

intrinsically as human beings. Concurrently, a highly homophobic public feels encouraged by such an official position to further discriminate and even harm people based on their SOGIESC, getting away unpunished.

The wider EECA region

In wider focus, the Eastern European and Central Asian region has been both restless and divided when it comes to protection from violence or discrimination based on sexual orientation, gender identity and gender expression. Currently, it does appear that aligning with the public policy (at least legislative) standards congruent with human rights principles that are inclusive of SOGIE, and as interpreted within the European Convention, has been positive motivator for changes in the EECA region. Moldova, Ukraine, and Georgia, whose socio-legislative contexts are focused on below, were successful in introducing amendments into their legislations that include SOGI and offer LGBTI individuals, at least, some level of official protection. However, these amendments continue to be challenged in these parliaments through petitions.

No other State within the EECA adopted any protective mechanisms relating to SOGIESC during 2017-2018: and it is evident that some of their legislative loopholes create motivation for governmental and public harassment around LGBT organizing, as discussed below.

Both Ukraine and Moldova successfully adopted specialized anti-discrimination clauses that have an open list of protected grounds; although SOGI is not among them, sexual orientation and gender identity are included as protected attributes in their Labour Codes.¹⁵ Notably, only Georgia thus far has been able to expressly introduce SOGI into its anti-discrimination legislation and Criminal Code.¹⁶ Ukraine and Moldova have not yet included SOGI in its administrative or criminal legislation. However, the Supreme Court of Ukraine interpreted that the open list of anti-discrimination grounds includes both sexual orientation and gender identity.¹⁷ Nonetheless, drafts to introduce anti-propaganda legislation are periodically registered in all three of these

countries. Communities that are set to protect the “traditional family values” and their children from being “confused” and exposed to “evil” often hold anti-propaganda actions and register respective petitions.

Despite the positive aspect of these legal amendments, there is still a long way to go for these three countries. Because of years of discrimination and stigma, LGBTI individuals and organisations are still reluctant to use the new defense mechanisms to file action against discriminators, and it may be challenging for the courts to evolve strong jurisprudence on some of these issues. Moldova and Ukraine’s hate crime laws do not enumerate SOGI as an aggravating factor, and therefore SOGI remains a non-justiciable ground for appeal.

In terms of public assembly, Ukraine has been the most successful among the EECA countries: three ‘Gay Pride’ events were held in 2016-2018 with considerable protection and assistance from the police, and with no instances of successful counter-violence or counter-actions.¹⁸ However, after the parade, some people were assaulted in the city, evidently based on animus to LGBTI people. The Gay Pride in Moldova in 2018 did not raise critical concerns either.¹⁹ There are still many loopholes and much legislation missing that would create a sophisticated anti-homophobic protection and defense mechanism, but these are highly positive steps that lay the foundation for anti-discrimination in these countries.

Unfortunately, these three States are unusual across the range of EECA countries, none of which have been able to introduce SOGIE into their anti-discrimination, or other targeted, positive laws.²⁰ Lithuania, and Belarus contain provisions that to some degree mirror the 2013 Russian anti-propaganda law, in the sense that they are adopted to “protect” the “traditional family values” and the children from moral degradation.²¹ No administrative or criminal offences have been adopted to supplement these laws. Parliaments in Kyrgyzstan, Kazakhstan, Poland, Romania, Tajikistan, Azerbaijan, and Armenia were not successful in passing anti-propaganda laws as of yet, although petitions continue to be made.²²

¹⁵ Fedorovych, I and Yoursky, Y., 2018, *Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries*, ECOM.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ IGLYO, *Expression Abridged: A Legal Analysis Of Anti-LGBT Propaganda Laws* (2018).

²² *Ibid.*; Fedorovych, I and Yoursky, Y., 2018, *Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries*, ECOM.

Central Europe has proven itself uninspiring with regard to approaching anti-discrimination legislation. Where advocates draw attention to the issues regarding discrimination regarding health, privacy, access to justice amongst many other issues, they can face challenging circumstances. Armenia, despite an active LGBTI community, has interfered with NGO Pink Armenia's attempts to raise the public awareness of the toxic discrimination that is ongoing in the country: its posters were removed from across Yerevan city without any explanations; similarly, two LGBT movies were removed from the Golden Apricot Film Festival programme without any commentary on the matter.²³

During the period under review, Azerbaijan's law enforcement conducted countless raids on LGBTI premises and individuals, arrested them, performed forced medical examinations and even blackmailed them, justifying the actions under the "necessity to protect public order" clause.²⁴ Although Georgia adopted SOGI as an enumerated status in its 2014 Law of Georgia on the Elimination of All Forms of Discrimination, five LGBTI persons were assaulted in Batumi and received no effective support from the police. Further, the court that convicted the murderer of transgender victim Zizi Chekalidze did not consider transphobia as an aggravating circumstance while delivering the judgment.²⁵

In Central Asia, Kyrgyzstan's parliament adopted in its first reading of its anti-discrimination draft legislation which is inclusive of SOGI: this draft has not as yet been approved or adopted as law, so its destiny is still under scrutiny.

In Macedonia, an anti-discrimination bill is also under parliamentary consideration, which may be inclusive of SOGI: observers are cautiously hopeful as Macedonia successfully ratified the Istanbul Convention,²⁶ and has also committed to removing the homo- and transphobic wording from the educational curricula.²⁷

Looking West

Within the European Union it has become abundantly evident that entrenched fractures divide sections of the populations along ideological, and increasingly politicized, lines. Growing nationalism and defiance towards EU institutions, which culminated in Brexit but is palpable everywhere, coexists in symbiosis with conservative and religious forces deploying various strategies to counter social justice progress in gender equality, sexual and reproductive health and rights, SOGIESC inclusion, migration, trade unions, and various other traditionally 'progressive' causes. These retroactive forces are indeed frequently met with determined opposition to maintain and protect the gains made in equality and human rights-based legislation, but the fact that attempts are being made to erode foundational principles continues to sound warning bells.

In September 2016 in Finland, a petition to repeal same-sex marriage illustrated that a roll-back on acquired rights is always a possibility (it failed and the 2015 marriage bill entered into force in 2017 as scheduled).²⁸ A common form of backlash that has reoccurred throughout Europe is the rejection of non-traditional forms of families encouraged by religious communities. For example, in the 2018 Romanian constitutional referendum concerning the definition of marriage, which inflamed rather polarized views, a boycott strategy led by human rights activists in the country proved successful, and the referendum did not get enough votes to be valid.

The recognition of systemic violation of the human rights of trans and intersex people gained ground as more European States adopted legal gender recognition in 2017 and 2018 (see 2018 TGEU Trans Rights Europe Map & Index,²⁹ and ILGA-Europe Annual Review 2018).³⁰ In the landmark case *A.P., Garçon and Nicot v. France*,³¹ the European Court of Human Rights ruled that the sterilisation requirement for eligibility procedure violated trans people's right to private life. Non-consensual surgeries on intersex children were outlawed in

²³ *Annual Review Of The Human Rights Situation Of Lesbian, Gay, Bisexual, Trans And Intersex People In Europe*, ILGA Europe, 2018.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Istanbul Convention Action against violence against women and domestic violence: The Convention in brief*, Council of Europe website.

²⁷ *Ibid.*

²⁸ *Valiokunnan mietintö*, LaVM 1/2017 vp-KAA 2/2016 vp, 15 February 2017.

²⁹ TGEU, *Trans Rights Europe Map & Index*, 2018.

³⁰ ILGA-Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2018*, May 2018.

³¹ *A.P., Garçon and Nicot v. France*, Nos. 79885/12, 52471/13 and 52596/13, 6 April 2017.