The 5 largest attacks on the fundamental rights of LGBTI people in the EU last year

Blog, Civil Rights and Freedom, Bias-motivated Speech, Freedom of Assembly, Freedom of Movement, Rule of Law

> In our submission to the European Commission's annual Rule of Law report, we've identified key trends in the systematic attacks on the rights of LGBTI people across EU member states, and what can be done to counteract them.

Do you know about the EU's Rule of Law mechanism? It can be used to ensure EU institutions react strongly against LGBTI rights violations across its member states. In the EU, rule of law means that all members of a society, including governments and members of parliaments, are equally subject to the law, under the control of independent and impartial courts.

The rule of law is important because it has a direct impact on the life of every citizen of the EU, and it ensures that laws protecting fundamental rights and democracy are respected by everyone, and can be enjoyed by everyone. It is a fundamental value upon which the EU is based.

Over the past few years it has become increasingly clear that many government-led violations of LGBTI rights in EU member states, go hand-in-hand with an undermining of the rule of law. In ILGA-Europe's submission to this year's EU Rule of Law Report, we've reported on the systematic attacks on the fundamental rights of LGBTI people across the EU, which have been enabled by the weakening of rule of law and democratic structures in several member states.

ILGA-Europe, with the input of various national-level LGBTI organisations, has submitted written input to inform the 2023 annual report, in order to ensure the violations of LGBTI rights linked to rule of law deterioration are recognised by EU institutions, and are addressed in their follow-up with member states. Here are the trends which we have highlighted to the EC:

Anti-LGBTI bias

In countries where the freedom of the judiciary is weakened, we have been witnessing political interference or bias in court cases related to LGBTI rights. For example, in Poland, the Ministry of Justice uses its powers to repeatedly appeal verdicts that were in favour of LGBTI defendants.

Also, in countries where media freedom is under attack, we are seeing more prevalence of anti-LGBTI bias, smear campaigns and even censorship of LGBTI content.

Harassment and intimidation of LGBTI human rights defenders

Across the EU, hate speech by politicians was a serious issue during 2022, creating an unsafe environment for LGBTI human rights defenders and often related to a rise in hate crime and hate speech against LGBTI people more broadly. LGBTI human rights defenders are still targeted by strategic litigation against public participation

(SLAPP) cases, which aim to intimidate activists and journalists to prevent them publishing information about attacks on LGBTI rights. In addition, we saw in Poland that the prosecutor's office used tactics to intimidate not only LGBTI people ahead of court cases but also judges presiding over cases related to LGBTI rights.

Anti-LGBTI legislation

Legislation aimed at rolling back the rights of LGBTI people continued to be tabled in 2022. The most well-known example of such legislation is the anti-paedophilia legislation adopted by Hungary in June 2021, which includes provisions which ban the "portrayal and the promotion of gender identity different from sex at birth, the change of sex and homosexuality" for persons under 18, and applies these to a number of regulations related to child protection, family, education, media and advertisement.

The European Commission started infringement proceedings against Hungary due to this law in July 2021, taking it to the Court of Justice of the European Union (CJEU) in July 2022. A similar law has since been tabled in Slovakia and Romania, while Poland has drafted a number of laws restricting rights of LGBTI people and currently in Bulgaria draft legislation aims to restrict the functioning of civil society in general.

Judgments are not implemented

Judgments of the Court of Justice of the EU (CJEU) or the European Court of Human Rights (ECtHR) continued to not be implemented last year. The most notable of these is the Coman case from 2018, on freedom of movement for same-sex spouses. Due to its non-implementation in Romania, the country where the case started, it has been taken to the ECtHR. An official complaint was also submitted to the European Commission, with a similar case.

Hate crimes are not investigated

Hate crimes against LGBTI people often are still not sufficiently investigated. A number of EU countries still do not have hate crime legislation with sexual orientation, gender identity or sex characteristics as aggravating grounds. In some countries which do have such legal protection, it is often not implemented properly by police, prosecutors or even Ombudspersons.

So, what can be done?

The EU has a number of tools at its disposal to ensure the respect of the rule of law in all EU countries. The European Commission (EC), the executive arm of the EU, is responsible for guaranteeing the respect of rule of law.

The EU can take specific steps against violations of LGBTI rights in member states, that is if they go against EU legislation and/or if they are rule of law violations. Instruments the EC can use in such cases include so-called infringement procedures, as we see against Hungary and Poland at the moment, triggering Article 7 of the Treaty of the EU, to suspend certain rights from a member state, as well as cuts in EU funding based on rule of law violations.

The EU annual rule of law report highlights breaches of EU and national law, including erosion of democratic standards. Based on this report, the EU institutions talk with EU countries, as well as national parliaments, civil society and other stakeholders in order to address concerns and avoid deterioration.

We hope that our remarks are heard and that the EC will integrate them in its annual Rule of Law Report. LGBTI rights are human rights and must be protected the same way rule of law should be respected in every EU country.

Read our submission