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Anti-Discrimination Centre Memorial works on protection of the rights of discriminated minorities, including gender- and SOGI-based, and migrants in Eastern Europe and Central Asia, carrying out monitoring, reporting, advocacy on local and international level, opposing discrimination by litigation and human rights education.

Recommendations on EU LGBTI+ Equality Strategy: *LGBTI rights in EU foreign policy*

ADC Memorial is a NGO, promoting non-discrimination and human rights in the region of Eastern Europe (non-EU states) and Central Asia, including the rights of LGBTI+.

ADC Memorial welcomes the European Commission's commitment to the principles of equality and non-discrimination, including based on sexual orientation, and fully supports the initiative on elaboration and adoption of LGBTI+ Equality Strategy to further protect and promote LGBTI+ human rights.

Despite the significant progress in recognition and guarantees of LGBTI+ rights, during the last years the tendencies that turn that progress backward are increasing. In the modern interdependent world, the homophobic policies in one countries trigger the deterioration of the situation in the other countries and regions. For guaranteeing non-discrimination and equal societies, it is not enough to take measures and adopt new policies only in the EU members-states. Being one of the main world leaders, the EU should have pro-active foreign policy towards the neighbouring and other countries, where the situation with LGBTI+ is dire.

In the region of Eastern Europe and Central Asia, the EU is one of a few actors promoting human rights and non-discrimination. For the recent decades some countries achieved progress in recognition of the rights of LGBTI+ due to impact and cooperation with the EU. For instance, the association agreements and visa-free travel regulations ensured the adoption of anti-discrimination laws in Georgia, Moldova, and Ukraine.

At the same times, the other actors in the region have opposite influence. Russia, being a highly influential actor in Eastern Europe and Central Asia, continues to be an example and promoter of restrictive legislative tools. Following the adoption of «gay-propaganda legislation» in Russia in 2013, the attempts to introduce similar regulations were taken in Ukraine, Moldova, Armenia, and Belarus.

The violence against LGBTI+ people, including murders and persecution, lack of comprehensive legal framework and protection against hate crimes, negative stereotypes and rhetorics targeting LGBTI+ are among the most serious problems LGBTI+ community faces. We call on the EU to

take more active and measures in its foreign policy targeting specific problems and issues regarding LGBTI+ rights.

Below are described the concrete areas which the EU could enhance in its foreign policy and provisions on which could be included in the LGBTI+ strategy.

Attacks, murder and unlawful prosecution of LGBTI+ people

Recommendations

- The EU should prioritise decriminalisation of consensual same-sex relationships between adult men (in Turkmenistan and Uzbekistan) and elimination of repressive practices and persecution on the basis of SOGI by law enforcement agencies, including raids, roundups, blackmail, violence, and extortion in its cooperation with the countries in the region. LGBTI+ should be recognised a vulnerable group in need of protection from violence.
- The EU Representations in the countries that are not secure for LGBTI+ people should take additional responsibilities to intervene in the urgent individual cases in life-threatening situation. We urge the EU to assist in provision of safe shelter and relocation of LGBTI+ people in such situations. In its communication with LGBTI+ activists and communities, the staff of the EU missions, representations, and embassies should take all measures to ensure confidentiality of communication and provide secure and safe space for communication and cooperation.

Background

“They interrogated people in different ways: they beat us, even broke one person’s arm, shocked us, beat us on the legs with batons, put on gas masks, strangled us, tied a five-liter bottle to our genitals, hit us on the bottom of our feet with clubs, undressed us in winter, poured water on the tile floor, made us wash it with our bodies. <...>Who could withstand these interrogations? They’ll throw you in jail anyway, and no lawyer in Turkmenistan will help you”¹ - this is an anonymous testimony of a person from Turkmenistan who was prosecuted for being a gay.

Article 135 of Turkmenistan’s Criminal Code criminalises consensual same-sex intercourse between men and stipulates a punishment up to two years’ imprisonment. However the qualifying elements can increase the punishment by a factor of 10. The guilt of the accused is proved by the confessions, usually get by torture, intimidation and other forms of pressure. According to ADC Memorial respondents, from 2013 to 2015 at least 100 people per year were sentenced to terms under Article 135, while 40 to 45 people charged under this article were in prison in 2013 to 2014; some who had served their time were prosecuted again and given a new sentence. Many are not able to survive the endless physical, psychological, and sexual violence—reports have appeared in the media about suicides in prison. After serving a term for committing a crime under Article 135, gays are basically deprived of any opportunities for development or a full life, because they cannot continue studying or working or find a job and, of course, they are stigmatized by their friends, relatives, and society in general.

The criminalisation of homosexual relations remains also in Uzbekistan, in article 120 of the Criminal Code. While the criminal prosecutions of gays is not so widespread in Uzbekistan as in Turkmenistan, legitimised criminal prosecution maintains a high level of homophobia in society and keeps many in a state of constant fear. Article 120 also opens up broad opportunities for

¹ ADC Memorial, Report LGBTI+ in the region of Central Asia: repressions, discrimination, exclusion, 2020 <https://adcmemorial.org/en/publications/lgbti-in-the-region-of-central-asia-repressions-discrimination-exclusion/>

blackmailing men regardless of their sexual orientation.² On September 2019, Shokir Shavkatov, 25, gay, was killed in Tashkent. The police reported that he was killed by another Uzbek man who met Shokir for a date. The friends of Shokir told that in the night club two 40-years-old men approached Shokir and left with him. The men identified themselves as police of ethics.³ The day before Shokir came out about his sexual orientation in the social networks.

While in the other countries of ex-USSR homosexuality is decriminalised, LGBTI+ persons regular face life-threatening violence, extrajudicial detentions and arrests, threats, torture, blackmail. The violence against LGBTI+, pressure and discrimination is present in all spheres of life - family, work, leisure spaces, education institutions, public sphere and in communication with state bodies. LGBTI+ people must hide their relationships, and live in constant fear of exposure and repressions.

In 2017 the massive state-led persecution - massive detentions, torture, murders - of LGBTI+ people took place in the Chechen republic, Russia. Survivors reported violence on the mere basis of belonging to the LGBT community.⁴ Based on different reports from 3 to 50 men were killed, the real number is unknown. Despite the public outcry in Russia and at the international level, the persecution, torture and murders of gays in Chechnya continued in 2018 and 2019.

However, the cases of murder and attacks are not limited to Norther Caucasus and Central Asia. For example, in 2014, a gay man from Minsk, Mikhail Pischeuski was severely beaten and passed away after spending a year in a coma. In 2014 and 2016 in Georgia transgender women - Sabi Beriani and Zizi Shekeladze were killed.

Often police not only fail to protect LGBTI+ community, but use violence, threats, extortion and blackmail against community on their own initiative. The special repressive practices against LGBTI+ people in the region are compilation of lists of LGBTI+ and HIV-positive people, special operations, raids, and round-ups.

Lack of anti-discrimination legislation on SOGI and its implementation

Recommendations

- The EU should follow-up the fulfilment of obligations of third countries based on bilateral (as association agreements or trade agreements) or multilateral international treaties on equality and promote comprehensive national anti-discrimination legislation, and demand from the partners the mechanisms for effective implementation of the legislation.
- The EU should take measures to strengthen capacities of state bodies, including police and judges to conduct effective investigation of crimes against LGBTI+ people, including crimes committed by law enforcement officers.

² Ibid

³ Radio Ozodlik, GUVU of Tashkent: 25 years old gay got acquainted with his murderer by the Internet, 16 September 2019, <https://rus.ozodlik.org/a/30165527.html>

⁴ Novaya Gazeta, Violence against the Chechen gays: the testimonies of survivors, 5 April 2017, <https://novayagazeta.ru/articles/2017/04/04/72027-raspravy-nad-chechenskimi-geyami-publikuem-svidetelstva>

Background

The other systemic problem all over the region is the lack of comprehensive legislation that provides protection of LGBTI+ human rights and prosecution of hate crimes.

Some countries in the region have legislation that violates LGBTI+ rights. As have been mentioned above in Russia in 2013, three federal laws were amended to include measures to «protect» minors from «propaganda of non-traditional sexual relationships», prohibit dissemination of such materials and establish administrative punishment measures for the offences. In 2016, Belarus also amended the Law on Children's Rights to include protection from «information harmful to their health and development» and to ban dissemination of information that «discredits the institution of family and marriage» for minors.

Other countries started to adopt the legislation to ensure non-discrimination. Moldova, Ukraine and Georgia have adopted law on Elimination of All Forms of Discrimination. However only Georgian law directly mentions discrimination on base of sexual orientation and gender identity, and other two need improvement in this area. Moreover, all three have problem with effective implementation and mechanisms to ensure implementation.

The majority of the countries in the region do not take comprehensive measures against hate crimes. Law enforcement bodies and courts do not have knowledges and skills for effective investigation and prosecution of perpetrators. As a consequence, the crimes are not documented as such, the majority of hate-motivated incidents are qualified as hooliganism and in investigation of grave crimes, the bias motive is not reflected as aggravating circumstances. This also leads to the lack of prevention of hate crimes.

Transgender people are marginalised and excluded from societies not only because of transphobia but also due to lack of appropriate procedures of legal gender recognition and comprehensive, non-stigmatizing medical transition services. For example, in Turkmenistan transgender people are forced to have gender reassignment surgery in other countries, but they are not able to change their Turkmen documents after. The law does not provide possibility of changing first and last names at a person's own desire. In Kazakhstan, transgender people have to spend a month in a psychiatric hospital to obtain a medical diagnosis and take further actions.

Families of LGBTI+ people continue to be ignored, as the legislation does not provide marriage equality or civil partnerships, not even mentioning children adoption. As for the intersex people, the medical surgeries of newborn intersex children are widespread, and sometimes take place without notification of parents.

Prevailing negative stereotypes and attitude to LGBTI+ people and community

Recommendations

- The EU should strongly encourage the national governments to conduct awareness-raising activities aimed at elimination of homophobia, biphobia, lesbophobia, and transphobia in society and in law enforcement, judicial, and other state agencies and media outlets. The EU should especially encourage to prosecute officials, public figures, and authors of publications in the media and online for calls to violence and the use of hate speech.
- Within its financial support via EIDHR, the EU should allocate funds at social empowerment of LGBTI+ community, such as development of micro- and small- business and other project directed at self-reliance, and support for development of inclusive education and actions against bullying in schools.

Background

The level of hostility towards LGBTI+ people is very high across the region, the majority of the population are prejudiced towards LGBTI+ people. The study by the PEW Research center, in 2017 concludes that 84% of respondents in Belarus, 97% in Armenia, 93% in Georgia, 92% in Moldova, 86% in Russia and 86% in Ukraine believe that homosexuality is not acceptable.⁵

These stereotypes are manipulated and strengthened by different conservative actors throughout the region, such as religious organizations, government officials, far-right groups, right-wing populist politicians, journalists, and others. Some politicians address homosexuality as a feature of ideological enemies and western spies, using such rhetorics against their political opponents, or to underline their conservative values.

In Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan, religious and political figures publicly condemn LGBTI+ people, the government of Turkmenistan denies the existence of LGBTI+ people in the country. A deputy in Kazakhstan spoke about restoring criminal liability for homosexuality, and judges and political analysts have proposed dealing with gay people “like they do in Chechnya” or castrating them. In Kyrgyzstan, a female deputy warned that the country was at risk of turning into “Gaystan”. The Tajikistan’s human rights ombudsman stated that the country cannot implement recommendations made by international organizations regarding LGBTI+ rights because of “moral [norms] and ethics for relationships between people in the country”.⁶

Such high level of public display of hatred of LGBTI+ people and open calls for homophobic violence in the media and on social media, and state-sponsored homophobia result that groups and individuals committing hate crimes are convinced to have a license for violence against LGBTI+ people.

For LGBTI+ people, being outed or coming out generally results in loss of employment, regardless of a person’s qualifications or professionalism and face problems in the educational institutions.

Providing safe space in the EU: LGBTI+ asylum-seekers and refugees in the EU

Recommendations

- The EU should take measures to adjust the refugee status determination (RSD) procedure, and asylum system sensitive and safe for LGBTI+ people. It should be ensured that LGBTI+ asylum-seekers are not settled in centres with their fellow countrymen without their free and informed consent. The methodologies should be elaborated for RSD procedures and interviews to be LGBTI+ friendly.
- The EU should take measures to ensure that the Member states raise capacities and knowledge of the staff of migration services, state border police, doctors, social workers, psychologists and other professionals working with LGBTI+ asylum-seekers and refugees.
- The EU should recommend member-states not to recognise the countries of Eastern Europe and Central Asia as third safe countries for LGBTI+ people with possibilities for internal relocation.

⁵ Pew Research Centre, Religious Belief and National Belonging in Central and Eastern Europe (2017). Link: <https://www.pewforum.org/2017/05/10/social-views-and-morality/>

⁶ ADC Memorial, Report LGBTI+ in the region of Central Asia: repressions, discrimination, exclusion, 2020 <https://adcmemorial.org/en/publications/lgbti-in-the-region-of-central-asia-repressions-discrimination-exclusion/>

Background

Some LGBTI+ people facing the described above persecution and discrimination, threat to life and safety, choose to leave their countries. However, even that is not easy. For citizens of Central Asian and Eastern European countries it is extremely difficult to obtain a visa for Europe or the United States, especially when the consulates are aware of their orientation or intent to request asylum. ADC Memorial faced situations when its partners were rejected visas for advocacy trips to EU, while the aim of the trip and the activities were well-known to the EU consulates.

This is why LGBTI+ people generally move to visa-free Eurasian or other countries (Russia, Kazakhstan, Turkey, United Arab Emirates) — which are far from safe—as labor migrants, with all the associated risks and hardships. Less frequently, they leave to study abroad, which requires significant financial resources. Departure from several countries is difficult for any citizen, LGBTI+ or not: until recently, Uzbekistan had exit visas and Turkmenistan still does. The restriction to leave the country could be also connected with issues of foreign passports and military services.

Even leaving the country does not guarantee the safety of LGBTI+ people fleeing repressions from the most vulnerable countries. These people still get threats from homophobic fellow citizens who have also migrated to the new country. Many also continue to live in constant terror for their relatives at home. They also worry that the special services will find them and forcibly return them home.

In late November and early December 2019, approximately 20 gay men who were citizens of Turkmenistan were arrested in Turkey. Activists assume that these men were taken back to Turkmenistan, where they could be blackmailed or imprisoned. This is not the first case of this kind of “cooperation” between the governments of these two countries. In another case, a gay man decided to leave Turkmenistan after his friend, who had been charged under Article 135, committed suicide in prison. He has been living in Turkey for three years, but hasn’t been able to get to Europe because airlines track suspicious people who can request asylum and don’t let them on flights. It’s difficult for a Turkmen citizen to find regular work in Turkey, even though this person has several diplomas. His stay in Turkey will end in one-and-a-half years, and he will have to either stay there illegally or find a way to travel somewhere else. He can’t return home—the police are looking for him there.

Those, who manage to arrive in the EU, face problems within the EU asylum system, which is not sensitive to the needs and security of LGBTI+ asylum-seekers. When settled in the centres for asylum-seekers, the specific vulnerabilities of these applicants are not taken into account. Often the LGBTI+ asylum-seekers are settled in the centres with their fellow countrymen, who start to persecute, threat and harass them based on sexual orientation. Moreover, in this way, the information could be leaked to the state of origin and be used against family and relatives of the LGBTI+ applicants.

According to the LGBTI+ people who were interviewed by asylum officers - in some countries the refugee status determination procedure is not sensitive also. Some questions posed aimed at verification sexual orientation are very personal, intimate and are offensive to the applicants. The other issue is interpreters, who are also often fellow-citizens, who may disclose the information about the applicant to the diaspora community in host country or in the country of origin.

At last, in some EU member states, the integration courses for refugees and migrants do not include or provide information on LGBTI+ community and human rights. The LGBTI+ refugees could face discrimination and bullying from other students or staff.