "Being young in Europe today – digital world" reveals concerns about the behaviors of children and young people.²³ According to the study, they may be exposed to potentially harmful content, which may create dependency, anxiety or aggression.

It has taken years for hate speech to finally become the subject of political debate. The President of the European Commission, Ursula von der Leyen, said, "We will propose to extend the list of EU crimes to all forms of hate crime and hate speech – whether because of race, religion, gender or sexuality. Hate is hate – and no one should have to put up with it".

According to the publication 'US/ THEM Hate Speech in Politics', hate speech against LGBTQIA+ people is present in public discourse in practically all EU member states: "Wherever right-wing populists are triumphant, hate speech becomes an inherent feature of political language. Where right-wing populists are only just clearing the way, hate speech is pushing itself into public space as a new phenomenon, causing shock to voters and embarrassment mixed with deep shame on the existing elite". The mainstreamization of hate speech remains a dangerous occurrence. "First, it is ignored by traditional parties, then its elements are accepted and finally adopted by mainstream politicians. The media play an invaluable role in this process, starting with the promotion of hate speech as a seemingly harmless tidbit, a little controversy to ensure better sales or click-through, and ending with the recognition of this phenomenon as an integral part of politics. Feedback between politics and the media leads to the full normalization of hate speech in public debate"²⁴. Discriminatory

22 European Commission (September 2018). Flash Eurobarometer 469: Illegal content online. <https://digital-strategy.ec.europa.eu/en/library/flash-eurobarometer-illegal-content>

23 Eurostat (2020). Being young in Europe today. https://ec.europa.eu/eurostat/statisticsexplained/index.php/Being_young_in_Europe_today_3_Eurobaromet

24 Hodun, M. (ed)(2021). US/THEM Hate Speech at the Service of Politics. Brussels: ELF. https://liberalforum.eu/publications/?taxonomy%5Bpublication-type%5D=-1&taxonomy%5Bmember%5D=-1&taxonomy%5Blanguage%5D=-1&post_year=-1&rs=hate+speech

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and prejudicial policies and practices against LGBTQIA+ people often reinforce contempt for sexual minorities in society, and, as a consequence, the LGBTQIA+ community is frequently targeted by “hate speech”.

According to the 2023 ILGA-Europe report, homophobic and transphobic rhetoric and other anti-LGBT+ hate crimes are rising across Europe, fuelled by divisive politics and socially conservative groups that also campaign against abortion access.²⁵ While Hungary and Poland’s anti-LGBTQI+ turn received a lot of media attention, hate speech from political and religious leaders increased in 17 countries including Portugal, Spain and Finland, which are known for being generally LGBT-friendly. The originators of such hate speech are politicians and state representatives in a number of countries, including Austria, Bulgaria, France, Italy, the Netherlands and Sweden.²⁶ According to the report, hate speech also originated from religious leaders in Greece and Slovakia. In some countries an increase in hate speech coincided with hostile media reporting. Hate speech towards LGBTQIA+ people was reported to have “peaked around Prides in Austria and France and fueled by politicians and religious leaders in Georgia, Moldova, Montenegro and Serbia”.²⁷ There have been court cases in which officials, individuals, the media and other organizations have been successfully prosecuted for hate crime and hate speech, including MPs who were indicted for hate speech in Bosnia and Herzegovina and Lithuania.

Homophobic and transphobia remain ubiquitous in Europe, and their prevalence on the internet and across social media has helped fuel a rise in hostility towards LGBTQIA+ people. A 2023 European Digital Media Observatory (EDMO) report observed that anti-LGBTQ misinformation and disinformation was particularly prolific and “often incites hate against minorities, laws and institutions”. Considerable anti-gender propaganda comes from Russia and is

25 ILGA-Europe (2023). 2023 Annual Review. https://www.ilga-europe.org/sites/default/files/2023/full_annual_review.pdf

<https://www.euractiv.com/section/non-discrimination/news/ilga-europe-reports-spike-in-violence-towards-lgbtqi/>

26 *Ibid.*

27 *Ibid.*

tailored to promote the Kremlin's strategic interests. Unfortunately, it uses (and accelerates) narratives and sentiments that already exist in Europe.²⁸

Hate speech often inspires hate crimes. Recent data on anti-LGBTQIA+ hate crimes in Europe is very worrying. "The most striking finding this year is the hate and violence reported across the region. We have done the annual report for 12 years, and this year's report finds that 2022 was the most violent year for LGBTQIA+ people," said Katrin Hugendubel, advocacy director of ILGA-Europe.²⁹ Activists stress also the severity of the violence. In 2022 alone, two people were killed and 20 wounded after an attack outside an LGBTI bar in Oslo; two people were murdered and one injured outside a queer bar in Bratislava; two gay men were killed in separate attacks by the same person in Ireland. According to the ILGA-Europe report, anti-LGBTI hate crime is on the rise in France, Germany, Hungary, Iceland, Ireland, Montenegro, the Netherlands, Portugal, Romania, Russia, Serbia, Spain, Switzerland, Turkey, Ukraine and the United Kingdom. In many of these countries, the rise in violence was unprecedented.³⁰

In May 2020, the EU Agency for Fundamental Rights (FRA) published the results of its second EU-wide survey on the extent and nature of discrimination, violence and hate speech experienced by LGBTI people across the EU, following the first-ever survey of its kind in 2012.³¹ The FRA results concluded that discrimination against LGBTI people persists, with little overall progress in the seven years since the first survey was conducted, indicating retrogression in some areas. The share of respondents reporting harassment and violence has also increased. A majority now report experiences of harassment (58% compared to 45% in 2012), but only 14% report

28 E.g. Strand, C., Svensson, J. (2021). Disinformation campaigns about LGBTI+ people in the EU and foreign influence. Brussels: European Parliament. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/653644/EXPO_BRI\(2021\)653644_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/653644/EXPO_BRI(2021)653644_EN.pdf)

Reid, G. (2023, May 7). Russia, Homophobia and the Battle for 'Traditional Values'. Human Rights Watch. <https://www.hrw.org/news/2023/05/17/russia-homophobia-and-battle-traditional-values>

29 Eastham, J. (2023, February 21). ILGA-Europe reports spike in violence towards LGBTQIA+.

Euractiv. <https://www.euractiv.com/section/non-discrimination/news/ilga-europe-reports-spike-in-violence-towards-lgbtqi/>

30 ILGA-Europe (2023).

31 FRA (2019). LGBT Survey II. Main Findings. <https://rm.coe.int/juul-van-hoof-presenta-tion/1680a45423>

attacks or threats of violence compared with 17% in 2012.

The FRA report rightly stresses that the fear and intimidation resulting from hate crime and hate speech prevent LGBTQIA+ persons from participating fully in society. Another challenge is lack of data on the extent of hate speech and hate crime towards LGBTQIA+ people in the EU, since most member states do not collect data on the issue or collect it in a manner to create obfuscation.^{32 & 33} Good research, the monitoring of existing mechanisms and training of units that prosecute those originating hate speech should constitute the starting point in the process of building a truly safe space for all citizens.

3.3. Trans-rights

From the LGBTQIA+ community, it is trans people that encounter particularly intense right-wing political interest and extreme levels of discrimination, harassment and violence. “This takes a variety of forms, including difficulties in access to work, housing and health services, and transgender people are frequently targeted by hate speech, hate crime, bullying and physical and psychological violence. Transgender people are also at particular risk of multiple discrimination. The fact that the situation of transgender people is considered as a disease by international diagnosis manuals is disrespectful of their human dignity and an additional obstacle to social inclusion”, stressed the Parliamentary Assembly of the Council of Europe in a resolution.³⁴ “The Assembly is concerned about the violations of fundamental rights, notably the right to private life and to physical integrity, faced by transgender people when applying for legal gender recognition; relevant procedures often require sterilization, divorce, a diagnosis of mental illness, surgical interventions and other medical treatments as preconditions. In addition, administrative burdens and additional

³² However, some surveys suggest that in certain Member States up to 50% of LGBTQIA+ persons have been victims of hate speech or hate crime. FRA (2009). Hate Speech and Hate Crimes against LGBT Persons. https://fra.europa.eu/sites/default/files/fra_uploads/1226-Factsheet-homophobia-hate-speech-crime_EN.pdf

³³ *Ibid.*

³⁴ PACE (2015). Resolution 2048 (2015). Discrimination against transgender people in Europe. <https://assembly.coe.int/nw/xml/xref/xref.xml2html-en.asp?fileid=21736>

requirements, such as a period of “life experience” in the gender of choice, make recognition procedures generally cumbersome. Furthermore, a large number of European countries have no provisions on gender recognition at all, making it impossible for transgender people to change the name and gender marker on personal identity documents and public registers”.³⁵ One in five trans and intersex people reported being physically or sexually attacked, double that of other LGBTI groups”, the Assembly added.

The statement just cited was made in 2015; much has changed, and data shows that over the past decade, the fight for trans rights in Europe has made significant gains, but many challenges remain and new problems have surfaced.³⁶ EU law does not provide for a specific prohibition of discrimination on the grounds of transgenderism. Some Member States see it as a form of sex discrimination, whereas others view it as discrimination on the basis of sexual orientation. A third group of Member States considers it to be neither. Malta is the only Member State that eschews the need for a mental health diagnosis in order to access trans-specific health care, relying instead on the informed consent of the patient.³⁷ By contrast, some other states have taken a more conservative stand regarding trans gender rights, and a number of governments have been trying to stop or hinder legal gender recognition. Access to health care is an area where barriers for trans people have increased in a number of countries, e.g., Ireland, Montenegro, Northern Ireland, Norway, Romania, Sweden, Turkey, Ukraine and the UK.³⁸

The mascot of officialdom’s anti-trans agenda is Hungary.³⁹ & 40 The slew of restrictive laws that have severely impacted equality in the

³⁵ *Ibid.*

³⁶ Saric, I. (2023, May 17). Trans rights largely advance in Europe but remain at risk. Axios. <https://www.axios.com/2023/05/17/trans-rights-europe-us>

³⁷ In 2023, Scotland and Spain have voted on legal gender recognition laws that include self-determination.

³⁸ ILGA-Europe (2023).

³⁹ In response to this law, which bears similarities to a Russian ‘homosexual propaganda’ law considered as violating the ECHR, the EC launched infringement proceedings and referred the matter to the CJEU, considering the Hungarian law i.a. a violation of Article 2 TEU.

⁴⁰ Hungary dropped from 2nd to 29th position in the Trans Right Map index. TGEU (2023). 10 Years of Trans Rights Mapping in Europe & Central Asia <https://tgeu.org/trans-rights-map-2023-10-year-trends/>

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country began in 2020 with an act that established that the “birth sex”, once recorded, cannot later be changed, thus rendering legal gender recognition impossible.⁴¹ The same year, the government rewrote the constitution to state, “Hungary shall protect the right of children to their identity in line with their sex at birth, and shall ensure an upbringing in accordance with the values based on our homeland’s constitutional identity and Christian culture.” In 2021, it passed a law banning “homosexual and transsexual propaganda”. In 2023, it implemented a law enabling citizens to report to the state people who “contest” children’s right to “an identity appropriate to their sex at birth”. The previous Polish government sought to use transphobia in its latest election campaign; the Children Ombudsman accused sex educators of providing “sex-changing pills” to students, with the ruling party leader narrating transphobic jokes during rallies. None of these tactics found resonance and were dropped. This dangerous phenomenon is not restricted to CEE. The UK’s Trans Right Map ranking dropped from 1st position in 2013 to the 21st in 2023; Latvia and Romania score fewer points today than they did a decade ago. In Finland, hate speech was reported during trans law debates in parliament, specifically targeting trans individuals and trans women.⁴² There were heated media debates and transphobic media pieces instrumentalizing children in Croatia, Germany, Iceland, Spain and the UK.⁴³

As mentioned before, hate speech promoted by politicians legitimizes hateful acts by citizens. In the case of trans people, the latter is particularly apparent, with tragic consequences. ILGA-Europe also raised concerns over an increase in trans hate speech online, flagging it a “serious issue online in Armenia, Austria, Latvia, Montenegro and Romania”. One key finding of the FRA survey is that trans respondents are less satisfied with their lives than the average EU individual, and trans people are more likely to be unemployed or excluded from the workforce than members of the average population. At least one in four respondents had been exposed to discrimination in some central aspect of their life. Trans people

41 Similar anti-trans attacks currently threaten legal gender recognition in Slovakia. TGEU (2023).

42 ILGA-Europe (2023).

43 *Ibid.*

are more likely to experience harassment than their cis LGB peers. Trans women experienced the highest amount of harassment and violence among respondents. Trans respondents did not often report being victims of a crime to the police owing to a lack of trust and disbelief that they could or would do something about it.⁴⁴ Trans Murder Monitoring, 2023, data shows that deadly violence against trans people remains consistently high. 45% of trans people reported murdered in Europe (whose travel background is known) were migrants or refugees.⁴⁵

3.4. Migration and asylum

Given the current migration crisis in the Mediterranean and full-scale Russian invasion of Ukraine, LGBTQIA+ rights (in terms of asylum and migration) have become a pressing matter in recent years.

Globally, over 175 million LGBTQIA+ individuals are estimated to live in persecutory environments.⁴⁶ At least 76 jurisdictions have criminalized privately engaging in sexual intercourse with a person of the same sex, seven of which deem it punishable by death.⁴⁷ A significant number of people arriving in the EU to apply for asylum are LGBTQIA+. Some of them flee persecution unrelated to their sexual orientation, gender identity or expression and sex characteristics (SOGIESC), while others are at risk of persecution precisely because of their SOGIESC.

The 2004 EU Qualification Directive referred explicitly to sexual orientation; its amended version, adopted in 2011, marks further progress in ensuring LGBTI applicants' rights by adding gender identity as a cause of persecution.⁴⁸ In its resolution dated 5 May

44 Calderon-Cifuentes, PA. (2021). Trans Discrimination in Europe. A TGEU analysis of the FRA LGBTI Survey 2019. TGEU. <https://tgeu.org/wp-content/uploads/2021/12/TGEU-trans-discrimination-report-2021.pdf>

45 TGEU (2023).

46 Organization for Refuge, Asylum & Migration, Opening Doors (2012). A Global Survey of NGO Attitudes Towards LGBTI Refugees and Asylum Seekers. <https://www.refworld.org/docid/524d418f4.html>

47 Gartner, J. (2015). (In)credibly Queer: Sexuality-based Asylum in the European Union. Humanity in Action. https://humanityinaction.org/knowledge_detail/incredibly-queer-sexuality-based-asylum-in-the-european-union/

48 The European Union Agency for Asylum published a report on national guidance and practices related to the asylum procedure for claims based on sexual orientation, gender identity and expression,

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2022, the EP mandated that special attention should be paid to LGBTIQ+ people and highlighted the specific difficulty faced by rainbow families in crossing borders. The EP also stressed that children of same-sex couples risk being separated from one or both parents and invited Member States to take account of de facto partnerships and families in the implementation of the Temporary Protection Directive (TPD). The latter, although enacted in 2001, was first brought into force to offer prompt assistance to people fleeing the war in Ukraine.⁴⁹

People seeking asylum in Europe on the grounds of SOGIESC not only face threats from fellow (non-LGBTQIA+) refugees in Europe, but also routinely see their claims rejected because of a widespread “culture of disbelief” and an “impossible burden of proof”.⁵⁰ Mistaken preconceptions and expectations of LGBTQ+ people on the part of migration authorities have a significant impact on the processing of their asylum applications. Some procedures are humiliating, e.g., Czech authorities have attempted to measure degrees of sexual arousal.⁵¹ UN Refugee Agency guidelines, which provide some parameters for immigration officers in this regard, along with several rulings of the European Union’s Court of Justice (CJEU), are not respected. Officials involved in deportations from European countries often ignore the risks LGBTQIA+ asylum seekers face at home.⁵²

and sex characteristics. EUAA (2022). Survey on Sexual Orientation and Gender Identity Key Findings Report. <https://euaa.europa.eu/publications/survey-sexual-orientation-and-gender-identity>
49 ILGA-Europe warns that there are some concerns about the implementation of the TPD being inclusive of all LGBTI people, and Member States have different implementing rules, for example regarding the inclusion of not recognized same-sex couples.

In its resolution of 5 May 2022, the EP considered that special attention should be paid to LGBTIQ+ people and highlighted the difficult situation of rainbow families when crossing borders, stressing that children of same-sex couples risk being separated from one or both parents, and invited Member States to take account of de facto partnerships and families in the implementation of the TPD.

50 Grierson, J. (2019, September 2). Home Office refused thousands of LGBT asylum claims, figures reveal. The Guardian. <https://www.theguardian.com/uk-news/2019/sep/02/home-office-refused-thousands-of-lgbt-asylum-claims-figures-reveal>

51 Asylum officers in the United Kingdom, Belgium, the Netherlands, Ireland, and Cyprus have been criticized for asking inappropriate, sexually explicit questions. In the United Kingdom, applicants were pressured to provide sexually explicit photographic and video evidence. Human Rights Watch (2018, August 30). EU Should Follow UN Guidelines on LGBT Asylum Seekers. <https://www.hrw.org/news/2018/08/30/eu-should-follow-un-guidelines-lgbt-asylum-seekers> Radio Prague International (2011, May 18). EU criticizes degrading practice of sexual arousal testing for asylum seekers in Czech Republic. <https://english.radio.cz/eu-criticizes-degrading-practice-sexual-arousal-testing-asylum-seekers-czech-8563543>

52 E.g. Meaker, M. (2017, August 7). German deportations ignore risks LGBT asylum seekers face at home. <https://www.politico.eu/article/gay-refugees-syria-lgbt-german-deportations-ignore-risks-asylum-seekers-face-at-home/>

There has also been an uptick in restrictions on migration, put in place by right-wing governments. ILGA-Europe reports that several LGBTI migrants and asylum seekers went on a hunger strike in Lithuania. Restrictive measures are in the pipeline in Sweden, and the UK plans reception centers in Rwanda, constituting a detrimental development for LGBT asylum seekers.

According to a study by Gender Stream, LGBTQI+ refugees face the greatest difficulty in host countries when searching for affordable and safe housing, accessing friendly medical care and clearing language barriers that prevent access to the labor market or limit opportunities for employment and socialization. It also reveals that groups with intersecting vulnerabilities, such as trans people who did not opt for a legal transition, LGBTQ couples with children or elderly dependents, LGBTQ people with mental health issues, HIV positive people and those with addictions, find themselves in particularly challenging situations, their problems exacerbated by the war and forced migration.⁵³

Poland, the most common destination country for Ukrainian refugees, was ranked last in the European Union for recognition of LGBTQ rights. Queer refugees experience there, as well as in other countries of the region, the feeling of a lack of safety and very restricted socialization. This is especially true for rainbow families with children, who are legally unorganized and socially marginalized. The situation is different in countries that are more LGBTQIA+-friendly, where refugees experience greater freedom. It is important to note that LGBTQIA+ Ukrainian asylum seekers received CSO support in several countries, including those with governments hostile towards minorities.⁵⁴

“With the number of forcibly displaced persons continuing to rise, states, businesses, and humanitarian and civil society organizations

53 Shevtsova, M., Poliakova (2023). LGBTQI+ Refugees in the EU Countries. Challenges and Needs. Gender Stream. <https://drive.google.com/file/d/1YqoF4X3CnmjBNiTH79lr420wlQUuoebr/view>

54 ILGA-Europe reported that Russian asylum seekers have had different experiences in the region. While in Bulgaria they received assistance, Russian asylum seekers faced a number of abuses or were rejected from asylum centers in Moldova and Montenegro.

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must invest in developing human rights-based policies and programs that take into account the intersectional dimensions of forced displacement and sexual orientation and gender identity, fostering stronger collaboration and coordination among all actors responsible for the protection of displaced LGBT individuals,” the UN Special Procedures remarked in a joint statement at IDAHOT 2022.⁵⁵ The statement is a reminder to Europe, a continent that will continue to be a destination for millions of people seeking safety and a better life, including those from the LGBTQIA+ community.

Conclusion

Europe is at a crossroads. The recent successes of right-wing populists (e.g., in the Netherlands) and their anticipated gains (e.g., in Germany) are ominous developments ahead of the European Parliament elections. In its next term, the EU legislature will feature the highest representation of radical, anti-liberal and anti-democratic forces in history, which may compromise development of an inclusive agenda in the Community. Only a strong and united coalition of parties and movements that believe in advancing human rights and inclusive politics can keep the continent on a humane course. If it sticks to its values, Europe still has a chance to retain its title of global champion of LGBTQIA+ rights. European leaders must take action and demonstrate that, in the discourse on hate speech and hate crimes, trans-rights and migration and asylum, they can take a clear stand without succumbing to the temptation of populism.

Before making it a global endeavour, the EU should strive to ensure equality and inclusivity within its own territory. The divergence in protection and respect for LGBTQIA+ rights between different EU regions is startling; however, the EU must not tolerate its Member States' deprivation of fundamental rights to minorities and their use of homophobic or transphobic propaganda in official discourse. Joining the EU requires every nation to subscribe to a sacrosanct set of values, and it is the obligation of the Community and its institutions

⁵⁵ <https://www.ohchr.org/en/statements/2022/05/forcibly-displaced-lgbt-persons-face-major-challenges-search-safe-haven>

to observe that they are not violated. In future, this set of values should be a compass for prospective members and a guideline to all those seeking to benefit from relations with the EU.

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